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Recent and Potential Trade Disputes Over Technical Barriers

Emerging Issues in Global Animal Product Trade:
Assessing the Effects of Free Trade Agreements on
Global Meat, Poultry and Dairy Trade

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FTAs Technical Barriers and Disputes

- For decades many have speculated that as tariff and similar barriers come down, other ways to limit import competition would expand. The WTO round has been dead for a decade, so FTAs have been the tools for lowering tariffs.
- What has that meant for technical barriers, when FTAs are meant to also smooth such disagreements?
- That is FTAs (1) increase the demand for technical barriers by protectionist interests by making substitute trade barriers more difficult, and (2) aim to raise the cost of pursuing technical barriers by more transparency and cooperation.
- The net outcome is tricky to uncover given all the other factors going on.

With that background:

- I focus on trade disputes over “technical” issues in the context of FTAs--old ones like NAFTA and new ones like KORUS-FTA.

WTO and FTAs:

Technical Trade Barriers and Disputes

- **To understand trade disputes one must also consider the WTO as an alternative venue to raise and settle disputes over technical trade barriers. The WTO has a well established agreements for TBT and Sanitary and Phytosanitary (SPS) concerns in trade**
- **And, the WTO has well recognized and functioning dispute resolution processes that are even handed across members, something FTAs are less likely to achieve.**
- **FTAs, such as NAFTA, have dispute settlement processes that are separate from the WTO, but it is not clear that they are much used for animal issues.**
- **For example, BSE troubles with Canada were dealt with in U.S. courts and never got to a NAFTA panel**
- **And, the North American COOL dispute went directly to the WTO, bypassing the NAFTA alternative.**

Has NAFTA affected US Canada Disputes?

- Results from 7 years ago, still hold--fewer disputes over time
- U.S.-Canada Disputes used to be more dumping and countervail.
- Technical disputes, such as BSE were dealt with in national courts not in panels.
- Is this due to NAFTA?
- Probably not, but the technical agencies do work together.
- In the case of cattle, R-CALF has opposed both Canada and the U.S. government.

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The Border Papers

Agricultural Trade Disputes Between Canada and the United States:

Costly but Diminishing

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Additional Affiliations and Disclosures

- **I have worked for many years with the Canadian Cattlemen's Association and their lawyers at Blank Rome in Washington, DC on a variety of trade issues related to technical barriers including BSE and COOL.**
- **I helped the Government of Canada on the economics of COOL for the WTO case.**
- **I have worked with Australian and New Zealand dairy interests for many years on a variety of trade issues, including technical barriers and issues.**
- **The analysis presented here represents my own academic contribution and does not reflect the views of any organization with which I am or have been affiliated.**

Technical trade barriers and WTO text

FTA language is similar to the WTO and includes the following:

Article 903: Affirmation of Agreement on Technical Barriers to Trade and Other Agreements

“Further to Article 103 (Relation to Other Agreements), the Parties affirm with respect to each other their existing rights and obligations relating to standards-related measures under the *GATT Agreement on Technical Barriers to Trade ...*”

Article 2 of the TBT Agreement of the WTO

2.1) Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favorable than that accorded to like products of national origin and to like products originating in any other country.

2.2) Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create.

Article 1 of the TBT Agreement of the WTO

1.3 All products, including industrial and agricultural products, shall be subject to the provisions of this Agreement.

1.5 The provisions of this Agreement do **not apply to sanitary and phytosanitary measures as defined in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures.**

Article 2 of the SPS Agreement of the WTO

SPS measures:

2. applied only to the extent necessary ...based on scientific principles and ... not maintained without sufficient scientific evidence, except as provided for in paragraph 7 of Article 5. [5.7... Science is insufficient, but must seek more evidence]

3. do not arbitrarily or unjustifiably discriminate between Members ..., including between their own territory and that of other Members. SPS measures shall not be applied in a manner which would constitute a disguised restriction on international trade.

BSE issues with Canada and Korea (starting almost a decade ago) were resolved in technical and policy discussions. No “dispute settlement” process was used.



