

# **REPORT ON SOUTH AFRICA'S TRADE PORTFOLIO**

**Select Committee on Trade and Industry, Economic  
Development, Tourism, Employment and Labour**

**29 November 2022**



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# Acronyms

AfCFTA	Africa Continental Free Trade Agreement	MFN	Most Favoured Nation
AGOA	Africa Growth and Opportunity Act	MTS	Multilateral Trading System
AU	African Union	SDG	Sustainable Development Goal
DSM	Dispute Settlement Mechanism	SDT	Special and Differential Treatment
EPA	Economic Partnership Agreement	NEDLAC	National Economic Development and Labour Council
EU	European Union	SACU	Southern African Customs Union
FCM	False Codling Moth	SADC	Southern African Development Community
FSA	Fisheries Subsidies Agreement	SSA	Sub Saharan Africa
GATS	General Agreement on Trade in Services	TRIPS	Trade Related Intellectual Property Rights
IPR	Intellectual Property Right	UK	United Kingdom
ITAC	International Trade Administration Commission	US	United States of America
IUU	Illegal Unreported and Unregulated	WPEC	Work Programme on Electronic Commerce
JSI	Joint Statement Initiative	WTO	World Trade Organization
MC12	Twelfth WTO Ministerial Conference		



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# Outline of the Presentation

- Progress from 2019 to date:
  - African economic integration: SACU, SADC, AfCFTA
  - SADC-EU EPA
  - SACU+M-UK EPA
  - AGOA
  - World Trade Organisation
- Functional policy mandate of the Trade Policy Branch
- Highlights of South African Trade Policy
- South African trade performance



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# African Economic Integration: trade

- African integration – to overcome the limits of small fragmented economies
- Intra-Africa exports: 16.3% in 2018-2020
- African markets are vital to African exporters
- Intra-Africa trade - largely value-added manufactured products
- SA - 22.4% of total intra-African trade
- 25.5% of SA's global exports in 2018-2020 went to Africa
- SA exports to Africa: 64.3% manufactured products (compared to 43.9% in its global export basket)
- SA's trade balance with Africa excluding SADC, fluctuates between surplus and deficit – due to price volatility of oil imports



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# Southern African Customs Union (SACU)

- 2002 SACU Agreement: common external tariff; revenue sharing formula
- Need common policies and institutions to advance integration
- Trade in Goods: SACU negotiates as a bloc that requires common positions, informed by common approaches to policy and trade related rules
- **the dtic** oversees matters related to tariffs, rebates and trade remedies for SA
- **the dtic** participates in processes to develop common SACU positions
- Since August 2020: new work program prioritising regional industrial cooperation, and investment and export promotion



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# Southern African Development Community (SADC)

- Intra-SADC trade accounts for 24% of SADC's global trade
- 87% of SA's total exports to Africa go to SADC
- The SADC Protocol on Trade was implemented in 2000, and 98% of tariff lines have been fully liberalized since 2012
- 13 of 16 SADC Members trade under the Protocol (excl. Angola, DRC, Comoros)
- Angola seeks accession
- SA addresses non-compliant trade restrictions that impede SA exports
- Enforcement hampered by absence of an effective dispute settlement mechanism after the suspension of the SADC Tribunal
- **Trade in Services:** Protocol on Trade in Services - framework and rules for trade in 6 sectors: Communication, Construction, Energy, Financial services, Tourism, and Transport
- Services Protocol entered into force on 13 January 2022





# African Continental Free Trade Area (AfCFTA)

- AfCFTA negotiations launched in June 2015
- 54 out of the 55 AU members have signed; to date, 43 Members have ratified
- **Phase I:** trade in goods; trade in services
- **Phase II:** investment; intellectual property rights; competition
- Overall framework agreement and protocols are agreed:
  - Agreement establishing the AfCFTA
  - Protocols on Trade in Goods, Trade in Services, and Rules and Procedures for the Settlement of Disputes
- Operational phase of the AfCFTA launched in July 2019
- In December 2020, AU Summit created the basis for initiating preferential trade from 1 January 2021: preferential trade may begin in products where tariff offers are verified, RoO are agreed, and relevant domestic legislation is in place



