The University of the Western Cape
Faculty of Law

Mini-thesis submitted in partial fulfilment of the requirements for the award of the MPhil degree

Rutendo Juliana Runi
(Student nu 2765988)

Balancing trade remedies and preferential trade agreements: A South African experience

SUPERVISOR
Professor Patricia Lenaghan

December 2018
Declaration

I, Rutendo Juliana Runi do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Works of others or referred to are accordingly acknowledged.

Signed

[Signature]

Date……7 December 2018........................................................................................................

This research paper has been submitted for examination with my approval as University supervisor.

Signed:……

Patricia Lenaghan

Date:…….7 December 2018........................................................................................................
Keywords

African Growth Opportunity Act AGOA
Anti-Dumping AU
European Union EU
Trade Remedies TR
Preferential Trade Agreements PTA
World Trade Organisation WTO
Trade Development and Cooperation Agreement TDCA
General Agreement on Tariffs and Trade GATT
Most Favored Nations MFN
United States of America USA
South African Poultry Association SAPA
Southern African Customs Union SACU
Free Trade Area FTA
Southern African Development Community SADC
Brazil Russia India China South Africa BRICS
Economic Partnership Agreement EPA
Regional Trade Agreement RTA
Dedication

I would like to dedicate this mini-thesis to my late parents Ignatious Nhamo Runi and Eilet Musiyiwa, rest in love.
Acknowledgements

First and foremost, I would like to thank God for his grace that has allowed me to complete my research.

Secondly, I would like to salute Professor Patricia Lenaghan for her unwavering support and consistency throughout this journey. I made many mistakes but her patience and kindness, has taught me lifelong lessons and transformed me into a scholar. I therefore express my gratitude towards her, Prof thank you!

I would also want to thank the Law faculty for affording me this opportunity, the administration for their support, Mr Meyer for always giving me direction and assistance and his patience in all my administration issues.

To my father Uncle Thomas Majaya and my mother/Aunty Emeldah Majaya, I am forever indebted. This journey would have not been possible without their financial support, rooted beliefs in education and most of all their love. You are my heroes, the words of Uncle Thomas ‘rambahnuchipusher aunty,’ and the prayers of my aunt saw me through, thank you!

I would also want to thank Dr Hove for his assistance, insightful feedback before I gave my work to my supervisor. I also thank Mrs Hove for her support and prayers as well as encouragement ‘makutopedza vasi shingirirai.’

To my friends who have become sisters Kuda and Audrey ‘Rue you almost there don’t give up..’thank you. I hope as I soldiered on and did not give up this has inspired my siblings Nyasha, Hezzy, Kupakwashe and Farikai, to advance even further than me. I always felt your love throughout this process.
Finally, to those whose names I could not mention, I know each of you friends and family, thank you very much for your tremendous support in this journey.
# TABLE OF CONTENTS

ACKNOWLEDGEMENTS ........................................................................................................ II

1 CHAPTER 1 INTRODUCTION .......................................................................................... 1  
1.1 Background to the study ............................................................................................ 1  
1.2 Problem Statement ......................................................................................................... 4  
1.2 Aim of the Research .................................................................................................. 5  
1.3 Research Questions ................................................................................................... 5  
1.4 Research Methodology .............................................................................................. 6  
1.5 Chapter Overview ..................................................................................................... 6  

2 CHAPTER 2 TRADE REMEDIES ........................................................................ 8  
2.1 Introduction ............................................................................................................... 8  
2.2 Classification of Trade remedies ............................................................................... 9  
2.3 Anti-dumping duties in response to dumping ........................................................... 9  
2.3.1 Factors influencing industries to initiate anti-dumping duties ...................... 11  
2.3.2 Disadvantages with anti-dumping ................................................................. 12  
2.4 Countervailing measures in relation to subsidies .................................................... 14  
2.4.1 History of Subsidies ...................................................................................... 15  
2.4.2 The use of countervailing duties ................................................................... 16  
2.4.3 Categories of subsides ................................................................................... 18  
2.4.4 Prohibited subsidies ....................................................................................... 19  
2.4.5 Actionable subsidies ................................................................................... 20  
2.4.6 Subsidies as protectionist .............................................................................. 21  
2.5 Safeguards in relation to sudden surges .................................................................. 22  
2.6 The use of trade remedies in Africa ........................................................................ 25  
2.7 The use of trade remedies in South Africa .............................................................. 27  
2.7.1 Process of anti-dumping investigation in South Africa ................................... 29
2.7.2 Justification of South Africa’s use of anti-dumping duties .................................... 30

2.8 Conclusion ..................................................................................................................... 32

3 CHAPTER 3 PREFERENTIAL TRADE AGREEMENTS .............................................. 34

3.1 Introduction ..................................................................................................................... 34

3.2 Preferential trade agreements within the context of General Agreement on Tariffs and Trade (GATT) ................................................................................................................. 35

3.2.1 Historical overview of the World Trade Organisation and the rise of preferential trade agreement .................................................................................................................. 36

3.3 Categories of preferential trade agreements ................................................................... 38

3.4 Examples of preferential trade agreements under GATT/WTO that South Africa is part of ............................................................................................................................................ 40

3.4.1 Trade Development Cooperation Agreement (TDCA) ............................................. 40

3.4.2 Economic Partnership Agreements (EPAs) ................................................................. 41

3.5 Preferences beyond the traditional approach ................................................................ 47

3.5.1 African Growth Opportunity Act (AGOA) ................................................................. 47

3.5.2 Brazil, Russia, India, China, South Africa (BRICS) ..................................................... 52

3.6 Advantages of preferential trade agreements .................................................................. 56

3.7 Disadvantages of preferential trade agreements ............................................................. 59

3.8 Managing the negative effects of preferential trade agreements ................................. 62

3.9 Conclusion ..................................................................................................................... 64

4 CHAPTER 4 ANALYSIS OF TRADE REMEDIES AND PREFERENTIAL TRADE AGREEMENTS .................................................................................. 66

4.1 Introduction ..................................................................................................................... 66

4.2 South Africa poultry industry ....................................................................................... 67

4.2.1 Industrial challenges in the poultry industry ............................................................. 68

4.3 Historical overview of USA–South Africa Trade Relations ........................................ 71

4.3.1 United State of America and South Africa and South Africa chicken case ............. 72

4.3.2 The challenges of the AGOA Amended Act (2015) .................................................... 76

4.4 Trade dynamics between South Africa and the European Union ............................... 80
4.4.1 Unleveled Playing field between South Africa and European Union .......... 80
4.4.2 Protectionism by developed countries a thorn to South Africa poultry
industry .................................................................................................................. 82
4.5 Brazil and South Africa Chicken Case .............................................................. 84
4.6 Challenges within International Trade Administration Committee (ITAC) ...... 88
4.7 Conclusion ........................................................................................................ 91
5 CHAPTER 5 CONCLUSION AND RECOMMENDATIONS ......................... 92
5.1 Introduction ..................................................................................................... 92
5.2 Conclusion ...................................................................................................... 92
5.3 Recommendations .......................................................................................... 97
Chapter 1 Introduction

1.1 Background to the study

Over the past decade countries have embraced globalisation. The depth and influence of globalisation has grown significantly since the 19th century. Globalisation has accelerated mainly due to increased integration in trade with bilateral, regional and multilateral trade negotiations on the rise. Multinational companies have also enlarged which enable production to be done seamlessly in different countries, increase in capital flows such as purchase of assets and bonds has also contributed. Furthermore, the surge on technological innovations and advancement cannot be ignored when one speaks of globalisation this era has been dubbed the technological era additionally there is also the role of migration which enhances labor movements. The world has rapidly shrunk to one global economy.

After the World War II countries began to move away from protectionism to liberalised trade and this resulted in the formation of the General Agreement on Tariffs and Trade (GATT) then the World Trade Organisation (WTO) which is comprised of 164-member states. The WTO regulates trade and promotes free trade. Over the years the organisation has been evolving to deal with issues such as climate and technical assistance. Global trade presents challenges which may give rise to the need for countries to protect their domestic industries for political and economic reasons.

---

The General Agreement on Tariffs and Trade (GATT) is at the core of the WTO in regulating global trade.\textsuperscript{7} One of its main aims is to promote the liberalisation of trade in a non-discriminatory way and to treat all trading partners fairly. The GATT provides for rules on fair trade and also regulates circumstances where the trade is unfair.\textsuperscript{8} The WTO has achieved considerable success at least 80 per cent of global trade now occurs under GATT. Multilateral trade has also promoted peace with a reduction of wars to over half since its inception and facilitated developing countries into the global economy.\textsuperscript{9}

The challenges of globalisation specifically in global trade have a greater impact on developing countries as compared to the developed nations, because of the differences in their economies.\textsuperscript{10} Low tariffs affect domestic industries who are unable to meet production costs while on the other hand, is the issue of subsidisation, developed nations offer inputs or finances to the agriculture sector and developing countries fail to compete with subsidised goods.\textsuperscript{11} This has been a long standing debate in the global trade negotiating rounds and has not yielded progressive results.\textsuperscript{12} Trade remedies perform a regulatory function in such situations. There has been a rapid rise in the use of trade remedies over the past decade, as member states continue to grapple with domestic pressures and international laws.\textsuperscript{13} The difficulty with the use of trade remedies is that they threaten the multilateral trading system in various ways of significance to this

\textsuperscript{7}Wolfer R, Stoll TP and Koebeler M \textit{WTO Trade Remedies} (2008) 760.
\textsuperscript{8}Wolfer R, Stoll TP and Koebeler M \textit{WTO Trade Remedies} (2008) 761.
\textsuperscript{13}Voon T, ‘Eliminating Trade Remedies from the WTO: Lessons from Regional Trade Agreements’ (2010) 59 International and Comparative Law Quarterly 620.
research is when they are used as protectionist measures by domestic industries.\textsuperscript{14} Provision of trade remedies are made under Article VI of the GATT 1994, Anti-dumping Agreement and the Agreement on Subsidies and Countervailing Measures.\textsuperscript{15}

Similarly, the WTO permits the conclusion of Preferential Trade Agreements (PTA)s and these have been on the rise recently.\textsuperscript{16} PTAs have proved to be more attractive based on two main factors which are firstly, conclusion of PTA tends to be quicker. Secondly, the difficulty in securing agreement of all parties during the negotiations of the Doha Development Round has set the pace for the rapid spread of PTAs.\textsuperscript{17}

Central to this research is the relationship between trade remedies and PTAs in particular when there is unfair trade. This area has not been researched as studies seem to have dealt with one of these two aspects separately. The interconnection between preferential trading agreements and trade remedies has received insufficient attention in research.

South Africa joined the WTO 1995\textsuperscript{18} and has benefited to a large extent through its active participation in the WTO. Over the last two decades, South Africa has embarked on a robust move to remove trade barriers and to increase trade relations. South Africa, which is a developing country as defined by the United Nations\textsuperscript{19} realised the need to industrialise, as well as the importance of opening up its markets to global trade to foster

\bibitem{15}Voon T, ‘Eliminating Trade Remedies from the WTO: Lessons from Regional Trade Agreements’ (2010) 59 International and Comparative Law Quarterly 623.
\bibitem{19}United Nations \textit{World economic prospects} (2014).
economic growth.\textsuperscript{20} In addition, South Africa has aggressively made use of the imposition of trade remedies as a means of protecting its domestic industries from the negative effects of trade liberalisation while at the same time also ensuring fair trade.\textsuperscript{21}

In light of above factors this mini-thesis sets out to examine how South Africa has been dealing with the complexities involved in the use of trade remedies while at the same time also maintaining preference as provided for in its PTAs. This research will draw from the experiences of trade remedies implemented against Brazil, European Union (EU) member states and also the United States of America (USA). These remedies will be analysed in light of the PTAs to which South Africa is party, such as the Trade and Development Cooperation Agreement (TDCA)\textsuperscript{22} between South Africa and the EU under the WTO and the African Growth Opportunities Act AGOA as well as BRICS the latter two give preferences but not under GATT/WTO.

1.2 Problem Statement

The problem this mini-thesis seeks to address is how South Africa can manage the challenge of balancing PTAs and implementing trade remedies. South Africa has been placed in a conflicting situation with its use of trade remedies on countries with whom it has preferential trading agreements with. South Africa's right to use trade remedies is consistent with the WTO laws but has not been welcomed by some of its trading partners. The effect of this has resulted in friction between South Africa and the USA, which saw the USA threatening to withdraw the benefits of the PTA agreements.

\begin{flushleft}
\textsuperscript{22} Erasmus G, TRALAC Trade Remedies and Dispute Settlement under the TDCA: South African Anti-dumping Duties on Chicken Imported from the EU (2014). http://www.tralac.org/ (Accessed 10 February 2018).
\end{flushleft}
The relationship between South Africa and its trading partners is of importance especially in this globalisation era, as it brings about economic benefits to the country. However, the domestic industry in South Africa has suffered significantly because of poultry imports from Brazil, USA and EU. The burden was more on unemployment which was further exacerbated and has increased to over 26.7 per cent, as small business in poultry sector where forced to shut down resulting in job losses.\textsuperscript{23} It becomes imperative for South Africa to protect its domestic industry where there is evidence of dumping using trade remedies. This is done to address unfair trade practises. South Africa is faced with the daunting task of finding a balance, plausible solutions are needed which foster strong economic ties with its trading partners whilst also encouraging growth of its domestic industry.

1.2 \textbf{Aim of the Research}

This mini-thesis aims to investigate which strategies South Africa can put in place to create a balance in implementing trade remedies on countries with which South Africa has preferential trade agreements. The research will also make recommendations on how South Africa can better balance trade remedies and preferential trading agreements.

1.3 \textbf{Research Questions}

How best can South Africa better balance trade remedies and preferential trade agreements? Three key questions are also important to finding the answer.

Firstly, to what extent has the domestic industry in South Africa relied on trade remedies to protect against the harmful effects on trade liberalisation?

\textsuperscript{23}Khumalo S, ‘SA unemployment rate steady at 26, 7’ \textit{FIN 24} May 15, 2018
Secondly, what mechanisms, if any, has South Africa put in place in trying to minimise the risk involved with implementing trade remedies, particularly to countries that it has preferential trading agreements?

What are the lessons that can be drawn from South Africa’s experience?

1.4 Research Methodology

To answer the above research questions, one will analyse relevant legal texts on South Africa’s participation in the WTO. The research is a desktop project and will make use of journal articles, legal texts on the WTO, textbooks, electronic resources, books, reports and working papers. The research will also use TRALAC documents on trade remedies in South Africa, WTO documents on preferential trade agreements as well as articles on AGOA and the USA website on AGOA. The research will give an in-depth analysis of the South Africa and Brazil chicken trade case as well as trade remedies which are to be imposed on the EU member states because of the alleged dumping. These cases will give an understanding of the particular challenges that South Africa faces when it implements trade remedies on countries that it has preferential trading agreements on. In the case of EU there are already speculations on a dispute arising the thesis will also use current news and development on the cases.

1.5 Chapter Overview

Chapter 1:
An introduction and background to the problem is given in this chapter.

Chapter 2:
Chapter two will give a brief history of South Africa’s participation in the WTO. It will provide trade remedies, a brief overview of trade remedies in general, looking at countervailing duties and safeguards. In particular it will focus on the advantages and disadvantages of anti-dumping how this has been implemented in South Africa.
effort to answer the question of the how South Africa has relied on trade remedies and how they have been used in Africa.

Chapter 3:
This chapter will give an overview of preferential trade agreements and then discuss them in the South African context. The chapter will discuss the challenges faced by South Africa, in respect to AGOA, when there is a conflict of interest drawing from the chicken case between the USA and South Africa. The Chapter will also discuss the EU and EPAs giving and analysis as well as the chicken case between South Africa and Brazil how this unfolded as they are both members of the BRICS. This chapter will discuss the preferential trade agreements whilst linking them to the trade remedies.

Chapter 4:
Chapter four will give an analysis of the Brazil and South Africa chicken case as well as the AGOA and the EU member states poultry imports. The research will discuss how South Africa has been coping and dealing with the challenges of reconciling preferential trade agreements and trade remedies.

Chapter 5:
Lastly, concluding chapter and recommendations.
Chapter 2 Trade remedies

2.1 Introduction

Trade remedies have become a widely accepted norm. Countries are trying to grapple with the effects of trade liberalisation which has successfully reduced tariffs rates to very low levels worldwide.24 As a result trade remedies have become more prevalent. Global trade has shifted as tremendous emphasis is now placed on non-tariff barriers. Trade remedies have become a resolve, an important one for that matter as the World Trade Organisation (WTO) allows for their use in a regulated manner but other countries often use them as protectionist measures. Pressures from domestic industry and changes in global economic climate such as, the recession has led to the proliferation of trade remedies.25 These trade remedies threaten the fundamentals of trade liberalisation and hamper global welfare trade at large if they are not used consistently with the provisions of the WTO.26 The three agreed approaches in multilateral trade are anti-dumping, safeguards and countervailing duties.

Most countries now use trade remedies as if they are an obligation hence the often-sighted statement their use has almost become the rule as opposed to using them as an exception to remedy where there is unfair trade. They have become deeply embedded in global trade that one is tempted to think they are rule. Their rapid spread has spilled over to developing countries.27 Furthermore, what is disturbing is as they have almost succeeded in creating a ‘new order’ in international trade. Proving to be effective as coping mechanisms to dealing with foreign exports. This chapter will give an overview of

the classification of trade remedies. It will look at anti-dumping duties in response to dumping, then look at countervailing measures in relation to subsidies and safeguards in relation to subsidies. The last two aspects to be discussed will be how these remedies have been used in Africa and in South Africa.

2.2 Classification of Trade remedies

Permissible under WTO laws are trade remedies which take form in anti-dumping, countervailing duties and safeguards measures. Anti-dumping and countervailing measures operate under Article VI of General Agreement on Tariffs and Trade (GATT) 1994, and the WTO Agreement on anti-dumping as well as the WTO Agreement on countervailing duties. Safeguards fall under Article XIX of GATT and the WTO Agreement on Safeguards.28 It is imperative to mention that dumping is allowed under Article VI of GATT however, anti-dumping duties are permissible in instances where the domestic industry might face material injury from imports.29 This study will discuss anti-dumping duties and move on to other trade remedies.

2.3 Anti-dumping duties in response to dumping

To deal with the complexities in international trade countries resorted to a resolve of trade remedies in circumstances where trade is unfair and were there has been an overwhelming surge of imports. Anti-dumping as a trade remedy, is the selling of goods in a country at a price which is less than that which the same comparable goods are sold for in the country of production.30 Interestingly dumping is permissible under Article VI of GATT. Economic theory states that dumping is not sustainable because in the long run sales are not viable for the exporter. Hypothetically dumping is not harmful in the long

run as it eventually balances out on its own. However it is threatening in the short run to the local manufacturers who face the danger of being driven out of the market. Dumping affects competition to the extent of non-existence and thereafter causing monopoly pricing. Anti-dumping becomes the measure to offset this by means of duty or tariff imposed by the government.