Canada and U.S. troubles over BSE spread to other trade partners

- **Interpretations of the science and obligations in the U.S. and Canada differed, but were gradually resolved after major losses in Canada. NAFTA did not play a major role.**
- **Issues still reverberate in U.S. courts**
- **BSE fallout may be related to COOL implementation for muscle cuts of cattle and hogs.**
- **BSE relations with Korea made people “mad” more than U.S. BSE relations with Canada,**
 - **but NAFTA likely had no role in that**
- **The KORUS_FTA may been a significant factor in settling the dispute in the sense that that irritant have to be resolved before the agreement could be implemented.**

COOL livestock, eh?



Photo Courtesy of:
Manitoba Agriculture and Food

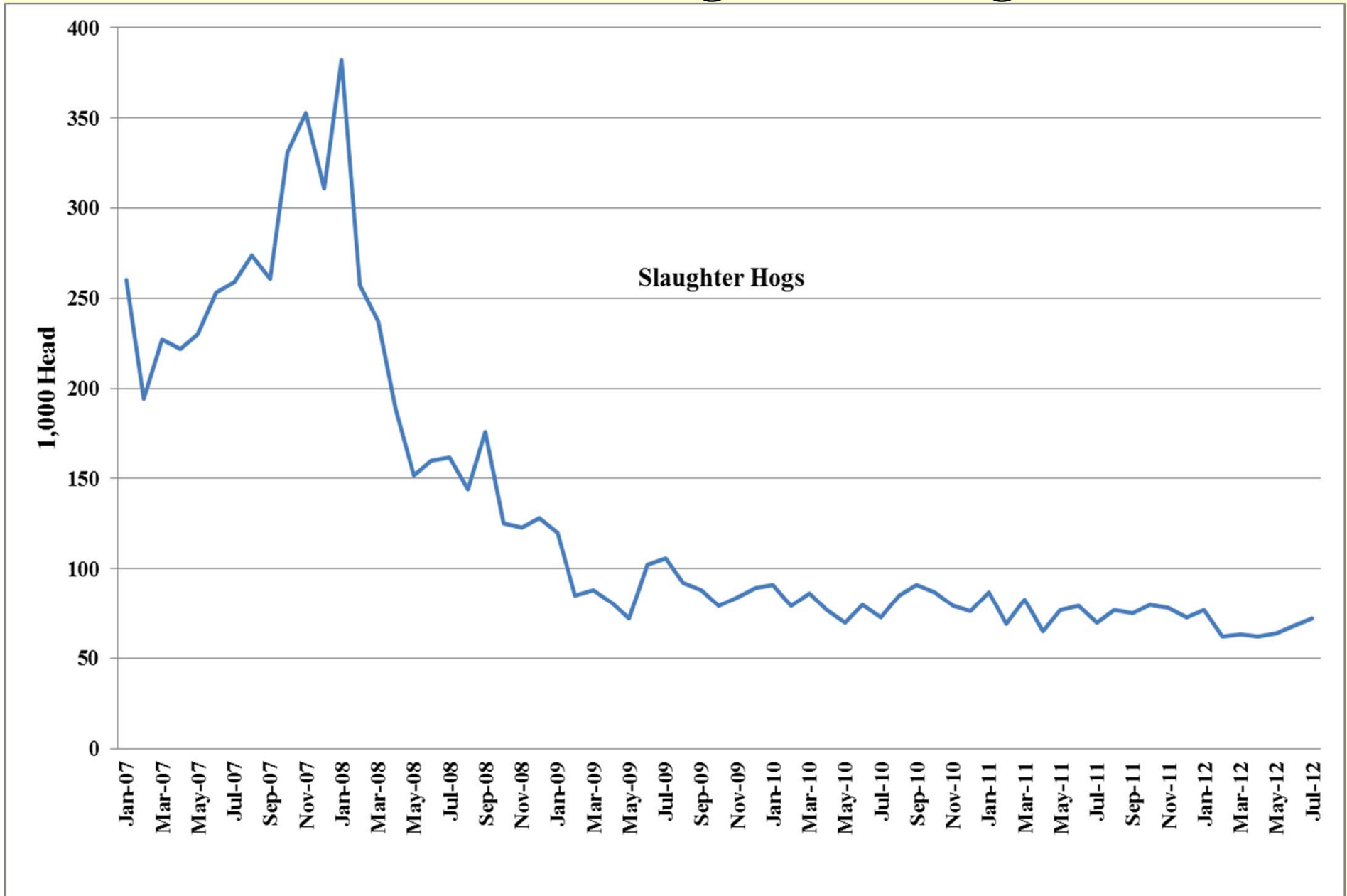
North American Technical Barriers to Trade, WTO Disputes not NAFTA

