WTO: Agricultural Issues for Africa

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Contents

About the authors

Preface

Let me start with the relationship between the NAMC and tralac, which has resulted in many scientific outputs. In the book titled *Africa's trade relations – Old friends, good friends and new friends* published in 2015, I outlined the awards won by products of the relationship. This book marks another milestone in the longstanding relationship between the two organisations that has also seen many capacity building initiatives called Geek Weeks that provide an opportunity for young professionals to work with established scholars such as Professor Ron Sandrey to mention one.

The book examines the complex multilateral trade negotiations, specifically as regards the inclusion of agriculture as part of the multilateral talks. The agriculture trade talks started in 2000 in terms of the original mandate of the Agreement on Agriculture, and then became part of the Doha Round of negotiations in 2001. Many scholars argue that following the completion of the Uruguay Round (UR), the sensitive issues surrounding agriculture are the main reasons why the Doha Round of trade negotiations is proving so difficult to conclude. It seems, to me, that these scholars are right. Trade Ministers at the 2013 Bali Ministerial Conference, adopted important decisions on agriculture and at the most recent Ministerial Conference in December 2015, in Nairobi, members of the WTO agreed to eliminate agricultural export subsidies. This marks an extremely important step in the reform of international trade rules on agriculture since the establishment of the WTO. This book focuses on these developments as well as the increasingly important role of non-tariff barriers that impact international of agricultural products. In addition, an examination of dispute resolution provisions in the WTO and in regional trade agreements, is also presented. The analysis emphasises that a rules based system of international trade requires a well-established dispute settlement mechanism, and the enforcement of rules.

Thank you to tralac and the NAMC team for compiling such an exciting book that covers a broad range of issues, including the current and relevant issue of non-tariff barriers.

Tshililo Ronald Ramabulana
Chief Executive Officer,
National Agricultural Marketing Council

Introduction

There are generally considered to be four legs to the global trading seat of trade liberalisation. These are the unilateral leg, or what one does on one's own; the bilateral leg, or what one does between one other partner; the regional leg, representing what one does with more than one partner; and the multilateral leg or what one does with all of one's trading partners collectively. Over the last few years the third leg, that of regionalism in the form of free and partial trade agreements has become more in vogue on the international trade policy scene, and in particular the two so-called Mega agreements of the Trans-Pacific Partnership Agreement (TPPA) and the proposed Transatlantic Trade and Investment Partnership (TTIP) between the European Union and the United States. On the African scene politicians have conveniently skipped over the Tripartite Free Trade Arrangement (T-FTA) that has not advanced much past the talking phase and are concentrating on promoting continental integration through the Continental Free Trade Agreement (CFTA).

Meanwhile, the WTO remains the largest trading bloc despite being in a state of what many regard as moribund and having done little since its inauguration as a part of the old General Agreement on Trade and Tariffs (GATT) to further its mandate of facilitating a free global trading system. Undoubtedly the GATT had made significant progress in liberalising merchandise trade, with tariff rates on manufactured goods now often at very low levels. There was much hope for agriculture reform at the inauguration of the WTO following the Uruguay Round (UR), as for the first time agriculture had been an important and significant part of the outcome of a GATT Round. Domestic subsidies for agriculture were at least forced into a restrained set of rules that must take credit for being a major factor curtailing their worst excesses. Tariffs have been reduced, although there are significant exceptions to this statement, and in particular in the importation of sensitive products to developed country markets.

The WTO covers trade in goods, services and intellectual property, dispute settlements and a periodic review of the trade policy of members. Within goods there are the two basic divisions of agriculture and non-agriculture, and this paper is primarily concerned with the WTO role in agriculture. In turn, the agricultural interests of the WTO concern the three basic areas of:

i. Substantially reducing tariff and non-tariff measures that would ensure market access of agricultural products.
ii. Reduction and ultimately phasing out all artificial forms of export competition.
iii. Substantial reduction in domestic support that would ensure non-trade distortion.

Proposals based around moving forward in these three broad areas have been on the table since 2004, with little progress except in the export competition area. Outside of these broad categories perhaps the main one that is of direct interest to African agriculture is the dispute mechanism, and here the focus is largely upon the cotton case. In understanding the WTO one must appreciate that not all members are equal. The organisation comprises a self-selection made of both developed and developing countries (which includes a sub-category of least developing countries), with all the African countries in the developing category. In general, these developing countries are not required to meet as strict a compliance target as the developed countries, and indeed for those in the least developing category the targets are currently such that in most cases little adjustments would be needed in their policies to meet an agreement of the DDA.

Against this background the object of the current book is to examine the current proposals associated with the DDA and assess what a successful agreement might mean for African agriculture. We concentrate upon the three keys themes that are core to agriculture in the WTO; those of domestic supports, market access and export incentives. We fully recognise that the WTO and the DDA is about more than just these core themes, and introduce many of these activities in different chapters to assess the WTO's relevance of these to African agriculture.

A little more on the WTO and the DDA

Chapter 1 provides a comprehensive background to the WTO and elaborates on the general points made above. An important aspect of the DDA is that it operates as a single undertaking, meaning that nothing is agreed until everything is agreed. Thus, failure to agree in one aspect of the negotiations can stall the whole process.

The market access negotiations focus on the six aspects of tariffs, tariff quotas, administration, special safeguards, state trading enterprises, and the sixth being other issues. Tariff reductions are the main issue here, and this operates on a formula basis that juggles between deeper cuts for developed member rates, generally higher cuts for higher starting rates (and importantly these are bound and not applied rates) and maximum and minimum rates within the different tariff bands to average out within the band. Domestic supports operate in a regime of green (permitted); special and differential (amber); and an additional blue box. Most attention focusses on the amber box where the reductions are proposed, although the interplay between boxes is somewhat complex at times. Export competition is becoming less of an issue as there was significant progress at the Nairobi Ministerial in achieving a reduction in export subsidies. Unfortunately little or no progress was made at Nairobi on market access or domestic supports, although some progress was made on issues such as food stockpiling, food aid and the cotton dispute.

Estimates of the value of DDA outcomes

In recent years the global trade modellers of the world, or perhaps more accurately their patrons, have largely moved on from assessing the gains from an outcome from the WTO's DDA. Perhaps it is because as the DDA stalled it lost some of its 'sexiness' appeal, or perhaps it was because as trade models become more sophisticated their assessments and the limitations of the DDA for agriculture became more apparent, the magnitude of the gains declined. The salient feature of this modelling research is that the gains for Africa are modest, with some countries actually losing welfare through results such as preference erosion in developed markets. This chapter undertakes a review of the literature that is relevant to quantitative analysis of the impacts of the DDA, with special reference to Africa and South Africa. While some of this review may be a little dated, that is of no real concern in that the general principles of the stalled DDA have barely changed, although what has changed in recent years is that the computer model analysis has become more sophisticated. This is especially so for the Global Trade Analysis Project (GTAP), the model of choice for most practitioners as more countries have been added to its data base and the trade and economic data is continually moving forward.

Assessment results reflect changes from a combination of better models that have more recent information such as the final UR tariffs, the full implications of China's accession to the WTO incorporated, an ability to model tariff revenue losses and the impacts of trade creation/diversion effects, the consequences of the erosion of tariff preferences, and a **scaling down** of the DDA ambitions that are now being modelled as more realistic assumptions of any outcome. Virtually all of the recent modelling work is pointing to reduced gains from the DDA, and even in some cases for developing countries to losses. These modest results are accentuated by the problems facing Africa in its major infrastructural and capacity constraints that will severely limit the abilities of most African countries to take advantage of any new opportunities.

We also find that reforms to the highly protected sugar regimes in developed countries and the consequential market outcomes are not necessarily good news for all African producers. For example, simulating changes to the EU sugar regime and introducing a situation where inter-African tariffs are eliminated confirm that these reforms are dominated by changes in the African sugar production and trade profiles. The big gainers are South Africa from enhanced sugar exports to mainly Kenya, and Kenya itself as resources are diverted away from its inefficient sugar sector.

Another WTO programme that has generated interest is the issue of trade facilitation. We examine tralac research relating to simulations of **time in transit** to proxy infrastructural deficits in Africa such as delays at border crossings, roadblocks for trucks, and the necessity to pay bribes. The welfare gains to Africa were substantial. The striking feature is that almost all of the gains to each country overwhelmingly accrue to that same country, and that (a) these gains are substantial, (b) they mostly accrue to the liberaliser and (c) in only taking 20% of the costs of time over and above an international benchmark we are leaving plenty of room for improvement in most African countries. Similarly, while not strictly speaking a WTO issue, tralac used this GTAP computer database and the full suite of African agricultural sectors and African countries/regions in order to assess the benefits of intra-African tariff abolition in agricultural trade across the continent. This research suggests that Africa has as much to gain from its own continental liberalisation of agricultural trade as it does from relying on the WTO.

The global agricultural profile as it relates to African agriculture

This chapter examines the two main remaining agricultural issues of market access and global domestic supports to assess where gains to Africa may come from. The primary focus is on the gains for African agriculture and overall African welfare. It starts by providing a profile of African agricultural exports by the main sources and products and examines this trade in detail to assess the tariff duties faced in their markets to glean some information as to where the WTO may be able to assist exports. This examination suggests that given the African export profile and current access conditions, more progress in access gains may result from better access into both the EU and fellow African countries, and we argue that in the former the EPAs and the Trade, Development and Cooperation Agreement (*TDCA*) are the best negotiating forums for European destinations, and the suite of African integration negotiations in progress offer the best opportunities for intra-African access liberalisation. In general, tariffs facing agricultural exports from least developed countries into developed countries are declining to a very low level, although there are still 'some nuts to crack' (sugar in particular).

An assessment on the profile on global agricultural subsidies shows that in many, but not all, cases domestic agricultural subsidies are declining, and that the declining role of export subsidies along with recent progress on an agreement here means that these export subsidies are a minor issue. Overall OECD agricultural protection is declining dramatically, driven by the weight of the US and EU declines. In the category of highly supported regime there are the well-known 'culprits' of Switzerland, Norway, Japan and Korea, along with the two surprises of Indonesia and China where protection is climbing rapidly. In general, subsidies globally are concentrated upon the so-called **rice pudding** of rice, milk and sugar. Only sugar is of export interest to Africa; South Africa and Swaziland in particular for exports and Kenya for imports. Both cotton and oilseeds are also important, and cotton carries much symbolic significance for Africa.

The overall assessment is that there seems to be few of the major African agricultural exports where the WTO could provide some benefits, and especially against the background of low agricultural tariffs into developed countries from LDCs. More specifically cotton seems to be more of a flash-point than an actual source of benefits and there is an outside possibility that perhaps some relief from the high (20%) tariffs into China may result from an agreement at the WTO. Sugar trade exists in a complex regime, but solutions through this maze for African producers are best pursued within Africa itself by negotiations in the African trade agreements currently in play and between South Africa and the EU under the TDCA. Several of the main products – cocoa, coffee and tea, live animals – exist in an almost duty free environment for African exporters. Of the others for fruit and vegetable exports non-tariff barriers are probably the main worry, as South Africa, the main fruit exporter, faces tariff complexities in the EU and high tariff barriers into China and India. Although tobacco exports from the main suppliers have duty free access into EU and South African markets, tobacco exports from Zimbabwe to China face a high 23,75% tariff. The semi-related products of oil seeds and animal and vegetable fats are largely destined for the EU and Africa, and here if the imports are not already duty free then bilateral or regional negotiations must offer the best possibilities for improved access conditions.

South African agricultural, forestry and fisheries exports – a profile

In the next two chapters we examine the profile of South Africa's exports and imports respectively, and here we extend the analysis to include both forestry and fisheries products. This is because both are under the auspices of the South African Department of Agriculture, Forestry and Fisheries (DAFF). We analyse market access conditions only as the previous chapter shows that it is through market access that the major overall gains may come from the WTO for agriculture, while for fisheries the WTO does not investigate subsidy supports to member countries.

For the **agricultural** sector, we find that a significant portion of exports from South Africa is destined either for the EU or for fellow African destinations. We consider that for the former any gains for market access are likely to come from direct negotiations under the umbrella of the TDCA rather than multilateral agreements. Furthermore, a multilateral agreement improving EU market access conditions is likely reduce South African preferential access conditions and therefore be of little or no value to South Africa. Africa itself is becoming an increasingly important destination for South African agriculture, we similarly consider that access conditions on the continent are much more likely to improve with direct negotiations through the SDAC FTA, the Tri–Partite FTA or the Continental FTA. Importantly, as most African WTO members are least developed countries they are very unlikely to have to make market access conditions under any foreseeable WTO outcome, and moreover any access concessions that they do make to all competing external sources are once again likely to reduce possible preferences for South Africa.

We confirm this general picture by analysis of the top-10 agricultural exports at the HS 4 level into the top-10 export destinations. We find that fellow SACU destinations of Botswana, Lesotho, Namibia and Swaziland, all of whom are in the top-10 destinations, are all duty free under the SACU agreement, and Zambia only applies duties on exports of South African citrus fruits and even here the rate is under 1%. Both Mozambique and Zimbabwe have a mixture of zero, low and modest rates. This leaves the three top-10 destinations of the EU, China and the US. The same general pattern of a mixture of zero, low and modest rates also applies to US applied tariffs for South Africa, with cane sugar and related products being the sectors where access conditions could improve. We have observed that the TDCA governs access conditions for South Africa's premiere market of the EU, and note that despite this bilateral agreement most of the exports to the EU have duties assessed. In particular, the sugar tariff is 37,73%. This leaves China as the outlier, where tariff rates are all double figures. Our analysis of course ignores possible markets where 'trade chilling' inhibits or prohibits exports from South Africa, although as a generalisation we consider that these cases may be limited to sugar and associated products.

For the **forestry** exports, the situation is less complex. Again examining the major markets by the major commodities, we find that the exports to the EU, Japan, Namibia, Botswana and Mozambique are all duty-free. The same conditions apply to exports into both Indonesia and Thailand, where virtually the only products of wood pulp are also duty-free. This leaves the major market for 2015 of China, India and Zimbabwe. For China, exports of wood pulp, the dominant export, and the next most important wood chips, are all duty-free, leaving only modest exports of paper and paperboard facing tariffs of 4,12%. For India, exports duties are 5,0% except for some negligible trade at 10%. Zimbabwe imports a wider range of forestry products, and here the tariffs are generally either at or near duty-free or at or near 10%. Overall, there are very few exports facing duties in the major markets other than India or Zimbabwe.
Five of the 11 major markets for South African **seafood** exports are duty-free, namely Hong Kong, USA, Namibia, Botswana and Mauritius. Mozambique imposes a 20% duty on crustaceans but otherwise is duty-free. Despite the TDCA, the EU, again the major market, levies duties ranging from 3,15% to

15,70%, and again the appropriate negotiating process is through the TDCA. This leaves the minor markets of Japan, Vietnam, Australia and Taiwan (Chinese Taipei). Japan imposes tariffs ranging from 1,92% to 10,39%, Vietnam has duties of 7,61% and 5,67% on its two import lines, Australia has only one dutiable import line at 2,81%, and Taiwan has duties ranging up to 19,53%. Thus, the major access concerns are the EU, Mozambique's crustaceans and to a lesser extent Japan. Lesser but still important access issues remain with Vietnam and Taiwan.

Overall, we see few cases where the WTO negotiations may improve South Africa's access conditions into the major markets for these exports. In all cases, the EU is the top destination, and except for forestry products, access conditions are generally constrained. Africa is becoming increasingly important, and here the access conditions are more likely to improve through direct intra-African agreements in the different negotiations that are in progress. In particular, Zimbabwe remains problematical.

South African agricultural, forestry and fisheries <u>imports</u> – a profile

The objective of this second South African paper is to evaluate the profile for South African agricultural, forestry and fisheries imports in recent years. We generally use trade data over the period from 2010 to 2015 inclusive, as it is only over this period that reliable and easily accessible trade data is available. The key findings from this research are that imports of both agricultural and forestry products have been steadily climbing while imports of fishery products have been more volatile but are in general also increasing.

The main agricultural imports have been wheat, rice and poultry meats, with a significant share of both wheat and poultry imports sourced from the EU and the rice from mainly Thailand and India. Next are spirits from mainly the EU, cane sugar from Swaziland and Brazil, and palm oils from Indonesia, while South African climatic conditions have forced an increased quantity of maize to be imported from South America. The duties on poultry meats, wheat and sugar have all increased in recent years as South Africa strives to protect domestic producers, although diluting these efforts are the significant imports from the preferential sources of the EU and SACU/SADC countries. Imports of both rice and maize are duty-free from all sources.

For 2015 paper was the main forestry product imported, followed by printed products such as books, brochures and similar products and then sawn timber. The EU is again the main supplier (where all imports are duty free), followed by China, the USA and Swaziland. South African non-preferential tariffs are modest, with the highest rates being 10,15% levied on packing containers, 6,07% on uncoated paper and 5,79% on printed material not elsewhere specified. Five of the top ten products enter duty-free from all sources, while paper with cellulose face a low **nuisance** tariff of 0,92%.

Namibia was ranked as number one supplier of fishery products to South Africa, followed by Thailand, India and China, with the EU only ranked in eighth position. The highest tariff rate assessed on fishery products is a 25% rate levied on non-preferential imports of extracts and juices of fish, while three lines are duty-free or below 1%. All non-EU preferential imports are tariff free (and that includes Norway). Significantly EU imports into South Africa from the EU are subject to tariff rates that in most cases do not give the EU any tariff preferences.

How may the Agreement on Agricultural improve the Agricultural, Forestry and Fisheries Trade performance of the BLNS[1] countries through better market access?

This chapter is a companion paper to a similar analysis of South African exports of agricultural forestry and fisheries products, and here we similarly include the three sectors for consistency although we eschew an analysis of the BLNS imports in these products. The major BLNS exports are sugar and sugar-related and beef and other meats. The sugar is from Swaziland while the beef products are from both Botswana and Namibia. In all cases South Africa and the EU are the dominant export destinations, followed generally by neighbouring or near-neighbouring African countries. Again, in all cases entry into South Africa and the EU is duty free, and entry into several African countries is also largely duty free. Thus, access conditions requiring further negotiations are mostly limited to fellow African countries, and here we consider that African trade agreement negotiations already on the table are the appropriate forums and not the WTO. This leaves very few instances where the WTO may be of benefit to BLNS agricultural exports.

[1] Where BLNS represents Botswana, Lesotho, Namibia and Swaziland

With respect to the individual BLNS countries, Botswana exports mainly beef and related products; Lesotho, wool and wheat milling related products; Namibia, again beef related products along with grapes and beer; and Swaziland, almost exclusively sugar and sugar-related products. The duty-free markets of South Africa and the EU dominate the destination profiles except for Lesotho where South Africa is effectively the only market for agricultural products.

The situation regarding market access for forestry products is even more clear-cut, as exports to the dominant destination of South Africa and the third market of the EU are duty-free and exports to second placed Zambia are largely duty-free. This basically only leaves some African destinations among the majors with possible duties that would again be best addressed through African negotiations.

Fishery exports to the main destinations of South Africa and the EU are again duty free, as are minor exports to Hong Kong, the US and Australia. Again a significant percentage of the other destinations are African countries where any remaining tariffs associated with these exports would be best negotiated under one of the several African agreements. Thus except for relatively minor exports to China and Japan, which attract similarly relatively minor tariffs, the complete access position can be summed up as being either (a) duty free or (b) where this is not the case then it is a matter of negotiations in African agreements or the very minor duties into Japan and China. It is therefore difficult, based on this evidence, to see the WTO negotiations doing much for BLNS (mostly Namibian) fisheries exports.

Overall there appears to be very limited export markets where the BLNS exporters of agricultural, forestry and fisheries products can expect the WTO to provide access gains.

How do other related issues fit into the WTO?

This book to date has focussed on the traditional core values of the WTO and their relationships to African agriculture. This chapter expands upon these core WTO issues and looks at some of the new and emerging trade issues and sees where the WTO fits into this landscape and how they may impact on Africa. Much of the attention is devoted to looking at the so-called Singapore issues of trade and investment, competition policy, transparency in government procurement and trade facilitation. Here we find that while the WTO now has a minimal interest in the first three of these important issues, it has a strong presence in trade facilitation. Consequently, we examine trade facilitation in more detail and see that improvement here is certainly needed in Africa, but caution that there are a lot of commentators questioning whether the reality of the programme will match the rhetoric that has been associated with it.

Other trade related issues examined are rules of origin, trade and environment, trade and labour, food security, tariff quota issues and the WTO disputes settlement mechanism. Again, while the WTO is involved to varying degrees in these issues there are few cases where direct gains to African agriculture can be foreseen in the near future.

One aspect of agricultural trade that is attracting attention is the issue of value-added in the process chain and constraints to fully benefiting from being able to move up this chain. We have not examined the role that the WTO may be able to play here directly, so we shall introduce some points at this stage. The first factor that is important is the issue of tariff escalation and how increased tariffs may constrain further processing. In analysis of tariffs facing African agricultural exports in this book we concluded that tariff escalation is not really a problem for most of the African agricultural exports as exports to the EU and US in particular are generally quota and duty free. Where problems exist in Africa this is more a matter for regional negotiations rather than multilateral negotiations. Other factors inhibiting value-added are the various NTBs, and again this is covered in the book. These NTBs can be very broad, and in Africa's case the inefficient processing and transport structures are definite barriers, but these are addressed by unilateral or possibly bilateral actions rather than through the WTO. An example of this is the costs to Africa of time in transit, as reducing these are crucial for value-added. In general we consider that the WTO offers little for enhancing African value-added opportunities, unless of course the WTO trade facilitation benefits are fully realised.

Chapter 1

The profile of South African imports of agricultural, forestry and fisheries products

Yolanda Potelwa, Moses Lubinga, Ron Sandrey and William Mwanza[2]

1. Introduction

The objective of this paper is to evaluate the profile for South African agricultural, forestry and fisheries (AFF) imports in recent years. We expand the traditional agricultural sector as the Department of Agriculture, Forestry and Fisheries (DAFF) in South Africa administer all these three sectors. We generally use trade data over the period from 2010 to 2015 inclusive, as it is only over this period that reliable and easily accessible trade data is available.

The key findings from this research are that imports of both agricultural and forestry products have been steadily climbing while imports of fishery products have been more volatile but are in general also increasing.

The main agricultural imports have been wheat, rice and poultry meats, with a significant share of both wheat and poultry imports sourced from the EU and rice from mainly Thailand and India. Next are spirits from mainly the EU, cane sugar from Swaziland and Brazil, and palm oils from Indonesia, while South African climatic conditions have forced an increased quantity of maize from South America. The duties on poultry meats, wheat and sugar have all

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[2] Economist, National Agricultural Marketing Council (NAMC); Senior Economist, NAMC; tralac Associate and tralac Researcher respectively. This paper is an output from the 'Geek Week' data training workshop held at tralac during the week of Monday 11 April to Friday 15 April 2016.

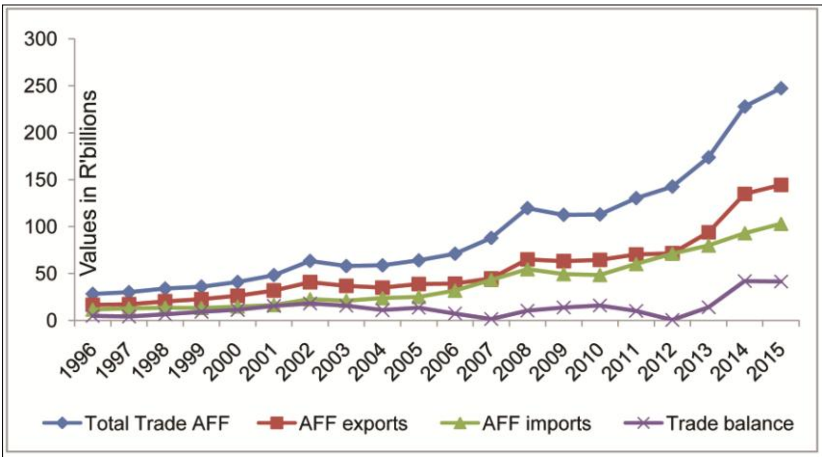
increased in recent years as South Africa strives to protect domestic producers, although diluting these efforts are the significant imports from the preferential sources of the EU and SACU/SADC countries. Imports of both rice and maize are duty-free from all sources.

For 2015 paper was the main forestry product imported, followed by printed products such as books, brochures and similar products and then sawn timber. The EU is again the main supplier, followed by China, the USA and Swaziland. Tariffs here are modest, with the highest rates being 10.15% levied on packing containers, 6.07% on uncoated paper and 5.79% on printed material not elsewhere specified. All imports from preferential partners are duty free, as are several lines for all sources.

2. South Africa's agricultural import profile

Figure 1 shows the AFF trade performance between 1996 and 2014 and since the implementation of AoA South Africa's AFF trade has improved an average of 12% between 1996 and 2014. In most years, exports have been marginally above imports, leading to a positive trade balance as shown.

Figure 1: South African AFF trade performance



Source: World Trade Atlas

2.1 Agriculture, Forestry and Fishery Import profile into South Africa

Imports of Agricultural products

This section focuses on agricultural imports into South Africa from the world between 2010 and 2015, with agricultural products as defined by the WTO. In 2015 South Africa imported a total of R92 billion with EU-28 as the leading supplier with imports worth R28 billion. Swaziland was in second place with R7.2 billion, followed by Argentina, China and Thailand.

Table 1: Main suppliers of agricultural products in South Africa

Values in millions Rand						
Sources	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**
World	**48 035**	**59 621**	**72 498**	**79 979**	**84 273**	**92 379**
EU-28	12 895	16 164	19 412	22 749	27 428	28 171
Swaziland	2 797	3 138	4 778	5 987	6 499	7 330
Argentina	4391	5 587	6 828	5 590	4 163	5 907
China	2 757	3 028	5 512	5 697	4 518	5 017
Thailand	3 428	3 540	4 077	4 457	4 204	4 908
Brazil	3 033	3 805	4 489	4 960	3 500	4 691
India	1 427	1 969	2 700	3 711	3 667	4 127
USA	2 497	3 684	2 997	3 710	3 934	3 852
Namibia	2 818	3 386	3 365	3 597	2 949	3 568
Indonesia	1 411	1 809	2 241	2 682	3 931	3 029

Source: TradeMap

Table 2 expresses this same data as percentage shares of South Africa's main suppliers of agricultural imports between 2010 and 2014. The EU's imports have been somewhat stable during the period with a low of 26,8% in 2012 and a high of 32,5% in 2014 before declining again to 30,5% in 2015. Swaziland's share increased significant between 2010 and 2015 (by 2.1 percentage points), and this was largely an increase of sugar imports. Shares from both Argentina and China showed fluctuations against a general decline, while those from Thailand, Brazil, USA and Namibia also declined over the period. In the lower segment of Table 2, the respective shares for India and Indonesia both slowly increased.

Table 2: Main suppliers of agricultural products in South Africa (% share values)

	2010	2011	2012	2013	2014	2015
EU-28	26,8%	27,1%	26,8%	28,4%	32,5%	30,5%
Swaziland	5,8%	5,3%	6,6%	7,5%	7,7%	7,9%
Argentina	9,1%	9,4%	9,4%	7,0%	4,9%	6,4%
China	5,7%	5,1%	7,6%	7,1%	5,4%	5,4%
Thailand	7,1%	5,9%	5,6%	5,6%	5,0%	5,3%
Brazil	6,3%	6,4%	6,2%	6,2%	4,2%	5,1%
India	3,0%	3,3%	3,7%	4,6%	4,4%	4,5%
USA	5,2%	6,2%	4,1%	4,6%	4,7%	4,2%
Namibia	5,9%	5,7%	4,6%	4,5%	3,5%	3,9%
Indonesia	2,9%	3,0%	3,1%	3,4%	4,7%	3,3%

Source: TradeMap

Tables 3 and 4 show main agricultural products imported by South Africa between 2010 and 2014, with this data expressed in R million in Table 3 and the associated percentage shares in Table 4. Wheat and Rice were the largest single import lines, and are both essentially staple foods. Poultry was the third largest single product (R4,5 billion in 2015) followed by spirits and cane sugar. Note the large increase in maize imports as drought conditions reduced domestic production and forced South Africa to import significant quantities of maize.

Table 3: Main imported agricultural products into South Africa, R million

		Values in Million Rand					
HS code	**Product description**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**
	AGRIC PRODUCTS	**48035**	**59621**	**72498**	**79979**	**84273**	**92379**
1001	Wheat and muslin	2026	4230	3941	4005	5376	5942
1006	Rice	3023	3651	5613	6412	4558	5436
0207	Poultry	1750	2706	3510	3876	4055	4574
2208	Spirits	2276	2603	2840	3733	3741	3692
1701	Cane Sugar	1666	1983	2507	3546	2935	3414
1511	Palm oil & its fraction	2176	2930	3292	2960	3788	3118
2304	Soya-bean oil-cake	2471	2578	2798	3155	2755	2370
2106	Food preparations, nes	1002	1194	1401	1845	2054	2212
1005	Maize (corn)	91	285	731	114	399	1856
2309	Animal feed nes	671	910	1109	1161	1440	1698

Source: TradeMap

Again, Table 4 presents the same data expressed as percentage shares, and shows that agricultural imports as a share of total imports is generally stable though fluctuating somewhat. Demand for poultry meats has been steadily increasing, and between 2010 and 2015 these imports increased by 1,6 percentage points in terms of share.

Table 4: Main imported agricultural products into South Africa (share values)

HS code	Product description	2010	2011	2012	2013	2014	2015
Agriculture share in total imports		7,0%	7,2%	7,5%	6,9%	6,6%	7,4%
1001	Wheat and muslin	4,8%	8%	6,2%	5,8%	7,5%	7,5%
1006	Rice	7,2%	6,9%	8,8%	9,3%	6,4%	6,9%
0207	Poultry	4,2%	5,1%	5,5%	5,6%	5,7%	5,8%
2208	Spirits	5,4%	4,9%	4,5%	5,4%	5,2%	4,7%
1701	Cane Sugar	4,0%	3,7%	3,9%	5,2%	4,1%	4,3%
1511	Palm oil & its fraction	5,2%	5,5%	5,2%	4,3%	5,3%	4,0%
2304	Soya-bean oil-cake	5,9%	4,9%	4,4%	4,6%	3,8%	3,0%
2106	Food preparations, nes	2,4%	2,3%	2,2%	2,7%	2,9%	2,8%
1005	Maize (corn)	0,2%	0,5%	1,1%	0,2%	0,6%	2,4%
2309	Animal feed nes	1,6%	1,7%	1,7%	1,7%	2,0%	2,2%

Source: TradeMap

Table 5 introduces a matrix that shows the values from the main country sources by the top 20 import commodities. It shows that wheat is mostly from by the EU-28 market followed by Argentina and Namibia. Rice is mostly imported from Thailand and India with minimal imports from Brazil, USA and Namibia, while the EU-28 and Brazil sources mainly supply the poultry imports. The EU-28 is the largest supplier of wheat, poultry meat, spirits and food preparations. Namibia was the eight supplier of agricultural product, and the data shows that live cattle to be eventually slaughtered in South Africa is the main import from Namibia.

Table 5: Matrix of main agricultural products imported by sources, R million for 2015.

	EU-28	Argentina	Thailand	Brazil	Swaziland	Indonesia	India	Namibia	China	USA
Total	13571	5256	4336	3771	2700	2298	2114	1543	1364	1201
Wheat	1559	192	0	0	0	0	0	0	0	155
Rice	7	0	2963	46	0	0	1713	28	33	10
Poultry meat	2645	214	29	1660	3	0	0	0	0	3
Spirit	3157	0	1	33	0	0	0	0	1	225
Cane sugar	8	0	23	623	2426	0	45	3	1	1
Palm oil	0	0	0	0	0	2163	0	0	0	0
Soya-bean oil-cake	0	2367	0	1	0	0	2	0	0	0
Food preparations nes	1258	26	23	6	42	1	46	0	85	429
Maize (corn)	1	932	0	603	1	0	1	0	0	105
Animal feed, nes	1092	14	12	30	137	0	2	8	83	173
Soya-bean oil	767	922	0	0	0	0	0	0	0	1
Tobacco	121	0	0	515	0	0	180	0	17	0
Chocolate	916	0	0	6	52	4	4	0	16	22
Coffee	168	0	0	84	0	117	9	0	0	11
Live cattle	0	0	0	0	12	0	0	1070	0	0
Sunflower oil	928	153	0	0	0	0	0	0	0	0
Coffee/tea	698	0	0	17	17	0	93	0	2	16
Juices	89	401	13	46	10	1	11	0	346	10
Guts, bladders etc	136	35	0	101	0	0	8	0	566	35

Source: TradeMap

South African imports of Forestry products

Examining South Africa sources of forestry products (Table6) we find that the EU is the largest supplier, followed by China and USA. At the bottom of the table note that India and Turkey round out the top 12 sources, with imports from Turkey increasing in 2015.

