

Trade remedies can offer export opportunities to unrelated parties: the case of the US-EU large aircraft dispute and opportunities for South Africa's wine exports to the US

Eckart Naumann



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ABSTRACT

Trade remedies and safeguards are key exceptions to the World Trade Organisation (WTO) principles of non-discrimination and transparency through binding commitments on tariffs and in other areas, and can broadly take the form of anti-dumping, countervailing and safeguard measures. Each of these measures fulfils a different purpose and represents a permitted response by countries to different trade-related threats.

In the case of the aircraft disputes ('Measures affecting trade in large civil aircraft'), with Airbus and Boeing underlying the disputes raised by the European Union (EU) and United States respectively, these matters triggered the start of formal processes through the WTO late in 2004. Fifteen years later, in 2019 (and then in 2020) countervailing actions were authorised under different WTO decisions of the WTO Dispute Settlement Body.

This Working Paper reviews recent developments in the large civil aircraft dispute and outlines how the resultant trade remedies cover products in industry sectors not related to the underlying dispute, and how new punitive tariff barriers to trade in affected products can potentially have impacts – and provide opportunities – for producers and exporters in third countries. More specifically, the focus is on trade remedies against certain wine tariff lines, impacts on trade flows since the imposition of trade remedies, and the potential opportunities that this may provide South African wine exporters, given the particularly favourable preferential market access that South Africa enjoys to the US market.

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Trade remedies can offer export opportunities to unrelated parties: the case of the US-EU large aircraft dispute and opportunities for South Africa's wine exports to the US

by Eckart Naumann

1. Introduction: linking US trade remedies to export opportunities for unrelated countries and sectors

Since most countries broadly aspire to free trade, the expected benefits flowing from international trade can result in situations whereby countries support domestic industries with the aim of encouraging exports, or at least to better enable domestic industries to compete with imports. Industrial policies can be used to help address issues around investment, job creation, the development and support of sectors of strategic importance (for example, production of important goods in the national context), the attainment of economies of scale, to enhance domestic industries that may be of special importance nationally for other reasons (even national prestige), and so on.

While WTO member states naturally have flexibility in terms of domestic industrial policy, WTO rules can put a limit on this flexibility and aim to ensure a more level playing field insofar that it pertains to international trade. Put differently, WTO disciplines are intended to ensure that trade amongst member states is fair, that it takes place on a non-discriminatory basis among member states (unless in a special preferential trade relationship), while also ensuring that countries are able to impose measures to protect domestic industries against unfair practices relating to the exports from other countries, when these can be established.

Trade remedies and safeguards are key exceptions to the WTO principles of non-discrimination and transparency through binding commitments, including on tariffs, and can broadly take the form of anti-dumping, countervailing and safeguard measures (see next section for a short explanation of each). Each of these measures fulfils a different purpose and represents a permitted response by countries to

different trade-related threats.

When countries apply trade remedies against the exports from one (or more) specific country, or against the exports of identified exporters in another country, or against imports of a product more generally following a surge in imports, trade remedies will be applied in line with applicable provisions of the WTO's rules-based framework. This includes the WTO Agreement on Subsidies and Countervailing Measures, the Agreement on the Implementation of Article VI of the GATT (the Anti-Dumping Agreement), and the WTO Safeguards Agreement. It is important to distinguish that safeguards involve measures that are implemented against certain imports from all countries (i.e. a country's imports from global sources), anti-dumping duties against the country from which the goods came, and countervailing measures – as is the case with the aircraft dispute – can include measures against unrelated industries.

In the case of the aircraft disputes ('Measures affecting trade in large civil aircraft'), with Airbus and Boeing the subject matter in disputes raised by the EU and United States respectively, these matters triggered formal processes through the WTO late in 2004. Fifteen years later, in 2019 (and then in 2020) countervailing actions were authorised under different WTO decisions of the WTO Dispute Settlement Body with both the US – and shortly after the EU – permitted to take punitive action against the exports from the other party (the respondent in the matter).

This has resulted in a number of special tariffs being imposed on numerous often unrelated consumer goods, including not only aircraft parts but indeed also some industrial and household goods, numerous agricultural goods, wine, spirits and so forth. These additional taxes, which have already been implemented and in fact further expanded recently, are substantially raising the cost of certain imported goods in the United States (and of course the EU for affected US-made goods). This risks – depending on the price elasticity of the products concerned – significantly raising the cost and suppressing the demand for affected European-made goods in the US market. Competing products from other countries, such as wine from South Africa, could consequently become far more competitive relative to European exports to the US.

This *Working Paper* reviews recent developments around the 'large civil aircraft dispute', tracks US imports of wine in tariff headings subject to trade remedies resulting from the outcomes of the dispute, and analyses the extent to which this may provide export opportunities to South African exporters to

the US, given the particularly favourable market access that South Africa has to the US market.

At the time of finalising this Working Paper, the US and EU trade administrations jointly^{1,2} announced a four month long temporary suspension of special (trade remedy) duties under the dispute, while the US and EU seek a way forward and prepare the ground for a more permanent solution to the dispute, and where agreement will be sought between the parties on what aircraft subsidies will, in future, be considered permissible and acceptable. Hovering over these negotiations will be China's growing aircraft sector, and the threat it could in future pose to the current Boeing-Airbus dominance.

The decision to temporarily suspend 'hostilities' follows the unilateral suspension of trade remedies by the UK – now no longer part of the EU - on imports from the US in January (albeit which the US reciprocated some time later, in early March, on UK and EU imports). However, in a sign of how the possible settlement of one trade dispute has little to no bearing on the next one, proposed digital services taxes (DST) remain a contentious issue, and while the US recently terminated³ an investigation into EU practices (and that of others) on 31 March 2021 because the planned DST by the EU that gave rise to its so-called Section 301⁴ investigation were not implemented, it is now proposing⁵ additional import duties of 25% (i.e. duties worth \$325m annually) on a range of unrelated goods exported by the UK to the US to compensate for the collection of digital sales taxes (expected to be \$325m) by the UK from US companies.

In any case, trade in wine (and other covered products) between the US and EU is likely to be affected both in the short term (businesses may try to use this time to claw back previous trade), but also in the medium term, depending on the outcome of these latest negotiations. However, real business confidence may take longer to return while the risk of changes or reversals to policy continues to linger; this is particularly the case given that additional tariffs were very substantial and made portions of trade

¹ USTR (2021). Joint Statement of the European Union and the United States on the Large Civil Aircraft WTO Disputes, 5 March 2021. [Internet:] <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/march/joint-statement-european-union-and-united-states-large-civil-aircraft-wto-disputes>

² European Commission (2021). EU and U.S. agree to suspend all tariffs linked to the Airbus and Boeing disputes, 5 March 2021. [Internet:] https://ec.europa.eu/commission/presscorner/detail/en/IP_21_1047

³ Federal Register (2021). Vol. 86, No 60, 31 March 2021. United States Trade Representative [Internet:] https://ustr.gov/sites/default/files/enforcement/301Investigations/DST_Termination_FRN_March.pdf

⁴ USTR (2021). Section 301 – Digital Services Taxes. [Internet:] <https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-digital-services-taxes>

⁵ Federal Register (2021). Vol. 86, No 60, 31 March 2021. United States Trade Representative [Internet:] https://ustr.gov/sites/default/files/enforcement/301Investigations/DST_Termination_FRN_March.pdf

uneconomical, business and trade planning often requires longer time horizons, and transportation and lead time considerations will always pose a certain risk to importers and consumers (who ultimately pay the cost of tariffs).

2. Forms of trade remedies

WTO disciplines on a number of different types of trade remedies provide the framework under which Member States can act against trade-related 'transgressions' by other countries (for example, government support that provides unfair advantages to a country's producers and exporters), or by companies based in other countries (for example, if dumping goods in foreign markets, resulting in injury to domestic operators there). This section briefly outlines the WTO trade remedies and safeguards, and identifies the relevant provisions and related remedies referenced in the civil aircraft dispute.

The two main trade remedies involve anti-dumping and countervailing measures, and different types of issues and threats can result in different trade remedies being invoked. Safeguards are not associated with unfair trade practices – but measures that can be used when a surge in imports causes or threatens to cause serious injury to the domestic industry.

2.1 Anti-dumping

Anti-dumping measures may be invoked when a situation arises whereby exporters sell goods into another market at an unfairly low price, a lower price than that product – or a like product – would be sold by that exporter domestically. By definition, anti-dumping measures are taken against the products and exports of specific companies rather than against the country as a whole or against a class of products. WTO regulations use the terms 'normal value' and 'export price' to identify situations where dumping occurs and calculate the presence of dumping based on a fair comparison between the two. The WTO Anti-Dumping Agreement regulates anti-dumping measures and sets detailed criteria for when anti-dumping measures may be imposed: a determination must be made to confirm that dumping has taken place, 'material' injury has been suffered by domestic operators resulting from the dumping action (of operators in other countries), and a causal link between the two must be demonstrated.

These issues can be very complex, especially when 'normal prices' cannot readily be readily ascertained,

or when injury to domestic industries must be established, let alone a causal link between the alleged dumping action and the injuries to local producers of like products. Once dumping has been established in accordance with relevant WTO standards and guidelines, remedial action would involve the application of anti-dumping duties on the product involved, usually for up to five years, and renewable.

2.2 Safeguards

Safeguards involve emergency measures that may be applied by countries in response to a surge in imports that causes, or threatens to cause, serious injury to a local industry that produces 'like' products⁶. A surge in imports can be in absolute terms, or relative to production volumes from local operators. Unlike anti-dumping, which involves 'unfair' trade practices, safeguards are intended to deal with the damage to local operators resulting from a surge in imports rather than having to meet the standard of establishing unfair practices. Trade remedies involving safeguards therefore do not impose measures against specific countries but apply non-selectively to imports (i.e. they are applied on a MFN basis), and usually involve special tariffs or quantitative restrictions.

