

## CONCEALING THE BARRIERS: AN EXPLORATORY DISCUSSION OF NON-TRADE BARRIERS' EFFICACY IN LIGHT OF 'THE SHRIMP-TURTLE CASE' AND 'BEEF HORMONE CONTROVERSY'

**Nijat Muradzada**

*Azerbaijan State University of Economics (UNEC)  
Baku, Azerbaijan*



### ABSTRACT

The policy uncertainties in global economic relations that oscillated the conventional order due to BREXIT and Trump's foreign economic policy necessitate a thoroughgoing analysis of the non-trade barriers since they served as the impetus in both events. Indeed, these events and global trade-inhibiting elements coalescing around them were bolstered by notorious antecedents. Hence this paper delves into two seminal cases, 'The Shrimp-Turtle Case' and 'Beef Hormone Controversy', to identify the efficacy of the non-trade barriers' as a long-term policy. The paper deploys a qualitative case-study method on an exploratory basis and purveys contribution by rendering a theoretical segregation between the policy response and cogent and sound policy.

**Keywords:** Protectionism, non-trade barriers, foreign economic policy, global trade, policy response.

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## INTRODUCTION

The policy uncertainties in global economic relations that emerged in the aftermath of the 2008 Financial Crisis abetted the advent of nationalist and populist political discourses, which are construed as the new wave of protectionist transformation in economic configuration. In this context, the election of Donald Trump in the US and BREXIT in the UK is perceived as the culmination of this turbulent process since the economic motivation of both is ensconced within protectionism (Dent, 2020). However, apart from salient cross-country trade discrimination endeavors, whose profound side-effects had been affirmed starting from the notorious "Corn laws," the effects of non-tariff barriers that exert a longstanding noteworthy impact on worldwide trade are generally overlooked. Hence, this article examines the nexus between non-tariff barriers' influence over global trade and the efficacy as a policy response for the global economic challenges through selected case studies.

### 1. A BRIEF LITERATURE REVIEW ON TRADE BARRIERS

As known, there is a sizable amount of protectionism-related literature. The conventional approach by Friedrich List denotes that inward-oriented trade policy would foster nascent sector-specific development and immunize the country in competition with others that have the overwhelming comparative advantage (Irwin, 2006). Fouda (2012) refers to protectionism as "an economic policy of restraining trade between nations, through methods such as tariffs on imported goods, restrictive quotas, and a variety of other restrictive government regulations is designed to discourage imports and prevent foreign take-over of local markets and companies" (p. 351). This approach implies to the ramification of protectionism in "direct" and "indirect" variations or could be interpreted as "tariff" and "non-tariff" respectively. Although both resemble in purpose, endeavoring to restrain foreign actors' penetration with the motivation of wealth retention and job protection, their methodology and consequences remarkably differ.

Without delving into the technical aspects, the significant negative effects of Trump-era tariffs, which can be classified as the manifestation of "direct" type, over welfare and prices in the US, had been quantitatively attested by Amity et al. (2019). Merely, Trump's trade war with China increased the US trade deficit by 12% to \$419 bn in 2018, since while US imports from China climbed, exports to China fell (Schenk, 2021). Synchronously, the impact of another protectionism motivated event, BREXIT, reverberated across the UK as the sharp depreciation of pound-sterling and 2.9% of increase of the consumer prices, costing annually £870 per average household (Breinlich et al., 2019). The cascade of episodes after the trauma caused by the 2008 Financial crisis, such as Trump's election and BREXIT, depicts that tariff barriers are more linked to situations where imprudent programs of populist politicians become conceivable in light of the abruptly deteriorated economic conditions that lead to panic and impulsive public reactions.

