



Enhancing sustainable development in South Africa through the efficient utilisation of SPS measures

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ABSTRACT

Sustainable development is increasingly vital in international trade, highlighting the need to align economic growth with environmental and sustainability goals. This study explores the role of Sanitary and Phytosanitary measures in fostering sustainable development within international trade, focusing on their application in Africa, particularly South Africa. Sanitary and Phytosanitary measures aim to balance the facilitation of global trade with the protection of human, animal, and plant health, supporting environmental sustainability and public well-being. International organisations and agreements, including the World Trade Organisation's *Agreement on the Application of Sanitary and Phytosanitary Measures* and the *General Agreement on Tariffs and Trade* are cited as frameworks that empower countries to implement scientifically sound health and safety standards. These measures help ensure that trade progresses without compromising environmental integrity or consumer safety.

Furthermore, harmonising sanitary and phytosanitary measures may be crucial for improving trade efficiency, driving policy alignment across Africa. This alignment is underscored by the African Continental Free Trade Area Agreement and the African Union's Sanitary and Phytosanitary Policy Framework. These initiatives seek to enhance intra-African trade by reducing barriers, improving agricultural sustainability, and fostering regional economic growth.

South Africa, one of Africa's leading trading nations, is committed to aligning national regulations with international standards while addressing local challenges, such as resource constraints and trade inefficiencies. By leveraging SPS measures effectively, South Africa and the broader African continent can boost sustainable agricultural practices, expand trade opportunities, and contribute to achieving the United Nations' Sustainable Development Goals. The study concludes that well-implemented SPS measures are critical in promoting a sustainable trade environment, ensuring long-term economic and environmental benefits.

Keywords: International trade policies; sustainable development; SPS measures; AfCFTA; African Union's Sanitary and Phytosanitary Policy Framework; agricultural sector; the World Trade Organisation.

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LIST OF ABBREVIATIONS AND ACRONYMS

<i>AfCFTA</i>	<i>African Continental Free Trade Area</i>
<i>AfCFTA Agreement</i>	<i>Agreement Establishing the African Continental Free Trade Area</i>
ALOP	Appropriate Level of Protection
AU	African Union
AUC	African Union Commission
CAADP	Comprehensive African Agricultural Development Programme
CBS	Citrus Black Spot
CBS-RMS	CBS Risk Management Scheme
CEN-SAD	Community of Sahel-Saharan States
Codex	Codex Alimentarius Commission
COMESA	Common Market for Eastern and Southern Africa
CTE	Committee on Trade and Environment (WTO)
DAFF	Department of Agriculture, Forestry, and Fisheries
DALYs	Disability-Adjusted Life Years
DOH	Department of Health
DREA	Department of Rural Economy and Agriculture (AU)
DSB	Dispute Settlement Body (WTO)
<i>DSU</i>	<i>Understanding on Rules and Procedures Governing the Settlement of Disputes</i>

DTI	Department of Trade and Industry
EAC	East African Community
ECCAS	Economic Community of Central African States
EC	European Community
<i>EC-Hormones</i>	<i>EC-Measures Concerning Meat and Meat Products</i>
ECOWAS	Economic Community of West African States
EU	European Union
FAO	Food and Agriculture Organisation (of the United Nations)
FCM	False Codling Moth
<i>Framework</i>	<i>African Union Sanitary and Phytosanitary Policy Framework</i>
FSIN	Food Security Information Network
<i>GATT</i>	<i>General Agreement on Tariffs and Trade</i>
GDP	Gross Domestic Product
GlobalGAP	Global Good Agricultural Practices
IGAD	Intergovernmental Authority on Development
I-TIP	Integrated Trade Intelligence Portal
<i>IPPC</i>	<i>International Plant Protection Convention</i>
ISSBs	International Standard Setting Bodies
NDP	National Development Plan, 2030
<i>NEMA</i>	<i>National Environmental Management Act 107 of 1998</i>

NTBs	Non-Tariff Barriers
NTMs	Non-Tariff Measures
OEC	The Observatory of Economic Complexity
PPECB	Perishable Products Export Control Board
RECs	Regional Economic Communities
SACU	Southern African Customs Union
SADC	Southern African Development Community
SAPA	South African Poultry Association
SDGs	United Nations 2030 Sustainable Development Goals
SGS	Société Générale de Surveillance / General Society of Surveillance
<i>Shrimp-Turtle</i>	<i>United States – Import Prohibition of Certain Shrimp and Shrimp Products</i>
SMEs	Small or medium-sized enterprises
SPS	Sanitary and Phytosanitary
<i>SPS Agreement</i>	<i>Agreement on the Application of Sanitary and Phytosanitary Measures</i>
SPS Committee	WTO Committee on Sanitary and Phytosanitary Measures
STCs	Specific Trade Concerns
<i>TFA</i>	<i>Agreement on Trade Facilitation (2017)</i>
UMA	Arab Maghreb Union

UN	United Nations
USA	The United States of America
USD	United States Dollar
WHO	World Health Organisation
WOAH	World Organisation for Animal Health/International Office of Epizootics
WTO	World Trade Organisation
<i>WTO Agreement</i>	<i>Marrakesh Agreement Establishing the World Trade Organisation</i>
WTO-STDF	World Trade Organisation's Standards and Trade Development Facility

1 Introduction

1.1 Background

The gap between environmental sustainability¹ and trade can be attributed to the intersection of economic growth and environmental concerns, which presents a significant modern challenge. Embracing the principles of sustainable development offers a potential solution to address this issue.² Sustainable development is defined as “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.³ It is acknowledged that international trade was created for the purpose of economic growth and not specifically for enhancing environmental sustainability.⁴ Through the lens of sustainable development, trade could be harnessed as a tool to bolster environmental sustainability. This view is underpinned by two interconnected core principles. Firstly, it underscores the imperative of meeting humanity's fundamental needs.⁵ Secondly, it recognises the boundaries of development, as influenced by prevailing technology, social structures, and their impact on environmental resources and the biosphere's resilience to cope with human activities.⁶ Currently, companies face increasing demands to establish sustainable development policies, given the heightened significance of crafting viable trading policies that promote environmental sustainability.⁷ This could be challenging since unchecked international trade could have a negative impact on the environment, while sustainable environmental policies could be conceived of as a barrier to trade.⁸ The debate around sustainable development arises at the point where economic growth and environmental sustainability

¹ Environmental sustainability refers to the capability of preserving the ecological equilibrium within our planet's natural environment and safeguarding natural resources to meet the needs of current and future generations. This notion, described as the preservation of natural capital, is distinct from but interconnected with both social sustainability and economic sustainability. See Morelli 2011 *Journal of Environmental Sustainability* 5.

² OECD 2023 <https://www.oecd.org/trade/topics/trade-and-the-environment/>.

³ World Commission on Environment and Development *Our Common Future* 43.

⁴ Birnie, Boyle, and Redgwell *International Law and the Environment* 777.

⁵ World Commission on Environment and Development *Our Common Future* 43.

⁶ World Commission on Environment and Development *Our Common Future* 43.

⁷ With the significant growth of global trade there has been a rise in environmental challenges such as biodiversity loss, water scarcity, climate change, and air pollution. This demands immediate international collaboration. Given this scenario, it is crucial to urgently address the relationship between international trade policies and domestic environmental regulations. See OECD 2023 <https://www.oecd.org/trade/topics/trade-and-the-environment/>.

⁸ OECD 2023 <https://www.oecd.org/trade/topics/trade-and-the-environment/>.

intersect. Balancing these two seemingly opposing interests becomes crucial, as economic growth must be nurtured within a sustainable environmental framework to ensure its long-term success. This study centres on finding the right equilibrium for a developing continent like Africa, with a particular focus on South Africa.

1.2 Trade under the World Trade Organisation

The World Trade Organisation (hereafter the WTO) is an international organisation with the objective of ensuring that international trade proceeds smoothly, predicably, and freely.⁹ The WTO acts as a common institutional organisation with a framework for Member States to conduct trade relations based on agreements and associated legal instruments.¹⁰ Therefore, the WTO has a vital function in facilitating global trade, fostering economic progress, and ensuring that trade is carried out fairly and transparently.¹¹ The WTO was established in 1995 as a result of the creation of the *Marrakesh Agreement Establishing the World Trade Organisation* (hereafter *WTO Agreement*).¹² This agreement, and its several annexures, is the WTO's governing document.¹³ It is important to note, however, that although the *WTO Agreement* is the successor to the previous legal regime known as the *General Agreement on Tariffs and Trade* (hereafter *GATT*), which was adopted in 1947, the *GATT* remains the main constituent treaty that the WTO administers.¹⁴

From the outset, the *GATT* precluded any domestic laws that impeded the trade of goods and services across borders.¹⁵ Consequently, most of the *GATT* principles have been carried over to the *WTO Agreement*, including fundamental principles like the "most-favoured nation" rule and the national treatment.¹⁶ According to the "most-favoured nation" rule, a country must not discriminate between its trading partners by offering

⁹ WTO *WTO in brief* 10.

¹⁰ Article II:1 of the *Marrakesh Agreement Establishing the World Trade Organisation* (1995).

¹¹ Matsushita, Schoenbaum, Mavroidis and Hahn *The World Trade Organisation – Law, Practice, and Policy* 18.

¹² Matsushita, Schoenbaum, Mavroidis and Hahn *The World Trade Organisation – Law, Practice, and Policy* 10.

¹³ WTO *WTO in brief* 7.

¹⁴ Birnie, Boyle, and Redgwell *International Law and the Environment* 775.

¹⁵ Birnie, Boyle, and Redgwell *International Law and the Environment* 775.

¹⁶ Birnie, Boyle, and Redgwell *International Law and the Environment* 775.

more favourable treatment to one country over another.¹⁷ In other words, any trade concessions, such as lower tariffs or reduced trade barriers, granted to one country must be extended to all other WTO members. Furthermore, the national treatment rule states that any trade restrictions put in place by a nation cannot discriminate against different types of goods by giving domestic products an advantage over imported ones.¹⁸ The “most-favoured nation” regulations and national treatment rules were created to prevent protectionism, and this is where the environment issue becomes relevant in trade. Although the WTO primarily focuses on trade rather than the environment, it permits trade restrictions related to environmental sustainability and protection, if such restrictions are not merely disguised protectionism under the pretext of environmental concerns.¹⁹

The multilateral trading system, which underpins how the WTO functions, reinforces agreements that Member States negotiate, sign, and have ratified by their respective parliaments.²⁰ These agreements serve as the legal framework for international trade, therefore giving the WTO the ability to impose obligations on all its Member States that are signatories to an agreement.²¹ Being a membership-based organisation, the WTO can impose restrictions on a Member State’s domestic policies only through the negotiations and commitments they voluntarily agree to when signing a multilateral or bilateral treaty.²² Thus, the regulations of the WTO are imposed by the members themselves under mutually agreed procedures when negotiating treaties. If a restriction must be enforced, the Member States must impose it, and the membership as a whole must approve it.²³

Furthermore, these treaties create binding commitments for Member States to adhere to specific trade policies, while simultaneously recognizing and providing essential trade rights to the Member States, thereby fostering collaboration and enhancing predictability

¹⁷ Article I of the *General Agreement on Tariffs and Trade* (1994).

¹⁸ Article III of the *General Agreement on Tariffs and Trade* (1994).

¹⁹ Joubert *Sanitary and phytosanitary measures as barriers to trade: A South African perspective* 4.

²⁰ WTO *WTO in brief* 3.

²¹ WTO *WTO in brief* 3.

²² WTO 2022 https://www.wto.org/english/thewto_e/whatis_e/tif_e/org1_e.htm.

²³ WTO 2022 https://www.wto.org/english/thewto_e/whatis_e/tif_e/org1_e.htm. See also WTO *WTO in brief* 6.

and stability in the international trade arena.²⁴ There are currently 164 Members that form part of the WTO.²⁵

The WTO serves as the principal forum for negotiations of multilateral trade agreements between its members, and for the legally enforceable settlement of disputes resulting from disagreements.²⁶ As the WTO functions within the bounds of the *WTO Agreement* and of the agreements established between the Member States, there will inevitably be conflicts that stem from the breach of agreement terms or the misinterpretation of an agreement.²⁷ Thus, when a trading conflict arises from an agreement, either through the belief that a members state's domestic policies are not aligned with the terms of the agreement signed or there is a violation of the *WTO Agreement*, then a Member State may approach the WTO Dispute Settlement Body (hereafter the DSB).²⁸

The DSB is governed by Annex 2 of the *WTO Agreement*. The primary goal of the DSB is to provide protection and reliability to the multilateral trading system, through speedy and simple dispute resolution.²⁹ The DSB usually encourages Member States to resolve their conflict through consultation or negotiation efforts. If this fails, Member States can request the formation of a panel to resolve the dispute. The panel will issue a report of its decision, which can then be appealed to the WTO's Appellate Body.³⁰

1.3 The WTO and environmental protection

It is important to assess the legal framework of the multilateral treaties within the *WTO Agreement*, in order to understand whether these treaties would allow for the implementation of environmental sustainability measures.³¹ The WTO does not have any specific environmental agreements, and the word "environment" is mentioned very

²⁴ WTO *WTO in brief* 3.

²⁵ WTO 2022 https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm.

²⁶ Birnie, Boyle, and Redgwell *International Law and the Environment* 776.

²⁷ WTO *WTO in brief* 7.

²⁸ European Commission 2023 https://policy.trade.ec.europa.eu/enforcement-and-protection/dispute-settlement/wto-dispute-settlement_en#.

²⁹ Article III:2 and Annex 2 of the *Marrakesh Agreement Establishing the World Trade Organisation* (1995).

³⁰ European Commission 2023 https://policy.trade.ec.europa.eu/enforcement-and-protection/dispute-settlement/wto-dispute-settlement_en#.

³¹ Birnie, Boyle, and Redgwell *International Law and the Environment* 776.

seldom in the *WTO Agreement*.³² Despite the fact that the WTO does not currently have any active environmental agreements, it does incorporate pro-environment policies into some of its agreements, affirming its Member States domestic legal obligation to promote environmental sustainability under certain conditions.³³ The WTO values environmental preservation and sustainable development, as evidenced by the Preamble of the *WTO Agreement*. In accordance with the preamble of the 1994 *WTO Agreement*, trade and economic expansion must allow for,

...the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.³⁴

Environmental sustainability is thus a goal set by the WTO, as all Member States must consider sustainable development, efficient resource use, and environmental preservation when conducting international trade and negotiating agreements.

1.4 WTO jurisprudence on trade and environmental protection

The 1947 *GATT* lists various general exceptions to free trade in Article XX. Although the word "environment" is not used in Article XX, subsections (b) and (g) are significant to the issue of sustainable development, since these subsections engage with environmental sustainability issues and provide justification for environmental trade restrictions.³⁵

The pertinent wording of Article XX states that the Member States of the WTO are permitted to enact measures in their domestic policies that are "necessary to protect human, animal or plant life or health".³⁶ Furthermore, Member States are allowed to enact measures "relating to the conservation of exhaustible natural resources" provided that such measures "are made in conjunction with limitations on domestic production or consumption".³⁷ These measures are subject to the chapeau (or introductory clause) of Article XX, stating that such measures cannot be applied in a way that would "constitute

³² WTO 2023 https://www.wto.org/english/thewto_e/whatis_e/tif_e/bey2_e.htm#.

³³ WTO 2023 https://www.wto.org/english/thewto_e/whatis_e/tif_e/bey2_e.htm#.

³⁴ Preamble of the *Marrakesh Agreement Establishing the World Trade Organisation* (1995). See also Birnie, Boyle, and Redgwell *International Law and the Environment* 776.

³⁵ Birnie, Boyle, and Redgwell *International Law and the Environment* 778.

³⁶ Article XX(b) of the *General Agreement on Tariffs and Trade* (1994).

³⁷ Article XX(g) of the *General Agreement on Tariffs and Trade* (1994).

a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail” or “to act as a disguised restriction on international trade”.³⁸

It seems then that for Article XX to apply to environmental sustainability, two requirements must be met, namely that its measure falls under either paragraph (b) or (g), and that the measure meets the requirements specified in the introductory paragraph of Article XX, namely to not be discriminatory or a veiled trade barrier.³⁹ If these two requirements are not met, then the measure imposed does not constitute true environmental protection. The WTO Appellate Body has been tasked with clarifying how to achieve a balance between free trade and environmental sustainability through the exceptions outlined in Article XX.⁴⁰

Furthermore, the principles outlined in Article XX have been incorporated into the *WTO Agreement* through the *Agreement on the Application of Sanitary and Phytosanitary Measures* (hereafter *SPS Agreement*), a component of the Multilateral Agreements on Trade in Goods as per Annex 1A of the *WTO Agreement*.⁴¹ The *SPS Agreement* serves as an expansion of the Article XX(b) exception to free international trade. Besides outlining specific rules, the *SPS Agreement* provides a route to justify certain restrictive measures, allowing nations to vary from their usual trade obligations under the *GATT*.⁴²

1.5 Motivation

The primary motivation for this study stems from the recognition that, while the WTO allows for environmental sustainability considerations, a crucial question arises: can environmental sustainability effectively coexist with international trade? Environmental sustainability is often perceived as a trade barrier, while international trade is primarily driven by the pursuit of profit and economic growth.⁴³ The central inquiry, therefore, is

³⁸ Article XX of the *General Agreement on Tariffs and Trade* (1994). Birnie, Boyle, and Redgwell *International Law and the Environment* 778.

³⁹ WTO 2023 https://www.wto.org/english/tratop_e/envir_e/envt_rules_exceptions_e.htm.

⁴⁰ Birnie, Boyle, and Redgwell *International Law and the Environment* 778. In chapter 2 a discussion will be had on the how the Appellate Body have managed the Article XX disputes.

⁴¹ See Annex 1 of the *Marrakesh Agreement Establishing the World Trade Organisation* (1995). The *EC-Hormones* case will also be discussed in chapter 2.

⁴² Article 2.4 of the *Agreement on the Application Of Sanitary and Phytosanitary Measures* (1995).

⁴³ Birnie, Boyle, and Redgwell *International Law and the Environment* 777.

whether these seemingly conflicting objectives can be harmonised in a way that international trade not only accommodates but also promotes potentially profitable environmental sustainability practices within the framework of sustainable development.