Safeguards are covered by the WTO Agreement on Safeguards⁷, which sets out whether serious injury is (or threatens to be) caused by a surge in imports. The Agreement also stipulates the factors that need to be considered in determining the impact of such imports on the domestic industry. The threat of serious injury relates to a threat that is 'clearly imminent'. On completion of an enquiry that establishes injury, the importing country can impose safeguards to protect the relevant local industry; this can be in the form of duties (which may exceed a country's bound WTO rates) or quotas, or a combination of the two. Safeguards are applied on global imports of a product, and not specifically against individual countries, and can remain in place for four years initially (subject to extension).

2.3 Subsidies and countervailing measures

The WTO Subsidies and Countervailing Measures Agreement⁸ (SCM) regulates the use of subsidies and any countervailing measures that can be used by a country to offset injury caused by subsidized imports. Subsidies extended by governments or any public body in another country reduce the cost at which

⁶ See WTO Agreement on Safeguards, Art. 2(1).: https://www.wto.org/english/docs_e/legal_e/25-safeg_e.htm

⁷ See WTO Agreement on Safeguards: https://www.wto.org/english/docs_e/legal_e/25-safeg.pdf

⁸ See WTO Agreement on Subsidies and Countervailing Measures: https://www.wto.org/english/docs_e/legal_e/24-scm.pdf

countries can export their goods to another country (WTO Member State), potentially resulting in unfair competition. Countervailing measures can be used to counter the harmful impacts on domestic producers stemming from subsidies paid by other countries. The key difference between subsidies (and countervailing action), and anti-dumping, is that the former results from the action of governments or government agencies whereas the latter results from the actions of companies; both can result in injuries suffered by domestic producers and competitors.

Countries can act on subsidies paid in another country that are 'specific' ⁹. A specific subsidy is one that results in a distorted resource allocation and is specifically provided to an enterprise, or industry, or a group of enterprises or industries. Subsidies that are commonly and widely available to a country's economy are not 'specific' and do not distort normal resource allocation and are therefore not included in SCM Agreement principles.

A subsidy must meet three criteria: there must be a financial contribution, the contribution must be by a government or public body, and be income or price support that results in a benefit being conferred. The two general types of subsidies are *prohibited* and *actionable* subsidies.

Prohibited subsidies are dependent on certain conditions, for example export performance (export subsidies) or require the use of certain shares of local content (local content subsidies). Actionable subsidies are specific to an enterprise (or industry), or otherwise limited in their geographic application, and while not prohibited can be challenged through the multilateral WTO framework (dispute settlement processes) and related national action (the imposition of countervailing duties by countries on the imports from the relevant country concerned).

⁹ See WTO, Trade Topics: Agreement on Subsidies and Countervailing Measures:
https://www.wto.org/english/tratop_e/scm_e/subs_e.htm

WTO regulations permit Member States to impose countervailing duties for a number of years (initially for five years, and renewable); such special tariffs need not be in sectors impacted by the subsidy but can be levied against any product exported by the other party. This usually follows a determination made by the WTO Dispute Settlement Body, as happened in 2019 and 2020 in the Boeing and Airbus cases.

Type of remedy and associated WTO Agreement	
SAFEGUARD MEASURES WTO Agreement on Safeguards [ASG] Art. XIX of GATT	<ul style="list-style-type: none"> Safeguard measures relate to scenarios whereby a product is being imported into a country in such increased quantities ('surges'), or the share of imports relative to domestic production increases so significantly, that it causes, or threatens to cause, serious injury to the domestic industry producing "like or directly competitive" products. Safeguards, where justified after an investigation, must be imposed on a MFN (i.e. non-discriminatory) basis Remedies: Duties, quotas or tariff quotas, notified to WTO and for up to 8 (10) years; subject to compensation.
COUNTERVAILING MEASURES WTO Agreement on Subsidies and Countervailing Measures [SCM] Art. XVI of GATT	<ul style="list-style-type: none"> The SCM disciplines the use of subsidies, as well as the use of countervailing measures that are used to offset any injury caused by subsidised imports. Subsidies are financial contributions (or other measures) paid for by governments (the exporting country) that result in a lower-priced and therefore more competitive good in the importing country. Developing countries and LDCs receive greater leniency through 'de minimis' and 'negligible import volume' thresholds Remedies: (Special) duties against imports from the subsidising country, for 5 years (renewable).
ANTI-DUMPING MEASURES WTO Anti-Dumping Agreement [ADA] Art. VI of GATT	<ul style="list-style-type: none"> Dumping arises when an exporter sells a product into a foreign market at a lower price ('export price') than that product (or a like product) would be sold by that exporter in the domestic market ('normal value'). The ADA permits member states to impose anti-dumping measures when a determination is made that (a) confirms dumping, that (b) material injury is suffered by the domestic industry and (c) causality between the two can be established. Remedies: Anti-dumping duties on specific products for 5 years (renewable).
Financial Contribution in context of subsidy <ul style="list-style-type: none"> Direct transfers of funds such as loans, grants, and equity infusions, such as potential transfers of funds of liabilities e.g. loan guarantees; revenue that is due and foregone or not collected, e.g. through fiscal incentives; The provision of goods or services (other than general infrastructure) or the purchase of goods; and Any form of income or price support in the sense of Article XVI (Subsidies) of GATT 	Countervailable subsidies <ul style="list-style-type: none"> Countervailing duties may only be applied against countervailable subsidies: Export subsidies Import substitution subsidies Actionable (specific) subsidies that are limited, in law or fact, to a limited number of enterprises, industries or regions
Definition of a subsidy A financial contribution by a government or public body, or income or price support, resulting in a benefit conferred <i>WTO Subsidies and Countervailing Measures Agreement</i>	
Prohibited Subsidy: Subsidies that require recipients to meet certain export targets, or to use domestic goods instead of imported goods.	Actionable Subsidy: A subsidy that is specific to one or a limited number of enterprises or industries, or is limited in geographical application.

Graphics by author¹⁰

¹⁰ Naumann, E. (2020). South Africa's re-designation as a 'developed country' in United States trade remedies legislation and investigations: possible impacts and consequences. tralac Working Paper No. US20WP02/2020. Stellenbosch: tralac

3. Broad timeline of the aircraft dispute

The competition between the two biggest producers of “large civil aircraft”, Boeing and Airbus, has been an ongoing matter for a long time. Founded in the US State of Washington in 1916, Boeing¹¹ is currently the second largest aircraft manufacturer after Airbus, the Toulouse, France based European company with production sites in various European countries. Airbus was formed much later than Boeing, in 1970, albeit as a consortium of various independent aviation firms based in France and Germany, and later in Spain and Britain. There were France's Aerospatiale, Germany's Deutsche Airbus, Spain's CASA and Britain's British Aerospace; the integrated Airbus company would later consist of the European Aeronautic Defence and Space Company (EADS) and British firm BAE Systems, with 80% and 20% holdings respectively¹².

The dispute between the two companies formally began in 2004, when the US sought discussions with the Airbus host nations on the subject of alleged unfair subsidies that Airbus received through preferential government loans. More specifically, the support was alleged to involve special launch aid / Member State financing (financing towards design and development paid to Airbus companies), preferential investment bank loans, infrastructure-related measures, corporate restructuring measures (including debt forgiveness), and research and development funding¹³. At about the same time, the EU filed its own complaint¹⁴ against the US at the WTO about government aid that Boeing received. Consultations on both disputes were requested through the WTO^{15,16} on **6 October 2004** when the respective parties first complaints were filed, and panels established the following year after bilateral negotiations between the respective complainants failed.

¹¹ See Wikipedia entry: [Internet:] <https://en.wikipedia.org/wiki/Boeing>

¹² See timeline: [Internet:] <http://www.airbus.com/company/history/the-timeline/>

¹³ WTO (date unknown). ‘EC and certain Member States – Large Civil Aircraft (DS316). Summary [Internet:] https://www.wto.org/english/tratop_e/dispu_e/cases_e/1pagesum_e/ds316sum_e.pdf

¹⁴ WTO. DS317: United States — Measures Affecting Trade in Large Civil Aircraft [Internet:] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds317_e.htm

¹⁵ WTO (2004). Dispute Settlement DS316: ‘European Communities and Certain member States — Measures Affecting Trade in Large Civil Aircraft’. [Internet:] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds316_e.htm

¹⁶ WTO (2004). Dispute Settlement DS317: ‘United States — Measures Affecting Trade in Large Civil Aircraft’. [Internet:] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds317_e.htm

Over the next years, an additional complaint was filed by the EU¹⁷ and the existing complaints were updated. Initial panel reports of the Dispute Settlement Body were circulated in 2010 and 2011 respectively, with the respondent parties filing appeals, which substantially extended the timeline of the associated process. In the case of the US complaint relating to Airbus, for example, an initial finding by the WTO found in favour of the US with respect to a number of issues raised; this finding was appealed (but the appeal was lost), and the EU was given until the end of 2010 to implement the findings of the panel report. However, aspects of the original complaint were suspended when the appellate body drops its finding that certain of the loans extended to Airbus fell into the 'prohibited' category. The EU was required to undertake certain remedial action to address the root of the US complaint; the US then moved the case to arbitration under the framework of the WTO Dispute Settlement Undertaking (Article 22.6) when it felt that the EU was not implementing the relevant findings.

In the meantime, the WTO found in favour of the EU in its own complaint against the US relating to subsidies being paid to Boeing. Many of the subsequent stages in the dispute timeline involving Boeing broadly mirrored those of the Airbus dispute. A finding in favour of the EU triggered an implementation timeline, with the US providing an undertaking that it would implement the recommendations and rulings of the Dispute Settlement Body. Accordingly, at the end of the 6 month period, the US confirmed the "*withdrawal of subsidies and removal of adverse effects in this dispute*"¹⁸. The EU immediately requested the formation of a compliance panel; the work of this panel took some 5 years (2012 to 2017), and when its findings were circulated among WTO members, the EU notified the Dispute Settlement Body that it intended to appeal certain issues of law and interpretation.