Countries can exercise their legal right under the WTO to implement an anti-dumping measure. The history of anti-dumping duties can be traced as far back as 1947. Countries during that time could simply make their own anti-dumping laws. The Kennedy and Tokyo round saw countries trying to negotiate a structure in the anti-dumping laws, but they continued to be used on a singular basis. 1995 paved a way for the anti-dumping measure that is now currently in use. Anti-dumping measures fall under the WTO Article V1 of the General Agreement on Tariffs and Trade 1994. This highlights the basic provisions relating to the anti-dumping actions and is the ‘enabling cause.’ Also there is the Agreement on implementation of Article V1 of the GATT 1994 the anti-dumping measure.

Certain preconditions also must be met before a country can impose an anti-dumping duty. Firstly, it should be determined if the exporting country has dumped goods in the importing country. Secondly, is there evidence of material injury of the domestic industry? Or any threats of material injury. Also, it has to be determined that any establishment of industry is hampered or cannot be created because that particular industry will be injured by imports. Thirdly is there material injury caused by the

31Viner J, Dumping: A Problem in International Trade (1923)34.
32Viner Jacob, (1923)35.
This entire process must be done in a fair and transparent manner according to the provisions of the WTO regulations.  

2.3.1 Factors influencing industries to initiate anti-dumping duties

For an industry to embark on a lengthy process of anti-dumping there are certain triggers this is not a comprehensive list and does not follow one specific country. There are certain variables that need to be considered such as the type of industries and the country involved.

One of these factors is that, the industry might be a target for foreign dumping because of its market share. Another factor could be retaliation in other words ‘tit for tat’ Nakagwa adds to this point by stating that anti-dumping can be used as a counter measure or even a protective measure from the abuse by foreign firms thereby the country can decide to show its power.

An example of tit-tat is shown in the case of trade war between United States of America (USA) and China, important to note is that, to tit for tat the trade war in terms of the anti-dumping act of the provisions of GATT, rather just a mere hike in tariff by USA. President Donald Trump threatened to hike tariffs on goods worth USD$200 billion from China, he further stated ‘And I hate to say that, but there is another USD267 billion ready to go on short notice if I want…’ Totalizing the tariff to almost USD500 billion. China responded by retaliating with USD$60 billion tariff on USA and also stated ‘If the USA takes trade measures against China …China will take necessary countermeasures.’

There have been contentions between the two economic giants as no consensus has been
reached yet, though China has expressed interests in a dialogue to solve the problem.\textsuperscript{46} In the same way anti-dumping may pose as a safety valve form the negative effects of trade liberalisation.\textsuperscript{47} Moore and Wu\textsuperscript{48} provide more clarity to this by revealing that most anti-dumping investigations are led by companies and seldom by governments. Therefore, are mere responses to the actions of the respective trading partners which are naturally woven in the industrial policy. They elaborate that anti-dumping is not necessarily the initial government’s industrial policy for protection of its domestic market.

Another important factor is that a country might have an unstable currency, and this could have an impact.\textsuperscript{49} Material injury is prone to be higher where the value of the currency has increased competition becomes higher because of the influx of cheap imports after the shock. Adoption of a new currency makes the country vulnerable to dumping.\textsuperscript{50} Prussa\textsuperscript{51} states that anti-dumping measures are the most used trade remedies globally.

\textbf{2.3.2 Disadvantages with anti-dumping}

Ndlovu states that dissatisfaction stems from three factors these are firstly, lack of sound market values. This happens through allowing producers from foreign markets who are not necessarily effective to gain market share in the importing country.\textsuperscript{52} Secondly, the absence of fair-trade practices, this happens due to the lack of real competition in domestic country resulting in exporters escalating prices. He argues that this is likely to occur where there is a lack of arbitrage opportunities for the competitors in the domestic

\begin{footnotesize}


\textsuperscript{50} Bown P, (2007)75.


\end{footnotesize}
country.\textsuperscript{53} Thirdly, the government and consumers as well as producers are likely to suffer from the adverse effects of dumping.\textsuperscript{54}

Further elaborating on criticisms raised against anti-dumping duties is the fact that its economic policies are not pragmatic and that it is merely a means of protecting the local producers from foreign exports.\textsuperscript{55} Another shortcoming is the insufficiency of the law often it fails to distinguish from predatory dumping to other internationally agreed dumping, as a result of fair comparative advantage.\textsuperscript{56} Predatory dumping is designed to wipe out the competition before raising the price above a competitive level.\textsuperscript{57} Bolton further points out that the likely occurrence of predatory dumping is slim.\textsuperscript{58} Also he points out to the absence of an examination by investigating to determine intent before imposing anti-dumping as important factor to highlight that anti-dumping agreement is not targeted at predatory dumping.\textsuperscript{59}

The WTO laws on anti-dumping duties are often dubbed unclear and complicated. For instance, to properly determine an injury or threat thereof, there is pertinent need for a holistic approach which entails a look into the macroeconomic policies and this is a cumbersome task which takes time and is expensive. Therefore countries evade that process so in some instances the connection between injury and the threat might not even be present because macroeconomic factors were not considered thus permitting the imposition of anti-dumping duties where there was no dumping or threat of material injury.\textsuperscript{60} Another example of the ambiguity of the law, ‘Article 6; 6 and Annex II of the Anti-dumping Act allows using available facts’ in instances such as (a) the party involved

\textsuperscript{53}Ndlovu L, (2010) 5 Journal Commerce and Technology 156.
\textsuperscript{60}Bolton R M, (2011) 29 Berkeley Int’l Law 77-78.
has refused to provide facts. Secondly, is when the other party is unable to provide relevant information within a reasonable timeframe. Thirdly, the other party might hinder the process affecting the process. Moreover, access to anti-dumping has proven to be easy and there has also been an opening of a large number of unjustified cases and there has been lack of the final imposition of the measure. Some investigations have been initiated immediately after the closing of the other one.

## 2.4 Countervailing measures in relation to subsidies

Another form of trade remedy is countervailing measures. These are measures or duties imposed to restore the fairness in international competition when a foreign competitor is being subsidised. A subsidy is when there is a direct or indirect transfer of funds by government or public entity this is done within a member state territory. The Agreement on Subsidies and Countervailing Measures has a role in ensuring that subsidies are regulated also enforcing discipline on the use of subsidies by member states.

In light of the above governments then use subsidies as a means of effecting essential elements of its social and economic policy such as stimulating export competitiveness in an industry and economic development. They can do this by investing for increased efficiency in an industry. they can also gradually transfer resources to other lines of production. Put in effect subsidies can stimulate the industries that are not competitive so

---

that they can encourage the appropriate adjustment at the same time allowing consumers
to enjoy cheap imports.\textsuperscript{67}

2.4.1 History of Subsidies
Over time GATT has been harsher to export subsidies as compared to domestic subsidies
to have a nuanced understanding of this one needs to briefly visit the evolution of the
countervailing measures.\textsuperscript{68} The original GATT provisions had little to say about subsidies
and countervailing measures they were only applied in trade in goods and not services. In
essence there was more tolerance towards the use of subsidies.\textsuperscript{69} The use of
countervailing duties was only highlighted on limited parameters those in which
countries importing where harmed by subsidies.\textsuperscript{70} During the period 1954-55 countries
saw a need to modify original provisions. Therefore, Article XVI was then amended, to
then include commitments to reduce export subsidies on primary products. This move
however, was not welcomed by all GATT member states.\textsuperscript{71}

In 1960 countries decided to come up with an illustrative list which entailed additional
products other than primary products and this was adopted by all GATT member states.\textsuperscript{72}
During this period three things where apparent primarily subsidies where allowed for
domestic producers. Member states where not in unison to this however there where
exceptions some countries where already making progress taking an initiative on
reducing export subsidies on other goods which were not necessarily primary products.\textsuperscript{73}
A standardisation measure was more apparent whereby countervailing duties where only
allowed under the basis of finding an injury. Put simply other words no injury no

\textsuperscript{68}Bentley, Stanbrook C. \textit{Dumping Subsidies: Law and procedures governing the imposition of
\textsuperscript{69}Bentley, Stanbrook C, 3 ed (1996) 14.
\textsuperscript{70}Bentley, Stanbrook C, 3 ed (1996) 14.
\textsuperscript{71}Bentley, Stanbrook C, 3 ed (1996) 14.
\textsuperscript{72}Bentley, Stanbrook C, 3 ed (1996) 15.
countervailing measure. Furthermore violation of GATT was based on the premise that a subsidy program had hindered access to markets or if there was any reduction on a tariff. The existing Agreement of subsidy and countervailing is based on the premise of Uruguay Round. The current GATT/WTO has a much more conceptualised law. Noteworthy of mention is the fact that it contains a definition of a subsidy which was non-existent in the preceding agreements before Uruguay Round.

One notes however that it is also not a coincidence that the history of countervailing can be traced to the USA, therefore favors their economic policy. Barcello and John state origins of subsidies date as far back as the 17th century and the first attempt to offset them was in 1862. The USA Tariff Act made a provision on sugar in 1890 which was the first countervailing law. Belgium 1892 encompassed all subsidised goods. It might be important to understand why the USA decided to put subsidies in the first place. Pam agrees to this by arguing that the current countervailing duties favor the developed nations by making.

2.4.2 The use of countervailing duties
Countervailing duties are imposed in response to subsidies and this are imposed after an investigation has been undertaken and fulfils all the legal obligation in the Agreement of Subsidies and Countervailing Measures. Under Article 21.3 of the Agreement on Subsidies and Countervailing Measures, the duties shall be in place for no more than five years unless a review is done before the initial expiry. The frequency and number of countries which use countervailing measure is less than that of anti-dumping. Statics

---

79See Article 21.3 Agreement on Subsidies and Countervailing measures.
note from the period of 1995 to 2011, 262 countervailing actions were reported to the WTO whilst almost 4000 anti-dumping actions were initiated during the same period.\textsuperscript{81} Over the period of June 1995 to January 2016 16 out of 160 countries have imposed countervailing measures, this is a smaller number as compared to anti-dumping duties\textsuperscript{82}

Factors alluding to this could be firstly,\textsuperscript{83} the decrease in the use of subsidies. Why secondly,\textsuperscript{84} the growth of service trade globally whilst countervailing duties address trade in goods only. Thirdly, the increasing importance of state-owned enterprise in international trade consequently leading to disputes of the use of the laws. Finally,\textsuperscript{85} the increase in global supply chains which points to constraints in addressing the impact of subsidies using countervailing duties. Clarke\textsuperscript{86} points out to the arguments against the use of countervailing duties stating that the law is ineffective and that it fails to capture all actions and tend to focus on actions which are not subsidies. Also, companies harmed by subsidies face difficulty to obtain relief. Equally important is the fact that implementing the law is expensive to either the companies defending or those employing the duty when a company is injured.\textsuperscript{87}

On the other hand countervailing duties are important as they offer political support to domestic countries.\textsuperscript{88} This is so because as indicated above competing with a subsidised firm is generally unfair to the one that does not subsidise, therefore having no measure to offset this will inevitably makes the GATT unpopular especially in countries that do not


\textsuperscript{84}Clarke P, (2015) 2-4.
\textsuperscript{86}Clarke P, (2015) 2-5.
\textsuperscript{87}Neufold I.N, UNCTAD \textit{Antidumping and Countervailing procedures use or Abuse Implications for developing countries} (2001)4.
subsidise their goods.\textsuperscript{89} Having a mechanism such as a countervailing duty encourages support for the GATT and effective trading system.\textsuperscript{90}

In fact, subsidies are not economically bad.\textsuperscript{91} They can be used as a stimulus to market failures and in instances where there is market distortion countervailing duties can be used as corrective measures.\textsuperscript{92} After some time companies often face products being duplicated and might eventually lose their market share.\textsuperscript{93} Government can assist in research funding which is useful in companies so that they can remain competitive in the market through innovation.

Moreover, the benefits of subsidies are also apparent even in the private sector through public education programs these tend to lower the cost of labor. Also, education is a basic human right and benefits the social welfare of citizens.\textsuperscript{94}

\textbf{2.4.3 Categories of subsidies}

In the Agreement of Subsidies and Countervailing Measures Article VI of GATT 1994 subsidies are classified as Prohibited subsidies which are not allowed the WTO and Actionable subsidies are those that can challenged through the WTO.\textsuperscript{95} Prohibited subsidies are those subsidies whereby those in importing country have specific target to meet.\textsuperscript{96} Actionable subsidies are subsidies which affect importing country and other countries negatively.\textsuperscript{97}

\textsuperscript{92}Clarke,P, (2015)3-7.
\textsuperscript{93}Clarke,P, (2015)3-7.
\textsuperscript{94}Clarke,P, (2015)4-6.
\textsuperscript{95}World trade Organisation\textit{Anti-dumping, subsidies, safeguards: contingencies, etchttps://www.wto.org/english/thewto_e/whatiss_e/tif_e/agrms8_e.htm#subsidies}(Accessed 2 February 2018)
\textsuperscript{96}World trade Organisation\textit{Anti-dumping, subsidies, safeguards: contingencies.}
\textsuperscript{97}World trade Organisation\textit{Anti-dumping, subsidies, safeguards: contingencies.}
2.4.4 Prohibited subsidies

Under the Agreement of Subsidies and Countervailing Measures Article 3 Prohibited subsidies are stated as export subsidies these exists because of a law targeted on exports. Also, those subsidies whereby there is the use of domestic goods instead of imported goods by design challenging the fundamentals of GATT.\textsuperscript{98} Looking at history, it is clear that during the course of the evolution of subsidies the GATT member states seemed to have reached an agreement that export subsidies are the most threatening as compared to domestic subsidies. This is so because export subsidies undermine the role of legitimate tariff policies to the importing country because domestic products will then climb the foreign tariff walls.\textsuperscript{99}

Also, an export subsidy intervening to a specific trade sector equals a negative tariffs this affects the fundamentals of trade liberalisation and resource allocation.\textsuperscript{100} Further arguing against the use of export subsidies is the fact that they tend to be highly inefficient even in those cases where they are used to correct market failures in the domestic economy.\textsuperscript{101} A subsidy by the government of any sort should ultimately aim at correcting the original distortion. It should then follow that a domestic subsidy can easily do this not an export subsidy.

Furthermore, if one throws in the argument that countries do not start by aiming a troubled market. Then the export subsidy is targeted at gaining a larger share of foreign markets. Interestingly, Barcello reveals that though export subsidies are prohibited under GATT mainly because of the negative effects they have to the importing country.\textsuperscript{102} The irony is that it is actually more harmful to the country they operate against. These are

\textsuperscript{98}World trade Organisation\textit{Anti-dumping, subsidies, safeguards: contingencies.}
\textsuperscript{100}Sykes, AO, University of Chicago Law School working paper no.186 \textit{The Economics of WTO Rules on Subsidies and Countervailing Measures} (2003)9-10.
advantages to the exporting country. The dangers are to the importing country which suffers the adverse impact of being unable to compete with subsidised goods.

2.4.5 Actionable subsidies

Actionable subsidies are permissible under the WTO. Instances where the subsidies being used unfairly to the other trading partner can be challenged using the WTO channels. Firstly, if the other country is found to be using subsidies in ways that injure the domestic industry this can result in a countervailing duty being imposed. Secondly, those which affect the competitiveness of the products whereby exporters reduce the price of the market. Thirdly, they could also hinder the domestic market by making locally produced goods uncompetitive.

Suffice to note, production subsidies are also part of actionable subsidies and could in fact be enacted in South Africa agricultural production. This remedy could be useful for South Africa to match its competitors such as Brazil and European Union (EU). The poultry industry has been stifled due to drought because it relies heavily on agriculture this will be further discussed in other chapters to follow. Feng and Gerson emphasize on three types of subsidies which are relevant in this study. However, a superficial summary of their discussion is central. They start of by distinguishing the difference between producer and consumer subsidies. Producer subsidies consist of direct payments to an industry that is performing poorly. They contribute to the industry through inputs and increase in revenues in the production process consumer revenue is similar to producer subsidies.

105World trade OrganisationAnti-dumping, subsidies, safeguards: contingencies.
106World trade OrganisationAnti-dumping, subsidies, safeguards: contingencies.
Producer subsidies are not easy to prove because they have a target group the particular study by Feng and Gerson focused on producer subsidies. In summary they place producer subsidies under three classifications namely those subsidies that increase revenue, secondly subsidies that lower cost of production and finally subsidies that are linked to the price input. Firstly, subsidies that increase revenues are put in place to offset unemployment and mostly politically inclined. Their other purpose is ensuring stability income for the workers. Secondly, subsidies that lower cost of production economic theory states that reducing the cost of production ceteris paribus (all things being equal) will result to reduced price of the product because the input are subsidies and consumers enjoy lower prices. Thirdly, subsidies that are not linked to the producer or input the government can decide to simply pump money directly to the industry a once of huge amount this type of subsidy does not run the risk of not benefiting the targeted beneficiary.

2.4.6 Subsidies as protectionist

The negative effect of trade liberalisation often drives governments to resort to shortcuts, such as increasing trade barriers. This becomes an impediment to trade liberalisation and has negative welfare effects in the long run. The importing country is then faced with market disruption. In the short run they can experience negative effects such as increases in unemployment, high welfare payments, underutilised resources and relocation expenses also intangible individual burdens of sudden change.

Against the backdrop the main challenge of GATT has been determining which government activities create unfair trade advantage. As indicated above the foundation of GATT rests upon reducing trade barriers, in an effort to increase global welfare.

---

111 For full discussion on these subsidies see generally Gerson KK, Feng H.
According to Clarke and Garry protective subsidies are harmful as they threaten the principles of GATT countries are demotivated in entering agreements in the first as reciprocity is not in place and thus affects the efforts of GATT in reducing trade barriers. Another reason pointed out is that it distorts resource allocation because goods and services will no longer be produced at the lowest possible cost. Domestic firms might also start producing more to whilst foreign firms produce less because of the artificial reductions in the cost of domestic price attributed to subsidisation. In addition, subsidy programs must be financed in somehow through forms of taxation and this might problematic in the economy.

2.5 Safeguards in relation to sudden surges

The increase of imports is inevitable where there are trade concessions. A safeguard then provides a safety valve in a situation where a product is being imported in such a condition to cause or threaten injury to the domestic industry. It differs from anti-dumping duties which is a remedy to dumping and Countervailing measures which is a remedy to subsidies because it will not be responding to unfair trade practices rather an increased competition fostered by importing state having lowered its tariff. Safeguard measures which are remedies to be utilised when sudden surges threaten the domestic industry and should then be applied to all products irrespective of origin since it is triggered by a particular trading or economic practise. Also an important factor is that safeguards are time limited they have eight years including any extensions and have holiday provisions of two years preventing an immediate re-imposition. Skyes argues that safeguards impede the transfer of resources to declining industries where there might

118 Viljoen, W, (201310).
be comparative advantage this so because safeguard measures provide protection to industries which are facing foreign competition, thereby delaying the contraction of the industries and delaying the transfer of resources.