Environmental sustainability may act as a barrier by limiting market entry for developing nations, intensifying competition, imposing labelling obligations,⁴⁴ implementing environmental taxes,⁴⁵ and impacting process and production methods.⁴⁶ Additionally, environmental sustainability can be realized through non-tariff measures (hereafter NTMs), specifically through the implementation of Sanitary and Phytosanitary (hereafter SPS) measures. NTMs can serve as trade barriers, but this is not always their intended purpose. NTMs refer to policy measures, apart from regular customs tariffs, which can potentially impact international trade in goods by influencing trade quantities or prices, or both.⁴⁷ The impact of these measures on trade can be either positive or negative since they encompass non-tariff barriers (hereafter NTBs), however, they go beyond mere barriers in their scope and effects.⁴⁸

SPS measures are NTMs that grant countries the authority to enforce restrictions on the importation of substandard goods that have the potential to jeopardise consumers' health, harm the environment, or violate safety regulations.⁴⁹ However, a balanced conversation can be had on how SPS measures could benefit trade and environment sustainability when implemented correctly.⁵⁰ Despite the complexity of environmental issues within the realm of trade and the potential trade barriers associated with environmental sustainability, it should remain an important discussion in international trade. SPS measures echo the principles of Article XX(b), as they are designed to safeguard the well-being of humans, animals and plants within a country's borders or prevent further harm from occurring.⁵¹ Approximately 35.8% of all NTMs notifications on

⁴⁴ Birnie, Boyle, and Redgwell *International Law and the Environment* 792.

⁴⁵ Birnie, Boyle, and Redgwell *International Law and the Environment* 796.

⁴⁶ Birnie, Boyle, and Redgwell *International Law and the Environment* 793.

⁴⁷ UNCTAD *International Classification of Non-Tariff Measures* v.

⁴⁸ Penda 2021 *Strathmore Law Review* 170.

⁴⁹ Ghodsi and Stehrer 2022 *World Trade Review* 72.

⁵⁰ United Nations Economic and Social Commission for Asia and the Pacific *Why non-tariff measures matter for sustainable development* 32.

⁵¹ Annex A(1) of the *Agreement on the Application Of Sanitary and Phytosanitary Measures* (1995). See also Kugler and Sucker *International Economic Law (southern) African Perspectives and Priorities* 477.

the WTO's Integrated Trade Intelligence Portal (hereafter I-TIP) pertain to SPS measures, totalling 22,065 measures.⁵² The primary focus of SPS measures lies in the agri-food sector. Livestock, animal products, fruits, and vegetables are particularly affected by SPS measures.⁵³

The agricultural sector plays a crucial role in intra-African trade, constituting around 75% of trade among African nations.⁵⁴ The implementation of the *African Continental Free Trade Area* (hereafter *AfCFTA*) will have a significant influence on this market. The *AfCFTA* is a free trade area encompassing most of Africa, established by the *Agreement Establishing the African Continental Free Trade Area* (hereafter *AfCFTA Agreement*). The *AfCFTA Agreement*, which became effective in 2019, aims to establish a unified continental market for goods and services, encompassing approximately \$1.3 billion (USD) African consumers and a combined GDP exceeding \$3 trillion (USD).⁵⁵ By incorporating Annex 7 of the *AfCFTA Agreement*, which emphasizes the adherence to the "Protocol on Trade in Goods concerning Sanitary and Phytosanitary measures", the agreement strives to promote trade while ensuring the protection of human, animal, or plant life and health within its State Parties' territories.⁵⁶ Moreover, the African Union Department of Rural Economy and Agriculture has formulated an SPS Policy Framework, which outlines a plan to optimize the efficiency and efficacy of SPS systems across the continent. The primary objectives of this framework are to safeguard human well-being and promote intra-African trade, notably in agricultural and food.⁵⁷

The study will specifically centre around South Africa's SPS measures, and their necessity for sustainable development. This study will analyse the country's implementation of SPS measures and their impact on promoting sustainable trade, considering both international and domestic policies. South Africa is a signatory to both the *AfCFTA Agreement* and the

⁵² WTO 2021 <http://i-tip.wto.org/goods/Forms/GraphView.aspx?period=y&scale=lg>.

⁵³ Joubert *Sanitary and phytosanitary measures as barriers to trade: A South African perspective* 3.

⁵⁴ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 19.

⁵⁵ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 19.

⁵⁶ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 19.

⁵⁷ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 8.

WTO Agreement and thus adheres to the SPS measures stipulated by these agreements. The South African legal framework also promotes the idea of the three pillars of sustainable development, looking at economic, social, and environmental development.⁵⁸ This concept is embodied in section 24 of the *Constitution of the Republic of South Africa*, 1996 and the *National Environmental Management Act* 107 of 1998.⁵⁹

Further, it will be examined how the country deals with potentially protectionist SPS measures by looking at practical examples. The first example to be discussed is *South African Poultry Association v The Minister of Agriculture, Forestry and Fisheries* (39597/2016) [2016] ZAGPPHC 862 (21 September 2016), which is a domestic case regarding the enactment of new regulations on permissible brine limits for chicken and the scientific basis behind this regulation.⁶⁰ The second example to be discussed is the *EU – measures concerning the importation of citrus fruit from South Africa*, which is an international dispute between the European Union (hereafter EU) and South Africa regarding the inadequate implementation of SPS measures on South Africa citrus fruit.⁶¹ By addressing these aspects, this project aims to contribute to the understanding and advancement of sustainable trade practices, particularly within South Africa.

1.6 Research question

How could sustainable development be enhanced in South Africa through the utilisation of SPS measures as sustainable trade policies?

1.7 Research aim and objectives

The main aim of this study is to review how SPS measures could be employed as a bridge to ensuring that environmental sustainability is pursued without unreasonable barriers to trade.

The objectives of this study are as follows:

⁵⁸ Kidd *Environmental Law* 17-18.

⁵⁹ Kidd *Environmental Law* 25.

⁶⁰ Vinti 2018 *Obiter* 508.

⁶¹ *EU – measures concerning the importation of citrus fruit from South Africa* WT/DS613/1 (2022) 1.

- Investigating how the WTO recognises environmental sustainability and how the Appellate Body manages cases of environmental sustainability;
- Exploring ways in which international and domestic trade policies can encourage sustainable development and environmental sustainability;
- Exploring possible ways in which trade policies can make sustainable development a viable option in developing countries; and
- Discussing whether a developing country such as South Africa can implement these policies in a sustainable way without unreasonably restricting trade.

1.8 Research methods

This research will be conducted as a desktop study. The research method used primarily involved the collection of data from existing and published resources.⁶² Primary sources will include materials like the WTO agreements, the Constitution of South Africa, trade policies, and international and national jurisprudence. Secondary sources will include relevant textbooks, journal articles, and applicable electronic resources.⁶³

1.9 Framework of the proposed study

This study will be divided into five chapters. The first chapter will be an introductory chapter, discussing how the WTO recognises and potentially facilitates sustainable development. The second chapter will act as a foundational chapter, consisting of a discussion on how international organisations have recognised and contributed to sustainable development and environmental protection. The third chapter will discuss the possible benefits of implementing sustainable development policies into African trade policies using SPS measures. The fourth chapter will specifically focus on South Africa and analyse if these sustainable trade policies are viable in a developing country. The fifth chapter will be the concluding chapter to close the discussion, provide the current solutions available, and consider all possible future solutions.

⁶² Juneja 2015 <https://www.managementstudyguide.com/desk-research.htm>.

⁶³ Juneja 2015 <https://www.managementstudyguide.com/desk-research.htm>.

2 The relationship between sustainable development and trading measures on a global scale

2.1 Introduction

This chapter will explore the nature of SPS measures and their role in the realm of international trade and sustainable development. The operational aspects of SPS measures will be delved into by closely examining the *SPS Agreement*. The *WTO Agreement* is closely interconnected with all the agreements within its purview, and these agreements consistently incorporate the principles outlined in the *GATT*. This exploration will particularly focus on sustainable trading practices and the entitlement to environmental protection regulations within the context of free trade.

The main rules dictating international trade are encapsulated in the *WTO Agreement*, making it a focal point in the ongoing global discourse seeking to identify the connection between trade and the environment. The intersection of trade and environment involves a spectrum of issues acknowledged by the WTO Committee on Trade and Environment (hereafter CTE).⁶⁴ The relationship between the WTO dispute settlement mechanism and the objective of environmental protection and sustainability will be explored through reviewing two significant cases presented to the DSB, namely the *EC-Measures Concerning Meat and Meat Products* case (hereafter the *EC-Hormones* case) and the *United States – Import Prohibition of Certain Shrimp and Shrimp Products* case (hereafter the *Shrimp-Turtle* case).

Additionally, this discussion will delve into the significance of harmonisation of SPS measures in free trade, as well as the recognition of sustainable development goals in trading practices. Sustainable development stands as one of the crucial issues of the decade, indicating that discovering sustainable trading methods can be advantageous in accomplishing numerous sustainability objectives.⁶⁵ These objectives include ensuring

⁶⁴ Chimni 2000 *Economic and Political Weekly* 1752.

⁶⁵ Hoekman and Nicita "Non-tariff measures and trade facilitation: WTO disciplines and policy space for development" 13.

product and food security, safeguarding the environment, and fostering economic growth, among other goals.⁶⁶

2.2 Understanding SPS measures and navigating their role and functionality within the WTO

SPS measures encompass quarantine and biosecurity protocols that are implemented to safeguard human, animal, or plant life and health.⁶⁷ These measures aim to mitigate potential threats stemming from the introduction and dissemination of pests and diseases, as well as risk associated with additives, toxins, and contaminants in food and feed.⁶⁸ SPS measures, given their characteristics, can lead to either direct or indirect trade limitations. However, all governments acknowledge the need for certain trade restrictions to guarantee food safety and the protection of animal and plant health.⁶⁹

These measures are administered through the *WTO Agreement*, specifically under the *SPS Agreement*.⁷⁰ Additionally, the oversight and coordination of these measures fall under the purview of the WTO Committee on Sanitary and Phytosanitary Measures (hereafter the SPS Committee).⁷¹

The *SPS Agreement* became effective upon the formation of the WTO on 1 January 1995. This agreement addresses the application of regulations related to food safety, as well as the health of animals and plants.⁷² Additionally, it establishes procedures to direct WTO Members in formulating, adopting, and enforcing measures that are sanitary (pertaining to human or animal life or health) and phytosanitary (concerning plant life or health),

⁶⁶ Hoekman and Nicita "Non-tariff measures and trade facilitation: WTO disciplines and policy space for development" 13.

⁶⁷ Department of Agriculture, Fisheries and Forestry of the Australian Government 2021 <https://www.agriculture.gov.au/biosecurity-trade/market-access-trade/wto/sps#daff-page-main>. See also Department of Agriculture, Fisheries and Forestry of the Australian Government *The WTO Sanitary and Phytosanitary (SPS) Agreement* 6.

⁶⁸ Department of Agriculture, Fisheries and Forestry of the Australian Government 2021 <https://www.agriculture.gov.au/biosecurity-trade/market-access-trade/wto/sps#daff-page-main>.

⁶⁹ *Fifth Review of the Operation and Implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures* G/SPS/W/304 (2018).

⁷⁰ WTO 2024 https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm.

⁷¹ Article 12 of the *Agreement on the Application Of Sanitary and Phytosanitary Measures* (1995).

⁷² These regulations both benefits humans in terms of agricultural practices and animals relating to their quality of life.

which can impact international trade.⁷³ The *SPS Agreement* is an integral component of the treaty that established the WTO. Consequently, all Member States that are signatories to the *WTO Agreement* are automatically included as members of the *SPS Agreement*.⁷⁴ It is compulsory for all WTO Members to adhere to the principles and commitments outlined in the *SPS Agreement*.⁷⁵

The *SPS Agreement* allows its Members the authority to implement their own domestic measures; however, these measures must align with the guidelines set out in the agreement.⁷⁶ Member States are required to ensure that their domestic SPS measures implement the appropriate level of protection (hereafter ALOP) essential for the protection of human, animal, or plant life or health, avoiding the imposition of trade restrictions that exceed what is necessary.⁷⁷

These measures should be founded on science and should not be maintained in the absence of sufficient scientific evidence.⁷⁸ Further, Member States must ensure that their domestic SPS standards do not display arbitrary or unjustifiable discrimination among countries experiencing identical or similar conditions, nor should they function as concealed impediments to international trade.⁷⁹ It is evident that the *SPS Agreement* extends and refines earlier *GATT* regulations to limit the implementation of unwarranted SPS measures designed for trade protection. The primary objective of the *SPS Agreement* is to uphold the inherent right of any government to establish the desired level of protection. However, it seeks to prevent the misuse of these sovereign rights for protectionist motives, and to prevent the creation of unnecessary obstacles to international trade.⁸⁰

⁷³ Lester, Mercurio and Davies *World Trade Law: Text, Material and Commentary* 617.

⁷⁴ There are presently 164 Member States in the WTO, including South Africa. As a result, all these members are also encompassed by the *SPS Agreement* and are subject to its regulations. See *Membership of the World Trade Organisation* WT/INF/43/Rev.23 (2022) 3.

⁷⁵ WTO 2024 https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm.

⁷⁶ Article 2.1 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

⁷⁷ This bears resemblance to the *GATT* Article XX(b) exception, as it serves to avoid unnecessary trade restrictions. See Lester, Mercurio and Davies *World Trade Law: Text, Material and Commentary* 619.

⁷⁸ Article 2.2 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

⁷⁹ This provision reflects the rules of Most-Favoured-Nation and the National Treatment, along with the principles discussed in the chapeau of Article XX of the *GATT*. See Article 2.3 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

⁸⁰ WTO 2024 https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm.

2.3 The role of the WTO and SPS Agreement in addressing trade disputes relating to environmental sustainability

Global trade is regulated by the *GATT/WTO Agreement*, which are responsible for promoting free trade between nations and preventing restrictions like tariffs, quotas, and bans imposed by individual countries that may unnecessarily obstruct trade.⁸¹ However, the pursuit of free trade occasionally conflicts with SPS measures adopted by individual nations that are ostensibly directed at environmental preservation or sustainability.

In cases of conflict between Member States that implement opposing measures, such conflict can be resolved through the WTO DSB.⁸² The DSB was established by the *WTO Agreement* to oversee the responsibilities laid down in the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (hereafter the *DSU*).⁸³

The DSB serves as the key component in ensuring stability and predictability within the multilateral trading system. It functions to safeguard the rights and obligations of all Member States, striving for the swift resolution of issues and the preservation of a balanced distribution of rights and obligations among the Member States.⁸⁴ Within the DSB, dispute settlement panels have been established, referring matters to arbitration, and the Appellate Body has been established to hear appeals from the findings issued by the panels in disputes brought by WTO Member States.⁸⁵

Numerous cases concerning environmental sustainability have arisen, examining the limits to protectionism and legitimate health and safety concerns. However, before exploring these cases, it is essential to comprehend the evaluation process of implemented SPS measures in a dispute. In cases involving the implantation of SPS measures, the DSB will assess the risk and determine the ALOP to ascertain if the measures are legitimate and appropriate in the given scenario. The risk assessment will

⁸¹ Kidd *Environmental Law* 59.

⁸² Kidd *Environmental Law* 59.

⁸³ This *DSU* is contained in Annex 2 of the *WTO Agreement*. See *Understanding on Rules and Procedures Governing the Settlement of Disputes* (1995). See also Chimni 2000 *Economic and Political Weekly* 1753.

⁸⁴ Article 3 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (1995).

⁸⁵ WTO 2024 https://www.wto.org/english/tratop_e/dispu_e/dispu_body_e.htm. See also Article 2.1 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (1995).

focus on scientific validity, while the determination of the ALOP will involve a thorough examination of the trade restrictions.⁸⁶

2.4 Risk assessment and determination of ALOP

Member States are required to guarantee that their SPS measures are founded on an assessment, suitable to the specific circumstances, of the potential risks to human, animal, or plant life or health.⁸⁷ The risk assessment of the SPS measure implemented must evaluate the probability of the introduction, establishment and spread of a pest or disease within the importing country.⁸⁸ Further, an evaluation must be made on the potential biological and economic outcomes associated with such SPS measures.⁸⁹ The assessment should consider the potential for detrimental effects on human or animal health resulting from the presence of additives, contaminants, toxins, or disease-causing organisms in food or feed.⁹⁰

The risk assessment must consider the scientific evidence and relevant factors associated with implementing SPS measures and the resulting protection they provide.⁹¹ Additionally, when assessing the risk to life and health and determining the ALOP, Member States should factor in economic considerations and evaluate the cost-effectiveness of alternative approaches to mitigating risks.⁹²

When there is a lack of adequate scientific evidence, Member States have the option to temporarily implement SPS measures based on available relevant information. This information may include data from relevant international organisations and SPS measures implemented by other Member States. However, Member States are obligated to seek supplementary information to conduct a more objective risk assessment and subsequently review the SPS measure within a reasonable timeframe.⁹³ Consequently,

⁸⁶ Lester, Mercurio and Davies *World Trade Law: Text, Material and Commentary* 623.

⁸⁷ Article 5.1 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

⁸⁸ Article 5.3 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

⁸⁹ Article 5.4 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

⁹⁰ Annex A(4) of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

⁹¹ Article 5.2 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

⁹² Article 5.3 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

⁹³ Article 5.7 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

Member States are allowed to implement provisional measures when scientific evidence is inadequate to ensure certainty regarding the associated risks.⁹⁴

2.5 Discrimination and the necessary level of trade restriction

When implementing SPS measures, Member States should ensure appropriate and consistent protection levels for the safety and health of humans, animals and plants. Member States must avoid arbitrary or unjustifiable differences in the protection levels it deems to be appropriate in different situations, especially if these distinctions result in unfair treatment or hidden trade barriers.⁹⁵ Therefore, two types of measures should be prevented, namely those that demonstrate discrimination against other Member States, and those that serve as covert obstacle to global trade.⁹⁶

Moreover, when instituting or upholding SPS measures to attain the ALOP, Member States must guarantee that these measures do not impose more restrictions on trade than necessary to achieve the suitable level of SPS protection. This consideration should encompass technical and economic feasibility studies.⁹⁷ Hence, if there exists an alternative SPS measure that is reasonably accessible, achieves the requisite level of SPS protection, and imposes notably fewer trade restrictions, then the enacted measure is deemed excessively restrictive.⁹⁸

2.6 WTO and the environment: Exploring sustainability in legal cases

The WTO is not opposed to environmental considerations, providing these measures are essential for environmental protection and conservation, as evidenced by the Appellate Body taking notable measures to align trade and environmental goals, as will be elaborated on in the cases discussed below.⁹⁹ The Appellate Body has affirmed that the

⁹⁴ This provision embodies the 'precautionary principle,' essentially asserting that a lack of dependable information justifies a certain level of regulation even in the absence of evidence indicating harm. See *Appellate Body Report on EC—Measures Concerning Meat and Meat Products (Hormones)* WT/DSD26,48/AB/R (1998) para 124.

