Recent debates around South Africa's future AGOA eligibility and the potential impact on trade

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ABSTRACT

This Trade Brief addresses recent developments and debates around AGOA, given lingering questions about South Africa's future AGOA eligibility, and the potential impact on trade should AGOA preferences be lost. AGOA forms part of United States legislation and significantly opens the domestic market to qualifying exports from eligible Sub-Saharan beneficiary countries, removing import duties and having a created longer time horizons for such preferences. While these preferences are non-reciprocal, and have been extended to South Africa along with dozens of other Sub-Saharan developing and least-developed countries, they are not unconditional, and remain subject to the ongoing compliance and continuous assessment with the Act's eligibility criteria. This Trade Brief highlights recent events insofar as they could possibly impact on South Africa's future AGOA eligibility, and looks at some of the potential impacts on trade flows resulting from a loss of AGOA privileges. This more nuanced analysis considers existing sectoral trade, AGOA preference margins and current value chain realities, as well as the potential fall back of reverting to GSP access should this become a relevant option.

Keywords: AGOA, South Africa, Tariff preferences

About the Author

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By Eckart Naumann

1. Introduction and overview

The United States 'African Growth and Opportunity Act' (**AGOA**) was signed into law by US President Bill Clinton on 8 May 2000 as Public Law 106 of the 200th Congress. Apart from a period during the run-up to AGOA's previous 10-year extension from 2015 to 2025 (which included South Africa in part due to concessions given to the US on poultry and beef), never has there been so much focus on AGOA, particularly from within South Africa.

This attention has been well justified for several reasons. AGOA's legislation contains a built-in expiry date where preferences fall away (being 30 September 2025), unless the legislation is extended by the US Congress prior to that. Traders and investors both in Sub-Saharan Africa and the United States alike (and without doubt further afield) are now keenly awaiting clarity around this pressing issue, since uncertainty will soon begin impacting sourcing and investment decisions, as these often rely on longer time horizons. There is of course the elephant in the room: questions, uncertainty and considerable controversy around South Africa's continued and future AGOA eligibility, given what has been alleged to be repeated non-compliance with aspects of AGOA's eligibility provisions, and occasional arguments whether the largest AGOA beneficiary should in fact be a beneficiary of AGOA's non-reciprocal trade preferences at all, based on its more advanced developmental status.

The value of AGOA is of course more extensive than some of the key (as well as more superficial) facts suggest. At its core, AGOA involves the United States extending duty-free access to its market to thousands of qualifying exports made in Sub-Saharan African 'beneficiary' countries – those countries among the group of potentially eligible countries that fulfil the AGOA eligibility criteria, as stipulated in the AGOA legislation and in the US Trade Act of 1974.

As of 2023, 35 Sub-Saharan African countries are AGOA beneficiaries, after four (Ethiopia, Mali, Guinea, and Burkina Faso) lost their respective beneficiary status over the past two years. Duty-free preferences are available to those products (tariff lines) where the legislation has enabled a special program indicator ('D') to be added to the US tariff schedule: around 5,300 products have this AGOA indicator. Furthermore, the AGOA legislation also contains provisions that govern the preferential trade in textiles and apparel, subject to countries having implemented an acceptable apparel visa system that manages traceability and origin of fabric inputs: this adds another roughly 1,400 tariff lines, bringing the total AGOA coverage to around 6,700 tariff lines.

While this 'only' represents a little under 60% of all tariff lines, it bears mentioning that most of the remaining schedule is already duty-free under the US' normal tariff relations (NTR) regime. This applies to goods imported into the US from almost all countries across the world, except for North Korea, Cuba, Russia, and Belarus (the US suspended normal trade relations with the latter two in April 2022, under the '*Suspending Normal Trade Relations with Russia and Belarus Act*'). Due to AGOA, beneficiary countries face almost no dutiable tariff lines in the US, with only around 3% of potential trade still being subject to tariffs. Of all AGOA beneficiaries' exports to the US during 2022 combined ($30 billion), $4.4 billion was in dutiable categories, resulting in $99 million in calculated duties, and effectively an overall duty rate on overall exports of 0.3%. More than 80% of the duties were levied on imports from South Africa. Notably, almost two thirds of the calculated duties were on five steel and aluminium products.

2. AGOA and the GSP

AGOA builds on the US Generalized System of Preferences (GSP), a program that in various guises has been implemented by numerous high-income countries since the 1970s and which provides developing countries with favourable market access. There are a number of technical differences between AGOA and the GSP, and slightly dissimilar eligibility criteria, but the two main differences are that AGOA also extends duty-free preferences to numerous products that have historically been considered too sensitive for (GSP) preferences even if extended to imports from least-developed countries, while AGOA has also not been subject to the far more regular and often fraught renewal process of the GSP.

While GSP preferences (with well over 100 beneficiary countries of the US scheme) and AGOA preferences largely overlap, approximately 1,600 tariff lines under AGOA do not qualify under the GSP. More importantly, the GSP has been a somewhat less predictable scheme to rely on, with Congressional re-authorisation ahead of GSP expiry failing to materialise around half the time the scheme came up for renewal, leaving US importers without immediate access to its preferences, unlike the AGOA scheme which has not suffered from this challenge. While GSP preferences would usually be restored months later, importers were left with uncertainties and had to make provisions (through customs bonds and the like) for normal import duties that were due without GSP, able to reclaim these only much later, likely with little or no indirect benefit accruing to the trader in the export country.

The US GSP is, currently, again without the required re-authorization, and has been without this since it last expired at the end of 2020, more than two and a half years ago. This has in effect significantly enhanced the relative value of AGOA, not only due to its uninterrupted benefits to traders while the GSP remains expired (with little immediate prospect for renewal), but also because US importers currently have far fewer choices around sourcing duty-free goods outside of Africa (or trade agreement partners, and Caribbean Basin countries that also have special access to the US market). This has clearly benefited countries like South Africa, with its relatively more established industrial and agricultural base combined with US preference status.

However, 2023 has been anything but straightforward in this regard. With respect to AGOA, South Africa has sailed close to the wind on various occasions over the past decade. At this point it is again worth mentioning AGOA's eligibility criteria (Section 104 of the Act), given that the legislation offers non-reciprocal but not unconditional benefits.