Table 6: Main suppliers of forestry products in South Africa

	Values in million Rand					
Exporters	2010	2011	2012	2013	2014	2015
World	12493	13481	15299	18200	20015	21127
EU-28	5836	5885	6963	8573	9159	9236
China	1265	1568	1869	2240	2552	2814
USA	1066	1134	1158	1374	1604	1683
Swaziland	555	599	856	891	902	1154
Brazil	304	495	526	600	800	721
Malaysia	512	549	610	588	640	705
Indonesia	524	524	481	499	505	571
New Zealand	81	76	185	397	611	558
Korea, Republic of	365	381	527	485	435	453
India	198	205	256	272	371	442
Turkey	92	66	24	28	47	365

Source: TradeMap

This same data is again expressed in percentage shares in Table 7. The EU market share has been somewhat stable between 2010 and 2015, with a low of 44% in 2011 and highs of 47% in 2010 and 2013. Most other sources have also been relatively stable, with perhaps Chinese and Turkish imports the exception to this as their shares have increased over the period shown.

Table 7: Main suppliers of forestry products in South Africa (shares)

	2010	2011	2012	2013	2014	2015
EU-28	47%	44%	46%	47%	46%	44%
China	10%	12%	12%	12%	13%	13%
USA	9%	8%	8%	8%	8%	8%
Swaziland	4%	4%	6%	5%	5%	5%
Brazil	2%	4%	3%	3%	4%	3%
Malaysia	4%	4%	4%	3%	3%	3%
Indonesia	4%	4%	3%	3%	3%	3%
New Zealand	1%	1%	1%	2%	3%	3%
Korea, Republic of	3%	3%	3%	3%	2%	2%
India	2%	2%	2%	1%	2%	2%
Turkey	1%	0%	0%	0%	0%	2%

Source: TradeMap

Tables 8 and 9 show main forestry products imported by South Africa between 2010 and 2015 by HS 4 products. This data is in values expressed by R million in Table 8 and the associated percentage shares in Table 9. Paper with cellulose, paper with kaolin and printed books were among the top thee imported products by South Africa.

Table 8: Main imported forestry products into South Africa, R million by HS 4 codes

		Values in Million Rand					
Code	**Product label**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**
HS 4	**Forestry**	**12493**	**13481**	**15299**	**18200**	**20015**	**21127**
4811	Paper with cellulose	1185	1405	1844	2299	2848	3102
4810	Paper with kaolin	2121	2096	2372	2516	2594	2730
4901	Printed books/brochures	1696	1594	1798	2003	1865	1816
4407	Wood sawn	833	937	1122	1136	1267	1512
4802	Uncoated paper	888	757	1236	1394	1381	1368
4804	Uncoated Kraft paper	395	489	625	927	1058	1157
4819	Packing containers	381	388	450	619	743	864
4703	Chemical wood pulp	304	336	349	597	873	850
4412	Plywood	226	295	402	451	653	630
4911	Printed matter nes	260	257	330	321	405	546

Source: TradeMap

Overall, forestry products have ranged between 1.8% and 2.1% of South Africa's total imports over the period. The increases leading up to and including 2015 were mainly from paper with cellulose, wood sawn and uncoated kraft paper with increased shares of 2,1%, 1%and 0,4%respectively between 2013 and 2015.

Table 9: Main imported forestry products into South Africa (share values)

		2010	2011	2012	2013	2014	2015
	Forestry	2,1%	1,8%	1,8%	1,8%	1,9%	2,0%
4811	Paper with cellulose	9,5%	10,4%	12,1%	12,6%	14,2%	14,7%
4810	Paper with kaolin	17,0%	15,5%	15,5%	13,8%	13,0%	12,9%
4901	Printed books & brochures	13,6%	11,8%	11,8%	11,0%	9,3%	8,6%
4407	Wood sawn	6,7%	7,0%	7,3%	6,2%	6,3%	7,2%
4802	Uncoated paper	7,1%	5,6%	8,1%	7,7%	6,9%	6,5%
4804	Uncoated kraft paper	3,2%	3,6%	4,1%	5,1%	5,3%	5,5%
4819	Packing containers	3,0%	2,9%	2,9%	3,4%	3,7%	4,1%
4703	Chemical wood pulp	2,4%	2,5%	2,3%	3,3%	4,4%	4,0%
4412	Plywood	1,8%	2,2%	2,6%	2,5%	3,3%	3,0%
4911	Printed matter nes	2,1%	1,9%	2,2%	1,8%	2,0%	2,6%

Source: TradeMap

Table 10 introduces a matrix presenting forestry imports into South Africa by source country and HS 4 classifications. Again, the EU is the source of most of these imports, followed China and USA. Imports of wood pulp from New Zealand are significant, while both India and Korea are important sources of paper.

Table 10: Matrix of main imported forestry products and their sources, R millions for 2015

HS code		EU	China	USA	Swaziland	Brazil	Malaysia	Indonesia	New Zealand	Korea	India
4811	Paper with cellulose	1767	234	120	0	62	62	35	0	14	286
4810	Paper with kaolin	1568	439	130	0	83	83	32	0	383	8
4901	Printed books & brochures	943	151	383	164	1	1	0	0	2	31
4407	Wood sawn	43	5	122	496	54	54	50	0	0	0
4802	Uncoated paper	875	150	21	0	105	105	88	0	1	31
4804	Uncoated kraft paper	647	8	66	0	101	101	6	0	1	2
4819	Packing containers	368	173	16	141	12	12	2	0	3	6
4703	Chemical wood pulp	108	6	340	0	27	27	33	260	0	0
4412	Plywood	125	265	5	0	109	109	11	8	0	7
4911	Printed matter nes	276	83	33	0	0	0	0	0	2	5
4411	Fibreboard of wood	250	75	0	0	53	53	0	1	1	0
4823	Other paper	225	115	32	0	1	1	22	0	31	8
4418	Builders joinery/carpentry wood	121	77	0	3	1	1	129	3	0	1
4704	Chemical wood pulp	10	0	33	0	7	7	0	273	0	0
4805	Paper/paperboard nes	176	55	20	0	4	4	12	0	0	0
4813	Cigarette paper	185	14	71	0	34	34	1	0	0	0
4803	Sanitary paper	35	136	1	0	0	0	29	0	0	6
4416	Casks, barrels etc of wood	226	1	31	1	0	0	0	0	0	0
4818	Toilet paper, tissues, diapers,	110	45	5	0	0	0	0	0	0	0
4409	Wood continuously	5	71	1	18	62	62	47	0	0	0
4809	Carbon, self-copy paper	104	11	69	0	0	0	20	0	1	0

Source: TradeMap

South African imports of Fishery products

Table 11 presents the main suppliers of fishery product imports into South Africa between 2010 and 2015, with the data expressed in R millions. Namibia was ranked as number one supplier, followed by Thailand, India and China, with the Falkland Islands completing the top 10 sources.

Table 11: Main suppliers of fishery products into South Africa

	Values in Million Rand					
Exporters	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**
World	**2590**	**2758**	**4157**	**4606**	**4561**	**5054**
Namibia	859	836	1181	1243	1370	1424
Thailand	764	681	1446	1612	1128	1320
India	173	309	304	475	521	443
China	185	186	305	299	302	438
Norway	78	102	136	210	289	319
Morocco	8	2	5	50	63	243
New Zealand	89	98	108	60	104	157
EU-28	87	69	114	101	156	143
Argentina	46	58	56	57	60	79
Falkland Islands	19	15	25	20	14	42

Source: TradeMap

Table 12 shows the same data in terms of percentage shares, with the top two sources both showing fluctuations before declining shares in 2015. Sources lower down the table are generally more stable, although there has been a significant increase from Morocco.

Table 12: Main suppliers of fisheries products into South Africa (shares)

Countries	2010	2011	2012	2013	2014	2015
Namibia	33%	30%	28%	27%	30%	28%
Thailand	29%	25%	35%	35%	25%	26%
India	7%	11%	7%	10%	11%	9%
China	7%	7%	7%	6%	7%	9%
Norway	3%	4%	3%	5%	6%	6%
Morocco	0%	0%	0%	1%	1%	5%
New Zealand	3%	4%	3%	1%	2%	3%
EU-28	3%	3%	3%	2%	3%	3%
Argentina	2%	2%	1%	1%	1%	2%
Falkland Islands (Malvinas)	1%	1%	1%	0%	0%	1%

Source: TradeMap

Table 13 and 14 show main fishery products imported by South Africa between 2010 and 2015 in monetary and percentage shares respectively. Table 13 shows South Africa imports mainly prepared and whole frozen fish, followed by crustaceans.

Table 13: Main fishery products imported by South Africa, 2015 R million

Code	Product label	2010	2011	2012	2013	2014	2015
	Fishery products	**2590**	**2758**	**4157**	**4606**	**4561**	**5054**
1604	Prepared fish	1056	918	2065	2166	1797	2026
0303	Fish, frozen, whole	589	713	705	854	1134	1444
0306	Crustaceans	281	465	401	611	626	539
0304	Fish fillets fresh and frozen	276	178	300	366	327	314
0307	Molluscs	146	195	208	164	247	278
1605	Crustaceans & molluscs prepared	109	136	184	205	215	208
0302	Fish, fresh, whole	75	90	211	164	132	156
0305	Smoked fish	3	44	61	50	54	62
0301	Live fish	17	17	19	24	24	24

Source: TradeMap

Overall fishery imports have constituted between 0,4% and 0,5% of South Africa's total imports over the period. By product, whole frozen fish showed the most significant increase, while frozen fish fillet declined from 2010 levels to become stable. Other imports have been generally stable.

Table 14: Main fishery products imported by product, (shares)

	2010	2011	2012	2013	2014	2015
Fishery products	**0,4%**	**0,4%**	**0,5%**	**0,5%**	**0,4%**	**0,5%**
Prepared fish	41%	33%	50%	47%	39%	40%
Fish, frozen, whole	23%	26%	17%	19%	25%	29%
Crustaceans	11%	17%	10%	13%	14%	11%
Fish fillets fresh and frozen	11%	6%	7%	8%	7%	6%
Molluscs	6%	7%	5%	4%	5%	6%
Crustaceans & molluscs prepared	4%	5%	4%	4%	5%	4%
Fish, fresh, whole	3%	3%	5%	4%	3%	3%
Smoked fish	1%	2%	1%	1%	1%	1%
Live fish	1%	1%	0%	1%	1%	0%

Source: TradeMap

Table 15 introduces a matrix presenting fishery imports into South Africa by source country and commodities. Prepared fish, the main import, is mostly sourced from Thailand followed by Namibia and China with a collective total of R1,9 billion. The whole frozen fish is mostly supplied by Namibia, New Zealand and Norway with the total of R663 million, R152 million and R125 million respectively in 2015. Morocco mainly supplies whole frozen fish while the Falkland Island supply only molluscs (squid and cuttle fish).

Table 15: matrix for main fishery products and main suppliers of fishery products, 2015 R millions for 2015

		Namibia	Thailand	India	China	Norway	Morocco	New Zealand	EU-28	Argentina	Falkland Islands
1604	Prepared fish	434457	1271765	25	214095	1326	7154	0	21163	0	0
0303	Fish, frozen, whole	663112	500	5516	46266	125728	235409	152870	68956	4303	0
0306	Crustaceans		4953	353482	2877	15322	0	826	12846	73183	0
0304	Fish fillets	245565	0	0	4390	17423	0	0	3291	0	0
0307	Molluscs	23502	0	12220	111932	0	0	1076	30906	800	42960
1605	Crustacean/ molluscs prep.	3415	41088	70344	57823	0	0	2527	2540	0	0
0302	Fish, fresh, whole	6554	0	1351	0	140762	0	0	251	0	0
0305	Smoked fish	38224	38	38	0	18224	0	0	1690	375	0
0301	Live fish	0	1213	63	150	0	0	0	902	0	0

Source: Trademap

Level of protection for imports of South Africa AFF products

The latest WTO country profile for South Africa reports that overall simple average applied tariffs on agricultural products were some 8,4%, with the comparable bound rates being much higher at 40,4%. This shows a significant gap between the applied and bound rates overall, and suggests that any WTO agreement is unlikely to lower these applied tariffs in the immediate future. In addition, some 42,1% of agricultural goods were entering South Africa at MFN duty free rates during 2013.

Table 16 shows the tariff imposed on agricultural imports as reported in the ITC database as at mid-2015. The tariffs are shown for 'members', such as the EU and SADC, with preferential access and others (non-members) at the so-called most favoured nation (MFN) rate. Chicken meat and offal, wheat and sugar have all had their non-member tariffs increased by South Africa in recent years[3]. The two highest rates shown in Table 16 are applied to poultry meat and sugar, followed a long way back by palm oils. Rice and maize are free duty for all imports, while imports of spirits face a tariff duty of only 1,57% (they also pay excise duty though, along with all domestic production of the same products). Note also that South Africa imposed a tariff rate on member countries for wheat and sugar, with both of these products subject to a complex dollar reference-pricing rate applied to protect the local producers. Table 5 earlier shows that significant imports of these products shown are 'member' imports from the EU and SACU/SADC (mainly Swaziland's sugar).

[3] See 'South Africa: Tariff Policy - Does It Matter?' By Susara J. Jansen Van Rensburg and Ron Sandrey, tralac Working Paper, 2016

Table 16: Tariff imposed on the main imported agricultural products

HS Code		2015	
		Non-members	**Members**
0207	Poultry meats	28,47%	0%
1001	Wheat	11,64%	0% (SA imposes 2,89% on EU countries)
1005	Maize	0%	0%
1006	Rice	0%	0%
1511	Palm oil	10,00%	0%
1701	Sugar	27,08%	0% (SA's imposes 16,49% on EU countries)
2106	Food preparations	5,91%	0%
2208	Spirits	1,57%	0%
2304	Oil-cake etc	6,60%	0%
2309	Animal feed	9,09%	0%

Source: TradeMap

Table 17 shows the tariffs imposed by South Africa on fishery imported into the country. Note in particular that even in the 'members' column the EU imports are subject to tariff rates that are mostly basically the same as 'non-members'. The highest tariff rate is a 25% rate levied on 'non-member' imports of extracts and juices of fish, while three lines are duty-free or below 1%. All non-EU 'member' imports are tariff free, and that includes Norway in all cases. Again, refer to Table 14 for the details of the product/source profile.

Table 17: Tariff imposed on the main imported fishery products

HS Code		Non-members	Members	
			EU	SADC
0301	Live fish	0%	0%	0%
0302	Fish, fresh	11,49%	11,48%	0%
0303	Fish, frozen	0,67%	0,67%	0%
0304	Fish fillets	13,77%	13,77%	0%
0305	Fish, dried, salted o	12,36%	12,36%	0%
0306	Crustaceans	0,14%	0,14%	0%
0307	Molluscs	2,16%	0,10%	0%
1603	Extracts and juices of fish	25,00%	0%	0%
1604	Prepared or preserved fish	6,32%	6,33%	0%
1605	Crustaceans, molluscs prepared	0,92%	0,28%	0%

Source: TradeMap

Table 18 shows the tariff imposed by South Africa on forestry products imported into the country. The ITC reports that all imports shown are duty-free to the EU and SACU/SADC 'member' sources. For the other sources, South Africa imposes the highest tariff rate of 10,15% for packing containers, followed by a modest 6,07% for uncoated paper and 5,79% for printed matter not elsewhere specified (nes). Five of the top ten products enter duty-free from all sources, while paper with cellulose face a low 'nuisance' tariff of 0,92%.

Table 18: Tariff imposed on the main imports of forestry products, %

HS 4	Description	Non-members	Members
4811	Paper with cellulose	0,92	0
4810	Paper with kaolin	0	0
4901	Printed books & brochures	0	0
4407	Wood sawn	0	0
4802	Uncoated paper	6,07	0
4804	Uncoated Kraft paper	0	0
4819	Packing containers	10,15	0
4703	Chemical wood pulp	0	0
4412	Plywood	10	0
4911	Printed matter nes	5,79	0

Source: ITC TradeMap

Chapter 2

African Agriculture and the WTO – the big picture

Ron Sandrey

In this paper we will provide a profile of African agricultural exports by the main sources and products and examine this trade in detail to assess the tariff duties faced in their markets to glean some information as to where the WTO may be able to assist exports. In the examination we will look at where more progress in access gains may result from better access into both the EU and fellow African countries, and we argue that in the former the EPAs and the TDCA are the best negotiating forums for these destinations. In addition we shall provide a background profile on global agricultural subsidies and show how, in many but not all cases, these subsidies are declining and the declining role of export subsidies. Similarly, tariffs facing agricultural exports from least developed countries into developed countries are declining to a very low level. To complete the picture we will also provide background information on related issues of concern such as some specific products that are important to Africa (sugar and cotton) and problems such as tariff escalation in general.

1. Introduction

Omolo 2015, in a background introduction to the WTO and how it relates to agriculture and agricultural trade liberalisation, provides the platform for this Chapter to build on. To recap, the Agreement on Agriculture (AoA) has three pillars: market access, domestic support and export competition.

a. **Market access** is related to trade restrictions that importers face while trading at the international level. These obstacles are largely in the form of tariff and non-tariff measures, where the AoA sort to replace the latter tariffs (**tariffication**). Importantly, countries negotiate to reduce their bound tariffs that they are legally committed not to exceed at the WTO. These bounds rates are generally (but not always) above what countries actually charge at the border – the applied tariff rate. The difference between the bound and applied tariff gives the **tariff overhang**, and in cases where this overhang is large then an agreed WTO tariff reduction may in fact be a hollow outcome. This is particularly the case in agriculture, and especially for developing countries.

b. **Domestic supports** are policies that subsidize production through prices or incomes. In the WTO parlance, **boxes** are used to identify subsidies. These boxes take the colours of traffic lights: green (permitted), amber (slow down — i.e. be reduced), red (forbidden).

c. **Export competition**: These are initiatives that make exports artificially competitive. They include export subsidies and credits; guarantees and insurance; food aid; exporting state trading enterprises; and export restrictions and taxes.

The objective for this chapter is to build upon the platform provided by Omolo and assess African agriculture against these three pillars to see where impacts of a Doha Development Round (DDA) agreement may come from. Special attention is given to market access for the main African agricultural exports. The emphasis on this market access focus is reinforced by Anderson et al 2006 who assess the research and find that the potential contribution to global economic welfare of removing agricultural subsidies is less than one-tenth of that from removing agricultural tariffs. This is backed up by the Organisation of Economic Cooperation and Development (OECD) and model-based estimates of producer distortions and shows that 75% of total support is provided by market access barriers when account is taken of all forms of support to farmers and to agricultural processors globally, and only 19% to domestic farm subsidies. Other research suggests an even higher 86% of the welfare cost of agricultural distortions is due to tariffs and only 6% to domestic farm subsidies. We will however examine the other two pillars of domestic supports and export completion to assure ourselves that this is indeed the case. We will also take the latest DDA positions as being the benchmark for how comprehensive a possible agreement may be. It would seem a little fanciful to expect an agreement that goes much beyond this benchmark when the WTO has not even been able to reach this position in discussion since the official DDA launch in November 2001.

1.1 Levels of protection

The OECD is the authoritative source of information on the levels of protection given to farmers. Their measure of producer protection is defined as the ratio between the average price received by producers (measured at the farm gate), including net payments per unit of current output, and the border price (measured at the farm gate). For instance, a coefficient of 1,10 suggests that farmers, overall, received prices that were 10% above international market levels. This indicator reflects the level of price distortions and is measured by the Producer Nominal Protection Coefficient expressed as the ratio of farm price to border reference price. It is an overall measure, and thus while aggregated across all sectors may hide variations to individual sectors. It is nonetheless the best general guide. Table 1 below shows the OECD ratios for several of the major global countries. It is ranked in three sections for the average of 2012–2014 inclusive: the first is for ratios of up to and including 1,05, the second for ratios up to and including 1,10, while the third category is for ratios above 1,10.

South Africa sits in the top group along with the generally accepted low agricultural protection countries of Australia, Chile, New Zealand and Brazil. What is unexpected is that both the United States and the EU are also now in this group. This is in contrast to their ratios in the first time period of 2000–2002 average and shows that protection has dramatically decreased in recent years. There are reasons for the decline in US protection in particular, with the strong commodity prices in the later period meaning that some of the price support mechanisms were dormant during this period and that the US leans towards 'green box' supports that are considered to be environmentally friendly and thus acceptable and not included. The EU decline is at a level that is much lower than what is the general perception of a highly protected agricultural regime.

Table 1: OECD ratios of agricultural protection, three years' averages

	2000-02	2006-08	2012-14
Australia	1,00	1,00	1,00
Chile	1,06	1,01	1,00
New Zealand	1,00	1,01	1,01
Brazil	1,01	1,03	1,01
South Africa	1,07	1,05	1,02
United States	1,13	1,02	1,02
Mexico	1,22	1,05	1,04
EU	1,27	1,12	1,05
Russia	1,02	1,15	1,06
Israel	1,18	1,06	1,07
Canada	1,11	1,10	1,08
Kazakhstan	1,12	1,03	1,09
OECD - Total	1,29	1,14	1,10
Turkey	1,28	1,30	1,20
China	1,03	1,04	1,21
Indonesia	1,09	1,08	1,26
Switzerland	2,56	1,76	1,45
Norway	2,63	1,81	1,74
Japan	2,28	1,86	1,94
Korea	2,51	2,05	1,96

Source: OECD

The central segment shows that the OECD total protection is declining dramatically as well, driven of course by the weight of the US and EU declines. Also note that Canada is in this segment, with its strong protection to dairy and poultry sectors, neither of which concern Africa. Finally, in the lower segment there are the well-known **culprits** of Switzerland, Norway, Japan and Korea, along with the two surprises of Indonesia and China where protection is climbing rapidly.

We emphasise that these are aggregate measures and give little information of the trade distorting nature of the overall supports. Butault et al 2012 report on a European Parliament assessment of agricultural supports in the main trading nations. They report that the EU has carried out reforms that have made farm support more efficient in the sense that more of the transfers from taxpayers and consumers now reach the farmers' pockets, and that the EU support now generates much less distortion in world markets. In many other OECD countries, the evolution of farm support has followed a rather similar path. They also reinforce that while US supports are lower than the EU, part of the difference can be explained by the high world prices at that time (2012) as the US relies more on countercyclical instruments. Interestingly, their analysis shows that Brazil and China invest heavily in research, and we consider that the spectacular success of agriculture in these two countries in recent years points strongly in the direction for Africa of more research and infrastructural development to assist the sector rather than direct supports. This is in supported by Butault et al as in contrasting both EU and US policies seem to keep focusing more on supporting farmers' income rather than investing in innovation, while the latest OECD reports indicate that the changes to global agricultural supports emphasise the swing from the 1990s where emerging economies taxed the sector and the developing countries protected their sector to one where protection is increasing in the emerging countries while developed countries support (US and EU in particular) is declining. The times they are a changing.

Meanwhile, the US heavily subsidizes grains, oilseeds, cotton, sugar, and dairy products. Most other agriculture – including beef, pork, poultry, hay, fruits, tree nuts, and vegetables (accounting for about half of the total value of production) – receives only minimal government support. In general, subsidies globally are concentrated upon to so-called 'rice pudding' of rice, milk and sugar. Only sugar is of export interest to Africa; South Africa and Swaziland in particular for exports and Kenya for imports. Both cotton and oilseeds are also important, and we will discuss cotton later as it carries much symbolic significance for Africa.

2. Where may the gains come from – a look at African agricultural trade

We introduce this section by showing Africa's agricultural exporters in Table 2, ranked by 2015 values. We emphasise that these values may be incomplete, as several African countries do not report their trade data to the International Trade Centre (ITC), the source of all our trade data and therefore the ITC relies on mirror (partner) data in some cases. This can be a problem when neither party reports to the ITC as does happen in Africa.

South Africa has consistently been the main exporter from Africa over the period shown. Côte d'Ivoire consistently follows behind, and then there are the four relatively tightly grouped countries of Morocco, Egypt, Ethiopia and Ghana. Even further down the list there are several countries with exports of at least one billion dollars, and the importance of agriculture to several of the countries not shown is demonstrated by the fact that the table with the top 15 exporters only contains 84% of Africa's agricultural exports during 2015. Also shown in line 3 is that Africa's agricultural exports to the world have risen from a low of 3,0% in 2008 to consistently being 3,6% or 3,8% in recent years. To put this in perspective it is a lower share than France's (which includes intra-EU exports) and China's. Not shown on the table are the next five African exporters of Mauritius, Zambia, Burkina Faso, Mozambique, Madagascar and Somalia, all of whom had exports of over half a billion dollars during 2015.

Table 2: African exporters of agricultural products & African % world exports

Exporters	2006	2008	2010	2012	2013	2014	2015
Africa	24247	33295	42980	51410	53537	57060	48293
Africa % world	*3,2%*	*3,0%*	*3,8%*	*3,6%*	*3,6%*	*3,8%*	*3,6%*
South Africa	3611	5346	8079	8621	9178	9315	8424
Côte d'Ivoire	2984	4017	5138	5024	4720	6741	6024
Morocco	1910	2741	2778	2966	3350	3634	3982
Egypt	1189	3338	5419	4958	5447	5478	3765
Ethiopia	876	1337	1907	2456	3345	4019	3743
Ghana	1735	1326	1136	2688	2347	3869	3094
Kenya	1834	2667	2921	0	3083	3298	2284
Tanzania	533	952	990	1576	1338	2464	1446
Tunisia	1305	1627	1263	1591	1621	1280	1333
Sudan	423	431	515	809	1280	1334	1305
Uganda	450	881	842	1226	1333	1245	1283
Zimbabwe	1795	620	772	1260	1226	1160	1145
Nigeria	230	1164	3402	7902	4771	2092	1080
Cameroon	537	752	1029	879	0	1064	993
Malawi	565	779	836	950	952	1028	893
Subtotal	82%	84%	86%	83%	82%	84%	84%

Source: ITC

Next we show the destinations for these exports in Table 3, and here the EU dominates with a share of 39,8% of the total in 2015, followed by South Africa who is the destination for another 17,2% in the latest year. Thus, some 57,0% of Africa's agricultural exports during 2015 were destined for wither the EU or South Africa. In both cases the main sticky import is sugar and related products, as virtually all other agricultural products have tariff and quota free entry in both destinations. The exceptions are largely South Africa's entry into the EU, and details of this will be covered in the next chapter. Perversely, with respect to African access into the EU with the Economic Partnership Agreements (EPAs) the African interest is to limit a WTO agreement that would dilute the value of its preferential access. Similarly, the rest of Africa's access into South Africa is being negotiated, and Potelwa et al 2015 show that outside of the East African Tripartite negotiating area there is very limited intra-African agricultural trade. Any progress on access issues within Africa are likely to be advanced in the potential African Continental-wide FTA rather than via the WTO in any event. Similarly, Africa's agricultural access into the US, the next main market, is constantly being negotiated through the American African Growth and Opportunity Act (AGOA) process.

There leaves few 'nuts to crack', although one must be careful in that 'trade chilling' or high tariffs and other barriers may be 'chilling' trade that otherwise would take place. This is especially the case with sugar, and we will explore this commodity later to assess whether the WTO offers a promise of better access for Africa here.

Table 3: African agricultural exports by destinations, US$ millions & % shares

Importers	2006	2008	2010	2012	2013	2014	2015
Total $ millions	25026	33778	43117	54622	54561	57108	48537
EU $ millions	11758	14467	15380	18351	18797	19099	19308
Africa $ millions	5738	8372	12638	15524	5738	6384	8372
% shares							
% to EU	*47,0%*	*42,8%*	*35,7%*	*33,6%*	*34,5%*	*33,4%*	*39,8%*
% to Africa	*22,9%*	*24,8%*	*29,3%*	*28,4%*	*10,5%*	*11,2%*	*17,2%*
subtotal EU/Africa	*69,9%*	*67,6%*	*65,0%*	*62,0%*	*45,0%*	*44,6%*	*57,0%*
US dollar millions							
USA	1125	1448	1762	3092	1904	2272	2797
Saudi Arabia	364	836	1246	1568	1851	1981	2382
India	545	769	881	1425	1741	2176	2044
South Africa	907	742	1301	2393	2385	1991	1872
China	806	504	1043	1605	1716	1859	1483
Russia	344	632	697	847	898	1035	1455
Turkey	241	384	755	692	848	941	1067
Japan	431	453	525	686	874	849	779
Malaysia	190	319	370	952	830	1167	743
Mozambique	266	317	415	598	675	841	734
Zimbabwe	180	536	686	1057	845	788	729
Namibia	22	12	730	823	786	767	720
% shown	91,6%	88,2%	89,1%	90,8%	73,1%	73,8%	91,7%

Source: ITC

3. Access conditions for the main individual commodities exported by Africa

Before we start examining the access conditions for African agricultural exports it is important to gain a perspective on these tariffs globally, and especially for the Least Developed Countries (LDCs) where most African countries are defined in the WTO. The WTO (Table 4, bottom half) shows that average developed country tariffs on agricultural products for these LDCs witnessed a gradual decline from 3,6% in 2000 to a mere 1% in 2011. Agricultural access for LDCs has the largest preference margin over Developing country tariffs (top half of Table 4) where the preference margins are around 6 percentage points. Note in particular how these tariffs have been declining since 2000, and especially for the LDCs.

Table 4: Average tariffs levied by developed countries on key products from developing and least-developed countries, 2000-2011 (percentage ad valorem)

Developing countries								
	2000	2005	2006	2007	2008	2009	2010	2011
Agriculture	9,2	8,8	8,5	8,3	8,0	7,8	7,3	7,2
Least Developed Countries (LDCs)								
Agriculture	3,6	3,0	2,7	1,9	1,6	1,2	1,0	1,0

Source: WTO

We will now examine trade access conditions for the African exports as given in Table 5. The format used will be to take the major supplier for each of the main commodities and use that as a proxy for African access. This is of course a partial analysis, but a comprehensive analysis assessing the tariffs facing each supplier would be a major undertaking. In general, we will report on exports to the EU and Africa. For the former we note that access conditions into the former have been exhaustively negotiated under the Economic Partnership Agreements (EPAs) between African countries and the EU, and there would be no improvement on the essentially duty free and quota free access that African countries either have or are in the process of ratifying. The exceptions here are South Africa (discussed in the next chapter of this book) and sugar. For the latter (intra-African access) we note that 1) few African countries would be obliged to make access conditions to any suppliers based in the special and sensitive product exemptions and the large tariff overhang between bound and applied rates for most African counties along with their developing and Least-developing Country status.

Table 5: African agricultural exports by commodity, US$ millions & % shares

	Product label	2014	2015	2014	2015
		$ million		% shares	
HS 2	Agriculture $ million & % total	57060	48293	9,95%	12,95%
18	Cocoa	9650	8503	16,9%	17,6%
08	Fresh fruit	7574	8081	13,3%	16,7%
07	Fresh vegetables	4240	4241	7,4%	8,8%
09	Coffee tea	4322	3466	7,6%	7,2%
24	Tobacco	3259	2753	5,7%	5,7%
12	Oil seed	3430	2579	6,0%	5,3%
15	Fats and oils	2163	2042	3,8%	4,2%
52	Cotton	3193	1893	5,6%	3,9%
17	Sugars	2699	1745	4,7%	3,6%
01	Live animals	1632	1680	2,9%	3,5%
06	Plants etc.	1802	1664	3,2%	3,4%
16	Meat fish processed	1913	1659	3,4%	3,4%
22	Beverages	2060	1632	3,6%	3,4%
20	Processed fruit, veg, nuts etc.	1620	1212	2,8%	2,5%
23	Residues	1136	880	2,0%	1,8%
10	Cereals	1368	874	2,4%	1,8%
21	Miscellaneous edible	1175	844	2,1%	1,7%
02	Meat and offal	654	676	1,1%	1,4%
04	Dairy, -eggs, -honey, etc.	1099	562	1,9%	1,2%
19	Processed cereal, etc.	796	411	1,4%	0,9%
Subtotal % total				97,8%	98,1%

Source: ITC

3.1 The commodity by country/market profile analysis

We next examine the trade profiles for the top ten African agricultural exports by HS 2 Chapters as shown in Table 5. We would note in passing that two of these exports, tobacco and sugar, are the subject of intense international condemnation in recent times as a result of health concerns. This may or may not have implications for African exports.

