

# Report On South Africa's Trade Portfolio: World Trade Organisation

## Portfolio Committee on Trade, Industry and Competition

**Tuesday, 15 November 2022**



**the dtic**

Department:  
Trade, Industry and Competition  
REPUBLIC OF SOUTH AFRICA

# Background

- SA is a member of the World trade Organisation (WTO), since its establishment in 1994.
- Prior to that date, SA under the pre-democratic order was represented at the WTO's predecessor, the body that administered the Generalised Agreement of Tariff and Trade (GATT).
- The principal terms under which SA was admitted as a member of the WTO was agreed during the Uruguay Round of trade talks that started in 1986.
- SA supports multilateral cooperation to manage interdependence and supports a rules-based trading system as embodied in the WTO
- However, WTO rules exhibit a range of imbalances and inequities that prejudice the trade and development interests of developing countries

# Background

- Rules in agriculture allow developed countries massive trade distorting support to their farmers, undermining the comparative advantage of many developing countries on many products and food security
- Rules on industrial subsidies constrain policy space in developing countries to support their industries but allow advanced economies to provide substantial support to their high-tech, knowledge-intensive industries
- Rules on intellectual property grant protection to patent-rights holders to encourage and reward innovation but unduly limits technology transfer, unduly protects monopoly rents and does not prioritise access to life-saving technologies including in health emergencies and pandemics

# Background cont.

The rules-based system faces a number of challenges:

- A non-functioning dispute settlement mechanism (DSM)
- Proliferation of small group negotiations (plurilateral) and unilateral decision-making that pose risks to consensus decision making and multilateralism
- Proposals to further restrict industrial policy in and technology transfer to developing countries
- Proposals to narrow the scope of special and differential treatment (SDT) that currently provides some flexibility to developing countries
- Wider risks to multilateralism include geo-political tensions; lingering effects of COVID-19; rising inequality; and risks associated with climate change

# MC12

- The WTO's main decision-making structure is the Ministerial Conference (known as "MC") of trade ministers, which meets periodically and finalise the content of trade rules and agreements.
- The previous Ministerial Conference was held in December 2017 in Buenos Aires, Argentina and was named MC 11. It largely deadlocked on a number of issues, including agriculture and the new issues (e-commerce, investment facilitation, domestic regulations on services).
- At the conclusion of MC11, some Members decided to launch Joint Statement Initiatives (JSIs)/plurilaterals, which were initially launched as exploratory discussions and have evolved into negotiations on binding rules in relations to e-commerce and investment facilitation that risk fragmenting the multilateral trading system.
- The planned MC12 was scheduled for June 2020 and was postponed twice due to COVID
- MC12 finally convened from 12-17 June 2022 in Geneva

# MC12

South Africa's strategic objective at MC12 was to work with a broad alliance of countries to achieve a concrete outcome on xx areas: a waiver of certain TRIPS provisions, regulation to address illegal fishing and over-fishing, addressing the inequities on e-Commerce taxation; and an agreement on terms of reference of WTO reform

MC12 adopted key Decisions on the following:

- Decision on the TRIPS Agreement
- Agreement on Fisheries Subsidies
- Ministerial Decision on World Food Programme Food Purchases Exemption from Export Prohibitions or Restrictions
- Work Programme on Electronic Commerce.

## Connection with DTIC Annual Performance Plan:

- Industrialisation through trade
- Policy flexibility for Localisation
- Support for rules-based system



South African officials negotiating text with US officials





STATEMENT BY H.E. MR EBRAHIM PATEL  
MINISTER OF TRADE, INDUSTRY AND COMPETITION

SOUTH AFRICA

When the World Trade Organisation was formed 28 years ago, the world was a very different place. South Africa was just emerging from 3 centuries of colonialism through the transition to democracy. The world economy was about a third of its current size in US dollars and China accounted for about 2% of global output. Google had not yet been formed: Covid-19 was unknown.

Twenty-eight years later, the institution has to confront a changed and changing world.

