

Overview of MC 12 Outcomes

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Overview

- Background: Overview of the WTO
- Key Questions: South Africa and the WTO
- MC 12 Outcomes



WTO IN BRIEF

In brief, the World Trade Organization (WTO) is the only international organization dealing with the global rules of trade. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible.

Overview of the WTO

The WTO has 164 members, accounting for 98% of world trade. A total of 25 countries are negotiating membership.

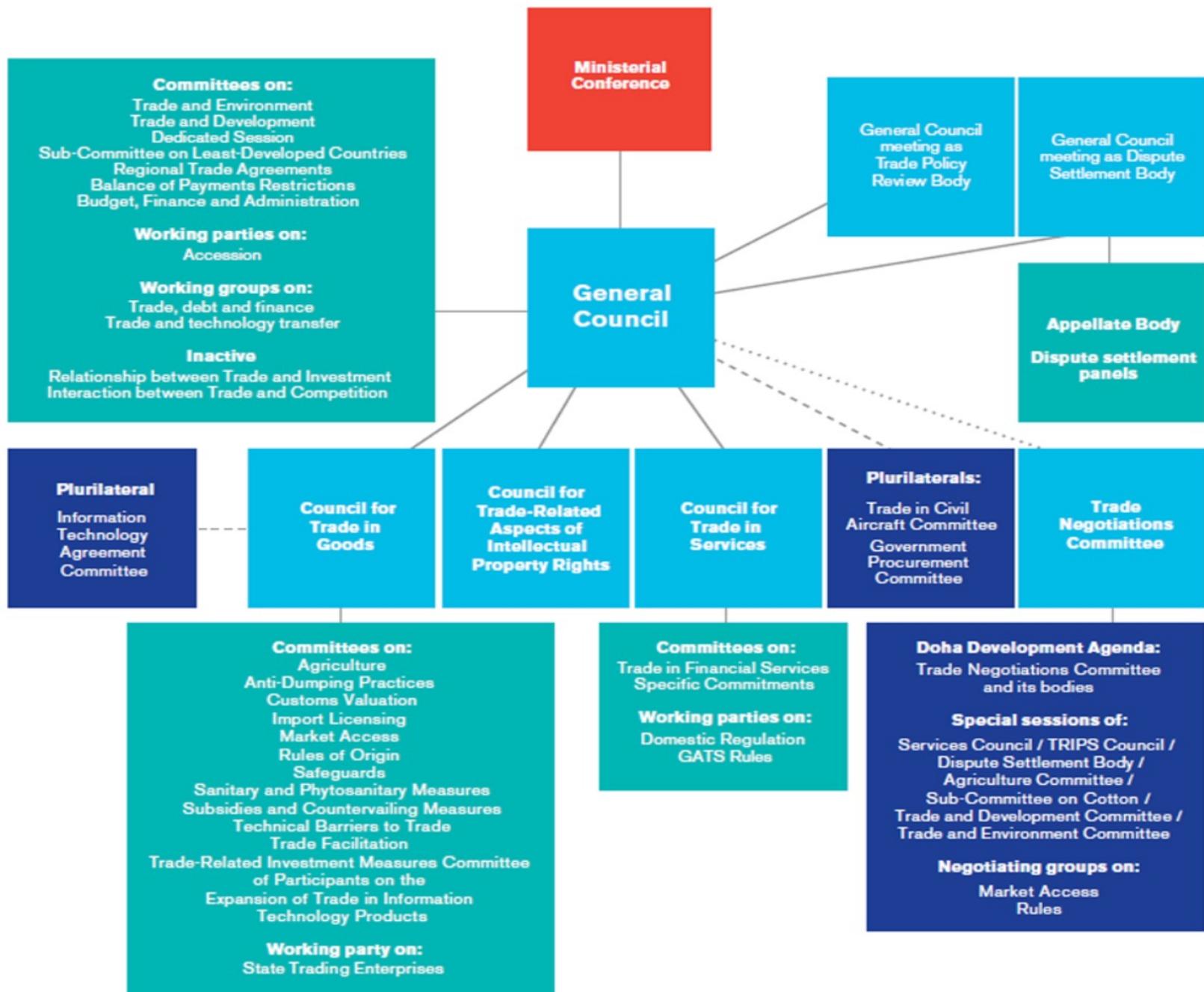
Decisions are made by the entire membership. This is typically by consensus. A majority vote is also possible but it has never been used in the WTO, and was extremely rare under the WTO's predecessor, the GATT. The WTO's agreements have been ratified in all members' parliaments.