Trebilcock, Howse and Eliason\textsuperscript{122} express their concerns over the high cost in trade protection using safeguards and therefore suggest other measures which are industrial subsidies or labor market adjustment policy to restructure those industries incapable of meeting foreign competition. Managing safeguards tends to be difficult because they have to be applied indiscriminately; they affect all exporters unlike anti-dumping and countervailing duties which can target a particular industry.\textsuperscript{123} This has inhibited the use of safeguards compared to anti-dumping and countervailing duties, in that impact of a safeguard is much more to an economy than anti-dumping and countervailing duties.\textsuperscript{124} To support this is a look at the recent Safeguard measure which was imposed by South Africa to the EU. This has been the second Safeguard imposed for over ten years now.

The poultry industry has been facing many challenges and has been criticised for using trade protectionist measures to deal with its internal challenges. The above stated suggestion by Trebilock, Howse and Eliason is important, South African Poultry Association (SAPA) argued an increase in imports but ignored that EU trade composition was actually on the decrease in 2014 the EU had the highest imports of 93 per cent and in 2016 this has decreased to 82 per cent.\textsuperscript{125}

Another important factor that International Trade Administration Commission (ITAC) was not analysed is the link between injury and the increase in imports. Factors that could

have contributed to the high imports could increase in chicken consumption which SAPA could not meet so an accurate analysis would have been comprised of the total imports relative to the consumption. The issue of ‘casual link’ is discussed here on safeguards as on anti-dumping by Brink these scholars agree to ascertain a serious injury evidence must be brought forward of the link increase in imports and the serious injury. It is revealed in SAPA’s application that factors not linked to his which are mostly the challenges the industry is facing such as capacity constraints, drought are the ones used which is not consistent to the WTO. SAPA managed to get a safeguard of 13.9 per cent but the effects of this is borne to the poor consumers who now have to pay more for chicken and rely heavily on it for protein. There need to be support of the poultry industry so that it is globally competitive.

Proponents who support safeguards state that it encourages trade liberalisation and cautious countries to enter a greater number of tariffs which might have not been the case, citing that it was a prerequisite for USA participation in the GATT. Unlike anti-dumping duties and countervailing measures, safeguard measures are less popular. Reasons of this could be their stringent legal regime and they are not attractive because of the need to provide compensation.

The availability of substitute instruments, lack of awareness, and poor organisation of local products the private sector often faces challenges and does not fully partake in the international trade agreements signed by the government.

2.6 The use of trade remedies in Africa

The wide acceptance of trade remedies is because they provide a temporary relief from domestic demands for protection that trade incites. Trade liberalisation often leads to cost adjustments. These adjustments can have negative effects to the domestic industry resulting in political pressure within the domestic industries. This pressure if left unchecked might build up to the extent of destroying the principle foundation of GATT by protectionist forces permanently reversing trade liberalisation. Having forecasted this problem countries resolved the need for trade remedies taking cognisance of the difficult adjustments that come with trade liberalisation.

The earliest users of trade remedies have been developed countries but over time this has evolved to developing nations. Prior 1994 the key players in the use of trade remedies where United States of America (USA), Canada, the European Union (EU) and Australia. The mostly used form of trade remedy has been anti-dumping duties.132 Recently countries such as Brazil, India, Mexico and Indonesia have dominated the scene.133 Trade remedies are important at the initial stages of development prior 1980 developed countries were the most frequent users, then after 1990 there was a shift to developing countries as they also started to industrialise more.134

Based on the above factor it is not surprising to note that in Africa, South Africa has been at the forefront of industrialisation therefore being one of the most dominant user of trade remedies particularly anti-dumping measures. Second on the list is Egypt, there have been newer entrances of countries such as Mauritius, Kenya and Ghana.135

---

African countries have often faced challenges in using trade remedies. These challenges range from lack national and legal and institutional frameworks which are a requirement as highlighted by Illy.\textsuperscript{136} Also most African countries do not have the legislations, only five countries have national legislations covering, anti-dumping, countervailing and safeguards. There is also lack of expertise and the cost involved in setting up trade remedies is exorbitant, looking at Egypt which used more that USD$10 million as an example. Specialists are highly crucial in global trade in areas such as economics and law but to attain them is a difficult task for African governments who cannot afford to pay them sufficiently.

However, the WTO has noted this challenge and often provides technical assistance to train officials, but upon return to their counties those trained join the private sector where there are lucrative salaries which results in the persistence of the problem.\textsuperscript{137} Over the years the WTO’s role in providing training to developing countries has evolved and they have provided considerable benefit to developing countries. Noteworthy is the 3000 participants increase in technical assistance from 2015 to 2016. During the same period Web based E learning rose to over 10 000 participants from 147 nations which was an increase from the period which had just over 7.500 people who participated.\textsuperscript{138} Africa has the largest participants on E learning of 38 per cent the least is the Caribbean which has just 5 per cent participants. Efforts of the WTO have even spread to the youth through the launch of young professional programme which commenced in 2016. For the success and expansion of these programmes there is a huge reliance on funding but unfortunately that has been on the decline with about 22 per cent from 2015.\textsuperscript{139} Most of this money comes from contributions as well as donations by developed countries and also the Doha Development Agenda Trust Fund.

Another problem is that the impact of these programmes has not reached a wide spectrum especially in communities because those trained do not train other officials back home and that in some trainings the decision makers are not engaged in the programmes.\textsuperscript{140} Finally, political factors often hinder the use of trade remedies by African countries as most of them depend on aid from developed countries and this is often the dilemma they are faced with an example will be China which has over the years increased its investment in African countries and continues to flood the continent with cheap products affecting the industrialisation process. The opening up of an investigation on its own often affects trade flows irrespective if it goes through and can lead to a decline in export.\textsuperscript{141}

2.7 The use of trade remedies in South Africa

There is no doubt that the use of anti-dumping measures has increased significantly over the past decade. This can be attributed to the growth in global trade thus a correlation in the proliferation of unfair trade practises.\textsuperscript{142} Trade remedies then play an increasingly pivotal role to remedy these unfair trade practises whilst the role of anti-dumping has become pivotal and has become contentious issue in international trade, with concerns over the future of global trade.\textsuperscript{143} These emanate from their tendency to hinder effective competition in the market, therefore posing as a barrier to trade.\textsuperscript{144} These are some of the negative un-intended consequences which threaten the global trading process at large.\textsuperscript{145}

\textsuperscript{140}World Trade Organisation\textit{Trade related technical assistance external evaluation} (2016)9.
\textsuperscript{141}Illy O, (2012).
\textsuperscript{142}Bown P, (2007)2.
South Africa initiated a robust trade liberalisation programme due to the fact that they had inherited a stagnant economy from the apartheid era and one crisis. In an effort to industrialise and to be competitive globally, South Africa made commitments to reduce tariff bands from 80 different levels to six ceiling rates also bind 98 per cent of all tariff lines and rationalised 12 000 tariff lines. In addition, the quantitative limits on agriculture where substituted with tariff. The WTO majors were sympathetic to South Africa therefore flexed their muscles on the crucial sectors such as the clothing and textile, assembly and component industries. They granted these sectors tariff binding which were larger and extended the protection periods. The government further removed support for farmers in terms of marketing and price thus ushering South Africa’s participation in the Cairns Group of agricultural exporters and followed by the WTOs G20 coalition as South Africa had advanced on deregulation and a more liberal agriculture sector. Former trade minister Trevor Manuel the launched a unilateral tariff which brought about tariff cuts for the clothing sector, textiles and automobile as a follow up to the country commitments of the WTO.

The history of anti-dumping law in South Africa dates as far back as 1914 well before the GATT, when the law was adopted. The law then came into force and implemented in 1921. During the first decade of the GATT South Africa was one of the most frequent users of the law. In 1914 the Customs Tariff Act was already in place and the anti-dumping, subsidies and countervailing duties had already been initiated. In 1923 the Board on Trade and Industries took over but it did not operate under the WTO even after

149 Vickers B, (2014)58
South Africa had been a member it stressed on the importance of domestic laws. Sanctions imposed on South Africa during Apartheid Era encouraged the government to provide protection to industries it considered of strategic importance. Import surcharges now reduced the need for anti-dumping measures. The Minister of Trade and Industry then removed the antidumping duties because they were not effective. 2003 then marked the restructuring of anti-dumping duties with the new body International Trade Administration Committee (ITAC).

2.7.1 Process of anti-dumping investigation in South Africa

An institution must be established before any anti-dumping investigation can be initiated. In South Africa this is done under the ITAC. Member states do not have to necessarily adopt the WTO legislation in their domestic laws, this depends upon each country’s own constitutional law. Some countries automatically enacted the international laws into the domestic South Africa is not one of them in this instance. The ITAC conducts its 'anti-dumping laws under the International Trade Administration Act of 2002 and the anti-dumping regulations promulgated in 2003 under the anti-dumping regulations.' It is imperative to mention South Africa does follow the binding laws of WTO but on anti-dumping they are used as interpretative aids this is acceptable under the International treaties agreement as states may or may not automatically adopt International laws into domestic laws. Adoption in International laws is done by means of implementing or enabling.

---

156Jourbert N, The Reform of the South African Antidumping Regime.
According to the ITAC\textsuperscript{164} the anti-dumping process starts of by the submission of an application which must have all the relevant documents of the Southern African Customs Union (SACU) industry. An investigation is then initiated through a public government notice made in the government gazette.\textsuperscript{165} Once this is done there is preliminary determination by the commission importers and exporters can then respond that information goes through a verification process. There is then a preliminary determination by the commission then the Minister of Trade and Industry makes recommendations and final determination. Finally, the decision is implemented through publication in the government gazette. This process normally takes ten months.\textsuperscript{166}

### 2.7.2 Justification of South Africa’s use of anti-dumping duties

At glance one might view South Africa as a protectionist country. However, Nakagwa\textsuperscript{167} sheds more light into this by giving some reasons why South Africa has been one of most prolific users of anti-dumping. South Africa gained its independence in 1994 and this made it possible for it to open up its markets to countries that it did not previously trade with during apartheid.\textsuperscript{168} This is noticeable because a decade into GATT it had imposed over half of the anti-dumping duties globally.\textsuperscript{169}

Another reason is South Africa plays a key role in the region SADC and SACU. It also has the most advanced economy as well as a robust infrastructure thus playing a leading role in trade and providing a leeway to trade in the Southern African region. One of the key factors that one should bear in mind is that South Africa is recognised as a developed

\textsuperscript{165}ITAC Trade Remedieshttp://www.itac.org.za/pages/services/trade-remedies (Accessed 23 February 2018).
\textsuperscript{166}ITAC Trade Remedieshttp://www.itac.org.za/pages/services/trade-remedies (Accessed 23 February 2018).
country in the WTO.\textsuperscript{170} Also it signed trade agreements with EU, These agreements are European Union Free Trade Area (EFTA)-SACU Free Trade Agreement, SADC and SACU.\textsuperscript{171} This also has an impact on the domestic industries because when duties reduce from product coming from these countries it will negatively impact the South African domestic industry.\textsuperscript{172} Anti-dumping plays a crucial role in addressing these cases. The import trade with SADC is significantly lower than from the EU thus a third of investigations are brought against the EU where trade is much more visible.\textsuperscript{173}

Also it is important to note that though the economy of South Africa is the largest in Africa\textsuperscript{174} as a whole, on the contrary it has a low a Gross Domestic Product (GDP) of 312 billion\textsuperscript{175} and this is spread across different industries in the economy.\textsuperscript{176} The diverse nature of the economy thus makes small segments of industries which can easily feel the effects of imports.\textsuperscript{177} The economy is also characterised then by single producers which further exacerbates the problem as there is less competition making the industries more vulnerable to foreign imports and one of their biggest trading partners being the USA and the EU which have more advanced economies.\textsuperscript{178} Brinks states concentrated industries are steel, plastic, glass and pharmaceuticals.\textsuperscript{179} These industries have been the prolific users of anti-dumping during the period 1992 and 2014 almost, over three hundred investigations where launched by these industries. Markedly, is that of the investigations

\textsuperscript{170}Vickers B, (2014)58-64.
\textsuperscript{172}Vickers B, (2014) 60-64.
\textsuperscript{173}Vickers B, (2014) 63-64.
made, they mostly comprised of single players in the industry or two players in the industry. Others where there is one leading player and supported by smaller industries. Over 150 where brought by one company industry.180

The global economic recession posed serious challenges to global trade at large and South Africa. Growth has been notably slow where in 2013 South Africa’s GDP grew with only 1.9 per cent and decreased with 1.5 per cent.181 Also important to note is that South Africa’s major trading partners to date have not fully recovered from the effects of recession which are Europe and USA.182 Consequently the negative effects of a slowed economic growth evident in South Africa, display increased levels of unemployment which is estimated at 26.7 per cent and poverty levels being high. Other challenges are high costs of labor and transport which can affect some industries especially the manufacturing the recent power outages affect the manufacturing process.183 This results in stunted the growth in the manufacturing industry. Against this backdrop it becomes imperative for South Africa to protect its industries. It important to note that membership of South Africa in the WTO keeps any protectionist measures under check.184

2.8 Conclusion
Countries can use trade remedies using WTO laws. This Chapter has given an over view of trade remedies looking at anti-dumping duties, safeguards measures and countervailing duties. The former, which is the most used remedy of three and South Africa has used it even before GATT. Developing countries face a cumbersome task in their quest to exercise their legal right in using trade remedies these challenges stem from, technical, financial amongst others. Their full participation in the WTO has remained minimal as compared to the developed nations. Most countries that use trade remedies such as South Africa, Egypt and Morocco hitherto are at an advanced stage of industrialisation, hence

the importance of protecting their domestic industries. The use of trade remedies has received criticism as some countries impose these trade remedies without enough legal and functional backing resulting in protectionism, South Africa as a prolific user if trade remedies have faced these criticisms. The chapter has revealed some of the reasons to this such as its history, recession and the role it plays in the region. It has also discussed the key challenges faced by developing countries in implementing trade remedies. The next chapter will then discuss PTAs with a further analysis to follow that will link them to the trade remedies discussed above.
3 Chapter 3 Preferential trade agreements

3.1 Introduction

The use of trade remedies and preferential trade agreements (PTA) often results in conflicting nexus. As exemplified by the friction between South Africa and United States of America (USA) in the African Growth Opportunity Act (AGOA) case.\(^\text{185}\) It is imperative to then understand the nature of PTAs in the same way trade remedies have been discussed in the previous chapter to give a balanced analysis. The permanency of PTAs is currently undoubted and has become ideal in global trade.\(^\text{186}\) There is a consensus among scholars such as Sandrey\(^\text{187}\) and Limao\(^\text{188}\) who have an analogous view to the above fact. They argue that PTAs have become a permanent feature in multilateral trade; pointing to factors such as their rapid growth and the looming size almost all the members of World Trade Organisation (WTO) are at the very least a member of more than one PTA. Up to the period of 2015 about 612 notifications have been made to the WTO and 406.\(^\text{189}\) Under PTAs there are unilateral trade preferences, which could be reciprocal, whereby, developed countries allow imports and remove trade barriers, or they could be non-reciprocal in the form of a waiver by a country.\(^\text{190}\) Also, Regional Trade Agreements (RTA) gives preferences and often at times linked to regional integration, these have been thriving such that from May 2018 there about 287 RTA in force.\(^\text{191}\) Three characteristics of these are that they are reciprocal, are trade agreements and offer


\(^{188}\) Limao N, (2006) 156.

\(^{189}\) Srinivasan TN, Preferential Trade Agreements with special reference to Asia 2 http://aida.wss.yale.edu/~srinivas/PreFTradeAgreements.pdf(Accessed 11 February 2018).


preferences These RTAs can be in the form of Free Trade Area (FTA), Customs Union (CU), Common Market (CM) and Monetary Union and these form the norm.\textsuperscript{192}

This chapter will firstly, give an overview of the PTAs that are permissible under Article XXIV of the GATT and secondly, it will look at the categories of preferential trade agreements then thirdly, proceeded to give examples of the trade agreements that South Africa has under the WTO, commencing with the Trade Development Cooperation Agreement (TDCA) and the recently signed Economic Partnership Agreements (EPAs). However, outside traditional scopes of PTAs there are also agreements which give preferences such as the AGOA and the BRICS these will be explored. The chapters will also, advantages of PTAs and the disadvantages. Finally, a discussion of how best to manage PTAs will be given.

3.2 Preferential trade agreements within the context of General Agreement on Tariffs and Trade (GATT)

Primarily the principle of non-discrimination is the core of the General Agreement on Tariffs and Trade (GATT), in order to ensure fair trade under the Most Favoured Nation (MFN) clause.\textsuperscript{193} There are five exceptions to this clause namely, general exceptions which are applied to protect human, animal or plant life therefore measures are taken to control trade in this area.\textsuperscript{194} Secondly there is security interest trade to which these restrictions are applicable for example where there are concerns of national security. Thirdly RTA member states of the same customs union or free trade area can override the MFN rule to give preferences on trade in goods and services.\textsuperscript{195} These preferences will not be extended to all WTO members. Fourthly there is the balance of payments to safeguard


\textsuperscript{194}See GATT Article XXI General Exceptions.

