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Political Precaution, Pandemics and Protectionism

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Despite strong scientific evidence and representations made by international scientific organizations, a considerable number of countries have imposed import bans on pork in response to the H1N1 pandemic. The imposition of these barriers is contrary to WTO rules. The motivation for the imposition of these barriers does not appear to have arisen from producers' requests or consumer lobbying – political precaution provides the motivation. There appears to be little control over political precaution in the rules of international trade. Hence, the balance between the strong rules of trade desired by firms wishing to engage in international commerce and the need, at times, for politicians to respond to requests for protection may be changing in favour of more protection.

Keywords: H1N1, import bans, pork, precaution, protection, swine

Introduction

Chinese President Hu Jintao Tuesday ordered the country to step up inspection and quarantine measures to prevent swine flu from entering China and ensure public health and safety....

China's Agriculture Ministry and quality watchdog issued a joint notice on Monday suspending all imports of live pigs or products containing pork from Mexico and the US states of Texas, California and Kansas.

China View, April 28, 2009

[T]he imposition of ban measures related to the import of pigs and pig products from countries with human cases of A/H1N1 are pointless and do not comply with international standards published by the OIE and all other competent standard setting international bodies for animal health and food safety....

World Organization for Animal Health, Press Release, June 11, 2009

It is sometimes appropriate to stand back and revisit some basic questions such as: Why do countries negotiate trade agreements? In the first instance, trade agreements are negotiated to reduce the uncertainty associated with capricious restrictions on market access for firms which wish to invest in international commercial activities.¹ In essence, trade agreements establish rules that put limits on the ability of governments to impose barriers to market access (and other trade-distorting policies). While the benefits of reducing trade barriers are often discussed in terms of welfare enhancement, the crux of the matter is whether firms that see a profitable opportunity in international commerce feel that their investments in such activities are sufficiently secure to allow the investments to go forward. From a firm's perspective there are few things that are more devastating than building up a foreign market only to have access to that market restricted due to the actions of a foreign government. While international commercial activities are often risky endeavours, there are a large number of institutional arrangements in the private sector that can mitigate many of the risks that are unique to international commerce (i.e., international private arbitration, documentary letters of credit to ensure payment, etc.) (Kerr and Perdikis, 2003). The activities of governments that impact upon international commerce, for the most part, must be dealt with through agreements among states.

While the activities of governments can increase the uncertainty associated with international commerce and, hence, reduce its level, it has also long been recognized that these risks cannot be eliminated. This is because politicians may wish to put trade restrictions in place for domestic political reasons. While many firms might prefer to have the ability of politicians to impose trade restrictions eliminated, there is a realization that politicians would be loath to agree. The next best alternative is to have a set of transparent and predictable rules for when and how governments can intervene to limit market access. While firms might like to see tariffs removed, if tariff rates are transparent and the mechanism whereby they can be changed is predictable, firms can make informed decisions about supplying a market. Thus, at any point in time, trade agreements represent the current compromise between the desires of firms engaging in international commerce for strong limitations on the ability of governments to impose trade restrictions and the desires of politicians to be able to impose trade restrictions in response to domestic requests for protection. Of course, trade agreements are constructed such that any ceding of sovereignty is temporary and commitments can be broken if the domestic politics is judged to be too difficult. In the case of the latter, choosing to ignore previously agreed commitments is not costless. For example, the member states of the World Trade Organization have agreed that countries injured by another country not living up to its commitments are entitled to compensation or allowed to retaliate. For the most part, however, countries tend live up to their commitments.²

In the case of trade barriers imposed on sanitary and phytosanitary grounds, the current multilateral compromise is embodied in the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) (Isaac, 2007). To impose trade barriers justified on these grounds, there must be a scientific reason for the measure. According to Isaac (2007, 385), "The science-based measures adopted must be proportional to the risk that is being targeted." The WTO, however, does not determine the sufficiency of the scientific evidence. Instead, the member states agreed that they would defer to three international scientific organizations – the Codex Alimentarius Commission (Codex) for food safety, the International Plant Protection Convention (IPPC) for plant safety and the World Organization for Animal Health (OIE)³ for animal health and safety. Sufficient scientific evidence "would be evidence that conforms to either the standards or the standards-setting procedures established by these organizations" (Isaac 2007, 385).

