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South Africa's experience of managing poultry sector trade policy

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South Africa's poultry sector

Poultry meat consumption in South Africa grew by 70% between 2000 and 2010, prompting growth in South African poultry production at an average of 6% per annum between 2004 and 2008. However, by 2013 growth in poultry production had dropped to a mere 1.6% per annum, with rising maize prices increasing production costs and the economic downturn slowing consumption growth (to 4% in 2012 and 3% in 2013).

This situation of declining growth rates in poultry meat production, linked to rising costs and a slowdown in consumption growth, had been compounded by rising levels of poultry imports, which grew by 32% between 2010 and 2011, a further 13.2% between 2011 and 2012 and an estimated 7.3% in 2013. By 2013, total imports of broiler meat were projected to be equivalent to 28% of South African production, a volume in excess of the production of South Africa's largest poultry producer.

From 2011 this led the South African government to look again at its poultry sector trade policy, which was somewhat piecemeal in its design.

Recent South African poultry sector trade policy developments

- **Long-standing tariff anti-dumping measures regarding US products**

Since 2000 the South African government has had in place anti-dumping duties (ADDs) against imports of US bone-in chicken products. US exporters maintained that this constituted unfair treatment, since similar measures were not applied to imports of similar poultry products from Brazil and the EU. More recently, US poultry meat exporters have begun lobbying the US Congress to link South Africa's continued access to US Africa Growth and Opportunity Act (AGOA) preferences to the removal of "unjustly targeted" protection measures in the poultry, beef and pork sectors.[1]

In the face of lobbying from businesses in the US, South Africa's Minister of Trade and Industry, while expressing full satisfaction with the current AGOA arrangement, recently indicated the South African government's willingness to consider giving some US producers the same access to the local market as the EU, "if that's what it takes" to maintain AGOA access for South African exports.

- **Introduction of safeguard measures against Brazilian poultry imports**

Up to 2011, Brazil was exporting around 166,000 tonnes of poultry products to South Africa per annum: this constituted 73% of South Africa's poultry meat imports – the Brazilian imports increased by 8% in 2011 alone. To address this, at the beginning of 2012 the South African government introduced on an interim basis additional duties of 62.93% and 46.59% respectively on imports of whole chickens and boneless cuts from Brazil (standard duties being 5% and 27% respectively). This measure was introduced on the basis of an interim recommendation of South Africa's International Trade Administration Commission (ITAC) following its investigation of allegations of dumping of Brazilian poultry products (see *Agritrade* article 'Use of policy tools to protect SACU poultry sectors raises trade policy issues', 13 January 2013).

The imposition of anti-dumping duties led to immediate protests from Brazilian exporters, who claimed that the South African Poultry Association (SAPA) "grossly overstated official import statistics" in making the case for anti-dumping duties (see *Agritrade* article 'US urged to join Brazilian WTO challenge to South African poultry tariffs', 12 August 2012). This led Brazil to launch a case against South African anti-dumping duties in the WTO.

In the course of 2012 it became apparent that overall, the anti-dumping duties imposed on Brazilian poultry products were not having the desired effect, with the expansion of foreign penetration of the South African poultry sector continuing. Against this background South Africa's Trade and Industry Minister declined to confirm ITAC's final determination and sought a more comprehensive strategy for addressing the problem of imports of poultry parts. The strategy focused on the scope for an increase in the general tariffs on poultry products within WTO bound ceilings, thus doing away with the need for specific anti-dumping duties. This reflected a broader government policy focus on applying a more sophisticated and transparent tariff policy in support of industrial development objectives.

- **Moves to a more comprehensive approach**

At the end of September 2013, following a report and recommendations from ITAC, the South African government increased import duties within bound ceilings for five poultry products. In determining the tariff increases, a conscious effort was made to balance the interests of domestic poultry producers with the consumption needs of poor households. Duties were increased most on products consumed by higher-income households. Poultry products consumed by poor households were subject to relatively low rates of tariff increase, while bone-in portions, which accounted for 70% of domestic poultry sales and 54% of imports in 2012, were subject to an *ad valorem* duty rather than a specific duty.