\textsuperscript{195}See GATT Article XXI General Exceptions.
external financial position and lastly, there are also waivers applicable to other member states and these temporary waivers can be granted in exceptional cases.\footnote{WTO Regional Trade Agreements, https://www.wto.org/english/tratop_e/region_e/rtta_pta_e.htm (Accessed 3 January 2018.).}

3.2.1 Historical overview of the World Trade Organisation and the rise of preferential trade agreement.

The failure of the Doha Development Round strengthened the rise of the new wave of PTAs though unintended in their purpose, resulted in a clause designed as an ‘exception’ to become the ‘rule.’ The key reason often pinpointed is the failure of the Doha Development Round to reach a conclusive consensus.\footnote{See GATT Article XXIV para 4-10 and the Enabling Clause para 2c.} The delays in reaching a consensus could not be ignored as global trade has to go on. Countries shifted focus and sought other means of engaging in effective trade and the clause designed as an exception which Article XXIV of the GATT and the Enabling Clause paragraph 2 are now being used as the rule.\footnote{Kapil K ABC, of preferential trade frequently asked questions (2009)3http://www.cuts-citee.org/pdf/monograph09-abc_of_preferential_trade_agreements.pdf (Accessed 4 February 2018.).} Membership in the WTO has grown to 164.\footnote{WTO Members and Observers https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (Accessed 4 February 2018.).} Therefore the accelerated growth of PTAs can also be attributed to this fact, thereby resulting in increase in trade equating to more countries desiring to be part of a PTA.\footnote{Kapil K ABC, (2009)3.} Also the WTO which is an established trade regulating body, has been dubbed to have an effective dispute settlement committee, which has paved way for countries to solve their disputes in trade related matters in this illustration for PTAs.\footnote{Kapil K ABC, (2009)3-4.}

A brief historical overview of WTO gives an insight of the genesis in the manifestation of PTAs. From the onset, the formulation of the WTO raised some suspicion as countries had not yet grasped the importance of the organisation. There were groups against trade globalisation, as well as environmental groups and labor groups who fought hard against the inception of WTO. This was so because there was a lack of consensus amongst
member states on how trade should be liberalised. Other countries felt that their
economies were at infancy and could not face the pressure of globalisation, therefore
they sought that the trade rules be revaluated. Others wanted to go ahead with the
establishment of WTO, as they saw the benefits.\textsuperscript{202} In 1999 at a ministerial conference in
Seattle there was stalemate in negotiations as no agreement could be reached. At the
same time protesters also mounted pressure by blocking the streets.\textsuperscript{203} Two things which
could not be agreed on were the agenda and the existing rules. Even though they faced
difficulty in finding a balance, another ministerial meeting called the ‘Doha Development
Round’ was held in Doha, though very little progress was made.\textsuperscript{204} Again the next
ministerial meeting was held in Cancun and this time it became more apparent that
reaching an agreement was a far-fetched dream.\textsuperscript{205} Developing countries felt that their
needs had not been placed into consideration at the adoption of the work programme. To
date, the Doha Development Round has still not achieved its main purpose of generating
a balancing trade system.\textsuperscript{206}

One should take note that PTAs did not come into effect because of the Doha
Development Round. They simply began to spread at a faster rate. In fact, before the
Doha Development Round, preferential trade agreements existed though they were not as
prevalent as they are now. Caliskan\textsuperscript{207} reveals that during the period from 1986 to 1994,
PTAs were used as safety nets, since there were perceived fears of the failure of the Doha
Development Round, particularly by the United States of America (USA). During the
1960’s, regionalism was shaped differently from the way it is shaped now. At that time,

\textsuperscript{204} Hartman WS, ‘The WTO, The Doha Round Impasse, PTAs, FTAs and RTAs’ (2013)\textit{The
International Trade Journal} 413 –415.
\textsuperscript{205} Hartman WS, ‘The WTO, the Doha Round Impasse, PTAs, FTAs and RTAs’ (2013)\textit{The
International Trade Journal} 421.
\textsuperscript{206} Hartman WS, ‘The WTO, the Doha Round Impasse, PTAs, FTAs and RTAs’ (2013)\textit{The
International Trade Journal} 413 –415.
\textsuperscript{207} Caliskan O, ‘The Rise of preferential Trade Agreements (PTAs): A review from the perspective of the
2018).
countries which were almost equal in terms of development levels, and were close geographically, advanced in regionalism. Mostly, these were influenced by domestic policies, which substituted imports on industrialisation and this had an impact on the market size of local industries. Trade was liberalised mostly on goods through the reduction of tariffs and removal of border barriers. This contrasts with the recent trends in regional integration which have evolved and are no longer limited to geographical area but have become more diverse.

### 3.3 Categories of preferential trade agreements

Typically, PTAs can comprise of signatories within the same region such as the European Union, the Southern African Development Community SADC and the African Continental Free Trade Area (AFCTA) to mention a few. These PTAs form what is known as Regional Trade Agreements (RTAs). They can be placed in different categories such as Free Trade Area (FTA), Common Market (CU), Customs Union and Economic Monetary Union (EMU). Under the WTO, RTAs contain both elements of a Customs Union and Free Trade Agreements. In an RTA, trade is liberalised on both preferential and reciprocal basis. Alternatively, trade can be liberalised on a preferential basis only meaning that there is differential treatment of trading partners and preferences are unilateral. Examples of this are the AGOA, which will be fully discussed later also the European Union Everything But Arms (EBA).

---

214 World Bank Regional Trade Agreements and preferential trade agreements a global perspective (2005).
215 World Bank Regional Trade Agreements and preferential trade agreements a global perspective (2005).
216 World Bank Regional Trade Agreements and preferential trade agreements a global perspective (2005).
An (FTA) deals with trade in goods and services in recent times, by eliminating barriers to trade amongst trading partners.\textsuperscript{217} Recently FTAs have been preferred as they are practical and there is less reliance on politics and geographical location.\textsuperscript{218} They are also prone to accessibility on commercial markets and typically involve fewer members, making it easier to reach consensus whilst maintaining the autonomy of the nations.\textsuperscript{219} Benefits are exclusive to members of the FTA and rules of origin\textsuperscript{220} are essential in concluding an FTA.

A Customs Union has redistributive instruments on tariff revenue among countries.\textsuperscript{221} These are the opposite of FTAs and normally involve more countries than an FTA and have a longer time frame leading to a loss of sovereignty on policy making countries.\textsuperscript{222} A Common Market (CM), this historically dates as far back as 1951 from the treaty of Paris.\textsuperscript{223} Challenges in the coal and steel industry, such as double taxation in different countries, gave rise to the need of a supervisory body in taxation for CM. This was put in effect, in 1953 with the objectives of monitoring the regulations on competition and the creation of a more transparent taxation and pricing system for the member states. From then this was modified to what we present day have as the CM.\textsuperscript{224} It is now an ‘agreement between two more countries, which entails removing trade barriers and establishing

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{217}Saundrey, R, TRALAC Trade negotiation for a free trade agreement a guide to general principle and requirements (2013)6-9.
\item \textsuperscript{222}Andrimanjara S, World Bank Group Customs Union 111-115.
\item \textsuperscript{223}Treaty Establishing the European Coal and Steel Community, (1951)261 U.N.T.S. 14.
\end{enumerate}
\end{footnotesize}
common non-tariff barriers for importers.’ This enhances free movement of goods and services, labor and capital amongst the member states. Some of the advantages of this system are that consumers have more choices and lower cost of goods and services. Economies become efficient and effective due to competition and seamless business transactions.\textsuperscript{225}

An Economic Monetary Union entails countries having the ‘same common currency and macroeconomic policy.’\textsuperscript{226}

3.4 Examples of preferential trade agreements under GATT/WTO that South Africa is part of

3.4.1 Trade Development Cooperation Agreement (TDCA)

At the demise of the apartheid regime, South Africa needed to be integrated in global trade. 1997 South Africa became part of the Lomé convention but unlike other ACP member it had no access to the benefits. Therefore, South Africa traded with the EU the European Union (EU) under the TDCA preferential agreement, South Africa entered into an agreement with the EU in 1999, named the TDC and this came into full effect in 2004.\textsuperscript{227} One of South Africa’s main precipitating factor, was to move away from its past trajectory. Prior 1994, the country was highly protective of its domestic industries using trade barriers in the form of both tariff and non-tariff barriers.\textsuperscript{228} The main objective of this trade agreement was to promote market access to the EU.\textsuperscript{229} It also dealt primarily with trade and in goods and to a smaller extent, services. Under the agreement, South

\textsuperscript{226}Andimanjaras S, World Bank Group \textit{Customs Union} 111-115.
\textsuperscript{227}See Trade development cooperation Agreement Act 2004/441/EC 26 April 2004.
\textsuperscript{229}See Trade development cooperation Agreement Act 2004/441/EC 26 April 2004.
Africa is required to eliminate over 85 per cent in tariffs on goods traded whilst the EU had to eliminate over 90 per cent.\textsuperscript{230}

Even though South Africa was part of the TDCA, other trading partners in the Southern African Customs Union where not in full support of this, as they were not part of the agreement with the EU and did not have any direct benefits from the agreement. Though SACU member states share a common tariff, they were not part of the TDCA, but had to abide by its provisions and this placed them at a disadvantage. Sharing a common external tariff meant that other SACU members had to reduce the tariffs to the EU as agreed in the South Africa and EU in the TDCA agreement.\textsuperscript{231} SACU member states where therefore not in support of the TDCA because they had no benefits to their side, the rules of origin was again another woe to them, the TDCA has been dubbed a loss to these SACU members.\textsuperscript{232}

### 3.4.2 Economic Partnership Agreements (EPAs)

The transition to the EPA in the context of South Africa requires a brief summary of the TDCA as it played a key role. At the end of the TDCA South Africa traded with EU under the EPA. One of the challenges South Africa continues to face as compared to other ACP countries is that it has the a more advanced economy and therefore does enjoy the same preferential access in same manner. This can pose as a hindrance to regional integration which remains key in the continent.

The EPAs culminated from prior concessions such as The Lomé conventions which were between EU and African, Caribbean and Pacific countries, commonly referred to (ACP)

were non-reciprocal.\textsuperscript{233} The intended benefits to the ACP were not fully comprehended; differing developmental levels between ACP countries and also interpretation by developing countries of goals of EPA was not what the EU hoped for. The EU grew frustrated as there was still lack of diversity in the economies. These agreements more importantly were non-reciprocal instance, diversity of the economies, frustrations began to mount on the part of the EU.\textsuperscript{234} Also importantly, these agreements were not in line with the WTO legal requirements, especially non-discrimination under Article XXIV. The Lomé convention Fast forward to 2007; it became more apparent that trade agreements between the EU and ACP were not sustainable and that member states had to abide with the WTO rules and regulations. For instance, if one looks at the enabling cause which allows preferences to be given to developing countries and least developing countries under the condition of aiding the countries to develop the Lomé failed to achieve this for more than 25 years and it became clear that this was not sustainable. This ushered in the Cotonou Agreement as a backbone to the EPAs, as it was modified to be more development oriented and reciprocal in nature.\textsuperscript{235} Strikingly, the EPAs then managed to give the ACP countries the much-needed relief in terms of protection of their infant industries and key industries as this was brought forward during the negotiation process. Both parties had realised the mistakes of the past concessions, which were not reciprocal and were concluded on charity basis to the ACP countries.\textsuperscript{236}

\textsuperscript{233}Lomé Convention was a trade agreement between European Economic Community and 46 ACP countries, and was modified from Lomé I to Lomé IV. However, it differed from Yaoundé because it grew in membership from the European community as well as African countries. It was mostly criticised for being non-reciprocal and the Structural Adjustment Programs which had to be implemented by ACP countries to secure aid, it failed to increase trade and ACP countries continued to be poor. Some changes, however, were made such as the promotion of democratic principles and it aimed to improve economic and political reforms. For full discussion on the Lomé Conventions See Banthia A, ‘A Success or Failure? An evaluation of fifty years (1957-2007) of European Union Development Policy in Africa, Caribbean and the Pacific’ (2007) 4-8.


\textsuperscript{235}SADC The Economic Partnership Agreement: What’s in it for SADC?

\textsuperscript{236}SADC The Economic Partnership Agreement: What’s in it for SADC?
The TDCA formed the basis of EPA negotiations on trade related aspects and once the EPA was in full force the TDCA was terminated to be replaced with SADC-EPA South Africa became part of the SADC-EPA and this one accommodated other trading partners in the SACU. The SADC-EPA is a legal agreement between the EU Botswana, South Africa, Lesotho, Mozambique and Namibia mostly referred to as (BLMNS). This agreement provided the much-needed relief to other SACU members who had been left out in the benefits of TDCA; they could now trade with South Africa and under the same trade agreement. This made trade to be easier in the regional grouping as prior the SACU members traded with the EU under the Lomé and Cotonou It must be noted that despite the name, the SADC EPA does not involve all SADC members in the strict sense. Other SADC countries trade under negotiating under EU-Eastern and Southern Africa EPA which comprises of Mauritius, Madagascar, Zimbabwe and Seychelles and Malawi there is also the EU-Central Africa EPA which are Cameroon, Central African Republic, Chad, Congo (Brazzaville), Congo-Democratic Republic of (Kinshasa), Equatorial Guinea, Gabon, São Tomé & Príncipe.

However, the basis of the conclusion of the EPAs has come under scrutiny by scholars who argue that it is not consistent with the WTO laws, especially with the Least Developed Countries (LDC). Nevertheless, it is still in the legal parameters of article XXIV, with the condition that the Free Trade Area (FTA) maintains uniformity; and this is despite differing levels of development of the other partner countries with reference to Article XXIV.

---

240 DiCaprio A and Trommer S, ICSTD Tracing the Special and Differential Treatment principle through the CARIFORUM-EPA (2009).
3.4.2.1 Benefits of Economic Partnership Agreements (EPA)

Countries do not just enter into agreements, they are lured by benefits and for the EPA agreement these are, first and foremost, African countries have been plagued by poverty and the EPA upholds poverty alleviation. It facilitates trade and is a departure from the previous agreements, which were used as aid and slowed down economic growth. These EPAs strengthen economic growth through reciprocity and trade.241

Secondly, the SADC EPA takes of the importance of different developmental levels, therefore it does not only promote trade liberalisation, but takes into full account that African countries are still going through economic transformation and have not matured as much as the EU. Therefore, there is flexibility in its conditions, with measures in place to allow growth of industries and protection of key industries, since it is also asymmetrical in nature.242

Thirdly, prior trade agreements, for example the TDCA, did not promote regional integration. The advantage of the SADC-EPA is that it now accommodates the SACU members. Therefore, the benefits are now applicable to all SACU members and they have a joint external tariff with regards to products and rules of origin.

Fourthly, the SADC-EPA has offered a different approach as it has become more sensitive to the importance of trade by promoting a stable economic environment for business to thrive in. The EPA offers market access to the SADC member states that are part of the agreement with the EU. It also further gave SADC countries a participatory


44
role in the agreement, therefore leaving no room for the EU to dictate how the partnership will work. This meant the EU had to accommodate the different levels of development for all members involved in the deal, and this is highlighted in the partnership agreement. This is a viable environment for investors and business because it is more reliable.\textsuperscript{243}

Fifthly, the trade agreement maintains fundamental human rights, democracy and rule of law, as well as unity. It also seeks to improve the livelihood of people though creating more opportunities, which will create employment. It also promotes economic growth through investment and trade, without ignoring the importance of the environment and maintaining sustainable labor standards. The EPA agreement will enable poverty alleviation and capacity development, as well as sustainable development.\textsuperscript{244}

And so as small analysis of these five aspects, it reveals that EPA agreements have evolved from the previous trade agreements between EU and ACP countries. They have become more inclusive and robust on promoting development. However, it takes time for the benefits to be fully utilised in practice.

3.4.2.2 Challenges of Economic Partnership Agreement

While the benefits of the SADC-EPA are apparent and are embedded in the objectives, reality proves there have been some challenges and concerns, such as the rules of origin. Firstly, there is a lack of clarity as the detailed information of cumulating mechanism was yet to be concluded which are part of the rules of origin.\textsuperscript{245} Transforming the objectives

\textsuperscript{244}European Commission EU Trade and Development EU Publications, \textit{10 Benefits of Economic Partnership Agreements} (2016)4-8.
\textsuperscript{245}Definition, Cumulation ‘is a principle that allows, within a set of conditions and limitations, materials originating elsewhere to be counted as local materials for purposes of meeting the relevant local content and local processing requirements as specified by the respective Rules of Origin (RoO).’ For full discussion on Cumulation See TRALACNaumann E, \textit{Cumulation provisions in the SADC EPA 2018} https://www.tralac.org/discussions/article/12626-cumulation-provisions-in-the-sadc-epa.html (Accessed 8 June 2018).
into practise reveals that more work needs to be done, as industries also needed to learn about rules of origin so that they can take full advantage of them such as value chains. The agreement also lacks a blueprint on aggressive promotion of finished products to the EU from SADC.246

Secondly the public is not adequately informed about the agreement and thus lacked understanding of how it could benefit them.247 As a consequence, this hinders industries in fully utilising the benefits of the agreement. A clear tool is yet to be established in this regard, that is easy to read and understand.248 Thirdly the agreement stifles the growth of regional integration, which is important in Africa. The SADC countries in the strict sense, are not part of same agreement.249 There is the SADC-EPA and the SADC-ESA. Though both agreements involve SADC countries, these deals could have been negotiated together. Implementation of the agreement seemed skewed to the benefit of the EU rather than SADC member states. Finally, there have been issues of commitment, which are also central to the results of trade agreements being grasped. Though there is progress in this regard, the levels of commitment are low for other member states in the SADC-EPA.250 There is therefore need for more robust measures to encourage commitment, with the role of civil society being important to ensure accountability in the government’s commitment. Because of their importance in the process, civil society also needs to be sensitised on PTA agreements that governments enter into.

The different categories mentioned above form the norm in terms of PTAs and RTAs but there has been a recent shift to newer approaches to suit the needs of different countries,
and examples of this are African Growth Opportunity Act (AGOA) and collaborative agreements such as Brazil, Russia, India, China and South Africa (BRICS). These agreements are central to this thesis because they reveal how South Africa balances trade remedies and preferential. A general overview will be given before a further analysis in chapter four.

3.5 Preferences beyond the traditional approach

3.5.1 African Growth Opportunity Act (AGOA)

Commencing, with the AGOA Act, as a point of departure, understanding the nuances of the trade act can aid ensuring that there is maximisation of the benefits of AGOA. The premise of AGOA since its inception was set on three conditions. Firstly, the recipients of AGOA should have a market-based economy or work in progress in that regard. Secondly, a more strengthened rule of law that enshrines workers’ rights and removal of trade barriers as well as economic policies that promote livelihoods of people and tackle corruption. Thirdly, preserving human rights and averting any activities that insidiously affect USA national security or promote terrorism. In addition, to the above, is a yearly presidential review to ascertain if the beneficiaries of the AGOA agreement are still adhering to the eligibility requirements of the Act. The serving USA president is mandated to submit a report to the Congress on how each of the 49 countries is progressing (Ref to section 506 of the AGOA Act).

Arguably, this preferential access has provided economic growth to the participating countries. To South Africa, these benefits include increase in employment with 62 000

---

252 Department of Commerce United States of America Summary of AGOA.
253 Department of Commerce United States of America Summary of AGOA.
254 Department of Commerce United States of America Summary of AGOA.
jobs created in the automobile industry, resulting in the expansion of the industry. Automotive exports from the USA reported up to R22.6 billion trade value, an increase from R3.5 billion in 2005. Trade between USA and Africa has increased as noted by USA Trade representative Ron Kirk. Also, AGOA has achieved its intended goal of creating a synergy between trade and economic development.

AGOA Act gives benefactor nations an opportunity to diversify their markets, by increasing production levels on goods normally not produced huge in volumes in their countries but are part of the AGOA preference list. African countries tend to specialise in a few industries but access to the USA market provides an incentive to expand on those industries as they can sell them duty free into the USA. The Generalised System of Preferences (GSP) is an important stimulant to increase in production and the value of goods produced. There have also been improved reciprocal trade relations between USA and the AGOA eligible countries.

Access and knowledge in trade are some of the challenges that African countries face in trade. To address these challenges AGOA provides technical assistance, therefore improving on capacity building. Programs such as ‘Millennium Challenge Corporation’ as well as United States Agency for International Development (USAID) have facilitated this. In exporting to another country there is increased competition and the product is

---


required to match or exceed the quality of those produced in the importing country. Organisations such as the ‘Africa Global (AGCI) Competitiveness have assisted emerging African companies.’ Such organisations address issues such as understanding the rules in trade, financial constraints and identifying investment opportunities, through imparting enterprises with useful education and training.