While a detailed account of each of the legal stages of the dispute process is beyond the scope of this Working Paper, the Dispute Settlement Body adopted the Appellate Body report in 2019. In the meantime, legal and procedural processes on the scale of the trade remedies also concluded. The Arbitrator determined that countermeasures to the value of just under \$4 billion per year would be permissible on the part of the EU, by way of a suspension of certain concessions under GATT (i.e. a deviation from the MFN principle, allowing the EU to raise special tariffs on US imports), a suspension

¹⁷ WTO (2005). DS353: United States — Measures Affecting Trade in Large Civil Aircraft - Second Complaint [Internet: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds353_e.htm]

¹⁸ Ibid.

of certain concessions and obligations under the WTO Subsidies and Countervailing Duties Agreement, as well as a suspension of certain commitments under the General Agreement on Trade in Services (GATS). This authority was granted to the EU on **26 October 2020**.

On the Airbus matter, in the meantime, arbitration proceedings concluded in **October 2019**. These proceedings had been suspended for a few years to allow for consultations around whether the EU had complied with the findings of the Dispute Settlement Body. In 2011, being of the view that the EU had failed to implement the Dispute Settlement Body's recommendations and rulings (just like the EU felt about the US implementation in the Boeing dispute), the US had requested to take countermeasures covering trade of \$7.5 billion annually, in the form of a suspension of tariff obligations under GATT rules, and also the suspension of certain services.

The Dispute Settlement Body of the WTO authorised this suspension of concessions on **14 October 2019**. In terms of the EU's alleged non-compliance with the recommendations of the Dispute Settlement Body, the Arbitration panel confirmed non-compliance in this matter and thereby rendered the earlier rulings operative. The EU notified that it would appeal certain findings of the compliance panel in December 2019. With this appeal pending, the EU informed the Dispute Settlement Body on **21 August 2020** that it had on its own accord amended certain loan agreements (essentially by bringing the financial terms in line with market benchmarks) despite these same issues forming part of the EU's earlier appeal.

Both the EU and the US have started applying tariff measures against each other; on **October 18, 2019** the US imposed special *additional*¹⁹ tariffs on EU imports of 10% (on non-military aircraft) and 25% (on a wide range of consumer goods) while on **10 November 2020**, the EU rolled out tariffs of 10-25% on certain imports from the US.

4. Enacting trade remedies: US action against EU's exports, timelines and substance

On **5 July 2019**, the US Office of the Trade Representative (the US equivalent to South Africa's trade ministry) gave notice of a hearing and request for public comments, along with an updated list of products being considered for special tariffs. According to the Federal Register notice of 12 April 2019,

¹⁹ These tariffs are in addition to any tariffs already in place. The respective tariff lines of the US tariff schedule are amended with the words "the duty provided in the applicable sub-heading + 25%".

which contained a list of products under consideration for additional tariffs, the “*appropriate action would include the imposition of additional ad valorem duties of up to 100 percent on products of the EU or certain member States*”²⁰.

The purpose of the hearing and request for comments, in consideration of the April notice, was stipulated as follows²¹:

-
- *The specific products in the additional list to be subject to increased duties;*
 - *the level of the increase, if any, in the rate of duty; and*
 - *whether increased duties on particular products on the additional list might have an adverse effect upon US stakeholders, including small businesses and consumers.*
-

Following these consultations, the US gave notice on 9 October 2019 of the list of products that would be subject to additional tariffs²² effective from **18 October 2019** onwards, for certain products originating in the EU.

While the more specific focus of this analysis is on wine products, and a detailed analysis of the many dozens of products impacted by higher US import tariffs (under the trade remedy measures taken) beyond the scope of this report, it should be noted that the US took a fairly differentiated approach in imposing new additional tariffs both in terms of product scope and country impact. Some tariffs are specific to the exports of only some European Member States while others apply more broadly; most are consumer products while others are industrial products with a much more direct link to aircraft.

²⁰ USTR (2019). Initiation of Investigation; Notice of Hearing and Request for Public Comments: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute Docket No. USTR–2019–0003]. [Internet:] <https://www.govinfo.gov/content/pkg/FR-2019-04-12/pdf/2019-07267.pdf>

²¹ USTR (2019). Notice of Hearing and Request for Public Comments: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute. [Docket No. USTR–2019–0003]. [Internet:] <https://www.govinfo.gov/content/pkg/FR-2019-07-05/pdf/2019-14352.pdf>

²² USTR (2019). Notice of Determination and Action Pursuant to Section 301: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute [Docket No. USTR–2019–0003]. [Internet:] <https://www.govinfo.gov/content/pkg/FR-2019-10-09/pdf/2019-22056.pdf>

New aircraft (other than military aircraft) of a weight exceeding 30 tons and produced in France, Germany, the UK and Spain (the 'home' countries of the Airbus consortium and linked to the adverse finding on actionable or illegal subsidies), received an additional duty of 10% ad valorem. In terms of the differentiated approach involving in other consumer goods, new tariffs in addition to existing tariffs on the respective products were imposed from the October date as follows (the aggregations below are broad summaries; the tariffs are narrowly defined by their respective HTS 8-digit sub-heading):

- **Most EU Member States (incl. UK): existing tariffs plus 25%**

Yoghurt, a wide range of cheeses, various fruit (including oranges, mandarins, clementines, cherries) and fruit juices, various seafood products (molluscs), various pork cuts

- **Germany, Spain, UK: existing tariff plus 25%**

Frozen pork, various cheese products, olives and olive oil.

- **Most EU Member States (incl. UK): existing tariffs plus 25%**

Yoghurt, a wide range of cheeses, various fruit (including oranges, mandarins, clementines, cherries) and fruit juices, various seafood products (molluscs), various pork cuts

- **Germany, UK: existing tariff plus 25%**

Biscuits, printed books, lithographs, photographs, certain machinery and power tools

- **Germany, Ireland, Italy, Spain, UK: existing tariff plus 25%**

Liqueurs and cordials, single malt Irish and Scotch whiskies, various clothing lines and household textiles

- **Germany: existing tariff plus 25%**

Coffee²³ (roasted, and instant coffee), tools (pliers, knives, metal cutting shears etc.), certain electric machinery

²³ Despite not growing any coffee, Germany is one of the largest coffee processors in the world, with various internationally recognized brands exported globally. Targeted tariffs such as these are likely to have significant impact, given trade volumes.

- *France, Germany, Spain, UK: existing tariff plus 25%*

Various categories of olives, and wine (not over 14%, in containers not over 2 litres) ²⁴

Following the initial imposition of additional tariffs on EU goods, the US amended and expanded the list of products subject to additional tariffs, effective **18 March 2020**²⁵. The revised list includes additional consumer products (for example, butchers or chopping knives from France and Germany).

Some of the previously included tariff lines receive higher additional duties, for example, aircraft imports from France, Germany, UK and Spain are now subject to an increased 15% additional duty (up from 10% additional duty previously). These additional tariffs however by and large apply to all EU Member States albeit there is some differentiation: in certain tariff lines, not all countries are directly impacted (in other words, some countries are excluded from these measures in certain tariff lines) while in others, individual countries are targeted .

On **18 August 2020**, the US again modified (albeit slightly) the list of tariff lines subject to additional duties of 25%, however leaving the level of additional duties intact. Revised duties on the expanded list of products became effective on 1 September 2020 and related mainly to certain jams and biscuits.

On **6 January 2021**, the US modified the list further, mainly to include additional wine categories previously excluded from the trade remedies. This action was triggered by events in Europe; as described in Section 3 above, the 'large civil aircraft dispute' that had been ongoing since 2004 involved parallel action, both by the US against the EU (pertaining to Airbus subsidies) and vice versa (pertaining to federal government support to Boeing). Both countries were successful in obtaining permission to take action against the other party's exports, and with this the EU announced measures against US exports effective **10 November 2020**; this after the WTO ruled on 13 October 2020 that the US may retaliate against illegal subsidies that had been provided to Boeing previously. These EU measures ranged from additional tariffs of 15 – 25% on certain US goods, covering an annual trade value of just

²⁴ Initially, as of the 18 October 2019 notice, only wine under 14% alcohol by volume, and in containers not over 2 litres (i.e., standard and magnum size bottles) were affected, as classified under HTS 2204.21.50; this was later broadened to other wine categories

²⁵ USTR (2020). Notice of Modification of Section 301 Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute [Docket No. USTR–2019–0003]. [Internet:] <https://www.govinfo.gov/content/pkg/FR-2020-02-21/pdf/2020-03454.pdf>

short of \$4 billion (as authorised by the outcome of the WTO Dispute Settlement Body).

While the issue was not so much about the measures *per se*, the US objected to certain aspects of the manner and related methodology in which the EU was taking action against US exports. Its objections centre on two key points: the baseline period used for calculating the trade value on which to base additional tariffs (the US contends that this period was impacted by the COVID-19 pandemic which suppressed trade volumes, and was thus not directly comparable to the methodology applied by the US in its action against the EU), and secondly that the EU did not include UK trade volumes in the calculation, which the US considers effectively inflates and over-values US exports to (the rest of) Europe and thus the related trade remedy action by the EU. Up until the UK's exit from the EU, US exports were therefore, albeit briefly, subject to higher duties. A lack of agreement on this issue between the parties (according to the US notification, it had expressed concern about these issues to the EU and had given the EU an opportunity to address them), which was declined²⁶.

In adding products to its list of trade remedies, the US specifically targeted exports from Germany and France, arguing²⁷ that “*these countries have provided the greatest level of WTO-inconsistent large civil aircraft subsidies.*” **New** tariffs of an additional 25% *ad valorem*, effective 12 January 2021, were levied against the following German and French originating wine products (and certain spirits) entering the US.