The SPS Agreement was put into the WTO during the Uruguay Round of multilateral trade negotiations. Prior to the Uruguay Round, trade in agricultural products was largely exempt from the General Agreement on Tariffs and Trade

(GATT) through the granting of waivers. It was agreed during the Uruguay Round that agricultural products should be subject to GATT disciplines.⁴ There was a worry, however, that governments, faced with new disciplines on their ability to restrict trade in agricultural products, would search for alternative means to respond to domestic requests for economic protection. Nefarious SPS measures were an obvious avenue for providing protection (Gaisford and Kerr, 2001). The SPS Agreement, with its scientific basis, was the mechanism chosen to close off this avenue. The agreement was designed with requests for protection from domestic producer interests in mind. The SPS Agreement has, however, proved to be controversial because it does not make any provisions for governments to respond to other groups in society (e.g., consumers or environmentalists) that might ask for protection and who do not accept the scientific consensus upon which the criteria were to be based (Isaac and Kerr, 2003). In the H1N1 pandemic of 2009, a new form of protectionism has come to the fore which calls into question the commitment of governments to the rule of law in international trade and considerably increases the risks firms face in the international commercial environment.

H1N1 and Trade Restrictions

Swine influenza (or the A/H1N1 virus-based human disease) was first reported in the Federal District of Mexico City on March 18, 2009. The number of cases in Mexico increased steadily over the next few weeks and, subsequently, cases were reported in the United States and Canada. The World Health Organization (WHO) issued its first *situation update* on April 24, 2009. By that time, in Mexico there were over 850 cases and there had been almost 60 deaths. The WHO's situation update (WHO, 2009, April 24) outlined why this particular strain of influenza warranted close monitoring.

The majority of these cases have occurred in otherwise healthy young adults. Influenza normally affects the very young and the very old, but these age groups have not been heavily affected in Mexico.

Because there are human cases associated with an animal influenza virus, and because of the geographical spread of multiple community outbreaks, plus the somewhat unusual age groups affected, these events are of high concern.

The Swine Influenza A/H1N1 viruses characterized in this outbreak have not been previously detected in pigs or humans.

After this initial situation update, the WHO began issuing almost daily – sometimes twice-a-day – updates. The WHO’s second update, on April 25, 2009 (WHO, 2009, April 25), concluded with “WHO is not recommending any travel or trade restrictions” (emphasis added). In its third update, on April 27, 2009, the WHO stated, “There is also no risk of infection from this virus from consumption of well-cooked pork and pork products” (WHO, 2009, April 27). Thus, right from the outset the WHO had issued clear statements about both the issue of trade restrictions and the relationship of the human disease to pork products. These statements were repeated in subsequent updates. In their 11th update, on May 3, 2009, the WHO made its first reference to any relationship between live swine and the human disease (WHO, 2009, May 3):

Canada on 2 May reported the identification of the A(H1N1) virus in a swine herd in Alberta. It is highly probable that the pigs were exposed to the virus from a Canadian farm worker recently returned from Mexico, who had exhibited flu-like symptoms and had contact with the pigs. There is no indication of virus adaptation through transfer from human to pigs at this time.

On April 30, 2009 the International Food Safety Authorities Network (INFOSAN), under the joint authority of two United Nations Organizations – the WHO and the Food and Agricultural Organization (FAO) – issued an updated *Information Note* explaining the relationship between the swine disease and the human disease (INFOSAN, 2009):

Swine influenza, *per se*, is not an OIE listed disease and there is currently no justification in the OIE Animal Health Standards Code for the imposition of trade measures on the importation of pigs or their products. However, if Influenza A/H1N1 virus would be shown to cause disease in animals, virus circulation could worsen the regional and global situation for public health. These assessments will inform possible decisions regarding implementation of movement restrictions of pigs in affected regions and underpin any decisions regarding trade restrictions relative to live pigs.

Swine influenza viruses do not normally infect humans. However, outbreaks and sporadic human infection with SIVs have been occasionally reported and serosurveys have demonstrated exposure of humans in certain risk groups. Most commonly, infection occurs in people in direct and close contact with pigs such as farm and abattoir workers. Onward transmission of SIVs among people in close contact with each other has occurred on a

few occasions. Human influenza viruses have also been transmitted from people to pigs.