- **Mandatory Country Of Origin Labeling (COOL) can, but may not, create access concerns and disadvantage imports relative to domestic competitors**
- **The Canada & Mexico successfully challenged U.S. COOL implementation for muscle cuts of beef and pork as applied to livestock that had spent some portion of their lives outside of the U.S.**
- **U.S. COOL requires that meat from a pig born in Canada or calf born in Mexico must be labeled as foreign even if the animal spends almost all its life and 90% of its value added including slaughter was in the U.S.**
- **The concern (cost) for the industry is segregation costs of tracking animals and meat from several origins.**

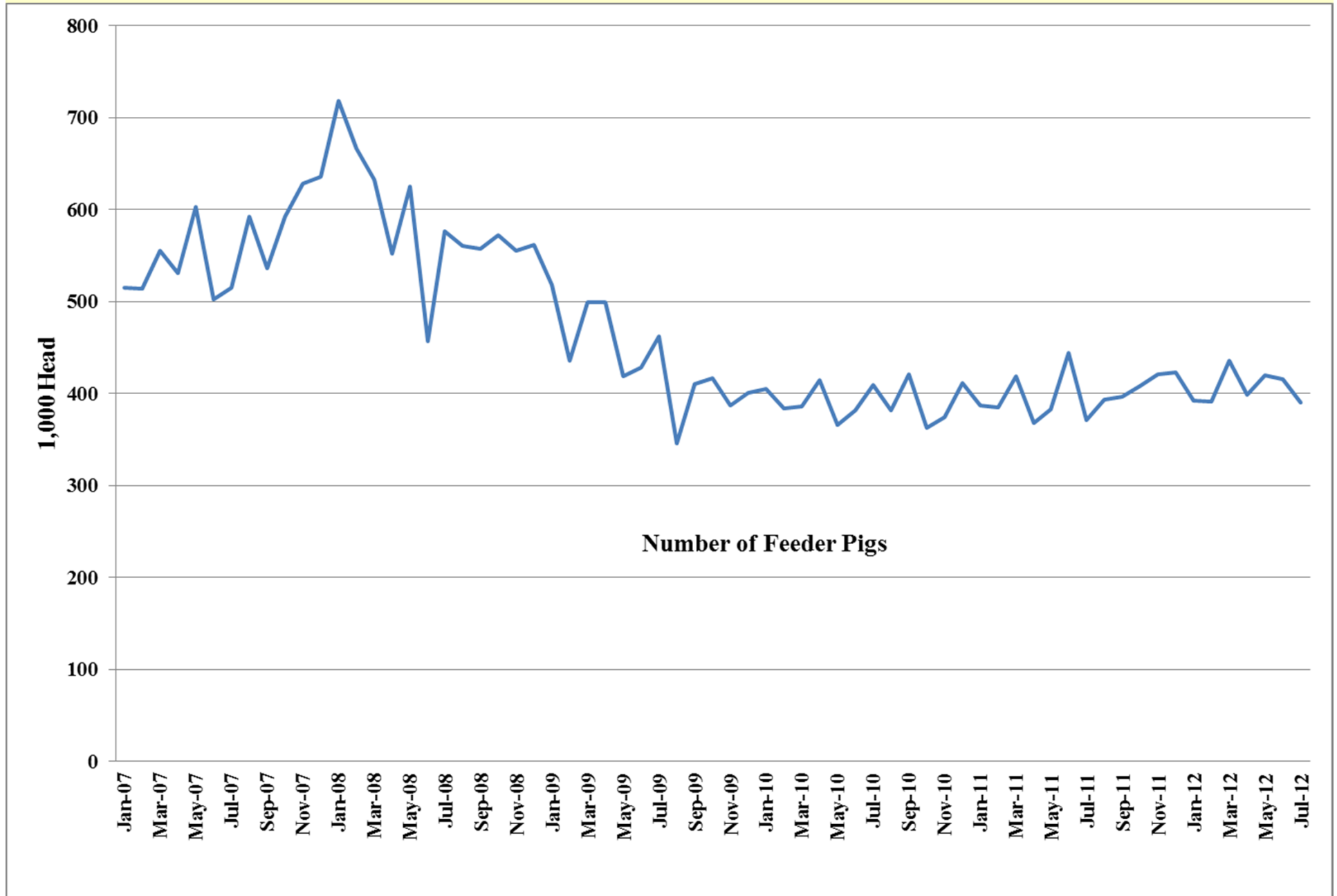
Hogs of Canadian origin look like U.S. hogs and the meat is the same. The market created no incentive for origin labeling before government mandates no significant competitive advantage to origin labels



