COMPETITION AND TRADE POLICY -

FRENEMIES?*

MARUMO NKOMO
a Lecturer in the Commercial Law Department at the University of Cape Town

MAGDALEEN VAN WYK**
Analyst in the Enforcement and Exemptions Division at the Competition Commission

ABSTRACT

The importance of the relationship between competition law and international trade policy has increased in recent years. Traditionally, competition laws are aimed at private behaviour that limits competition and harms consumers. Competition laws are largely based on domestic legal principles intended to maximize economic efficiencies. Trade laws, by contrast, are aimed at public behaviour, whereby governments create tariff and non-tariff market barriers, thereby protecting domestic producers at the expense of foreign competitors. Unlike competition laws, trade policy is aimed at opening markets to exporters and protecting domestic industries, not at optimizing marketplace efficiencies and consumer benefits. In short, the two bodies of law and policy involve fundamentally different actors with fundamentally different institutional perspectives, cultures, methods of dispute resolution, and legal principles.

With reference to recent case studies, this paper contains a theoretical and practical analysis of the impact and effect that tariffs imposed by the International Trade Administration Commission (“ITAC”) has on competition as well as an evaluation and comparison of the conceptual frameworks and systems of ideas that influence decisions in the areas of competition law and trade policy.

In concluding, the paper will look at the degree to which trade policy and competition law serve the same goals and recommend how ITAC and the Competition Commission can complement each other.
INTRODUCTION

The English Oxford Dictionary defines a frenemy as “a person with whom one is friendly despite a fundamental dislike or rivalry.”¹

It is easy to see why competition and trade policy can be considered enemies. Traditionally, competition laws are aimed at the behaviour of private firms that limits competition and harms consumers. It is mostly based on domestic legal principles intended to maximize economic efficiencies and sanctions business conduct that is considered harmful to the competitive process, such as collusive or exclusionary agreements, anticompetitive mergers and abuse of dominance. Competition laws are enforced in courts, and the principles of diplomacy often present during trade negotiations are replaced with a winner-take-all aspect².

With trade laws, by contrast, governments generally impose specific limitations in the form of tariff and non-tariff market barriers, which protects domestic producers at the expense of foreign competitors. Unlike competition laws, trade policy is aimed at opening markets to exporters and protecting domestic industries, not at optimizing economic efficiencies and consumer benefits³. Trade laws and policy often involve negotiated solutions, and comprise of representatives of governments who are engaged in continuous bilateral and multilateral relationships and who will need to interact with one another after a dispute is resolved⁴.

It is clear that the two bodies of law and policy involve fundamentally different players with fundamentally different institutional perspectives, types of inquiry, methods of dispute resolution, and legal principles⁵.

Despite these differences, this paper will argue that competition and trade policy can also be friends. After briefly looking at the aims of both Competition and Trade regulation, this paper will discuss the measures taken to promote these two different fields. This will be done by a discussion of the recent tariff increase on poultry products and its effect on competition. In concluding, the paper will look at the degree to which trade policy and competition law serve the same goals and recommend how ITAC and the Competition Commission can complement each other.

AIMS OF COMPETITION AND TRADE REGULATION

The overriding goal of competition policy in South Africa is to achieve a more effective economy. It is largely concerned with optimizing marketplace efficiencies by protecting against concerted actions to increase prices or reduce output.⁶ In terms of the preamble of the Competition Act, 89 of 1998, as amended (“the Act”) some aims of the Act include providing for markets in which consumers have access to, and can freely select the quality and variety of goods and services they desire; and to restrain particular trade practices which undermine a competitive economy.

To achieve these objectives, the Commission must balance issues related to competition with the broader social and economic goals outlined in the Act, such as employment, international participation in world markets and recognising the role of foreign competition in South Africa, as well as the ability of small and medium sized businesses and firms owned

¹ http://www.oxforddictionaries.com/definition/english/frenemy
³ Competition Policy and international trade distortions, Alden F. Abbott and Shanker Singham at p 23.
⁴ Epstein at p 362
⁵ Epstein at p 345
⁶ http://www.compcom.co.za/evolution-of-competition-policy/
or controlled by historically disadvantaged persons to compete. A fundamental principle of competition regulation in South Africa is therefore the need to balance economic efficiency with socio-economic equity and development.

The aims of trade and competition regulation are complimentary however the implantation of these tools has remained distinct. Trade regulation is aimed \textit{inter alia} at reducing barriers to trade in goods and services. These restrictions are often imposed by government through legislation and other regulatory measures.

