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Review

Fundamental tension between competition and industrial policy in a small developing country

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This paper examines the development of the Botswana's poultry sector, which has become the dominant meat industry in Botswana. The poultry sector is the most successful example of import substitution in Botswana with the country having achieved national self sufficiency. The paper describes the value chain in the industry and shows how, given the small size of the market, a high degree of market concentration exists. This paper raises issues regarding the fundamental tension between competition and industrial policy in a small developing country. As the larger firms in the poultry industry move towards export readiness after 36 years of protection, the question of a new trade and industry regime is considered.

Key words: Poultry industry, competition policy, trade policy.

INTRODUCTION

Traditionally, Botswana has been a beef producing and consuming country but with rapid urbanization, poultry has supplanted cattle as the dominant livestock sector. The development of the industry reflects long-standing government policy dating from the 1970"s to develop an industry which is able to meet national needs through import substitution. The early policy of import substitution, which resulted in the development of the industry, emphasized the creation of sufficient producer surplus to encourage on-going development and investment in the industry. However, with parts of the industry now exporting, the question arises as to whether the longstanding policy of import substitution and market closure is appropriate and whether a move to a more open trading regime may not be in the benefit of the industry and the country as a whole. The purpose of this

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paper is to examine the development of the country‟s poultry sector, which has become the dominant meat industry in Botswana.

The second issue of relevance that will be discussed is the relationship between competition policy and development and industrial policy in a small developing country. With the completion of the Uruguay Round of negotiations, the development of the „new issues‟ such as competition policy was introduced into global trade discussions. These new issues are the product of a paradigm shift that occurred post-1995. The issue of competition policy puts into focus the related question of the development role of the state and its role in balancing consumer/producer surplus has become central to industry policy. This paper is also meant to facilitate discussion on the Botswana‟s new competition policy and act. This is especially so in light of the Economic Mapping Report commissioned by the government of Botswana, which revealed that there is market dominance in the meat industry (Ministry of Trade and Industry, 2005).

The immediate stimulus for this paper was an earlier study undertaken in 2010, where it was observed that Botswana had the Southern African Customs Union (SACU) region‟s lowest retail prices for beef using the only available common price comparator, that is, brisket and the highest price in the region for frozen chicken (BIDPA, 2010). These are two types of meat products commonly consumed by lower income groups in SACU countries.

COMPETITION POLICY IN A MICRO STATE INSIDE A CUSTOMS UNION

Competition policy in small and micro states

The issue of competition policy has reached the global agenda largely as a result of the issue being advocated for by developed countries as part of what were then called „the new issues‟ that appeared at the Singapore Ministerial meeting of the World Trade Organisation (WTO) in 1996 (WTO,1996). In large measure, the issue has been introduced to developing countries out of the realization that market opening commitments made by them in the Uruguay Round of trade negotiations would be of no commercial value to developed countries unless there was an appropriate competition regime in WTO member states that protected the interests of exporting firms and assured contestability of markets (Sauve, 2004). Thus, developed countries and, in particular, the European Union (EU) have been pursuing an active policy of supporting rules on competition policy (Brittain, 1997). This WTO approach has also been expanded bilaterally in the EU‟s regional negotiations with the developing countries of Africa , the Caribbean and the Pacific.

In all these discussions on the issue of competition policy, there has been scant consideration given to whether greater competition which is frequently associated with diminished producer surplus is beneficial for developing countries. Many developing country Non Governmental Organisations (NGOs) have pushed and supported competition policy issues in large measure out of the view that these rules can assist developing countries in strengthening their competition rules against local monopolies. In Botswana, the government has negotiated an interim Economic Partnership Agreement (EPA) with the EU, and is generally supportive of the approach which enshrines competition policy. Whether the Government of Botswana is willing, in the end, to provide legally binding commitments on competition policy in trade negotiations with developed countries, like the Caribbean has done, is to be determined in the final EPA with the EU which at the time of writing had not been concluded.

There exists a fundamental tension over the issue of competition policy and law in developing micro states such as Botswana. First, it is entirely plausible for a small state to maintain a rational competition policy that, at least for medium term, is anti-competitive, as it may be in the national interest to assist firms to accumulate sufficient capital, i.e. generate producer surplus in a particular sector, so as to assist firms to eventually become internationally competitive. Second, and it is a more pervasive issue of small and micro states, that irrespective of their development status, the existence of extended economies of scale in production and management in any given industry means that the small size of the market results in only being sufficient „market space‟ for an efficient monopolist or possibly duopolistic (Gal, 2001). This brings into question the very logic of importing policies and laws from larger developed countries that make little economic sense in developing micro-states like Botswana. The issue of whether small states are capable of conducting a competition policy based essentially on developed country competition laws, while attempting to develop import substituting sectors, is at the heart of the case of the poultry industry in Botswana.

Botswana’s competition law

The Competition Act passed by the Botswana parliament in late 2009 created a new Competition Commission and a new Competition Authority, which are now in full operation. The legislation provides the Commission and the Authority with the ability to undertake the usual range of activities found in most countries that have enacted similar legislation. The authority may undertake investigations of vertical and horizontal agreements (Articles 25, 26 and 27), as well as the abuse of dominant position (Article 30). If following an investigation, it is determined that a horizontal or vertical agreement that breaches any of the prohibited behaviour specified in the Act is said to exist in a particular industry, the commission is authorized to give direction for the termination of the agreement (Article 43.1). Botswana‟s Competition Commission serves as the board for the Competition Authority, which does the investigation and recommends remedies, and makes decisions which can be fascinating to the commission. The commission acts as the tribunal to adjudicate cases brought to it by the Competition Authority or by appellants.

The act also provides for the possibility of a fine of 10% of turnover during the breach of the prohibition on such agreements up to a maximum of 3 years (Article 43.4). The remedies available to the Commission include the requirement for an enterprise to divest itself of any enterprise or assets (Article 44.3.e). These remedies are common to many Competition Laws and are similar to those that are found in South African legislation.

