

**THE EFFECT OF THE AGREEMENT ON AGRICULTURE ON THE RELATIONSHIP  
BETWEEN SOUTH AFRICA AND THE EUROPEAN UNION**

**BY**

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## **DECLARATION**

I, Nikhiel Deeplal, state that 'The effect of the Agreement on Agriculture on the relationship between South Africa and the European Union,' is my own work, and that all of the sources that I have used and quoted have been indicated and acknowledged by means of references.

A handwritten signature in black ink, appearing to read 'N. Deeplal', with a stylized flourish underneath.

*Nikhiel Deeplal*

211 537 478

## **DEDICATION**

This dissertation is dedicated to my Mother and my late grandfather Mr J Chutergun.

Thank you for always being my pillars of strength. This was only possible through your love and support.

I am because you are!

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# **CHAPTER 1**

## **INTRODUCTION**

### **1.1 Background and Introduction**

The Agreement on Agriculture<sup>1</sup> (AoA or referred to as ‘the agreement’) was agreed upon during the Uruguay round of the General Agreement on Trade and Tariffs (GATT 1994). It came into effect when the World Trade Organisation (WTO) was formed on 1 January 1995. The agreement regulates trade in agricultural products and produce, between all Members of the WTO and applies to all equally. However, a distinction is sometimes drawn between developing and developed countries.<sup>2</sup>

The AoA establishes a number of generally applicable rules with regard to trade-related agricultural measures, primarily in the areas of market access, domestic support and export subsidies.<sup>3</sup> ‘These rules in particular relate to country-specific commitments to improve market access and reduce trade-distorting subsidies which are contained in the individual country schedules of WTO Members and constitute an integral part of the GATT.’<sup>4</sup> This means that the agreement has to be implemented by members making changes to their domestic policy to bring it in line with the agreement.

While the agreement sets out the general rules and commitments that states must follow, ‘it does not include within it specific quantitative commitments on a country by country and commodity by commodity basis.’<sup>5</sup> A major objective of the Uruguay Round of Negotiations is the quantitative

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<sup>1</sup> Agreement on Agriculture (15 April 1994) LT/UR/A-1A/2.

<sup>2</sup> Elamin, Pearce and Sharma, The FAO Resource Manual on Agreement on Agriculture provides *introductory analysis of various market access provisions*.

<sup>3</sup> ‘Agriculture: Explanation, Introduction’ available at [https://www.wto.org/english/tratop\\_e/agric\\_e/ag\\_intro01\\_intro\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/ag_intro01_intro_e.htm), accessed on 20 May 2015.

<sup>4</sup> Ibid.

<sup>5</sup> <http://www.fao.org/docrep/w7814e/w7814e07>, accessed on 20 May 2015.

commitments. These are included in the country schedules which each member is required to commit to and submit to the WTO.<sup>6</sup> The core goal of any trade agreement in the WTO is to bring about trade liberalisation and put all countries on the same footing when it comes to trade. The AoA sets out three main pillars of trade: market access, domestic support and export subsidies.<sup>7</sup>

Market access primarily deals with import of goods and the rules and commitments relating to such. 'Its purpose is to expand trade by preventing various non-tariff barriers and by binding and reducing tariffs.'<sup>8</sup> In the WTO context, 'market access' is about both obligations and rights.<sup>9</sup> This means that states have an obligation to offer market access to their goods to other states but, in turn, they have the right to have market access to the goods of other states. Market access has four important elements, 'tariffication, tariff reduction, market access provisions that oblige countries to provide 'low' import tariffs for a fixed quota of imports.'<sup>10</sup>

Article 9 of the AoA<sup>11</sup> discusses export subsidies. It states that export subsidies must be reduced and that these are commitments under the agreement.<sup>12</sup> Export subsidies refer to financial support from the state for producers that have a surplus; this enables them to export their goods at a lower cost.<sup>13</sup> Agriculture receives preferential treatment over other commodities as export subsidies are still allowed; however, the agreement introduced limits, whereas none existed before.<sup>14</sup> The fundamental reason why export subsidies were introduced is because it causes a lot of damage to exporting countries and reduces their market share and export earnings. This mostly affects

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<sup>6</sup> <http://www.fao.org/docrep/w7814e/w7814e07>, accessed on 20 May 2015.

<sup>7</sup> Agreement on Agriculture (15 April 1994) LT/UR/A-1A/2.

<sup>8</sup> <http://www.fao.org/docrep/w7814e/w7814e07>, accessed on 20 May 2015.

<sup>9</sup> Elamin, Pearce and Sharma, FAO Resource Manual on Agreement on Agriculture provides *introductory analysis of various market access provisions*.

<sup>10</sup> 'Main elements of the Agreement on Agriculture' available at <http://www.fao.org/docrep/w7814e/w7814e06.htm#chapter2themainelementsoftheagreementonagriculture>, accessed on 21 May 2015.

<sup>11</sup> Agreement on Agriculture (15 April 1994) LT/UR/A-1A/2.

<sup>12</sup> Ibid.

<sup>13</sup> William DJ. , Jackson JH., *The Future of International Economic Law: Business & Economics* (2008)326.

<sup>14</sup> 'Main elements of the Agreement on Agriculture' available at <http://www.fao.org/docrep/w7814e/w7814e06.htm#chapter2themainelementsoftheagreementonagriculture>, accessed on 21 May 2015.

developing countries such as those within the Cairns group and on the African continent.<sup>15</sup> Countries with a low level of self-sufficiency may experience overall welfare gains when export subsidies are introduced. Generally, consumer gains should more than often offset producer losses; however, this is influenced by the extent to which export subsidies destabilise markets.<sup>16</sup>

The main goal of domestic support is to raise producers' income and maintain the profitability of domestic farming. Financial assistance from

the state enables producers to compete on the global market. However, this is limited due to the fact that countries with strong economies can provide more support to their producers and thus dominate the international market. Domestic support can be broken up into three categories two of which are not restricted. The **Green Box** measures are assumed not to affect production and are therefore not considered trade-distorting. They are acceptable under the AoA and are not subjected to reduction.<sup>17</sup> The **Blue Box** category includes measures such as direct payments to farmers that are intended to limit production.<sup>18</sup> These are also considered acceptable and are not subject to reduction, but are between the green and the amber box.<sup>19</sup> The category which is restricted is the controversial **Amber Box**. These are measures that are considered trade-distorting and are therefore subjected to reduction; however support is still allowed, although reduced.<sup>20</sup> Measures such as price support and import subsidies impact production.

As noted earlier, WTO agreements do make exceptions for countries depending on their developmental level. The organisation has no set definition of developed or developing countries. Rather, countries themselves declare whether they are developed, developing or least developed. The declared status may be challenged by another member state.<sup>21</sup> Such status is highly relevant and has a significant effect, particularly in respect of agriculture. On the other hand, the United

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<sup>15</sup>Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> 'Agriculture: Explanation, Domestic Support' available at [https://www.wto.org/english/tratop\\_e/agric\\_e/ag\\_intro03\\_domestic\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/ag_intro03_domestic_e.htm), accessed on 20 May 2015.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid

<sup>20</sup> Ibid.

<sup>21</sup> 'Development: Definition, Who are developing countries availbale at [https://www.wto.org/english/tratop\\_e/devel\\_e/d1who\\_e.htm](https://www.wto.org/english/tratop_e/devel_e/d1who_e.htm), accessed on 16 may 2015.

Nations (UN) and the World Bank (WB) have their own methods to determine development status and disagree on the definition of a developing or least developed nation. According to the UN, there is no set definition whilst the WB definition is heavily dependent on gross national income (GNI) per capita.<sup>22</sup> ‘Countries with a GNI per capita of less than \$1005 are classified as low-income countries, those with between \$1,006 and \$3,975 as lower middle income countries, those with between \$3,976 and \$12,275 as upper middle income countries, and those with incomes of more than \$12,276 as high-income countries.’<sup>23</sup> This scale has a significant impact on the classification of countries as least developed or developing.

However, the list of the least developed countries (LDCs) is decided upon based on recommendations by the Committee for Development policy to the UN Economic and Social Council and, ultimately, the General Assembly which make the decision.<sup>24</sup> The basic criteria for inclusion are an economic vulnerability index, a human assets index and certain thresholds with regard to per capita GNI.<sup>25</sup> While space constraints do not allow for detailed discussion of this,<sup>26</sup> in a nutshell, developed countries are more industrialised, and have higher income per capita, more developed economies and higher levels of technological advancement than developing countries and in particular, have an overall higher standard of living.<sup>27</sup> Such countries include the United States of America, France, the United Kingdom, Belgium, Switzerland and The Netherlands, to name but a few.<sup>28</sup> On the other and, developing countries have under-developed industries, and a lower standard of living and human development index.<sup>29</sup> These countries are mainly found in

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<sup>22</sup> Library of congress collections policy statements, available at <http://www.loc.gov/acq/devpol/devcountry.pdf>, accessed on 12 May 2015.

<sup>23</sup> ‘Country classification, Data sources, country classifications and aggregation methodology’ available at [http://www.un.org/en/development/desa/policy/wesp/wesp\\_current/2012country\\_class.pdf](http://www.un.org/en/development/desa/policy/wesp/wesp_current/2012country_class.pdf), accessed on 21 May 2015.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> This study is primarily concerned with the status of a state which is self-determined; it therefore does not engage in further discussion on GNI and how it comes about.

<sup>27</sup> ‘What is the difference between developing and developed countries’ <http://politics.stackexchange.com/questions/4940/what-is-the-difference-between-developed-countries-and-developing-countries>, accessed on 28 May 2015.

<sup>28</sup> ‘World economic outlook’ available at <http://www.imf.org/external/pubs/ft/weo/2014/01/pdf/text.pdf>, accessed on 28 May 2015.

<sup>29</sup> ‘What is the difference between developing and developed countries’ <http://politics.stackexchange.com/questions/4940/what-is-the-difference-between-developed-countries-and-developing-countries>, accessed on 28 May 2015.

Asia and Africa and include India, South Africa (SA), Burma, Tunisia, etc.<sup>30</sup> The WTO recognizes countries that are not considered to be developed as developing and least developed, each with their own benefits and commitments under the agreement. The difference in these groups' level of development is linked to their ability to compete in the multilateral trading system. This is especially true of agriculture. The major distinction between the developed; developing and least developing states is that the commitments of the agreement differ and are far less for the latter group. One such commitment which demands less (which some may argue is a massive benefit of the classification) is Article 6 para 2<sup>31</sup> of the AoA where the following two important exemptions for developing countries from domestic support reduction commitments are set out:

- 'investment subsidies which are generally available to agriculture; and
- Agricultural input subsidies generally available to low-income or resource-poor producers.'<sup>32</sup>

Thus, domestic support meeting these criteria is not required to be included in the calculation of the current aggregate measurement of support (AMS). Least-developed countries, on the other hand, are exempt from all domestic support reduction commitments, but may not exceed the total AMS established for the base period (1986-88).<sup>33</sup> The reason is the different economic situations within these countries. Developing countries are not as economically strong and stable as developed countries. There are thus significant differences in the structure and goals of their agricultural policies. While developed countries continue to subsidise agricultural producers, developing countries have tended to tax the agricultural sector, rather than support it.<sup>34</sup>

Another difference lies in the reduction of total AMS which is 20% for developed countries, and 13.3% for developing and least developed countries, with 0% for the implementation period of 10 years.<sup>35</sup> These exceptions are not absolute and certain requirements have to be met.<sup>36</sup> Annex 2 of

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<sup>30</sup> 'World economic outlook' available at <http://www.imf.org/external/pubs/ft/weo/2014/01/pdf/text.pdf> accessed on 28 May 2015.

<sup>31</sup> Agreement on Agriculture (15 April 1994) LT/UR/A-1A/2.

<sup>32</sup> Agreement on Agriculture (15 April 1994) LT/UR/A-1A/2.

<sup>33</sup> <http://www.fao.org/docrep/w7814e/w7814e07>, accessed on 10 August 2015.

<sup>34</sup> Ibid.

<sup>35</sup> Agreement on Agriculture (15 April 1994) LT/UR/A-1A/2.

<sup>36</sup> Ibid.

the AoA states that the exemption must have ‘no or at most minimal, trade-distorting effects or effects on production.’<sup>37</sup> The agreement goes on to state that support must be through a publicly-funded government programme. This programme must not involve transfers from consumers and price support to producers should not be an effect of such a programme.<sup>38</sup> Further policy conditions are set out in annex 2 that are not discussed here but must be complied with.

Payments directly under production limiting programs, rural development in developing countries, certain government assistance to encourage agricultural, and other support that is only a small proportion (5% for developed countries, and 10% for developing countries) of the value of production of individual products or the value of total agricultural production are other policies which are not included in the Total Aggregate Measurement of Support reduction commitments.<sup>39</sup>

However, there are substantial differences between the figures for domestic support set out in the agreement and the targets for countries’ legally binding “schedules” of commitments.<sup>40</sup> For example, under market access, the average tariff cut for all agricultural products was 36% for developed and 24% for developing countries with a minimum cut per product of 15% and 10%, respectively.<sup>41</sup> The same applies to export subsidies, where the agreement states:

‘Reduce the values of mainly direct export subsidies to 36% below the 1986-90 base period level over the six-year implementation period, and the quantity of subsidized exports by 21% over the same period. The reduction in values for developing countries will be two-thirds of the reduction for developed countries and will be carried out over a 10-year period. Least-developed countries are exempted.’<sup>42</sup>

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<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

Thus, despite treating members the same and seeking to balance trade dynamics, the WTO takes the global and economic positions of states into account and to level the playing field. This ensures optimal benefit for all and no unfair advantage or disadvantage to any member state. The distinction between member states is important not only for the AoA but for all Agreements under the WTO.

## **1.2 Preliminary Literature Review and Motivation for the Study**

‘Agriculture basically created civilization as we know it. In fact, using anthropologists’ definition of civilization, farming was a prerequisite for civilization in every part of the world.’<sup>43</sup> Agriculture is one of the most positive ways of surviving and earning an income in a world where money is hard to come by. It is relatively easier than other trades, requires less capacity and funds in some cases, is not skills intensive and is accessible to the poorest of the poor. People are not only able to feed themselves but are able to start small businesses and in some cases expand into the local market. Vast amounts of land are available in most countries and while citizens might not have the resources to use it for construction and other purposes, they are able to farm. Therefore agriculture is fundamental to humankind’s survival not only because it provides food, but due to its potential to improve the lives of the local farmers.

Agriculture is a substantial part of global multilateral trade. In 2013, the value of global exports of agricultural goods stood at UD\$1 745 billion.<sup>44</sup> In March 2015, SA recorded its highest ever export of agricultural goods.<sup>45</sup> Globally, more than 148 270 710 tonnes of wheat are imported and exported annually, together with products such as soybeans and maize. Thus, global trade in agricultural goods is important to both developing and developed countries.

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<sup>43</sup> ‘Positive effects of Agriculture’ available at [http://www.waldeneffect.org/blog/The\\_positive\\_effects\\_of\\_agriculture](http://www.waldeneffect.org/blog/The_positive_effects_of_agriculture) accessed, on 16 June 2015.

<sup>44</sup> <http://faostat.fao.org/desktopdefault.aspx?pageid=342&lang=en&country=202> accessed on 8 August 2015.

<sup>45</sup> ‘South Africa Exports’ available at <http://www.tradingeconomics.com/south-africa/exports>, accessed on 16 August 2015.



Economic growth is the cornerstone of poverty reduction and agriculture is the engine of economic growth in most African countries. Approximately 65% of Africans rely on agriculture as their primary source of livelihood and more than 90% of the continent's agricultural products are produced by small-scale farmers.<sup>46</sup> SA exports in excess of \$25 Billion<sup>47</sup> worth of agricultural products annually.<sup>48</sup> In 2015, five of the top 10 countries that SA exports agricultural goods to are members of the European Union (EU),<sup>49</sup> including the United Kingdom (14%), The Netherlands (11%), Germany (4%), Belgium (4%) and Italy (2%). Other countries in the top 10 include Zimbabwe, Japan, the United States and Mozambique.<sup>50</sup> In 2011, maize accounted for the highest volume of agricultural exports from SA at 2 563 159 tonnes, followed by wine, oranges, grapes and apples.<sup>51</sup> SA also imports agricultural products to the value of around \$16.7 billion each year,<sup>52</sup> including wheat, soybean and palm oil.<sup>53</sup>

In 2013 alone, the EU exported €118 Billion worth of agricultural products.<sup>54</sup> Wine tops the list at 7 417 993 tonnes per year followed closely by Food Prep Nes, whole milk cheese and pork.<sup>55</sup> Although European imports are dropping, they still amount to more than €100 Billion worth of agricultural products per annum<sup>56</sup> and include Food Prep Nes, whole milk cheese and wine.<sup>57</sup>

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<sup>46</sup> 'Agriculture's critical role in Africa's development' available at <http://www.ifpri.org/publication/agriculture-s-critical-role-africa-s-development>, accessed on 12 August 2015.

<sup>47</sup> Daya Y., *South African agricultural exports: trends, composition, direction and potential*, directorate international trade: trade research desk available at <http://www.daff.gov.za/researchp/saagricexp.pdf>, accessed on 9 August 2015.

<sup>48</sup> This figure is for year 2005. Agricultural exports have increased since then.

<sup>49</sup> Daya Y., *South African agricultural exports: trends, composition, direction and potential*, directorate international trade: trade research desk available at <http://www.daff.gov.za/researchp/saagricexp.pdf> accessed on 9 August 2015.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> <http://faostat.fao.org/desktopdefault.aspx?pageid=342&lang=en&country=202>, accessed on 8 August 2015.

<sup>54</sup> 'Statistical and economic information report, Directorate-General for Agriculture and Rural Development,' December 2013 available at [http://ec.europa.eu/agriculture/statistics/agricultural/2013/pdf/full-report\\_en.pdf](http://ec.europa.eu/agriculture/statistics/agricultural/2013/pdf/full-report_en.pdf), accessed on 12 August 2015.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> Ibid.

Agriculture is not only important for import and export purposes. Many households survive on their own produce or the profit from farming. In SA 19.9% of households rely on subsistence and commercial agriculture for survival.<sup>58</sup> It is estimated that about 4 million South Africans survive on their own produce.<sup>59</sup> Agriculture is thus crucial for food security in a country with high poverty rates. Indeed, in many developing countries, it is the only means of livelihood. In countries such as Zambia and Uganda, large sections of the population rely on subsistence farming and agricultural trade and agricultural goods are the main export.<sup>60</sup> Although this model is less successful in sub-Saharan Africa due to population growth, it is still practiced due to the lack of alternatives.<sup>61</sup> More than 80 years ago, Eleanor Roosevelt observed that, ‘The objective of subsistence farming is not to compete with regular farming or add to the burden of agricultural overproduction. The idea is that families engaged in subsistence farming consume their own garden products locally instead of sending them to distant markets.’<sup>62</sup> This illustrates the importance of this form of agriculture not only to the developing, but the developed world as her remarks were directed at citizens of the United States. However, Vandana Shiva argues that free market economics threatens these marginalised groups of farmers who often receive very little government support.<sup>63</sup> Of the 12.1 million farmers in the EU, 5.1 million are subsistence farmers, mainly in eastern European countries such as Romania and countries like Hungary and Bulgaria.<sup>64</sup>

Food security, from agricultural activity, both imported and locally grown, is thus a global phenomenon that spans the developing and developed world. It needs to be considered in

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<sup>58</sup> ‘Agricultural statistics’ available at [http://www.statssa.gov.za/?page\\_id=735&id=4&paged=3](http://www.statssa.gov.za/?page_id=735&id=4&paged=3), accessed on 16 August 2015.

<sup>59</sup> Aliber M., *Exploring Statistics South Africa’s National Household Surveys as sources of information about household-level food security*. Agrekon Vol. 48:4. 2009.

<sup>60</sup> ‘Subsistence farming’ available at [http://www.newworldencyclopedia.org/entry/Subsistence\\_farming](http://www.newworldencyclopedia.org/entry/Subsistence_farming), accessed on 16 August 2015.

<sup>61</sup> Ibid.

<sup>62</sup> Roosevelt E., *Subsistence Farmsteads* *Forum* 91 (Apr. 1934): 199-201. From the Eleanor Roosevelt Papers Project, 1934. Retrieved 11 August 2007.

<sup>63</sup> Shiva V., *Staying Alive: Women, Ecology and Development*. Zed Books, 1989. ISBN 0862328233 8-12.

<sup>64</sup> ‘Semi Subsistence farming and small farms in the EU’ available at <http://www.arc2020.eu/2013/06/semi-subsistence-farming-and-small-farms-in-the-eu>, accessed on 15 August 2015.

examining the AoA as trade affects the way people access food and determines whether it is healthy, sustainably sourced, and nutritional and whether they are able to make informed food choices (food security).<sup>65</sup>

Agriculture is not only important for citizens' survival in countries with a large number of subsistence farmers but for the prosperity of the nation as a whole, as many countries rely on agricultural exports to sustain their economies. Tobacco accounts for 74% of Malawi's exports and more than 23.8% of its Gross Domestic Product (GDP),<sup>66</sup> and agricultural exports make up 12.3% of Gambia's GDP and 18.2% of Guatemala's.<sup>67</sup> India exports agricultural products to the tune of \$39 billion, while China is the world's largest exporter of rice.<sup>68</sup> Agriculture is the bedrock on which the economic boom rests in these two countries.<sup>69</sup> Since developing countries have witnessed the largest growth in the export of agricultural goods,<sup>70</sup> their reliance on this type of trade has increased.<sup>71</sup>

The AoA has different impacts and implications depending on where it is applied and the role a particular country plays within the agricultural trade framework. Developing countries have been more affected than their developed counterparts. There are various views on the agreement. Scholars such as Birovljev and Ćetković argue that it is vitally important as, for the first time it formalises agricultural trade and introduces the three important pillars of domestic support, market access and export subsidies.<sup>72</sup> Jank maintains that the tariff removal increases exports; exports

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<sup>65</sup> 'What is food security' available at <http://www.foodsecuritynews.com/What-is-food-security.htm>, accessed on 15 August 2015

<sup>66</sup> <http://www.fao.org/docrep/005/y3733e/y3733e0d.htm>

<sup>67</sup> Ibid.

<sup>68</sup> 'India's agricultural exports climb record high' available on <http://www.fas.usda.gov/data/india-s-agricultural-exports-climb-record-high>, accessed on 16 August.

<sup>69</sup> 'Top agricultural producing countries' available at <http://www.investopedia.com/financial-edge/0712/top-agricultural-producing-countries.aspx>, accessed on 17 August 2015.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Birovljev J., Ćetković B., The impact of the WTO agreement on agriculture on food security in developing countries, 135 EAAE Seminar Challenges for the Global Agricultural Trade Regime after Doha available at <http://ageconsearch.umn.edu/bitstream/160372/2/03-Birovljev,%20Ćetkovic%20-%20EAAE%20135.pdf>, accessed on 18 August 2015.

from Latin America to the EU increased by 8%.<sup>73</sup> Other authors note that the fact that domestic support is limited improves the ability of farmers in poorer countries that do not have access to substantial support to compete with farmers who receive lower subsidies and multinationals in the developed world.<sup>74</sup> John Jackson argues that lower export subsidies have prevented countries flooding the market with their products, promoting competition,<sup>75</sup> while Mulleta states that the fact that developing countries can deviate and implement smaller tariff reductions works in their favour as this ensures that domestic agricultural producers are not threatened by foreign competition.<sup>76</sup>

However, there are various problems with the implementation of the agreement. Sharma states that many countries lack information on items such as commitments to meet the newly set requirements.<sup>77</sup> Birovljev and Četković are of the opinion that, ‘In developing countries the WTO Agreement on Agriculture adversely affects food security by increasing poverty and inequality by restricting the tools available to governments to promote food security.’<sup>78</sup> They add that trade liberalisation benefits large industries while the small farmer suffers.<sup>79</sup> The current study argues, that it advantages richer developed countries like those in the EU and works to the detriment of developing countries such as SA.<sup>80</sup> One of the most interesting aspects of the AoA which is not part of other WTO trade agreements is that subsidies that have the potential to distort trade are permitted, despite being limited. This exposes the agreement up to interpretation and manipulation

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<sup>73</sup> Jank MS., *Agricultural Trade Liberalisation: Policies and Implications for Latin America*, Inter-American Development Bank, 2004.

<sup>74</sup> ‘Agriculture: Fairer trade markets’ available at [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/agrm3\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm3_e.htm) accessed, on 18 August 2015.

<sup>75</sup> Jackson J., *The Jurisprudence of the GATT and the WTO, Insights on Treaty Law and Economic Relations*, Cambridge University Press (2000).

<sup>76</sup> Mulleta, F.F., *The Quest for Affordable Food: Prospects in the Doha Round for Net Food Importing Developing Countries*, South African Institute of International Affairs: Development Through Trade Program, Occasional Paper No. 54. (2010).

<sup>77</sup> Sharma R., *Developing Country Experience with the WTO Agreement on Agriculture and Negotiating and Policy Issues*, Paper presented at the International Agricultural Trade Research Consortium (IATRC) summer symposium on *The Developing Countries, Agricultural Trade and the WTO*, Whistler Valley, Vancouver, Canada, 16-17 June 2002.

<sup>78</sup> Birovljev J. & Četković B., *The impact of the WTO agreement on agriculture on food security in developing countries*, 135 EAAE Seminar Challenges for the Global Agricultural Trade Regime after Doha available at <http://ageconsearch.umn.edu/bitstream/160372/2/03-Birovljev,%20Cetkovic%20-%20EAAE%20135.pdf>, accessed on 18 August 2015.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

which has most often been a claim by nations.<sup>81</sup> Furthermore, domestic law will have to be amended to successfully implement the AoA. While this will affect all countries, developing nations will be most affected.<sup>82</sup> Research has also shown that the agreement has resulted in increased imports which adversely affect local production in developing countries with major impacts on food security as stated by Gonzalez.<sup>83</sup> Jackson argues that the non-removal of tariffs in the agreement is to the detriment of less developed and developing countries and agriculture still remains largely protected.<sup>84</sup> These issues are addressed in more detail in subsequent chapters.

This study examines the AoA in detail as its effects are far more than just legislative ones that impact trade, but extend to food security and in the long run could potentially affect human rights. It discusses how the agreement has impacted SA's agricultural trade since its inception, especially in light of the country being a developing nation. The effect of the AoA's three pillars on agricultural development and SA's agricultural trade is investigated with particular reference to trade with the EU. Given that the commitments for the former are markedly different from those for the latter, how does this impact this relationship? Is the agreement skewed in favour of the developed world? The AoA's impact on the relationship between the EU and SA is examined by analysing the bilateral Trade, Development and Cooperation Agreement<sup>85</sup> (TDCA) concluded between these parties that is moulded and constrained by the AoA.

The point of entry to this discussion is not from an historical perspective as the deadline for implementation has passed but rather from an analysis of whether the agreement has achieved what it set out to achieve and its effects from the time of implementation to the present. This is important

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<sup>81</sup> Sharma R., Developing Country Experience with the WTO Agreement on Agriculture and Negotiating and Policy Issues, Paper presented at the International Agricultural Trade Research Consortium (IATRC) summer symposium on *The Developing Countries, Agricultural Trade and the WTO*, Whistler Valley, Vancouver, Canada, 16-17 June 2002.

<sup>82</sup> <http://www.fao.org/docrep/w7814e/w7814e07.htm> [18 August 2015]

<sup>83</sup> Gonzalez CG., Institutionalizing Inequality: *The WTO Agreement on Agriculture, Food Security, and Developing Countries*, 27 COLUM. J. ENVTL. L. 433 (2002) available at <http://digitalcommons.law.seattleu.edu/faculty/415> accessed on 19 August 2015.

<sup>84</sup> Jackson J., *The Jurisprudence of the GATT and the WTO*, Insights on Treaty Law and Economic Relations, Cambridge University Press (2000).

<sup>85</sup> Trade, Development and Cooperation Agreement, October 1999.

as there is talk of new rounds of trade negotiations with some arguing that the agreement might be renegotiated with a focus on climate change and food security.<sup>86</sup>

### **1.3 Research Question**

The issues addressed in this study are of academic and practical interest for the reasons set below. Firstly, considering that this is an agreement which has been assented to by all member states of the WTO after negotiations, does the agreement put all states on a level playing field or does it have different results on different states? This can be assessed by looking at SA and the EU and their relationship.

Secondly, the question arises as to whether the agreement does more harm than good to SA, especially in light of its trade with one its biggest importers, the EU.

Thirdly, does the AoA work solely to the benefit of the EU as a developed nation, especially in relation to the way it trades with developing countries like SA which rely heavily on their trade income?