WTO's top level decision-making body is the Ministerial Conference, which meets usually every two years.

Below this is the General Council (normally ambassadors and heads of delegation based in Geneva but sometimes officials sent from members' capitals) which meets several times a year in the Geneva headquarters. The General Council also meets as the Trade Policy Review Body and the Dispute Settlement Body.

At the next level, the Goods Council, Services Council and Intellectual Property (TRIPS) Council report to the General Council.

Numerous specialized committees, working groups and working parties deal with the individual agreements and other areas, such as the environment, development, membership applications and regional trade agreements.



WTO has 164 Members



WTO Agreements

- The WTO's rules – the agreements – are the outcome of negotiations between the members. The current set is largely the outcome of the 1986-94 Uruguay Round negotiations, which included a major revision of the original General Agreement on Tariffs and Trade (GATT).
- The Uruguay Round created new rules for dealing with trade in services and intellectual property and new procedures for dispute settlement. The complete set consists about 30 agreements and separate commitments (called schedules) made by individual members in specific areas, such as lower tariffs and services market-opening.
- Through these agreements, WTO members operate a non-discriminatory trading system that spells out their rights and their obligations. Each member receives guarantees that its exports will be treated fairly and consistently in other members' markets. Each promises to do the same for imports into its own market. The system also gives developing economies some flexibility in implementing their commitments.

WTO Agreements (cont'd) –Trade in Goods: General Agreement on Tariffs and Trade

From 1947 to 1994, the GATT was the forum for negotiating lower tariffs and other trade barriers; the text of the GATT spelt out important rules, particularly non- discrimination.

Since 1995, the Marrakesh Agreement Establishing the WTO and its annexes (including the updated GATT) has become the WTO's umbrella agreement. It has annexes dealing with specific sectors relating to goods, such as agriculture, and with specific issues such as product standards, subsidies and actions taken against dumping. A recent significant addition was the Trade Facilitation Agreement, which entered into force in 2017.

General Agreement on Trade in Services (GATS)

Banks, insurance firms, telecommunications companies, tour operators, hotel chains and transport companies looking to do business abroad enjoy the same principles of more open trade that originally only applied to trade in goods. These principles appear in the General Agreement on Trade in Services (GATS).

WTO members have made individual commitments under the GATS stating which of their service sectors they are willing to open to foreign competition, and how open those markets are. These are their Schedules of Commitments.

Agreement on Trade-related Intellectual Property Rights (TRIPS Agreement)

The WTO's Intellectual Property Agreement contains rules for trade in ideas and creativity. The rules state how copyrights, patents, trademarks, geographical names used to identify products, industrial designs and undisclosed information such as trade secrets – “intellectual property” – should be protected when trade is involved.

Dispute Settlement

- The WTO's procedure for resolving trade conflicts under the Dispute Settlement Understanding is vital for enforcing the rules and therefore for ensuring that trade flows smoothly. Governments bring disputes to the WTO if they think their rights under the WTO agreements are being infringed. Judgements by specially appointed independent experts are based on interpretations of the agreements and individual members' commitments. The system encourages members to settle their differences through consultation with each other. If this proves to be unsuccessful, they can follow a stage- by-stage procedure that includes the possibility of a ruling by a panel of experts and the chance to appeal the ruling on legal grounds. Confidence in the system is borne out by the number of cases brought to the WTO – more than 500 cases since the WTO was established compared with the 300 disputes dealt with during the entire life of the GATT (1947-94).

