



The European Green Deal and its Farm to Fork Strategy: Advancing South Africa's Agri-Food Trade Law

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Mini dissertation accepted in partial fulfilment of the requirements for the degree *Master of Laws in International Trade Law* at the North-West University

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Graduation: July 2024

ABSTRACT

European Union countries have pledged to become climate-neutral by 2050, fulfilling their commitments under the 2015 Paris Agreement on Climate Change. The European Commission has adopted the European Green Deal to attain this goal. This mini-dissertation explores the European Union's climate action response and environmental sustainability efforts as embodied in the European Green Deal and its Farm to Fork strategy. It identifies and draws from it an environmental sustainability benchmark and considers how this initiative may potentially strengthen environmental sustainability in South Africa's Agri-Food Trade Law.

The benchmarking exercise hinges upon an understanding of the intersection between Trade Law and key issues such as food security, environmental sustainability, and economic development. This study delves into this intersection in the context of the long-standing trade partnership between the European Union and South Africa.

Keywords

European Green Deal, Farm to Fork, Food Systems, Climate Action, Food Security, Environmental Sustainability, Agri-Food Trade, Trade Law

ACKNOWLEDGEMENTS

Firstly, I would like to thank my Lord and Saviour, Jesus Christ, for allowing me to continue my studies with His unwavering grace and guidance throughout my academic journey. Your heavenly presence provided me strength and wisdom, which held me steadfast in navigating through the challenges of this academic endeavour and would not be able to have done this without Your guidance.

To my loving and always supportive husband, Willie Heyneke, this accomplishment is just as much yours as mine. You provided me with the encouragement and unconditional love that kept me focused. You were my safe heaven throughout this dissertation, as I could not have completed this without you. Your constant belief in me and endless love and patience made this journey possible. Even though you had your challenges during this time, you always encouraged me and believed in my ability, even when I sometimes could not believe in myself. Thank you from the bottom of my heart, and I thank God for placing you in my life.

I express my deepest gratitude to my loving mother, Casperina van Wyk, who has been a constant pillar of support and has always referred me back to my Lord and Saviour, Jesus Christ. Mom, your boundless love has encouraged and propelled me to continue and always do my best. Thank you for always being able to come to you with any concern and then for encouraging and supporting me with your nurturing personality that has always guided me back to my Lord and Saviour, Jesus Christ.

I wish to dedicate a special acknowledgement to my beloved father, Christoffel Johannes van Wyk; he was a well-respected academic himself; even though he has passed, his ambition and passion for academics continued to shine a guiding light on my journey. As an academic, I know he would be proud of me for continuing my studies and looking down from heaven, smiling and witnessing the whole journey, viewing my achievements, and even sending me extra energy even though I was unaware. Dad, you always believed in me and my potential, and the fundamental values you have instilled in me for all the years have always led me and contributed

to my encouragement to continue my studies. This dissertation is a tribute to your legacy, and I hope I continue to make you proud.

I extend a heartfelt appreciation to the rest of my family and friends who supported me with continued support and encouragement never to give up. Your words, prayers, and positive energy empowered me to continue and do my best.

Finally, I am forever grateful to my supervisor, Prof Germarié Viljoen, whose mentorship and support guided me throughout this journey and was always there for any questions and guidance. Your expertise and insights were fundamental to my outcome, and I am forever grateful. Thank you for believing in me and encouraging me with lots of patience.

I want to close with one of my favourite Bible verses in Proverbs 3:5-6: "Trust in the Lord with all your heart lean not on your own understanding, in all your ways acknowledge Him, and He will make your paths straight."

TABLE OF CONTENTS

List of abbreviations	1
Chapter 1: Introduction.....	5
<i>1.1 Background.....</i>	<i>5</i>
<i>1.2 Problem statement</i>	<i>6</i>
<i>1.2.1 Climate change</i>	<i>6</i>
<i>1.2.2 The EGD and its FTF strategy.....</i>	<i>7</i>
<i>1.2.3 Trade Law</i>	<i>8</i>
<i>1.2.4 Environmental sustainability, food security and economic development.....</i>	<i>10</i>
<i>1.2.5 South Africa's Agri-Food Trade Law</i>	<i>10</i>
<i>1.3 Research question</i>	<i>13</i>
<i>1.4 Research aims and objectives</i>	<i>13</i>
<i>1.5 Research Methodology</i>	<i>13</i>
<i>1.6 Framework.....</i>	<i>14</i>
Chapter 2: Theoretical foundations: The intersection of trade law, food security, environmental sustainability, and economic development. 16	
<i>2.1 Introduction.....</i>	<i>16</i>
<i>2.2 Strategic trade partnership and trade dynamics</i>	<i>17</i>
<i>2.3 Trade Law and the challenges of food security, environmental sustainability, and economic development.....</i>	<i>21</i>
<i>2.3.1 Food security</i>	<i>21</i>
<i>2.3.2 Environmental sustainability.....</i>	<i>23</i>
<i>2.3.3 Economic development.....</i>	<i>26</i>
2.4 Concluding remarks.....	28
Chapter 3: The European Green Deal (EGD) and its Farm to Fork Strategy (FTF).....	31

3.1 Introduction.....	31
3.2 EGD and FTF Strategy.....	32
3.2.1 <i>Evolution of the EU's climate action initiatives.....</i>	32
3.2.2 <i>The European Green Deal.....</i>	33
3.2.3 <i>Farm-to-Fork strategy.....</i>	38
3.3 Establishing a benchmark for environmental sustainability.....	41
3.3.1 <i>Climate Action.....</i>	42
3.3.2 <i>Food security</i>	43
3.3.3 <i>Economic development.....</i>	44
3.4 Conclusion	46
Chapter 4: South Africa's environmental sustainability regulatory framework	48
4.1 Introduction.....	48
4.2 Sustainability law in South Africa	49
4.2.1 <i>Constitutional and accompanying regulatory framework</i>	49
4.2.2 <i>Environmental sustainability and food security</i>	53
4.2.3 <i>Environmental sustainability and economic development</i>	57
4.3 Climate change law	58
4.3.1 <i>International Perspectives.....</i>	58
4.3.2 <i>Regional Perspectives.....</i>	60
4.3.3 <i>Domestic Perspectives.....</i>	63
4.4 South Africa's Agri-Food Trade Law framework	68
4.5 Benchmark and best practices	73
4.5.1 <i>Climate Action.....</i>	74
4.5.2 <i>Food Security.....</i>	76
4.5.3 <i>Economic development.....</i>	78
4.6 Conclusion	79
Chapter 5: Conclusion and recommendations.....	81

5.1 Background.....	81
5.2 Revisiting the objectives of the study.....	81
5.2 Key findings	82
5.2.1 <i>South Africa and the EU: A strategic trade partnership</i>	<i>82</i>
5.2.2 <i>The nexus between food security, environmental sustainability, and economic development</i>	<i>84</i>
5.2.3 <i>The EGD and FTF strategy: An environmental sustainability benchmark.....</i>	<i>84</i>
5.2.4 <i>Environmental sustainability in South Africa’s Agri-Food Trade Law</i>	<i>86</i>
5.3 Concluding remarks: Leveraging the EGD and FTF Strategy benchmarks to advance environmental sustainability in South Africa’s Agri-Food Trade Law	95
Bibliography.....	98
<i>Literature</i>	<i>98</i>
<i>Case Law</i>	<i>102</i>
<i>Legislation</i>	<i>103</i>
<i>International instruments</i>	<i>104</i>
<i>Government publications</i>	<i>105</i>
<i>Internet sources</i>	<i>105</i>

List of abbreviations

AAI	African Adaptive Initiative
AoA	Agreement on Agriculture
APRM	African Peer Review Mechanism
AREI	Africa Renewable Energy Initiative
AU GRAP	African Union Green Recovery Action Plan
CAADP	Comprehensive African Agricultural Development Programme
CAP	Common Agricultural Policy
CARA	The Conservation of Agricultural Resources Act
CASP	Comprehensive Agricultural Support Programme
CBAM	Carbon Border Adjustment Mechanism
CBD	Convention of Biological Diversity
CEAP	Circular Economy Action Plan
CISG	United Nations Convention on Contracts for International Sale of Goods
CSA	Climate-Smart Agriculture
DALRRD	Department of Agriculture, Land Reform and Rural Development
DFFE	Department of Forestry, Fisheries, and the Environment
DoH	Department of Health
DSI	Department of Science and Innovation
DTIC	Department of Trade, Industry, and Competition

EGD	European Green Deal
EPA	Economic Partnership Agreement
EU	European Union
EU ETS	European Union Emissions Trading System
FAO	Food and Agriculture Organisation
FDI	Foreign Direct Investment
FS	Food System
FTA	Free Trade Agreement
FTF	Farm to Fork
GDP	Gross Domestic Product
GHG	Greenhouse Gas
GTS	Green Transport Strategy
IFSS	Integrated Food Security Strategy
IPCC	Intergovernmental Panel on Climate Change
ITA	International Trade Administration Act
ITCA	International Trade Administration Commission
LEDs	Low Emissions Development Strategy
NCCAS	National Climate Change Adaption Strategy
NCCC	National Climate Change Committee
NCCRP	National Climate Change Response Policy

NDC	National Determined Contribution
NDP	National Development Plan
NEMA	National Environmental Management Act
NFNSP	National Food and Nutrition Security Plan
NFSD	National Framework for Sustainable Development
NPFNS	National Policy on Food and Nutrition Security
NSSD	National Strategy for Sustainable Development and Action Plan
OECD	Organisation for Economic Co-operation and Development
PCC	Presidential Climate Commission
PTA	Preferential Trade Agreement
RAP	Regional Agricultural Policy
SACU	Southern African Customs Union
SADC EPA	Southern African Customs Union Economic Partnership Agreement
SARS	South African Revenue Service
SDG	Sustainable Development Goals
SEMA	Specific Environmental Management Act
SET	Sectoral Emission Targets
STI	White Paper on Science, Technology and Innovation
TDCA	Trade, Development and Cooperation Agreement
UN	United Nations

UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNFCCC	United Nations Framework Convention on Climate Change
UNEP	United Nations Environment Programme
WTO	World Trade Organisation

Chapter 1

Introduction

1.1 Background

Climate change, characterised by long-term changes in temperature and weather patterns, presents a significant challenge for humanity.¹ It is widely recognised as one of the most critical concerns facing our era,² with its detrimental effects amplified by rapid population growth and urbanisation.³ The adverse impacts of climate change are most visibly apparent in the agricultural sector, where shifts in climate patterns, including rising temperatures and floods, severely affect food production and distribution.⁴ These changes not only disrupt the immediate agricultural output but also degrade soil fertility, leading to widespread land degradation and reduced crop yields.⁵ The challenges of growing and distributing food are therefore intensified by climate change, introducing uncertainties and risks to global agricultural or farming systems. Consequently, the 2021 United Nations (UN) Food Systems Summit⁶ declared a crisis in food systems,⁷ encompassing all activities related to the production, processing, distribution, and consumption of food.⁸ In its turn, Food Systems are closely connected to trade because the production, distribution, and consumption of food often involve cross-border transactions and depend on international agreements.⁹

The argument unfolds to reveal the complex interplay between climate change, food security, and trade law, which involves a range of interconnected issues. These issues

¹ United Nations date unknown <https://www.un.org/en/climatechange/science/causes-effects-climate-change>.

² United Nations date unknown <https://www.un.org/en/climatechange/science/causes-effects-climate-change>.

³ Béné et al 2019 *Global Food Security* 156.

⁴ Future Learn date unknown <https://www.futurelearn.com/info/courses/climate-smart-agriculture/0/steps/26565>.

⁵ Arora 2019 *Society of Environmental Sustainability* 96.

⁶ United Nations 2021 <https://www.un.org/en/food-systems-summit>.

⁷ The Covid-19 pandemic exacerbated the reality - Galanakis 2020 *Foods* 524.

⁸ FAO 2018 <https://www.fao.org/3/ca2079en/CA2079EN.pdf>.

⁹ FAO 2018 <https://www.fao.org/3/ca2079en/CA2079EN.pdf>.

range from implementing measures to mitigate the impacts of climate change on agriculture to developing strategies for both adaptation and mitigation. As detailed below, this research posits that addressing the intersection of these issues is essential for developing sustainable, resilient, and equitable Food Systems in the face of climate change.

1.2 Problem statement

1.2.1 Climate change

The escalating global concern surrounding environmental shifts due to climate change and its impact on global trade is undeniable, particularly as the Agri-Food trade remains vulnerable to environmental fluctuations that influence agricultural production.¹⁰ The UN Climate Change Conference in 2015 culminated in the adoption of the Paris Agreement, the binding treaty on climate change.¹¹ The Paris Agreement has been ratified by 194 parties (194 states as well as the European Union (EU)).¹²

The Paris Agreement obliges all signatory countries to undertake efforts to reduce their greenhouse gas (GHG) emissions and collaborate in adapting to the adverse impacts of climate change.¹³ As part of its commitment to climate action,¹⁴ the EU Commission has introduced a policy transition that prioritises sustainable Food Systems, acknowledging the importance of sustainable agriculture and food

¹⁰ Changing weather conditions that include floods and storms that damage trade infrastructure like roads, bridges and tracks – Kyriakopoulou, Kyriacou and Pearson 2023 <https://www.lse.ac.uk/granthaminstitute/explainers/how-does-climate-change-impact-on-international-trade/>.

¹¹ UNFCCC date unknown <https://unfccc.int/process-and-meetings/the-paris-agreement>.

¹² United Nations date unknown <https://www.un.org/en/climatechange/paris-agreement>.

¹³ United Nations date unknown <https://www.un.org/en/climatechange/paris-agreement>.

¹⁴ South Africa (SA) is committed to addressing climate change and submitted its first *Nationally Determined Contribution* to the UN's Framework Convention on Climate Change (UNFCCC). It states that SA is committed to reducing GHG emissions and updated the contribution in 2021. Furthermore, SA became a signatory of the Paris Agreement on Climate Change and has a *Climate Change Bill* aiming for a low-carbon and sustainable climate economy and related matters.

distribution in mitigating environmental impacts. This policy is encapsulated in a comprehensive strategy referred to as the 'European Green Deal' (EGD).¹⁵

The EGD represents the EU's vision for future farming or agricultural policy, aiming for climate neutrality and promoting a sustainable EU economy.¹⁶ In the realm of Food Systems, the EU Commission has introduced the Farm to Fork (FTF) strategy as a key component of efforts to shift agricultural policies towards environmental sustainability.¹⁷

1.2.2 The EGD and its FTF strategy

Launched by the EU Commission in December 2019, the EGD represents an extensive strategy comprised of policy initiatives designed to guide the EU towards a transformative green transition.¹⁸ The transformative green transition denotes a comprehensive shift, among other things, environmental sustainability across various aspects of society and the economy.¹⁹ The EGD is based on the premise that achieving a sustainable future necessitates a holistic and integrated approach. It emphasises the need for all pertinent policy areas to align and contribute to the overarching climate goals.²⁰ The green transition must therefore encompass every sector of society and the economy, including trade law, food security and environmental sustainability, ensuring that each policy area contributes to the collective climate-related goals.²¹

¹⁵ Jendrośka and Reese 2023 <https://iclg.com/practice-areas/environment-and-climate-change-laws-and-regulations/02-environmental-law-in-transformation-key-developments-under-the-european-green-deal>.

¹⁶ According to Jendrośka and Reese, the Commission committed in the Green Deal Communication (GDC) to reset its efforts to address climate change and environmental challenges and pursue a new growth strategy to transform the EU into a sustainable, resource-efficient, and carbon-neutral economy by 2050—European Commission date unknown https://climate.ec.europa.eu/eu-action/european-green-deal_en.

¹⁷ European Commission date unknown https://food.ec.europa.eu/horizontal-topics/farm-fork-strategy_en.

¹⁸ Claeys, Tagliapietra and Zachman 2019 *Bruegel Policy Contribution 2*.

¹⁹ Claeys, Tagliapietra and Zachman 2019 *Bruegel Policy Contribution 2*

²⁰ Sikora 2021 *ERA Forum* 684.

²¹ Some areas include climate action commitments, environmentally sustainable, secure, affordable energy, agriculture, international trade, and diplomacy - Sikora 2021 *ERA Forum* 682.

The EGD includes several policy initiatives. One of these is the FTF strategy. As indicated earlier, the EU Commission introduced the FTF strategy to shift agricultural policies towards environmental sustainability. It follows that the FTF strategy is designed to support and expedite the EU's shift towards a sustainable food system.²² The primary objectives of the FTF strategy include creating a system with a neutral environmental impact, aiding in climate change mitigation and adaptation, ensuring food security, and ensuring access to adequate, safe and sustainable food for all.²³ Moreover, the strategy aims to promote economic progress and uphold fair trade practices.²⁴

Tailored specifically for the EU context, the EGD and its FTF Strategy consider the unique trade relations,²⁵ priorities,²⁶ and needs of EU Member States.²⁷ It is important to recognise that the EU consists of member states with diverse economic, social and environmental contexts. The integration of these states into the EU's single market system, coupled with their shared environmental commitments, positions the EU as a key player in global trade and environmental governance.

1.2.3 Trade Law

International Trade Law provides the framework that regulates trade or international commerce between different countries²⁸ and can play an important role in promoting

²² European Council 2023 <https://www.consilium.europa.eu/en/policies/green-deal/>.

²³ European Council 2023 <https://www.consilium.europa.eu/en/policies/green-deal/>.

²⁴ European Commission date unknown https://food.ec.europa.eu/horizontal-topics/farm-fork-strategy_en_.

²⁵ The EU is dedicated to further sustainable development and trade by engaging in different trade agreements using trade policy instruments - European Union 2021 https://www.eeas.europa.eu/eeas/economic-relations-trade-and-sustainability_en_.

²⁶ European Commission 2023 https://ec.europa.eu/commission/presscorner/detail/en/ip_23_3492.

²⁷ All Member States collectively pledged to achieve the goal of the EU becoming the first climate-neutral continent - European Commission date unknown https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/delivering-european-green-deal_en_.

²⁸ Georgetown Law date unknown <https://www.law.georgetown.edu/your-life-career/career-exploration-professional-development/for-jd-students/explore-legal-careers/practice-areas/international-trade-law/>. 'Exports' refer to goods or services produced or available domestically but sold internationally while 'imports' pertain to goods or service procured or bought from international sources.

environmentally sustainable practices or, conversely, in harming the environment and society.²⁹ It facilitates the exchange of eco-friendly inventions and green farming methods through international trade networks, as well as the proliferation of eco-friendly goods. However, these activities also have the potential to increase carbon emissions, encourage unsustainable exploitation of natural resources, and exacerbate international economic inequalities.

This mini-dissertation argues that the EGD and the FTF strategy have the potential to significantly influence international trade law and global trade practices. These include aligning regulations, changing trade agreements, shifting market access dynamics, affecting competitiveness, and even potentially altering dispute resolution mechanisms.

The integration of these strategies with existing international trade agreements, their Impact, and their influence on global environmental and sustainable practices will likely be the focus of policymakers, practitioners, and academics in the future.³⁰ The integration of the sustainability strategies is further expected to significantly affect agriculture, particularly in emerging economies such as South Africa, which faces significant challenges related to food security and economic development.³¹

For a country like South Africa, that trades with the EU, it may become necessary to align agricultural practices and environmental policies with the standards established by the EGD and FTF strategy.³² This alignment could lead to changes in their domestic laws to meet the EU's sustainability criteria. Furthermore, future trade agreements negotiated by the EU may include clauses that mandate adherence to sustainability standards like those advocated by the EGD and FTF, embedding environmental

²⁹ FAO 2020 <https://www.fao.org/3/cb0665en/cb0665en.pdf>.

³⁰ Trade Atlas 2022 <https://www.tradeatlas.com/en/blog/the-european-green-deal-and-its-effects-on-export>.

³¹ Theron 2022 https://croplife.co.za/Article/NewsArticle?pv=Impact_of_EU_Green_Deal_on_South_African_Agriculture_Conference_Summary. Since its inception by the Commission in 2019, the EGD has been the subject of various debates and policy discussions concerning its implementation Cameron *et al* 2021 *Pretoria—South Africa* vii–viii; Siddi 2020 *UPI REPORT* 4.

³² Steenkamp 2023 <https://www.hortgro.co.za/news/eu-green-deal-challenges-and-possible-gains-for-south-african-farmers/>.

sustainability into trade agreements. The dynamics of market access could also shift, with the EU only allowing products and services that meet certain sustainability and environmental criteria to enter its market. This could have a broad impact on global production and trade practices, urging producers worldwide to adopt more sustainable methods.

1.2.4 Environmental sustainability, food security and economic development

The emphasis on environmental sustainability within the EGD offers trading partners, such as South Africa, a unique opportunity to refine and advance its environmental strategies and practices.³³ By aligning with the EGD, trading partners can enhance their country's environmental footprint,³⁴ promote sustainable agriculture,³⁵ and drive green innovation.³⁶

The EGD and FTF Strategy not only addresses environmental concerns and challenges but also supports the goals of food security and economic growth. As will be indicated in Chapter 2 below, this approach underscores the interconnectedness of environmental sustainability, food security and economic development, highlighting how progress in one area can affect progress in others, creating a cycle of sustainability.

While environmental sustainability, food security and economic development are deeply interconnected, this mini-dissertation therefore emphasises environmental sustainability as a critical foundation that supports and enables long-term food security and economic development.

1.2.5 South Africa's Agri-Food Trade Law

Regrettably, South Africa does not have an adequate regulatory framework concerning food security and economic development, nor does the country have legislation

³³ See par 1.2.3 above.

³⁴ Cameron *et al*/2021 Pretoria—South Africa 69.

³⁵ Cameron *et al*/2021 Pretoria—South Africa 63.

³⁶ Cameron *et al*/2021 Pretoria—South Africa 1.

governing Agri-Food Trade Law.³⁷ Agri-Food, per the criteria established by the World Trade Organisation (WTO), includes "animal products, crops and plant-based products, fruit, vegetables and olive oil, wine, beverages and food preparations, coffee, tea, cocoa and spices, non-edibles, but excludes fish and fish products".³⁸ Agri-Food trade thus refers to exchanging agricultural and food products between different countries.

This research sets out to argue that Agri-Food Trade Law, which governs the international trade of agricultural and food products, can play a pivotal role in facilitating sustainability, enhancing food security, and promoting economic development within the South African context.

The regulatory framework for Agri-Food law in South Africa is multifaceted, encompassing international, regional, and domestic levels. Each level plays a crucial role in shaping the policies, standards, and practices within the country's agricultural sector. The international framework for Agri-Food law in South Africa is significantly influenced by the WTO rules pertaining to agriculture. These include the WTO's Agreement on Agriculture (AoA) that shapes the agricultural trade policies of its member countries, including South Africa. The AoA recognises the importance of addressing food security in both current and future negotiations.³⁹ Additionally, the UN's Food and Agricultural Organisation (FAO) is a leading international organisation focused on prioritising food security.⁴⁰

The regional framework for Agri-Food Law is shaped by the policies and protocols of the Southern African Development Community (SADC), which influence agricultural

³⁷ The main gap in the law that has been identified is that no law stipulates the completion of a climate change assessment before construction of a new mine or new developments like power source – the University of Witwatersrand 2024 <https://www.wits.ac.za/news/latest-news/opinion/2024/2024-04/sas-laws-arent-geared-to-protecting-against-climate-change-judges-are-trying-to-fill-the-gap.html>.

³⁸ European Commission 2023 https://agriculture.ec.europa.eu/system/files/2023-05/agrifood-south-africa_en.pdf and European Commission 2023 https://agriculture.ec.europa.eu/system/files/2023-06/agrifood-product-classes-details_en.pdf.

³⁹ WTO date unknown https://www.wto.org/english/tratop_e/agric_e/agric_e.htm.