AGOA has also facilitated efforts in fighting poverty and improved economic conditions. Through AGOA countries have taken significant strides to make their environment investor-friendly and easier to do business in. Improvements on social and political stability are visible, and they have also grasped the importance of working together through promoting regional integration.

---

Figure 1

South African AGOA excluding and including GSP from 2007 to 2016

Prices

Years


Data from AGOA Data Center
Figure 1: Trade between South Africa and USA in the years 2007-2016, with the two graphs showing trade volumes with GSP included (yellow) and excluded (brown). Price = Unit in Customs value USD millions of data extracted from AGOA data center.\textsuperscript{262}

To show that AGOA has opened more trade opportunities Figure X reveals that trade is higher including GSP, but has been increased sharply between 2007 and 2008, but drastically declined during the time of recession. From 2010 to 2011 there was an increase, however thereafter it is showing a decline and only becomes steady 2015 to 2016. Trade excluding GSP follows a similar trend. In the event that AGOA faces termination, it could be a major loss for participating countries, but this could result in South Africa making significant changes to increase product variety.

An analysis of the impact of AGOA reveals mixed reactions to its future with others opting for extensions in preparation for a more reciprocal trade relationship. The intentions of AGOA are not clear the motto often said by the USA President Donald Trump ‘The American people will come first.’\textsuperscript{263} Shows how the USA will promote its interest at any cost The fact that South Africa even served as an example for other African countries on the consequences that they are likely to face if they do not conform to wills. of USA.A statement by the USA Ambassador to the African Union (AU) reveals worrying motives, which lean towards a global competition by developed nations to take advantage of the continent’s resources, asevident in his quote:

‘If we don’t invest on the African continent now, we will find that China and India have absorbed its resources without us, and we will wake up and wonder what happened to our golden opportunity of investment.’\textsuperscript{264}

Dr Donald MacKay stated that ‘AGOA is a gift to the country which is not reciprocal…you just have to accept it.’ This is a controversial statement, which to some extent, reveals some challenges that African countries have faced under AGOA, particularly South Africa. The lessons from South Africa are useful and eye opening to other countries. AGOA has been termed a stimulant of economic growth, which aims to enhance the relations between Africa and the USA, in a bid to promote global integration of the benefactor countries. However, the intentions of the USA may say otherwise, proving to be ulterior motivates which benefit the USA and not necessarily the AGOA benefactors.

3.5.2 Brazil, Russia, India, China, South Africa (BRICS)

A suffice discussion of the newer approaches in the form of collaborations that are not under WTO PTAs, involves the BRICS. This agreement also highlights a conflict between preferential trade agreements and trade remedies. BRICS is a collaboration of five countries which have growing economies and seek a different perspective in the global order of business and trade. It consists of Brazil, Russia, India, China and South Africa (BRICS). The founding states where Brazil, Russia, India and China formerly known as the (BRIC) and commenced negotiations with other countries which, had similarities in terms of stability, in economic growth and growing populations, as well as a firm industrial capacity. In 2010 South Africa joined the other countries and grouping became known as the BRICS.

Dissatisfaction with the current global political order also contributed to the establishment of this collaboration; especially with the effects of the recession, which

266 Prinsloo C, SAIIA ‘AGOA and The Future OF US-Africa Trade Relations.’
267 Prinsloo C, SAIIA ‘AGOA and The Future OF US-Africa Trade Relations.’
was felt globally whereby eventually this collaboration would ultimately simulate the G7.\textsuperscript{269} The main aim of forming BRICS was to lead the way in terms of global economic development, and to enhance the role of both underdeveloped nations and developing nations. It was forecasted that "by 2018, the cumulative GDP of BRICS countries will exceed that of United States and also that by 2030 will exceed that of G7."\textsuperscript{270} Based on the Sanya Declaration,\textsuperscript{271} the foundation of BRICS was honesty, realism, unity, reciprocity, non-exclusion and diplomacy.\textsuperscript{272} They collectively have demography of 41 per cent of the world’s population and are able to play an important role in the world economy.\textsuperscript{273}

From its inception, BRICS had challenges and as a result, some did not have confidence in it and forecasted its failure in 2011 as revealed by the following sarcastic statement by one British member of the European Parliament, ‘BRICS is rather a state of mind.’\textsuperscript{274} Chiu summarises the challenges in BRICS by stating that differing levels of economic development hinder economic progress, unlike economically advanced economies in the G7. For instance, China depends on investments for growth and Russia on energy sectors. The former also has a prowess in big industries but has a weak financial and service sector.

Additionally, industries in South Africa, Brazil and India are still insufficient and underdeveloped. These countries often have to deal with the developmental issues on the

\textsuperscript{269}Demiral CT, \emph{The analysis of BRICS and the Diverse Role of BRICS Countries in International Politics} (2014).2
\textsuperscript{271}University of Toronto \emph{BRICS information Center SANYA Declaration} http://www.brics.utoronto.ca/docs/110414-leaders.html (Accessed 20 June 2018).
\textsuperscript{272}University of Toronto \emph{A global Forum for the New Generation: The Role of BRICS and the Prospects for the Future} (2012).
ground, with South Africa struggling with the weakening Rand, making sustaining its role in the grouping, a cumbersome task.\textsuperscript{275} They all have to deal decisively with the changes taking place in their economies before they can make a significant global impact. Recently, BRICS had challenges in reaching agreements and some of their ambitious goals are yet to be realised as the ‘hype around their formation seems to have died down.\textsuperscript{276} The Recession in Russia and Brazil has contributed to delays in some projects, therefore their objective of replacing the western supremacy seems to be far off; with a few noticeable achievements such as the New Development Bank, which approved projects worth USD1.5 billion in 2017.

Further highlighting the challenges, the BRICS countries face as a panacea to western supremacy, they have internal problems of incoherence despite having similar developmental problems. Their economies and political paths are different. They had differences before coming together, such as those between India and China, which had some political and economic clashes. To completely erase these differences has not been easy and is still ongoing. Also, Brazil and India are at loggerheads in terms of similar interest in markets which they share, and the fact that there has been fierce competition for these markets. In addition to this, China being a major contributor, because of the previously described features of its economy, integration with others might prove to be problematic. Though these challenges have not been of concern at the present for BRICS, they may have contributed in has slowing down their momentum.\textsuperscript{277}

The BRICS countries are not legally bound by a treaty, which tend to provide much needed robustness on the policies that are made in terms of morality, by ensuring that they remain consistent with the legal parameters in place in their countries and

An example of this is the fact that in BRICS there is a lack of legal instruments that cater for the grouping. Looking at, for instance, policies made in global E-commerce, which have become a pinnacle in trade because of the internet and advances in technology. E-commerce has amassed a growth of over 25 trillion globally and has been an accelerator in trade domestic, regional and international trade. Business to business E-commerce has been on the lead with over US$20 trillion in trade and followed by business to customers which are still on the rise with almost US$3 trillion. World-wide, this has fostered employment creation and facilitated growth in industries, which yields positive results in terms of poverty eradication and enhancing welfare. BRICS countries realised this and put forward policies in this area though they are scant in the legal aspects. For e-commerce to thrive there is also a need for an enhanced security and honesty from the one trading end to the other. The current regulations are not enough to solve the existing E-commerce challenges such as regulations for online and offline trade, which are direct. There are regulations, but these fall under the broader spectrum of national and international laws of data, privacy and customer protection. There is need of a legal arm in BRICS for it to be fully effective.

Despite the challenges, BRICS continues to be an important collaboration, which regardless of the initial skepticism surrounding its formation has not died. South Africa is hosting the next meeting, and the BRICS unity is projected to increase the global economy by over 25 per cent in 2020. In 2017 they contributed 23.6 per cent to the global economy. The BRICS collaboration is thus still pivotal. They have worked to foster partnerships even though they have differing economic levels, with China being the country that contributes the most in their partnership. The BRICS countries have shown the importance of collective agreements. For instance, they were able to jointly come forward with an Action Plan for the 2030 Agenda for Sustainable Development,

279 UNIDO and ITC Status, Challenges and opportunities of BRICS E-Commerce (2017).
which was adopted by the G20. Furthermore, they advanced the need for peace and stability, and called for the G20 to be in full support. The role of South Africa is vital as a key link to the needs of the developing countries and Africa. Whilst BRICS has challenges, it remains important in providing balance of power to the western hegemony.

3.6 Advantages of preferential trade agreements

Having looked at different PTAs that South Africa it is important to know why countries often find concluding preferential trade agreements attractive than the multilateral trade system. Proponents of PTA point at three key areas, which are: they much quicker to conclude, flexible and offer countries the ability to choose. They thus become more attractive than the multilateral negotiations. In addition according to Limao, political leaders have preferred PTAs. Baccini and Urpelainen reiterate this by stating that one of the reasons leaders find PTAs attractive is that they increase the credibility of local economic reforms. By entering into a PTA with a country that has a stronger economy, this plays an influential role to the domestic supporters, who will gain more confidence on transformative economic policies. The PTA strengthens the position of the leaders in assisting in effecting the economic reforms that would have faced antagonism from domestic opposition political parties. PTAs also help leaders who are in office for a limited period of time and thus become more attractive as they can be seen as having

implemented sound economic policies and this gains them support of voters in the next election.

Krishna raises a key question, having established that trade under PTAs has not contributed much to overall trade liberalisation. He questions, the rationale behind those that lobby against multilateral trade liberalisation in support of preferential trade. He states that politicians should then support preferential trade on the basis of being offered immunity of liberalisation on imports of those goods that compete with their production or those that offer market access to countries that their partner with. This would then mean that MFN and PTA would complement each other in terms of tariffs.

Trading Partners can discriminate against each other on the basis of some Non-Tariff Barriers (NTB) provisions which are allowed under GATT. The PTA can therefore offer protection from these NTBs. Member states can provide a ‘safety valve’ for local producers as well as exporters it partners with in the same PTA. Also Dieter on the other hand argues against the use that the proliferation of preferential trade agreements is weakening to the WTO. He argues that the preferential trade agreements go against the principle of non-discrimination which is at the heart of GATT. GATT article XXIV gives exception to the GATT non-discrimination and has gained momentum as the rule. This ultimate distorts the welfare gains of fair trade. Bhawati agrees to this by

stating the often cited examples against GATT are not sufficient. The first and commonly stated one is that the GATT has become more of talk and very little action calling it the general agreement of talk to talk thus implying it has yielded very fewer tangible results. However, this notion fails to explain how the OECD countries tariffs were reduced significantly by GATT, further arguing against those who state that GATT is dead, he notes that countries have joined the GATT like China.²⁹⁷

Equally important is that PTAs reduce protection in terms of trade remedies. They have provisions which are against protectionism and have institutions that are established to deal with trade remedies unlike the WTO.²⁹⁸ Additionally, members of the same PTA have lower rates of imposing anti-dumping duties on each other as compared to other non-PTA members.²⁹⁹ Moreover, PTAs are important to developing countries as they provide a platform for enhancing knowledge on the negotiating system, giving them practising ground.³⁰⁰ The agreements often at times extend to capacity building, technology transfer and technical assistance.³⁰¹ Developing countries also enter RTAs so as to gain access to larger markets in the USA and EU. Though this is provided for under the MFN, it might avoid any further protectionism. It is important to note there is still visible protectionism on some products like agriculture.³⁰²

3.7 Disadvantages of preferential trade agreements

To suffice this analysis, it is important to point out that though, preferential agreements have become a common feature in the multilateral trading systems, and they are disadvantages to them. Dieter suggests with time countries will later realise the harmful effects of PTAs, though in the interim they have become a permanent feature.\textsuperscript{303} Some of the main disadvantages are complexities in the rules of origin often described as ‘spaghetti bowl’ a term which was first used by Jagdish Bhagwati in 1995.\textsuperscript{304} In addition to the latter, there is discrimination of other member states, high costs and failure to capture other important aspects such as labor, will be discussed below.

Due to the nature of PTAs, preferences are only extended to the parties involved in the agreement, are not for all like in the multilateral trade system.\textsuperscript{305} Therefore, goods produced in the country which is party to the agreement, are eligible for duty free trade. This results in complexities in rules of origin.\textsuperscript{306} The product nationality often becomes difficult to establish as a result and this is because member states will be avoiding divergence of tariffs. Directly linked to this are high costs in administration and the paper-work involved, particularly in developing countries, which lack resources. Additionally, Chauffor and Maur\textsuperscript{307} agree to this by stating that rules of origin can be manipulated to protect domestic producers of intermediate goods, thus moving away from the real objectives. This could also hinder the cost effectiveness by being uneconomical as they can raise the costs of supplying to the markets of preferential

\textsuperscript{303}Dieter H, \textit{The Multilateral Trading System and Preferential Trade Agreements can their Negative Effects be Minimised?} (2008) 4.
trading partners. A criterion has therefore established to minimise the negative effects of avoiding trade deflation. It is important note that this is not holistic approach as factors such as firstly a charge of tariff classification, secondly a minimum amount of domestic value added and finally the use of specific manufacturing products are the variables.

Balwdin argues that one of the problems with this is the spaghetti bowl effect, that means countries entering in many trade agreements and there is an overlap on the trade tariffs and rules thus tangling trade deals. This hampers the organisation of global trade. Three things emerge because of this, which are; application of tangled rules of origin is problematic in terms of administration. Secondly, there are constraints on the benefits trade agreements due to the implicit regulatory division of trade agreement. Finally, different tariffs or treatment of origin can lead to triangulation or diversion of trade shipping goods via a member with lower tariffs in order to gain access to a country with higher tariffs.

Regionalism also poses challenges of discrimination, which undermine the value of the MFN principle and has resulted in trade being ineffective economically. For instance manufacturing due to globalisation is no longer taking place in one country, as production

---

309 Deflation definition. Trade deflation is the decrease in the general price level of goods and services. This happens when prices fall because supply of goods is higher than demand.
tends to be spread to different nations.\textsuperscript{317} Manufacturing has become internationalised.\textsuperscript{318} The tangle complicates business for manufacturing.\textsuperscript{319} There is need for additional accounting for inventory management of products and inputs. Also the requirements in productive processes are different with not all of them being permitted in the differential rules of origin.\textsuperscript{320} Many countries form part of a regional grouping which makes it a daunting task to find trustworthy sources of supply.\textsuperscript{321} These negative effects not only affect firms in developed countries but also in the developing countries who are unable to negotiate trade effects of the tangle.\textsuperscript{322} The rich nations can maneuver with their financial muscle and this is hindrance to poor nations whose governments cannot assist. Therefore, the impact is to a large extent, felt by the poor countries.\textsuperscript{323}

Moreover, labor issues are often left scantily addressed, particularly in North-South agreements. The movement of temporary workers is often met with barriers such as stringent border controls. In the USA this has heightened since the 9/11 attacks with more scrutiny and increased paperwork needed. This poses a challenge to developing countries where unemployment is already high.\textsuperscript{324} Sandrey\textsuperscript{325} points this out by highlighting that the USA has tightened its labor laws on countries it has bilateral FTAs, with regards to other FTAs, with South America being a prime example. This has been a barrier to trade to countries that trade with the USA but, they decided to channel any disputes to the WTO. There has not been any consensus on Doha Development Round, furthermore trade

\footnotesize{\textsuperscript{317} Baldwin R, Thorntorn P, Multilaterising Regionalism (2008) 80. \\
\textsuperscript{318} Baldwin R, Thorntorn P, Multilaterising Regionalism (2008) 79-90. \\
\textsuperscript{320} Carnerjo R, Harris J, IADB \textit{Convergence in the rules of Origin Spaghetti Bowl a methodological proposal} (20010). \\
\textsuperscript{321} Carnerjo R, Harris J, IADB (2010)10. \\
\textsuperscript{322} Baldwin R, Thorntorn P, Multilaterising Regionalism (2008) 120. \\
\textsuperscript{323} Baldwin R, Thorntorn P, Multilaterising Regionalism (2008) 125. \\
and labor where not even part of the discussions on the table.\textsuperscript{326} The USA has also incorporated trade and labor in all its FTA agreements, with strict measures on those who do not abide with these, and this is done under The Trade Promotion Authority.\textsuperscript{327}

### 3.8 Managing the negative effects of preferential trade agreements

PTAs seem to be there for a while, though they hinder the proper functioning of multilateral trade. If they will become deeper or if another alternative on trade will emerge remains largely unclear.\textsuperscript{328} Regulation on movement of capital and protection of intellectual property rights remains largely covered by GATT with only 40 per cent in movement of capital and 34 per cent under protection of intellectual property rights referenced under different PTAs.\textsuperscript{329} It is not clear however, if this has economic effects as the area is still poorly studied in academic research.

However, the negative consequences of PTAs have to be dealt with. It is clear that the benefits are short-lived and hinder multilateral trade.\textsuperscript{330} The preferences are eroded due to high cost of sourcing supplies from different countries.\textsuperscript{331} One way would be to lower the MFN tariffs below 5 per cent, making the cost of preferences higher or equal therefore there is no incentive establish a PTA.\textsuperscript{332} This is a simplified analogy, as in reality there are many more complex variables which might complicate the process.

Equally important is that countries should also be aware that entering an RTA may not necessarily yield the intended benefits that the countries aim to see and that there are

\textsuperscript{326}Sandrey R, TRALAC Trade negotiations for a Free trade Agreement a guide to the general practices and requirements (2013)14-15.
\textsuperscript{327}Sandrey R, Trade (2013)15.
important factors such as time, which need to be considered. Hicks and Kim researched on the impact of RTA commitment on the overall trade liberalisation using Asia as a case study.\textsuperscript{333} They revealed that most RTAs signed in Asia had not increased trade. On the surface, time appears to be a key factor whereby effects of trade\textsuperscript{334} liberalisation, through RTA might only be realised much later or merely the reasons for entering an RTA might have shifted and are no longer economic. In developing this argument, they raise important factors such as the effectiveness of the RTAs has to do much with what happens when the agreements are being signed. The qualitative aspect of the agreement is equally important. RTA agreements tend to differ, particularly those amongst developing countries, which are characterised by reduced tariffs on one product whilst leaving others affected by trade barriers. Others eliminate all trade barriers, and some contain a list with products that will not be covered in the RTA agreement as a negative list. Governments then have autonomy over the agreement and may choose to enter an agreement or not and this has an impact on trade liberalisation.\textsuperscript{335}

Strong agreements which have high levels of commitment and credibility tend to increase trade. The standard approach that signing an RTA signals increase in trade is not entirely true. For example, a zero per cent instant cut on tariffs, has negative impact on trade other than reducing tariffs over time. Correspondingly, product coverage is important whereby agreements that covered agricultural products where high in increased trade with 30.9 per cent.\textsuperscript{336} Reciprocity is also important in agreements as it reduces tariffs and at the same time increases trade. Therefore, entering in RTA agreements requires credibility and commitment so that positive results can be achieved.\textsuperscript{337} These are key factors which countries have to take into consideration and will help them in realising if PTAs are worth entering.