Efforts to restrain and eliminate state sponsored trade barriers have taken place under the auspices of the multilateral trading system. The World Trade Organization (WTO) and its predecessor, the General Agreement on Tariffs and Trade (GATT) have formed the cornerstone of these international endeavours. This supranational system is backed by binding treaties that utilise transparency and non-discrimination as tools to achieve its objectives.

Competition regulation on the other hand targets the conduct of private entities that hinder competition and does not typically have extra-territorial application.

While governments are the subjects of the rules contained in trade agreements, it is private firms that are the immediate beneficiaries. Trade liberalisation opens up new markets and opportunities for the goods and services of commercial actors. The increased competition from international goods and services creates greater efficiency in the domestic market which in turn benefits consumers. However, these benefits will not accrue if domestic firms are able to stifle new entrants through anti-competitive practices. Therefore, it can be said that trade regulation is ineffective without facilitative competition disciplines.

The recognition that competition and trade regulation are complimentary has since the 1940s led to calls for competition disciplines to be formally introduced into the multilateral trading system. Initially, the incorporation of competition disciplines into the multilateral trading system was tabled during the failed efforts at the creation of an International Trade Organization (ITO).

In 1997, a working group was established within the WTO to analyse the link between competition and trade policies. The prominent role played by competition law in the European common market led the European Communities (EC) to champion the addition of competition law during the Singapore and Doha Ministerial Meeting In 2001. However, competition was eventually dropped from the agenda at the Seattle Ministerial Conference two years later due in large part to the failure to garner support from developing country WTO members.

An issue that arises from the absence of substantive competition norms within the WTO is the use of existing WTO disciplines to try and deal with anticompetitive practices by governments and private firms. The \textit{Telmex} case is a good example. In this dispute the
United States alleged that that cartel-like incumbent protection regulatory arrangements provided by Mexico’s telecommunications regulator to the dominant domestic telecoms services provider violated Mexico’s WTO commitments to open up its telecommunications market. In particular, it was alleged that the arrangement was in conflict with Mexico’s commitments under the General Agreement on Trade in Services (GATS), the GATS Telecommunications Annex, and the accompanying Reference Paper to prevent Mexico’s dominant carrier from engaging in anti-competitive practices.15

The panel in large part ruled in favour of the United States, finding that Mexico had failed to ensure interconnection at cost-oriented rates and had failed to prevent anticompetitive practices by a major telecommunications supplier. Upon the delivery of the adverse finding, Mexico brought its regulatory regime into conformity with the Panel ruling. It has been lamented by WTO scholars that this procompetitive outcome did not become a precedent but has remained rather anomalous.16

A less effective means of using trade disciplines to restrain anticompetitive practices is in the sphere of trade remedies.17 As eluded to above, the concept that the eradication of trade barriers will lead to efficient outcomes is prefixed on the assumption that firms will behave competitively, this notion is seldom realistic however and some form of government intervention is often necessary.

The absence of clear competition disciplines within the multilateral trading system has contributed to the proliferation of anti-dumping measures. Where foreign based enterprises abuse their market dominance through predatory pricing for instance, the territorial nature of competition law makes it an inadequate tool to deal with the transgression.18 This has led governments to use antidumping as an alternative to competition disciplines.19

Regrettably, however, antidumping for the most part is not being used to address abuse of market power. Antidumping procedures are defined under the assumption that a domestic competitive industry is facing a foreign monopolist or an international cartel, but this assumption is not supposed to be tested during the investigation. The consensus among trade economists is that the use of anti-dumping has become a tool to finance the inefficiency of special interests.20 Michael Finger who is known for his seminal work on antidumping opines that “antidumping is a trouble-making diplomacy, stupid economics and unprincipled law”.21

One of most comprehensive studies ever undertaken on the welfare effects of anti-dumping was conducted by International Trade Commission (ITC) of the United States in 1995. The

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15 The approach in the Reference Paper followed some principles of competition and regulation for participants to consider binding in their basic telecommunications commitments, to protect and promote competition by requiring that, appropriate measures be maintained in order to ensure the elimination of anti-competitive practices. The US and Mexico had both committed themselves to the Reference Paper, which establishes disciplines on competition safeguards in the telecoms sector. Such safeguards include interconnection guarantees, transparent licensing, independence of regulators from telecoms operators, and fair allocation of resources such as frequencies, numbers, and rights of way.

16 Abbott and Singham at 31.

17 Here, the government is permitted to exact increased tariffs on the goods of entities that through “unfair” trade practices have caused injury to the domestic industry.


