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Baby Formula and Regulatory Failure

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A lot of people are blaming free markets for the baby formula shortage. As the economist Jagdish Bhagwati might say, the problem with this is that the invisible hand is nowhere to be seen. The baby formula market is filled with sweetheart government contracts, protective tariffs, barriers to entry, and other regulations. Government has so insulated the industry from competition that it's a minor miracle the industry isn't even more concentrated than it already is. Critics do not have a free market to point to.

In an op-ed being syndicated to newspapers by *Inside Sources*, I go through some of these regulations, then point out how absurd it is that many proposed solutions to the mess these regulations caused is to add still more regulations.

First, parents receiving WIC [Special Supplemental Nutrition Program for Women, Infants, and Children] assistance are allowed to choose only certain brands. Second, consumers must pay a 17.5 percent tariff on any imported formula, which prices countless brands out of the U.S. market. It's a nice arrangement for the companies—and for their lobbyists—but it raises prices for families and makes it difficult to boost supplies during shortages.

When new formulas enter the market, regulations forbid sellers from letting anyone know about them for 90 days, even as manufacturers may advertise existing formulas all they like. Those first months on the shelf are make-or-break for many new products, which is why existing producers like this otherwise pointless regulation. At times like this, parents might appreciate hearing about new options.

One of those options is toddler formula, which in many cases meets the Food and Drug Administration's nutritional requirements for infant formula. However, FDA regulations prohibit many manufacturers from recommending this option.

That is just the beginning of the government-created mess. The whole piece is here.

After I sent in the article, President Biden invoked the Defense Production Act to import more baby formula. It would do this by requisitioning commercial aircraft to fly in formula from abroad. But the only imports allowed would be from factories that meet all FDA regulations,

which are designed in part precisely to keep foreign formula out of the U.S. market, so it wouldn't do much good without some regulatory relief. And those imports would start happening on their own the minute such relief is offered. Either way, this Defense Production Act action is performative at best, and disruptive at worst, since those aircraft have other uses.

The better solution would be something called mutual recognition. If a competent regulator with similar standards to ours, like Europe, Japan, Australia, and the like, approves something, then it should automatically be approved in the U.S. In return, those regulators should give similar approval to U.S.-approved products.

Domestic baby formula producers will howl at having to face honest competition, but the next time a factory goes down, parents won't be left scrambling, and even during normal times, actual market competition will help lower prices.

The op-ed is [here](#). The Cato Institute's [Gabriella Beaumont-Smith](#) and [Scott Lincicome](#) have also done excellent work on the baby formula shortage.