⁴⁰ FAO date unknown <https://www.fao.org/about/about-fao/en/>.

practices and food security. This includes the SADC Regional Agricultural Policy (RAP).⁴¹ Additionally, initiatives and policies related to agriculture and food security within the African Union (AU) framework include the Comprehensive African Agricultural Development Programme (CAADP)⁴² and African Peer Review Mechanism (APRM),⁴³ which play a key role in guiding agricultural development and ensuring food security across the continent.

The *Constitution of the Republic of South Africa*, 1996 (the Constitution) is the supreme law that outlines that everyone has the right to have access to sufficient food⁴⁴ and that every child has the right to basic nutrition.⁴⁵ The Department of Agriculture, Land Reform and Rural Development (DALRRD) plays a key role in overseeing and supporting the agricultural sector. Its responsibilities include ensuring land accessibility, promoting rural development, and fostering sustainable agricultural and food systems, or Agri-Food systems, for the people of South Africa.⁴⁶ In alignment with its constitutional duties, the government has promulgated specific laws and has implemented various policies that govern different aspects of agriculture,⁴⁷ including food safety,⁴⁸ animal health,⁴⁹ and plant protection.⁵⁰

This comprehensive governance framework, spanning international, regional, and domestic levels, seeks to facilitate a sustainable Agri-Food trade sector. It prioritises the protection of people, producers, and the environment while ensuring food security.

⁴¹ SADC date unknown <https://www.sadc.int/pillars/food-agriculture-natural-resources>.

⁴² AU 2021 <https://au.int/en/articles/comprehensive-african-agricultural-development-programme>.

⁴³ AU date unknown <https://au.int/en/organs/aprm>.

⁴⁴ Section 27(1)(b) of the Constitution.

⁴⁵ Section 28(1)(c) of the Constitution.

⁴⁶ National Government of South Africa date unknown <https://nationalgovernment.co.za/units/view/427/departments-of-agriculture-land-reform-and-rural-development-dalrrd>.

⁴⁷ *The Conservation of Agricultural Resources Act* 43 of 1983, *Agricultural Products Standards Act* 119 of 1990, *Marketing of Agricultural Products Act* 47 of 1996, *Meat Safety Act* 40 of 2000, etc.

⁴⁸ Integrated Food Security Strategy (IFSS) of 2002, National Policy on Food and Nutrition Security (NPFNS) of 2014, and National Food and Nutrition Security Plan (NFNSP) of 2017.

⁴⁹ *Animal Diseases Act* 35 of 1984, *Animal Protection Act* 71 of 1962, and *Animal Health Act* 7 of 2002, etc.

⁵⁰ *Agricultural Pests Act* 36 of 1983, *Biodiversity Act* 10 of 2004, etc.

1.3 Research question

To what extent can the European Green Deal's Farm to Fork strategy be used to enhance environmental sustainability in South African Agri-Food Trade Law?

1.4 Research aims and objectives

The main objective of this research is to leverage the EGD's FTF strategy policy initiatives to advance and strengthen environmental sustainability in South African Agri-Food Trade law.

To accomplish this, the following secondary goals are set:

1. To theoretically dissect the intersection between food security, environmental sustainability, economic development, and trade law, specifically focusing on the EU and South Africa as strategic trade partners.
2. To theoretically examine the EGD and FTF strategy 1) to indicate the relevance of these instruments for climate change and environmental sustainability; and 2) to establish a benchmark to advance and strengthen environmental sustainability in South African Agri-Food Trade law.
3. To examine South Africa's regulatory framework for environmental sustainability and how it relates to Agri-Food Trade Law, as well as to evaluate it against the sustainability benchmark established by the EGD and FTF strategy.
4. To leverage the EGD's FTF policy initiatives to enhance environmental sustainability in South Africa's Agri-Food Trade Law. Leveraging the EGD is expected to improve environmental sustainability in South Africa's Agri-Food Trade Law.

1.5 Research Methodology

The research method for this study will comprise a literature review of published primary and secondary sources on the EGD and its FTF strategy, as well as the notion

of Agri-Food Trade Law in the EU and South Africa. As indicated, the EU's food and agricultural strategy has been developed within a specific EU context characterised by, for example, the diverse needs of member states, the complexities of market integration, regional diversity, environmental sustainability, and external trade relations. Understanding this context is essential to evaluate the suitability of EU approaches for other contexts, such as South Africa, which has different levels of development, agricultural practices, and socio-economic considerations.

By employing a legal analysis and literature review to examine trade law, environmental sustainability, and regulatory frameworks, this research aims to contribute to understanding how South Africa can align its Agri-Food trade practices with international ecological norms while ensuring competitiveness in the global market.

1.6 Framework

The structure of the mini dissertation is divided into five chapters. The present chapter provides the research question's background, the problem under discussion, some key concepts, and the methodology employed.

Chapter 2 discusses the intersection of trade law and existing food security, environmental sustainability, and economic development in South Africa and the EU.

Chapter 3 provides an overview of international trade law perspectives, specifically on the EGD and FTF strategy, to set a benchmark for leveraging South Africa's environmental policies to conform to international environmental standards and maintain global competitiveness.

Chapter 4 examines South Africa's environmental sustainability regulatory framework and how it relates to Agri-Food Trade Law. It then evaluates the framework against the sustainability benchmark established by the EGD and FTF strategy.

Chapter 5 leverages the findings of the preceding chapters and summarises the conclusions to advance environmental sustainability in South Africa's Agri-Food trade law.

Chapter 2

Theoretical foundations: The intersection of trade law, food security, environmental sustainability, and economic development

2.1 Introduction

Chapter 1 posited climate change as a catalyst for reform in the realm of trade law, initiating an important discourse on its intersection with food security, environmental sustainability, and economic development.⁵¹ Building on this foundation, this chapter delves deeper into these intersections, highlighting the need for an integrated approach to trade law, herein conceptualised as Agri-Food Trade Law.

The importance of this investigation stems from the role trade policies play in shaping global responses to climate change.⁵² By examining the intricate ways in which trade law impacts food security, environmental sustainability, and economic development, this research underscores the potential for legal frameworks to act as tools to mitigate climate change effects. It also unravels the necessity for adaptive trade policies that not only support economic development but also ensure environmental sustainability in an era of climatic uncertainty. Moreover, this theoretical exploration is essential for understanding the next chapter's focus on the EGD and its FTF strategy, which synchronises trade practices with the global sustainability agenda.

The discussion follows the following structure: Part 1 briefly explores the regulatory framework of trade law and elucidates the trade law dynamics and role players between South Africa and the EU. Part 2 delves deeper into the intersection between trade law and the existing global challenges of food security, environmental sustainability, and economic development. It examines how trade law intersects with these dimensions and explores its implications. Finally, Part 3 concludes by examining the intersection of trade law with these existing challenges and provides the foundation for creating a resilient Agri-Food Trade Law framework.

⁵¹ See par 1.2.4 above.

⁵² See par 1.2.3 above.

2.2 Strategic trade partnership and trade dynamics

For purposes of the scope of this study, it is necessary to consider the strategic trade partnership that exists between the EU and South Africa. This partnership was underscored at the 7th EU-South Africa summit,⁵³ which affirmed South Africa's position as the EU's foremost trading partner in Africa and identified it as one of the EU's ten key strategic partners.⁵⁴

The EU is Africa's leading export destination and trade partner of which the relationship is governed by various EU-Africa trade agreements that advance sustainable development initiatives in Africa, international collaboration, and expansion of export products.⁵⁵ The EU-Africa trade agreements include preferential trade agreements (PTA) with 18 African countries, consisting of five economic partnership agreements (EPA), of which one is with South Africa, and four Association Agreements (AA). Resulting from these PTA's, most of the African exports exceeding 90% enter the EU market without any import duties. Additionally, meeting EU standards unlocks access to other potential markets and improves market competitiveness. Furthermore, the EU-Africa trade agreements enhance trade and investment opportunities in Africa that target amongst others the Agri-Food sector.⁵⁶

South Africa has established various trade strategies to engage with its trading partners.⁵⁷ These include customs unions, Free Trade Agreements (FTAs), preferential trade agreements (PTAs), non-reciprocal trade agreements, and ongoing trade negotiations.⁵⁸ Schedule 10 of the *Customs and Excise Act* 91 of 1964 provides

⁵³ Held on 15 November 2018 in Brussels, Belgium.

⁵⁴ European Union 2018 https://www.eeas.europa.eu/sites/default/files/eu-south_africa_factsheet.pdf.

⁵⁵ European Commission date unknown <https://www.tralac.org/documents/resources/external-relations/eu/epas/4918-the-european-union-and-africa-partners-in-trade-factsheet/file.html>.

⁵⁶ European Commission date unknown <https://www.tralac.org/documents/resources/external-relations/eu/epas/4918-the-european-union-and-africa-partners-in-trade-factsheet/file.html>.

⁵⁷ Department of Trade, Industry, and Competition date unknown <http://www.thedtic.gov.za/sectors-and-services-2/1-4-2-trade-and-export/market-access/trade-agreements/>.

⁵⁸ Department of Trade, Industry, and Competition date unknown <http://www.thedtic.gov.za/sectors-and-services-2/1-4-2-trade-and-export/market-access/trade-agreements/>.

numerous international, regional, and bilateral trade agreements. The commissioner, the South African Revenue Service (SARS), conditional to the Minister of Finance,⁵⁹ oversees the enforcement of all trade agreements that South Africa has ratified.⁶⁰

The *International Trade Administration Act* 71 of 2002 (ITA) is another crucial aspect of the current trade legislation.⁶¹ Under this act, the International Trade Administration Commission (ITAC), an autonomous entity functioning under the supervision of the Minister of Trade, Industry, and Competition,⁶² conducts custom tariff inquiries, offers trade remedies, and administers import and export controls as mandated by the legislation.⁶³

The trade relationship between South Africa and the EU was formalised and secured through the Trade, Development and Cooperation Agreement (TDCA).⁶⁴ This agreement shaped the multifaceted trade dynamics and partnership linking South Africa and the EU.⁶⁵ The TDCA simplifies trade between the two countries by laying the foundation for specific trade rules governing the trade relationship, called preferential trade arrangements, and establishing an area between the parties where goods can move with limited restrictions, known as a Free Trade Area.⁶⁶ Furthermore, the agreement encompassed developmental and economic cooperative dimensions and cooperation on other levels, including environmental and technological cooperation.⁶⁷ The TDCA also provides guidelines for trade interactions, promoting enhanced market access and playing a critical role as South Africa integrated into the global economy.⁶⁸

⁵⁹ Definitions of the *Customs and Excise Act*.

⁶⁰ Section 2 of the *Customs and Excise Act*.

⁶¹ ITAC date unknown <http://www.itac.org.za/pages/about-itac/an-overview-of>.

⁶² Section 7 of ITAC.

⁶³ ITAC date unknown <http://www.itac.org.za/pages/about-itac/an-overview-of>.

⁶⁴ TDCA was signed in 1999 but fully enacted in 2004 - Eur-Lex 2018 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Ar12201>.

⁶⁵ Eur-Lex 2018 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Ar12201>.

⁶⁶ Eur-Lex 2018 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Ar12201>.

⁶⁷ Viljoen 2017 <https://www.tralac.org/blog/article/12514-from-the-tdca-to-the-sadc-eu-epa-the-significant-changes.html> and Protocol 4 of the EPA.

⁶⁸ Eur-Lex 2018 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Ar12201>.

However, considering sustainability imperatives within the trade context, a transformative development occurred in 2016.⁶⁹ The trade component of the TDCA was amended, culminating in the SADC-EU Economic Partnership Agreement (EPA). Furthermore, the SADC-EU EPA is the most significant FTA governing the South African-EU trade relationship, allowing economic development space. The agreement has removed most of South Africa's import customs duties to the EU, allows free access to signatory countries, and diversifies South African exports to the EU.⁷⁰ This new agreement emphasises sustainability, incorporating ecological and social factors,⁷¹ aiming for development expansion, trade enhancement, and collaborative, sustainable development objectives.⁷² The SADC-EU EPA symbolises the ambition to formulate and adopt a regulatory framework that harmonises economic development with sustainability.⁷³

In 1995, both South Africa and the EU became members of the WTO, an entity of considerable prominence in international trade.⁷⁴ The WTO plays a pivotal role by establishing legal parameters, mediating trade disagreements,⁷⁵ and monitoring member trade policies.⁷⁶ Its significance lies in fostering international trade⁷⁷ through a framework where member states negotiate, mediate, and resolve potential disputes.⁷⁸

⁶⁹ European Commission date unknown https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/south-africa_en.

⁷⁰ European Commission date unknown https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/south-africa_en.

⁷¹ Viljoen 2017 <https://www.tralac.org/blog/article/12514-from-the-tdca-to-the-sadc-eu-epa-the-significant-changes.html> and Protocol 4 of the SADC EPA.

⁷² Art 1 of the SADC EPA.

⁷³ Eur-Lex 2021 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:0702_21.

⁷⁴ WTO date unknown https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm.

⁷⁵ On 29 July 2022, SA requested the first dispute settlement from the WTO to consult against the EU regarding apparent irregularities concerning the importation of citrus fruit – WTO 2022 https://www.wto.org/english/news_e/news22_e/ds613rfc_29jul22_e.htm.

⁷⁶ European Commission date unknown https://agriculture.ec.europa.eu/international/agricultural-trade/wto-and-eu-agriculture_en.

⁷⁷ Agrahari 2022 <https://blog.ipleaders.in/role-of-wto-in-international-trade/>.

⁷⁸ Tarver 2022 <https://www.investopedia.com/terms/w/wto.asp#citation-7>.

Furthermore, South Africa⁷⁹ and the EU⁸⁰ are members of the International Organisation for Economic Co-operation and Development (OECD), a key stakeholder supporting trade dynamics.⁸¹ The OECD occupies a significant role in trade through its multifaceted objectives, including establishing international standards to resolve various social, economic, and environmental challenges.⁸² Therefore, the joint affiliation of South Africa and the EU with the OECD underlines their collaborative efforts in responding to these challenges and promoting international trade dynamics. Its foundational objectives, rooted in shared values, interests and benefits, are instrumental in navigating the countries' interplay of economic, social, and environmental complexities.⁸³

In 2015, South Africa and the EU adopted the 2030 Agenda for Sustainable Development Goals (SDGs).⁸⁴ Their alignment signifies a mutual understanding of international trade's role in achieving economic growth, poverty eradication, and sustainability. Central to this is the acknowledgement that international trade catalyses economic advancement and addresses socio-economic challenges.⁸⁵ In fact, the SDGs refer to trade as essential for achieving food security.⁸⁶ International trade ensures continuous access to a greater variety of inexpensive food and safeguards against unexpected disruptions, which include climate change that influences weather conditions affecting domestic production of goods.⁸⁷

⁷⁹ In 2007, SA became a member of the OECD, which includes a wide variety of policy concerns – OECD 2023 <https://www.oecd.org/southafrica/south-africa-and-oecd.htm>.

⁸⁰ The EU has 22 member states that form part of the 38 members of the OECD – United Nations 2021 https://www.eeas.europa.eu/paris-oecd-unesco/relations-oecd-and-unesco_en?s=64.

⁸¹ WTO date unknown https://www.wto.org/english/thewto_e/coher_e/wto_oecd_e.htm.

⁸² Alongside Leadership, lawmakers, and members of communities by sharing knowledge and best practices - OECD date unknown <https://www.oecd.org/about/>.

⁸³ European Union 2021 https://www.eeas.europa.eu/south-africa/european-union-and-south-africa_en?s=120.

⁸⁴ 2030 Agenda for Sustainable Development adopted by the UN's member states in 2015 for eradicating poverty, enhancing health and education, promoting equality, and fostering economic growth while addressing the effects of climate change - United Nations date unknown <https://sdgs.un.org/goals>. SA provided a baseline report in 2017 and a more comprehensive country report in 2019 – Statistics South Africa 2019 <https://www.statssa.gov.za/?p=12813>.

⁸⁵ The World Bank 2022 <https://www.worldbank.org/en/topic/trade/overview>.

⁸⁶ FAO 2018 <https://www.fao.org/3/I8545EN/i8545en.pdf> and UNCTAD date unknown <https://unctad.org/topic/trade-analysis/trade-and-SDGs>.

⁸⁷ FAO 2017 <https://www.fao.org/3/i7833en/i7833en.pdf>.

Given the above, the trade relationship and trade dynamics between South Africa and the EU have evolved through various agreements and the influence of international entities. The TDCA has marked a critical shift in the trade dynamics between the parties, which transformed to include the key objective of sustainability with the SADC-EU EPA. The membership of South Africa and the EU in global organisations like the WTO, OECD and the UN emphasises their commitment to aligning to an international regulatory framework, sustainable development and ensuring successful trade governance.

The South Africa-EU relationship is significant as they are primary and strategic trade partners.⁸⁸ The partnership between South Africa and the EU goes beyond economic ties. It extends to shared goals,⁸⁹ including international collaboration on different levels,⁹⁰ actions against climate change,⁹¹ promotion of equitable and transparent trade,⁹² and sustainable economic development.⁹³

2.3 Trade Law and the challenges of food security, environmental sustainability, and economic development

2.3.1 Food security

Food security represents one of the most pressing challenges of the 21st century, encompassing the complex interplay of factors required to ensure that all people have physical and economic access to sufficient, safe, and nutritious food that meets their

⁸⁸ See Chapter 1 above in the background section.

⁸⁹ Shared goal of promoting multilateralism, which is the collaboration of no less than three countries sharing specific norms and values, – United Nations 2023 <https://www.un.org/en/observances/multilateralism-for-peace-day> and European Commission 2018 <https://www.consilium.europa.eu/en/meetings/international-summit/2018/11/15/>.

⁹⁰ Strengthening their collaboration on biodiversity, circular economy and water resource management – European Commission 2018 <https://www.consilium.europa.eu/en/meetings/international-summit/2018/11/15/>.

⁹¹ European Commission 2023 https://ec.europa.eu/commission/presscorner/detail/en/ip_23_353.

⁹² European Commission date unknown https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/south-africa_en.

⁹³ European Union 2018 https://www.eeas.europa.eu/sites/default/files/eu-south_africa_factsheet.pdf.

dietary needs for a healthy life.⁹⁴ The challenge of achieving food security is multifaceted, rooted in issues ranging from agricultural productivity, environmental sustainability and climate change to socio-economic inequalities and even political instability.⁹⁵ Moreover, the quest for food security is increasingly challenged by global trends such as population growth, urbanisation, and especially climate change, which exacerbates the vulnerability of agricultural systems to extreme weather events.⁹⁶ Climate change has an impact on exacerbating water and affects food security globally, including contributing to rising temperatures and changing weather patterns that ultimately lead to floods, droughts, and heat waves that affect.⁹⁷ The challenges regarding climate change in a country like South Africa are significant combined with population growth and others that impact agriculture production.⁹⁸ To effectively address this challenge a collaborative approach across all sectors, that includes policymakers, is recommended and encourages international and regional collaboration to address these climate change challenges.⁹⁹ The intersection of food security with trade law introduces an additional layer of complexity. Trade law and policies play a critical role in ensuring the availability, accessibility, and affordability of food.¹⁰⁰ Trade can enhance food security by enabling the efficient distribution of food from surplus to deficit regions, promoting agricultural development and facilitating economic development.¹⁰¹ Trade law is foundational to food security as it speaks to market access and trade barriers that promote market accessibility and allow equitable distribution of food to mitigate concerns related to food security.¹⁰² Market access can also be restricted by tariffs, quotas, and other trade barriers.¹⁰³ On the other hand, trade policies, such as subsidies and tariffs, can distort markets, undermine local

⁹⁴ 1996 World Summit - The World Bank date unknown <https://www.worldbank.org/en/topic/agriculture/brief/food-security-update/what-is-food-security>.

⁹⁵ FHAFNB 2023 <https://fhafnb.com/glossary/food-security/>.

⁹⁶ FAO 2015 <https://www.fao.org/3/i5188e/I5188E.pdf>.

⁹⁷ Adom, Simatele and Reid 2022 *AJEC* 73.

⁹⁸ Adom, Simatele and Reid 2022 *AJEC* 88.

⁹⁹ Adom, Simatele and Reid 2022 *AJEC* 88.

¹⁰⁰ FAO 2015 <https://www.fao.org/fsnforum/index.php/activities/discussions/examining-linkages-between-trade-and-food-security>.

¹⁰¹ Zimmerman and Rapsomanikis "Trade and Sustainable Food Systems" 685.

¹⁰² Zimmerman and Rapsomanikis "Trade and Sustainable Food Systems" 689.

¹⁰³ Zimmerman and Rapsomanikis "Trade and Sustainable Food Systems" 702.

agricultural sectors in less developed countries, and exacerbate food insecurity.¹⁰⁴ Trade facilitation like lowering trade barriers and enhancing customs protocols can establish a more resilient, efficient, and transparent food supply chain that benefits farmers, traders, consumers, and the economy at large.¹⁰⁵ Furthermore, the link between trade law and food security regularly overlaps with environmental sustainability and economic development. Trade agreements can encourage sustainable farming practices and include climate action mitigation provisions like reducing GHG emissions in food production. Promoting the trade of environmentally sustainable agricultural products, in turn, through trade agreements facilitates diversification and encourages long-term economic development.

Addressing the challenge of food security through the lens of trade law requires a balanced approach that promotes fair and equitable trade practices, supports sustainable agricultural practices, and safeguards the rights and livelihoods of the most vulnerable populations which is also significant for the Agri-Food sector. Ultimately, the integration of trade law into strategies for enhancing food security offers a pathway towards a more just, sustainable, and resilient Agri-Food trade regulatory framework.

2.3.2 Environmental sustainability

Sustainability is defined and frequently referred to as sustainable development to meet the present needs without compromising the ability of future generations to meet theirs.¹⁰⁶ Sustainability has three main pillars that are interconnected and mutually interactive which include economic, environmental, and social sustainability.¹⁰⁷ Environmental sustainability is the protection and responsible use of natural resources

¹⁰⁴ World Bank 2023
<https://thedocs.worldbank.org/en/doc/0534eca53121c137d3766a02320d0310-0430012022/related/Unfair-Advantage-Distortive-Subsidies-and-Their-Effects-on-Global-Trade-2023.pdf>.

¹⁰⁵ Zimmerman and Rapsomanikis "Trade and Sustainable Food Systems" 702.

¹⁰⁶ Theis and Tomkin Sustainability: a Comprehensive Foundation 6 and the definition of sustainable development is provided in the *National Environmental Management Act* to include the combination of social, economic and environmental factors into management now and in the future – Section 1 xxix of the *National Environmental Management Act* 107 of 1998.

¹⁰⁷ Theis and Tomkin Sustainability: a Comprehensive Foundation 6.

while preserving the biodiversity of natural habitats for overall present and future health.¹⁰⁸ Trade law can have a significant impact on shaping environmental sustainability by establishing a framework that enhances or limits sustainable practices.

The WTO provides for rules and regulations related to international trade embedded within the WTO agreements that set the guidelines for how nations trade.¹⁰⁹ The WTO has prioritised enhancing international trade by creating trade rules that balance the sensitive trade-offs of how natural resources could be utilised while protecting and safeguarding the environment.¹¹⁰ Furthermore, climate change also disrupts the human quality of life and the environmental sustainability of global biodiversity.¹¹¹ Environmental sustainability and climate change are interlinked,¹¹² and mitigating climate change is vital in ensuring the long-term sustainability of the global environment, including reducing GHG emissions, which is a worldwide effort to be effective.¹¹³ Ensuring environmental sustainability requires a multi-approach in relation to climate change that includes various measures that will ensure the protection of natural resources and create a sustainable, and resilient global food system.¹¹⁴

A report called Sustainable Trade in Resources, generated by the United Nations Environment Programme (UNEP) and International Resource Panel,¹¹⁵ further underscored the dire need for environmentally sustainable trade rules and policies to

¹⁰⁸ Sphera 2020 <https://sphera.com/glossary/what-is-environmental-sustainability/>.