5. US imports of wine from Europe and South Africa

5.1 Trade performance and trends

In applying trade measures against certain EU imports, the US included one wine tariff line from the outset, effective 18 October 2019. This related to wine in containers not over 2 litres and with an alcohol content of not over 14%, and would thus cover the majority of wine imports from the EU, in particular from the wine-producing countries concerned. Any wine produced in France, Germany, Spain and the UK and imported into the US would therefore have attracted an import duty of 6.3c (US) per litre, and

²⁶ Federal Register (2021). Notice of Revision of Section 301 Action: Enforcement of U.S. WTO Rights in Large Civil Aircraft Dispute. Supplementary Information. [Internet:] <https://www.federalregister.gov/documents/2021/01/06/2020-29225/notice-of-revision-of-section-301-action-enforcement-of-us-wto-rights-in-large-civil-aircraft>

²⁷ Ibid.

additionally, an ad valorem duty of 25%.

Table 1. Wine subject to additional 25% duties during the initial trade remedy action (when originating in France, Germany, UK, Spain)

HTS Tariff Code	Additional Duty	GSP status	MFN tariff	Description
2204.21.50	+25%	A+	6.3c / liter	Wine other than Tokay (not carbonated), not over 14% alcohol, in containers not over 2 litres

Source: USITC Tariff database

Following the imposition of new trade measures effective 12 January 2021, 11 more wine tariff lines (see following table) also became subject to the additional 25% duty charge, over and above the applicable MFN rate given that trade between the parties is under general WTO MFN disciplines. These additional categories includes all wine in containers larger than the initial 2 litre cut-off, and also includes wine in the >14% alcohol categories.

The US trade administration had previously warned, in July 2020, that France would be subject to additional duties on French champagne, cosmetics and handbags, but this did not materialise following last-minute 'agreement' on French digital services taxes that would impact large US tech companies.

Table 2. New additional tariffs on wine and related products effective 12 January 2021 (when originating in France and Germany)

HTS Tariff Code	Additional Duty	GSP status	MFN tariff	Description
2204.21.20	+25%	A+	19.8c / liter	Effervescent grape wine, in containers holding 2 litres or less
2204.21.30	+25%	A	6.3c / liter	Tokay wine (not carbonated) not over 14% alcohol, in containers not over 2 litres
2204.21.60	+25%	A	5.3c / liter	Marsala wine, over 14% vol. alcohol, in containers holding 2 litres or less
2204.21.80	+25%	A	16.9c / liter	Grape wine, other than Marsala, not sparkling or effervescent, over 14% vol. alcohol, in containers holding 2 litres or less

HTS Tariff Code	Additional Duty	GSP status	MFN tariff	Description
2204.22.20	+25%	A+	8.4c / liter	Wine of fresh grapes, other than sparkling wine, of an alcoholic strength by volume ≤14% in containers holding over 2 litres but not over 4 litres
2204.22.40	+25%	A+	22.4c / liter	Wine of fresh grapes, other than sparkling wine, of an alcoholic strength by volume >14% in containers holding over 2 litres but not over 4 litres
2204.22.60	+25%	A+	14c / liter	Wine of fresh grapes, other than sparkling wine, of an alcoholic strength by volume ≤14% in containers holding over 4 litres but not over 10 litres
2204.22.80	+25%	A+	22.4c / liter	Wine of fresh grapes, other than sparkling wine, of an alcoholic strength by volume >14% in containers holding over 4 litres but not over 10 litres
2204.29.61	+25%	A+	14c / liter	Wine of fresh grapes, other than sparkling wine, of an alcoholic strength by volume ≤14% in containers holding >10 litres
2204.29.81	+25%	A+	22.4c / liter	Wine of fresh grapes, other than sparkling wine, of an alcoholic strength by volume >14% in containers holding >10 litres
2204.30.00	+25%	A+	4.4c / liter + 31.4c / pf. liter	Grape must, nesoi, in fermentation or with fermentation arrested otherwise than by addition of alcohol * pf. Liter = Proof Liter. A liter of liquid at 15.56°C which contains 50 percent (100 proof) by volume of ethyl alcohol
GSP categories: A = all GSP beneficiaries; A+ Lesser developed beneficiaries only; A* = certain GSP countries are ineligible				

Source: USITC Tariff database

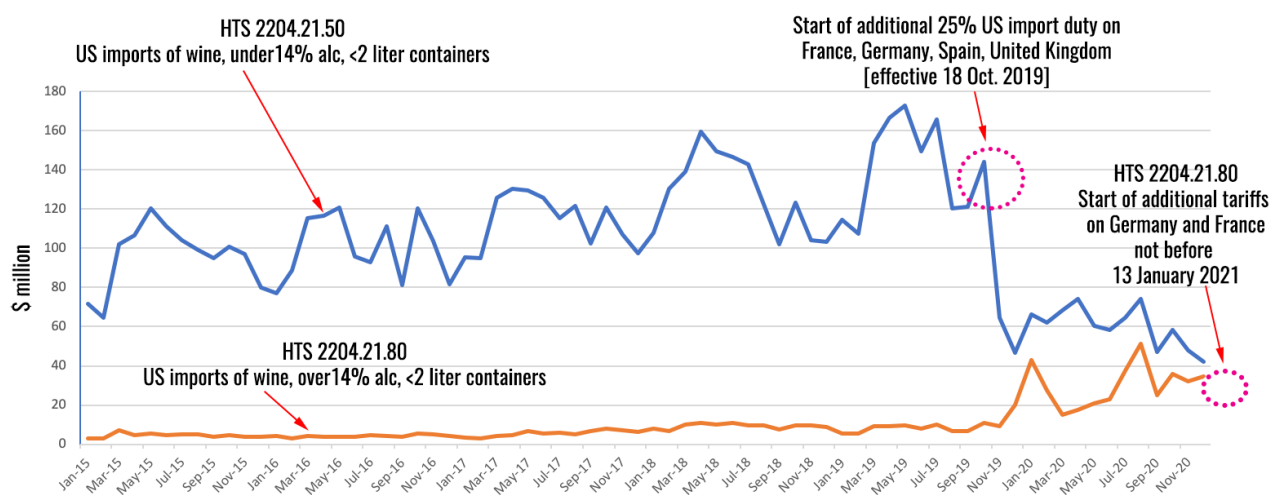
The broadening in scope of US tariffs on wine from grape wine with an alcohol content of 14% or less, in containers of 2 litres or less, to henceforth include most other wine categories, represents a significant shift by the US and substantially broadens the measures taken against France and Germany in particular. This raises the landed cost of European wine by a large measure and, in contrast, makes wine sourced from other countries relatively more competitive, by some margin. This is particularly so for countries that have preferential access to the US market, such as South Africa, which currently enjoys duty-free access to the US for most products originating in South Africa.

A review of US import data for wine in containers of under 2 litres, containing less than 14% (HTS

2204.21.50) and more than 14% (HTS 2204.21.80) alcohol respectively, reveals an interesting trend. The former received additional tariffs mid-October 2019, immediately resulting in a sharp decline in imports from France, Germany, Spain and the UK. In fact, monthly imports of HTS2204.21.50 dropped from \$144m in October 2019 (the month in which additional duties were announced and implemented, giving importers little chance of changing orders), to \$64m in November and \$46m in December 2019. A similar seasonal decline was not noted in the previous year.

In contrast, imports of wine in the >14% alcohol category, from the same four countries, had been averaging just over \$8m per month in the period January to November 2019, but then rose to \$20m and \$43m in December 2019 and January 2020 respectively. Aggregate 2020 imports rose more than three-fold from \$111m in 2019 to \$364m in 2020. In contrast, wine <14% alcohol which was subject to additional tariffs from mid-October 2019 recorded \$724m in US imports (from the four European countries concerned), compared to more than twice that (\$1,527m) through 2019.

Fig 1. US imports of wine in select tariff lines (monthly data)



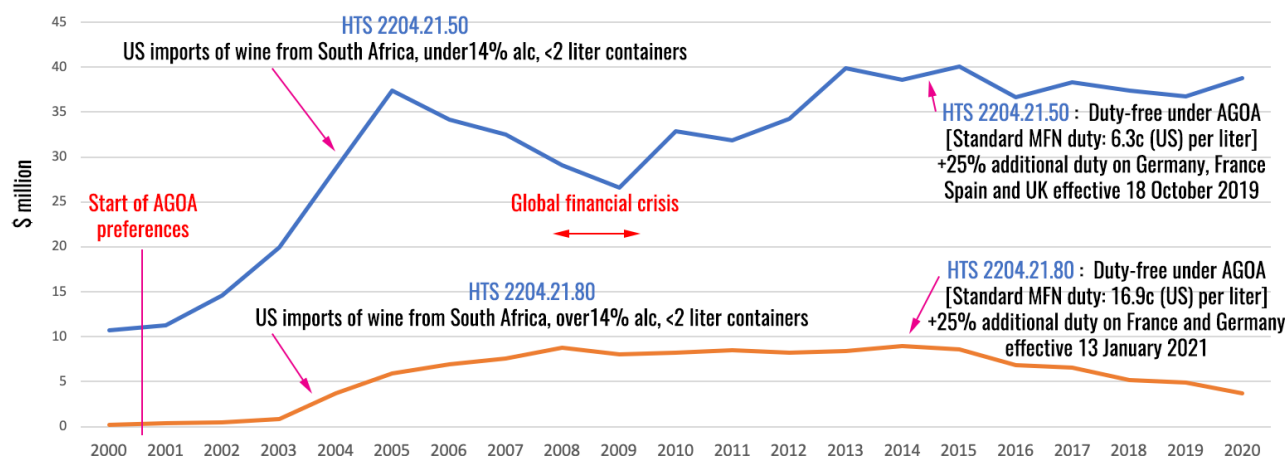
Source: US Dataweb database, author's projection

This shows that the tariffs had a marked impact on US imports in the category subject to additional tariffs (wine =<14% alcohol), while wine >14% alcohol saw a three-fold increase. This is not to suggest possible issues with incorrect import classification of wines to avoid higher duties (although this remains an international problem in a number of sectors), but would (possibly) indicate a deliberate change in imported products and consumer preferences (likely brought about by the significant price changes). It

may also suggest a consumer change in demand to similar category wine from other sources, likely including from domestic US producers, although the trade data is not conclusive on this (see table further below).