1) The analysis starts with cocoa, where the exports are predominantly HS 1801, cocoa beans, and the major supplier to world markets is Côte d'Ivoire with a 55% market share of the full HS 18 exports (followed by Ghana). The major market is the EU with a market share of around 60%, and given that the EU tariff is already zero there are no gains from that destination. Tariffs for the next two markets of the US and Malaysia are a modest 5%. Within Africa, South Africa is the leading importer with a reported tariff of 8,4%.

2) The exports of fruit (HS 08) are the second largest export commodity, and here the situation is more complex, a complexity accentuated by actual and perceived non-tariff barriers in several markets. South Africa with a 36% share is the dominant exporter, and overall around 40% of Africa's fruit is destined for the EU followed by India, Russia and the US. Using South Africa as the benchmark, tariffs are reported in aggregate to be 2,4% into the EU, 1,4% into the United Arab Emirates and 3,5% into Russia. Rates of 10% and above suggest that access into both India and China may be a problem. Exports of nuts are important to mainly South Africa, and these exports are destined for the EU, Hong Kong and the US, all of whom are duty-free for this product. Banana trade has been the subject of a large WTO dispute between the EU and suppliers, and we note that African banana exports are mainly from Cameroon and Côte d'Ivoire to the EU duty-free. Morocco, the second supplier of HS 08, is mainly exporting citrus, with Russia as the top destination where tariffs of 3,59% are assessed on average.

3) African exporters of the eclectic vegetable mix are headed by Morocco and Egypt, with the main destinations overall being the EU (44,7% during 2015) and intra-Africa (23,3% during 2015). Benchmarking Morocco we find that tariffs were 6,37% into the main market of the EU and 8,63% into the next market of Russia, while the other lesser markets were generally much less. A similar pattern applies for Egypt, the next supplier, although here the duty-free market of Saudi Arabia is the main market. South Africa's exports were mainly to SADC countries, and here the exports were mainly duty-free except to the 50% levied by Angola.

4) Next are exports of HS 09, which for Africa is coffee, tea, vanilla and cloves in that order. The main exporters were Ethiopia, Kenya, Uganda,

Madagascar and Tanzania, with coffee dominating with exports of just over two billion during 2015 and tea following with $716 million in the same year. Examining Ethiopia (which is not a WTO member and therefore cannot expect any benefits) we find that its exports of almost exclusively coffee are destined for the duty-free or almost duty-free markets of the EU, Saudi Arabia and the US. We note here that there seem to be inconsistencies in the data, as several countries such as Afghanistan, Swaziland, Mali, Romania and Poland are showing wide variations in their reported imports.

5) Tobacco is exported from predominantly Zimbabwe (32%), Malawi (18%) and Tanzania (15%) to mostly the EU and South Africa (both duty free). There is however a major issue with exports from Zimbabwe that tralac has identified in the ITC data. They are listed as exports to South Africa, but there are corresponding South African imports from Zimbabwe of only a fraction of that amount. And while there are no Zimbabwean exports to China. Conversely, China reports imports from Zimbabwe that generally match those reported by Zimbabwe as destined for South Africa. It seems to be merely a transit through South Africa as there is no change at the detailed code description suggesting any value-added. Tariff in this line are reported by the ITC as being 5,56% into Russia, 23,75% into China and 25,8% into the US. This would indicate a significant tariff bill for someone if the Zimbabwean tobacco is actually going to China as seems to be the case.

6) Oil seeds are number six on the African export list, and here the main exporters are Ethiopia, Sudan, Nigeria, Tanzania and Burkina Faso with the main products being oil seeds per se, medicinal plants, locust beans and ground nuts (peanuts). The main markets overall (with tariffs faced by Ethiopia in brackets) were China and then the EU (both 0%), Turkey (7,11%), Japan (0,27%) India (17%) and Saudi Arabia (2,03%). Of the African total, from 18% to 32% have been destined for China over the last five years, 13% to 17% to the EU and from 11% to 16% to Africa.

7) Animal and vegetable fats and oils are the next export, with Tunisian olive oils dominating and they are followed by South Africa and Morocco. Overall, some 72% – 77% of the total has been destined for mostly the EU and Africa, with the respective shares varying over the last three years. For

Ethiopia the bulk of the exports are to the EU, but here there is an assessed duty of 9,96% for this EU-sensitive product. Next are exports to the US (2,93% duty) and Libya at zero duties. For South Africa it is mostly soy bean and sunflower oils destined for fellow SADC members where the exports are duty free except to the main market of Zimbabwe with it's 6,26% duties.

8) Cotton, HS 52, is the flash-point for Africa and the WO. The issue here is not market access though, but rather US subsidies to domestic production. African exports of HS 5201, raw cotton, are predominantly from West Africa and the three main destinations are China, India and Singapore in somewhat equal values. The duty into China is 20%, while for India and Singapore (and most other destinations) it is zero. China is the main global importer taking around a third of imports, while the US is the main exporter with a similar market share. Therefore duties into China of 20% and competition from the subsidised American exports are the main issues for Africa and the WTO with respect to cotton.

9) Sugar, HS 17, is the most protected sector where Africa is a significant global exporter, and here the situation is more complex. Currently the major African exporters are Swaziland, Mauritius and South Africa with a combined global market share of 3.3% during 2015. Both Swaziland and Mauritius have virtually free tariff access to all their markets (both within Africa and the EU) according to the ITC data, while South Africa still faces tariffs both within Africa and the EU as well as high tariffs in the significant markets of Indonesia, Japan and India. The African tariff rates are best addressed in the context of the Tri-Partite FTA in the case of Kenya in particular or the TDCA in the case of South African access to the EU. We will discuss this in more detail later.

10) Live animal exports (HS 01) are concentrated from Sudan, Somalia and Ethiopia (83% of African exports), with the main destinations being Saudi Arabia, Oman and Somalia. None of the three main exporters are WTO members and therefore it is difficult to see what the WTO may be able to do, and in addition: the main destination from Sudan is Saudi Arabia where tariffs are zero;, the main destinations from Somalia are Saudi Arabia and Oman where again the tariffs are zero; and the main

destination for Ethiopia is Somalia, who is not a WTO member. Therefore in general the WTO offers nothing for live animal exporters.

In conclusion there seems to be few of the major African agricultural exports where the WTO could provide some benefits, and especially against the back-ground of low agricultural tariffs into Developed countries from LDCs as shown in Table 4. Cotton seems to be more of a flash-point than an actual source of benefits as the background issue is US supports to its domestic producers. This is already subject to an agreement (discussed below) and there is an outside possibility that perhaps some relief from the high (20%) tariffs into China may result from an agreement in the WTO. Sugar trade exists in a complex regime, but solutions through this maze for African producers are best pursued within Africa itself by negotiations in the African trade agreements currently in play and between South Africa and the EU under the TDCA. Several of the main products – cocoa, coffee and tea, live animals – exist in an almost duty free environment. Of the others for fruit and vegetable exports non-tariff barriers are probably the main worry although South Africa, the main fruit exporter, faces tariff complexities in the EU and high tariff barriers into China and India. Although tobacco exports from the main suppliers are outlined in the ITC data as being largely destined for the duty free EU and South African markets, the exports from Zimbabwe to South Africa are actually destined for China where a 23.75% tariff is reported. The semi-related products of oil seeds and animal and vegetable fats are largely destined for the EU and Africa where if the imports are not already duty free then bilateral or regional negotiations must offer the best possibilities for improved access conditions (we note that exports of oil seeds into China are duty free).

The limitation of an analysis such as the above is that there may well be cases where medium to high tariffs are ‘chilling’ trade that would take place or increase with better access conditions. Other than the general cases discussed above there are few examples that we can identify, although access for sugar into Kenya where the current tariffs of 85% are extraordinarily high and generally trade prohibiting. Also, in the sugar regimes the protectionism spreads beyond just the basic raw sugar imports to include any further processing such as tinned fruits, jams and preserves that contain sugar.

3.2 Additional comments on particular products of export interest Sugar

The Uruguay Round of the General Agreement on Tariffs and Trade (GATT) (the old WTO) did little directly for sugar but indirectly helped in both setting up the framework for a substantial liberalisation of sugar production and trade in the future and augmented this through the dispute settlement mechanism (where the Appellate Body applied and confirmed earlier case law developed in New Zealand's successful case against Canadian dairy export subsidies). The disruptive polices of the EU, the US and Japan cause most of the problems by heavily subsidising their producers and providing limited quota access and very high out-of-quota tariffs to maintain these regimes. Accentuating the problems for competitive producers are the export subsidies that the EU uses to sell surpluses onto remaining free-world markets. This is the product with the most potential for preference erosion for the region, but currently exports are low. It is also a case that will pit developing countries against one another, and even in Africa. This is because some who currently export a limited amount, but have the potential to become competitive, will take trade away from others who are relying on preferences.

Sandrey and Moobi 2016 outline how Brazil is a leading cane sugar producer, and also has the fastest growth rate among the leading producer. Conversely, cane production in the USA, Australia, South Africa, Cuba and Venezuela all show a decline in sugar production over this same period. South Africa, the top African producer, is just ahead of Egypt, and they are followed by Sudan, Kenya and Swaziland who each have similar shares of African production. Overall Africa accounted for 5% production share of global production in 2013, and this was down from the 7% in 2000.

South Africa has generally been marginally ahead of Swaziland as the top African global exporter of sugar, followed by Mauritius. Algeria was the main African importer of sugar during 2014, followed by Nigeria, Sudan and Morocco. Africa imported some 18.3% of the global sugar exports during 2014, a figure that has been relatively stable since 2012 after climbing from lower levels. South Africa was the main intra-African importer of sugar, followed by Sudan, Namibia and Kenya, and overall, Africa is a net importer of sugar.

Sandrey and Moobi also consider that the South Africa sector has not been subjected to market forces in the same way that other agricultural sectors have been in recent years. The argument employed by the sugar sector that they face a distorted international trading environment holds equally true for many of the sectors that have been fully exposed to international competition. Indeed, currently sugar in South Africa enjoys more protection than the major producers of Brazil, the EU, Australia and China and is only behind the US in the major OECD support measures. Much of this protection is through a dollar based reference price (DBRP) tariff system that grants import protection against low world prices, but special treatment to sugar extends to trade restrictions on free trade from non-SACU SADC imports into SACU. This latter special treatment is not given to any other products, either agricultural or non-agricultural.

Jensen and Sandrey 2015 simulated the impacts of reforms in the EU sugar sector upon this African production and trade using the Global Trade Analysis Project (GTAP) computer model. During 2006 a reform of the CAP sugar regime brought a simplification of the EU quota structure when these quotas were prolonged until 2014/15 with no commitment to further renewal. Other research has estimated that EU production will increase and sugar imports into the EU will decline. Meanwhile, the recently concluded Economic Partnership Agreements (EPAs) is crucial for sugar access to the EU for many LDC countries, and it is against this background that tralac ran these simulations.

They found that production in the EU increases by 5.29%, African exports to the EU declined by 14% and by 10.8% in total to market outside of Africa as the increased EU competition puts pressure on Africa's traditional markets. Production declined across the board in Africa, and the trade results mirror the production affects with all African exports declining in the face of an 11% increase in EU global exports and a loss of markets in the EU. Changes are marginal for intra-African trade, although there is a decline of 14% to the EU and displacement by the EU's global export increase of 11% displaces African exports. Furthermore, in reporting on tralac research simulating the implications of a liberalisation whereby all agricultural tariffs on intra-African trade go to zero **after** factoring the EU reforms into the trade model, these intra-African reforms were dominated by changes in the African sugar production and trade profiles. The big gainers were South Africa from enhanced exports to mainly Kenya and Kenya itself as resources are diverted away from its inefficient sugar sector. Thus, changes to the EU sugar regime are not necessarily good news for Africa and the big potential gains to the sugar sector are mainly within Africa itself. The latter is within the auspices of African integration and not the WTO.

Coffee is a classic example of an agricultural product whose long-term market prices have fallen dramatically over the last two decades in spite of increasing demand. Coffee beans sold in the international market are significantly differentiated from coffee sold as a final product to the consumer, with coffee as most people know it sold in an end market where advertising and service quality dominate the cost of coffee beans. According to the FAO Brazil and Vietnam are the world’s largest coffee growers with a combined share of 49% in 2013. Africa contributed just on 10%, with Ethiopia, Uganda and Côte d'Ivoire being the largest growers. Worryingly, although almost all coffee is grown in the developing world, there were signs in late 2013 that Brazil, the champion of developing country agricultural free trade, was implementing a coffee subsidy to growers. Since then however, coffee bean prices have recovered, albeit not back to previous highs.

Cotton emerged as a major flashpoint at the WTO trade summit in Cancun, Mexico, as four West African countries, namely Benin, Burkina Faso, Chad and Mali, called for an end to cotton subsidies in rich countries and compensation to cover economic losses caused by these subsidies. This challenge dramatically highlighted both the problems that African farmers in particular face in a distorted agricultural market, and how the balance of power in the WTO is swinging away from rich countries to a more representative view of the entire WTO membership. In general, West African cotton farmers are able to produce cotton at perhaps one third of their counterparts in the US, but it is the US subsidies that are denying them export opportunities.

Cotton, while not a crucial issue for eastern Africa, is still important in that (a) some exports do originate from the region and (b) this issue has become the rally-cry for African nations. In actuality better access may not deliver as much as some hoped for, but in the interests of solidarity with fellow Africans the region should support comprehensive reforms (but not to the extent of being ‘brought off’ by a cotton outcome). African nations export very limited quantities of cotton to the US, and although market access is not the issue for cotton, the use of domestic subsidies in the US and EU and the consequential price reduction for internationally traded cotton is.

On market access, the decision calls for cotton from LDCs to be given duty-free and quota-free access to the markets of developed countries and to those of developing countries declaring that they are able to do so from 1 January 2016. The domestic support part of the cotton decision acknowledges members' reforms in their domestic cotton policies and stresses that more efforts remain to be made. On export competition for cotton, the decision mandates that developed countries prohibit cotton export subsidies immediately and developing countries do so at a later date.

The situation for **bananas** is similar to that of sugar, where the developing countries are being set against one another as a result of the WTO banana dispute. Basically, Latin American producers with a share of about 60% dominate the EU market, while many of the other ACP countries have a restricted quota access of about 20% of the market. Africa had around a 7% share of exports during 2013. The situations for bananas demonstrate that there are both winners and losers in many trade disputes, and that the two camps can both contain developing and least developed countries. The losers were those earning rents from exporting at better access prices, while the gainers are the more efficient producers who now have an ability to export into a freer market at a fairer price.

3.3 Export subsidies

Strubenhoff 2016 writes that in December 2015 at the World Trade Organization's (WTO) 10th Ministerial Conference in Nairobi, members finally agreed that export subsidies for agriculture would be abolished. The agreement states that 'developed country members shall immediately eliminate their remaining scheduled export subsidy entitlements as of the date of adoption of this decision' and 'developing country members shall eliminate their export subsidy entitlements by the end of 2018.' WTO members also 'undertake not to provide export credit, export credit guarantees, or insurance programs' for agricultural products. He then asks 'Why did the EU agree to abolish export subsidies and the U.S. agree to abolish export credits'. He considers that farming lobby groups loved them, and governments in poor, food-importing countries liked the cheap imported food. But they were distorting market prices leading to higher-than-market prices and surplus production in exporting countries and lower prices and less production in importing countries. Hence policymakers in developed countries cared more about farmers, while developing countries cared more about consumers.

The benefits from this action are hard to quantify, as this measure of support has been declining and thus the direct impact is rather minimal. Perhaps more important is that new subsidies shouldn't be implemented, and perhaps we can wave goodbye to one instrument of distortion.

3.4 Other issues

Special products, the SSM and even perhaps Sensitive Products need to be carefully considered. The latter are products that a member may declare and thus be obliged to make lesser market access commitments for that product. Special products extend this concept to developing members only for those products that are a staple or basic food of that country, and negotiations continue on how extensive this concession may be. Unfortunately in Africa there seems to be a tendency for countries to bow to special interest groups rather than consider a more broad approach which examines overall welfare when special products are listed, and this protectionist approach negates a significant share of the likely welfare gains from trade liberalisation.

Extending this still further is the SSM measure that will allow both developing and least developed members to raise tariffs in the event of an import surge that threatens domestic producers. The SSM constitutes a unique instrument to assist with food security, livelihood security and rural development. It must be simple, effective and easy to implement. Members will need to consider what products they consider important to list in their schedules, and this extends to the SSM products. Similarly, developing countries and least developed countries are entitled to nominate Sensitive products, as these are not just for the developed countries. In practice, the use of Special products is likely to be more important for defensive interests. Members need to carefully watch the use of Sensitive products by the developed members, as there is a balance between better market access and possibly preserving some preference rents as discussed earlier.

Tariff escalation similarly needs to be carefully considered without prejudice to the products benefiting from preferential arrangements. This is an issue in commodities such as the further processing of coffee beans, for example. This is a difficult area to analyse, as most researchers commonly just look at the increase in tariffs as the raw product moves through the processing chain. While indicative, it does not tell anything about the increased tariff rate relative to the value-added component of the processing chain, or the capacity/ competitiveness of the country in undertaking that value added process.

Cocoa and products are the leading single agricultural export from Africa, and here tariff escalation does not seem to be a problem. The export of the further value added products of cocoa butter, chocolate and cocoa powder from the leading exporter of Côte d'Ivoire all seem to have largely duty free access to their markets. Similarly for coffee, where looking at exports from Ethiopia (and even though it is not a WTO member we could argue that it is a worst-case example for Africa as it has no WTO access benefits) we find that access is generally duty free for its main raw coffee exports and for the extremely limited exports of roasted coffee as well. There do however seem to be significant tariffs against roasted coffee in several markets so we cannot rule out trade chilling or prohibition through tariff escalation here but the evidence is very limited.

There have however been suggestions that the monopolistic competition in the cocoa and related products market is impacting on these products. Here the WTO is concerned that as government barriers to trade and investment have been reduced the gains from this liberalisation may be thwarted by private anti-competitive practices. Mutually supportive trade and competition policies can contribute to sound economic development, and effective competition policies help to ensure that the benefits of liberalisation and market-based reforms flow through to all citizens. Many WTO member countries, including many developing and transition countries, have adopted competition laws.

Too often we find that access conditions into many markets are stymied by overly rigorous **rules of origin (ROO)** regimes. The WTO is moving on this problem. The 2013 Bali Ministerial Decision on preferential rules of origin for LDCs set out, for the first time, a set of multilaterally agreed guidelines to help make it easier for LDC exports to qualify for preferential market access. The Nairobi Decision expands upon this by providing more detailed directions on specific issues such as methods for determining when a product qualifies as 'made in an LDC' and when inputs from other sources can be 'cumulated' (combined together) into the consideration of origin. It calls on preference-granting members to consider allowing the use of non-originating materials up to 75% of the final value of the product and calls on preference-granting members to consider simplifying documentary and procedural requirements related to origin. The key beneficiaries will be sub-Saharan African countries, which make up the majority of the LDC Group, the proponent for the Nairobi Decision on Preferential Rules of Origin for LDCs.

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Chapter 3

Analytics of the WTO Agricultural Agreement for Africa

Ron Sandrey

1. Introduction

In recent years the global trade modellers of the world, or perhaps more accurately their patrons, have largely moved on from assessing the gains from an outcome from the WTO's Doha Development Agenda (DDA). Perhaps it is because as the DDA stalled it lost some of its 'sexiness' appeal, or perhaps it was because as trade models become more sophisticated the limitations of the DDA for agriculture became more apparent and consequently the magnitude of the gains declined. Funders, and especially government funders, do not want to hear of lowering gains.

The salient feature of this modelling research is that the gains for Africa are modest, with some countries actually losing welfare through results such as preference erosion in developed markets.

Background and modelling assessments of the DDA for agriculture in particular Sandrey 2006 a succinctly set the scene for agriculture in the WTO with 'For nearly 50 years agriculture was largely exempt from manufactured goods trade rules. While member countries' prosperity grew on the back of a relatively open trading system for manufactured goods, these same countries erected trade barriers – some insurmountable – to agricultural imports. Hand-in-hand with trade barriers went generous farm support payments provided by government treasuries. Rather than being driven by straightforward economic principles, as is largely the case with manufactured products, domestic agricultural policies were driven by a perceived need for self-sufficiency in food, wartime food shortages memories, and strong government decision-making representation. This resulted in growing unsaleable product surpluses for which governments had to provide further subsidies to dispose of on world markets. The ideological view that agriculture is somehow different from other sectors continued despite it being comprehensively brought into the multilateral negotiating environment for the first time. Separate agriculture disciplines were agreed under the Agreement on Agriculture (AoA), although the Uruguay Round (UR) did initiate a process to reduce or limit agriculture's exemptions and bring them more fully under GATT/WTO disciplines.'

Against that background this section undertakes a review of the literature that is relevant to quantitative analysis of the impacts of the DDA, with special reference to Africa and South Africa. While some of this review may be a little dated, that is of no real concern in that the general principles of the stalled DDA have barely changed, although what has changed in recent years is that the computer model analysis has become more sophisticated. This is especially so for the Global Trade Analysis Project (GTAP), the model of choice for most practitioners. More countries have been added to its database and the trade and economic data is continually moving forward. While models such as GTAP have the undoubted strength of forcing consistency in their analysis, they also suffer from weaknesses in that they are a representation of the 'real world'. Against this background they can however provide interesting insights into simulated outcomes.

We could also start the paper with a more recent and in-depth assessment by summarising Brink (2014). He examined the policy settings of twelve developing and seven developed countries and found that few of these countries would need to change their settings very much if at all in order to conform with the rules and commitments of an agreement if it was implemented immediately as it now stands. For market access this is mainly because the margins between bound tariffs that are the base for negotiations and actual applied tariffs are large enough to allow the bound rates to remain larger than the applied rates after a DDA agreement for several countries, and for others the reductions in the applied rates would be quite small. This is accentuated when the use of sensitive and special products is taken into account. Similarly, most of the nineteen countries would face no or little difficulty in complying with constraints on domestic subsidies. Those that may face a challenge include Canada, Norway, Switzerland, Thailand and the United States, as well as possibly Russia and China.

We shall eschew the obvious question of why the negotiations are so difficult if there seems to be little pain. Perhaps politics holds sway over economic outcomes in that widely spread and diverse gainers are less visible than the concentrated and hence more visible (and vocal) losers.

2. A precautionary note: who stole the gains from trade liberalisation?

A notable feature of the December 2005 WTO Hong Kong Ministerial was the use and citation of models, with the more recent ones at that time showing a considerable reduction in global welfare gains from trade liberalisation, and in particular an almost-disappearance of the gains to developing countries. Why are the gains shrinking? Part of the answer is that some of the assumptions are being re-visited, while the newer version of the GTAP model and its associated database enables analysts to use better trade and tariff data and incorporate both the EU expansion and China's WTO accession into their updated base work. These combinations are making a huge difference, but even so ten years ago Ackerman (2005), for example, detailed how the gains were becoming both smaller and skewed towards the developed countries rather than poverty alleviation in the developing world.

Using the Version 6 database, the World Bank revised the potential benefits downwards to a miserly $3,13 per head in the developing world (in contrast to the $79,04 per head in the developed world)[4]. This work acknowledges the difficulties associated with anticipating an outcome for the Doha Development Agenda (DDA) and recognises some of the issues such as sensitive products, the bound versus applied tariffs[5], problems of quota rates and preference erosion and that of defining and disciplining reductions in agricultural supports in Organisation for Economic and Cooperation Development (OECD) countries. High income countries are the winners, and in some instance where

[4] Anderson, K. and Martin, W. (2005).Note that these gains are not repeatable gains, but rather a once-only step upwards.

[5] The margins between bound tariffs that are the base for negotiations and actual applied tariffs are large enough to allow the bound rates to remain larger than the applied rates after a DDA agreement for several countries, and for others the reductions in the applied rates would be quite small. This is accentuated when the use of sensitive and special products is taken into account.

special products can be exempted the developing countries as a group actually lose out.

In this World Bank research the gains for South Africa are generally modest but always positive. Under a complete global liberalisation of trade assumption the global gains from the World Bank analysis were $287 billion, with $1.3 billion of this going to South Africa (with all exports up by 14,3% and imports up by a greater 18,0%, and agricultural exports up by 2,4% and imports up by a lesser 1,1%, thus highlighting that most of the gains are from non-agricultural sectors). We caution that this model used a dynamic recursive approach which will lead to greater gains than the standard model, and thus the results are not directly comparable to the gains that we will present later in this paper.[6] Now moving to a DDA outcome simulation, the World Bank gains for South Africa become very modest but always positive: from $0,1 to $0,3 billion. There was greater variation in the global outcome with respect to the agricultural-only gains; from $75 billion with full agricultural liberalisation to a mere $13,4 billion even using a dynamic model but with generous allowances for special products. As a percentage of real income these South African gains are similar to those for India but well below those for Thailand, Argentina and Brazil.

Another source of information detailing the potential benefits to South Africa from liberalisation of OECD agricultural policies was the OECD review of South African agriculture (OECD, 2006). They also used the GTAP model, but we must caution that it is based upon Version 5 (1997 base year) and not Version 6 using the 2001 base year data[7]. In addition, the different assumptions make it difficult to compare results, but with partial global liberalisation in both agriculture and non-agriculture the South African gain is some $251 million with around one-third of the South African gains ($88m) coming from agriculture. The most import contributions are from global reforms in wheat, fruit and vegetables, dairy products, processed sugar and other processed food sectors.

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[6] Indeed, these gains are about three times the standard GTAP global gains of $84 billion as presented in the same World Bank book in Chapter 2.

[7] Tralac is now using version 9, but some analysts are still using Version 8 claiming that Version 9 has too many errors in its African data.

Polaski (2006), using a very detailed approach found that agricultural liberalisation benefits only a relatively small subset of developing countries and global benefits were modest. Those benefiting from agricultural liberalisation include Brazil, Argentina, most of Latin America, South Africa and Thailand. Accounting for this modest global result is the 'Special Products'. For South Africa gains are some $57 million from the DDA agricultural-only, with most of these gains resulting from better sugar marketing conditions.

Another paper that examined the plausible impacts of the DDA was that by Kirkpatrick et al (2006), where they agreed that the economic impact of the DDA is likely to be modest, and smaller than earlier predicted. In particular they were worried that the gains are not shared, and in the poorer countries, with Sub-Sahara Africa as the example, poverty may worsen as these countries lose from trade liberalisation on the one hand and on the other face severe supply constraints that bedevil Africa. This is especially so when the dynamic or second and subsequent effects of the DDA are examined, as the developing countries have the best infrastructure to exploit these advantages. If the DDA is to be a 'development round' then additional measures such as 'aid for trade' will need to be implemented.

The Swedish Board of Trade (2006) simulated three potential Doha outcomes using GTAP: one core scenario, and two scenarios involving more and less far-reaching liberalisation respectively (with 'less' appearing to be a more realistic scenario). Four elements were included in all scenarios: non-agricultural market access (NAMA), agricultural liberalisation, services liberalisation and trade facilitation. For these options, three versions of the GTAP model were used; 'main model', 'standard GTAP' and 'dynamic GTAP'. The Least Developed Countries (LDCs) did not make any commitments on manufactures, agriculture and services, but they were expected to make commitments in trade facilitation. The estimated potential gain in real global income from this simulated Doha round were from $46-230 billion per year, with the lower estimate from less liberalisation using the standard GTAP and the higher from the more far-reaching outcome. All country/regional groups gained, and the developing countries, including LDCs, were the major winners (although with the somewhat nebulous 'trade facilitation' contributing the most to developing countries' gains). Gains for South Africa from Doha reform in the less liberalisation scenario using the standard model were exactly $1 000 million, with 59% of this from Doha NAMA liberalisation, 37% from 'trade facilitation' and only 3% from agricultural liberalisation (with the remaining 2% from services). Netting out the trade facilitation gains these results (and using the standard GTAP model and a not-overly optimistic view of a possible Doha) outcome are consistent with the other research discussed above.

In addition, there are two other themes pertinent to the analysis of both Free Trade Agreements(FTAs) and the DDA for Africa. These are (a) the question of tariff revenue loss and (b) the issue of trade creation and trade diversion. For the first issue Sandrey and Jensen (2007) examine the impacts of known and possible trade agreements that involve Southern African Customs Union (SACU) and calculate the potential loss of tariff revenues to SACU as preferences are granted to trading partners. They find that this loss will have major impacts upon Lesotho's economy in particular as these tariff revenues currently comprise half of total government revenues in the Kingdom. On the second issue Sandrey (2006b) takes this a step further and finds that introducing the trade creation and diversion formulas into the analysis accentuates the revenue loss problem.

Analysts are warning that the projected gains from the DDA and the Economic Partnership Agreement (EPA) are not what they initially expected (or hoped for?) to be as an updated model database enables factors such as tariff revenue loss to be factored into recent research and the hopes of anything approaching a comprehensive DDA agreement are fading. With respect to the proposed EPA the same tariff revenue loss and the related concept of trade creation/trade diversion is important. However, more crucially the potential damage to Africa's industrial base, the probable reluctance of the EU to make meaningful reforms to their agricultural sector during the DDA negotiations and the limitations to take advantage of opportunities imposed by self-inflicted African infrastructural constraints is casting a shadow that suggests there may even be losses to at least some African countries from both the EPA and the DDA.

This results from a combination of better models that have more recent information such as the final UR tariffs, the full implications of China's accession to the WTO incorporated, an ability to model tariff revenues losses and the impacts of trade creation/diversion effects, the consequences of the erosion of tariff preferences, and a 'scaling down' of the DDA ambitions that are now being modelled as more realistic assumptions of any outcome. Virtually all of the recent modelling work is pointing to reduced gains from the

DDA, and even in some cases for developing countries to losses. These same or similar factors are also contributing to the cautious results that are now coming from researchers who are looking at the EPA possibilities, and especially so as most African countries at the time had good access into Europe under CONOTOU[8] for developing or the Everything but Arms (EBA) for the least developed countries (thus, there was limited 'upside' gain.

These results are accentuated by the problems facing Africa in its major infrastructural and capacity constraints that will severely limit the abilities of most African countries to take advantage of the new opportunities. Africa itself must address most of these problems, and, in doing so, ensure that aid monies for these projects are well spent. African countries must negotiate hard to ensure that the development promises of both the DDA and the EPA are, in fact, realised. To this end they must be vigilant against efforts to use 'the old shell game' of just moving aid already promised into another package.

3. South Africa and African research specifically

Sandrey and Jensen 2007 simulated a likely WTO outcome for South Africa and found that global welfare gains from Doha are estimated to be some $48 billion, with a minor $3 billion of this from agricultural reform and the dominant $45 billion from the liberalisation of markets for non-agricultural goods. South Africa gains some $340 million, with $42 million of this from agricultural reform and the remainder from non-agricultural reforms. They considered that these results were consistent with those presented in recent research, and reinforced that the shielding of some sensitive and special products considerably reduces the global gains from agricultural liberalisation. By product, the gainers in South Africa are the beef and sheep meat, and dairy products sectors where output and consequently exports increase, albeit from low bases. Production and trade in the wheat and sugar sectors decline (where South Africa largely chose to utilise its protective flexibility in the sugar

[8] The **Cotonou Agreement** is a treaty between the European Union and the African, Caribbean and Pacific Group of States ("ACP countries"). It was signed in June 2000 in **Cotonou**, Benin's largest city, by 78 ACP countries (Cuba did not sign) and the then fifteen Member States of the European Union

sector). Beef exports to the EU and the ‘rest of the world’ are the big export gainers. There was a very slight increase in agricultural imports.