¹⁰⁹ WTO date unknown https://www.wto.org/english/res_e/webcas_e/ltt_e/ltt10_e.htm.

¹¹⁰ WTO date unknown https://www.wto.org/english/tratop_e/envir_e/envt_intro_e.htm.

¹¹¹ Shivanna 2022 *Indian National Science Academy* 160.

¹¹² Ede 2023 <https://www.linkedin.com/pulse/inter-relatedness-climate-change-environmental-global-ed/>.

¹¹³ Shivanna 2022 *Indian National Science Academy* 166.

¹¹⁴ Ede 2023 <https://www.linkedin.com/pulse/inter-relatedness-climate-change-environmental-global-ed/>.

¹¹⁵ International science policy initiative that was established in 2007 by the United Nations Environment Programme, whose goal is sustainable development, that was meant to share indispensable expertise on how to use natural resources – UNEP date unknown <https://www.unep.org/explore-topics/resource-efficiency/what-we-do/international-resource-panel> and UNEP date unknown <https://www.unep.org/who-we-are/about-us>.

avoid exaggerated climate change and future food concerns.¹¹⁶ The current circumstances vary worldwide, and each country's needs and objectives differ. Still, the main goal needs to be an efficient and successful regulatory framework for environmental policies, which is required globally and nationally.¹¹⁷

Examining the nexus between environmental sustainability and trade law is necessary to promote environmentally conscious practices in different regions for economic and environmental gain.¹¹⁸ The examination further establishes cooperation, innovation, and shared commitments to continue their trade partnerships in addressing global challenges like climate change and environmental deterioration.

The EU has been a leader in its endeavours to accomplish a more sustainable environment and address challenges with climate change.¹¹⁹ The EU has prioritised environmental sustainability, focusing on the effective administration of natural resources, promoting trade that supports climate action and removing specific trade barriers in trade agreements with trading partners, and clear guidelines on sustainable development form part of these agreements.¹²⁰ The EU prioritises environmental sustainability to be incorporated within various dimensions of the EU law, particularly the trade policy.¹²¹ Additionally, the EU is dedicated in its trade policy framework to fostering sustainable development through trade agreements, the motivation of similar goals in developing countries, and its trade and development policy.¹²² As mentioned, trade significantly influences climate change through the distribution of goods during transport.¹²³ Ultimately, trade could also contribute to mitigating climate

¹¹⁶ UNEP 2020 <https://www.unep.org/news-and-stories/story/new-trade-rules-vital-protecting-planet>.

¹¹⁷ OECD 2019 <https://www.oecd.org/trade/topics/trade-and-the-environment/>.

¹¹⁸ WTO 2023 https://www.wto.org/english/res_e/booksp_e/wtr23_e/wtr23_ch5_e.pdf.

¹¹⁹ National Treasury 2022 http://eusa.treasury.gov.za/?page_id=8825.

¹²⁰ European Commission date unknown https://policy.trade.ec.europa.eu/development-and-sustainability/sustainable-development/sustainable-development-eu-trade-agreements_en.

¹²¹ European Commission date unknown https://policy.trade.ec.europa.eu/development-and-sustainability/sustainable-development_en.

¹²² European Commission date unknown https://policy.trade.ec.europa.eu/development-and-sustainability/sustainable-development_en.

¹²³ Pangestu 2023 <https://blogs.worldbank.org/voices/greening-trade-development>.

change, as without it, no resources could be moved around the globe to relieve crises.¹²⁴

These factors' interlocked essence compels a deeper insight into the multifaced connection between trade law and environmental sustainability, specifically within the Agri-Food sector.¹²⁵ Consequently, and because of the existing strategic partnership between the EU and South Africa, the EU will continue to invest in South Africa to assist in South Africa's shift to achieve the same objective of a low-carbon, stable economy.¹²⁶

2.3.3 Economic development

The economic environment is a complex relationship between trade and regulatory frameworks which are intertwined, each affecting the other.¹²⁷ Trade laws facilitate market access by reducing trade barriers and tariffs which leads to greater economic opportunities and promotes economic development.¹²⁸ Furthermore, promoting equitable trade that is accessible to everyone provides a stable system for international trade.

Economic development encapsulates the advancement of a country's prosperity and the total well-being of its people through different strategies on an economic and social level.¹²⁹ Trade is an essential factor driving economic development,¹³⁰ and global poverty has decreased significantly over the last few years because of increased trade activities.¹³¹ Key elements such as governments' trade policy, productivity, need,

¹²⁴ Parliament of the Republic of South Africa 2022 <https://www.parliament.gov.za/bill/2300773>.

¹²⁵ Gebrehiwot, Cornelius, and Korsten 2019 *De Jure Law Journal* 101.

¹²⁶ National Treasury 2022 http://eusa.treasury.gov.za/?page_id=8825.

¹²⁷ Koeniger and Silberberger 2015 *CEGE* 4.

¹²⁸ Koeniger and Silberberger 2015 *CEGE* 2.

¹²⁹ British Columbia date unknown <https://www2.gov.bc.ca/gov/content/employment-business/economic-development/plan-and-measure/economic-development-basics>.

¹³⁰ Zimmerman and Rapsomanikis "Trade and Sustainable Food Systems" 685 and Raghutla 2020 *Journal of Public Affairs* 2.

¹³¹ The World Bank 2023 <https://www.worldbank.org/en/topic/trade/brief/trade-has-been-a-powerful-driver-of-economic-development-and-poverty-reduction>.

and currency conversion ratio greatly influence trade law and economic development.¹³²

Currently, the EU is South Africa's most extensive trade and investment partner, as the largest share of foreign direct investment (FDI) is received from the EU.¹³³ The gross domestic product (GDP) is a country's economic activity indicator, calculating all goods and services sold within a specific timeframe.¹³⁴ Furthermore, trade represents a certain percentage of a country's overall GDP,¹³⁵ calculated as the total exports and imports.¹³⁶

In the first three months of 2023, South Africa's GDP grew, primarily because of rising exports and increased trade in food products.¹³⁷ Still, agriculture had the most significant decline and negative impact on South Africa's GDP because of the impact of climate change on the quantity and quality of crop yields. Hence, trade is an important role player in South Africa's economic development. South Africa contributed only 0.7% towards the global GDP in 2022.¹³⁸ As one of the world's leading economies, the EU contributes one-sixth of international trade.¹³⁹ Trade represents a substantial percentage of the EU's GDP every year, and the EU ranks as the top country where trade represents the highest contributor to the GDP.¹⁴⁰

¹³² Kelly and Logan 2023 <https://www.investopedia.com/ask/answers/041615/which-factors-can-influence-countrys-balance-trade.asp>.

¹³³ European Commission date unknown https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/south-africa_en.

¹³⁴ World data date unknown <https://www.worlddata.info/africa/south-africa/economy.php>.

¹³⁵ Agri-Food contributing up to 5% of SA's GDP - Food Security 2022 <https://foodsecurity.ac.za/wp-content/uploads/2022/06/Food-Systems-Profile-South-Africa-Catalysing-the-sustainable-and-inclusive-transformation-of-food-systems.pdf>.

¹³⁶ Macrotrends 2023 <https://www.macrotrends.net/countries/EUU/european-union/trade-gdp-ratio>.

¹³⁷ GDP grew by 0.4% and exports by 4.1% in the first three months of 2023 – Department of Statistics in South Africa 2023 <https://www.statssa.gov.za/?p=16379>.

¹³⁸ World Economics date unknown <https://www.worldeconomics.com/Share-of-Global-GDP/South%20Africa.aspx>.

¹³⁹ Visual Capitalist 2023 <https://www.visualcapitalist.com/16-trillion-european-union-economy/>.

¹⁴⁰ Macrotrends 2023 <https://www.macrotrends.net/countries/EUU/european-union/trade-gdp-ratio>.

As an evolving economy, South Africa struggles with some of the highest inequality and poverty in the world because of poor economic growth.¹⁴¹ The NDP sets the ambitious targets of eradicating poverty, decreasing inequality, and promoting economic growth and exports in South Africa by 2030.¹⁴² The existing economic conditions of South Africa are unsustainable, and the introduction of transforming the economy to enhance job creation is of great importance and aims to improve and strengthen trade.¹⁴³ Evidently, international trade is a driver for enhancing economic growth.¹⁴⁴

The increased trade, from rapid expansion and excessive use of natural resources, has resulted in aggravated environmental concerns that need to be in support of sustainable economic growth.¹⁴⁵ Thus, international trade law must be proficient in restricting trade barriers to exchanging environmentally friendly goods and promoting trading to improve the situation.¹⁴⁶ The intersection of trade law with economic development closely relates to Agri-Food trade as the rules and regulations governing trade relations impact the Agri-Food sector globally.

2.4 Concluding remarks

South Africa and the EU share a longstanding and strategic partnership in trade law, which has significantly influenced the economic landscapes of both regions. This chapter has established that the foundation of this relationship lies in a series of bilateral trade agreements, notably the Trade, Development, and Cooperation

¹⁴¹ The World Bank 2023
https://databankfiles.worldbank.org/public/ddpext_download/poverty/987B9C90-CB9F-4D93-AE8C-750588BF00QA/current/Global_POVEQ_ZAF.pdf.

¹⁴² Department: The Presidency - National Planning Commission 2023
https://www.nationalplanningcommission.org.za/National_Development_Plan.

¹⁴³ Ministry of Finance RSA 2021
https://www.treasury.gov.za/comm_media/speeches/2021/2021092101%20SPEECH%20BY%20MINISTER%20OF%20FINANCE%20ON%20POLICY%20CHALLENGES%20OF%20ECONOMIC%20DEV%2021%20SEPTEMBER.pdf.

¹⁴⁴ United Nations Conference on Trade and Development date unknown
<https://unctad.org/topic/trade-agreements/trade-policy>.

¹⁴⁵ Gu *et al* "Trade Law Needs to Be Better Incorporated into the UN Sustainable Development Goals" 526.

¹⁴⁶ Gu *et al* "Trade Law Needs to Be Better Incorporated into the UN Sustainable Development Goals" 526.

Agreement (TDCA).¹⁴⁷ The TDCA, along with subsequent agreements, has significantly boosted trade flows between South Africa and the EU, positioning the EU as one of South Africa's key trading partners. The trade law partnership between South Africa and the EU holds critical significance for the Agri-Food sector. It not only strengthens the economic bonds between the two regions but also promotes a united effort towards environmental sustainability and food security.

In part two of this chapter, the intersection between trade law and the global challenges of food security, environmental sustainability, and economic development has unveiled the profound and multifaceted role that trade law plays in addressing these critical issues.¹⁴⁸ Trade law serves as a key mechanism for fostering international cooperation, and facilitating the exchange of goods, services, and technologies that are essential for sustainable development. By harmonising standards and ensuring fair trade practices, trade law can significantly contribute to enhancing food security, promoting environmental sustainability, and stimulating economic growth.

South Africa faces significant food security, environmental sustainability, and economic development challenges, marked by a complex interplay of economic, social, and environmental factors. Despite being a middle-income country with a well-developed agricultural sector, a substantial portion of the population struggles with both access to and the affordability of nutritious food. High levels of poverty and unemployment exacerbate the situation, limiting the purchasing power of many households and making them vulnerable to food insecurity. Additionally, the country's agricultural sector is under pressure from various fronts, including climate change, which manifests through droughts, floods, and changing weather patterns, adversely affecting crop yields and livestock productivity. These challenges, combined with issues of inequality and distribution, underscore the urgency of adopting comprehensive strategies to ensure food security, environmental sustainability, and economic growth for all South Africans.

¹⁴⁷ See par 2.2 above.

¹⁴⁸ See par 2.3 above.

A resilient Agri-Food Trade Law framework recognises and addresses the intricate interconnections among trade, food security, environmental sustainability, and economic development. To devise such a framework, grounded in sustainability principles, this study delves into the EGD and its FTF strategy as a foundational benchmark. By examining the EGD and FTF strategy, the study aims to outline whether trade laws can be structured to not only facilitate the smooth exchange of agricultural goods and services but also to ensure that these exchanges ensure food security, promote environmental sustainability, and contribute to economic development. This approach underscores the importance of integrating sustainability into the core of trade law to navigate the complex challenges facing the global Agri-Food sector.

The chapter thus provides the footwork for a robust and resilient Agri-Food trade legal framework that navigates the intricacies of food security, environmental sustainability, and economic development. A holistic integrated approach across all sectors is required to achieve this.

Chapter 3

The European Green Deal (EGD) and its Farm to Fork Strategy (FTF)

3.1 Introduction

Navigating the intricate landscape of global trade and sustainability, Chapter 2 explored the nexus between trade law, food security, environmental sustainability, and economic development. It further examined the trading relationship between South Africa and the EU, underlining their positions as strategic partners.¹⁴⁹ From this discussion, the necessity for a strong and resilient Agri-Food trade legal framework became apparent, one that navigates the intricacies of food security, environmental sustainability, and economic development.

Changing climate patterns introduced a new dimension to trade law.¹⁵⁰ In fact, as will be indicated,¹⁵¹ there is an increasing recognition of the need to integrate environmental sustainability into trade agreements.¹⁵² Against this backdrop, this chapter introduces the EGD and its FTF Strategies to examine their potential to enhance environmental sustainability within the Agri-Food trade context.

The goal of the examination is to theoretically examine the EGD and FTF strategy 1) to indicate the relevance of these instruments for climate change and environmental sustainability; and 2) to establish a matrix or benchmark or standard for environmental sustainability in Agri-Food Trade law. This will then feed into the overarching objective of this mini-dissertation, which is to discern whether these EU frameworks and initiatives can strengthen or support South Africa's environmental policies, thereby enhancing the Agri-Food trade dynamics or relations between South Africa and the EU.

¹⁴⁹ See par 2.2 – 2.3 above.

¹⁵⁰ WTO 2022 https://www.wto.org/english/res_e/booksp_e/wtr22_e/wtr22_e.pdf.

¹⁵¹ See par 2.3.2 above.

¹⁵² WTO 2022 https://www.wto.org/english/res_e/booksp_e/wtr22_e/wtr22_e.pdf.

The discussion unfolds into two parts. Firstly, the chapter investigates the EGD and FTF strategy and the introduction of stricter sustainability standards to promote climate action. In part two, the discussion aims to carve out a benchmark that can be used in Chapter 4 to measure and potentially enhance environmental sustainability within South Africa's Agri-Food Trade law.

3.2 EGD and FTF Strategy

3.2.1 Evolution of the EU's climate action initiatives

Since the Intergovernmental Panel on Climate Change (IPCC) released its initial assessment report in 1990,¹⁵³ discussions about an EU climate policy were prompted.¹⁵⁴ The second assessment report led to the Kyoto Protocol of 1997, marking a shift towards handling and managing the use of GHG emissions in developed countries and establishing a requirement for regular reporting to the UNFCCC.¹⁵⁵ The Paris Agreement followed in 2015, in recognition of the need for a binding global effort to address the effects of climate change to ensure that the global average temperature increase remains below 2°C.¹⁵⁶ The Paris Agreement represented a global milestone by recognising the need for a collaborative and united approach to addressing climate change, without distinguishing between more developed or less developed countries.¹⁵⁷ The need to reduce and stabilise emissions further motivated the EU to adopt collective and synchronised approaches and

¹⁵³ The IPCC was initiated in 1988, forming part of the United Nations Environment Programme (UNEP) and World Meteorological Organization (WMO) in advising lawmakers globally about carbon-linked climate change and its risks – Lindwall 2023 <https://www.nrdc.org/stories/ipcc-climate-change-reports-why-they-matter-everyone-planet#sec-what-is>.

¹⁵⁴ The three areas of interest were reducing greenhouse gasses, encouraging renewable energy resources, and increasing energy productivity - Prahl, Hofmann and Duwe 2014 http://climatepolicyinfohub.eu/european-climate-policy-history-and-state-play.html#footnote1_knjygij.

¹⁵⁵ The Kyoto Protocol came into effect on 16 February 2005 - United Nations Climate Change date unknown https://unfccc.int/kyoto_protocol and Lindwall 2023 <https://www.nrdc.org/stories/ipcc-climate-change-reports-why-they-matter-everyone-planet#sec-what-is>.

¹⁵⁶ United Nations Climate Change date unknown <https://unfccc.int/process-and-meetings/the-paris-agreement>.

¹⁵⁷ Roberts 2016 *South African Journal of Science* 2.

measures towards climate action.¹⁵⁸ As will be detailed herein, combating climate change and promoting environmental sustainability are intrinsically linked, as efforts to reduce GHG emissions directly contribute to the preservation of natural ecosystems.

The European Commission initiated the EGD in 2019, as part of its commitment to combat climate and environmental-related challenges.¹⁵⁹ Central to this initiative is the ambitious goal to reduce the EU's GHG emissions to zero by 2050,¹⁶⁰ aligning with its obligations under the Paris Agreement.¹⁶¹ To determine the potential of the EGD and its FTF strategy in promoting environmental sustainability and combating climate change, the first step is to examine its content, focus and scope.

3.2.2 The European Green Deal

The EGD comprises a set of policy initiatives by the EU, aimed at achieving climate neutrality in Europe by 2050.¹⁶² It consists of and highlights the need for a comprehensive interdisciplinary and holistic strategy collection of policies collectively aiming at the same climate-related goal, including actions across the environment, trade, and agriculture sectors.¹⁶³ Launched in December 2019, the EGD seeks to reshape the EU into a just and thriving society, with an economy that is up-to-date, efficient in resource use, and competitive economy that aims for zero GHG's by 2050, ensuring economic development that does not rely on resource depletion.¹⁶⁴ Additionally, it strives to preserve, maintain, and elevate the EU's environmental

¹⁵⁸ Prahl, Hofmann and Duwe 2014 http://climatepolicyinfohub.eu/european-climate-policy-history-and-state-play.html#footnote1_knjygij.

¹⁵⁹ European Commission 2019 https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF.

¹⁶⁰ Also referred to as climate-neural – European Commission date unknown https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en.

¹⁶¹ The EU has been a leader in climate change efforts and leading the initiatives thereof by committing to reducing GHG emissions by 55% by 2030 – European Commission 2021 https://climate.ec.europa.eu/news-your-voice/news/delivering-european-green-deal-2021-07-14_en.

¹⁶² European Commission date unknown https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en.

¹⁶³ European Commission 2023 <https://www.consilium.europa.eu/en/policies/green-deal/>.

¹⁶⁴ European Commission 2019 https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF.

assets, and ensuring the health and safety from environmental risks and consequences.¹⁶⁵ At its core, the EGD serves as a comprehensive action plan to address climate change, foster sustainable development, and secure a healthier environmental future.¹⁶⁶ It is an ambitious blueprint for action that integrates economic, social, and environmental objectives, thereby setting a benchmark for sustainability and climate action globally.

The aims of the EGD include action towards climate change, reaching climate neutrality by 2050, economic development independent from resource use, enhancing biodiversity,¹⁶⁷ and establishing a sustainable FS through the FTF strategy.¹⁶⁸ The key components and scope for this study are European Climate Law and FTF strategy of which each objective is the reducing of GHG emissions across all sectors and encouraging sustainable agriculture and FSs.

Coordinating and establishing sustainability in all the EU policies, the EGD serves as a strategic framework for the EU to achieve climate neutrality by 2050 and places climate-related factors into policies across all sectors. Furthermore, the goal is to incorporate the initiatives into legislation to ensure the alignment of all policies and laws with the purposes of the EGD objectives.¹⁶⁹ The initial endeavours following the EGD that drive efforts towards climate action include the European Climate Law,¹⁷⁰

¹⁶⁵ European Commission 2019 https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF.

¹⁶⁶ European Council 2023 <https://www.consilium.europa.eu/en/policies/green-deal/>.

¹⁶⁷ Biodiversity is a key element of the EGD, protecting and rehabilitating natural habitats and biodiversity and striving for a zero-pollution objective for an environment without toxins. The biodiversity strategy adopted in 2020 is a continuing recovery effort to a more sustainable environment that collectively promotes individuals, the world they live in and the climate - European Commission date unknown https://environment.ec.europa.eu/strategy/biodiversity-strategy-2030_en.

¹⁶⁸ Other components consist of just and inclusive transition for all, sustainable energy, reduce harmful toxins, structures, and improvements, eradicating pollution, research, and growth, and combating inequitable competition from carbon leakage – Patel and Robinson 2021 <https://www.nortonrosefulbright.com/en/knowledge/publications/c50c4cd9/the-eu-green-deal-explained>.

¹⁶⁹ The alignment of EU's actions towards climate change to law is referred to as Fit for 55 – European Commission date unknown https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en.

¹⁷⁰ The EU Climate Law sets compelling targets of decreasing net emissions by 55% by 2030 and an intermediary 2040 target, beyond its aspiration of achieving climate neutrality by 2050. Furthermore, it aims to create a framework to oversee the development of the set targets,

Climate Pact,¹⁷¹ and 2030 Climate Target Plan.¹⁷² A significant step towards achieving the EU's ambitious EGD objectives was reached with legislative adjustments and improvements that include when the EU Climate Law was accepted in 2021.¹⁷³ This paves the way for other objectives to be incorporated into the regulatory framework, leading to progress in all areas, particularly in enhancing food security, environmental sustainability and economic development in the Agri-Food trade sector.¹⁷⁴ A holistic approach that aligns all EU member states' policies is suggested to implement this initiative successfully. A zero-pollution action plan was passed in May 2021 to achieve this goal.¹⁷⁵ A chemical strategy to promote sustainability was also accepted in October 2020.¹⁷⁶

The EGD places the EU at the forefront of leading climate action that aims to set global environmental sustainability standards to be translated to climate action policies and motivate other countries to lead by example. The EU encourages international collaborations through the EGD¹⁷⁷ and supports other countries to do the same, as they acknowledge the need to address climate concerns collectively.¹⁷⁸

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- presenting anticipating indicators to address various economic stakeholders' concerns and securing the shift towards climate neutrality that cannot be undone. - European Council 2021 <https://www.consilium.europa.eu/en/press/press-releases/2021/06/28/council-adopts-european-climate-law/>.
- ¹⁷¹ Creates an open share platform across the EU for citizens and businesses to converse in ways and strategies to attain a more sustainable environment that combats climate action - SDSN Europe 2022 <https://egd-report.unsdsn.org/introduction-the-policy-framework-for-implementing-the-european-green-deal/>.
- ¹⁷² ECEEE date unknown <https://www.eceee.org/policy-areas/test/>.
- ¹⁷³ European Parliament 2023 <https://www.europarl.europa.eu/news/en/headlines/society/20200618STO81513/green-deal-key-to-a-climate-neutral-and-sustainable-eu>.
- ¹⁷⁴ European Parliament 2023 <https://www.europarl.europa.eu/news/en/headlines/society/20200618STO81513/green-deal-key-to-a-climate-neutral-and-sustainable-eu>.
- ¹⁷⁵ European Commission date unknown https://environment.ec.europa.eu/strategy/zero-pollution-action-plan_en.
- ¹⁷⁶ European Commission date unknown https://environment.ec.europa.eu/strategy/chemicals-strategy_en.
- ¹⁷⁷ These include sustainable technology, sustainable finance and carbon pricing - European Commission 2019 https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF.
- ¹⁷⁸ Transitioning towards a more sustainable economy by providing financial support, exchange of expertise and skill development

Firstly, to ensure the success of the EGD, seeking green finance and investment that would enable a fair progression is needed and will include a Sustainable Europe Investment Plan that will coordinate the framework for sustainable investments.¹⁷⁹ Furthermore, a significant element of this will be the EU budget committed to 25% towards establishing climate throughout the EU projects, and 30% of the Invest EU Fund has been set aside to address the global climate change concern. Secondly, an emphasis has been placed on the value of the National budgets and shifting the focus to greening budgets to ensure that investments go to the critical focus areas.¹⁸⁰ Thirdly, research and innovation will be stimulated as crucial as they are key role players because of the need for new technologies.¹⁸¹ Horizon Europe provides 35% of the finances to climate mitigation related to the EGD.¹⁸² A fourth effort will be engaging the education and training sector by creating a European competence framework to assist in determining understanding, proficiencies, and viewpoints on climate change and the development of sustainability.¹⁸³ Furthermore, it improves the sustainability of school structures and functions with financial support. Lastly, a holistic commitment to accomplish effective, fair progression will be required from all EU activities and strategies to correlate with the objectives of the EGD.¹⁸⁴

The EGD includes other initiatives that contribute to the aims of climate neutrality and climate action. The 2030 Climate Target Plan includes strategic initiatives within the "Fit for 55 package" to minimise emissions by 55% by 2030 and intends to align legislation with this EU goal.¹⁸⁵ Included in the "Fit for 55 package" are, The EU

¹⁷⁹ European Commission 2019 https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF.