3. AGOA eligibility criteria

AGOA's eligibility criteria cover (and require) respect for the rule of law, political pluralism, systems to combat corruption, protection of internationally recognised worker rights, prohibition of forced and child labour, and regulations around occupational safety and hours of work, minimum government interference in the economy such as price controls. Of course, adherence to these standards is adjudicated by the US and many of these criteria feature at least some grey area, are subject to different interpretation and subjectivity, and probably political nuance. But all are, arguably, well justified. The focus on labour rights, for example, relates to how the US sees the potentially distortionary impact of labour standards on global trade and how domestic worker and business interests can be impacted by standards elsewhere. Other criteria have a more direct link to US offensive interests and include the elimination of barriers to US trade and investment (national treatment principles around investment, protection of intellectual property, resolution of bilateral trade and investment disputes), and a (country) not engaging in activities that undermine United States national security or foreign policy interests.

Past challenges in this respect (trade barriers) include the chicken, pork and beef 'saga' that almost derailed South Africa's continued inclusion as an AGOA beneficiary country in the period after 2015. Powerful US senators, including Chris Coons and Johnny Isakson who jointly chaired the recently formed Senate chicken caucus, used continued AGOA eligibility for South Africa as leverage to negotiate market access under a tariff rate quota for US (brown meat) chicken to South Africa, which had been subject to anti-dumping duties or bans until then. Complicating matters at the time was an outbreak of avian influenza in the US, potentially adding indirect risk to South Africa's ostrich industry.

These barriers had been construed as barriers to US trade and investment, running afoul of the AGOA criteria, although the facts around the case are obviously far more complex. Issues around pork were quite different and related to South Africa's health and safety regulations concerning certain porcine diseases, while beef barriers centered around mad cow disease (*spongiform encephalopathy*) with South Africa having banned meat imports from the US following an outbreak of the disease in the US in 2003. All issues were ultimately resolved (including through the recognition of certain veterinary standards, and the US receiving a quota for chicken imports into South Africa), but not before President Obama formally put South Africa on a 60-day AGOA suspension notice for agricultural commodities under AGOA in the latter parts of 2015, in a potentially inverted *quid pro quo* outcome.

Another hiccup – not entirely resolved – involves South Africa's intellectual property rights regime. Proposed legislation, aimed at reforming IP rights and in particular fair use policies in South Africa, ostensibly put the country at odds with the AGOA eligibility criteria (around the protection of IP), and was sent back to parliament rather than be signed into law. It triggered an outpouring of appeals to the US Trade Representative, as well as public hearings, but ultimately led to no status change for South Africa's AGOA eligibility given that the legislation in question had not been passed.

Another issue involved the private security industry in South Africa, with legislation passed by parliament in 2014 (and signed into law late in 2021) restricting foreign ownership in the South African security to under 50%, a move that was likened by some as amounting to forced divestment akin to the expropriation of foreign investment, since many of the largest security firms in South Africa were foreign owned.

4. The Russia issue

More recently, South Africa's relationship with Russia has attracted considerable attention, and with respect to AGOA, whether this represented another potential breach to the eligibility criteria, specifically around (not) undermining United States national security or foreign policy interests. Concerns have also been noted around South Africa's voting record at the UN, and in particular a stance that appears not only inconsistent with the country's often postulated belief in human rights as a core foundation of international relations but at times effectively in support of or deference to Russia and other repressive regimes, whether by insisting on watered down language or voting against certain resolutions. Of course, the existing relationship with Russia is a longstanding one and complex and harks back to South Africa's apartheid years, but various events in relation to Russia, and that country's war in Ukraine, have actively undermined South Africa's international standing. They have cast doubt on the country's so-called non-aligned stance that is often offered up as a defense for seemingly inconsistent and at times arguably disingenuous policy stances on important matters such as these. The irony with this is that much of the world chose not to remain non-aligned and neutral during the apartheid years and through this helped sustain the struggle against apartheid.

It is worth recalling that the US enforces compliance with the AGOA eligibility criteria (both 'behind the scenes", proactively, and during annual AGOA reviews, even if to the outside it can appear to be an inconsistent, or at times selective approach. A number of countries have lost their AGOA beneficiary status over the years on the basis of one or more eligibility criteria breaches, while a few have regained it after 'remedying' eligibility breaches (e.g. Madagascar, Eswatini, DRC), but none have been pinged on the basis of undermining US national security or foreign policy interests. The table below reflects on the nature of past eligibility breaches that led to full (or in the case of Rwanda, partial) suspension of AGOA preferences.

Category	Eligibility criteria	Count
Economic	Economic reform	2
Economic	Elimination of barriers to US trade and investment	1
Political	Rule of law / political pluralism	15
Political	Anti-corruption	2
Labour / human rights	Labour (incl. forced and labor rights)	3
Labour / human rights	Human rights	11

* *some countries have lost eligibility based on more than one eligibility category*

Source: USITC (2023: 43) AGOA Program usage, trends, and sectoral highlights (https://agoa.info/downloads/reports/16182.html)

Two recent events in particular stand out. South Africa hosted joint exercises with the Chinese and Russian navies off the coast of Durban, South Africa, in the latter part of February 2023, ironically coinciding with the one-year anniversary of Russia's invasion of Ukraine, adding to the unfortunate optics. Prior to that, late on 6 December 2022, a Russian registered and US-sanctioned cargo ship the Lady R entered a South African naval base (Simonstown) and offloaded, as well as loaded, various containers of cargo, an event that was shrouded in secrecy and raised speculation at the time that sanctioned cargo was being ferried (and worse, that South Africa was supplying military provisions to Russia). The issue became even more serious in May, when US ambassador to South Africa Reuben Brigety, formerly US ambassador to the African Union and in his South African post since August 2022, accused South Africa of having shipped arms to Russia (in the Lady R incident), arguably the ultimate cardinal sin, and willing to "bet his life" on the veracity of this accusation. This led to widespread international condemnation, impacted the currency, and damaged South Africa's reputation, at a time when this was arguably already at a relatively low point. Diplomatic channels and accepted protocols aside, this immediately raised the very real prospect that just like the Lady R slipped out of Simonstown harbour on 9 December 2022, South Africa's AGOA ship had figuratively-speaking also sailed, and that little now stood in the way of South Africa losing AGOA preferences, alongside possibly other economic and political consequences, and even sanctions.