Outside of Africa the big gainers were China, Japan, EU and their ‘rest of the world’, while the US loses. Within the Southern African Customs Union (SACU) Botswana loses by some $9 million, while the ‘rest of SACU’ aggregation of Lesotho, Namibia and Swaziland gains substantially by $134 million. In addition, Sandrey and Jensen report that there are two other themes pertinent to the analysis of the DDA for Africa. These are (a) the question of tariff revenue loss and (b) the issue of trade creation and trade diversion, and both of these are important and must be considered.

Nyhodo (2009) sums up the dilemma that faces some developing countries with respect to agricultural liberalisation. On the one hand it is expected that liberalisation would increase prices and hence the demand for developing country imports and the subsequent benefits to terms of trade. On the other hand these same developing countries may lose preferential access and then face wider compensation from developed country exports. Therefore the outcomes are not unambiguously beneficial to developing countries; in general, it is commonly thought that net exporters would gain but net importers would lose, although preference loss may cloud this generalisation. Later in the paper we will look at the example of recent liberalisation in the EU’s sugar regime and report that tralac’s computer analysis assessed these changes as making African traders marginally worse off. In general, there is a theme that comes from simulating trade liberalisation, and that is that the benefits often flow disproportionally to those undertaking the liberalisation as resources are diverted into their most productive use.

Overall, as Nyhodo notes, depending on the distribution of the gains, South Africa may gain or lose from an outcome from the DDA. Using the South Africa PROVIDE model[9] he assesses the results for South Africa. Importantly, there is a big difference between comprehensive liberalisation and that of excluding the three crucial commodities of wheat, other grains and sugar. In this latter case there are changes to world prices of only between –3% and

[9] He uses the GLOBE model to firstly assess the wider global impacts of liberalisation before feeding these results into the PRONIDE model.

+3%, whereas when the excluded three are simulated the changes are significantly higher. There are also significant differences between global export prices and global import prices, with export prices generally higher as developed country protection is mitigated.

The reported results concentrate upon wheat, an import sector, and sugar, a sector that used to be export but is now also a significant import sector. They also highlight the complexities of assessing a ‘price’, as that depends upon what price we are actually talking about. Perhaps the most important one for assessing the overall production response is that facing farmers, and here their price increase of 3,8% for wheat and 0,47% for sugar is below the increases in import prices. There is a modest increase in production in both of these commodities in response to the price increase, but overall the results seem to be similarly modest.

Examining a wider African perspective Coulibaly et al 2016 reviewed and modelled Africa’s priority issues and interests in ongoing WTO negotiations[10]. They found that an agreement on the DDA in agriculture would have a high positive impact on growth and welfare in Africa relative to the rest of the world, although they caution that not all African countries gain. Importantly the WTO has to make progress on the three key issues of market access, agricultural support and S&D treatment. Estimates of welfare changes under the proposed Doha scenario for African regions are quite modest and are estimated at around US$ 8,3 billion, and the study reveals the relative importance of market access for Africa. The net gain to Africa is estimated to be US$ 320 million under market access reforms compared to US$ 99 million gains under export subsidy reforms and US$ 4 million under domestic support reforms.

As always the inclusion of Trade Facilitation and removal of non-tariff barriers (NTBs) in trade liberalisation amplifies the gains from liberalisation. Using the export and import value of time[11], it is found that the welfare gains are

[10] A perusal of the comprehensive set of references in this paper reaffirms our view that little has been written on computer modelling research on the DDA agricultural outcome over the last ten years.

[11] We caution that there may be an element of double counting here where both import and export values of time are incorporated into the model.

respectively estimated to be US$ 44 million and US$ 56 million. By estimating welfare gains using alternative proxies for NTBs, the welfare gain varies from US$ 64 million to US$ 18 billion.

They also assess the counter-balancing impacts of recent developments on the Trans-Atlantic FTA and Trans-Pacific FTA where they are expected to enhance trade among the participating countries but would have trade diversion for Africa. Here the welfare loses for Africa area round US$ 290 million under the Trans-Atlantic FTA and US$ 976 million under the Trans-Pacific FTA. Reverting back to more WTO-related changes they found that there would be substantial gains following the EU CAP reforms of 2014–20 compared to the US Farm Bill of 2014–2018, with the CAP reforms estimated as US$ 7,2 million welfare gains compared to US$ 1,6 million for the Farm Bill. Furthermore, closer to home the study supports the integration agenda of African countries with welfare and trade effects under both Tripartite FTA and Continental FTA, with the latter estimated to generate welfare gains at around US$ 13,4 billion while for the former welfare gains would be around US$ 2,9 billion.

Overall, their Doha scenario suggested that agricultural-only liberalisation would generate a global gain of US$ 6,3 billion, with almost half accruing to the EU 28 and Canada. Gains for Africa amount to US$ 8,26 billion (which is 130% of the total welfare gain) with a mixed outcome as a result of differences in initial specialisation, domestic protection and factor endowment. Countries affected by the erosion of preferences and the changes in relative prices lose (North Africa, Central Africa, Zimbabwe, Botswana, Namibia, Cameroon and Côte d'Ivoire). Conversely, Cameroon and Côte d'Ivoire, both net agricultural exporters, gained through market access, while gains for South Africa are unexpectedly limited. Technically, total gains for Africa are almost the same using either the Swiss or the tiered market access tariff reduction formulas.

Also, in one of the few other recent analyses of the DDA, Decreux and Fontagné 2011 stress that the case of Sub-Saharan Africa (SSA) is important for the Round and deserves additional comment. This region does not liberalise overall (or only to a very small extent), due to the combined presence of LDCs, Paragraph 6 Annex b countries and other flexibilities conceded to developing countries. In particular, improved market access opportunities are usually limited for SSA countries, which already benefit from preferential schemes in some important markets. Importantly, improved market access granted to SSA countries' competitors actually works to decrease some of the SSA countries' export prices, leading to terms of trade losses and reduced domestic production for SSA countries.

4. Sugar reforms

The global sugar sector operates on a stage that includes (a) highly protected sectors in some developed countries that concentrate upon beet sugar production and (b) the cane sugar producers who generally, but not always, operate in more open production and trade regime in generally, but again not always, in developing countries. Despite the complex and restrictive trade policies of many countries sugar trade plays an important role in global agricultural trade, and indeed during the 2011 sugar price spike it was the 4th most traded agricultural product by value at the HS 4 level. South Africa has generally been marginally ahead of Swaziland as the top African global exporter of sugar, with these two also being the top intra-African sugar exporters. Algeria was the main African importer of sugar during 2014, followed by Sudan (both North and South combined) and Nigeria, and overall Africa is a net importer of sugar.

Jensen and Sandrey 2015b analysed the impacts of reforms in the EU sugar sector upon this African production and trade using the GTAP computer model. They found that production in the EU increased by 5,29%, African exports to the EU declined by 14% and by 10,8% in total to markets outside of Africa as the increased EU competition puts pressure on Africa's traditional markets. Production declined across the board in Africa, and the trade results mirrored the production affects with all African exports declining in the face of an 11% increase in EU global exports and a loss of markets in the EU. Changes are marginal for intra-African trade, although there is a decline of 14% to the EU and displacement by the EU's global export increase of 11% displaces African exports. Thus, reforms in developed country markets are not necessarily good news for African producers. They also extended this research to assess the implications of agricultural tariffs on intra-African trade going to zero (after factoring the EU reforms into the model). Here the results confirm that these agricultural-only reforms are dominated by changes in the African sugar production and trade profiles. The big gainers are South Africa from enhanced sugar exports to mainly Kenya and Kenya itself as resources are diverted away from its inefficient sugar sector.

5. Related issues

While not specifically on the WTO, agricultural and Africa theme the issue of trade facilitation is one that is attracting increased attention in the WTO. Jensen and Sandrey 2015c examined the issue of 'time in transit' to proxy infrastructural deficits in Africa such as delays at border crossings, roadblocks for trucks, and the necessity to pay bribes. African countries are well aware of these problems, and trade facilitation was the main outcome from the 2013 Bali WTO Ministerial Conference. The agreement was to streamline customs procedures and minimise delays at borders – with Africa expected to be the main beneficiary. World Bank researchers and others have combined to produce a database of per day ad valorem costs to use in GTAP, with these estimates provided in ad valorem equivalents of the per day costs along with the number of days involved, and Jensen and Sandrey used the Singapore international best-practice benchmark of four days for imports and assessed a reduction of 20% in the days over and above this benchmark for African **imports**.

The welfare gains to Africa were substantial. For South Africa, they are some US$ 8,519 million in real terms and, as is usually the case, this is the most significant result for both Africa and the total worldwide gain of US$ 31,231 million. Following close behind are the very large gains to Nigeria and the rest of Africa aggregation. In direct contrast to our tariff elimination scenarios, there are gains to many of the large economies outside Africa as their export prices rise in response to more efficient transit times in Africa. The striking feature from the results is that almost all of the gains to each country overwhelmingly accrue to that same country, and that (a) these gains are substantial, (b) they mostly accrue to the liberaliser and (c) in only taking 20% of the costs of time over and above an international benchmark we are leaving plenty of room for improvement in most African countries.

Similarly, while not strictly speaking a WTO issue, Jensen and Sandrey (2015a) used the GTAP computer database and the full suite of African agricultural sectors and African countries/regions in order to assess the benefits of intra-African tariff abolition in agricultural trade across the continent. This research suggests that Africa has as much to gain from its own continental liberalisation of agricultural trade as it does from relying on the WTO.

South Africa was the leading beneficiary, with the economy at 2015 being some US$ 1,840 million better off than it would otherwise have been. Kenya is the next largest African gainer, followed by Senegal and Côte d'Ivoire. The key agricultural sectors were vegetables, fruits and nuts; crops (other); red meat; vegetable oils and fats; dairy products; refined sugar and associated products; food products not classified elsewhere; and beverages and tobacco. Overall, the largest impact was felt in the vegetable oils and fats sector, with Côte d'Ivoire and Kenya the African gainers. Perhaps the more interesting and important outcome, however, was in the sugar sector as reported above. Changes in other sectors are often dominated by South Africa. They found that Kenya, Tanzania, Zimbabwe and the rest of Africa lose significant tariff revenues that would have to be adjusted for in some way, and that Zimbabwe, and to a lesser extent Tanzania, were the big losers overall.

In addition, tralac has undertaken significant research on non-tariff issues in both analytical modelling and related survey work. These barriers are significant, and not reported here as they are the subject of a separate Chapter.

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Chapter 4

How the Agreement on Agricultural might improve the South African Agricultural, Forestry and Fisheries Trade performance

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1. Introduction

This paper examines the export trade profiles of the South African agricultural, forestry and fisheries sectors to assess where the WTO may be able to improve market access for these exports. We have extended the traditional agricultural sector to include the forestry and fisheries sectors as, although classified as manufacturing sectors in the WTO, these two sectors are under the auspices of the Department of Agriculture, Forestry and Fisheries (DAFF) in South Africa. We analyse market access conditions only. An earlier chapter in this book shows that it is through market access that the major overall gains may come from the WTO for agriculture, while for fisheries the WTO does not investigate subsidy supports to member countries.

For the **agricultural** sector, we find that a significant portion of exports from South Africa is destined either for the EU or for fellow African destinations. We consider that for the former any gains for market access are likely to come from direct negotiations under the auspices of the Trade and Development Cooperation Agreement (TDCA) rather than multilateral agreements. In fact, a multilateral agreement improving EU market access conditions for South African competitors is likely to reduce South African preferential access conditions and therefore be of little or no value to South Africa. Similarly, with Africa becoming an increasingly important destination for South African agriculture, we consider that access conditions are much more likely to improve with direct negotiations through the SDAC FTA, the Tri–Partite FTA or the Continental FTA. As most African WTO members are least developed countries, they are very unlikely to have to make market access concessions under any foreseeable WTO outcome, and any that they do make are once again likely to reduce possible preferences for South Africa.

We confirm this general picture by analysis of the top-10 agricultural exports at the HS 4 level into the top-10 export destinations. We find that fellow SACU destinations of Botswana, Lesotho, Namibia and Swaziland, all of whom are in the top-10 destinations, are all duty-free under the SACU agreement, and Zambia only applies duties on exports of South African citrus fruits and even here the rate is under 1%. Both Mozambique and Zimbabwe have a mixture of zero, low and modest rates. This leaves the three top-10 destinations of the EU, China and the US. The same general pattern of a mixture of zero, low and modest rates also applies to US applied tariffs for South Africa, with cane sugar and related products being the sectors where access conditions could improve. We have observed that the TDCA governs access conditions for South Africa's premiere market of the EU, and note that despite this bilateral agreement most of the exports to the EU have duties assessed. In particular, the sugar tariff is 37,73%. This leaves China as the outlier, where tariff rates are all double figures. Our analysis of course ignores possible markets where 'trade chilling' inhibits or prohibits exports from South Africa, although as a generalisation we consider that these cases may be limited to sugar and associated products.

For the **forestry** exports, the situation is less complex. Again examining the major markets by the major commodities, we find that the exports to the EU, Japan, Namibia, Botswana and Mozambique are all duty-free. The same conditions apply to exports into both Indonesia and Thailand, where virtually the only products of wood pulp are also duty-free. This leaves the major market for 2015 of China, and India and Zimbabwe. For China, exports of wood pulp, the dominant export, and the next most important wood chips, are all duty-free, leaving only modest exports of paper and paperboard facing tariffs of 4,12%. For India, exports duties are 5,0% except for some negligible trade at 10%.Zimbabwe imports a wider range of forestry products, and here the tariffs are generally either at or near duty-free or at or near 10%. Overall, there are very few exports facing duties in the major markets other than India or Zimbabwe.

Five of the 11 major markets for South African **seafood** exports are duty-free, namely Hong Kong, USA, Namibia, Botswana and Mauritius. Mozambique imposes a 20% duty on crustaceans but otherwise is duty-free. Despite the TDCA, the EU, again the major market, levies duties ranging from 3,15% to 15,70%, and again the appropriate negotiating process is through the TDCA. This leaves the minor markets of Japan, Vietnam, Australia and Taiwan (Chinese Taipei). Japan imposes tariffs ranging from 1,92% to 10,39%, Vietnam has duties of 7,61% and 5,67% on its two import lines, Australia has only one dutiable import line at 2,81%, and Taiwan has duties ranging up to 19,53%. Thus, the major access concerns are the EU, Mozambique's crustaceans and to a lesser extent Japan. Lesser, but still important, access issues remain with Vietnam and Taiwan.

Overall, we see few cases where the WTO negotiations may improve South Africa's access conditions into the major markets for these exports. In all cases, the EU is the top destination, and except for forestry products, access conditions are generally constrained. Africa is becoming increasingly important, and here the access conditions are more likely to improve through direct intra-African agreements in the different negotiations that are in progress. In particular, Zimbabwe remains problematical.

In April 1994, contracting parties to the General Agreement on Tariffs and Trade (GATT), including South Africa, officially signed the Marrakesh Declaration, which established the World Trade Organization (WTO) as an institutional framework for overseeing further trade negotiation rounds and adjudicating trade disputes. The declaration also formalised the successful conclusion of the seven-year Uruguay Round (UR) of multilateral trade negotiations, a Round where agricultural products were comprehensively included for the first time. Subsequently, agricultural trade was subject to less discrimination, though it is still regarded as the poor cousin of trade in industrial or manufactured goods with respect to protection levels. Arguably the AoA set the scene for a radical change in the way agriculture is globally supported and traded, and as shown in an earlier chapter it has had a significant effect in bringing down domestic subsidies and lowering access barriers in developed markets for least developed countries and effectively ending export subsidies. This paper will however explore what the WTO may do for the South African agriculture, forestry and fisheries sectors in the future.

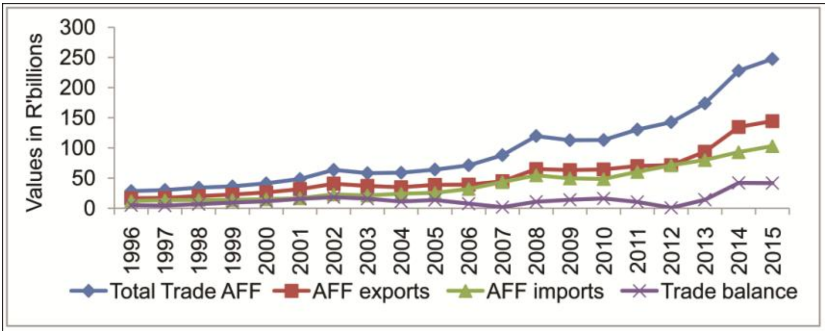
Sandrey 2006 assessed the impacts of the AoA on the South African sector ten years after the establishment of the WTO. He concluded that although the policies and the resultant institutional framework the new South Africa inherited as it emerged from the troubled years of the apartheid era still heavily influenced South African agriculture, there had been major changes over the 10 years to 2006. These changes included land reform programmes; the introduction of minimum wages and other employment conditions for farm workers; the deregulation of the Control Boards; substantial liberalisation of international trade; and the withdrawal of a large proportion of the farmer support services provided to commercial and small-scale farmers alike. The AoA influenced the agricultural sector in South Africa through several different channels such as domestic policy (with tariff policy as sub-set), and offshore market access conditions, although arguably domestic policy reforms went beyond any changes mandated by the UR.

The objective of this paper is to evaluate the impact of South African agricultural trade performance since the inception of the Agreement on Agriculture (AoA), the background to which is outlined an earlier chapter and will not be repeated here. Our analysis includes both the forestry and fishery sectors, as DAFF administer both of these sectors.

2. The Agriculture, Forestry and Fishery (AFF) Export Trade profiles from South Africa

Following the Uruguay Round of the WTO and the subsequent AoA South African agriculture entered, a new era came into part through the removal of imports quota and tariff in their borders with an objective of increasing South Africa's participation and export competition in the global market. Figure 1 shows the AFF trade performance between 1996 and 2015 and since the implementation of AoA South Africa's AFF trade has improved at an average of 12%. In most years exports have been marginally above imports, leading to a small positive trade balance as shown.

Figure 1: South African AFF trade performance



Source: World Trade Atlas

In this section we will look at the South African Agriculture, Forestry and Fishery trade in a more comprehensive analysis of South Africa's overall export trade performance in recent years. We have limited our analysis to the years between 2010 and 2015, as it was only in 2010 that intra-SACU trade data became accessible and reliable.

2.1 The agricultural export profile

This section focuses on the agricultural exports from South Africa into the world between the period in 2010 and 2015. Table 1 profiles South Africa's agricultural exports, where overall these exports increased by 47% from R62 billion in 2010 to R116 billion in 2015. The EU has consistently been the largest destination since 2010, taking some R29.9 billion in 2015. Namibia has been the second largest destination, with R9,3 billion in 2015, followed by Botswana, Mozambique and China with a 2015 total of R6.8 billion, R5.8 billion and R5.2 billion respectively.

Table 1: South Africa's Top 10 export destinations (Agriculture), R millions

Importers	2010	2011	2012	2013	2014	2015
World	62103	65051	74907	93462	107613	116629
EU 28	16819	16908	18153	24598	27017	29952
Namibia	5628	6148	6552	7572	8503	9377
Botswana	4691	4811	5419	6037	6305	6830
Mozambique	2395	2473	2815	4313	5523	5844
China	1374	1642	2543	3579	4324	5322
Zimbabwe	3452	4189	5023	5268	5314	5227
Lesotho	2381	2668	3132	3508	3747	4091
Zambia	1071	1244	1729	2370	3190	3716
USA	1768	1744	2087	2385	3020	3605
UAE	1409	1477	1757	2266	3022	3587

Source: International Trade Commission (ITC) TradeMap

The agricultural products used are based on the definition of the WTO which excludes fish and forestry products. It also includes various degrees of processing for different commodities in agriculture. Table 2 shows these same destinations by percentage share. The EU of course dominates and has done across the period with relatively consistent shares from a high of 27% in 2010 to a low of 24% in 2012.The table highlights the importance of the SACU and SADC countries, most of whom who have similarly been relatively consistent destinations. Increasing Chinese and UAE shares complete the main features of the table.

Table 2: Percentage shares (%) of South Africa's Top 10 agricultural export destinations

Importers	2010	2011	2012	2013	2014	2015
EU-28	27	26	24	26	25	26
Namibia	9	9	9	8	8	8
Botswana	8	7	7	6	6	6
Mozambique	4	4	4	5	5	5
China	2	3	3	4	4	5
Zimbabwe	6	6	7	6	5	4
Lesotho	4	4	4	4	3	4
Zambia	2	2	2	3	3	3
USA	3	3	3	3	3	3
UAE	2	2	2	2	3	3

Source: ITC TradeMap

Table 3 introduces the main South African agricultural exports by HS 4 for 2010 to 2015 inclusive, with the data expressed in R million. Citrus fruit has been ranked number one since 2010, with exports of R13,7 billion in 2015. Wine, grapes and apples (pome fruit) followed these fruits in 2015. Note that sugar was among the top ten agricultural exports, and although South Africa exported significant quantities of sugar, it was a nett importer of sugar in 2015.

Table 3: South Africa's Top 10 agricultural exports, R millions

		Value in Million Rand					
Code	**Product label**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**
	Agricultural Products	62103	65026	74907	93462	107613	116628
0805	Citrus fruit	6686	6840	7388	9342	11625	13694
2204	Wine	6075	5795	6314	8340	8509	8733
0806	Grapes	3654	3385	4093	4986	6286	7418
0808	Pome fruit	3161	3457	4053	6100	5892	6975
0802	Nuts, nes	740	1013	1349	1808	2721	3864
2009	Fruit & vegetable juices	2111	2260	2535	3007	3568	3670
5101	Wool	1300	2091	2385	2920	2834	3178
2106	Food preparations, nes	1178	1426	1560	1753	2277	2521
2008	Preserved fruits, nes	1 601	1423	1604	1849	2033	2395
1701	Cane Sugar	2664	2283	2716	4278	4592	1998

Source: ITC TradeMap

The data for these top 10 commodities is expressed in % of export market shares in Table 4. Over the period citrus (0805) became more important, increasing in market share from 10,77% in 2010 to 11,74% in 2015, and we may add that this increase took place in a competitive global market. Wine, in a similarly competitive market, has been losing market share – from 9,78% in 2010 to 7,49% in 2015. Similarly, sugar has also been losing the market share from 4,29% in 2010 to 1,7% in 2015[12]. Most other HS 4 lines are relatively stable.

[12] We add that 2015 was a year beset by adverse climatic conditions that altered exports of sugar and maize in particular.

We next combine these tables to show the matrix of Table 5 where the main destinations are paired with the main exported products. The EU-28 is the main destination for all the top ten agricultural products except where the USA for nuts etc and the SACU/SADC destinations for both food preparations and sugar dispose it from the top position. China is an important market for wool and fruits and wine. Note that the four SACU partners of Namibia, Botswana, Lesotho and Swaziland all appear in this top destinations list.

Table 4: Percentage share of South Africa's Top 10 agricultural exports, % shares

Code	Product label	2010	2011	2012	2013	2014	2015
0805	Citrus fruit	10,77	10,52	9,86	10	10,8	11,74
2204	Wine	9,78	8,91	8,43	8,92	7,91	7,49
0806	Grapes	5,89	5,21	5,46	5,4	5,84	6,36
0808	Pome fruit	5,09	5,32	5,41	6,53	5,48	5,98
0802	Nuts nes	1,19	1,56	1,8	1,93	2,53	3,31
2009	Fruit & vegetable juices	3,4	3,48	3,39	3,22	3,32	3,15
5101	Wool	2,09	3,22	3,18	3,12	2,63	2,72
2106	Food preparations, nes	1,9	2,19	2,08	1,88	2,12	2,16
2008	Preserved fruits nes	2,58	2,19	2,14	1,98	1,89	2,05
1701	Sugar cane	4,29	3,51	3,63	4,58	4,27	1,71

Source: ITC TradeMap

Table 5: Matrix for main agricultural exports and main export markets (Million Rand)

HS 4		EU 28	Namibia	Botswana	China	Mozambique	Zimbabwe	Lesotho	Zambia	Swaziland	USA
0805	Citrus fruit	5117	31	21	499	54	5	13	34	14	504
2204	Wine	4917	416	82	455	150	46	24	60	41	513
0806	Grapes	5126	14	16	52	11	43	3	10	5	96
0808	Pome fruit	2435	76	103	5	52	66	25	94	37	17
0802	Nuts, nes	616	14	10	282	3	3	1	2	5	831
2009	Fruit/veg juices	691	383	406	31	318	180	98	157	85	92
5101	Wool	695	0	0	2237	1	0	1	0	0	5
2106	Food preparations	121	170	181	0	311	395	55	325	103	12
2008	Preserved fruit, nes	741	50	66	187	11	14	16	14	30	93
1701	Cane Sugar	16	681	347	1	348	133	114	1	7	13

Source: ITC TradeMap

Table 6 shows the tariff rates associated with these exports. We have deleted Botswana, Lesotho, Namibia and Swaziland, as they are all duty-free under the SACU agreement. Note in particular that despite the TDCA between South Africa and the EU most of the exports to the EU have a duty assessed into that market, and in particular the sugar tariff is 37,73%. Rates into China are all double figures, and it is worth reporting here that the main Southern Hemisphere competitors of Australia and New Zealand have significant tariff advantages over China in these products thanks to their FTAs. Zambia is largely duty-free, while both Mozambique and Zimbabwe have a mixture of zero, low and modest rates. We see the same general pattern in the US applied tariffs.

Table 6: Matrix of applied tariff rates for main exports into main markets (%)

HS 4		EU 28	China	Mozambique	Zimbabwe	Zambia	USA
0805	Citrus fruit	7,77	11,52	10,58	0	0,96	0,22
2204	Wine	3,38	14,74	0	10,04	0	1,38
0806	Grapes	0	12,57	0	2,20	0	0
0808	Pome fruit	7,49	11,16	13,62	0	0	0
0802	Nuts, nes	0	14,02	0	7,24	0	0,14
2009	Fruit/veg juices	8,09	20,89	0	3,25	0	0,08
5101	Wool	0	38,0	0	0	0	0,62
2106	Food preparations	3,89	17,01	10,62	0,28	0	9,42
2008	Preserved fruit, nes	2,07	15,99	15,0	0	0	8,09
1701	Cane Sugar	37,73	50,0	3,53	5,54	0	10,73

Source: ITC TradeMap

2.2 Fisheries exports

Shown in Table 7 are South Africa's fishery exports by destination, expressed in R million, and they highlight that between 2010 and 2015 these exports to the world grew from R3.9 to R5.9 billion. EU consistently and dominantly ranked in 1st place among these top 10 importers, registering an amount of

R2.7 billion in 2015. Next in 2015 were Hong Kong, Vietnam and the USA. According to the ITC South Africa ranked as the 24th largest global exporter of HS 03, the standard finfish category with a 0,4% global share.

Table 7: South Africa's Top 10 export destinations of fish & related products, R million

Importers	**Value in Million Rand**					
World	**3908**	**4220**	**4368**	**5015**	**6098**	**5971**
EU-28	1837	1934	1885	2033	2671	2695
Hong Kong	551	502	542	618	617	731
Vietnam	4	178	19	147	317	365
USA	192	187	230	296	329	321
Australia	181	221	264	329	276	255
Mozambique	50	66	97	125	184	162
Namibia	139	141	136	154	162	161
Mauritius	62	62	62	90	159	144
Botswana	86	74	106	117	129	141
Taipei, Chinese	33	35	47	77	109	119
Japan	120	139	137	139	186	111

Source: ITC TradeMap

The EU share has remained consistently around 45% of South Africa's total fishery exports to the world over the period. Exports to Vietnam and Mozambique have increased relative to the total, thus increasing their market share, while conversely exports to Hong Kong have declined relative to the total (thus declining market shares).

Table 8: Percentage (%) share of South Africa's Top 10 export destinations (fish)

Importers	2010	2011	2012	2013	2014	2015
EU 28	47	46	43	41	44	45
Hong Kong	14	12	12	12	10	12
Vietnam	0,11	0,04	0,5	3	5	6
USA	5	4	5	6	5	5
Australia	5	5	6	7	5	4
Mozambique	1	2	2	3	3	3
Namibia	4	3	3	3	3	3
Mauritius	2	1	1	2	3	2
Botswana	2	2	2	2	2	2
Taipei, Chinese	0,8	0,8	1	2	2	2
Japan	3	3	3	3	3	2

Source: ITC TradeMap

In monetary terms, Table 9 shows the top 10 fishery exports from South Africa. Frozen fish was ranked as the largest export fishery products with the total amount of R1,4 billion in 2015.Frozen fish fillets was ranked as the second largest exported fishery product with an amount of R1,2 billion, followed by molluscs and crustaceans with totals of R1,15 billion and R990 million respectively in 2015.

Table 9: South Africa's Top 10 fishery product exports, R million

Code	Product label	2010	2011	2012	2013	2014	2015
	Fishery products	3908	4220	4368	5015	6098	5971
0303	Whole fish frozen	870	966	992	1185	1429	1456
0304	Fish fillets	724	807	906	1079	1410	1278
0307	Molluscs	801	785	732	659	920	1158
0306	Crustaceans	649	686	722	913	1110	990
1604	Prepared fish & caviar	365	431	559	657	654	520
0302	Whole fish fresh	293	306	254	230	250	233
1605	Prepared crustaceans & molluscs	67	101	68	149	178	208
0305	Smoked fish	104	91	97	98	105	92
1603	Extracts crustaceans & molluscs	2	2	4	4	17	11

Source: ITC TradeMap

Since 2011, the whole fish frozen was ranked as the largest fish export with a positive growth of export share except for the minor decline in 2012 (see table 10). Fish fillets and crustaceans showed significant declines of export shares by 1,7% and 1,6% respectively between 2014 and 2015. The molluscs has been showing positive export share growth from 13,2% in 2013 to 19,4% in 2015.

Table 10: Percentage share of South Africa's Top 10 export destinations (fish)

Code	Product label	2010	2011	2012	2013	2014	2015
0303	Whole fish frozen	22,3	22,9	22,7	23,6	23,4	24,4
0304	Fish fillets	18,5	19,1	20,7	21,5	23,1	21,4
0307	Molluscs	20,5	18,6	16,8	13,2	15,1	19,4
0306	Crustaceans	16,6	16,3	16,5	18,2	18,2	16,6
1604	Prepared fish & caviar	9,3	10,2	12,8	13,1	10,7	8,7
0302	Whole fish fresh	7,5	7,3	5,8	4,6	4,1	3,9
1605	Prepared crustaceans & molluscs	1,7	2,4	1,6	3,0	2,9	3,5
0305	Smoked fish	2,7	2,2	2,2	2,0	1,7	1,6
1603	Extracts crustaceans & molluscs	0,1	0,1	0,1	0,1	0,3	0,2

Source: ITC TradeMap

Table 11 introduces the matrix where the main destinations are displayed along with the main exported products. The EU market is the largest importer with imports of fish fillets, crustaceans and prepared fish and caviar amounts of R783 million, R960 million and R643 million respectively in 2015.

Table 11: Matrix for fish exports and main markets (Value in million Rand)

HS 4		EU 28	Hong Kong	USA	Mozambique	Namibia	Botswana	Japan	Vietnam	Australia	Mauritius	Taiwan
	Total	2692	730	322	162	156	126	65	28	20	10	9
0306	Crustaceans	46	173	180	1	14	3	6	28			3
0303	Whole, frozen	783	16	65	148	29	11	4			8	2
0302	Whole fish fresh	112		43	2	8	6	14				
0304	Fish fillets	960		32	5	32	14			12		
0307	Molluscs	643	351	2	1	10	1	33				5
0301	Live fish	2						2				
1604	Prepared fish caviar	146	1		4	56	88			5	2	
0305	Smoked Fish		22		1	3	1	7		3		
1603	Extracts					1						
1605	Prepared crust/ molluscs		167			4	1					

Source: ITC TradeMap

Table 12 shows the duties faced by South Africa in these markets, and this follows directly from the matrix table above. Note that excluded are Hong Kong, USA, Mozambique, Namibia, Botswana and Mauritius, as all exports were reported as duty-free into these markets. Hong Kong was duty-free except for a minimal 0,09% levied on smoked fish, while only one line faced duty into Australia. All fisheries products into the EU faced duties, and here it would be logical that any improvement in access conditions should be pursued through TDCA negotiations with the EU and not through the WTO as the latter may erode preferences. Some duties into Japan are moderate to high, while those into Taiwan (Chinese Taipei) are very high.