¹⁸⁰ The restructuring of taxation promotes economic growth and adds to the robustness of environmental instabilities, which will make a difference. - European Commission 2019 https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF.

¹⁸¹ This included new technologies, sustainable solutions, and disruptive innovation.

¹⁸² European Commission 2019 https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF.

¹⁸³ European Commission 2019 https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF.

¹⁸⁴ European Commission 2019 https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF.

¹⁸⁵ Additionally, the plans are newly suggested measures for an integrated and equitable regulatory framework to guarantee that all EU policies share the same EU climate objectives and are contributing to those objectives - European Council date unknown

Emissions Trading System (EU ETS),¹⁸⁶ the social climate fund,¹⁸⁷ the Carbon Border Adjustment Mechanism (CBAM),¹⁸⁸ GHG emission reduction goals for EU member states,¹⁸⁹ and renewable energy, to name a few.¹⁹⁰

A circular economy involving an industrial strategy,¹⁹¹ and a 'sustainable products' policy focusing on minimising and reusing resources before ultimately recycling those resources.¹⁹² The circular economy action plan will ensure they are first reduced and reused before recycling resources. Simultaneously, by setting minimum standards, innovative business frameworks will be promoted to ensure that environmentally harmful products do not enter the EU market.¹⁹³ A circular economy has been described as a sustainable and economical method focusing on responsible and continuous resource utilisation.¹⁹⁴ It is primarily concerned with disentangling

<https://www.consilium.europa.eu/en/policies/green-deal/fit-for-55-the-eu-plan-for-a-green-transition/>.

¹⁸⁶ Improvement was implemented in April 2023 - European Council for Energy Efficient Economy date unknown <https://www.eceee.org/policy-areas/test/>. The revisions in the EU ETS, counting for 40% of the EU's total GHG emissions and aim of reducing by 62% by 2030 from 2005, cover GHG emissions from aviation, maritime, and road transport, as well as buildings and other sectors - ECEEE 2023 <https://www.eceee.org/policy-areas/product-policy/eu-emissions-trading-system-eu-ets/>.

¹⁸⁷ Assistance to aid those most affected - European Council date unknown <https://www.consilium.europa.eu/en/policies/green-deal/fit-for-55-the-eu-plan-for-a-green-transition/>.

¹⁸⁸ The CBAM ensures that non-EU countries do not counteract the EU's efforts to lessen emissions by international trade rules - European Council date unknown <https://www.consilium.europa.eu/en/policies/green-deal/fit-for-55-the-eu-plan-for-a-green-transition/>.

¹⁸⁹ Binding GHG emission targets for sectors like transport, buildings, agriculture, and waste - European Council date unknown <https://www.consilium.europa.eu/en/policies/green-deal/fit-for-55-the-eu-plan-for-a-green-transition/>.

¹⁹⁰ The relevance of EU ETS and CBAM comes into play regarding the Agri-Food trade and its global impact. Renewable, inexpensive, and stable energy resources for achieving the emission target for 2030 and 2050 by decarbonising the energy sector. - European Commission 2019 https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF.

¹⁹¹ Accepted in 2020, aligning with the EGD and bringing the EU to the forefront as a global leader in circular economy movements – ECE date unknown <https://www.eceee.org/policy-areas/test/>.

¹⁹² A legal framework for environmentally friendly plastics will also be established to provide measures for using disposable plastics - European Commission 2019 https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF.

¹⁹³ European Commission 2019 https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF.

¹⁹⁴ Moraga *et al*/2019 Resources, Conservation and Recycling 452.

economic development from using natural resources.¹⁹⁵ The circular economy is thus a method to reduce waste and move toward a sustainable future.

3.2.3 Farm-to-Fork strategy

The FTF strategy is a central element of the EGD, aiming to create a more sustainable EU FS that has a neutral or positive environmental impact, helps to mitigate climate change, and ensures food security and nutrition, thus improving the quality of life of EU citizens and reducing the environmental and social footprint of the EU FS.¹⁹⁶ The FTF strategy aims to make FSs more sustainable and aligns with EGD's goals of reducing GHG emissions, enhancing biodiversity & moving towards a circular economy with less food waste.

The objectives of the FTF strategy are building a sustainable food production,¹⁹⁷ processing, and distribution, enhancing food security, reducing environmental and climate food print in the FS, encouraging a more sustainable and healthy diet, lessening food loss and waste, and innovation in agriculture to develop new technologies and practices that increase environmental sustainability in agriculture. The FTF strategy also contributes to the EGD's climate objectives by seeking to reduce the environmental footprint of food production. The strategy's comprehensive approach to transforming FSs is essential for the EGD's success which encourages sustainable food production, distribution, and trade.

The key components of the FTF strategy are supporting farmers,¹⁹⁸ Agri-Food sector contribution towards the economy, and ensuring food affordability and accessibility

¹⁹⁵ Pauliuk 2018 Resources, Conservation and Recycling 81.

¹⁹⁶ European Commission date unknown https://food.ec.europa.eu/horizontal-topics/farm-fork-strategy_en.

¹⁹⁷ The European Commission has set goals for the following food production constraints by 2030: lessening the use of mineral fertiliser by 20%, minimising the use of pesticides by 50%, lowering the nutrient losses by 50%, cutting EU sales on antimicrobials by 50%, and the boosting organic farming to 25% of EU agricultural land. An integrated nutrient management action plan will also be implemented to ensure compliance with nutrient loss - European Commission 2020 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0381>.

¹⁹⁸ Additionally, methods to help remove carbon dioxide from the air are encouraged, supporting farmers with additional methods including adopting a circular bio-based economy. The Climate Pact will drive the adoption of the new business approach with the EU carbon farming initiative

that aligns with the EGD's main goal of environmental and sustainability goals.¹⁹⁹ Initiatives from the FTF strategy to support farmers are aimed at environmental sustainability and aligning with the EGD. Initiatives include environmental and climate Impact reduction,²⁰⁰ revising animal welfare legislation, encouraging organic farming,²⁰¹ improving the Common Agricultural Policy (CAP),²⁰² and eco-schemes and strategic plans.²⁰³ The FTF strategy highlights the critical role Agri-Food plays in the broader economy that is more sustainable and climate-resilient. Revision of the CAP and setting up eco-schemes are vital specifically regarding originality and sustainability.²⁰⁴ The new modern CAP is critical to the EGD and achieving the FTF strategy's objective to transition to sustainable agriculture, which promotes environmental sustainability for farmers, enhancing directed assistance to small-scale farmers and providing larger room for countries to adapt to changing conditions.²⁰⁵ Furthermore, a legal framework, Circular Economy Action Plan (CEAP), is implemented to monitor and control the removal of environmental emissions to ensure compliance with the fundamental goal of reducing GHG emissions to obtain climate neutrality.²⁰⁶ Collective action from various dimensions, including advisory guidance, financial

– Ensuring sustainable food production, European Commission 2020 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0381>.

¹⁹⁹ European Commission 2020 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0381>

²⁰⁰ Lessening environmental and climate impact of animal production through encouraging sustainable feed and cutting down dependency on significant feed components.

²⁰¹ Increasing EU agricultural land to 25% by 2030.

²⁰² Improving environmental and climate performance.

²⁰³ Supporting by providing investments for sustainable technologies and establishing eco-schemes to fund sustainable practices.

²⁰⁴ European Commission 2020 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0381>.

²⁰⁵ Implemented on 1 January 2023 - European Commission date unknown https://agriculture.ec.europa.eu/common-agricultural-policy/cap-overview/cap-2023-27_en.

²⁰⁶ European Commission 2020 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A98%3AFIN>.

tools,²⁰⁷ and research²⁰⁸ and innovation,²⁰⁹ is critical to achieving and promoting these ambitious EU EGD efforts towards just, nutritious, and sustainable FS.²¹⁰

Furthermore, the FTF strategy underlines the importance of a sustainable FS that facilitates accessibility to healthy and affordable food to all and emphasises strengthening durable and sustainable practices while enabling food security in times of crises.²¹¹

The FTF has a global dimension, seeking to promote the transition for sustainable FSs worldwide through EU trade policies and international cooperation. This aligns with the EGD's aim to lead by example and to encourage other countries to adopt more sustainable practices. The FTF strategy sets the EU FS to be a worldwide sustainability standard, and the European Commission is formulating legislative guidelines related to a sustainable FS to facilitate the realisation of the established objectives of the strategy by the end of 2023.²¹² In addition, the EU will guide the worldwide shift towards a sustainable Agri-Food system through their existing partnerships regulated by different trade agreements such as bilateral, regional, and multilateral agreements.²¹³ The FTF strategy also highlights that resolving how food is wasted and lost is essential to achieving sustainability, as it brings relief to users and suppliers. To tackle food waste and loss, the commission will incorporate the prevention thereof in

²⁰⁷ InvestEU is promoting innovation, investment and creating work opportunities from 2021 – 2027, and the EU Green Deal Industrial Plan that endorses the EGD ambitions towards climate neutrality – European Union date unknown https://investeu.europa.eu/index_en.

²⁰⁸ Horizon Europe is running until 2027, and funds that prioritise actions against climate change while also achieving the SDGs – European Commission date unknown https://research-and-innovation.ec.europa.eu/funding/funding-opportunities/funding-programmes-and-open-calls/horizon-europe_en.

²⁰⁹ EU CAP Network is a platform where various stakeholders can engage and share knowledge regarding agriculture – EU Cap Network date unknown https://eu-cap-network.ec.europa.eu/about-european-cap-network_en.

²¹⁰ European Commission date unknown https://food.ec.europa.eu/horizontal-topics/farm-fork-strategy_en.

²¹¹ European Commission 2020 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0381>.

²¹² Eufic 2022 <https://www.eufic.org/en/food-production/article/the-eu-farm-to-fork-strategy-can-we-make-the-european-food-system-healthier-and-sustainable>.

²¹³ European Commission 2020 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0381>.

the EU guidelines.²¹⁴ Lastly, to avoid food fraud, the commission will exercise a zero-tolerance position as it threatens the sustainability of FSs.²¹⁵ Efforts will include harsher preventative actions, enhancing import regulations, and exploring the potential of improving coordination and inquiry abilities within the European Anti-Fraud Office.

The anticipated effect of the objectives of the FTF strategy on environmental sustainability is the reduction in GHG emissions, improved biodiversity, less dependency on pesticides and fertilisers, enhancing soil and water quality resources, and ensuring that all the objectives are cohesive with the goals of the EGD.

3.3 Establishing a benchmark for environmental sustainability

The EGD, alongside its FTF Strategy, integrates a variety of elements aimed at enhancing environmental sustainability across different sectors. These initiatives seek to transform the EU into a resource-efficient economy that achieves net-zero GHG emissions by 2050, ensuring that economic growth is independent of resource consumption. This section extracts fundamental components from both the EGD and the FTF Strategy that are key to enhancing environmental sustainability.

The elements included in the EGD to enhance environmental sustainability consist of climate neutrality, the move to a circular economy action plan to reduce the environmental footprint with the EU's FS, and the emphasis on a comprehensive holistic approach that is needed across all sectors. The FTF elements include the transition towards sustainable food production, processing and distribution, less food waste, and innovation in agriculture to develop new technologies and practices that increase environmental sustainability in agriculture.

Collectively, these elements address the multifaceted challenges of environmental sustainability within the context of climate change. By incorporating these

²¹⁴ European Commission 2020 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A98%3AFIN>.

²¹⁵ European Commission 2020 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A98%3AFIN>.

components, the EGD and its FTF Strategy establish a standard for environmental sustainability globally. To further enhance environmental sustainability, these elements are herein organised under three themes, which help in setting this benchmark. These themes are climate action, food security and economic growth.

3.3.1 Climate Action

The objective of having net-zero emissions by 2050 is a key aspect of climate action. A circular economy encourages recycling by reducing food waste and contributes to lessening the carbon impact which in turn contributes to climate action. The encouragement of more innovative solutions towards lessening environmental sustainability through new technologies and practices lessens the environmental impact and is another climate-mitigating factor.

These climate action mitigation measures set by the EGD and FTF strategy aim to strengthen environmental sustainability through lessening GHG emissions with the primary goal of climate neutrality by 2050 and setting future targets like reducing GHG emissions by 55% by 2030 across all sectors and shifting towards sustainable economic growth.²¹⁶ Overall, the objectives of the EGD's climate-mitigation measures are coordinated efforts in addressing climate change, with the goal of a sustainable and resilient future for the EU and its people. The EGD encourages that the desired economic growth is not subject to using natural resources and supports the development of more sustainable practices overall.²¹⁷

The EGD emphasises the need to protect, maintain, and boost the EU's natural capital while protecting everyone's health and well-being from climate-related occurrences. A just and inclusive transition is required to ensure that the shift towards a more

²¹⁶ See par 3.3.2 above.

²¹⁷ Climate-mitigating goals include transitioning to clean and efficient energy, renewable technology solutions, and the investment in research to further these climate-mitigating efforts. Adopting and prioritising a more sustainable energy sector with supporting strategies in transitioning to more environmentally friendly energy materials and energy effectiveness is essential and will include a target percentage in decarbonising the industry that is still aligned with the regulatory framework.

sustainable future is fair, takes everyone into account and is not unfairly affected by the shift.

Ultimately, the lessening of GHG emissions will be instrumental in achieving environmental sustainability. Additionally, prioritising revamping existing policies and regulatory instruments to incorporate environmental sustainability will be instrumental. The need for an innovative, integrated framework across all sectors is significant as that is one of the EGD's primary goals in aligning all EU member states activities and strategies.

3.3.2 Food security

The FTF strategy aims to set new intentional standards to minimise the environmental and climate footprint in the EU's FSs to ensure their durability while ensuring food security during global concerns like climate change.²¹⁸ The elements found in the EGD and FTF strategy for advancing environmental sustainability include sustainable food production, processing, and distribution, reducing food waste, and innovation in agriculture to develop new technologies and practices strengthening and building a resilient and sustainable global FS that ensures food security, as stipulated regulatory framework that all contribute to food security.

The environmental sustainability standard set by the FTF strategy to ensure sustainable food production, processing, and distribution is prioritising long-term food security by redefining the EU food supply chain. Furthermore, it aims to be more sustainable, have less environmental impact, and simultaneously address the global concerns of natural resource depletion, biodiversity decline, and overall human health.²¹⁹

The main element is that all relevant food chain actors must contribute to sustainability, shifting to more environmentally sustainable production methods to

²¹⁸ European Commission 2020
content/EN/TXT/?uri=COM%3A2020%3A98%3AFIN.

<https://eur-lex.europa.eu/legal->

²¹⁹ See par 3.2.3 above.

enhance environmental and climate-related effects.²²⁰ The objectives include minimising the dependency on mineral fertilisers, pesticides, and antimicrobials and promoting utilising integrated pest management and precision agriculture techniques.

To develop a climate-resilient and sustainable FS is necessary that contributes to the primary objective of a climate neutrality by establishing a framework that incorporates environmentally sustainable and adaptable efforts into the FS.²²¹

Transitioning away from food waste directly affects food security by limiting the quality and quantity of available food consumption that affects food prices and dietary profiles. Transitioning towards adopting measures aimed at reducing food waste across the Agri-Food chain, improving harvest measures, storing, processing, and the distribution of food.²²²

Overall, collective action of these three elements, namely food security, environmental sustainability, for environmental sustainability will ensure food security by incorporating sustainable food production, processing, and distribution, lessening food waste, and innovation in agriculture into a climate-resilient sustainable FS, and a stipulated legal framework that will guide the efforts of food security as a priority. A holistic approach is required to incorporate these three components in all areas of the food production system to ensure a well-balanced diet, encourage the transition to a healthier diet, and ensure that food is not wasted.

3.3.3 Economic development

The EGD aims to generate and encourage job opportunities within sustainable industries that will foster economic development.²²³ Coordinating the objectives towards environmental sustainability and economic development, the EGD aims to a fundamental transformation that will ensure a sustainable, resilient, and integrative

²²⁰ European Commission 2020 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A98%3AFIN>.
²²¹ See par 3.2.3 above.
²²² Santeramo 2021 Agriculture & Food Security 2.
²²³ European Commission 2020 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A98%3AFIN>.

economy for the future.²²⁴ The elements set by the EGD and FTF strategy for environmental sustainability are the transitioning towards a circular economy to reduce environmental impact, an overall FTF strategy that aims to stimulate economic growth independent from resource use, and a holistic approach across all sectors.

Green finance and investment and aligning future investments towards sustainable investments will motivate stakeholders to consider environmental factors in their decision making ensuring the alignment with long-term stability.²²⁵ Creating a framework that will facilitate green finance and investments will simplify the process and have it coordinated.

The shifting of national budgets to focus more on prioritising green initiatives and environmentally sustainable projects that contribute to a more sustainable economy that is decoupled from natural resource use is vital to ensure a climate-resilient framework.²²⁶ Furthermore, encouraging research and development in sustainable technologies will further promote economic development and excel the competition in global markets.²²⁷

The key element of success is the holistic approach that involves all stakeholders' efforts and initiatives to ensure a fair and effective transition to an environmentally sustainable future.²²⁸ The embracing and promotion of a circular economy will prioritise and ensure the sustainable use of resources, waste reduction, and encouraging recycling.²²⁹ Preserving biodiversity is vital by providing actions to secure and restore the natural environment and biodiversity, grasping the integral role of a thriving environmental framework.

²²⁴ See par 3.2.2 above.

²²⁵ European Commission 2020 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A98%3AFIN>.

²²⁶ European Commission 2020 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A98%3AFIN>.

²²⁷ European Commission 2020 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A98%3AFIN>.

²²⁸ Economist Impact date unknown <https://impact.economist.com/projects/foodsustainability/blogs/the-european-green-deal-taking-a-holistic-approach-to-addressing-food-sustainability/>.

²²⁹ See par 3.3.2 above.

3.4 Conclusion

This chapter provided a theoretical exploration of the EGD and the FTF strategy, aiming to underscore their significance for addressing climate change and enhancing environmental sustainability. The chapter also established a benchmark that could be used to further enhance environmental sustainability within South Africa's Agri-Food Trade law.²³⁰

The analysis revealed that the EGD and its FTF Strategy incorporate various elements designed to improve environmental sustainability across various sectors. These initiatives are key in transitioning the EU towards a resource-efficient economy, targeting net-zero GHG emissions by 2050 and economic development that does not rely on resource depletion.²³¹ The chapter identified some essential elements from both the EGD and the FTF Strategy that are crucial for promoting environmental sustainability.²³² The elements for the EGD included climate neutrality, the move to a circular economy action plan to reduce the environmental footprint with the EU's FS, and emphasis on a comprehensive holistic approach across all sectors. The elements of the FTF strategy included transition towards a sustainable food production, processing and distribution, less food waste, and innovation in agriculture to develop new technologies and practices that increase environmental sustainability in agriculture.

Subsequently, this chapter organised these elements, articulating a benchmark under three themes: climate action, food security, and economic growth.²³³ Climate action elements found are the main objective of climate neutrality by 2050, which is reducing overall GHG emissions and is fundamental for climate action.²³⁴ Shifting towards a circular economy focuses on reducing food waste and lessening the environmental impact, especially in the FS. Encouraging innovation in sustainable agriculture contributes to sustainable practices which is also a mitigating factor. Food security

²³⁰ See par 3.2 above.

²³¹ See par 3.2.2 above.

²³² See par 3.3 above.

²³³ See par 3.3.1 – 3.3.3 above.

²³⁴ See par 3.3.1 above.

elements focussed on sustainable production, processing, and distribution, less food waste, and innovation in agriculture all address global concerns for natural resource depletion and set new environmentally sustainable standards in Agri-Food products.²³⁵ The EGD and FTF strategy overall coordinates environmental sustainability in all sectors to promote economic development and the transition towards a more sustainable and resilient economy.²³⁶

The benchmark revealed that the EGD and FTF strategy initiatives have established high standards for environmental sustainability. Achieving these objectives in the context of trade law requires a comprehensive approach to align with the environmental sustainability goals.

²³⁵ See Par 3.3.2 above.

²³⁶ See par 3.3.3 above.

Chapter 4

South Africa's environmental sustainability regulatory framework

4.1 Introduction

Chapter 3 delved into the EU's EGD and its FTF strategy, assessing their significance for climate change and establishing a benchmark for environmental sustainability.²³⁷ The analysis laid the groundwork for the widespread integration of environmental sustainability principles across all sectors, aiming collectively to achieve the environmentally sustainable goal of addressing climate change through concerted efforts.

Building on this foundation, the current chapter turns its focus to South Africa's efforts towards sustainability and climate change mitigation. It seeks to apply the benchmark and principles outlined in Chapter 3 to enhance sustainability practices within South Africa, particularly in securing food security and promoting economic development within the agricultural sector. This logical progression is set to demonstrate how insights from the EU's strategies can inform and strengthen South Africa's efforts towards achieving its sustainability objectives.

Structuring a discussion on South Africa's sustainability law, particularly within the realms of climate change mitigation, food security, and economic development, necessitates a holistic approach that underscores the interconnectedness of these domains. Consequently, the first part of this chapter provides a brief introduction to the concept of sustainability law in South Africa and its role in addressing contemporary challenges. This section illuminates key legislation and policies pertinent to environmental protection. This part also discusses how sustainability law supports food security and economic development in South Africa. The second part delves into South Africa's legal and policy mechanisms designed to curtail GHG emissions and address climate change. Notably, the third part evaluates South Africa's strategies against the benchmarks established in Chapter 3, focusing specifically on climate

²³⁷ See par 3.3 above.

change and environmental sustainability, linked to food security, and economic development. It concludes with lessons learned and identifies best practices that could refine South Africa's sustainability law framework, which will assist in proposing recommendations for strengthening South Africa's legal and policy structures for enhanced sustainability in the Agri-Food sector in the last chapter.

4.2 Sustainability law in South Africa

4.2.1 Constitutional and accompanying regulatory framework

Section 24 of the Constitution provides for "an environment that is not harmful to health or well-being" and the right "to have the environment protected for present and future generations".²³⁸ This right allows for the management of the environment to guarantee and preserve environmental sustainability while ensuring socio-economic development.²³⁹

The regulatory framework overseeing environmental management is set by the *National Environmental Management Act* 107 of 1998²⁴⁰ (NEMA) in South Africa. NEMA serves as a cornerstone legislation, providing a comprehensive framework for environmental governance and management in the country.²⁴¹ It sets out guiding principles for informed decision-making on environmental issues, provides for intergovernmental collaboration, and outlines guidelines for mitigating environmental impacts. The present NEMA proclaimed GHGs as a primary concern of air quality hazards and prioritised reducing GHG emissions in 2016.²⁴²

In section 1 of NEMA, several specific environmental management acts (SEMA) conform with NEMA and have set numerous environmental provisions and

²³⁸ Section 24(a) – (b) of the Constitution.

²³⁹ Section 24 (b)(i) – (iii) and (2) of the Constitution.

²⁴⁰ *National Environmental Management Act* 107 of 1998.

²⁴¹ South African Government date unknown <https://www.gov.za/documents/national-environmental-management-act>.