The main question addressed in this study is thus: Does the AoA have an effect on the trade relationship between SA and the EU?

This can be understood by taking a closer look at the effect of the agreement on South Africa. The effect of the agreement on the European Union. And how, if at all, the agreement has it changed their relationship?

### **1.4 Research Methodology**

The study is based on a desktop review of relevant legal and economic material. The legal and economic rules, principles, treaties and arguments set out in this material is analysed and critically

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<sup>86</sup> Cardwell M., Smith F., *Renegotiation of the WTO Agreement on Agriculture: Accommodating the new big issues*. International and Comparative Law Quarterly, 62, pp. 865-898. doi:10.1017/S0020589313000341 (2013).

discussed to draw logical conclusions either to support or reject the proposed topic. Material was sourced from online sources, WTO agreements, journal articles, academic papers, academic texts, UN and WTO reports and newspaper reports, to name but a few.

### **1.5 Limitations of the study**

This study is limited to an analysis of the AoA. While the Agreement on the Application of Sanitary and Phytosanitary Measures<sup>87</sup> as well as the Anti-dumping Agreement<sup>88</sup> as well as other agreements have an effect on the AoA and its implementation, they are not covered in the study. Furthermore, the study focuses on the effect of the agreement on two main actors, SA and the EU. While other countries may be used for comparative reasons, to highlight a point or as a case study, the primary focus is these actors. Nonetheless, the relationship between the EU and SA could be regarded as a microcosm of global trade dynamics between developing and developed countries. Finally, the study is limited to the current implementation and effect of the agreement, and is based on research conducted before June 2016.

### **1.6. Structure of the Thesis**

This thesis comprises the following chapters and parts:

Chapter 1:	Introduction and Background
Chapter 2:	History and Analysis of the WTO and the Agreement on Agriculture
Chapter 2.1:	Part A: History

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<sup>87</sup> Agreement on the Application of Sanitary and Phytosanitary Measures, 1867 U.N.T.S. 493.

<sup>88</sup> Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement), 1868 U.N.T.S. 201.

Chapter 2.2:	Part B: The Agreement on Agriculture
Chapter 3:	The Development of SA's and the European Union's Agricultural Trade
Chapter 3.1:	Part A: The Development of SA's Agricultural Trade from Apartheid to the Democratic Dispensation
Chapter 3.2:	Part B: The Development of the European Union's Agricultural Trade
Chapter 4:	The Trade Development and Cooperation Agreement and its Effect on SA and the European Union
Chapter 4.1:	Part A: Introduction to the Trade Development Cooperation Agreement between SA and the European Union
Chapter 4.2:	Part B: Effect of the TDCA on SA and the European Union
Chapter 5:	Conclusion and Recommendations



**CHAPTER 2**  
**HISTORY AND ANALYSIS OF THE WTO AND THE AGREEMENT ON**  
**AGRICULTURE**

**2.1 Overview**

Agricultural trade has been largely left out of the formal agreements of the multilateral trading system (MTS), despite being a central part of this system. In order to answer the research question, it is necessary to understand the impact and role of trade in international relations. This chapter examines the origins of international trade and the current situation. It focuses on the MTS after World War Two (WWII), starting with the Bretton Woods Conference and its outcomes, and the International Monetary Fund (IMF) and the World Bank (WB). The International Trade Organisation (ITO) is discussed, as well as how its shortcomings led to the General Agreement on Trade and Tariffs (GATT). This thesis is limited in that it will not engage with trade regulations prior to the GATT.

Prior to the creation of the GATT, countries traded in a bilateral trade agreement system which included the Most Favoured Nation (MFN) principle discussed later in this chapter.<sup>89</sup> The economic fallout wrought by WWII created the need for trade transformation and agricultural reform, bringing agriculture to the fore of some of the trade negotiations. This is further discussed in the section of the various rounds of the GATT and its problems. The need for a global trade body gave birth to the WTO. How the AoA became part of the WTO is a key question addressed in this chapter. The MFN and the National Treatment Principle (NTP) are still relevant to international trade as they have been integrated into the WTO; this issue is also explored.

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<sup>89</sup> R Hyman, 'Shifting Dynamics in International Trade Unionism: Agitation, Organisation, Bureaucracy, Diplomacy', *Labour History*, vol 46, no. 2, pp. 137-154, 2005, Business Source Complete.

The second part of the chapter analyses the AoA that has changed the face of agricultural trade as it introduces regulations for the first time. It focuses on market access, export subsidies and domestic support. The effects of three categories of domestic support are further discussed. Finally, the *de minimis* provision is discussed; this is an exemption within the agreement before it outlines the country schedules. The effects of such schedules are considered later in the dissertation.

## **2.2 Part A: History**

### **2.2.1 Introduction Part A**

The 1930s and 1940s were a dark period in world history with the Great Depression and WWII<sup>90</sup>. The end of WWII and the demise of the League of Nations created the need for the international community to come together. In 1945<sup>91</sup> the most powerful international body, the UN, was formed.<sup>92</sup> Global economic and financial instability in the post-war period<sup>93</sup> affected trade and all other aspects of international relations. This led to the Bretton Woods Conference.<sup>94</sup>

### **2.2.2 The Bretton Woods Conference**

The Bretton Woods Conference, officially known as the United Nations Monetary and Financial Conference, saw 44 delegates from different countries meeting from 1 to 22 July 1944 in Bretton Woods, New Hampshire in the US.<sup>95</sup> The conference was the brain child of representatives of WWII victors, led by the US and Britain.<sup>96</sup> ‘The policies adopted by governments to combat the

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<sup>90</sup> 1945.

<sup>91</sup> 24 November 1945.

<sup>92</sup> ‘History of the United Nations’ available at <http://www.un.org/en/aboutun/history/>, accessed on 2 September 2015.

Its effectiveness and structure are highly debatable but this would require study on its own; however it has prevented a Third World War from occurring especially during times where war seemed inevitable.

<sup>93</sup> D A Irwin, *The GATT in a Historical Perspective*, AEA Papers and Proceedings, p. 323, May 1995.

<sup>94</sup> Ibid.

<sup>95</sup> ‘The Bretton Woods Conference 1944, U.S Department Archive’ available at <http://2001-2009.state.gov/r/pa/ho/time/wwii/98681.htm>, accessed on 4 September 2015.

<sup>96</sup> D A Irwin, *The GATT in a Historical Perspective*, AEA Papers and Proceedings, p. 323, May 1995

Great Depression – high tariff barriers, competitive currency devaluations, discriminatory trading blocs – had contributed to creating an unstable international environment without improving the economic situation.’<sup>97</sup> The Atlantic Charter<sup>98</sup> issued by US President Roosevelt and British Prime Minister Winston Churchill was a first small step in seeking to reverse this situation. The Bretton Woods Conference gave birth to the IMF and WB.

### **2.2.3 The International Monetary Fund**

In 1942, the US and Britain began preparing for formal discussions on economic stability and transformation. Harry Dexter White, special assistant to the US Secretary of Treasury and John Maynard Keynes, an advisor to the British Treasury wrote separate papers on the formation of an organisation that would provide financial assistance to countries facing financial deficits.<sup>99</sup> The common thread in the proposals was the notion of fixed exchange rates especially in relation to the dollar. From 1942 to spring 1944, considerable effort was put into reaching a common approach. On 21 April 1944, the allies announced that an IMF would be formed. The fundamental role of the IMF is ‘overseeing the international monetary system to ensure exchange rate stability and encouraging members to eliminate exchange restrictions that hinder trade.’<sup>100</sup>

Article I of the IMF Charter states that:

‘The purposes of the International Monetary Fund are:

- i. To promote international monetary cooperation through a permanent institution which provides the machinery for consultation and collaboration on international monetary problems.
- ii. To facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of

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<sup>97</sup> ‘The Bretton Woods Conference 1944, U.S Department Archive’ available at <http://2001-2009.state.gov/r/pa/ho/time/wwii/98681.htm>, accessed on 4 September 2015.

<sup>98</sup> Atlantic Conference of August 1941.

<sup>99</sup> ‘The Bretton Woods Conference 1944, U.S Department Archive’ available at <http://2001-2009.state.gov/r/pa/ho/time/wwii/98681.htm>, accessed on 4 September 2015.

<sup>100</sup> ‘About the IMF’ available at <http://www.imf.org/external/about.htm>, accessed on 5 September 2015.

employment and real income and to the development of the productive resources of all members as primary objectives of economic policy.

- iii. To promote exchange stability, to maintain orderly exchange arrangements among members, and to avoid competitive exchange depreciation.
- iv. To assist in the establishment of a multilateral system of payments in respect of current transactions between members and in the elimination of foreign exchange restrictions which hamper the growth of world trade.
- v. To give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.
- vi. In accordance with the above, to shorten the duration and lessen the degree of disequilibrium in the international balances of payments of members.

The Fund shall be guided in all its policies and decisions by the purposes set forth in this Article.’<sup>101</sup>

The IMF thus aims to maintain economic stability regardless of the political landscape or global challenges. Its aim becomes relevant when trying to assist smaller countries deal with financial crisis and assists these and other countries by monitoring exchange rate policies which has a major effect on the trade ability of countries.<sup>102</sup> It also seeks to address the issue of exchange rates which both Keynes and White explored in their proposals.<sup>103</sup>

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<sup>101</sup> Articles of Agreement of the International Monetary Fund, Article I: Purposes. Adopted at the United Nations Monetary and Financial Conference, Bretton Woods, New Hampshire, 22 July 1944. Entered into force on 27 December 1945.

<sup>102</sup> Moore, Terbeek, Thym ‘International Financial Crisis’ available at [https://web.stanford.edu/class/e297c/trade\\_environment/global/hcrisis.html](https://web.stanford.edu/class/e297c/trade_environment/global/hcrisis.html) accessed on 8 September 2015.

<sup>103</sup> ‘The Bretton Woods Conference 1944, U.S Department Archive’ available at <http://2001-2009.state.gov/r/pa/ho/time/wwii/98681.htm>, accessed on 4 September 2015.

### **2.2.4 The World Bank**

The Bretton Woods Conference also saw the formation the WB. The Bank offers loans to developing countries that were most in need of funds post-WWII when there was a global economic downturn. It is not a traditional bank as such, but has two development arms, the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA).<sup>104</sup> The WB is collectively owned by 186 members. Recent developments include the launch of the International Finance Corporation (IFC), the Multilateral Guarantee Agency (MIGA), and the International Centre for the Settlement of Investment Disputes (ICSID) that support the Bank's goal of reducing poverty worldwide. These five institutions constitute the World Bank Group.<sup>105</sup> However, loans are conditional on strict repayment policies and long-term agreements.<sup>106</sup>

The IBRD's Articles of Agreement, Article I: Purposes, state that the aim of the WB is to:

- i. 'Assist in the reconstruction and development of territories of members by facilitating the investment of capital for productive purposes, including the restoration of economies destroyed or disrupted by war, the reconversion of productive facilities to peacetime needs and the encouragement of the development of productive facilities and resources in less developed countries.
- ii. Promote private foreign investment by means of guarantees or participations in loans and other investments made by private investors; and when private capital is not available on reasonable terms, to supplement private investment by providing, on suitable conditions,

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<sup>104</sup> 'The Purpose of the World Bank' available at [http://useconomy.about.com/od/internationalorganizations/p/World\\_Bank.htm](http://useconomy.about.com/od/internationalorganizations/p/World_Bank.htm), accessed on 10 September 2015.

<sup>105</sup> Ibid.

<sup>106</sup> An example is the recent bailout of Greece which imposed austerity measures on citizens in order to honour the Bank's repayment policy.

finance for productive purposes out of its own capital, funds raised by it and its other resources.

- iii. Promote the long-range balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment for the development of the productive resources of members, thereby assisting in raising productivity, the standard of living and conditions of labour in their territories.
- iv. Arrange the loans made or guaranteed by it in relation to international loans through other channels so that the more useful and urgent projects, large and small alike, will be dealt with first.
- v. Conduct its operations with due regard to the effect of international investment on business conditions in the territories of members and, in the immediate post war years, to assist in bringing about a smooth transition from a wartime to a peacetime economy.<sup>107</sup>

The Bank is guided in all its decisions by these purposes.<sup>108</sup> They illustrate the developmental nature of the Bank and its objective of ensuring that developing countries have access to finance.<sup>109</sup> In 2006 the WB gave 48% of total external debt to low and middle income countries, most of whom are from the developing world.<sup>110</sup> In 2007 the percentage was 43%, in 2008 41% and most recently in 2015, 38%.<sup>111</sup> This shows that large amount of loans are given to the developing world thereby, despite the conditions set by the WB, allowing for developing countries to have funds to

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<sup>107</sup> International Bank for Reconstruction and Development, Articles of Agreement (as amended effective 27 June 2012).

<sup>108</sup> Ibid.

<sup>109</sup> Whether this actually happens is debatable.

<sup>110</sup> <http://datatopics.worldbank.org/debt/> accessed on 9 September 2015.

<sup>111</sup> Ibid.

function and continue to participate within the trade realm. The WB thus supports the long term goals of the Bretton Woods Agreement by making development tools more accessible.<sup>112</sup>

### **2.2.5 International Trade Organisation (ITO)**

The WB and the IMF could not achieve economic stability on their own<sup>113</sup> The parties to the Bretton Woods Conference recognised the need for a structure to set up multilateral trade agreements and tariff reductions and to compel states to abide by their commitments, including them in their domestic law.<sup>114</sup> The formation of the ITO was proposed at the UN Conference on Trade and Employment from 21 November 1947 to 24 March 1948 in Havana, Cuba.<sup>115</sup> The conference produced the Havana Charter which proposed the ITO to address the issues raised above. It was signed on 24 March by 53 countries led by the US and Great Britain.<sup>116</sup> This was the first time so many countries had come together and agreed on trade regulation. The Charter provided for a number of escape clauses to the commitments listed in it to cater for the needs of the developing countries in Latin America and Asia and the short term needs of the industrial world.<sup>117</sup> The irony is that, while most of these escape clauses were based on US practices, the Charter was not passed by the US Congress.<sup>118</sup>

It has been argued that the ITO was too ambitious in that it tried to fulfil too many roles and overstepped the mark.<sup>119</sup> For example, Sir Hubert Henderson stated that its basic conditions were unsuited for the modern world.<sup>120</sup> He criticised the organisation for failing to include equilibrium

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<sup>112</sup> International Bank for Reconstruction and Development, Articles of Agreement (as amended effective 27 June 2012).

<sup>113</sup> D Drache, *The Short but Significant Life of the International Trade Organization: Lessons for Our Time*, CSGR Working Paper No. 62/00 November 2000.

<sup>114</sup> Ibid.

<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid.

<sup>118</sup> W Edstrom, 'International Trade: The rise and the fall of the Havana Charter', available at <http://crossick.blogactiv.eu/2009/06/04/international-trade-the-rise-fall-of-the-havana-charter>, June 4 2009, accessed on 10 September 2015.

<sup>119</sup> Ibid.

<sup>120</sup> P Ellsworth, 'The Havana Charter: Comment', *American Economic Review* (1949) 39, 6, pp. 1268-1273, Business Source Complete.

in the balance of payments<sup>121</sup> and argued that, in negotiating the Charter, the US only supported provisions that were in its best interests and wanted to be exempted from the rest.<sup>122</sup> Finally, Henderson maintained that the economic policy shifts contained in the Charter were too radical for a sensitive and insecure financial period.<sup>123</sup>

The Charter was finally agreed upon in March 1945. However, ratification by the legislatures of states proved difficult. Despite being the driving force behind the entire process, the US was unable to pass the Charter through its Senate as a result of which the entire process, including the ITO, collapsed.<sup>124</sup> The US now shifted its focus to the GATT as more and more countries showed interest in being part of GATT discussions. The GATT was the only multilateral instrument governing international trade from 1948 until the birth of the WTO.<sup>125</sup> It is important as it formalises international trade and takes a very direct approach to agriculture. The ITO left a gap which now the GATT had to fill.

### **2.2.6 The GATT**

In 1947 certain tariff concessions were negotiated. A mechanism was required to implement and protect them and the Havana Charter was still pending entry. Thus, the Chapter on Commercial Policy from the Havana Charter was converted to the GATT with a few additions made in the process. To bring the GATT into force as quickly as possible a Protocol of Provisional Application was developed. This saw the birth of the GATT, one of the most important agreements in trade history.<sup>126</sup>

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<sup>121</sup> Ibid.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

<sup>124</sup> W Edstrom, 'International Trade: The rise and the fall of the Havana Charter', available at <http://crossick.blogactiv.eu/2009/06/04/international-trade-the-rise-fall-of-the-havana-charter>, June 4 2009, accessed on 10 September 2016.

When the US was unable to get the Charter passed, other states lost hope in it and the process was abandoned by most. The US' views on international bodies and treaties were changing. The Roosevelt era was coming to an end and the US also felt that the ITO would violate its state sovereignty.

<sup>125</sup> Ibid.

<sup>126</sup> 'Pre-WTO legal texts' available at [https://www.wto.org/English/docs\\_e/legal\\_e/prewto\\_legal\\_e.htm](https://www.wto.org/English/docs_e/legal_e/prewto_legal_e.htm), accessed on 12 September 2015.



The plan was for the GATT to come into effect immediately and later be amended in line with the ITO. This meant that the ITO would replace the GATT.<sup>127</sup> Following the failure to form the ITO, the GATT was expected to fulfil the ITO's role, but it was a treaty rather than an organisation and was thus unable to do so.<sup>128</sup> It was signed on 30 October 1947 and took effect in January 1948.<sup>129</sup> It lasted until 1995 when the WTO came into being. The GATT<sup>130</sup> spanned eight rounds of negotiations<sup>131</sup> each of which had a specific effect on trade with some directly impacting agricultural trade. These are discussed later in this chapter.

### 2.2.6.1 Problems with the GATT

Leading academic and trade specialist Professor John Jackson identified a number of issues relating to the GATT. Firstly, the lack of a Charter meant that the GATT did not have international legal personality.<sup>132</sup> The agreement was supposed to be provisional until the ITO was established. With the collapse of the ITO the GATT remained provisional. Secondly, Jackson states that the GATT (Part II of 1947) allowed states to maintain domestic rules even when they consented to the GATT. As such, GATT rules only applied when they were not inconsistent with a state's domestic law. This resulted in a lack of uniformity in the application of the GATT rules which

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<sup>127</sup> 'Havana Charter for an International Trade Organisation', *The International Law Quarterly*, Vol. 2, No. 2 (Summer, 1948), pp. 283-345 Published by: Cambridge University Press on behalf of the British Institute of International and Comparative Law.

<sup>128</sup> A Oxley, 'The Achievements of the GATT Uruguay Round, *Agenda*', *A Journal of Policy Analysis and Reform* Vol. 1, No. 1 (1994), pp. 45-53 Published by: ANU Press available at <http://www.jstor.org/stable/43198662> accessed on 12 September 2015.

<sup>129</sup> The GATT was signed by 23 nations in Geneva.

<sup>130</sup> A Oxley, 'The Achievements of the GATT Uruguay Round, *Agenda*', *A Journal of Policy Analysis and Reform* Vol. 1, No. 1 (1994), pp. 45-53 Published by: ANU Press available at <http://www.jstor.org/stable/43198662> accessed on 12 September 2015.

<sup>131</sup> The negotiations started in Geneva with 23 parties and ended in Doha with 159 parties.

'Uruguay Round Agreement' available at [https://www.wto.org/english/docs\\_e/legal\\_e/06-gatt\\_e.htm](https://www.wto.org/english/docs_e/legal_e/06-gatt_e.htm), accessed on 14 September 2015.

<sup>132</sup> 'International legal personality enables individual states to be personified and as such facilitate legal procedure.' S Nemanja, *What is International Legal Personality and why does it matter?* University of Nicosia, Public International Law available at [https://www.academia.edu/1220009/What\\_is\\_International\\_Legal\\_Personality\\_and\\_why\\_does\\_it\\_matter](https://www.academia.edu/1220009/What_is_International_Legal_Personality_and_why_does_it_matter), accessed on 16 September 2015.

lead to issues in international trade. For example, the GATT did not cater sufficiently for agriculture which constituted 12% of world trade or for clothing and textiles that made up 7%.<sup>133</sup> This caused a lack of harmonisation between the GATT and domestic law.<sup>134</sup> Nonetheless, the GATT played an important role in ensuring the development and operation of international trade law such as providing lower tariffs to contracting parties and implementing rules as to how states should conduct themselves, and rules on transparency; quotas; tariffs; and economic development assistance, etc.<sup>135</sup> It also catered for developing countries by allowing them to exit the agreement.<sup>136</sup> Of importance was that the GATT made provision for a dispute resolution body and set rules for states to join as well as adopting the laws of the GATT.

### **2.2.7 World Trade Organisation**

In April 1994, 123 countries met in Marrakesh, Morocco to sign the WTO treaty which was to change the face of international trade law.<sup>137</sup> However the WTO only came into existence on 1 of January 1995.<sup>138</sup> It is the successor to the GATT<sup>139</sup> and incorporates it. GATT 1947 was not legally binding and most of its provisions were transferred to GATT 1994 which now forms part of Annex 1A of the WTO.<sup>140</sup> In terms of Article III, 'The general purpose of the WTO is to facilitate the implementation, administration and operation as well as to further the objectives of the WTO agreements.'<sup>141</sup> The main aim of the WTO is to negotiate multilateral trade agreements to reduce

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<sup>133</sup> A Oxley, 'The Achievements of the GATT Uruguay Round, *Agenda*', *A Journal of Policy Analysis and Reform* Vol. 1, No. 1 (1994), pp. 45-53 Published by: ANU Press available at <http://www.jstor.org/stable/43198662> accessed on 12 September 2015.

<sup>134</sup> J Jackson, *The Jurisprudence of the GATT and the WTO*, Insights on Treaty Law and Economic Relations, Cambridge University Press, 2000.

<sup>135</sup> World Trade Organisation 'The Uruguay Round' available at 'The Uruguay Round' available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact5\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm), accessed on 11 September 2015, accessed on 12 September 2015

<sup>136</sup> An example is an escape clause to allow for emergency action with regard to an industry within the state which may be threatened.

<sup>137</sup> World Trade Organisation 'The Uruguay Round' available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact5\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm), accessed on 12 September 2015

<sup>138</sup> Ibid.

<sup>139</sup> World Trade Organisation 'The Uruguay Round' available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact5\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm), accessed on 12 September 2015

<sup>140</sup> H Löberbauer 'Questions on International Economic Law and Institutions' available at <http://www.grin.com/en/e-book/58631/questions-on-international-economic-law-and-institutions>, accessed on 15 September 2015.

<sup>141</sup> Article III of Marrakesh Agreement.

obstacles the international trade and ensure a level playing field.<sup>142</sup> These agreements are monitored and implemented through the WTO.

‘The WTO agreements are lengthy and complex because they are legal texts covering a wide range of activities. However, a number of simple, fundamental principles run throughout all of these documents. These principles are the foundation of the multilateral trading system.’<sup>143</sup> The principle of non-discrimination (discussed later in this chapter) ensures that countries do not discriminate between their own and foreign goods. Greater trade openness is encouraged by lowering trade barriers as well as quantitative measures and import bans or quotas that selectively restrict quantities.<sup>144</sup> Predictability and transparency are also core principles. This means there can be no sudden and arbitrary changes in trade agreements without proper processes. The WTO also seeks to create a more competitive trade environment by discouraging trade barriers such as export subsidies and dumping of goods on emerging markets at low rates to gain market dominance. Although the issues are complex, the rules try to regulate what is fair and unfair trade. This is helpful, especially when governments are directed to put certain measures in place to remedy the damage caused by unfair trade. Another principle is more benefits for developing countries (discussed above). Finally, a principle that is synonymous with the WTO is protecting the environment whilst still being able to trade. The organisation takes steps to protect the environment as well as public, animal and plant health<sup>145</sup> and enforces this when states conduct national and international trade. Ultimately, its core goal is to promote free trade without any damaging side effects.<sup>146</sup>

Somewhat similar to the GATT, the WTO also has a dispute resolution body which addresses with disputes arising from interpretation and application of agreements. Given that the GATT lacked

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<sup>142</sup> World Trade Organisation ‘The Uruguay Round’ available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact5\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm), accessed on 12 September 2015

<sup>143</sup> Ibid.

<sup>144</sup> Ibid.

<sup>145</sup> This can be found in the Agreement on the Application of Sanitary and Phytosanitary Measures, 1867 U.N.T.S. 493.

<sup>146</sup> Although this study recognises and accepts certain benefits that come with being a WTO member, further in the study these benefits will be interrogated and their shortcomings will be explored.

uniformity, the WTO seeks to place all states on an equal footing in that they are no longer able to pick and choose which agreement they want to be part of. Instead, a package of agreements that covers aspects such as trade in goods, services and intellectual property (in a single undertaking). These are renegotiated from time to time and added to the package.<sup>147</sup>

The WTO is run by its members that make all major decisions, either a Ministerial Conference that usually takes place once every two years or by their ambassadors or delegates who meet in Geneva, the seat of the WTO.<sup>148</sup> Unlike the GATT, the WTO compels governments to make their trade laws transparent<sup>149</sup> as well as their commitments and progress.<sup>150</sup> This enables the organisation to assess whether or not countries are actively implementing agreements, with consequences for defaulters. However, the WTO has a system of substantive equality. Developing countries are treated differently and are given longer periods to implement agreements. Furthermore, as seen in the AoA, their commitments are less strenuous. Various cooperation missions are undertaken in developing nations. The WTO conducts training and capacity building programmes for government officials in Geneva each year to enable them to acquire the necessary skills to engage with the international trade framework.<sup>151</sup>

The WTO is led by two main bodies; the Ministerial Conference and the General Council. The day-to-day running of the organisation is in the hands of the secretariat in Geneva. The Ministerial Conference makes all major decisions with regard to trade. The General Council is more policy orientated and consists of the dispute settlement body and the trade review policy body.<sup>152</sup> Only states may appear before the WTO and no private individuals may make representations.<sup>153</sup> Thus

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<sup>147</sup> World Trade Organisation, 'Understanding the WTO' available at [https://www.wto.org/english/thewto\\_e/whatis\\_e/what\\_we\\_do\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/what_we_do_e.htm), accessed on 14 September 2015.

<sup>148</sup> Ibid.

<sup>149</sup> Ibid.

<sup>150</sup> Agreement on Agriculture 1994.

<sup>151</sup> World Trade Organisation, 'Understanding the WTO' available at [https://www.wto.org/english/thewto\\_e/whatis\\_e/what\\_we\\_do\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/what_we_do_e.htm) accessed on 14 September 2015.

<sup>152</sup> Agreement on Agriculture in Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Marrakesh, 15 April 1994.

<sup>153</sup> Preamble to Agreement on Agriculture in Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Marrakesh, 15 April 1994.

in order for a company or individual to have a case heard at the WTO they have to lobby their governments to take it up. Unlike the *a la carte* approach adopted by the GATT where different disputes were heard by different bodies, there is one central body. Space constraints do not allow for further discussion of the structure of the WTO.

Two important principles of the WTO are the Most Favoured Nation Principle (MFN) and the National Treatment Principle (NTP). Both ensure that market access is not affected by discrimination.<sup>154</sup>

### **2.2.7.1 Most Favoured Nation Principle**

The MFN is found in Article 1 of the WTO which incorporates part of the GATT, 1994. It states that items must be treated the same when they reach a country's borders, thereby ensuring equality. Thus, no matter where the product comes from, all like foreign products will be treated the same; this means that if any exceptions are granted to one state, the same exceptions must be granted to other states in respect of similar products.<sup>155</sup> For example, if The Netherlands were to raise tariffs on goods from SA, they would have to raise tariffs on all countries' products. Changes in the way countries are treated apply immediately to all WTO members that the state is in contact with. However, the MFN rule is not absolute and there are noted exceptions such as free trade areas, customs unions, preferential treatment and the Anti-Dumping<sup>156</sup> tariff by WTO members<sup>157</sup> that are not discussed here.

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<sup>154</sup> A Moola, *Particular Legal Issues in International Trade: A Critique of the Multilateral Agreement on Agriculture from the Perspective of South Africa and Brics* (unpublished LLM Thesis, University of KwaZulu-Natal, 2014) 21.

<sup>155</sup> Ibid.

<sup>156</sup> Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement), 1868 U.N.T.S. 201.

<sup>157</sup> A Moola, *Particular Legal Issues in International Trade: A Critique of the Multilateral Agreement on Agriculture from the Perspective of South Africa and Brics* (unpublished LLM Thesis, University of KwaZulu-Natal, 2014) 21.