Table 12: Matrix for fish exports and main markets (Value in million Rand)

HS 4	Total	EU 28	Hong Kong	Japan	Vietnam	Australia	Taiwan
0306	Crustaceans	5,93	0	2,66	5,67		19,53
0303	Whole, frozen	5,15	0	4,34			18,16
0302	Whole fish fresh	3,15	0	4,11			
0304	Fish fillets	6,88				0	
0307	Molluscs	3,71	0	8,18			30,23
0301	Live fish	7,32		1,92			
1604	Prepared fish caviar	15,70	0			2,81	
0305	Smoked fish		0,09	10,39		0	

Source: ITC TradeMap

2.3 Exports of Forestry products

As shown in Table 13, the exports of South African forestry products totalled R25.8 billion in 2015, with China rising to be the leading destination. The EU has been a consistent destination, while Indonesia was important during 2011 in particular. Closer to home the four African destinations of Namibia, Botswana, Zimbabwe and Mozambique have also featured.

Table 13: South Africa's Top 10 export destinations (Forestry)

	Values in million Rand					
Importers	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**
World	17164	18596	17178	19262	23669	25859
EU 28	2553	2389	2316	2372	3223	3166
China	726	1266	1391	2187	3857	4081
Japan	1508	1652	1375	1504	1627	2114
India	408	568	509	846	968	2046
Namibia	1223	1391	1456	1537	1759	1899
Indonesia	1970	2647	1893	1824	1646	1581
Botswana	1161	1244	1236	1251	1386	1379
Zimbabwe	718	806	897	1053	1163	1207
Mozambique	468	556	599	801	1103	1011
Thailand	658	611	597	526	725	923

Source: ITC TradeMap

Table 14 represents this same data displayed as percentage shares for the main destination for forestry products. As observed earlier with agriculture and fishery exports, the EU had been the dominant export destination market although its shares have been stable to perhaps declining and it has been overtaken by the rapidly rising exports to China. Indonesia's declining share is apparent, as is the rise in the share of exports to India. Other markets are relatively stable.

Table 14: Percentage share of South Africa's Top 10 export destinations (forestry)

Importers	2010	2011	2012	2013	2014	2015
EU 28	14,88	12,85	13,48	12,32	13,62	12,25
China	4,23	6,81	8,10	11,36	16,30	15,78
Japan	8,79	8,89	8,01	7,1	6,88	8,18
India	2,38	3,06	2,97	4,40	4,09	7,91
Namibia	7,13	7,48	8,48	7,98	7,44	7,34
Indonesia	11,48	14,23	11,02	9,47	6,95	6,12
Botswana	6,7	6,69	7,20	6,49	5,86	5,33
Zimbabwe	4,18	4,34	5,23	5,47	4,91	4,67
Mozambique	2,73	3	3,49	4,16	4,66	3,91
Thailand	3,84	3,3	3,48	2,73	3,07	3,57

Source: ITC TradeMap

The main HS 4 categories are shown in Table15, with chemical wood pulp ranked as the largest individual product in 2015 with exports of R8,7 billion. Uncoated kraft paper was ranked as the second largest exported forestry products with an amount of R2,6 billion, followed by packing containers and chemical wood pulp with totals of R2,65 billion and R1,3 billion in 2015. The same data is presented in terms of the percentage shares in Table 16.

Table 15: Top 10 forestry exports

		Million Rand					
Code	**Product label**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**
	Forestry Products	17163	18596	17178	19262	23669	25859
4702	Chemical wood pulp	4340	5597	4696	5861	8009	8706
4401	Wood chips etc.	1816	1715	1438	1638	1979	2626
4804	Uncoated kraft paper	1706	1959	1968	1908	2240	2514
4819	Packing containers	979	925	958	1107	1262	1322
4703	Chemical wood pulp	1085	1210	754	691	865	1257
4802	Uncoated paper	1438	1004	1067	1040	1178	937
4403	Logs	184	284	433	493	814	713
4901	Printed books and brochures	676	687	594	659	625	702
4418	Builders' specialist timber	412	465	457	476	633	687
4805	Uncoated paper	201	236	279	347	461	593

Source: ITC TradeMap

Table 16: Percentage share South Africa's Top 10 forestry product exports

Code	**Product label**	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**
	Forestry Products	2,9	2,4	2,1	2,1	2,4	2,5
4702	Chemical wood pulp	25,3	30,1	27,3	30,4	33,8	33,7
4401	Wood chips etc.	10,6	9,2	8,4	8,5	8,4	10,2
4804	Uncoated kraft paper	9,9	10,5	11,5	9,9	9,5	9,7
4819	Packing containers	5,7	5,0	5,6	5,7	5,3	5,1
4703	Chemical wood pulp	6,3	6,5	4,4	3,6	3,7	4,9
4802	Uncoated paper	8,4	5,4	6,2	5,4	5,0	3,6
4403	Logs	1,1	1,5	2,5	2,6	3,4	2,8
4901	Printed books and brochures	3,9	3,7	3,5	3,4	2,6	2,7
4418	Builders' specialist timber	2,4	2,5	2,7	2,5	2,7	2,7
4805	Uncoated paper	1,2	1,3	1,6	1,8	1,9	2,3

Source: ITC TradeMap

Table 17: Matrix for forestry exports and main export markets for 2015 (value in million Rands)

HS 4	Product label	EU	China	Japan	India	Namibia	Indonesia	Botswana	Zimbabwe	Mozambique	Thailand	% Total
	Forestry	3211	4139	2145	2075	1922	1604	1392	1211	1019	936	75%
4702	Chemical pulp	1081	3234	140	1630	0	1438	0	0	21	710	93%
4401	Wood chips etc.	14	169	2003	318	2	0	6	1	2	0	94%
4804	Paper/paperboard	1556	37	0	1	80	2	46	138	15	0	74%
4703	Chemical pulp	0	681	0	0	0	159	0	0	0	218	83%
4819	Packing containers	35	1	0	22	252	0	198	149	256	0	68%
4418	Builders' timber	150	0	0	0	122	0	127	20	41	0	66%
4407	Sawn wood	7	0	0	1	137	0	157	5	129	0	78%
4818	Toilet paper etc.	1	0	0	0	161	0	123	48	56	0	70%
4802	Uncoated paper	6	0	0	0	76	0	79	124	64	0	37%
4403	Logs	20	5	0	1	117	0	91	3	101	0	47%
4901	Books etc.	44	0	0	0	134	0	49	44	28	0	42%
4820	Registers etc.	6	0	0	1	71	0	46	115	22	0	62%
4805	Paper/paperboard	17	0	0	3	39	0	17	121	9	1	34%
% to Destination		91%	100%	100%	95%	62%	100%	67%	64%	73%	99%	

Source: ITC TradeMap. Note that the 2015 totals are updated by the ITC. They may not necessarily reconcile exactly with earlier tables.

The data in Table 17 shows that the matrix of the top 13 export lines from South Africa represents 75% of the total forestry exports for 2015 (right hand column). The African destinations of Namibia, Botswana and Zimbabwe show that only 62% to 67% of the total exports are in the table, and similarly the exports of HS 4805 and HS 4802 show that only 34% and 37% respectively of the exports are similarly in the table. An examination of the data shows that of HS 4802 and HS 4805 almost all of the missing exports are to African destinations not represented in the table. Exports to China, Japan, Indonesia and Thailand are conversely all shown in the table (100% in bottom line) and furthermore these exports are effectively in only two product lines for Japan, Indonesia and Thailand. Conversely, the EU and the African destinations shown all report trade in most product lines.

The tariff rates associated with this export trade in forestry products are shown in Table 18 below. As all exports to the EU, Japan, Botswana, Namibia and Mozambique are duty-free they are not shown, while an 'x' denotes no trade reported in that line. Tariffs into China, Indonesia and Thailand are modest, while those into India are based at 5,0% or 10,0% and those into Zimbabwe vary significantly and range from zero or very low to around 11%.

Table 18: Tariff rates into major markets by major products, %

HS 4	Product label	China	India	Indonesia	Zimbabwe	Thailand
4702	Chemical pulp	0	5,0	x	x	0
4401	Wood chips etc.	0	5,0	x	0	x
4804	Paper/paperboard	4,12	10,0	4,87	5,0	x
4703	Chemical pulp	0	x	0	x	0
4819	Packing containers	5,78	10,2	x	8,54	x
4418	Builders' timber	x	x	x	11,25	x
4407	Sawn wood	x	10,0	x	0	x
4818	Toilet paper etc.	x	x	x	11,52	x
4802	Uncoated paper	x	x	x	0,73	x
4403	Logs	0	5,0	x	0,36	x
4901	Books etc.	x	x	x	0	x
4820	Registers etc.	x	10,0	x	10,0	x
4805	Paper/paperboard	x	10,0	x	0	5,0

Source: ITC Trade Map

Chapter 5

The Agriculture Negotiations At the World Trade Organisation: An update after the Nairobi Ministerial Conference.

Miriam W. O. Omolo

1. Introduction

The World Trade Organization (WTO) is considered the largest trading bloc with the goal of facilitating a free global trading system. Multilateral negotiations began after World War II with the objective of establishing an umbrella body International Trade Organization (ITO) parallel to the Breton Woods Institutions. Due to political difficulties, the ITO was never established. A group of 23[13] countries began trade negotiations under a provisional set of rules known as the General Agreement on Trade and Tariffs, (GATT)[14] and in 1995 the WTO was created while the GATT rules remained in force. The fundamental differences between GATT and the WTO are: while GATT was an agreement, the WTO is an international organization which is concerned with members following the trade rules set out. The GATT was concerned with trade in goods and tariff reductions only.

The stylised process used to gain progress in international negotiations is called the trade round. Countries meet together to negotiate a set of tariff reductions and other measures that liberalise trade. There have been eight trade rounds

[13] The countries include Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Luxembourg, the Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, United Kingdom, and United States. Subsequently the United States, China, Lebanon and Syria withdrew.

[14] An agreement where contracting parties operated on a set of rules in order to reduce tariffs as per the GATT agreement

since 1947, of which the Uruguay round completed in 1994, established the WTO. The WTO agreements cover goods, services and intellectual property. The agreement has six main parts: the agreement establishing the WTO, the agreement for the three broad categories of trade (goods, services and intellectual property), dispute settlement and the review of government trade policies. The agreement starts with the broad principles of GATT, General Agreement on Trade in Services (GATS) and Trade Related Aspects of Intellectual Property Rights (TRIPS). This is followed by extra agreements and annexes dealing with special requirements of specific sectors or issues.

2. The Agreement on Agriculture

The Agreement on Agriculture (AoA) was the outcome of the Uruguay round of negotiations (1986–1994). The objective of the AoA was to remove agricultural trade distortions in order to ensure that import and export markets remained predictable for traders. These distortions arose from the loopholes in the GATT that allowed members to use import quotas and subsidise agricultural trade. The AoA has three pillars: market access, domestic support and export competition.

i. **Market access**: These are trade restrictions that importers face while trading at the international level. The AoA sought to remove these market access obstacles, which were largely in the form of tariff and non-tariff measures (such as quotas), and replace them with tariffs – a process known as **tariffication**. Countries negotiate to reduce their bound tariffs i.e. tariff ceilings that countries have legally committed to at the WTO. However, the respective country governments charge lower tariffs on agricultural imports, this is known as the applied tariff. The difference between the bound and applied tariff gives the **tariff overhang**.

ii. **Domestic support**: These are policies that subsidise production through prices or incomes. When agricultural producers receive subsidies from their governments, they are able to produce and charge lower prices, this has the effect of increasing production and flooding both local and international markets to the detriment of other agricultural producers who do not receive domestic support. In the WTO parlance, **boxes** are used to identify subsidies. These boxes take the colours of traffic lights: green (permitted), amber (slow down - i.e. be reduced), red (forbidden). In the AoA, the **red box** does not exist. Domestic support is measured using the aggregated measurement of support (AMS). This is the annual level of support (in monetary terms) provided for an agricultural product that favours the producer of that specific product.

iii. **Export competition**: These are initiatives that make exports artificially competitive. They include export subsidies, export credits, guarantees and insurance; food aid; export state trading enterprises; and export restrictions and taxes.

The Uruguay round of trade negotiations resulted in setting numerical targets for reducing trade distortions in agriculture as presented in table 2-1. The framework of rules set to reduce all these forms of trade distorting support is presented in Article 20 of the AoA. The negotiations took place in two phases: phase I (March 2000–March 2001) countries submitted proposals of their initial starting point of negotiations; phase II (March 2001–February 2002) members had informal meetings where they discussed specific topics and developed technical proposals on how to reach a consensus agreement on the changes to rules and commitments. Apart from the tariff reductions, domestic support and export subsidies, there are also issues of special and differential treatment (S&D[15]) for developing countries and non-tariff concerns[16].

[15] S&D is the treatment accorded to developing countries which are more favourable than other WTO members for example longer periods for implementing agreements and commitments (see table 2.1)

[16] Non-tariff concerns include issues related to food security, poverty alleviation, environmental protection and rural development which governments tend to pursue as part of their development objectives.

Table 2-1: Summary of Uruguay Round Targets Under Agreement on Agriculture

	Developed Countries (1995–2000) – 6 years	**Developing Countries (1995–2004) – 10 years**
Tariffs		
Average cut for agricultural products	- 36%	- 24%
Minimum cut per product	- 15%	- 10%
Domestic Support		
Total AMS cut for sector (base period: 1986–88)	- 20%	- 30%
Exports		
Value of subsidies	- 36%	- 24%
Subsidised quantities (base period: 1986–90)	- 21%	- 24%

Source: WTO Agreement on Agriculture

2.1 Groups Negotiating in Agriculture[17]

It is worth mentioning that there are several groups that negotiate in agriculture, these groups tend to come together with the key feature being an issue of common interest affecting them. Figure 1 provides a summary of these groups and their objectives.

[17] https://www.wto.org/english/tratop_e/agric_e/negoti_groups_e.htm

Figure 1: Groups Negotiating in Agriculture

- *African, Caribbean and Pacific (ACP) – these are countries that have preferences to the EU. Their main issue of concern is agricultural preference. The ACP group negotiating at the WTO is made up of 79 countries, 61 are WTO members while the rest are either observers or non-WTO members.*
- *African Group – is made up of 43 African countries that are members of the WTO, they focus on all issues affecting African countries.*
- *Asian Developing members – is made up of 31 Asian countries that are members of the WTO.*
- *European Union (EU) – is made up of 29 European countries that are members of the EU customs union and the WTO, the focus is on all issues affecting the EU.*
- *Mercosur – this is the common market of the southern Cone made up of four WTO members: WTO Argentina, Brazil, Paraguay and Uruguay.*
- *G90 – is made up of the African group, ACP and least developed countries. They focus on all issues affecting the group members.*
- *Least Developed Countries (LDCs) – made up of 34 WTO members, and 14 observers/non-WTO members. They negotiate on issues affecting LDCs at the WTO.*
- *Small and Vulnerable Economies (SVEs) in agriculture – these are made up of 15 countries with small economies (Barbados, Bolivia, Cuba, Dominican Republic, El Salvador, Fiji, Guatemala, Honduras, Maldives, Mauritius, Mongolia, Nicaragua, Papua New Guinea, Paraguay, Trinidad and Tobago) whose agricultural sectors are vulnerable to negative shocks due to their size.*
- *Recent new members (RAMs) – these are recently acceded members who joined the WTO after 1995. They negotiate on general issues affecting them.*
- *Low-income economies in transition – these countries seek the same treatment as LDC's, they include: Armenia, Kyrgyz Republic and Moldova.*
- *Cairns Group – a list of agricultural exporting countries that push for agricultural liberalisation; it is made up of 20 countries.*
- *The tropical products group – made up of eight countries that negotiate in favour of tropical products.*
- *G10 – a coalition of countries lobbying for agriculture to be treated as diverse as possible because of non-trade concerns such as food security.*

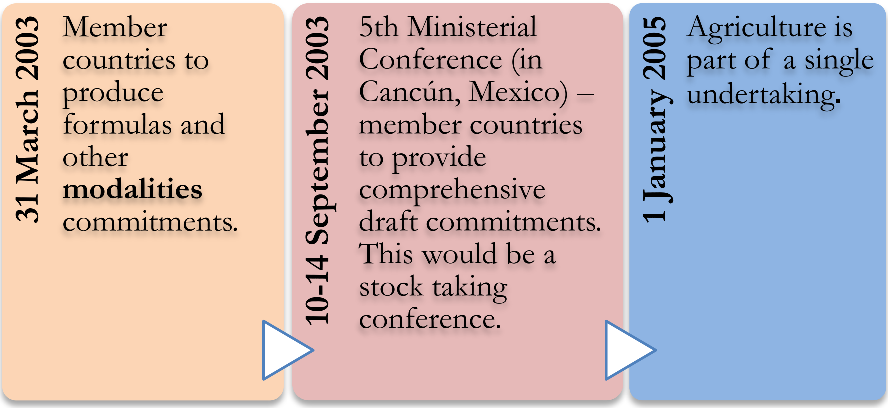
- *G33 aka 'Friends of Special Products' – made up of 48 developing countries who want limited opening of the agricultural sector for developing countries.*
- *Cotton-4 – made up of Benin, Mali, Burkina Faso and Chad. Their main objective is to ensure cotton subsidies and tariffs are cut to enable them to have market access in the cotton-subsiding countries.*

3. The Doha Development Agenda (DDA) – Agriculture

The DDA owes its existence to the fourth WTO Ministerial Conference held in Doha, Qatar in November 2001 where a declaration was issued on 14 November 2001 with key dates (Figure 2). There were a range of subjects discussed under the declaration, however, this background paper focuses on the section on agriculture. The Doha declaration built on the work that was already going on in agriculture negotiations (phase I and II). The declaration reconfirmed the long-term objective of establishing a fair and market-oriented trading system through a programme of fundamental reforms. The commitment by member governments in this sector is aimed at:

i. substantially reducing tariff and non-tariff measures that would ensure market access of agricultural products.
ii. reducing and ultimately phasing out all forms of export subsidies.
iii. substantial reduction in domestic support that would ensure non-trade distortion.

Figure 2: Key Dates in the Doha Ministerial Declaration



Source: Doha Ministerial Declaration

3.1 The Missed Deadlines

Members were unable to meet the deadline of March 2003 on modalities that would enable them to produce their comprehensive draft commitments. They proceeded to prepare a framework of modalities, which was completed in August 2003, even though the process continued to August 2004. From September 2004 till now, members are in the modalities phase. The preparations for the Cancun Ministerial Conference saw the preparation of a joint text from the United States (US) and the European Union (EU), and proposals from country groupings such as the G20[18], Dominican Republic, Honduras, Nicaragua and Panama, Japan, Bulgaria, Chinese Taipei, Iceland, Republic of Korea, Liechtenstein, Switzerland, Norway and Kenya. These proposals later formed the Annex *A Draft Framework on Agriculture* (aka *Perez del Castillo* text) of the draft Ministerial Declaration[19]. Proposed amendments and further negotiations from members resulted in the *Derbez*

[18] Argentina, Bolivia, Brazil, Chile, China, Colombia, Costa Rica, Cuba, Ecuador, Egypt, El Salvador, Guatemala, India, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand, Venezuela.

[19] WTO-JOB (03)/150/Rev.1, 24 August 2003

Text[20]. Members could still not agree on the four Singapore issues[21]: investment, competition, government procurement and trade facilitation. The Cancun Ministerial Conference ended in a deadlock following the conclusion by Chairperson Luis Ernesto Derbez that despite considerable movement in consultations, members held firm positions, particularly on the Singapore Issues. On 1 August 2004, the 147 members of the WTO approved a package which had frameworks that could be used to complete the modalities on agriculture.

3.2 Market Access

Tariffs

The market access negotiations focused on tariffs and quotas. The preparations for modalities were handled under six components: tariffs, tariff quotas, tariff quota administration, special safeguards, importing state trading enterprises, and other issues. Phase I of the negotiations on tariffs and quota focused on how tariffs would be handled. Countries such as Canada and the US argued in favour of inclusion of sectoral liberalisation and there were discussions of whether to base negotiations on bound or applied tariffs, this was because most countries had large tariff overhangs. Most developing countries also complained about tariff escalation[22], hence increasing incomes through processing agricultural products was not a viable option. In phase II, two proposals emerged on tariff reduction:

i. Use the formula of the 1986–94 Uruguay Round negotiations that averaged the reduction over all products, with variation for individual products as long as the minimum reduction level is met.
ii. Use the **cocktail** approach that uses a flat-rate percentage reduction for all products with additional **non-linear** reductions on higher tariffs, expanding quotas, and special treatment for developing countries whilst factoring in non-trade concerns. The percentage was not specified.

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[20] WTO-JOB (03)/150/Rev.2, 13 September 2003

[21] Singapore issues are four working groups, set up during the WTO Ministerial Conference of 1996 in Singapore.

[22] Tariff escalation is the increase in duty and other tariff charges on processed imports as compared to raw materials.

In preparation for the modalities, two proposals for reducing the tariff were put forward:

- the Swiss Formula, which was proposed by the Swiss in the Tokyo Round for negotiating industrial tariffs. They (the Swiss) did not support the Swiss formula for the agriculture negotiations
- the Uruguay Round Approach, which was linear and variations were allowed for all products as long as the average target was met.

Interestingly, looking at the country proposal Uruguay preferred the Swiss Formula whilst Switzerland preferred the Uruguay Round Approach. A middle ground was reached where there was a blend between the two approaches with the flexibility of varying around the averages as long as they are above a minimum set for each product. Table 3.1 provides a summary of the tariff reduction which factored in special and differential treatment of developing countries.

Table 3-1: Tariff Band Proposals for Developed and Developing Countries

Developed Countries			**Developing Countries**		
Tariff Rate	Average Cut	Minimum Cut for any product	Tariff Rate	Average Cut	Minimum Cut for any product
90%+	60%	45%	120%+	40%	30%
15–90%	50%	35%	60–120%	35%	25%
0–15%	40%	25%	20–60%	30%	20%
			0–20%	25%	15%
			Special products	10%	5%

Source: WTO Agriculture Negotiations

In preparation for the draft framework modalities, the EU and the US proposed a blended formula, in which products are separated into three groups: one would use the Uruguay Round Approach, another the Swiss Formula and one would be duty-free. In preparation for Cancun, the *Pérez del Castillo* draft offered had the option of three groups of products all using the Uruguay Round Approach but with different cuts, or two groups, one applying the Uruguay Round Approach while the other used the Swiss Formula. The *Derbez Text* draft on the other hand provided two groups (for the Swiss Formula and the

Uruguay Round Approach) but with control on developed countries' tariffs and measures, this was meant to deal with tariff escalation.

Tariff Quotas

Members agreed that tariff quota administration, tariff quota expansion and in-quota tariff remained a challenge and there was no single formula that could work for all. The following were the proposals for the draft modalities.

- For tariff quotas there would be no obligation to reduce in-quota duties except in preferential tariff-free and quota-free programmes and for tropical products or those used to diversify agriculture and in cases where less than 65% of the quota is used.
- Expansion of tariff quota volumes to 10% of domestic consumption (6,6% for developing countries) with an implementation period of 5 years (10 years for developing countries) and the flexibility of allowing one quarter of total tariff quotas allowed to increase to 8% (5% for developing countries), but only if another quarter is increased to 12% (8% for developing countries).

Given that special and differential treatment is an integral part of the negotiations, developed countries would give duty-free access for key products while developing countries would not have to expand tariff quotas for selected Special Products (SPs) for food security, rural development or livelihood security. In preparation for Cancun, both the *Pérez del Castillo* draft and the *Derbez Text* adopted the US-EU approach. The former text focused on developed countries only, since quota expansion and in-quota tariff reductions were not agreed on. The latter included flexibilities related to non-trade concerns and proposed the need to further negotiate on quota expansion and in-quota tariff reductions.

Domestic Support

The discussions on domestic support covered green box, Article 6.2 on special and differential treatment, blue box and amber box.

Amber Box

All production and trade distorting domestic support are included in this box. The objective is to reduce the total value of these measures, and there was debate in phase II as to whether subsidies in this box should be reduced by product.

- Aggregate Measure of Support (AMS) would be reduced from final bound levels by 60% over 5 years (40% over 10 years for developing countries).
- The *Pérez del Castillo* text adopted the US-EU proposal of broadly reducing trade-distorting supports by a range of percentages to be negotiated. The *Derbez Text* proposed a ceiling on amber box supports paid for each product to reduce governments' ability to shift supports between products.

Green Box

The green box subsidies cause no/minimal trade distortions. The main proposals were to maintain the set of measures that do not distort/minimally distort trade; these measures largely include objectives that deal with non-trade concerns such as food security, environmental protection etc. There was a proposal for updating the base period for **decoupled**[23] income support. There was another proposal for a **development** box added to the green box in order to enable them to deal with non-trade concerns. In revised draft modalities, in addition to the above proposals, countries asked for stringent criteria for compensation allowed in the green box as well as allowing for increased cost for protecting animal welfare. Both the *Pérez del Castillo* and *Derbez Texts* proposed the negotiations for the green criteria box be discussed or reviewed.

Blue Box

The blue box provides an exemption to the rule that all subsidies linked to production must be kept within the *de minimis* support level. Currently the EU, Iceland, Norway, Japan, the Slovak Republic and Slovenia have notified the WTO on the use of this box. There have been proposals by developing countries to move this box to the amber box since it is a way of providing domestic support. There have been proposals to reduce the support in this box by 50% over a 5 year period (cut by 33% over 10 years for developing countries), another alternative is to merge it under the green box, allowing developing countries to delay the merger for up to 5 years. The *Pérez del Castillo* and *Derbez Texts* straddled between the US-EU proposals, modifying the definition of the blue box and totally eliminating this box as proposed by

[23] These are domestic support programmes that are not product specific but include direct income supports for farmers that are not related to current production levels or prices.

the G20 and the G90 by including further reductions after a negotiated end of implementation period.

Export Competition

Export had five components: export subsidies; export credit, guarantees and insurance; food aid; exporting state trading enterprises; and export restrictions and taxes. In all the discussions and negotiations, special and differential treatment and non-trade concerns were an integral part of the five components. During phase I, there were 24 proposals received from WTO members on issues relating to export competition under any of the five components. Some proposals included the elimination of all forms of subsidies while others proposed deep reductions in subsidies. There were proposals for ensuring a **zero sum** where subsidies could increase in one product whilst reduce in the other. Several proposals were made which are highlighted either as preparation for modalities, draft modalities or draft frameworks (outlines).

Export Subsidies

There were several proposals made by different countries, these can largely be summarised as:

- 50% immediate reduction in exports subsidies. This would serve as a down payment and subsequently a further reduction to zero can be done in 3 years for developed countries (6 years for developing countries).
- 50% immediate reduction without down payment and further reduction of subsidies to zero in 5 years.
- Broadly, ‘elimination is neither included nor excluded’, depending on what happens in other areas, including export credit and domestic support.
- Modulation – allowing moderate cuts for some products in return for steeper cuts in others.
- There were countries that proposed commitments on per unit subsidies (e.g. dollars per tonne of a product).

The draft modalities i.e. time within which to eliminate the export subsidies included 5 years (10 years for developing countries) for one set of products (of interest to developing countries) and 9 years (12 years for developing countries) for the rest of the products. In the draft framework, the *Derbez Text* proposed a negotiated end date for phasing out all forms of export subsidies.

Export Credit

There were two main proposals with regards to export credit:

- Rules based – export credit and insurance would have to be granted on commercial terms such as duration of credit (e.g. 180 days), benchmarks for interest rates (such as the London inter-bank rate), appropriate insurance premiums etc. Anything that deviated from this would be classified as **export subsidies** and would have to be reduced or eliminated.
- Reduction commitments – this means calculating the subsidy component of credit, insurance and guarantees and treating them in the same way as regular export subsidies.

Both the *Pérez del Castillo* and *Derbez Text* drafts proposed that 'distorting elements' of export credits should mirror those of export subsidies, both in the selection of products, and the reduction or elimination.

Food Aid

Most countries agreed that food aid was not a threat if it emanates from appeals from the World Food Programme (WFP) and any other humanitarian organisations that declare an emergency. Most developing countries get concerned when food aid is meant to offload surpluses. The G90 reiterates that food aid dealing with emergencies should be addressed in order to meet chronic food shortages or a country's development goals. Both the *Pérez del Castillo* and *Derbez Text* drafts envisage disciplines or **additional** disciplines to prevent food aid from replacing commercial trade.

Export and State Trading Enterprises (STE)

There is concern about exporting state trading enterprises since they are perceived to be a likely cause of trade distortion in the world market. There is also a debate as to whether state trading enterprises can have monopoly power and be bailed out using subsidies when they are in a crisis, unlike private companies. However, most developing countries argue that STEs can be used to meet government objectives such as food security, and to meet the demand where private sector is too weak to trade or compete with foreign traders. In cases where there is a state granted monopoly, there were proposals for notification of purchase, sales prices and transactions costs, this would ensure price transparency. The *Pérez del Castillo* and *Derbez Text* drafts stated that disciplines on export subsidies and subsidised export credits should also apply to all relevant export subsidies.

4. The August 2004 Framework

In July 2004 delegations negotiated intensively in order to come up with a package of agreements (hence the name July Package) and a framework (outline) to be used for the completion of modalities (the August Framework).

4.1 Market Access

The August Framework provided guidelines for negotiations that would ensure **substantial** expansion of trade without explicitly spelling out any formulas.

- All members except LDCs would ensure they contribute towards improvement to market access – hence a singular approach.
- The agreed formula should be tiered and progressive so that higher tiers would have steeper cuts.
- Tariff reductions would be based on bound tariffs.
- Special and differential treatment accorded to developing countries should be **operationally effective**.
- All countries would have the flexibility to have sensitive products, however, even with these products in place there should still be **substantial improvement** in market access. Each member would select his or her list of sensitive products.

Issues relating to special safeguard mechanisms, sectoral initiatives and geographical indications were not agreed on. Negotiations would continue on reducing or eliminating in-quota tariff rates, improving the administration of quotas, reducing or eliminating tariff escalation and tariff simplification.

4.2 Domestic Support

- A tiered formula would be used for the overall level of support, which combines the amber box, *de minimis* and blue box. This would ensure that higher levels of support would have steeper tariff cuts. All countries would have the overall permitted level of support cut by 20%.
- The amber box would be cut using a tiered formula and like the overall support, higher tariffs will have steeper cuts. There would also be limits set on particular products.

- Developing countries are allowed a *de minimis* support of 5% value of total agricultural production (10% for developing countries). It further allows 5% *de minimis* for the value of production of a product (10% for developing countries), in case of product specific support.
- Blue box support would be capped at 5% of agricultural production over a period to be negotiated.
- Green box support would be reviewed and clarified to ensure non-trade distortion.

4.3 Export Competition

Under export competition, it was agreed that the following issues would be subject to negotiations:

- A date that would mark the end of export subsidies that are listed in the member's commitments.
- A all export credits, export credit guarantees or insurance programmes with repayment periods beyond 180 days; those with shorter repayment periods but failing to conform with disciplines that are to be negotiated; trade-distorting practices of state trading enterprises that are considered to be subsidised.
- Food aid that does not conform to various disciplines.
- The details of annual reductions by instalments and parallel treatment for the different forms of export subsidies.

5. The Honk Kong Ministerial Conference (MC6)

The 6th WTO Ministerial Conference was held in Hong Kong, China on 13–18 December 2005. The objective of this meeting was to take stock of the on-going round of negotiations. There was significant progress made especially after the July Package and August 2004 Framework since the Director Pascal Lamy announced that the Doha was back on track after hibernation. The Doha Mandate and August Framework provided the basis for the negotiations. Table 5.1 provides a summary of the key outcomes from the agriculture negotiations.