A subsequent investigation by a specially appointed panel, led by a former Supreme Court Judge, found that no arms were shipped to Russia, and that the cargo offloaded comprised an old pre-Covid times order of ammunition (of a type used in operations in Northern Mozambique and apparently interoperable with local ammunition and weapons there, where South Africa along with other countries are involved in stemming an Al-Shabaab insurgency). While the panel's report has not been made public, a summarised version is set to be released shortly. A similar assertion to this effect had been made in the weeks after the event by South Africa's defence minister. After leaving Simonstown port, there was little urgency for the ship to head to Russia, with stopovers in Beira (Mozambique) and Port of Sudan (Sudan) along the way (track her journey here).

In the meantime, there has been a walk back of sorts relating to the comments made by the US ambassador, albeit more in form rather than substance, with input having been provided to the panel, and the matter remains not fully resolved. According to government pronouncements, no evidence had been presented to the enquiry that could back up the earlier claims.

In July, influential US Senator, James Risch (R), proposed legislation (by means of *Amendment 820* to the '*National Defense Authorization Act for Fiscal Year 2024*' currently being deliberated by Congress) that seeks an official review of South Africa's actions (and by extension, continued AGOA eligibility) as well as removing South Africa as the previously chosen host country of the annual AGOA Forum in 2023. South Africa has not previously hosted this influential event and an anticipated August date has already been moved to a later, possibly November date, presumably to avoid a clash with the BRICS summit being hosted by South Africa and taking a "wait and see" approach to unfolding developments.

Earlier, in February 2023 while the military exercises with China and Russia were underway, Michigan Congressman John James (R) tabled a resolution (House Resolution 145) calling on the Biden administration to conduct a thorough review of the US-South Africa relationship. While neither the resolution nor the amendment has gone anywhere yet (as of late August 2023), they are symptomatic of the growing unease and frustration on the part of the US with South Africa's conduct, and according to informed sources, the optics and timing of the February exercises are believed to sit particularly unwell with certain Members of Congress.

Joint naval exercises are of course nothing new, notwithstanding the unfortunate timing of the February exercises. They usually serve primarily diplomatic purposes rather than enhancing warfighting readiness. South Africa had however declined participation in the multinational maritime exercise Cutlass Express off East Africa in early March 2023, led by the US navy, although smaller scale drills were undertaken between South Africa and the US mid 2022 under 'Exercise Shared Accord' (albeit this was more slanted towards a medical training exercise), and the US navy vessel USS Hershel "Woody" Williams last called on South Africa in August 2022.

5. Trade Impact on South Africa

The prospect of South Africa's future in-eligibility for AGOA preferences, or possible exclusion on other grounds, rapidly became an issue that was widely dissected by the South African media, in business and political circles. Much was interleaved with unsubstantiated rhetoric (as can be expected when politics mix with developments of this nature), often short of facts, but also somewhat alarmist and at times wildly exaggerated in claims of various pending doomsday scenarios on South Africa's horizon should it lose preferential access to the US market, all being essentially taken as a foregone conclusion.

The problem with some of this commentary and associated reporting is that it is often based on a simplistic premise that a loss of AGOA would on the one hand translate into (a) South Africa losing overall access to the US market for its exports (barred from the US, exporters will need to find new markets), or (b) that export trade currently benefiting from AGOA preferences would cease, with a resultant loss of business and employment, to (c) AGOA being largely inconsequential to South Africa insofar as any slack (surplus export goods) would simply be taken up by other markets.

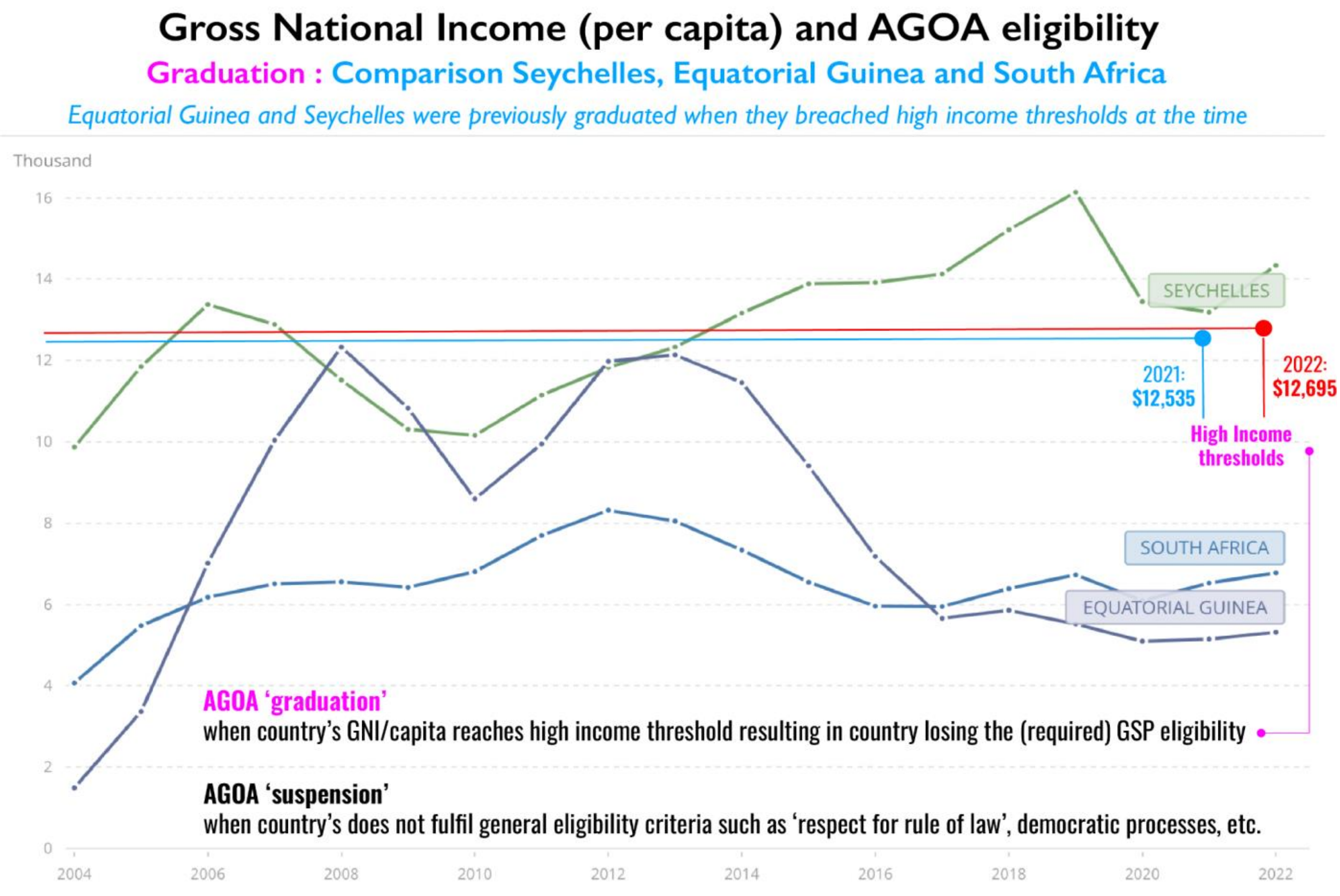
While the answer probably lies somewhere in between, a more nuanced assessment is required, and one that recognises the broader facts while seeing potential impacts more on a sectoral if not company by company basis.