⁹⁵ Article 5.5 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

⁹⁶ *Appellate Body Report on EC—Measures Concerning Meat and Meat Products (Hormones)* WT/DSD26,48/AB/R (1998) para 210-246.

⁹⁷ Article 5.6 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

⁹⁸ Footnote 3 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

⁹⁹ Chimni 2000 *Economic and Political Weekly* 1752.

WTO does not impede environmental protection and has granted a degree of flexibility to Member States implementing SPS measures. Thus, under specific conditions, the WTO Appellate Body expresses readiness to support unilateral trade measures aimed at achieving environmental protection objectives.¹⁰⁰

2.6.1 United States-Turtle case 1998

The Shrimp-Turtle case involves the United States (hereafter USA) as the party adopting restrictive measures. The USA banned the importation of shrimp from certain countries in Asia because of legislation that did not allow imported shrimp without the use of a “turtle-excluding devices”, which prevent turtles from being caught together with the shrimp. The Appellate Body decided that this restriction did meet the requirement of the exhaustible natural resources exclusion but held that another aspect of the free trade requirements relating to discrimination between countries had been violated.¹⁰¹

In 1996, the USA issued a directive stating that shrimp imports from countries lacking sufficient policies to safeguard sea turtles would be prohibited.¹⁰² These measures led to specific countries being exempted from the shrimp import prohibition. India, Pakistan, Thailand, and Malaysia contested this exemption before a WTO panel, which determined that the USA import ban on shrimp and shrimp products was not warranted under Article XX of the 1994 *GATT*. However, in the USA appeal, the Appellate Body dismissed certain interpretations presented by the panel, aiming to establish a more equitable understanding of the nexus between trade and the environment.¹⁰³

The Appellate Body highlighted the clear acknowledgment by the WTO members to efficiently and responsibly use the world's resources in alignment with sustainable development. Thus, the signatories to the *WTO Agreement* were fully aware of the significance and validity of environmental protection as an objective in both domestic and international policy.¹⁰⁴ The Appellate Body further clarified that WTO members recognise

¹⁰⁰ These conditions have already been discussed in the *SPS Agreement* and Article XX of the *GATT*, also known as the general exception clause. Chimni 2000 *Economic and Political Weekly* 1752.

¹⁰¹ Kidd *Environmental Law* 59.

¹⁰² Chimni 2000 *Economic and Political Weekly* 1754.

¹⁰³ Chimni 2000 *Economic and Political Weekly* 1754.

¹⁰⁴ *Appellate Body Report on United States—Imported Prohibition of Certain Shrimp and Shrimp Products* WT/DS58/AB/R (1998) para 129.

the responsibility of sovereign nations within the WTO to enact effective measures for conserving endangered species or safeguarding the environment.¹⁰⁵

The Appellate Body further had to consider whether, as stated in Article XX, there was unjustifiable discrimination between nations where the same conditions prevail. Accordingly, the major problem with the measures the USA had implemented were the intentional and coercive effect on other WTO Member States to change their domestic policies.¹⁰⁶ In international trade, a Member State should not impose an economic embargo to force other members to adopt its internal policy measures, disregarding differing conditions in different territories.¹⁰⁷

Furthermore, the Appellate Body highlighted the failure of the USA to engage in meaningful negotiations with the parties involved, as well as other nations exporting shrimp to the US. The ideal was to reach comprehensive agreements, either bilaterally or multilaterally, for the conservation and protection of sea turtles before implementing the import ban on shrimp exports from those nations.¹⁰⁸ However, the USA did not explore other available options but instead opted for unilateral action. Thus, the Appellate Body considered the measures implemented as unjustifiable discrimination because, an import ban is typically the most severe trade measure, and the inflexible standard it sought to enforce was deemed as arbitrary discrimination.¹⁰⁹

Therefore, the Appellate Body overturned the panel's determination that the USA measure in question did not fall within the range of measures allowed under the chapeau of Article XX. However, while the USA measure qualified for provisional justification under Article XX(g), it did not satisfy the conditions of the chapeau of Article XX, and consequently was not justified under Article XX of the *GATT*.¹¹⁰ This case was a clear

¹⁰⁵ *Appellate Body Report on United States—Imported Prohibition of Certain Shrimp and Shrimp Products* WT/DS58/AB/R (1998) para 185.

¹⁰⁶ *Appellate Body Report on United States—Imported Prohibition of Certain Shrimp and Shrimp Products* WT/DS58/AB/R (1998) para 161.

¹⁰⁷ *Appellate Body Report on United States—Imported Prohibition of Certain Shrimp and Shrimp Products* WT/DS58/AB/R (1998) para 164.

¹⁰⁸ *Appellate Body Report on United States—Imported Prohibition of Certain Shrimp and Shrimp Products* WT/DS58/AB/R (1998) para 166.

¹⁰⁹ *Appellate Body Report on United States—Imported Prohibition of Certain Shrimp and Shrimp Products* WT/DS58/AB/R (1998) para 171.

¹¹⁰ Chimni 2000 *Economic and Political Weekly* 1753.

demonstration of the balance that must be struck between a member's right to use an exception under Article XX and its responsibility to honour the treaty rights of other members.¹¹¹ Thus, establishing equilibrium between environmental sustainability and free trade regulations rather than merely protecting the principles and objectives of the latter.

2.6.2 EC-Hormones case 1998

This case focused on the *SPS Agreement*, involving two panels that addressed distinct grievances from the USA and Canada against the European Community (hereafter EC). The complaints were related to the EC's prohibition of imports of meat and meat products obtained from cattle treated with specific natural or synthetic hormones for growth promotion purposes.¹¹²

Both panels arrived at the same finding, determining that the EC was upholding SPS measures without conducting a proper risk assessment.¹¹³ Consequently, the EC had established arbitrary or unjustified distinctions in determining the required level of protection in various cases, leading to discrimination or a veiled constraint on international trade.¹¹⁴ The EC also retained SPS measures not grounded in established international standards.¹¹⁵ As a result, the panels suggested that the DSB should urge the EC to align the disputed measures with its responsibilities under the *SPS Agreement*.

The EC appealed this decision to the Appellate Body. Ultimately, the Appellate Body affirmed the panel's findings that the SPS measures enforced by the EC did not align with the necessary standards for a proper risk assessment.¹¹⁶ Additionally, the Appellate Body concurred that the scientific reports provided by the EC did not reasonably substantiate the imposition of the import ban, lacking sufficient specificity to justify the ban.¹¹⁷ Despite endorsing the panel's conclusion, the Appellate Body put forth various interpretations of

¹¹¹ *Appellate Body Report on United States—Imported Prohibition of Certain Shrimp and Shrimp Products* WT/DS58/AB/R (1998) para 156.

¹¹² Chimni 2000 *Economic and Political Weekly* 1757.

¹¹³ This defies Article 5.1 of the *SPS Agreement*. See Chimni 2000 *Economic and Political Weekly* 1757.

¹¹⁴ This defies Article 5.3 of the *SPS Agreement*. See Chimni 2000 *Economic and Political Weekly* 1757.

¹¹⁵ This defies Article 3.1 and 3.3 of the *SPS Agreement*. See Chimni 2000 *Economic and Political Weekly* 1757.

¹¹⁶ Chimni 2000 *Economic and Political Weekly* 1758.

¹¹⁷ Chimni 2000 *Economic and Political Weekly* 1758.

the *SPS Agreement* that significantly contribute to the harmonisation of trade and environmental objectives.

One concern centred around the assertion that the adopted SPS measures by the EC did not adhere to international standards, being more stringent than the established norms. However, the Appellate Body determined that Member States possess the independent right to enforce heightened protection measures if deemed justifiable or necessary.¹¹⁸

One could contend that the measures implemented were justifiable and necessary, based on the conducted risk assessment. The Appellate Body, in reviewing the EC's risk assessment, demonstrated a willingness to consider real-world social factors to assess whether the SPS measure had sufficient support or was reasonably justified.¹¹⁹ Accordingly, it is important to recognise that a risk assessment extends beyond evaluating risks solely in a controlled scientific laboratory setting; it also involves assessing the potential for negative impacts on human health.¹²⁰

Further, the Appellate Body recognised the deep concerns among consumers in the EC, as evidenced by reports highlighting public apprehension regarding ecological and environmental risks. This reflects a broad understanding of the risk concept, and signifies a noteworthy progression in balancing trade and environmental objectives.¹²¹ This establishes a legal nexus between the level of public concern and compliance with WTO regulations, providing civil society with the authority to validate government regulatory measures.¹²²

The connection between the risk assessment and the enacted SPS measure demonstrated a readiness to incorporate a variety of knowledge research into the adjudication process.

¹¹⁸ Chimni 2000 *Economic and Political Weekly* 1758. *Appellate Body Report on EC—Measures Concerning Meat and Meat Products (Hormones)* WT/DSD26,48/AB/R (1998) para 104.

¹¹⁹ *Appellate Body Report on EC—Measures Concerning Meat and Meat Products (Hormones)* WT/DSD26,48/AB/R (1998) para 187.

¹²⁰ *Appellate Body Report on EC—Measures Concerning Meat and Meat Products (Hormones)* WT/DSD26,48/AB/R (1998) para 187.

¹²¹ Perez 1998 *European Foreign Affairs Review* 563.

¹²² Perez 1998 *European Foreign Affairs Review* 572.

This perspective expands the concept of risk assessment beyond the confines of science to encompass various media, sources, agents, and approaches to different types of risk.¹²³

The Appellate Body also explored the precautionary principle, a defence presented by the EC, which was ultimately rejected.¹²⁴ Nevertheless, the Body underscored key aspects concerning the connection between the precautionary principle and the *SPS Agreement*.¹²⁵ The precautionary principle explicitly recognises the right of Member States to determine their own appropriate level of SPS protection, which may be more cautious than existing international standards.¹²⁶ However, the principle cannot be used as a rationale for implementing SPS measures that contradict the provisions of the *SPS Agreement*.¹²⁷

Furthermore, the Appellate Body emphasised that a panel tasked with deciding if there is adequate scientific evidence to justify a Member State maintaining a specific SPS measure, should consider that a responsible government will often adopt cautious and prudent approaches, particularly when dealing with irreversible or life-threatening risks.¹²⁸ The Appellate Body concluded that the SPS measures, demonstrating arbitrary and unjustified distinctions in the levels of protection, did not result in discrimination or a disguised trade restriction.¹²⁹

¹²³ Perez 1998 *European Foreign Affairs Review* 572.

¹²⁴ The European Commission contended that the precautionary principle has the authority to supersede the requirements for Member States to conduct thorough risk assessments and consider existing scientific evidence, along with other pertinent factors, as outlined in Article 5.1 and 5.2 of the *SPS Agreement*. See Lester, Mercurio and Davies *World Trade Law: Text, Material and Commentary* 630.

¹²⁵ The precautionary principle is based on sustainable development as it acknowledges that environmental harm can be irreversible, thus it is preferable to prevent potential harm rather than attempting to remedy it afterwards, which could be impossible or extremely expensive. See Kidd *Environmental Law* 9.

¹²⁶ The precautionary principle is embodied in the *SPS Agreement* in Article 5.7, Article 3.3, and the sixth paragraph of the preamble. See Chimni 2000 *Economic and Political Weekly* 1758.

¹²⁷ *Appellate Body Report on EC—Measures Concerning Meat and Meat Products (Hormones)* WT/DSD26,48/AB/R (1998) para 124.

¹²⁸ *Appellate Body Report on EC—Measures Concerning Meat and Meat Products (Hormones)* WT/DSD26,48/AB/R (1998) para 124.

¹²⁹ *Appellate Body Report on EC—Measures Concerning Meat and Meat Products (Hormones)* WT/DSD26,48/AB/R (1998) para 240.

While there has been criticism of the Appellate Body's interpretations of the *SPS Agreement* in the *EC-Hormones* case because it seems to support protectionism, these interpretations have significantly advanced the integration of trade and environmental goals.¹³⁰ The *EC-Hormones* case stands out as one of the most environmentally friendly decisions in the history of *GATT/WTO*, as the Appellate Body's approach to interpreting the *SPS Agreement* aimed to grant Member States autonomy and flexibility in imposing SPS measures.¹³¹ These two cases were examined to illustrate the delicate balance required between promoting free trade and ensuring sustainable development. Furthermore, they demonstrate a willingness to implement SPS measures that safeguard human health and the environment while also maintaining fairness in free trade agreements.

2.7 Advancing sustainable development through harmonisation

The WTO and the *SPS Agreement* encourage Member States' governments to establish national SPS measures that align with international standards, aiming to align domestic SPS measures with global regulations and standards.¹³² While international standards often surpass the national requirements of many countries, the *SPS Agreement* explicitly allows governments to opt not to adopt these international standards.¹³³ As mentioned, Member States have the option to implement measures with higher standards. However, if a national requirement imposes a greater trade restriction, the country may be required to provide scientific justification.¹³⁴ This entails demonstrating that adhering to the relevant international standard would not achieve the level of health protection the country deems appropriate.¹³⁵

The WTO does not create these international standards; instead, they are formulated by eminent scientists and specialized international organisations focused on health protection.¹³⁶ These standards undergo international scrutiny and review for validation.

¹³⁰ Chimni 2000 *Economic and Political Weekly* 1759.

¹³¹ Perez 1998 *European Foreign Affairs Review* 581.

¹³² Article 3.1 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

¹³³ Lester, Mercurio and Davies *World Trade Law: Text, Material and Commentary* 621. See also Article 3.3 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

¹³⁴ Article 3.3 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

¹³⁵ Lester, Mercurio and Davies *World Trade Law: Text, Material and Commentary* 621.

¹³⁶ WTO 2024 https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm.

The most prominent organisations in the field of SPS standards include the Codex Alimentarius Commission (hereafter Codex), the World Organisation for Animal Health/International Office of Epizootics (hereafter WOA), and the international and local organisations operating within the framework of the *International Plant Protection Convention* (hereafter *IPPC*).¹³⁷ Codex oversees matters related to food safety, WOA manages animal health and zoonoses, while the *IPPC* takes care of plant health.¹³⁸

These organisations are commonly referred to as the “three sisters” in developing international standards, recommendations and guidelines for plant and animal health and food safety.¹³⁹ A suggestion has been made that these three organisations could offer guidance to the SPS Committee regarding specific trade concerns (hereafter STCs) related to animal diseases, food safety, and plant health. In addressing such trade concerns, the respective organisations may be invited to share their insights into finding solutions.¹⁴⁰ Harmonised global SPS measures may also have the potential to tackle trade issues connected to sustainability and sustainable development.

Food safety and food standards are crucial because they are linked to sustainable development, particularly in developing countries where agriculture and agricultural production play a significant role in trade. Therefore, harmonising these regulations could prove to be advantageous, as discussed in the next section.

2.8 Trade and food standards

The market for food and agricultural trade holds significant value, with the annual trade value of agricultural products nearly tripling over the last decade, especially in emerging economies and developing nations, totalling around \$1.7 trillion (USD) in 2014.¹⁴¹ By

¹³⁷ Annex A (3) of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

¹³⁸ Annex A (3) of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

¹³⁹ *Fifth Review of the Operation and Implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures G/SPS/W/304* (2018).

¹⁴⁰ South Africa was the nation that proposed this to the SPS Committee, while also critically noting that the comments provided by these organisations are advisory in nature, and they should be viewed as expressions of their own responsibility, without imposing any binding obligations on any WTO Member. See *Fifth Review of the Operation and Implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures G/SPS/W/304* (2018).

¹⁴¹ World Trade Organisation *International Trade Statistics 2015* 32.

2022, the merchandise exports of agricultural products reached approximately \$1.78 trillion (USD).¹⁴²

Therefore, it stands as a sizable and profitable market for countries seeking economic benefits. Food standards, specifically SPS measures, play a crucial role in the realm of food and agricultural trade, as these standards instil consumer confidence by ensuring the safety, quality, and authenticity of food supply.¹⁴³ Therefore, in order to engage in international trade with products that are secure, meet quality standards, and adhere to labelling requirements, producers must be capable of meeting food standards. By establishing a shared understanding among consumers, producers, and governments regarding various aspects of food, international food standards ensure smooth and efficient trade.¹⁴⁴

However, these standards could also impede free trade. When governments worldwide implement different food standards, trade becomes more costly, and ensuring food safety and meeting consumer expectations becomes more challenging.¹⁴⁵ Therefore, harmonising food standards can streamline trade while also addressing sustainable development needs. Codex, the collaborative food standards programme between the WTO and the Food and Agriculture Organisation of the United Nations (hereafter FAO), provides governments with a framework to facilitate trade through the establishment of internationally agreed-upon and science-based food standards. Codex plays a vital role for governments in achieving public health goals related to food safety and nutrition.¹⁴⁶

¹⁴² World Trade Organisation *Statistical Review 2023* 13.

¹⁴³ Trade has broad impacts on various economic and social factors, influencing market structures, the productivity and composition of agricultural output, the diversity, quality, and safety of food products, as well as the composition of diets. See Food and Agriculture Organisation of the United Nations and World Trade Organisation *Trade and Food Standards* 6.

¹⁴⁴ Food and Agriculture Organisation of the United Nations and World Trade Organisation *Trade and Food Standards* 7.

¹⁴⁵ Food and Agriculture Organisation of the United Nations and World Trade Organisation *Trade and Food Standards* 2.

¹⁴⁶ This includes food-related risks, such as health hazards due to micro-organisms, pesticide residues, other contaminants, and unsafe food additives. See Food and Agriculture Organisation of the United Nations and World Trade Organisation *Trade and Food Standards* 10.