\textsuperscript{333}Hicks R and Kim S Y, Reciprocal Trade Agreements in Asia: Credible Commitment to Trade Liberalisation or Paper Tigers (2012) 12 Journal of East Asian Studies 4.
Krishna reasons that the rapid spread of PTAs does not necessarily translate to overtaking the multilateral trading system in terms of liberalisation on the overall. Statistics prove that trade under preferential basis is only 16 per cent of overall global trade. Bagwell, Bown and Steiger’s findings coincide with this by asserting that 84 per cent of global trade merchandise still takes place under MFN. This refutes the assumption that trade under PTA is more effective and efficient. Moreover, even in instances where margins exist, preferences may not be used by exporters due to the prohibitive costs in obtaining resource and inputs from PTA markets, which might make the process less efficient. Also, other barriers include high administrative costs in rules of origin and domestic value added ‘requirements needed to gain access to the lower preferential rates.’

3.9 Conclusion

PTAs have been there even before the inception of the WTO. They have grown and evolved. The challenge is that they undermine the role of GATT but for now they seem to be the preferred means. They come with challenges such as difficulty in establishing rules of origin and discrimination and other aspects such as labor are not incorporated. However, they tend to be easier to conclude the GATT often the termed the ‘general agreements of talk to talk’ implying that there is little action in GATT. This aids them in being a preferred means; they tend to be faster easier to conclude. As PTAs continue to be on the rise so is the need to manage them so that the original idea of GATT is not eroded. Sometimes countries are often ill-equipped in terms of the real benefits and the so-called benefits might not be immediately hence the need for countries to take into consideration important factors such as time as this has an impact to the outcomes. Also,

the dynamics of preferential trade agreement has shifted to newer forms of preferences such as the AGOA which offers unilateral preferences, EPAs and Collaborations such as BRICS. In Africa there are regional agreements such as the SADC, AFCT among others. Each of these has played a crucial role in providing an impetuous for South Africa to be assimilated into global trade as well as other African countries. Often, though behind the attractiveness of trade liberalisation are some pitfalls that countries who enter into these agreements need to wary of, the playing field is not equal and economic muscles can be used at the detriment of the interest of the other party such in the case of AGOA.

More so, BRICS has played an enormous role in catering for the needs of the developing nations and seeks to place new reforms in the global economic order, which currently favors the developed countries, but this is not an easy task as the collaboration is fairly new as compared to the EU. It is prone to some challenges such as financial constraints, different levels of development which hinder the success of its projects. The EU has on the other hand has evolved in trade relations with Africa. It has shifted to a more inclusive approach to foster economic developing moving from aid to trade, but on the ground, however there are still some visible challenges which need to be resolved and these have been discussed. One cannot imagine South African without being part of these PTA agreements the benefits has been astounding, economically and socially. The perceived challenge in using trade remedies on countries it has PTAs will be discussed in the next chapter as there is need of a balance.
Chapter 4 Analysis of trade remedies and preferential trade agreements

4.1 Introduction
South Africa could not be left out of the main stream of a rapidly expanding trend of preferential trade agreements (PTAs) to remain relevant in global economics. To date it has PTAs with countries such as Botswana, Lesotho, Namibia and Swaziland under Southern African Customs Union (SACU).\textsuperscript{341} It is also part of the Southern African Development Community (SADC) which is a free trade area, with provisions made under SADC treaty Article 22 and these two are regional trade agreements (RTA). Also, it forms part of the SADC-EPA with the European Union (EU), EPA Economic Partnership Agreement (EPA), and it has a Memorandum of understanding with China which promotes bilateral Trade and Economic Co-operation.\textsuperscript{342} It is also part of a Free Trade Agreement (FTA) between the European Free Trade Agreement (EFTA) states and SACU states. Furthermore, it has a unilateral trade agreement with United States of America (USA) that is, the African Growth and Economic Act (AGOA).\textsuperscript{343} Additionally, South Africa has trade agreements with Zimbabwe and Malawi.

The conclusion of these agreements had both a positive and negative impact on South Africa. South Africa’s domestic industry in particular the poultry industry continues to struggle in dealing with the huge surge of imports which came as a result of the conclusion of these PTAs. As one of its immediate solutions, South Africa began to implement trade remedies, but this too was problematic because the use of trade remedies is bound by World Trade Organisation (WTO) parameters. South Africa’s trading partners revealed a myriad of inconsistencies in the use of trade remedies by South Africa.

and this caused friction with its trading partners; for instance, the USA which threatened to withdraw benefits to South Africa under AGOA. On the other hand, South Africa justified the use of trade remedies as legitimate and stated that it followed the proper procedures in implementing them. Furthermore, the complexities of PTAs become more apparent as exemplified by the challenges of trading with advanced economies and countries with competitive advantage such as Brazil. With resounding evidence pointing to structural issues, especially in the poultry sector, South Africa is often accused of using protectionist measures. This chapter will look at how South Africa tries to balance trade remedies and PTAs. The chapter will provide an analysis of the AGOA deal, the Brazil chicken case and the Economic Partnership Agreements (EPA). Each analysis is unique, but in some instances, there are notable spill over. The ITAC recently has faced criticism and has been taken to court, these challenges will be discussed to give a suffice analysis.

4.2 South Africa poultry industry

To understand this case, one needs to take a closer look at the poultry industry in South Africa. Generally, chicken consumption in South Africa has grown immensely over the past decade and this can be attributed to a rise in the population. Other contributing factors such as improved living conditions, urbanisation and higher diversity on dietary requirements also play a role. Statistics show that there has been over 50 per cent growth in the consumption of poultry over the past decade. Chicken led the meat consumed in the country with 41.2kg per capita consumption in 2017, followed by beef (13.39kg), pork (4.8kg) and lastly sheep.

---

The poultry industry in South Africa has not been able to produce the required volumes to meet demand, thereby making use of imports.\textsuperscript{349} This could be ascribed to drought, whose result is a ripple effect on the production of corn, and in the process increasing the cost of chicken feed, by up to 40 per cent. The impact of drought in the poultry industry is substantial, as chicken feed constitutes 70 per cent of the cost in the production process.\textsuperscript{350} Moreover, the industry is also faced with other challenges such as an increase in price of labor, power shortages and the lack of a viable environment for investors.\textsuperscript{351} Water shortage is another barrier, as projections state that South Africa will still be unable to meet its consumer demands even into the next decade. Additionally, the industry faced a shortage of crushers, resulting in a situation where South Africa was exporting soy and corn importing soy meal during the 2013 to 2014 period. However, stability has been reported as South Africa expanded its capacity to crush soy. The industry is highly monopolised as shown by the fact that half of the market is owned by two huge companies and 31 per cent constitutes the share of medium-sized business. South Africa will continue to depend on imports, but this has to be regulated.\textsuperscript{352}

4.2.1 Industrial challenges in the poultry industry

Differing from above the EU countered South Africa’s allegations of dumping and pointed to the myriad of structural problems that the poultry industry faces.\textsuperscript{353} In a statement issued in March 2017, the EU stated that SAPA had not lodged a formal complaint through ITAC on alleged dumping. Secondly, the EU denied allegations on


\textsuperscript{351}National Agricultural Marketing Council (2015) 16-18.


subsidies that it conforms to the terms of the SADC-ECAP agreements. Thirdly, poultry exports have declined because of the avian influence outbreak up two thirds.\textsuperscript{354}

Proponents of the EU reason that the industry’s problems such as lack of adequate inputs places South Africa in a position where it fails to meet the demand for instance if one looks at the soy bean.\textsuperscript{355} It attracts an import tariff of 8 per cent and it imports more than twice its local production in soy oilcake.\textsuperscript{356} The quest of animal feed manufacturers on tariff removal, which would consequently decrease the cost of production, was denied in the application they made to Department of Agriculture Forestry and Fisheries (DAFF), as it reasoned that this would affect a sustainable soya bean policy.\textsuperscript{357} There has been an upward shift in the soya bean production capacity, but it is still insufficient to meet the domestic industry’s needs. Imports of soya bean oil cake still significantly fall short of the demands of South Africa, estimated at 72 per cent and South Africa is only been able to produce 17 per cent of that. A lot still needs to be done.\textsuperscript{358} The Industry experienced an increase in production of soya bean from 2015 to 2016, with up to more than a million tons being produced, but due to drought, a forecasted decrease of over 25 per cent was seen in the year 2017 to 2018.\textsuperscript{359} There is still a heavy reliance on imports and one of the major exporters is Spain, Argentina and Netherlands.\textsuperscript{360} The severe drought has impacted on yellow maize, which normally is produced adequately in the country but now requires

\textsuperscript{354}European Union Statement on Poultry by the EU Delegation to South Africa on the occasion of the FAIR Play Social Support Summit (2017) 2-4.
\textsuperscript{357}Greenberg S, Thow AM, and Hara M. (2017)24.
\textsuperscript{359}Sihlobo W and Kapuya T, (2016) 3.
imports to meet demand.\textsuperscript{361} These factors contribute to the structural problems the poultry industry faces.

The poultry industry also faces health concerns, which limits its capacity to export to other countries.\textsuperscript{362} South African producers use antibiotics and brining for preservation of chicken meat.\textsuperscript{363} This method has been critiqued as it poses a risk in health and it is only used to maximise profits especially brining.\textsuperscript{364} The mass composition of chicken meat to brine was at 70 to 30, so thirty percent accounted for water. Therefore, most countries did not accept the chicken from South Africa and have often mentioned that South African consumers are sold water instead of chicken.\textsuperscript{365} Recently, from October 2016 the brine composition regulations changed from 30 per cent to 15 per cent to about 10.5 per cent. This was again a major blow to local producers such as Astral feeds, which experienced drop-in sales when they implemented this law.\textsuperscript{366} They also mentioned that this would impact their production capacity.\textsuperscript{367} Brazil has placed a ban on it and the USA pegged it at 15 per cent in chicken meat but produces at less than 2 per cent. This poses a challenge on South Africa to export to these and other countries as even regionally, Zimbabwe has banned chickens from South Africa and also, the brining composition for South Africa is still relatively high compared to other countries.

\textsuperscript{361}Greenberg S, Thow AM, and Hara M, (2017)\textsuperscript{24}.
Further strengthening the above woes for South Africa is the Avian Influenza outbreak, which has been one of the biggest challenges to the poultry industry. An estimated 1300 jobs have been lost due to its outbreak locally. The industry experienced a loss of R954 million. This disease has been persistent in commercial farms, which still experienced the outbreak until January 2018. This posed challenges to farmers who experienced a slow response to the emergency. Secondly, the virus had to be completely destroyed before introducing new birds and this has been cumbersome and contributed to major delays. Thirdly, securing compensation has been difficult because of the rules that are there these ought to be re-looked at so that farmers are able to recover losses and resume business as they need to by new stock and also to address food security concerns.

4.3 Historical overview of USA–South Africa Trade Relations

The USA understood that they could no longer operate on an aid only basis to assist African countries in alleviating poverty and correcting the ills of colonialism, but instead sought trade, which is a more sustainable way of achieving the same goals. A brief historical background reveals that South Africa and USA trade relations had been complex and this stems from apartheid. The USA supported the apartheid regime and its ills, because, during that period they both had a common enemy, which was the Soviet Union. After the demise of the Soviet Union, the USA further supported the prevention of a war between South Africa and Angola, which if not contained could have resulted in damaging effects to both countries and the region. As apartheid was fading, the USA brought about civil society programs and this enhanced a sense of unity between the two


countries. Civic religious leadership, which was anti-apartheid, also helped ease the tension in the relationship. After 1994, USA companies began to warm up to the idea of trade with South Africa, but there was still a level of mistrust therefore during Mandela’s presidency period trade relations were minimal. Again, at the time when President Mbeki entered the political scene, nothing much had changed because of differing political views globally one of the consequences of this, was the failure of the USA to conclude a regional trade agreement with SA in 2003.

However, at the same time South Africa and EU signed an Economic Partnership Agreement. At present, the future of SA and USA trade agreements relations uncertain, with the ushering in of President Donald Trump.

4.3.1 United State of America and South Africa and South Africa chicken case
According to Cochrane, Hansen and Seely, prior to the year 2000, trade relations between USA and South Africa on meat were steady, with shipping volumes of about 37.192 tons of leg quarters from USA to South Africa. Things took a drastic turn in 2010 when SA imposed anti-dumping duties on USA chicken, resulting in a sharp decline to almost zero imports from USA. In 2010, US exports began to gain momentum and steadily increase, going up to 9.665 tons until 2012.

Again in 2012 South Africa imposed another round of restrictions on chicken imports from the USA by increasing its anti-dumping duties. The USA saw this move as unfair and argued that SA had used a method of calculation which was inconsistent with the

---

WTO laws. This argument was raised because South Africa used the cost value method which is provided for when there is sufficient reason to do so. The error in legality was the fact that according to Article 2.2.1.1 calculation of cost is based on exporter’s records or party under investigation and they should be agreeable to the accounting norms of the exporting country and should be able to reveal production costs and reflect the sale of product being investigated. However, South Africa used weight based cost allocation, thus moving from the accepted norm without a justifiable cause. The USA poultry producers further argued that they had the records, but South Africa insisted on using the other method. South Africa on the other hand argued that the price of USA imports made it impossible for local firms to compete. Furthermore, the USA market and most developed nations preferred chicken breast meat and therefore dumped the other less desired parts to South Africa.

To support the above argument, according to the broiler industry, leg quarters in the USA have decreased in consumption by 40 per cent whilst the price of deboned breasts has decreased by 9 per cent. This gives a plausible reason as to why the USA dumps these unwanted chicken portions in South Africa. The comparison in price using the north eastern region of USA reveals a cost of 30.24/lb for leg quarters and for breast meat, 130.39/lb in zar, this converts to the price of leg quarters being R9.82/kg and that of skinless breast meat to be R42.42/kg. On the other hand, the price of mixed portions was R17.00 kg and for breast R25.00/kg. Breast meat is preferred in the USA, and therefore, the price of leg quarters makes it very difficult for domestic producers to remain profitable. Hence the need for South Africa to protect its industries consistent with the WTO laws is imperative.

---

379 See Anti-dumping Agreement Article 2.2.1.1.
The serving USA president is mandated to submit a report to the Congress on how each of the 49 countries is progressing.\(^\text{383}\) With this review, South Africa’s position in the AGOA deal was ‘hanging loose’ as it was facing possible failure. South Africa implemented anti-dumping duties consistent with the GATT Article VI on anti-dumping. The controversy emanated from the ban on three meat products from the USA which where poultry, pork and beef.\(^\text{384}\) Congress did not agree with South Africa, and from the president’s review, they firmly concluded that South Africa had not made any progress towards eliminating barriers, and consequently they pushed for their interests by announcing that they would suspend South Africa from AGOA.\(^\text{385}\)

This had dire implications for South Africa, considering that the benefits AGOA had for South Africa is striking, especially in the automobile industry. SA is in the top three biggest exporters under AGOA, as it exporting products such as wine, citrus, fruit and nuts.\(^\text{386}\) Expulsion from AGOA would be disastrous and result in a loss of jobs and also affect the Gross Domestic Product (GDP) of South Africa, as the automobile industry contributed slightly over 7 per cent to the GDP of the economy.\(^\text{387}\) South Africa and USA then resolved to have a 65,000 tones quota for USA chicken, a move which was seen by others as the USA bullying SA.\(^\text{388}\) The poultry industry claimed that the quota would

\(^{383}\) Department of Commerce United States of America Summary of AGOA.


result in an estimated loss of 4000 jobs.\textsuperscript{389} The latter figure would be very high in an economy marred with a high unemployment rate of more than 25 per cent.\textsuperscript{390}

The USA failed to use proper channels for instance in the dispute settlement mechanisms of the WTO. Mafu argues that the USA was aware it could win the case either way, referring to the case between China and USA which is similar to the South African case.\textsuperscript{391} Also, Brinks highlighted that given in all four cases that were challenged in the WTO South Africa, revoked the anti-dumping duties it had imposed. One could almost predict with certainty that South Africa would see a similar outcome in this scenario as well. Therefore, using AGOA might have actually been a blessing in disguise, because South Africa negotiated the quota, which was gave some balance for it.\textsuperscript{392} Practically however, another reason could have simply been that decisions take long through the dispute settlement process and therefore AGOA was a quick fix. However, Mafu does not ignore the possibility of the USA portending that its chances of winning the case were slim, therefore it used intimidation tactics.\textsuperscript{393} To support this is a statement previously stated in this paper by Dr. Mackay, that the Act has become a gift.\textsuperscript{394}

To support the above argument is Mshomba details that it is not an easy task for developing countries to lodge cases against the EU and the USA because of the nature of preferences they receive, they offer benefits to the African countries.\textsuperscript{395} He therefore states that they are already disadvantaged by this fact. He seemed to have predicted the problems South Africa would run into by being a benefactor noting that the architects of these preferences In this case the USA, can simply withdraw benefits at their discretion.

\textsuperscript{389}Gumede W, (2017).
\textsuperscript{392}Brink G, ‘One Hundred Years of Anti-dumping in South Africa’ (2015)17.
\textsuperscript{393}Mafu M, (2016)37-38.
\textsuperscript{394}AGOA.Info ‘South Africa Underutilising AGOA-OFFICIAL’ (2016).
\textsuperscript{395}Mshomba ER, Africa and the World Trade Organisation (2009) 76.
makes it difficult for a country to explicitly raise their concerns. He further also notes that African countries also receive financial assistance and conditionality’s placed have a bearing on they are ability to pursue a case against the developed. The USA is also notorious of issuing position papers before WTO meeting as warnings and a formality to subtly send a message to developing country there have been cases where they direct warnings to diplomats. Developed nations tend to use other methods as compelling tools to peruse their interest.\textsuperscript{396}

It is not by coincidence that the USA used AGOA as leverage for pursuing its own interests. Senator Isakson admitted to this by stating that though they were looking for ways to use AGOA to the benefit of both parties, they felt they were not benefiting in a fair way as South Africa had placed barriers.\textsuperscript{397} A cursory glance at this reveals that USA was likely waiting for an opportune time. The chairman of finance committee in USA echoed the same sentiments as he stressed the need to be more aggressive especially on the use of updated tools in AGOA to mount pressure on SA. These updated tools will be discussed as they provide insights into the future of AGOA.

4.3.2 The challenges of the AGOA Amended Act (2015)
A look into the AGOA Amended Act which was amended in 2015 is imperative because it raises some suspicion and does not portray clear motives. The Act was reviewed at the behest of former President Barrack Obama and congress and South Africa was the catalyst to this.\textsuperscript{398} The revised Act poses serious challenges to the signatories of AGOA, which cannot be ignored. The intentions of AGOA now appear to gravitate towards power supremacy and subjugating the very foundations which it was initially formed to assist, particularly that of facilitating the growth of African economies.