The broader facts and considerations include the following:

(a) **Applicability**: AGOA preferences apply to almost 60% of all products (tariff lines) in the US tariff schedule. Most of the remaining goods – in which the bulk of South Africa's US export trade occurs – are duty free under standard non-preferential trade (MFN / NTR), and unrelated to AGOA status.

(b) **Impacted trade**: The withdrawal of AGOA preferences means that US importers sourcing AGOA-eligible goods from South Africa would have to clear goods through customs on a non-preferential basis and pay different levels of import duty. Around 25% of South Africa's overall US-bound exports traded under AGOA preference during 2022, much of the remaining trade was also duty-free under normal trade relations (NTR).

(c) **AGOA / GSP graduation**: AGOA eligibility requires a country to also be GSP eligible. Graduation from AGOA (as opposed to exclusion through non-compliance with AGOA's listed eligibility criteria) happens when a country reaches a per capita income status above the developing country thresholds required for GSP status. Two African countries have previously graduated from consideration for AGOA preferences – Seychelles and more recently Equatorial Guinea – for this reason. The latter fell back below the appropriate threshold a few years later, halving its per capita GNI (the boom in hydrocarbons having elevated its per capita GNI status earlier), but presumably remains ineligible on compliance grounds. South Africa's income status remains far below this threshold and would thus not be graduated out of AGOA for such reasons.



Source: World Bank national accounts data (July 2023)

(d) **Program overlap and variance**: AGOA and GSP product coverage largely overlaps, with a handful of products being GSP (but not AGOA eligible), while AGOA offers duty-free preferences to around 1,600 products that are in turn not GSP-eligible. This means that a loss of AGOA status would usually impact "only" 1,600 tariff lines (caveat: take note of the following bullet point), but since the GSP reauthorisation has remained outstanding since the start of 2021, there is no fallback to GSP. In other words, the 25% of South Africa's exports that qualified under AGOA during 2022 would not have the GSP option available.

(e) **GSP for least-developed countries**: On the issue of GSP, there's a significant sting in the tail around South Africa. The US GSP comprises two sub-programs: one for all beneficiaries (general GSP), and an additional one reserved for imports from poorer beneficiaries classified as least developed (LDCs). Around two thirds of products fall under the general scheme (program indicator A in the tariff schedule), and the remaining ones are reserved for LDCs (program indicator A*). South Africa's fallback when (and if) GSP reauthorisation takes place (and under what new terms) is therefore far more limited, plus many of the AGOA products that South Africa is an active exporter of only qualify for the LDC version of the GSP, ruling South Africa out from that fallback option.

The trade impact of an AGOA preference loss by South Africa (assuming no GSP) would therefore potentially impact around a quarter of South Africa's exports to the US, based on 2022 data, albeit certainly not through a loss of all or even substantial shares of affected trade. Any impact on trade would depend on a range of other factors, inter alia:

Ability to absorb duties: Not having AGOA status means US importers of South African made products must pay standard import duties as applicable. There is a large variance in US import duties, with some outliers (beverages, tobacco, dairy products, sugars, textile goods) all having relatively high average duties (10-20% averages), while many have very low duties (wood, paper, fish, machinery, other manufactured goods, chemicals, transport goods incl. cars) (1-5% averages). In some sectors, margins may be sufficiently large to allow importers to absorb this duty, without much or any impact on trade, or seeking alternative suppliers and countries. In other cases, even a small or moderate duty preference may be instrumental in the choice of supplier and country to source goods from, especially in highly competitive and widely distributed sectors, where price pressure may be high.

Preference margins: Linked to the previous point, the value of preferences relate to (for both the exporter and importer) the preference margin on offer. The greater the duty saving, the greater the value of the (AGOA) preference. For products with a very low duty preference margin, the loss of preference is likely to be far less impactful.

Exchange rate developments: Exchange rate movements can significantly impact the landed price of a product exported from South Africa to the US. The South African currency declined by 9% during 2022, and a further 10% year to date to end July 2023. While such movements also impact producer input costs, and has a generally inflationary impact, it is also likely to make South African goods more competitive in the US in the context of AGOA preferences (or in mitigating the loss thereof). Purely exchange rate derived competitiveness is obviously not sustainable.

Competitiveness of the industry / product: A loss of AGOA preferences would likely be more keenly felt in highly competitive sectors with many alternative suppliers. In others, it might simply translate into an overhead that adds transaction costs, without necessarily having a significant noticeable impact on trade overall. This should be seen in the context also of other prevailing dynamics, preference margins, and the ability of businesses to absorb such costs without impeding trade.

Uniqueness of the SA product, dynamics of demand: The more unique the product, insofar as it fulfills an important demand, the less susceptible are trade flows likely to be through a loss of AGOA preferences. Trade in goods and resources where South Africa holds a strategic competitive advantage, be it on quality considerations or product features, or because a resource is essential for US industries, are likely to be less vulnerable to a loss of AGOA preferences. Such goods would still be imported from South Africa.