### 2.2.7.2 National Treatment Principle

The NTP is found in Article III of the GATT. It follows on from the MFN principle but provides that once a product has met the requirements to enter a country, it must be treated the same as that country's domestic goods.<sup>158</sup> Thus, foreign and domestic goods must be treated exactly the same within WTO member states.<sup>159</sup> This provision is open to interpretation and cases have been used to interpret what it means. A case that is often used is the *Japanese Alcoholic Beverages Case*<sup>160</sup> that offers guiding principles on interpretation.<sup>161</sup> 'However, two policies are specifically exempt from NT obligations, i) subsidies - government schemes that grant benefits to specific entities and ii) government procurement - government entities purchasing goods with no intention of reselling them.'<sup>162</sup>

### 2.2.8 Agricultural Trade negotiations during the GATT rounds

During the various rounds of negotiations from the 1940s to the present, there have been substantial changes in the approach to agricultural trade and much focus has been placed on this sector. Previous documents such as the Havana Charter focused more on labour law than trade.<sup>163</sup> However, agriculture did come up in the GATT rounds which will be briefly discussed below. The first three rounds primarily focused on liberating the manufacturing industry which meant that agriculture was left to domestic control and regulation.<sup>164</sup>

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<sup>158</sup> Sharma 'Agriculture in the GATT: A Historical Account' available at <http://www.fao.org/docrep/003/x7352e/x7352e04.htm>, accessed on 15 September 2015.

<sup>159</sup> 'China's farm scrapers are high-rises that will generate their own food' available at <http://io9.com/5988573/chinas-farmscrapers-will-generate-their-own-food>, accessed on 17 September 2015.

<sup>160</sup> Award of the Arbitrator, *Japan – Taxes on Alcoholic Beverages – Arbitration under Article 21.3(c) of the DSU*, WT/DS8/15, WT/DS10/15, WT/DS11/13, 14 February 1997, DSR 1997:I, p. 3.

<sup>161</sup> The case stated that the following must be considered: (i) whether the taxed imported and domestic products are like; and (ii) whether the taxes applied to the imported products are in excess of those applied to the like domestic products. This shows how taxes are directly catered for in article III.

<sup>162</sup> A Moola, *Particular Legal Issues in International Trade: A Critique of the Multilateral Agreement on Agriculture from the Perspective of South Africa and Brics* (unpublished LLM Thesis, University of KwaZulu-Natal, 2014) 24.

<sup>163</sup> 'Havana Charter for an International Trade Organisation *The International Law Quarterly*, Vol. 2, No. 2 (Summer, 1948), pp. 283-345. Published by: Cambridge University Press on behalf of the British Institute of International and Comparative Law.

<sup>164</sup> A Moola, *Particular Legal Issues in International Trade: A Critique of the Multilateral Agreement on Agriculture from the Perspective of South Africa and Brics* (unpublished LLM Thesis, University of KwaZulu-Natal, 2014) 24.

The Geneva round which began in April 1947<sup>165</sup> lasted seven months and saw the signing of the GATT. It focused on tariff reductions through the Supplier Rule. On request, this allows special tariff concessions for the country that supplies the largest amount of a particular product.<sup>166</sup> The most notable aspect of this round was the number of concessions granted. Although the exact number is not known it is said that about 45 000 concessions occurred during this round, affecting approximately \$10 billion worth of trade.<sup>167</sup>

The Annecy Round in Annecy, France began in 1949 and lasted five months. Once again, the focus was on tariff reduction but it also allowed the accession of more members.<sup>168</sup>

England was the host of the eight-month Torquay round which began in September 1950.<sup>169</sup> Thirty-eight countries participated and 8 700 tariff concessions were reached.<sup>170</sup>

The second Geneva round occurred from 1956 to 1959 in Geneva.<sup>171</sup> \$2.5 billion worth of trade concessions were agreed and it was during this round that the European Economic Community (EEC) formed the Common Agricultural Policy (CAP) in 1957.<sup>172</sup> The CAP aimed to protect the

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<sup>165</sup> World Trade Organisation 'GATT bilateral negotiating material by Round' available at [http://www.wto.org/english/docs\\_e/gattbilaterals\\_e/indexbyround\\_e.htm](http://www.wto.org/english/docs_e/gattbilaterals_e/indexbyround_e.htm), accessed on 16 September 2015.

<sup>166</sup> R Chetty, *A Critical Appraisal of the Role of Aid for Trade in the Achievement of a Global Partnership for Development in respect of Kenya and Tanzania* (Unpublished LLM Thesis, University of KwaZulu-Natal, 2013) 21.

<sup>167</sup> WTO, 'The GATT years: from Havana to Marrakesh' available at [https://www.wto.org/English/thewto\\_e/whatis\\_e/tif\\_e/fact4\\_e.htm](https://www.wto.org/English/thewto_e/whatis_e/tif_e/fact4_e.htm), accessed on 10 September 2015.

<sup>168</sup> R Chetty, *A Critical Appraisal of the Role of Aid for Trade in the Achievement of a Global Partnership for Development in respect of Kenya and Tanzania* (Unpublished LLM Thesis, University of KwaZulu-Natal, 2013) 21.

<sup>169</sup> WTO, 'The GATT years: from Havana to Marrakesh' available at [https://www.wto.org/English/thewto\\_e/whatis\\_e/tif\\_e/fact4\\_e.htm](https://www.wto.org/English/thewto_e/whatis_e/tif_e/fact4_e.htm), accessed on 10 September 2015.

<sup>170</sup> Ibid.

<sup>171</sup> R Sharma, 'Agriculture in the GATT: A Historical Account' available at <http://www.fao.org/docrep/003/x7352e/x7352e04.htm>, accessed on 15 September 2015.

<sup>172</sup> R Sharma, 'Agriculture in the GATT: A Historical Account' available at <http://www.fao.org/docrep/003/x7352e/x7352e04.htm>, accessed on 15 September 2015.

EEC's domestic agricultural industry through the use of farm subsidies which promoted its agricultural products together with the use of tariffs.<sup>173</sup>

Former US Treasury Secretary, Douglas Dillon, proposed the next round of negotiations which came to be known as the Dillon round of negotiations that took place in Geneva and began in September 1960.<sup>174</sup> Despite the US originally arguing for the banning of the CAP, it eventually accepted it.<sup>175</sup> This round witnessed an estimated \$4.9 Billion worth of trade concessions.

Round 6 began in Geneva in May, 1963. Proposed by US President John F. Kennedy, it came to be known as the Kennedy round. Agriculture and farm subsidies were ignored in this round of negotiations.<sup>176</sup>

The 7<sup>th</sup> round occurred from 1973 to 1979 in Tokyo and saw the largest number of participants since the GATT's inception, with 102 nations participating. More than 8 700 concessions were approved. For the first time, members agreed that agriculture should receive the same attention as other sectors. This saw a massive change in agricultural trade which was spurred on by the US proposing a set of agricultural trade reforms from non-tariff barriers to tariff-equivalents.<sup>177</sup> 'The EU argued against such major trade reform in agriculture in order to defend its CAP. In the end, the EU won on a procedural vote. This meant that the CAP was safe until the next round of GATT negotiations.'<sup>178</sup>

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<sup>173</sup> A Moola, *Particular Legal Issues in International Trade: A Critique of the Multilateral Agreement on Agriculture from the Perspective of South Africa and Brics* (unpublished LLM Thesis, University of KwaZulu-Natal, 2014) 22.

<sup>174</sup> R Chetty, *A Critical Appraisal of the Role of Aid for Trade in the Achievement of a Global Partnership for Development in respect of Kenya and Tanzania* (Unpublished LLM Thesis, University of KwaZulu-Natal, 2013) 22.

<sup>175</sup> R Sharma, 'Agriculture in the GATT: A Historical Account' available at <http://www.fao.org/docrep/003/x7352e/x7352e04.htm>, accessed on 15 September 2015.

<sup>176</sup> Ibid.

<sup>177</sup> Ibid.

<sup>178</sup> A Moola, *Particular Legal Issues in International Trade: A Critique of the Multilateral Agreement on Agriculture from the Perspective of South Africa and Brics* (unpublished LLM Thesis, University of KwaZulu-Natal, 2014) 22.



The final round of GATT negotiations was the Uruguay Round which started in 1986 and ended in 1994.<sup>179</sup> This saw an increase of agricultural negotiations as well as the number of participants.<sup>180</sup> The long life span of this round means that it is not possible to cover in depth here; the key outcomes are, however, considered. This round saw the formulation of the AoA which focused on the three areas on which agricultural trade systems are based.<sup>181</sup>

Interestingly, the US and the Cairns Group argued for greater agricultural reform during these rounds with the latter in particular arguing for improved market access and reduced domestic support.<sup>182</sup> The EU argued against this and stated that the GATT should be more in line with its CAP. It also suggested individual commodity reform rather than a holistic approach. This was supported by the Japanese and Koreans who had vested interests due to their large volumes of rice exports. Developing countries argued for special and differential treatment and hoped for greater market access.

A key document during this round was the Dunkel Draft which was formulated after negotiations deadlocked during the 1988 mid-term review. A number of short term measures were introduced in the Geneva Accord of April 1989, including a freeze on domestic support, border protection and export subsidies.<sup>183</sup> Negotiations continued and in 1990 the EU again rejected the draft agreement. Finally, in 1991 all countries agreed to liberalise three key areas of international agricultural trade.<sup>184</sup> At the last minute, the EU rejected the Dunkel Draft stating that it should be re-negotiated.

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<sup>179</sup> It started in Uruguay and continued in Geneva, Brussels, Washington and Tokyo.  
R Sharma, 'Agriculture in the GATT: A Historical Account' available at  
<http://www.fao.org/docrep/003/x7352e/x7352e04.htm>, accessed on 15 September 2015.

<sup>180</sup> Ibid.

<sup>181</sup> Ibid.

<sup>182</sup> Ibid.

<sup>183</sup> Ibid.

<sup>184</sup> A Moola, *Particular Legal Issues in International Trade: A Critique of the Multilateral Agreement on Agriculture from the Perspective of South Africa and Brics* (unpublished LLM Thesis, University of KwaZulu-Natal, 2014) 28.

To the surprise of many, the following year the EU started revisiting its CAP to bring it closer in line with the Dunkel Draft, resulting in the Blair House Accord.

The key goal of the Blair House Accord was to amend the Dunkel Draft. These amendments, which are now in the Final Agreement, included the following:

‘the volume of subsidized exports be reduced to 21 per cent from the original proposal of 24 per cent; the base period used for establishing the baseline from which export subsidies would be cut was made more flexible, and had the effect of initially raising the level of permitted export subsidies; direct income payments made under production limiting programmes such as EU’s scheme under the reformed CAP and the USA’s deficiency payments were made exempt from domestic support reduction commitments; and commitments to reduce domestic support on a product-by-product basis were replaced by a commitment to reduce overall support to the agricultural sector.’<sup>185</sup>

The Blair House Accord saw the conclusion of the Uruguay round in 1993 with all parties reaching agreement.<sup>186</sup> ‘The AoA became an annexure to the main agreement establishing the WTO. After 46 years, agriculture had its first taste of trade liberalisation.’<sup>187</sup>

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<sup>185</sup>R Sharma, ‘Agriculture in the GATT: A Historical Account’ available at <http://www.fao.org/docrep/003/x7352e/x7352e04.htm>, accessed on 15 September 2015.

<sup>186</sup> Ibid.

<sup>187</sup> A Moola, *Particular Legal Issues in International Trade: A Critique of the Multilateral Agreement on Agriculture from the Perspective of South Africa and Brics* (unpublished LLM Thesis, School of Law, University of KwaZulu-Natal, November 2014) 24.

### **2.2.9 Agriculture under the WTO**

Article 20 of the AoA<sup>188</sup> highlights the importance of agricultural trade and that on-going negotiations are required for agricultural liberalisation to occur.<sup>189</sup>

#### **2.2.9.1 Singapore WTO Ministerial Conference, 1996**

The first ministerial conference took place in Singapore in 1996<sup>190</sup>. It focused on four main issues: government procurement; trade facilitation; trade and investment and trade and competition.<sup>191</sup> Developing countries argued during negotiations that these issues favoured developed countries.

#### **2.2.9.2 Seattle WTO Ministerial Conference, 1999<sup>192</sup>**

Due to the fact that developing nations felt that the Singapore issues favoured the developed world, the negotiations at this conference collapsed.<sup>193</sup>

#### **2.2.9.3 GATT Doha Round, 2001**

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<sup>188</sup> 131 'Article 20: Continuation of the Reform Process: 1- Recognizing that the long-term objective of substantial progressive reductions in support and protection resulting in fundamental reform is an ongoing process, Members agree that negotiations for continuing the process will be initiated one year before the end of the implementation period, taking into account:(a) the experience to that date from implementing the reduction commitments;(b) the effects of the reduction commitments on world trade in agriculture;(c) non-trade concerns, special and differential treatment to developing country Members, and the objective to establish a fair and market-oriented agricultural trading system, and the other objectives and concerns mentioned in the preamble to this Agreement; and (d) what further commitments are necessary to achieve the above mentioned long-term Objectives.'

<sup>189</sup> A Moola, *Particular Legal Issues in International Trade: A Critique of the Multilateral Agreement on Agriculture from the Perspective of South Africa and Brics* (unpublished LLM Thesis, University of KwaZulu-Natal, 2014) 25.

<sup>190</sup> World Trade Organisation 'The Doha Round' available at [http://www.wto.org/english/tratop\\_e/dda\\_e/dda\\_e.htm#development](http://www.wto.org/english/tratop_e/dda_e/dda_e.htm#development), accessed on 16 September 2015.

<sup>191</sup> Ibid.

<sup>192</sup> R Sharma, 'Agriculture in the GATT: A Historical Account' available at <http://www.fao.org/docrep/003/x7352e/x7352e04.htm> accessed on 15 September 2015.

<sup>193</sup> Ibid.

In 2000, an Agricultural Committee was established to head up the Doha round of negotiations.<sup>194</sup> Of interest is that 45 interested countries made proposals to the committee and these were negotiated to reach common ground. These issues were discussed at the Ministerial Conference in Doha, Qatar in 2001. The AoA identified agricultural reforms in three main areas: i) improve market access to developed countries, ii) reduce domestic support and iii) reduce farm subsidies. The Doha negotiations have therefore centered on these areas.<sup>195</sup> The round is yet to be completed.

#### **2.2.9.4 Cancun WTO Ministerial Conference, 2003**

Various submissions were made, with some countries making individual submissions and others combined ones. The US and EU teamed up and other partnerships emerged. This saw countries like SA, Brazil, China and other developing nations coming together. They formed the group that came to be known as the G20 countries.<sup>196</sup> The Cancun round resulted in a deadlock; a not uncommon situation within the WTO and the MTS. The deadlock broke in July 2007 and the modalities in agriculture were established through a package of agreements called the July package or the “August Framework” as it is officially known.<sup>197</sup>

#### **2.2.9.5 Hong Kong WTO Ministerial Conference, 2005**

At this conference members decided to set a scale of reduction in agricultural tariffs and on farm subsidies.<sup>198</sup> However, no agreement was reached and a deadline to do so was set.

#### **2.2.9.6 Negotiations from 2006 to 2008**

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<sup>194</sup> M Tancu, *US' and EU's Agricultural Policies in the Context of GATT/WTO* (Post-Doctoral Thesis, University of Aarhus, 2010) 34.

<sup>195</sup> R Bhala, *'International Trade Law: Theory and Practice'* (2001) 257-259.

<sup>196</sup> South African Human Rights Commission 'The Right to Food' (2014) 5th Economic and Social Rights Report Series 2002/2003, 1.

<sup>197</sup> R Bhala, *'International Trade Law: Theory and Practice'* (2001) 257-259.

<sup>198</sup> R Heakal, 'What is international trade?' available at <http://www.investopedia.com/articles/03/112503.asp>, accessed on 16 September 2015.

In July 2006, another deadlock was reached and attempts were made to break it in 2007.<sup>199</sup> After a series of meetings in Geneva a draft on modalities was finally produced. This became known as the 'July 2008 package.'<sup>200</sup> The next step was a ministerial conference.<sup>201</sup>

#### **2.2.9.7 Geneva WTO Ministerial Conference, 2009**

This round started on 30 November and ended on 2 December 2009. The theme was 'The WTO, the Multilateral Trading System and the Current Global Economic Environment.'<sup>202</sup> Director-General, Mr Pascal Lamy noted that the main reason for this round was to review the WTO's performance in addressing the major issues confronting international trade.<sup>203</sup> The deadline for this round was 2010.

#### **2.2.9.8 Geneva WTO Ministerial Conference, 2011**

At this point the members agreed that the draft modalities of 2008 should remain the basis for future agricultural negotiations. Despite this, Mr Lamy has suggested that the Doha round is effectively dead.<sup>204</sup>

#### **2.2.9.9 Bali WTO Ministerial Conference, 2013**

Bali was the host of the 9<sup>th</sup> Ministerial conference that focused on reaching agreement on specific issues. It placed much emphasis on agriculture and its specifics are discussed later on in the

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<sup>199</sup> D Drache 'The Short but Significant Life of the International Trade Organization: Lessons for Our Time' (2000) CSGR Working Paper No. 62/00 Centre for Canadian Studies, York University, 37.

<sup>200</sup> World Trade Organisation 'The GATT years: from Havana to Marrakesh' available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact4\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm), accessed on 14 September 2015.

<sup>201</sup> A Moola, *Particular Legal Issues in International Trade: A Critique of the Multilateral Agreement on Agriculture from the Perspective of South Africa and Brics* (unpublished LLM Thesis, University of KwaZulu-Natal, 2014) 28.

<sup>202</sup> BM Hoekman, PC Mavroidis, *Global Institutions: The World Trade Organisation Law, Economics, and Politics* (2007) 20.

<sup>203</sup> Ibid 21.

<sup>204</sup> PC Mavroidas 'Doha, Dohalf or Dohaha? The WTO Licks Its Wounds' (2011) 3 *Trade Law and Development* No 2, 368.

thesis.<sup>205</sup> Some of the outcomes of the Bali round included a ministerial declaration which reaffirmed the principles and objectives of the Marrakesh Agreement which established the WTO.<sup>206</sup> The conference also focused on the Doha Development Agenda as well and delved further into the agenda.<sup>207</sup>

#### **2.2.9.10 Nairobi Ministerial Conference, 2015**

The Nairobi conference<sup>208</sup> saw the adoption Nairobi package together with a group of Ministerial decisions on agriculture, cotton and issues related to LDC's.<sup>209</sup> The Nairobi declaration confirms the commitment of WTO members to continue and advance negotiations on the Doha issues. These issues include all three pillars of agriculture as outlined in the AoA.<sup>210</sup> There has also been some developments surrounding export subsidies of developing nations and the elimination of such subsidies with immediate effect.<sup>211</sup> Further, new rules regarding cotton export were also introduced.<sup>212</sup> 'The implementation of preferential treatment in favour of services and service suppliers of Least Developed Countries and increasing LDC Participation in services extend the multilateral waiver for preferences to LDC services exports to 2030 was introduced.'<sup>213</sup>

#### **2.2.10 Conclusion**

Part A of this chapter traced the changes to the MTS, focusing on agriculture. While most argue that these are positive, some view them in a negative light. It showed how agriculture shifted from domestic jurisdiction as the GATT continued to change. The Uruguay round saw the introduction of the all-important AoA which focused on market access, domestic support and export subsidies.

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<sup>205</sup> '9th WTO Ministerial Conference, Bali, 2013 and After' available at

[https://www.wto.org/english/thewto\\_e/minist\\_e/mc9\\_e/balipackage\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/mc9_e/balipackage_e.htm), accessed on 15 August 2015.

<sup>206</sup> 'Ninth Ministerial Conference Session, Bali, 3-6 December 2013 Ministerial Declaration And Decisions' available at [https://www.wto.org/english/thewto\\_e/minist\\_e/mc9\\_e/bali\\_texts\\_combined\\_e.pdf](https://www.wto.org/english/thewto_e/minist_e/mc9_e/bali_texts_combined_e.pdf).

<sup>207</sup> Ibid.

<sup>208</sup> 15 to 19 December 2015 Nairobi, Kenya.

<sup>209</sup> '10<sup>th</sup> Ministerial Conference,' available at

[https://www.wto.org/english/thewto\\_e/minist\\_e/mc10\\_e/mc10\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/mc10_e/mc10_e.htm), accessed on 10 March 2017.

<sup>210</sup> 'Outcome of the 10th WTO Ministerial Conference held in Nairobi, Kenya from 15 to 19 December 2015.' Available at [https://www.thedti.gov.za/parliament/2016/MC10\\_outcomes.pdf](https://www.thedti.gov.za/parliament/2016/MC10_outcomes.pdf).

<sup>211</sup> Ibid.

<sup>212</sup> Ibid.

<sup>213</sup> Ibid

The AoA allows for continued negotiations on these matters. Thus, the Doha rounds continue and trade reform in the agricultural sector is an on-going process. It is claimed that these negotiations witnessed the progressive realisation of trade liberalisation. While the main engagements largely omitted agriculture, as the focus changed, it was realised that there is a need to regulate this important sector. As the rounds progressed agriculture took center stage but, due to states' vested interests in amongst other things, agricultural and economic growth, the talks collapsed. They were resuscitated by key members from the USA and Europe and after various rounds where different categories of countries presented their views, the AoA was finally agreed upon, changing agricultural trade forever.

## **2.3 Part B: The Agreement on Agriculture**

### **2.3.1 Introduction**

This part of the chapter briefly discusses the three main pillars of the AoA, market access, export subsidies and domestic support.

### **2.3.2 Market Access**

The AoA states: ‘Article 4:

1. Market access concessions contained in Schedules relate to bindings and reductions of tariffs, and to other market access commitments as specified therein.
2. Members shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties, except as otherwise provided for in Article 5 and Annex 5.’<sup>214</sup>

There are four important elements of market access:

1. ‘Tariffication - the obligation to convert non-tariff-barriers (NTBs) to trade tariff equivalents.
2. Tariff reduction.
3. Market access provisions that require countries to provide "low" import tariffs for a fixed quota of imports.

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<sup>214</sup> FAO Corporate Document Repository, ‘The main elements of the Agreement on Agriculture’ available at <http://www.fao.org/docrep/w7814e/w7814e06.htm#chapter2> the main elements of the agreement on agriculture, accessed on 20 August 2015.



4. Special treatment and special safeguard provisions that provide exemptions from the above commitments.<sup>215</sup>

These measures have various critical effects on trade, including opening the market to make trade more friendly and preventing countries from using trade barriers to their advantage by distorting trade restrictions. They promote the development of trade by ensuring that existing export markets are maintained and that countries are allowed stipulated volumes of imports at reduced tariffs. ‘A WTO Member is no longer allowed to limit trade through import bans or quantitative restrictions, or other similar measures, except under such specified situations such as safeguards, food safety and adverse balance of payment situation.’<sup>216</sup>

Article 4.2<sup>217</sup> does not allow quantitative restrictions on imports and thus only normal tariffs apply.<sup>218</sup> This works to the benefit of most developing nations, who rely on exports and whose ability to import is hindered by import quotas mostly set by developed countries that desire to control their domestic markets. A classic example is the export of grapes from Namibia to the EU. Due to “miserly” import quotas, Namibia is only able to import 900 tonnes of seedless grapes to the EU and amount above this has a 16.4% tariff charge.<sup>219</sup> This is but one of many examples where the quota is detrimental; the agreement seeks to change this situation.

The importance of the base-period, from 1986 to 1988 cannot be overemphasised, since, having established the value of the base period tariff through the tariffication of NTBs countries are committed to reducing these as follows:

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<sup>215</sup> Ibid.

<sup>216</sup> K Pant, Y Karki, P Pandey, ‘FOA Corporate Document Repository, Agreement on Agriculture: Market Access’ available at <http://www.fao.org/3/a-ae896e/ae896e03.pdf>, accessed on 17 August 2015.

<sup>217</sup> Agreement on Agriculture (15 April 1994) LT/UR/A-1A/2.

<sup>218</sup> FAO Corporate Document Repository, ‘The main elements of the Agreement on Agriculture’ available at [http://www.fao.org/docrep/w7814e/w7814e06.htm#chapter2the main elements of the agreement on agriculture](http://www.fao.org/docrep/w7814e/w7814e06.htm#chapter2the%20main%20elements%20of%20the%20agreement%20on%20agriculture), accessed on 20 August 2015.

<sup>219</sup> The Scope for Improving Developing Country Access. European Research Office and Global Food Security Group Ireland, November 1998.

- i. For developed countries, an unweighted average of 36% subject to a minimum reduction of 15% in each tariff line over a six-year implementation period.
- ii. For developing countries the commitments are 24% and 10%, respectively and the implementation period is extended to ten years.
- iii. There are no reduction commitments for LDCs.<sup>220</sup>

### **2.3.3 Export Subsidies**

Article 9 of the AoA<sup>221</sup> discusses export subsidies. It states that these must be reduced and that such reductions are commitments under the agreement.<sup>222</sup> Article 9 states that export subsidy reduction must occur for the following:

9.1(a) - Governments or their agencies that are directly subsidising exports.<sup>223</sup>

9.1(b) - The selling of or disposing of non-commercial stocks of agriculture, by government, via export at a rate that is lower than that which the goods can be acquired within the domestic market.<sup>224</sup>

9.1(c) - ‘payments on the export of an agricultural product that are financed by virtue of governmental action.’<sup>225</sup>

9.1(d) - ‘the provision of subsidies to reduce the costs of marketing exports of agricultural products.’<sup>226</sup>

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<sup>220</sup> K Pant, Y Karki, P Pandey, ‘FOA Corporate Document Repository, Agreement on Agriculture: Market Access’ available at <http://www.fao.org/3/a-ae896e/ae896e03.pdf>, accessed on 17 August 2015.

<sup>221</sup> Agreement on Agriculture (15 April 1994).

<sup>222</sup> Ibid.

<sup>223</sup> Ibid.

<sup>224</sup> Ibid.

<sup>225</sup> Ibid.

<sup>226</sup> Ibid.

9.1(e) - ‘internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.’<sup>227</sup>

9.1(f) - ‘subsidies on agricultural products contingent on their incorporation in exported products.’<sup>228</sup>

Woolcock and Sykes state that export subsidies are the most important aspect of the AoA as they have the most immediate and direct impact on world markets.<sup>229</sup> An export subsidy refers to state support for producers that have a surplus. This enables them to export their goods to the global market at a cheaper rate.<sup>230</sup> Agriculture receives preferential treatment as such export subsidies are not permitted in other sectors; the agreement introduced constraints where none previously existed but still allowed them to exist.<sup>231</sup> Sykes noted that, ‘If a particular program confers benefits on a private entity, a ‘subsidy’ may be declared to exist without further enquiry.’<sup>232</sup> This is pertinent as the definition of a subsidy is often manipulated to escape the restrictions placed by the agreement. Therefore it is essential to understand exactly what a subsidy is.

The essence of the restriction is as follows: ‘Export subsidies, measured in terms of both the *volume of subsidised exports*, and in terms of the *budgetary expenditure on subsidies*, have been capped at *base period* levels. A list of 22 products has been defined to which Countries are now committed to reducing export subsidies for a large number of different agricultural commodities.’<sup>233</sup> Items on the list include rice, coarse grains, wheat and wheat flour, sugar, butter and butter oil, bovine pig and poultry meat, wine, tobacco and cotton, etc. The schedule for

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<sup>227</sup> Ibid.

<sup>228</sup> Ibid.

<sup>229</sup> S Woolcock ‘European Union trade policy.’ In: The new Palgrave dictionary of economics online. Palgrave Macmillan reproduced with permission of Palgrave Macmillan (2011).

<sup>230</sup> W J Davey, J H Jackson, *The Future of International Economic Law: Business & Economics* (2008) 326.

<sup>231</sup> FAO Corporate Document Repository, ‘The main elements of the Agreement on Agriculture’ available at [http://www.fao.org/docrep/w7814e/w7814e06.htm#chapter2the main elements of the agreement on agriculture](http://www.fao.org/docrep/w7814e/w7814e06.htm#chapter2the%20main%20elements%20of%20the%20agreement%20on%20agriculture), accessed on 20 August 2015.

<sup>232</sup> A O Sykes, *The Economics of WTO Rules on Subsidies and Countervailing Measures* (The Law School, The University Of Chicago, May 2003).