US imports of wine from South Africa in containers under 2 litres, in the <14% alcohol and >14% alcohol categories, are illustrated below. A number of trends become evident, including how South African wine in the **=<14% alcohol category** accounts for a much greater share of US imports than wine in the **> 14% alcohol category**. More specifically, in 2020 this represented a difference by a factor of ten (\$38.8m versus \$3.75m). It is also clear that imports from South Africa expanded rapidly in the early 2000s, in terms of market access likely the result of a combination of the duty-free market access that South African producers enjoyed to the US market under the African Growth and Opportunity Act (AGOA), applicable to both tariff lines mapped below, but also (at the time) the significant exchange rate devaluation of the South African currency against the US\$. This alone made South African wine a particularly attractive proposition, combined of course with the quality and overall value that South African wine producers could offer US buyers.

Fig. 2 US imports of wine from South Africa (annual data)



Source: US Dataweb database, author's projection

Towards the end of the 2000s, imports from South Africa declined significantly, driven at least in part by the appreciation (against the US\$) of the South African currency which raised the landed cost of wine in the US, but also lower demand due to the global financial crisis at the time, which had a cooling effect on international trade more broadly. While wine imports from South Africa recovered, the strong

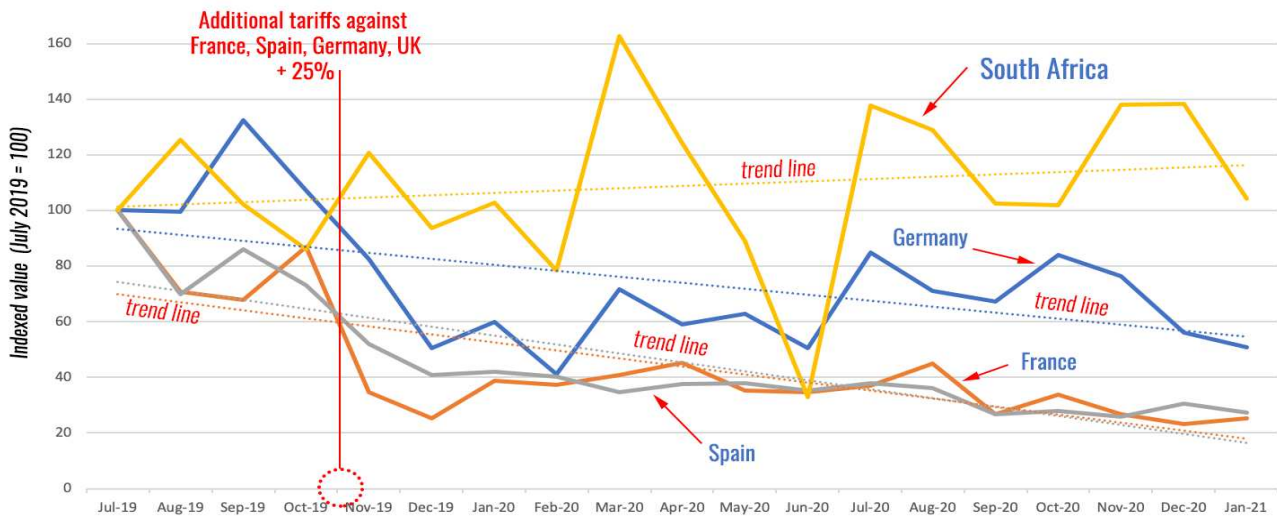
growth seen previously was not replicated and overall exports in these two categories have remained relatively constant over the past decade (for example: combined US imports from South Africa in these two tariff lines in 2011 were \$40.4m and \$42.5m almost a decade later, in 2020).

Meanwhile, a review of recent US imports of wine in HTS2204.21.50 (<14% alcohol, under 2 litres) is revealing in terms of the impact of the additional 25% duties on some of its main sources of imports. Italy is the largest supplier to the US in recent years, followed closely by France. With Italy excluded from the additional 25% duties effective mid-October 2019, France has been the largest casualty and the affected wine imports from this country declined by 53% from 2019 to 2020.

Likewise, Spain and Germany saw declines of 58% and 33% respectively in the affected wine tariff category. The UK, in any case never in the list of top 10 below, saw wine trade in the affected tariff line decline by 98% from \$15.6m in 2019 to \$0.3m in 2020. At the same time, it dropped from 13th position to 38th position as a source of US imports.

The following chart compares US imports of HTS2204.21.50 from France, Spain, Germany and South Africa, the latter not impacted by the additional 25% tariff, from mid-2019 to the present. The data was indexed in order to present a relative overview, and linear trend lines were added to show the direction since this mid-2019 starting date (i.e. shortly before the imposition of duties), given also that the data used is monthly data. This means that the absolute values are not reflected: for example, in 2019 France accounted for 30% of US imports in this tariff line, and South Africa less than 1%. For illustrative purposes, the UK is left off this list of indexed imports as very little wine is sourced by the US in this specific tariff line, with large swings in the data. The decline in imports from the affected European countries following the imposition of the tariffs is almost immediate. In contrast, South Africa's exports in this tariff line increased slightly.

Fig. 3 US imports of wine in HTS 2204.21.50 (monthly data, indexed values)



Source: US Dataweb database, author's projection

The overall decline in US imports from 2019 to 2020 was 21% in tariff line **HTS2204.21.50**, clearly attributable by and large to the impact of the special additional tariffs. The following table refers, listing the top 10 suppliers (in 2020) of wine in this tariff line, along with recent exports to the US, and the percentage change 2019 to 2020 respectively. Impacts from other variables, especially related to the Covid pandemic (and possible changes in demand, new logistical challenges and so forth) cannot be excluded, although 2019 US imports (unaffected by the pandemic) were already slightly lower than the previous year. If one excludes the affected supplier countries in the calculation (i.e. those subject to the additional 25% duty on HTS2204.21.50), then the year-on-year decline in imports is only 1%. Amongst the leading suppliers to the US not directly impacted by the special duty, New Zealand has seen growth of over 6% from 2019 (the country was already on a growth trajectory), Portugal (+11.5%) and South Africa (+5.5%).

Table 3. Top 10 suppliers to the United States of grape wine <14% alc, in containers <2 litres
(HTS2204.21.50)

Supplier Country to United States	\$ million 2018	\$ million 2019	\$ million 2020	2019 - 2020 YoY % change
Italy	1371	1306	1299	-0.56%
France	1222	1232	584	-52.63%
New Zealand	358	390	415	6.38%
Australia	253	249	239	-3.99%
Argentina	229	210	196	-6.97%
Chile	162	138	133	-3.98%
Spain	197	190	80	-57.85%
Portugal	54	57	64	11.49%
Germany	96	89	60	-32.59%
South Africa	37.4	36.7	38.8	5.53%
TOTAL	4089	4015	3188	-21%
TOTAL excl. France, Spain, Germany, UK	2558	2488	2464	-1%

Source: US Dataweb database (2021)

The following two pie charts (for the years 2019 and 2020 respectively) map US imports in the wine tariff classifications affected (or potentially affected) by additional US tariffs, effective October 2019 and January 2021, where these each accounted for at least 0.5% of combined US imports in their respective categories. In other words, of the 12 wine tariff lines potentially impacted by additional trade remedy tariffs, only five accounted for more than 0.5% of the combined total trade value. The purpose of this is to provide some context of the magnitude of US imports of wine, to track changes from 2019 to 2020 (when some of the leading global suppliers were impacted in the 'dominant' tariff line classification), and to reveal some details on relative category changes in US wine imports.

The most obvious of these changes is that 2020 saw a major decline in tariff-affected trade, but also, that there was a significant increase in trade in HTS2204.21.80, which is wine > 14% alcohol by volume, which on the one hand may simply be a result of changing consumer demand and buying choices

towards different imported wines (with these having become relatively less expensive). There was also a significant percentage increase of US imports of bulk wine (11% and 20% for the <14% and >14% alcohol categories, in containers >10 litres), albeit this is off a much lower base. These categories remained unconstrained until January 2021, thus no impacts are reflected in the data apart from those brought about by standard MFN tariffs.