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# African Continental Free Trade Area

**Trade in Goods:** current focus is on tariff offers and RoO

- Tariff offers: 46 Members have submitted tariff offers, of which 37 comply with the agreed modalities
- SACU tariff offer is close to being finalized: 17 tariff lines short of an offer that must cover 90% of tariff lines
- Rules of Origin: RoO have been agreed on 88.03% of all product lines (4746)
- Significant divergences in Africa and amongst SACU members on key products (sugar, clothing and textiles, autos)
- SA seeks to ensure that RoO support increased African content in intra-African trade – “Made in Africa”
- Effective customs controls essential to avoid transshipment so benefits of preferential trade accrue to African producers



# African Continental Free Trade Area

**Trade in Services:** current focus is to finalise Schedules of Specific Commitments

- Priority sectors: Finance, Tourism, Transport, Communication, and Business Services
- 47 offers tabled, of which 20 have been recommended for adoption
- SA's initial offer to the AfCFTA is based on commitments made in SADC and the WTO, all on condition of reciprocity
- Following request and offer negotiations, and further domestic consultations, an improved offer will be tabled for Cabinet consideration

## **Phase II issues:**

- Protocols on investment, intellectual property and competition policy were finalized by AfCFTA Council of Ministers of Trade in October; legal vetting in January; presentation to Summit in February for adoption
- SA mandate arises from national policy and legislation and consultation in NEDLAC
- Work in the Committees on Women and Youth in Trade, and Digital Trade is expected to commence in early 2023

# SADC-EU Economic Partnership Agreement

- As a bloc, the EU is SA's largest trading partner
- SADC-EU EPA in force since 10 October 2016
- In September 2018, SACU imposed a safeguard measure against EU poultry imports
- In April 2020, the EU initiated an arbitration to challenge the measure
- The outcome largely favoured SACU by rejecting the EU request to remove safeguard measure and refund duties
- Review of the SADC-EU EPA is underway
- Parties have exchanged indicative lists of issues of interest
- SA seeks improvements on RoO, export tax provisions and market access
- EU interests are rule making in areas such as investment, competition, IPR and sustainable development
- Ongoing areas of bilateral engagement with the EU include: citrus exports, game meat, aquaculture, horses, steel, and poultry



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# SACU+Mozambique-UK Economic Partnership Agreement

- EPA with the UK “rolled over” the SADC-EU EPA commitments into a new agreement to avoid trade disruption as the UK exited the EU (1 Jan 2021)
- The Agreement included a list of follow-up issues under a Built-in Agenda:
- Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) matters; Export Taxes
- SA will seek improvements on quota limits, export tax provisions and market access



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# African Growth and Opportunity Act

- US was SA's 2nd largest trading partner in 2021
- AGOA granted preferences for higher value added products
- SA exports under AGOA peaked at 30% of its US exports in 2013; declining to 12% in 2021
- Decline largely due to poor economic conditions and measures restricting manufactured exports; e.g. Section 232 duties on steel and aluminum
- 2020 and 2021 exports: R108bn and R193bn, respectively
- Recent export growth has been driven by high prices of minerals (especially the price of rhodium)
- In 2021 minerals & metals accounted for 72% (R138bn) of SA's total exports to US, signalling a return to pre-AGOA patterns where SA exports are dominated by minerals
- AGOA set to expire in 2025



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# African Growth and Opportunity Act