<sup>233</sup> FAO Corporate Document Repository, ‘The main elements of the Agreement on Agriculture,’ available at [http://www.fao.org/docrep/w7814e/w7814e06.htm#chapter2the main elements of the agreement on agriculture](http://www.fao.org/docrep/w7814e/w7814e06.htm#chapter2the%20main%20elements%20of%20the%20agreement%20on%20agriculture), accessed on 20 August 2015.

implementing cuts appears in the Country Schedules.<sup>234</sup> ‘The base period specifies the level of the subsidy for each affected commodity; the bound level for 1995 and the level to which the subsidy will be reduced to by the end of the implementation period.’<sup>235</sup>

The data show that developed countries appeared to be committed to reducing the volume of subsidised exports by 21% and expenditure on subsidies by 36%, both over a six-year implementation period (1995-2000).<sup>236</sup> For developing countries the reduction commitments were 14% and 24% for volume and expenditure, respectively, whilst the implementation period (1995-2004) was ten rather than six years.<sup>237</sup> The base period for export subsidies differs from that of market access as here the base period is 1986 to 1990.<sup>238</sup> No reduction is required for LDCs. Furthermore 9.1(d) and (e) are permissible in these countries.<sup>239</sup> ‘The rules do not say anything about per unit subsidy rates in any year<sup>240</sup> - which may mean that the rates may be varied provided that the maximum limits on both the outlay and volume are respected. Some flexibility is provided by Article 9.2(b); in that in any year a country can exceed, within limits, the prescribed level of subsidy provided specified cumulative criteria are met.’<sup>241</sup> However the interpretation of such flexibility causes confusion.

Article 10 of the Agreement<sup>242</sup> - *prevention of circumvention of export subsidy commitments* - looks at how members can hide their subsidies under other mechanisms. ‘Export credits provide one such possibility, the concern here being that they may conceal an element of price or interest rate subsidy.’<sup>243</sup> Article 10.2 calls for members to work towards international measures to govern

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<sup>234</sup> Ibid.

<sup>235</sup> Ibid.

<sup>236</sup> WTO. 1999. *Guide to the Uruguay Round Agreements*. WTO Secretariat and Kluwer Law International, Geneva.

<sup>237</sup> Ibid.

<sup>238</sup> Ibid.

<sup>239</sup> S. Healy, R. Pearce & M. Stockbridge, FAO. 1998. *The Implications of the Uruguay Round Agreement on Agriculture for developing countries: A Training manual*.

<sup>240</sup> e.g., US\$15 per ton.

<sup>241</sup> S. Healy, R. Pearce & M. Stockbridge, FAO. 1998. *The Implications of the Uruguay Round Agreement on Agriculture for developing countries: A Training manual*.

<sup>242</sup> Agreement on Agriculture (15 April 1994).

<sup>243</sup> S. Healy, R. Pearce & M. Stockbridge, FAO. 1998. *The Implications of the Uruguay Round Agreement on Agriculture for developing countries: A Training manual*.

these provisions and Article 10.4 deals with food aid and stipulates that it should not be used to circumvent export subsidy reduction commitments. Many developed countries have successfully implemented the export subsidy reduction with the United States, Finland, Sweden, Canada and the European Union reaching their 36% reduction target. Developing countries like Romania and Israel also have met their 24% reduction target.<sup>244</sup>

The fundamental reason why export subsidies were introduced is because it causes a lot of damage to exporting countries and reduces their market shares and export earnings. This mostly affects developing countries such as countries within the Cairns Group and on the African continent.<sup>245</sup> ‘In general, export subsidies may offer overall welfare gains to importing countries with very low levels of self-sufficiency, as consumer gains should more than often offset producer losses, although the extent to which such subsidies destabilise markets influences this calculation.’<sup>246</sup> Among other reasons, this explains why the export subsidies are critical to bring about trade balance and to ensure that countries are not disadvantaged based on their economic situation and clout. Rather, countries with significant agricultural potential can benefit from trade in such goods.<sup>247</sup>

#### **2.3.4 Domestic Support**

The main goal of domestic support is to raise the income of the producer and maintain the profitability of domestic farming. As the name suggests, governments offer financial support to domestic farmers or companies, thereby decreasing production costs and increasing profitability. Goods can be sold at low prices, and can thus flood the market and cause market domination.<sup>248</sup> ‘The agricultural package of the Uruguay Round has fundamentally changed the way domestic

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<sup>244</sup> World Trade Organisation, ‘Agriculture: Explanation, Domestic Support’ available at [https://www.wto.org/english/tratop\\_e/agric\\_e/ag\\_intro03\\_domestic\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/ag_intro03_domestic_e.htm), accessed on 18 August 2015.

<sup>245</sup> Ibid.

<sup>246</sup> Ibid.

<sup>247</sup> Ibid.

<sup>248</sup> A O Sykes, *The Economics of WTO Rules on Subsidies and Countervailing Measures* (The Law School The University Of Chicago, May 2003).

support in favour of agricultural producers was treated under the GATT 1947.<sup>249</sup> The agreement only allows for unrestricted domestic support in two situations and restricts it under one situation. As highlighted in chapter 1, these categories are the Green, Blue and Amber boxes.

#### **2.3.4.1 Green Box**

Annex 2 of the AoA<sup>250</sup> sets out the criteria that must be met for the support to fall under the Green Box and therefore be exempted from reduction commitments. This means that support can even be increased without any financial limitation by the WTO.<sup>251</sup> The general criteria set in annex 2 are that the support should have ‘no or at most minimal, trade-distorting effects or effects on production.’<sup>252</sup> It must be provided through a publicly-funded government programme which does not involve transfers from consumers and must not have the effect of providing price support to producers.<sup>253</sup> The Green Box covers government service programmes and was mainly created for the benefit of developing nations. This includes programmes that involve research on the environment and the product.

‘The Green Box also provides for the use of direct payments to producers which are not linked to production decisions, i.e. although the farmer receives a payment from the government, this payment does not influence the type or volume of agricultural production (‘decoupling’).’<sup>254</sup>

#### **2.3.4.2 Blue Box**

Unlike with the Green Box, where support is not determined by action, with the Blue Box support is actionable in return for production; thus, the quantity has no consequential effect on the

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<sup>249</sup> World Trade Organisation, ‘Agriculture: Explanation, Domestic Support’ available at [https://www.wto.org/english/tratop\\_e/agric\\_e/ag\\_intro03\\_domestic\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/ag_intro03_domestic_e.htm), accessed on 18 August 2015.

<sup>250</sup> Agreement on Agriculture (15 April 1994).

<sup>251</sup> World Trade Organisation, ‘Agriculture: Explanation, Domestic Support’ available at [https://www.wto.org/english/tratop\\_e/agric\\_e/ag\\_intro03\\_domestic\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/ag_intro03_domestic_e.htm), accessed on 18 August 2015.

<sup>252</sup> Agreement on Agriculture (15 April 1994) Annexure 2.

<sup>253</sup> Ibid.

<sup>254</sup> Ibid.

support.<sup>255</sup> Direct payments under production limiting programmes (often referred to as “Blue Box” measures) are exempt from commitments if such payments are made on fixed areas and yield a fixed number of livestock.<sup>256</sup> ‘Such payments also fit into this category if they are made on 85 per cent or less of production in a defined base period.’<sup>257</sup>

### 2.3.4.3 Amber Box

The Amber Box contains all domestic support measures considered to distort production and trade (with some exceptions), which is defined in Article 6 of the Agreement.<sup>258</sup> These include measures to support prices, or subsidies directly related to production quantities. These supports are subject to limits, *de minimis* exemptions.<sup>259</sup> ‘The ‘amber box’, also known as the ‘Aggregate Measure of Support’ (AMS), combines price support with aid coupled to production and not exempt from reduction commitments. This had to be reduced by 20% over six years, compared with the reference period 1986-1988. In addition, all WTO members may apply the ‘*de minimis* clause’, which allows any support amounting to less than 5% of the value of the product under consideration (specific aid) or of total agricultural production (non-specific aid) to be excluded from the current AMS. This ceiling is set at 10% for developing countries.’<sup>260</sup>

This category is often exploited by developed nations. Most subsidies in these countries go to a small group of agri-businesses that are then able to dominate the global market. Because this is allowed by the agreement it is continuously done on a large scale despite the reduction. While developed nations have the funds to do so, developing nations do not and it has a completely different effect on them. The developed nations enjoy economic growth and domination, while developing nations suffer reliance and economic stagnation. This violates the very reason for the

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<sup>255</sup> Ibid.

<sup>256</sup> Ibid.

<sup>257</sup> Ibid.

<sup>258</sup> Ibid.

<sup>259</sup> World Trade Organisation, ‘Agriculture Negotiations: Background Fact Sheet, Domestic Support in Agriculture, The Boxes’ available at [https://www.wto.org/english/tratop\\_e/agric\\_e/agboxes\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/agboxes_e.htm), accessed on 13 August 2015.

<sup>260</sup> European Parliament, ‘Fact Sheets on European Union, WTO Agreement on Agriculture’ available at [http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU\\_5.2.7.html](http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_5.2.7.html), accessed on 18 August 2015.

existence of the WTO. Developed countries have not sufficiently decreased their trade-distorting agricultural subsidies, which provide additional income to agricultural producers and allow them to sell their products at a lower price.<sup>261</sup> Farmers in developing countries are forced to compete with subsidised, larger foreign producers who may cause local producers to go out of business, increasing rural-urban migration, the vulnerability of food-importing nations to swings in global commodity markets, and food insecurity.<sup>262</sup>

An example is the large subsidies, amounting to more than \$ 1.25 billion dollars granted to the cotton industry in the USA<sup>263</sup> which, due to excess production, causes them to sell their product at a lower price. Farmers in poor African countries, where there is no subsidy, are forced to sell at this new low price to survive in a market that is dominated by US producers. As their survival is at stake, they take what they get and incur a \$450 million loss in the process.<sup>264</sup> The narrative is repeated in the EU's support of the beef industry with each cow receiving US\$ 2.2 support per day, more than what half the world's population earns a day.<sup>265</sup> Once again, this works to the detriment of producers in the developing world as goods are dumped on the global market, causing major imbalances in global trade dynamics.

### **2.3.5 De Minimis Provision**

As noted earlier, certain subsidies in the Amber Box are exempted and are called the *de minimis provisions*. If a product does not fall under the blue or green categories, it is subject to reduction. However, if total domestic support is not more than 5% of the total value of production for that product in developed countries and 10% in developing countries, it is not subject to reduction. For example, if the value of the production of sugar is \$100 million and the domestic support offered

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<sup>261</sup> 'Community Supported Agriculture' available at <http://afsic.nal.usda.gov/community-supported-agriculture-3> accessed on 9 September 2015.

<sup>262</sup> Ibid.

<sup>263</sup> B. Ouedraogo, For African Cotton Farmers, Inter Press Service, August 15 2006 available at <https://www.globalpolicy.org/component/content/article/220/47369.html>.

<sup>264</sup> Ibid.

<sup>265</sup> D. Green, M Griffith, 'Dumping on the Poor: The common agricultural policy, the WTO and International Development' available at [http://www.iatp.org/files/Dumping\\_on\\_the\\_Poor\\_The\\_Common\\_Agricultural\\_Po.ht.aceesed](http://www.iatp.org/files/Dumping_on_the_Poor_The_Common_Agricultural_Po.ht.aceesed) on 21 August 2015.



is \$5 million, it is not subject to domestic support reductions.<sup>266</sup> Non-product specific support it is not subject to reduction if the support is 5% (developed countries) and 10% (developing countries) of the value of total agricultural production.<sup>267</sup>

### **2.3.6 Country Schedules**

The AoA was not the only document to come out of the Uruguay round. The round as a whole required certain quantitative commitments (which were a key part of the round). Countries had to outline their commitments on a commodity to commodity basis in country schedules and submit them to the WTO.<sup>268</sup> Countries presented their drafts that were then open for other countries to evaluate and object to the schedules. Known as the verification process, it lasted which lasted from December 1993 to April 1994. If no country objected to another country's schedules by the end of the Uruguay round on 15 April 1994, it formed part of the final schedules.<sup>269</sup> Only a few adjustments and negotiations occurred. These final schedules signify a country's commitment to the WTO and are thus considered to have international legal status.<sup>270</sup> The commitments in the schedules usually have to be implemented within a particular period as outlined in specific agreements on particular commodities. Once these tariffs were finalized they became binding. The commitments are highlighted per commodity and in this case NTBs, export subsidies and domestic support are highly applicable with regards to agriculture.<sup>271</sup>

### **2.3.7 Conclusion**

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<sup>266</sup> World Trade Organisation, 'Domestic Support' available at [https://www.wto.org/english/tratop\\_e/agric\\_e/ag\\_intro03\\_domestic\\_e.htm](https://www.wto.org/english/tratop_e/agric_e/ag_intro03_domestic_e.htm), accessed on 12 September 2015.

<sup>267</sup> Ibid.

<sup>268</sup> FAO Corporate Document Repository, 'The main elements of the Agreement on Agriculture' available at [http://www.fao.org/docrep/w7814e/w7814e06.htm#chapter2the main elements of the agreement on agriculture](http://www.fao.org/docrep/w7814e/w7814e06.htm#chapter2the%20main%20elements%20of%20the%20agreement%20on%20agriculture), accessed on 20 August 2015.

<sup>269</sup> O'Connor 'Module on Agriculture' *United Nations Dispute Settlement Course* (2003) 7.

<sup>270</sup> Ibid

<sup>271</sup> FAO Corporate Document Repository, 'The main elements of the Agreement on Agriculture' available at [http://www.fao.org/docrep/w7814e/w7814e06.htm#chapter2the main elements of the agreement on agriculture](http://www.fao.org/docrep/w7814e/w7814e06.htm#chapter2the%20main%20elements%20of%20the%20agreement%20on%20agriculture), accessed on 20 August 2015.

An analysis of the AoA illustrates the extent to which agriculture has become regulated. This issue is discussed in more detail when this agreement and its effects on the EU and SA are considered. The differential treatment of countries based on their development status shows the steps the WTO has taken in seeking to level the playing field. Whether or not this has been achieved will also be analysed. While the measures put in place might be regarded as benefitting developing countries, in reality, they often allow them to be exploited by developed nations. Country schedules bind countries to their commitments. The three aspects of the AoA render agricultural trade more stable to a certain degree but more importantly, make this trade a real and significant part of the global trading system. However, the agreement however is extremely technical and requires a fair amount of expertise to understand and implement correctly. This is not always easy for developing countries. While it treats all likes the same, which prevents global trade discrimination, in some areas such as domestic support the AoA is still manipulated, sometimes making it counterproductive.

## **CHAPTER 3**

### **THE DEVELOPMENT OF SA'S AND THE EUROPEAN UNION'S AGRICULTURAL TRADE**

#### **3.1 Introduction**

While SA is well known for its troubled political and socio-economic history, its political and social transformation is admired worldwide and has had major effects on its trade and industry. Various trade developments emerged as the political situation changed. New political ideologies, the need to redress the atrocities and inequalities of the past and the development of a more nuanced approach to socio-economic rights and trade development marked SA's transition to democracy. The first part of this chapter assesses political change in SA in the past 70 years. However, the focus' is trade in the post-apartheid dispensation. It is vital to understand the political shift in order to analyse how the political ideologies of the new government changed and moulded new trade policies. The chapter investigates how the South African Constitution<sup>272</sup> has impacted on international law and trade law in specific. It focuses on changes in international trade post 1994. It examines current trade policies and how they operate between members of the agreements. Current legislation that relates to trade as well as bilateral and multilateral international trade agreements is examined. Finally, the chapter summarises other trade agreements that are important in understanding the context in which the AoA and others operate as well as how the TDCA is impacted by trade developments within the Republic.

Part B of this chapter focuses on the EU. It briefly outlines its emergence and history as well as its functionality. Finally, it considers the current EU position on agricultural policy which is necessary to understand how the common agricultural policy informs external EU trade policies, including the TDCA.

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<sup>272</sup> Constitution of the Republic of South Africa, 1996.

## **3.2 Part A: South Africa's Trade Development from Apartheid to the Democratic Dispensation**

### **3.2.1 SA's Political History and Transition**

Apartheid came into being when the National Party assumed power in SA in 1948. This system of racial segregation privileged whites<sup>273</sup> and forcibly imposed residential segregation and separate public areas for white and Black South Africans. Marriage between people from different race groups was outlawed by the Prohibition of Mixed Marriages Act<sup>274</sup> and all political opposition was suppressed.

One of the first pieces of legislation passed by this new government was the Export Credit and Foreign Investments Insurance Act.<sup>275</sup> It provided insurance on contracts for export transactions and investment loans with countries outside the Republic in order to promote trade.<sup>276</sup> Although still applicable today the Act was largely ineffective during the period of economic sanctions.<sup>277</sup>

The apartheid regime imposed its will by means of brute force and its police force that was accused of and later admitted<sup>278</sup> to committing acts of violence and murder to further the interests of the government. The regime violated various international treaties and human rights law.<sup>279</sup> Given that SA depends on trade in gold and other natural resources, its trade policy focused on this sector.

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<sup>273</sup> 'Apartheid' available at <http://www.history.com/topics/apartheid>, accessed on 15 November 2015.

<sup>274</sup> The Prohibition of Mixed Marriages Act, Act No 55 of 1949.

<sup>275</sup> Act No. 78 of 1957.

<sup>276</sup> Export Credit and Foreign Investments Insurance Act, No. 78 of 1957.

<sup>277</sup> This Act was ineffective due to sanctions preventing states from trading with South Africa; therefore the protection it offered had no effect as no or very limited trade occurred during this period.

<sup>278</sup> This emerged during hearings of the Truth and Reconciliation Commission (TRC) chaired by Archbishop Desmond Tutu and set up by the democratically elected government that offered amnesty to those who admitted to their crimes.

<sup>279</sup> P Pigou 'Monitoring Police Violence and Torture in South Africa' April 2002, *Centre for the Study of Violence and Reconciliation*, available at <http://www.csvr.org.za/docs/policing/monitoringpolice.pdf>.

The African National Congress (ANC) and other movements such as the Pan Africanist Movement (PAC) and the South African Communist Party (SACP) that led the struggle against apartheid<sup>280</sup> were banned for many years, with many of their members being forced to flee the country, while others were tortured, murdered and incarcerated for long periods of time. Many African countries as well as in other parts of the world supported the anti-apartheid struggle. When the ANC came to power, it sought to repay its debts to these countries, providing loans and other kinds of support and, in particular, strengthening ties with Southern African countries. Various treaties were signed between the states in this sub-region; these are discussed later in this chapter.

The massacre of 69 people protesting against SA's pass laws at Sharpeville in 21 June 1960<sup>281</sup> not only kicked off the armed struggle but brought further international attention to the atrocities in the country.<sup>282</sup> The Soweto uprising in 1976 further underlined to extent to which the National Party was prepared to use violent means to suppress any opposition. The UN demanded an end to apartheid and was met with militant refusal by the government and the then president Verwoerd.<sup>283</sup> On 1 April 1960 the UN Security Council passed resolution 134<sup>284</sup> deploring apartheid policies and Sharpeville killings. In 1962, it adopted resolution 1761<sup>285</sup> against apartheid policies. The General Assembly highlighted SA's blatant disrespect for the UN in ignoring warnings and requests to abandon its racial policies.<sup>286</sup> The resolution went on to urge UN members to end all diplomatic ties with SA and to close their ports to ships which flew the South African flag.<sup>287</sup> The most damaging part of the resolution was section 4(d)<sup>288</sup> which promoted a boycott of South

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<sup>280</sup> G E Devenish 'Cutting the apron strings: the South African experience of decolonisation' (Dec 2013) 9(2) *The Journal for Transdisciplinary Research in Southern Africa* 309-340.

<sup>281</sup> 'Sharpeville Massacre: The origin of South African human rights day' available at <http://africanhistory.about.com/od/apartheid/a/SharpevilleMassacrePt1.htm>, accessed on 11 November 2015.

<sup>282</sup> G E Devenish 'Cutting the apron strings: the South African experience of decolonisation' (Dec 2013) 9(2) *The Journal for Transdisciplinary Research in Southern Africa* 309-340.

<sup>283</sup> E S Reddy 'The United Nations: Partner in the Struggle Against Apartheid' available at <http://www.un.org/en/events/mandeladay/apartheid.shtml>, accessed on 18 November 2015.

<sup>284</sup> United Nations Security Council resolution 134 (1960). Question relating to the situation in the Union of South Africa.

<sup>285</sup> United Nations General Assembly resolution 1761 (XVII). The policies of apartheid of the government of the Republic of South Africa.

<sup>286</sup> *Ibid.*

<sup>287</sup> *Ibid.*

<sup>288</sup> E S Reddy 'The United Nations: Partner in the Struggle Against Apartheid' available at <http://www.un.org/en/events/mandeladay/apartheid.shtml>, accessed on 18 November 2015.

African goods and refraining from exporting goods and ammunition to the country. This had a direct effect on the South African economy. The value of the currency dropped and trade input and output plummeted to all-time lows.<sup>289</sup>

Over the years, various resolutions were passed urging States to stop dealing with SA. An Arms Embargo was also passed in the 1970s<sup>290</sup> which increased the pressure. In 1985 some 30 multinational companies began divesting from SA.<sup>291</sup> Foreign capital was diverted to other countries.<sup>292</sup> However during the 1970s, trade policy shifted to import substitution with the aim of diversifying economic activity, enhancing growth and making SA less reliable on trade in gold and mineral resources. A report published by the IMF in the early 1990s showed the impact of the sanctions. White employment decreased<sup>293</sup> which meant that the system the white minority had rooted for was no longer working for them. Former President De Klerk recounts how isolated white South Africans felt when they travelled abroad and how difficult it was to run a country with so many restrictions.<sup>294</sup> He adds that financial difficulties became a “source of social unrest.”<sup>295</sup> International isolation negatively impacted trade

However not all countries saw the apartheid regime for what it was. Britain and some of the other former colonial powers did not want to cut ties with SA as it was regarded as the gateway to the continent.<sup>296</sup> Indeed, Prime Minister Margaret Thatcher referred to the ANC as a ‘terrorist’ organisation.<sup>297</sup> Under her administration, British companies were allowed to trade with SA and

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<sup>289</sup> P I Levy ‘Sanction on South Africa: What did they do?’ (February 1999), Centre discussion paper 796, Economic Growth Centre, Yale University available at [http://www.econ.yale.edu/growth\\_pdf/cdp796.pdf](http://www.econ.yale.edu/growth_pdf/cdp796.pdf).

<sup>290</sup> E S Reddy ‘The United Nations: Partner in the Struggle Against Apartheid’ available at <http://www.un.org/en/events/mandeladay/apartheid.shtml>, accessed on 18 November 2015.

<sup>291</sup> T Nyoka ‘Unscrewed: Is it Vassar’s Time to Divest’ (1 October 1985) Volume XVI Number 1, *Vassar’s Investigative Monthly* 1-2.

<sup>292</sup> A Laverty ‘Impact of Economic and Political Sanctions on Apartheid’ (June 2007) available at <http://theafricanfile.com/politicshistory/impact-of-economic-and-political-sanctions-on-apartheid>, accessed on 18 November 2015.

<sup>293</sup> T Bayoumi ‘Output, Employment and Financial Sanctions in South Africa’ (December 1990) IMF Working Paper No. 90/113.

<sup>294</sup> F W De Klerk *The Last Trek-A New Beginning* New York; St. Martin’s Press (1999) 114.

<sup>295</sup> Ibid 134.

<sup>296</sup> A P Sapa ‘Did Margaret Thatcher help prolong Apartheid?’ *The Mail and Guardian* 10 April 2013.

<sup>297</sup> Ibid.

were SA's biggest trade partners. While the United Kingdom later imposed sanctions on SA by Britain, this was the result of the US Congress' decision to take this route, as Thatcher feared that failure to do so would result in her country's global isolation.<sup>298</sup>

Countries all over the world continued to dissociate themselves from SA and the rand plummeted to all-time lows.<sup>299</sup> The country's virtual bankruptcy forced the National Party to the negotiations table. De Klerk released Nelson Mandela from prison in 1990 and the ANC and other organisations were unbanned. The two leaders guided SA to a democratic election despite fears of an uprising by various groups. The ANC won the elections with an overwhelming majority and SA became a free and democratic country.<sup>300</sup> Sanctions were lifted and SA was welcomed back into the international community. It soon became a key trading partner not only within the Southern African region but in the global multilateral trading system.<sup>301</sup> However, the democratic government inherited a complex system of quantitative restrictions and high tariffs<sup>302</sup> on consumer products, with lower tariffs on imported machinery and capital goods.<sup>303</sup> The ANC's focus on regional integration and economic transformation had a direct impact on its trade policy. The ANC's economic policies were based on the Freedom Charter.<sup>304</sup> The democratic government's trade policies rested on four pillars: sustainable and environmentally- friendly economic growth; investment that promotes job creation; economic integration into the Southern African region and a clear and effective competition policy to promote fairness in the market for domestic and international goods.<sup>305</sup> This stance was completely different to from taken by the apartheid regime

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<sup>298</sup> Ibid.

<sup>299</sup> 'South African Rand' available at <http://www.oanda.com/currency/iso-currency-codes/ZAR>, accessed on 18 December 2015.

<sup>300</sup> G E Devenish 'Cutting the apron strings: the South African experience of decolonisation' (Dec 2013) 9(2) *The Journal for Transdisciplinary Research in Southern Africa* 309-340.

<sup>301</sup> A Lavery 'Impact of Economic and Political Sanctions on Apartheid' (June 2007) available at <http://theafricanfile.com/politicshistory/impact-of-economic-and-political-sanctions-on-apartheid>, accessed on 18 November 2016.

<sup>302</sup> P Kowalski, R Lattimore & N Bottini 'South Africa's Trade and Growth OECD Trade Policy' Working Paper No. 91 (September 2009), *Organisation for Economic Co-operation and Development, Trade and Agriculture Directorate: Trade Committee*.

<sup>303</sup> Ibid.

<sup>304</sup> '50th National Conference: Resolutions - Economic Transformation' available at <http://www.anc.org.za/show.php?id=2435>, accessed on 18 December 2015.

<sup>305</sup> Ibid.

that steered clear of regional integration and focused on relationships with the former colonial powers.

### **3.2.2 The South African Constitution and Trade**

The founding document of the democratic dispensation, the South African Constitution<sup>306</sup> privileges human rights and the rule of law. The Constitution is the supreme law of the land.<sup>307</sup> Its Bill of Rights (BOR) sets out important rights which are the cornerstone of the country's democracy. While it does not directly address international trade, some sections are of interest. Interestingly, the TDCA, which encompasses trade, development, good governance and cooperation, embraces certain constitutional provisions/elements. For example, S22<sup>308</sup> of the BOR states that citizens have freedom of trade and occupation. This makes it necessary for the government to enact legislation that enables trade of all kinds, including international trade. It can therefore be assumed that citizens' right to trade is protected in the Constitution. The more controversial property clause in S25 of the Constitution allows for property to be expropriated and fairly redistributed.<sup>309</sup> Those whose land was unfairly appropriated during the apartheid period are now able to reclaim their land and contribute to the economy through agricultural development and production.<sup>310</sup> This effectively enables the poor to participate in international trade as SA is known for its agricultural exports.<sup>311</sup>

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<sup>306</sup> Constitution of the Republic of South Africa, 1996.

<sup>307</sup> S8 of the Constitution of the Republic of South Africa, 1996.

<sup>308</sup> S22 of the Constitution of the Republic of South Africa, 1996.

<sup>309</sup> S25 of the Constitution of the Republic of South Africa, 1996.

<sup>310</sup> N Kahn 'Land and Agrarian Reform in South Africa' (2007) 20(12) *Policy: Issues and Actors* 6.

<sup>311</sup> The Author of this study recognises the express relationship between S27, the right to food, of the Constitution of the Republic of South Africa, 1996, and international trade in agriculture. In achieving the right in S27(1)(c): to access sufficient food and water, it is important for countries and SA to be aware of the way a country trades as well as how trade agreements are entered into as it will often affect food prices and the availability of products on the market. In trying to make S27 a reality, careful attention must be given to the way we enter such agreements like the AoA and the TDCA as this could affect long term ability to provide affordable food in a sustained manner to the South African market. This idea will not be engaged with further in this study.



S39 (1) (b) of the BOR<sup>312</sup> states that, in interpreting the BOR the courts **must** consider international law. Furthermore, S232 states that international customary law becomes law in SA unless it is inconsistent with the Constitution or an Act of parliament.<sup>313</sup> Finally, S231 provides that an international agreement is only binding on the state once it has passed through both houses of parliament.<sup>314</sup> It then becomes law in the Republic. The courts must interpret legislation consistent with international law (S233).<sup>315</sup> Thus, international law is highly respected in the South African legal system; this opened the door for SA to enter into more international agreements, such as the TDCA and WTO trade agreements.<sup>316</sup>

Treaty law is directly applicable to the South African legal system.<sup>317</sup> With the development of a constitutional order, for the first time, the implementation of treaties was binding on all arms of the state. This meant that international trade law and trade agreements became binding; these have played a significant role in SA's development. All three arms of the state, the executive, the legislature and judiciary, are bound by these treaties, unlike the previous government where parliament was supreme. Legal opinions and policy decisions of the international organisations like the WTO and WB are respected by States and are persuasive in nature but are not binding.