Fig 3. 2019 US wine imports in certain tariff lines

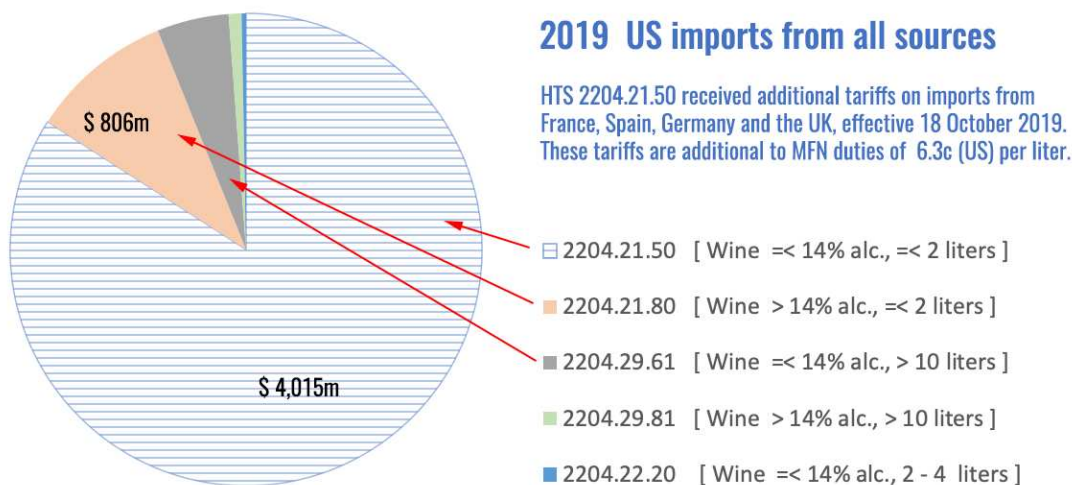
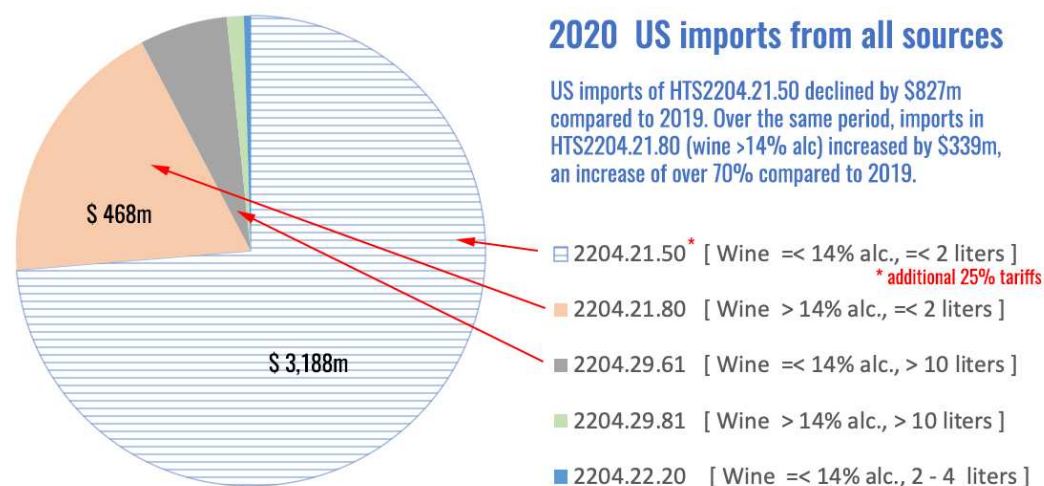


Fig 4. 2020 US wine imports in certain tariff lines



In terms of US imports of wine in the HTS2204.21.80 tariff line (>14% alcohol, in containers of 2 litres or less), which saw a 70% increase in 2020 compared to 2019 (as noted in the graphic above), the data

also reveals that imports from France increased more than three-fold, and France's share of the US import share went from 23% in 2019 to 78% one year later in 2020 (from \$108m in both 2018 and 2019, to \$362m in 2020).

Imports from Spain, another country subject to higher tariffs on the $\leq 14\%$ alcohol category, also increased more than two-fold, from \$63m to \$146m in this 'unconstrained' category (and its share of the total rose from 13% to 18%). In contrast, imports from Italy, the third largest US supplier in this category and not subject to additional tariffs, increased only slightly while its relative share of the total declined from 28% to 18%.

5.2 (Underutilised) opportunities for South Africa?

The previous analysis has provided some insight into US wine imports, the nature of the additional import tariffs on certain wine resulting from the 'large civil aircraft dispute' against Europe, and the impact that these measures appear to be having on US imports from the countries concerned. While overall US imports within the initial category subject to additional tariffs i.e. wine with $\leq 14\%$ alcohol in containers 2 litres or less, have declined by 21% between 2019 and 2020 (*see Table 3 above*), the decline in imports from countries not impacted by the additional tariffs has been only 1% overall (with much of 2020 also impacted by challenges from the pandemic).

The sudden increase in imports of wine in the higher alcohol category ($>14\%$ by volume) is likely a result of the higher special tariffs and to some extent may represent an intra-country substitution of product (i.e. a substitution of European wine in favour of US produced wine), and in terms of timing almost perfectly correlated with the decline in cleared imports of $\leq 14\%$ wine, but (this) could potentially also point to classification issues. The jump in imports of higher alcohol classification wine from France, leading to a more than three-fold increase in the share of the US import market to 78%, remains a noteworthy change noted in 2020 compared to the previous year, and undoubtedly is a direct result of the additional tariffs applicable to the lower-alcohol equivalent category. However, this category was much later added to the list of products subject to additional 25% import duties into the US, effective 13 January 2021.

South Africa still accounts for a relatively small share of the US import market, in both the $\leq 14\%$ and $>14\%$, 2 litre containers or less categories (HTS 2204.21.50 and HTS 2204.21.80 respectively), where

South Africa's share of the US import market was 1.2% and 0.5% respectively for 2020 (within these specific tariff lines). This is despite the fact that South Africa is consistently one of the top 10 wine producers globally; in terms of US wine exports and the attractive duty-free market preferences available, South Africa clearly appears to be "boxing well below its weight class". This nominal mismatch between national wine production, and exports to the US, becomes clear when one contrasts national production volumes with US trade (exports to the US); the table below provides an overview of the leading wine producers globally.

The value of US imports from South Africa, of wine in the category that received additional duties against some European imports, did rise in 2020 compared to the previous year, possibly also as a result of the relative preference advantage that South African exporters enjoy. However, this must also be seen in the context of (US) wine trade with South Africa in the higher alcohol category (in containers of 2 litres and less, i.e. excluding bulk wine) declining over this period, and SAWIS data (see more on this data in the next section) which shows that packaged wine export volumes by South Africa to the US declined somewhat in the March 2020-February 2021 period. This would make any assertion that South Africa has made significant inroads into the US market due to other countries' tariff barriers unconvincing.

New Zealand, for example, produced 3 hl. of wine in 2018 (and hence is not listed in the below table, where it would otherwise be ranked 16th), which is less than one third of South Africa's production. Yet, in 2020 the US imported more than ten times the value of wine of tariff category HTS2204.21.50 (= <14% alcohol, in containers of 2 litres or less) from New Zealand compared to its imports from South Africa; US imports from New Zealand were worth \$414m compared to those from South Africa of \$39m (see *Table 3*). Imports from New Zealand do not receive special preferences either, unlike what South African products obtain through the African Growth and Opportunity Act (AGOA) provisions (i.e. 0% import duty). The contrast with supplies from Italy is even more stark: the country has wine production output that is between 5 to 6 times that of South Africa's, but the US imported more than 30 times (by value) in this category from Italy, compared to its imports from South Africa.

The US is the world's largest consumer of wine (see *Table 6 below*), and while much of the market might be satisfied from local sources, trade volumes are indicative of the potential of this major consumer market. From South Africa's perspective, one key difference between the US and the European market,

for example, would be that the EU has some of the world's largest producer countries, but per the statistics below, the world's three leading producers (all in Europe) consume far less than they produce. South Africa does enjoy preferential access to the European market too, under the bilateral SADC-EU Economic Partnership Agreement (EPA), but some agricultural exports including wine are subject to tariff rate quotas, which potentially limits an unconstrained expansion of duty-free access for South Africa's wine exports.

Table 4. Major global wine producers (2016-2018)

Major wine producers (top 10)	Hectolitre (hl)	hl	hl	Variation 2017 – 2018
	2016	2017	2018	
Italy	50.9	42.5	54.8	29%
France	45.3	36.3	48.6	34%
Spain	39.7	32.5	44.4	37%
USA	23.7	23.3	23.9	2%
Argentina	9.4	11.8	14.5	23%
Chile	10.1	9.5	12.9	36%
Australia	13.1	13.7	12.9	-6%
Germany	9	7.5	10.3	38%
South Africa	10.5	10.8	9.5	-12%
China	13.2	11.6	9.1	-22%

Source: 2019 Statistical report on world vitiviniculture²⁸

²⁸ OIV (2019). International Organisation of Vine and Wine Intergovernmental Organisation. 2019 Statistical Report on World Viniviticulture [Internet:] <https://www.oiv.int/public/medias/6782/oiv-2019-statistical-report-on-world-vitiviniculture.pdf>

Table 5. Major global wine consumers (2016-2018)

Major wine consumers (top 5)	Hectolitre (hl)	hl	hl	Variation 2017 – 2018
	2016	2017	2018	
USA	31.7	32.6	33	1.2%
France	27.1	27	26.8	-0.7%
Italy	22.4	22.6	22.4	-0.9%
Germany	20.2	19.7	20	1.5%
China	19.2	19.3	17.6	-8.8%

Source: 2019 Statistical report on world vitiviniculture²⁹

Of course, import trends and export success for consumer products such as wine depend fundamentally on consumer choice and consumer preferences, which translate into demand and consumption. This analysis does not seek to pass a qualitative value judgment on South Africa's wines, or those of any competitor country, suffice to state that South Africa's is a leading producer of quality wines among New World producers and readily holds its own amongst the best, both in quality and as an overall value proposition, despite much global competition.

The country's distance from major international consumer markets is a challenge, as are agricultural standards (sanitary and phytosanitary requirements, etc.) in export markets, but these are similar challenges to those faced by a number of competitor countries with respect to the US market. However, South Africa retains duty-free status on most wine categories into the US market, under the terms of AGOA. Wine is also duty-free under the US GSP (and therefore has AGOA status) but this generally applies only to countries with LDC development status (the US GSP adds the A+ denominator for HTS2204.21.50 in the US tariff schedule, restricting its preference status to LDC countries and qualifying AGOA beneficiaries).

The respective GSP status of wine tariff lines is listed earlier in Table 2; while GSP products are by extension included in the AGOA categorisation (irrespective of the category of GSP status), AGOA is a time-bound preference scheme and is currently set to expire towards the end of 2025 (and South Africa

²⁹ OIV (2019). International Organisation of Vine and Wine Intergovernmental Organisation. 2019 Statistical Report on World Viniviticulture [Internet: <https://www.oiv.int/public/medias/6782/oiv-2019-statistical-report-on-world-vitiviniculture.pdf>

would not automatically qualify for preferential status in all tariff lines under the GSP). Similarly, the GSP is subject to periodic renewal, which often does not happen prior to the expiry of the GSP (tariff preferences are then usually applied retrospectively once the program is renewed). In fact, the US GSP expired at the end of 2020 and is yet to be renewed (competitor countries normally using GSP preferences now have to export to the US under MFN or even the much higher non-WTO rates that the US applies).