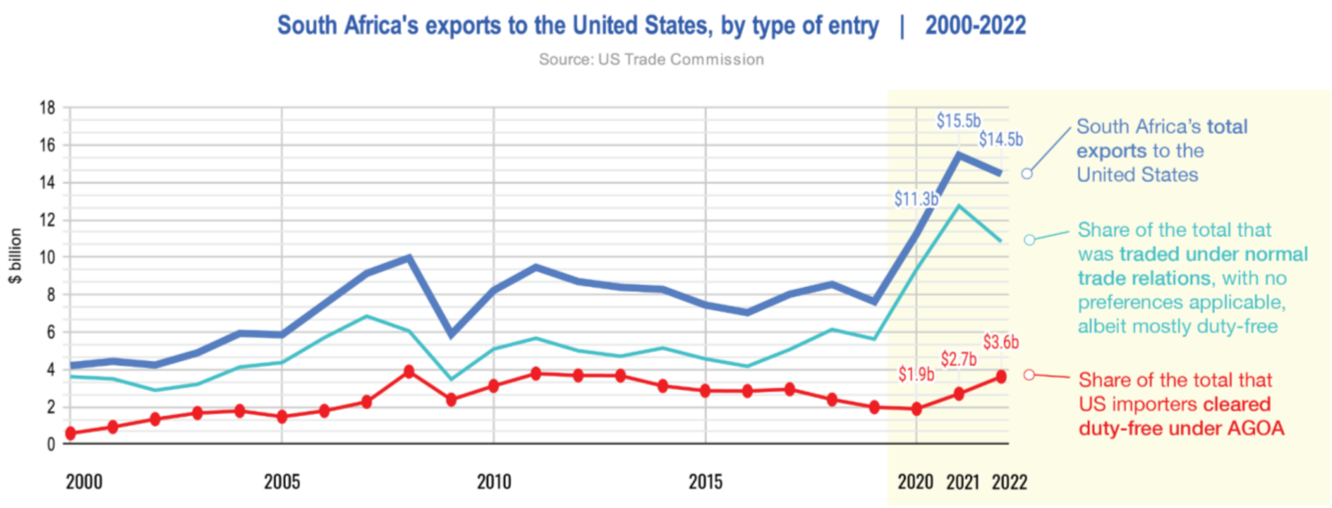
Nature of the value chain and industry: Each sector will have different vulnerabilities in relation to AGOA preferences and derive different benefits from any preferences. The type of value chain also, to a large extent, determines the potential impact of (a loss of) AGOA preferences. In buyer-driven value chains, as is typical of the apparel sector, buyers and brand owners largely control the sourcing dynamics, including location, design, and price, and often even supplier's upstream sourcing decisions (for example with respect to fabric). Such transactions will often be driven by preference-margin, especially since the sector is highly competitive globally, and still subject to high tariffs in the US. Motor vehicles – part of a producer-driven value chain – form part of a more extensive production and distribution networks with longer time horizons, and preference margins will be helpful but may not be as instrumental in the sourcing decisions (motor vehicles are subject to a relatively small 2.5% preference margin through AGOA).

Consumer preferences and price elasticity of demand for a product: Price and cost benefits emanating from preferential trade can drive consumer preferences and purchasing decisions. Inelastic demand for a particular product means that tariffs may not have a significant impact on trade flows, and a loss of preferences (where such added costs are transmitted to US consumers) might not be as impactful as in certain commodity-type products where many alternative suppliers exist. If South African oranges became subject to standard US import duties (1.9c / kg) and this results in higher prices for importers and final consumers, this may not translate into significant trade reductions if South African oranges have a particular appeal to US consumers, or are sold during a season when there is less local competition, or still (inclusive of tariff) delivers a better value proposition compared to other citrus suppliers. Where there is significant opportunity for substitution, any preference loss would of course be more keenly felt by South African citrus exporters (and who may be expected to absorb at least some of the additional cost).

Contractual and strategic considerations: Contractual obligations may mitigate any loss in preferences in the short term, where there are fruitful business and trade relations with exporters, and sourcing from South Africa forms part of a well-established trade pattern. This could be seen following Ethiopia's loss of AGOA preferences at the end of 2021, with the country's exports of apparel to the US increasing significantly (rather than subsiding, without the support of AGOA benefits) in the year that followed, presumably as existing supply arrangements remained in place for some time. Over the medium term, such impacts on trade may be more keenly felt, as sourcing and trade relations are reconfigured and adapted. A loss of AGOA preferences would therefore relate only to the quarter of South Africa's US exports that falls under AGOA, but any reduction in trade is likely to be far more muted. From a strategic perspective, sourcing from South Africa (whether under AGOA or not) can hold special benefits, for various reasons ranging from a diversification of foreign sourcing by US importers, the quality and overall value proposition of South African produced goods, access to important (and sometimes rare) raw and intermediate materials needed by US manufacturers, and so forth.

South Africa's US exports und share under AGOA

South Africa's exports to the US reached an all-time high in 2021 ($15.5 billion) and remained at elevated levels in 2022 (in US$ terms). Over the past three years, exports under AGOA/GSP preferences have climbed to levels last seen in 2011-2013. In fact, despite 2022 aggregate exports being $1 billion lower than the previous year, AGOA exports have increased by $0.9 billion over the same period. In the chart below, AGOA and GSP claims are combined, since the actual GSP claim could have been made under GSP or AGOA (interesting side fact: US traders cleared $1.2 billion worth of imports from South Africa under GSP preference over the past two years, while GSP remained suspended, when the same trade could have entered duty-free under AGOA – a retrospective claim for GSP preferences can only be made once that program is unauthorized at some as yet uncertain point in future).



AGOA trade accounts for one quarter of South Africa's exports in 2022. The top product categories and specific tariff lines traded under AGOA, along with the standard US import duty (representing the AGOA preference margin), are listed in the tables below.

South Africa's exports to the US under AGOA preference in 2022

Chapter	Product category	$ million	2021-2022
87	VEHICLES AND PARTS AND ACCESSORIES THEREOF	1525	86%
72	IRON AND STEEL	475	19%
71	PRECIOUS OR SEMI-PRECIOUS STONES, PRECIOUS METALS	409	-2%
8	EDIBLE FRUIT AND NUTS	244	42%
29	ORGANIC CHEMICALS	153	24%
28	INORGANIC CHEMICALS	140	31%
22	BEVERAGES, SPIRITS AND VINEGAR	88	20%
38	MISCELLANEOUS CHEMICAL PRODUCTS	76	4%
84	MACHINERY AND MECHANICAL APPLIANCES; PARTS	69	-6%
89	SHIPS, BOATS AND FLOATING STRUCTURES	60	3%

The motor vehicle category is by far the largest category by chapter, representing over 40% of South Africa's AGOA exports in 2022. Within this category, the bulk comprised passenger cars with an engine capacity of 1500cc - 3000cc, mainly BMW and Mercedes vehicles which are known to be shipped to the US under AGOA. According to naamsa (the Automotive Business Council in South Africa), some of these vehicle models are now also produced in the US, resulting in lower exports from South Africa. Transactions in this category avoid the standard 2.5% duty that is normally due for trade within this classification code. Commercial vehicles generally have a much higher duty (25%) but here South Africa barely records any US exports (apart from some dumpster trucks, albeit that this category is duty-free anyway). Related automotive exports, such as catalytic converters, are also duty-free under the general schedule.