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<sup>312</sup> S39(1)(b) of the Constitution of the Republic of South Africa, 1996.

<sup>313</sup> S232 of the Constitution of the Republic of South Africa, 1996.

<sup>314</sup> S231(2) of the Constitution of the Republic of South Africa, 1996.

'An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces.'

<sup>315</sup> S233 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

<sup>316</sup> Section 27 'The role of international law in South African health law and policy-making' 2012 *Health and Democracy*.

International law is defined by the United Nations as treaties and conventions which are agreed upon by member States which then become binding on these States with regard to their interaction with one another as well as citizens of the state. These include agreements such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Customary international law is also a source of international law which is binding on states and after a period of time becomes binding on the international community. What some may call 'soft law' which is made up of non-binding judgments, also forms part of International law.

<sup>317</sup> *Government of the Republic of South Africa and Others v Grootboom and Others 2001 (1) SA 46 (CC)* para 26 In the Grootboom case Yacoob J said:

"The relevant international law can be a guide to interpretation but the weight to be attached to any particular principle or rule of international law will vary. However, where the relevant principle of international law binds South Africa, it may be directly applicable."

### **3.2.3 Post-1994 Trade Developments**

As noted earlier, with the lifting of the arms embargo and economic sanctions during the period 1990 to 1994, SA entered a new trade era. This required major policy shifts that yielded positive results; in the first 10 years of democracy the country achieved a growth rate of 3%; significantly higher than the 10 years prior to 1994 when it was only 1%.<sup>318</sup> From 2004 the growth rate exceeded 4% per annum, with 5% recorded in 2005. However, the 2008 global economic crisis severely affected the South African economy.<sup>319</sup> In 1994 SA signed the Marrakesh agreement under the Uruguay round of the GATT and therefore became a founding member of the WTO.<sup>320</sup> This meant that it had to commit to significant trade liberalisation. The Agreement was ratified by parliament in March 1995.<sup>321</sup> The schedule of specific commitments made by SA on financial services under the General Agreement on Trade in Services (GATS) was ratified by both houses of parliament in 1999 and therefore became binding on SA.<sup>322</sup> The country made more than 12 000 tariff concessions and quantitative restrictions on agriculture were converted to tariff equivalents.<sup>323</sup> Bell concludes that SA has actually exceeded its commitments under the GATT.<sup>324</sup> Lawrence Edwards notes that effective rates of protection for trade fell from the 1990s to 2004.<sup>325</sup> In the manufacturing

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<sup>318</sup> P O'Malley 'Accelerated and Shared Growth Initiative for South Africa (AsgiSA)' (2006) Nelson Mandela Centre of Memory available at <https://www.nelsonmandela.org/omalley/index.php/site/q/03lv02409/04lv02410/05lv02415/06lv02416.htm>, accessed on 13 November 2015.

<sup>319</sup> Ibid

<sup>320</sup> P Kowalski, R Lattimore & N Bottini, Organisation for Economic Co-operation and Development, Trade and Agriculture Directorate: Trade Committee, *South Africa's Trade and Growth OECD Trade Policy Working Paper No. 91*, September 2009.

<sup>321</sup> N Steytler 'Global governance and national sovereignty: The World Trade Organisation and South Africa's new constitutional framework' (1999) 6 *Law, Democracy and Development* 90.

<sup>322</sup> Ibid

The position of parliament when choosing to ratify an agreement is one of all or nothing as parliament has to either accept the entire package or disregard it in its entirety. This is due to the fact that negotiations have already been concluded before these package agreements are presented to parliament. In some cases, parliament is informed and makes comments on the negotiations through its committees but it is extremely difficult for parliament to be involved in multiparty trade agreements which are extremely complicated in their nature and negotiations.

<sup>323</sup> L Edwards 'Has South Africa Liberalised its Trade?' (2005) 73(4) *South African Journal of Economics*.

<sup>324</sup> T Bell 'Should South Africa further liberalise its foreign trade?' (1992) Working Paper. No. 16, *Economic Trends Research Group*, Cape Town.

<sup>325</sup> L Edwards 'Has South Africa Liberalised its Trade?' (2005) 73(4) *South African Journal of Economics*.

Effective rates of protection aim to capture the extent of protection on value added as opposed to protection on final output. Effective rates of protection are calculated according to the following formula:  $ERP_j = \frac{(v_j^* - v_j)}{v_j} = \frac{t_j - \sum a_{ij}t_i}{1 - \sum a_{ij}}$

where  $V_j^*$  is the domestic value added to the final product  $j$  at tariff distorted prices,  $V_j$  is the value added under free trade,  $t_j$  is the tariff on outputs,  $t_i$  is the tariff on inputs and  $a_{ij}$  is the quantity of the intermediate input  $i$  used in the production of one unit of  $j$ .

sector, it fell from 48% in 1993 to 12.7% in 2004, while surcharges dropped from 30.8% to 8% between 1993 and 2003.<sup>326</sup> In 1994 the labour intensive manufacturing sectors such as textiles, leather products and furniture were given the highest protection, while the primary sector which included agriculture and mining had negative or low rates of protection.<sup>327</sup> The WB recently stated that it is easier to do business in SA than in other BRICS<sup>328</sup> countries; however, in trading across borders, South African firms are disadvantaged than other BRICS countries' firms, except for Russian firms.<sup>329</sup> The table below presents a summary of trade transformation from the 1970s to the post-apartheid era.

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<sup>326</sup> L Edwards 'Has South Africa Liberalised its Trade?' (2005) 73(4) *South African Journal of Economics*.

<sup>327</sup> *Ibid.*

<sup>328</sup> The BRICS countries seek to build and strengthen their relationship through trade and development policies and partnerships. The group includes Brazil, Russia, India, China and South Africa.

<sup>329</sup> L Edwards 'Has South Africa Liberalised its Trade?' (2005) 73(4) *South African Journal of Economics*.

Table 1: Chronology of trade liberalisation from the early 1970s

1972-1976	Export Development Assistance scheme introduced. Substitution of tariffs for QRs resulting in net decline in protection (Bell, 1997).
1979-80	Rise in gold price resulting in the appreciation of rand.
1980	Reinforced system of export incentives.
1983-85	Proportion of value of imports subject to QRs fell from 77% to 23% over period. Relaxation of import permits by switching from a positive list to a negative list. Real depreciation of rand.
1985-1992	Proportion of tariff items subject to QRs fell from 28% in 1985 to less than 15% in 1992.
September 1985	Introduction of 10% import surcharge on all imported goods not bound by GATT.
August 1988	Differential surcharge rates applied to Luxury goods (60%), Capital goods (10%), Motor vehicles (20%) and Intermediate goods (10%). • Increased applications for <i>ad valorem</i> and formula duties by businesses (Bell, 1992)
1989	"Structural adjustment programmes" involving a system of duty free imports for exports implemented for motor vehicles and textiles and clothing.
1990	• General Export Incentive Scheme (GEIS) introduced. Provided a tax free financial export subsidy to exporters based on the value of exports, degree of processing and local content of the exported product.
1990-91	Reduction of import surcharges to 40%, 5%, 15% and 5% for Luxury, Capital, Motor vehicles and Intermediate goods, respectively.
23/6/1994	Import surcharges abolished for Capital and Intermediate goods.
1/10/1995	Remaining import surcharges abolished.
1994	SA's GATT offer during Uruguay Round: (1) bound about 98% of all tariff lines at the Harmonised System (HS) eight-digit level as against 18% before the round (2) Reduction in the number of tariff rates to six: 0%, 5%, 10%, 15%, 20% and 30% (3) Rationalisation of the over 12000 tariff lines (4) Tariffication of QRs on agricultural products (5) Special provisions (extensions of the adjustment period and raised maximum tariff rates) for textile, clothing and motor vehicle industries granted. Decision taken to phase out GEIS. Adoption of anti-dumping and countervailing duties legislation
1995	Payments under GEIS became taxable, range of eligible products reduced.
From 1994-97	Deregulation of agricultural marketing and control boards established under the Agricultural Marketing Act of 1968. Import control on agricultural products removed.
1996	New Tariff Rationalisation Process (TRP) formulated: Tariff lines and peaks to be reduced, Formula and specific duties to be converted into <i>ad valorem</i> rates, Imports that have no "suitable substitutes" to be duty free, <i>ad valorem</i> rates of 30% on final products, 20% on intermediate goods and 10% on primary goods are generally not to be exceeded. GEIS limited to manufacturing goods.
Aug 1996	Signing of the SADC Free Trade Protocol (implemented in September 2000)
1 July 1997	Termination of export subsidies provided under GEIS.
1 Jan 2000	Implementation of SA-EU Trade, Development and Cooperation Agreement (TDCA)
2000	Preferential access to US for some products under African Growth and Opportunity Act (AGOA)
21 October 2002	2002 SACU Agreement introduces a new institutional structure; a dispute settlement mechanism; the requirement to have common policies on industrial development, agriculture, competition, and unfair trade practices; and a new system regarding the common revenue pool and sharing formula (WTO, 2003: viii)
December 2004	Preferential Trade Agreement signed between SACU and MERCOSUR

Source: Bell (1992, 1997), Belli et al. (1993), WTO (1993, 1998, 2003) <sup>330</sup>

<sup>330</sup> T Bell 'Should South Africa further liberalise its foreign trade?' (1002) Working paper no. 16, *Economic Trends Research Group*, Cape Town.

Bell T 'Trade policy.' In J Michie and V Padayachee, V. (eds.), *The Political Economy of South Africa's Transition*. London: Dryden Press (1997).

This table shows the major changes in SA's international trade.

### **3.2.4 Acts of Parliament**

In 2002, SA passed the International Trade Administration Act to regulate trade.<sup>331</sup> The Act created the International Trade Administration Commission (ITAC) which came into force on the 1 June 2003.<sup>332</sup> It replaced the Board of Tariffs and Trade which existed from 1986.<sup>333</sup> The ITAC is a statutory body that aims to increase investment and thus create jobs through economic expansion and development. It was also tasked with the responsibility of establishing an efficient and effective system for the administration of international trade in line with the Southern African Customs Union (SACU)<sup>334</sup> Agreement and the International Trade Administration Act.<sup>335</sup> The main functions of ITAC are customs tariff investigations, import and export control and trade remedies.<sup>336</sup> It is a key component in ensuring that SA's international trade is not only on par with the rest of the world but does not fall behind in terms of policies and regulations which may make subject to abuse. The ITAC investigates imports and exports as well as tariffs and prepares reports which it uses to draft and suggest policy and regulations to government.<sup>337</sup> Most tariff adjustments are done under the Schedules of the Excise and Customs Act<sup>338</sup> which is still applicable.

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P Belli, M Finger & A Ballivian 'South Africa: A review of trade policies.' (1993) 4 *World Bank Informal Discussion Papers on Aspects of the South African Economy*, The Southern Africa department, The World Bank.

WTO 'Trade Policy Review: South Africa.' *Geneva: World Trade Organisation Secretariat* (1993).

WTO 'Trade Policy Review: Southern African Customs Union.' *Geneva: World Trade Organisation Secretariat* (1998).

WTO 'Trade Policy Review: Southern African Customs Union.' *Geneva: World Trade Organisation Secretariat* (2003).

<sup>331</sup> Act No. 71 of 2002.

<sup>332</sup> 'An overview of ITAC' available at <http://www.itac.org.za/pages/about-itac/an-overview-of>, accessed on 15 November 2015.

<sup>333</sup> Ibid

<sup>334</sup> 2002

<sup>335</sup> 'An overview of ITAC' available at <http://www.itac.org.za/pages/about-itac/an-overview-of>, accessed on 15 November 2015.

<sup>336</sup> Ibid.

<sup>337</sup> 'Tariff Investigations' available at <http://www.itac.org.za/pages/services/tariff-investigations>. accessed on 15 November 2015.

<sup>338</sup> Act No. 91 of 1964.

The ITAC is guided (and in some instances bound) by and works closely with other policies and legislation. The New Growth Path<sup>339</sup> is one such policy. It strives to achieve an annual growth rate of between 6% and 7% per annum and to create five million jobs by 2020<sup>340</sup>; international trade is crucial in achieving these objectives. Another is the Industrial Policy Action Plan (Ipap), first introduced in 2007 and amended and reintroduced in 2013 with Ipap 5 coming into being in 2015.<sup>341</sup> This plan aims to reduce unemployment and spur growth. Trade and Industry Minister, Mr Rob Davies has described Ipap as a policy that addresses the need for long term development through exports, amongst other things. The policy also explored new export markets especially in BRICS nations.<sup>342</sup> Other policies include the National Industrial Policy Framework (NIPF)<sup>343</sup> and the Trade Policy and Strategy Framework (TPSF).<sup>344</sup>

The TPSF is a critical policy for SA, especially when it comes to agricultural trade and production. The agricultural sector will be subject to tariffs that must be in line with SA's international commitments and will be applied on a case to case basis. Trade distortion by the country's trading partners is also alluded to in the policy and it makes provision for such distortion to be investigated, thus ensuring that SA remains a competitive agricultural exporter. The policy also notes the need to weigh up the profitability of farmers against the price of food and the need to ensure food security among the poor.<sup>345</sup> It makes direct reference to the ITAC and informs its functioning. It goes on to consider various regional and international bilateral and multilateral trade agreements as well as how SA can expand into the global economy.<sup>346</sup> Finally, the policy considers preferential trade agreements (PTA) as well as free trade areas (FTA) and their implementation and development. Dube and Mandigora argue that this policy demonstrates SA attempt to replicate the growth model used by the developed and larger economies of the world.<sup>347</sup>

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<sup>339</sup> 23 November 2010.

<sup>340</sup> CJ van Aardt, L A Lighthelm & J van Tonder 'A Broad Review of The New Growth Path Framework with a Specific Emphasis on the Feasibility of its Proposed Targets' *UNISA Bureau of Market Research* (2001) 413.

<sup>341</sup> 'What is the Industrial Policy Action Plan?' *City Press* 7 April 2013.

<sup>342</sup> *Ibid.*

<sup>343</sup> The Department of Trade and Industry, 2013.

<sup>344</sup> *Ibid.*

<sup>345</sup> A South African Trade Policy and Strategy Framework, April 2010.

<sup>346</sup> *Ibid.*

<sup>347</sup> M Dube & G Mandigora 'Examining SA's trade policy for 2012' *The New Age* 14 May 2012.

The country has also adopted other legislation in relation to international trade. The Counterfeit Goods Act<sup>348</sup> seeks to protect the market from counterfeit goods. It conferred powers on the police to search premises for such goods without a warrant in certain circumstances and allows customs officials to seize and detain such goods or suspected counterfeit goods.<sup>349</sup>

### **3.2.5 Bilateral and Multilateral Agreements**

#### **3.2.5.1 South African Customs Union (SACU)**

As noted above, SA has entered into various bilateral and multilateral agreements that seek to develop and strengthen trade relations with other countries. One of the most important of these agreements is the Trade Developmental and Cooperation Agreement (TDCA) which is discussed in the following chapter.

The Southern African Customs Union<sup>350</sup> was entered into on 11 December 1969 and replaced the agreement of 1910, making it the longest standing customs agreement in the world. It was concluded between SA, Botswana, Lesotho, Swaziland and Namibia. It is binding on SA as it is a self-executing agreement; the agreement itself prescribes its applicability within a specific territory.<sup>351</sup> Annual meetings are held to discuss agreements; however, some committees such as the Trade and Industry Liaison Committee and the Ad hoc Sub-Committee on Agriculture meet three times a year.<sup>352</sup> SACU's main objectives, is to maintain the free interchange of goods amongst member countries.<sup>353</sup> It also seeks to integrate member states into the global economy through enhanced trade and investment.<sup>354</sup> The agreement provides for a common external and

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<sup>348</sup> Act No. 37 of 1997.

<sup>349</sup> Ibid.

<sup>350</sup> South African Customs Union Agreement 11 December 1969.

<sup>351</sup> J Nakagawa *Antidumping Laws and Practices of the New Users* (2006) 204.

<sup>352</sup> 'Southern African Customs Union (SACU): History and Present Status' available at <http://www.dfa.gov.za/foreign/Multilateral/africa/sacu.htm>, accessed on 22 November 2015.

<sup>353</sup> Article 2 of the 2002 SACU Agreement.

<sup>354</sup> Ibid.

The objectives of SACU as contained in Article 2 of the 2002 SACU Agreement are:

excise tariff for the customs area. It is important in uniting Southern African countries and helping them to develop.

SACU also enters into trade agreements with other unions or trade blocs. One such agreement is the Free Trade Agreement between the European Free Trade Association<sup>355</sup> (EFTA) States and SACU States. This agreement opens trade between the blocs with the goal of creating a free trade area with tariff reductions on certain goods including industrial goods (such as fish and other marine products) and processed agricultural products. Basic agricultural products are covered by bilateral agreements with individual EFTA States; these include the Agricultural Agreement between the SACU States and Iceland.<sup>356</sup> However, all these agreements are subject to the WTO's rules, regulations and agreements.<sup>357</sup>

SA is party to the Trade, Investment and Developmental Cooperation Agreement (TIDCA)<sup>358</sup> through SACU. This agreement between SACU and the USA is different from the free trade area with the EFTA as it makes provision for parties to sign and negotiate agreements relating to customs cooperation and technical barriers to trade (TBT) and sanitary and phytosanitary measures (SPS), all of which have their own agreements at the WTO. As with other agreements, the TIDCA established a forum for engagement between members on growth through investment and matters

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- a. To facilitate the cross-border movement of goods between the territories of the Member States;
  - b. To create effective, transparent and democratic institutions which will ensure equitable trade benefits to Member States;
  - c. To promote conditions of fair competition in the Common Customs Area;
  - d. To substantially increase investment opportunities in the Common Customs Area;
  - e. To enhance the economic development, diversification, industrialization and competitiveness of Member States;
  - f. To promote the integration of Member States into the global economy through enhanced trade and investment;
  - g. To facilitate the equitable sharing of revenue arising from customs, excise and additional duties levied by Member States; and
  - h. To facilitate the development of common policies and strategies.

<sup>355</sup> EFTA Compromises of Iceland, Liechtenstein, Norway and Switzerland.

<sup>356</sup> 'Agricultural Agreement between the SACU States and Iceland' available at <http://www.efta.int/media/documents/legal-texts/free-trade-relations/southern-african-customs-union-SACU/Agricultural%20Agreements/Iceland.pdf>, accessed on 20 November 2015.

<sup>357</sup> Article 4 (1) of the Free Trade Agreement between the European Free Trade Association (EFTA) States and Southern African Customs Union States, 1 July 2006.

<sup>358</sup> 16 July 2008.



of common interest.<sup>359</sup> This agreement is important for the SACU countries as member countries exported about \$9.4 billion to the US in 2013 alone. It is even more significant for SA as 90% of these exports, totalling \$8.5 billion were from that country.<sup>360</sup> The US imported \$259 million worth of agricultural products from SACU in 2013. Its positive effects on SACU are demonstrated by the fact that exports to the US (\$9.4 billion) exceeded imports from that country (\$7.6 billion).<sup>361</sup>

Furthermore, SACU has extended its agreements to other developing nations. The SACU-Mercosur<sup>362</sup> Preferential Trade Agreement (PTA) was signed on 16 December 2004 and took agriculture into account. It was replaced by the 2008<sup>363</sup> agreement which included additional protocols. This was the first agreement between SACU and another regional economic group of developing countries.<sup>364</sup> It enabled SACU to extend its relations with these South American countries through promoting cooperation and opening up discussions for further tariff preferences. Tariff preferences offer access to markets and increased trade opportunities, benefitting both regions. While the agreement covers a narrow range of products from the agricultural, fisheries and industrial sector, it offers trade concessions on about 1 000 specific products.<sup>365</sup> This agreement has resulted in significant agricultural liberalisation. SA's (the largest economy in SACU) agricultural exports to Mercosur increased from R69.7 million in 2003 to R126.2 million in 2008. However, this was significantly less than imports from Mercosur which increased from R2.7 billion in 2003 to R10.7 billion in 2008.<sup>366</sup> While the agreement has thus the agreement has worked to the benefit of Mercosur rather than SACU, this is nonetheless an important trade agreement for developing economies.

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<sup>359</sup> 'Department of Trade and Industry: 'Trade, Exports and Investment,' available at [https://www.thedti.gov.za/trade\\_investment/ited\\_trade\\_agreement.jsp](https://www.thedti.gov.za/trade_investment/ited_trade_agreement.jsp), accessed on 15 November 2015.

<sup>360</sup> Office of the United States Trade Representative: Southern African Customs Union (SACU), available at <https://ustr.gov/countries-regions/africa/regional-economic-communities-rec/southern-african-customs-union-sacu>, accessed on 1 December 2015.

<sup>361</sup> Ibid.

<sup>362</sup> Mercosur comprises Argentina, Brazil, Paraguay and Uruguay.

<sup>363</sup> 27 June 2008, Midrand, South Africa.

<sup>364</sup> Department: Agriculture, Forestry and Fisheries: 'SACU-Mercosur Preferential Trade Agreement,' available at <http://www.nda.agric.za/doaDev/sideMenu/internationalTrade/docs/Mercosur.pdf>, accessed on 1 December 2015.

<sup>365</sup> SACU Secretariat, 'Press Release on the Conclusion of the SACU – MERCOSUR Preferential Trade Agreement (PTA)' available at <http://www.sacu.int/docs/pr/2008/pr0627.pdf>, accessed on 28 November 2015.

<sup>366</sup> Department: Agriculture, Forestry and Fisheries: 'SACU-Mercosur Preferential Trade Agreement,' available at <http://www.nda.agric.za/doaDev/sideMenu/internationalTrade/docs/Mercosur.pdf> accessed on 1 December 2015.

### 3.2.5.2 The Southern African Development Community (SADC)

SA is a member of one of the most important trading blocs on the African continent, the Southern African Development Community<sup>367</sup> (SADC). SADC was formally formed on 17 August 1992 after the Treaty of Southern African Development Community was signed in Namibia.<sup>368</sup> It replaced the Southern African Development Co-ordination Conference (SADCC).<sup>369</sup> As with many other agreements discussed here, it aims to promote cooperation between nations and to strengthen their socio-economic and political relationship. The SADC Free Trade Area (FTA) established through the SADC Protocol on Trade<sup>370</sup> aims to remove trade barriers, thereby strengthening trade relations in the region and to prohibit unfair business practices among member states.<sup>371</sup> The FTA was established in August 2008 with 85% duty free trade.<sup>372</sup> Maximum tariff liberalisation was achieved by January 2012 with the completion of the tariff phase down process.<sup>373</sup> The FTA is extremely difficult to achieve in its entirety especially since most of the trade that the members of SADC engage in is with countries outside the region.<sup>374</sup>

SADC trade is again dominated by SA which is one of the strongest economies in the bloc. While critics are sceptical of the FTA, since its implementation in 2000, intra-SADC trade more than doubled from \$13.2 billion to about \$34 billion in 2009, a 155% increase.<sup>375</sup> Agricultural trade is a key component of the agreement and its liberalisation increases trade and strengthens the economies of these developing nations. While the largest portion of SA's exports goes to the EU, it exports about \$15 772 million worth of goods to other African countries, of which \$10 388

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<sup>367</sup> 'SADC Overview' available at <http://www.sadc.int/about-sadc/overview/>, accessed on 12 November 2015.

SADC includes countries in the Southern part of the continent; its current members are: Angola, Botswana Democratic Republic of Congo, Madagascar, Lesotho, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.

The current Chair of SADC is Zimbabwean President Robert Mugabe.

<sup>368</sup> 'Southern African Development Community (SADC): History and Present Status' available at <http://www.dfa.gov.za/foreign/Multilateral/africa/sadc.htm>, accessed on 12 November 2015.

<sup>369</sup> 1 April 1980.

<sup>370</sup> 24 August 1994 and later amended in 2000, 2007 and 2008.

Only 12 of the 15 members of SADC are part of the FTA; Seychelles, DRC and Angola remain outside of the FTA

<sup>371</sup> R Sandrey *An analysis of the SADC Free Trade Area* (2013) Stellenbosch: Tralac.

<sup>372</sup> 'Southern African Development Community (SADC):History and Present Status' available at <http://www.dfa.gov.za/foreign/Multilateral/africa/sadc.htm>, accessed on 12 November 2015

<sup>373</sup> 'SADC Overview' available at <http://www.sadc.int/about-sadc/overview/>, accessed on 13 November 2015.

<sup>374</sup> R Sandrey *An analysis of the SADC Free Trade Area* (2013) Stellenbosch: Tralac.

<sup>375</sup> 'SADC Overview' available at <http://www.sadc.int/about-sadc/overview/>, accessed on 13 November 2015.

million worth goes to SADC countries and \$261 million to SACU countries only.<sup>376</sup> The import statistics are similar; SA imports the most from the EU<sup>377</sup>, but of the \$9 541 million worth of goods imported from Africa in 2012, \$5 660 million worth came from SADC countries compared to \$487 million from SACU countries, with the balance from countries outside of these two groups. The SADC FTA is thus extremely beneficial to SA.<sup>378</sup>

### 3.2.5.3 Other Trade Agreements

SA is also a party to bilateral trade agreements such as the Zimbabwe/SA Bilateral Trade Agreement,<sup>379</sup> a preferential trade agreement between the two states. In 2015, SA and Zimbabwe entered into five agreements, including a Memorandum of Understanding on Trade Cooperation.<sup>380</sup> SA and China have recently signed 26 agreements linked to investment and development which will increase trade between the countries. China is the African continent's biggest trading partner and bilateral agreements between the two countries will promote economic and industrial development which it is speculated SA will be the main beneficiary of.<sup>381</sup> SA also benefits from unilateral agreements of assistance such as the African Growth and Opportunity Act<sup>382</sup> (AGOA) which gives sub-Saharan African countries duty free access to US markets.<sup>383</sup> In order to qualify, they need to fulfil certain requirements such as improving the rule of Law and respecting core labour standards.<sup>384</sup> Since these are set by the US this Agreement is highly prescriptive. SA has recently been at loggerheads with the US over chicken imports. The US threatened to withdraw AGOA assistance. However, this did not occur.<sup>385</sup> While it is acknowledged that the agreement has a varying effect on the agricultural trade of countries in

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<sup>376</sup> R Sandrey *An analysis of the SADC Free Trade Area* (2013) Stellenbosch: Tralac.  
All the above data is for 2012

<sup>377</sup> SA's biggest and most important trading partner is the EU. While recent developments might make China the country's largest trading partner, at the time of writing the EU reigned supreme. The timeframe for new agreements with China to come into effect is a long one.

<sup>378</sup> R Sandrey *An analysis of the SADC Free Trade Area* (2013) Stellenbosch: Tralac.

<sup>379</sup> August 1996.

<sup>380</sup> 'SA, Zimbabwe sign five bilateral agreements' *South African Government News Agency* 8 April 2015.

<sup>381</sup> 'China's R94bn SA stake' *The Times Live* 3 December 2015.

<sup>382</sup> 18 May 2000 as Title 1 of The Trade and Development Act of 2000, 106 of 200<sup>th</sup> Congress.

<sup>383</sup> 'Agoa: South Africa, US sign Agri Trade Agreement' *ENCA* 17 November 2015.

<sup>384</sup> 'About Agoa' available at <http://agoa.info/about-agoa.html>, accessed on 3 December 2015.

<sup>385</sup> S Mkhwanazi, Ska'Nkosi & B Ginindza 'AGOA: Obama turns the screws on SA' *Business Report* 9 November 2015.

Africa, it is praised for the benefits of duty free trade, with around R780 million worth of agricultural exports to the US.<sup>386</sup> SA is party to various other trade agreements that are not discussed here.

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<sup>386</sup> Ibid.

### **3.3 Part B: The Development of the European Union's Agricultural Trade**

#### **3.3.1 Introduction**

The EU is a unique formation, which is made up of various operational and decision-making arms. This part of the chapter analyses the structure and functionality of the EU and its decision making processes. The EU's main policy on agriculture, the Common Agricultural Policy (CAP) is briefly discussed, as the main focus of this dissertation is SA and the extent to which such affects EU trade.

#### **3.3.2 The European Union**

The EU is an international organisation<sup>387</sup> that is made up of 28 independent states<sup>388</sup> in Europe.<sup>389</sup> It's predecessor, the European Community was formed after WWII to foster economic relations and development between European states. Over the years it has changed from a purely economic to a political organisation which takes decisions through treaties and enters into political agreements with other states and organisations that are binding on all of its members. One of its most significant economic decisions was to have a single currency, the Euro (€) for all its members (except the UK). This ensured economic growth and expanded trade.<sup>390</sup>

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<sup>387</sup>

The Treaty on European Union (TEU), the Maastricht Treaty, was signed in Maastricht on 7 February 1992 and came into force in 1993. It established the European Union, gave the Parliament more say in decision-making and added new policy areas of cooperation.

