

SA-US trade relations – from chicken wars to Trump and beyond

The United States of America is a longstanding and important trading partner of South Africa, not only because it absorbs large volumes of South Africa's metal, mineral, manufactured and agricultural exports but also because it is a major source of foreign direct investment (FDI) and official development assistance (ODA). South Africa, in turn, imports sizeable quantities of technology-rich machinery, equipment and other value-added products from the US, which supports South Africa's economic growth and development efforts. About 600 US companies operate in South Africa (which is the largest market for the US in Africa), together employing about 120,000 people.

Traditionally, the two countries enjoyed a cordial relationship, with each viewing the other as a strategically significant gateway into a potentially vast and important market on the other side of the world. But in recent years the relationship between South Africa and the United States has become somewhat fractious. South Africa has been crying foul over what it perceives to be the United States' heavy-handedness in trying to secure greater access into the South African market. A particular bone of contention for South Africa has been the alleged dumping of US chicken products on the local market, with costly consequences for South African chicken farmers. The United States, in turn, has become increasingly vocal about the need for South Africa – which currently enjoys duty- and quota-free access for a large proportion of its US-bound exports under the Generalised System of Preferences (GSP) and African Growth and Opportunity Act (AGOA) scheme combined – to commit to a more reciprocal trade partnership. Indeed, a number of US Congressmen have over the years stated that South Africa is 'too developed' to still be benefiting from the raft of benefits under AGOA which were intended as a temporary measure to encourage beneficiary countries to improve their export competitiveness across various industry sectors.

Now, with the new Trump Administration showing a strong preference for bilateral trade deals that favour (or at least are not 'unfair to') American companies, South Africa stands at a bit of a crossroads in its trade relationship with the United States. Should it continue to rely mainly on its GSP and AGOA preferences (although AGOA is scheduled to expire in 2025)? Or should it be exploring the prospects of negotiating an FTA (free trade agreement) with the United States, which would bring greater balance to the relationship and ensure that South Africa sets its sights more on trade competitiveness than trade concessions?

Clearly, with the world in a state of flux and trade alliances becoming increasingly fluid, South Africa runs the risk of becoming marginalised if it does not prepare for a future in which special, non-reciprocal trade treatment for the developing world is significantly scaled back. To understand what South Africa stands to lose or gain from its evolving trade relationship with the United States under different scenarios, it is useful to examine current SA-US trade ties more closely.

South Africa has a number of trade and investment arrangements in place with the United States, including the Generalised System of Preferences (GSP); the African Growth and Opportunity Act (AGOA) scheme; the Trade, Investment and Development Cooperation Agreement (TIDCA) and the Trade and Investment Framework Agreements (TIFA).

The Generalised System of Preferences (GSP) is a unilateral preference scheme operated by a number of countries and permitted under the enabling clause of the World Trade Organization (WTO). It is not contractually binding on the benefactors and can be withdrawn unilaterally. GSP preferences are offered to South Africa, by virtue of its developing country status, by the European Union (EU), Norway, Switzerland, Russia, Turkey, the United States, Canada and Japan, and make provision for certain industrial and agricultural products to qualify for preferential market access into these countries.

The African Growth and Opportunity Act (AGOA) scheme is a unilateral assistance measure granted by the United States to 43 sub-Saharan African (SSA) countries, including South Africa. Under AGOA,

which came into effect in 2000, beneficiary countries enjoy preferential access into the US market in respect of a number of qualifying products. AGOA expands the duty- and quota-free benefits previously available only under the country's GSP scheme. Under the combined AGOA-GSP programme, duty-free access into the US market covers about 6,500 product tariff lines.

The Trade, Investment and Development Cooperation Agreement (TIDCA) is a cooperative framework agreement between the member of the Southern African Customs Union (SACU), of which South Africa is a member, and the United States. The TIDCA makes provision for the parties to negotiate and sign agreements relating to sanitary and phyto-sanitary (SPS) measures, customs cooperation and technical barriers to trade (TBT). It also provides a forum for engagement on any matters of mutual interest, including capacity-building and trade and investment promotion. The bilateral Trade and Investment Framework Agreement (TIFA), in turn, provides a forum for South Africa and the United States to address issues of mutual interest, including AGOA, TIDCA, trade and investment promotion, non-tariff barriers, SPS measures, infrastructure, and others.

Of the above-mentioned agreements, AGOA and the GSP are the most important, borne out by the fact that in 2015, 98% of South Africa's merchandise exports to the US market entered duty- and quota-free under the combined AGOA and GSP dispensations.

