JAN
2020

TRADE BRIEF

South Africa under GSP country review: what implications for preferential exports to the United States?

Eckart Naumann

TRADE BRIEF

tralac Trade Brief
No. US20TB01/2020
January 2020

tralac | trade law centre

ABSTRACT

On 25 March 2019, the United States Office of the United States Trade Representative (USTR) issued a notice through the Federal Register on its annual Generalized System of Preferences (GSP) product and country review. This is a relatively routine review process relating to the country's non-reciprocal trade preference scheme(s).

Exactly seven months later, on 25 October 2019, the USTR announced GSP "enforcement action" relating to seven countries, including South Africa, having accepted a petition by the International Intellectual Property Alliance (IIPA) regarding South Africa's ongoing compliance with the GSP eligibility criteria. A subsequent Federal Register notice on 19 November sets out some of the more detailed timelines around this process as it pertains to South Africa's case.

What is at stake for South Africa's trade under GSP and AGOA? Developments in South Africa (and any action taken by the IIPA or the US) might impact, influence, or indeed form some kind of persuasive precedent for what might or might not follow in other African markets later.

Published by the Trade Law Centre (tralac)
P.O. Box 224, Stellenbosch, South Africa, 7599

Citation

Naumann, E. 2020. *South Africa under GSP country review: what implications for preferential exports to the United States?* tralac Trade Brief No. US20TB01/2020. Stellenbosch: tralac.

About the Author

ECKART NAUMANN is an economist with an undergraduate degree in economics and financial accounting and an MCom in economics from the University of Cape Town. His research and consulting work spans a range of sectors and subjects, with a particular focus on rules of origin and market access issues. Eckart serves as a tralac Associate and oversees the development and implementation of the African Growth and Opportunity Act (AGOA) online information portal, *Agoa.info*.

Acknowledgements

This report is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of Trade Law Centre NPC and do not necessarily reflect the views of USAID or the United States Government.

South Africa under GSP country review: what implications for preferential exports to the United States?

by Eckart Naumann

On 25 March 2019, the United States Office of the United States Trade Representative (USTR) issued a notice through the Federal Register (the US equivalent to the South African Government Gazette) on its annual ***Generalized System of Preferences*** (GSP) product and country review (Docket No. USTR–2019–0001). This is a relatively routine review process relating to the country's non-reciprocal trade preference scheme(s). US legislation makes provision for, *inter alia*, any interested party to submit a petition relating to the review of GSP eligibility of any beneficiary developing country with respect to the designation criteria listed in the underlying US trade legislation. The US classifies South Africa as a beneficiary developing country for GSP purposes.

Exactly seven months later, on 25 October 2019, the USTR announced GSP "enforcement action" relating to seven countries, including **South Africa**, having accepted a petition by the International Intellectual Property Alliance (IIPA) regarding South Africa's ongoing compliance with the GSP eligibility criteria. A subsequent Federal Register notice on 19 November sets out some of the more detailed timelines around this process as it pertains to South Africa's case. It should be noted that GSP eligibility is also a pre-condition for AGOA eligibility – in other words, a country's AGOA status is entirely dependent on it (also) enjoying GSP beneficiary status, and meeting the relevant eligibility criteria thereunder. More on this later.

The IIPA meanwhile describes itself as a "*private sector coalition of trade associations representing US copyright-based industries working to improve international protection and enforcement of copyrighted materials and to open foreign markets closed by piracy and other market access barriers*". The IIPA is naturally focused on the interests of its own members (rather than some altruistic concern for South African owners of copyright material in this regard), and South Africa's apparent failure to provide adequate protection to *American* copyrighted works and sound recordings forms the basis for the IIPA leveraging national and international market access preferences and related avenues at its disposal to defend or enforce these.

One can also surmise that the interests run deeper: developments in South Africa (and any action taken by the IIPA or the US) might impact, influence, or indeed form some kind of persuasive precedent for what might or might not follow in other African markets later. It is hard to imagine that South Africa's copyright protection is inferior to that of most other African countries, but given the perceived weaknesses and market importance the stakes are naturally quite high.