Table 5-1: Summary of Key Outcomes of Hong Kong Ministerial Conference

Pillars	Key Outcomes
Market Access	• Four bands would be adapted to structure tariff cuts with the relevant threshold to be agreed upon. There was near convergence on a linear based approach within the tariff bands. • Developing countries had the flexibility to designate an appropriate number of tariff lines for special products based on food security, livelihood security and rural development indicators. • Special safeguards mechanisms would be based on price triggers and import quantities, the precise arrangements would be subject to further negotiations. • Special products and special safeguard mechanisms (SSM) would be an integral part of the agriculture negotiations.
Domestic Support	• There would be three bands in the final bound total AMS and an overall cut in trade distorting subsidies.
Export Competition	• There will be parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effects, which should be completed by December 2013. o The modalities for achieving this will be specified so that the targets are realised in the first half of the implementation period. • Export credits, export credit guarantee schemes or insurance programmes with a guarantee of 180 days and below should be self-financing to reflect market consistency. • Disciplines relating to trade distorting exporting STEs will extend to monopoly power so that they don't circumvent the direct disciplines on STEs on export subsidies, government financing and underwriting of losses.
Food Aid	• A safe box for bona fide food aid will be provided to ensure the emergency food aid is not impeded through agreement. • The establishment of effective disciplines for in-kind food aid, monetization and re-exports.
Cotton	• All forms of export subsidies on cotton to be eliminated by 2006. • Countries will provide duty and quota-free access to all LDCs. • The trade distorting subsidy on cotton production is to be more ambitiously reduced with a shorter implementation period than other trade distorting subsidies.

Source: Hong Kong Ministerial Declaration (2005)

6. The Bali Ministerial Conference (MC9)

The Bali Ministerial Conference held 3–6 December 2013 Bali, Indonesia was held after several missed deadlines[24]. The Bali Package had the objective of identifying a set of **low-hanging fruits** with a particular focus on LDCs. The focus of the package was on trade facilitation, agriculture and food security. There were two proposals given under agriculture:

i. The G20 gave proposals on export tariff rate quota (TRQ) administration and export subsidies.
ii. The G33 proposed public stockholding for food security purposes. A key area of discussion was the consistency of national policies and WTO farm subsidy rules where government expenditure on building food stocks for food security are minimal or non-trade distorting.

India for example feared being in such a situation due to its National Food Security Act which provided for subsidised food grains under the Public Distribution System. India proposed such price support schemes should be considered compatible with the green box and not be subjected to limitations. However, green box measures should not provide price support to producers.

6.1 Outcomes

i. The tariff rate quota-discussion remained a technical issue – eventually to be solved through an understanding on TRQ administration.
ii. Export subsidy –'Members would **exercise utmost restraint** in using any form of export subsidy and **ensure to the maximum extent possible** that **progress towards the parallel elimination of all forms of export subsidies** […] will be maintained.'
iii. Public food stockpiling:
    a. A list of support policies used as general government services under the WTO green box were defined, such as land rehabilitation, drought management and rural employment and farmer settlement programmes.

[24] Draft 2006 modalities (June); 2007 revised draft modalities; 2008 revised draft modalities; July 2008 package; 2008 revised draft modalities

b. Members opted for an interim solution in the form of a peace clause and committed to finding a permanent solution by the 11th ministerial conference in 2017.
c. The WTO temporarily refrains from lodging a legal complaint through the WTO Dispute Settlement Mechanism if a developing country exceeds its amber box limits as a result of stockholding for food security. The following conditions would have to be satisfied:
    i. This is limited to traditional staple food crops and to existing programmes.
    ii. There are a series of notification and transparency requirements and the obligation to hold consultations upon request.
    iii. The stocks procured under such programmes should not distort trade or adversely affect the food security of other members.

7. The Nairobi Ministerial Conference (MC10)

The MC10 was the first WTO ministerial meeting to be held in Africa. Little progress had been made so far in terms of possible areas of agreement and if the statement by the chair of agriculture was anything to go by then there was little hope in concluding the agriculture negations.
'Unfortunately, the areas of divergence remain and our challenge is to see what is still possible to narrow the gaps and precisely where…'
The Chair of the agriculture negotiations, Ambassador Vangelis Vitalis of New Zealand

The G33 had made proposals to have special safeguards mechanisms, that would allow developing countries to temporarily raise tariffs to curb import surges, be included under issues to be discussed in Nairobi. Australia had also made a proposal on how export competition could be commercially beneficial. There had been no changes on discussions on public stock holding, cotton, domestic support and market access. The Nairobi Package (table 7.1) made some remarkable progress in agriculture even though it did not result in the conclusion of the Doha round of negotiations.

Table 7-1: Summary of Key Outcomes in the Agriculture Negotiations – MC10

Pillars	Key Outcomes
Special Safeguard Mechanism	• Developing countries have the right to recourse to a special safeguard mechanism (SSM) based on the Hong Kong Ministerial Declaration. Members to further negotiate on SSM in a dedicated special session within the Committee of Agriculture.
Export Competition[25]	• Developed member countries shall eliminate all export subsidies in their schedules with immediate effect while developing country members shall eliminate all export subsidies by 2018. • Developing countries will keep the flexibility to cover transport and marketing costs up to 2023 while least developing countries and net food importing countries will enjoy additional time until 2030. • Export subsidies by members should have minimal trade distorting effects and should not impede the exports of other members. • Agricultural state trading enterprises will not operate in a manner to circumvent the disciplines set out in Article XVII, the Understanding on the Interpretation of Article XVII and other relevant provisions of GATT 1994, the Agreement on Agriculture and other WTO Agreements.
Public Stock Holding for Food Security[26]	• Members are to further negotiate in order to come up with a permanent solution to public stockholding for food security purposes. • The negotiations will take place within the special session in the committee of agriculture.
Cotton	• Duty and quota-free market access of cotton and cotton products originating from LDCs to developing and developed countries shall be on a voluntary basis, this takes effect from 1 January 2016. This arrangement is subject to the preferential trade arrangement between the LDC and developing/developed country.

[25] WT/MIN (15)/W/47

[26] WT/MIN (15)/W/46

Pillars	Key Outcomes
	• Members shall not provide export credits, guarantees or insurance schemes for products listed in Annex 1 of the Agreement on Agriculture. Some of the export financing support includes: direct credits/financing, refinancing, and interest rate support; export credit insurance or reinsurance and export credit guarantees; government-to-government credit agreements where some/all risks are covered by government; direct and indirect government export credit support such as deferred invoicing and foreign exchange risk hedging. o Export financing support shall be for a maximum of 18 months of repayment period from the start date of the contract to the final day of payment. o All the export credits, guarantees or insurance schemes mentioned above shall be self-financing and shall cover the long-term operating costs and losses of programmes as illustrated in Annex I of the Agreement on Subsidies and Countervailing Measures item (j)[27]. • Under special and differential treatment, developing country members who provide export financing support will have a maximum of 18 months repayment period with an implementation period starting in 2016 to 31 December 2020. • Least developed and net food importing countries shall have 34–54 months repayment terms for the acquisition of basic foodstuff.
Food Aid	• Members would ensure that disciplines agreed on would not hamper provision of food aid in cases of emergencies.

Source: Nairobi Ministerial Declaration (2015)

[27] The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.

8. Conclusion

Reviewing the progress made in the negotiations under agriculture from the Uruguay Round Targets under the Doha Development agenda up to the Nairobi Ministerial Conference (MC10), it will be acknowledged that progress has been made towards achieving the Uruguay Round Targets. However, this progress is not sufficient to complete the Doha Round. There is progress in achieving reduction in export subsidies, much more than even set out under the Uruguay Round Targets. However, under the market access pillar and domestic support, very little progress has been made. There is a lot of work that needs to be put in place in order to carry forward the commitments under the Hong Kong Ministerial Conference, this includes:

- setting up a four-band tariff structure under the market access pillar
- setting up three bands in the final bound total AMS and in the overall cut in trade distorting subsidies under the domestic support pillar.

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Chapter 6

Resolving non-tariff barrier disputes: multilateral versus regional mechanisms

William Mwanza, Elizabeth Nderitu, Yolanda Potelwa, Ron Sandrey and Willemien Viljoen

1. Introduction

Non-tariff barriers (NTBs) and their associated problems of trade facilitation pose a particular challenge to trade liberalisation and development in Africa, and that is especially so since in many cases the more transparent tariff costs are reducing. NTBs need priority attention. These border and beyond-the-border constraints raise the costs of doing business and contribute to the low levels of intraregional trade. Intra-African non-tariff barriers are significant and, indeed, the majority of African countries would gain more from NTB reductions than from tariff eliminations. However, recently there has been a notable and disappointing increase in the use of NTBs in both Southern African Development Community (SADC) and the East African Community (EAC). Many of these barriers relate to Sanitary and Phytosanitary (SPS) Measures and Technical Barriers to Trade (TBT) measures applicable to trade in agricultural and industrial goods.

There are well-established multilateral disciplines (on international standards, TBT and SPS measures) which provide conceptual frameworks for addressing NTBs. The World Trade Organisation (WTO) agreements contain disciplines on customs and transit, technical regulations and health and safety issues. WTO members have implemented the SPS and TBT Agreements, while the WTO dispute settlement process has resolved various NTB-related disputes. Furthermore, in the Regional Economic Communities (RECs) within eastern and southern Africa the agreements, protocols and annexes of the EAC, Common

Market for East and Southern Africa (COMESA) and SADC all provide legal frameworks for the elimination (or resolution) of NTBs.

An effective rules-based dispensation requires the means to (a) settle disputes and then (b) to ensure that the rules are enforced. There must be effective remedies when NTB obligations are violated, in both the multilateral and regional arenas. Comparing the WTO dispute resolution mechanism with that in the RECs shows that the WTO dispute settlement bodies have been effective in hearing and resolving many disputes related to NTB issues, while dispute resolution in the EAC, COMESA and SADC have both been problematic and underutilised when it comes to NTBs. The SADC dispute resolution mechanism faces its own inherent difficulties (due to its new design), while the EAC has a formal dispute settlement process in place which has not yet heard even one NTB-related dispute. Instead, informal bilateral and regional discussions are currently the preferred method for addressing NTB matters in the EAC. However, this might change once the EAC Elimination of Non-Tariff Barriers Act of 2015 comes into effect.

One of the outcomes of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) was to change its name and morph itself into the new WTO. This was more than a symbolic change, as it roughly represented a time of major shift in the issues for the new WTO to concentrate on. Through to that time the GATT focus had largely been on reducing global non-agricultural tariffs, and here its success was remarkable. The very high tariffs on these goods were largely (but not completely) reduced to minimal levels, and now the WTO positioned itself to act upon agricultural issues as discussed in the other chapters of this book and the multiplicity of so-called new-generation issues. Among these new issues were the Singapore issues of trade and investment, competition policy, transparency in government procurement and trade facilitation. Except for trade facilitation, these issues proved to be 'a bridge too far' and were not picked up by the WTO. Some aspects of these issues and many others, such as rules of origin, trade and environment, trade and labour, food security, tariff quota issues and the WTO disputes settlement mechanism, for example, remain as issues where the WTO is involved in, to varying degrees. If these issues impede trade in any way, without being tariffs, they are, by definition, non-tariff barriers to trade. This timing of GATT to WTO change was also a simultaneous to the proliferation of bilateral and regional free trade agreements (FTAs) that now criss-cross the global scene in a bewildering manner. One has only to look at the negotiated schedule for the now possibly stalled Trans Pacific Partnership (TPP) Agreement to see that tariffs are but a minor component of a new generation FTAs as the new generation issues take precedence. To remain relevant in the modern area the WTO not only has to move forward but it also has to act in coordinating these FTAs; this is because almost all of the FTA partners are also WTO members and therefore regarded as family.

This same situation exists in Africa. While much of the talk about continental-wide FTAs is centred on tariffs, evidence tells us that other barriers, including inefficient and time-consuming border procedures, for example, contribute more than tariffs to low levels of intraregional trade. This proliferation of border and beyond-the-border constraints raises the cost of doing business, including cumbersome and ineffective customs documentation and border procedures, export taxes and quantitative restrictions.

The aim of this chapter is to explore the variety of options under WTO law vis-à-vis regional legal instruments to address NTBs and resolve NTB disputes, particularly NTBs affecting agricultural trade. Through contrasting and comparing the WTO and REC legal instruments as they pertain to NTBs and dispute resolution it is possible to determine whether the WTO offers a way ahead to deal with NTBs and NTB disputes. Are the WTO dispute settlement bodies better placed to deal with agricultural NTBs and NTB disputes or does regional dispute settlement options offer some more appropriate fora?

The paper starts with a short discussion on the clarification of NTBs, and here we find that these descriptions can be very wide and all-encompassing. The next section presents a short analysis of the potential gains to the region that implores Africa to make a determined effort to alleviate NTBs. The paper then examines some case studies on NTBs experienced by traders in SADC and the EAC. Resolution has been reached in some but not all of these cases. In the final section, we address the primary purpose of this paper, that of introducing and examining the rules governing NTBs and examining the all-important question of where the regional authorities and the WTO can coordinate and cooperate in moving forward.

2. Definitions and related issues

The Organisation for Economic and Cooperation Development (OECD) makes a distinction between non-tariff measures (NTMs) and non-tariff barriers (NTBs). NTMs are seen as covering policy measures, other than import duties, which limit trade but with no implied judgement on the legitimacy of such measures. NTBs are seen as instruments that violate WTO law. Operationally, 'in the field', NTBs are also seen as restrictions or prohibitions or conditions or specific market requirements which make the import or export of products difficult and/or costly. The term NTB is also often used to describe the unjustified or improper application of NTMs including SPS measures. Here the OECD definition –'with no implied judgement on the legitimacy of such measures'– is an interesting one which highlights the 'grey' areas of many trade constraints and the need for arbitration. Others has indulged in the semantics of these differences between NTBs and NTMs, but we shall avoid this discussion and state that NTBs or NTMs are basically measures other than tariffs that are restricting or prohibiting trade. As with the remainder of the book, our emphasis will be on agriculture but we also stress that these measures can equally apply to manufactured goods or services. Similarly, we shall not engage in a cataloguing exercise of NTBs and NTMs, as several institutions are already doing just that.[28]

We must always recognise that NTMs can exist for valid reasons, including public safety, consumer protection and food security and also to address anticompetitive behaviour. It is only when these measures are implemented in such a way as to unnecessarily increase the cost of international trade, inhibit trade, or are implemented in a manner which discriminates against imports relative to domestically produced goods or applied in an illegitimate or WTO-inconsistent manner that they potentially become genuine barriers to trade. It therefore depends on from whose perspective one is looking to determine whether NTBs are 'good' or 'bad'. That is why arbitration and enforcement are needed.

[28] For example, UNCTAD at http://ntb.unctad.org/docs/Classification%20of%20NTMs.pdf: COMESA at http://www.tradebarriers.org/ntb/non_tariff_barriers; OECD at https://www.oecd.org/tad/agricultural-trade/45013630.pdf and APEC at https://www.gpo.gov/fdsys/pkg/FR-1998-05-15/html/98-12908.htm; and the WTO itself at http://i-tip.wto.org/goods/default.aspx?language=en.

In this next section we look at some case study examples to see how their resolution process is addressed. We start with NTBs in the SADC and EAC region; a comparison and contrast between the WTO dispute resolution mechanism and regional dispute mechanisms follow; and finally our particular focus shifts to the EAC, as it seems to have the most active process in operation.

3. Illustrating the importance of addressing barriers to trade in Africa

A recent analysis using the Global Trade Analysis Project (GTAP) computer model by Jensen and Sandrey (2015) illustrates the potential impact of NTB reductions for African economies. The analysis used the pre - released Version 9.2 GTAP database (based on actual trade date for 2011) and detailed and comprehensive datasets for trade-related barriers, by country. Balistreri et al. have decomposed trade costs into three categories of costs that can be lowered by (a) trade facilitation, (b) non-tariff barriers, and (c) the costs of barriers to business services. For non-tariff barriers, the focus was on licences, quotas and bans; price control measures; competition restrictions; and technical barriers to trade (customs delays were not included). Technically, NTBs were reduced by 50%, and this was done in two separate technical ways that will not be outlined here but can be found in Jensen and Sandrey (2015).

The results were presented in terms of final economic gains from the simulations expressed in terms of Equivalent Variation (EV) welfare at 2025 as measured by the amount over and above the 'business as usual' situation. Gains from complete African integration in the form of tariff elimination are substantial and spread across all African countries except Zimbabwe. A very similar pattern applies to the African-wide reduction in NTB costs. Those countries outside Africa lose as their trade became displaced through increased intra-African trade. These results support Mevel and Karingi (2012) in showing that intra-African non-tariff constraints to trade are at least as important but probably more important than actual tariff barriers.

The results also highlight that many countries gain from their own liberalisation as greater efficiencies flow through their own economies. These countries include Kenya and Nigeria, for example. South Africa is a major gainer in secondary agriculture, as are Namibia, Morocco and Senegal, while the rest of Africa gains in both primary and secondary agriculture. In many instances the sums representing ‘own’ gains are very large. Here the policy implications are again clear; this is because reducing these domestic NTB are directly under the control of the home government. Coordinated efforts to reduce NTBs are the best option but much can be done in those countries with high barriers by unilateral actions. Importantly, the research found an emphasis on NTBs in the agricultural sectors for most countries.

4. Non-tariff barriers experienced by traders of SADC and EAC

For the SADC region we find that common NTBs include trade facilitation, the SPS technical barriers to trade; rules of origin (RoO) and quantitative restrictions and prohibitions. Firstly, trade facilitation mainly focuses on transport, clearing, and forwarding; customs and administrative entry that adds extra costs was reported by Amoako-Tuffour et al. (2016) who found that trade facilitation efforts in the SADC region reduced transaction costs as the result of reduced times of clearance and transportation cost at the borders. Viljoen (2015) argued that SPS measures were identified as the most problematic technical NTBs, thus suggesting that harmonisation of these measures would improve intraregional trade. RoO measures have also played a very important limiting role in the SADC trade. Lastly, NTBs such as quantitative restrictions and prohibitions are particularly prevalent in agricultural trade (Hartzenberg and Kalenga 2015).

South Africa citrus exports to the EU: Sanitary and phytosanitary measures

South Africa currently exports more than one third of its total citrus exports to the European Union (EU) market. This sector is a major contributor to the agriculture sector in terms of employment and export earnings. In recent years, the sector was faced with stricter Citrus Black Spot (CBS) regulations in the EU, as it is regarded as an important phytosanitary requirement for citrus import permission (Carstens et al., 2012)). Phytosanitary is applied on the basis of food safety, plant health and environment. The EU had indicated that if South Africa exceeded more than the five allowable CBS interceptions the country would be subjected to a ban. This measure was because CBS has not occurred in in the EU and the EU feared that the disease contained by South Africa’s imports would spread in the EU territory. This was despite the fact that Citrus Research international had conducted a number of scientific research projects indicating no likelihood that the disease would occur in the EU due to its colder temperature. Nonetheless South African citrus producers and exporters were required to comply with CBS regulations in order to retain market share. Both producers and exporters now have to comply with the CBS regulation through spraying their orchards and redirected CBS-affected fruit into a non-CBS-sensitive market into the world. Although it is costly to comply with EU market regulations there is a likelihood that it will have returns for South African industry in future.

Zimbabwe's temporary import ban of fruit and vegetables

The Zimbabwean fresh-fruit industry has been growing at an average growth rate of 32% over the past ten years. Its local supply is now sufficient to meet the local demand and the Zimbabwean government introduced a temporary ban on imports of fresh fruit and vegetables in 2014 (Collen, 2014). Zimbabwe followed with other import bans, and in late 2016 Minister Davies told South African media that Zimbabwe should have followed a process under the SADC protocol that sets out procedural requirements for trade restrictions. The SADC protocol, which regulates intraregional trade, allows a member country to adopt protection measures if it demonstrates that its industries are under stress (Mataranyika, 2016).

Exporting beer to Tanzania – TBT matters

In 2013, the Tanzania Food and Drugs Authority (TFDA) imposed new requirements on importing BRARUDI beer into Tanzania. The TFDA requested a new label that provided additional information about the storage conditions for products that had not been submitted during the application for export. The failure to adhere to the Tanzanian technical regulations by importers will mean that their products cannot enter the Tanzanian market. The restriction on the new labels was imposed on two companies based in Kenya and Burundi. Although the issue was apparently resolved in 2015, there seems to have been delays in processing the applications for registration (COMESA, EAC and SADC Reporting, Monitoring and Eliminating Mechanism, 2016).

Import licensing introduced by Malawi

In 2015, Malawi ratified the Control of Goods Act for both imports and exports requiring import licencing whereby importers are required to produce an import licence before bringing goods into the country. This restricts SADC partner imports. Zambia laid a complaint through the online NTB portal (www.tradebarriers.org) as this new measure requires countries to obtain an import licence under conditions and instructions provided by Malawi.

South African poultry industry: anti-dumping measures

The South African poultry industry has, in recent years, been experiencing increased import competition. The International Trade Administration Commission (ITAC) imposed provisional anti-dumping duties on Brazilian imports. Brazil argued that these measures did not comply with substantive and procedural requirements. Accordingly, it challenged South Africa in the WTO. South Africa then chose to impose import tariffs of up to 82% (up from 27%) on all poultry products originating in countries with which South Africa had no preferential trade arrangements. The tariff increase did not apply to the EU countries due to the Trade, Development and Cooperation Agreement (TDCA) between South Africa and the EU, but South African producers then made another anti-dumping application with regard to boneless chicken imported from EU countries. This was approved with measures applied on imports from Germany, Netherlands and the United Kingdom (UK) for the protection of the poultry industry.

Kenya's import ban on import of sugar from Uganda

It was reported that Kenya banned imports of sugar from Uganda based on allegations that some unscrupulous traders were sourcing sugar cheaply from outside the region, repackaging it and re-exporting it to countries in the region, including Kenya where sugar prices have remained high (Kisero, 2015). Uganda threatened to retaliate by also banning imports of other products from Kenya. The matter was settled amicably after discussions between the presidents of the two countries (Goin, 2015).

Uganda imposes VAT on rice imports

It was reported that exports of Tanzanian rice to Uganda faced difficulties due to the imposition of an 18% value added tax (VAT), which was not levied on domestically produced and traded rice. This VAT was also imposed in reaction to alleged illicit trade whereby rice imported from outside the region was said to be repackaged in Tanzania and exported to partner states like Uganda (Barigaba, 2015). It is clear that the imposition of VAT on imported rice and not domestically produced rice was in contravention of the WTO national treatment principle which is also enshrined in article 15 of the EAC Customs Union Protocol.

5. Resolving the non-tariff barriers dispute

A pertinent issue with a rules-based dispensation is that the rules are enforced and where rules are broken there are effective remedies for the affected party. This holds true for commitments made by countries in the multilateral, regional and bilateral trade fronts. These agreements govern the rules of the game and countries have undertaken to be bound by the commitments made. In the multilateral trade arena, the WTO has many agreements in place which relate to non-tariff issues; the same goes for regional and bilateral non-tariff issues. Not only do the trade agreements and protocols of the EAC, COMESA and SADC govern the use of these non-tariff measures to try and limit the potential harmful effect of these on trade, but also explicitly state that countries must eliminate existing NTBs and refrain from using any new NTBs. However, the proliferation of NTBs shows that countries are not abiding by these commitments made. Seeing that non-tariff barriers are increasingly becoming more problematic for traders given their associated trade costs and reduction in competitiveness the question is: What remedy is available for traders and the private sector?

For countries which do not abide by their commitments, dispute resolution is available through the different dispute resolution mechanisms allowed for in different agreements. Article 1 of the WTO Dispute Settlement Understanding states: ‘This Understanding shall apply to disputes brought pursuant to the consultation and dispute settlement provisions of the agreements listed in Appendix 1…and the settlement of disputes between Members concerning their rights and obligations under the provisions of the Agreement Establishing the World Trade Organization…’. Article 6 of the WTO Agreement on import licensing procedures states: ‘The settlement of disputes with respect of any matter affecting the operation of this Agreements shall be subject to the provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding’. Article 23 of the EAC Treaty states that the East African Court of Justice ‘shall ensure the adherence to law in the interpretation and application of and compliance with this Treaty'. According to Article 24.1 of the COMESA Treaty a member state can refer the failure to meet an obligation or an infringement of a provision in the Treaty to the COMESA Court of Justice, while the 2000 SADC Protocol on the SADC Tribunal states in Article 14 that it has jurisdiction over disputes which relate to 'interpretation and application of the Treaty…'. According to Article 33 of the 2014 SADC Protocol on the Tribunal the new SADC Tribunal will have 'jurisdiction on the interpretation of the SADC Treaty and Protocols relating to disputes between Member States' when the protocol enters into force.

If countries do not abide by their commitments to address non-tariff barriers, dispute resolution is available. However, whether these dispute resolution mechanisms provide effective remedies for those who incur the costs has come into question. It is business which experiences these barriers, runs the added trade cost when a barrier arises or bears the brunt if a loss is made due to barriers and additional costs. Often these costs are also shifted onto consumers through higher consumer prices. To provide effective relief for the private sector (and consumers) dispute resolution should entail the expeditious elimination of NTBs and appropriate remedies to the affected traders. The ability of current dispute mechanisms to provide effective relief for traders in the case of NTBs is questionable. Some of the issues which have been brought to the fore with the available mechanisms include the locus standi of private individuals and business in the multilateral and regional dispute settlement arena; the extra-territorial application and enforcement of domestic court rulings; the jurisdiction of domestic and regional courts, and the WTO dispute settlement body over matters and the time involved in resolving matters through these dispute mechanisms.

- Locus standi: The WTO dispute mechanism and the new SADC Tribunal (once it comes into effect) do not afford private individuals or business the opportunity to bring a dispute in front of the relevant fora. The use of these mechanisms is reserved for member states (i.e. governments) only, when commitments of the relevant treaties are breached by other member states. The EAC Court of Justice does provide standing in front of the court to natural and legal persons and member states if an 'act, regulation, directive, decision or action of a member state or institution of the community' is unlawful or results in the breach of a provision of the treaty. In terms of COMESA, natural and legal persons and member states have standing if an ‘act, regulation, directive or decision of the council or member state’ is unlawful or results in the breach of a provision of the treaty. However, Article 26 of the COMESA Treaty contains the proviso that natural and legal persons must first exhaust local remedies in national courts or tribunals of the relevant member state prior to the dispute being referred to the regional court. If the relevant fora for a NTB dispute is a domestic court, the individual or legal person will have to show that he has standing before the court based on the breach of a multilateral or regional agreement by a decision or action of the particular government. This can be exceptionally difficult if a foreign trader brings a dispute in a foreign associated court against actions taken by the relevant foreign government.

- Jurisdiction over NTB matters: The various WTO agreements and regional treaties contain commitments about NTBs and trade-barrier-related matters. The dispute-resolution provisions give the relevant dispute settlement body jurisdiction when there has been a breach of these commitments under certain circumstances. However, domestic courts will first have to establish jurisdiction over a matter covered in multilateral and regional agreements. Whether a particular domestic court does have jurisdiction will depend on the incorporation requirements of international law into the domestic law of a specific country and the jurisdictional powers of the relevant domestic court.

- Extraterritorial application and enforceability: If the domestic courts are the relevant fora the extraterritorial application of national laws and enforceability of remedies beyond national boundaries are always drawn into question. Furthermore, the ability of regional courts to ensure remedies as enforced by the member state which is in breach of a treaty commitment, can also be weak. What is one to do if the government does not implement a decision made by the regional court? In the case of NTBs in SADC, COMESA and the EAC this is a very complex issue. According to all three these treaties member states have committed themselves to remove existing NTBs and must refrain from using any new NTBs. However, there is an ever-increasing use of measures which are NTBs (import permits, export levies, seasonal bans, SPS and TBT measures, etc.) and which sprout from new legislation and regulations. A pertinent question if these measures are ever tested in front of a regional court is:

How can the court ensure that a decision made will result in a change of legislation or regulation in the offending member state?

- Time lapse: Dispute settlement procedures, irrespective of the fora (WTO, regional or domestic) are all time consuming, especially if appeal procedures follow the initial court proceedings. This is problematic for traders and the private sector. The private sector incurs the higher cost of doing business or the loss at the moment the barrier is in place. However, the available dispute resolution mechanisms are unable to give immediate relief for those traders. As a matter of fact, the traders will have to incur further costs to bring a case in front of the relevant court with the hope of receiving compensation after the fact.

6. Rules governing non-tariff barriers

The multilateral rules of the WTO include explicit agreements to manage NTBs with a specific focus on customs and transit, technical regulations, and health and safety issues. Over the years, WTO member countries have implemented the SPS and TBT agreements. The principal disciplines of the WTO which apply to NTBs are the prohibition on quantitative restrictions in GATT Article XI, the non-discrimination obligation in Articles I and III (with the added flexibility of the general exception in Article XX), and transparency obligations.

Although there is no WTO agreement dealing explicitly with the issue of NTBs, there are numerous WTO agreements which are applicable to areas of NTBs. The following agreements aim to provide strict rules under which policies can be implemented or utilised in order to limit the harmful effect of specific barriers on trade:

- Articles 4.2 and 5 of the Agreement on Agriculture
- Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement)
- Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation Agreement)
- Agreement on the Application of Sanitary and Phytosanitary Measures

- Agreement Technical Barriers to Trade
- Agreement on Pre-Shipment Inspection
- Agreement on Rules of Origin
- Agreement Import Licensing Procedures
- Agreement Subsidies and Countervailing Measures
- Agreement on Safeguards
- Trade Facilitation Agreement.

The WTO dispute settlement process has also resulted in a number of NTBs resolved on a multilateral level through the enforceable legal process and the consequent development of case law. At the same time, regional agreements have also now shifted their focus to addressing NTBs prevailing in regional trade.

This is also the case in the RECs in southern and eastern Africa, with the trade agreements and protocols of the EAC, COMESA and SADC providing a legal framework for the elimination of NTBs.

- SADC: Article 6 of the SADC Trade Protocol requires all member countries to adopt and implement policies to eliminate current NTBs in terms of intra-SADC trade. Member countries must also refrain from imposing any new NTBs on intra-SADC trade. Furthermore, there are numerous annexes to the Trade Protocol, protocols, memoranda of understanding (MoU) and regional policies which are applicable to the areas of NTBs. These include Annexes II (Customs Cooperation), III (Simplification and Harmonisation of Trade Documentation and Procedures), IV (Transit), VIII (SPS), and IX (TBTs), Protocol against Corruption, Protocol on Transport, Communication and Meteorology, MoU on Standardisation, Quality Assurance, Accreditation and Metrology, and the SADC Regional Agricultural Policy.

- COMESA: The COMESA Treaty Article 45 calls for the removal of NTBs on trade among members. Article 49 requires countries to remove all those intra-COMESA NTBs which were in place when the treaty entered into force and to refrain from imposing any new restrictions and prohibitions on member countries. However, intra-COMESA quantitative restrictions or prohibitions are allowed for a limited time period for the protection of infant industries. Furthermore, various other provisions are applicable to NTBs, including articles in the COMESA Treaty pertaining to trade remedies, customs cooperation, simplification and harmonisation of trade documents and procedures, standardisation and quality assurance and cooperation in agriculture, and Annex I to the Treaty pertaining to transit, and Regulations on the Application of SPS Measures.

- EAC: According to Article 75(5) of the EAC Treaty and Article 13 of the East African Customs Union Protocol countries need to remove all intra-EAC NTBs and are required not to impose any further NTBs on imports from other member states. Article 13(2) of the Customs Union Protocol calls for a mechanism to identify, monitor and remove NTBs within the Customs Union. This has led to the development of the Time-Bound Matrix and the East African Community Elimination of Non-Tariff Barriers Act, 2015. Articles in the EAC Treaty regarding trade remedies, cooperation in standardisation, quality assurance, metrology and testing, cooperation in infrastructure and services, cooperation in agriculture, the EAC Standardisation, Quality Assurance, Metrology and Testing Act, and the Agriculture and Rural Development Strategy are all also relevant to NTBs

7. Comparing WTO and regional dispute settlement mechanisms

A vital component of a rules-based dispensation is the means to effectively settle disputes to ensure that the rules are enforced. Rules-based, inter-state trade disputes result from measures taken under national laws. The validity of such measures are then measured against the requirements set by the applicable international agreements. This is the reason for trade disputes mainly being about the application or interpretation of the applicable international instruments. If relevant national laws are absent or defective, rules-based trade becomes impossible. Thus, settling disputes about the application and interpretation of legal instruments in an objective and binding manner leads to certainty in the market and certainty for investors. Legal certainty and the predictable application of the rules are necessary. This brings benefits to intergovernmental relations and to the private sector. This advances the effectiveness and legitimacy with which government policies are implemented and can lead to a general improvement in governance, the ability to fight corruption and the limitation of illegal activities.