²⁴² UNFCCC 2021 <https://unfccc.int/sites/default/files/NDC/2022-06/South%20Africa%20updated%20first%20NDC%20September%202021.pdf> and *National Environmental Management: Air Quality Act* 39 of 2004.

standards.²⁴³ The *National Water Act* 36 of 1998 facilitated a foundation to amend legal aspects governing water resources, revoke particular legislation, and address any further matters associated with the latter. The *National Environmental Management: Biodiversity Act* 10 of 2004 is another vital SEMA that enacts specific provisions for effectively governing and preserving South Africa's biodiversity in line with NEMA, taking measures to protect different life forms and their natural habitat deserving of national security, promotion of the sustainable use of native biological resources, guaranteeing the fair distribution of profits resulting from the bioprospecting, and to establish and define the responsibilities of a South African National Biodiversity Institute. Some other SEMAs include *National Environmental Management Act: Air Quality Act* 39 of 2004,²⁴⁴ *National Environmental Management: Waste Act* 59 of 2008,²⁴⁵ *National Environmental Management: Integrated Coastal Management Act* 24 of 2008,²⁴⁶ and *National Environmental Management: Protected Areas Act* 57 of 2003.²⁴⁷ Additionally, other national and provincial provisions strive to address environmental sustainability.²⁴⁸

There has been significant progress in South Africa regarding environmental sustainability. *Fuel Retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* was fundamental in South Africa regarding the examination of legal principles and development of sustainable development.²⁴⁹ Moreover, how the notion of sustainable development is understood, adapted, and

²⁴³ Bowmans 2020 <https://bowmanslaw.com/wp-content/uploads/2020/06/GUIDE-SA-Environmental-Digital-2020.05.26.pdf>.

²⁴⁴ *National Environment Management: Air Quality Act* 39 of 2004.

²⁴⁵ *National Environmental Management: Waste Act* 59 of 2008.

²⁴⁶ *National Environmental Management: Integrated Coastal Management Act* 24 of 2008.

²⁴⁷ Bowmans 2020 <https://bowmanslaw.com/wp-content/uploads/2020/06/GUIDE-SA-Environmental-Digital-2020.05.26.pdf>.

²⁴⁸ This includes the *Mineral and Petroleum Resources Development Act*, 28 of 2002, *Water Services Act* 108 9 of 1997, *National Forests Act*, 84 of 1998, *National Heritage Resources Act* 25 of 1999, *Marine Living Resources Act* 18 of 1998 - Bowmans 2020 <https://bowmanslaw.com/wp-content/uploads/2020/06/GUIDE-SA-Environmental-Digital-2020.05.26.pdf>.

²⁴⁹ *Fuel Retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* 2007 6 SA 4 (CC).

integrated into the framework of the South African legal system. The Constitutional Court concluded that sustainable development still evolving in International Law, but emphasise the importance of sustainable development South African law in balancing environmental protection with other socio-economic elements.²⁵⁰ In the *Fuel Retailers'* case, there was an objection to the construction of a fuelling station in White River, Mpumalanga, South Africa.²⁵¹ The court concluded that when there are decisions related to the environment, a strive for a harmonious integration of environmental and socio-economic development elements will be considered, guided by the notion of sustainable development.²⁵² Furthermore, the court found that the environmental authorities did not consider the socio-economic implications of establishing the proposed filling station.²⁵³ It was also noted in the *Fuel Retailers* case that NEMA was set to realise the Constitutional right provided under section 24 of the Constitution.²⁵⁴ NEMA defines sustainable development as "integrating social, economic and environmental factors into planning, implementation and decision-making to ensure that development serves present and future generations".²⁵⁵

The *Earthlife Africa Johannesburg v The Minister of Environmental Affairs* case provided significant guidance on the section 24 right of protecting the environment through legislation and other measures about environmental sustainability.²⁵⁶ In this case, Earthlife Africa sought clarity on the environmental impacts that the Minister of Environmental Affairs needed to consider before approving the construction of a coal-fired power station. The court emphasises that, in line with section 24 of the NEMA, the constitutional right provided in section 24, an environmental authorisation required an environmental impact report before approval. Murphy J affirmed that climate change considerations are crucial, underscoring a regulatory gap, as the

²⁵⁰ *Fuel Retailers* case par 45 and 46, and Feris 2008 Constitutional Court Review 244.

²⁵¹ *Fuel Retailers* case par 14 – 16.

²⁵² *Fuel Retailers* case par 61.

²⁵³ *Fuel Retailers* case par 71.

²⁵⁴ *Fuel Retailers* case par 59.

²⁵⁵ Section 1(1)(xxix) in preamble of NEMA and under definitions.

²⁵⁶ *Earthlife Africa Johannesburg v The Minister of Environmental Affairs and others* [2017] JOL 37526 (GNP)

Environmental Impact Assessment Regulations had previously omitted climate change as a pertinent factor.²⁵⁷

Another ground-breaking case that resonates with the constitutional right to ensure environmental sustainability²⁵⁸ is the case of *Trustees for the time being of Groundwork Trust v Minister of Environmental Affairs*.²⁵⁹ In the case, relief was sought by the court for the government to improve the air quality in the Mpumalanga Highveld as it was alleged that the government infringed on the right to a healthy environment.²⁶⁰ Judge Collis found that when air quality does not meet the National Standards, it contradicts the right to first impression.²⁶¹ It was found that the air in the area infringed on the resident's constitutional right to a healthy environment and that the Minister had a legal duty to address this issue.²⁶² Note that this judgment and outcome have far-reaching consequences for national and local governments not to monitor and enforce air quality management.²⁶³

The three cases mentioned above contribute to understanding environmental sustainability and how South African courts interpret it. The *Fuel Retailers case* emphasises the importance of harmonising the protection of the environment with socio-economic development under the notion of sustainable development.²⁶⁴ The *Earthlife Africa* case underlines the importance of advancing the understanding of environmental sustainability, especially concerning climate change considerations. This development helps bridge the regulatory gaps, ensuring holistic reviews of environmental aspects. The *Groundwork Trust* case emphasised the importance of the constitutional right to ensure environmental sustainability, which is placed on the state's responsibility to protect this right through environmental governance practices.

²⁵⁷ Humbly date unknown <https://www.wits.ac.za/gci/gci-news/news-archive/a-landmark-case-on-climate-change-in-sa/>.

²⁵⁸ Section 24(a) of the Constitution and par 8 of the Judgement.

²⁵⁹ *Trustees for the time being of Groundwork Trust and Another v Minister of Environmental Affairs and others* (39724/2019) [2022] ZAGOOGC 208.

²⁶⁰ Par 16 – 22 in the Judgement.

²⁶¹ Par 10 in the Judgement.

²⁶² Par 241.1 – 241.3 in the Judgement.

²⁶³ Balendran 2022 <https://cer.org.za/news/major-court-victory-for-communities-fighting-air-pollution-in-mpumalanga-highveld>.

²⁶⁴ *Fuel Retailers* case par 46.

Overall, these cases demonstrate the complex, intertwined relationship between environmental sustainability and the rights to it, understanding the different legal interpretations and incorporating a more holistic approach to environmental protection within the legal framework. Adding to this complex holistic approach will be considering trade conditions and how that can impact the environment and socio-economic rights, considering the different trade-offs it can have with environmental sustainability and improving socio-economic rights.

Although case law confirms that challenges remain, South Africa has taken significant strides in developing a regulatory framework that recognises and addresses the importance of environmental sustainability in the country's development agenda.²⁶⁵

4.2.2 Environmental sustainability and food security

South Africa's Agri-Food trade regulatory framework comprises various legislation, policies, and initiatives.²⁶⁶ Section 27 of the Constitution is the primary legislation laying the foundation for sufficient food for all and underscores the nexus between a healthy environment, the sectors offering food, and the state's constitutional responsibility to ensure these rights are materialised.²⁶⁷ Notably, the priority of food security was emphasised in the most recent 2021 Nationally Determined Contribution (NDC),²⁶⁸ with the agricultural sector as a central focus point.²⁶⁹

²⁶⁵ SA has made significant progress in addressing environmental sustainability. It has developed the *National Development Plan 2030* (NDP), which sets forth the ambitious targets of eradicating poverty, decreasing inequality, and promoting economic growth and exports by 2030 in South Africa National Planning Commission 2023 <https://www.fao.org/3/cc0471en/online/state-of-agricultural-commodity-markets/2022/food-agricultural-trade-globalization.html>. Furthermore, the *National Framework for Sustainable Development (2008)* stipulates that SA's sustainable development aims to become sustainable, economically successful, and independent while protecting democracy by meeting their people's basic needs, responsible management of resources, and contributing effectively to all levels.

²⁶⁶ See par 1.2.5 above.

²⁶⁷ Section 27(1)(b) and (2) of the Constitution.

²⁶⁸ It is a worldwide requirement that every country produce an improved national climate action strategy, also called a NDC, that indicates their initiatives and strategies to reduce GHG emissions to execute the vision of *the* Paris Agreement ultimately successfully - United Nations date unknown <https://www.un.org/en/climatechange/paris-agreement>.

²⁶⁹ UNFCCC 2021 <https://unfccc.int/sites/default/files/NDC/2022-06/South%20Africa%20updated%20first%20NDC%20September%202021.pdf>.

South Africa has embedded environmental sustainability within its regulatory framework.²⁷⁰ The importance of addressing food security has been encapsulated with the Constitution and various approaches have been taken by the government in line with its constitutional obligation. It includes the Integrated Food Security Strategy (IFSS) in 2002, the National Policy on Food and Nutrition Security (NPFNS) in 2014, and the National Food and Nutrition Security Plan (NFNSP) of 2017.²⁷¹ The NPFNS replaced the IFSS to introduce a more holistic approach that included considerations such as climate change.²⁷² The NPFNS also addresses the sustainability of food security, supplying a general definition of food and nutrition security and actions to address the compliance and alignment of these challenges.²⁷³ Furthermore, these policies have been supported by additional initiatives that include the Integrated Nutrition Programme of 2002, the Strategic Plan for the Prevention and Control of Non-Communicable Diseases of 2013, and the Strategy for the Prevention and Control of Obesity of 2015, which focussed on dietary support.²⁷⁴

The IFSS was effective from 2002 until 2015 and prioritised South Africa's food security challenge by implementing various efforts.²⁷⁵ Mainly, the goal was to encourage homegrown food production, develop better employment opportunities, strengthen dietary requirements and food safety, build more resilient safety nets and food crisis response systems, drive a better understanding to ensure effective decision-making related to food and encourage constructive communication among all stakeholders. The NPFNS goal is to implement a holistic strategy to provide food and nutrition security, including social, economic, and agricultural strategies.²⁷⁶ Currently, there is

²⁷⁰ See par 4.2.1 above.

²⁷¹ Food Security 2022 <https://foodsecurity.ac.za/wp-content/uploads/2022/06/Food-Systems-Profile-South-Africa-Catalysing-the-sustainable-and-inclusive-transformation-of-food-systems.pdf>.

²⁷² Other acts also include *Agricultural Products Standards Act* 119 of 1990, *Agricultural Pest Act* 36 of 1983, and *Agricultural Research Act* 86 of 1990, to name a few – see sections 1.1 and 1.2 of the NPFNS and an integrated approach is recommended across all sectors to address climate change challenges - Adom, Simatele and Reid 2022 *AJEC* 73.

²⁷³ Section 1.2 of the National Policy on Food and Nutrition Security.

²⁷⁴ Food Security 2022 <https://foodsecurity.ac.za/wp-content/uploads/2022/06/Food-Systems-Profile-South-Africa-Catalysing-the-sustainable-and-inclusive-transformation-of-food-systems.pdf>.

²⁷⁵ FAO 2023 <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC149624/>.

²⁷⁶ Section 3 and 4 of the National Policy on Food and Nutrition Security.

no Food and Nutrition Security Act in South Africa. Still, it is noted within the NPFNS that it is laying down the foundation of possible legal authority for the future.²⁷⁷ The NFNSP is an additional holistic initiative that South Africa takes to address food and nutrition insecurity that is to the SDGs' objectives.²⁷⁸

The NDC identified the need to ensure a robust climate-resilient infrastructure that can withstand climate challenges like food security through climate-smart agriculture.²⁷⁹ South Africa is concerned with food and nutrition insecurity with an unsustainable FS.²⁸⁰ The onus of food safety and quality legislation in South Africa lies with the Department of Agriculture, Land Reform, and Rural Development (DALRRD),²⁸¹ the Department of Health (DoH), and the Department of Trade, Industry, and Competition (DTIC).²⁸²

South Africa's unsustainable FS results from a dual challenge of insufficient nourishment and excessive nutrition, unsustainable food production practices, severe regional inequalities, and not progressing fast enough with integration.²⁸³ The need to transition to a more sustainable FS has been noted and involves various improvements.²⁸⁴ Some of these improvements include addressing food and nutrient insecurity by ensuring the affordability of healthy food, transitioning to more sustainable farming practices, improving existing FS policies to incorporate vital

²⁷⁷ Section 11 of the National Policy on Food and Nutrition Security.

²⁷⁸ FAO 2023 <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC211944/>.

²⁷⁹ UNFCCC 2021 <https://unfccc.int/sites/default/files/NDC/2022-06/South%20Africa%20updated%20first%20NDC%20September%202021.pdf>.

²⁸⁰ Section 1.3 of the National Policy on Food and Nutrition Security.

²⁸¹ The Department of Agriculture, Forestry and Fisheries (DAFF) and the Department of Rural Development and Land Reform (DRDLR) were merged in 2019 to form the Department of Agriculture, Land Reform and Rural Development (DALRRD) – National Government of South Africa 2019 <https://nationalgovernment.co.za/units/view/427/departments-of-agriculture-land-reform-and-rural-development-dalrrd>.

²⁸² Food Advisory Consumer Service 2019 <https://foodfacts.org.za/regulation-of-food-safety-and-quality-in-south-africa/>.

²⁸³ Food Security 2022 <https://foodsecurity.ac.za/wp-content/uploads/2022/06/Food-Systems-Profile-South-Africa-Catalysing-the-sustainable-and-inclusive-transformation-of-food-systems.pdf>.

²⁸⁴ See par 2.3.1 above.

considerations such as sustainability and ensuring compliance by implementing a collective strategy to promote a comprehensive FS.²⁸⁵

As mentioned in chapter 3, one of the objectives of the FTF's strategy is to ensure more sustainable agriculture that stimulates environmental sustainability.²⁸⁶ It was noted that this requires a holistic approach involving various stakeholders to ultimately achieve a sustainable FS. Sustainable agriculture has five vital areas: the effectiveness of natural productivity, minimising risk, preserving natural resources, securing the profitability of agricultural practices, and ensuring agricultural practices are socially acceptable.²⁸⁷ Several South African legislations influence sustainable agriculture that might contribute to developing a national strategy on sustainable agriculture that currently does not exist in South Africa.²⁸⁸ These acts include *The Conservation of Agricultural Resources Act* 43 of 1983 (CARA), *Fertilizers, Farm Feeds, Seeds and Remedies Act* 36 of 1947, *Agricultural Pests Act* 36 of 1983, *Agricultural Products Standards Act* 119 of 1990, *Meat Safety Act* 40 of 2000, and others.²⁸⁹ CARA monitors and controls the overall use of natural agricultural resources to ensure long-term protection.²⁹⁰ The *Agricultural Products Standards Act* 119 of 1990 establishes provisions for managing and regulating the sale and export of specific agricultural goods and related aspects.²⁹¹ The *Agricultural Pests Act* 36 of 1983 also addresses controlling and preventing pests and diseases in agricultural produce.²⁹² The *Marketing of Agricultural Products Act* 47 of 1996 initiated the National Agricultural Marketing Council, which promotes the efficiency and competitiveness of agricultural

²⁸⁵ Food Security 2022 <https://foodsecurity.ac.za/wp-content/uploads/2022/06/Food-Systems-Profile-South-Africa-Catalysing-the-sustainable-and-inclusive-transformation-of-food-systems.pdf>.

²⁸⁶ See par 3.3.3 above.

²⁸⁷ Khwidzhili and Worth 2016 South African Journal of Agricultural Extension 22 – 24.

²⁸⁸ Khwidzhili and Worth 2017 South African Journal of Agricultural Extension 81.

²⁸⁹ Khwidzhili and Worth 2017 South African Journal of Agricultural Extension 81 – 82.

²⁹⁰ Resources include water, soil, and other plant life – Preamble and Section 1(xviii) of CARA.

²⁹¹ South African Government date unknown <https://www.gov.za/documents/agricultural-product-standards-act-6-mar-2015-1127> and Sec 3 and 4 of *the Agricultural Product Standards Act*.

²⁹² South African Government date unknown <https://www.gov.za/documents/agricultural-pests-act-30-mar-2015-1202> and Sec 3 and 6 of the *Agricultural Pests Act*.

markets.²⁹³ The *Meat Safety Act* 40 of 2000 regulates meat product production, import, and export, ensuring compliance with health and safety standards.²⁹⁴

4.2.3 *Environmental sustainability and economic development*

The 2019 White Paper on Science, Technology and Innovation (STI) acknowledges the significance of economic development and the circular economy.²⁹⁵ It underscored the importance of capitalising on opportunities for sustainable economic development from new sources like the circular economy. The STI defines circular economy as stepping away from a "take, make and dispose" outlook and moving towards a new economic model that renews and replenishes resources and minimises waste.²⁹⁶ The Department of Science and Innovation's (DSI) Deputy Director-General supports the transition towards a circular economy that will provide several benefits.²⁹⁷

South Africa initiated the Green Fund in 2011 to enable investments in sustainable investments to eradicate poverty and assist with creating employment opportunities in South Africa.²⁹⁸ Additionally, it aims to support existing financial allocations to shift to a low-carbon and climate-resilient economy. The Green Fund's objectives are mainly to encourage sustainable projects, strengthen efforts of climate policy endeavours, build a foundation that supports green economy expansion, and secure more investments for an environmentally sustainable economy.

The NDP of South Africa, released in 2012, sets forth ambitious targets of eradicating poverty and decreasing inequality by 2030 in South Africa and includes environmental sustainability as a core component in achieving these targets.²⁹⁹ South Africa must

²⁹³ South African Government date unknown <https://www.gov.za/documents/marketing-agricultural-products-act> and Sec 3 and 9 of *the Marketing of Agricultural Products Act*.

²⁹⁴ South African Government date unknown <https://www.gov.za/documents/meat-safety-act> and Section 11, 13 and 14 of the *Meat Safety Act*.

²⁹⁵ DST 2019 https://www.dst.gov.za/images/2019/White_paper_web_copyv1.pdf.

²⁹⁶ DST 2019 https://www.dst.gov.za/images/2019/White_paper_web_copyv1.pdf.

²⁹⁷ Minimising dependency on scarce resources, saving money, development of sustainable products, and enhancing environmental quality – South African Government 2023 <https://www.gov.za/news/media-statements/science-and-innovation-launches-initiatives-accelerate-development-south>.

²⁹⁸ DFFE date unknown <https://www.dffe.gov.za/green-fund>.

²⁹⁹ South African Government 2012 <https://www.gov.za/issues/national-development-plan-2030>.

foster inclusive economic growth and encourage collaboration across all sectors to perform and accomplish these goals.³⁰⁰ As a member of G20,³⁰¹ South Africa's trade and environmental policies are influenced by global economic coordination, which might be impacted by the EGD's focus on sustainability and climate change.

4.3 Climate change law

Climate change law in South Africa is a fundamental component of the country's sustainability efforts, representing a critical and evolving field that confronts the complex challenges posed by global warming and environmental degradation. As the global crisis of climate change intensifies, South Africa has acknowledged the need to address environmental issues, especially climate change, due to its impacts on the country's natural environment and economy.³⁰² The agricultural sector, in particular, is severely impacted by climate change through rising temperature levels, erratic weather patterns and their adverse effects on crop yields.³⁰³ This underscores the sector's susceptibility and further emphasises the role of climate change law in promoting sustainable agricultural practices.

4.3.1 International Perspectives

South Africa is part of several international trade organisations and agreements, including the WTO, OECD, UN and G20 that each play a significant part in navigating trade, addressing the global concern of climate change, and economies to establish sustainable development and ensuring successful trade governance by establishing climate mitigation and adaptation measures.³⁰⁴

South Africa has committed to instruments by signing various international environmental agreements, including the Kyoto Protocol, which forms an integral part

³⁰⁰ South African Government 2012 <https://www.gov.za/issues/national-development-plan-2030>.

³⁰¹ G20 2023 India <https://www.g20.in/en/about-g20/about-g20.html>.

³⁰² USAID 2022 https://www.climatelinks.org/sites/default/files/asset/document/South%20Africa%20Climate%20Info%20Fact%20Sheet_FINAL.pdf.

³⁰³ UNU WIDER 2016 <https://www.wider.unu.edu/sites/default/files/RB2016-5-Climate-change-effects-on-irrigation-and-crop-yields-in-South-Africa.pdf>.

³⁰⁴ See par 2.2 and 2.3.3 above.

of the UNFCCC that minimises GHG emissions by setting targets.³⁰⁵ South Africa became a signatory of the Paris Agreement³⁰⁶ on Climate Change to form part of the NDC striving to lessen GHG emissions and battle climate change threats.³⁰⁷ South Africa notably advanced its response towards climate change since its commitment to the Paris Agreement in 2015.³⁰⁸ An NDC is each party's country's climate commitments that are a fundamental tool of the Paris Agreement to reach objectives.³⁰⁹ This requires a country to stipulate how they will support minimising GHG emissions and adjusting to the effects.³¹⁰ Comparative NDCs must be submitted to the UNFCCC every five years to indicate improved and progressive ambitions to reach the goals of the Paris Agreement.³¹¹

In 2016, South Africa submitted its first NDC to the UNFCCC, which states that South Africa is committed to reducing its GHG emissions.³¹² South Africa's most recent 2021 NDC indicated new and improved GHG emission mitigation efforts, first adaptation communication, and South Africa's aligned goal of reaching a net zero emission by 2050 that is committed to in the Low-Emission Development Strategy.³¹³

Additionally, South Africa is a member of the Convention on Biological Diversity (CBD) which aims to promote activities toward a sustainable future³¹⁴ and the Convention

³⁰⁵ Green Agri date unknown <https://www.greenagri.org.za/action-plans-and-policies/international-treaties/>.

³⁰⁶ Adopted on 12 December 2015 at the 21st session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC CoP21) – United Nations Climate Change date unknown <https://unfccc.int/process-and-meetings/the-paris-agreement>.

³⁰⁷ Department of Forestry, Fisheries, and the Environment 2016 <https://www.dffe.gov.za/mediarelease/southafricasignsparisagreementonclimate>.

³⁰⁸ UNFCCC 2021 <https://unfccc.int/sites/default/files/NDC/2022-06/South%20Africa%20updated%20first%20NDC%20September%202021.pdf>.

³⁰⁹ UNDP 2023 <https://climatepromise.undp.org/news-and-stories/NDCs-nationally-determined-contributions-climate-change-what-you-need-to-know>.

³¹⁰ UNDP 2023 <https://climatepromise.undp.org/news-and-stories/NDCs-nationally-determined-contributions-climate-change-what-you-need-to-know>.

³¹¹ United Nations Climate Change date unknown <https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs>.

³¹² NDC Partnership date unknown <https://ndcpartnership.org/country/zaf>.

³¹³ United Nations Development Programme date unknown <https://climatepromise.undp.org/what-we-do/where-we-work/south-africa>.

