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Technical Trade Barriers Facing U.S. Meat Exports

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It has become a cliché to assert that the principal barriers to trade in agricultural products since the creation of the World Trade Organization (WTO) are to be found in the realm of sanitary and phytosanitary (SPS) measures rather than traditional border measures like tariffs and quotas, but this is undeniably the case for trade in beef and pork products. Tariffs and, to a much smaller extent, quotas continue to restrict imports into, and depress consumption in, many of the largest beef and pork consuming countries around the globe. In general these measures have the virtue of operating in a relatively transparent and predictable fashion. Moreover, because most tariffs are applied on a most favored nation (MFN) basis they affect imports from all suppliers equally. Sanitary measures applied to beef and pork imports, on the other hand, are discriminatory by their very nature. At one level, this is a natural result of the fact that animal and public health conditions differ among supplying countries. However, because sanitary measures often are not applied in a transparent or predictable fashion, there is considerable scope for countries to use them in ways that are not consistent with their obligations and commitments under the WTO Sanitary and Phytosanitary Agreement. A short but by no means exhaustive list of sanitary barriers facing U.S. beef and pork exports today is sufficient to illustrate the variety of measures in use by major meat consuming countries.

The Continuing Consequences of Bovine Spongiform Encephalopathy (BSE)

The U.S. beef industry's experience with BSE stands as the prime example of the impact that the indiscriminate application of sanitary restrictions can have on global meat trade. In 2003 when the United States reported its first case of BSE it was the largest beef exporting country in the world. Overnight, after the first case was announced, countries around the world closed their borders to U.S. beef. Since then the U.S. government together with the industry has pursued a sustained effort to negotiate the restoration of access for U.S. beef and repair the damage that was done to the image of the United States as a beef producing country. Notwithstanding these efforts, the value of lost beef exports over the last nine years is estimated at $15.0 billion and in 2011, exports finally returned to their 2003 level. Contrary to the guidelines of the World Organization for Animal Health (the OIE), most beef importing countries still maintain restrictions on imports from the United States, and China and Australia, among others, ban U.S. beef entirely.

Given the damaging and precedent-setting nature of the U.S. experience with BSE it is worthwhile to ask what the U.S. beef industry has learned from this episode in its history. The list of lessons is long and has had a profound impact on the way the industry thinks about and approaches the export side of its business. At the top of the list is a much greater appreciation for the value of exports to the industry's long-run health. Along with this also came a clear understanding for many in the industry of the vulnerability that is an inherent part of relying on exports to account for a growing share of production.

Beyond these valuable and sobering lessons the industry also gained some useful insights into the realities of agricultural trade in this era of intensive reliance by importing countries on sanitary measures as the preferred means of

restricting imports. For example, the last nine years have shown that having science on your side is a necessary but not a sufficient condition for prevailing in trade disputes that revolve around sanitary measures. Similarly, the BSE experience has shown that a strategy for resolving these disputes that relies primarily on the relevant international standard is likely to fall short in a world where countries, including the United States, are sometimes selective in their adoption of those standards.

The beef industry's long and painful experience with BSE also has reinforced the established fact that countries typically take a very long time to reverse the decision to close their markets to imports. One of the hardest lessons to learn for all countries that have found themselves locked out of markets is that, once markets close, the dynamics of the importer-exporter relationship changes. The importing country is now in the position of setting the terms under which it will reopen its market, and the exporting country has very little, if any, leverage to use in asserting its rights and making arguments for the safety of its products.

When this new dynamic becomes established, importing countries typically prefer to reduce their import restrictions and re-open their markets in a series of steps rather than fully restore access in a single grand gesture. A corollary to this is that, a market-opening negotiating strategy by the exporting country that takes an "all or nothing" approach is likely to produce an impasse. That leaves the importing country's market closed and both countries dug in behind seemingly irreconcilable positions.

Finally, the BSE experience has reinforced to the industry and the U.S. government the truth of the well-known adage that in trade agreements, as in all international undertakings, "the devil is in the details." For this reason it is critically important that governments negotiate the terms of technical trade agreements in close consultation and coordination with experts from the affected industry to ensure that the resulting protocols are consistent with, and supportive of, commercial practices.

Conflicts over the Role of Beta-Agonists in Production

The European Union (EU) is perhaps the obvious place to start any discussion of trade restrictive standards for meat, since it has achieved an unparalleled level of notoriety for adopting and maintaining measures that are inconsistent with the scientific evidence on the health risks associated with certain production technologies. Notable among the EU's restrictions are its ban on the use of hormones and beta agonists in cattle production and its ban on the use of beta agonists in swine production. Beta agonists are a class of compounds that includes some products that are widely accepted as safe (e.g., ractopamine and zilpaterol, both of which are approved in the United States and a number of other countries) and others like clenbuterol that are recognized as dangerous and are banned in most countries. Ractopamine and zilpaterol are feed additives that are used to increase feed conversion efficiency in cattle and pigs.

Beta-agonist and hormone bans in beef and beta-agonist bans in pork by the EU stem from the application of the so-called "precautionary principle," which it has used to justify bans and restrictions on a number of agricultural production technologies. As applied by the EU, the logical and prudent concept of caution has been transformed into a justification for maintaining restrictions on certain food production processes. These processes are considered, on the basis of what it judges to be inadequate evidence to the contrary, to carry unacceptable risks to human or animal health or the environment.