The GSP is a non-reciprocal and unilateral trade preference programme by the United States – one of numerous similar ones established by developed countries around the world. It offers importers in the United States duty-free importation of goods into the country, thus making eligible exports from beneficiary countries more competitive. The programme was instituted in 1976 and today accounts for over $23 billion worth of United States imports. 121 countries and territories are beneficiaries of this programme, with 44 countries classified as LDCs (a number of countries are by law excluded from attaining beneficiary status – such as the EU, Canada, Australia, Switzerland, Norway and so forth, certain communist countries, and countries that restrict the supply of vital commodity resources from international trade).

There's also a special dispensation for LDCs, which benefit from more extensive product coverage in the US GSP: approximately 1,500 tariff lines (of almost 5,100 lines under GSP) are reserved for LDC beneficiaries. These can be viewed here (by applying the relevant A, A+ and A* filter for each GSP 'category' indicator). What makes this relevant to South Africa is that AGOA extends the duty-free preferences – reserved under the GSP for LDC countries – also to AGOA beneficiaries, and therefore also to South Africa.

So what, in essence, could follow from the GSP review process? Four main scenarios stand out:

i. Nothing happens (but South Africa possibly remains on a special 'watch')

ii. Nothing happens for now (but possible action is suspended until such time that South Africa enacts the legislation that triggered the review)

iii. South Africa loses some GSP preferences but not GSP beneficiary status overall – possibly targeting certain sectors or trade volumes

iv. South Africa loses GSP beneficiary status as a whole (which then also removes South Africa's AGOA beneficiary status as that is conditional on GSP beneficiary status).

The US GSP (and similar GSP programmes globally) operates under a waiver – known as the Enabling Clause – of the standard non-discrimination requirements and associated most-favoured-nation (MFN) principles of the WTO, and therefore forms its primary legal basis in the multilateral context. This enabling legislation then allows developed countries to offer developing (and least developed) countries more favourable market access to its own markets, and importantly, also on a non-reciprocal basis.

Article 3 of this legislation requires GSP programs to be "designed and, if necessary, modified, to respond positively to the development, financial and trade needs of *developing* countries" (emphasis added), and as such should be tailored to the interests of the recipient countries rather than the economic (or political) interests of the preference granting country.

Using non-reciprocal GSP preferences as some kind of direct or *de facto* leverage to extract special concessions from beneficiary countries (to comply with standards set by the grantor country rather than the development needs of the beneficiary country) could then potentially be in contravention of the requirements of the WTO regulations under which the GSP operates. The benchmark is that any action taken by a GSP recipient country must breach broad-based international or multinational standards rather than those of interest primarily to the parties concerned (the preference granting country, or indeed, the beneficiary country).

Similarly, the WTO Dispute Settlement Understanding (DSU) requires that its Member States do not unilaterally adjudicate a dispute by making a determination "to the effect that a violation has occurred" (see Article 23(2)a of the DSU); rather, such disputes should be settled under the WTO's dispute settlement processes. Nevertheless, recent experience (for example the so-called US-China "trade war") has again shown that trade disputes are often addressed unilaterally rather than multilaterally, for example under so-called Section 301 legislation of the US, even though its use in isolation of WTO mechanisms has previously been rejected by a WTO panel report. There have in fact been remarkably dissimilar approaches followed regarding this matter, even in the presence of various multilateral mechanisms that should (or could) have been used by all parties concerned. Perhaps weighing somewhat on the situation above has been the significant imbalance in trade volumes.

While any GSP review remains the prerogative of the preference granting country, any resultant action that flows from it and which potentially removes beneficiary status from a beneficiary country could potentially, depending on the facts at hand, create issues and even be reviewable under the Dispute Settlement Mechanisms and associated procedures, or under the *Enabling Clause*. This potentially adds another dimension to the review process around South Africa's participation under the US GSP (and by extension AGOA).

While the GSP offers non-reciprocal duty-free benefits to US importers (i.e. partner countries aren't compelled to offer the same preferences on the importation of US-made products into their countries), the program is clearly not entirely unconditional, nor need it be. Apart from the US' multilateral commitments with respect to the GSP, it national legal basis is specifically the *Trade Act of 1974*, where the conditions and requirements pertaining to GSP product coverage and country eligibility are set out. In order to be eligible for preferential clearance into the US under GSP, a product must be GSP eligible, must be imported directly from a beneficiary country, must meet the rules of origin requirements (i.e. must be the growth, product or manufacture of a beneficiary country or have undergone sufficient value-addition there), and must be cleared on importation into the US with the relevant shipping documentation and GSP program indicator denotation (A, A+ or A*).