Transmission among and between pigs and humans is likely to occur through direct or indirect contact with respiratory secretions or inhaling large droplets or aerosols spread through coughing and sneezing. The clinical picture of SIV infection in people is generally similar to that of human seasonal influenza. It is likely that most people, especially those who do not have regular contact with pigs, do not have immunity to SIVs and thus would be susceptible to SIV infection, although cross-protectivity studies are ongoing to explore this question further. Currently, there is no vaccine to protect people from SIV infection.

While the language is careful, the implications are clear. Swine influenza is a normal disease in pigs and is not considered a sufficient economic risk to swine populations to justify trade restrictions on the international movement of pigs. While the risk to humans of contracting swine flu from pigs is non-zero, it is likely confined to individuals who work closely with the animals. The general population does not face any discernible risk. In addition, there is the strong statement – probably the strongest statement one could get from an international scientific organization – from the OIE that begins this paper, stating bluntly that import barriers imposed on pigs and pork products from countries reporting the human disease were pointless and in contravention of international standards. Thus, the message from the scientific community was consistent and unequivocal. There was no justification for the imposition of trade barriers.

On April 30, 2009 it was reported⁵ that the WHO had issued a list of twenty countries that, despite this strong, consistent and early message, had imposed bans on the importation of live pigs and pork products from a variety of countries reporting cases of the H1N1 human disease. Nine of the countries listed are not members of the WTO – Azerbaijan, Belarus, Kazakhstan, Lebanon, Macedonia, Montenegro, Russia, Serbia and the United Arab Emirates – and, hence, are not bound by WTO commitments pertaining to having a scientific basis for the imposition of barriers and an assessment of the risks. The other eleven countries – Bahrain, China, Croatia, Ecuador, Indonesia, Jordan, Philippines, Suriname, Switzerland, Thailand and Ukraine are members of the WTO. As of April 30, 2009, only Ukraine had notified the WTO of its measures – an import ban on pork from Mexico and the U.S. states of California, Texas and Kansas. While Switzerland was on the WHO's list as having a ban on importation of pork from Canada, Mexico, New Zealand and the United States, it was reported that a spokesman from the Swiss Federal Veterinary Office said there are no

pork or meat bans in place in response to the H1N1 virus (Thomson Reuters, 2009, May 4, 17:15:22 GMT).⁶

The May 18th, 2009 WHO situation report shows an additional twenty countries having imposed trade restrictions on the basis of H1N1 (WHO, 2009, May 18) – Armenia, Barbados, Bolivia, Cameroon, Chad, Dominican Republic, El Salvador, Gabon, Ghana, Guatemala, Honduras, Kyrgyzstan, Malaysia, Mauritius, Moldova, St. Lucia, Sudan, Tajikistan, Venezuela and Zambia. At the same time, a few countries were lifting previously imposed restrictions on imports. From the perspective of pork exporting firms, this is exactly the sort of arbitrary imposition of import barriers that trade agreements are negotiated and designed to prevent. There was no scientific justification for imposing the import bans, nor had risk assessments been undertaken. The import restrictions were put in place with little notification and no consultation, leading to in-transit shipments being refused. Certainly there was a degree of understandable consumer confusion surrounding the relationship between something called *swine flu* and contact with pigs and/or consumption of pork, but this could have been overcome through education.

What's in a Name?

In its situation updates of April 26, 27 and 28th, the WHO referred to the outbreak as “swine influenza”. That abruptly changed on April 29th, when the update was headed “Influenza A(H1N1)”. That heading has been used on all subsequent updates. The WHO undertook the re-branding of swine flu due to the negative impacts the name was having on the pork industry:

The World Health Organization announced Thursday it will stop using the term “swine flu” to avoid confusion over the danger posed by pigs. The policy shift came a day after Egypt began slaughtering thousands of pigs in a misguided effort to prevent swine flu.

WHO spokesman Dick Thompson said the agriculture industry and the U.N. food agency had expressed concerns that the term “swine flu” was misleading consumers and needlessly causing countries to ban pork products and order the slaughter of pigs.

“Rather than calling this swine flu ... we’re going to stick with the technical scientific name H1N1 influenza A,” Thompson said. (The Weekly Journal of Rural America, May 1, 2009).