We are now in a new age with new challenges:

- first, the sustainability of our carbon-emitting and consumption model;
- second, the vast and growing inequality within and between countries;
- third, the vulnerability that greater integration brings, in health and supply-chain disruptions;
- and fourth, the more pronounced geo-political tensions and a polarising world that creates new tensions in global rule-making and rule adherence.

The WTO will need to reinvent itself for the new age; be more flexible and promote stronger development outcomes. We need a rules-based system to promote global prosperity, to do so inclusively; and to not rely on the law of the jungle where power alone defines who eats and who gets eaten. And for this reason, the rules need to enable greater trade between nations that result in indeed in balanced and developmental outcomes.

Globalisation has brought great benefits to many. It has also brought new challenges – most recently we saw the example of the rapid spread of the corona virus across borders. We can decide to either close borders with all the costs that entails; or to find ways in which we can harness the fruits of science and innovation to address these, including through more flexible IP rules and waivers in pandemics.

Global inequality within and between nations requires a more considered approach to development agenda of the WTO to ensure that workers and poorer communities benefit from global trade.

Africa's population has grown significantly since the establishment of the WTO. In 1994, it was about 700m; today it has doubled to 1.4 billion people and in the next 28 years it is projected to grow by a further billion people.

Africa has 17% of the world's population yet accounts for only 3% of global GDP and about 1% of global steel and automobile output.

For the African continent and for SA, the defining economic challenge of our generation is and will be industrialisation, to find ways to grow more, to grow greener and to grow inclusively.

We will need to address the historical imbalances in some of the agreements arising from the Uruguay Round of the GATT talks that were incorporated into the newly-formed WTO. These include measures on agriculture and for some African countries, industrial tariffs.

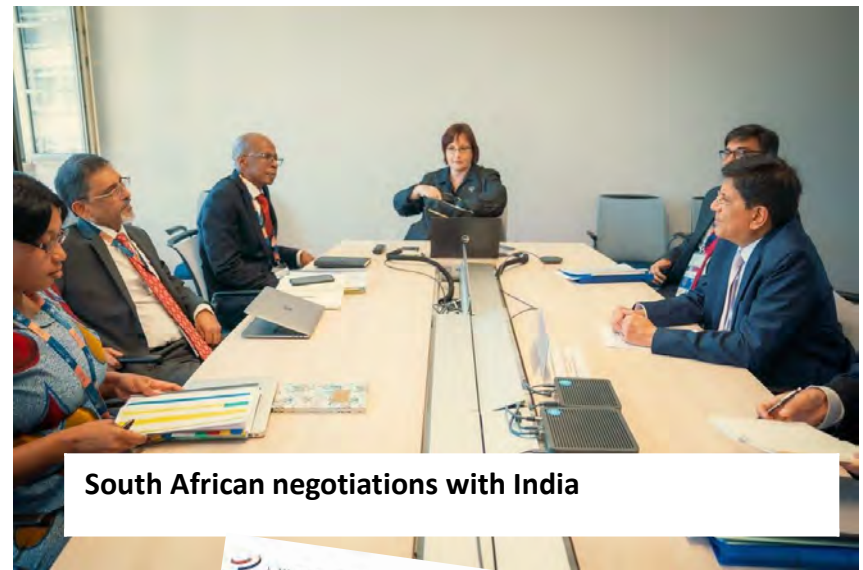


**First African and female Director General of  
WTO, Ngozi Okonjo-Iweala**





South African negotiations with European Union



South African negotiations with India

The MC12 decision on the TRIPS Agreement enables the production and supply, including export, of COVID-19 vaccines, their ingredients and components under patent, without the authorisation of the patent holders.



# MC12

Additional areas agreed are as follows:

- A Work Programme on Small Economies that provides for a continuation of ongoing work to support small economies
- TRIPS Non-violation and Situation Complaints (“rolls over” previous decisions preventing challenges to measures alleged to deprive a Member of an expected but unspecified benefit under the TRIPS).