7.1 The choice of forum to resolve NTB disputes – issues to consider

Most of the concluded Regional Trading Agreements (RTAs) concern the same issues as various WTO agreements, including trade in goods and services, sanitary and phytosanitary measures, and agricultural issues. The majority of these trade agreements also contain some form of dispute settlement mechanism. These dispute settlement arrangements can broadly be characterised as being one of the following: (1) choice of forum agreements with or without the requirements granting exclusive jurisdiction to the chosen forum; (2) exclusive jurisdiction agreements which require all RTA disputes to be brought only in front of the RTA dispute settlement forum; or (3) preference agreements which specify a preferred forum that can be changed to an alternative forum upon agreement among the parties. The majority of RTAs utilise the first type, allowing for a choice of forum. To date, there has been little clarification on the exact relationship between the RTA dispute settlement mechanisms and the WTO Dispute Settlement Understanding (DSU). The existence and nature of the dispute settlement mechanisms in RTAs have raised questions regarding their consistency with the WTO DSU (Hillman, 2009). There is an ongoing debate about the relationship between the WTO and RTAs in terms of the hierarchy of the legal systems. Although Article XXIV of GATT allows for the establishment of an RTA it is silent on the relationship between such agreements. The DSU also does not state the relationship between the WTO and other agreements when a dispute arises (Tagle and Claros, 2016).

Due to the lack of clarification on the matter there are differing opinions based on the general rules of interpretation of international law. Opinions are divided as to whether WTO law prevails over RTA rules when there is an inconsistency and whether RTAs can be considered as a modification of WTO rules. Some RTAs do not provide for any rules about hierarchy between such agreements and other international agreements signed by the member countries. Dispute settlement bodies under some RTAs, however, have taken a position on the matter. The Andean Community Court of Justice (ACJ) takes the view that if there is a conflict between the Andean rules and WTO law, the regional rules will prevail and conflicting WTO laws become inapplicable. Furthermore, the application of Andean rules is not conditional upon its compatibility with WTO rules. The Permanent Tribunal of Review (PTR) in Mercosur follows a similar approach. According to the PTR, Mercosur rules prevail over public or private international law of the member states. The PTR will not accept the violation of regional rules as justification to apply a WTO rule by a member country. However, in other RTAs like the EU the question around the hierarchical relationship is yet to be settled. The European Court of Justice (ECJ) has refused to decide whether WTO law trumps Community Law.

In the US-Section 301 case the Dispute Settlement Panel (2000) stated that the function of the DSU was to provide security; predictability of the multilateral trading system and the DSU provisions should be interpreted in light of this objective and purpose. Furthermore, the DSU must aim to preserve the rights and obligations of the member states as covered by the relevant agreements (Agreement Establishing the WTO, the Multilateral Agreements and Plurilateral Trade Agreements) and provide clarity to existing provisions. This does not explicitly preclude the dispute settlement bodies from considering claims under non-WTO agreements. However, Tagle and Claros (2016) state that according to this interpretation a WTO claim can only be based on the covered agreements. Thus, the WTO dispute settlement bodies should assess whether any measure applied by a WTO member country complies with the covered WTO agreements; in other words, they do not assess whether or not non-WTO agreements should be applied by the dispute settlement bodies.

There are numerous issues which relate to dispute resolution and the choice of forum – issues which are yet to be clarified:

- The jurisdiction of WTO law over non-WTO law: According to Hillman (2009) it is firmly established that the WTO dispute settlement bodies do not have the authority to enforce provisions of an RTA directly. However, questions have been raised as to whether RTA rules should be treated differently than other non-WTO law because GATT explicitly recognise RTAs. Some scholars have argued that WTO law cannot stand completely separate from public international law, so it does not add to or take away from parties' rights and obligations if RTA law is taken into account in the resolution of a dispute by a WTO forum.

- Can a country stand on a RTA provision as a defence to violate WTO law? According to Pauwelyn (2001) bilateral agreements can be invoked as a defence to set aside WTO provisions. The WTO is not 'an island created' and WTO rules can be applied differently to different WTO countries depending on non-WTO rules they have accepted due to a lack of a centralised legislator in international law. However, Cho (2003) disagrees with Pauwelyn. According to Cho the WTO must maintain its autonomy by upholding its legal integrity; what is inconsistent with WTO rules cannot be WTO-legal through any mechanism, like unilateral modifications.

- Double breaches and double handling: Can the breach of both an RTA and WTO obligation be handled in parallel by different dispute settlement fora to enforce an identical or similar RTA and WTO obligation? In the WTO Appellate Body decision in the Mexico Soft Drinks dispute Mexico argued that the WTO dispute settlement bodies did not have inherent jurisdiction to exercise their substantive jurisdiction of the case which Mexico saw as a purely North American Free Trade Agreement (NAFTA) dispute. However, both the Panel and the Appellate Body rejected the argument and were of the view that various provisions of the WTO DSU required the WTO adjudicatory bodies to exercise substantive jurisdiction over the dispute unless there is a legal impediment to stop them from doing so.

- Exclusive forum clause: Can the WTO dispute settlement bodies decline jurisdiction if both parties to a dispute have agreed to a clause in an RTA which gives exclusive jurisdiction of a dispute to the dispute settlement mechanism of an RTA?

- Res Judicata: If this doctrine is included in an RTA it raises the issue of whether a WTO dispute is an appeal or relitigation if it has already been heard by a regional forum. If parties in an RTA agree to this doctrine, and a decision by a regional forum is conclusive and places a bar on subsequent action on the same claim, the parties effectively strip the WTO of some of its jurisdiction. Will countries be seen as violating the terms of the RTA if a case is brought to the WTO?

Box 1 illustrates two different approaches to resolving disputes which have been followed by WTO member countries which are also party to a regional arrangement. These disputes relate to sanitary and phytosanitary measures which have been imposed on imports. In both these instances the parties are signatories to the WTO Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), the International Plant Protection Convention (IPPC) and the World Organisation for Animal Health (OIE). Furthermore, South Africa and the EU are parties to the TDCA (as well as the recently concluded Economic Partnership Agreement – EPA) while South Africa and Zambia are members of SADC. These regional arrangements also have specific provisions regarding SPS matters as well as regional dispute and conflict resolution provisions.

According to Tagle and Claros (2016) the factors to consider in the choice of a dispute settlement forum are:

- WTO law governs the inter-state relationship between WTO member countries only in their capacity as WTO member countries
- WTO dispute settlement bodies must ensure the application of WTO rules, not the rules of regional trade arrangements
- WTO dispute settlement bodies do not have the authority to enforce the obligations countries have made within a regional agreement
- the institutions of the WTO should not intervene when regional rules are disobeyed, unless there is a simultaneous infringement of WTO law.

Box 1: Different approaches to dispute resolution: Citrus Black Spot and American Foulbrood Disease

Since 2010 there has been an ongoing dispute between South Africa and the EU regarding citrus fruit exports from the former to the latter. At the centre of the matter is the lack of scientific consensus and definitive scientific evidence that Citrus Black Spot (CBS) on the peel of South African citrus fruit exports poses a risk to the orchards of the citrus-producing regions of the EU. At the same time South Africa is also involved in a dispute with Zambia regarding similar SPS-related matters. This dispute relates to organic honey exports from Zambia to South Africa which are currently being denied market access due to the fact that the honey is not irradiated as required in terms of the South African honey regulations (Regulation Number 835). Although these cases are based on the same allegations, divergent approaches are currently being utilised to resolve the disputes.

a) South Africa and the EU in the case of CBS

In February 2013 the IPPC Secretariat hosted formal consultations between South African and the EU under the IPPC Dispute Settlement System as an attempt to resolve the ongoing battle between the two countries on the CBS issue. However, the proceedings were suspended after the parties agreed to negotiate on further steps to be taken after the results of ongoing scientific analysis have been made known. Until the end of 2013, when CBS was found in certain consignments of exports, the EU allowed the import of citrus fruits produced in areas categorised as CBS-free or from production sites where no CBS-infected fruit were detected in official inspections. The detection of CBS, however, led to a temporary ban being imposed which was lifted in May 2014 under the conditions that citrus fruits could only be exported to the EU market when stricter plant safety rules were adhered to. These rules were notified to the WTO Committee on SPS Measures in July 2014 as emergency measures to be taken against imports from areas not recognised as CBS-free in South Africa and include records of chemical treatments to be kept, registering packing houses, inspections of orchards and extensive sampling.

South Africa and the EU are signatories to the WTO Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), the IPPC and the OIE. Due to the inability of bilateral talks between South Africa and the EU to resolve the matter, South Africa opted to follow the multilateral route to attain a resolution of the dispute. South Africa raised its concerns at the SPS Committee of the WTO and requested the IPPC to establish an expert committee to resolve the two opposing views on the matter. According to South Africa, the stringent import conditions and the threat of reimposing the previous ban are unnecessary and without technical justification or scientific merit. South Africa has also posed an alternative solution to the EU in the form of market division. In terms of its request the EU can be divided with only the southern citrus-producing region imposing stricter import regulations. This should eliminate any concerns regarding the imported fruit contaminating the orchards in the citrus-producing region of the EU. However, the EU has yet to respond to this request and the matter is now in the hands of the WTO and IPPC to find an amicable solution.

b) South Africa and Zambia in the case of American foulbrood (AFB)

South Africa allows only imports of honey from Zambia that has been irradiated; this is due to historical evidence of AFB. However, the Zambian industry has repeatedly asked for an exception to the irradiation rule due to an analysis undertaken by the South African National Department of Agriculture (NDA) on honey samples from across Zambia revealing that no AFB is currently found in Zambia. The problem with irradiating the honey is that it loses its status as organic honey once it has been irradiated and no Zambian non-irradiated honey is currently allowed to enter South Africa's borders. Zambia is well-known for its honey production of which the majority is certified organic due to the climatic conditions and the traditional processing and harvesting techniques employed by the beekeepers. In order to allow organic imports into South Africa it was indicated that draft requirements for imports of non-irradiated honey had been internally consulted with the relevant role players. These requirements have been drafted by the National Plant Protection Organisation of South Africa, which has the responsibility for setting import measures for honey even though honey falls within the ambit of OIE rather than the IPPC.A final draft was expected by the end of November 2013. However, these regulations are currently still in draft form and Zambian organic honey is still being denied access.

South Africa and Zambia are signatories to the WTO SPS Agreement, the IPPC and the OIE. Zambia has opted to follow the route of continued bilateral consultations through the tripartite and SADC NTB resolution mechanisms to resolve the dispute with South Africa. However, it is unclear whether these political consultations will actually result in an amicable resolution in the near future. The honey issue has been referred to the subcommittee where it has been stalled for the last year. If Zambia continues to choose this route it seems that a resolution is still a long time away and, with the suspension of the SADC Tribunal, finality in the matter might never be reached. However, Zambia is not limited to taking the route of bilateral consultations and can still decide to follow the same multilateral route as South Africa did in the case of CBS.

Seeing that both cases are based on a similar violation of the provisions of the WTO Agreement on SPS Measures, Zambia can follow suit in an attempt to pressure South Africa into finding a timeous solution in the matter. However, the lack of financial, organisational and human capacity, the time-consuming process of the WTO dispute settlement mechanisms and the complexity of the WTO rules are often cited as the main reasons why developing and least developed countries do not utilise the multilateral dispute settlement mechanisms put in place. Irrespective of the reasons, it seems that Zambia remains unwilling to use multilateral measures to address South Africa's use of SPS measures as a barrier to trade and an instrument to protect domestic industries. This can turn out to be a costly decision.

7.2 Case study: Comparing the EAC's dispute resolution processes and their viability with those of the WTO system in case of NTBs

The WTO dispute settlement systems provides an independent and rules-based formal dispute settlement mechanism. Any dispute arising under the WTO agreements must be resolved in accordance with the DSU. In accordance with the DSU when a dispute occurs the parties must first engage in consultations before a request can be made for the Dispute Settlement Body (DSB) to establish an ad hoc panel to hear the dispute. Furthermore, parties can make an appeal of any decision to the Appellate Body. If the respondent member country does not comply with the recommendations made in the final adopted report within the required reasonable time period, and if negotiations for compensation are fruitless, the complainant can request authorisation to impose retaliatory measures by suspending concessions or obligations.

The majority of the disputes which have been brought before the WTO DSB has covered areas and agreements which fall under non-tariff measures. The majority of these disputes are about trade remedies in general, and anti-dumping in particular. Up to date 513 disputes have been brought to the DSB of which 33 relate to the Agreement on Agriculture (Articles 4.2 and 5), 114 to the Anti-Dumping Agreement, 17 to customs valuation, 46 to import licensing, 5 to pre-shipment inspections, 7 to rules of origin, 46 to safeguards, 44 to sanitary and phytosanitary measures, 112 to the Agreement on Subsidies and Countervailing Measures and 52 to TBTs (tralac calculations based on WTO DSB statistics).

Comparing the United Nations Country Classification (United Nations Statistics Division, 2016) with the WTO information about disputes by country and territory (WTO, 2016) shows that there is a relative balance between developed and developing countries as complainants and respondent economies in total, but the concentration varies from dispute to dispute.

For instance, in the case of the disputes pertaining to Articles 4.5 and 5 of the Agreement on Agriculture there are 26 developed countries as complainants, while respondents are mostly developing economics (in 22 of the 33 disputes). In the case of the Anti-Dumping Agreement, of the 114 disputes the majority of the complainants were developing countries and the respondents mostly developed countries. Of the 44 cases citing the Anti-Dumping Agreement with developing countries as respondents 8 involved anti-dumping measures taken by South Africa (5), Egypt (2) and Morocco (1). The developed economies which are mostly party to a dispute include the United States (US), the EU, Canada and Australia; while active developing economies include Brazil, China, India, Indonesia and Argentina. Of the African economies, South Africa and Egypt are the only countries which can be seen as being actively involved in the WTO dispute settlement process. However, these are also far less than the average usage by developing and emerging economies in Latin America and Asia.

The EAC Treaty is notified as a regional trade agreement to the WTO under Article XXIV of GATT. It is, strictly speaking, not separate from the WTO system but an integral part of it. It governs its own processes, though these are supposed to be compatible with WTO disciplines. The East African Court of Justice (EACJ) is the judicial body of the Community. Furthermore, customs union and common market frameworks also provide for alternative dispute resolution mechanisms, including a Committee on Trade Remedies. To date, no dispute relating to NTM provisions has been heard by the EACJ and the alternative dispute resolution mechanism in the EAC has also not been greatly used for resolving NTB matters. The resolution of NTBs has thus far mainly been done on a bilateral or regional basis through National Monitoring Committees and the EAC Time-bound Matrix. However, this might soon change after the EAC Elimination of Non-Tariff Barriers Act, 2015 comes into effect.

There exist a number of avenues for dispute resolution in the EAC:

a) The East African Court of Justice

First, Article 23 of the EAC Treaty establishes the EACJ as the judicial body of the community responsible for ensuring the adherence to law in the interpretation and application of and compliance with the treaty.

b) Customs Union and Common Market frameworks

Secondary legal instruments of the EAC Treaty provide for alternative dispute resolution mechanisms from the EACJ – specific to particular stages in the EAC's integration process.

In Article 13 of the Protocol establishing the EAC Customs Union, partner states bound themselves to remove all existing NTBs and to refrain from introducing new ones. Article 24 (1) of the protocol then establishes an East African Community Committee on Trade Remedies to 'handle any matters [in the implementation of the EAC Customs Union] pertaining to' rules of origin, anti-dumping measures, subsidies/countervailing measures, and safeguard measures as provided for in the respective annexes to the protocol governing these areas, and any matter referred to the committee by the council. These are areas from which non-tariff barriers to trade can emanate if respective measures are not optimally implemented.

Article 24 (1)(e) particularly provides that the committee is responsible for dispute settlement provided for under EAC Customs Union (Dispute Settlement Mechanism) Regulations, specified in Annex IX to the protocol.

With respect to the EAC Common Market, the Protocol on the Establishment of the East African Community Common Market ('the Common Market Protocol') provides in Article 54 (2)(a) that partner states guarantee that where any person whose rights and liberties as recognised by the protocol are infringed, such a person shall have the right to redress in accordance with the partner state's constitutions, national laws and administrative procedures and with provisions of the protocol. Article 54(2 (b) further provides that 'the competent judicial, administrative or legislative authority or any other competent authority [at the national level], shall rule on the rights of the person who is seeking redress'.

To date, resolution of NTBs has been handled bilaterally or on a regional basis when the respective National Monitoring Committees (NMC) of the five partner states meet at the regional NMCs forum. They then update a 'time-bound matrix', a tool that shows progress made on elimination of reported NTBs. There also exists the tripartite online reporting system for NTBs. Both these tools, strictly speaking, were for monitoring the resolution of NTBs. The actual resolution has been taking place following bilateral meetings or follow-up with focal points after NTBs were reported at the regional forum or on the tripartite online system. In February 2015, the East African Legislative Assembly (EALA) passed a legislation providing a means for aggrieved parties to litigate in issues relating to non-tariff barriers to trade as they are identified by the monitoring mechanisms. The law is known as the East African

Community Elimination of Non-Tariff Barriers Act, 2015. To date, the United Republic of Tanzania and the Republic of Kenya have assented to the act.

7.2.1 Compatibility of the alternative dispute resolution mechanisms in the EAC

The issue of whether the dispute resolution mechanisms in the Customs Union and Common Market Protocols of the EAC oust the jurisdiction of the EACJ has been considered by the court in the case of East African Law Society V Secretary General of the EAC. The court ruled that the respective protocols became an integral part of the treaty once they were enacted under Article 151(1) of the treaty. The court has jurisdiction as the judicial organ of the EAC responsible for interpretation and application of the treaty including its annexes and protocols. It held that articles 75 and 76 of the treaty provide for the establishment of a customs union and a common market and 'institutions that the Council may deem necessary for administration of the customs union and common market' and that these institutions are not at the exclusion of the court. With regard to the Committee on Trade Remedies established under Article 24 of the Customs Union Protocol, the court noted that it represents a pragmatic approach to the resolution of disputes as the customs union is being administered, as opposed to the long and arduous litigation process of the courts. Importantly, it held that it does not take away the interpretative jurisdiction of the court. It held the same view with regard to the national dispute resolution process provided for in Articles 54(1) and (2) of the Common Market Protocol and hence found that the court itself remains the final authoritative forum in matters of interpretation and application of the treaty.

7.2.2 Utilisation of the EAC dispute resolution frameworks in non-tariff barrier matters

There has thus far not been a high reported utilisation of the alternative dispute resolution mechanisms in the EAC, particularly with respect to NTB matters.

The closest that the EACJ came to ruling on an NTB issue was in the case of Modern Holdings (EA) Limited v Kenya Ports Authority. This was a customs and border procedures issue whereby the applicant challenged, in the court, the

Kenya Ports Authority's (KPA) failure to clear its consignment of fruit juice and mineral water in time leading to the expiry of the goods and loss of the consignment. The court did not proceed to make a determination on the matter at hand but threw out the application because it held that it is only partner states or institutions of the EAC that can stand as defendants in the court and not a natural or legal person as was the case with KPA.

There has not been any record of utilisation of the panel process provided for under the Committee on Trade Remedies, while the national court determinations of Common Market provisions are an area that requires further research.

7.2.3 Does the WTO offer a better dispute resolution option than EAC processes?

There exists some possibility for disputes encountered in the course of trade in the EAC to be settled at the WTO. However, this is subject to a number of considerations.

First, the nature of the issue at hand will determine which WTO provisions would apply in the resolution of the dispute. For example, the rules of origin provisions that could have applied in the matters concerning the importation of Ugandan sugar or Tanzanian rice are those of the EAC and not of the WTO. Hence, the matter could have been properly dealt with within the EAC dispute resolution processes. On the other hand, the WTO rules on national treatment, as also provided for in the Customs Union Protocol, would have applied in the matter of Tanzanian rice, and so the matter could have been resolved either within the WTO or within the EAC's processes. It is important to note that there are only certain sections of the EAC Treaty that explicitly provide that WTO provisions apply. Apart from the national treatment provision, the Customs Union Protocol provides that WTO rules apply in some instances – such as investigations involving third countries– in the areas of anti-dumping and subsidies and countervailing measures. Dispute settlement of these matters is the purview of the Committee on Trade Remedies, with the WTO Dispute Settlement Mechanism provided for disputes concerning third countries.

Second, there are temporal considerations. As acknowledged by the EAC Court in East African Law Society V Secretary General of the EAC (2011), its processes can be long and arduous. Issues concerning non-tariff barriers normally require timeous resolution. Each step in the panel processes provided for in the Committee on Trade Remedies and the WTO Dispute Settlement Mechanism is time-bound and so increasing the likelihood for resolution of disputes within a definite period of time.

Third, there are varying costs – monetary and systemic – which may tilt in favour of utilising the EAC processes. For example, it may be costlier to take a matter to Geneva for resolution than to resolve it within the region. Also, the EAC is premised on its partner states acting jointly to effectively implement the treaty and its associated legal instruments. There are costs involved as to the legitimacy and effectiveness of the EAC dispute resolution system according to which a matter is taken for resolution at the WTO where the concerned provisions could have also been interpreted and applied within the region's system.

Fourth is the issue of who can bring a matter for resolution. The WTO Dispute Settlement and the Committee on Trade Remedies processes can only be brought by a partner state against another partner state, regarding non-tariff barriers encountered in the export of products to the allegedly offending party. The EACJ process, however, provides for references to be brought by natural and legal persons. Such references can be not only against another partner state, but also against a natural or legal person's own government. This can be, for example, in the case of an importer experiencing non-tariff barriers in their own country of residence, incorporation or establishment. Although the court process has been noted to be potentially long and involving, it means that persons or companies do not have to lobby their governments to open dispute settlement proceedings against another partner state, but can go directly to the court to seek redress. They may also proceed along this route where efforts to engage their own governments to remove non-tariff barriers either directly or through national court processes do not yield results.

Based on the foregoing, it can be seen that the WTO Dispute Settlement Mechanism is limited in its ability to resolve non-tariff barrier issues within the EAC Treaty framework. Although it can represent a quicker route of resolving a dispute, it is limited due to the WTO provisions that apply within the EAC framework, monetary and systemic costs, and the ability of private parties to directly seek redress. For the EAC, it would be important to ensure that the dispute settlement framework is functioning optimally and ensuring the quick and efficient resolution of disputes over non-tariff barriers.

8. Conclusion

The debate surrounding the importance of eliminating NTBs within Africa is not new, but it is critical for African integration and trade liberalisation efforts. This is especially the case in terms of agricultural product trade. This is not just because it is the product with the highest incidence of NTBs being utilised but also because it forms a major part of economic growth, export earnings, employment and development in the majority of African economies. It is also troubling that the incidence of NTBs in areas which have been marked for industrial development (including agro-processing)is also on the rise. In order to address these challenges effective legal frameworks should be in place at national, regional and multilateral levels while countries must commit themselves to particular undertakings. Ultimately, there should be effective remedies when NTB-related obligations are violated.

However, the jury is still out on whether the best forums to address the violation of NTB obligations are regional dispute settlement bodies or those of the WTO. There are many scholars who offer different opinions on the effectiveness of regional dispute settlement arrangements vis-à-vis the WTO as well as what the interaction should be among the various available fora. What is evident from the chapter is that private firms and traders suffer as a result of NTBs while the consequences are passed on to consumers. However, the international agreements regulating this aspect are concluded between states and the regional institutions which have been put in place and are fora for state officials. Private-sector stakeholders do not have standing before these bodies; this translates into the absence of effective dispute settlement mechanisms. The success of the mechanism is contingent on the capacity of individual governments to implement their obligations and on advocacy programmes to inform the private sector. We are left with a conundrum – current multilateral, regional and national dispute settlement mechanisms fall short to resolve NTB disputes expeditiously and in a manner beneficial for traders. What is needed to ensure the quick, efficient and cost-effective resolution of NTB disputes?

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Chapter 7

Where do the Singapore and related issues fit into the WTO?

Ron Sandrey

1. Introduction

Most of what this book has examined to date has been focussing on the traditional core values of the WTO and their relationships to African agriculture. It is the intention of this chapter to expand upon these core issues and look at some of the new and emerging trade issues and see where the WTO fits into this landscape and how they may impact on Africa.

Much of the attention is devoted to looking at the so-called Singapore issues of trade and investment, competition policy, transparency in government procurement and trade facilitation. We find that while the WTO now has a minimal interest in the first three of these important issues, it has a strong presence in trade facilitation. Consequently, we examine trade facilitation in more detail and see that improvement here is certainly needed in Africa, but caution that there are a lot of commentators questioning whether the reality of the programme will match the rhetoric that has been associated with it.

Other trade related issues examined are rules of origin, trade and environment, trade and labour, food security, tariff quota issues and the WTO disputes settlement mechanism. Again, while the WTO is involved to varying degrees in these issues there are few cases where direct gains to African agriculture can be foreseen in the near future.

Background

Most of this book has focussed on what the WTO may do for African agriculture in terms of how exports may benefit. The focus is on the triple areas of reducing harmful agricultural product supports, enhancing market access through lowering import tariffs in key markets and countering export subsidies. The latter issue has become much less of a focal point as these subsidies have been, or are being, phased out Similarly, for the first issue of domestic supports we found in earlier chapters that they are generally, but not always, reducing in the developed economies but at the same time increasing in some developing economies, such as China. This leaves market access as epitomised by import tariffs, and here we found that as a sweeping generalisation reducing these tariffs along with current DDA structures similarly may do little for African agriculture. In a separate chapter, we have extended the general issue of market access to examine non-tariff measures/barriers (NTMs or NTBs) that actually or perceivably stand in the way of African agricultural exports. We find that these may indeed be more important than tariff barriers and perhaps the WTO offers some way forward in helping to mitigate these costs to exporters.

The WTO is, however, about more than just these access-related issues, and the objective for this current work is to explore these other issues and examine where the WTO may advance the interests of African agricultural trade. Paramount among these issues are the so-called Singapore issues. The World Trade Organisation (WTO) members decided at the 1996 Singapore Ministerial Conference to set up three new working groups on trade and investment, competition policy, and transparency in government procurement. They also instructed the WTO Council for Trade in Goods to look at possible ways of simplifying trade procedures, or, as it became known, ‘trade facilitation’. These four issues collectively became known as **the Singapore Issues**. They were subsequently included on the Doha Development Agenda (DDA), with negotiations to start after the 2003 Cancun Ministerial Conference, ‘on the basis of a decision to be taken by explicit consensus at that session on modalities of negotiations’.

In addition, there are other trade issues that could be directly, or at least peripherally, associated with the WTO. These includes trade and the environment, trade and labour, food security and many non-tariff measures (with the latter mainly being covered in a separate chapter). A particular NTM are the ubiquitous rules of origin (ROO), and here we will examine how the ROO is acting as an increasingly important barrier to trade as global tariffs reduce and these other issues become more transparent. Several of these issues tend to mean different things to different countries and therefore perhaps become more mired as a result. An example of this may be food security, an issue that means much more to Africa than perhaps the Island city-state of Singapore with virtually no agricultural resources and a reliance upon its prosperity to purchase agricultural products on the global market.

The objective for this paper is to examine these related issues with a special emphasis on how the WTO may benefit African agriculture. For the Singapore issues in particular it borrows heavily from the recent publication by Sandrey 2015a, but it adds an emphasis on agriculture and introduces some of the other related issues. In general, we are finding that developed and even emerging countries are less interested in areas such as subsidies and market access that has the core of WTOs activity. They are moving on issues such as investments, competition polices, government procurement, migration, intellectual property, financial services and taxation and pharmaceuticals. While African economies have less interest in these new issues, it behoves us to examine at least some of them here.

Related to these new issues is an innovative approach from Hufbauer and Schott 2013. They evaluated the potential gains to the world economy focussing on what they believed were seven agreements that could be ratified at that time through the DDA. These seven were trade facilitation, international trade in services, the digital economy, duty-free quota-free (DFQF) market access for developing countries, agricultural subsidies, food export controls and gains from environmental goods and services. The total global gains to GDP were in excess of two trillion US dollars ($2,212 billion). A staggering sum. Directly relevant to this paper are the trade facilitation gains of nearly one trillion dollars and the gains from DFQF, controls on agricultural subsidies (as represented by export subsidies),and food export controls. The gains from the latter three were inconsequential in the overall total. Ignoring the realities of achieving this outcome, the salient point from their analysis is that global gains from DFQF access and controls on agricultural export subsidies are almost negligible. Interestingly, their gains from trade facilitation were almost evenly split between developed and developing countries, with Sub-Sahara Africa gaining very little.

2. The so-called Singapore issue[29]

The WTO members decided, at the 1996 Singapore Ministerial Conference, to set up three new working groups on trade and investment, competition policy, and transparency in government procurement. They also instructed the WTO Council for Trade in Goods to look at possible ways of simplifying trade procedures, or, as it became known as, **trade facilitation**. These four issues collectively became known as **the Singapore Issues**. They were subsequently included on the Doha Development Agenda (DDA), with negotiations to start after the 2003 Cancun Ministerial Conference, 'on the basis of a decision to be taken, by explicit consensus at that session on modalities of negotiations'.

The basic problem for the WTO was that these negotiations would only proceed following a clear consensus decision to do so, and this was especially crucial for competition policies and investment as the WTO already had an Agreement on Government Procurement. At the time of the Cancun WTO meetings, Sandrey 2006 reports that these Singapore issues had become a priority for the European Union (EU) in particular, and were pushed ahead until the final days of those meetings. Developing countries had consistently opposed their inclusion in the negotiating agenda, arguing that the subject and scope of these issues were unclear and that they lacked the technical capacity to implement them and therefore, it was unrealistic to pursue them without knowing what compensatory gains they would get in other negotiating areas. Investment, competition policy and government procurement were seen as areas where the developed countries were imposing their standards upon developing countries in a one-way manner. Tensions became based around the degree to which the WTO should intrude into domestic policy space rather than remain essentially a trade organisation. Were Singapore Issues a bridge too far?

Yes they were, and the outcome from Cancun was that talks collapsed with the three Singapore Issues of investment, competition policies and procurement shouldering a significant and possibly unfair portion of the blame. Trade facilitation did however find common ground. Developing members saw trade facilitation as an opportunity to leverage aid for a chronic internal domestic problem, and developed members saw reduced transaction costs as enabling

[29] This section draws heavily from and expands Sandrey 2015a.

their exporters to gain advantage in these markets. Consequently, of the Singapore Issues, trade facilitation alone has specifically stayed with the DDA and this was reinforced by WTO Members who agreed on 1 August 2004 (the so-called July Framework) to proceed with negotiations on only one Singapore Issue, trade facilitation. The other three were dropped from the DDA, but for the purpose of this paper we can still include them as DDA issues.

Nearly twenty years after the 1996 Singapore Ministerial, several salient facts relating to the Singapore Issues are still relevant. The first is that while the WTO remains essentially moribund, arguably the only real outcome from the WTO since the Uruguay Round outcome was the Agreement on Trade Facilitation (TF) that emerged from the Ninth Ministerial *Conference*, held in *Bali*, Indonesia, from 3 to 7 December 2013. For the first three issues of trade and investment, trade and competition policy and government procurement, the battle ground has moved from the WTO to the various free trade agreement (FTA) negotiation tables around the world, This in itself highlights how the focus has moved from the WTO per se to these bilateral and regional negotiating tables. Importantly, Africa is evaluating its regional policies in the context of both the Tripartite Free Trade Area (TFTA) for the whole of eastern and southern Africa and the Continental Free Trade Area (CFTA), and these issues need to be seen within the nexus of the WTO, the mega-regionals and the African TFTA and CFTA.