Number of Hogs Imported from Canada for Immediate Slaughter (> 50 kg)



Pigs imported from Canada (<50 kg)



The COOL WTO dispute

- **The WTO Panel and Appellate Body ruled in favor of Canada and Mexico on TBT agreement grounds.**
- **Legal issues in interpretation of the TBT agreement are too complex for me.**
- **But, the Panel and AB agreed with the basic economic reasoning and evidence that, in this instance, COOL implementation did cause trade problems.**
- **Interestingly, NAFTA played no role in heading off or settling the dispute. NAFTA was irrelevant.**
- **Also, more than a dozen “third parties” had much interest in ‘systemic issues’ related to labeling that the hogs and cattle almost got lost in the legal generalities.**
- **So, probably the WTO is the right venue for this sort of issue.**

Technical Trade Barriers and Farm Animal Treatment: A trade dispute in waiting



**Global production: 70 million tons shell eggs,
U.S. is the second largest producer, behind China**

Conventional cages



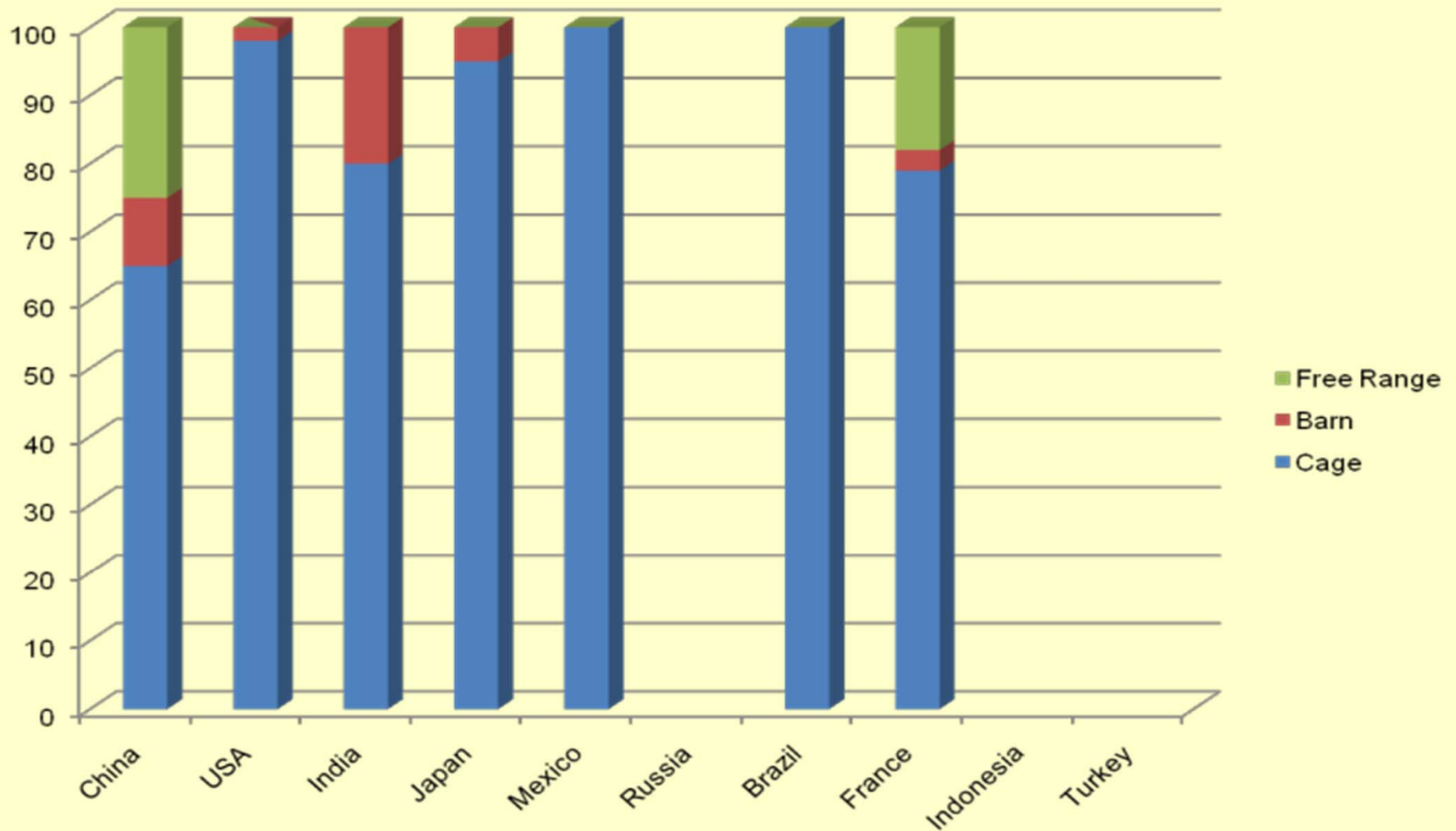
Non-cage systems