Despite strong export growth in this sector during 2019-2022, with a doubling in exports in the first half of 2023 compared to the same period 2022, there have been six previous years – a decade ago – where the dollar value of South Africa's auto exports to the US was still higher, by some measure. Virtually all trade takes place under AGOA, an indication that AGOA's rules of origin (requiring at least 35% local content) are also fulfilled. It stands to reason that AGOA has helped drive US imports from South Africa, but is one of many considerations by producers, given that the preference margins are relatively small. Reports of pending doom and gloom, should AGOA fall away, are thus likely vastly overstated.

One other aspect is important to point out: the specific tariff lines where most of South Africa's preferential trade takes place, whilst AGOA eligible, does not qualify for GSP preferences unless the goods are produced in and exported from an LDC country. Should AGOA expire, or South Africa loses its AGOA status, it will not be able to ship these goods under GSP, unlike GSP countries which have broader access to preferential GSP tariff lines. This assumes a future re-authorisation of the GSP.

Agricultural exports would probably be more affected. Like motor vehicles, there is little general fallback of any significance for South Africa under the GSP, as South Africa's main AGOA exports (comprising mandarins, oranges, macadamia nuts and wine) either do not qualify for GSP preferences, or GSP access is restricted to LDC beneficiaries.

HTS code	Product classification description (abbreviated)	$ million	2021-2022	AGOA	GSP	Standard Tariff
8703.23.01	Motor vehicles w. capacity >1,500cc but <=3,000cc	1477	96%	Yes	Yes (LDCs)	2.50%
7113.19.29	Gold necklaces and neck chains	326	-2%	Yes	Yes	5.50%
7202.41.00	Ferrochromium	260	13%	Yes	Yes	1.90%
7202.30.00	Ferrosilicon manganese	99	16%	Yes	Yes	3.90%
7113.19.50	Precious metal (o/than silver) jewelry and parts	78	-1%	Yes	Yes	5.50%
3823.70.60	Industrial fatty alcohols	73	4%	Yes	Yes (LDCs)	2.40%
2849.90.50	Carbides, nesoi	62	34%	Yes	Yes	3.70%
8409.99.91	Parts nesoi, used with engines for motor vehicles	60	-12%	Yes	Yes	2.50%
0805.21.00	Mandarins	60	64%	Yes	No	1.9c (US) / kg
7202.19.50	Ferromanganese 1-2% of carbon	60	25%	Yes	Yes	1.40%
0805.10.00	Oranges	58	27%	Yes	No	1.9c (US) / kg
0802.62.00	Macadamia nuts, shelled	57	35%	Yes	Yes (LDCs)	5c (US) / kg
7202.11.50	Ferromanganese > 4 percent of carbon	53	97%	Yes	Yes (LDCs)	1.50%
2914.12.00	Butanone	47	38%	Yes	Yes	3.10%
8903.32.00	Motorboats, over 7.5m but not over 24m	47	N/A	Yes	Yes	1.50%

Should AGOA preferences be lost, the extent to which South Africa's agricultural exports to the US would be impacted, or decline, still depends on a range of factors. Many of these have been spelt out earlier and depend on the different dynamics prevailing within each sector rather than blanket over-arching factors, including the demand profile of US consumer demand, and the ability of importers (and possibly exporters) absorbing some or all of the additional costs associated with standard tariffs. If a container filled with 20 tons of oranges is shipped to the US, the non-AGOA import duty implication would probably be $300-$400, based on the prevailing tariff; whether this will make sourcing from South Africa uneconomical depends on full consideration of the overall cost structure, other market dynamics, seasonality of the produce, alternative suppliers offering similar or better quality, contractual obligations, and so on. In 2022, South Africa was the second largest supplier of oranges to the US, behind Chile and ahead of Mexico, accounting for 25% of oranges imported into the US.

Shelled macadamia nut exports avoid a 5c (US) / kg import duty when cleared through US customs under AGOA, and South Africa has become the largest supplier to the US, accounting for 43% share of US imports during 2022. In fact, along with Kenya and Malawi, 85% of the US' import demand is covered, all benefiting from AGOA preferences. The impact on South African exporters and US importers, and consumers, would again depend on the dynamics within this value chain and how any additional burden of duties would be absorbed should AGOA be lost.

Wine trade is not included in the table as it comprises several different classification codes, depending on the alcohol content, container size, sparkling / non-sparkling, and so on. Combined, however, these categories accounted for $66m of South Africa's AGOA trade in 2022, essentially placing it in 7th position in the above table. Import duties range from 6.3c (US) per liter in South Africa's largest export category (wine, not over 14% alc., in containers < 2 liters) to bulk wine categories, with duties of 14 - 22.4c / liter depending on alcohol content. Almost 90% of South Africa's wine exports under AGOA takes place in categories for which South Africa would have no GSP fallback in the absence of AGOA preferences, as GSP preferences only apply to LDC countries.