What is unique about the circumstance of Botswana as it pertains to Competition Act is that it is a small developing landlocked country in a customs union with a dominant partner, that is, South Africa. The issue of relevance is how significant competition policy can be under such circumstances. This is particularly important when it comes to the definition of the relevant market for the purposes of determining whether abuse of a dominant position has occurred. In the Competition Act, the relevant market is defined as „the geographical or product market used for assessing the effects of the practice, conduct or agreement on competition‟ (Article 2). In any competition law case, the most common issue of contention is the definition of the appropriate market. This can be local, national or regional and this is the subject of legal and economic disputes globally.

In the case of SACU which is a customs union where production is polarized into the largest and most developed member, South Africa, virtually for every consumer good, the relevant market is the SACU market and not Botswana, as this has been legally the case since 1910. This does not mean that the relevant market may not be national or even local, but most commonly in the case of those goods where the government has purposely closed the Botswana market for the purposes of economic development, for example, poultry, to all or most international trade, the market can be said to be the same as the legal jurisdiction covered by the Competition Act. The conundrum of competition policy in a country like Botswana, which is both small and part of a customs union, is that where the country may be the „relevant market‟ for the purpose of the Competition Act, it is almost always so only by virtue of government policy to close the market to foreign competition, including that from other SACU members. In most cases, the relevant market is the SACU market and, therefore, the Botswana Competition Commission will only be able to operate when it works closely with its SACU counterparts (other members of the customs union). Moreover in many cases, for example, where a conspiracy occurs to raise prices or reduce or apportion output it will normally have occurred in the main market, namely South Africa, and be extended to Botswana in a pro forma manner as would be the case with the other SACU members. Botswana has no jurisdiction to investigate outside its borders and unless co-operation is close to the relevant South Africa authorities, the ability of the Botswana Competition Commission to implement its mandate will be circumscribed. Thus, the market, generally SACU, is not the same as legal jurisdiction of the legislation, that is, Botswana, and, therefore, the legislation can only have limited application as a result.

The drafters of the legislation were also well aware of the problem of statutory agencies. The legislation declares *ultra vires,* „enterprises acting on the basis of a statutory monopoly in Botswana‟ (Article 3.2(b)). While the poultry industry or other similar import substituting sectors cannot be seen as a statutory monopoly as is the case of infrastructure providers, such as Botswana Power Corporation; its existence is a result of government legislation providing the prohibition of imports, that is, Control of Goods (Importation of Eggs and Poultry Meat) Regulations [SI 120, 1979, 7th December], 1979. Given the small size of the Botswana poultry market, the closure of the market from imports, combined with the existence of significant economies of scale in the sector, meant that the Government was, in effect, creating the conditions for what is at very least a „statutory oligopoly‟, and may be a legal monopoly if one employs the 40% market share threshold as a criteria. More importantly, for the case of the poultry and other import substituting industries, the legislative drafters provided a policy based caveat for the application of remedies by the Competition Authority and Commission, which will render its work both taxing and potentially quite arbitrary in its application. In determining whether there has been an abuse of dominant position, the Competition Authority (Article 30.2) „may have regard for either the agreement or conduct in question:

1. Maintains or promotes exports from Botswana or employment in Botswana
2. Advances the strategic national interest of Botswana in relation to a particular economic activity
3. Provides social benefits which outweigh the effects on

competition
4. Occurs within the context of a citizen empowerment initiative of Government, or otherwise enhances the competitiveness of small and medium sized enterprises; or
5. In any other way enhances the effectiveness of the government‟s programmes for the development of the economy of Botswana, including the programmes of industrial development and privatization.

Virtually all of these caveats, which are common to many such laws around the world, could be argued as a justification of abuse of dominant position in any of the import substituting industries in Botswana. The question of relevance is, of course, whether the cost to the consumer from the existence of a state created oligopoly is, in fact, justifiable. Nevertheless, these caveats are at the heart of the tension between development policy, which often results in the encouragement of market concentration in order to develop a new industry, and competition law, which is specifically aimed at it creating a competitive market.

DEVELOPMENT OF THE POULTRY SECTOR

Early developments[1]

The development and commercialization of the Botswana poultry industry started in 1975 with the development of a rural project known as “Thuo ya Dikoko”. This was aimed in large measure at egg production rather than broilers. It started in several regional centres, namely Gaborone, Lobatse, Mahalapye and Maun, and poultry extension officers were sent to these centres to provide technical expertise. A religious group, the Mennonites, financed the project, which only lasted for 5 years. Under this project, the Ministry of Agriculture (MoA) was to buy day old pullets and sell them at eight weeks of age to the farmers. By selling pullets at eight weeks, the project was an attempt by the MoA to introduce poultry at relatively low risk to the small-scale farmer. It was believed that the development of small-scale poultry enterprises could greatly reduce imports and also increase the incomes of poorer families who did not own cattle.

The Government of Botswana, in an effort to encourage small producers and to create employment, established the Small Projects Programme in 1978, which provided financial support to community groups who intend to start or increase agricultural production. The upper ceiling was P25, 000, with five people constituting a group. By the end of the 1970s and in the beginning of the 1980s, the Government embarked on more far reaching policies in the poultry sector.

[1]This section on the early developments of the industry draws heavily and with permission on a paper prepared by Mr Peter Kirby, the former Chairperson of the Botswana Poultry Association and a pioneer in the poultry industry.