- **AGOA eligible sub-Saharan (SSA) countries** have a common position on AGOA:
  - Extend AGOA beyond its 2025 expiry, for an extended period of time
  - Improve product and country coverage and remove US non-tariff barriers
  - Opposition to “graduating” – i.e. excluding some SSA countries from AGOA
- SSA call for US support to Africa’s industrialisation and integration efforts and encourage increased US investment in manufacturing and infrastructure
- **United States** has considered comprehensive reciprocal market opening and rules through FTAs with individual African countries; implications for SA and Africa:
  - FTAs with individual African countries will undermine Africa’s integration agenda
  - US FTAs involve extensive tariff liberalisation in agriculture and industry, access to government procurement, and legally binding commitments in services, digital trade, intellectual property and investment
  - These can close off space for economic development policy; not compatible with an economic development and transformation agenda
- SA will host the AGOA Forum in 2023; SSA will seek to influence future direction and content of SSA-US trade and investment

# WTO and MC12 Outcome

- Multiple crises that call for re-think of trade liberalization and globalization – COVID-19; rising inequality, growing poverty; inflation; climate change
- Growing recognition of the importance of policy space and industrialisation
- Increases in subsidies, unilateral measures and re-shoring to address supply-chain disruptions
- Calls for greater inclusivity and diversification of production in light of lessons from the pandemic and food crisis
- The 12<sup>th</sup> Ministerial Conference (MC12) agreed on:
  - Partial waiver of patent protection under TRIPS
  - Partial Fisheries Agreement
  - Some minimal rules on export restrictions to address food insecurity
  - Extension of e-commerce moratorium and e-commerce work programme
  - A commitment to WTO Reform



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# TRIPS Waiver and WTO response to the pandemic

- TRIPS Decision reaffirms Members' right to authorize production and supply of patented COVID-19 vaccines, including ingredients and processes, without IP holders consent
- Members can use any legal instrument to authorize such production and supply
- Waiver is limited to compulsory licenses for vaccines and does not cover therapeutics or diagnostics
- Negotiations underway to extend the decision and cover therapeutics and diagnostics that are also essential medical tools to address the pandemic
- Deadline of 17 December 2022 for these negotiations
- To be effective, the TRIPS Decision requires domestic implementation
- SA's Patent Bill to include TRIPS flexibilities
- Members also adopted a Declaration on the WTO Response to the COVID-19 Pandemic to initiate a process for improved preparedness against future pandemics





# Fisheries Subsidies Agreement

- First WTO Agreement seeking to protect the environment
- Partially fulfils the mandate in SDG 14.6
- Prohibits WTO Members from providing subsidies to:
  - Vessels or operators engaged in illegal, unreported and unregulated (IUU) fishing; and
  - Fishing of overfished stock unless they aim to rebuild stocks to sustainable levels; and
  - Fishing in unregulated high seas
- Two thirds of Membership must ratify the Agreement to bring it into force
- Negotiations continue to address subsidies contributing to overfishing and overcapacity and effective S&D – deadline set for December 2023
- If comprehensive disciplines are not agreed within four years of the entry into force, or otherwise decided by the General Council, the Agreement shall be terminated



# Agriculture and Food security

- Agricultural negotiations remain deeply contested and MC12 resolved to continue engagements
- For most developing countries, the key issues: a permanent solution for the public stockholding for food security purposes, disciplines on trade distorting domestic support (agriculture subsidies), cotton and special safeguard mechanism (SSM)
- Other Members advocate further trade liberalisation
- MC12 adopted a Declaration on the Emergency Response to Food Insecurity
- Members agreed to avoid imposing WTO-inconsistent export prohibitions or restrictions on food trade and that any emergency measures should: (i) minimise trade distortions; (ii) be temporary, targeted, transparent and proportionate
- The Declaration recognised the vital role of local production and food stocks in meeting Members' domestic food security objectives



# E-Commerce

- Ministers agreed to reinvigorate the work under the Work Programme on Electronic Commerce (WPEC), in line with its development dimension
- WPEC aims to examine among others: Competition and classification issues of electronic transmissions; new technologies and access to technology; implications of e-commerce on traditional means of distribution of physical goods and financial implications of e-commerce for developing countries
- Ministers agreed that the e-commerce moratorium will end at MC13 (December 2023) and if MC13 is postponed, then March 2024 at the latest, unless decided otherwise by the General Council
- Members will engage in structured discussions on the WPEC and the moratorium for a decision at MC13
- Discussions will also focus on the impact of the moratorium customs revenue losses and digital industrialization