But what does the US Trade Act of 1974 say with respect to product and more importantly country coverage? The conditions pertaining to designating a country as a beneficiary country for purposes of GSP preferences are contained in Chapter 12 Sub-Chapter V (US Code Section 2462). This legislation gives the US President the power to designate a country as a GSP beneficiary, it also provides a number of "factors affecting country designation". These are (summarised):

- A country's (expression of) interest to be designated as a beneficiary country
- Economic development, living standards, GNP per capita and other "appropriate" economic factors of that country
- Whether other major developed countries extend GSP benefits to that country
- The extent to which the US has equitable and reasonable market access to that country

- *The extent to which intellectual property rights are adequately and effectively protected* (emphasis added)

- Absence of unreasonable export practices by that country

- Extent to which a country has reduced trade distorting investment practices and has reduced or eliminated barriers to trade in services

Similarly, the AGOA legislation draws on another additional set of eligibility criteria (Chapter 23 (US Code Section 3703) which also make reference, in paragraph 1(C), to the elimination of barriers to US trade and investment, including through…"*the protection of intellectual property*".

Both the GSP and the AGOA programmes are subject to periodic reviews, and both are in fact currently being reviewed. At the center of the IIPA's filing(s) relating to South Africa's compliance – both with GSP and AGOA criteria – lie the (planned) legislative amendments to South Africa's intellectual property laws. These are contained in the following:

- Copyright Amendment Bill (B13B-2017)

- Performer's Protection Amendment Bill (B24B-2016)

Each legislative amendment has gone through a number of years of deliberation, consultation, draft changes and adaptations, since the process to update South Africa's copyright legislation (Copyright Act and Performers' Protection Act) began in 2015. This process has been fraught and the proposed legislative changes remain highly contentious in some quarters, both domestically and internationally. Notwithstanding, both pieces of legislation have now gone through almost all of the formal processes (including parliamentary approval) and – for the past few months already – have remained on the desk of the president awaiting signature and passage into law.

A critique of the legislation is outside of this analysis, but in the context of the complaint by the IIAP – which now has culminated in South Africa's future status as a GSP beneficiary country being reviewed – it is perhaps worth noting in broad terms some of the core arguments that the IIAP presents in its complaints. Underlying these is the IIPA's stated position that South Africa fails to provide adequate and effective copyright protection for US copyright creators and owners, and does not offer assurances to the US that equitable and reasonable market access will be provided.

The IIPA also draws on a country's obligations, commitments and standards derived from the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) in terms of copyright protection and enforcement and the standards and legal norms around online marketplaces provided under the various World Intellectual Property Organization (WIPO) Internet treaties, such as the WIPO Copyright Treaty (WCT) as well as the WIPO Performances and Phonograms Treaty (WPPT). The following are some of the concerns it raises:

- The presence of limitations on the freedom of rights holders to contract in the open market (both bills limit the assignment of rights to a maximum of 25 years) and the inclusion of ministerial powers to determine compulsory contractual terms for contracts "seemingly" covering any transfer or use of rights

- A hybrid fair use/fair dealing approach that borrows from US legislation but contains broad exceptions and limitations to copyright protection, "whose effects would imperil the legitimate markets for educational materials, locally-distributed works, and online works in general".

- The inclusion of licensing and regulatory mechanisms that are likely to undermine the digital marketplace, focusing on regulating relationships between (creative) parties instead of providing an adequate legal framework within which the parties can then freely negotiate the terms and conditions of their relationship

- Inadequate criminal and civil remedies for infringement, including online piracy, and inadequate provisions relating to technical protection measures, as well as relating to circumvention of such measures.