Thus began a major effort to separate in consumers' (and presumably politicians') minds the human disease from the disease that is present in pig populations. While a reasonable policy response given the circumstances, it is a clear indication that the efficacy of scientific argument as an underpinning of public policy is on the wane and that gaining control of the message in the formal and informal⁷ media – through its manipulation if necessary – is becoming increasingly important. Instead of explaining that pigs and pork do not pose a threat, rather alter the perception so that the disease is not associated with pigs. If scientific information is not important, however, the wisdom of having science as a major pillar of trade policy is called into question. The crux of this question, however, lies with political decision makers and who or what influences their decisions.

Will Political Precaution Become a Pandemic?

Political precaution has been defined as arising

when politicians are being pressured to “do something”, or to be “seen to be doing something” in the face of strongly expressed concerns by members of civil society even when risks are very low or largely speculative (Kerr, 2004).

Requests for protection are most often expected from domestic producers seeking economic relief from strong foreign competition. There is no evidence that the trade barriers put in place due to the H1N1 pandemic arose in response to such requests. If anything, local pork producers did not want the additional media attention the imposition of trade barriers would have meant – and which could only strengthen the association of their pork products with the human disease in the minds of consumers. Of course, the imposition of trade barriers in this case will bring the normal benefit – an increase in price – and, hence, their removal may be resisted by vested interests in the country imposing the barriers. The agitation for the imposition of trade barriers, however, did not come from domestic producers.

Consumers may also be the source of demands for trade barriers. As suggested above, there was a certain amount of consumer confusion and anxiety regarding whether consumption of pork or proximity to pigs could lead to an individual contracting the disease. A scan of the internet, however, does not indicate a groundswell of demand for closing borders to foreign pork and swine. Even after the closures, there was very little comment in favour of the import bans.

The nature of the disease, however, left politicians with few opportunities to be “seen to be doing something” to protect their citizens. The initial reports of a large number of deaths of healthy young adults in Mexico – a result that differs considerably from the normally high-risk demographic groups in a flu epidemic (i.e., the very young and the elderly with other health problems) – differentiated H1N1 from a more common seasonal flu. The WHO and local health officials had no explanation for this anomaly and, hence, had no specific health policy recommendations. Vaccines were under development – a process that could not be accelerated by political action. Monitoring was increased, but that is not the type of activity that assures the public that politicians are taking strong measures on their behalf. The prevailing official message from the health establishment was *wait and see*. The strongest proactive statement from the WHO was

Individuals are advised to wash hands thoroughly with soap and water on a regular basis and should seek medical attention if they develop any symptoms of influenza-like illness (WHO, 2009, May 3).

This is hardly a message that would assure the citizenry that political leaders had the situation firmly in their control. Given the degree of attention the pandemic was receiving in the media, and the considerable anxiety being displayed by the public, one can certainly understand political leaders desire to *be seen to be doing something*. It is, however, worrisome that the President of China would feel the need to engage in such *precautionary activity*.⁸ Of course, *the need to be seen to be doing something* is particularly important in China due to the government’s attempts in the past to cover up avian flu outbreaks and other food safety problems (Liu, Hobbs and Kerr, 2009). Imposing trade barriers on pork imports is a relatively easy way to appear to be providing pro-active leadership in dealing with the threat of an H1N1 pandemic. Some countries also imposed quarantine on travellers from countries reporting infections, but as the number of countries reporting infections grew, the optics of *locking up* business travellers and tourists worsened and the dearth of human quarantine facilities made such precautions impractical. Banning imports of pigs and pork products posed no such difficulties. It seems clear that, in some countries, pigs and pork were a particularly easy target. In heavily Muslim countries such as Indonesia, Malaysia, the United Arab Emirates, Jordan, Lebanon and Sudan, where pork consumption is forbidden for a large percentage of the population for religious reasons, imports were insignificant and an import ban would have the tacit support of large segments of society.