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# E-Commerce

- Some WTO Members are negotiating e-commerce rules under the JSIs but significant divergences on key issues remain
- The negotiations address a range of issues of which more important include cross-border data flows; localisation of data, servers or computing facilities; a permanent moratorium on ET; and prohibition on requirements to disclose the source
- SA Position: Continue work within the current multilaterally WPEC Work Programme



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# WTO Reform

- Members agreed to work towards “necessary” reform of the WTO
- Process must be Member-driven, open, transparent, inclusive and must address the interests of all Members, including development issues
- For SA, WTO reform should:
  - Rebalance trade rules from Uruguay Round to facilitate Africa’s industrialization  
Deliver on mandated issues
  - Preserve the core principles of the WTO and its multilateral character
- The WTO DSM has been disabled, primarily due to US concerns on the functioning of the Appellate Body
- Members have agreed to address the challenges as effective enforcement is essential for proper functioning of the rules based multilateral trading system



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# WTO Reform

- Risks posed by WTO reform agenda:
  - Reform of the DSM may see return to pre-WTO-era where disputes resolution shaped by trade power not due process
  - Efforts to introduce plurilateral agreements (amongst sub sets of Members) on non-mandated issues will fragment the system, and undermine both the MFN principle and consensus decision making that are cornerstones of the WTO
  - Proposed new rules could further constrain industrial policy making and restrict technology transfer
  - A narrowing of the scope for special and differential treatment (SDT) that offer a degree of flexibility to developing countries



# FCM dispute

- SA has initiated WTO consultations with the EU to address concerns about new regulations imposed to address False Codling Moth (FCM) on citrus
- In 2017 the EU regulated FCM as a quarantine pest for the first time and SA introduced a risk mitigating systems approach that was implemented in 2018
- Evidence is SA's system has effectively reduced the risk of FCM
- On 21 June 2022, the EU published new regulations amending requirements that will introduce significant new barriers to SA citrus, especially oranges, exports to the EU
- The new requirements focus primarily on cooling before and during shipment that would have significant cost implications for SA, especially for emerging farmers
- SA believes less trade restrictive and less costly responses are available to manage risks associated with FCM
- Consultations with the EU are ongoing and aim to find a mutually acceptable solution that balances the EU's perceived risk of FCM with continued market access for SA exports



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# Functional mandate of the Trade Policy Branch

- the dtic's trade policy work is primarily about:
  - Negotiating and managing trade **rules** at bilateral, regional and multilateral levels
  - negotiations aim to enhance **market access** for SA exports without unduly undermining domestic industry and employment, and preserving development policy options
- Rules focus on trade in agricultural and industrial goods, but increasingly expanding to measures that affect trade in services, investment, and intellectual property rights
- Integration in Africa is a major priority, following “developmental integration” approach: combines opening markets, with industrial and infrastructure development initiatives



# SA's Trade Policy Orientation

- SA's trade policy (TP) aims to support industrial development, sustainable economic growth, decent well-paying jobs and economic inclusion
- SA's TP seeks to improve our trade policy by increasing exports of higher value added manufactured goods
- Resonates globally: policy approaches have seen a “return” of industrial policy to strengthen national industrial capabilities and promote trade
- In Africa, SA has worked to advance continental economic integration and industrialization
- SA's non-Africa engagements must support this; must correct manufacturing deficit in our trade profile
- Multilaterally, SA adopts a developmental approach:
  - seek to address existing imbalances in the rules
  - secure policy space to pursue industrialisation and ensure new challenges (e.g. pandemic, environment) are addressed fairly and equitably



# Trade Policy Statement

Trade Policy Statement (May 2021) frames SA trade policy and its international trade engagements on SA's industrial policy objectives.