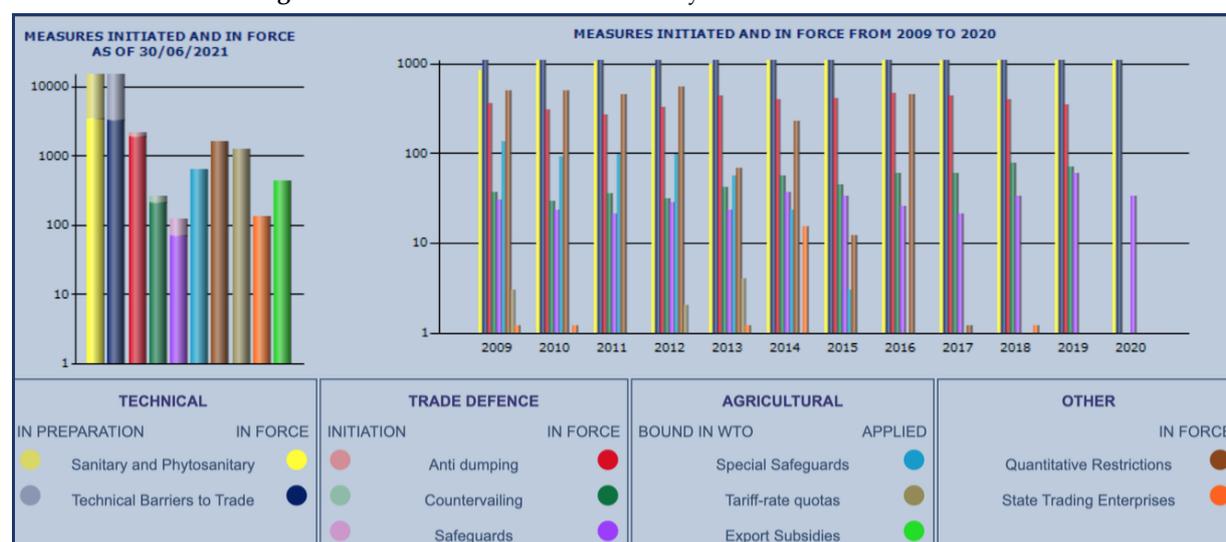
Besides internal factors, exogenous elements are the impetus of protectionist actions. Due to the fact that tariff barriers cause a more harsh "tit for tat" sequence and inject uncertainty that harms all involved parties in terms of trade, the nature of protectionist motivations transmuted to be obscured under the aegis of non-tariff barriers. Generally, non-tariff barriers evince as quotas, licenses, technical and administrative formalities and regulations, customs regulations, sanitary/phytosanitary certifications and regulations, and etc. Delpuech et al. (2021) attribute the imposition of the aforementioned restrictive measures to the imbalances regarding trade and financial exchange generated due to endogenous shortcomings of globalization. The Global

"South" and "North" dichotomy appears to be decisive here as well. In this sense, Moss & Bartlett (2002) argue that developed nations generally advocate "tough labour and environmental standards" with the purpose of "ensuring fair trade" (p. 10). Even Senator from New York and 2008 US presidential election primary at that time, Hillary Clinton in an interview in 2007, explicitly enunciated that she calls for "a review of existing trade agreements" with the aim of the stipulation of new provisions regarding the enhancement of living standards across the globe. Nonetheless, in her following sentence, she tended to justify her opinion as "There is nothing protectionist about this" (Financial Times, 2007). Bhagwati (2008) epitomizes this phenomenon with the term "export protectionism" and further elucidates that developing countries perceive the "in your interest" "harmonization" process of standards, proposed by the US in many cases, as a tool of leveraging the US interests since it "aimed at raising the cost of production of foreign rivals by forcing on them the same labor standards as in the United States" (p. 78).

## 2. EXAMINING NON-TRADE BARRIERS

Lee & Prabhakar (2021) expound on the recently rising volume of non-tariff barriers as "exceptional policy responses" to "exceptional circumstances," alluding to the pandemic (p. 3). Authors assert that non-tariff barriers have "non-trade, public policy objectives" (p. 3). Nonetheless, WTO published World Trade Report (2012) presents that non-tariff barriers are "almost twice as trade restrictive as tariffs" (p. 136).

**Figure 1.** Number of non-tariff measures by all WTO member countries



*Source:* <http://i-tip.wto.org/goods/Forms/GraphView.aspx?period=y&scale=lg>

Figure 1. sheds light on the quantifiable aspect of the non-tariff measures. In the last 11 years, Sanitary and phytosanitary and technical barriers to trade share the top places. Albeit the scope and purpose of application of these measures are enacted in the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures, the imposition of these measures frequently transcends beyond the legal provisions and legal texts to conceal protectionist motivations. Hence in this essay, one sanitary/phytosanitary and one technical barrier concerned case will be analyzed, which are assumed to serve as the fulcrum role for this argument of "hidden protectionism."

### 3. THE SHRIMP-TURTLE CASE

To address the negative impact of human activity on the sea turtles, the United States Congress approved Section 609 of Public Law 101-102 in 1989, which prohibited the importation of shrimp obtained through methods that endanger sea turtles. Prior to this, by 1987 across the US, the use of Turtle Excluder Devices (TED), a specific installation to the fishing nets to allow sea turtles to escape, was imperative (Chessick, 2008). Thus Section 609 could be considered the extension of 1987 obligation worldwide. In 1991, with a confined geographical scope to some Caribbean and the Mexican gulf countries, the enactment commenced through a three-year transition period (Srivastava & Ahuja, 2002).