Simultaneously, it provides a foundation for trade, and the *SPS Agreement* relies on Codex standards as the benchmark for harmonisation.¹⁴⁷ The harmonisation of food standards ensures that producers adhere to the same standards in various countries, and also lowers the costs of products for consumers.¹⁴⁸ This, in turn, reduces trade costs and promotes inclusivity by making trade more transparent and efficient, enabling smoother movement of food between markets.¹⁴⁹ This is advantageous for governments with resource constraints, as they can depend on the high-quality scientific knowledge embedded in international standards instead of extensively investing in the development of their own food safety requirements. The Codex international food standards also consider the needs and capacities of a variety of countries, including developing countries.

Nevertheless, achieving harmony requires the active participation of WTO Member States, to effectively resolve trade conflicts and to ensure trade regulations stay relevant amid current challenges. Trade disputes can be resolved through the WTO, as Members have the option to provide feedback on notifications of draft SPS measures and work towards resolving concerns through bilateral consultations. Further, Members can present STCs to the relevant WTO committees or utilize the formal dispute resolution mechanism provided by the WTO.¹⁵⁰ Countries need to make substantial investments in food safety and control to actively participate and engage on the global platform. Governments must have the internal capacity to coordinate efficiently among all stakeholders.¹⁵¹ This is essential not just for influencing standards and trade rules at Codex and the WTO but

¹⁴⁷ Food and Agriculture Organisation of the United Nations and World Trade Organisation *Trade and Food Standards* 15.

¹⁴⁸ Various countries have different interpretations or employ distinct criteria for safety standards when defining the same product. See Food and Agriculture Organisation of the United Nations and World Trade Organisation *Trade and Food Standards* 15.

¹⁴⁹ The principle of transparency holds significance, as it mandates that all WTO Member States must communicate any alterations to their SPS measures, enabling other Member States to acquaint themselves with the newly introduced SPS measures. See Article 7 of the *SPS Agreement*.

¹⁵⁰ Food and Agriculture Organisation of the United Nations and World Trade Organisation *Trade and Food Standards* 17.

¹⁵¹ Food and Agriculture Organisation of the United Nations and World Trade Organisation *Trade and Food Standards* 28.

also for utilizing the tools provided by this system to enhance domestic food safety and expand opportunities for exports.¹⁵²

2.9 Balancing sustainability development goals and trade by using SPS measures as catalysts

Given that food standards and trade are closely connected in guaranteeing the provision of safe, nutritious, and ample food for a steadily increasing global population, the United Nations 2030 Sustainable Development Goals (hereafter SDGs) recognise the potential of trade to foster sustainable development, through the use of SPS measures.¹⁵³ The SDGs are a set of 17 interconnected objectives designed to address various global challenges and promote sustainable development by the year 2030. The goals cover a range of issues, including eradicating hunger, ensuring food safety, sustainable agriculture, healthy lives and well-being, economic growth, and strengthening global partnerships for sustainable development.¹⁵⁴ The SDGs were adopted by all 193 United Nations Member States in September 2015 as part of the 2030 Agenda for Sustainable Development.¹⁵⁵ The SDGs aim to create a more inclusive, equitable, and environmentally sustainable world by addressing social, economic, and environmental challenges on a global scale. Each goal has specific targets and indicators to track progress towards achieving them.¹⁵⁶

Accordingly, the United Nations (hereafter the UN) regards the SDGs as the focus for improving global welfare in the next decade and implies that effective trade policy measures can directly and indirectly play a crucial role in advancing many of these SDGs, such as reducing hunger, promoting good health, and encouraging harmony.¹⁵⁷ SPS

¹⁵² Food and Agriculture Organisation of the United Nations and World Trade Organisation *Trade and Food Standards* 28.

¹⁵³ Food and Agriculture Organisation of the United Nations and World Trade Organisation *Trade and Food Standards* v.

¹⁵⁴ The main emphasis will be on SDGs 1, 2, 3, and 17, as the collaborative efforts of the FAO and the WTO, along with their global framework for food standards and trade, play a significant role in realizing these objectives. See Food and Agriculture Organisation of the United Nations and World Trade Organisation *Trade and Food Standards* v. See also United Nations System Staff College *The 2030 Agenda for Sustainable Development* 1.

¹⁵⁵ South Africa is also a Member State of the United Nations. See United Nations 2023 <https://www.un.org/en/about-us/member-states>.

¹⁵⁶ United Nations 2024 <https://sdgs.un.org/goals#history>.

¹⁵⁷ Hoekman and Nicita "Non-tariff measures and trade facilitation: WTO disciplines and policy space for development" 14.

measures directly support the health and wellbeing of communities, by safeguarding public health through the prevention of foodborne illnesses and the transmission of diseases through agricultural products. By ensuring compliance with food safety standards, SPS measures contribute to improving health outcomes and promoting well-being.¹⁵⁸ By preventing the spread of pests and diseases that can affect and destroy crops and livestock, SPS measures contribute to food security and sustainable agriculture.¹⁵⁹

SPS measures may also indirectly impact poverty reduction efforts, by promoting food security and improving access to safe and nutritious food. Ensuring the safety and quality of food products through SPS measures can contribute to reducing foodborne illnesses and improving overall health, thereby indirectly addressing poverty by enhancing the well-being of individuals and communities.¹⁶⁰ If SPS measures unfairly restrict access to safe and affordable food for low-income communities by imposing stringent regulations on imports, it could exacerbate poverty. Therefore, by ensuring that SPS measures prioritize food safety without unduly limiting access to essential food items, SPS measures could contribute to poverty reduction goals.¹⁶¹

Finally, SPS measures may indirectly enforce the global implementation of sustainable development, by facilitating international partnerships and cooperation in trade. Collaboration between countries in harmonising SPS standards, sharing optimal practices, and providing technical assistance could facilitate trade and promote sustainable development.¹⁶² This underscores the importance of a universal and non-discriminatory multilateral trading system under the WTO. This highlights the significance of respecting

¹⁵⁸ This is in support of SDG 3. See Hoekman and Nicita "Non-tariff measures and trade facilitation: WTO disciplines and policy space for development" 27.

¹⁵⁹ This aligns with the objectives of SDG 2. See Hoekman and Nicita "Non-tariff measures and trade facilitation: WTO disciplines and policy space for development" 14 and 27.

¹⁶⁰ Hoekman and Nicita "Non-tariff measures and trade facilitation: WTO disciplines and policy space for development" 27.

¹⁶¹ This is applicable to SDG 1. See Hoekman and Nicita "Non-tariff measures and trade facilitation: WTO disciplines and policy space for development" 14.

¹⁶² This supports with the spirit of SDG 17. See Hoekman and Nicita "Non-tariff measures and trade facilitation: WTO disciplines and policy space for development" 27.

the rights and role of national leadership to implement policies for sustainable development.¹⁶³

2.10 Conclusion

International trade and sustainable development are interconnected through the interactions between the global economy and the environment. The global economy exists within the biosphere of the planet, implying that the risks posed to the biosphere by human activity are not solely environmental threats; they also pose economic risks. There is a pressing need for trade practices that safeguard the environment and for trade regulations that achieve environmental protection without resorting to protectionism.¹⁶⁴

While challenging, the trade community has endorsed sustainable development, as evidenced by instances demonstrating flexibility in implementing SPS measures to protect food safety. SPS measures both directly and indirectly reinforce the UN SDGs, contributing to sustainable development by advancing food security, public health, international trade cooperation, and environmental awareness. The WTO DSB has endeavoured to interpret the *SPS Agreement* in a manner that achieves a balance and incorporates both trade and environmental goals, as seen in cases like *Shrimp-Turtle* and *EC-Hormones*. These instances demonstrate that the provisions of the *GATT* and the *SPS Agreement* possess enough flexibility to uphold legitimate environmental protection objectives.¹⁶⁵ Ultimately, the goal of the *WTO Agreement* and the *SPS Agreement* is to standardize regulations while preserving the autonomy of domestic governments to determine their own standards.¹⁶⁶ The next chapter will delve into African trade accords and how SPS measures have impacted these agreements and trade within the continent. The agri-food sector and agriculture will be especially looked at, as this industry is crucial for African continental development, both economically and socially.

¹⁶³ Hoekman and Nicita "Non-tariff measures and trade facilitation: WTO disciplines and policy space for development" 14.

¹⁶⁴ Bacchus and Saha 2022 <https://www.ids.ac.uk/opinions/international-trade-for-global-sustainable-development/>.

¹⁶⁵ Chimni 2000 *Economic and Political Weekly* 1760.

¹⁶⁶ This is also echoed in other international instruments alike. See Principle 12 of the *Rio Declaration on Environment and Development* (1992).

3 Leveraging SPS policies for sustainable development in developing countries: the African perspective

3.1 Introduction

This chapter will explore how SPS policies, specifically focused on the agricultural sector, can be leveraged to enhance trade and foster sustainable development across Africa. Agriculture, and the multiple sectors it is comprised of (such as crop production, livestock farming, and agri-business), plays a pivotal role in shaping the continent's future. Africa has undergone a transformation, with agricultural development holding immense potential to impact every region, from the remote rural areas of the Sudanian savannas to the bustling urban markets of Cairo or Cape Town. By focusing on agriculture in this discussion, this transformation is positioned as a key driver of change in various aspects of African life, including health, nutrition, dietary habits, urbanisation, technological advancements, and economic livelihoods.¹⁶⁷

In order to promote agricultural development, it is essential to improve trade by harmonizing SPS measures affecting the agri-food sector. Consequently, the African Union (hereafter the AU) recognized the need to establish a continental SPS policy framework that would act as a guide and support AU Member States and the continent as a whole in creating unified SPS measures. Thus, to address some of Africa's health and trade challenges, the *African Union Sanitary and Phytosanitary Policy Framework* (hereafter the *Framework*) was developed. This *Framework* was inspired by the Malabo goal of enhancing intra-African and global trade; it aligns with Annex 7 of the *AfCFTA Agreement* relating to SPS measures; ensures consistency with WTO obligations; and adheres to international standards.

The *Framework* will build upon the *AfCFTA Agreement* as its foundation, leveraging the existing harmonisation already established. This continent-wide initiative is a continuation of extensive collaborative efforts amongst the AU institutions, individual Regional Economic Communities (hereafter RECs), and the AU Member States themselves, aiming

¹⁶⁷ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 19.

to strengthen SPS systems and aligning standards across Africa.¹⁶⁸ The *AfCFTA Agreement's* established outline for harmonisation provides a solid basis for this new AU *Framework*, which seeks to advance and unify SPS measures throughout the continent. This approach reflects a long-standing commitment to improving trade and agricultural development through consistent and effective SPS practices.

Thus, in this chapter, we will explore the role and significance of the *AfCFTA* and its efforts to unify Africa for the purposes of strengthening the economy, along with the said *Framework* seeking to harmonise SPS policies across the continent. The goals, challenges, and strategies for implementation of the latter will be examined.

3.2 Transforming African agriculture by leveraging the AfCFTA and SPS policies for food security and economic growth

Africa is undergoing an expansion of its intra-African agrifood market, driven by significant population growth, rapid urbanisation, and rising incomes. According to the AU, it is expected that by 2050 the food demand within Africa will increase by 178%. Currently, Africa's net food import bill exceeds \$40 billion (USD) annually and is anticipated to soar up to \$400 billion (USD) by 2030.¹⁶⁹ Therefore, agriculture and food remain crucial trading commodities for Africa, as the continent continues to develop.

However, it is important to note that Africa has the highest per capita rate of foodborne diseases in the world, resulting in 137,000 deaths and 91 million cases of sickness annually, according to the World Health Organisation (hereafter WHO).¹⁷⁰ These illnesses are typically caused by infectious or toxic agents such as bacteria, viruses, parasites, or chemical substances that enter the body through contaminated food.¹⁷¹ The most prevalent risks involve bacteria like *Salmonella*, *Campylobacter*, and *Escherichia coli*, which infect millions of people each year, often resulting in severe and even fatal

¹⁶⁸ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 23.

¹⁶⁹ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 14.

¹⁷⁰ WHO 2024 <https://www.afro.who.int/news/first-ever-world-food-safety-day-elevates-attention-dangerous-foodborne-diseases-africa>.

¹⁷¹ WHO 2024 <https://www.afro.who.int/news/first-ever-world-food-safety-day-elevates-attention-dangerous-foodborne-diseases-africa>.

consequences.¹⁷² Additionally, viruses, parasites, and naturally occurring toxins also contribute to these foodborne illnesses, with the greatest impact being on children under five years.¹⁷³

Consequently, African agriculture must undergo a structural transformation to meet the increasing food demands while simultaneously addressing the public health burden of foodborne illnesses among the most vulnerable populations.¹⁷⁴ Ensuring access to ample amounts of safe and nutritious food is crucial for sustaining life and promoting good health. This could be achieved through the implementation of a sufficient and unified continental SPS policy framework and collective trading under the *AfCFTA*.

3.3 Understanding the AfCFTA

The *AfCFTA Agreement* is a regional trade agreement that intends to defragment Africa's economy in an attempt to increase continental productivity and trade.¹⁷⁵ On 21 March 2018, AU leaders signed the landmark agreement to establish the *AfCFTA Agreement*, which came into force in May 2019. The *AfCFTA Agreement* has now been signed by 54 out of the 55 countries in Africa, establishing the largest free trade area in the world, based on the number of participating countries.¹⁷⁶ Further, the *AfCFTA* connects 1.3 billion people across 54 African nations, with a combined GDP of \$3.4 trillion (USD).¹⁷⁷

The *AfCFTA* presents a unique opportunity for countries in the region to integrate competitively into the global economy, reduce poverty across the continent, and promote inclusion for less developed nations on the global stage.¹⁷⁸ There have already been significant advancements in improving the standard of living and reducing poverty in

¹⁷² WHO 2024 <https://www.who.int/news-room/fact-sheets/detail/food-safety>.

¹⁷³ WHO 2024 <https://www.afro.who.int/news/first-ever-world-food-safety-day-elevates-attention-dangerous-foodborne-diseases-africa>.

¹⁷⁴ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 14.

¹⁷⁵ Trading in agricultural products and the agri-food sector will specifically be discussed, as this is one of the most important trading sectors for the continent of Africa. Fofack 2018 *Finance and Development Journal* 50.

¹⁷⁶ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 18.

¹⁷⁷ Maliszewska and Ruta *The African Continental Free Trade Area: Economic and Distributional Effects* 7.

¹⁷⁸ Maliszewska and Ruta *The African Continental Free Trade Area: Economic and Distributional Effects* 5-7.

Africa, and with *AfCFTA*'s potential to increase trade, productivity and job creation can be improved, further reducing poverty.¹⁷⁹

The World Bank estimates that over the next decade, the *AfCFTA* will help up-lift millions of Africans out of extreme or moderate poverty, and could also lead to a 7% increase in real income gains amounting to nearly USD 450 billion, serving as an impetus for long-term reform and integration across the continent.¹⁸⁰

The *AfCFTA Agreement* seeks to boost African trade, aiming to increase both total global and intracontinental exports, by reducing tariffs among member countries and to decrease trade costs by lowering NTBs, such as SPS standards.¹⁸¹ To address agricultural and food-related NTBs, the *AfCFTA Agreement* includes specific provisions for "Sanitary and Phytosanitary Measures" in Annex 7. Annex 7 outlines that SPS measures should align with the WTO *SPS Agreement* and adhere to international standards set by Codex, the *IPPC*, and the WOH. ¹⁸²

Furthermore, the *Agreement* aims to increase trade by enhancing trade-facilitation measures such as trade-facilitation agreements, and soft and hard infrastructure at the borders of member countries.¹⁸³ Additionally, it will complement existing sub-regional economic communities and trade agreements in Africa by providing a continent-wide regulatory framework. These efforts intend to cut red tape, reduce compliance costs for traders, and ultimately make it easier for African trade to integrate into global supply

¹⁷⁹ Maliszewska and Ruta *The African Continental Free Trade Area: Economic and Distributional Effects* 7.

¹⁸⁰ This is crucial given the significant trading and financial damages caused by the COVID-19 pandemic in recent years and the continent's need for economic rehabilitation. See Maliszewska and Ruta *The African Continental Free Trade Area: Economic and Distributional Effects* 7.

¹⁸¹ Under the *AfCFTA*, NTBs on goods and services will be reduced on a 'most-favoured nation' basis, meaning all member countries benefit equally. See Maliszewska and Ruta *The African Continental Free Trade Area: Economic and Distributional Effects* 1. See also Article 4 (a) of the *Agreement Establishing the African Continental Free Trade Area* (2019).

¹⁸² African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 18. See also Article 1 of *Annex 7 (Sanitary and Phytosanitary Measures) of the Agreement Establishing the African Continental Free Trade Area* (2019).

¹⁸³ Hard infrastructure encompasses the physical systems needed for operation and soft infrastructure encompasses the institutions needed for operations. See Maliszewska and Ruta *The African Continental Free Trade Area: Economic and Distributional Effects* 1. See also Article 4 (e) of the *Agreement Establishing the African Continental Free Trade Area* (2019).

chains. While these reforms will be challenging, the potential benefits are significant.¹⁸⁴ Accordingly, the unification sought by the *AfCFTA* provides an ideal foundation for implementing a continental SPS policy framework that can further harmonise SPS measures across Africa.

3.4 The formation of the African Union SPS policy framework

While the *AfCFTA Agreement* aims to capitalize on market and trade opportunities at local, regional, and international levels, African countries encounter several challenges in achieving this goal. One significant barrier to trade is the use of NTBs, such as SPS measures. SPS measures are essential for ensuring domestic consumer health and safe trade, as they play a crucial role in protecting public health and safeguarding animal and plant life.¹⁸⁵ A lack of SPS measures enforcement could lead to increased foodborne diseases and the exclusion of countries from international markets, while poorly implemented procedures can cause unnecessary costs and inefficiencies in the trading system.¹⁸⁶

The *Framework* was developed in response to a request from the AU Specialized Technical Committee on Agriculture, Rural Development, Water, and Environment in October 2017.¹⁸⁷ The committee sought an instrument to harmonise SPS policies amongst the AU Member States.¹⁸⁸ Thereafter, the AU's Department of Rural Economy and Agriculture (hereafter DREA) assembled a team of local and international partners to develop the *Framework*. The *Framework* is science-based and aims to assist the AU Member States and RECs in achieving their trade objectives;¹⁸⁹ safeguard plant and

¹⁸⁴ Maliszewska and Ruta *The African Continental Free Trade Area: Economic and Distributional Effects* 1.