- **Build industrial capacity:**

- Restore appropriate balance between trade growth and national industrial development; more resilient production systems and a degree of “strategic autonomy” in production and trade
- Tariffs are a key instrument; determined through case-by-case analysis (ITAC)
- Tariff adjustments and rebates should not blunt competitive pressures on firms – therefore, may require reciprocal commitments from industry, e.g. investment or skills development
- Maintain fair competition; deploy trade defense instruments effectively
- Cooperate with SARS and trading partners to eliminate illicit trade and under-invoicing

- **Workers, women and communities:**

- Trade policy must support the development of an inclusive economy and create opportunity for women, youth, rural enterprises
- Protect sectors with large numbers of women workers and entrepreneurs



# Elements of Trade Policy Statement (2)

- **Unlock development across Africa:** African FTAs; promote cross-border infrastructure development and industrial development cooperation; RoO must boost industrial development (“Made in Africa”)
- **Drive manufacturing exports and open markets for SA goods:** Bilateral engagements to expand value-added exports and encourage inward investment in industry; address trade barriers; SA advocates partners view Africa as an investment destination
- **Enhance South Africa’s role at the WTO and the future Multilateral Trade System:** SA supports a rules-based multilateral trading system and independent arbitration; advocates reform built on inclusivity and development; WTO reform must enshrine the right of states to pursue national development strategies within a rules-based system
- **Resilience and to build back better:** Pandemic exposed limited industrial capabilities and over-reliance on global supply chains; inadequate levels of prior investment in research and development and manufacturing capabilities; must build more diversified production centres



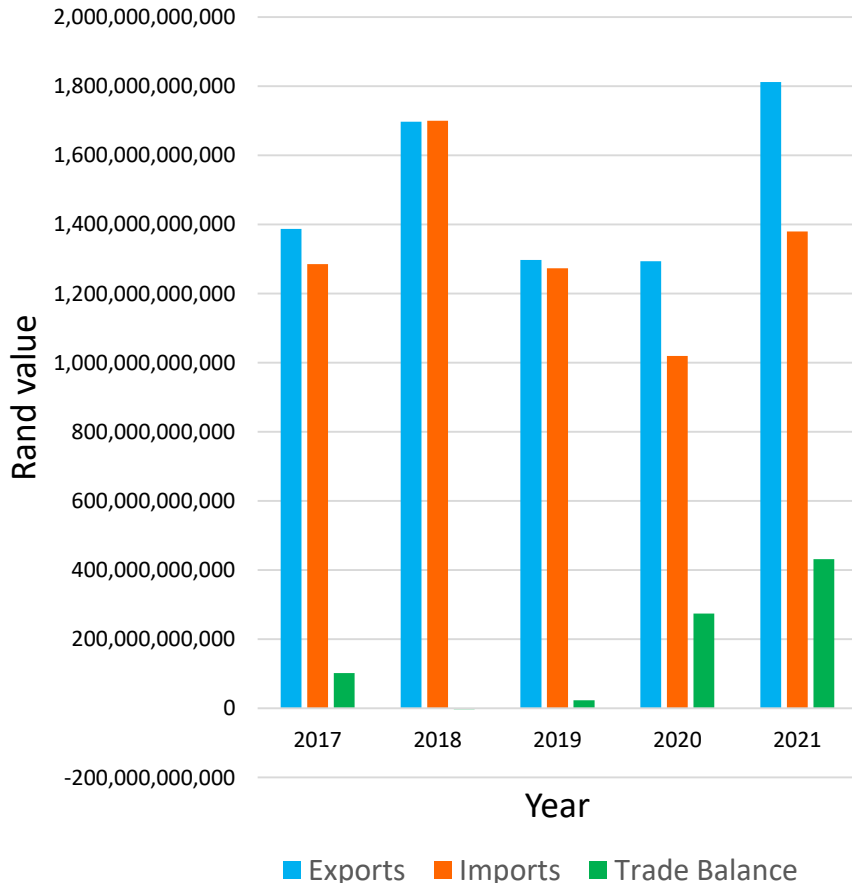
# Elements of Trade Policy Statement (3)