\textsuperscript{396}Mshomba ER, \textit{Africa and the World Trade Organisation} (2009) 80-86.
\textsuperscript{398}Ismail F, (2017)528.
The Amended Act appeared to be targeting South Africa. Consequently South Africa became an example to other countries, of the repercussion that a country faced if it failed to conform to the bidding of USA.\(^{399}\) In the out-of-cycle review there is a specific mention of ‘South Africa subsection 3E’ This section states, that ‘recognizing that some concerns have been raised about compliance of some beneficiary countries the President should initiate an out-of-cycle review with respect to South Africa not later than 30 days after the date of enactment of this subsection.’\(^{400}\)

This out-of-cycle review on its own is problematic It offers a paradox, by defeating the intended benefits of AGOA. Logically, investors would want stability and such scenarios raise uncertainty, which would inevitably make them hesitant to invest; resulting in untapped potential and thus limiting the foundation of AGOA. This does not in any way benefit the business and the economy of African countries. Recently for example Rwanda, Tanzania and Uganda, face a review due to the proposed ban they wanted to adopt on second hand clothing and this ban will mostly affects USA traders who are the sources of the second-hand clothing.\(^{401}\)

Moreover, USA has been clamoring for ‘reciprocity and concessions’ and this raises mistrust.\(^{402}\) From its inception, AGOA was supposed to be catalyst for African countries to be assimilated in the global trade economy.\(^{403}\) The shifting of the original intent is indeed a challenge to the future of AGOA, which has increasingly becoming unhinged. Maybe from the onset, prognosis of African problems was not sufficiently backed. The focus on market access as the only problem between USA-Africa was a narrow perspective and it is now evident that there are market access opportunities, which have

\(^{399}\)Ismail F, (2017)534.
\(^{400}\)Ismail F, (2017)534.
\(^{402}\)Ismail F, (2017)536.
\(^{403}\)Ismail F, (2017)540.

Even though trade liberalisation has widened, the benefits are still modest. African countries are not competitive enough to take full advantage of the free market concessions.\footnote{Páez L, Karingi S, Kimenyi M and Paulos M, (2010) 4-6.} South Africa poultry industry has not fully developed as discussed earlier and still faces some challenges which pose as stumbling blocks to match USA competition. The focus for the USA should be more directed towards enhancing and facilitating initiatives that make it easier for African countries to do business.\footnote{Páez L, Karingi S, Kimenyi M and Paulos M, (2010) 6.} Improving competitiveness ought to be top priority in AGOA by addressing for instance issues such as infrastructure, power, that is electricity in the case of South Africa, and natural causes such as drought.

The challenges of AGOA are also evident in non-tariff barriers, which are perpetrated in the 2015 AGOA Act. Lenaghan argues rules of origin quotas reflect negatively on the future of AGOA and also minimise its benefits.\footnote{Lenaghan P M, ‘Trade Negotiations or Trade Capitulations: An African Experience,’ 124 La Raza17Law Journal. 117 (2015).} Instead of alleviating this challenge the USA has further exacerbated the problem in the Amended Act, where private companies, lobby groups can file a petition any time if they feel any of the member states are not adhering to the rules of AGOA or infringing their economic interests.\footnote{Ismail F, (2017)534.} Any barriers they face, whether economic or otherwise, justified or not, warrant the member state to be placed under review and the President can determine if there is improvement.
position of the AGOA beneficiary is therefore threatened. This is a challenge to the investors firstly because the environment is unstable and also due to the fact that the playing field remains unequal. Especially in cases where a country is justified in placing barriers due to environmental or domestic market concerns. The benefits of AGOA are then not fully fulfilled.

In addition to this, the issue of ‘national treatment’ becomes imperative. The USA placed conditionality of equality of external companies and USA companies, under AGOA. The inability of African companies to compete with USA companies, places them at a high risk of being driven out of the market. Competing on equal terms is problematic as discussed by Lenaghan because USA companies receive government support and also can secure loans globally at low interest rates and they can bank their profits offshore and are able to escape taxes. This is unfair if one looks at the South African poultry industry, which must compete equally with advanced companies who have more competitive advantages; and AGOA seems ignorant of the effects on the domestic industry such as job losses. Capacity building in the Act remains insufficiently backed. Davis agrees with this by giving recommendations that the United States could implement. Firstly, a restructure of AGOA is needed in promoting ‘national utilisation’ programs to be implemented. Secondly, encouraging USA investors by offering low tax rates up to zero, particularly for companies that invest commodity products in AGOA countries.

---

410 Ismail F, 2017)534.
4.4 Trade dynamics between South Africa and the European Union

PTAs have become of key importance, but when markets are opened there is often a rise of imports that the domestic industry might not be aware of or prepared to deal with. This has been the problem with South Africa and the USA, as highlighted above and is almost similar in the case of EU and South Africa. The two first concluded their Trade Development Cooperation Agreement (TDCA), which was preceded by the EPA and this was significant step for South Africa to be assimilated into global trade. The European Union (EU) is one of the biggest trading partners with South Africa and trade between the two has increased by 50 per cent.\textsuperscript{416}

4.4.1 Unleveled Playing field between South Africa and European Union

The EU has used its trade policy to gain super power title. Regional integration facilitated both economic and political unity of the member states and now EU has emerged stronger and taken significant dominance in both trade and politics.\textsuperscript{417} Importantly however, is that South Africa has a weaker economy in comparison to the EU. The EU boasts one of the major economic giants globally and has a significant share in the global economy. This has a negative impact to South Africa, which is one of the fastest growing economies in Africa, but a small player in the international market.

This imbalance poses challenges to South Africa, firstly, the EU has a greater bargaining power even in the WTO, it can influence decisions. Recently however, African countries have been coming together to do the same. Secondly, the EU is also highly protective of its domestic market, in particular the agricultural sector. One of the reasons why both the Uruguay and Doha Round were not successful is because of the failure to reach a conclusive agreement in terms of trade in agriculture.\textsuperscript{418} This sector remains protected because of the Common Agricultural Policy (CAP) of the EU where just over 160 billion

\begin{thebibliography}{99}
\bibitem{417} Meunier S, and Nicolaidis K, ‘The European Union as a Trade Power’ pg2-4.
\bibitem{418} Marković I and Marković M, \textit{Economics of Agriculture: Agricultural Protectionism of the European Union in the conditions of international trade} Review Article (2014) 413-433.
\end{thebibliography}
Euro is injected into the agricultural sector in the form of subsidies, there has been a slight change due to the outcry by member states of the WTO, but this overall impact of this remains small in the global economy.\textsuperscript{419} The CAP has undergone restructuring by moving away from past forms of subsidies such as ‘export subsidies, production quotas to producer subsidies.’\textsuperscript{420}

On the other hand, the agricultural sector in South Africa is not subsidised due to financial constraints. Political and historical factors also contribute to the lack of funding. A wide populace of white farmers still dominates in land ownership and this is a current contentious issue in South Africa.\textsuperscript{421} However, the country has provided some support to its farmers though it cannot be compared to the EU. The support came in the form of the Marketing of Agricultural Products Act, which aimed at promoting the internal agriculture, by also reducing global competition and removing import and export controls, as well as marketing boards, which were inefficient.\textsuperscript{422} It removed subsidies and brought import tariffs. Recent efforts include the development and implementation of the South African Agricultural Production strategy to improve international competitiveness from the year 2011 to 2025. It aimed to bolster the support system in agriculture so that it can be easily assimilated in the global platform and compete with EU particularly.\textsuperscript{423} Whilst these efforts are commendable, they remain insufficient in facilitating a competitive advantage against the EU.

\textsuperscript{420}European Commission \textit{the Common Agricultural Policy at Glance}.
\textsuperscript{422}See Marketing Agriculture Act 1996.
In South Africa, agriculture plays a key role in the production value chain of poultry, as it constitutes 70 percent due to chicken feed. The poultry industry in EU is not financed by the CAP, but it indirectly benefits because of the highly subsidised agriculture which ensures that chicken feed is acquired cheaply.\textsuperscript{424} The other advantage the EU has over South Africa is similar to the USA, whereby there is a high preference of chicken breast meat. In Europe this was a result of the BSE crisis and resulted in the prohibition of use of bone meal to feed their animals.\textsuperscript{425} These unwanted residuals would have to be disposed inevitably, and African markets seemed a lucrative destination because they would still profit after transportation costs in comparison to other methods of disposal,\textsuperscript{426} further reiterating, based on the above-mentioned point, the EU’s bargaining power in the WTO.

This EU poultry regime is described by Goodison as comprising of an apportioned system which is characterised by high MFN rates and no less than 22 tariff subheadings varying from 187/ton to euro 1.024/ton and from \textit{ad valorem} rates of 10.9 per cent to 15 per cent applied alongside an extensive range tariff rate quotas in line with the EU’s GATT agreed minimum market access obligation and a special safeguard mechanism, which has been permanently invoked since the conclusion of the Uruguay Round.\textsuperscript{427} The EU has managed to protect its domestic industry from any price fluctuations and imports.

4.4.2 Protectionism by developed countries a thorn to South Africa poultry industry

Trade liberalisation dictates countries should open-up their markets but, more often, though unintended it also incites protection as countries struggle to grapple this concept without conflicting the interest of domestic industries. Even the architects of trade liberalisation are not excluded in this dilemma and have exercised both subtle and salient.

\textsuperscript{427}Goodison, P, (2015) 9-11
forms of protectionism. Statistics reveal that in the G20 member states, which the EU is part of, have some level of protectionism but in the form of non-tariff barriers. Whilst all G20 member states have almost successfully been able to do away with tariff barriers, the shift has been to non-tariff barriers. In the year 2012, the G20 members collectively saw an increase of non-tariff barriers to a record 402 measures. This figure continued to escalate to a highest of 600 measures in 2015. In 2017 there was sharp decline to 9 measures and most of these non-tariff barriers are still in place. This further shows that developed countries still protect their domestic markets.

Historically, the Great Depression, which was the largest global economic failure, revealed that one of largest contributing factors was countries pursuing protectionist policies. This further aggravated the situation which was already dire. The USA initiated a tariff Act named Smoot Hawley, which led to the spiraling of events. Other countries also began to act in the same tit-for-tat manner. For example, Canada, UK, France, Spain and Italy also implemented barriers to trade. In summary the result of this was a decline in global trade by over 35 percent, and over 50 percent was due to increase in trade barriers. Countries then realised the impact of this and resorted to trade liberalisation. However, the global recession also posed some challenges, which resulted in non-tariff barriers being put in place again, thus showing that developed countries were hesitant to remove them leading to somewhat slow progress.

---

431 Tariff Act 1930 or Smoot Hawley Tariff Act raised USA TARRIFS ON 890 Products for Full discussion See Washington International Trade Association ‘Did the Smoot-Hawley Tariff Cause the Great Depression’ (2014).
One of the most cited examples when countries implement protectionist policies is the need to protect domestic industries from shocks imports.\textsuperscript{433} Others have given examples such as Asia where some Asian countries, have successfully implemented protectionist policies and have advanced in economic development. Economically it is established that the benefits of protectionist policies are short lived as they are not viable in the long run. Reasons such as protecting industries, which are efficient, can also result in price monopoly, are economically bad for the country. Countries often face pressures internally with companies in need of protection, and this has been the case also in South Africa a developing country. In the media, the President of EFF political party, Julias Malema, issued a statement that chicken imports and especially those from the EU were crippling the poultry industry.\textsuperscript{434} Lobby groups like Fair Play, have also stated the same. Two things have been clear: that imports would destroy the poultry industry to state of non-existence, and that they would also result in food insecurity.\textsuperscript{435}

4.5 Brazil and South Africa Chicken Case

The two countries Brazil and South Africa have strong economic ties which date as far back as 1948.\textsuperscript{436} They both part of the BRICS and India Brazil South Africa (IBSA) which as a unified cooperation that discusses crucial matters such as trade a ‘dialogue forum’.\textsuperscript{437} The Brazil chicken case is interesting because of how South Africa tactically handled the case to balance the preferential trade agreements and trade remedies without disrupting trade relations between Brazil and South Africa, as well promoting the interest

\textsuperscript{435}FAIRPLAY Stop Trade Dumping Nowhttp://fairplaymovement.org/ (Accessed 20 July 2018).
of the domestic producers who were clamoring for equality in trade as they felt they were being pushed out of the market with cheap imports.

Brazil is the one of the most dominant players in the chicken industry globally.\textsuperscript{438} The country boasts of a 35 percent market share,\textsuperscript{439} the thriving poultry industry can be attributed to favorable climatic conditions which play a critical role in soy production and maize these two are important in chicken feed.\textsuperscript{440} Other factors such as government funding also contribute to the industries success. The Brazilian government offers seed funding to the farmers and has a conducive environment for investment, access to loans as well as a relaxed taxing system among others this aids a long way in the promotion of poultry sector.\textsuperscript{441}

Summarily the chicken war erupted between South Africa and Brazil in 2011 when South African Poultry Association (SAPA) filed a complaint to ITAC, contending Brazil of dumping chicken into South African Customs Union (SACU) frozen whole birds and boneless chicken. ITAC responded by investigating the matter and concluded that indeed three Brazilian chicken exporters were selling chicken below the market price in their country. Provisional duties were imposed on Brazil ranging from 6 to 63 percent in 2012. However, this became a contentious issue not only in Brazil but in South Africa. Brazil did not agree with the duties placed it argued that ITAC was protecting inefficient poultry


producers and this was politically motivated. Secondly ITAC had made errors in calculations and omitted export price and normal price. Thirdly, there was lack of transparency of information that was used to determine the assessment on prices. This would have negative impact on the domestic consumers, who suffer from buying expensive locally produced chicken.

Interestingly, however Brazil and South Africa negotiations failed prior the Brazil decision to lodge a complaint to the WTO. This was so because the wine deal offered by Brazil to South Africa was not lucrative Brazil would remove duties on wines from South Africa in exchange of the chicken. South Africa declined the deal based on the reasoning that Brazil was not of one of South Africa’s important market in terms of wines therefore opted to remain with the EU where the market is huge. Brazil contested the case at the WTO dispute settlement, they were aware, that South Africa had violated the WTO laws in anti-dumping. At this critical point South Africa had to protect its domestic industries similarly also maintaining its trade relations. Methodologically, South Africa responded by imposing 82 percent tariff even more than the 27 per cent which was previously there, and these were blanket duties. Countries that did not have preferential trading agreements with South Africa, such as the EU, suffered the effects of the duties. In 2013, Brazil retaliated by initiating an investigation on tyres into Brazil.

Arriving to this conclusion was a carefully calculated solution premised, on the understanding that the two countries were part of BRICS and a dispute in the WTO would strain trade relations. However, this was the first trade dispute between BRICS members, recently though China has banned chicken from Brazil. South Africa evaded a confrontation and used a blanket approach of duties on all. Despite this case, there are continued strong trade relations between the two countries. Presently in the first half of
2018 Brazil is biggest exporter of poultry to South Africa accounting for almost 70 per cent.\textsuperscript{442}

It follows from the Brazil chicken case and USA-SA case to point out to the importance of having a strategy in negotiations. Odell\textsuperscript{443} has highlighted these into two broad categories, A superficial review reveals firstly, the Distributive strategy secondly the integrative strategy’ in negotiations the former refers to strategy which is altruistic, this is merely getting into a negotiation with an entitlement from others and protecting against such claiming when there is conflict of interest from another party’ It involves examples such as ‘high demands, refusing all concessions, delay, manipulation and taking hostage, agreeing to less than the demanded’ among others this strategy is more prevalent to developed nations and in this case is exemplified by the AGOA case. The latter is more inclusive working towards a common goal values mutual benefits and involves openness in information sharing, exchange concessions win-win, mutually beneficial solutions amongst others.

This appears to have been the strategy that South Africa used to a large extent on the Brazil chicken case.\textsuperscript{444} However, both have disadvantages so sometimes countries might resolve to combine both these strategies to form mixed-distributive or mixed-integrative which might be less harmful in effects.\textsuperscript{445} There is an importance in having a strategy in trade negotiations, to provide a balance between trade remedies and preferential trade agreements, but often at times this is daunting task for developing as discussed in chapter 2,\textsuperscript{446} developed countries tend to have an upper hand in negotiations because during negotiations they have the technical expertise to update information whilst negotiations

\textsuperscript{443}Odell S J, Negotiating Trade Developing countries in the WTO and NAFTA (2006) 14-17.
\textsuperscript{444}Odell S J, Negotiating Trade Developing countries in the WTO and NAFTA (2006)14-17.
\textsuperscript{445}For full discussionSee generally Odell S J, Negotiating Trade Developing countries in the WTO and NAFTA (2006)7-42.
\textsuperscript{446}Odell S J, Negotiating Trade Developing countries in the WTO and NAFTA (2006)14-17.
are ongoing. Secondly developed countries are less corrupt in their domestic systems and there is a high degree of openness which, they are readily aware of their domestic limitations and can better negotiate.\textsuperscript{447}

4.6 Challenges within International Trade Administration Committee (ITAC)

The notable decline in anti-dumping cases forms a research topic on its own but for the scope of this paper one will attempt to answer this.\textsuperscript{448} It is important to note that though PTAs and trade remedies provide complexities and have their merits and demerits. Internally however, an ineffective trade body hinders domestic industries from making use of the provisions made through the GATT to remedy unfair trade, when there is an unexpected surge of imports.\textsuperscript{449} There is no doubt that the persistence of this problem if not addressed will yield detrimental effects to the country’s economy as many industries will shut down resulting in increases in unemployment and a myriad of other challenges such as poverty amongst others.

These challenges are firstly, autonomy.\textsuperscript{450} On paper according to the law ITAC is supposed to be guided by the constitution, and policy matters are to be dictated by the Minister.\textsuperscript{451} The state’s role to ITAC should sorely be to ensure it maintains its autonomy and does not act in a biased manner. This is a stark contrast to reality which reveals that there is no presence of autonomy and policy issues are dictated by ‘Minister of Economic

\textsuperscript{447}Odell S J, \textit{Negotiating Trade Developing countries in the WTO and NAFTA} (2006)\textsuperscript{147}.
\textsuperscript{449}Binding tariffs and applying them equally to all trading partners (most-favored-nation treatment, or MFN) are key to the smooth flow of trade in goods. The WTO agreements uphold the principles, but they also allow derogations — in some circumstances. Three of these issues are called "trade remedies" and cover Actions taken against dumping, Subsidies and "countervailing" measures to offset subsidies and emergency measures to limit imports temporarily, designed to "safeguard" domestic industries.’ See WTO E-Learning Trade Remedies and the WTO (2012).
Development’ on functionality matters while on the other hand ‘Minister of Trade then makes the recommendations.’ It becomes more challenging when issues such as China’s immunity from any countervailing duty are stated with no possible justification. The fact that they there is this directive remains a challenge to companies who would have lodged complaints and their cases are dismissed without any investigation. They also inhibit the work of ITAC and raises questions on credibility of ITAC.

Secondly, whilst most African countries struggle with technical expertise this not South Africa’s problem to a large extent, South Africa has managed to produce a number of ‘trade remedy panellist’ this reveals that South Africa has a considerable sufficiency in terms of expertise. Strikingly, South Africa has never utilised the dispute settlement system in the WTO and has not been involved as a third party either.