Trade Monitoring

- WTO's Trade Policy Review Mechanism is designed to improve transparency, to create a greater understanding of the trade policies adopted by WTO members and to assess their impact. Many members see the reviews as constructive feedback on their policies.
- All WTO members must undergo periodic scrutiny, each review containing reports by the member concerned and the WTO Secretariat. In addition, the WTO undertakes regular monitoring of global trade measures. Initially launched in the wake of the financial crisis of 2008, this global trade monitoring exercise has become a regular function of the WTO, with the aim of highlighting WTO members' implementation of both trade-facilitating and trade-restricting measures.
- South Africa (SACU) – most recent WTO Trade Policy Review is November 2015
- ((The European Union, the United States, Japan and China) be reviewed each 3 years, the next 16 be reviewed each five years, and others be reviewed each seven years. A longer period may be fixed for least-developed country Members)

https://www.wto.org/english/tratop_e/tpr_e/tp424_e.htm



Joint initiatives ^{*} –

At the 11th Ministerial Conference in December 2017, like-minded groups of WTO members issued joint statements on advancing discussions on e-commerce, on developing a multilateral framework on investment facilitation, on launching a working group on micro, small and medium-sized enterprises (MSMEs) and on advancing ongoing talks on domestic regulation in services trade.

The groups are open to all WTO members.

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- ▣ [Joint initiative on Electronic Commerce](#)
 - ▣ [Joint initiative on Investment Facilitation for Development](#)
 - ▣ [Joint initiative on Micro, small and medium-sized enterprises \(MSMEs\)](#)
 - ▣ [Joint initiative on Services Domestic Regulation](#)
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Key questions

- The Effect of WTO rules to the Sovereignty of the Republic of South Africa?
- WTO obligations fit into South Africa's new *democratic* form of governance?
- WTO obligations impact on intergovernmental relations and co-operative government between the spheres (South Africa has three spheres of government)?
- The Effect of the industrialisation policy (industrial policy) on WTO obligations?

Key questions cont'd

- What are the gaps caused by previous rounds of negotiations that South Africa, and Africa need to treat them as risks going forward?
- What role could the SC play in the process of negotiations-RSA in relation to the WTO core business?
- Is there a window of opportunity that the NCOP through the SC play an active role in relation to the engagement with International Agreements (both plurilateral and multi-lateral)?
- Can the NCOP-SC play an active role in shaping foreign trade policy?

Background

- The WTO's 12th Ministerial Conference (MC12) took place from 12 to 17 June 2022 at WTO headquarters in Geneva.
- Ministers from across the world attended to review the functioning of the multilateral trading system, to make general statements and to take action on the future work of the WTO.
- Kazakhstan was originally scheduled to host MC12 in June 2020, but the conference was postponed due to the COVID-19 pandemic.
- The conference concluded successfully on 17 June, with agreement on a package of key trade initiatives.
- In welcoming the final "Geneva Package" delivered after five and a half days of marathon talks, the Director-General of the WTO said the deal showed to the world that "WTO members can come together, across geopolitical fault lines to address problems of the global commons, and to reinforce and reinvigorate this institution."

Agreement on Fisheries Subsidies

- WTO members have forged an [Agreement on Fisheries Subsidies](#) which sets new global rules to curb harmful subsidies and protect global fish stocks in a manner that also recognizes the needs of fishers in developing and least-developed countries (LDCs).
- It is the first WTO agreement to place environmental sustainability at its core. Fisheries subsidies — estimated to range from USD 14 billion to USD 54 billion per year globally — enable many fishing fleets to operate longer and farther at sea, to the detriment of marine life.
- "The agreement prohibits support for illegal, unreported and unregulated (IUU) fishing. It bans support for fishing in overfished stocks. And it takes a first but significant step forward to curb subsidies for overcapacity and overfishing by ending subsidies for fishing on the unregulated high seas,"
- 260 million people who depend on marine fisheries for their livelihood.