- **The digital economy:**
  - Challenges and opportunities; premature to develop WTO rules that could risk “locking in” current imbalances and foreclosing options to address challenges
- **Environmental sustainability:**
  - Paris Agreement - advanced economies must meet own commitments and assist less developed countries with finance and technology to effect a green transition
  - Need coherence between UNFCCC framework and WTO rules - rules must be mutually supportive, not shift the burden of adjustment to developing countries
  - Unilateral trade measures could undermine coherence in multilateral climate policymaking e.g. border adjustment taxes on carbon content of imports
  - Environmental sustainability is a global public good, requires multilateral cooperation
  - Trade measures should be calibrated, timed and sequenced with green technology transfer and financing for developing countries



# SA's trade performance

SA trade



## Observations:

- SA total exports in 2021: R1,8 trillion
- SA total imports in 2021: R1,4 trillion
- SA trade balance in 2021: R432 billion
- South Africa's share of world merchandise (goods) trade has grown from 0.45% in 2000 to 0.55% in 2021

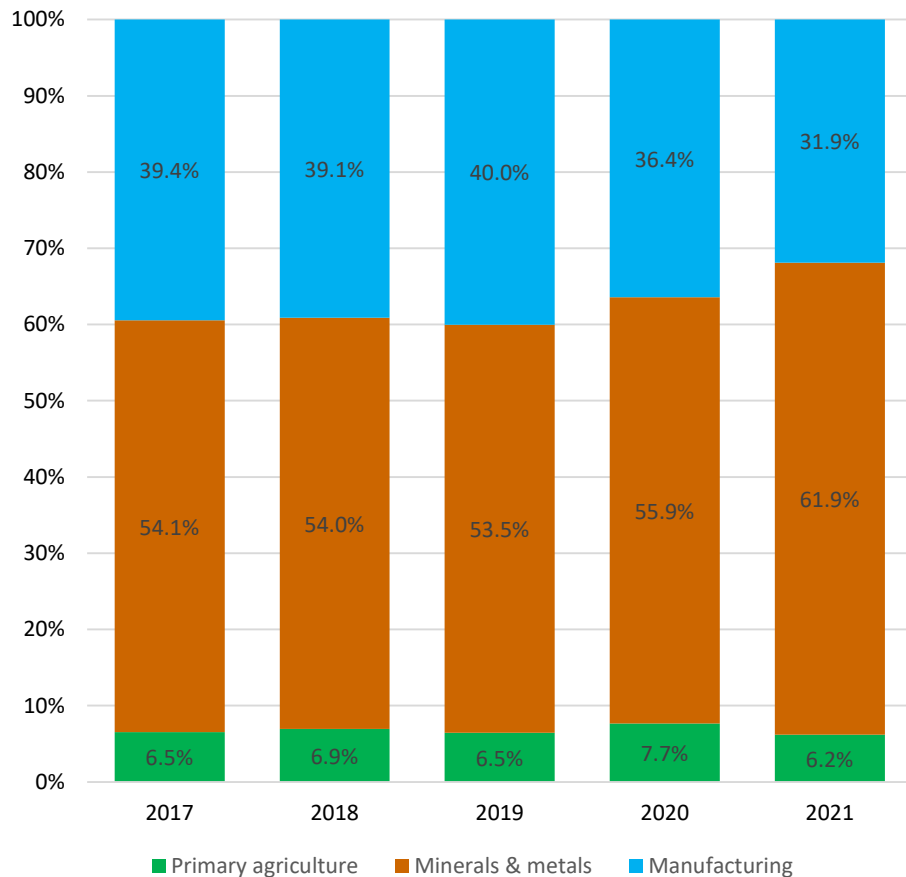
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# SA's export content

SA export content



## Observations:

- The value of manufactured exports have increased from R471 bn in 2020 to R578 bn 2021
- However, the value of minerals & metals exports have grown much faster, from R724 bn in 2020 to R1122 bn in 2021
- This resulted in this sector growing to a disproportionate share of SA's export basket
- This value growth is due to strong growth in resource prices

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