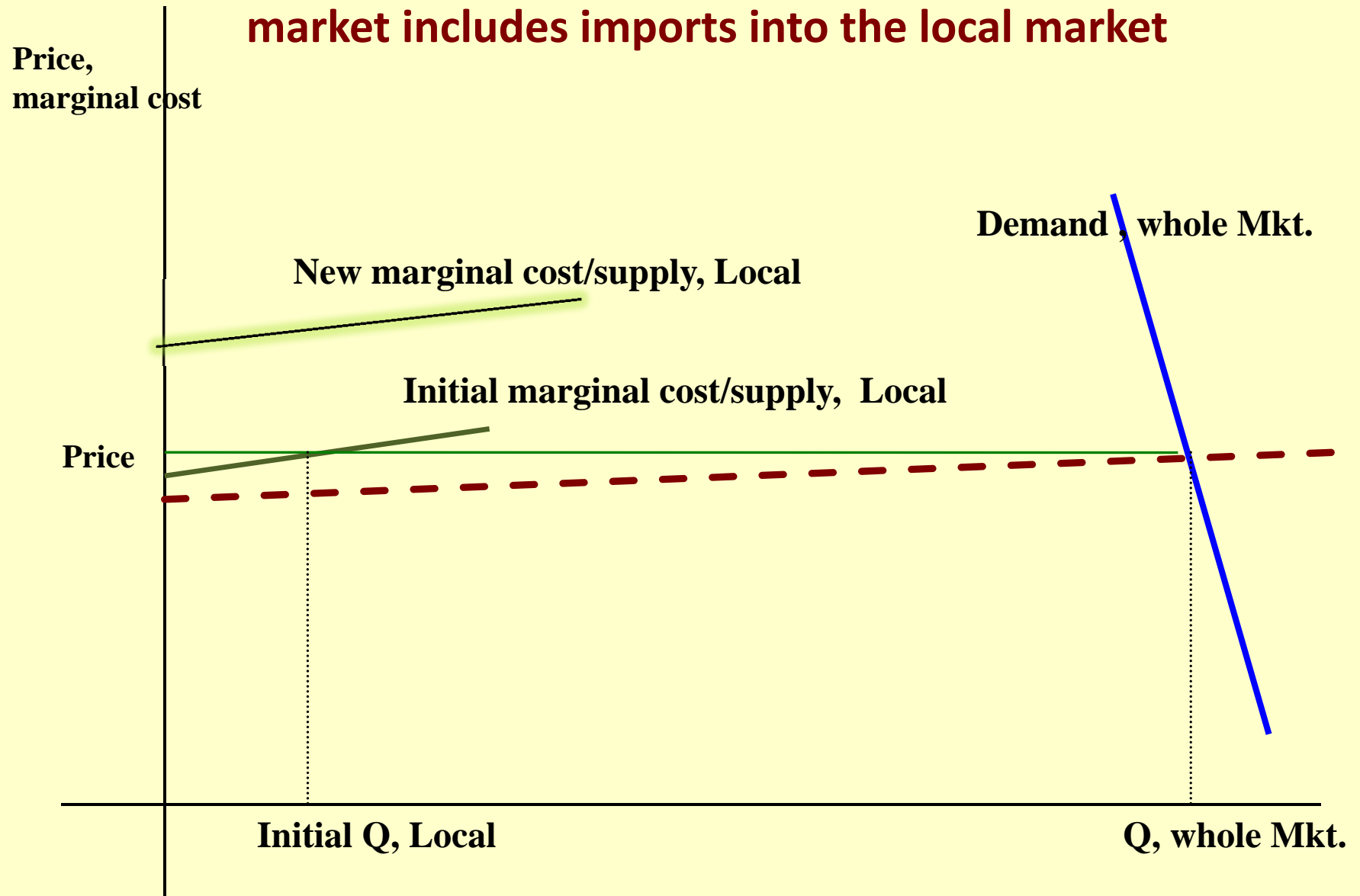
Housing systems affect costs of production mainly through feed efficiency, labor costs and marketable eggs per hen. Non-cage is more costly at the farm and for consumers

Supply functions are quite elastic over a several year horizon because there is no limiting resource (such as land or breeding stock) and technology is replicable over this horizon.

Hen housing in the ten largest egg-producers (data from a few years ago--before final implementation of new EU rules in 2012)



Local and broader market effects of requirements to use cage housing systems for egg production locally when the relevant market includes imports into the local market



Many egg alternatives are already in the market



Requirements on what is consumed may bias buyers against imported products that have higher costs of documenting compliance.

Or benefit imports that meet standards more cheaply.

Implementation and market facts are key.

Production standards and trade barriers

- **Unless there are import barriers, cost-increasing animal care restrictions affect **where** products are produced, **not how** and benefit imports**
- **Unless many consumers will pay more, costly local rules do not affect animal care**
- **National, state, and local measures need trade barriers to change animal care standards, unless local production standards are required of imports**
- **This is a natural case for a technical barriers dispute, if anyone cares enough to bring a case.**
- **The first such “trade” case may be between U.S. States and the first shots are in the Farm Bill.**

FTAs have a (limited) role in disputes over technical barriers

- **More trade means more disputes, so FTAs may cause more disputes than they settle**
- **Even a fully integrated system with the same basic standards, like the market for U.S. and Canada livestock products, generates disputes**
- **Even trade in an old FTA like between States can generate disputes, under the commerce clause**
- **The WTO is a useful forum in part because cases can set global precedents and as “case law” develops dispute settlement improves the predictability and security of trade relations.**