The Treaty of Amsterdam was signed on 2 October 1997 and came into force in 1999. It amended previous treaties. The Treaty of Lisbon was signed on 13 December 2007 and came into force in 2009. It simplified working methods and voting rules, created a President of the European Council and introduced new structures with a view to making the EU a stronger actor on the global stage.

European Commission, Directorate for Communication 'The European Union Explained' (November 2002) 3.

<sup>388</sup> The EU current member states are Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

European Commission, Directorate for Communication 'The European Union Explained' (November 2002) 3.

<sup>389</sup> M J Gabel 'European Union (EU)' July 2015 *Encyclopedia Britannica*.

<sup>390</sup> European Commission, Directorate for Communication 'The European Union Explained' (November 2002) 3

The EU has various institutions with different roles and functions. Its highest and most important body is the European Parliament which rotates between Brussels, Luxembourg and Strasbourg.<sup>391</sup> There are 751 Members of the European Parliament (MEPs) who are directly voted into office every five years by citizens of the EU. It is presided over by the President of the EU Parliament.<sup>392</sup> The Parliament has three main roles. Firstly, it has a legislative function together with the EU Council and is responsible for passing law. Secondly, since it is a democratically elected body it has democratic supervision over all EU institutions and can reject nominations of Commissioners as well as censure the Commission. Finally, together with the Council, it controls the EU budget and therefore can influence EU spending<sup>393</sup> and the flow of funds into and from the EU.

The European Council is another important institute of the EU and is made up of Presidents or Prime Ministers of member states. It meets four times a year to discuss the EU's political decisions and to decide on its priorities. The EU President and the EU Commission's President also sit in the EU Council. The Council does not adopt legislation but rather discusses issues on which the Commission is then asked to draft legislation. The majority of decisions in the European Council are taken by a simple majority; however, only heads of governments are allowed to vote.<sup>394</sup>

The Council is another EU institution that should not be confused with the European Council. It consists of a Minister from each Member state. The Council makes policy decision by passing laws through the Ministers who have the authority to bind their states. It discusses; debates, amends and adopts legislation.<sup>395</sup> Council meetings are open to the public.

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<sup>391</sup> Ibid 5.

<sup>392</sup> Ibid 9.

<sup>393</sup> Ibid.

<sup>394</sup> Ibid 10.

<sup>395</sup> Ibid 14.

The European Commission is said to be the driving force within the EU's institutional system. It implements the decisions of the EU Parliament and the Council, especially legislative ones.<sup>396</sup> Members of the commission are appointed by their states to run the EU. The Commission is an independent institution which has no political ties to any State. Although the Commissioners are appointed by their countries, they do not have a political mandate and they should not be influenced by their homeland, but act in the best interests of the Union. The commission is accountable to the Parliament which can dismiss it through a motion of censure. It attends all Parliamentary sittings and answers questions on proposed policies. The 28 Commissioners meet once a week with each Commissioner in charge of a particular policy area.<sup>397</sup> The EU has various other institutions such as the National Parliament, the Court of Justice and the European Central Bank that are not discussed here.<sup>398</sup> Annexure A on page 115 shows decision making in the EU.

### **3.3.3 The Common Agricultural Policy (CAP)**

Various EU policies regulate trade in different sectors between EU members. The Common Agricultural Policy (CAP) applies to all EU members; however, the finer details of its application and specific commitments may differ from state to state.<sup>399</sup> The CAP was one of the founding agreements of the European Community.<sup>400</sup> It provided a framework for food and agricultural programmes to address the food crisis in Europe. The CAP was part of the Rome Treaty which was signed in 1958<sup>401</sup> but came into effect in 1963 and focused on four main areas: developing a unified market in the EU with the free movement of agricultural goods; all costs linked to the CAP were to be funded by a common treasury with money also being sourced from tariffs; EU products would be given preference over imported goods (this has changed since the formation of the WTO); and the CAP aimed to level the playing field for farmers and other industries whilst at the

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<sup>396</sup> Ibid.

<sup>397</sup> Ibid 17.

<sup>398</sup> Ibid 21.

<sup>399</sup> S Nori & M Gemini 'The Common Agricultural Policy vis-à-vis European pastoralists: principles and practices' 2001, *licensee Springer* 2.

<sup>400</sup> Comprising of France, Germany, Italy, The Netherlands, Belgium and Luxembourg.

<sup>401</sup> C Delayen 'Agricultural Policy: A Brief Introduction' (2007) *Institute for Agriculture and Trade Policy* March 25, 1957.

same time providing consumers with food at a reasonable price.<sup>402</sup> The CAP is an important part of EU policy and in 2011 42% of EU budget was contributed towards it (€141.2 billion).<sup>403</sup>

While EU members generally have high levels of agricultural production, economic strain, increased imports and as ever increasing fuel costs make it more difficult to compete in this market.<sup>404</sup> In order to sustain agribusiness, farmers need additional financial support. The CAP supports farmers through direct payments or domestic support as catered for in the AoA, price guarantees and other instruments which include tariffs and quotas on some imported products.<sup>405</sup> All funds directed towards agricultural producers within states can no longer come from individual governments but have to be administered via the CAP.<sup>406</sup> This creates a uniform system which ensures that domestic support is equal among EU members, preventing unfair competition. The CAP uses a principle called '*decoupling*' which shifts the focus from production to promoting environmentally-friendly practices and market-based dynamics.<sup>407</sup> 'Therefore, more public financial support directly relates to the proper stewardship of land and farmers' practices are remunerated for their capacity to deliver the basic public goods desired by European society.'<sup>408</sup>

The CAP is divided into two parts. The first is direct payments (domestic support), which support market development, and come from the EC budget.<sup>409</sup> This is an area-based mechanism where farmers are given direct payments to stabilise their income, based on the area they manage. This system was introduced in 2013; previously pastoralists received a payment for each head of livestock they managed.<sup>410</sup> This method ensures the permanent up keep of land and prevents it from becoming arid or infertile. The second part is support for farmer's initiatives and multi-annual

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<sup>402</sup> Ibid.

<sup>403</sup> S Nori & M Gemini 'The Common Agricultural Policy vis-à-vis European pastoralists: principles and practices' 2001, *licensee Springer* 2.

<sup>404</sup> 'What is the Common Agricultural Policy (CAP)?' available at <http://www.ecpa.eu/information-page/agriculture-today/common-agricultural-policy-cap>, accessed on 14 December 2015.

<sup>405</sup> Ibid.

<sup>406</sup> Ibid

<sup>407</sup> S Nori & M Gemini 'The Common Agricultural Policy vis-à-vis European pastoralists: principles and practices' 2001, *licensee Springer* 2.

<sup>408</sup> Ibid.

<sup>409</sup> Ibid.

<sup>410</sup> Ibid.



rural development measures which include but are not limited to environmental protection; this is co-financed by member states. The measures are applied differently in different states based on the principle of subsidiarity.<sup>411</sup> This part largely focuses on the EU's rural development policy. It rests on three main axes. Firstly, it improves competitiveness through support for innovation, restructuring and development; secondly it improves the countryside and the environment through support for land management and helps to fight climate change, and finally it encourages diversification of economic activities and improving the quality of life in rural areas. The CAP has various other schemes in different countries that cater for their specific agricultural needs,<sup>412</sup> such as the traditional livestock breeding scheme in Bulgaria<sup>413</sup> or the Oxtail transitional cooperation project in Austria, Bulgaria, Hungary, Romania and Germany.<sup>414</sup> The CAP is important for the EU; in 2013 it was the largest food exporter in the world and sustaining and growing agriculture is in the best interests of the EU.<sup>415</sup>

The 2013 CAP reform transformed it to make farmers more environmentally-friendly and conscious, encourage research and spread knowledge about more sustainable farming practices and a fairer support system for farmers. In the long term, this places farmers in a stronger position along the food chain.<sup>416</sup> The reform also aims to educate consumers about the food they eat as all products are required to have detailed labels which include the country of origin as well as the ingredients.<sup>417</sup> The CAP reform also promotes fair trade with developing countries. As required by the AoA, its export subsidies mean that imported goods from developing countries can enter the EU with ease.<sup>418</sup> The CAP is therefore very important in regulating and supporting the largest trade market in the EU. While it has transformed in order to meet WTO requirements, substantial support is directed to agricultural development, strengthening the EU and its member States.

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<sup>411</sup> Ibid.

<sup>412</sup> Ibid 5.

<sup>413</sup> Ibid 6.

<sup>414</sup> Ibid.

<sup>415</sup> European Commission 'Agricultural trade in 2013:EU gains in commodity exports' 2013, Agriculture and Rural Development.

<sup>416</sup> 'European Union Agriculture' available at [http://europa.eu/pol/agr/index\\_en.htm](http://europa.eu/pol/agr/index_en.htm), accessed on 13 December 2015.

<sup>417</sup> Ibid.

<sup>418</sup> Ibid.

The CAP is also important for SA as it informs EU decisions before entering into any trade agreements which affect agriculture. When the TDCA was being negotiated, the CAP had to be taken into consideration and all further discussions relating to the TDCA will have to be in line with CAP and other EU agricultural trade agreements. As SA is bound by ITAC, so too is the EU bound by the CAP.

### **3.4 Conclusion Parts A & B**

Part A demonstrated that change in government leads to change in fiscal policy. This has a direct impact on with whom and how a country trades. It examined how South African trade policies and laws changed following the demise of apartheid and how trade liberalisation has been incorporated into the legal system. SA's political transition had a direct effect on SA's policy stance as it entered new agreements with diverse partners to build economic ties. The chapter also reviewed the trade agreements entered into by SA in recognition of the increasing importance of international trade. SA is more alert to trade developments that not only work to its benefit but to the regional block it belongs to. Trade blocs sometimes have more power than individual states; therefore, their importance cannot be overemphasised and they benefit the entire continent. The agreements entered into either focus directly on agriculture, or as will be seen later in the TDCA, include elements that impact this sector. This promotes low tariffs and open agricultural markets not only for SA to access but for the country to apply. Agricultural trade increases and the sector is enhanced through the introduction of new technologies and access to inputs such as certain fertilisers. Such improvements are highly beneficial to agricultural production in developing countries like SA. Finally, Part A offered insight into why the EU is SA's main trading partner. Colonial ties with Europe and the continent's strong investment in the South African economy nurtured a strong relationship that was revived when sanctions were lifted.

Part B highlighted the complex EU framework. While member states are independent, they are bound by all EU decisions. The multi-layered decision making process ensures fairness at all stages of governance. The single currency and open markets make the EU an extremely successful trading bloc not only in the international community but for its members. The CAP guides EU agricultural development and ensures that farming is sustainable. It encourages farmers to become more environmentally-friendly which in turn ensures the sustainability of the agricultural sector. The CAP is a founding document which binds the EU and has a direct effect on agriculture as it informs trade policy as does ITAC for SA.

The chapter showed that trade developments and changes which are country specific have a direct impact on international trade as well as particular regional or bilateral agreements. The understanding of agricultural policy changes over the years due to supply and demand curves as well as climate change which has also informed many current policy positions and affects agricultural producers and consumers in any country, especially in the EU and SA where the agricultural relationship is a vital one.

## **CHAPTER 4**

### **THE TRADE DEVELOPMENT AND COOPERATION AGREEMENT AND ITS EFFECT ON SOUTH AFRICA AND THE EUROPEAN UNION**

#### **4.1 Introduction**

The TDCA<sup>419</sup> is by and large a trade liberalisation agreement between the EU and SA. It includes all EU member States including Great Britain and Ireland which form part of the EU. While extremely technical, the agreement deals directly with a few areas within the trade sector, especially agriculture, which is analysed in this chapter. As its name suggests, it focuses on trade, development and cooperation; the current study hones in on the trade component.

This chapter examines the nature of the TDCA and the impact of its implementation. It begins by outlining the history and objectives of the agreement. The agreement is analysed focusing on the trade aspect. Its benefits for both SA and the EU are discussed and various problems that arise are highlighted. Since this study is primarily concerned with SA, the effects of the agreement are considered from a South African perspective in relation to the EU. The problems considered include market access, subsidisation, high health standards, the impact on employment and particular issues relating to SACU. The chapter ends by assessing the extent to which the TDCA is beneficial or detrimental to SA's current agricultural dynamics.

#### **4.2 Part A: Introduction to the Trade Development Cooperation Agreement between SA and the European Union**

##### **4.2.1 History and Objectives**

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<sup>419</sup> The TDCA was signed in 1999 and came into force in 2004.

The TDCA was signed in Pretoria on 11 October 1999 but only entered into full force on 1 May 2004. However, some provisions<sup>420</sup> which fall within EU competence have been applied since 1 January 2000.<sup>421</sup> Its objectives are clearly stated in Article 1 and include:

‘developing a closer relationship between parties, helping SA in its consolidation of its economic and social foundational transition, to contribute to the social and economical development of Southern Africa through regional cooperation and integration, to see the mutual trade liberalisation of goods, services and capital and promote expansion of such interaction, to smoothly and gradually integrate South Africa into the world economy and finally to enhance the relationship of the EU and SA through greater cooperation which will be in their mutual interest.’<sup>422</sup>

Respect for human rights and democratic principles are an essential part of the agreement.<sup>423</sup> Linked to this is the encouragement of continuous political dialogue between the EU and SA to promote understanding of the positions and interests of the parties, encourage support for democracy and human rights and to promote social justice. These dialogues can happen at various levels from the Parliamentary level down to the diplomats or representatives.<sup>424</sup>

#### **4.2.2 Trade Component of the TDCA**

Trade is central in Title II of the agreement. Article 5 establishes a FTA between the parties in accordance with clauses in the agreement discussed below as well as those which conform to WTO standards. The FTA had to be established in SA within a 12 year period and within the EU within a 10 year period starting from the year the agreement came into effect, i.e., the year 2000.<sup>425</sup> As a developing country, SA was granted more time as acting too quickly could have had adversely effects.<sup>426</sup> The FTA is not only important to agriculture but to trade as a whole as an entire range

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<sup>420</sup> These include certain provisions linked to tariff reduction as well as the Wine and Spirit Agreement between the EU and SA.

<sup>421</sup> Trade, Development and Cooperation Agreement (TDCA) Summaries of EU legislation, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:r12201>, accessed on 19 October 2015.

<sup>422</sup> Trade, Development and Cooperation Agreement (TDCA), Article 1.

<sup>423</sup> Trade, Development and Cooperation Agreement (TDCA), Article 2.

<sup>424</sup> Trade, Development and Cooperation Agreement (TDCA), Article 5.

<sup>425</sup> J Assarson, *The Impacts of the European Union - South Africa Free Trade Agreement* (Doctoral Thesis, Upsalla University, 2005).

<sup>426</sup> Ibid.

of goods<sup>427</sup> are covered. Common to FTA's, 'liberalisation of trade in services and free movement of capital'<sup>428</sup> are also covered.<sup>429</sup> Both parties commit to tariff elimination through abolishing or reducing custom duties. Article 9<sup>430</sup> makes it compulsory for the parties to abolish any charge which has an effect equivalent to customs duties imposed on imported goods. This means that the EU is meeting its obligation under the AoA with regard to market access and tariffication. Custom duties on items listed in the Annexures to the agreement were to be reduced gradually, although there had to be a 75%<sup>431</sup> reduction on the basic duty at the time when the agreement was entered into for most products, excluding agricultural goods. In terms of the agreement, further reductions would occur over specified periods of time which differ for the parties as well as for different items.

The reductions for agriculture are different from the rest of the products. The reductions are quite extensive. For items in Annex IV list 1<sup>432</sup>, the initial reduction is 75% for both parties. However for List 2 the initial reduction is 91% for the EU with 10 years to reach total abolishment<sup>433</sup> and 67% for SA with five years to reach total abolishment.<sup>434</sup> Customs duties for items in List 3 need to be reduced by 87% within three years<sup>435</sup> for the EU with final abolishment occurring within 10 years; and 88% within five years for SA with final abolishment occurring within 12 years.<sup>436</sup> This somewhat replicates the commitments required of countries in the AoA with developed countries (the EU) having to commit to more reduction in a shorter time while less developed (SA) or least

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<sup>427</sup>These goods include: live animals and products; vegetable products; fats and oils; prepared foods; mineral products; chemical products; plastic and rubber; hides and skins; wood and articles; pulp, paper, etc.; textiles and articles; footwear and headgear; articles of stone; precious stones, etc.; base metals and products; machinery; transport equipment; precision instruments; arms and ammunition; miscellaneous manufactured and works of art, etc.

<sup>428</sup> Trade, Development and Cooperation Agreement (TDCA), Article 5.3.

<sup>429</sup> Trade, Development and Cooperation Agreement (TDCA), Article 5.

<sup>430</sup> Trade, Development and Cooperation Agreement (TDCA), Article 9.

<sup>431</sup> Trade, Development and Cooperation Agreement (TDCA), Article 14.

<sup>432</sup> Trade, Development and Cooperation Agreement (TDCA), Article 15.

<sup>433</sup> Trade, Development and Cooperation Agreement (TDCA), Article 14.

<sup>434</sup> Trade, Development and Cooperation Agreement (TDCA), Article 15.

<sup>435</sup> Trade, Development and Cooperation Agreement (TDCA), Article 14.

<sup>436</sup> Trade, Development and Cooperation Agreement (TDCA), Article 15.

developing countries have to commit to less reduction over a longer period.<sup>437</sup> The agreement sees a total tariff reduction of 95% on goods entering the EU and 86% on goods entering SA.<sup>438</sup>

This analysis offers insight into how the AoA affects the relationship between SA and the EU. Trade agreements which cover agricultural trade now show the same level of commitment and application as the AoA. As such, it can be argued that the AoA directly influences the current trade relationship between these two particular partners. Because this agreement is the main agreement on trade between SA and the EU, to a great extent the effects of the TDCA which can be felt in the South African agricultural sector are a product of the AoA.

Article 16<sup>439</sup> deals with agricultural safeguards where harm is caused or threatened by one partners in the markets of the other due to sensitivity in the agricultural market. The TDCA also states that a review of the agreement must be conducted after five years and steps must be taken to further liberalise trade. Article 19<sup>440</sup> does not allow any new duties to be introduced or any restrictions on the quantity of imports; this increases market access. Agricultural policy is again highlighted in Article 20<sup>441</sup> which states that regular consultations should be held on agricultural policies and their respective strategies and practical modalities.

The agreement also encapsulates other agreements. Article 23.1 states:

‘Nothing in this Agreement shall prejudice or affect in any way the taking, by either Party, of anti-dumping or countervailing measures in accordance with Article VI of the GATT 1994, the Agreement on Implementation of Article VI of the GATT 1994, the Agreement on Subsidies and Countervailing Measures, annexed to the Marrakech Agreement establishing the WTO.’<sup>442</sup>

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<sup>437</sup> Ibid.

<sup>438</sup> Ibid.

<sup>439</sup> Trade, Development and Cooperation Agreement (TDCA), Article 16.

<sup>440</sup> Trade, Development and Cooperation Agreement (TDCA), Article 19.

<sup>441</sup> Trade, Development and Cooperation Agreement (TDCA), Article 20.

<sup>442</sup> Trade, Development and Cooperation Agreement (TDCA), Article 23.

This shows that the agreement does not function outside of the WTO framework. It goes on to state that consultations on constructive remedies should be held before such measures are taken.<sup>443</sup>

In this respect, at face value the agreement seems problematic because of the lack of safeguards. However Articles 24 to 26 introduce safeguard mechanisms. Where imported goods threaten or cause harm to domestic producers who produce like or the same product, or when increased import of a particular good causes or threatens to cause economic deterioration to the EU's outermost region or to other members of the SACU,<sup>444</sup> exceptional measures may be taken.<sup>445</sup> These include the introduction or an increase in customs duties<sup>446</sup> (however, strict regulations and rules for the application of these measures are set out in Article 25).<sup>447</sup> The TDCA requires that, before adopting any of these exceptional measures, a procedure needs to be followed.<sup>448</sup> Rules of Origin,<sup>449</sup> which are extremely detailed, are covered in Protocol 1<sup>450</sup> as highlighted in Article 28 which is additional to the agreement.<sup>451</sup> This Protocol is not discussed in detail in this thesis.

Free competition among EU and South African companies is further enhanced by the TDCA as it includes provisions which avoid abuse by firms with a dominant position in the market.<sup>452</sup> Protection of intellectual property<sup>453</sup> is also recognized by the TDCA and South African competition laws will be reconstructed through technical assistance provided by the EU; the agreements also provides for urgent consultations.<sup>454</sup> While developmental cooperation set out in the agreement is not analysed further, it is important to note that the agreement provided for SA to

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<sup>443</sup> Ibid.

<sup>444</sup> Trade, Development and Cooperation Agreement (TDCA), Article 24.

<sup>445</sup> Trade, Development and Cooperation Agreement (TDCA), Article 25.

<sup>446</sup> Ibid.

<sup>447</sup> Ibid.

<sup>448</sup> Trade, Development and Cooperation Agreement (TDCA), Article 26.

<sup>449</sup> While they have only been implemented relatively recently, Rules of Origin have become an important part of international trade.

<sup>450</sup> TDCA Protocol 1 on Rules of Origin, available at <http://wits.worldbank.org/GPTAD/PDF/annexes/EC-SouthAfrica%20protocol.pdf> accessed on 20 October 2015.

<sup>451</sup> Trade, Development and Cooperation Agreement (TDCA), Article 26.

<sup>452</sup> Trade, Development and Cooperation Agreement (TDCA), Article 35.

<sup>453</sup> Trade, Development and Cooperation Agreement (TDCA), Article 46.

<sup>454</sup> Trade, Development and Cooperation Agreement (TDCA) Summaries of EU legislation, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:r12201>, accessed on 19 October 2015.



receive €980 million in development aid for the period 2007 to 2013.<sup>455</sup> Finally, the agreement states that economic cooperation between the parties will promote the growth of both economies due to the free trade model introduced in the agreement.<sup>456</sup>

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<sup>455</sup> Trade, Development and Cooperation Agreement (TDCA) Summaries of EU legislation, available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:r12201>, accessed on 19 October 2015.

<sup>456</sup> Ibid.

### **4.3 Part B: Effect of the TDCA on SA and the European Union**

#### **4.3.1 Benefits of the TDCA**

Authors such as Jeffery Lewis, Sherman Robinson and Karen Thierfelder argue that the TDCA brings more good than harm to SA.<sup>457</sup> They agree that there will be an increase in EU exports, especially products that had higher tariffs before the TDCA; these mainly include fruit and vegetables.<sup>458</sup> However research shows that South African exports to the EU increased by 75% since the implementation of the TDCA. Exports to Sweden (mainly wine and textiles) increased by 419%, with those to Austria, Spain and Ireland also showing strong increases.<sup>459</sup> SA's most important export partners are the United Kingdom and Germany.<sup>460</sup> This is due to the long standing relationship between SA and the United Kingdom together and Germany's need for South African goods. Import from the EU increased by 93%, while those from France increased by 221% with the biggest increase being in turbo-jets, petroleum and tyres.<sup>461</sup> R43 billion worth of goods were imported from Germany which was SA's largest importer within the EU. Countries like Spain and Portugal also saw an increase in exports to SA.<sup>462</sup>

On the other hand, Lorenzo Jachia and Ethel Teljeur argue that the TDCA will also bring about trade diversion.<sup>463</sup> Jacob Viner explains that this occurs when imports from a low-cost producing non-member (not a party to the free trade <sup>464</sup>agreement) country are stopped by the country which is a member of the FTA. Instead, the member imports its products from a high-cost producing member country.<sup>465</sup> This increases the volume of imports as the tariffs are removed, which

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<sup>457</sup> D Lewis, Jeffrey, Robinson, Sherman and Thierfelder, Karen (2003): Free Trade Agreements and the SADC Economies, Journal of African Economics, Vol 12, pp. 156-206.

<sup>458</sup> Ibid.

<sup>459</sup> The South African Department of Trade and Industry: Trade Statistics, available at <http://tradedstats.thedti.gov.za/TableView/tableView.aspx>, accessed on 25 October 2015.

<sup>460</sup> Ibid.

<sup>461</sup> D Lewis, Jeffrey, Robinson, Sherman and Thierfelder, Karen (2003): Free Trade Agreements and the SADC Economies, Journal of African Economics, Vol 12, pp. 156-206.

<sup>462</sup> Ibid.

<sup>463</sup> Jachia, Lorenza and Teljeur, Ethél (1999): Free Trade between South Africa and the European Union: a Quantitative Analysis, UNCTAD Discussion Paper, No 141, pp. 1-48.

<sup>464</sup> J Viner 'The Customs Union Issue, Carnegie Endowment for International Peace,' New York (1950).

<sup>465</sup> Ibid.

represents trade creation.<sup>466</sup> The diversion occurs when trade which would ordinarily go to the non-member party is diverted to the member party. Trade relations between the non-member party and the member party are strained especially in light of SA's trade with other SADC members who are not part of the TDCA.<sup>467</sup> The price difference between the low-cost producing non-member country and the high-cost producing member country will determine the size of trade diversion.<sup>468</sup> The data in the diagram below<sup>469</sup> shows that, while there has been an increase in imports from African states, exports to African States have declined, mainly due to the decrease in the SACU area.

**EU-28 trade balance in goods by partner (billion EUR)**

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Extra EU-28	-82.2	-134.5	-212.2	-212.5	-276.1	-141.7	-176.2	-170.8	-112.3	51.6	22.4
Argentina	-2.6	-2.5	-2.5	-2.6	-4.6	-3.4	-1.9	-2.4	-1.4	1.9	0.6
Australia	11.1	10.9	8.7	10.4	12.9	12.0	14.5	16.2	19.4	21.9	20.4
Brazil	-7.6	-8.1	-9.6	-11.6	-9.7	-4.5	-1.9	-3.3	2.3	6.8	5.8
Canada	5.7	5.5	5.4	1.1	0.4	2.6	2.0	-0.8	1.1	4.4	4.3
China	-80.8	-109.3	-132.1	-162.0	-170.8	-132.9	-170.5	-158.6	-147.9	-131.9	-137.7
India	0.7	2.1	1.6	2.5	1.7	2.0	1.4	0.7	1.0	-1.0	-1.6
Indonesia	-5.7	-6.1	-7.3	-7.4	-7.7	-6.5	-7.6	-8.9	-5.8	-4.7	-4.9
Japan	-31.5	-30.6	-33.7	-35.5	-34.1	-22.5	-23.3	-21.5	-9.3	-2.6	-1.3
Mexico	7.8	7.6	8.6	8.8	8.0	5.8	7.6	6.9	8.4	9.9	10.5
Russia	-38.8	-57.3	-70.3	-57.7	-75.5	-53.9	-75.8	-92.7	-91.7	-87.5	-78.5
Saudi Arabia	-3.6	-6.9	-6.0	1.3	-0.9	7.3	6.9	-2.0	-4.5	3.6	6.5
South Africa	0.2	0.7	-0.3	-1.7	-3.8	-3.2	1.3	4.5	5.1	8.9	4.9
South Korea	-12.9	-14.3	-18.1	-17.0	-14.2	-10.9	-11.6	-3.8	-0.2	4.1	4.1
Turkey	7.3	8.4	8.1	5.5	8.2	8.0	18.8	24.7	26.6	26.9	20.4
United States	76.0	91.6	96.4	82.2	65.3	48.5	69.3	72.1	86.7	93.3	105.7

Source: European Commission-Directorate General for Trade<sup>470</sup>

### **4.3.2 Problems arising out of the TDCA**

A number of problems have arisen since the conclusion of the TDCA. For the purpose of this study, market access, subsidies, high health standards, problems within SACU and employment

<sup>466</sup> Ibid.

<sup>467</sup> J Assarson, *The Impacts of the European Union - South Africa Free Trade Agreement* (Doctoral Thesis, Upsalla University, 2005).

<sup>468</sup> Pugel, A. Thomas and Lindert, H. Peter (2000): International Economics pp. 216-218, McGraw Hill, USA.

<sup>469</sup> European Commission: Directorate General for Trade, available at [http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_122532.pdf](http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122532.pdf) accessed on 28 October 2015.

<sup>470</sup> European Commission: Directorate General for Trade, available at [http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc\\_122532.pdf](http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_122532.pdf), accessed on 28 October 2015.

are discussed in order to substantiate the conclusion that the TDCA may have not have been the most ideal agreement for SA to be party to.