These increased duties entered into effect from 1 October 2013 and were applicable to all poultry imports, with the exception of those from the EU. The EU exception arose as a result of the commitments entered into through the EU–South Africa Trade, Development and Cooperation Agreement (TDCA). This was a major source of concern to the South Africa poultry industry – from 2009 onwards the EU had become an increasingly important source of imports of poultry parts. Indeed, by the end of 2012 the EU accounted for 69% of imports of poultry parts, a category which accounted for fully 54% of total poultry imports.

South African poultry tariff changes

Tariff line	Product	Share of imports (%)	Existing duty (%)	Recommended duty (%)
0207.1.90	Whole bird	1	27	82 (bound rate)
0207.14.10	Boneless cuts	11	5	12
0207.14.90	Bone-in portions	54	18 (220 rand cents/kg)	37
0207.14.20	Offal	5	27	30
0207.12.20	Carcasses	2	27	31

Source: ITAC, 'Increases in the rates of customs duty on frozen meat of fowls of the species *Gallus Domesticus*: Whole bird, boneless cuts, bone-in portions, carcasses and offal'; and 'Media statement by the Department of Trade and Industry on tariff increases with respect to certain poultry products'.

The specific problem of the EU and the use of bilateral anti-dumping provisions

Between 2009 and 2012, EU poultry exports to South Africa grew from a mere 7,938 tonnes to 131,970 tonnes, with South Africa taking fully 30% of the expansion in EU poultry meat exports that occurred between 2009 and 2012.

Imports of poultry meat from the three main EU exporters – the Netherlands (14%), Germany (6%) and the UK (6%) – reached 26% of total imports in 2012, up from a mere 3% in 2010. These countries account for 60% of imports of frozen, bone-in portions, which account for fully 40% of total poultry meat imports. SAPA claimed that "in the three years from 2010, the EU has gone from a market share of 0.5% in chicken pieces to 70%" (see *Agritrade* article 'South African poultry sector problems compounded by rising EU exports', 15 April 2013). By 2012, EU poultry meat exports to South Africa were equivalent to 9.5% of domestic South African poultry production.

EU poultry meat exports to South Africa and globally 2009–12 (tonnes)

	2009	2010	2011	2012
South Africa	7,938	22,006	94,076	131,970
Total EU world exports	1,015,784	1,354,610	1,412,110	1,430,658

Source: European Commission, 'EU market situation for eggs and poultry advisory group', 25 March 2014, http://ec.europa.eu/agriculture/consultations/advisory-groups/poultry-eggs/index_en.htm

This expansion in EU poultry exports reflected a continued growth in EU poultry production, (amid a slight dip in EU consumption linked to the economic downturn) and the pursuit of active export promotion strategies targeting African markets (see *Agritrade* article 'EU poultry sector developments and prospects', 22 April 2013).

It also reflected the reality that EU poultry producers are able to pass on feed cost increases to domestic consumers without fear of losing market share to imports, given the operation of the EU poultry sector import regime. This means that EU exporters of poultry meat are not affected by rising feed costs, which can substantially impact on the price competitiveness of domestic producers in countries like South Africa (where during this period, at one point, maize prices rose fully 50%, with this carrying important cost implications for local poultry producers).

In the specific case of South Africa, the provisions of the TDCA also insulated EU exporters from any moves towards increased levels of tariff protection, with EU exporters reportedly enjoying preferences on some four 8-digit tariff headings for fresh, chilled and frozen poultry meat, and four 8-digit tariff headings for prepared poultry meats (see *Agritrade* article 'South Africa defuses WTO poultry dispute with Brazil', 18 February 2013)

It was recognised that in view of the commitments made under the South Africa–EU TDCA, measures other than most-favoured nation (MFN) tariff increases would be needed to deal with the increased volumes of poultry meat imports from the EU.