¹⁸⁵ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 14.

¹⁸⁶ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 14.

¹⁸⁷ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 14.

¹⁸⁸ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 15.

¹⁸⁹ The AU DREA, in collaboration with RECs, plays a crucial role in enhancing the effectiveness and integrity of SPS systems across the continent. RECs are essential for providing SPS guidance and coordination to further align standards and support their implementation at the regional level. The AU currently recognizes eight RECs: the Arab Maghreb Union (UMA), the Common Market for Eastern and

animal health and food safety; and enhance intra-African and global trade.¹⁹⁰ Furthermore, it provides the guidelines to AU Member States and RECs on the necessary strategies and action needed for the implementation of the *Framework*.

3.5 The importance of SPS measures in Africa and the basis for a continental policy framework

The *Framework* is designed to support already existing SPS strategies that have been applied by the AU Member States and the RECs, which in turn prioritises the cooperation between the national, regional, and continental spheres. By reinforcing existing SPS measures, it helps to avoid duplicated efforts and provides guidance to non-complying African countries on improving their SPS systems through harmonisation.¹⁹¹

The integration of existing and new SPS measures, along with improvements to African SPS systems, will be achieved by following the guidelines of Annex 7 of the *AfCFTA Agreement*. This will impact trade between AU Member States by enforcing the “Protocol on Trade in Goods” provisions related to SPS measures. The ratification of the *AfCFTA* is expected to significantly impact the agricultural market in Africa, which currently represents around 75% of all intra-African trade.¹⁹² Therefore, the *Framework* seeks to support the *AfCFTA Agreement* by creating conditions that enable smaller commercial farms and agri-businesses to comply with international SPS standards, thus sustainably growing the economy of Africa.

Moreover, the *Framework* aims to achieve the SDGs by utilizing SPS measures to enhance public health. Through the effective utilisation of SPS measures, the *Framework* aims to achieve key SDGs, such as eradicating all forms of poverty, eliminating hunger, securing

Southern Africa (COMESA), the Community of Sahel-Saharan States (CEN-SAD), the East African Community (EAC), the Economic Community of Central African States (ECCAS), the Economic Community of West African States (ECOWAS), the Intergovernmental Authority on Development (IGAD), and the Southern African Development Community (SADC). See African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 18.

¹⁹⁰ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 15.

¹⁹¹ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 19 and 22.

¹⁹² African Union Commission *The Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) Policies of African Regional Economic Communities (RECs)* 23.

food supply, improving nutrition, promoting sustainable agriculture, and ensuring health and well-being for people of all ages.¹⁹³ SPS measures are therefore crucial to the continent's agriculture-driven poverty reduction strategies, as more advanced SPS systems promote wider market access, create more businesses and job opportunities, and have the potential to alleviate the economic impact of illnesses, especially on the most vulnerable populations such as children and the elderly.¹⁹⁴

The enforcement of efficient and compliant SPS systems may help achieve the zero-hunger goal by ensuring improved access to nutritious and safe foods that meet international standards. Furthermore, human well-being is closely connected to the health of plants and animals found in our environment.¹⁹⁵ For instance, Africa contends with various diseases that can be transmitted from animals to humans.¹⁹⁶ Persistent exposure to unsafe food, much of which comes from animals, and related foodborne illnesses can directly contribute to malnutrition and hinder growth in future generations.¹⁹⁷

Therefore, science-based plant health systems, like Integrated Production and Pest Management, are vital for ensuring food security, safety, and environmental health. Additionally, zoonotic diseases, which can be transmitted from animals to humans, present significant health risks.¹⁹⁸ Consequently, robust animal health systems, including effective surveillance, proper farming practices, and sanitary slaughter facilities, are crucial for reducing these risks and enhancing public health across the continent.¹⁹⁹

It is evident that the *Framework* is essential and will bring significant benefits to the continent. However, it is important to recognise that the implementation process is not

¹⁹³ These objectives mirror the first, second and third Sustainable Development Goals by the United Nations. See United Nations 2024 <https://sdgs.un.org/goals>.

¹⁹⁴ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa 20*.

¹⁹⁵ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa 20*.

¹⁹⁶ WHO 2022 <https://www.afro.who.int/news/africa-63-jump-diseases-spread-animals-people-seen-last-decade>.

¹⁹⁷ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa 20*.

¹⁹⁸ Elsohaby and Villa 2023 *BMC Veterinary Research* 186.

¹⁹⁹ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa 21*.

without its difficulties, and that there are still strategies to be developed and challenges to be overcome by African nations.

3.6 The challenges in implementing a continental SPS policy framework

Africa faces numerous challenges related to SPS regulations and the potential implementation of the continental *Framework*, such as those stipulated in Annex 7 of the *AfCFTA Agreement*. These challenges also stem from the absence, prior to the establishment of the *Framework*, of a clear and unified system of organisations and policies to coordinate and enforce these regulations at the continental level.²⁰⁰

First, there is a lack of awareness among African governments and the private sector about the importance of SPS issues. Consequently, administrators consider SPS issues a low priority, and insufficient financial resources are allocated to address these concerns.²⁰¹

Second, there is a lack of incentive for the private sector to engage in formal regulated trade, as government officials often lack the capacity and capability to effectively monitor and enforce SPS standards. This leads to difficulties in the ability to consistently implement SPS policies and procedures.²⁰²

Third, there are insufficient science-based systems to collect, analyse, and share information on the presence of high-risk diseases, pests, or food safety hazards in the region. The scientific data that is collected is rarely shared for policy development, leading to a lack of transparency in SPS standards and regulations among countries.²⁰³

Fourth, the reluctant adoption of SPS policies by the public sector results in non-compliance with regulations, and inadequate or non-existent infrastructure and laboratories, hindering the ability of government bodies and agri-businesses to meet

²⁰⁰ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 15.

²⁰¹ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 15.

²⁰² African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 23.

²⁰³ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 23.

safety standards.²⁰⁴ Moreover, poor national and regional coordination leads to fragmented and ineffective efforts. These challenges impede the establishment of a consistent and effective system for ensuring the safety of food and agricultural products across Africa, thus harmonisation is crucial.²⁰⁵

3.7 The main objectives of the continental SPS policy framework and strategies for implementation

The *Framework* envisions the implementation of modern SPS systems aligned with the WTO *SPS Agreement*, essential for agricultural development and trade within Africa as well as globally. Thus, its mission is to enhance public health, food security, and market access by developing harmonized SPS systems across Africa, working closely with AU Member States and RECs.²⁰⁶ Ultimately, the *Framework* intends to contribute to achieving the Comprehensive African Agricultural Development Programme (hereafter CAADP) and Malabo Declaration goal of tripling intra-African and global trade²⁰⁷ and to support the *AfCFTA Agreement Annex 7* objectives.²⁰⁸

The *Framework* is driven by principles of scientific and risk-based decision-making, aligned with international standards, thus ensuring the establishment of science-based standards, harmonization, cooperation, and the secure trade of animals, plants, and food

²⁰⁴ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 15.

²⁰⁵ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 15.

²⁰⁶ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 26.

²⁰⁷ The CAADP and the Malabo Declaration form part of the Agenda 2063 continental initiative, which aims to help African countries eradicate hunger and reduce poverty by boosting economic growth through agricultural development. Agenda 2063 is a collection of initiatives proposed and currently being implemented by the African Union, adopted on 31 January 2015, in Addis Ababa. See African Union 2024 <https://caadp.org/>. See also Article V (5) of the *Malabo Declaration on Accelerated Agricultural Growth and Transformation for Shared Prosperity and Improved Livelihoods* (2014).

²⁰⁸ The objectives of this Annex are to: "a) facilitate trade while safeguarding human, animal or plant life in the territory of the Member States; b) enhance cooperation and transparency in the development and implementation of SPS measures to ensure that they do not become unjustifiable barriers to trade; and c) enhance technical capacity of Member States for the implementation and monitoring of SPS measures while encouraging the use of international standards in the elimination of barriers to trade." See Article 4 (a)-(c) of *Annex 7 (Sanitary and Phytosanitary Measures) of the Agreement Establishing the African Continental Free Trade Area* (2019).

products with minimal disruptions to trade.²⁰⁹ The *Framework* has four main objectives that address the varied and interconnected needs of SPS systems in Africa, namely, creating a harmonised and science-based SPS system; enhancing collaboration and trade facilitation; developing technical capacity; and boosting political support and investment from the public and private sectors for SPS systems.²¹⁰

3.7.1 Objective 1: Establish harmonised science-based SPS systems

To accomplish objective 1, AU Member States need assistance in developing harmonized, science-based SPS systems that match international standards and regional conditions. This support can be provided through national-level science-based systems that align with existing RECs standards, ensuring that the least trade-restrictive measure is taken. Many AU Member States have national SPS systems that do not conform to international standards, thus a legislative and regulatory review, and modernisation of SPS frameworks is needed.²¹¹ Encouraging AU Member States to adopt and comply with science-based SPS measures will safeguard human, animal, and plant health, while promoting proper risk assessments to ensure minimal trade restrictions and protecting public health. Further, establishing surveillance systems for priority pathogens, pests, and food safety hazards is essential, as well as advocating for compartmentalisation in recognizing Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence will further facilitate safe trade across the continent.²¹²

A key goal of the *AfCFTA Agreement* is to enhance the technical capacity of AU Member States to implement and monitor SPS measures and promote the use of international standards to eliminate trade barriers.²¹³ Harmonising standards at the RECs and

²⁰⁹ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 26.

²¹⁰ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 26.

²¹¹ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 28.

²¹² African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 29.

²¹³ Article 4 (c) of *Annex 7 (Sanitary and Phytosanitary Measures) of the Agreement Establishing the African Continental Free Trade Area* (2019).

continental levels could therefore meet the current needs for safe domestic and international trade in the agri-food sector.²¹⁴

3.7.2 Objective 2: Strengthen collaboration and trade facilitation

Objective 2 aims to enhance collaboration and trade facilitation by boosting efficiencies and reducing trade costs with the development of a unified continental SPS system. For example, post-harvest agricultural losses amount to around 40% of food produced, thus hindering sustainable food security in Africa. This issue is exacerbated by the complexity of eight RECs, 55 Member States, and various SPS systems, along with differing audit, certification, and import/export verification mechanisms.²¹⁵

Additionally, a lack of transparency in terms of information-sharing among the RECs and AU Member States further hampers cooperation, creating barriers to greater intra-African trade and economic development.²¹⁶ Therefore, ensuring free trade among Africa's 55 countries could lead to more robust markets with reduced food losses during transport. This could increase smallholder incomes, lower food prices for consumers, alleviate hunger, and reduce environmental stress.²¹⁷ The AU can assist its Member States in leveraging existing RECs SPS harmonisation efforts to establish unified continental standards based on international norms, which may reduce trade costs. Encouragement should be given for participation in WTO SPS activities and the adoption of harmonized SPS audit and verification systems.²¹⁸

State Parties to the *AfCFTA Agreement* reaffirm their rights and responsibilities to conduct import and export inspections in accordance with principles and guidelines set by international standard-setting bodies.²¹⁹ Therefore, it is crucial to support transparent

²¹⁴ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 29.

²¹⁵ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 30.

²¹⁶ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 31.

²¹⁷ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 31.

²¹⁸ Article 9 (2) of *Annex 7 (Sanitary and Phytosanitary Measures) of the Agreement Establishing the African Continental Free Trade Area* (2019).

²¹⁹ Article 10 of *Annex 7 (Sanitary and Phytosanitary Measures) of the Agreement Establishing the African Continental Free Trade Area* (2019).

import and export inspections and certification systems, and to streamline border crossing infrastructure and processes within the continental framework.²²⁰ Furthermore, enhancing the capacity of the *AfCFTA* Secretariat and relevant AU technical offices could improve coordination among Member States and RECs in SPS matters. After providing this assistance, the AU may well effectively coordinate Member States and RECs to participate in forums and activities, creating a unified SPS voice for Africa.²²¹

3.7.3 Objective 3: Build technical capacity

Objective 3 intends to enhance technical capacity by amplifying resources and cooperation among RECs, Member States, and stakeholders. The effectiveness of an SPS system depends significantly on the technical expertise of its human resources and the adequacy of its physical infrastructure.²²² Member States need well-trained inspectors, researchers, and laboratory personnel to manage SPS risks and meet international food safety standards. However, African governments often lack the resources to identify and retain skilled staff members, while also facing a shortage of essential physical infrastructure, such as specialized laboratories and equipment.

Cooperation among Member States is necessary to build and maintain reference laboratories across the continent. Weak inspection systems, porous borders, and unregulated pest movement have resulted in pest outbreaks, which negatively affect the environment, food security, agricultural production, and trade.²²³ Africa also lacks a

²²⁰ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 31.

²²¹ These strategies mentioned, help Annex 7 implement the provisions of the Protocol on Trade in Goods related to Sanitary and Phytosanitary measures that impact trade between State Parties, either directly or indirectly. See Article 2 of *Annex 7 (Sanitary and Phytosanitary Measures) of the Agreement Establishing the African Continental Free Trade Area* (2019).

²²² African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 32.

²²³ For instance, in 2017 the SADC experienced a threat to the yearly maize harvest as a Fall Armyworm (*Spodoptera frugiperda*) outbreak was reported, affecting Malawi, Namibia, South Africa, Zambia and Zimbabwe. This pest impacted the production of maize, in turn effecting food security and trade within the region. See The Brookings Institution 2017 <https://www.brookings.edu/articles/fall-armyworm-outbreaks-in-the-sadc-region-how-to-respond/>. See also FSIN *Global report on food crises 2017* 72.

central source of SPS information, hindering efforts to align policy interventions or address shared threats.²²⁴

To address these challenges, the AU must promote demand-driven capacity building through inclusive prioritisation processes and formal needs assessments. Objective 3 focuses on creating and strengthening regional “centres of excellence” for SPS technical assistance and expanding human resources at both national and regional levels.²²⁵ This includes developing essential physical infrastructure, such as regional reference testing laboratories, and enhancing technical capacity for early warning and response systems.²²⁶

Moreover, the improvement of transparency and efficiency in SPS management could be achieved by informing the WTO of new or updated SPS measures and sharing essential information, such as pest risk assessments, test results, and pest databases, across Africa. Further, using Information and Communications Technology, such as digital tools and web-based networks, coupled with appropriate training, could enhance information sharing.²²⁷ This approach may lead to better compliance with SPS standards, expand trade opportunities, and safeguard public health by ensuring that up-to-date and accurate information is readily accessible and effectively utilized across the continent.²²⁸

3.7.4 Objective 4: Increase political support and public and private sector investment in SPS systems

Objective 4 may be realized by expanding intra-African trade in plants, animals, and food through enhanced public-private cooperation, increased awareness, and resource

²²⁴ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 32-33.

²²⁵ Article 14(1)(f) of *Annex 7 (Sanitary and Phytosanitary Measures) of the Agreement Establishing the African Continental Free Trade Area* (2019).

²²⁶ Article 14(1)(d) of *Annex 7 (Sanitary and Phytosanitary Measures) of the Agreement Establishing the African Continental Free Trade Area* (2019).

²²⁷ For instance, the IPPC has launched *ePhyto Solutions*, which is an abbreviation of ‘electronic phytosanitary certificate’. The IPPC’s *ePhyto Solutions* consists of a central server that produces electronic phytosanitary certificates and enables the exchange of certificates between National Plant Protection Organisations. See IPPC 2024 <https://www.ippc.int/en/ephyto/>. See also FAO *ePHYTO solution - an innovative system for electronic phytosanitary certificates 2*.

²²⁸ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 32-33.

mobilization.²²⁹ The 2015 WHO report on the global burden of foodborne diseases identifies Africa as the most impacted continent, estimating that foodborne diseases account for between 1,179 and 1,276 Disability-Adjusted Life Years (hereafter DALYs) in Africa.²³⁰ DALYs measure the total impact of diseases by combining the years lost due to early death and the years people live with illness or disability.²³¹ This means foodborne diseases in Africa significantly reduce people's quality of life and life expectancy. This significant burden is primarily due to inadequate control of infectious biological hazards, underscoring the urgent need for improved systems.²³²

Food safety incidents often lead to trade restrictions on affected regions, as they are identified as sources of contaminated food. To effectively implement SPS measures, it is crucial to enhance food safety norms and controls, particularly in animal and plant health. These controls, typically managed by small or medium-sized enterprises (hereafter SMEs), require technological and scientific support throughout the agricultural value chain, including production, processing, distribution, and consumption.²³³

Furthermore, the private sector is vital for boosting exports, domestic trade, and adding value to agricultural products, thereby supporting market sustainability in Africa and beyond. Effective public-private collaboration and transparency are essential for promoting SPS compliance and maintaining trade. It is crucial to mobilise financial and technical resources, with strong political commitment from RECs, the AU Member States, and international partners.²³⁴

Strategies to help AU Member States ensure transparency (with all stakeholders) include offering technical assistance to develop and sustain public-private partnerships. This involves collaborating with farmer organisations, trade groups, SMEs, miller associations,

²²⁹ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 34.

²³⁰ World Health Organisation *WHO Estimates of the Global Burden of Foodborne Diseases* 38.

²³¹ World Health Organisation 2024 <https://www.who.int/data/gho/data/themes/mortality-and-global-health-estimates/global-health-estimates-leading-causes-of-dalys>.

²³² World Health Organisation *WHO Estimates of the Global Burden of Foodborne Diseases* 38.

²³³ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 34.