Policy in the 1980s and 1990s

By the late 1970s and early 1980s, a new more commercial approach to the development of poultry production came from the government. Three instruments of government policy have been largely responsible for the successful development of an import substituting poultry industry in Botswana since 1980. The first is the development of a government controlled marketing channel allowing Botswana access to the primary poultry market. The second policy was the Financial Assistance Policy (FAP); and the third, and arguably the most powerful and enduring instrument, has been the use of trade policy through quantitative import restrictions on the import of eggs and poultry meat into the country. In many ways, the history of the development of the poultry sector in Botswana is a microcosm of African agriculture in the post-independence era. A policy of import substitution funded with generous assistance to local producers and entrepreneurs, along with state sponsored marketing channels, was a common hallmark of early post-colonial African agriculture. As was often the case, these policies of government marketing channels and support for small scale local producers collapsed and marketing became dominated by large private sector firms with little small scale indigenous production.

Poultry agricultural management association (PAMA)

In the 1980s, the government assisted the poultry sector through the establishment of the Poultry Agricultural Management Association (PAMA), the function of which was to collect, buy, grade process and market poultry products for the members (Government of Botswana, 2010). Significantly, PAMA also provided feed and day old chicks (DoC) for producers, which decreased the risks faced by small scale producers. This co-operative marketing arrangement was assisted by the government and, with funding from the EU, continued until the 1960s, when it collapsed because of poor management and lack of financial expertise. With the collapse of PAMA, the direct access that had been previously available to the small scale producers and the primary poultry market decreased and eventually disappeared. Now access to the large scale supermarkets and retail chains is only available through the out-grower programs of some of the larger producers, together with sporadic sales to individual supermarkets where purchases are not centralized.

Financial assistance policy (FAP)

The move to import substitution in the poultry industry was facilitated not only by the state sponsored marketing agency, but also by the now terminated Financial Assistance Policy (FAP), which began in 1982 and was ended in 2000. The FAP was created to provide assistance to firms, both local and foreign to establish or expand operations in Botswana and during the period of the program, considerable subsidies were provided. The FAP was replaced by the Citizen Entrepreneurial Development Agency (CEDA) which provides assistance to local entrepreneurs. A very substantial proportion of the larger agricultural projects in the FAP were for the development of the poultry sector; and it is one of the few lasting legacies of the policy. Few firms that were originally supported still remain in operation[2]. Throughout the entire life of the FAP, the poultry sector, both layers and broilers, were very much at the heart of assistance packages provided by the government in the agricultural sector. This was especially so for small scale projects. In the third FAP evaluation undertaken in 1995, 23% by value of the 2,800 small agricultural grants given (515) were granted to the poultry sector (MFDP, 1995)[3]. Large scale projects were also offered assistance by the FAP. According to the reviews of the sector, the government invested 24% of the FAP agricultural grants at the end of the program in 1995-1999 in the poultry sector (MFDP, 2000). The total cost of the programs in the period 1995-99 alone was P 20 million Pula. The FAP was discontinued in 2000 because of the lack of effectiveness and what was considered to be widespread abuse of the provisions.

Trade policy instruments

While the development of co-operative marketing arrangements, such as PAMA, and the provision of subsidies and concessional loans through the FAP were important for early development of the poultry industry, these were not the most important levers of economic power used by government to facilitate the development of the poultry sector. The most powerful and enduring instrument of government policy in the poultry sector has been the protection from foreign competition through restrictions of imports which have been available since at least 1979 with the introduction of the Control of Goods (Importation of Eggs and Poultry Meat) Regulations [SI 120, 1979, 7th December, 1979][4]. Imports are presently a small residual of total demand and non-specialized poultry importers only have access to foreign sources of supply when domestic production is insufficient to meet local demand. Given the enduring significance of these instruments, this will be discussed at length as follows:

The current size of the industry

As a result of the aforementioned policies, the poultry industry is now considered one of the most important success stories of Botswana‟s policy of agricultural development and import substitution. Botswana is now largely self-sufficient in poultry meat and eggs. From its very humble beginnings, poultry meat and egg production have grown to the point where they are able to supply most of the nation‟s needs. The development of the supply of broiler meat is presented below. What is evident is that the sector only began very substantial growth from the mid-1990s. This growth and expansion of the sector can be explained in large measure from the continued restrictions imposed by the government on the trade in poultry products. This is the last remaining lever of policy that government continues to employ in the sector. Figure 1 shows the poultry population trends, both traditional and commercial in Botswana.

There is a particularly important policy consequence that stems from the history of the industry. The government‟s original objectives with regard to the development of the poultry industry were always predicated and continue even to this day to be based, at least in part, on the development of small scale local producers. The original intent of all the interventions in the sector was the establishment of an import substituting sector based on small scale producers that would assist with rural poverty alleviation. However, with the demise of PAMA and FAP, the commercial reality of the sector meant that such small scale producers would not be able

[2]Approximately 55% of the 134 projects in the poultry sector in the S.E. Division in 2010, that is, in the vicinity of Gaborone, were described as ‘collapsed’ by the Poultry Division. This does not include all poultry firms in the industry that were supported under the FAP, although many of the collapsed firms date from the FAP period.

[3]P13 million in grants were provided to the small scale projects in agriculture and some P4 million went to the poultry sector; pg 47.

[4]Act to Control of Goods, Prices and Other Charges, [CAP.43:07] Act 23, 1973.

