

Import bans are measures that are particularly trendy in Africa, as many governments use these kind of restrictions to protect their local productions from foreign competition. They have been often [defined](#) as a 'poor substitute' to the inability of African governments to create incentives that enable local producers to compete favorably with foreign competitors. But in the WTO context, import bans are regarded as non-tariff trade barriers and are therefore generally prohibited. So why African nations insist on introducing them?

More precisely, import bans are permitted only in certain circumstances, namely to protect human, animal or plant life or health. The relevant legal basis is Article XX(b) GATT, which sets out the so-called "necessary test" rule. This rule means that a restrictive measure of imports is justified only if it is necessary to avoid the risk that, for instance, that pests, disease or from contaminated food, beverages or feedstuffs can cause damage to the life or health of humans, animals or plants. In addition, the WTO Sanitary and Phytosanitary (SPS) Agreement contains additional rules that allow WTO members to introduce an import ban, provided that a scientific risk assessment is carried out to justify the measure. In practice, the legitimacy of an import ban must be supported by a convincing evidence, based on scientific principles, of the necessity of such a ban. From an economic standpoint, this means that the cost of an import ban will need to be assessed in a cost-benefit framework by comparing the threat of economic damage – due to the actual risk posed to human, animal or plant health – to the welfare loss due to the unavailability of the product in the importation market. Moreover, the SPS Agreement contains a clause (art. 5.7) to allow flexibility in instances where relevant scientific evidence is insufficient to perform a risk assessment.

Typical cases of import bans are related to the outbreak of animal diseases, to the insurgence of epidemics in some countries (e.g., avian influenza, bovine spongiform encephalopathy, etc.), or can be imposed by governments (or Customs Unions) on products that may cause a risk to the human health. This is for instance the case of genetically modified foodstuffs. Import bans are also introduced with the more general need to protect the environment and the agricultural sector from exotic invasive pests and pathogens.

Despite article XX(b) GATT does not mention the environment, a series of decisions of the WTO panels have repeatedly admitted the introduction of import bans also for reasons related to the protection of the environment. Two landmark case that are particularly relevant are the [China – Raw Materials](#) and the [China – Rare Earths](#) cases. In such cases, the WTO panels argued that the protection of the environment is a valid cause of justification of the imposition of an import ban. A more recent WTO panel is the

Brazil—Retreaded Tyres

, a dispute started by the European Union against an import ban on retreaded tyres introduced by Brazil, justified with the need to protect its environment by preventing the accumulation of waste tyres and, thus, avoid the risks of fire and mosquito-borne illnesses.

Basically, import bans are admitted by the GATT/WTO rules in very limited cases. Nonetheless, African nations, and developing countries in general, seem to have shown a strong inclination to introduce such measures, especially in recent years. Why?

The answer is simple. The Appellate Body, the second instance WTO court is paralyzed since 2019 because of the "[veto power](#)" exerted by the United States on the appointment of its members. Even if an African State is condemned by a WTO panel because of the introduction of an unjustified import ban, the solution is easy. It suffices to appeal such a decision to the Appellate body, that being not nominated, will not be able to solve the controversy. Consequence? The WTO panel decision will be suspended, and that nation will continue to use its ban.

Practical cases of this approach? Let's take Indonesia, for example. This country introduced in 2020 an export ban on nickel ore to stimulate the production of value-added nickel products. These measures, similarly to import bans, are not allowed by art. Article XI:1 of the GATT 1994, which prohibits WTO members from introducing or maintaining any form of export prohibition or restriction other than duties, taxes or other charges, although some exceptions are listed in para 2 of the same article. The WTO working panel condemned Indonesia for the infringement of such article. The answer of the Indonesia President? "[It's okay](#)". I have told the Minister (of Trade) to appeal...". tho