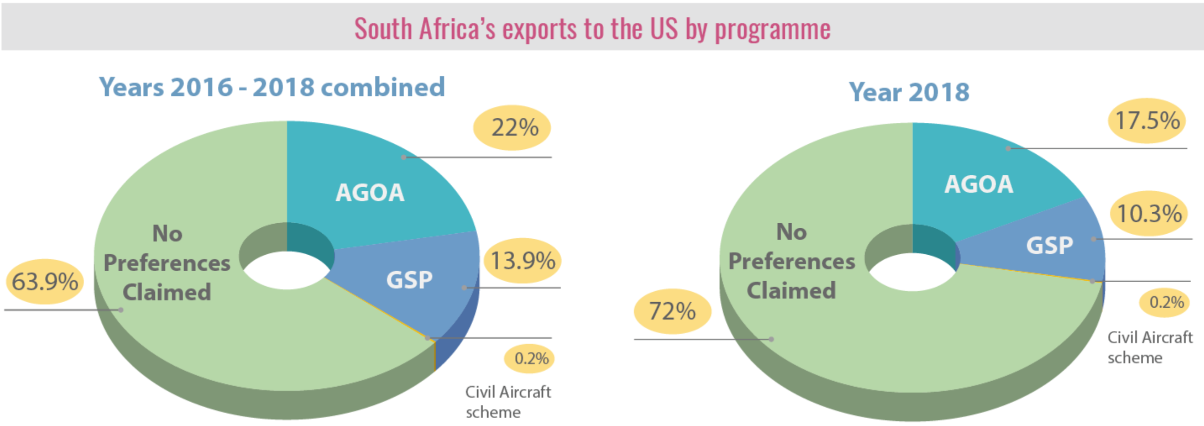
In essence, the key concern is that (US) copyright holders and related commercial interests will not be sufficiently protected in the South African market and transgressions not adequately prosecuted as a result of deficiencies in the underlying law. For example, fair-use exemptions (e.g. relating to textbooks) could reduce the copyright protection afforded to certain educational materials in what appears potentially to be a mismatch between the IP laws prevalent in developed countries (i.e. the US) and perhaps some of those of developing countries (i.e. South Africa and others).

Trade under GSP and AGOA: What is at stake for South Africa?

Two-way trade between the United States and South Africa was valued at $13.3 billion in 2018. This has doubled in dollar terms since 2000 (and more so in ZAR terms), the year that the AGOA legislation was enacted and South Africa's preferences to the US market expanded beyond what was until then available only under the GSP. Under combined GSP/AGOA preferences, along with the (sizable) portion of product lines that are already duty-free under the US' NTR regime (i.e. WTO Most-Favoured-Nation), South Africa now only faces tariffs on approximately 5% of **potential** exports (i.e. tariff line classifications) to the US. This number does not however account for current special tariffs on certain aluminium and steel product lines that may not have received an exemption relating to recent US protective action on its global steel and aluminium imports, having invoked Section 232 of the Trade Expansion Act of 1962 for this purpose in March 2018 (the first time this legislation has been invoked since the inception of the WTO).

South Africa has also consistently recorded a trade-in-goods **surplus** with the United States; in 2018, exports to the United States ($8,470m) exceeded imports from the US ($5,517m) by more than 50%. This rather positive situation from South Africa's perspective is shown in the following chart:

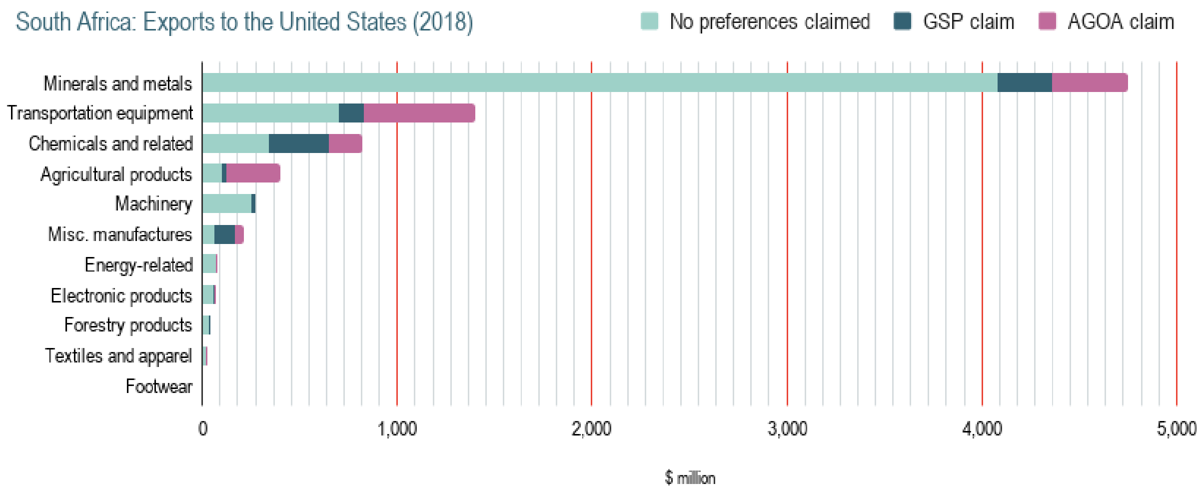
In terms of exports by preference programme, and counting the past 3 years' (2016-2018) exports to the US, it is evident that the **majority of trade happens without any special preferential market access** (in other words, on a 'normal tariff relations' basis); and most of this is currently in duty-free categories. 13.9% of South Africa's exports were able to claim (duty-free) GSP preferences while an additional 22% entered the US duty-free by claiming AGOA preferences. Even if all preferential (duty-free) trade were removed, South Africa would still be recording a trade surplus.