19 Ibid at 2.


ITC research demonstrated that removing the antidumping and countervailing duties that were active in 1991 would have allowed a welfare gain of US$1.6 billion, i.e., about 0.03 percent of the country’s GDP that year.\textsuperscript{22}

Notwithstanding the clear welfare costs, the United States has continually been a key proponent of anti-dumping. An often cited communication by the United States to the WTO clearly articulates that country’s view on the role of anti-dumping as follows:

"Contrary to the assumptions of some economists, the antidumping rules are not intended as a remedy for the predatory pricing condemned by competition laws. Rather, the antidumping rules are a trade remedy which WTO Members have agreed is necessary to the maintenance of the multilateral trading system. Without this and other trade remedies, there could have been no agreement on broader GATT and later WTO packages of market-opening agreements, especially given imperfections which remain in the multilateral trading system."\textsuperscript{23}

According to this view, anti-dumping is merely a “safety valve”. In other words, a tool governments can use to garner political support for the trade liberalisation agenda that states are bound to pursue under the WTO. This support comes from industries that are influential enough to engage profitably with government but unprepared to face international competition.

Most developing countries do not share the “pressure valve” view and have expressed concern about the abuse of anti-dumping. These concerns have led to ongoing efforts to reform anti-dumping at WTO level. One of the key mandates of the Doha agenda was to make the Agreement on Implementation of Article VI of the GATT (Antidumping Agreement) more robust and less ambiguous, thereby decreasing the scope for abuse.\textsuperscript{24}

South Africa for example is one country that adopts a much more stringent approach than what is required by the Antidumping Agreement in domestic implementing legislation and regulations.\textsuperscript{25}

The view postulated by the US not only undermines trade liberalisation and the intended benefits of elimination of barriers to trade, it also stifles competition by funding inefficient domestic incumbents.\textsuperscript{26}

This tension and interplay between trade and competition can be illustrated by the recent controversial increase in poultry tariffs.

INCREASE OF IMPORT TARIFFS ON FROZEN POULTRY\textsuperscript{27}

This section sets out the most important factual and legal background information on the recent increase in poultry tariffs. This is important as it allows for the identification of the measures that will form the basis of the discussion on the interplay between instruments

\textsuperscript{22} ECLAC (2001) at 10.
\textsuperscript{25} The International Trade Administration Act and the Antidumping Regulations have several provisions that adopt stricter standards than are required under the Antidumping Agreement including mandatory application of the lesser duty rule in instances where importers and exporters have cooperated in the investigation.
\textsuperscript{26} ECLAC (2001) at 11.
\textsuperscript{27} ITAC Report 442: Increase in the rate of customs duty on frozen meat of fowls of the species gallus domesticus: whole bird, boneless cuts, bone-in portions, carcasses and offal.
used by competition authorities to advance the role of foreign competition on the one hand and trade authorities’ measures to protect the domestic industry on the other.

**Background to poultry tariffs**

In March 2013, The South African Poultry Association (SAPA) on behalf of its members, applied to the International Trade Administration Commission (“ITAC”) for an increase in the rate of customs duty on five frozen poultry products. SAPA is the representative organisation of poultry producers in South Africa. The products investigated were carcases, whole bird, boneless cuts, offal and bone-in portions respectively.

The five poultry products in question are sold mainly through retail outlets, with only a small percentage sold to the food service industry such as restaurants, fast food chains and hotels. The preferred chicken products consumed in the SACU are bone-in portions sold as individually quick frozen (IQF) products known as “braai packs”. During its investigation, ITAC found that the demand for these products has increased over the three year period for which data was collected.

**Background to poultry industry**

The poultry industry is the largest agricultural sub-sector in South Africa, accounting for 23% of all agricultural production. In monetary terms, this industry accounts for R22.9 billion for chicken meat and R6.7 billion for eggs. The volume of poultry products produced in South Africa increased by approximately 40% over the last 10 years, from 1.1 million tons in 2003 to 1.5 million tons in 2012. Over the same period, consumption increased over 80%, from 1.2 million tons to approximately 2.2 million tons, a consumption rate at which domestic production could not keep up with. According to SAPA, bone-in cuts are considered as “lower value” products in developed countries, since these countries prefer breast meat. This results in bone-in cuts being exported to SACU in relatively large quantities at low prices.