While the need to put in place barriers to trade for reasons of political precaution is understandable, it raises questions about the role of scientific expertise in influencing decisions on international trade. It is inconceivable that competent veterinary authorities would have sanctioned the imposition of trade barriers. This is not a case where there is a degree of scientific disagreement as in some other cases where political precaution has come to the fore in trade policy making – such as import bans on genetically modified organisms (Isaac and Kerr, 2003). The message from the scientific community is both strong and consistent. The imposition of barriers despite the lack of a scientific basis means that either the politicians imposed the barriers over the opposition of their scientific authorities or the scientific authorities were unwilling to oppose the political leadership. Neither scenario bodes well for a science-based system for rules of trade. A vigorous diplomatic effort based in large measure on putting forth the scientific case does appear to have influenced some countries to lift their bans.

The exercise of political precaution by more than thirty countries no doubt led to increased fears surrounding H1N1. The WHO's initial list of twenty countries was widely reported in the press. It could not help but raise suspicions among the public across the globe – Why are countries imposing import bans?; Would they impose a ban if there were no risk?; Why don't they trust the WHO? The net result would have been an increasing number of consumers removing pork from their diets and further calls for trade restrictions in countries that had chosen not to impose them.⁹ While the imposition of the bans may have had the desired effect on citizens regarding their sentiments toward their political leadership, it could only have served to fuel their unwarranted fears and confusion over sources of information. If H1N1 returns with a vengeance in the fall of 2009, as appears to be the concern of health authorities, or when another confusingly named disease appears in the future, one wonders if political precaution, itself, will become a pandemic.

Conclusion

Countries certainly have the option to bring a complaint forward to the WTO's dispute settlement system, as the H1N1-related import bans were imposed without a scientific justification or a risk assessment.¹⁰ The WTO disputes process, however, takes too long and is too cumbersome to deal with this type of capricious imposition of import bans. The damage has been done to exporters, and it is likely that the bans will be lifted long before a formal dispute could wend its way through the WTO disputes system. In any case, the WTO disputes system was not designed to deal with this type of trade policy making. Governments largely live up to their international commitments – flagrant flouting of the rules has been the exception. The rules, however, were agreed when scientific expertise was better respected and before the revolution in electronic media technology. Thus, no restraints on the exercise of political precaution were built into the rules.

Trade policy makers and those with an interest in engaging in international commercial activities should be worried because, once it becomes apparent that barriers to imports can be imposed despite a scientific consensus to the contrary, the progress achieved in international trade rule making since the inception of the GATT may have been considerably eroded. The balance between the strong rules of trade desired by firms wishing to engage in international commerce and the need, at times, for politicians to respond to requests for protection may be changing in favour of more protection.

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Endnotes

1. Of course, trade agreements can also deal with other policies that can distort international trade, such as subsidies.
2. The one notable exception is the European Union's ban on the importation of beef produced using hormones, where the EU chose to accept retaliation rather than lift its ban in compliance with a WTO panel's ruling – see Kerr and Hobbs (2005) for details of the case. Of course, countries interpret their commitments differently, leading to often lengthy disputes, appeals and delays in implementing WTO panel rulings. There may also be bilateral settlements negotiated by countries in a dispute. Thus, compliance or the resolution of a dispute may be far from instantaneous, but outright non-compliance remains an anomaly.
3. It is common to refer to the World Organization for Animal Health using its previous name, the International Office of Epizootics, and the acronym for the French language version of its title – Office International des Epizooties – OIE.
4. Albeit with a transition period in many cases.
5. See, for example, Thomson Reuters (2009, May 4, 7.23am) and Thomson Reuters (2009, May 4, 10:03am). At the time of writing I have not been able to verify the WHO as the source of the list either on the WHO website or through direct attempts to contact the organization.
6. At the time of writing, I have not been able to determine how this inconsistency has been resolved. It is important because of Switzerland's status as a modern market economy and, thus, a model for other countries to emulate. It is also important because there are continuing reports in the media that Switzerland has banned imports of pork products despite its official denial. See, for example, The Pig Site (2009).
7. Such as internet blogs, social networking sites and chat rooms.
8. See the quote that began this paper.
9. See, The Pig Site (2009) for an example of pork producers asking for an import ban, in part because Switzerland had been reported as having put an import ban in place. This is why having Switzerland appear on the list of countries imposing a ban is so important – its presence adds credibility to the bans. While the Swiss government reacted swiftly, the unamended list remained accessible.
10. Countries such as Canada are considering a WTO challenge (Harris, 2009).

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