6. Impact of AGOA loss

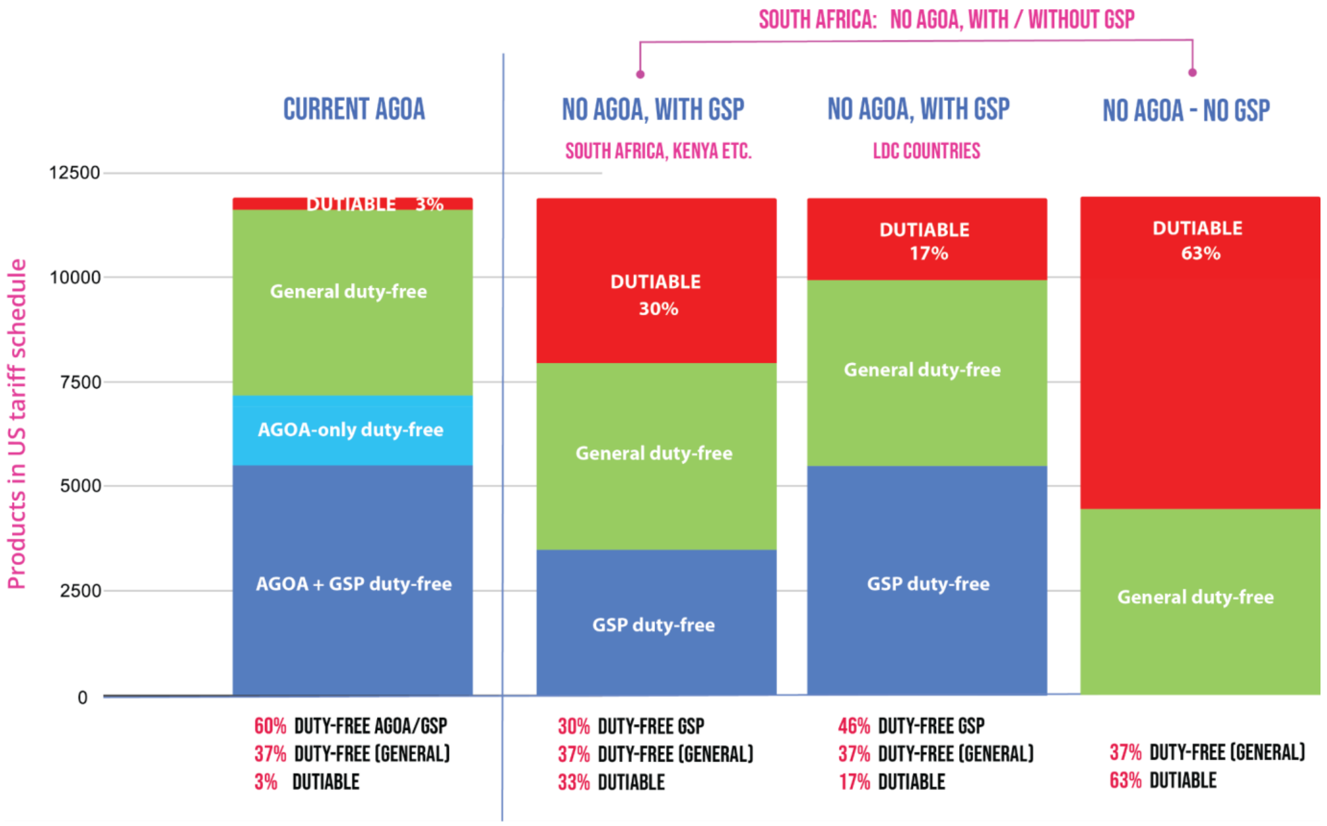
As the above analysis has sought to show, the potential and likely impact on South Africa's exports to the US following a loss of AGOA (through a suspension of preferences) requires a far more nuanced analysis on its potential impacts. Factors that have led to some of the prevailing narrative have of course been the entirely self-inflicted wounds and own-goals, at a time when South Africa can least afford these missteps, and when it should be well understood that old political loyalties and the associated posturing and rhetoric are a disservice to the country, and do not translate into any economic benefit.

Should AGOA preferences be withdrawn, transaction costs will rise, and trade will be impacted. US consumers will likely pay more for imported goods, US businesses more on imports of final and intermediate goods, South African producers and exporters will likely see some declines in exports (and may need to lower selling prices to compensate for the higher US landed cost), some sales will be lost as US buyers switch to other sources, and some sectors may suffer job losses.

Decision makers may look less favorably on South Africa as a sourcing or investment destination, depending on the secondary impacts that an AGOA loss entails, and importantly, on what basis AGOA was withdrawn. Some sectors, including agricultural producers of wine, citrus and nuts, jewelry manufacturers, chemicals, clothing (not a major export by South Africa but benefiting from attractive preference margins), are likely to feel some pain. Auto exports, South Africa's largest AGOA export, would likely have the largest financial impact in absolute terms, but may be better placed than other sectors to absorb this, given some of the other factors discussed above, probably with little impact on trade volumes in the near term that can be attributed to a loss of AGOA.

An important consideration is also the question about South Africa's potential fallback situation in the absence of AGOA (either through suspension or expiry), in terms of other US preferences. This depends on the timely renewal of the GSP scheme; South Africa is a GSP beneficiary (with no impending threat of graduation based on income levels), although the general GSP and AGOA eligibility criteria overlap to some extent.

While around three quarters of AGOA preference lines have GSP status, the situation is quite different for South Africa as a non-LDC country, as the AGOA product coverage under GSP (applicable to non-LDC developing countries) is only half (of the AGOA total), and more importantly, much of the AGOA trade takes place in tariff lines that are only applicable to LDCs (autos, wine, nuts etc.) or are not eligible for GSP preferences at all (e.g. citrus). If the GSP is renewed (with South Africa part of it), preferences reduce to 3,500 tariff lines (from around 6,700 under AGOA); without renewal and no AGOA, all trade would be under normal trade terms. In percentage terms, with GSP as a fallback, 30% of tariff lines would be dutiable (LDCs: 17%), while without AGOA or GSP, dutiable products would represent around 63% of the total. (Only) approximately 37% of trade would remain duty-free under the normal trade regime.



Given many other challenges facing South African businesses, rampant unemployment, the electricity crisis and political uncertainty, South Africa (as the largest AGOA beneficiary) cannot afford to be left out under a future AGOA dispensation. Not addressed here are the reputational consequences of South Africa losing AGOA preferences, impacts on standing relationships, international cooperation, political and economic voids, and spheres of influence to be filled by other countries, the indirect impacts on producers in neighbouring countries whose intermediary products end up in finished products exported to the US under AGOA, and so forth. In fact, various '*AGOA Utilization Strategies*' completed by neighbouring countries in recent years see the South African market to be a key consideration for regional exporters.

7. Way forward

Whether the US decides to remove South Africa's AGOA beneficiary status remains uncertain and is definitely not a foregone conclusion. For every trade transaction, parties in both the US and South Africa benefit, including businesses, consumers, workers, the fiscus, and the respective value chains overall. Trade transactions happen because they are better and more profitable than the next best option that might be available and foregoing these carries opportunity cost. Arguments in favour of future in-eligibility are often on shaky grounds.