Agreement on Fisheries Subsidies...cont'd

- Developing and LDC members stand to benefit from provisions specific to them in the Agreement and from technical assistance and capacity building that shall be provided through the [WTO Fisheries Funding Mechanism](#).
- The Negotiating Group on Rules (on Fisheries Subsidies) has been tasked by members to continue negotiations to further curb certain subsidies that contribute to overcapacity and overfishing.
- This Agreement will enter into force upon acceptance of its legal instrument by two-thirds of the membership.

WTO Response to the Pandemic

- In response to the ongoing impact of COVID-19, members adopted a [Ministerial Declaration](#) on the WTO response to the current and future pandemics.
- This includes a [waiver](#) of certain requirements under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) concerning the use of compulsory licences to produce COVID-19 vaccines.
- These decisions "will make access to medical supplies and components more predictable in this pandemic, and in the next one."
- The TRIPS waiver compromise "will contribute to ongoing efforts to deconcentrate and diversify vaccine manufacturing capacity, so that a crisis in one region does not leave others cut off," she added.
- The Declaration calls on relevant WTO bodies to continue or initiate work on lessons learned and challenges experienced during the COVID-19 pandemic. Areas of focus will include export restrictions, food security, intellectual property, regulatory cooperation, services, tariff classification, technology transfer, trade facilitation, and transparency. A yearly stocktaking exercise will take place in the General Council up to the end of 2024.

WTO Response to the Pandemic...cont'd

- In parallel, the Ministerial Decision on the TRIPS Agreement provides a platform for members to work together to diversify vaccine production capacity. Members will have greater scope to take direct action over the next five years to override the exclusive effect of patents through a targeted waiver that addresses specific problems identified during the pandemic, especially facilitating and streamlining vaccine exports. Members also have greater clarity regarding related options open to them for pandemic response, including an array of emergency use measures.
- This outcome also opens the way for technical support from WHO, WIPO, the WTO and others to make full and effective use of all the options. Members also agreed that, no later than December 2022, they will decide on whether to extend the waiver to cover the production and supply of COVID-19 diagnostics and therapeutics.
- While all developing country members can benefit from the decision, developing country members with existing COVID-19 vaccine manufacturing capacity are encouraged to opt out. The TRIPS Council publishes a [record of such binding commitments](#) by members pledging not to avail themselves of this decision.

Food Insecurity

- The MC12 outcome package on agriculture comprised a [Ministerial Declaration](#) on the emergency response to food insecurity and a [Ministerial Decision](#) on exempting World Food Programme (WFP) humanitarian food purchases from export prohibitions or restrictions.
- Both respond to demands from the international community for immediate action by WTO members to address food shortages and soaring food prices and ensure that the most vulnerable can access emergency food aid.
- The Declaration underlines the strong commitment by WTO members to take concrete steps to facilitate trade, which plays a vital role in improving global food security, and improve the functioning and resilience of global food markets.
- It also reaffirms the importance of not imposing export prohibitions or restrictions on agri-food trade in a WTO-inconsistent manner.
- The WFP Decision was welcomed by World Food Programme Executive Director David Beasley: "This humanitarian exemption ... ensures critical relief reaches the most vulnerable." DG Okonjo-Iweala said the Decision will make it easier for the WFP to "do its difficult job of feeding millions" suffering from acute hunger.