This recognition led to ITAC launching an anti-dumping investigation against specific exports of frozen poultry meat parts from Germany, the Netherlands and the UK. SAPA had "applied for anti-dumping duties of 91% against producers and importers from Germany and the Netherlands, and of 58% on producers and importers from the UK".[2] At the beginning of July 2014, ITAC recommended the provisional application of anti-dumping duties of between 22 and 73%. These consisted of:

- "anti-dumping duties of 31.3% on Wiesenhof, from Germany, and 73.3% on the remaining German importers" of frozen bone-in portions;
- "preliminary duties of 22.8%" on all imports of frozen bone-in portions from the Netherlands (excluding Frisia);
- a duty of 22% against all frozen bone-in portions of chicken imported from the UK.

These duties were duly imposed and are to remain in place until 2 January 2015. In the intervening period the concerned parties may make further submissions before a final ruling is made.[3] In addition, ITAC said that "companies which supplied deficient information during the initial part of ITAC's investigation would have two weeks from Friday to submit the correct information." These new anti-dumping duties affected companies in EU member states that supplied some 101,581 tonnes of frozen poultry meat products in 2012.

These measures have been introduced under the anti-dumping and countervailing measures provisions of the 2000 EU–South Africa Trade Development and Cooperation Agreement (TDCA). The provisions are set out in Article 23 and largely reiterate WTO commitments.

Under the TDCA, specific dispute settlement arrangements are set out in Article 104. This states that "any dispute relating to the application or interpretation of this Agreement" may be referred to the Cooperation Council which "may settle any dispute by means of a decision".

The Cooperation Council is established under Article 97, with a commitment to setting up procedures for "forestalling problems which might arise in areas covered by the Agreement". However, it should be noted that the Cooperation Council has not been designed as a forum that can ultimately rule on the correct application of the WTO rules and commitments, on which the anti-dumping and countervailing measures provisions of Article 23 are based. Indeed, according to analysis from South Africa's Trade Law Centre (Tralac), "the relationship between WTO law and the TDCA is not explained in the context of the application of trade remedies." The Cooperation Council is essentially a consultative body, and not an adjudication body. In this context, the parties retain "their right to refer disputes about the correctness of anti-dumping measures to the dispute settlement mechanism of the WTO".[4]

It should also be noted that in this context the provisions of the TDCA in no way affect the rights of either party to take trade disputes to the WTO.

The outcome of South African efforts to invoke anti-dumping provisions under its bilateral trade agreement with the EU is potentially of considerable interest to other ACP governments, given the forthcoming or ongoing implementation of Economic Partnership Agreement (EPA) commitments by ACP governments.

Lessons from the South African experience

The first lesson from the South African experience is the need to actively use tariff policy to prevent market disruptions arising from trade in residual poultry parts, which have little or no economic value in OECD markets.

However, this needs to be seen in the context of growing consumer demand for low-cost sources of protein in many developing countries. This raises the issue of reconciling the interests of consumers and producers.

The second lesson thus relates to the application of differentiated tariffs in seeking to square the circle of competing consumer and producer interests when seeking to make full use of bound tariff ceilings.

A third lesson relates to the scope for using anti-dumping and countervailing measures provisions under bilateral trade agreements, where the trade in residual poultry parts takes place at price levels which constitute dumping. The South African action shows that this is possible, however the jury is still out on whether this will prove effective in the long term, given the prospect that the EU may challenge these anti-dumping measures either in the TDCA Cooperation Council or, if deemed necessary, the WTO. It should be borne in mind that under most bilateral EU trade agreements, dispute settlement provisions in no way constrain the rights of the parties to refer disputes about the correctness of anti-dumping measures to the dispute settlement mechanism of the WTO.

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