While AGOA was re-authorised in June 2015 for another 10 years until 2025 through the 'AGOA Extension and Enhancement Act', South Africa's position in AGOA in recent years has become progressively less secure. The new Act makes provision for out-of-cycle reviews which can be initiated at any time to determine whether a beneficiary sub-Saharan African country still meets the eligibility criteria which state (inter alia) that countries should make continual progress towards establishing a market-based economy, an effective legal dispensation and an effective labour law system, and eliminating barriers to US trade and investment.

South Africa was the first country to undergo such a review in July 2015, impelled by concerns about South Africa's possible non-compliance with AGOA eligibility criteria. Specific areas that the US authorities probed were South Africa's credentials as a market-based economy, the strength of the country's rule of law, the quality of workers' rights, and the effectiveness of efforts to combat corruption and reduce poverty and child labour. Other areas of concern were the evident inability to enforce copyright and trade mark rights leading to financial losses due to counterfeiting and piracy, and South Africa's Private Security Industry Amendment Bill of 2012 which requires majority local ownership of security companies. In conducting its review, the US was particularly concerned about the various trade barriers it encountered, especially long-standing obstacles encountered by US poultry, beef and pork producers when exporting to the South African market.

The review resulted in a determination that South Africa fell short in meeting the AGOA eligibility criteria and in 2016 the US issued a proclamation suspending AGOA benefits for agricultural products from South Africa. Prior to the effective date of suspension, however, South Africa took the appropriate action to address the key concerns and so avoided the suspension of its AGOA benefits. It did this by entering into a trade deal with the US which allowed an annual quota of 65,000 metric tons of US bone-in chicken into the South African market which would not be subject to anti-dumping duty. Before this deal was struck, bone-in chicken imports always attracted a 900c/kg anti-dumping duty over and above the normal most-favoured-nation (MFN) duty. Chicken imports from the US remain a highly contentious issue in South Africa as large quantities of surplus chicken are being dumped in the local market by other countries at prices way below their cost of production and this has had an adverse effect on the domestic chicken industry. In fact, instability in the chicken supply chain could escalate into a national crisis in view of the importance of the industry for employment and general food security in the country.

Over the past few years, the United States has made it increasingly clear that it wants to negotiate reciprocal free trade agreements (FTAs) with sub-Saharan African countries and that it is justified in

pushing in this direction in view of the EU having already concluded (and mostly implemented) several European Partnership Agreements (EPAs) with sub-regions and/or individual countries in Africa. This was a recurring theme at the 2016 AGOA Forum in Washington, D.C. where US and African policymakers were 'advised' to reconsider their trading relationship and in the process start thinking about what the future trade and investment policy architecture surrounding an Africa-US engagement would look like. The US recommended that policymakers should focus on ensuring that the outcome of their trade and investment policy deliberations: supports African regional economic integration as well as integration into the global trading system; provides for greater reciprocity; supports African value-added production; promotes export diversification through value-added agriculture, manufacturing and services; includes Africa-based reforms across a wide range of policy areas; and takes into account different levels of capacity and trade readiness across the region.

South Africa, together with its fellow SACU members, began FTA talks with the United States in 2003 but the negotiations were suspended in 2006 in the face of divergent views from both sides on the envisaged scope and level of ambition of the proposed FTA. SACU has always held the view that the US was inflexible in its approach to the negotiations. In this regard SACU had particular reservations about the prospects for intellectual property rights protection (specifically patents on drugs and seeds), government procurement and investment, agricultural subsidies and new generation issues such as technical standards and data management. During the negotiations, SACU also felt that the emerging agreement lacked a sufficient developmental impetus which it considered to be very important given the varying levels of economic development among member countries. The United States, on the other hand, was looking for stronger and more binding reciprocal commitments that would free up trade flows on a wide range of products. For this reason, it had always envisioned an all-encompassing FTA. The US has also been quite dismissive of SACU's view that the (what turned out to be inconclusive) FTA negotiations lacked a developmental focus, indicating that its trade deals with other developing countries had proven to be trade expanding and therefore had clearly prioritised development.

Despite these ructions, the United States has made it clear, quite publicly and on a number of occasions, that it would like to re-open FTA negotiations with SACU, using the TIDCA as a "building block" for such negotiations. For example, at the WTO SACU Trade Policy Review held in November 2015 in Geneva, Switzerland, the US indicated that it was looking forward to working with SACU to find ways to use the TIDCA as an effective vehicle for discussing the future of SACU-US trade and investment relations which would hopefully be built on a "more mature, permanent and reciprocal relationship". In 2016 the US brought its intent into sharper focus by submitting a list of 387 tariff lines to South Africa in terms of which it believed US exports were at a disadvantage relative to equivalent EU exports to South Africa. It remains unclear how (or if) this issue has been resolved and/or what the outcome has been.