About one third of South Africa's exports to the US over the past three years however enjoyed (and continues to enjoy) a competitive advantage in the US market as a result of US importers being able to claim GSP/AGOA preferences. Preferences in **these** categories are now potentially threatened, depending on the outcome of the GSP review process. This would directly impact US buyers and consumers, and South African producers and exporters.

'*Minerals and metals*' accounts for the largest export category, with $4.75 billion in exports to the US in 2018. Most trade takes place under normal tariff relations, comprising products for which there is **no import duty** on an MFN ('normal tariff relations') basis. Although 'only' 15% of sector trade utilised AGOA/GSP preferences (certain ferroalloys, carbides, certain jewellery, aluminium sheets), this still amounted to $673m and the second largest category nominally in terms of preferences claimed on South African export goods.

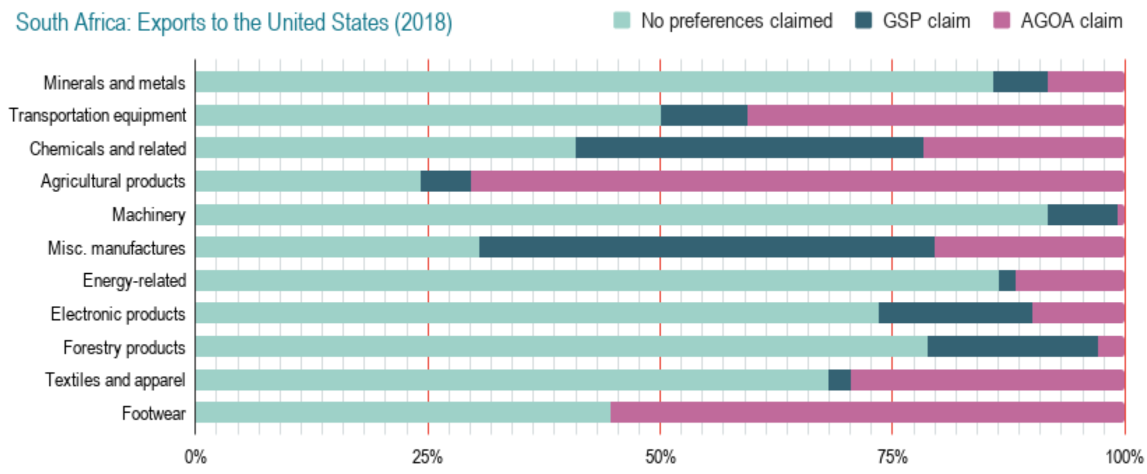
The sectors for which GSP preferences matter the most *relative* to total exports to the US are 'chemicals' (e.g. industrial fatty acids), 'transportation equipment' (motor vehicles) and 'miscellaneous manufactures' (e.g. yachts) . When including AGOA, the agricultural sector, however, potentially has some of the greatest *exposure* to a loss of preferential market access with 75% (equal to $304m) of South Africa's US-bound agricultural trade having been cleared into the US under duty-free preferences during 2018.



The diagram above shows South Africa's exports to the US sector by sector, in descending order of value, differentiating between the amounts that were cleared under normal tariff relations ("no preferences claimed") versus GSP and AGOA preference claims on importation. This should be viewed alongside the following diagram, which shows the relative breakdown of preferential and non-preferential trade by sector on a percentage basis for the year 2018. Here, the share of GSP (chart: dark blue) is potentially vulnerable under the GSP review while the purple bar chart reflects the share that would be impacted should South Africa lose GSP beneficiary status altogether, since this would then also remove South Africa's current AGOA status.