The SACU market of the 5 investigated products grew by 2.5 per cent from 2010 to 2012. The SACU producer’s share of this market was 91% in 2010 and decreased to 89 per cent in 2012. By comparison, imports increased their share of the SACU market by 2 per cent from 9 per cent in 2010 to 11 per cent in 2012. In absolute volume terms, imports of the 5 investigated products increased by 74 per cent from 2010 to 2012. Of these increases, imports from the EU showed the most growth, increasing from 5 per cent in 2010 to 32 per cent in 2012. For bone-in portions EU imports constituted 69% of total imports in 2012 up from 39% in 2010. However, due to the Trade, Development and Cooperation Agreement (“TDCA”) between South Africa and the EU, ITAC cannot address imports from the EU. After the EU, Brazil is the largest exporter of most of the products investigated.

**ITAC investigation**

As reasons for requesting a tariff increase, SAPA submitted the following issues to ITAC:

- Producers in SACU are experienced financial distress with their business threatened mainly by a large and rapid increase in the volume of imports of extremely low priced frozen poultry meat. This has resulted in some small and medium sized producers exiting the market and certain large producers reducing their workforce with further job losses anticipated;

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28 See ITAC report 442
29 Who owns whom report: the Poultry and Egg Industry
31 See ITAC report 442
Low priced imports are having an adverse effect on further investment in the poultry associated industries, with the effects being felt by both commercial and emerging broiler producers, as well as SACU production capacity and SACU food security.

the SACU industry faces a cost disadvantage due to rising input cost, for example, for maize, soya, sunflower and fishmeal, which are the predominant inputs into poultry feed, as well as high administered prices and wages.

To address these issues, SAPA requested an increase in tariffs as set out in the table below:

<table>
<thead>
<tr>
<th>Tariff subheading</th>
<th>Product description</th>
<th>Current duty</th>
<th>Proposed duty</th>
<th>Type of duty requested</th>
</tr>
</thead>
<tbody>
<tr>
<td>0207.12.20</td>
<td>Carcasses (excl. necks and offal) with all cuts (e.g. thighs, wings, legs and breasts) removed</td>
<td>27%</td>
<td>991c/kg with a maximum of 82%</td>
<td>Specific duty capped with the bound rate</td>
</tr>
<tr>
<td>0207.12.90</td>
<td>Other: Whole bird</td>
<td>27%</td>
<td>1111c/kg with a maximum of 82%</td>
<td>Specific duty capped with the bound rate</td>
</tr>
<tr>
<td>0207.14.10</td>
<td>Boneless cuts</td>
<td>5%</td>
<td>12% or 220c/kg with a maximum of 82%</td>
<td>Combination duty capped with the bound rate</td>
</tr>
<tr>
<td>0207.14.20</td>
<td>Offal</td>
<td>27%</td>
<td>67% or 335c/kg with a maximum of 82%</td>
<td>Combination duty capped with the bound rate</td>
</tr>
<tr>
<td>0207.14.90</td>
<td>Other bone-in portions</td>
<td>220c/kg</td>
<td>56% or 653c/kg with a maximum of 82%</td>
<td>Combination duty capped with the bound rate</td>
</tr>
</tbody>
</table>

ITAC’s impact analysis indicated that if the requested tariffs by SAPA be applied, the prices of frozen chicken charged by the domestic producers could rise on average by 23 per cent. ITAC recommended an 8 per cent profit margin, which yielded the lowest impact on consumer prices, at 12 per cent on average, when applied to whole bird, boneless cuts and bone-in portion, but none for offal and carcasses. When considering that ITAC took into account that the lower income group consume offal and carcasses, with the effect on consumer prices for this group a 4 per cent increase on average.

During its deliberations and in arriving at its recommendations, ITAC took the following factors into account:

- The rising level of imports into SACU, and the associated decline in the market share of SACU producers of chicken meat;
- The considerable levels of production, employment and investment in the domestic poultry industry;
The decreasing profitability and diminishing returns of the domestic poultry industry in the face of low-priced imports from abroad;

The competitive position and the significant price disadvantages experienced in relation to foreign producers;

The relatively high input costs experienced by the domestic producers;

Domestic supply and demand conditions and weighing the interests of investors and producers (a fair and reasonable profit margin) and consumers (price-raising impact); and

The price impact analysis that showed with an eight per cent profit margin applied to whole bird, boneless cuts and bone-in portions, but non for offal and carcases, the impact on consumer prices would be relatively low, while allowing for further investment in the industry

After considering all these factors, ITAC recommended the following duties:

<table>
<thead>
<tr>
<th>Product</th>
<th>Existing Duty</th>
<th>Recommended Duty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frozen Whole Bird</td>
<td>27%</td>
<td>82%</td>
</tr>
<tr>
<td>Boneless Cuts</td>
<td>5%</td>
<td>12%</td>
</tr>
<tr>
<td>Bone-in Portions</td>
<td>18%</td>
<td>37%</td>
</tr>
<tr>
<td>Offal</td>
<td>27%</td>
<td>30%</td>
</tr>
<tr>
<td>Carcasses</td>
<td>27%</td>
<td>31%</td>
</tr>
</tbody>
</table>

The reason that ITAC’s recommended duties were lower than requested by SAPA, was in order to minimise the price-raising impact for consumers. Brazilian producers of whole chicken enjoy vast economies of scale in comparison to domestic producers. Whole birds are destined for the high end of the market and therefore ITAC recommended that the WTO-bound rate be implemented.

ITAC was of the view that the recommended tariff support would ensure that South African poultry producers compete on an equal footing as international poultry producers. These tariffs would also allow for a reasonable profit for producers, which would lead to further investment in the industry, increase in production and employment and would minimise the price-raising impact on consumers. These duties will be reviewed after 5 years of implementation to determine the impact on domestic production, investment and employment.

ITAC acknowledged that increased duties alone would not enable the sector to realise a successful turnaround strategy. It therefore recommended that a number of factors should be addressed in the medium to long term, such as optimal breeding selection, feed procurement and utilisation, efficient use of abattoirs and sound management of cold chain, product mix, marketing logistics, and an overall strategy addressing all the listed challenges, such as mortalities, feed costs, market risk.

VIEWS OF THIRD PARTIES

As part of the consultative process, ITAC engaged extensively with various interested parties throughout the investigation. A number of companies opposed the tariff application, most

During its investigation ITAC found factors impacting the production costs of domestic poultry producers are relatively high cost structures, such as high feed costs, when compared to the major poultry producing regions internationally. Feed costs account for 65-70 per cent of total cost of poultry production, and an important input in the manufacture of poultry feed is soya bean meal, of which approximately 90 per cent is imported.

Known colloquially as a sunset review.
notably AMIE\textsuperscript{34}. AMIE stated that if the requested duties were approved this could lead to significant job losses in the import value chain.

In addition, SAPA, AMIE and the Commission briefed the Portfolio Committee on Agriculture, Forestry and Fisheries (the Committee) on the status of poultry tariffs in South Africa and the possible impact of the proposed tariff increase for poultry imports in September 2013.

\textit{View of SAPA}\textsuperscript{35}

SAPA stated that the aim of the tariffs was not to be punitive, nor reduce volumes of imports, but to put importers and local producers on an equal competitive footing. They submitted that the local poultry industry was struggling due to dumped imports and therefore needed protection from the vast increase in imports, which had suppressed prices. Factors leading to high production cost was the increase in the cost of electricity which had more than doubled in four years; input costs such as for grain feed and fuel had also increased; and without tariff protection, 110 000 jobs were at risk.

\textit{View of AMIE}\textsuperscript{36}

AMIE was of the view that an increase in import tariffs would have the net effect of rising food prices, limited access and choice, reduced quality and threatened food security. They submitted that the local industry needed to be globally competitive by accessing export markets, managing input costs, grow bigger birds and balance the carcass. AMIE further submitted that there was currently equilibrium between local supply and imports. The import volume, which accounted for 10.2\% of local poultry production, stimulated competition and was healthy. The local industry was controlled by large vertically-integrated local participants who sought to maintain their protected status. In their view the impact of protectionist activities would result in retaliatory measures by some trade partners, as had already started happening with some agricultural products.

\textit{View of the Competition Commission}\textsuperscript{37}

The Commission was clear on the fact that it was on the side of the consumer. From a competition perspective, imports might force domestic producers to compete, resulting in lower prices for consumers and more product choices. Increasing import tariffs may mean the sustainability of poultry producers with poor operational performance at the expense of consumers; less product choice and high prices, which impacts on food security. The Commission was further of the view that the vertically-integrated market structure incentivised anti-competitive behaviour, tie-in, supply agreements, information exchange and price setting. It further noted that the dramatic increase in imports was from the EU, not South America and since the tariffs did not apply to the EU then tariffs would only affect a small percentage of the import market. The question could then be asked whether it was necessary at all.