MC 12 adopted an Outcome Document that covers a range of issues, notably to pursue “necessary WTO Reform”. Several Declarations adopted that provide guidance and impetus for future work:

- Sanitary and Phytosanitary Declaration
- Ministerial Declaration on the Emergency Response to Food Insecurity
- Ministerial Declaration on the WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics

# **WTO TRIPS WAIVER AND COVID-19 VACCINE EQUITY**



# TRIPS Decision - background

- TRIPS Agreement establishes minimum standards for the protection of different forms of intellectual property rights (IPRs) by all WTO Members
- Widespread concern that IPRs hinder diversified production and access to affordable medical products, despite “flexibilities” in the TRIPS Agreement
- These constraints were matters of concern to address HIV/AIDS in early 2000s and arose again in the COVID-19 pandemic
- In October 2020, during the height of the pandemic, SA and India submitted a proposal for a “time bound, proportionate and limited waiver” to remove IPR barriers to the expansion and diversification of production of COVID-19 vaccines, therapeutics and diagnostics
- This was a necessary response to address the highly concentrated and inadequate production that exacerbate global vaccine inequality
- There was strong resistance from certain developed country Members that delayed an early outcome
- At MC12 a Decision on the matter was agreed.

# TRIPS – a process of building support

- Between October 2020 and June 2022, SA and India put together a wide coalition of countries that supported the proposal for a waiver.
- These included 65 co-signatory countries and over 50 countries that supported the proposal, though not as co-signatories.
- Support was secured from most developing countries (including all African Union states, Argentina, Indonesia, China, Bolivia and Malaysia) and later from some developed countries (including New Zealand, Australia and Canada). The USA in May 2021 announced support for a waiver for vaccines while consulting on therapeutics and diagnostics.
- Initial opposition was mainly from the EU, UK, Japan and Switzerland.
- SA and India secured the support from a range of public voices, including scientists, doctors, Nobel Laureates, MPs, faith-based organisations, and civil society organisations, including UNAids
- An informal group of 4 countries then began discussions on a possible compromise, given that the WTO makes decisions by consensus

# TRIPS Decision

- These talks were known as the “Quad discussions” and was comprised of SA, India, the EU and the USA.
- With the support of the Director General of the WTO, a number of options were identified in the Quad talks and were put to WTO members for consideration.
- Following talks at MC 12, the following was agreed:
  - A waiver that provides additional flexibility enabling vaccine exports to other eligible Members and joint initiatives and removes requirements that these should be predominantly for the domestic market.
  - Clarifications of existing flexibilities, including
    - confirmation that Governments may authorize local manufacturers to produce and export vaccines (ingredients, substances or elements and utilize processes) covered by patents, without the permission of patent holders
    - An eligible Member need not require the proposed user to make efforts to obtain an authorization from the right holder

# TRIPS Decision

- The decision can be implemented via executive orders, emergency decrees, government use authorizations, judicial or administrative orders, whether or not a Member has a compulsory license regime in place
- It stipulates: “Determination on adequate remuneration under Article 31(h) may take account of the humanitarian and not-for-profit purpose of specific vaccine distribution programs aimed at providing equitable access to COVID-19 vaccines in order to support manufacturers in eligible Members to produce and supply these vaccines at affordable prices for eligible Members”.
- “Further, in setting the adequate remuneration, eligible Members may take into consideration existing good practices in instances of national emergencies, pandemics, or similar circumstances.”
- The Decision is effective for five years and may be extended by the General Council. Negotiations now underway to include therapeutics and diagnostics that are also needed to address the pandemic



# TRIPS Decision

Decision on waiver:

- Represents a step forward in prioritising human life and public health
- Does not fully address all developing country concerns
- Was adopted unanimously at the WTO MC12
- To be effective, the TRIPS Decision requires domestic implementation
- SA's Patent Bill is intended to also give domestic effect to all available TRIPS flexibilities
- MC12 adopted a Declaration on the WTO Response to the COVID-19 Pandemic that initiates a process for improved preparedness against future pandemics, including to diversify production and promote technology transfer