Minerals and metals, for instance, accounted for 59% ($4,754m) of South Africa's US exports while textiles and apparel's share was 'only' 0.31% ($25m). Nevertheless, for companies operating within each respective sector and who export to the US, issues around preferential market access are entirely relevant, and potentially critical.

Focusing on the relative utilization (exposure) of GSP/AGOA preferences, the **agricultural** sector is clearly the largest user of preferences, followed by miscellaneous manufactured goods, chemical products and transportation equipment.



For **misc. manufactures**, **GSP** access is most relevant: 49% of exports utilized GSP and another 20% AGOA (combined 69%).

For the **agricultural** sector, only 5% entered the US under GSP while 71% used AGOA (combined 76%).

For **chemicals**, GSP was used by 37% and AGOA by 22% (combined 59%).

Transportation equipment used the GSP for 9% of exports and AGOA for 41% (combined 50%).

The greater the share of South Africa's exports entering the US under preference, the greater the potential "exposure" to any changes to US importers' access to GSP and possibly AGOA benefits when sourcing South African made qualifying goods. However, and this is important, exposure may represent vulnerability **but does not automatically translate into an equivalent risk of (or result in) lost markets and trade**. Rather, other factors would also need to be considered on a case by case, sector by sector basis, not all of which are easily and objectively measurable.

Relevant factors to be considered might therefore also include:

- Actual preference margins in each traded product i.e. the size of the normal import tariff compared to duty-free preferential market access;

- The type of value chain and uniqueness of the product (along with possible market dynamics flowing from South Africa's relative size, or other relevant factor as a supplier pertaining to each product in question);

- Other value chain dynamics such as whether the South African export product forms part of a buyer or producer driven value chain, along with the ability of the parties to a transaction to set (and absorb or pass on) price changes;
- The seasonality of the product and associated demand and supply characteristics;
- The nature of the commercial relationship between South African supplier and US buyer;
- The presence or not of alternative destination markets for South African goods, and the speed at which such goods could be "re-routed" to other buyers;
- The ability to absorb a possible loss in preferences (e.g. by lowering the effective selling price);
- The price elasticity of demand for a product, i.e. the changes in demand in reaction to changes in price (resulting from higher landed costs), etc.

Given the nature of exports to the US, it is worthwhile looking a little closer at some of the sectors, namely transportation equipment, chemicals and agricultural exports.

The following tables contrast some of South Africa's key sector exports to the US claiming *preferential* entry in 2018 against the preference margin (normal duty) that would otherwise be payable by the importer.

Leading transportation equipm. exports under preference by South Africa to the United States in 2018 | $ million

HTS code	Product description	Preference Scheme	Value 2018	NTR tariff (pref margin)	AGOA / GSP
87032301	Motor vehicles w/spark-ign. >1, 500cc but <=3, 000cc	AGOA	$534.5	2.5%	no tariff
84099991	Engine parts nesoi, used with mtr. vehic. engines	AGOA	$70.87	2.5%	no tariff
84082020	Compress.-ignition piston engines for mtr. vehic.	AGOA	$16.96	2.5%	no tariff
87089981	Pts. & access., nesoi, of mtr. vehicles	GSP	$16.19	2.5%	no tariff
84082020	Compress.-ignition piston engines for mtr. vehic.	GSP	$4.59	2.5%	no tariff
87089275	Pts. & access., nesoi, parts of mufflers, nesoi	GSP	$4.54	2.5%	no tariff
87071000	Bodies (including cabs), for mtr. vehicles of 8703	AGOA	$3.63	2.5%	no tariff
87039001	Motor vehicles to transport persons, nesoi	AGOA	$2.83	2.5%	no tariff
87084011	Pts. & access. of mtr. vehicles, gear boxes	GSP	$2.68	2.5%	no tariff
87089275	Pts. & access., nesoi, parts of mufflers, nesoi	AGOA	$1.54	2.5%	no tariff

Transportation sector goods comprise primarily HTS Chapter 87 articles, mainly motor vehicles and parts. The NTR tariff is consistent at 2.5%. It could thus be suggested that the duty saving on US imports from South Africa in effect compensates much of the cost of shipping the goods from South Africa to the US. Most AGOA-eligible products are also GSP classified, and can be cleared into the US under either classification (GSP 'A' or AGOA 'D') – for example engine parts under HTS 84082020 in the table above.