WTO Reform

- WTO members agreed to undertake a comprehensive review of the WTO's functions in order to ensure the organization is capable of responding more effectively to the challenges facing the multilateral trading system. It reflects the "widespread recognition that the WTO's core functions need to be updated and improved."
- In the [MC12 outcome document](#) adopted on 17 June, Ministers committed members to work towards reform of the organization to improve all its functions through an open, transparent and inclusive process.
- The review will be carried out through the WTO's General Council and its subsidiary bodies, with the goal of submitting possible reform proposals to the 13th Ministerial Conference (MC13) due to take place by the end of 2023. Previously, members have submitted proposals on issues such as improving the transparency of governments' trade measures, reviewing special treatment for developing countries and reinvigorating the WTO's negotiating function.
- Ministers also agreed to talks on addressing concerns with respect to the WTO's dispute settlement system with the view to securing a fully functioning system by 2024.

Other Decisions

- Ministers adopted a [Sanitary and Phytosanitary \(SPS\) Declaration](#) on responding to challenges that may significantly impact international trade in food, animals and plants.
- The Declaration commits WTO members to launching a work programme to identify new challenges in the implementation of the WTO's SPS Agreement, with the aim of enhancing how the Agreement is applied.
- Ministers also adopted a decision reaffirming the commitment of members to the WTO's [Work Programme on Small Economies](#), which seeks to address the particular challenges facing these economies.
- [Another](#) decision extends the moratorium on so-called TRIPS "[non-violation and situation](#)" complaints, which deals with situations where a government may complain it has been deprived of an expected benefit because of another government's action, even if no agreement has been violated.

Moratorium on taxation of e-commerce

Overview

- Definitions and distinctions: digital trade and digitally-ordered trade
- Magnitude of the sector globally and in Africa
- Digital divide in Africa
- MC 12 and the moratorium on taxation of e-commerce

Definitions and distinctions

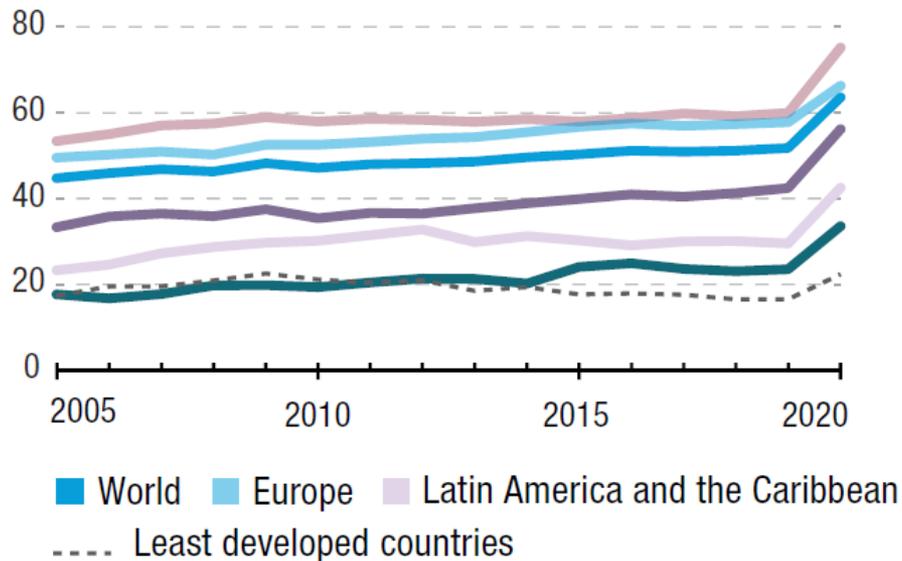
‘Digital trade’ is a broad category of trade, defined by the OECD, IMF and WTO as ‘all trade that is digitally ordered or digitally-delivered’

- Digitally-delivered trade:
 - Ordered and paid for online and delivered electronically. Examples: cloud services, SaaS, digital markets as services, digital video streaming, music streaming, software download, gaming. High entertainment proportion
- Digitally-ordered good and services:
 - Any good or service that is ordered online (e-commerce). However, in the case of a service, the service is not delivered electronically as with digitally-delivered goods. Example of the latter – a ride-hailing service