All of this, however, happened prior to President Trump moving into the White House and at this stage America's trade policy approach and its priorities remain uncertain. What we do know is that on 1 March 2017, in its annual report to Congress, the Trump Administration submitted the President's National Trade Policy Agenda for 2017. In it, the President called for a "more aggressive" trade policy approach. The hallmarks of this trade policy in the coming months will be to expand trade in a way that is "freer and fairer to all Americans", with "every trade-related action that the US takes being designed to boost economic growth, promote job creation, promote reciprocity between the US and its trading partners, strengthen the manufacturing base and the ability of the US to defend itself, and expand the country's agricultural and services exports". The Administration has also stated that it believes that these goals will best be accomplished by focusing on bilateral negotiations rather than multilateral negotiations, and that trade agreements should be subject to renegotiation and revision in the event that goals are not met. This could be a further indication of the strong-armed tactics that South Africa has come to associate with US trade negotiators over the years.

President Trump's new trade (and investment) agenda has sparked much debate among economists and policymakers. Some feel that his protectionist leanings could violate WTO rules or, worse, unleash a chain reaction in which other countries will simply follow suit and close up their markets. This has the potential to trigger a new era of economic protectionism worldwide which some analysts fear could escalate into a global trade war. This would severely compromise business activities and growth in many regions.

It is not clear how South Africa should react to President Trump's more inward-looking trade approach which is set to colour SA-US relations for the foreseeable future. Given South Africa's current political uncertainty, which also impacts its dealings with other SACU members, one option would be to keep a low profile for the time being, continuing to take advantage of its GSP and AGOA preferences to ensure relatively high export volumes to the US market. There is much at stake if South Africa were to be removed from the AGOA equation. Unlike other, poorer African countries which are dependent on a limited range of low-value products for their export earnings, the relative sophistication of South Africa's economy means that its export offerings to the US are more diverse. In 2015, for example, South African exports to the US¹ included: precious metal and stones, such as platinum and diamonds (valued at \$2.4 billion); vehicles (\$1.5 billion); iron and steel (\$615 million); machinery (\$538 million); and major agricultural products, including fruit and vegetables, fresh fruit, wine and beer (\$281 million).

However, trying to adopt a low profile could be a short-sighted strategy given President Trump's action-driven agenda and propensity to look after American interests first. AGOA is a legacy of the Clinton Administration's attempts to boost Africa's development prospects through special trade treatment – an approach that has been losing its appeal in recent years as more and more countries buckle under the weight of rising competition and political-economic uncertainty. AGOA will in any case expire in 2025, leaving South Africa in a far less advantageous position than it is today. By not being proactive in its trade dealings with the US, South Africa could find itself losing out to other African countries considered to be of higher priority in the eyes of the Trump Administration, particularly as the periodic squabbling over market access for US chicken products has left a sour taste in the mouths of many American producers and lawmakers.

South Africa imports a great deal from the United States, although it was only the 41st largest export market for the US in 2015, which suggests it may not hold all that much strategic value for the US in the grand scheme of things. South Africa's leading imports from the US in 2015 included: machinery (\$1.2 billion); vehicles (\$651 million); electrical machinery (\$450 million); aircraft (\$342 million); optical and medical instruments (\$324 million); and major agricultural products such as tree nuts, seeds, prepared food and dairy products (\$211 million). Although outside the AGOA structures, South Africa's services exports to the US in 2015 (including travel and transportations services, and professional and management services) were valued at \$1.7 billion – lower than the value of its merchandise exports but still a significant amount. Services imports that year (including travel and transportation services, and computer software) were valued at \$3 billion. In 2014, the United States was responsible for an impressive \$6.2 billion-worth of FDI inflows into South Africa, as against South Africa's much more modest \$765 million-worth of FDI outflows to the US.

With all challenges, new opportunities present themselves. South Africa has a chance to exploit shifting global trade patterns and alliances to strengthen and/or clarify its position vis-à-vis its traditional and non-traditional trading partners. In recent years South Africa's trade policymakers have been turning their attention increasingly towards Africa and the other BRICS countries as sources of market opportunities and investment, but most of these countries (perhaps with the exception of India) have been dealing with significant economic challenges at home. While no one can predict exactly how Trump's trade agenda will play out, the United States will undoubtedly

¹ All SA-US trade data was obtained from the Office of the United States Trade Representative (USTR) at the following web address: <https://ustr.gov/countries-regions/africa/southern-africa/south-africa>

remain a formidable economic power for many years to come and should South Africa ignore this, it will be at its peril.

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