Leading chemical and related exports under preference by South Africa to the United States in 2018 | $ million

HTS code	Product description	Preference Scheme	Value 2018	NTR tariff (pref margin)	AGOA / GSP
38237060	Industrial fatty alcohols not of animal or vegetable origin	AGOA	$58.45	2.4%	no tariff
28253000	Vanadium oxides and hydroxides	GSP	$49.99	5.5%	no tariff
28499050	Carbides, nesoi	AGOA	$44.55	3.7%	no tariff
29141200	Butanone (Methyl ethyl ketone)	GSP	$40.42	3.10%	no tariff
28499050	Carbides, nesoi	GSP	$33.33	3.7%	no tariff
28439000	Inorganic or organic compounds of prec. metals	AGOA	$29.77	3.7%	no tariff
29161250	Nonaromatic esters of acrylic acid	GSP	$25.99	3.7%	no tariff
28439000	Inorganic or organic compounds of prec. metals	GSP	$25.63	3.7%	no tariff
29141300	4-Methylpentan-2-one (Methyl isobutyl ketone)	GSP	$13.23	4%	no tariff
29153100	Ethyl acetate	GSP	$12.27	3.7%	no tariff

The ten leading exports (under preference) in the chemical and related products sector **individually** recorded exports of over $10m each in 2018. Applicable tariffs under NTR entry are up to 5.5%; preferences under both AGOA and GSP clearly contributing significantly to the competitiveness of South African-made products in the US. With just short of 60% of South Africa's US-bound exports in this sector utilising AGOA/GSP preferences during 2018, the sector is potentially significantly exposed to any changes in the underlying preference schemes.

The agricultural sector (table below) has achieved significant success under AGOA, with almost 70% of total sector exports to the US able to claim AGOA preference and an additional 5% GSP in 2018. Nuts, citrus and wine are the three primary beneficiaries , some facing significant duties under normal tariff relations.

Preferences have helped South African exporters achieve significant success in the US, albeit on the back of important domestic dynamics. Fresh oranges (HTS 08051000) from South Africa accounted for 21% of *total* US imports of oranges in this tariff classification and the country was the second largest source of imported oranges into the US after Chile, and ahead of Mexico. South Africa's orange growing season (only oranges from the Western and Northern Cape have the necessary SPS certification for US imports) is at completely different times of the year (southern vs. northern hemisphere) to that of the US.

For macadamia nuts, South Africa (and Kenya) each accounted for 36% of the total US import market in 2018, aided by the AGOA preference margin. This relatively fast growing crop has made full use of the preferences on offer, while benefiting from positive consumer sentiment and trends. On the back of this, production in South Africa and Kenya has been increasing significantly.

Leading agricultural exports under preference by South Africa to the United States in 2018 | $ million

HTS code	Product description	Preference Scheme	Value 2018	NTR tariff (pref margin)	AGOA / GSP
08026200	Macadamia nuts, shelled	AGOA	$66.71	5c / kg	no tariff
08051000	Oranges, fresh or dried	AGOA	$43.73	1.9c / kg	no tariff
22042150	Wine, in containers not over 2 liters	AGOA	$34.04	6.3c / kg	no tariff
08062010	Raisins, made from dried grapes	AGOA	$16.80	1.8c / kg	no tariff
22071060	Undenatured ethyl alcohol of <80 % vol. alcohol	AGOA	$14.30	2.5%	no tariff
17011410	Other cane sugar, raw, in solid form	AGOA	$13.26	1.4606c / kg	no tariff
08052100	Mandarins, including tangerines and satsumas	AGOA	$ 8.78	1.9c / kg	no tariff
08052200	Clementines, fresh or dried	AGOA	$ 8.60	1.9c / kg	no tariff
08029098	Nuts nesoi, fresh or dried, shelled	AGOA	$ 7.42	5c / kg	no tariff
21050050	Edible ice, except ice cream	AGOA	$ 6.56	17%	no tariff

What comes next? What are the vulnerabilities for South Africa?