Losing AGOA beneficiary status would likely have economic but also significant non-economic consequences that are difficult to quantify and would probably deeply strain the relationship between South Africa and the US (which is based on far greater agreement, alignment and collaboration than any points of disagreement might suggest). It would also strain the relationship between the US and Africa more broadly, bilaterally and in various multilateral fora, undermine cooperation on shared strategic security concerns, healthcare, potentially impact US investors in South Africa, and some of the reported 600 US businesses that operate here.

It would open the door to greater Chinese and Russian influence in South Africa and the region, an outcome that is likely to be seen with great concern by both Republican and Democrat lawmakers in Congress, notwithstanding the growing frustration with aspects of South Africa's stubborn and seemingly irrational and contradictory conduct in certain fora.

The substantial chicken quota for access to the South African market that US lawmakers negotiated in the lead-up to the 2015 AGOA renewal would likely come to an immediate end too. The irony here should not be lost, given that one of its key proponents at the time is also a signatory to the recent letter to the Biden Administration to strip South Africa of its hosting rights for this year's AGOA Forum (the highly credentialed Senator Coons (D) has long shown a deep interest in and understanding of Africa, has done volunteer work in South Africa and Kenya, and has previously written a book on South Africa and the US divestment movement).

8. AGOA Forum – opportunity lost?

On the matter of the AGOA Forum, South Africa has certainly run the risk of immediate consequences for various recent developments. But it may also have dodged some bullets in this regard. The Lady R saga and the public accusations by the US ambassador to South Africa have resulted in a substantial fallout, but it appears now that the South African government may have been somewhat exonerated on the very explicit and bluntly expressed key charge (arms shipments to Russia).

The BRICS summit held in Johannesburg during August didn't include Russian President Putin, at least not in person, and the powerful optics (no group photo featuring Putin) should not be lost. The South African government was even forced to confirm in unsealed court papers that an arrest warrant had been sent to the National Director of Public Prosecutions based on the ICC warrant that had been issued back in March 2023 (the US is of course not a state party to the ICC).

Various high-powered delegations comprising government ministers, labour unions and big business had in the meantime lobbied Washington, in person, to make South Africa's case, and request continued inclusion under AGOA, and (presumably) hosting of the AGOA Forum. This was a seldom-seen united front.

Realistically, it is probably too late to switch the Forum to another host country now anyway, barring a last-minute intervention or development that is of a gravely serious nature that would make the country's hosting untenable. The planning logistics hardly permit it, and the political fallout would without doubt seriously undermine the Forum along with the broader US-Africa relationship. An annual AGOA Forum is required by the AGOA legislation. In over 20 years, South Africa has yet to host the Forum, and fully deserves the opportunity to be hosting this important event.

9. AGOA renewal and South Africa's continued inclusion

On AGOA's renewal prospect and a possible suspension (or non-inclusion) of South Africa, this is also no foregone conclusion. It does however seem likely, and widely supported by stakeholders in Africa and the US, that AGOA should continue beyond its current September 2025 expiry date. Whether this will take the form of a simple extension (say by a further 10 year term, to 2035) or by making AGOA preferences permanent (not unlike the Caribbean Basin Economic Recovery Act CBERA, for some Caribbean countries), or an altogether new preference program for Sub-Saharan Africa, remains to be seen.

Enhancements to the program could involve linked trade facilitation and additional technical development support (a further broadening of the support being delivered under the USAID's current Africa Trade and Investment program ATI), especially in key sectors and disciplines. Product eligibility is already extensive and there is relatively little room for further extension, and the general rules of origin provisions are arguably not a barrier currently (apart from the apparel rules for South Africa) and offer a balanced approach to the question of economic origin and substantial transformation on any non-originating inputs. While AGOA does not provide a waiver of quotas, by and large these have very little impact on AGOA beneficiary countries, and potentially only in a small number of cases.

However, AGOA is too important to let expire, and the US is unlikely to choose that path, since the economic, strategic, and political costs would simply not align with the US' own interests and ambitions, and needs for shared economic prosperity and stability, nor those of African countries.

The question specifically around South Africa's future eligibility is a little less certain. It is of course the prerogative of the US Congress to include or exclude any country on any grounds. South Africa clearly qualifies in terms of its income status which remains well below the GNI per capita income thresholds that would disqualify it from GSP and AGOA through graduation, with little prospect of the country attaining high income status. Any argument that South Africa has "benefited enough" or has developed and progressed enough and "no longer needs AGOA", simply holds no water. It is also worth bearing in mind that AGOA trade from all beneficiary countries combined accounts for only 0.3% of global US imports (in 2022), with South Africa's portion representing about a third of that.

Bilateral (preferential) trade supports both US and South African businesses, workers, and consumers, and ticks many other boxes that are of mutual benefit and concern. In the submissions and recent public hearings pertaining to the 2023 (annual) AGOA eligibility review, for year 2024 beneficiary status, there was significant support from potentially affected stakeholders in favor of an AGOA extension, and one that includes South Africa (no doubt motivated by recent events, concerns, and speculation). Predictably, some old concerns were also once again ventilated, for example on South Africa's copyright legislation, etc. The outcome to these hearings and deliberations can be expected late October / early November 2023.

This review process is separate and distinct from processes that happen through Congress (for example, changes to or extensions of AGOA), and in fact merely implements laws and directives previously decided by Congress. With respect to South Africa, findings on eligibility and ineligibility could emanate from the annual review process (on the USTR's interpretation of compliance with the AGOA and GSP eligibility criteria, and a subsequent decision by the Administration/President) or could simply result from an Act of Congress that decides on this, as it wishes.

There are clearly frustrations with South Africa, and things have been threatening to boil over. The US absolutely needs South Africa inside the AGOA tent, not on the outside, and South Africa cannot afford to lose this valuable facility. There is little doubt that there will be a timely extension of AGOA consistent with the current Administration's multipronged efforts at restoring and expanding US influence in Africa, coupled with generous assistance packages – the plethora of top US officials visiting Africa in recent times are one such indicator – even if part of the reason might be to counter influence from other countries, and with US security concerns placed somewhere in the middle.

Notwithstanding a highly divided Congress – this issue continues to enjoy support across the aisle – cool heads and strategic nous will likely prevail, and with South Africa continuing to be an integral part of it.