In early 1997, India, Malaysia, Pakistan, and Thailand filed a united case against the United States' restriction on importing certain shrimp and shrimp derivatives in early 1997. As known, the prohibition was centered on the conservation of marine turtles. Although in the first instances of the dispute settlement process within the WTO, the US import ban was found to be inconsistent with several provisions, nonetheless, the final panel depicted that after the recommendations, the US decision was complying with the relevant GATT article.

In spite of the primary motivation for the prohibition being portrayed as environmental, Kishore (2012) argues that another intention of this restriction was to offset the disadvantageous position of the American fishers in terms of costs. The Atlas of Economic Complexity demonstrates that the US imported almost 34% merely frozen shrimps in 1996 from the above-mentioned low-cost advantaged four countries, to whom TEDs would mean additional costs. Kishore's (2012) outlook is reinforced by the discrimination fact, which has been affirmed by the WTO as well (WTO, 2010). While the US provided a smooth transition period accompanied by technical assistance to Caribbean countries, peculiarly, it neglected to follow the same path with the South Asian countries. This notion once again alludes to that the US had an obvious domestic market protection intention apart from the environmental purpose.

The US approach to environmental issues is open to debate since it is the second-largest greenhouse gas emitter at the moment (BBC, 2021). Furthermore, the US has never ratified the Kyoto protocol, which Dessai (2001) links this reluctance to the intensive lobbying of the firms operating in the coal and oil industry. In the context of the Shrimp-Turtle Case, India disclosed another fact that marred the US justification of import prohibition due to the environmental motives. The US expressed its willingness to enter into a regional deal with India, given that the latter withdrew the case before the WTO Dispute Settlement Mechanism (Kishore, 2012). If the sole purpose was environmental protection, one would hypothetically assume that if India would agree to drop the case, ultimately, what compromises would be given in terms of environment protection by the US.

The preliminary debate in the US Congress regarding Section 609 reveals some insight details that corroborate the argument that domestic market protection is the companion condition of Section 609 besides environmental essence. Congressman Tauzin (1989) from Louisiana, in his speech at the House of Representatives implying to TEDs, said that *"their use will make the domestic shrimping industry an endangered or extinct species in our economic landscape. All the while, the United States is importing shrimp from nations that turn a blind eye to the destruction of turtle nesting areas and which do not require their shrimpers to use turtle excluder devices"* (p. 15727). Congressman Smith (1989) from Mississippi, in the introduction of the Turtle Protection Parity Act, commented: *"Our shrimpers face the added burden of a Federal regulation requiring them to use TEDs [...] which,*

*if applied only to Americans, ignores the identical threat to sea turtles posed by foreign shrimpers"* (p. 11750). Similarly, Congressman Hayes (1989) from Louisiana remarked: *"Under the present system of sea turtle protection and enforcement, our domestic shrimping fleet is placed at a severe economic disadvantage"* (p. 24156). Senator Breaux and Senator Johnston from Louisiana also advocated the protection of the domestic shrimp industry.

In 1993, the US fishery products imports and exports were totaled \$17.54 bn, and the shrimps in terms of value constituted 1/3 of the overall imports (Centers for Epidemiology & Animal Health, 1995). Consequently, the US, where 75% of shrimp demand is supplied by imports (Chessick, 2008), managed to offset the disadvantageous position of the domestic market players via a technical barrier. On the other hand, shrimp-producing countries did not only encounter the decline of comparative advantage but, concomitantly, the occurrence of a cross-sector multiplication effect. Ling et al. (2001) underscore that apart from providing employment opportunities intra-sector basis, the shrimp industry "also created numerous upstream and downstream industries which are directly or indirectly related to the shrimp industry" (p. 83).