# Agriculture and Food Security

- The COVID-19 pandemic, effects of climate change and the war in Ukraine have exacerbated food insecurity globally.
- WTO Members are discussing the need to re-orientate the Agriculture Negotiations towards trade rules that assist countries to increase their food security.
- Agriculture negotiations are a critical component of the WTO work, but negotiations are deeply contested- the core concern is the imbalance arising from massive agriculture subsidies by some developed countries that limit production and trade of many developing countries, including in Africa on products where they have comparative advantage.
- There was only limited convergence at MC12 on the reforms needed to agriculture trade disciplines

# Agriculture and Food Security

For most developing countries, the key issues are:

- disciplines on trade distorting domestic support (agriculture subsidies): the WTO Agreement on Agriculture has allowed developed countries to continue their high subsidies on agriculture products, including those exported to developing countries, impacting their small farmers' livelihoods and food security, it is important to agree on disciplines to address this.
- a permanent solution for the public stockholding for food security: the Agreement on Agriculture explicitly recognises the need to take account of food security. At the Bali Ministerial Conference, ministers agreed that, on an interim basis, public stockholding programmes in developing countries would not be challenged legally even if a country's agreed limits for trade-distorting domestic support were breached. They also agreed to negotiate a permanent solution to this issue.
- Cotton – need to have rule on subsidies on cotton that affect the competitiveness of the Cotton 4 (Benin, Burkina Faso, Chad and Mali); and

# Agriculture and Food Security

- special safeguard mechanism (SSM)- the SSM is a tool that will allow developing countries to raise tariffs temporarily to deal with import surges or price decreases. The negotiations have stalled on the price and volume triggers that could be the basis for the SSM due to divergences of views among Members.
- Other Members advocate further trade liberalisation.
- SA and Africa's priority is to correct the historical imbalances in the Agreement on Agriculture arising from the Uruguay Round and ensure fair and equitable trade in agriculture.

# Agriculture and Food Security

- MC12 adopted a Declaration on the Emergency Response to Food Insecurity
- The Declaration acknowledges the importance of not imposing WTO-inconsistent export prohibitions or restrictions on agri-food trade
- The Declaration recognised the vital role of local production and food stocks in meeting Members' domestic food security objectives
- MC12 also adopted a Ministerial Decision relating to World Food Programme purchases: Members agreed to avoid imposing WTO-inconsistent export prohibitions or restrictions on food trade and that any emergency measures should: (i) minimise trade distortions; and (ii) be temporary, targeted, transparent and proportionate



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FUNDING  
OVERFISHING**

**ALL EYES ON YOU, WTO!**  
END THE SUBSIDIES THAT DRIVE **OVERFISHING.**

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# Fisheries Subsidies Agreement

- The fisheries subsidies negotiations aim is to eliminate certain forms of subsidies that contribute to overcapacity and overfishing, as well as illegal, unreported and unregulated fishing
- It requires effective and appropriate treatment for developing and least-developed countries
- Subsidies to the fisheries sector can lead to production and trade distortions that result in unsustainable fishing practices and overexploitation of fish stocks
- SA's priorities for the Fisheries negotiations in WTO:
  - Safeguard the rights of coastal States
  - Preserve food security and livelihoods of artisanal and subsistence fisheries
  - Preserve policy space to develop our fishing sector and the blue oceans economy
  - Ensure that the Agreement is in line with the objective of the UN goals including effective and appropriate special and differential treatment for developing countries

# Fisheries Subsidies Agreement

- This is the first WTO Agreement seeking to protect the environment and partially partially fulfils the mandate of the UN
- It prohibits WTO Members from providing subsidies to:
  - Vessels or operators engaged in illegal, unreported and unregulated (IUU) fishing;
  - 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 that contribute to overfishing and overcapacity and effective SDT – 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





# **E-COMMERCE REGULATION AFTER MC12: WHERE ARE WE, WHERE ARE WE HEADING?**

# E-Commerce

- Since 1998, WTO Members have periodically taken decisions to not impose customs duties on electronic transmissions (a 'moratorium')
- In light of the rapid expansion of e-commerce during the pandemic, increasingly constrained revenue sources and the impact of the moratorium on digital industrialization, many developing countries are questioning the need to extend the moratorium
- A study by UNCTAD estimates that SA is losing a potential revenue of \$44 million per annum based on the MFN duties on 49 digitizable products
- Some Members are negotiating e-commerce rules under the Joint Statement Initiatives (JSIs) but significant divergences remain
- The negotiations address a range of issues, notably cross-border data flows, localisation of data, technology transfer and a permanent moratorium
- SA position: continue exploratory work and information sharing under the current multilateral Work Programme on Electronic Commerce (WPEC)