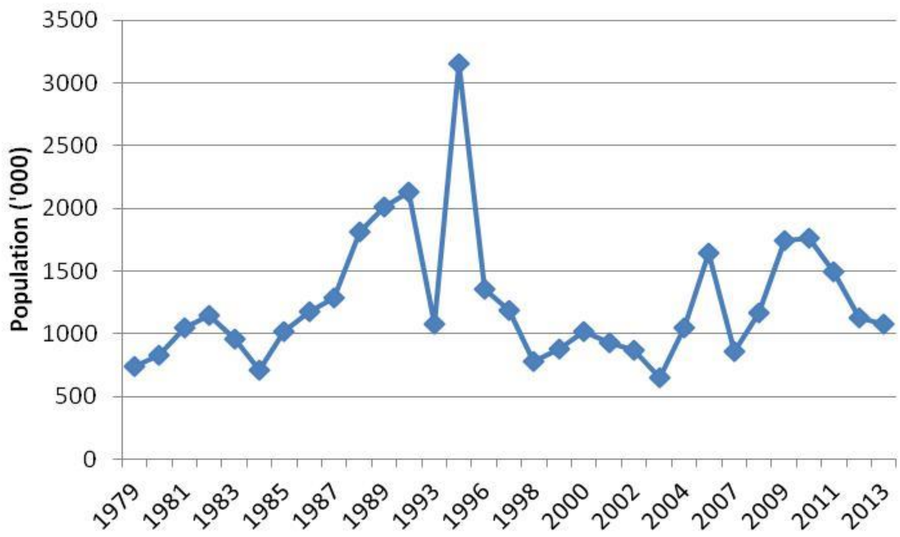


Figure 1. Poultry population in Botswana. Source: Statistics Botswana, 2015.

to compete nor would they have access to the primary poultry market. The poultry policy became more reliant on restricting market access to Botswana of imports. While this policy protects both the small scale producers and large alike, it is the small scale producers who do not benefit from economies of scale; and thus, they will have the greatest difficulty finding an appropriate market niche that provides them with sufficient returns to justify their continuation in the industry.

SACU AND THE BOTSWANA POULTRY IMPORT REGIME

This section considers the import regime in some detail because it is the most enduring and effective instrument of government policy that has been used to support the industry. In order to fully appreciate the importance of international trade on the poultry sector one needs to appreciate that there are two levels of trade restrictions on poultry meat trade in Botswana. The first level of restriction is that imposed on SACU trade; and the second level, which is permitted for what are in effect infant industries, are national non-tariff measures.

SACU trade restrictions

SACU imposes a uniform common external tariff and a sample of the applied tariffs on the main poultry products is found below. The maximum tariff for poultry products were about 27%, then the South African Poultry Association (SAPA) applied for the increase in tariffs in August 2013 through the International Trade Administration Commission (ITAC)[5]. SAPA received support from the producers in Botswana, Lesotho, Namibia and Swaziland (BLNS) and worried that their survival is threatened mainly by the large and rapid increase in the volume of imports of extremely low priced frozen chicken meat (from 97565 tonnes in 2008 to 238582 tonnes in 2012, about 40% increase).

Import duties remain high for broiler meat in most categories where competitive imports are possible (Table 1). The maximum tariff is now at 82% and used to deter export countries to 'dump' poultry in the SACU region. The industry argues that these measures are designed to support and promote the poultry producers across the entire SACU market to ensure a sustainable and competitive industry that is able to provide greater food security to the region's people.

Botswana's trade restrictions-non-tariff measures

As the country is now self-sufficient, imports of poultry meat to Botswana are normally not permitted, but do occur on an ad hoc basis in either of two ways. The first

[5]Under the current SACU arrangement South Africa continues through ITAC to be responsible for the setting and amendment of the Common External Tariff (CET) however this is due to change once other SACU Members have established National Bodies and the Tariff Board is set up.

Table 1. SACU tariff for poultry products.

HS code	Product description	Duty prior August 2013	Proposed duty	Duty agreed (September 2013 to present)
0207.12	Not cut in pieces, frozen	-	-	-
0207.12.20	Carcasses (excluding necks and offal) with all cuts (e.g. thighs, wings, legs and breasts) removed	27%	991 c/kg with a maximum of 82%	31%
0207.12.90	Other: Whole bird	27%	1111c/kg with a maximum of 82%	82%
0207.14	Cuts and offal, frozen	-	-	-
0207.14.10	Boneless cuts	5%	12% or 220c/kg with a maximum of 82%	12%
0207.14.20	Offal	27%	67% or 335c/kg with a maximum of 82%	30%
0207.14.90	Other: Bone in portions	220c/kg	56% or 653c/kg with a maximum of 82%	37%

Source: South Africa Government Gazette, 12 April 2013, SACU Tariff Schedule 2012 and SAPA Tariff Application 2013.

is what government officials call „small volume" imports through individual specialty end users for Further Processed Chicken (FPC). Import permits are granted for these virtually automatically. Highly specialized poultry, such as free range or organic products, are imported by top-end-of-the-market supermarkets, but most shortages for supermarkets are met through the dominant wholesaler. Secondly, on an ad hoc and seasonal basis, bulk imports of frozen chicken occur in relatively large volumes as required. This normally occurs in the Easter period and in the months leading up to the end of the year, where shortages of day old chicks or other supplies mean that the market is not being adequately served by domestic production. In this situation, imports are permitted, but these imports occur by firms linked to domestic production. This then raises the question of the import price, which, according to government officials, is not discussed at the Poultry Liaison Committee (PLC) [6].

The differences in price between South Africa and Botswana at the retail level shows that there is a substantial difference in price, and „economic rents" will, therefore arise in the trade. Either of the two options is possible for the distribution of these rents. Either the difference in price between the SA and Botswana price is absorbed along the value chain, normally by the importer, which allows the price difference between the domestic and imported chicken prices to equate. Alternatively, the importer can lower prices domestically and capture a larger share of the market. This latter option would not be in the interests of the Botswana Poultry Association (BPA)[7], nor of other importers; and hence, producers and importers have a common interest to stop this form of trade induced price competition. Needless to say, this price competition is seen by economists as one of the greatest benefits of international trade as it allows the lowering of price and an increase in consumer surplus. According to the BPA, the dominant wholesaler has traditionally imported most poultry products into Botswana on behalf of the BPA and the rents have largely accrued to the importing company[8]. It is explained

[6]Policy and practical day-to-day issues pertaining to the management and governance of the poultry industry are discussed within the context of the Ministry of Agriculture's, Poultry Liaison Committee. The committee is 'open' to participants/stakeholders and, according to government officials, includes all those may who feel there is a need to discuss any particular issue and, hence, may attend on an ad hoc basis. The administrative structure of industry governance still reflects a predominant role of firms with no place for any representatives of consumer interests. The regular members of the committee include the following groups' producers represented by the Botswana Poultry Association. Meetings will also include individual producers who may choose to be present. The PLC also includes retailers, wholesalers, distributors and processors as well as specialty franchises. Only producer and government interests are present with no consumer interest.

