

Rock-a-bye trade restrictions on baby formula

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Over the last few months, a U.S. baby formula producer issued recalls both voluntarily and required by the Food and Drug Administration (FDA). These recalls are rocking the U.S. baby formula market leaving parents facing higher prices and bare shelves. Stores like Walgreens, CVS Health, and Target are limiting the number of formula products per purchase because of low inventory—just last month, national out-of-stock levels reached 40 percent !

One reason retailers are struggling to recover stock levels is the multifarious trade restrictions that limit infant formula imports. The United States subjects infant formula to tariffs up to 17.5 percent and tariff-rate quotas (TRQs); for TRQs some level imported are subject to a tariff with the excess subject to a tariff and additional duties. A few trading partners receive “special” duty rates where some infant formula imports are duty-free or receive lower tariffs and TRQs. Mexico is one of the few U.S. trading partners that has some duty-free access for infant formula, and uncoincidentally, is the top trading partner for U.S. formula imports. Though, in comparison to total imports from Mexico (worth almost \$400 billion), formula imports are extremely low.

This graph illustrates how little baby formula the United States imports compared to its estimated domestic consumption. While it may not seem bad (and is even encouraged by many nowadays) that the U.S. does not import much baby formula, it is important to understand why the United States is not importing baby formula — amidst the current scarcity, the inability to import is detrimental as parents are left with few to no options.

Absurdly, provisions were added to the United States-Mexico-Canada Agreement (USMCA) to restrict imports of formula from Canada, supposedly because China was investing in a baby food plant in Ontario, and this new production might eventually enter the U.S. market (heaven forbid!). Thus, the provisions in the USMCA’s agriculture annex establish confusing and costly TRQs on Canadian exports of infant formula, and the United States imported no baby formula from Canada in 2021.

Making matters even worse, infant formula is subject to onerous U.S. regulatory (“non-tariff”) barriers. For example, the FDA requires specific ingredients, labeling requirements, and mandates retailers wait at least 90 days before marketing a new infant formula. Therefore, if U.S. retailers wanted to source more formula from established trading partners like Mexico or Canada, the needs of parents cannot be quickly met because of these wait times. Businesses also have little incentive to go through the onerous regulatory process to sell to American retailers, given the aforementioned tariffs and the relatively short duration of the current crisis.

The European Union (EU) is especially noteworthy in this regard. Many parents demand formula from the EU not only because of the current scarcity but because European formula meets other

preferences, including a perceived higher quality, and more varieties like goat's-milk-based formula. Technically, it is illegal to import baby formula from the EU for commercial purposes, but parents can (and do) import it for personal use. Recently, the FDA recalled some European infant formula because it did not comply with FDA labeling requirements. It is agreed by many medical experts that the differences between American and European formula are minor and are not worth the expense imposed by these regulations.

U.S. “marketing orders” for milk throw in another regulatory wrench. These laws cover multiple classes of milk and establish a system for dairy farmers with price and income supports, and trade barriers. The milkiess (ha) of the system makes it difficult to clearly conclude that these orders impact infant formula but given dry milk is a vital component, it can be inferred that these orders that we know raise the price of milk, distort economic activity in the dairy sector that could stymie U.S. producers’ ability to produce more formula to help make up for lost supply. And of course, the import barriers contained within the orders dampen U.S. producers’ demand for foreign classes of milk, including dry milk, thereby reducing options, which are needed most during domestic emergencies.

Congress may not be able to do much for the current crisis, but it should act now and consider how to liberalize trade in baby formula by working towards reducing the opacity of TRQs and marketing orders. Better yet, completely repealing both TRQs on baby formula and milk marketing orders could help prevent another formula crisis, and any regulations set by the FDA affecting formula imports should be out of necessity based on science. The unintended consequences that result from policies implemented in a vacuum illustrate once again, that protectionism promotes the opposite of resilience.

As if being a new parent isn't hard enough!

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