#### **4.3.2.1 Market Access**

There has been opposition to the agreement since its inception. In the year 2000, the South African business community spoke out against it, stating that it was too idealistic and that the open market system would be detrimental to uncompetitive industries that relied on the closed system of trade that the country once had.<sup>471</sup> It was noted that the textiles, clothing and automotive sectors would be most affected. Industry leaders predicted as many as 40 000 jobs would be lost in Mpumalanga Province.<sup>472</sup> EU products were openly and easily able to enter South African markets. The sudden change in the dynamics of certain industries, with large volumes of EU products entering the market, caused many local manufacturers who were not able to adapt fast enough, to shut down, increasing job losses. This was the first sign that the agreement could be counterproductive as job creation was one of its cornerstones.

Eurostep argues that the agreement is more beneficial to the EU as SA opens its market to a greater extent.<sup>473</sup> Before the TDCA, SA was able to export more duty free commodities than the EU; the agreement changes this situation.<sup>474</sup>

Figure 4.1: European Union's Exports and Imports with SA in Billion Euros

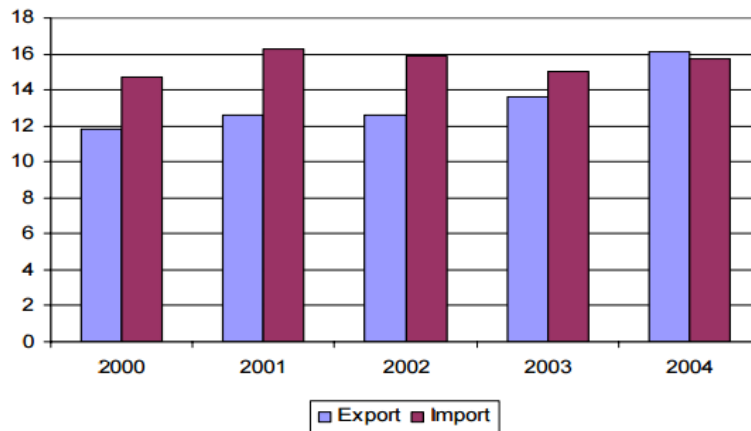
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<sup>471</sup> The South African Institute of International Affairs, Intelligence update 03/2000: The SA-EU TDCA: A Business perspective, available at <http://dSPACE.africaportal.org/jspui/bitstream/123456789/31534/1/The%20Sa-Eu%20Tdca.pdf?1>.

<sup>472</sup> The South African Institute of International Affairs, Intelligence update 03/2000: The SA-EU TDCA: A Business perspective, available at <http://dSPACE.africaportal.org/jspui/bitstream/123456789/31534/1/The%20Sa-Eu%20Tdca.pdf?1>.

<sup>473</sup> J Assarson, *The Impacts of the European Union - South Africa Free Trade Agreement* (Doctoral Thesis, Upsalla University, 2005).

<sup>474</sup> Ibid.



Source: European Union<sup>475</sup>

The data in the above figure show that at the time when the agreement was implemented, the EU imported more from SA than it exported, amounting to 14.5 billion Euros.<sup>476</sup> Four years later, EU exports to SA exceeded imports. Empirical evidence suggests that between 1994 and 2004 SA exports to the EU increased by 75%, while imports from the EU increased by 93%.<sup>477</sup> Thus, open SA markets have been extremely beneficial to the EU and could have negative effects on local manufacturers.

Farmers in SA have argued that the market access envisaged in the agreement is skewed as it allows the EU more access to South African markets. South African markets were opened up to the EU to about 81% whilst EU markets were only opened up to about 62%.<sup>478</sup> This was seen as extremely unfair to SA producers. The data further indicates that in 2012 SA only retained protection over 108 product lines whereas the EU maintained protection over 615 product lines. Sugar is one of the protected products on the EU list and requests to remove it have caused some concern on the part of the Europeans, especially considering the vast amount of sugar SA produces.<sup>479</sup> Rudi Richards of the South African Fruit and Vegetable Canners' Association argued

<sup>475</sup> European Union available at [http://trade-info.cec.eu.int/doclib/docs/2005/july/tradoc\\_113447.pdf](http://trade-info.cec.eu.int/doclib/docs/2005/july/tradoc_113447.pdf) (050628).

<sup>476</sup> Ibid.

<sup>477</sup> J Assarson, *The Impacts of the European Union - South Africa Free Trade Agreement* (Doctoral Thesis, Upsalla University, 2005).

<sup>478</sup> 'Farmers Lobby for Improved EU Access' *Sunday Times* 16 January 2011 at 10.

<sup>479</sup> Ibid.

that quota-free and duty-free access to the EU would bring in R1.5 billion worth of investment, which would boost growth and employment.<sup>480</sup> This suggests once again that the agreement works in favour of the EU. It is assumed that this is due to the EU's financial and bargaining power, resulting in smaller developing countries like SA compromising far more than they ordinarily would in order to conclude the agreement. This could be described as a form of manipulation by the developed country of the developing country.

It is commonly argued that developing countries are manipulated into certain concessions by, to all intents and purposes, being held ransom by developed countries that are not willing to enter into agreements unless their terms are met. This sort of 'manipulative bargaining' can be seen in various other trade agreements and at the WTO itself. The collapse of various rounds of WTO negotiations, especially within the realm of agriculture discussed in previous chapters, can be said to be a product of such processes. Negotiations are always difficult and developing countries are not able secure an optimal outcome. Indeed, in recent times they have abandoned negotiations. The only ray of hope lies in the collective power of developing nations as they support one another and are able to stand up to the global super powers.

However in bi-lateral agreements, the developing country often has very few bargaining chips to ensure that the agreement favours its interests. This has become increasingly problematic in relation to WTO agreements that aim to protect such countries, yet fail to do so. This leads one to question the core functionality of the WTO and whether it is still achieving its goals, especially with regard to the AoA. Oxfam International expresses concerns about the effects that agreements such as the TDCA have on smaller developing countries due to serious competition from European multinationals.<sup>481</sup> Phil Bloomer argues that unless there is a shift in the way that negotiations are

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<sup>480</sup> Ibid.

<sup>481</sup> 'Unequal Partners' Oxfam International Briefing Note, September 2006 available at <https://www.oxfam.org/sites/www.oxfam.org/files/unequal%20partners.pdf>.

conducted and in what is negotiated, such agreements will produce free trade deals that damage the economies of smaller countries.<sup>482</sup>

Due to various complaints and concerns regarding excessive imports from the EU, in 2013, the International Trade Administration Commission of SA (ITAC) published guidelines for safeguard applications. Rian Geldenhuys argues that there was a need for an increase in applications against the EU as the TDCA negatively impacted the local agriculture sector.<sup>483</sup> The ITAC noted that local agri-processing companies were struggling to compete with imports from the EU.<sup>484</sup> EU imports entered SA duty free due and local companies could not match their prices. The new regulations addressed some key aspects of the problems confronting South African producers. It made lodging applications with the ITAC easier as dumping or a surge of EU products in the market did not have to be proved; the only thing local manufactures would have to prove is that the imports harmed them.<sup>485</sup> This makes the requirements set out in the agreement far less strenuous. It is important as smaller companies or producers, which are the majority of South African producers, did not have the resources to prove the burdensome requirements of the TDCA as well as those of the WTO's Anti-Dumping agreement.<sup>486</sup>

Increased access to markets increases competition for local manufacturers and despite the guidelines set by ITAC to assist farmers the bottom line is that many imports cannot be prevented as the agreement and the FTA created in it are geared towards opening the market to foreign goods. If SA implements stringent assessment and guidelines, the EU will do the same and since SA relies on the EU for trade, thus would have a more damaging effect on the former than the latter.

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<sup>482</sup> P Bloomer 'Europe is pressurising African countries into harsh trade agreements which are of little benefit to countries trying to escape poverty' *The Guardian* 10 December 2007 available at <https://www.theguardian.com/commentisfree/2007/dec/10/partnershipforgetit>

<sup>483</sup> R Geldenhuys 'SA moves to protect agriculture from EU imports' *Business Day* 11 April 2013 available at [www.bdlive.co.za/business/trade/2013/04/11/sa-moves-to-protect-agriculture-from-eu-imports%3Fmode%3Dtrue+%26cd=10%26hl=en%26ct=clnk%26gl=za](http://www.bdlive.co.za/business/trade/2013/04/11/sa-moves-to-protect-agriculture-from-eu-imports%3Fmode%3Dtrue+%26cd=10%26hl=en%26ct=clnk%26gl=za)

<sup>484</sup> M Obinyeluaku, Newsletter of International Trade Administration Commission of South Africa (ITAC) May 2013: Volume 1.

<sup>485</sup> A Visser 'SA moves to protect agriculture from EU imports' *Business Day* 11 April 2013 at 2.

<sup>486</sup> Ibid.

Ultimately, it appears that SA is put in position where it simply has to accept the increase in imports and allow a few farmers to suffer for the greater good of trade relations.

As noted earlier, the TDCA governs trade relations between SA and the EU, but interestingly, in other poor African countries, the effects in respect of onerous agricultural terms are similar and direct comparisons can be drawn. In Mozambique for example, local farmers are not able to produce sugar on their extremely fertile land because they have been denied access to the market. Oxfam International has referred to the situation in Mozambique as ‘the great EU sugar scam’.<sup>487</sup> African farmers argue that the EU strives to create a dependency system, thus ensuring a monopoly of power. Quotas work to the detriment of Mozambique as the amount of sugar allowed to enter the EU is restricted. Although it costs only R2 200 to produce white processed sugar in Mozambique compared to Europe with a cost of R6 300, subsidies make farming in the EU far more profitable and cheaper.<sup>488</sup> Taken together with the fact that Mozambican farmers cannot access EU markets, the sugar sector suffers greatly, jeopardising jobs and entire industries in developing countries.<sup>489</sup> This endorses the notion of skewed market access in the agreement as can be seen in the number of lines protected in the EU and SA. In 2003 sugar reform was still not on the table in the EU’s latest reform considerations and African farmers feel that the western world is manipulating them with aid rather than increasing trade.<sup>490</sup>

#### **4.3.2.2 Impact of Subsidies**

Concerns have been raised about the amount of subsidies received by farmers in the two different regions. In the EU, it is reported that farmers received up to 50% subsidies for their production while their South African counterparts only received about 10%.<sup>491</sup> This means that EU farmers could sell their goods for a far lower price, especially given that they now pay very few tariffs.<sup>492</sup>

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<sup>487</sup> S Njobeni ‘Oxfam warns EU trade deals could sink poor countries’ *Business Day* 27 September 2006.

<sup>488</sup> *Ibid.*

<sup>489</sup> *Ibid.*

<sup>490</sup> B Peta ‘Nothing Sweet about EU farm subsidies’ *Sunday Independent* 5 January 2002 at 5.

<sup>491</sup> Lee, C. Margaret (2002): *The European Union – South Africa Free Trade Agreement: In whose Interest*, *Journal of Contemporary African Studies*, 20.1, pp. 81-106.

<sup>492</sup> *Ibid.*



This made it difficult for South African farmers to compete. Ordinarily, tariffs would be the way to increase prices and make them more market related but without this measure there is no protection for local producers. The benefits of the agreement seem to be eroded by the EU 'including reduction and/or elimination of EU MFN tariffs at the multilateral level, and reform of EU domestic support schemes particularly in products subject to commodity protocols.'<sup>493</sup>

Furthermore, in 2001 the EU subsidised its farmers in excess of \$103.5 billion with the majority of funds going to French farmers, as that country was the world's second largest agricultural producer following the US.<sup>494</sup> In 2004, \$310 billion was awarded in agricultural subsidies; six times more than developing nations received in aid.<sup>495</sup> This contradicts various statements made by the EU on its plans to reduce farming subsidies as these tripled in a three-year period. This supports the notion that the economic growth of the EU is more important than global integration and development.

The majority of these subsidies go to large agri-business which only make up 25% of farmers, yet receive 89% of the support.<sup>496</sup> This is a problem for EU farmers. According to Desta, large EU multinationals are allowed to dominate the market as they become the leading producer of a particular good.<sup>497</sup> This works to the benefit of the EU as it becomes the largest producer of a particular product which can be dumped on developing countries at a low price. In essence they control the market for that particular product. This has two direct effects on farmers in the EU.

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<sup>493</sup> M G Desta, Legal issues in international agricultural trade: WTO compatibility and negotiations on economic partnership agreements between the European Union and the African, Caribbean and Pacific States, FOA legal papers online #56, May 2006.

<sup>494</sup> Q Wray 'EU ploughs less into farming' *The Star* 13 December 2001 at 6.

<sup>495</sup> C Lourens 'DA joins calls for fair trade system' *Business Day* 4 February 2004 at 2.

<sup>496</sup> Lee, C. Margaret (2002): The European Union – South Africa Free Trade Agreement: In whose Interest, *Journal of Contemporary African Studies*, 20.1, pp. 81-106.

<sup>497</sup> M G Desta, Legal issues in international agricultural trade: WTO compatibility and negotiations on economic partnership agreements between the European Union and the African, Caribbean and Pacific States, FOA legal papers online #56, May 2006.

It is common knowledge that, small to medium farmers in the EU do not have access to the level of subsidies the multinationals receive. Competing for them is difficult with negative impacts on their output and profitability. Subsistence farmers are not able to sustain themselves and run at a loss. On the other hand, the agricultural industry in developing countries is even worse affected. Local producers cannot compete with the large multinationals that dump cheap goods on local markets as they receive small subsidies. Larger producers are also unable to survive and shut down, causing job losses. The end result is that large multinationals soon become the only producer of the product and are able to regulate the market. This scenario is present in both the US and the EU.

The effects of skewed subsidisation have been observed in a number of industries. It is reported that the average cow in Europe received a \$2 a day subsidy which is twice the income of most Africans.<sup>498</sup> In 2001 the SA cotton industry shed more than 24 000 jobs due to its inability to compete with foreign goods whose products were heavily subsidised to the tune of \$4.4 billion.<sup>499</sup> SA's Democratic Alliance argues that making small scale farming unsustainable makes land redistribution more difficult to achieve.<sup>500</sup> Moreover, tariff barriers cost developing nations like SA around \$100 billion a year, twice the amount they receive in aid.<sup>501</sup> South African farmers receive between R6 to R8 billion per year in subsidies.<sup>502</sup> Although efforts have been made to increase the amount to R11 billion, they have not come to fruition.<sup>503</sup> The support has not been trade distorting and falls under the Green Box of the AoA.

Not all subsidies go directly to farmers, as other programmes such as school nutrition programmes also fall under these subsidies. This means that they are slightly distorted.<sup>504</sup> With regard to direct support under the Amber Box SA is limited to about R2 billion under the WTO<sup>505</sup>; therefore the

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<sup>498</sup> A Goldblatt 'Agriculture: Facts & Trades South Africa' WWF 2009 available at [http://awsassets.wwf.org.za/downloads/facts\\_brochure\\_mockup\\_04\\_b.pdf](http://awsassets.wwf.org.za/downloads/facts_brochure_mockup_04_b.pdf).

<sup>499</sup> A Goldblatt 'Agriculture: Facts & Trades South Africa' WWF 2009 available at [http://awsassets.wwf.org.za/downloads/facts\\_brochure\\_mockup\\_04\\_b.pdf](http://awsassets.wwf.org.za/downloads/facts_brochure_mockup_04_b.pdf).

<sup>500</sup> C Lourens 'DA joins calls for fair trade system' *Business Day* 4 February 2004 at 2.

<sup>501</sup> Ibid.

<sup>502</sup> 'Govt to hike farm subsidies' *Fin24* 19 May 2010 at 1.

<sup>503</sup> Ibid.

<sup>504</sup> Ibid.

<sup>505</sup> Ibid.

subsidies are far less than what the EU provides to its farmers and not much can be done to change the situation. SA has also not made full use of the R500 million export subsidies that it was able to use in the past few years.

Besides direct subsidies to support farmers, indirect subsidies such as pesticide ones have also been low which puts SA farmers at risk as they are not able to obtain the most advanced pesticides on the market and suffer significant production losses.<sup>506</sup> This dilemma was experienced in Indonesian rice industry in the early 1990s.<sup>507</sup> Although subsidies for pesticides have been discontinued in most parts of the world, support to develop new and enhanced pesticides continues, which South African farmers do not seem to benefit from.

Ultimately, South African farmers' ability to compete with subsidised farmers from Europe leads to the latter dumping their goods on the South African market at a rate that SA cannot compete with. Between 2006 and 2008 there was a 263% increase in wheat imports, with about 1.6 million tons imported per year.<sup>508</sup> Local wheat production is a third of what it was in the 1990s.<sup>509</sup> From 1993 to 2008, the number of farmers in SA dropped by 31%,<sup>510</sup> South African food consumption patterns have changed significantly post-1994. The rise of the middle class led to decreased maize and wheat consumption and an increase in meat and chicken consumption. The last-mentioned, increased from 6kgs to 27kgs per person per year, creating the need to import chicken.<sup>511</sup> While chicken farmers have increased production, they are unable to meet demand.<sup>512</sup> Low government subsidies coupled with the lack of advanced technologies makes keeping up with demand very difficult. As witnessed recently in the AGOA saga, the need for poultry compromises SA's position<sup>513</sup>. It is difficult for SA to negotiate effectively when the country is in desperate need of

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<sup>506</sup> A Goldblatt 'Agriculture: Facts & Trades South Africa' WWF 2009 available at [http://awsassets.wwf.org.za/downloads/facts\\_brochure\\_mockup\\_04\\_b.pdf](http://awsassets.wwf.org.za/downloads/facts_brochure_mockup_04_b.pdf).

<sup>507</sup> Ibid.

<sup>508</sup> Ibid.

<sup>509</sup> Ibid.

<sup>510</sup> Ibid.

<sup>511</sup> Ibid.

<sup>512</sup> Ibid.

<sup>513</sup> 'This is what US Agoa chicken looks like when it comes to SA' *Fin24* 24 April 2016.

poultry. Indeed, the country has gone as far as to accept a drop in quality and health standards, which in most cases are lower than those required in SA, to avoid damaging trade relations. This again forces SA to do deal with situations in a manner that it ordinarily avoids or that it is not comfortable with. Instead of levelling the playing field, developed states continue to have the upper hand.

The above discussion suggests that South African farmers have suffered in the tough economic climate in the country as high fuel prices have also affected productivity as well as profitability. Although not a direct subsidy, the fuel support offered to motorists in Europe makes farming more profitable. The South African sugar industry is one of the hardest hit sectors as transportation of sugar increased from R1 a bag in 1980 to R10 a bag in recent years.<sup>514</sup> 2009 also saw the Sasol scandal which affected the food price and was discovered much later than it should have been due to SA's lack of resources.<sup>515</sup> The developmental aspect of the TDCA was supposed to assist SA to make progress in this regard; however, few technological advances have been shared and the country remains in a disadvantaged position. Fuel aid benefits producers in developed countries, reinforcing the earlier argument that the better the resources, the greater the productivity which leads to more control of the sector. It is for this reason that the agricultural market is dominated by developed countries.<sup>516</sup>

#### **4.3.2.3 High Health Standards**

Despite tariff and quantity restrictions being removed, countries still use quality standards to limit trade. The Agreement on the Application of Sanitary and Phytosanitary Measures<sup>517</sup> (SPS) is often

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SA cannot meet the demand for chicken and despite AGOA having a negative effect due to the terms of the agreement SA had to accept it. The agreement sees chicken of a lower quality entering the country at cheaper prices which causes a shift in the market. This is not the only issue with the agreement. Others include market access and subsidisation. This creates an unfair trading environment.

<sup>514</sup> A Goldblatt 'Agriculture: Facts & Trades South Africa' WWF 2009 available at [http://awsassets.wwf.org.za/downloads/facts\\_brochure\\_mockup\\_04\\_b.pdf](http://awsassets.wwf.org.za/downloads/facts_brochure_mockup_04_b.pdf).

<sup>515</sup> Sasol and fertilizer companies colluded which increased the food price. Sasol was later fined R250 million.

<sup>516</sup> A Goldblatt 'Agriculture: Facts & Trades South Africa' WWF 2009 available at [http://awsassets.wwf.org.za/downloads/facts\\_brochure\\_mockup\\_04\\_b.pdf](http://awsassets.wwf.org.za/downloads/facts_brochure_mockup_04_b.pdf).

<sup>517</sup> 15 April 1994, 1867 UNTS 493.

used by states to limit goods coming into their country on grounds permitted by the WTO such as quality which has a health and safety effect.<sup>518</sup> Former South African Minister of Finance Mr Trevor Manuel noted that ‘high tariffs remain a significant barrier, but non-tariff barriers, such as arbitrarily imposed phytosanitary rules, further limit goods.’<sup>519</sup> In 2007 SA imported a fertilizer from China which contained substances banned in the EU, resulting in the EU banning all pineapple imports from SA and causing massive losses to the farmers in the Eastern Cape,<sup>520</sup> one of the country’s poorest regions. These standards make exporting difficult as it is impossible for SA farmers to know the effects some of imported products, such as pesticides and fertilizers, will have on their crop and they do not have the resources to run scientific tests.<sup>521</sup> Only once the crop is ready is it rejected by the EU on grounds of health standards. Since they are geared up for export, it is difficult to re-enter the domestic market.

Pests pose a significant threat to farmers. Insects are able to easily adapt and adjust to different circumstances and combat pesticides due to mutations from generation to generation. This forces farmers to constantly change their pesticides and the methods they use. Rother, Hall and London state that, South African farmers do not have the technology to keep up with the latest pesticides and in most cases are forced to simply increase the amount used.<sup>522</sup> Since they are being encouraged to engage in high production farming to gain commercial status, they increase their usage of pesticides, especially given that commercial farming relies on this practice.<sup>523</sup> Excessive use of pesticides which has been approved in SA has, however, been banned in other parts of the world including Europe which makes exporting to European markets extremely difficult which

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<sup>518</sup> This agreement is relevant because it is one of the only WTO agreements that deal with product standards and health standards which must be complied with in order to ensure that products are safe to consume. It sets out basic animal and plant standards as well as food safety. This ensures that, globally, citizens receive a safe standard of produce. It provides a framework to regulate all WTO members which can be then supplemented by country specific standards.

<sup>519</sup> G Mutume, ‘New Barriers Hinder African Trade,’ *Africa Renewal* May 2006, available at <http://www.un.org/africarenewal/magazine/january-2006/new-barriers-hinder-african-trade> accessed on 2 November 2015 (Online Article).

<sup>520</sup> A Goldblatt ‘Agriculture: Facts & Trades South Africa’ WWF 2009 available at [http://awsassets.wwf.org.za/downloads/facts\\_brochure\\_mockup\\_04\\_b.pdf](http://awsassets.wwf.org.za/downloads/facts_brochure_mockup_04_b.pdf).

<sup>521</sup> T Palmer & A Ainslie ‘Country Pasture/Forage Resource Profiles South Africa’ 2006 available at <http://www.fao.org/ag/AGP/agpc/doc/Counprof/southafrica/SouthAfrica.htm>.

<sup>522</sup> H Rother, R Hall & L London ‘Pesticide use among emerging farmers in South Africa: contributing factors and stakeholder perspectives.’ *Development Southern Africa* 25(4): 399–424 (2008).

<sup>523</sup> *Ibid*.

adversely affects the South African exports.<sup>524</sup> The South African dilemma is that pesticides which are approved in Europe are unaffordable as they are sold predominantly in Europe. On the other hand, Chinese pesticides are far cheaper, help farmers meet local demand and also pass South African health standards. However, these goods cannot be exported to the EU.<sup>525</sup> Thus, although SA has increased market access to the EU, it is submitted that in reality, the red tape of the EU trade system as well as technical barriers do not provide full access as promised in the agreement.

SA is currently the only country in the world to allow genetic modification of its staple crop, maize.<sup>526</sup> Although it works for SA as it is able to deal with the high demand for maize within the country. Importing nations do not accept genetically modified maize. It is for this reason that the EU does not accept the import of any maize from SA.<sup>527</sup> Despite the TDCA allowing for free flow of trade, it restricts trade as EU standards and methods of production must be met in order for goods to enter. Case studies in other developing countries reveal a similar scenario. Currently, the Western Cape is the only province that is able to export citrus to the US due to that country's high health and safety standards which only farmers in this region can meet.<sup>528</sup> Although this is good for the province as more than 50% of USA imported oranges come from the Western Cape, it is disadvantageous to other provinces that do not have the infrastructure or resources to produce citrus in an acceptable manner.<sup>529</sup>

#### **4.3.2.4 Problems relating to the South African Customs Union (SACU)**

There has been much tension in SACU since SA signed the TDCA as it extended preferential benefits only to SA with regard to trade with the EU. Due to the TDCA, almost all goods from the EU will eventually enter the SACU region without duties. This causes considerable loss of tariffs

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<sup>524</sup> A Goldblatt 'Agriculture: Facts & Trades South Africa' WWF 2009 available at [http://awsassets.wwf.org.za/downloads/facts\\_brochure\\_mockup\\_04\\_b.pdf](http://awsassets.wwf.org.za/downloads/facts_brochure_mockup_04_b.pdf).

<sup>525</sup> H Rother, R Hall & L London 'Pesticide use among emerging farmers in South Africa: contributing factors and stakeholder perspectives.' *Development Southern Africa* 25(4): 399–424 (2008).

<sup>526</sup> A Goldblatt 'Agriculture: Facts & Trades South Africa' WWF 2009 available at [http://awsassets.wwf.org.za/downloads/facts\\_brochure\\_mockup\\_04\\_b.pdf](http://awsassets.wwf.org.za/downloads/facts_brochure_mockup_04_b.pdf).

<sup>527</sup> Ibid.

<sup>528</sup> Ibid.

<sup>529</sup> Ibid.

among other SACU members, namely the BLNS<sup>530</sup> members. They do not receive the same benefits as SA under the TDCA, yet the EU benefits when its goods enter these countries.<sup>531</sup> Leading trade specialist Dot Keet argues that the TDCA has a negative effect on SA<sup>532</sup> as the country did not take into account the interests of the BLNS members when it signed the TDCA.<sup>533</sup> When the TDCA was first implemented exports increased, but once lower tariffs were introduced, EU imports also increased.<sup>534</sup> Keet observes that the trade deficit between SA and the EU is growing at about two billion euros a year in favour of the EU. She adds that EU exports to SACU have increased by 50% since 2003.<sup>535</sup> It is for this reason that Keet argues that the TDCA needs to be revised if it is to address the problems and concerns of the BLNS. However, the EU is reluctant to enter into such negotiations and is only prepared to discuss an economic partnership agreement (EPA) which SA did not sign at that point but did sign in 2014.<sup>536</sup> However SACU members are careful not to overstep the mark to avoid a reduction in EU aid.<sup>537</sup> This again highlights how the politics of rich and poor nations play out with poor developing nations having to tread lightly to receive much-needed developmental aid from rich nations. The EPA which SA has signed tries to balance some of the deficits created by the TDCA by improving access to EU markets, but does not address all the issues which arise due to the TDCA.<sup>538</sup>

Akinkugbe argues that SA's preferential trade terms with the EU means that there is a risk of EU trade with other Southern African countries declining.<sup>539</sup> There was considerable decline in exports

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<sup>530</sup> Botswana, Lesotho, Namibia and Swaziland.

<sup>531</sup> A Kwa 'Southern African countries at odds over EU trade deals' *City Press* 25 May 2008 at 6.

<sup>532</sup> D Keet 'Southern Africa: Whither Regional Integration?' *Transitional Institute* 2008 available at <https://www.globalpolicy.org/component/content/article/173/30544.html>.

<sup>533</sup> Ibid.

<sup>534</sup> Ibid.

<sup>535</sup> Ibid.

<sup>536</sup> The Department of Trade and Industry 'Conclusion of the Economic Partnership Agreement' 17 July 2014 available at <http://www.dti.gov.za/editmedia.jsp?id=3079>.

<sup>537</sup> M van der Holst, *EPA Negotiations between EU and SADC/SACU grouping* (Thesis presented in partial fulfilment of the requirements of the degree of Master of Arts (International Studies), University of Stellenbosch, 2009).

<sup>538</sup> The Department of Trade and Industry 'Conclusion of the Economic Partnership Agreement' 17 July 2014 available at <http://www.dti.gov.za/editmedia.jsp?id=3079>.