³¹⁴ UN date unknown <https://www.un.org/en/observances/biological-diversity-day/convention>.

on Wetlands (Ramsar Convention) which encourages sustainable activities in the protection and use of wetlands.³¹⁵

Currently, South Africa is not a signatory to the treaty of the *United Nations Convention on Contracts for International Sale of Goods*,³¹⁶ also known as the Vienna Convention.³¹⁷ This convention establishes standardised principles and guidelines governing the international trade of goods among the states that have ratified the treaty.³¹⁸

4.3.2 Regional Perspectives

South Africa displays a multifaced approach to participating in regional engagements through entities like the Southern African Customs Union (SACU),³¹⁹ the SADC,³²⁰ and the African Union (AU),³²¹ and includes bilateral trade agreements like the SADC-EU EPA.³²² South Africa's involvement in AU initiatives like the AU's Agenda 2063, The Africa We Want, are aimed at a thriving Africa with a strategic framework for holistic and sustainable development.³²³ South Africa is one of the leading economies in the African continent,³²⁴ and is strategically positioned to promote sustainable development, and market integration, and to encourage climate change mitigation and adaptation in the region.³²⁵ South Africa's participation highlights its continent-wide strategy directed at an innovative and sustainable development. South Africa's

³¹⁵ Ramsar date unknown <https://www.ramsar.org/about/convention-wetlands-and-its-mission>.

³¹⁶ Hereafter referred to as CISG.

³¹⁷ Vienna 1980.

³¹⁸ United Nations date unknown https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg.

³¹⁹ Southern African Customs Union 2023 <https://www.sacu.int/show.php?id=546>.

³²⁰ Southern African Development Community 2022 <https://www.sadc.int/member-states/south-africa>.

³²¹ European Commission 2021 https://www.eeas.europa.eu/south-africa/european-union-and-south-africa_en?s=120.

³²² See par 2.2 above. The EPA exists between the EU and the Southern African Development Community (SADC), which includes SA - Cameron *et al* 2021 *Pretoria. South Africa* 100 and SARS 2021 <https://www.sars.gov.za/legal-counsel/international-treaties-agreements/trade-agreements/sadc-eu-epa/>.

³²³ AU date unknown <https://au.int/en/agenda2063/overview>.

³²⁴ Michael 2023 <https://businessday.ng/news/article/africas-powerhouses-10-largest-economies-on-the-continent-in-2023/>.

³²⁵ Okonjo-Iweala 2020 https://www.brookings.edu/wp-content/uploads/2020/01/ForesightAfrica2020_Chapter4_20200110.pdf.

Carbon Tax Act 15 of 2019 is a major contributor to South Africa's commitments to reducing GHG emissions, efforts toward low-carbon technologies and framework.

SACU prioritises global market integration of member states by lowering barriers to enhance trade and investment.³²⁶ South Africa can play a leadership role in favouring sustainable trade practices that coordinate efforts for climate change commitments. Additional AU's climate change instruments are outlined in the Climate Change and Resilient Development Strategy and Action Plan (2022 – 2032), a key instrument for regional collaboration to address efficient climate change efforts.³²⁷ The AU Climate Change and Resilient Development Strategy and Action Plan contributes to the AU's Agenda 2063 strategic framework for holistic and sustainable development by including several key initiatives and mechanisms.³²⁸ Some of these key initiatives and mechanisms include the African Adaptation Initiative (AAI), the Africa Renewable Energy Initiative (AREI), and the AU Green Recovery Action Plan (AU GRAP) to name a few.³²⁹ The AU Climate Change and Resilient Development Strategy and Action Plan (2022 – 2032) also includes an additional document that outlines a list of continental and regional measures to address climate change that include AU continental vision policies, AU sector policies, strategies and frameworks, AU initiatives and action plans, and Regional climate change policies, strategies and frameworks.³³⁰ Furthermore, another key AU climate change initiative is the Continental Green Recovery Action Plan (2021 – 2027) which aims to align recovery initiatives with the SDGs and Paris Agreement with a strong emphasis on job creation and sustainable development.³³¹

³²⁶ SACU date unknown <https://www.sacu.int/about/traden/overview.html>.

³²⁷ AU 2022 <https://au.int/en/documents/20220628/african-union-climate-change-and-resilient-development-strategy-and-action-plan>.

³²⁸ AU 2022 <https://au.int/en/documents/20220628/african-union-climate-change-and-resilient-development-strategy-and-action-plan>.

³²⁹ Others include Pan-African Action Agenda on Ecosystem Restoration for increased Resilience, Just Rural Transition Initiative, NDC Partnership, Extreme Climate Facility and African Blue Economy Strategy - AU 2022 <https://au.int/en/documents/20220628/african-union-climate-change-and-resilient-development-strategy-and-action-plan>.

³³⁰ A full examination of AU climate change documents falls beyond the focus of this mini dissertation.

³³¹ AU 2021 <https://au.int/en/pressreleases/20210715/african-union-launches-continental-green-recovery-action-plan>.

SADC member states, including South Africa, have prioritised incorporating environmental sustainability, and climate change mitigation and adaptation measures through endorsing multilateral environmental agreements.³³² SADC initiatives like SADC Regional Indicative Strategic Development Plan (RISDP),³³³ SADC Climate Change Strategy and Action Plan,³³⁴ are aimed at promoting sustainable development and natural resources management.

As previously discussed,³³⁵ the SADC-EU EPA is another example of South Africa's strategic engagement that furthers existing trade relationship between the EU and the SADC member states that includes South Africa. This agreement has integrated economic development with environmental sustainability that indicates South Africa's commitment to taking climate change factors into account in exiting trade agreements.³³⁶ South Africa not only plays a strategic role in the negotiations that include sustainable development and climate change mitigation, but also the SADC-EU EPA has a broader implication that encourages trade agreements that furthers economic development in a sustainable manner.³³⁷ This engagement further illustrates South Africa's commitment to the fight against climate change in international trade agreements.

South Africa's commitment to addressing climate action concerns can be seen by the alignment of its national climate change policies with its commitments under the discussed regional engagements and agreements that secure a uniform method in addressing climate change. South Africa strategic and integrated approach is consistent with addressing climate change concerns across the different regional engagements that has a broader impact on international trade.³³⁸

³³² SADC date unknown <https://www.sadc.int/pillars/environment-climate-change-0>.

³³³ SADC date unknown <https://www.sadc.int/pillars/regional-indicative-strategic-development-plan-2020-2030>.

³³⁴ SADC 2015 https://www.sadc.int/sites/default/files/2021-11/SADC_Climate_Change_Strategy_and_Action_Plan-English.pdf.

³³⁵ See par 2.2 above.

³³⁶ See par 2.2 above.

³³⁷ Amusan and Olutola 2016 *Sage Publications Ltd* 405.

³³⁸ Amusan and Olutola 2016 *Sage Publications Ltd* 406.

4.3.3 Domestic Perspectives

Global climate change mitigation is imperative as it affects everyone worldwide.³³⁹ As discussed,³⁴⁰ South Africa is a vital part of climate change mitigation as a strategic player in Africa that can influence robust policies and partnerships in encouraging environmental sustainability and economic development.

In 2008 South Africa established the South African National Framework for Sustainable Development (NFSD), which highlighted a new approach to sustainable governance of South Africa's diverse resources.³⁴¹ The *National Strategy for Sustainable Development and Action Plan* (NSSD 1) of 2011 was an improvement on the NFSD, prioritising sustainable development, and incorporating essential factors such as environmental conservation and effectiveness that were applicable from 2011 - 2014.³⁴² The NSSD aims to build a climate-resilient framework that includes climate change adaptation in other areas of development for better understanding and ensuring the availability of necessary resources in times of need.³⁴³ The NSSD 2 followed for the period 2015 – 2020 which progressed from the NSSD 1. This strategy is a holistic approach toward achieving long-term sustainable development in South Africa to be integrated into South Africa's vision and values for environmental protection, social equity, and economic effectiveness.

In 2011, the National Climate Change Response Policy (NCCRP) White Paper was approved as an extensive multi-sectoral mitigation and adaptation framework to respond to climate change challenges and opportunities.³⁴⁴ This policy directs

³³⁹ European Commission date unknown https://climate.ec.europa.eu/eu-action/international-action-climate-change/global-climate-action_en.

³⁴⁰ See par 4.3.2 above.

³⁴¹ Department of Forestry, Fisheries and the Environment date unknown <https://www.dffe.gov.za/national-strategy-sustainable-development-and-action-plan>.

³⁴² Department of Forestry, Fisheries and the Environment date unknown <https://www.dffe.gov.za/national-strategy-sustainable-development-and-action-plan>.

³⁴³ Department of Forestry, Fisheries and the Environment 2019 https://www.dffe.gov.za/sites/default/files/docs/nationalclimatechange_adaptationstrategy_ue10november2019.pdf.

³⁴⁴ Lukey 2020 https://www.dffe.gov.za/sites/default/files/reports/nccrp_nationalclimatechange_responsepolicy_casestudy.pdf.

mitigation efforts and emphasises the nexus between the agricultural sector and climate change.³⁴⁵

Other South African climate change actions range from climate adaptation to mitigation, including the Presidential Climate Commission (PCC), South Africa's Low Emissions Development Strategy (LEDS), National Climate Change Adaption Strategy (NCCAS), carbon tax, and a Just Transition Framework.³⁴⁶ The PCC was created during the 2018 Job Summit to facilitate the just transition and employment opportunities.³⁴⁷ The PCC was established in Dec 2020, focusing on fair and balanced growth to an inclusive, low-carbon and climate-adaptive economy that will guide and provide recommendations for how South Africa responds to climate change.³⁴⁸ The PCC provided the framework for a fair and balanced transition to inform policymakers on the intersection between climate and development challenges, with central policy areas including prioritising climate change mitigation and adaptation.³⁴⁹

The NCCAS is another fundamental initiative that upholds South Africa's dedication to fulfilling its obligations of the Paris Agreement under the UNFCCC,³⁵⁰ which has been taken in alignment with South Africa's national sustainability development objectives and forms a critical element of the multi-sectoral climate change adaptation.³⁵¹ The

³⁴⁵ Ziervogel et al 2014 WIREs Climate Change 614.

³⁴⁶ USAID 2023 <https://www.usaid.gov/climate/country-profiles/south-africa>.

³⁴⁷ South African Government 2018 https://www.gov.za/sites/default/files/gcis_documents/Job_Summit_FrameWork_Agreement.pdf.

³⁴⁸ The Presidency Republic of South Africa 2020 <https://www.thepresidency.gov.za/press-statements/presidential-climate-change-coordinating-commission-appointed>.

³⁴⁹ Other key policy areas include Social Protection and Decent Work, Education and Training, Industrial Development, Economic Diversification and Innovation, and Energy Security and access. This study examines the effect of Climate change on Agri-Food Trade, thus focusing on the climate change policy initiatives – Presidential Climate Commission Report 2022 <https://pcccommissionflo.imgix.net/uploads/images/A-Just-Transition-Framework-for-South-Africa-2022.pdf>.

³⁵⁰ In terms of Article 7.9 of Paris Agreement 2015 https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

³⁵¹ Department of Environment, Forestry and Fisheries 2019 https://www.dffe.gov.za/sites/default/files/docs/nationalclimatechange_adaptationstrategy_ue10november2019.pdf.

NCCAS is also embedded in the Constitution and principles of NEMA,³⁵² mainly to ensure the right to a safe and healthy environment provided for in section 24.³⁵³ The four objectives consist of strengthening South Africa to respond to climate change impacts effectively, promoting the inclusion of climate change adaptation throughout development goals and planning, expanding climate change knowledge and the ability to address that, and establishing the infrastructure and resources in place for the effective implementation of climate change responses.³⁵⁴

The Green Transport Strategy (GTS) was incorporated in 2018 to focus on lessening the transport sector's GHG emissions, including prioritising the health of the environment and its individuals.³⁵⁵ This strategy also has a possible economic impact on South Africa's trade sector; improving the overall health benefits of South African citizens by reducing GHG emissions could increase productivity and economic growth.

One of South Africa's climate action efforts is the *Carbon Tax Act*, which came into effect in June 2019, with the primary objective of implementing a framework for taxing GHG emissions and addressing related matters collectively.³⁵⁶ To lessen the impact of climate change by reducing GHG emissions and human rights violations and ensuring that South Africa's responsibilities match with the different international climate change instruments, the *Carbon Tax Act* was passed in June 2019.³⁵⁷ The main objective of the Act is to restrict the amount of carbon dioxide and other GHG emissions released into the atmosphere, and the burden of minimising environmental

³⁵² Department of Environment, Forestry and Fisheries 2019 https://www.dffe.gov.za/sites/default/files/docs/nationalclimatechange_adaptationstrategy_ue10november2019.pdf.

³⁵³ UNFCCC 2021 <https://unfccc.int/sites/default/files/NDC/2022-06/South%20Africa%20updated%20first%20NDC%20September%202021.pdf>.

³⁵⁴ Department of Environment, Forestry and Fisheries 2019 https://www.dffe.gov.za/sites/default/files/docs/nationalclimatechange_adaptationstrategy_ue10november2019.pdf.

³⁵⁵ Department of Transport 2018 https://www.transport.gov.za/documents/11623/89294/Green_Transport_Strategy_2018_2050_onlineversion.pdf/71e19f1d-259e-4c55-9b27-30db418f105a.

³⁵⁶ Preamble of the *Carbon Tax Act*.

³⁵⁷ Commitments made under the UNFCCC, Kyoto Protocol, Paris Agreement, and the SDGs under the UN – Nemavhidi and Jegede 2023 *Environmental Law Review* 12.

degradation must be borne by those who cause it.³⁵⁸ The *Carbon Tax Act* is part of Phase One of the Carbon Tax Regime that was planned for 1 June 2019 – 31 December 2022 but was extended to run until 31 December 2025, after which Phase Two will start 1 January 2026.³⁵⁹ Phase 1 focused on sectors driven by fossil fuels, including the energy sector, manufacturing and construction industry, mining, etc.³⁶⁰ The agricultural sector is notably excluded from carbon tax until 2026.³⁶¹

Together, these international, regional, and domestic frameworks form a comprehensive approach to limit GHG emissions and address climate change in South Africa. They aim to balance environmental protection with climate mitigation and adaptation measures ensuring that the country's growth is sustainable and beneficial for both current and future generations.

Key climate change mitigation efforts in South Africa include the Just Energy Transition Partnership (JETP) and the *Climate Change Bill*.³⁶² The JETP effort aims to address climate change by transitioning South Africa into a low-carbon economy that will enable economic development, create employment opportunities, and secure more stability of energy supply.³⁶³ JETP will support South Africa in shifting towards a sustainable economic model through international collaborations partnerships with the United Kingdom, EU, and the US by allocating USD 8.5 billion towards achieving this.³⁶⁴

³⁵⁸ Preamble of the *Carbon Tax Act* and Nemavhidi and Jegede 2023 *Environmental Law Review* 15.

³⁵⁹ BDO South Africa 2022 <https://www.bdo.co.za/en-za/insights/2022/tax/carbon-tax-phase-1-2>.

³⁶⁰ De Wet and Daniel 2020 <https://www.thesait.org.za/news/498762/Who-is-Affected-by-The-Carbon-Tax.htm>.

³⁶¹ Arnoldi 2022 <https://www.engineeringnews.co.za/article/agriculture-sector-needs-to-prepare-for-incoming-carbon-tax-esg-guidelines-2022-06-09>.

³⁶² Climate Scorecard 2022 <https://www.climatecard.org/2022/10/south-africa-is-ranked-96-out-of-182-countries-in-terms-of-climate-change-vulnerability-and-its-preparedness-to-enhance-resilience/#:~:text=and%20Action%20Alert-,South%20Africa%20is%20Ranked%2096%20out%20of%20182%20Countries%20in,Its%20Preparedness%20to%20Enhance%20Resilience&text=Droughts%2C%20floods%2C%20storms%2C%20landslides,globe%20due%20to%20climate%20change>.

³⁶³ Presidential Climate Commission date unknown <https://www.climatecommission.org.za/south-africas-jet-ip>.

³⁶⁴ South African Government 2022 <https://www.gov.za/news/media-advisories/media-briefings/government-hosts-joint-media-briefing-just-energy-transition>.

The Just Energy Transition Investment Plan (JET IP) outlines the investment needs that are stipulated in the NDC to reach the decarbonisation goals.³⁶⁵

South Africa adopted a *Climate Change Bill* in 2022 to combat the adverse impact and build a sustainable, durable economy and society in the changing climate.³⁶⁶ The *Climate Change Bill* is South Africa's legal groundwork for further climate change initiatives, ensuring adherence to the carbon budget program and setting sectoral emission targets (SET) to monitor and minimise GHG emissions across different sectors while promoting sustainable development.³⁶⁷ The key objectives of the Bill include a unified response to climate change, an effective climate change response towards a long-lasting equitable transition towards a climate-resilient, low-carbon economy while contributing to the global fight to lower the GHG emissions that cause climate change.³⁶⁸

The *Climate Change Bill* of South Africa is designed to provide a coordinated and integrated response to climate change and its impacts. The *Climate Change Bill*, reflecting South Africa's commitment to addressing the global challenge of climate change, aims to establish a legal framework for mitigating GHG emissions and adapting to the effects of climate change, ensuring the country's long-term environmental sustainability and socio-economic resilience.

The *Climate Change Bill* is vital for South Africa's transition to a low-carbon, climate-resilient economy, and society. It positions the country to better manage the risks associated with climate change, fulfil its international obligations under the Paris Agreement, and ensure sustainable development for future generations.

³⁶⁵ Presidential Climate Commission date unknown <https://www.climatecommission.org.za/south-africas-jet-ip>.

³⁶⁶ Parliament of the Republic of South Africa 2022 <https://www.parliament.gov.za/bill/2300773>.

³⁶⁷ UNFCCC 2021 <https://unfccc.int/sites/default/files/NDC/2022-06/South%20Africa%20updated%20first%20NDC%20September%202021.pdf>.

³⁶⁸ Section 2 of the *Climate Change Bill* and Rapson and Molefi 2022 <https://www.webberwentzel.com/News/Pages/Climate-change-bill-introduced-in-Parliament.aspx>.

4.4 South Africa's Agri-Food Trade Law framework

South Africa's Agri-Food Trade Law framework is designed to govern the production, distribution, trade, and consumption of agricultural and food products. This comprehensive framework is aimed at ensuring the sustainability, competitiveness, and fairness of South Africa's Agri-Food sector within both domestic and international markets. It encompasses a broad spectrum of regulations and standards covering food safety, environmental protection, agricultural practices, market access, and trade agreements.

The Agri-Food Trade Law framework in South Africa is essentially structured to balance multiple objectives that include ensuring food security to South African citizens, climate change mitigation through encouraging sustainable agricultural methods, and advancing economic development through the Agri-Food value chain. Regulatory actions include addressing plant health standards, quality control, and tracking food origin products for securing consumer safety and trust. In addition, the framework supports South Africa taking part in international Agri-Food markets, ensuring compliance with international trade laws and agreements, thereby enhancing South Africa's Agri-Food products exports and imports.

It was highlighted that South Africa currently struggles with food and nutrient insecurity through an unsustainable FS and needs a more holistic strategy and National Act.³⁶⁹ Even though South Africa has presently made significant advancements in addressing environmental sustainability through various legislation and policies, a more climate-resilient environment is needed to ensure effective adaptation and mitigation efforts to address food security through sustainable agriculture. The proposed regulatory framework will be coordinating efforts between the various governmental role players, to ensure cohesive policies, and engagement across the Agri-Food sector.

³⁶⁹ See par 4.2.2 above.

The *Customs and Excise Act* of South Africa is a vital component of the current trade law framework, creating regulations and limitations of imported or produced goods, implementing, and enforcing customs and excise tariffs and associated matters.³⁷⁰ This Act relates to Agri-Food trade by how agricultural products move across borders also affecting the cost that has a direct impact on food security and ensuring a trade balance. The ITA regulates the trade policy and import and export tariff controls through ITAC.³⁷¹ ITA has a direct effect on the Agri-Food products competitiveness of South Africa in international markets through the implementation of trade remedies.³⁷² ITAC that controls imports and exports, from national legislation and international agreements, including Agri-Food products, can facilitate food security and environmental sustainability, and compliance with specific international standards.³⁷³ South Africa uses the International Harmonised Commodity Description and Coding System to control imports and exports.

The National Regulator for Compulsory Specifications Act 5 of 2008 warrants that the compulsory specifications, set by the board of the national regulator, are adhered to for all products to meet health, safety, and environmental standards.³⁷⁴ This act relates to all imported and exported Agri-Food products to meet the standards set by the board and might affect market access. Furthermore, the act's compulsory specifications do include environmental protection that can include environmental sustainability and promoting more sustainable products with less impact on the environment.

The Competition Act 89 of 1998 promotes fair trade practices to facilitate a competitive economy enabling equal opportunities for all to have market access and to trade

³⁷⁰ Chapter II of the *Customs and Excise Act* 91 of 1964.

³⁷¹ See par 2.3.3 above - South African Government date unknown <https://www.gov.za/documents/customs-and-excise-act-31-jul-1964-0000> and South African Government date unknown <https://www.gov.za/documents/acts/international-trade-administration-act-71-2002-22-jan-2003>.

³⁷² These include anti-dumping duties, countervailing duties, and safeguarding measures – Section 16 of ITA.

³⁷³ ITAC date unknown <http://www.itac.org.za/pages/services/import--export-control/export-control>.

³⁷⁴ Section 1 of the *National Regulator for Compulsory Specifications Act*.

internationally; this enables effective economic development within South Africa.³⁷⁵ The promotion of fair trade practices and enabling a competitive economy enhances Agri-Food trade by enhancing market competition, broadening local farmers' market access, and ultimately enhancing South Africa's Agri-Food product competition internationally.

Since South Africa is part of various trade agreements, this can have a significant effect on Agri-Food trade as these provide the framework to promote trade relationships with various countries and regions.³⁷⁶ The impact of trade agreements on South Africa's Agri-Food trade directly impacts market access and affects export opportunities. South Africa has different trade agreements that include Free Trade Agreements (FTA),³⁷⁷ Preferential Trade Agreements (PTA),³⁷⁸ and Non-reciprocal Trade Agreements.³⁷⁹ FTAs aim to enable more effective trade without tariffs and barriers, to enhance market access, and to stimulate economic development between the different countries.³⁸⁰ PTAs allow preferred access to certain products from members by rather reducing tariffs instead of cancelling them. Support to developing countries to encourage economic development can be the starting point for further agreements which are usually unilateral.³⁸¹ Non-reciprocal Trade Agreements are mainly focused on assisting developing countries with economic development with lower tariffs or without any, allowing more exports improving overall living standards and contributing to reducing poverty.³⁸² Environmental sustainability has a nexus with

³⁷⁵ Preamble of the *Competition Act*.

³⁷⁶ See par 1.2.5 above.

³⁷⁷ SADC: Protocol on Trades in Goods, SADC: Protocol on Trade and Services, TDCA. European Free Trade Association -SACU FTA, SADC-EPA – Frenchside 2023 <https://frenchside.co.za/what-countries-does-south-africa-have-trade-agreements-with/>.

³⁷⁸ SACU-Southern Common Market (Mercosur) PTA, Zimbabwe/South Africa bilateral trade agreement - Frenchside 2023 <https://frenchside.co.za/what-countries-does-south-africa-have-trade-agreements-with/>.

³⁷⁹ Generalised System of Preferences (GSP) and *Africa Growth Opportunity Act* (AGOA) - Frenchside 2023 <https://frenchside.co.za/what-countries-does-south-africa-have-trade-agreements-with/>.

³⁸⁰ Investopedia 2024 <https://www.investopedia.com/terms/f/free-trade.asp>.

³⁸¹ CEVA Logistics date unknown <https://www.cevalogistics.com/en/glossary/preferential-trade-agreement>.

³⁸² FAO date unknown <https://www.fao.org/3/j5424e/j5424e01.pdf>.

trade law that can promote environmentally conscious practices for both economic and environmental benefits.³⁸³

Environmental sustainability forms a considerable priority within the framework that indicates an increasing acknowledgement of the agricultural sector's role in adding to and mitigating climate change efforts. Measures and incentives that are designed to lessen GHG emissions, maintain water resources, and improve soil conditions are key to the framework. The framework also aims to build climate-resilience diversity and enhance agriculture's adaptability skills.