[7] The Botswana Poultry Association was formed in 1995 to create a liaison organization between producers as a whole and the Government.

[8] The former Director of Animal Production, Mr Lesitamang Paya, was quoted in the *Poultry Site News Desk* in November

by the BPA that the choice of this company stems from the fact that it is the only company that has sufficient freezer capacity to manage the needed volume of frozen imports.

The BPA agreed that the price difference between the South African price and the domestic price will be taken up either by importers or retailers and that the retail price of imported South African chicken should not undercut the domestic producer. One of the larger supermarket chains in Botswana indicated that, when they do import chicken from South Africa through this dominant company, they have agreed on a small 5% margin; and that the difference in price is absorbed by the supermarket. Thus, the high margin available from imports is not necessarily absorbed at the producer/wholesaler end of the market. By allowing the producers to import, the economic rents created can also be absorbed by the importer-retailer. But in either case, the consumer is not the beneficiary[9]. This procedure employed by the PLC for allocating import permits stops imports from undermining domestic production and therefore limits any benefits that competition from international trade may have for consumers[10].

There has been a proliferation of imports with FPC poultry imports growing at unprecedented rate. The import data is presented in Figures 2 and 3. Total consumption of poultry meat was approximately 70,000 tonnes in 2008/09 with some 2960 tonnes of FPC chicken (MoA, 2009). Trade figures for the calendar year 2009 from the Statistics Botswana indicate that imports have fallen slightly. It is understood that a facility is under construction by one of the larger poultry producers to fill this growing segment of the market. Given the market access policy arrangements, that is, that no imports are permitted where domestic production exists, it is also understood that imports of FPC will be brought to an end with the establishment of this new processing facility.

It is also important to note that there has been evidence in the past of poultry meat smuggling across the border from South Africa. This indicates that the price differential between the Botswana and South African price is of a sufficient order of magnitude to justify the risks associated with these types of nefarious activities.

Not only have there been restrictions on the import of poultry meat, but there have been recent policy changes which have resulted in restrictions on the import of day old chicks, which was implemented in 2009. There are also pre-Southern African Development Community (SADC) Free Trade Area (FTA) restrictions presently in place on the import of animal feed, which must be consumed in the proportions of 70% local production to 30% imports[12].

SACU, SADC, EPA and WTO obligations

What also needs to be considered in any discussion of trade in poultry products in Botswana is the nation‟s on-going commitment to the four principle trade agreements to which it is a signatory. Both the SACU Agreement (2002) and the SADC Trade Protocol, which established a free trade area between all SADC countries in 2008, as well as the WTO and the Interim EPA with the EU, are relevant to the trade in poultry products. The provisions of the SACU Agreement, to which both Botswana and South Africa are signatories, allows the BLNS members to depart from their obligations of the customs union in the case of infant industries for a period of eight years[13]. A further justification that has been offered is that the poultry restrictions can be explained under the provisions of Article 29 of SACU (2002), which provides a general exception clause for agricultural marketing[14]: Member States may impose marketing regulations for agricultural products within its borders, provided such marketing regulations shall not restrict the free trade of agricultural products between the Member States, except as defined below:

(a) Emergent agriculture and elated agro-industries as

2008 saying that "In an ideal situation, retailers should be the ones to import. It is only that there is a crisis this year (FMD). When the situation normalizes, we will call the producers and tell them that their role is to meet the local demand. There has been no shift away from the process of producer related companies being permitted to import. http://www.thepoultrysite.com/poultrynews/16510/producers-accused-of-price-fixing 24 Nov 2008

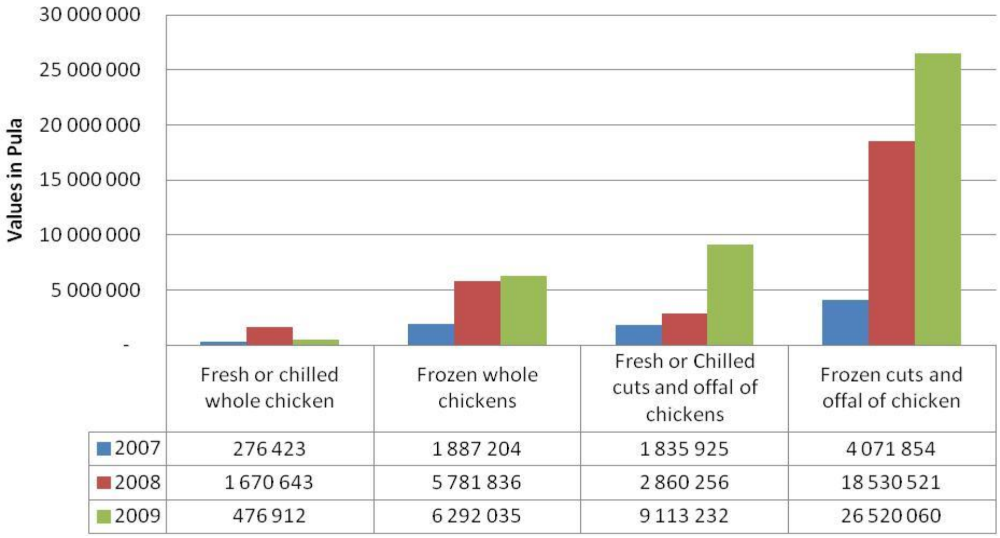
[9] In interviews some supermarkets indicated that they do lower the price of poultry below domestic prices when they are permitted to import. No evidence was provided of this.