# E-Commerce

- MC12 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
- MC12 also agreed that the e-commerce moratorium will end at MC13 (December 2023) and if MC13 is postponed, then by March 2024, 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 on customs revenue losses and digital industrialization



# WTO Reform

- Developing countries have over many years advocated redressing the imbalances arising from the WTO agreements
- The Doha Development Agenda (DDA) launched in 2001 provided a mandate to rebalance trade rules and put the interests of developing countries at the centre of the work. In the view of developing countries, these efforts have been frustrated since 2008
- The reform now being advanced by some developed countries raise a range of systemic matters that will change the WTO's architecture and principles and introduce new issues and approaches that may be inimical to development
- For SA, supported by many others, WTO reform should:
  - Rebalance trade rules from the Uruguay Round to facilitate Africa's industrialization
  - Deliver on mandated issues (food security and development)
  - Preserve WTO core principles and its multilateral character

# WTO Reform

- MC12 agreed to work towards “necessary” reform of the WTO
- The process must be Member-driven, open, transparent and inclusive
- The work will cover all WTO functions- negotiation, monitoring and dispute settlement.
- Work will be conducted by the General Council and subsidiary bodies who will “review progress, and consider decisions to be submitted to the next Ministerial Conference”
- The Dispute Settlement Mechanism (DSM) of the WTO has been disabled primarily due to US concerns on the functioning of the Appellate Body. MC12 recognised the “urgency” of addressing the challenges of the dispute settlement system, and committed to discussions to seek a “well-functioning dispute settlement system accessible to all Members by 2024”
- MC12 reaffirmed the foundational principles of the Marrakesh Agreement which will underpin WTO reform



# 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 rather than 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 offers a degree of flexibility to developing countries
- Erosion of the Member-driven process
- Climate change measures could have negative impacts on many developing countries through new “environmental” tariffs and non-tariff barriers such as the Carbon Border Adjustment Mechanism

# WTO Reform

In the discussions about WTO reform, SA will seek the following:

- Addressing the need for policy space in global agreements to enable African industrialisation
- Retaining a development-focus for the WTO, including in retaining the concept of special and differential treatment for developing countries
- An effective dispute settlement system
- Strengthening the multilateral character of the WTO.
- Preserve the principles of the WTO, including consensus decision making.



# Conclusion

- South Africa worked with a broad coalition of countries to ensure a successful outcome at MC12
- The final outcome provides support for
  - Citizens: through the flexibilities gained through the TRIPS Agreement
  - Consumers: with measures to discourage export-bans on critical foods
  - Farmers: by avoiding new restrictions for South African farmers
  - Fisher-communities: with protections against vessels strip-fishing our waters
  - Entrepreneurs in e-Commerce: by opening the door to an end to the moratorium on customs duties or adequate support for developing countries in e-Commerce
- Much more will need to be done to build greater fairness and equity in global trade and truly place development at the centre of trade talks

# Thank you



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Department:  
Trade, Industry and Competition  
**REPUBLIC OF SOUTH AFRICA**

# Annex - Acronyms

DDA	Doha Development Agenda
DSM	Dispute Settlement Mechanism
IPR	Intellectual Property Right
IUU	Illegal, Unreported and Unregulated
JSIs	Joint Statement Initiatives
MC12	Twelfth WTO Ministerial Conference
MFN	Most Favoured Nation
MTS	Multilateral Trading System
SDG	Sustainable Development Goal
SDT	Special and Differential Treatment
TRIPS	Trade Related Intellectual Property Rights
UNCTAD	United Nations Conference on Trade and Development
WPEC	Work Programme on Electronic Commerce
WTO	World Trade Organization