²³⁴ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 34.

and retailers to achieve common SPS objectives.²³⁵ This improvement in compliance may help businesses move from informal trade practices to more structured and regulated trade channels, like certification schemes that are gradually implemented. This transition ensures that trade practices become more formalized and standardized, which can enhance overall trade efficiency and safety.²³⁶

Moreover, promoting and raising awareness about SPS issues among senior government officials, private sector leaders, and the public could generate support for stronger SPS systems. The African Union Commission's (hereafter AUC) global platform should be utilized to obtain financial and technical resources necessary for implementing SPS measures in AU Member States.²³⁷

3.8 The implementation processes of the continental SPS policy framework

The *Framework* will be executed at multiple levels and stages, with key institutions assigned distinct but complementary roles in developing essential institutional infrastructure. At the continental level, the AUC will oversee the implementation of the *Framework*, delegating certain tasks to the DREA. The DREA will play a pivotal role in coordinating, implementing, and monitoring the *Framework* across the continent, working in collaboration with RECs, Member States, and other key stakeholders at both regional and national levels.²³⁸

Further, the AUC will ensure that the *Framework* and its actions are in line with the objectives of African Agenda 2063, and Annex 7 of the *AfCFTA Agreement*, while strengthening the capacity of its relevant departments to manage the strategy's implementation. Furthermore, the *AfCFTA* Sub-Committee for Sanitary and Phytosanitary Measures will collaborate with DREA to provide an overarching view, monitor, and

²³⁵ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 35.

²³⁶ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 35.

²³⁷ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 35.

²³⁸ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 36.

periodically review the *Framework's* implementation in relation to Member States' commitments to Annex 7.²³⁹

At the regional level, the RECs will be tasked with incorporating the *Framework* into their regional development plans. The *Framework* acknowledges that Africa's sub-regions face unique challenges and have their own SPS strategies and regulatory oversight. Consequently, sub-regions may create their own strategies and tools, provided they align with and build upon the African *Framework* and are committed to implementing measures that promote the harmonisation of SPS practices across the continent.²⁴⁰ Significant effort has been made by the AU to ensure that the *Framework* complements rather than duplicates existing regional SPS strategies.²⁴¹

The AUC will work closely with RECs to gather resources that will help AU Member States meet their SPS commitments, especially for cross-border issues. This support will involve improving cooperation in SPS systems, encouraging knowledge-sharing among policymakers, businesses, and experts, and securing resources to expand these efforts.²⁴²

Finally, at the national level, AU Member States will manage interconnected activities aimed at enhancing and establishing effective plant and animal health and food safety systems. They will use the *Framework* strategy to identify key components needed to create or revise their own national plans.²⁴³ National governments will be expected to consistently engage in SPS meetings at regional, continental, and international levels. They will also need to create policies that secure sufficient financial and human resources

²³⁹ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 36.

²⁴⁰ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 37.

²⁴¹ This is evident as the AU has collaborated the RECs, including SADC, to align the continental SPS framework with their established SPS regulations. See African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 37.

²⁴² African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 37.

²⁴³ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 37 – 38.

to implement their national strategies. Additionally, governments must establish frameworks that involve civil society, key groups, and other stakeholders.²⁴⁴

3.9 Conclusion

In Africa, agriculture is crucial for socio-economic development and significantly contributes to poverty reduction. It provides about 65% of employment and constitutes 75% of domestic trade on the continent. Consequently, SPS measures are especially vital for African trade, as most products covered by SPS agreements are predominantly agricultural.²⁴⁵

Collaboration in the development and implementation of SPS measures within the *AfCFTA* will enhance harmonisation and reduce the adverse impact of SPS measures on both export capacity and import control, as inconsistent SPS measures could greatly obstruct intra-African trade.²⁴⁶

Additionally, the *Framework* offers a guide for key stakeholders (namely AU institutions, RECs, Member States, and the private sector) to collaborate and fortify SPS systems across the continent. The effective siting of the *Framework*, within the *AfCFTA* is crucial for advancing agricultural development and trade across Africa. By fostering greater harmonisation of SPS measures and enhancing cooperation among African institutions and countries, Africa could potentially strengthen SPS systems and achieve sustainable economic growth. This collaborative approach will ensure that SPS measures support rather than hinder trade, ultimately contributing to improved food safety, agricultural productivity, and economic resilience across the continent.

²⁴⁴ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 37 – 38.

²⁴⁵ African Union Commission *The Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) Policies of African Regional Economic Communities (RECs)* 23.

²⁴⁶ African Union Commission *The Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) Policies of African Regional Economic Communities (RECs)* 23.

4 Attempting harmony between sustainable development and trade facilitation in the agri-food sector through South Africa's SPS implementations

4.1 Introduction

This chapter will primarily focus on South Africa, examining its sustainable trade policies as a developing country within the context of SPS measures and the agri-food sector. It will explore whether sustainable development can be achieved without excessively limiting trade. South Africa is a member of both the WTO and the AU; thus South Africa complies with the SPS regulations outlined in the *WTO SPS Agreement*, Annex 7 of the *AfCFTA Agreement*, the *AU Framework*, and those further set out by International Standard Setting Bodies (hereafter ISSBs), such as the WOH, IPPC and the Codex.²⁴⁷ South Africa's SPS regulations are designed by these organisations, as well as by the RECs it falls under – the Southern African Development Community (hereafter the SADC).²⁴⁸

This chapter will explore the South African legal framework, highlighting how South Africa prioritizes sustainable development, and the principles it has established to make sustainable development an achievable endeavour. South Africa is considered the trading hub of southern Africa, thus serving as an example for other developing countries in terms of its sustainability efforts in the agri-food market.²⁴⁹ The discussion will include the *Constitution of the Republic of South Africa* and the *National Environmental Management Act 107 of 1998* (hereafter *NEMA*) in this regard.

Furthermore, the nexus of SPS measure implementation and trade facilitation will be discussed, looking at both South Africa and the SADC. Additionally, the most relevant

²⁴⁷ WTO 2024 https://www.wto.org/english/thewto_e/countries_e/south_africa_e.htm. See also South African Government 2024 <https://www.gov.za/about-sa/international-relations>.

²⁴⁸ South Africa joined the SADC in April 1994 as the Community's 11th member. See SADC 2024 <https://www.sadc.int/member-states/south-africa>. See also Joubert *Sanitary and phytosanitary measures in the SADC region: a South African legal perspective* 24.

²⁴⁹ South Africa is the economic heartbeat of the SADC and is regarded as the trading hub for southern Africa. Its economy is the most developed in Africa, featuring a sophisticated financial system that includes one of the world's top stock exchanges. See SADC 2024 <https://www.sadc.int/member-states/south-africa>.

South African legislation governing SPS measures and the SADC *Sanitary and Phytosanitary Annexure to the Protocol on Trade* will be discussed. Therefore, evaluating how effectively the SADC and South African SPS regulations are harmonized with each other and aligned with international standards.

Lastly, controversial case law will be analysed from a national and international perspective, exploring how South Africa deals with conflict in terms of SPS measures, and the arguments shaped by both international and national influence. In this regard two disputes will be discussed, namely the national case of *South African Poultry Association v The Minister of Agriculture, Forestry and Fisheries* and the international dispute of the *EU – measures concerning the importation of citrus fruit from South Africa*, as well as the more recent dispute of the *EU – Additional Measures Concerning the Importation of Citrus Fruit From South Africa*.

4.2 The concept of sustainable development within the South African legal framework

As a member of both the WTO and the AU, South Africa adheres to the SPS regulations established by these organisations. However, to gain insight into its approach to sustainable development, it is useful to examine South Africa's legislation, which may be incorporated into its trade policies and SPS regulations concerning the agri-food sector.

South Africa's national legislation supports sustainable development, as sustainability is engrained into the *Constitution*, which is considered to be the supreme law.²⁵⁰ The *Constitution* emphasises the concept of sustainability by asserting that all South Africans have the right to a protected environment, which must be preserved for current and future generations.²⁵¹ This must be achieved through reasonable laws and actions that

²⁵⁰ Section 2 of the *Constitution of the Republic of South Africa*, 1996.

²⁵¹ Given that the Constitution is the supreme law in South Africa, it logically follows that if it emphasises sustainability, this principle must bleed into all other legislative frameworks within the Republic, including international trade laws and policies. Therefore, its inclusion and discussion are paramount. See section 2 and 24(b) of the *Constitution of the Republic of South Africa*, 1996.

ensure the sustainable use of natural resources while also supporting fair economic and social development.²⁵²

Further, sustainable development is a fundamental principle of South African environmental law and is closely considered in the principles outlined in *NEMA*.²⁵³ *NEMA* defines sustainable development as the equal integration of social, economic and environmental factors into the planning, implementation and decision-making of sustainable policies, in an effort to ensure that these developments serve both present and future generations.²⁵⁴ In other words, when developing policies and regulations meant to serve development projects, the social, economic and environmental dimensions must be considered equally. Sustainability serves as a blueprint for achieving human development goals while also protecting the natural systems essential for the economy and society by ensuring that natural resources and the ecosystem is not exhausted.²⁵⁵

It is clear from the provisions of *NEMA* and the *Constitution* that sustainable development consists of a “three pillar” approach, namely economic, social and environmental considerations. These three pillars must be maintained concurrently and with equal dedication, much like the traditional African three-legged cooking pot: the pot will become unstable unless all the legs are equal in length and strength.²⁵⁶

South Africa's three-pillar approach could be extended to its international trade policies. Properly implementing SPS measures in the agri-food sector could facilitate trade, ensuring it is safer, more efficient, effective, and sustainable.

²⁵² This constitutional section was the main discussion in *Fuel Retailers Association of Southern Africa v Director-General*, which was a landmark case in South Africa for sustainable development and environmental sustainability. See section 24(b)(iii) of the *Constitution of the Republic of South Africa, 1996*. See also *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province 2007* 6 SA 4 (CC) para 44 – 45.

²⁵³ Kidd *Environmental Law* 10.

²⁵⁴ Section 1 and 2(3) of the *National Environmental Management Act 107 of 1998*.

²⁵⁵ Kidd *Environmental Law* 17.

²⁵⁶ Kidd *Environmental Law* 17 – 18.

4.3 Facilitating safe and sustainable international trade within South Africa with the effective implementation of SPS measures

Trade facilitation streamlines the processes involved in moving goods across local, regional, or international borders, by minimising bureaucratic hurdles. This in turn reduces trading costs, enhances trading capacity, contributes more effectively to food security, and promotes economic development.²⁵⁷ In the trade of food and agricultural products, SPS measures are essential as they help mitigate risks to human, animal, and plant health that can arise from cross-border movement of goods.²⁵⁸ However, when poorly implemented, SPS measures can increase the costs of trading and potentially render it unprofitable for traders, especially in developing countries.²⁵⁹

The following section will explore how South Africa's SPS measures in the agri-food industry can either hinder or facilitate trade, based on how they are implemented. This section will also suggest ways South Africa can improve its use of SPS measures to protect health while keeping trade costs low.

4.3.1 The nexus between the implementation of SPS measures and trade facilitation

In many developing countries, such as those in southern Africa, SPS measures account for a significant portion of the regulations that formal traders face at the border and within the country.²⁶⁰ These SPS measures involve extensive documentation, such as import and export permits, phytosanitary certificates, quality standards certifications, and certificates of origin, amongst others. Further, these measures also include inspections and tests to verify compliance with national regulations.²⁶¹ While many of these measures are justified in the pursuit to protect human, animal and plant health, others may not be.

With the introduction of globalisation, food and animal and plant products intended for local use can now be sourced from various countries and across continents. Thus, the

²⁵⁷ These goals are echoed in the AU's 2014 Malabo Declaration on accelerated agricultural growth and transformation. See Rathebe 2015 *WTO-STDF report iv*.

²⁵⁸ For instance, the spread of diseases like foot and mouth disease from an affected country to a disease-free one. See Rathebe 2015 *WTO-STDF report iv*.

²⁵⁹ Rathebe 2015 *WTO-STDF report iv*.

²⁶⁰ Rathebe 2015 *WTO-STDF report v*.

²⁶¹ Rathebe 2015 *WTO-STDF report v*.

trade of food and other agricultural products has the potential to boost economic development and alleviate poverty, especially for rural communities in developing nations like South Africa.²⁶² However, without proper SPS controls in place, such trade can introduce and spread food-borne animal diseases and/or plant pests.²⁶³ This could harm human, animal and plant health within the importing country and potentially impact that country's long-term exporting capacities.

The WTO's *SPS Agreement* aims to promote the safe trade of food and agricultural products by establishing a set of rules that allow nations to implement the necessary SPS measures to protect human, animal and plant life and health from trade-related risks.²⁶⁴ Simultaneously, it aims to prevent these measures from becoming unjustified trade barriers.²⁶⁵ The *SPS Agreement* promotes safe and sustainable trade, helping to reduce the costs associated with trading. Hence, the implementation procedures and processes of South Africa's SPS measures will be examined in relation to Article 8 and Annex C of the *SPS Agreement*, as well as the recommendations developed by Codex, the *IPPC*, and the *WOAH*.²⁶⁶

Another agreement worth briefly noting is the WTO's *Trade Facilitation Agreement* (hereafter *TFA*), which came into effect on 22 February 2017 after being ratified by two-thirds of WTO Member States.²⁶⁷ Trade facilitation, which focuses on simplifying, modernising, and harmonising export and import processes, has emerged as a crucial issue in the global trading system. In response to the challenges posed by bureaucratic

²⁶² Rathebe 2015 *WTO-STDF report* 1.

²⁶³ Rathebe 2015 *WTO-STDF report* 1.

²⁶⁴ Rathebe 2015 *WTO-STDF report* 1. See also Article 2.2 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

²⁶⁵ Rathebe 2015 *WTO-STDF report* 1. See also Article 2.3 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

²⁶⁶ In terms of the SPS Agreement, Annex C outlines the provisions for enforcing Article 8, which focuses on control, inspection, and approval procedures, and is closely tied to the principle of least-trade restrictiveness. See article 8 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

²⁶⁷ South Africa is amongst these states, submitting its instrument of acceptance on 30 November 2017. See WTO 2024 https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm. See also Republic of South Africa's Department of Trade and Industry *Trade and Economic Co-operation Agreements* 3.

delays that hinder the movement of goods across borders, the WTO introduced the *TFA* to help reduce these delays and streamline trade operations.²⁶⁸

The *TFA* provisions aim to accelerate the movement, release, and clearance of goods, while also outlining procedures to enhance collaboration between customs and relevant authorities on trade facilitation and customs compliance.²⁶⁹ This improved efficiency can significantly expedite the trade process for products that must meet certain SPS standards. The importance of this is underscored by the World Bank's 2014 Logistics Performance Index, which identified border agencies and customs as the "weakest links" in global supply chains.²⁷⁰ This creates bottlenecks that can be detrimental in developing countries like South Africa, where delays in the trade of goods can have serious economic consequences, as the costs of such delays are often high.

The *TFA* also includes provisions for technical assistance and capacity building, as it is estimated that the implementation of the *TFA* could generate significant funds, potentially boosting global trade by up to \$1 trillion (USD).²⁷¹ Trade facilitation can positively influence the flow of trade, with the most impactful measures being the improvement of access to information, the simplification and harmonisation of documents, automating processes and risk management, modernised border procedures, and the promotion of good governance and fairness.²⁷²

4.3.2 The operations, opportunities and best practices for SPS implementation in South Africa

This section will examine the operations, best practices, and areas for improvement in South Africa's implementation of SPS measures, focusing on the agri-food sector.

²⁶⁸ WTO 2024 https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm.

²⁶⁹ WTO *Easing Trade Bottlenecks in Landlocked Developing Countries* 42. See also Article 2.1.1 of the *Agreement on Trade Facilitation* (2017).

²⁷⁰ Rathebe 2015 *WTO-STDF report* 4. See also The World Bank *Connecting to Compete 2014 Trade Logistics in the Global Economy: The Logistics Performance Index and Its Indicators* 23.

²⁷¹ Peterson Institute for International Economics and ICC Research Foundation *Payoff from the World Trade Agenda 2013* 11. See also Sakyi and Afesorgbor 2019 *Journal of African Trade* 5. See also Article 12.1.2 of the *Agreement on Trade Facilitation* (2017).

²⁷² Moisé and Sorescu 2013 *OECD Publishing* 5.

South Africa is actively involved in enhancing its international trade, adhering to global standards, and participating in multilateral trade agreements to promote more efficient trade for both the Republic and other southern African nations.²⁷³ However, despite South Africa's efforts, there have been challenges in managing SPS matters that have led to serious economic consequences. A notable example occurred in 2008 when South Africa lost access to the Thai fresh fruit market. This setback occurred because the South African National Plant Protection Organisation failed to submit a request for exemption from Thailand's new market access requirements before the deadline set by the Ministry of Agriculture. This oversight was estimated to have cost the South African fruit industry approximately \$ 3.74 billion (USD).²⁷⁴

Since this mistake, the South African Department of Agriculture, Forestry, and Fisheries (hereafter DAFF) has consistently worked to align its agri-food legislation with international standards.²⁷⁵ This is important, as agriculture accounts for roughly 10% of formal employment in the Republic, employing a significant portion of the unskilled workforce. And though the primary agricultural sector contributes only about 3% to South Africa's GDP, agriculture still plays a vital role in foreign exchange earnings and supports the livelihoods of the rural poor.²⁷⁶

A limited portion of arable land in South Africa is used for agricultural production, with the major fruit categories produced being citrus fruits such as oranges, as well as apples, pears, peaches, table grapes, and avocados.²⁷⁷ And while agricultural exports are not a dominant part of the economy, the sector has the potential for growth, provided the right conditions are established, as outlined in Chapter 6 of the National Development Plan, 2030 (hereafter NDP).²⁷⁸

²⁷³ For instance, South Africa is a member of the Southern African Customs Union (hereafter SACU) and SADC, which became a Free Trade Area in 2008. Additionally, South Africa is engaged in discussions to integrate the SADC with COMESA and the EAC into a Tripartite trading block; and maintains an active participatory role in the WTO. See Rathebe 2015 *WTO-STDF report* 20.

²⁷⁴ Rathebe 2015 *WTO-STDF report* 20.

²⁷⁵ These international standards refer to the Codex, OIE, and IPPC guidelines. See Rathebe 2015 *WTO-STDF report* 21.

²⁷⁶ Rathebe 2015 *WTO-STDF report* 21.

²⁷⁷ Rathebe 2015 *WTO-STDF report* 21.

²⁷⁸ Rathebe 2015 *WTO-STDF report* 21.