Other factors, such as the general value proposition of South African wine exports (in spite of this clearly being a competitive and generally price-driven sector), should nevertheless continue to make South African wine an attractive choice in markets such as the US. South African wine is of course already widely available in most parts of the US, where it competes with local wine as well as imports from the rest of the world, but changing market conditions (and competitiveness factors and associated uncertainty impacting other suppliers to the US) are indicative of new opportunities and potentially vast untapped potential for South African wine in this export destination. A generally favourable exchange rate adds South African wine's attraction in many key international markets.

Among the leading consumer markets globally, the US has increased its consumption of wine in recent years, while other major markets such as France, Italy, Germany, and the UK have remained stable or decreased their consumption. Apart from factors such as the quality of South African wine generally, and a favourable exchange rate, key market access issues pertaining to the large US market specifically, include:

- *South African wine qualifies for **duty-free status** import in the US under the provisions of **AGOA***
- *South Africa is not subject to the special **25% tariffs** as applied by the US against wine from France, Spain, Germany and the UK (together forming the bulk of US foreign sourcing) in the context of retaliatory action under the aircraft dispute remedies*
- *South Africa is **not a party** to the trade disputes or similar currently contentious trade-related issues between the US and Europe (whether relating to civil aircraft, or proposed taxes on digital services etc.) and may thus be less vulnerable to the uncertainties and business risks associated with WTO disputes and trade remedies (on wine and other products).*

In the context of South Africa's preference status for wine exports to the US, the following factors

should be borne in mind:

- *South Africa is a beneficiary of the US GSP scheme, and also qualifies for AGOA preferences, the latter which are currently set to expire on 30 September 2025, unless renewed by Congress*
- *The US GSP is subject to periodic reauthorisation; on 31 December 2020 the most recent authorisation expired and no GSP preferences are currently available pending reauthorisation by the US Congress (this does not affect South Africa, which continues to receive GSP / AGOA preferences irrespective of GSP re-authorisation status)*
- *In the absence of AGOA, which permits duty-free wine imports from South Africa, preferences to a country such as South Africa would only apply to certain tariff lines (see Table 2) – tariff lines with general GSP status (denoted 'A'), as per the following point*
- *GSP tariff lines with general applicability (i.e. relevant to South Africa in the absence of AGOA) is limited to 'wine > 14% alcohol in containers of 2 litres and less', as well as Tokay and Marsala wine (types of fortified wine originally from the Sicily region in Italy and Hungary respectively, and thus not commercially relevant to South Africa's exports)*
- *Essentially, only the higher-alcohol grape wine category (>14% alcohol, in containers of 2 litres or less) would receive GSP preference status when imported into the US from South Africa*
- *South Africa is (still) officially subject to a GSP eligibility review, which was activated following complaints about South Africa's proposed intellectual (IP) property legislation overhaul. An 'adverse' outcome of this review could have threatened South Africa's GSP and AGOA eligibility status. The US from time to time changes the GSP country list, most recently impacting Turkey (full exclusion) and Thailand (partial exclusion). The South African president, in June 2020, sent the relevant IP legislation back to parliament which for now has substantially eased US concerns on this matter, which could have negatively impacted trade flows (a loss in preferences would mean that South Africa's access to the US market would be on the basis of WTO MFN relations and not on a preferential basis)*

- *South Africa does not have a bilateral preferential trade agreement with the US; wine is typically included as a duty-free 'sector' in most US preferential trade agreements³⁰. Should the country (or customs union, or a wider regional country configuration) decide to conclude a reciprocal trade agreement with the US, then wine would likely enjoy permanent preference status*

Given the size of the US market, and the preferential market access status that South Africa enjoys, this should automatically make the US market one that is considered a high priority destination for South African exporters. South Africa's export data³¹ however would seem to suggest otherwise; in 2020, only approximately 6% of South Africa's wine exports were sent to the US. Instead, 60% went to the EU (mainly the UK, Germany and the Netherlands), 15% to Africa, 9% to Asian countries, and so on.

The current dynamics around access to the US market, and the wider impacts of international trade disputes both on the countries involved and often in unrelated third countries, remain complex and the situation relatively fluid. While these issues are playing out, it is worth also briefly casting an eye in an easterly direction where politics, public health and economics are having an impact on Australia's trade relationship with its most important wine export destination, namely China.

Asian countries buy roughly half of Australia's wine exports, with China accounting for more than 70% of this share (China in 2020 purchased 33% of Australia's wine exports)³². To put this into context, China – with whom Australia has a preferential trade agreement³³ since 2015 as a result of which wine qualified for duty-free trade since the start of 2019³⁴ – accounts for twice the value of wine exports from Australia compared to the next export destination (UK; 16%), closely followed by the US (15%). But Australia's wine exports to China unravelled at the end of 2020 following China's imposition of trade remedies (countervailing duties) against wine exports from Australia, effective 28 November 2020, following an investigation launched by China in August 2020. These new *ad valorem* duties against Australian wine range from 107% to 212%, and will apply initially for 4 months, but under existing

³⁰ Harmonized Tariff System of the United States (HTUS). Accessed February 2021.

³¹ ITC Trade Map database. Accessed March 2021 [Online:] www.trademap.org

³² Ibid.

³³ Australia (2021). Department of Foreign Affairs and Trade. China-Australia Free Trade Agreement. [Online:] <https://www.dfat.gov.au/trade/agreements/in-force/chafta/Pages/australia-china-fta>

³⁴ Wine Australia (2019). Market Bulletin, Issue 145. Where does Australian wine attract preferential tariffs? [Online:] <https://www.wineaustralia.com/news/market-bulletin/issue-145>

regulations can be extended to 9 months³⁵. This follows a rise in tensions between the two countries on a number of issues unrelated to bilateral trade.

The immediate impact of these new duties, from the duty-free status previously (competitor countries such as South Africa pay normal MFN duties) was that Australian wine exports to China plummeted (reportedly³⁶ by as much as 98% in December). For Australia, this means that it will need to try to find new markets for wine that would normally have gone to China (for business and product reasons, such wine cannot necessarily all be stored to be sold to China once the anti-dumping measures are lifted, possibly later in 2021).

This may lead to increased competitive pressure in foreign markets for South African wine, including in the US. Of course, these China-Australia trade measures also present an opportunity for South Africa in the Chinese market, which currently (still) accounts for only approximately one third of South Africa's Asian wine exports (wine exports to China representing 3% of South Africa's global total in 2020)³⁷. By some reporting, South African producers have already noted significant new business interest from China and the recent imposition of trade remedies against Australia could add further weight to this trend³⁸. But once again these are international trade disputes and market access issues, interwoven with politics, all of which have the potential to significantly impact South African wine exports even where the issues giving rise to new opportunities and threats are unrelated to South Africa.

6. Overview of South Africa's recent wine exports to the world

In the 12-month period March 2020 to February 2021, South Africa sold the equivalent of more than 1.2 million bottles of wine abroad, each day³⁹. This excludes wine sold in neighbouring countries within the customs union⁴⁰, which permits the free circulation of goods. The 330 million litres of wine exported

³⁵ Reuters (2020). China to keep anti-dumping duties on Australian wine for up to four months [Online:] <https://www.reuters.com/article/us-china-australia-wine/china-to-keep-anti-dumping-duties-on-australian-wine-for-up-to-four-months-idINKBN28D0SX>

³⁶ The Drinks Business (2020). [Online:] <https://www.thedrinksbusiness.com/2021/01/australian-wine-exports-to-china-plummeted-by-98/>

³⁷ ITC Trade Map database. Accessed March 2021 [Online:] www.trademap.org

³⁸ Business Insider (2020). South African wine could be a winner as China slaps Australia with massive import duties. [Online:] <https://www.businessinsider.co.za/south-african-wine-could-be-a-winner-as-china-slaps-australia-with-massive-import-duties-2020-11>

³⁹ SAWIS (2021). South African wine statistics [Online:] http://www.sawis.co.za/info/stats_exports_2021.php

⁴⁰ As per note provided in SAWIS data

were made up of bulk and packaged wine in the ratio of roughly 60:40; in other words, bulk wine exports significantly exceeded packaged wine exports. Bulk wine production also accounts for the majority of the sector's national output. Many wines on foreign shelves are exported from South Africa as bulk wine, which is then repackaged into boxes or bottles. Although bulk wine exports remain a somewhat controversial issue in some quarters (arguments often evolve around low pricing, national branding, and associated reputational issues, and so on), the fact remains that this constitutes a significant component of the South African wine sector.

The period under review also correlates with the impacts of the Covid-19 pandemic being heavily felt in South Africa. Making matters worse for the wine sector was the fact that for much of the year, local wine sales were banned in South Africa, and at one stage this even included the transportation of alcohol, for example to sea ports (which were also closed). For extended periods, the domestic hospitality sector was also closed for business (or at least was unable to offer alcohol sales), meaning that there were no legal channels in which wine could be dispensed with locally.

Table 6. South Africa's exports of packaged and bulk wine to 5 leading destinations March 2020 – February 2021 and change compared to previous period

South Africa's exports of packaged wine			South Africa's exports of bulk wine		
Destination	Volume	% change YoY	Destination	Volume	% change YoY
United Kingdom	31m litres	+ 14.9%	Germany	57m litres	+13.6%
The Netherlands	17m litres	+0.3%	United Kingdom	53m litres	+14.5%
Germany	11m litres	-12.2%	Denmark	14m litres	+13.7%
Sweden	11m litres	+7%	France	12m litres	-13.6%
United States	9m litres	-2%	United States	12m litres	+815%
Total all countries	136m litres	-3.4%	Total all countries	194m litres	+13.8%

Source: SAWIS data (2021)⁴¹

These periods of lost consumption cannot simply be clawed back, as is the nature of the product concerned. Yet in spite of the very substantial domestic challenges, aggregate wine export volumes did

⁴¹ SA Wine Industry Information and System (SAWIS) data. Accessed March 2021 [Online:] http://www.sawis.co.za/info/stats_exports_2021.php

in fact increase during this period, compared to the previous (pre-Covid) year, by approximately 6% overall. The large segment of these exports (bulk wine) ensured that there would be growth in overall export volumes, by recording an increase of 13.8% (compared to a decline in packaged wine of 3.4%).