In some respects, for Africa the international conflict of Cancun continues. The developing countries still see these issues through the prism of exporting countries that are trying to force open markets of the poorer importing countries, thus attempting to ensure economic development in their nations at the expense of the developing countries' policy space. The extent to which 'ex-Singapore issues' are being introduced into the African and other regions, through bilateral and regional agreements negotiated with the EU and the US as the dominant economies, becomes an important one, and in general the EU seems to be pursuing them with some vigour and rigour while the US is adopting a more benign approach.

The old General Agreement on Tariffs and Trade (GATT), the precursor to the WTO, was hugely successful in bringing industrial tariffs down dramatically since World War Two. It had not, however, achieved the same success in bringing agricultural tariffs and supports down, and many felt that a concentration on these core areas was preferable to attempting to embrace too many new issues that, while important, are not ‘frontline’ issues. Conversely, behind-the-border issues are becoming more important as tariffs and visible protection measures are reducing, and in that respect perhaps the GATT/WTO had become a victim of its own success as these so-called ‘not frontline’ issues were becoming more visible and therefore increasingly relevant.

Meanwhile, investment and competition policy have always been an indirect component of the GATT and WTO. The General Agreement on Trade in Services (GATS) contain rules on monopolies and exclusive service suppliers, and the principles have been elaborated considerably in the rules and commitments on telecommunications, for example. The agreements on intellectual property and services also both recognise governments’ rights to act against anti-competitive practices and their rights to work together to limit these practices. And the WTO already have a limited Agreement on Trade Related Investment Measures (TRIMs) and an Agreement on Government Procurement that cover such issues as transparency and non-discrimination that some WTO members have signed.

It has long been known that at the heart of the so-called Asian growth miracle has been the ability of these Asian nations to get most of their economic and trade related policies functioning in a coherent manner. While the general and over-used term of ‘good governance’ may be used to describe this general coherence, and we need to be conscious that this term can mean different things to different people and different societies, many observers stress the importance of an inclusive society that values social coherence and equality as being just as important as growth per se. For economic and social development, it is important to get policy sets working together, and the new theme word for this in trade agreements is ‘regulatory coherence’.

Essentially, this emphasises the fact that, as Mumford 2014 outlines, the ‘behind the border’ barriers to trade have become the new frontier for trade policy. This is reinforced by the lowering importance of tariffs per se and the growth of global chain trade in both goods and services. The attention to this frontier is not without controversy however. There are concerns that the global business sector will push reforms and international coherence at the expense of governments ceding domestic sovereignty in many social, economic and environmental areas. Accepting that, as in all issues, there are extreme views, Mumford provides a description of regulatory coherence as the interface between domestic regulation and international trade and investment liberalisation. We consider that many aspects of the Singapore Issues fit neatly into this interface and are an essential part of the ‘good governance’ package of modern trade policy.

3. Competition policies

The OECD, in a background note to their June 2015 meeting of Competition Policy experts[30], outlined how it is a fundamental principle of competition law and policy that firms should compete on the merits and should not benefit from undue advantages due to their ownership or nationality. Governments can affect the way markets function sometimes to the detriment of free competition. They can set procurement/tax rules or regulatory regimes, putting private companies at a disadvantage compared to state-controlled or supported firms, or yet, they can participate in a market by providing services directly or through state-owned/controlled firms.

Ensuring a ‘level playing field’ is therefore key to enabling competition to work properly, but the proviso must be made that markets must actually be free and fair. Often of course it is not the case, and the objective for competition policies is to monitor and correct anomalies and asymmetries in the market place. Typically (and by definition), competition policy means providing remedies to deal with a range of anticompetitive practices, including price fixing, cartel arrangements, abuses of a dominant position or monopolisation, mergers that limit competition, and agreements between suppliers and distributors (‘vertical agreements’) that foreclose markets to new competitors.

In examining a mega-regional agreement we find that the objective of the Trans-Pacific Partnership (TPP) chapter on competition policy was outlined by Asian Pacific Economic Cooperation (APEC) leaders as being ‘to promote a competitive business environment, protect consumers and ensure a level playing field for TPP companies’[i]. This seems to involve the enactment and enforcement of competition laws and relevant institutional frameworks, due

[30] http://www.oecd.org/daf/competition/competitive-neutrality-in-competition-enforcement.htm

process provisions in the enforcement of competition laws, transparency obligations, consumer protection, affording standing to private parties to initiate legal action under competition laws, and technical cooperation for the developing country partners with limited legislation and competence in this area. This became a contentious issue in the TPP, and negotiations focused on New Zealand's pharmaceuticals subsidies by Pharmac, the agricultural producer boards from Canada and Singapore in public utility and transport services, and the US in examples such as their antitrust and associated laws pertaining to the generous treatment given to the US civil aviation industry.

The USTR 2015 reported that the TPP Parties[31] agreed to adopt or maintain national competition laws that proscribe anticompetitive business conduct and work to apply these laws to all commercial activities in their territories. They agreed to establish or maintain authorities responsible for the enforcement of national competition laws, and adopt or maintain laws or regulations that proscribe fraudulent and deceptive commercial activities that cause harm or potential harm to consumers and to cooperate, as appropriate, on matters of mutual interest related to competition activities. They also agreed to obligations on due process and procedural fairness, as well as private rights of action for injury caused by a violation of a Party's national competition law, and agreed to cooperate in the area of competition policy and competition law enforcement, including through notification, consultation and exchange of information. We note that this chapter is not subject to the dispute settlement provisions of the TPP, but Parties may consult on concerns. It therefore seems like a 'best endeavour' outcome, but it does move the general international frontier forward and further away from excluded countries/regions such as Africa.

Since the WTO withdrew from the competition policy field, focus moved more to the OECD where the main policy response has been the development of so-called 'competitive neutrality frameworks' that a number of OECD member countries have implemented. These are required for government business activities not to have a net competitive advantage over their private-sector competitors simply by virtue of public-sector ownership. For the TFTA

[31] We note at the time of writing this paper that TPP negotiations have concluded but the agreement has not been fully ratified, with the position of the US in doubt.

members the main implication may well be a potential closing of available policy space, and especially so in view of many states trying to implement industrial policies.

3.1 The African dimension

This is an active part of the trade policy agenda in South Africa and the region, although there is an asymmetry in the enthusiasm, legislative support and administrative capacity through the region. While, unquestionably, South Africa has a competition policy framework and capability that are equal to or better than many developed countries, the same does not hold regionally. There is a need to bring more SADC countries into a functioning competition policy framework to enhance economic efficiency. Perhaps the TPP in particular will highlight this and convince more developing states in the region that, associated with market access commitments, there is a need to have these policies aligned with policies that discipline that market. More widely, this should in turn reflect on opportunities to progress the issue through the WTO as the final policy convergence agency. And capacity building is once again a key factor here.

Within SADC, Article 25 of the SADC Protocol on Trade provides for member states to implement measures within the Community that prohibit unfair business practices and promote competition. The Protocol provides for a framework of trade co-operation among member states based on equity, fair competition and mutual benefit that will contribute to the creation of a viable Development Community in Southern Africa. Within the EAC the WTO (2013) reported that in general, competition issues are not yet regulated at the EAC regional level, while at the national level only Kenya and Tanzania have fully functioning competition laws and institutions. The EAC Competition Act was however enacted in 2006, and this Act contains provisions on, inter alia, abuse of market dominance, mergers and acquisitions, consumer welfare, member states' subsidies, and prohibits anti-competitive concerted practices.

The COMESA Competition Commission is the first regional competition authority in Africa and second in the world. Its mandate is to ensure fair competition and transparency among economic operators in the region. It commenced operations in January 2014, and promotes and encourages competition by preventing restrictive business practices and other restrictions that deter the efficient operation of markets, thereby enhancing the welfare of the consumers in the Common Market, and protecting consumers against offensive conduct by market actors.

Similarly, for the TFTA, Annex 7 on Competition Policy and Consumer Protection states that under Article 23(3) of the Agreement, Article 1 'the Tripartite Member States recognise the importance of fair competition in promoting trade, supporting industrialisation and promoting consumer welfare and note that fair competition creates a level playing field by all players, large and small, and therefore promotes a good working environment for companies and businesses particularly the micro, small and medium scale enterprises in this way promoting investment in the region'.

4. Government procurement

The role of government in its procurement of goods and services typically accounts for 10–15% of GDP for developed countries, and up to as much as 20% of GDP for developing countries. In an attempt to open this significant portion of the international economy to international competition, WTO members signed the plurilateral (only binding on WTO members who choose to sign) Agreement on Government Procurement (GPA) at the Uruguay Round in 1994. This agreement was based on the 1979 Tokyo Round government procurement agreement, and as of June 2016 there were46 signatories (with all 28 members counted individually). Most of the members are developed countries. The intention of the GPA is to ensure that government decisions regarding government purchases of goods and services do not depend upon where the good is produced or the service rendered, nor upon the supplier's foreign affiliations.

The text of the original Agreement, while limited in scope, establishes rules requiring that open, fair and transparent conditions of competition be ensured in government procurement. However, these rules do not automatically apply to all procurement activities of each party. Rather, the coverage schedules play a critical role in determining whether a procurement activity is covered by the Agreement or not. Only those procurement activities that are carried out by covered entities purchasing listed goods, services or construction services of a value exceeding specified threshold values are covered by the Agreement. The WTO Working Group on Transparency in Government Procurement examines questions such as: does a particular government publish the criteria upon which it bases its procurement decisions? Does it publish the opportunities for procurement so that all suppliers know about them? Does it encourage competition among potential suppliers? After investigating these questions and others, the working group will then try to create policies to open competition for government contracts.

Many countries, for a variety of reasons, place restrictions on government procurement of both goods and services. Some will do so to encourage domestic industry, though many developing countries have limited domestic service industries, and turn to foreign providers as a result. Several developed countries would like to see the GPA become a multilateral agreement. This would increase market opportunities for their own firms, allowing them to bid for foreign government purchases on a level playing field. The strongest advocates of the multilateral GPA are, unsurprisingly, the US and EU Supporters as they see it is part of 'good governance' in the developing world in introducing a more transparent and competitive procurement process to reduce opportunity for corruption and rent-seeking by domestic governments and suppliers. Opposition comes from many developing countries that realise they will be disadvantaged by established foreign companies, and this in turn would lead to local problems of employment and balance of payments, as well as running counter to possible industrial policy and infant industry, labour, environmental and racial empowerment policies. But in reality they have far less capacity to bid for tenders in the developed countries.

A reflection upon the linkages of government procurement and other aspects of the WTO disciplines may be appropriate, as procurement relates, by definition, to either goods or services, and market access for these are covered by the fundamental WTO principles. While government procurement is probably more important because of the scope of the issue, given the role of the state in many economies, the basic principles of market access and domestic subsidies remain the same. On a similar note we could mention that the concept of 'buy local' patriotic campaigns are widespread but they do not seem to attract censure and condemnation to the same extent. Should these campaigns be placed under some disciplines? Perhaps a WTO challenge would answer this, and perhaps some procurement may also be open to challenges within the current WTO rules.

Despite several differences in procurement practice a similar non-binding outcome resulted from the TPP agreement. The parties commit to core disciplines of national treatment and non-discrimination and agree to publish relevant information in a timely manner to treat tenders fairly and impartially, and to maintain confidentiality of tenders. They also agree to use fair and objective technical specifications, to award contracts based solely on the evaluation criteria specified in the notices and tender documentation, and to establish due process procedures to question or review complaints about an award. This outcome seems to strengthen the GPA and indirectly the WTO.

4.1 The African dimension

In recent years the South African government has taken measures to implement a reformed government procurement practice. It is the vehicle through which many of the government's policies and strategies will be realised, and the vision is to give effect to positive discrimination enshrined in the Constitution, which, in turn, will boost local businesses and create much-needed wealth for previously disadvantaged people. In South Africa, the government procurement policy and the related strategies have a very specific economic, social and political aim. These socio-economic dimensions are the reason that many developing countries, including South Africa, refuse to enter into negotiations in government procurement.

COMESA 2009 outlines how the objectives of COMESA Public Procurement Regulations include: (a) to foster competition and openness in public procurement procedures; (b) to foster fair management systems in procurement; (c) to promote accountability, transparency, and value for money in the public procurement process for national development; and (d) to promote harmonisation of public procurement laws and practices for the enhancement of intra- COMESA Trade. WTO 2013 reports that in the EAC in general, open tendering is the rule in public procurement by EAC countries, and except for Uganda, all EAC countries had at that time brought new procurement laws into operation. Meanwhile, South Africa will need to be cognisant of the fact that future FTAs may examine the noble endeavours of using procurement as a means of redressing previously disadvantaged persons who were discriminated against under the former apartheid regime.

In the final analysis though, procurement policies probably have little to do with African agriculture. Firstly, Africa has minimal involvement in the WTO GPA, and perhaps more importantly it is difficult to see where agricultural products are likely to be directly related to procurement policies with the possible exception of famine relief efforts.

5. Trade and Investment

We cannot stress enough that the lessons over the last three or four decades from the dynamic regions of Asia in particular show that the preconditions for growth are putting domestic structures in place to foster investment and export-oriented trade. However, while investment is a necessary condition it is certainly not a sufficient condition for export-led growth. There is a correlation between the two, but the main foundation is getting the basics, or that over-used term 'good governance', right. This latter is very much under the control of a country's own government, and it is unclear why domestic legislation and regimes need external control to maximise a country's own welfare.

The WTO has only been peripherally involved with investment in three ways. Firstly, a Working Group established in 1996 conducts analytical work on the relationship between trade and investment. Secondly, the Agreement on Trade-Related Investment Measures (TRIMS) prohibits trade-related investment measures, such as local content requirements, that are inconsistent with the basic provisions of GATT 1994. And thirdly, the General Agreement on Trade in Services addresses foreign investment in services as one of four modes of supply of services.

Investment issues are, however, increasingly becoming an essential component of the modern FTA, as partners seek to benefit from an increase in bilateral investment as well as from the exchange and transfer of knowledge, technology, ideas and export opportunities. Ways in which an FTA could contribute to these aims include:

- greater transparency of regulations or laws that affect foreign investments
- more liberalised regimes which will facilitate the foreign investment
- improvements that can make it easier for investors to resolve any disputes that they may have

- promotion of bilateral or regional investment by strengthening investor confidence and thereby encouraging current partnerships into new areas of manufacturing and service industries through joint ventures and strategic alliances.

Much of the current Foreign Direct Investment (FDI) into Africa is driven simply by the need to control the resource extraction sectors and has little in the way of linkage back to desired aspects of FDI, such as technology transfer and poverty alleviation. Until better governance regimes become the norm in Africa it is difficult to see how trade agreements will foster much in the way of more desirable FDI.

Hufbauer and Schott 2013 offer some interesting thoughts on how the WTO could use investment policies to re-establish itself into the international scene in a meaningful way. For example, they could undertake a systematic analysis of the terms and coverage of existing BITs and RTAs and look at how several aspects of these agreements cover different things, such as environmental and taxation policies, and help provide a framework for common rules and a more effective disputes resolution framework. While these ideas are valid, again there are limited direct links to African agriculture, given the relatively basic foundation for much of the continent's structure.

6. Trade facilitation

Trade facilitation can mean different things to different people, and is closely linked to and an integral part of capacity building. In the strict sense of the WTO agenda, trade facilitation is focused upon customs and border operational procedures. In a wider sense the OECD views it as helping the institutions, negotiators and processes that shape trade policy and the rules of international commerce. In its extreme but still accurate form it can be viewed as the complete infrastructural package that leads to international competitiveness in global trade. The latter is an area in which Africa is notoriously lagging, as there can be no question that general trading costs are very high in Africa (Shayanowako, 2014, Pearson and Chaitezvi, 2012 and Pearson, 2011).

Arguably, the only real outcome from the WTO since the Uruguay Round outcome was the Agreement on Trade Facilitation (ATF or TF) that emerged from the Bali talks. Pearson 2015 relates how, in December 2013, WTO Members concluded negotiations on a new Trade Facilitation Agreement (WT/MIN (13)/36), aimed at expediting the movement, release and clearance of goods, including goods in transit, and at improving customs cooperation, as part of a wider Bali package. The members then adopted, on 27 November 2014, a Protocol of Amendment to insert the new Trade Facilitation Agreement into Annex 1A of the WTO Agreement. This Agreement will enter into force once two-thirds of WTO members have completed their domestic ratification process and it will be binding on all member states (with no exclusions) from the time of its entry into force, although with provisions for delayed implementation for Developing and Least Developed Countries. As of 18 June 2015, only eight members had signed the Agreement (Botswana, Hong Kong China, Singapore, the USA, Mauritius, Malaysia, Japan and Australia). This is far short of the 107 required, and with the WTO Ministerial in December 2015 looming observers are doubtful that more than 40 members will have signed (with the EU's 28 members contributing massively to that total).

The African Development Bank (ADB) reported on the implications of the TF for Africa.[ii] The report notes that, firstly, a binding TF agreement will push countries to undertake trade facilitation reforms in keeping with their commitments, and that there are a number of countries that have been lethargic in undertaking customs reforms and other trade facilitation measures. This has impeded the efficient operation of their infrastructure, including the regional transport corridors. In some instances there is little inclination from key African government agencies to undertake reforms, and a binding commitment on TF would help initiate and lock in reforms. In addition, the TF contains obligations on the publication of information on issues such as documentation for imports; export and transit procedures; duties and taxes; fees imposed by governments regarding importation or exportation; import, export or transit restriction; and appeal procedures.

Shintaro Hamanaka, 2014 from the ADB, acknowledges that it could be argued that the TF benefits are heavily tilted in favour of exporting countries, and regards it as an 'import-facilitating agreement', which will worsen Africa's trade balance and does little to address the productive and export constraints facing developing countries. To directly benefit, African exporters must increase value-adding activities by promoting investment in areas such as value chains, otherwise the benefits of the TF deal will be marginal and African countries will miss out on the alleged $1 trillion Bali trade boost. Meanwhile, issues such as NTBs, compliance with SPS, tariff escalation and tariff peaks on products of interest, African exporters continue to stifle Africa's potential to reach international markets and upgrade along the value chain. Therefore, parallel efforts to the TF are required in addressing these issues both in regional and global markets.

The Organisation for Economic and Cooperation Development (OECD)[32] assesses the potential benefits of the Bali package. This is done with the 'limited' implementation scenario that assumes that countries that are already implementing best practices will continue doing so, but that others will not (where implementation is discretionary, showing significant potential benefits). This package is, however, not without controversy; the African countries argue that this package lacks balance and is tilted heavily in favour of an agreement forced on the poor nations by the industrialised countries. Many developing countries, including the African countries, see the package as aimed at opening their markets to goods through enhanced merchandise access. They believe that, conversely, there is little to gain for developing-country exports to the developed world whose infrastructure is generally excellent.

Within the TPP the United States Trade Representative (USTR) reported that initially the TPP countries agreed that capacity building and other forms of cooperation were critical both during the negotiations and post conclusion to support TPP countries' abilities to implement and take advantage of the agreement. These will be needed to help developing countries to meet the high standards the TPP countries aspire to. To this end, several cooperation and capacity-building activities have already been implemented and more are planned. The TPP countries are also discussing specific texts that will establish a demand-driven and flexible institutional mechanism to effectively facilitate cooperation and capacity-building assistance after the TPP is implemented.

The big questions remain though, as to whether any of the monies directed to trade facilitation will be 'new monies' or merely a redirection of monies

[32] See website: http://www.oecd.org/trade/tradedev/OECD_TAD_WTO_trade_facilitation_agreement_potential_impact_trade_costs_february_2014.pdf.

already allocated to projects that may or may not be similar to 'trade facilitation'. Many observers believe answers to this range from 'unlikely' to a flat 'no' and that smoke and mirrors will be the order of the day. Is there more rhetoric than reality in the whole trade facilitation project? Many think so.

Shintaro Hamanaka, after an examination of the AFT, is left less than impressed. He offers two critical points: the first is developing and LDC members can decide when to implement obligations and implementation can be subject to the provision of assistance from donors; and secondly, the obligations are not ambitious and tend to be best endeavour ('to the extent possible'). The agreement is not expected to have a major legal impact on members, and the economic impact also seems to be narrow because it covers only limited trade facilitation items. While the paper considers that technical assistance may be helpful and financial assistance can be an important catalyst, ATF trade facilitation reform is fundamentally a unilateral action and political will is essential. Therefore, the ATF can be a guide for trade facilitation reform at the domestic level and the likelihood for success of such unilateral reforms is enhanced with assistance. Importantly, gains from trade facilitation mainly result from investment in physical infrastructure such as ports, airports, roads and rail infrastructure, and this wider aspect of trade facilitation is outside the scope of the ATF.

Others are even more pessimistic, and even to the point of scathing. Capaldo summarises his paper with an abstract that reads: 'Official estimates tend to overstate the benefits of trade facilitation and ignore its costs. When all underlying assumptions are brought to light, expecting large gains appears unreasonable. At the same time, estimated employment benefits may easily turn into net losses. With fundamental uncertainty surrounding its effects, implementing trade facilitation without enhancing systems of social protection would be ill advised. Indeed, the net effect of trade facilitation may depend on the social policies it is complemented with. While trade facilitation may bring extra business to import-export firms, it is not a feasible or sustainable growth strategy for all countries and it cannot be expected to deliver growth to the global economy. Importantly, he considers that the figures generally bandied about as gains from trade facilitation fail to support any reasonable expectation that the reform may benefit developing economies. Thus, can we expect little for Africa?

6.1 A tralac African analysis

Politics aside, there is little argument that African countries have a problem with infrastructural delays and associated costs[33]. But how serious are these problems? Jensen and Sandrey 2015 examined the costs of trade facilitation in Africa only as represented by costs such as delays at border crossings, roadblocks for trucks, and the necessity to pay bribes. They used cost of delay data from Minor 2013 and Hummels and Schaur 2013, who developed a database of per day ad valorem costs to use in the Global Trade Analysis Project (GTAP) computer model, with these estimates providing ad valorem equivalents of the per day costs along with the number of days involved. In implementing the GTAP model, Jensen and Sandrey used the Singapore international best-practice benchmark of four days for imports and assessed a reduction of 20% in Africa for the days over and above this benchmark for **imports** only, to avoid possible double counting.

The data reinforced that transit delays and subsequent costs are largely an African issue, and in taking a calculation of a 20% reduction in these African costs they argued that their approach was conservative. There was still plenty of 'slack' in the system, although there are countries in Africa that are very close to international benchmarks, this proves that Africa has the potential to improve.

The welfare gains to Africa were substantial. For South Africa, they were some US $8,519 billion in real terms and, as is usually the case, this is the most significant result for both Africa and the total worldwide gain of US $31,231 billion. Following close behind are the very large gains to Nigeria and the rest of Africa aggregation. In direct contrast, in tariff elimination scenarios, there were gains to many of the large economies outside Africa as their export prices rise in response to more efficient transit times in Africa.

The striking feature from the Jensen and Sandrey results is that almost all of the gains to each country overwhelmingly accrue to that same country. This may in part be a feature of the way in which they modelled their reductions: as they only addressed changes in **import** times in transit whereby the benefits

[33] See United Nations Economic Commission for Africa (2013).

accrue to the importer. Notwithstanding these technical issues, the facts remain that (a) these gains are substantial, (b) they mostly accrue to the liberaliser and (c) in only taking 20% of the costs of time over and above an international benchmark they were leaving plenty of room for improvement in most African countries. And the gains in welfare, although concentrated in Africa, were global in nature. This goes some way to refuting the argument (paranoia?) that the gains disproportionately accrue to developed country exporters.

7. Rules of Origin (ROO)

Sandrey 2015b examined the ROO and found an almost universal agreement that the ROO, as designed mainly to stop trade deflection or 'imports sneaking through the back door' in preferential trade agreements, are becoming increasingly complex through an interlay of different rules and are therefore unduly trade restricting, costly to manufacturers and overall welfare reducing. They represent a NTB in a global trading environment where these NTBs are becoming more trade restrictive than actual tariffs, and especially so in a global manufacturing and trading environment that is rapidly changing in this century while the ROO remain firmly rooted in their 1970s base. While some observers have boldly questioned the need for the ROO, unfortunately some indication of origin of goods will always be necessary. They are required as identification for reporting purposes and also for several trade-related reasons apart from preferential trade agreements. This leaves a situation whereby the best option forward is to re-examine the ROO and as a minimum, try to simply coordinate the rules and regimes.

This state-of-the-art solution for the way forward in the reform process is currently represented by a 2014 WTO paper (the 'Uganda paper') which cites an internal EU report that considers the ROO provisions to be old-fashioned and not to be following developments in world trade. ROO were drawn up in the 1970s and have not changed much since, whereas the commercial world has. They were also based on the need to protect community (EU) industry and on the premise that beneficiary countries should be encouraged to build up their own industries in order to comply. In most cases, this has not happened. Instead, there has been a trend towards the globalisation of production, but ROO have not been adapted to this. Compliance costs are high and the procedures outdated, and this, combined with lower preferential margins and high compliance costs, makes preferences unattractive. Successive rounds of negotiations have substantially lowered the preferential margins and dramatic changes in technologies and transport, information technology and communication occurred. The fragmentation of production and the global value chains approach have defeated any argument for a vertical integration of industrial sectors that traditionally underpinned the need for strict ROO. Moreover, there is no evidence that some set ROO are transparent and simple, or that they have been trade and investment creating in LDCs.

As a sweeping generalisation the ROO is not a major issue in agriculture, and especially not in the African case where agriculture tends to be exported at a primary level. They are much more of an issue in manufacturing, and especially so for Africa in textile and clothing exports. Thus, it is hard to see many avenues where the WTO nexus with African agriculture can be of direct benefit. Having said that, the Nairobi Ministerial Conference adopted a decision that will facilitate opportunities for least-developed countries' export of goods to both developed and developing countries under unilateral preferential trade arrangements in favour of LDCs. This gives more detailed directions on specific issues such as methods for determining when a product qualifies as ‘made in an LDC’ and when inputs from other sources can be ‘cumulated’, and calls on preference-granting members to consider allowing the use of non-originating materials up to 75% of the final value of the product. It also calls on preference-granting members to consider simplifying documentary and procedural requirements related to ROO, and the WTO considers that the key beneficiaries will be sub-Saharan African countries.

Hufbauer and Schott 2013 also suggest a practical way in which the WTO can make a valuable contribution. They argue that as the World Customs Organization (WCO) has created a database of preferential rules of origin prescribed by regional free trade agreements (RTAs) this information should be matched by the WTO with the MFN tariff rate schedules. This in turn would identify sectors where the MFN tariffs do not differ greatly. Here the WTO could suggest to the RTA members that rules of origin are not needed to prevent ‘trade deflection’ as the transhipment costs will eat up the tariff advantage. Furthermore, the WTO could identify sectors where RTA members could easily attain a reasonable degree of harmonisation in applied tariffs, and thereafter eliminate rules of origin since ‘trade deflection’ would no longer be a serious problem.

8. Trade and environment

The WTO reports that sustainable development and protection and preservation of the environment are fundamental goals of the WTO. They are enshrined in the Marrakesh Agreement (which established the WTO) and complement the WTO's objective to reduce trade barriers and eliminate discriminatory treatment in international trade relations. While there is no specific agreement dealing with the environment, under WTO rules members can adopt trade-related measures aimed at protecting the environment, provided a number of conditions to avoid the misuse of such measures for protectionist ends are fulfilled.

The WTO contributes to protection and preservation of the environment through its objective of trade openness, through its rules and enforcement mechanism, through work in different WTO bodies, and through ongoing efforts under the Doha Development Agenda. The Doha Agenda includes specific negotiations on trade and environment and some tasks assigned to the regular Trade and Environment Committee, and it is also looking at the effects of environmental measures on market access, the intellectual property agreement and biodiversity, and labelling for environmental purposes. Similarly, while climate change, per se, is not part of the WTO's ongoing work programme and there are no WTO rules specific to climate change, the WTO is relevant because climate change measures and policies intersect with international trade in a number of different ways. The WTO is also actively seeking a way forwards with its tariff-liberalising Environmental Goods Agreement (EGA) whereby it would build on an APEC initiative to phase out these tariffs over time.

9. Trade and Labour

Wikipedia reports that the WTO currently does not have jurisdiction over labour standards and the only place in which they are mentioned in the entire set of WTO Agreements is in GATT Article XX e) 'relating to the products of prison labour'. However, since the formation of the WTO in 1995 there have been increasing calls for action on the labour standards issue, and requests for a 'human face on the world economy'. The United Nations is among those bodies which have criticised the current system, and have called for a shift to a human rights oriented approach to trade, with steps to be taken 'to ensure that human rights principles and obligations are fully integrated in future negotiations in the World Trade Organization'.

There are several issues that cloud the trade and labour issue for the WTO. These include political economy questions on domestic sovereignty that go beyond current WTO positions and seek to dictate how countries treat their citizens. In strictly economic and trade terms, this trade and labour boils down to the concept of comparative advantage where developing countries with their excess of cheap and usually unskilled labour are accused of ignoring labour standards by developed countries. The developing countries in turn see this stance as protectionist measures. In theory there is wording in the WTO agreement that could be used to protect human rights, but in practice it seems unlikely that this will become a major WTO issue in the foreseeable future.

10. Food security

At the 2013 Bali Ministerial Conference there was a proposal to shield public stockholding programmes for food security in developing countries, so that they would not be challenged legally even if a country's agreed limits for trade-distorting domestic support were breached. When governments buy food from farmers at supported prices to build up stocks, this counts as **Amber Box** domestic support, and can be considered as a measure that distorts trade by affecting market prices and the quantities produced. This Amber Box support is limited, with most developing countries allowed an amount that is conceptually minimal (*de minimis*) of up to 10% of the value of production. Some of developing countries are saying it is difficult to remain within these limits. Members agree that food security is a vital issue, but are concerned that it might weaken the disciplines that apply to all domestic support.

It became an issue at the Bali conference and members sort a compromise interim agreement. India became the villain that stalled the entry into force of the WTO Trade Facilitation Agreement (TFA) and the associated 'Bali package' with the drastic reversal of the negotiating position post-Bali by India's new government. India's standpoint was based on its genuine concern over food security. All seems to be resolved, and in April 2016 India ratified the new TFA and an outcome from the Nairobi meetings was that Ministers adopted a Ministerial Decision on Public Stockholding for Food Security

Purposes that commits members to engage constructively in finding a permanent solution to this issue.

11. Tariff quotas: under-fill and special treatment

Tariff quotas (TRQs) are where import duties are lower on quantities within the quotas and higher for quantities outside. They were agreed in the Uruguay Round negotiations as a means of allowing exporters some access to other countries' markets when the normal (out-of-quota) tariffs on imports are high. Some countries are concerned with the methods governments use to share these quotas among traders (TRQ administration) and that this can become an additional trade barrier and consequently means that quotas are sometimes not used (under-filled). Conversely, importing countries argue under-fill is often simply supply and demand in the market. Developing countries have argued for information and monitoring on these quotas along with mechanisms to ensure quotas are filled. A partial compromise was struck at Nairobi, but the issue remains largely unresolved and TRQs can be regarded as non-tariff barriers to trade.

12. Disputes settlement

Perhaps one of the real successes of the WTO has been the Disputes Settlement Understanding. The dispute of most interest to African agriculture has been the 'cotton problem'. This began in 2002 when Brazil and the four African cotton producers of Benin, Burkina Faso, Chad and Mali argued that cotton subsidies caused world cotton prices to decline and reduced their export revenues. It became a long drawn out saga, and virtually ended at the Nairobi 2015 WT Ministerial Meetings in what could be called a draw. It did however highlight two key shortcomings of the current trading system: the inability of less powerful trading partners to bring their cases to the WTO and the need to broaden the 'sentencing' procedures to include compensation when counter-measures from these less powerful members are not applicable. Another agricultural dispute that indirectly concerned Africa was the even longer running banana dispute. It was finally settled in 2012 with the EU's revised commitments replacing, with tariffs only, a complicated and WTO-illegal banana import regime, and with the Africa EPA agreements with the EU they will have duty and quota free access.

While the mechanism may have been (almost periphery) of benefit to Africa and African agriculture, there are undoubtedly ways in which reforms would make it easier for smaller countries with limited resources to use. The WTO needs to give serious consideration to this.

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[ii] See http://www.afdb.org/en/blogs/integrating-africa/post/trade-facilitation-in-the-bali-package-whats-in-it-for-africa-12698/.