The NDP foresees that the agri-food industry could be a major driver for job creation and improving livelihoods, should the demand growth potential be realised in South Africa and the wider southern African region.²⁷⁹ Further, the NDP intends to support small businesses through strengthening regional economic integration and increasing intra-regional trade in southern Africa, from 7% in 2014 to 25% by 2030. This will be done by addressing NTB, such as SPS measures and border post constraints, that inflate business costs in the region and continent.²⁸⁰

Furthermore, the NDP recognises that trade negotiations and SPS agreements are the best way to gain market access. South Africa must stay competitive globally to secure and expand its market share. South Africa's success at breaking onto the international trade stage will depend on how it and its regional trading partners apply various instruments, including the *SPS Agreement*.²⁸¹

4.3.3 Improving transparency

To effectively participate in regional and international agricultural trade, it is important for traders and producers of agricultural products to have access to reliable and accurate information. This ensures that producers and traders can operate in a transparent and predictable environment.²⁸²

According to Article 7 and Annex B of the *SPS Agreement*, all WTO Member States are required to provide the organisation with any changes and relevant information on their SPS measures.²⁸³ Member States must quickly publish any adopted SPS regulations to allow interested parties to familiarize themselves with the new information.²⁸⁴

²⁷⁹ National Planning Commission of South Africa *Our future - make it work: National Planning Commission National Development Plan 2030* 219.

²⁸⁰ National Planning Commission of South Africa *Our future - make it work: National Planning Commission National Development Plan 2030* 220.

²⁸¹ National Planning Commission of South Africa *Our future - make it work: National Planning Commission National Development Plan 2030* 223.

²⁸² Rathebe 2015 *WTO-STDF report* 26.

²⁸³ Article 7 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

²⁸⁴ Annex B (1) of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

South Africa adheres to the *SPS Agreement's* basic reporting requirements through the National Notification Point and a National Enquiry Point.²⁸⁵ Further, South African authorities publish the fees for all SPS-related services in a publicly accessible online tariff book, while also consulting with agriculture industry associations on potential fee increases a year prior to their consideration, approval and implementation.²⁸⁶ Although the *SPS Agreement* does not mandate the online publication of fees or industry consultations on costs, the TFA does require the disclosure and publication of information on fees and charges related to SPS measures.²⁸⁷ This practice, along with providing comprehensive details on specific SPS requirements and import/export procedures, enhances transparency and predictability.

While South Africa appears committed to maintaining transparency regarding SPS measures, producers and traders face challenges in accessing information about SPS procedures, application forms, fees, and waiting times, despite these details being outlined in government regulations. Many traders reportedly rely on personal contacts within industry associations or with government officials to gather this information.²⁸⁸ Authorities such as DAFF do make this information available online and on the DAFF website, offering access to application forms and publishing comprehensive details on SPS regulations, fees, and processing times for documents and goods clearance.²⁸⁹ While the necessary information is available, many traders remain unaware of its existence or find it difficult to locate. Improving accessibility and raising awareness about where to find this information could enhance transparency in SPS procedures and fees, thereby improving governance in the implementation of SPS measures.²⁹⁰

4.4 Observations on South Africa's SPS implementation and trade facilitation

It has been observed that accurate information regarding the legislation, processes, and procedures for importing and exporting agricultural products, like fresh fruits and vegetables, can be easily accessed on the websites of the national departments in charge

²⁸⁵ Rathebe 2015 *WTO-STDF report* 26.

²⁸⁶ Rathebe 2015 *WTO-STDF report* vi.

²⁸⁷ Rathebe 2015 *WTO-STDF report* vi.

²⁸⁸ Rathebe 2015 *WTO-STDF report* 26.

²⁸⁹ Rathebe 2015 *WTO-STDF report* vi and 26.

²⁹⁰ Rathebe 2015 *WTO-STDF report* vi.

of SPS controls.²⁹¹ Additionally, information on waiting times and the fees for services offered by SPS agencies are also available on these sites.

Industry associations, such as the Perishable Products Export Control Board (hereafter PPECB), provide further valuable information such as the Maximum Residue Levels, which are approved by the Department of Health (hereafter DOH) for pesticides, chemicals, and metals that may be present in food products for both imports and exports.²⁹² Further, the PPECB oversees the food safety of minimally processed agricultural commodities intended for export.²⁹³ However, this information is not easily accessible to small-scale traders and producers, especially those without internet access or those not part of industry associations.

Small-scale traders and producers in provinces outside of Gauteng face challenges due to limited access to SPS-related information, as their extension workers and farmers often have to contact or travel to Pretoria for assistance.²⁹⁴ This process is inefficient and raises concerns. Although steps have been taken to simplify paperwork and make application forms available online, most tasks are still done manually in the Republic, making the system less efficient.²⁹⁵

Although there is still room to improve access to information for new market entrants and small-scale producers and traders, some effective practices are already in place. These include ongoing discussions through online forums, the efficient operation of the National Notification Authority and Enquiry Point, and a semi-automated system for processing registrations of food business operators and applications for phytosanitary certificates.²⁹⁶

South Africa can facilitate trade by encouraging the use of international standards established by Codex, the IPPC, and the OIE. While some African RECs, including the SADC, have created their own regional standards, it is crucial to ensure these do not hinder trade by imposing stricter requirements than international standards.²⁹⁷ This brings

²⁹¹ Rathebe 2015 *WTO-STDF report* 30.

²⁹² Rathebe 2015 *WTO-STDF report* 23.

²⁹³ Rathebe 2015 *WTO-STDF report* 30.

²⁹⁴ Rathebe 2015 *WTO-STDF report* 30.

²⁹⁵ Rathebe 2015 *WTO-STDF report* 30.

²⁹⁶ Rathebe 2015 *WTO-STDF report* 30.

²⁹⁷ Rathebe 2015 *WTO-STDF report* 40.

us to the next section, which will evaluate how well South Africa's SPS regulations align with international standards.

4.5 South Africa's compliance with international standards

It is essential to assess whether South Africa adheres to the international standards established by global standard-setting bodies, ensuring that it neither exceeds nor falls short of the internationally agreed goals. South Africa is the largest market in the SADC region, accounting for nearly 50% of all intra-SADC trade, making it the region's top importer and exporter.²⁹⁸ Consequently, due to this large market, South Africa assumes a leading role in shaping food safety standards within the SADC, and aligning its policies with international principles, norms, and standards.

In South Africa, the responsibility for food safety and control legislation primarily falls on the health and agricultural sectors. Food control is the compulsory regulatory activity, enforced by national, provincial, or local authorities, to protect consumers by ensuring that food meets safety and quality standards, and is accurately and truthfully labelled according to legal requirements.²⁹⁹ Further, it ensures that food is safe, wholesome, and suitable for consumption throughout its production, handling, storage, processing, and distribution.³⁰⁰

The food and agricultural industry comprise the largest manufacturing sector in South Africa, thus greatly impacting trade, public health, food security, and poverty.³⁰¹ The responsibility for food safety is shared across three government departments, namely the DOH, the DAFF, and the Department of Trade and Industry (hereafter DTI).³⁰² Further, provincial and district health authorities are also responsible for food safety, and those

²⁹⁸ In 2022, the SADC exported \$302 billion (USD) and imported \$245 billion (USD). With South Africa being its largest importer and exporter, exporting \$147 billion (USD), which corresponds to 48.7% of the total exports, and importing \$113 billion (USD), which is 46.1% of the total imports in the SADC. See OEC 2022 https://oec.world/en/profile/international_organization/sadc.

²⁹⁹ South African Department of Health 2024 <https://www.health.gov.za/food-control/>.

³⁰⁰ South African Department of Health 2024 <https://www.health.gov.za/food-control/>.

³⁰¹ Mukumba *An Analysis of Southern Africa's Food Safety Standards* 42.

³⁰² Mukumba *An Analysis of Southern Africa's Food Safety Standards* 42.

overseeing food safety controls at land ports of entry are expected to stay informed about SPS developments within the SADC region.³⁰³

South African authorities and lawmakers adhere to international standards by aligning the legislation of South Africa with international regulatory bodies. For instance, all food products entering the country must fully comply with the *Foodstuffs, Cosmetics, and Disinfectant Act* 54 of 1972, which itself follows the standards, guidelines, and recommendations of the Codex.³⁰⁴ It is evident that South Africa and the SADC adheres to international standards; however, despite these efforts, sometimes these standards and guidelines are not taken into consideration when SPS disputes arise. The following section will examine two controversial disputes, both at national and international level, regarding a failure of effective SPS implementation by South Africa, as well as the protectionist and scientifically unjustified measures implemented against South Africa.

4.6 Navigating controversial case law and international disputes involving South Africa

4.6.1 A case of SPS measures against South Africa's citrus exports

South Africa initiated two WTO dispute settlement actions to challenge the EU's regulations concerning two plant health issues, namely Citrus Black Spot (hereafter CBS) and False Codling Moth (hereafter FCM).³⁰⁵ The South African government argues that the regulations, which cost local citrus growers around R3.7 billion (ZAR) annually to meet CBS and FCM standards, are unscientific and overly restrictive. They contend that South Africa's world-class risk management system already ensures safe citrus exports and protects the livelihoods of thousands of industry workers.³⁰⁶

³⁰³ Mukumba *An Analysis of Southern Africa's Food Safety Standards* 42.

³⁰⁴ Additionally, other key South African legislation relevant to SPS measures, such as the *Agricultural Pests Act* 36 of 1983 and *Agricultural Products Standards Act* 119 of 1990, must also comply with international standards set by organisations such as the FAO, WOH and IPPC. See Joubert *Sanitary and phytosanitary measures in the SADC region: a South African legal perspective* 40.

³⁰⁵ Department of Trade, Industry and Competition (Republic of South Africa) 2024 <https://www.thedtic.gov.za/south-africas-cases-against-eu-citrus-measures-move-forward-at-wto-2/>.

³⁰⁶ Department of Trade, Industry and Competition (Republic of South Africa) 2024 <https://www.thedtic.gov.za/south-africas-cases-against-eu-citrus-measures-move-forward-at-wto-2/>.

On 14 July 2022, the EU introduced stringent SPS measures on South African citrus imports to prevent the spread of *Thaumatotibia leucotreta*, also known as False Codling Moth (FCM), requiring up to 25 days of mandatory cold treatment.³⁰⁷ Previously, South African citrus fruit was freely imported into the EU; however, with the abrupt implementation of these new regulations, during the peak export season and with only 23 days' notice, logistical challenges were created that led to shipment rejections.³⁰⁸ South Africa challenged the measures through the WTO, arguing they were unscientific, discriminatory, and unnecessary barriers to trade, raising export costs and threatening the citrus industry.³⁰⁹ This marked South Africa's first WTO dispute.³¹⁰

On 24 April 2024, South Africa initiated a second WTO dispute with the EU over a ban on citrus affected by *Phyllosticta citricarpa*, also known as Citrus Black Spot (CBS), claiming these restrictions lacked scientific basis under the *SPS Agreement*.³¹¹ CBS is a fungal disease, causing cosmetic blemishes to citrus fruit, but not posing any risk to human health. Despite this, the EU has implemented stringent SPS measures, aimed at preventing the spread of CBS into Europe.³¹² South Africa is the world's second-largest citrus exporter, with 40% of its citrus exports destined for the EU.³¹³ However, repeated interceptions of CBS-infected citrus led the EU to impose stricter regulations. These include extensive requirements for approval, inspection, testing, packaging, transportation, certification, labelling, and traceability for citrus imports from South Africa, along with the possibility of further bans on these imports.³¹⁴

4.6.1.1 Compliance and criticism of EU SPS measures

South Africa has strengthened both domestic regulations and international advocacy to comply with EU CBS standards. Initially, the *Agricultural Pests Act* 36 of 1983 lacked

³⁰⁷ *EU – measures concerning the importation of citrus fruit from South Africa WT/DS613/1* (2022) 1.

³⁰⁸ *EU – measures concerning the importation of citrus fruit from South Africa WT/DS613/1* (2022) 1.

³⁰⁹ Roberts, Andreoni and Chisoro 2022 <https://theconversation.com/south-african-citrus-new-eu-rules-are-unjust-and-punitive-188387>.

³¹⁰ WTO 2022 https://www.wto.org/english/news_e/news22_e/ds613rfc_29jul22_e.htm.

³¹¹ WTO 2024 https://www.wto.org/english/news_e/news24_e/ds624rfc_24apr24_e.htm.

³¹² *EU – Additional Measures Concerning the Importation of Citrus Fruit From South Africa WT/DS624/1* (2024) 1.

³¹³ Vinti 2016 *OBITER* 450.

³¹⁴ *EU – Additional Measures Concerning the Importation of Citrus Fruit From South Africa WT/DS624/1* (2024) 1.

export controls, but due to ongoing CBS disputes, DAFF and the PPECB introduced the CBS Risk Management Scheme (CBS-RMS) in 2013 to meet EU requirements. This scheme ensures that only compliant citrus fruit reaches the EU.³¹⁵

Domestically, South Africa updated its phytosanitary regulatory framework under the *Agricultural Pests Act* to align with international standards to ensure that the CBS-RMS meets these global standards. Internationally, South Africa had raised concerns about the legality of the EU's SPS measures through the WTO's SPS Committee and DSB. South Africa argued that the EU's extensive SPS measures on CBS lack scientific justification, suggesting they are a form of protectionism designed to limit market access for non-EU citrus producers.³¹⁶

Non-compliant South African citrus products are denied entry to the EU or destroyed unless processed. Despite South Africa's improvements in export procedures and risk management systems to reduce the number of CBS detections, persistent challenges remain as the EU's stricter measures continue to impact South African citrus exports.³¹⁷

The legal argument that South Africa has upheld is that the SPS measures implemented by the EU rely more on speculation rather than scientific evidence. Pest risk assessments from international experts, including the European Food Safety Authority, have shown that CBS is unlikely to spread in Europe due to its climatic conditions, and it is unlikely that CBS will spread via citrus-fruit.³¹⁸ Nevertheless, the EU persisted with restrictive measures, which South Africa claimed are discriminatory and trade-restrictive, and breach the WTO's *SPS Agreement* and its provisions.

South Africa has made considerable efforts to align with international SPS standards. However, the ongoing CBS dispute highlights the broader conflict between protectionism

³¹⁵ Vinti 2016 *OBITER* 454.

³¹⁶ South Africa argues the legal validity of the EU's measures, focusing on Article 2.2 and 5.1 of the *SPS Agreement*, which requires SPS measures to be based on sufficient scientific evidence and proper risk assessments. See Vinti 2016 *OBITER* 462.

³¹⁷ Vinti 2016 *OBITER* 456.

³¹⁸ Vinti 2016 *OBITER* 456.

and legitimate phytosanitary concerns. South Africa continues to challenge the EU's SPS measures, arguing that they lack sufficient scientific evidence.³¹⁹

South Africa and several international pest-risk assessments have questioned the science behind the EU's measures. The EU's SPS regime lacks a solid scientific foundation and fails to establish a clear link to the relevant scientific data, suggesting potential protectionist motives.³²⁰ Additionally, South Africa argues that the EU's SPS measures exceed what is necessary to protect human and plant life, making them unnecessarily trade restrictive.³²¹

4.6.2 *The South African case for sufficient science*

The national case of *South African Poultry Association v The Minister of Agriculture, Forestry and Fisheries* addresses the legal validity of the newly promulgated regulations by the Minister of Agriculture, Forestry and Fisheries (hereafter the Minister) imposing a 15% limit on brine in poultry.³²²

The South African Poultry Association (hereafter SAPA) challenged the regulations, claiming there was no scientific basis for the brine limit; alternatively, that the science relied on for determining the brining limits was faulty.³²³ The Minister argued that the limit was necessary to protect consumer interests. This case has been criticised for failing to recognise and implement the necessary SPS measures and standards set by the *WTO Agreement* and the *SPS Agreement*.

4.6.2.1 The facts of the case

Most of the raw frozen poultry products in South Africa are injected with brine, yet this matter arose due to the excessive use of brine in poultry products.³²⁴ The use of brine was initially intended to enhance the flavour and texture of the poultry; however, some

³¹⁹ Vinti 2016 *OBITER* 473.

³²⁰ Vinti 2016 *OBITER* 473.

³²¹ Vinti 2016 *OBITER* 473.

³²² Vinti 2018 *OBITER* 508. See also *South African Poultry Association v The Minister of Agriculture, Forestry and Fisheries* (ZAGPPHC) (unreported) case number 39597/2016 of 21 September 2016 para 11.

³²³ Vinti 2018 *OBITER* 508.

³²⁴ Vinti 2018 *OBITER* 509.

producers began abusing this practice by injecting excessive amounts of brine to increase the mass of the product.³²⁵

This led to significant financial gain and compromised product quality, as some unofficial reports suggested that some poultry products were increased by up to 40% by brine.³²⁶ In response to these concerns, the Minister introduced new regulations to limit the permissible brine limit at 15%, promulgating this regulation on 22 October 2016, allowing the relevant producers six months to adjust their processes.³²⁷ The SAPA contested this regulation, arguing that there was no scientific basis for the brine limit, thus challenging its lawfulness under both domestic and international law, particularly under the *SPS Agreement*.³²⁸

4.6.2.2 Failure to implement a scientific basis

South Africa, as a member of the WTO, is bound by the *SPS Agreement*, which requires that any SPS measures be based on sufficient scientific evidence. These SPS measures relate to legislation that aims to safeguard human health from risks arising from food additives, such as brine, in food and feedstuffs (constituting a phytosanitary measure).³²⁹

However, in this matter, the court did not explicitly recognise the new brine limit as a phytosanitary measure as defined by the *SPS Agreement*, and made its judgement oblivious to this fact.³³⁰ Thus, the court concluded that it was not necessary for the brine limit to have an absolutely correct scientific basis, stating that brining levels are an inaccurate science.³³¹

This decision of the court has been scrutinised, especially amongst academics, with arguments that the court should have determined the brine limit to be a phytosanitary

³²⁵ *South African Poultry Association v The Minister of Agriculture, Forestry and Fisheries* (ZAGPPHC) (unreported) case number 39597/2016 of 21 September 2016 para 13.

³²⁶ Vinti 2018 *OBITER* 509.

³²⁷ *South African Poultry Association v The Minister of Agriculture, Forestry and Fisheries* (ZAGPPHC) (unreported) case number 39597/2016 of 21 September 2016 para 3.

³²⁸ Vinti 2018 *OBITER* 509.

³²⁹ Vinti 2018 *OBITER* 513. See also Annex A(1)(b) of the *Agreement on the Application Of Sanitary and Phytosanitary Measures* (1995).

³³⁰ Vinti 2018 *OBITER* 515.