South Africa's exports to the US of packaged wine declined by 2%, despite the severe contraction in US imports of wine from France, Spain and Germany (given the additional tariffs). There was, as the data in Fig. 1 revealed earlier, a significant and almost immediate swing away from the "tariff-constrained" category (wine \leq 14% alcohol, in containers of 2 litres or less) towards the similar higher-alcohol equivalent (wine containing $>14\%$ alcohol), although this did not compensate for the lower volumes overall in the former category. What is evident is that South African wine did not appear to fill any "gap" in the US market that may have been created as a result of the above, at least not in the packaged wine segment. Given that exports to countries such as the UK and Sweden rose significantly over the same period this would suggest that the issue was not inherently one of closed borders and blocked trade channels.

South Africa's exports of bulk wine did however rise significantly over the same period, which contributed to an overall increase in wine exports over the period under review (and perfectly matching the start of Covid-related lockdowns and business restrictions). The stand-out change in export volume of bulk wine was seen in exports to the US, which increased by more than 800%, mainly in white varieties, from 1.3m litres in '2019' (more specifically March 2019-Feb 2020) to 11.6m litres in '2020' (more specifically March 2020 – Feb 2021). As a result, South Africa's bulk wine exports to the US now exceed packaged wine exports by one third. In the previous period, packaged wine still exceeded bulk wine to the US by a factor of 6. South Africa's overall wine exports to the US (packaged + bulk) doubled over this period by volume, according to SAWIS data⁴².

This does not, on the face of it, demonstrate much relation to the tariff-related trade remedies on select packaged wine applied by the US against some European countries, and may in fact relate to entirely different reasons (for example, South Africa's price competitiveness in this segment combined possibly with a change in US consumer demand during the economic downturn towards lower priced non-premium wine or house brand wines).

⁴² SAWIS (2021). South African wine statistics [Online:] http://www.sawis.co.za/info/stats_exports_2021.php

While South African export data (by volume) shows a doubling of wine exports to the US, US import data shows that the value of wine imported from South Africa “only” rose by 8.6% in 2020 compared to 2019, from \$45.8m to \$49.8m. Bearing in mind exchange rate movements, and the slight mismatch between the SAWIS data time period used by the author (March – February, as available on the SAWIS website at the time) and the annual (Jan-December) US import data values⁴³ used in this comparison, it still appears that South African wine was under significant price pressure overall in the US given the relatively smaller increase in \$ value, versus the doubling in export volume.

In summary, South Africa has seen an overall increase of 6% in global wine export volume since the beginning of the Covid pandemic (period March 2020 – February 2021), compared to the previous annual period, despite the severe impact more generally of South African lockdown restrictions, periods with closed borders and significant port challenges⁴⁴. During this period, South Africa's wine exports to the US doubled in overall volume terms, while the increase in value has been far smaller. US imports of South African wine increased by just under 9% between 2019 and 2020, while the increase in the =<14% alcohol packaged segment – which represents approximately 80% of US imports from South Africa – was ‘only’ 5.5% (see Table 3 earlier). In 2020, South Africa's share of the US wine import market was 0.9% by value, slightly up from 0.75% in 2019, but off a lower base in 2020 due to the additional tariffs on some European countries.

7. Concluding remarks

Trade tensions, disputes, sanctioned and unsanctioned remedies imposed by countries on traded goods, can have many intended and unintended consequences. The focus of this Working Paper is to unpack, in broad terms, the ‘large civil aircraft’ dispute that had been formally ongoing since 2004, and informally for much longer, and how the trade remedies authorised under the WTO framework could potentially provide opportunities for uninvolved third parties and industries (South African wine exports to the US). In this matter, both the EU and the US obtained limited waivers from WTO MFN disciplines (non-discrimination, bound tariffs etc.) that permit them to impose additional ‘punitive’ tariffs on

⁴³ At the time of writing, US import data for February 2021 was not yet available, which prevents an exact time-period match. However, some issues would in any case remain, given time differences between export dates in the South African data and the clearing of these goods into the US.

⁴⁴ Bloomberg (2020). <https://www.bloomberg.com/news/articles/2020-07-01/transnet-sends-staff-to-cape-town-port-to-help-clear-backlogs>

specific values of annual imports from the other party.

Such tariffs need not be limited to the sector concerned, or indeed a sector that suffered injury from the actions by the other party or parties against which an adverse finding was made. The China-Australia trade tensions and related remedies, mainly against Australian wine exports to China, are also touched on briefly; in this case the additional tariffs concerned are however not the result of a WTO dispute but an (internal) assessment by China that alleged illegal subsidies and dumping by Australia and as a result of this adverse finding imposed very punitive tariffs on Australian wine. These have, virtually overnight, decimated China's wine imports from Australia, which can potentially provide temporary or longer term opportunities for South African wine exports to China.

Under the US trade remedy action against imports from the EU, it has (also) targeted the large aircraft sector (with up to 15% in additional tariffs), but predominantly European consumer goods. Annual trade subject to authorised remedies is \$7.5 billion (on US imports from the EU) and \$4 billion (on EU imports from the US) respectively. Countries that have been found by the WTO Dispute Settlement Body to have supported Airbus and related firms (France, Germany, Spain and the UK) were subject to more targeted trade remedies by the US than other European countries were, although none were ultimately excluded in some form or another. New tariffs, additional to standard MFN duties already in place, have been levied mainly against goods from the agriculture and processed agricultural products sectors, and on some industrial goods.

In terms of European wine, initially only one – albeit the most important – tariff line was targeted at the start of US trade remedies mid-October 2019, and additional tariffs of 25% were levied by the US against four European countries. This quickly led to a major drop in US imports from the targeted countries, albeit also quite a sizeable shift to wine imports being customs cleared into the US in the slightly higher alcohol content segment (which suggests a very rapid reorganisation of wine sourcing, but could at face value potentially also suggest issues around product classification on importation). This higher-alcohol content wine segment was later, early January 2021, also added to the list of wines subject to higher tariffs, along with a dozen other wine categories, essentially now covering all wine imports from certain EU countries.

The dramatic drop in US imports of wine in 'affected' wine tariff lines would suggest that this can be expected to pave the way for an increase in wine imports from other countries. While wine is nowhere

near a generic product where product produced in one country is simply substitutable by wine made locally in the home country or in other supplier countries, should the situation so demand or the opportunity present itself, it is without doubt that punitive tariffs against the leading suppliers of wine to the US will have a serious impact on demand for such same wine. And herein lies opportunity for other wine supplier countries that can compete in terms of price, quality, and the overall value proposition.

The trade data does not however suggest that South Africa has fully embraced these new opportunities. South African wine exports to the US, in terms of landed US\$ value, have remained fairly static in recent years in spite of South African producers enjoying duty-free access to the US market as a result of AGOA. This preference arrangement places South African exporters on a similar footing as those countries with which the US has a fully-fledged bilateral trade agreement, and waives the duties faced by competing European producers and many other WTO Member States.

While the value of South African wine imported into the US in 2020 has increased slightly compared to the previous year, this is not so much a result of 'packaged' wine trade (which during that year was subject to additional tariffs on EU products) but rather appears to primarily relate to the massive volume increase (as recorded by SAWIS) in bulk white wine shipped to the US. South Africa's reported packaged wine exports to the US in the period March 2020 – February 2021 are in fact lower than over the previous period. Given the doubling in export volume against a less than 10% (in \$ value) increase in US imports from South Africa over a broadly overlapping time period, this may then suggest significant overall price pressure on such exports from South Africa, perhaps as domestic market conditions and economic imperatives made sales of such bulk wine increasingly urgent.

There is no suggestion made here that international trade is not complex, technical, time consuming and highly competitive, and that many factors impact on the decisions of consumers and importers to purchase or source certain wine from a specific country. Industry reputation, individual brand reputation, recognition and awareness, country reputation, logistical considerations, overall value propositions, the ability of a product to offer more appealing attributes than those from another country, certification and consumer labels, integration with international sourcing networks, buyer relationships, product differentiation, label design and packaging and many other factors play a role in "placing" a country or producer's products on US retail shelves or into buyer catalogues. Many of these

require significant resources to be invested, others might rely largely on ratings from industry personalities or favourable results from reputable international wine trophy competitions, and other factors. Nevertheless, it can be argued that South African can hold its own amongst the best in the world and it is not the inherent quality of output that constrains South African wine exports.

A key factor however remains **market access**. South Africa enjoys preferential market access to the US and almost every product that is produced in South Africa and exported to the US may enter the country free of import duty. *Preferential* market access continues to be a critical factor that supports South African wine sales to the US and provides South African producers a competitive advantage. Its preference margin(s) is different for each product and depends on the respective MFN tariffs that the US applies on such tariff lines.

When trade disputes elsewhere between countries result in rising tariffs, this often makes South Africa's exports relatively more competitive, and potentially makes them much more attractive to foreign buyers, especially when there is already a history of successful exports and market penetration. The US-EU trade disputes, which have escalated in recent years, illustrate how industries in unrelated third countries, in this case South Africa, can potentially benefit; the 'large civil aircraft dispute' and its potential impacts on wine trade are just one example of this. International trade developments at the multilateral WTO level, as well as more bilaterally between third countries such as the currently unfolding China-Australia trade disputes, should (continue to) be monitored closely by wine producers, exporters and related industry bodies; the capacity and flexibility to respond to such developments as rapidly as possible should continue to be developed and expanded, and remain a key component of any sector development and export strategy.

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