[10] The BPA received Pula 0.25 for every kilo of poultry meat imported by the dominant company and these funds are used for the maintenance of the industry association.

[12] Statutory Instrument No.66 of 2005 states that "any person applying for (an) import permit for maize meal, samp, maize rice, or animal feed for poultry and livestock shall be required to purchase at least 70 percent of the requirements locally and the remainder can be imported".

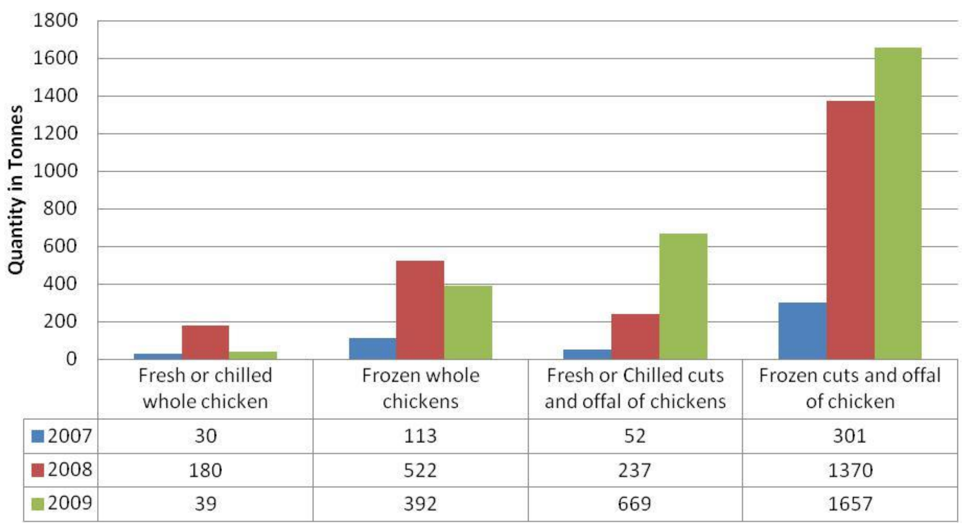
[13] Infant industry protection is afforded under Article 26 (2) and (3) of the SACU 2002 Agreement, which allows countries to extend the infant industry protection for longer periods subject to the agreement of the SACU Council. Article 26(4).

[14] Pers. com, Department of Trade and Industry, 8 September 2010.



	Fresh or chilled whole chicken	Frozen whole chickens	Fresh or Chilled cuts and offal of chickens	Frozen cuts and offal of chicken
2007	276 423	1 887 204	1 835 925	4 071 854
2008	1 670 643	5 781 836	2 860 256	18 530 521
2009	476 912	6 292 035	9 113 232	26 520 060

Figure 2. Value of poultry imports into Botswana.



	Fresh or chilled whole chicken	Frozen whole chickens	Fresh or Chilled cuts and offal of chickens	Frozen cuts and offal of chicken
2007	30	113	52	301
2008	180	522	237	1370
2009	39	392	669	1657

Figure 3. Volume of poultry meat imports into Botswana.

agreed upon by Member States; or
(b) any other purpose as agreed upon between the Member States.

The Government of Botswana has notified the restriction on poultry to the SACU Council and it has been accepted[15]. However, Botswana also has market opening commitments under SADC to remove non-tariff measures. Article 6 of the Protocol on Trade states that non-tariff barriers (NTBs) are as follows:

„Except as provided for in this Protocol, Member Statesshall, in relation to intra-SADC trade:

[15]Pers. com, Department of Trade and Industry, 9 September 2010. It is by no means evident how Botswana could put a legally valid case before the SACU Council that its measures in the poultry industry do not violate the prohibition on using the provisions of Article 25(1) of SACU 2002 for the purpose of protection of industry.

1. Adopt policies and implement measures to eliminate all existing forms of NTBs.
2. Refrain from imposing any new NTBs.

At the 6th Special Meeting of the SADC Committee of Ministers of Trade and Industry, held in Dar es Salaam, Tanzania, on 8 November 1999**,** agreement was reached on two broad areas of NTBs, namely, the core NTBs that should be eliminated immediately on commencement of the FTA implementation process, and other NTBs set aside for gradual elimination. The core NTBs identified include:

1. Cumbersome customs documentation and procedures;
2. Cumbersome import and export licensing/permits;
3. Import and export quotas (except those concerning special sensitive products as may be specified);
4. Unnecessary import ban/prohibitions.

These NTBs were supposed to be eliminated for all non-sensitive products by 2008. However, despite calls by SADC members for the removal of all NTBs, there appears to be only limited appetite amongst SADC members for change in the current practices. A recent SADC review of the development of the FTA has argued (SADC, 2010):

„SADC‟s programme on the elimination of NTBs has not moved at the same pace as tariff liberalisation. In many instances, NTBs are continuously increasing and their elimination is, therefore, a critical factor in consolidating the FTA. Pursuant to this, in July 2007, SADC Ministers of Trade agreed to a mechanism for reporting, monitoring and eliminating NTBs." Government of Botswana officials have also argued that[16]:

Article 20 of the SADC Protocol on Trade also allows Member States to apply safeguard measures to a product only if it has been determined that such product is being imported into its territory in such increased quantities which may cause serious injury to the domestic industry. Member States shall apply safeguard measures only to the extent and for such period of time necessary to prevent or remedy serious injury and to facilitate adjustment.

There also exist WTO obligations to which Botswana is a signatory which are unlikely to be enforced because of the high cost of any potential complainant relative to the size of the market. In particular, the Uruguay Round *Agreement on Agriculture* strictly prohibits the type of quantitative restrictions found under the Control of Goods (Importation of Eggs and Poultry Meat) Regulations [S.I. 120, 1979], which imposes import licensing provisions based on volumes. These measures have been in action since 1979 and Botswana‟s commitments under the WTO, which are provided for unambiguously under the terms of Article 4(2) of the *Agreement on Agriculture,* which states that „Members shall not maintain, resort to or revert to any measures of the kind which have been required to be converted into ordinary customs duties‟. In other words, tariffication of all Non-Tariff Measures which was so widespread, in particular, footnote number 1 specifies that „the measures include quantitative import restrictions (GATT, 1995). This then raises the issue of how Botswana and the other small states have been able to justify and continue such quantitative restrictions. The Trade Policy Review of the WTO for Botswana (2009) states that the reasons that these import restrictions are maintained are for „food security reasons‟ (WTO, 2009).