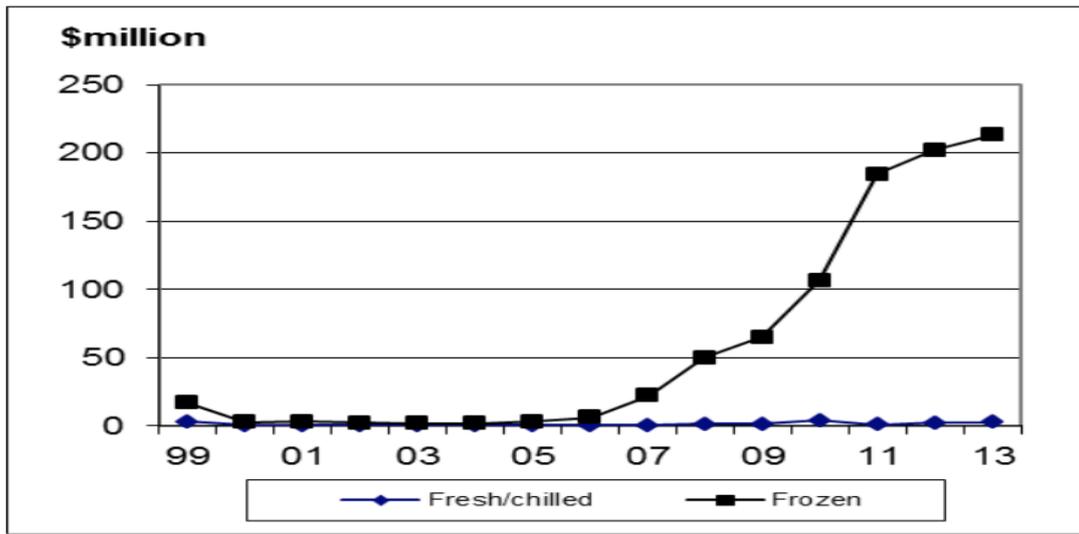
#### **4. BEEF HORMONE CONTROVERSY**

The discord between the US and European Communities (EC) upon the European import restriction on meat and meat products derived from growth-promoting hormones administered cattle is the first dispute settled by the WTO under the Sanitary and Phytosanitary Agreement. Although the EC had a longstanding past regarding controversies revolving around the application of hormones in animal husbandry, in 1989, it prohibited the importation of the growth hormone-treated beef (Neugebauer, 2008). The ban encompassed six hormones that were pervasively utilized by meat producers in the US, as these substances had Food and Drug Agency (FDA) approval (Nelson, 2013). Despite it being one of the intractable cases that lasted for 13 years (1996-2009), it concluded in the "mutually acceptable solution." WTO in the first panel disapproved the EC's ban, as it was devoid of necessary scientific research, but based on precautionary principle to minimize any potential risk. Thus, retaliatory measures allowed the US to be imposed in the form of US\$116.8 mn tariffs on European products annually (USITC, 2000). In the subsequent phases, WTO equilibrated the situation, enunciating that both sides can perpetuate the restrictive practices within the presaged framework.

Undoubtedly, the reduction of chemicals in the food that Europeans frequently consumed was the priority. Nevertheless, as with all policies, it generated some further effects, encapsulated in different spheres, various forms. Albeit the Sanitary and Phytosanitary Agreement has some evident provisions concerning abstention from the actions driven by protectionist motivations, consequences frequently circumvent this notion. Johnson (2015) propounds that "many in the United States perceive the EU's ban as an example of how sanitary and phytosanitary (SPS) measures and non-tariff barriers are used as disguised protectionism." Moreover, Charlier & Rainelli (2002) emphasize that the EC ban might be a true hindrance to the US beef producers' comparative advantage of hormone-administered beef. Through operationalizing this outlook, one would postulate, referring to Galbraith (2002), who outlines that hormones facilitate a faster growth, this factor inherently would levy a burden on the hormone-avoiding European producers. Hence the consequence of this policy might also encompass the alleviation of this burden on the European producers.

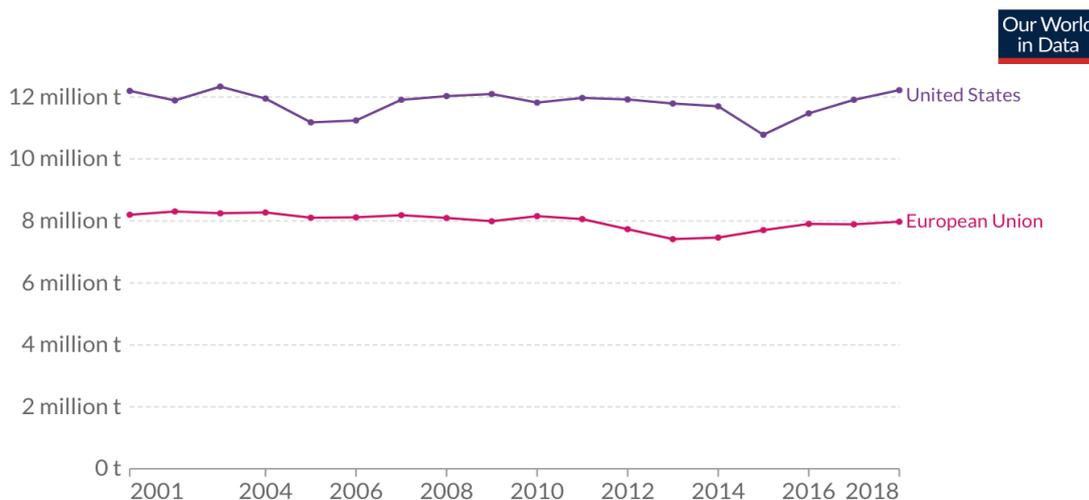
The two figures below, as the descriptive indicators of the policy impact over the European import, substantiate the bilateral sectoral relationship. As the European beef imports abruptly rose from the US between 2010 and 2013 (Figure 2.), overall production, as seen in Figure 3., across the EU dropped from 8,06 million to 7,41 million tonnes. In their quantitative analysis, Beckman et al. (2020) also affirms the US pressure on the EU beef market and state that "the increase in US exports to the EU leads to a decrease in beef production, freeing up resources for more productive sectors" (p. 1339)