Exports of digitally deliverable services, by region and country grouping (UNCTAD)

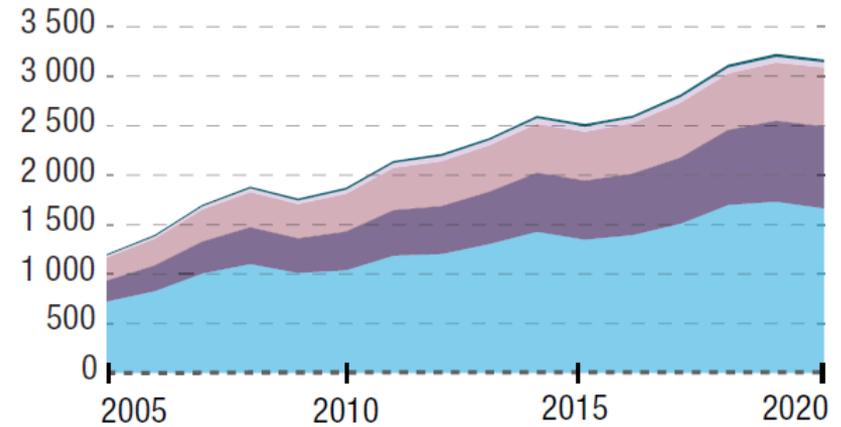
(a) **Share of services exports**

(Percentage)