On 19 November 2019, the US announced a timeline for the hearings in the Federal Register. The first key date – 17 January 2020 – represents the first deadline for filing of comments and pre-hearing briefs, followed by public hearings on 30 January 2020 (GSP country practice reviews of Azerbaijan, Ecuador, Georgia, Indonesia, Kazakhstan, Thailand, **South Africa**, Uzbekistan, as well as Laos). Post-hearing submissions may be made until 28 February 2020. The timeline for any possible outcomes or changes to the GSP has not yet been determined.

As shown in the analysis above, over the past three years, over one third of South Africa's exports to the US were cleared at destination in terms of GSP/AGOA preferences. Of this, about one third of the preferential trade took place under the GSP, while two thirds utilized AGOA preferences. Given that many products have dual GSP/AGOA status (i.e. they are GSP but also the more long-term AGOA classification), these differences in preferential clearance into the US are somewhat less relevant, but highlight the relative importance of the respective programmes to importers of South African goods.

If the US' GSP review indeed finds and confirms 'contraventions' of the US GSP eligibility criteria in South Africa's copyright legislation (not yet enacted), then action could potentially be suspended, or the country could become subject to close monitoring for any further developments in this regard.

Should only limited action follow pertaining to the GSP only – for example South Africa loses GSP preferences for certain product categories or sectors – then the impact on South Africa would be relatively limited. A total of around 10% of South Africa's exports in 2018 cleared into the US duty-free under GSP (see earlier pie charts showing breakdown of US imports). Leading products under GSP exported by South Africa comprise inorganic chemicals, iron and steel, and minerals (precious metals and stones).

If however the US ultimately decides to remove South Africa's GSP beneficiary status altogether then this could have more far-reaching and serious consequences due to the knock-on impact also on AGOA eligibility. AGOA eligibility requires a country to (also) meet the GSP eligibility standards and a loss of GSP beneficiary status would essentially then pull the rug out from under the country's AGOA beneficiary status.

Sectors whose exports have the highest AGOA clearance status relative to total US-bound exports in 2018 were the **agricultural sector, transportation goods** and **chemicals**, but even sectors and individual firms in sectors with much lower trade volumes could be significantly affected.

The agricultural sector is potentially the most exposed with 70% of trade taking place under AGOA (and another 5-6% under GSP). Half of all automotive goods utilise AGOA (and to a lesser extent GSP), which removes the 2.5% import duty that would otherwise be payable. And around 60% of chemical and related goods make use of GSP and AGOA, with tariffs on leading exports mostly in the 2.5% – 4% band on importation into the US.

The impact of a total loss of preference is quite unpredictable for some of the reasons spelt out earlier, including the actual preference margin (duty saving), the price elasticity of demand by US importers for South Africa's exports, the presence (and ease of switching) of alternative markets for South Africa's affected exports, the value chain dynamics prevailing in each product category and the broader sector, and so forth.

It is therefore impossible to conclude what the likely gravity of any actual "loss" to South African-US trade would be, should South Africa lose (any) preferential market access; only that **up to one third of all South Africa's US-bound exports are potentially exposed and vulnerable.** It's likely that far less would actually be impacted in a manner that significantly reduces or even torpedoes the export trade currently taking place.

Whether any potential action on trade preferences by the US would have any arguably positive impact on any party involved, or even result in changes to the as yet un-enacted legislation, also remains to be seen. There is of course the potential of it inching the two countries closer towards seriously considering a reciprocal comprehensive trade agreement despite the respective positions and ambitions still appearing to be quite far apart.

Changes in the preference landscape would undoubtedly negatively affect both US importers, downstream businesses and consumers (in the US) it would do the same to South African producers and exporters and workers – in other words, an overall loss in the many benefits from trade between the US and South Africa, and felt on both sides.

The bigger impact likely lies elsewhere though, including a possible deterioration in the bilateral non-preferential trade relationship overall, harm to the investment climate involving the US and South Africa, undermining of established value chain linkages, and (even) broader political relations and dynamics. There could also potentially be implications owing to countries' international obligations under the multilateral trade framework, as discussed earlier. Economic and trade benefits almost always lay the groundwork for a deeper and more meaningful relationship in many other areas too, a fact that will without doubt weigh on any decision-making and outcomes of the GSP country review around South Africa's continuing eligibility status.

- - -