Figure 2. EU Beef Imports from the US (1999-2013)



Source: <https://sgp.fas.org/crs/row/R40449.pdf>

Figure 3. Beef production in the US and EU (2001-2018)



Source: [ourworldindata.org](http://ourworldindata.org)

The contention over the beef ignited the fuse of a longstanding “Cold War” between Atlantic allies, the EU, and the US in different spheres. Firstly, it exacerbated the “Banana dispute,” where the EU favored banana producers in Africa, the Caribbean, and the Pacific over low-cost Latin America. It is worth underlining that the major operators in Latin America were two US corporations, Chiquita Brands International and Dole Food Company (Ames, 2001). Furthermore, the Airbus-Boeing dispute erupted upon the US filing a case to the WTO but soon turned into mutual accusations that each other’s airplane manufacturers enjoyed illegal subsidies (Pandey, 2020). Even the Airbus-Boeing case affected the Scotch whisky industry with a loss of £600 mn when the Trump administration implemented 25% tariffs (Reuters, 2021). Yet, this tariff itself is the manifestation of another protectionist maneuver since microeconomic theory suggests that whenever the price of an imported commodity is on an upward trend, this induces consumers to purchase cheaper national substitutes (American Bourbon instead of Scotch whisky in this case).

## **DISCUSSION AND CONCLUSION**

The essay attempted to unveil various notions via the thoroughgoing analysis of the two generic cases. The selected cases were upon predisposed criteria. One was related to the Agreement on Technical Barriers to Trade and the other to the Agreement on the Application of Sanitary and Phytosanitary Measures. Simultaneously, the focal construct of the essay was based on the examination of how the dissimilarities of parties within the selected cases in terms of economic development would affect the result. Namely, in the phase of case selection, the attempt was to interrogate the trilateral nexus of economic development level, trade war proneness, and total compliance with the requirements. In the Shrimp-Turtle Case, four developing countries, India, Malaysia, Pakistan, and Thailand was against a developed US. In the Beef Hormone Controversy, however, one developed country, the US, was against a bloc of developed countries, the EU. This framework enabled to extrapolate meaningful outcomes whether protectionism is a reasonable policy response to the challenges of the global economy from different perspectives for numerous parties.

In the Shrimp-Turtle Case, the US enjoyed salient supremacy over the complainant countries. It transcended its domestic legal provisions to the threshold of the national level, although all involved parties had their own laws to address the issue of high mortality rates of sea turtles. In addition, it substantially undermined the comparative advantage of the aforementioned countries by imperatively imposing the installation of the US-made device on the fishnets. Unquestionably, TEDs raised the operational costs, which evinced in the final price in the US market. The discussions in Congress delineated that the concern is more about the domestic market actors’ protection rather than the environment. Consequently, the US efficiently used protectionism as a tool to leverage its economic interests since none of these countries had immunity to commence a trade war as their trade compositions were structured in the form of the exportation of raw materials and importation of industrial products, in other words, the dependency relationship.

On the other hand, the Beef Hormone Controversy among the US and EU is one of the striking embodiments of the power balance struggle on the highest echelon of world politics. The EU policy, which was apt to be construed as a protectionist move, triggered the outbreak of a longstanding and costly trade war with the US. The election of a populist politician, Donald

Trump, in the US as the president has nourished the overall situation. It has to be denoted that specifically in the Beef Hormone Controversy, the EU had attained some short to mid-term gains; still, in the end, the US predominance was decisive. The US penetration to the meat production sector caused a noticeable decline, and it seems like this trend will persist as long as the beef production trend in the US is positive. In this case, protectionist policy response impaired the bilateral trade relations, and foremost has led to the advent of retaliatory actions cycle that injected uncertainty. Hence, in contradistinction to the developing countries studied in the previous case, due to the capabilities of both sides to engage in a trade war, the protectionist endeavor was futile and counterproductive as a policy response.

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