The Botswana poultry industry has indicated its intention to exports to the EU, especially for breast meat which is strongly preferred in the EU, but not in Botswana (Farmers Magazine, 2010). With the establishment of an EU standard compliant abattoir by Tswana Pride, such a development is indeed possible. Under the provisions of the Interim EPA which govern trade and commercial relations between the EU and Botswana, the sort of quantitative restrictions through import licensing used by Botswana to prohibit imports from South Africa and by extension by the EU are simply not permitted[17]. While other SACU, SADC and WTO members may turn a blind eye to the sort of quantitative restrictions imposed by Botswana in the poultry industry, it is questionable that the EU will permit exports duty free access to its market for a product which are restricted by Botswana. Moreover, the export to the EU is predicated on those import restrictions which allow Botswana producers to obtain a higher price for dark meat on the local market. While it would appear that SADC does nominally impose legal restrictions on the type of quantitative trade measures used by Botswana in the poultry industry, given the widespread use and increasing prevalence of NTBs by SADC members, it can only be concluded that these limitations on the use of these instruments are more apparent than real. The WTO also disciplines its members on precisely these forms of quantitative

[16] No safeguard investigation has occurred in the poultry industry.

[17] Article 35 of the Interim EPA states:

'All Import or Export prohibitions or restrictions in trade between the Parties, other than customs duties and taxes and other charges provided for under Article 22, whether made effective through quotas, import or export licenses or other measures, shall be eliminated upon entry into force of this Agreement unless justified under the provisions of Article XI, restrictions which are not permitted. It is only because the Botswana market is very small that there is no complain. But, the non-tariff barriers are in clear violation of the spirit, and, in the case of the WTO, the letter of Botswana is legal obligations.

THE POULTRY VALUE CHAIN

There are 9-10 relatively large producers of poultry in Botswana who are members of the BPA. However, the main supermarkets in Botswana are supplied by 5-6 companies which are closely inter-related. According to industry sources, supermarkets, which purchases 45% of poultry consumed by supermarkets, buy from „any source as long as it meets standards and price". The industry also suggests that in Botswana, the minimum efficient scale in the broiler industry is achieved when a facility is produced between 30,000-50,000 units per week, although much larger producers exist in South Africa. There are a large number of small and contract growers who are well below this scale level (TRANSTEC AND BIDPA, 2010)[18]. Until late 2010, there were two groups in the industry which dominated the broiler production. One of the groups is linked to other largest producers and also includes three of the biggest producers. This grouping is responsible for between 40 - 60%[20] of the market share[21]. Both groups were integrated along the value chain to a greater or lesser degree with some having more backward integration into inputs and others being forward integrated into processing and supermarkets. There are also, a large number of small scale producers who supply the large firms on a contract basis, as well provide supply on government tender. In the region of Gaborone, many of these small scale producers which, in 2010, included some 18 farmers, according to the company, employed some 200 workers. These small scale producers have no direct access to supermarkets and many of their sales are to small village retail outlets and individuals. An important market outlet for some of these relatively small producers is on tender to government institutions, such as schools and the Botswana Defence Force. The larger producers supply the out-growers with inputs. Since 2000, however, there has been a steady rise in commercial sector holdings, and by 2004, there were nominally over 300 small holdings. The majority of the holdings that were established and funded a decade or so ago under the FAP are no longer operational.

According to the government, the company which supplies some 95% of poultry feed for the industry is also owned by the dominant poultry producing group. It is important to note that the retail distributor of the production insists that, largely because of the high cost of transport, it is cheaper to procure poultry feed in Botswana rather than from South Africa. They argue that the obligation to purchase from local sources on a 70/30 basis will add pula 250-300 per tonne to the price of feed. Current levels of commercial maize production are such that this proportion of local supply of maize cannot come from domestic production of maize and, therefore, the ratio, while nominally mandatory, is aspirational in nature, rather than binding when it comes to maize farmers. The total procurement of maize of the Botswana Agricultural Marketing Board (BAMB), which is the only significant buyer, in 2009, was approximately 4,500 tonnes, almost all of which went largely to the two largest milling firms in Botswana. The domestically produced maize available through BAMB was used by these firms in the maize milling sector to produce maize meal and not in the production of animal feed. As there is very little local maize for animal feed, the 70/30 rule provides a legally assured market and that of the other very small producers, which are, in turn, largely produced from imported grains. Given current levels of maize output in Botswana, such a policy does not appear to be in the interests of the economic efficiency of the poultry industry, maize farmers or of consumers, and should, therefore, be abandoned. Therefore, the dominant firm in the industry, that is, companies owned or associated with, are vertically integrated along the value chain all the way from poultry, day old chicks, production and finally to freezer and distribution facilities.

TOWARDS A SMALLHOLDER POLICY

As was noted at the beginning of this paper, the original intention of Government, NGO and donor policy in the early days of the industry in the 1970s and 1980s was to use the poultry industry as a way of increasing rural incomes of smallholders and thereby alleviating poverty. However, the commercial reality of economies of scale as well as the management of PAMA and the FAP means

GATT 1994'.