As previously mentioned,³⁸⁴ South Africa has committed itself to include climate change and environmental sustainability legislation that addresses climate-related and overall environmental issues. South Africa's most recent NDC committed to net zero emissions by 2050 and would require significant GHG reductions. The environmental sustainability regulatory framework is reflected by the Constitution and NEMA for the overall governance of environmental management in South Africa, which also addresses reducing GHG emissions and seeing it as a major concern for overall health.³⁸⁵ South Africa's NDP has a significant environmental sustainability component that aims to alleviate poverty, improve equality, and encourage economic development by 2030. Overall, South Africa has shown dedication and commitment to their international obligations pertained to in the Paris Agreement that prioritises climate action. Additionally, the first notion of National Climate Change Act was introduced by the acceptance of the *Climate Change Bill* in 2022 to enable a climate-resilient economy by establishing a legal framework for other climate-related initiatives and climate mitigation efforts. The *Carbon Tax Act* is another climate action mitigation legislation aiming at the reduction in overall GHG emissions furthering the efforts towards climate action. As mentioned above, CARA is responsible for ensuring that natural agricultural resources are utilised to provide long-term protection.³⁸⁶ The climate change response and legislation include initiatives like the NCCRP and NCCAS

³⁸³ See par 2.3.2 above.

³⁸⁴ See par 4.2 and 4.3 above.

³⁸⁵ See par 4.2.1 above.

³⁸⁶ See par 4.2.2 above.

that identified the interconnectedness between the Agri-Food sector and climate action. The relevant South African legislation related to the Agri-Food sector has also been addressed.³⁸⁷ The NCCAS incorporates climate change considerations, recognises the need to guarantee food security and aligns with the Paris Agreement and sustainable development goals for environmental sustainability.³⁸⁸ The need to have an enhanced regulatory framework that incorporates climate action, environmental sustainability, food security, and economic development is needed which is currently lacking.³⁸⁹

Economic development initiatives within the Agri-Food Trade Law framework is aimed at providing support to small-scale and commercial farmers, better supply chain effectiveness, and raising the value level addition of the sector. The approach incorporates strategies to promote investment in Agri-Food sectors, development of sustainable agricultural technologies, and providing farmers with services for improved market access and simplifying trade.

The 2019 STI recognised the need to transition towards a circular economy that forms part of South Africa's transition towards a sustainable future.³⁹⁰ This transition involves improvements in food production and consumption methods, lessening waste, with less environmental impact while advancing economic development. The South African government has recognised the role circular economy plays in a sustainable environment for a resilient economy.³⁹¹ Consequently, and because of the existing strategic partnership between the EU and SA, the EU will continue to invest in SA to assist in our shift to achieve the same objective of a low-carbon, stable economy.³⁹²

³⁸⁷ See par 4.2.2 above.

³⁸⁸ Zembe, NemaKonde and Chipangura 2023 International Journal of Disaster Risk Reduction 6.

³⁸⁹ FAO 2012 https://www.researchgate.net/profile/Sje-Midgley/publication/236142953_Reducing_Disaster_Risks_to_Food_Security_in_Southern_Africa_Towards_Integration_and_Co-operation/links/02e7e51653d6f2881e000000/Reducing-Disaster-Risks-to-Food-Security-in-Southern-Africa-Towards-Integration-and-Co-operation.pdf.

³⁹⁰ See par 4.2.3 above.

³⁹¹ UNEP 2020 file:///C:/Users/13061178/Downloads/CESA.pdf.

³⁹² National Treasury 2022 http://eusa.treasury.gov.za/?page_id=8825.

SWITCH Africa³⁹³ is one of the EU's initiatives to support African countries, including SA, in transitioning to a more environmentally sustainable economy by providing opportunities to build resilient resource use and adopting environmentally friendly methods and strategies.³⁹⁴ As the agricultural sector is a large contributor to GHG emissions and affected by climate change, the use of Climate Smart Agriculture (CSA) is a mitigation and adaptation measure that is applied by South Africa through SWITCH Africa.³⁹⁵ These initiatives enhance the innovation taken in the agricultural sector that develops alternative measures and practices to ensure more sustainable framing for a long-lasting effect.

The South African Trade law framework is a comprehensive legal and policy framework dedicated to address vital concerns of food security, environmental sustainability, and economic development. This Agri-Food framework is significant to the agriculture sector's future, equipped to meet domestic and global needs in a sustainable and equitable manner.

4.5 Benchmark and best practices

The benchmark established in chapter 3, drawing upon the core elements of the EGD and the FTF Strategy, will now serve as a measure against which South Africa's Agri-Food Trade law is evaluated. This benchmark, rooted in the overarching themes of climate action, food security, and economic development, provides a framework for assessing South Africa's legal and policy approaches in these areas. By applying this benchmark, the analysis aims to identify gaps, opportunities, and strengths within South Africa's Agri-Food Trade law, offering insights into how it aligns with or diverges from international best practices as exemplified by the EGD and FTF Strategy. This benchmarking exercise will contribute to a deeper understanding of how South Africa

³⁹³ Funded by the EU in 2013, focusing on agriculture, manufacturing, waste management and tourism – Switch2Green date unknown
<https://www.switchtogreen.eu/home/switchafricagreen/>.

³⁹⁴ Switch2Green date unknown <https://www.switchtogreen.eu/home/switchafricagreen/>.

³⁹⁵ DFFE 2020 https://www.dffe.gov.za/sites/default/files/docs/csa_volume2.pdf.

can enhance its legal framework to better support sustainable agriculture, resilience to climate change, and economic growth within the Agri-Food sector.

4.5.1 Climate Action

South Africa's climate action comprises various international, regional, and domestic commitments through the recognition of the effect climate change has on specifically the agricultural sector. International organisational collaborations such as the WTO, OECD, UN, and G20 emphasise South Africa's dedication to addressing climate action and establishing climate mitigation and adaptation measures.³⁹⁶ South Africa's involvement with the international organisation the UN and its commitment to sustainable development, and commitments toward reducing GHG emissions should align with EGD's objectives but could for example require adjustments in trade strategies to meet new environmental standards.³⁹⁷ The Paris Agreement was a pivotal point that redirected the world, including South Africa, in a more climate-orientated direction.³⁹⁸ South Africa has also committed to reducing GHG emissions by becoming a signatory of the Paris Agreement, of which the first NDC indicated the commitment and the second NDC enhanced the first commitment to reach a net-zero emission target by 2050. The recent NDC emphasises the significance of incorporating environmental sustainability throughout the existing regulatory framework consisting of policies and laws to enhance sustainable development and respond to climate change effectively and collectively.³⁹⁹ This will ensure overall guidance to all economic sectors in climate adaptation and facilitate institutional alignment and optimise the management of climate change adaptation across South African national spheres. Additional participation in efforts like CBD and the Ramsar convention further indicated South Africa's dedication to encourage sustainable development and protecting the environment. South Africa embraces its global responsibility to address climate change

³⁹⁶ See Par 4.3.1 above.

³⁹⁷ SA rejoined the UN in 1994 after SA's first democratic election - Permanent Mission of South Africa to the United Nations, New York City 2023 <https://www.southafrica-usa.net/pmun/index.html>.

³⁹⁸ Roberts 2016 South African Journal of Science 1.

³⁹⁹ UNFCCC 2021 <https://unfccc.int/sites/default/files/NDC/2022-06/South%20Africa%20updated%20first%20NDC%20September%202021.pdf>.

by aligning its legislation with its international legal obligations and encouraging consistency between the different levels of frameworks.⁴⁰⁰

South Africa's regional collaborations with SACU, SADC, and the AU emphasised that it is further dedicated to promoting sustainable development in the region with its position within Africa. Additionally, existing trade agreements like the SADC-EU EPA prioritise expanding the trade relationship by including environmental sustainability within the trade agreements. Integrating environmental sustainability within the existing trade relationships, like the SADC-EU EPA, aligns with the EU's broader objectives to have a sustainable economy by creating opportunities out of climate-related challenges across every policy sector, ensuring fairness and inclusivity for all.

The NFSD of 2008 introduced an innovative framework to administer sustainable development. The NSSD 1 of 2011 and NSSD 2 of 2015 followed as improvements of this framework to address climate concerns. Additionally, further climate change adaptation and mitigation efforts were incorporated to strengthen South Africa's climate change response and included enhancing institutional effectiveness by improving governance and legal frameworks and, national and provincial response, as well as securing finances to ensure the adaptation efforts.⁴⁰¹ Initiatives like the NCCRP and NCCAS focus on the effect of climate change and recognise the nexus with the Agri-Food sector.

South Africa's environmentally sustainable regulatory framework clearly indicates a strong dedication to promoting environmental sustainability as is shown through sections 24 and 27 of the Constitution and NEMA which guarantees a healthy environment and sufficient food for current and future generations.⁴⁰² Although case law⁴⁰³ confirms that challenges remain, South Africa has taken significant strides in

⁴⁰⁰ See par 4.3 above.

⁴⁰¹ UNFCCC 2021 <https://unfccc.int/sites/default/files/NDC/2022-06/South%20Africa%20updated%20first%20NDC%20September%202021.pdf>.

⁴⁰² See par 4.2.1 and 4.2.2 above.

⁴⁰³ The case of *Earthlife Africa Johannesburg v The Minister of Environmental Affairs*⁴⁰³ was ground-breaking for South Africa's environmental sustainability. It was established that climate change is a significant factor in South Africa's environmental sustainability as it translates to the constitutional environmental right in Sec 24. In *Fuel Retailers v Department of Agriculture*,

developing a regulatory framework that recognises and addresses the importance of environmental sustainability in the country's sustainability and Agri-Food Law Frameworks.⁴⁰⁴

The *Carbon Tax Act* is a significant climate action legislation, as it aims to tax gasses that are like GHG emissions and any other matters connected to that. The *Climate Change Bill* is significant to South Africa's climate action efforts as it lays down the foundation for further legislation to build a resilient and sustainable economy. The further development will ensure that the *Climate Change Bill* eventually becomes South Africa's first Climate Change Act and impacts South Africa's climate response.⁴⁰⁵ Introduced only as recently as February of 2022, the *Climate Change Bill* correlates with the commitments towards climate change responses within the NCCRP and the Paris Agreement.⁴⁰⁶

South Africa's need to comply with international sustainability standards is critical to align with its commitments under the Paris Agreement and NDC to minimise GHG emissions with the goal of reaching a net-zero emission target by 2050.

4.5.2 Food Security

The South African Constitution lays down the foundation of the right to sufficient food in section 27 and recognised the importance of food security with the 2021 NDC which

Judge Ngcobo J found that sustainable development is a fundamental principle guiding environmental rights in South Africa – Krüger 2019 *The Constitutional Court Review* 495. South Africa has made significant progress in addressing environmental sustainability but translating it to SA trade law has not received much attention.

⁴⁰⁴ SA has made significant progress in addressing environmental sustainability. It has developed the *National Development Plan 2030* (NDP), which sets forth the ambitious targets of eradicating poverty, decreasing inequality, and promoting economic growth and exports by 2030 in South Africa- National Planning Commission 2023 <https://www.fao.org/3/cc0471en/online/state-of-agricultural-commodity-markets/2022/food-agricultural-trade-globalization.html>. Furthermore, the *National Framework for Sustainable Development (2008)* stipulates that SA's sustainable development aims to become sustainable, economically successful, and independent while protecting democracy by meeting their people's basic needs, responsible management of resources, and contributing effectively to all levels.

⁴⁰⁵ CER 2022 <https://climatelaw.org.za/>.

⁴⁰⁶ Rapson and Molefi 2022 <https://www.webberwentzel.com/News/Pages/Climate-change-bill-introduced-in-Parliament.aspx>.

also identified the need for a robust climate-resilient framework to withstand climate challenges like food security through sustainable agriculture.⁴⁰⁷ The main food policies initiated in accordance with the constitutional obligation include the NPFNS and NFNSP, of which the latter incorporated a comprehensive approach with climate change considerations. Additionally, other initiatives that support these policies include the Integrated Nutrition Programme, Strategic Plan for Prevention and Control of Non-Communicable Diseases, and Strategy for the Prevention and Control of Obesity which all aim at supporting a healthy diet. The evolving trade relationships between South Africa and the EU might necessitate re-evaluation to adapt to the environmental standards set forth by the EGD to ensure continuous market access.

Currently, South Africa does not have a national Food and Nutrition Security Act, but policies like the NPFNS and NFNSP holistically consider food security with climate change considerations.⁴⁰⁸ Additionally, South Africa's involvement in trade organisations provides avenues for collaboration and knowledge sharing on sustainable practices.

The need to transition to a national strategy on sustainable agriculture and FS, improve existing FS policies, and incorporate sustainability factors are significant in ensuring future requirements. The existing legislation related to and affecting sustainable agriculture are *CARA, Fertilizers, Farm Feeds, Seeds and Remedies Act, Agricultural Pests Act, Agricultura Products Standards Act, Meat Safety Act* and more. Trade is a driving factor for economic development and international cooperation, and South Africa might have to adhere to the strict standards set by the FTF strategy to have continued market access to the EU.

South Africa's need to comply with the stringent environmental standards set by the FTF strategy for fair, healthy, and environmentally sustainable FS by means of its food security and agricultural policies ensures the continuation of EU market access while encouraging sustainable agriculture. This alignment enables international

⁴⁰⁷ See par 4.2.2 above.

⁴⁰⁸ See par 4.2.2 above.

collaboration and sharing of best practices with the EU as an existing trading partner that supports South Africa's objective of economic development.

4.5.3 Economic development

Economic development in view of the existing SADC-EU EPA, encourages the transition towards a circular economy for successful environmental sustainability. The South African White Paper on STI has recognised the benefits of a circular economy that promotes environmental sustainability.⁴⁰⁹ South Africa's NDP has environmental sustainability as a core component that will ensure the alleviation of poverty by 2030. The Green Fund of South Africa aims to attract investments to South Africa to transition to a low-carbon and environmentally sustainable economy. This indicates South Africa's need for assistance in moving towards a climate-resilient economy from strategic partners and investors.

The existing trade partnership is beneficial by aligning its objectives and creating opportunities for sustainable investment, collaboration in green technologies, and sharing knowledge for minimising the environmental footprint while promoting economic development.

The existing SADC-EU EPA that prioritises the incorporation of environmental sustainability within the trade relationship is a significant step toward furthering more sustainable trade that promotes economic development but complies with the guidelines for sustainable development. The strategic approach demonstrates how an existing trade agreement may be used to reinforce commitments made towards climate action and highlights South Africa's commitment to addressing climate change that drives economic development.

This chapter indicates that these benchmarks and best practices are essential for strengthening South Africa's legal and policy structures for enhanced sustainability in the Agri-Food sector. South Africa needs to align current trade law principles with environmental sustainability to further the cohesiveness and holistic approach to

⁴⁰⁹ See par 4.2.3 above.

sustainable development. The establishment of a resilient regulatory framework that encourages environmental sustainability while facilitating trade is vital.

4.6 Conclusion

This chapter discusses South Africa's progression towards sustainability and climate change mitigation, particularly within its agricultural sector. Through the implementation of the benchmarks and principles outlined in Chapter 3, it has examined the enhancements in sustainability practices necessary for safeguarding food security and encouraging economic development in South Africa, in view of the country's strategic trade partnership with the EU.⁴¹⁰

The examination illustrated the significance of learning from the EU strategies, particularly the EGD and FTF strategies, which can strengthen South Africa's sustainability efforts. The strategic approach of including these principles in South Africa's Agri-Food trade law is highlighted to enhance the country's sustainability objectives and stress the importance of international best practices for developing impactful national policies.

However, South Africa's Agri-Food trade law framework still has several shortcomings when compared to the EGD and FTF Strategy that sets high standards of environmental sustainability, food security, and economic development.

Currently, South Africa requires a harmonised policy strategy that incorporates climate mitigation and adaptation measures across all sectors, including Agri-Food trade, even though South Africa has made considerable progress in environmental legislation.⁴¹¹ The importance of creating a climate-resilient framework to enable effective adaptation and mitigation strategies aimed at ensuring food security through sustainable agriculture is emphasised.

South Africa is presently struggling with food and nutrition insecurity because of an unsustainable FS and because of the unavailability of a national Food Security and

⁴¹⁰ See par 4.5 above.

⁴¹¹ See par 4.2.1 above.

Nutrition Act that can provide a holistic approach to dealing with these challenges.⁴¹²

The necessity for a more holistic framework that highlights the importance of support and encouragement for sustainable production, processing, and distribution of food is clear.

The objective of South Africa's Agri-Food Trade Law framework is to improve market competition and strengthen its position in the global market.⁴¹³ Still, there is a need for more innovation in agricultural practices to lessen the environmental impact and improve productivity.

Considering the strategic trade partnership SADC-EU EPA and the stringent sustainability standards set by the EGD and FTF strategy, South Africa might have to re-evaluate certain national legislation and trade strategies to comply with these new standards. The incorporation of sustainability criteria into existing trade agreements and trade legislation could be necessary to have continued EU market access for South African Agri-Food products.

⁴¹² See par 4.2.2 above.

⁴¹³ See par 4.2.3 above.

Chapter 5

Conclusion and recommendations

5.1 Background

Agri-Food Trade significantly contributes to global GHG emissions through the production and distribution of agricultural and food products across different countries.⁴¹⁴ Nonetheless, this mini-dissertation has laid the foundation to investigate whether and how Agri-Food Trade Law can act as a key mechanism in addressing climate change.⁴¹⁵ The research was therefore concerned with understanding the interplay between trade and climate change, gauging their mutual impacts, weighing the balance between environmental sustainability and global trade objectives, and discerning their combined role in the sustainability of the Agri-Food trade.

The study examined the EU and South Africa, highlighting their roles as strategic trade partners. It explored the potential influence of the EU's EGD and the FTF strategy on enhancing environmental sustainability within the context of South African Agri-Food trade law. Through its chapters, the research was set to provide an exploration of how these EU strategies could contribute to shaping a more sustainable Agri-Food trade framework in South Africa. This research is particularly crucial and timely given the fact that South Africa does not have dedicated legislation that regulates Agri-Food Trade Law sustainably.

5.2 Revisiting the objectives of the study

The primary objective of this mini-dissertation was to harness the policy initiatives of the EGD's FTF Strategy to enhance and reinforce environmental sustainability within South African Agri-Food Trade Law. To accomplish this, the following secondary goals were set:

⁴¹⁴ Richie, Rosado and Roser 2022 <https://ourworldindata.org/environmental-impacts-of-food#citation>.

⁴¹⁵ United Nations Conference on Trade and Development 2022 https://unctad.org/system/files/official-document/ditctab2022d7_en.pdf.

1. To theoretically dissect the intersection between food security, environmental sustainability, economic development, and trade law, specifically focusing on the EU and South Africa as strategic trade partners.
2. To theoretically examine the EGD and FTF strategy 1) to indicate the relevance of these instruments for climate change and environmental sustainability; and 2) to establish a benchmark to advance and strengthen environmental sustainability in South African Agri-Food Trade law.
3. To examine South Africa's regulatory framework for environmental sustainability and how it relates to Agri-Food Trade Law, as well as evaluate it against the sustainability benchmark established by the EGD and FTF strategy.
4. To leverage the EGD's FTF policy initiatives to enhance environmental sustainability in South Africa's Agri-Food trade law. Leveraging the EGD is expected to improve environmental sustainability in South Africa's Agri-Food Trade Law.

5.2 Key findings

The objectives of this mini-dissertation are reflected across the respective chapters, with each one exploring one dimension of the research question. In doing so, the discussions resulted in the key findings. These findings are used to draw some conclusions and to inform South Africa's Agri-Food Trade law.

5.2.1 South Africa and the EU: A strategic trade partnership

This mini-dissertation argues that the EU's drive to synchronise trade practices with the global climate action agenda, through its EGD and the FTF strategies, has significant implications for this partnership. The EU and Africa maintain a strategic trading partnership, in terms where over 90% of African exports access the EU market.⁴¹⁶ South Africa is the EU's most significant trading partner in the Southern

⁴¹⁶ European Commission date unknown <https://www.tralac.org/documents/resources/external-relations/eu/epas/4918-the-european-union-and-africa-partners-in-trade-factsheet/file.html>.

Africa region, particularly in the Agri-Food sector.⁴¹⁷ The trading relationship between South Africa and the EU was formalised and strengthened with the Trade, Development and Cooperation Agreement (TDCA) in 1999,⁴¹⁸ followed by the Southern African Economic Partnership Agreement (SADC-EPA) in 2016. These agreements bolstered bilateral and regional trade and reinforced the strategic partnership between South Africa and the EU. Notably, the SADC-EPA has broadened its scope to emphasise environmental sustainability, integrating sustainable development goals into its trade partnership.⁴¹⁹

Within the broader scope of this study, which centres on the EU's EGD and its FTF strategy – aimed at transforming food systems into equitable and sustainable frameworks – it became clear that the EGD, with its increasingly stringent policies and strategies, is specifically designed for the EU context.⁴²⁰ Understanding the dynamics of the strategic partnership between South Africa and the EU provided valuable insights into the applicability and adaptability of these strategies in diverse contexts.

As will be indicated below, the EU's drive to synchronise trade practices with the global climate action agenda, through its EGD and the FTF strategies, has significant implications for this strategic partnership between South Africa and the EU. South Africa may now be expected to have more stringent sustainability standards to comply with to have continued EU market access and re-evaluate national legislation, and trade agreements to align with these standards. Compliance with these sustainable standards has the potential to promote sustainable practices within the agricultural sector of South Africa and a global shift toward implementing trade policies that align with environmental sustainability.

⁴¹⁷ Annual Digest 2021 https://sadc-epa-outreach.com/images/files/EPA_Annual_Digest__2021_Final.pdf.

⁴¹⁸ TDCA was signed in 1999 but fully enacted in 2004 - Eur-Lex 2018 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Ar12201>.

⁴¹⁹ See par 2.2 above.

⁴²⁰ See par 1.5 above.

5.2.2 The nexus between food security, environmental sustainability, and economic development

This study established a nexus between food security, environmental sustainability, and economic development.⁴²¹ The nexus was explored through the lens of the EU's strategy contained within the EGD and its FTF strategy. The nexus between food security, environmental sustainability, and economic development is essential to improving a sustainable climate-resilient and fair FS. The main objective of the EGD is to achieve climate neutrality by 2050 for a sustainable economy, while the FTF strategy aims for a sustainable climate-resilient FS with less of an environmental impact that ensures food security while promoting economic development. This comprehensive approach underscores the interdependence of all three elements of food security, environmental sustainability, and economic development and how each affects one another in different circumstances and creates a cycle of sustainability. The study identified that environmental sustainability forms an essential element that encourages long-term food security and economic development, especially within the existing trade partnership between South Africa and the EU.⁴²²

Consequently, the research emphasised the need for a robust and resilient Agri-Food trade legal framework. This framework must navigate the complexities of food security, environmental sustainability, and economic development. Achieving this necessitates a holistic and integrated approach across all sectors. A resilient Agri-Food trade law framework must recognise and address the intricate interconnections among trade, food security, environmental sustainability, and economic development, ensuring a balanced and sustainable approach to Agri-Food trade and policy.

5.2.3 The EGD and FTF strategy: An environmental sustainability benchmark

As trade continues to impact the environment, chapter 3 examined the EGD and the FTF strategy, analysing their relevance in addressing climate change.⁴²³ The EGD's

⁴²¹ See par 2.3 above.

⁴²² See par 1.2.4 and 2.3.2 above.

⁴²³ See par 3.3.1 above.

FTF strategy aims to transition the EU's food system towards environmental sustainability, contributing to the EGD's goal of making the EU a climate-neutral continent by 2050.⁴²⁴ Chapter 3 explored how these initiatives could assist in reducing GHG emissions, mitigating climate change, and accelerating the green transition.