<sup>539</sup> Akinkugbe, O. (2000): The European Union – South Africa Free Trade Agreements and the SADC Region, *The South African Journal of Economics*, Vol. 68:4, pp. 639-661.

to African countries by SA from R32 billion in 2002 to R26 billion in 2004.<sup>540</sup> Some may argue that this is due to the country's trade focus shifting to the EU, but the evidence is inconclusive. There has been no decrease in the export-import relationship between SA and other major partners such as China and the USA.<sup>541</sup>

#### 4.3.2.5 Impact on Employment

Keet also argues that the TDCA is damaging South African companies.<sup>542</sup> Due to the agreement, large EU multinationals such as Parmalat were able to enter the country and buy all the dairy companies in the Western Cape.<sup>543</sup> Parmalat went onto to terminate all supply contracts with local dairy companies that supply them with milk and instead imported duty free powdered milk from the EU.<sup>544</sup> This caused drastic job losses.<sup>545</sup> Keet states that although the TDCA envisaged a rapid increase in employment, the actual rate is slow with major cuts occurring in different sectors.<sup>546</sup>

In the 1970s, more than two million people were employed in the South African agricultural sector; this dropped to around 700 000 in 2014.<sup>547</sup> Land redistribution has been extremely slow with only 7.5 % of the land being distributed to poor black people for subsistence farming and small businesses.<sup>548</sup> This means that the majority of South Africans are at the mercy of large companies.<sup>549</sup> Oxfam has accused the EU of being contradictory in its actions as it says it wants to alleviate poverty at global level but its trade policies have the opposite effect.<sup>550</sup> The EU promotes

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<sup>540</sup> The South African Department of Trade and Industry: Trade Statistics, available at <http://tradestats.thedti.gov.za/TableViewer/tableView.aspx>, accessed on the 25 October 2015.

<sup>541</sup> J Assarson, *The Impacts of the European Union - South Africa Free Trade Agreement* (Doctoral Thesis, Upsalla University, 2005).

<sup>542</sup> D Keet 'Southern Africa: Whither Regional Integration?' *Transitional Institute* 2008 available at <https://www.globalpolicy.org/component/content/article/173/30544.html>.

<sup>543</sup> A Kwa 'Southern African countries at odds over EU trade deals' *City Press* 25 May 2008 at 6.

<sup>544</sup> Ibid.

<sup>545</sup> Ibid.

<sup>546</sup> D Keet 'Southern Africa: Whither Regional Integration?' *Transitional Institute* 2008 available at <https://www.globalpolicy.org/component/content/article/173/30544.html>.

<sup>547</sup> M Kalaba 'South Africa's struggling agricultural sector: what went wrong 20 years ago' *Sunday Times* 29 July 2015.

<sup>548</sup> Ibid.

<sup>549</sup> Ibid.

<sup>550</sup> 'EU and US not to agree on farm subsidies' *Sunday Times* 8 September 2002 at 1.



trade liberalisation in poor countries which allows its members to infiltrate the market, causing industries within developing countries to shut down and job losses; however, they find it difficult to allow large corporates from developing nations to operate within their own markets. Anti-globalisation movements have identified trade as the main cause of global inequality and have stated that the EU has done little to directly address this issue. Oxfam adds that trade in itself is not problematic, but the rules surrounding it are deeply problematic and are in urgent need of global reform.<sup>551</sup> Despite the WTO making great strides in this regard, individual packages between states (like the TDCA) which are within state jurisdiction due to state sovereignty make reform of the entire system essential as developed nations continue to act in their own interests' time and time again.

#### **4.4 Conclusion**

In principle, and at the time it was agreed on, the TDCA was possibly the ideal agreement. It put SA in a good position with the EU in terms of trade, development and cooperation. For a country that was emerging from economic sanctions, this agreement was exactly what was needed to enter global markets, with none better than its largest trading partner, the EU. Such enthusiasm and the fact that SA is a small developing caused it to make concessions which later worked against the country. The government opened up the markets very quickly as it thought this would ensure equal and swift access to European markets. While this initially worked in SA's favour, large production volumes within the EU meant that more goods would later enter SA than would enter the EU. Many South African business leaders challenged accelerated trade liberalisation, with Leslie Boyd of Anglo American famously remarking that the government was 'holier than GATT' in reducing tariffs at a faster rate than suggested by the WTO.<sup>552</sup>

The benefits of the TDCA cannot be denied as trade did increase in the early 2000s and some South African products continue to dominate the European market. However, the benefits that

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<sup>551</sup> Ibid.

<sup>552</sup> R De Lange 'Water in the Tariff and smoke in the water' *Engineering News* 25 September 2015 available at [http://www.engineeringnews.co.za/article/water-in-the-tariff-and-smoke-in-the-water-2015-09-25/article\\_comments:1](http://www.engineeringnews.co.za/article/water-in-the-tariff-and-smoke-in-the-water-2015-09-25/article_comments:1).

were anticipated at the time of the agreement were short lived and the TDCA seems to be causing severe damage to the country's agricultural sector. Not only does it negatively affect South African agricultural trade with the EU but it affects agricultural production within SACU which could ultimately impede the country's global agricultural trade. The fact that market access is encouraged may speak more to the EU than to SA as other barriers to trade can be used to prevent such access or make it more difficult, as has been seen in relation to the high health standards set by the EU. Other effects on employment and subsidisation are all the product of SA having had to make too many compromises in order to receive temporary benefits which are now an active threat to the agricultural sector. The TDCA was good for a country that was trying to enter the market but now that SA is one of Africa's leading economies and traders, it appears to stunt its growth and is more of a mistake than a victory.

## **CHAPTER 5**

### **CONCLUSION AND RECOMMENDATIONS**

#### **5.1 Introduction**

This thesis aimed at achieving a few outcomes with the one ultimate conclusion being drawn. The thesis engaged with the following research questions. Firstly, does the agreement on agriculture work to equalise trade between nations or does it work to the benefit of developed states and the detriment of developing by analysing its effect on South Africa and the European Union.? Secondly, does the AoA, which South Africa has consented to, do more harm than good to South Africa especially in light of its trade with one its biggest importers, the EU? Thirdly does this agreement work solely to the benefit of the EU as a developed nation, especially in relation to the way it trades with developing countries like South Africa which rely heavily on trade income or is it also detrimental to the EU? And the main question to be addressed in this thesis is; does the AoA have an effect on the trade relationship between South Africa and the European Union?

The study sought to demonstrate the extent to which the AoA has molded the TDCA and the relationship between the EU and SA. This chapter concludes the thesis by examining whether the agreement is beneficial to the parties to the relationship. It also offers recommendations on a way forward with regard to SA-EU trade. In seeking to determine whether the TDCA should remain as is or be amended, various issues that challenge the two parties that emerged from the analysis presented in the previous chapter are examined and recommendations are made on how the problem(s) can be avoided or resolved. Finally, this chapter considers the possible benefits of the agreement and places them in context. The relevant literature on the effects of the agreement which is molded by the AoA in compliance with WTO standards is referred to in order to locate this study's position in this debate. The conclusion shows the link between the various agreements and the WTO and the effect this has on South Africa's international trade.

## **5.2 Conclusion and Recommendations**

### **5.2.1 Market access**

Given that SA is a developing country<sup>553</sup> it is influenced by certain dynamics that impact its position within the international trading community. Certain aspects of trade that might be acceptable and tolerable in the developed world could cause distress to SA. The South African system is also unique in that, due to the country's political transition, it was forced to evolve quickly.

The TDCA changed the face of agricultural trade between SA and the EU. Despite the implementation period being about ten years, the change in the trade dynamics of a country that was emerging out a period of political and economic instability was not easy. The democratic SA sought to become part of the international trade community by joining the WTO. Despite having had little interaction with the outside world,<sup>554</sup> its trade policy had to quickly conform to the global standards demanded of all members by the WTO.<sup>555</sup> Falling into line with WTO policies and procedures was dangerous for a country in a weak economic position. The sudden change in its trade position had negative impacts on its agricultural sector which are still felt today, almost 20 years later. South Africa became a WTO member<sup>556</sup> and party to the AoA, and signed the TDCA in a relatively short period of time. The shift from an agricultural sector that was largely unregulated to a regulated and open market system was a considerable one. As highlighted in chapter 4, this has drastic effects on farmers and others.<sup>557</sup> It has been argued that the swift about turn in the trading relationship between SA and the rest of the world, especially the EU was a beacon of new hope at the time; this researcher agrees with this viewpoint to some extent. However, as the current study has shown, the long term effects might have been more damaging especially when the intricate clauses of the TDCA are analyzed. Thus, in hindsight, it could be

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<sup>553</sup> Although larger than most other developing countries.

<sup>554</sup> Due to the sanctions against SA in response to apartheid.

<sup>555</sup> M Kalaba 'South Africa's struggling agricultural sector: what went wrong 20 years ago' *Sunday Times* 29 June 2015.

<sup>556</sup> World Trade Organisation 'The Uruguay Round' available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact5\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm), accessed on 12 September 2015.

<sup>557</sup> D Lewis, Jeffrey, Robinson, Sherman and Thierfelder, Karen (2003): Free Trade Agreements and the SADC Economies, *Journal of African Economics*, Vol 12, pp. 156-206.

argued that SA should have assessed its own economic progress before committing itself to the WTO and its far-reaching policies as well as signing the TDCA.

As noted previously, South Africa was accustomed to a closed market system. The level of competition was low and the quality of consumer goods was high as most goods did not leave the country as is the case now.<sup>558</sup> The acceptance and signing of the WTO brought about immediate and swift access to the market. South Africa traders were now operating in an open system. The TDCA further enhanced this situation by making market access a key component of the agreement. This is submitted to have put SA in a dangerous position as the open market created a situation many farmers did not know how to deal with. Richer companies were able to export and profit, and local farmers suffered in the long run as their previous competitors, local larger companies were now joined by foreign producers.<sup>559</sup>

This study has shown that SA did not only import products that were not available in the country but goods that were readily available. Producers that previously had little competition due to the closed trading system SA was part off, were now forced to compete with multinational companies from different parts of the world.<sup>560</sup> Farmers had to adapt to this change that happened too fast for them to keep up with. Thus, it is argued that when SA entered the free trade market, it should have been more cautious as to how fast it opened up its system. It did not do so gradually, but all in one go, this can be seen in the market access provisions of the TDCA. A more gradual transition might have been more suited to its needs. Given that the die has been cast, SA should try to undo some of the open access market areas to strengthen local markets. Open market access that is a product of trade liberalisation has certain positive aspects.<sup>561</sup> However, the access enjoyed by the EU and

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<sup>558</sup> A Goldblatt 'Agriculture: Facts & Trades South Africa' WWF 2009 available on [http://awsassets.wwf.org.za/downloads/facts\\_brochure\\_mockup\\_04\\_b.pdf](http://awsassets.wwf.org.za/downloads/facts_brochure_mockup_04_b.pdf).

<sup>559</sup> J Assarson, *The Impacts of the European Union - South Africa Free Trade Agreement* (Doctoral Thesis, Upsalla University, 2005).

<sup>560</sup> The South African Institute of International Affairs, Intelligence update 03/2000: The SA-EU TDCA: A Business perspective, available at <http://dspace.africaportal.org/jspui/bitstream/123456789/31534/1/The%20Sa-Eu%20Tdca.pdf?1>.

<sup>561</sup> Jachia, Lorenza and Teljeur, Ethél (1999): Free Trade between South Africa and the European Union: a Quantitative Analysis, UNCTAD Discussion Paper, No 141, pp. 1-48.

SA is disproportionate despite WTO regulations and the AoA. While the implementation periods for the various agreements, especially the TDCA stretch over a number of years, it is submitted that irrespective of the length of the period, SA's initial position and the ill-considered policies that it introduced would have caused trade barriers for SA.

### **5.2.2. Subsidies**

Subsidies have been by far been the most controversial aspect of the agreement. The research has shown that the amount granted for each commodity in different countries differs significantly depending on financial resources and trade policy.<sup>562</sup> Further, it was shown that the EU spends almost five times what SA allocates to subsidies,<sup>563</sup> with serious consequences for the latter country's farmers and producers.

The TDCA will not succeed in leveling the playing field as long as this situation persists, despite the fact that SA might receive development aid from the EU.<sup>564</sup> It can be argued that the aid dynamic of the agreement is a smoke screen to disguise the bigger problem of subsidies. The large amounts the EU spends on subsidies could be transformed into developmental aid with benefits for both parties.

The EU would be able to obtain cheaper products from SA as the aid could be used to subsidise farmers. The suggestion that the EU reduce subsidies for farmers to bring European countries more in line with the AoA appears to be stuck at the level of rhetoric given that such subsidies increased threefold over a three year period.<sup>565</sup> Subsidies are an issue in relation to both the AoA and

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<sup>562</sup> Lee, C. Margaret (2002): The European Union – South Africa Free Trade Agreement: In whose Interest, *Journal of Contemporary African Studies*, 20.1, pp. 81-106.

<sup>563</sup> Ibid 91.

<sup>564</sup> C Lourens 'DA joins calls for fair trade system' *Business Day* 4 February 2004 at 2.

<sup>565</sup> M G Desta, Legal issues in international agricultural trade: WTO compatibility and negotiations on economic partnership agreements between the European Union and the African, Caribbean and Pacific States, FOA legal papers online #56, may 2006.

TDCA.<sup>566</sup> While the AoA sets out clear provisions on how subsidies should work<sup>567</sup> and requires country specific schedules, it does not regulate how subsidies may be granted within a community of countries like the EU. This has enabled the EU to privilege French farmers that receive the largest portion of its subsidies. Reform is urgently required to address this issue.<sup>568</sup>

It has been argued within the EU itself that the way subsidies are distributed is unfair.<sup>569</sup> Eight-nine per cent go to large agribusinesses that dominate the market.<sup>570</sup> They harness their resources and technology to keep prices low, making it difficult for both local EU and South African farmers to compete.<sup>571</sup> Subsidies have come under further scrutiny following an increase in the amount when a decrease was committed to.<sup>572</sup> This situation calls for improved monitoring and for pressure to be brought to bear on the EU to abide by its commitments, resulting in a more fair global trade system, in respect of agriculture.

It is thus recommended that additional categories be added to the green, amber and blue boxes that differentiate between the type or nature of the producer, the needs of the producer and the domestic growth of the industry that would occur as a result of the growth of producers. Should this not be achievable at the level of the AoA and the WTO; SA and the EU should seriously consider it is decided to renegotiate the TDCA.

### 5.2.3 Health Standards

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<sup>566</sup> Q Wray 'EU ploughs less into farming' *The Star* 13 December 2001 at 6.

<sup>567</sup> Agreement on Agriculture Article 10.

<sup>568</sup> Q Wray 'EU ploughs less into farming' *The Star* 13 December 2001 at 6.

<sup>569</sup> 'Q&A: Reform of EU farm policy' *BBC News* 1 July 2013 available at <http://www.bbc.com/news/world-europe-11216061> accessed on 2 February 2016.

<sup>570</sup> *Ibid.*

<sup>571</sup> B Waterfield 'EU farm subsidies paid to big business' *The Telegraph* 18 July 2009 available at <http://www.telegraph.co.uk/news/worldnews/europe/eu/5852319/EU-farm-subsidies-paid-to-big-business.html> accessed on 4 February 2016.

<sup>572</sup> Lee, C. Margaret (2002): The European Union – South Africa Free Trade Agreement: In whose Interest, *Journal of Contemporary African Studies*, 20.1, pp. 81-106.

While all States are said to be equal, international trade demonstrates that this is not the case. The power dynamics between nations and their different financial status mean that some States have higher standards than others. Different health standards have had a major effect on agricultural trade.<sup>573</sup>

The case study of the pineapples in chapter 4<sup>574</sup> shows that developing countries are not on par with developed nations in terms of technological advances in the agricultural sector. They thus rely on imported fertilizers<sup>575</sup> and opt for those that cost the least. In the South African pineapple farmers' case, this resulted in them violating the EU's health standards and losing out on the European market.<sup>576</sup> To realize the TDCA's objective of economic development, health standards should be revisited, not with a view to lowering them, but to ensure effective communication or standardisation to ensuring consistent practices in the EU and SA.

The quest for market access requires farmers in developing countries to adopt more commercial production practices.<sup>577</sup> South African farmers are using excessive amounts of fertilizer to be able to produce more.<sup>578</sup> Again, this calls for reconsideration of the health standards; if something is bad for EU citizens, why is it good enough for South Africans? The EU also imposes standards which, as in the case of oranges that were feared to have black spot, led to a ban on all citrus imports.<sup>579</sup> These issues should be considered if and when the agreement comes under review.

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<sup>573</sup> A Goldblatt 'Agriculture: Facts & Trades South Africa' WWF 2009 available at [http://awsassets.wwf.org.za/downloads/facts\\_brochure\\_mockup\\_04\\_b.pdf](http://awsassets.wwf.org.za/downloads/facts_brochure_mockup_04_b.pdf).

<sup>574</sup> Ibid.

<sup>575</sup> H Rother, R Hall & L London 'Pesticide use among emerging farmers in South Africa: contributing factors and stakeholder perspectives.' *Development Southern Africa* 25(4): 399-424 (2008).

<sup>576</sup> T Palmer & A Ainslie 'Country Pasture/Forage Resource Profiles South Africa' 2006 available at <http://www.fao.org/ag/AGP/agpc/doc/Counprof/southafrica/SouthAfrica.htm>.

<sup>577</sup> A Goldblatt 'Agriculture: Facts & Trades South Africa' WWF 2009 available at [http://awsassets.wwf.org.za/downloads/facts\\_brochure\\_mockup\\_04\\_b.pdf](http://awsassets.wwf.org.za/downloads/facts_brochure_mockup_04_b.pdf).

<sup>578</sup> C Dunmore 'Europe bans South African citrus imports over black spot fears.' *BDLive Online* 28 November 2013 available at <http://www.bdlive.co.za/business/trade/2013/11/28/europe-bans-south-african-citrus-imports-over-black-spot-fears> accessed on the 28 January 2016.

<sup>579</sup> Ibid.



### 5.2.4 Employment

Job creation through economic growth is one of the key pillars of the AoA as well as the TDCA.<sup>580</sup> Many developing countries rely on WTO agreements to advance their industries; especially because they depend on low end labour intensive markets due to outsourcing by the developed world as can be seen in the ‘sweat shops’ in the Far East.<sup>581</sup> WTO agreements such as the AoA should aim to grow local industries and small scale businesses. However, business exchanges occur only between those with capital to spare. While European investors can afford to enter South African markets, as can those from the USA with companies like Walmart taking over major businesses in South Africa,<sup>582</sup> the opposite is not true.

The example of Parmalat in chapter 4<sup>583</sup> shows how a large multinational is able to enter SA and source inputs from partners in their home country, destroying the business of local suppliers. Furthermore, its profits are exported to the home country and local investors cannot compete with multinationals. While foreign investment is sorely needed in SA, can the country afford to make such compromises that violate the spirit of the TDCA? It is therefore recommended that the TDCA reconsider/reexamine the way EU companies and investors interact with South African companies and addresses the sustenance of local and emerging producers and commercial farmers. It needs to strike a balance between the need for foreign investment and the need for profit driven markets that contribute to domestic growth.

Oxfam International rightly points to the disjuncture between what is said during negotiations and what comes after agreement has been reached.<sup>584</sup> The goals and objectives of the WTO and the parties involved in a particular agreement need to be reflected throughout the course of the

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<sup>580</sup> A Kwa ‘Southern African countries at odds over EU trade deals’ *City Press* 25 May 2008 at 6.

<sup>581</sup> D Roberts & A Bernstein ‘Inside a Chinese Sweatshop: ‘A Life of Fines and Beating.’ *Bloomberg Business* available at [http://www.businessweek.com/2000/00\\_40/b3701119.htm](http://www.businessweek.com/2000/00_40/b3701119.htm) accessed on 10 February 2016.

<sup>582</sup> ‘Walmart in South Africa: what it means, and why the government has done its best to interfere.’ 11 December 2013 available at <http://www.news24.com/MyNews24/Walmart-in-South-Africa-what-it-means-and-why-the-government-has-done-its-best-to-interfere-20131211>

<sup>583</sup> A Kwa ‘Southern African countries at odds over EU trade deals’ *City Press* 25 May 2008 at 6.

<sup>584</sup> S Njobeni ‘Oxfam warns EU trade deals could sink poor countries’ *Business Day* 27 September 2006.

agreement.<sup>585</sup> The TDCA is a case in point as the developmental aspects of the agreement are not being achieved. Certain of its clauses on market access and business access need to be revisited.

### **5.2.5 Problems for SACU**

The problem with bilateral agreements between two dominant parties or states is that they have an indirect or direct effect on other trade partners. The TDCA has negatively affected SACU members especially, the BLNS States. Keet<sup>586</sup> notes that, as trade becomes easier between the EU and SA, trade with SACU members decreases due to the free trade agreement. Thus, SA effectively becomes a portal for the EU to enter sub-Saharan Africa. From a policy point of view not much can be done to remedy this situation. Therefore it is proposed that when entering into such agreements in future, parties that will be directly affected should be consulted or even included in the negotiations process. This would ensure that regional cooperation remains intact.

### **5.2.6 Benefits and disadvantages**

The benefits of the WTO, AoA and TDCA cannot be ignored. The WTO has single handedly changed the face of international trade. An international body that regulates trade and that is able to adjudicate on disputes is crucial in the current political and economic environment. The WTO has ensured States at least commit to greater and more open trade which is to the benefit of all, but the lack of practical implementation by States is of concern and there is a need to review the AoA.

More so, since the AoA is able to bring together and allow agriculture to become a focus of trade. Too often in the past, agriculture; which is the driving force behind human existence, was side tracked while more “important” aspects of trade were prioritised. The financial markets and exchanges rates together with commodities such as gold and oil often influenced economic and

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<sup>585</sup> WTO Article XXXVI Provision 1 accessed on 10 July 2016 available at [https://www.wto.org/English/res\\_e/booksp\\_e/gatt\\_ai\\_e/art36\\_e.pdf](https://www.wto.org/English/res_e/booksp_e/gatt_ai_e/art36_e.pdf).

<sup>586</sup> D Keet ‘Southern Africa: Whither Regional Integration?’ Transitional Institute 2008 available at <https://www.globalpolicy.org/component/content/article/173/30544.html>.

trade engagements however life giving agricultural produce was ignored. The AoA has brought most countries up to speed. It has been able to differentiate clearly between developed countries, who are often the greatest exporters, and developing countries who by enlarge import; yet are known to be farming dependent countries. The agreement is unapologetic in its aims at trying to level out the playing field between the different economic statuses of countries, how they interact and how they are able to benefit from their relationships. This is extremely important especially in a global economy where history is to blame for many of the inequalities that exist today.

Robin, Sherwin and Theirfield praise the TDCA for its beneficial effects on SA which cannot be disputed.<sup>587</sup> However, Assarson argues that these are short lived and become disadvantages within a relatively short period of time.<sup>588</sup> The rapid growth in South African exports to countries like Germany and Sweden could taper off as trade stabilises. Trade diversions will not solve all the problems.<sup>589</sup> Furthermore, it should always be remembered that the agreement has created vast wealth for the EU.

It was also concluded that although the TDCA has some positive benefits for SA it has had detrimental effects, particularly in the agricultural sector which outweigh the benefits. This is not to suggest that the AoA works solely to the benefit of the EU, but that due to the EU's bargaining power, SA is the weaker partner and thus stands to benefit less. In the long run, while the AoA has changed the trade relationship between SA and EU, it has not worked as planned because bi-lateral agreements between States, although within the ambit of WTO agreements, give States autonomy and the power relations between them affect the outcome of such agreements.

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<sup>587</sup> D Lewis, Jeffrey, Robinson, Sherman and Thierfelder, Karen (2003): Free Trade Agreements and the SADC Economies, *Journal of African Economics*, Vol 12, pp. 156-206.

<sup>588</sup> J Assarson, *The Impacts of the European Union - South Africa Free Trade Agreement* (Doctoral Thesis, Upsalla University, 2005).

<sup>589</sup> Jachia, Lorenza and Teljeur, Ethél (1999): Free Trade between South Africa and the European Union: a Quantitative Analysis, UNCTAD Discussion Paper, No 141, pp. 1-48.

This study analyzed international trade by considering the way the WTO functions and how agreements are concluded. It focused on the AoA and its impact on agricultural trade by analyzing how the agreement impacts relations between SA and the EU.

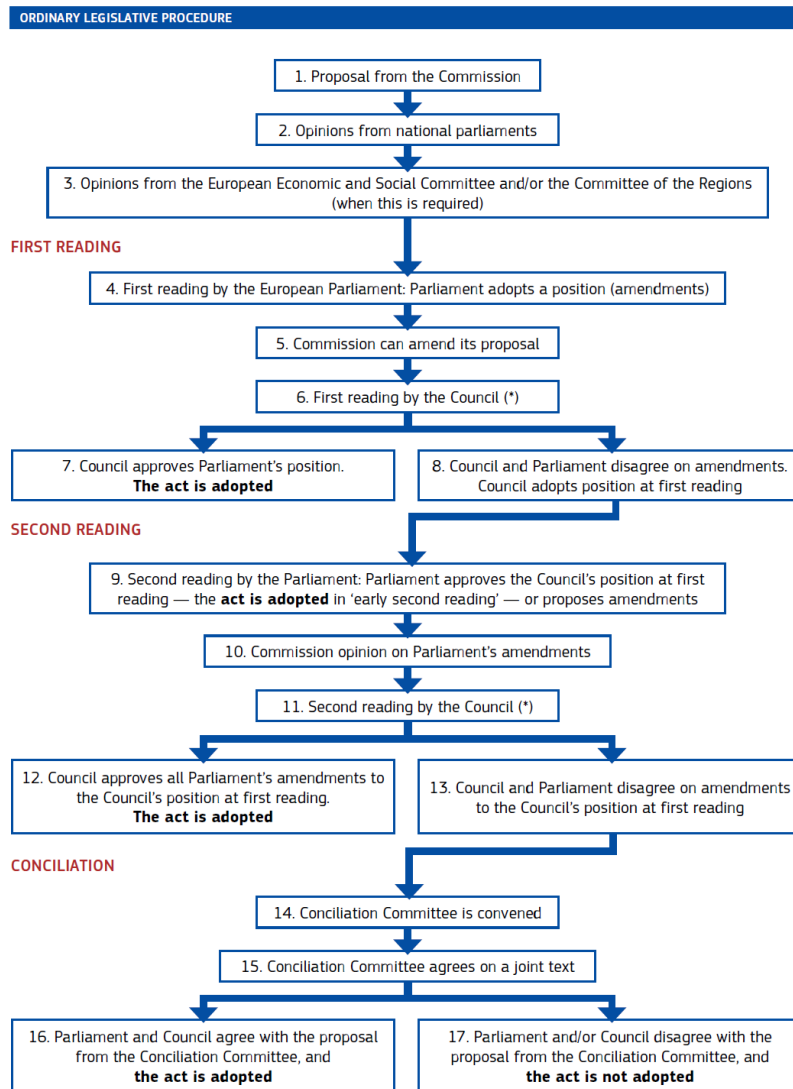
The study found that, although the WTO seeks to put all States on the same level, economic and political power has made this a difficult task with countries from the Global North dominating decision making.

Conclusively, agriculture is the back bone of any society, making the AoA an important agreement. However, if food is not regarded as a necessity but rather as an economic tool, agricultural trade will be motivated by profit rather than survival. People and their livelihoods should be the central focus of the agreement by treating all States the same and providing them with free and fair opportunities. If we are to address the issues of poverty and famine, agriculture policies need to be at the forefront of global policy reform and should receive urgent attention as the future depends on it.

## ANNEXURES

### Annexures A

Source: European Commission, Directorate for Communication<sup>590</sup>



(\*) Council adopts its position by a qualified majority (the treaties provide for unanimity in a few exceptional areas). However, if the Council intends to deviate from the Commission's proposal/opinion it adopts its position by unanimity.

<sup>590</sup> European Commission, Directorate for Communication 'The European Union Explained' (November 2002) 8.

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27 October 2015

Mr Nkhosho Dimpfal (211537478)  
School of Law  
Howard College Campus

Dear Mr Dimpfal,

Protocol reference number: HSS/1577/015M

Project title: The effect of the Agreement on Agriculture on the relationship between South African and the European Union

**Full Approval – No Risk / Exempt Application**

In response to your application received on 23 October 2015, the Humanities & Social Sciences Research Ethics Committee has considered the abovementioned application and the protocol have been granted **FULL APPROVAL**.

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment/modification prior to its implementation. In case you have further queries, please quote the above reference number.

**PLEASE NOTE:** Research data should be securely stored in the discipline/department for a period of 5 years.

The ethical clearance certificate is only valid for a period of 3 years from the date of issue. Thereafter Recertification must be applied for on an annual basis.

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

  
Dr Shonuka Singh [Chair]

/ms

Cc Supervisor: Ms Clydenia Stevens  
Cc Academic Leader Research: Dr Shannon Hoctor  
Cc School Administrator: Mr Pradeep Ramswak

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Humanities & Social Sciences Research Ethics Committee

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