Despite its bans on hormones and beta agonists the EU has maintained a high level of self-sufficiency in beef and pork. This has been possible only because of high tariffs, restrictive quotas, and an expansive structure of domestic supports that result in European consumers paying some of the highest prices for their food of anyone in the world.

If the EU maintains some of the world's most notorious sanitary measures for beef and pork, Russia, as one of the newest members of the WTO, has a long way to go to bring its standards for meat into compliance with its new international obligations and commitments. In addition to its zero tolerance for the presence of residues of beta agonists in beef and pork, Russia maintains similar trade restrictive and non-science-based standards for tetracycline residues, food-borne pathogens, and slaughter plant hygiene. Unlike the EU, Russia is far from achieving self-sufficiency in beef or pork and will continue to rely heavily on imports to meet growing consumption levels for the foreseeable future as the middle class expands and meat becomes a larger part of the Russian diet.

Although China has been a WTO member for more than ten years, its track record for bringing its sanitary measures for beef and pork into compliance with the requirements of the SPS Agreement is, at best, mixed. Like Russia, China maintains a zero tolerance for the presence of residues of hormones and beta agonists in beef and pork and applies trade restrictive, non-science-based standards for food-borne pathogens in meat.

The Intersection of Science and Safety

Last summer the Codex Alimentarius Commission, the international standard-setting body for public health, adopted maximum residue limits (MRLs) for ractopamine residues in beef and pork and agreed to launch

the standard-setting process for zilpaterol. This came after five years during which the EU, with the support of a number of countries including Russia and China, had blocked the adoption of a Codex standard for ractopamine. The EU's opposition to the Codex MRLs was not based on any defensible scientific arguments but instead stemmed from the application of its policy on the use of agricultural productivity-enhancing technologies. According to that policy, the EU will actively work to block the adoption of international standards that recognize the safety of technologies that it has banned, even if its bans are not supported by scientific risk assessments. This policy is itself an extension of the precautionary principle, which has guided many of the EU's most controversial domestic production standards, into the realm of international standards and trade.

As noted above, the EU is not alone in restricting the use of beta agonists; Russia, China, Taiwan, and Thailand also apply restrictions to their use domestically and in meat imports. This group of countries was joined by many others in opposing the adoption of the MRLs for ractopamine by the Codex, and the final vote was extremely close (69 countries for adoption and 67 against). The EU, Russia, and China have all disavowed the outcome of the Codex process and have proclaimed their intention to maintain their restrictions on the use of ractopamine domestically and on residues in meat imports. Under the terms of the SPS Agreement WTO member countries are not required to adopt international standards, but if they apply more trade restrictive standards they are required to support these standards with a scientific risk assessment. None of the countries that currently maintain restrictions on ractopamine have met this WTO requirement.

The current impasse over beta agonists and ractopamine in particular poses a number of especially difficult challenges for the U.S. beef and pork industries. Ractopamine and zilpaterol have been widely adopted by cattle feeders and pork producers in the United States, and most of the beef and pork produced in this country comes from animals that have been fed one of these feed ingredients. On the other hand, most of the other beef and pork exporting countries in the world either have not approved ractopamine or zilpaterol or have provided importing countries where the products are restricted with guarantees that they will not export beef and pork to them from animals that have been fed one of these compounds.

For the U.S. beef and pork industries, losing access to important export markets like Russia and China would come at a high cost. However abandoning the use of beta agonists to meet these countries' requirements could drive up production costs enough to undermine the industries' capacity to compete in these same markets. More fundamentally, agreeing to meet Russia's or China's restrictive policies on beta agonists would represent a retreat from the commitment to science and technology that has fueled the growth in U.S. agricultural productivity over the past 75 years. The beef and pork industries have been at the vanguard of this drive to adopt safe, effective technologies as they have received regulatory approval and have been brought to the U.S. market. Both industries clearly recognize what they would give up in increased efficiency and improved competitiveness in global markets if they agreed to back away from their commitment to technologies like ractopamine and zilpaterol.

The ractopamine vote in the Codex and the deepening dispute over how to regulate the use of this compound highlight a growing divide between countries that have made a commitment to technologically-intensive agricultural production systems and those that have not. If the reservations held by the latter group of countries only manifested themselves in regulations that they apply to their domestic agriculture industries, their policies would not put them at odds with the other group of countries. Nor would they find themselves out of compliance with the obligations and commitments they have taken on as members of the WTO.

But the EU and the group of countries that opposed the MRLs for ractopamine in the Codex are actively pursuing policies that are designed to go beyond their own borders and blunt the spread of innovation and the development of new, safe, productivity-enhancing technologies. This should be a source of very serious concern for anyone who is thinking about how the world is going to achieve food security for our expanding population in the next 30-40 years. The United States, the European Union, and the other countries at the forefront of this debate have a shared responsibility to find a way to bridge their differences and come together behind a program that will draw on all available, safe agricultural productivity-enhancing technologies to feed our hungry planet in the years ahead.

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