[20]The estimate of 60% of market share was confirmed by the MoA as well as the Farmers Magazine Botswana,2010 which stated that the abattoir was razed down in May 2009 and at the time it was the largest in the country supplying 60% of chicken consumed in the country'

[21]The Botswana National Competition Policy (2005, page 4) defined Monopolisation as:

'The conduct and practice of a firm with a dominant position of at least 40% or market share and significantly larger than that of its biggest rival to maintain , enhance or exploit their dominant power in the market place' that now smallholders only operate in a very peripheral place in the industry, either supplying large producers as out-growers or supplying direct to small rural buyers. By and large, the smallholder, as noted above, has no direct access to the primary poultry market, that is, supermarkets. Instead, the poultry meat value chain is now dominated by one group of firms that is vertically integrated; and the original intent of the poultry policy, which was to stimulate smallholder production, has not occurred because this is counter to the commercial imperative of having large firms that benefit from economies of scale and direct marketing links to supermarkets.

Government policy towards poultry smallholders has not been sufficiently robust to fundamentally change the reality described above. Smallholder policy, given the uncompetitive current structure of the industry, can, if cast in commercial realities, be a powerful vehicle for achieving increased competition in the industry. There now appears to be every intention to return to government managed co-operatives in the poultry sector through the Livestock Management and Infrastructure Development (LIMID) II program, which will provide government assistance to the poultry sector through a 4 million Pula grant for the construction of a co-operative abattoir, which will be managed by government temporarily, „until such time as they are profitable‟. The LIMID program requires injections of capital by the members of the co-operative and, as a result, this will assure greater stakeholder intervention in management than was the case with PAMA in the 1980s. However, the LIMID II proposal, at least initially, involves a very similar dominant role for government, as was the case during PAMA. This approach failed in the past and its proponents need to demonstrate how the current LIMID proposal, whereby government will manage the proposed smallholder poultry abattoir, will lead to different outcomes from that of PAMA. Moreover, it is questionable whether such small scale abattoirs of 100,000 units per month will prove to be profitable and the government will be able to readily exit the envisaged management role in the LIMID proposal.

If the Government wishes to see the smallholder part of the industry thrive and develop, a more imaginative and well-funded proposal needs to be considered, rather than that of government management of an abattoir. Variants of the current proposal have failed in the past and there appears to be little in the LIMID proposal that draws on the PAMA experience of state control in the sector. Providing financial support to smallholders to find professional management from outside government and providing incentives to supermarkets and other consumers to invest in the development of the smallholder sector is more likely to achieve commercial success in strengthening the smallholder sector than using government controlled agencies.

There is a need for the development of a comprehensive smallholder plan, which must be part of a return to a more competitive sector. What is unavoidable is the reality of economies of scale and the need to establish strong marketing links with existing supermarkets. The key to a successful smallholder plan is funding a partial liberalisation of trade with an accompanying earmarked levy on import permits that could produce sufficient revenues which could then be earmarked for a smallholder industry plan[22].

CONCLUSIONS

The poultry meat industry, as it is presently functioning has succeeded in producing national self-sufficiency in poultry meat. However, based on international prices, the industry is uncompetitive and arguably it is characterized by an industry structure that is duopolistic or oligopolistic. The normal policy response of economists when such a situation arises as a result of trade restrictions is to propose substantial and immediate trade liberalisation that would permit imports from SA and elsewhere which would in turn, lower prices and increase competition. Assuming that the Government of Botswana would like to continue to see a viable and profitable domestic poultry industry, a full and complete liberalisation should be avoided at this point in the industry‟s development, as it is highly doubtful that the industry could survive such an economic shock. However, partial and progressive market opening as proposed in the policy recommendations below would increase the competitive pressures on the industry, result in lowering of prices and would also force the industry to lower its operating costs. After 36 years of trade restrictions, a modest liberalisation, as proposed below, should be considered.

Policy recommendations

1. The poultry industry is Botswana‟s most successful import substituting sector and the government is quite rightly proud of the achievement of reaching national self-sufficiency in poultry products. However, that national self sufficiency has been achieved at a considerable cost to

[22] A levy on imported products coming from other SACU countries is not uncommon as these are imposed by other BLNS countries. As it is the result of a liberalisation of intra SACU trade, as compared to the status quo, it is more likely to find support amongst SACU members.

the consumer as well as to the taxpayer through various investment support programs over the years. Restrictions on imports have been in place since 1979. The government needs to undertake a fundamental review of its policy for a large part of the industry does not require infant industry protection to the extent that has been the case in the past. In order to assure the long term efficiency and viability of the industry and maintain consumer support, the government needs to ease, in part, the long standing trade restrictions. However, this will need to be balanced against objective of protecting small producers who will find adjustment to a more competitive industry even more difficult.

2. The industry is vertically integrated along the value chain with two groups controlling the industry. The value chain for poultry is highly uncompetitive. As an instrument of competition policy, the government should give consideration to providing extra financial incentives to encourage new firms seeking to enter the industry to provide alternative supply of inputs, freezer facilities and poultry meat.

3. The poultry industry cannot approach international competitiveness if the government of Botswana insists on the current policy of forced domestic procurement of poultry feed, that is, 70/30 rule. Botswana‟s commercial production of grain marketed through BAMB is 4,500 tonnes and almost all is used for human consumption. Therefore, the 70/30 rule, when applied to poultry feed becomes a market support measure for local poultry feed producers and does not support local maize farmers. The poultry feed market is dominated by one firm which supplies over 90% of domestic supply. There should also be no further trade restrictions on other inputs such as DoC as this further compounds the industry‟s lack of competitiveness.

4. The government should give consideration to the development of a Smallholder Poultry Plan based in part on providing tax concessions and other benefits to larger firms and supermarkets to procure poultry from domestic smallholders. A smallholder marketing program should also be properly funded to assist smallholders to develop direct co-operative links to supermarkets though further consideration should be given to the modalities in light of the failed earlier attempts to establish PAMA. Government may wish to give consideration to imposing a levy on these poultry imports to be used to develop the small-holder poultry plan considered.

Conflict of interests

The authors have not declared any conflict of interests.

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