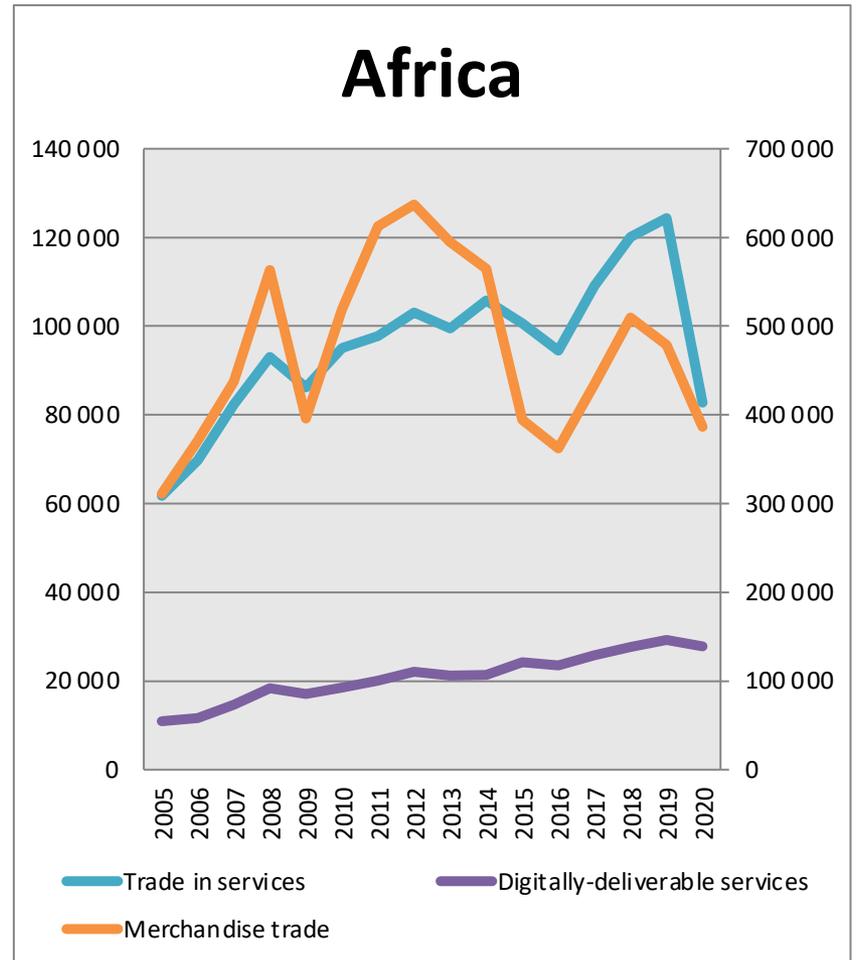
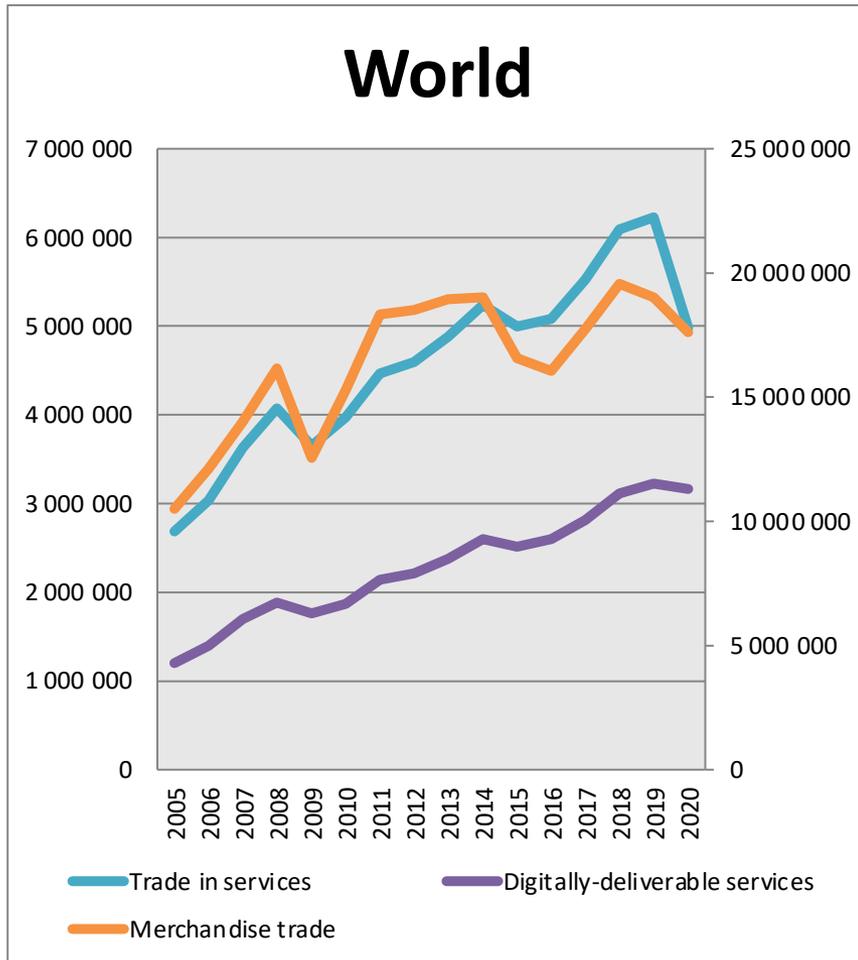


(b) **Export value**

(Billions of current dollars)



Scaling DDS vs TIS vs merchandise trade (RHS axis)



Africa and the Digital Divide

- Africa is the last continent in the world where large proportions of the population are still 'offline' and excluded from the digital economy
- This is a result of two primary factors
 - (1) the cost of access and (2) the lack of expertise and technology know-how. Cost creates a self-perpetuating cycle of the second factor. Lack of access or expensive access limits exposure to the digital economy and serves to alienate citizens from the online world and the considerable benefits it brings
- Across Africa, investment into telecommunications infrastructure is growing strongly, but far greater investment into roads and rail are needed as well
- The worldwide average is around \$40, meaning several countries actually have below average broadband internet costs
- Mauritius, Reunion, Tunisia, Egypt, Algeria and Morocco are all in this category whereas several other African countries are not far above the average – South Africa, Côte d'Ivoire, Libya and Mayotte are notable here