\textbf{COMPETITION COMMISSION INVESTIGATION}\textsuperscript{38}

During the course of the ITAC investigation, AMIE lodged a complaint with the Commission against SAPA, alleging, inter alia that SAPA lodged an application for protection with ITAC to deter or prevent international competition on chicken products. According to AMIE, this

\footnotesize{\textsuperscript{34} For a discussion of AMIEs objections see ITAC report 442.  
\textsuperscript{35} SAPA Presentation to the Portfolio Committee on Agriculture, Forestry and Fisheries, Cape Town, 10 September 2013  
\textsuperscript{36} AMIE presentation: Portfolio Committee of Agriculture, Cape Town, 10 September 2013  
\textsuperscript{37} http://db3sqepoi5n3s.cloudfront.net/files/130910impact.pdf  
\textsuperscript{38} Association of Meat Importers and Exporters v South African Poultry Association and Producers of Frozen Chicken: 2013Jul0320}
represents a tacit co-ordinated approach to a trading condition that has the effect of substantially preventing or lessening competition in the poultry market. AMIE further alleged that if the requested duty increase was implemented, it would have the effect of removing all chicken imports from the market and create a more concentrated domestic industry.

The Commission assessed the alleged conduct as a possible violation of section 4(1)(a) of the Act.

As stated above, SAPA is the representative organisation of poultry producers in South Africa. Its members consist of poultry producers and poultry-related firms that are in the same line of business. Any agreement amongst its members, or decisions determined by it would fall within the ambit of section 4 of the Competition Act, 89 of 1998 (as amended). In light of the above, the Commission was of the view that the Respondents are parties in a horizontal relationship as contemplated in the Act.

The Commission found that the alleged conduct does not amount to a contravention of the Act. The allegation relates to the provisions of the International Trade Administration Act, Act 71 of 2002 (“the ITAC Act”), which, inter alia, permits a person to apply to ITAC for an increase in customs duties.

With regards to the allegation that the tariff increases will allow SAPA’s members to increase prices on chicken products, the Commission found that this is unlikely to be the case. Instead, in ITAC’s investigation, it was found that poultry producers would be able to make fair and reasonable margins. Further, ITAC will be conducting a review of the duties imposed in favour of the Respondents after five years. The Commission was of the view that this mechanism would constrain the Respondents from abusing the protection granted by, for instance, charging excessive prices for their poultry products.

RECOMMENDATIONS

Competition law affects basic structures of the market and key areas of economic conduct, and therefore it necessarily affects imports into the market and exports from it, and is therefore a component of trade policy. Just as competition law was to remove obstacles to domestic competition, trade policy was to remove obstacles to trade among nations

The difficult policy question would be whether the ambit of competition laws or of trade laws should be expanded to address conduct that could result in both marketplace inefficiencies and barriers to free trade.

Another consideration is whether an international consensus for a baseline set of rules governing anticompetitive conduct should be developed. This could possibly be foundation for subsequent incremental changes that may be implemented only when international consensus develops. A possible forum for this could be the WTO, which could prohibit government tolerance of private agreements that discriminate against foreign competitors. In addition, the WTO should expand its definition of required “government measures” under the WTO rules to address both hybrid government/private trade-restrictive practices as well as essential facility bottlenecks. These measures alone will not solve the sometimes opposing idealisms of competition and trade policy, but will be a starting point of bringing these areas into symmetry.

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39 Competition Law and International Trade: the European Union and the Neo-Liberal Factor, David J Gerber, 1995 at p 2
40 Epstein at p 346
41 Epstein at p 368
A possible solution closer to home would be a memorandum of understanding ("MOU") between the Commission and ITAC, combined with advocacy. In order to ensure the consistent application of the Act across sectors, the Commission may negotiate agreements with other regulatory authorities, participate in their proceedings and advise, or receive advice from, any regulatory authority.\(^{42}\)

Advocacy can ensure that competition considerations are taken into account in the formulation of laws, regulations, and public policies, whereas a MOU can clarify how the concurrent jurisdiction where competition concerns overlap with regulatory responsibilities be handled.

CONCLUSION

Despite its occasional opposing views, competition and trade policy, properly applied, are mutually reinforcing methods for promoting welfare. Current WTO negotiations aimed at reducing and eliminating barriers to trade, such as tariffs, promote welfare-enhancing relations between countries that increase trade and raise welfare in the liberalising nations. In turn, these benefits are magnified by competition law rules that lower the incidence of consumer welfare-reducing restrictions on the competitive process.\(^{43}\)

\(^{42}\) http://www.compcom.co.za/structure-and-function/

\(^{43}\) Abbot at p 24