³³¹ *South African Poultry Association v The Minister of Agriculture, Forestry and Fisheries* (ZAGPPHC) (unreported) case number 39597/2016 of 21 September 2016 para 23.

measure, subject to SPS requirements, which necessitate a scientific basis for such measures. Arguably, this decision of the court violates Article 2.2 and Article 5.1 of the *SPS Agreement*, which stipulates that SPS measures must be based on scientific principles and sufficient scientific evidence.³³²

4.6.2.3 Non-compliance of products

Usually, when products are non-compliant with SPS measures or standards, South Africa manages these products through a regulatory framework that includes risk assessments, consultation with stakeholders, and setting limits to ensure consumer protection.³³³ In this matter, the Minister consulted with relevant stakeholders, including SAPA, before implementing the new regulations. While SAPA argued that the brine limit lacked a scientific foundation, the ministerial authority justified the regulation as necessary to protect public health and prevent consumer deception.³³⁴

The court acknowledged that while the scientific evidence on the appropriate brine limit was inconclusive, the regulation was a compromise based on input from at least 20 stakeholders.³³⁵ This suggests that South Africa's approach to dealing with non-compliant products includes measures to balance scientific evidence, stakeholder input, and public health concerns, even when the science is not definitive.

4.6.2.4 Criticism of the court decision

Arguably, in this matter, the court misdirected itself in various respects, failing to recognise the new brine limit as a phytosanitary measure and not requiring a sound scientific basis for the limit, as mandated by the *SPS Agreement*.³³⁶ This oversight led to a lower threshold for "sufficient science" and neglected the need for a risk assessment to justify the measure, thus falling short of international standards.

³³² Vinti 2018 *OBITER* 516.

³³³ Vinti 2018 *OBITER* 517 – 520.

³³⁴ Vinti 2018 *OBITER* 520.

³³⁵ Vinti 2018 *OBITER* 520.

³³⁶ Vinti 2018 *OBITER* 525.

Further, the court overlooked South Africa's constitutional duty to comply with its international obligations.³³⁷ This failure was highlighted by academic criticism that not adhering to international SPS standards can have significant legal and practical implications, such as compromising food quality, consumer safety, and fair-trade practices.³³⁸

4.7 Conclusion

South Africa's implementation of SPS measures reflects its commitment to balancing trade facilitation and sustainable development. As a member of international organisations such as the WTO and the AU, South Africa aligns its SPS regulations with international standards, promoting both human and environmental health while safeguarding economic interests. The Republic aims to integrate sustainable development principles, rooted in its *Constitution* and *NEMA*, prioritizing economic, social, and environmental factors equally.

However, challenges remain, particularly in the agri-food sector, where compliance with SPS measures can be costly and complex, especially for emerging farmers. South Africa's ability to align with international standards while reducing trade barriers is critical for regional and global competitiveness. Notably, the disputes with the EU regarding citrus exports highlight the need for scientifically justified SPS measures that protect trade without being overly restrictive.

Furthermore, South Africa can improve its SPS implementation by enhancing transparency, streamlining SPS procedures, and providing more accessible information to small-scale farmers. Continued collaboration with international bodies and regional partners is essential to ensure that SPS measures facilitate safe trade and sustainable development while protecting the livelihoods of those in the agricultural sector.

³³⁷ Section 231 – 233 of the *Constitution of the Republic of South Africa*, 1996.

³³⁸ Vinti 2018 *OBITER* 525.

5 Making a connection on how SPS measures may foster sustainable development

5.1 Introduction

The main idea behind this study emerged from the suggestion that international trade could coexist and thrive through sustainable development principles. This concept was explored through SPS measures that may act as a middle ground for facilitating effective trade and protecting the environment, human health, plants, and animals that make trade possible.

Embracing the principles of sustainable development may offer a potential solution to addressing the gap that exists between environmental sustainability and trade.³³⁹ This may prove difficult, as unregulated international trade could negatively impact the environment, while sustainable environmental policies could be perceived as barriers to trade.³⁴⁰ Striking a balance between these two concepts is important, as economic growth must be achieved within sustainability to ensure its long-term success. Thus, guidance has been sought from international organisations, principles, standards and guidelines that may be or have been applied in developing countries, such as South Africa.

The focus has largely been on the WTO and its multilateral agreements, as this international organisation aims to ensure that global trade flows smoothly, predictably, and freely.³⁴¹ And while the WTO primarily focuses on trade rather than environmental issues, it allows trade restrictions for environmental protection and sustainability, provided that such restrictions are true and not merely disguised as protectionism.³⁴²

Article XX of the *GATT* is particularly important, as it permits WTO Member States to implement domestic policies necessary for protecting human, animal, or plant life and health.³⁴³ Further, it allows for measures aimed at conserving limited natural resources.³⁴⁴ However, these measures must not result in arbitrary or unjustifiable discrimination

³³⁹ OECD 2023 <https://www.oecd.org/trade/topics/trade-and-the-environment/>.

³⁴⁰ OECD 2023 <https://www.oecd.org/trade/topics/trade-and-the-environment/>.

³⁴¹ WTO *WTO in brief* 10.

³⁴² Joubert *Sanitary and phytosanitary measures as barriers to trade: A South African perspective* 4.

³⁴³ Article XX(b) of the *General Agreement on Tariffs and Trade* (1994).

³⁴⁴ Article XX(g) of the *General Agreement on Tariffs and Trade* (1994).

between countries with similar conditions, nor should they serve as a disguised restriction on international trade.³⁴⁵

The principles outlined in Article XX of the *GATT* are echoed in the WTO's *SPS Agreement*, specifically elaborating on the Article XX(b) exception to unrestricted international trade. The *SPS Agreement* emphasises the desire to enhance human, animal, and plant health amongst all WTO Member States and provides guidelines on achieving these improvements.³⁴⁶ SPS measures themselves are designed to safeguard the well-being of humans, animals, and plants within a country's borders and prevent further harm.³⁴⁷

SPS measures grant countries the authority to enforce restrictions on the importation of substandard goods that have the potential to jeopardise consumer health, harm the environment, or violate safety regulations.³⁴⁸ Thus, a well-rounded discussion has been presented on how SPS measures can positively impact both trade and environmental sustainability when applied effectively. While there may be consensus on the potential of SPS measures to enhance trade, it is essential first to revisit and understand the link between sustainable development and trade to appreciate how sustainable practices could positively influence trade.

5.2 The nexus between sustainable development and trade

Building on the conversation of how SPS measures can sustainably boost trade while protecting the environment, it is important to examine the nature of SPS measures and their role within international trade and sustainable development, as well as the link between sustainable development and trade.

SPS measures are necessary for health and safety. However, they can also lead to trade restrictions, and in order to mitigate unjustifiable trade barriers, the *SPS Agreement* requires these measures to be scientifically grounded and proportionate.³⁴⁹ Member States can establish their own SPS measures, but they must align with international

³⁴⁵ Article XX chapeau of the *General Agreement on Tariffs and Trade* (1994).

³⁴⁶ Article 2.4 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

³⁴⁷ Annex A(1) of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

³⁴⁸ Ghodsi and Stehrer 2022 *World Trade Review* 72.

³⁴⁹ Article 2.2 & 5.1 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

standards and avoid creating disguised trade restrictions.³⁵⁰ Furthermore, the WTO's dispute settlement mechanism is an important forum for resolving conflicts between trade and environmental protection.³⁵¹ This has resulted in landmark cases such as the *Shrimp-Turtle* and *EC-Hormones* disputes that illustrated the delicate balance between the right to protect the environment and the need to prevent unjustified protectionism in global trade.³⁵²

Some trade regulations, such as SPS measures, work within the scope of sustainable development, and the WTO has an evolving role in harmonising environmental and economic objectives through the *SPS Agreement*. SPS measures can drive sustainability, as the WTO and the *SPS Agreement* encourage Member States to base their national SPS regulations on internationally recognised standards.³⁵³ This alignment helps to ensure that food safety, animal health, and plant protection are globally consistent, reducing trade barriers and fostering sustainable agricultural practices.³⁵⁴ Specifically, the Codex, the WOHAI, and the *IPPC* are key international organisations establishing these standards.³⁵⁵

Harmonising food safety standards promotes efficient trade and contributes to the UN's SDGs. SPS measures directly and indirectly address goals such as ending hunger and promoting well-being by ensuring food security, enhancing public health, and supporting sustainable agriculture.³⁵⁶ However, these SPS and food safety measures can also pose challenges, especially for developing countries, which may struggle with the costs and complexities of meeting international standards.

With the global market for agricultural products expanding, it is essential that SPS measures create a balance between trade facilitation and sustainable development. International collaboration and harmonisation of established health and safety standards is key to advancing both trade and sustainability, and it also positions Africa to engage

³⁵⁰ Article 2.3 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

³⁵¹ Kidd Environmental Law 59.

³⁵² Chimni 2000 *Economic and Political Weekly* 1752.

³⁵³ Article 3.1 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

³⁵⁴ Food and Agriculture Organisation of the United Nations and World Trade Organisation *Trade and Food Standards* 6.

³⁵⁵ Annex A (3) of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (1995).

³⁵⁶ Hoekman and Nicita "Non-tariff measures and trade facilitation: WTO disciplines and policy space for development" 14.

effectively in global markets and improve intra-continental trade efficiency in terms of the agricultural sector.

5.3 Sustainable trading in Africa with the SPS policy framework

SPS policies, especially those focused on the agricultural sector, may be leveraged to enhance trade and promote sustainable development across Africa. Agriculture is important to Africa, not only for the tradeable goods it produces, which drive economic growth, but also for the job-market stability and food security it provides to people across the continent. The harmonisation of SPS measures that impact the agri-food sector may help advance agricultural development in terms of enhancing trade and driving economic growth. This harmonisation has been a key objective in various African agreements and policies, including the *AfCFTA Agreement*, which aims to boost intra-continental trade by lowering trade barriers such as SPS measures, and the AU's *Framework*, which seeks to implement a unified SPS policy across Africa to facilitate efficient and smooth trade.³⁵⁷

The *Framework* aims to harmonise SPS standards across Africa, supporting existing policies by AU Member States and RECs.³⁵⁸ Further, the *Framework* aligns with Annex 7 of the *AfCFTA Agreement* to promote safe agricultural trade, aiming to boost intra-African trade and access international markets, especially for smaller businesses, while also supporting sustainable development goals like food security and health.³⁵⁹

The main objectives of the *Framework* are four-fold. First, harmonise science-based SPS standards and create a unified system across African nations, improving surveillance for food safety and controlling risks from pests and diseases.³⁶⁰ Second, enhancing collaboration amongst the AU, RECs, and national authorities to facilitate smoother and

³⁵⁷ Maliszewska and Ruta The African Continental Free Trade Area: Economic and Distributional Effects 1. See also African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 15.

³⁵⁸ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 19 and 22.

³⁵⁹ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 19 and 22. See also African Union Commission *The Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) Policies of African Regional Economic Communities (RECs)* 23.

³⁶⁰ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 28.

more cost-effective trade between African nations.³⁶¹ This includes ensuring transparent import and export processes. Third, technical capacity can be enhanced by boosting technical expertise, training personnel, and establishing reference laboratories to strengthen the capabilities of SPS systems, particularly in managing public health risks and reducing post-harvest losses.³⁶² Fourth, there is a need to secure political and financial support by attracting investments from the public and private sectors and fostering policy support for SPS measures, emphasising food safety, agricultural productivity, and adherence to international standards.³⁶³

Nonetheless, the *Framework* faces several challenges, including a lack of awareness regarding the significance of SPS among governments and the private sector, limited financial resources within SPS agencies, and inconsistent enforcement by government authorities.³⁶⁴ Additionally, there are shortcomings in scientific data-sharing amongst the nations, poor infrastructure, and conflicts in SPS regulations at both regional and national levels.³⁶⁵ Addressing these issues is essential for improvement. The AUC, in collaboration with DREA, RECs, and national governments, will oversee the implementation of this *Framework*. The AUC will ensure that it aligns with the African Agenda 2063 and Annex 7 of the *AfCFTA Agreement*, while the RECs will integrate SPS strategies into their own regional plans.³⁶⁶ National governments will develop SPS strategies specific to their countries' needs and shortcomings, providing resources to establish effective plant, animal, and food safety systems, driving sustainable trade growth and public health improvements.³⁶⁷

³⁶¹ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 30.

³⁶² African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 32-33.

³⁶³ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 34.

³⁶⁴ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 15-23.

³⁶⁵ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 15-23.

³⁶⁶ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 35.

³⁶⁷ African Union Department of Rural Economy and Agriculture *Sanitary and Phytosanitary (SPS) Policy Framework for Africa* 36.

This will also impact South Africa, which is a member of both the WTO and the AU, as it complies with the SPS regulations specified in the WTO's *SPS Agreement*, Annex 7 of the *AfCFTA Agreement*, the AU's *Framework*, and those established by ISSBs.³⁶⁸ South Africa's SPS regulations are shaped by these organisations and the guidelines of the SADC. Furthermore, South Africa has been assessed on how it seeks to harmonise sustainable development with trade facilitation in the agri-food sector through its own SPS implementations and those set by international standards.

5.4 South Africa's SPS standards and implementation

This study has examined SPS measures, ranging from broad international standards to an African continental framework, ultimately narrowing down to the South African perspective on SPS measures and the national regulations thereof. South Africa's legal framework embeds sustainable development into its Constitution and national legislation, notably *NEMA*, which emphasises the balancing of social, economic, and environmental factors in its policies.³⁶⁹ This "three-pillar" approach ensures sustainability for current and future generations – and in terms of international trade, South Africa's SPS measures in the agri-food sector support efficient, safe, and sustainable trade practices.

South Africa's implementation of SPS measures in the agri-food sector faces challenges but also offers opportunities to improve transparency and efficiency in trade facilitation.³⁷⁰ By adhering to global standards and participating in trade agreements, South Africa aims to boost regional integration and job creation through agriculture, a sector employing much of its unskilled workforce.³⁷¹

Further, several recommendations could benefit South Africa's SPS implementation in the agri-food sector. First, South African authorities could consider creating a centralised information system for SPS measures. Currently, a significant amount of information on SPS requirements and controls can be found on the websites of DAFF, the DTI, the DOH,

³⁶⁸ WTO 2024 https://www.wto.org/english/thewto_e/countries_e/south_africa_e.htm. See also South African Government 2024 <https://www.gov.za/about-sa/international-relations>.

³⁶⁹ Section 24(b)(iii) of the *Constitution of the Republic of South Africa*, 1996. See also Section 1 and 2(3) of the *National Environmental Management Act* 107 of 1998.

³⁷⁰ Rathebe 2015 *WTO-STDF report* 26.

³⁷¹ Rathebe 2015 *WTO-STDF report* 21.

the PPECB, and various producer, exporter, and importer associations. In the short-term, it may be beneficial for the government and the private sector to collaborate to merge all this information into a single agricultural trade information portal, saving time and costs for all parties in the agricultural value chain.³⁷²

Second, in the long-term, consideration should be given to setting up public internet terminals in rural post offices, municipal libraries or provincial agriculture offices to give rural farmers access to all government information, including SPS procedures. Additionally, for producers and traders without internet access but with cell phones, it is recommended to establish a toll-free call centre, staffed by knowledgeable DAFF officials familiar with the different SPS units, to assist with their inquiries.³⁷³

Third, explore ways to include representatives of smaller, less experienced traders in SPS-coordination mechanisms alongside commercial traders. While current public-private committees and forums that discuss SPS regulations, controls, and fees are valuable, involving these smaller traders would improve the quality of discussions and lead to better outcomes.³⁷⁴

Fourth, South Africa can consider the enhancement of the current risk-based SPS inspection system by allowing certified traders who adhere to certain voluntary standards, such as those set by Global Good Agricultural Practices (GlobalGAP), to be recognised as low-risk.³⁷⁵ Consequently, these certified traders who follow strict safety and quality measures may undergo fewer inspections than those without third-party certification.³⁷⁶

³⁷² Rathebe 2015 *WTO-STDF report* 31.

³⁷³ Rathebe 2015 *WTO-STDF report* 31.

³⁷⁴ Rathebe 2015 *WTO-STDF report* 31.

³⁷⁵ GlobalGAP offers certification solutions for agriculture, aquaculture, and floriculture to promote safer, more sustainable farming practices worldwide, covering a wide range of products such as fresh produce, livestock, dairy, flowers, tea, coffee, and aquaculture. Operating in over 135 countries, including South Africa, it supports responsible farming practices globally. See Rathebe 2015 *WTO-STDF report* 31. See also GlobalGAP 2024 <https://www.globalgap.org/about/>. See also SGS 2024 <https://www.sgs.com/en-za/services/globalgap>.

³⁷⁶ Rathebe 2015 *WTO-STDF report* 31.

While South Africa aims to align with global standards, balancing SPS compliance with trade facilitation remains challenging. Enhanced transparency and support for small farmers could improve adherence and regional trade competitiveness.

5.5 Closing remarks

This discussion has focused on the implementation of SPS measures, particularly in the agri-food sector. It has concluded that these measures and policies could serve as a fundamental basis for sustainable trade. The strategic use of SPS measures as sustainable trade policies can greatly boost both trade and sustainable development in South Africa. By effectively harmonizing national SPS regulations with international standards set by global bodies, South Africa can facilitate smoother access to international markets. This alignment reassures trading partners that South African products meet established safety and quality standards, thereby expanding trade opportunities.

Further, promoting safe and sustainable agricultural practices through SPS measures may ensure that products and production methods protect human, animal, and plant health. This not only improves the quality of exports but also enhances the reputation of South African products in international markets. Sustainable practices can lead to higher demand from environmentally conscious consumers, further boosting trade. The effective implementation of SPS measures may streamline the trade process by reducing bureaucratic hurdles associated with exporting goods. A transparent and efficient SPS regulatory framework helps exporters navigate compliance requirements more easily, minimizing delays and costs. This efficiency is crucial for small-scale farmers and producers, who are often more vulnerable to trade barriers.

Furthermore, providing local farmers with the correct training and resources on SPS compliance can boost their ability to meet international standards. This demonstrates a commitment to implementing high SPS standards in all agricultural levels and may allow South African products produced by small-scale producers to enter new markets. By utilizing SPS measures effectively, South Africa can enhance sustainable development through increased trade opportunities, improved market access, and greater compliance with international standards, ultimately contributing to economic growth and environmental sustainability.

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