Digital Startups and Investment 1

The types of start-ups of the top ten are (via WeeTracker, 2019):

- Fintech (four)
- Cleantech (one)
- Software as a service (SAAS) (one)
- Transport tech (one)
- Recruitment
- Agritech
- Analytics

E-Commerce

- There are at least ten major e-commerce ventures currently operating in Africa
- These ventures were funded in collaboration with international investors – reflecting the potential in Africa's market seen by the international investor community

Digital Startups and Investment 2

- Some of these e-Commerce ventures innovated their own payments and delivery systems in order to be able to contain the end-to-end service. They have this extent of innovation in common with the original e-commerce global platforms such as eBay and Alibaba
- Shining examples:
 - Jumia.com is almost certainly Africa's first e-commerce unicorn and its founder, Jeremy Hodara, understands the potential of e-commerce to advance intra-African trade. He makes the important point that the number of inhabitants per retail outlet is a tiny fraction of that in the developed world, presenting a unique opportunity for e-commerce start-ups on the continent
 - MallforAfrica.com is an app-based platform allowing customers in Africa to shop the top web stores in the US, the UK and Europe and have the items delivered to them or collected. Payment is made through the platform's own payment system and does not require a PayPal account. It is currently offered in 17 African countries, primarily Anglophone countries

Digital Startups and Investment 3*

- African digital entrepreneurs face challenges in accessing investment capital
- The majority of VC investment into the digital sector in Africa is into fintech, the magnitude into e-commerce is the second largest category
- Leading countries are Nigeria, Kenya, Egypt and South Africa, in that order
- Some global tech giants such as Amazon Web Services have established investment programmes for emerging entrepreneurs
- However, African tech entrepreneurs still face huge challenges in accessing funds. North American investors accounted for 42% of all African VC deals over the five years 2015-2019. The majority of large ventures in Africa are led by foreigners

12th Ministerial Conference and e-Commerce Moratorium 1

- E-Commerce driven cross-border trade is subject to customs duties and customs direct taxes at the border, however, DDS cross the border electronically and as such, have not been taxed up to now. This is in accordance with a moratorium adopted in 1998
- At the 12th WTO MC on 17th June 2022, it was decided by the delegates to extend the moratorium (maintain the practice of not imposing customs duties on electronic transactions) until MC13
- At MC13 the moratorium will expire unless the ministers agree to extend it
- India, Indonesia, Sri Lanka and South Africa were threatening to block the extension. Their objection is that the costs of the moratorium are borne by developing countries, which are by far net importers of DDS

12th Ministerial Conference and e-Commerce Moratorium 1

- 108 tech companies lobbied for the extension of the moratorium, citing the fragile global economy and the need for a recovery. They also argue that the moratorium offers small developing countries the opportunity to become competitive in DDS
- Lobbyists argued that tariff revenue gains would be more than offset by economic losses

Conclusions/Policy Recommendations

- Cross-border e-Commerce, in which there is the physical delivery of an item, is not the same thing as 'digitally-delivered services' (DDS), which is a strongly growing market segment
- The digital divide in Africa is stark and more extreme than anywhere else in the world. However, investment into ICT infrastructure has been strong given the huge penetration of mobile devices and wide use for fintech, social media and communications
- There are multiple players and systems supporting the digital economy. These need to be in place in order for the digital economy to be viable. African countries should follow the example of Rwanda, which has created a national digital strategy ('Smart Rwanda') with cross-silo coordinated policies, regulatory consistency and investment promotion
- Investment in tech startups in Africa has been strong in areas that are predictably successful, such as e-commerce; and in areas showing growth, such as fintech. Funding sources on the continent are limited however
- The DDS taxation moratorium has been extended, but not without opposition. At MC13 it may be finally dropped if the global economy has shown good recovery