Thirdly, another challenge is insufficient expertise, for an accurate verdict to be reached in court there is need of enough expertise and proper presentation as well as understanding of facts. Brink argues there is no tribunal court or specific court that is established for matters such as the anti-dumping. There is a gap in technical aspects of economics and accounts. The current judicial system fails to capture all the aspects required for a successful case such as the technicalities in economics and accounts. Most knowledge is concentrated on procedural matters.

The use of anti-dumping for century before GATT is not reflective of success currently, the anti-dumping process still marred with bottlenecks, which affects the domestic industry. The structuring of ITAC processes which require that all the injury information must be presented prior initiating a case. The law requirement of some evidence which is

---

not necessarily detailed is far from reality. This has an impact on time where there are significant delays between the times an application is submitted to the launch of an investigation. This is the same scenario on sunset reviews all factual evidence has to be presented before ITAC can initiate an investigation. The downside of this is an industry can actually close down before full investigation has been done and ‘anti-dumping duties have lapsed before sunset review.’

More so, the ITAC process lacks clarity this is made manifest on firstly confidentiality there is no established process to ascertain if submissions made as confidential can really be classified as that. Secondly the availability of files on request of appointment, which normally takes longer than a week is barrier to the public in being able to easily access them. Thirdly the public reports lack depth there is no full presentation of all considerations and facts thereof there is a violation of the anti-dumping Act, which requires all the information to be presented in the public report. Fourthly ‘lack of disclosure’ there is an omission of material injury or the connection on information concerned parties are directed to the preliminary report and it also lacks remarks made by interested parties on the preliminary information is not fully disclosed on the facts letter.

Lack of consistency with the WTO laws, this shown on determining injury whereby ITAC does not conform to WTO regulations which stipulates each product has to have its facts or information. ITAC has relaxed approach in submitting product information there is no hard and fast rule to submit information each singular product. The conclusion then becomes biased because not all products where presented. The example mentioned by Brinks of an injury established based on less than a third of reasons revealing injury.

---

4.7 Conclusion

South Africa has gained immensely in AGOA even though the future remains uncertain. The country continues to face challenges in finding a balance, in particular in dealing with PTAs. The USA pushed for their interests and this affected the domestic industry, whereby they were job losses and company’s closed, small business suffered the most. Whilst the quota implemented was a success for South Africa, the USA has revealed that its relationship with South Africa is skewed and that South Africa needs a reform in the poultry industry to be able to cope with the challenges presented. It faces minimal options, and this chapter has analysed the challenges in the poultry sector such as drought and its associated effects, and how these have been persistent.

Although South Africa remains in AGOA, the Amended ACT as a result of the friction in chicken case, points to future problems. With the USA indicating its desire for reciprocity and pushing for its interests, one might be tempted to say that the benefits of AGOA in the long run cannot be guaranteed for South Africa. Also, South Africa might need to look at other options or enter into a better trade agreement with the USA. One the other hand the case of Brazil chicken case provides different dynamics and South Africa set precedence in dealing with trade remedies and PTAs. It managed to successfully circumvent a clash by using diplomacy and managed to maintain their relations. There was a balance, but this is often not the case when a country is dealing with an economic giant, so it appears that a country’s level of development is important in maintaining that balance. Besides these other challenges emerge such as ineffective trade regulating bodies South Africa boast as the leading in Southern Africa, but it still has challenges such as lack of clarity not enough expertise and consistency.
Chapter 5 Conclusion and recommendations

5.1 Introduction
This mini thesis has looked at the balancing trade remedies and preferential trade agreements from a South Africa experience. Over the years, countries have relied on trade remedies to deal with the sudden rise in imports. The relationship between trade remedies and preferential trade agreements can be complex, it is often envisioned that, when a country has a preferential trade agreement the use of trade remedies should be minimal to avoid conflict. However, this might not be so in some cases, there is therefore the need to use trade remedies consistent with the World Trade Organisation (WTO) legal parameters. It has emerged in this discussion, that often at times striking a balance is not an easy task but crucial, yet provisions of the General Agreement on Tariffs and Trade (GATT) Article VI point to the legal aspect that must be adhered to justify the use of trade remedies in the form of anti-dumping and countervailing duties also safeguards, the latter which operates under Article XIX of the GATT. This chapter will look at the findings and proceed to give the conclusion.

5.2 Conclusion
As mentioned above this thesis looked at balancing trade remedies and preferential trade agreements a South African experience. Chapter 2 it has been revealed that South Africa has relied on trade remedies in the form of anti-dumping duties,\textsuperscript{461} countervailing\textsuperscript{462} and safeguard measures.\textsuperscript{463} However, it has depended more on anti-dumping duties and this has resulted in frictions with its trading partners such as United States of America (USA) and Brazil. The use of trade remedies often leads to the debate if they are being used as protectionist, or to remedy unfair trade? South Africa is no exception to this and has often been accused of being protectionist.

\textsuperscript{461}See 2.3 chapter 2 of this thesis
\textsuperscript{462}See 2.4 chapter 2 of this thesis
\textsuperscript{463}See 2.5 chapter 2 of this thesis
The above question has produced a mixed reaction, with the aggrieved countries often pointing to South Africa as protectionist. Noteworthy, is that South Africa has an established body, which deals with trade remedies and this body is called International Trade Administration Committee (ITAC). It operates under the legal arm of GATT. Though South Africa has frequently used trade remedies such as anti-dumping, it has done so following all the legal channels and is therefore justified to use trade remedies. South Africa as a developing country needs the protection of trade remedies, because their domestic industry has not sufficiently grown to meet the foreign competition. To a large extent South Africa has complied with WTO rules in the use of trade remedies. Whilst South Africa has been one of the few countries to succeed in the use of trade remedies, this is still a far-fetched dream for other developing countries in Africa who lack the sufficient, technical, financial and legal expertise to rely on these trade remedies. Though the WTO has provided assistance, technical assistance for developing countries, challenges are still evident in the form of officials who do not use the knowledge gained in their respective governments and move to other sectors and the impact has not reached the required levels a lot still need to be done.\footnote{See 2.7 chapter 2.}

To provide a nexus between trade remedies and preferential trade agreements, one notes PTAs open up markets but often a times the unintended might occur when there is a surge of imports which prompts the use of trade remedies. Chapter 3 then gave a synopsis on preferential trade agreements, and revealed that over the years countries have preferred this form of trade more than the multilateral rounds due to firstly, the failure of the conclusion of the Doha Development Round and secondly, delays in reaching consensus other reasons which make PTAs attractive simply because they easier and quicker to conclude we are living in a fast paced global environment.\footnote{See 3.2 chapter 3.} South Africa became part of this new wave of the rise of PTAs became part of the Trade Development Cooperation
Agreement (TDCA) which was the blueprint of the,\textsuperscript{466} the Economic Partnerships Agreement (EPA).\textsuperscript{467} It then became part of the SADC-EPA, this agreement is typically under traditional ambits of preferential trade agreements of GATT. There has been a move to other forms of preferential arrangements such as the BRICS\textsuperscript{468} and African Growth Opportunity Act (AGOA).\textsuperscript{469} South Africa also has trade agreements with other African countries for example the Southern African Development Cooperation (SADC), Southern African Customs Union (SACU) to mention a few.\textsuperscript{470} Undoubtedly, these preferential trade agreements have played a pivotal role in South Africa’s economy, they have fostered socio-economic growth, by opening new markets and have encouraged smooth trade. Also, this has impacted key industries such as wine sector in Europe-SA trade relations in AGOA the automobile industry has benefited immensely. South Africa has been placed on a global map, and this successfully improved the livelihoods of people. These agreements are important, therefore the need to maintain and strengthen trade relations.

All is well before the use of trade remedies on preferential trade agreements. Invoking, trade remedies stirs conflict. The problem is further worsened especially with newer forms of preferential arrangements such as AGOA and BRICS. These are not WTO compliant in a strict sense. South Africa found itself in a precarious situation caught ‘between a rock and hard place.’ Its position was threatened in the AGOA and whilst on the other hand the domestic industry was facing a crisis, there was an outcry with domestic producers citing an influx of chicken which threatened closure resulting in unemployment. In a country where unemployment has already escalated to two digits figures above 25 percent this is dire. Brazil on the other hand was not very happy with the blanket tariff and pursued a ‘tit for tat method’ importantly is that both these countries are key partners in trade to South Africa and maintaining trade relations is equally

\footnotesize{\textsuperscript{466} See 3.4.1 chapter 3.
\textsuperscript{467} See 3.4.2 chapter 3.
\textsuperscript{468} See 3.5.1 chapter 3.
\textsuperscript{469} See 3.5.2 chapter 3.
\textsuperscript{470} See 4.1 chapter 4.}
paramount. Even with European Union (EU), there was a notable friction with the safeguard imposed. Chapter 4 gave an analysis of the chicken cases and in both the Brazil chicken case and the United States of America and South Africa it has emerged is that South Africa needs to not only depend on trade remedies but improve the domestic industries competitiveness. The three cases have strikingly, pointed at this as a major impediment to trade between SA and its global partners. However, efforts are currently underway to rectify the problems such as South African Agricultural Production strategy to restructure the poultry industry and improve on its competitiveness.\footnote{See 4.4.1 chapter 4.}

Newer approaches to preferential arrangements are not WTO compliant therefore, it becomes very difficult to challenge aspects that are not fair this is revealed in the chicken case, between the USA and South Africa. Moreover, when one makes a comparison for instance with the EPA’s which have evolved and have involved African countries in the processes, so that they can fully benefit trade agreement, though there is still more that needs to be done but, the inclination to comply to WTO rules is evident. AGOA on the other hand can simply terminate a country’s membership, which is counterproductive almost reversing the benefits incited. Investment is unlikely in unstable environments. South Africa’s need for the preference places in at disadvantage and unable to leverage much of its position.\footnote{See 4.4.1 chapter 4.} The continued need for assistance, because Africa cannot fund its initiatives weakens Africa’s leverage on trade deals.

South Africa reacted differently in the Brazil chicken case, it realized the importance of maintaining trade relations and also protecting domestic.\footnote{See 4.4.1 chapter 4.} In this case a more balanced approach was given, whereby, South Africa diplomatically engaged with Brazil and applied blanket tariffs. Different from the USA -SA case, the USA pushed for its interests and showed its economic muscle. Aligning this with their mantra often mentioned by President Donald Trump ‘The American people will come first once again ‘\footnote{See 4.4.1 chapter 4.} SouthAfrica
even served as an example for those African countries on the actions that the USA is able to take when a country does not conform to wills.\textsuperscript{474} As the saying by Winston Churchill ‘you cannot reason with a tiger with your head in its mouth.’\textsuperscript{475} Both countries resolved on a 65 000tonnes quota of meat from the USA. This greatly disappointed domestic producers but being excluded from AGOA was not an option for South Africa a greater loss would be incurred to them. The strategy employed by South Africa was a distributive strategy on Brazil whilst the USA pursued a highly integrative strategy.\textsuperscript{476}

Finding a balance is a cumbersome task, taking cognisance of the fact that there is still some level of protection by developed countries the Common Agricultural Policy places it at a competitive disadvantage as well as the EU has a highly subsidies agricultural policy.\textsuperscript{477} Natural disasters such as drought which affect the production of chicken feeds therefore places South Africa in a competitive, disadvantage also the avianflu outbreak.\textsuperscript{478} Moreover, trading with country that has a motto of ‘America first’\textsuperscript{479} promoting its interests only looking at the AGOA Amended Act where updated tools have been enacted. These are the need for reciprocity and concessions, and therefore places a huge burden on South Africa in its attempt to balance trade remedies and preferential trade agreements.\textsuperscript{480} Also South Africa does not follow linear strategy in its trade negotiations but is more spontaneous, and this can be ascribed to difference in cases that South Africa has to deal with. Each trading partner it has differences in political and economic ties to the other.

On the other hand, South Africa has not fully utilised the trade remedy system as discussed in chapter 4. Initially South Africa was the most prolific user of anti-dumping

\textsuperscript{474}See 3.6 chapter 3.
\textsuperscript{475}Run W, You cannot reason with a tiger with your head in its mouth(2017)1.
\textsuperscript{476}See 4.5 chapter 4.
\textsuperscript{477}See 4.4.1 chapter 4.
\textsuperscript{478}See 4.4.1 chapter 4.
\textsuperscript{479}See 3.6 chapter 3.
\textsuperscript{480}See 4.3 chapter 4.
measures. There has been a notable decline in the use of anti-dumping, one of the factors pointed out is that ITAC, has placed some measures which make the process difficult for industries to use trade remedies. Some of these challenges are the lack of autonomy, there seems to a relaxed approach in using the dispute settlement systems. The high level of bureaucracy in the in the ITAC which hinders efficiency. Though advanced than most African countries the country is still lacking in expertise.

This mini thesis has also noted that there are only a few countries in the African continent that have an established body that deals with the trade remedies such as the ITAC, about five countries only. The lack of legal expertise and finances is a hindrance to most African countries. Yet this is an important instrument that African countries can use to protect their domestic industries. The dumping of chicken is not only evident in South Africa but other African countries as well. The need to use these sophisticated measures to cope with the challenges of trade liberalisation is pertinent.

### 5.3 Recommendations

Striking a balance will certainly require more enhanced domestic industries and the assistance of government led initiatives as well as the private sector. The agricultural sector needs improvement in terms of inputs and technologies to meet the demand on poultry every part of the value chain in poultry production should be enhanced.

Unilateral trade agreements alike AGOA, have advantages but the limitations are glaring such as uncertainty in membership position and rules can be changed at any time. South should start looking at other forms of preferential trade agreements that can best benefit the country. South Africa, could go back to the basics of WTO compliant agreements or

---

481 See 2.6 chapter 2.
482 See 2.6 chapter 2.
483 See 2.7 chapter 2.
regional trade as alternative. There is need to be more aggressive in regional trade agreements (RTA) so that Africa can trade on its own as well as they have a stronger body as whole than different agreements. and that Africa should work toward improving its industries and product variety to best capture the benefits of preferential arrangements.

Moreover, African countries, could learn from ITAC, on its structure and functioning and it can be used as blueprint in other countries, to better cope with surges of imports. It is also important to note that as Africa is moving into an Africa Continental Free Trade Area (ACFTA) the dialogues of the effects of trade liberalization should form part of the policy and there is need for an established body that also deals with conflicts on trade remedies and preferential trade agreements. Such a body would require technical expertise that is able to also represent other African countries who have not established a body like ITAC. Also, trade negotiators in South Africa and Africa as whole should be also fully trained on the dynamics of trade and which negotiations strategies to implement on situations presented. The private sector could also play a crucial role in providing consultancy services as well as legal services to government where it is not adequate such as in the poultry cases.

South Africa has evolved, in trade and is progressing but more needs to be done, it is important to also raise awareness to the public on agreements that the government is entering into and its implications positive and negative to the companies, there should be support offered to firms that are directly affected by trade liberalisation. Those at infancy stage might not be able to afford the legal channels available to implore the option of trade remedies, government led initiatives should be available to support these companies.
**Bibliography**

**Books**


Gustav B, Kabayashi T, *South Africa in Anti-dumping and Practices the New Users*


Publisher: University of Chicago Press; ©1970: Chicago.


Publisher: Cameron May Ltd: London:

Trebilock M, Howse R and Eliason A, *The Regulation of International Trade* 4ed
(2013)415-17: London


**Reports**


**Websites**


Department of Trade Industry South Africa *Trade* >https://www.thedti.gov.za/trade_investment/ited_trade_agreement.jsp


Erasmus G TRALAC *Trade Remedies and Dispute Settlement under the TDCA: South African Anti-dumping Duties on Chicken Imported from the EU* >http://www.tralac.org/


FAIRPLAY Stop Trade Dumping Now>http://fairplaymovement.org/.


International Trade Center Business Guide to Trade Remedies in Brazil Anti-Dumping, Countervailing and Safeguard Legislation, Practices and Procedures


Khumalo S, ‘SA unemployment rate steady at 26, 7’ FIN 24 May 15, 2018

Kowalski P, OECD.Org. Impact of Changes in Tariffs on Developing Countries


Global Poultry Industry Challenged by a Pending Trade Shake-up!


Southern African Development Community *History and treaty*
>https://www.sadc.int/about-sadc/overview/.


South African History Online *Impact of the collapse of the USSR on South Africa>*www.sahistory.org.za/.


Southern African Development Community *History and treaty>*https://www.sadc.int/about-sadc/overview/.


University of Toronto *BRICS information Center SANYA* Declaration >http://www.brics.utoronto.ca/docs/110414-leaders.html.


World trade OrganisationAnti-dumping, subsidies, safeguards: contingencies, etc >https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm#subsidies.

WTO Jourbert N, *The Reform of the South African Antidumping Regime*  

WTO *History of the multilateral trading system*  

World Trade Organisation *Technical Information on Rules of Origin*  

WTO *Understanding the WTO, The Organisation*  

WTO *Regional Trade Agreements*  

WTO *Members and Observers*  

World Trade Organisation *Subsidies and Countervailing measures overview*  
**New Papers**


Churchill O, ‘US-China Trade War’ *South China Morning Post* 8 September 2018

Davis W, AGOA.info *AGOA and the continental Free Trade Area*


The Sunday Mail/Financial Mail ‘The Great Chicken Rip Off… a third of frozen chicken is just water’ 16 August 2016.


Webb S,‘Brazil's poultry industry could take years to recover from strike -minister’ Reuters May 30 2018 >https://www.reuters.com/article/us-brazil-transportation-
minister/brazils-poultry-industry-could-take-years-to-recover-from-strike-minister-idUSKCN1IV2XU.


**Journals**


http://etd.uwc.ac.za/
Publications


Papers


Department of Agriculture Forestry Fisheries *South African Agricultural Production Strategy* Concept Document (2011) Department of Agriculture Forestry Fisheries:

Department for International Development and Department for Business and innovation Skills *Protectionism Trade and Investment Analytical Papers*. Department for International Development and Department for Business and innovation Skills.

Demiral CT, *The analysis of BRICS and the Diverse Role of BRICS Countries in International Politics* (2014).


Limao N, World Trade Review 155 *Preferential vs multilateral trade liberalisation evidence and open questions* (2006). World Trade Review.

Marković I and Marković M, Economics of Agriculture: *Agricultural Protectionism of the European Union in the conditions of international trade* Review Article.


Neufold IN, UNCTAD *Antidumping and Countervailing procedures use or Abuse Implications for developing countries* (2001). UNCTAD.


http://etd.uwc.ac.za/


Vickers B, Strategic Review of Southern Africa vol 36 no2. Department of political science

UNIDO and ITC *Status, Challenges and opportunities of BRICS E-Commerce* (2017). UNIDO and ITC.


Thesis


http://etd.uwc.ac.za/
Mafu M, Has *South Africa Been Handed A Poisoned Chalice? Assessing the legal Implications of AGOA for South Africa’s trade policy*

**Articles**

GATT Article XXI

GATT Article XXIV

GATT Article XXI General Exceptions.

**Treaties**


**ACTS**


Marketing Agriculture Act 1996