The EGD and FTF strategy initiatives have established high environmental sustainability standards aimed at reducing GHG emissions, with the goal of achieving climate neutrality by 2050.⁴²⁵ These standards are designed to protect natural resources while promoting economic development. They include measures for both climate change mitigation and adaptation, as well as strategies to ensure food security and foster economic growth.

The chapter sought to explore how the EGD and FTF strategy can serve as a benchmark for environmental sustainability and how this benchmark can be applied to enhance South Africa's Agri-Food regulatory framework. The chapter therefore established specific measures and standards, which were set to include: climate action, Food security, and economic development elements.

It was found that the main elements retrieved from the EGD and FTF strategy that enhance environmental sustainability are climate neutrality and the circular economy action plan, which aims to reduce the environmental footprint, and a comprehensive approach that is needed across all sectors from the EGD. The elements in the FTF strategy were identified as sustainable food production, processing, and distribution, lessening food waste, and innovation in agriculture to enhance the development of new technologies and sustainable practices that increase environmental sustainability in agriculture.⁴²⁶

The elements identified were further organised under three themes that assist in setting a benchmark to work from and include climate action, food security, and economic development. It was found that a holistic approach across all sectors,

⁴²⁴ See par 3.2.3 above.

⁴²⁵ See Par 3.2 above.

⁴²⁶ See par 3.3 above.

climate neutrality, the need for a circular economy, and innovation in agriculture are organised under climate action. The elements of sustainable food production, processing and distribution, less food waste, and innovation in agriculture were organised under food security. The theme of economic development included elements of circular economy, the FTF strategy seeing that it aims for economic development independent from resource use, and the holistic approach across all sectors.

5.2.4 Environmental sustainability in South Africa's Agri-Food Trade Law

Chapter 3 established a benchmark aimed at advancing and reinforcing environmental sustainability within South African Agri-Food Trade law. In Chapter 4, through the benchmarking exercise, South African Agri-Food Trade Law has been evaluated against this standard.⁴²⁷ The findings from this comparison reveal that there are significant opportunities for enhancement within South African Agri-Food Trade Law. South Africa has a good sustainability law framework consisting of the Constitution, NEMA, various food security strategies and policies, and the White paper on STI recognising economic development through the circular economy.⁴²⁸ By aligning more closely with the established benchmark, improvements to a more resilient sustainability law framework can be made in specific areas, such as climate action mitigation and adaptation, environmental sustainability, food security, and economic development.

South Africa's sustainability law framework is anchored in the Constitution,⁴²⁹ which aims to foster a sustainable and economic intervention. It emphasises the protection of basic human rights, including environmental rights, as enshrined in section 24 of the Constitution, which ensures a healthy environment for current and future generations. Central to its environmental governance is the National NEMA, supported by specific legislation like the *National Water Act* and the *National Waste Act*. NEMA is the fundamental legislation responsible for environmental management and

⁴²⁷ See par 4.5 above.

⁴²⁸ See par4.2 above.

⁴²⁹ See par 4.2.1 above.

provides for a thorough framework encompassing navigation of environmental concerns, intergovernmental collaborations, and prioritising the lessening of GHG emissions. These laws, along with judicial interpretations, underscore the country's commitment to environmental sustainability, integrating it with food security and economic development.

Since the initiation of the EGD by the European Commission in 2019, there have been various implementation and policy debates on the requirements for the EGD's success.⁴³⁰ Discussion and questions include international collaboration transitioning with fairness and inclusivity, a fundamental EGD component.⁴³¹ More specifically, questions arise about South Africa, as a significant trading contributor in Africa, due to the existing strategic partnership between the EU and South Africa, with South Africa being a major exporter of food to the EU.⁴³² Furthermore, aligning regulatory and Agri-Food policies in South Africa is essential to continuing the EU trade relationship.⁴³³ The importance and contribution of EGD to global health and broader environmental benefits is significant but will require the intricate evaluation of the regulatory framework and is only achievable with collaborative support. Simultaneously, the EU's EGD sets the global standard.⁴³⁴

The FTF strategy's target is to establish a sustainable FS and mitigate the effects of climate change by eliminating GHG emissions along the FS lifecycle that produce inevitable trade-offs to balance.⁴³⁵ Such exchanges might include, for example, the possible advances made in the social and economic domains, such as ensuring the availability of nutritious and affordable food and simplifying the regulatory processes for producers, which could hinder the pursuit of environmental goals.⁴³⁶ For this

⁴³⁰ Siddi 2020 *UPI REPORT* 4.

⁴³¹ Siddi 2020 *UPI REPORT* 6.

⁴³² European Union External Action 2018 https://www.eeas.europa.eu/node/53753_en.

⁴³³ Shilobo and Kapuya 2021 <https://www.dailymaverick.co.za/article/2021-11-01-eu-green-deal-presents-new-opportunities-threats-and-risks-for-south-african-agriculture/>.

⁴³⁴ Haines and Scheelbeek 2020 *The Lancet* 1329.

⁴³⁵ Appunn 2021 <https://www.cleanenergywire.org/factsheets/eus-farm-fork-strategy-impacts-climate-productivity-and-trade>.

⁴³⁶ Appunn 2021 <https://www.cleanenergywire.org/factsheets/eus-farm-fork-strategy-impacts-climate-productivity-and-trade>.

reason, these exchanges should ultimately be considered with care when new regulatory measures are considered, seeing that the EGD and its FTF strategy are addressing the restricted use of emission-based sources to establish a resilient FS for the future.⁴³⁷

South Africa's climate change law framework consists of international perspectives like the WTO, UN, and Paris Agreement, regional engagements like SADC, SACD, and AU, and domestic perspectives like the NSSD 1 and NSSD 2, NCCAS and *Climate Change Bill*.⁴³⁸ To achieve climate neutrality, South Africa has an interconnected set of regulations, policies, and international obligations that focus on reducing GHG emissions, advancing sustainable development, and moving towards a climate-resilient framework.

South Africa has made progress in setting various GHG emissions targets and moving towards achieving climate neutrality, but there is room for further development. The *Climate Change Bill* reflects South Africa's dedication to combating climate change, reducing GHG emissions, and aligning its efforts with international, regional, and national policies for a comprehensive approach to sustainability. The *Climate Change Bill* is only the beginning of future legislation and additional measures for reducing GHG emissions and moving towards a sustainable and resilient economy incorporating all areas. To achieve climate neutrality objectives and meet international standards thereof, a comprehensive regulatory framework is needed that specifically involves the areas of climate change laws and incorporating environmental sustainability across all sectors. The framework to regulate climate change initiatives, compliance with carbon budgets, and setting sector-specific targets for lessening emissions are set by the *Climate Change Bill*.

The *Carbon Tax Act* is another legislation aimed at reducing GHG emissions and taxing GHG emissions by aligning to South Africa's international commitments made under, amongst others, the Paris Agreement. Specifically, the Green Transport Strategy of

⁴³⁷ Appunn 2021 <https://www.cleanenergywire.org/factsheets/eus-farm-fork-strategy-impacts-climate-productivity-and-trade>.

⁴³⁸ See par 4.3 above.

2018 focuses mainly on GHG emissions reduction in the transport sector and recognises the overall health of the environment. South Africa's NSSD 1 and NSSD 2 started prioritising sustainable development and started incorporating factors of environmental protection.

South Africa made international commitments to reduce GHG emissions and aim for a net zero emission target by 2050 in its most recent NDC of 2021 as a signatory of the Paris Agreement. Various regional and international entity participations from South Africa like SACU, SADC and AU have commitments aimed at furthering sustainable development and successful management of natural resources.

Agri-Food Trade Law emerged as an important driving force for environmental sustainability, by weaving together principles aimed at protecting the environment with the legal frameworks that govern agricultural and food trade. South Africa's Agri-Food trade regulatory framework is governed by a combination of laws designed to oversee imports and exports while ensuring the quality and safety of agricultural products. *The Customs and Excise Act* of 1964, alongside the ITA of 2002, establishes regulations for the movement of goods across borders. Furthermore, the *Agricultural Products Standards Act* enforces standards for agricultural products, ensuring they meet specific quality criteria. Additionally, the *Agricultural Pests Act* addresses the management and control of pests affecting agriculture, safeguarding the sector's health and productivity. Together, these laws form a comprehensive framework that regulates the Agri-Food trade, promoting both the domestic and international competitiveness of South Africa's agricultural sector.

The *Customs and Excise Act* could be affected by changes in export requirements set by the EU in which South Africa would need to adhere to stricter environmental and sustainable standards or tariff adjustments for goods produced under the FTF sustainability criteria that would necessitate revisions to foster adherence and impact tariff rates and classification. Similarly, the ITA, which establishes the ITAC and regulates the country's economic activities regarding international trade,⁴³⁹ must be

⁴³⁹ See par 2.2 above - Sections 2 and 7 of the *International Trade Administration Act*.

examined to determine if it is aligned with the EU's evolving trade standards and regulations. The possible impact of the FTF is less direct as the tasks and responsibilities of ITAC could be duly influenced to ensure continuous market access to the EU mainly because of incorporating sustainability in the trade dynamics and requirements arising from the EGD and FTF strategy. Still, it could lead to possible future considerations by ITAC, the body responsible for administering trade policy instruments,⁴⁴⁰ such as sustainability aspects in its evaluations, tariff-related assessments, and trade remedies. Government bodies like the DTIC, the DALRRD, DoH and The Department of Forestry, Fisheries, and the Environment (DFFE) could see shifts in their operational focus due to the EGD's environmental and sustainable goals.⁴⁴¹

South Africa's food security framework has made progress in addressing food security through its legislative and policy framework to enhance sustainable food production, processing, and distribution. Even though South Africa currently does not have any Food Security and Nutrition Act, which will be required to successfully transition towards sustainable food production, processing, and distribution South Africa has made efforts to address sustainability with the NCCRP and NCCAS.⁴⁴² A more holistic approach is required to achieve this objective towards a sustainable food system that includes a regulatory framework that is dedicated to securing sustainable food. The NCCRP encourages the adoption of sustainable farming practices that have less environmental impact and are also a climate mitigating factor. The necessity for a more integrated framework is required that prioritises the support and encouragement of sustainable production, processing, and distribution. The requirement to shift toward a circular economy that encourages the reduction of food waste and encourages sustainable practices will also contribute to the objective of attaining sustainable food production, processing, and distribution. The EU is supporting

⁴⁴⁰ Department of Trade Industry and Competition 2020 <http://www.thedtic.gov.za/wp-content/uploads/ITAC-APP.pdf>.

⁴⁴¹ These government branched play a significant role in the Agri-Food trade of SA - Foodfocus date unknown <https://www.foodfocus.co.za/home/Legislation/Articles/ROAD-MAP-TO-LEGISLATION-AFFECTING-THE-FOOD-INDUSTRY-IN-SOUTH-AFRICA---Updated>.

⁴⁴² See par 4.4 above.

farmers with eco-schemes by providing support in obtaining sustainable practices which is not the case in South Africa.

As a result of compliance with new agricultural standards set by the FTF strategy, additional non-tariff barriers for African Agri-Food exports to the EU include South African Agri-Food exports.⁴⁴³ The CBAM initiative of the EU aims to control the carbon emission intensity of goods imported into the EU by imposing a tariff.⁴⁴⁴ This could have a significant impact on the agricultural sector and the products produced when the *Carbon Tax Act* is applicable, and those products are subject to the EU's CBAM, which would necessitate adjustments to the carbon tax and alignment of carbon pricing strategies in international standards to meet EU requirements. South African exports to the EU might face higher costs due to the CBAM, potentially impacting the competitiveness of the products in the EU market. The CBAM would require quarterly reporting on the carbon emissions of products produced and imported into the EU. This will result in importers familiarising themselves with the products that form part of the carbon-intensive products list of the CBAM rules, countries of origin and the possible implication of cost, and how the reporting process will work is of note.⁴⁴⁵

The FTF strategy encourages the shift towards sustainable agricultural practices to ensure a sustainable FS within the EU. This increases the competition for South Africa's Agri-Food products and will force South African farmers to transition to more sustainable farming practices to stay competitive.⁴⁴⁶ In line with this, shifting towards more sustainable practices could amend consumers' demand for Agri-Food products with less environmental impact which goes hand in hand with sustainable agricultural practices. This will directly impact South Africa's Agri-Food exports by influencing

⁴⁴³ Carnegie 2021 <https://carnegieendowment.org/2021/10/18/what-does-european-green-deal-mean-for-africa-pub-85570>.

⁴⁴⁴ Lobdell 2023 <https://www.thomsonreuters.com/en-us/posts/international-trade-and-supply-chain/eu-carbon-border-tax/>.

⁴⁴⁵ Lobdell 2023 <https://www.thomsonreuters.com/en-us/posts/international-trade-and-supply-chain/eu-carbon-border-tax/>.

⁴⁴⁶ Steenkamp 2023 <https://www.hortgro.co.za/news/eu-green-deal-challenges-and-possible-gains-for-south-african-farmers/>.

farmers' income and trading opportunities.⁴⁴⁷ As the CAP is the EU's most significant food security instrument, various FTF strategy objectives have been incorporated into the new modern CAP. These are instrumental in achieving the EGD and FTF strategy objectives focusing on sustainable agriculture by prioritising environmental sustainability by assisting farmers.⁴⁴⁸ The dedication of 40% of the CAP budget to climate action is significant⁴⁴⁹ since this might provide a competitive enhancement to EU farmers as the CAP aids farmers where the South African farmers do not have the same advantage.⁴⁵⁰

The implication of the EGD and FTF strategy with newly set regulations and requirements related to environmental sustainability and agricultural products might have a significant impact on South African legislation. In terms of CARA, it might involve several areas as it prioritises sustainability, biodiversity, and reducing the agricultural and environmental footprint. Possible implications might result in reviewing the act to include amendments or regulations that address climate change mitigation and adaptation measures in minimising GHG emissions in the agricultural sector and building a more climate-resilient framework. The *Agricultural Products Standards Act* might also need to be reviewed to ensure compliance with the new agricultural product requirements set by the EGD and FTF strategy, potentially affecting the export market to the EU. The *Fertilizers, Farm Feeds, Seeds and Remedies Act* 36 of 1947,⁴⁵¹ which regulates the registration, use and importation of fertilisers, farm feeds, and sterilising plants, might also need to be re-evaluated to determine how to comply with the new standards set by the FTF strategy regarding the transition of farming methods with fertilisers and pesticides.⁴⁵² South African agricultural inputs that include fertilisers may need to be updated to meet the new

⁴⁴⁷ Steenkamp 2023 <https://www.hortgro.co.za/news/eu-green-deal-challenges-and-possible-gains-for-south-african-farmers/>.

⁴⁴⁸ See par 3.3.3 above.

⁴⁴⁹ European Commission 2019 https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF.

⁴⁵⁰ Steenkamp 2023 <https://www.hortgro.co.za/news/eu-green-deal-challenges-and-possible-gains-for-south-african-farmers/>.

⁴⁵¹ *Fertilizers, Farm Feeds, Seeds and Remedies Act* 36 of 1947.

⁴⁵² European Commission 2020 https://food.ec.europa.eu/system/files/2020-05/f2f_action-plan_2020_strategy-info_en.pdf.

environmental and sustainability requirements set to be able to export to the EU and to be accepted. *The Agricultural Pests Act* could also be affected significantly seeing that this act regulates the way agricultural pests are controlled and dealt with, considering the reduction objective of pesticides in the FTF strategy. If South Africa intends to maintain its trade relationship with the EU by continuing its Agri-Food export to the EU, compliance with the set standards would be fundamental. This will ensure that exported Agri-Food products meet the EU's environmental and safety standards.

The study indicated that South Africa economic development framework identified a circular economy as a significant part of its strategy to enhance sustainable development by having less of an environmental impact.⁴⁵³ The commitment is demonstrated by several measures and the realisation of enhancing food production and consumption that reduces the environmental impact and limiting food waste alongside boosting environmental sustainability. The *National Environmental Management: Waste Act* of South Africa is one of the legislative measures to ensure that everyone's right to a healthy environment is protected.⁴⁵⁴ A more integrated regulatory framework that considers other environmental sustainability criteria will provide for achieving overall food waste across all sectors. The act prioritises revising the existing approach to ensure the overall health and well-being of everyone, protecting the environment and setting up guidelines to do so. Section 2 of the act provides for the measures for a healthy environment and includes less use of natural resources and encourages a re-use, recycling, and recovery of waste which are key elements of a circular economy.⁴⁵⁵

The 2019 STI White Paper underscored the significance of having sustainable economic development through a circular economy. This shifts towards a regenerative one that restores and regenerates natural resources, cuts down on waste, and minimises the environmental footprint. The benefit of a circular economy lies in less

⁴⁵³ See par 4.2.3 above.

⁴⁵⁴ Preamble of *National Environmental Management: Waste Act*.

⁴⁵⁵ Section 2 of the *National Environmental Management: Waste Act*. and includes others like preventing pollution and environmental degradation, compliance to international obligations, and integrated waste management reporting.

dependency on limited resources, reduced expenses and an increase in more sustainable products while the environment is protected. International collaboration is vital to transition towards an environmentally sustainable economy with partners like the EU that provide support through initiatives like SWITCH Africa Green.

South Africa's dedication toward achieving environmental sustainability and the recognition of a circular economy, concludes the importance of agricultural innovation and developing new technologies to be more sustainable need further advancement. South Africa's commitment to successfully achieve the objectives of the SDGs that correlate especially with climate change, food security, and sustainable agriculture is a clear indication to encourage more innovation in the agricultural sector that has less environmental impact but enhances productivity and environmental sustainability.

Considering the recognition of a circular economy is only the first step and further actions are required to be successful. There is a need for a comprehensive regulatory framework that harmoniously considers elements related to climate action, environmental sustainability, food security, and economic development that encourages a circular economy.

Some of the challenges South Africa faces regarding the EGD include continuous Agri-Food market access, expanding levels of competition, possible trade barriers, consumer demand adjustment, and agricultural subsidy amendments.⁴⁵⁶ The primary focus of the EGD's environmental sustainability and climate neutrality may result in stricter environmental standards and legal requirements for Agri-Food imports that might affect South African farmers to comply to attain EU market access but also affect the Agri-Food trade between Africa and the EU because South Africa is a member.

It was found that integration of sustainability standards from the EGD and FTF strategy is vital for fostering sustainability within the South African Agri-Food sector, ensuring that the trade of agricultural products and food contributes not only to economic growth but also to the principles of environmental sustainability. South Africa's

⁴⁵⁶ Steenkamp 2023 <https://www.hortgro.co.za/news/eu-green-deal-challenges-and-possible-gains-for-south-african-farmers/>.

Sustainability Law, climate change, food security, and economic development frameworks are established as discussed, but can be further enhanced by the environmental sustainability standards set by the EGD and FTF strategy. The EGD and FTF strategy holistically considers environmental sustainability across all sectors including the agricultural sector incorporating environmental sustainability, food security, and economic development resulting in a more climate-resilient regulatory framework.

5.3 Concluding remarks: Leveraging the EGD and FTF Strategy benchmarks to advance environmental sustainability in South Africa's Agri-Food Trade law

The EGD and its FTF strategy, focusing on environmental sustainability, have the potential to influence international trade dynamics, especially between the EU and trading partners like South Africa. Given South Africa's role as a key exporter to the EU, the EGD's environmental goals could lead to significant modifications in South Africa's agricultural practices and trade policies.⁴⁵⁷ These adjustments may require a comprehensive overhaul of South Africa's regulatory framework for trade.

South Africa's participation in international and regional trade organisations and agreements such as the WTO, SACU, and SADC, where the WTO's Agreement on Agriculture aims for fair agricultural trade, may see changes to accommodate the EGD's sustainability emphasis.⁴⁵⁸ This could mean altering agricultural trade practices under these agreements. Potential alternations might include South Africa adopting stricter sustainability standards for Agri-Food products by reducing the use of fertiliser use, encouraging more organic farming, and promoting more sufficient resource use.⁴⁵⁹

Furthermore, South Africa's commitment to sustainable development through its involvement with the UN could align with the EGD's objectives.⁴⁶⁰ However, this

⁴⁵⁷ See par 4.6 and 5.2.4 above.

⁴⁵⁸ See par 1.2.5, 2.2 and 4.2 above.

⁴⁵⁹ See par 5.2.4 above.

⁴⁶⁰ See par 2.2 and 4.2 above.

alignment might necessitate revisions in trade strategies to adhere to new environmental standards. Revision might include South Africa's focus to trade in more environmentally sustainable goods and services with less of an environmental footprint, adopting carbon pricing mechanisms, sustainable agricultural practices, and more investments that focusses on sustainable technologies.

As a G20 member, South Africa's trade and environmental policies, shaped by global economic coordination, could be influenced by the EGD's sustainability and climate change focus.⁴⁶¹ The EGD's sustainability and climate change ambitions stretches beyond the EU,⁴⁶² that includes influencing G20 countries like South Africa to amend trade policy adjustments, aligning environmental policies, promotion of climate change, and encouraging international collaboration and investment. Additionally, South Africa has entered into regional and bilateral trade agreements, such as the EPA between the EU and SADC states, which may be impacted by the EGD's stringent sustainability requirements.⁴⁶³

The DTIC plays a vital role in enacting trade policies, and its strategies might be guided by the EGD's directions.⁴⁶⁴ Government bodies like the DTIC and DALRRD could experience shifts in focus towards EGD-aligned environmental and sustainability goals.⁴⁶⁵ Likewise, the *Customs and Excise Act* and the *International Trade Administration Act*, which regulate imports and exports, may require amendments to comply with the EGD's sustainability criteria.⁴⁶⁶ In summary, the EGD and FTF's sustainability focus could drive significant reforms in South Africa's Agri-Food Trade Law framework, impacting trade agreements, domestic legislation, and the operations of regulatory bodies.⁴⁶⁷

⁴⁶¹ See par 4.2.3 above.

⁴⁶² Almeida et al 2023 Political Geography 2.

⁴⁶³ See par 4.3 above.

⁴⁶⁴ See par 5.2.3 above.

⁴⁶⁵ See par 5.2.4 above.

⁴⁶⁶ See par 5.2.3 above.

⁴⁶⁷ See par 5.2.4 above.

The EGD and FTF strategy does not just present possible challenges to South Africa's Agri-Food Trade law but also has some opportunities. The potential opportunities include the growing demand for more sustainable products, encouraging joint endeavours and sharing of expertise, financial support opportunities, expanding the export market, and improving climate-resilient efforts for climate change adaptation.⁴⁶⁸

The aim of the FTF strategy is to encourage and adopt a sustainable FS that reduces the environmental impact in the whole food production value chain, which will result in the growing demand for more sustainably produced food.⁴⁶⁹ The EGD and its FTF strategy is another significant opportunity for South Africa that promotes collaboration and the sharing of best practices to drive sustainable development.

The potential to further expand South Africa's organic agricultural production is of note as the FTF strategy has significantly emphasised its importance.⁴⁷⁰ Additionally, by South Africa aligning with the standards and requirements set by the EGD and FTF strategy, South Africa can also contribute to global food security, as the EU has limited space to produce the anticipated global food demand expected for 2050.⁴⁷¹

In conclusion, South Africa's environmental sustainability regulatory framework is a starting point to include environmental sustainability in the Agri-Food Trade Law regulatory framework. The need to consider and incorporate initiatives taken by the EU in their EGD and FTF strategy is needed to ensure food security, environmental sustainability, and economic development.

⁴⁶⁸ Steenkamp 2023 <https://www.hortgro.co.za/news/eu-green-deal-challenges-and-possible-gains-for-south-african-farmers/>.

⁴⁶⁹ Matthews "Implications of the European Green Deal for Agri-Food Trade with developing countries" 2.

⁴⁷⁰ The Conversation 2021 <https://theconversation.com/the-eus-green-deal-opportunities-threats-and-risks-for-south-african-agriculture-170811>.

⁴⁷¹ The Conversation 2021 <https://theconversation.com/the-eus-green-deal-opportunities-threats-and-risks-for-south-african-agriculture-170811>.

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