

# **The Non-tariff Barriers in the Developed Countries (The Case of USA, EU and Japan)**

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## **Abstract**

The non-tariff barriers have been a subject of discussion for a long period of time during the liberalization of the global trade flows between the countries. However, in order to understand the relation between free trade and protectionism in certain countries there should be analyzed not only their trade policies but also the submitted trade disputes. The focus has been placed on the dominant economies at the global market i.e. on the USA, EU and Japan as economic and political leaders in the international trading system. Three important conclusions emerge from this analysis. Firstly, there are more complaints which have been submitted in relation to the tariff barriers than such that have been resolved. Secondly, there have been submitted more trade complaints against the USA than all those against the other two countries, EU and Japan. Thirdly, it cannot be said that there is a relation between the degree of protectionism and the frequency of trade complaints against a particular country.

**Key words:** non-tariff barriers, protectionism, trade disputes.

## **1. Introduction**

Nowadays, the non-tariff barriers are the most important regulative instrument of the trade policy of many countries, especially the large and developed economies. The increase in the relative importance of non-tariff barriers as an instrument of trade policy has imposed the need for their better understanding. In the course of the empirical research in this paper there have been used numerous relevant studies, reports and indicators of credible institutions which analyze the frequency of the non-tariff barriers. This analysis includes the non-tariff policies and practices in Japan, EU and the USA, especially from the aspect of significant non-tariff barriers and differences in the regulation between these countries. The research is based on the relevant analysis of non-tariff protectionism between the USA, EU and Japan in the period of 2002-2007 in David Hanson's (*Associate Professor of International Business, Duquesne University, Pittsburgh, USA*) paper "Limits to Free Trade: Non-Tariff Barriers in the European Union, Japan and United States" and it has been complemented with author's research on the non-tariff protectionism between these countries in the period of 2007-2013. Main sources of information are the official reports on the limits of trade and investments published by the three governments. One part of the research is based on the annual report on foreign trade barriers (an annual *Report on Foreign Trade Barriers*) published by the Office of the United States Trade Representatives. The data contained in the research is also based on the report on compliance by major trading partners on trade agreements (an annual *Report on Compliance by Major Trading Partners on Trade Agreements*) published by the Ministry of Economy, Trade and Industry of Japan. These reports focus themselves on situations where the trading partners of Japan take measures that violate the international agreements. The EU has been provided with data of foreign trade barriers from the market access database (the *Market Access Database*) of the European Commission. It was presented the status of the submitted trade disputes to whose evidence has been come by consulting the official documentation available at the site concerned with settling the trade disputes within the framework of WTO (DISPUTE SETTLEMENT).

## **2. The non-tariff policies and practices of the USA, EU and Japan**

The non-tariff protectionism of the USA imposes itself to a great extent on non-commercial objectives. It includes a prohibition of importing marine products, crabs and tuna from countries which do not obey the American environmental regulations. Antidumping remains to be a key instrument of the U.S. trade policy. The U.S. policy regarding the public procurement presents a national treatment provision based on the principle of reciprocity. For procurement which is not in accordance with the Agreement on public procurement or other international agreements, the USA has imposed a series of requirements (as for example, "Buy American Products). The USA has also imposed export restrictions and controls on national security.

The non-tariff protectionism is strongly expressed in the EU as well. It manifests itself by the implementation of protective, antidumping and compensatory measures. The technical regulations, standards as well as the sanitary and phytosanitary measures have not been

completely harmonized between the member countries. Besides that, the products which place themselves at the market of the member country must be in accordance with the national legislation as well as with the EU legislation. Similarly, the EU procures export subsidies for a large number of agricultural products. There have been enacted new regulations for protection of geographical names of wine and hard drinks. There is also predominant a different explanation of the regulation of public procurement in the EU by the member countries.

The non-tariff protectionism in Japan is manifested in different forms. Japan imposes prohibitions of import and import quotes of different products. Namely, because of the danger of diseases, Japan also imposes prohibitions at the import of beef and poultry from different countries. The import of certain goods is a subject to approval of import licenses for provision of national security. The number of antidumping measures which are imposed by Japan is rather small and there is no evidence for imposing protective measures.

### 3. Comparative analysis of the non-tariff barriers in the trade between the USA, EU and Japan

Three important conclusions emerge from this analysis. Firstly, there are more complaints which have been submitted in relation to the tariff barriers than such that have been resolved. Secondly, there have been submitted more trade complaints against the USA than all those against the other two countries, EU and Japan. Thirdly, it cannot be said that there is a relation between the degree of protectionism and the frequency of trade complaints against a particular country. The total number of submitted trade complaints in the period of 2002-2007 as well as the number of settled and unsettled disputes is presented in table 1.

**Table 1: Total number of submitted trade complaints in 2002-2007**

	Number of WTO cases						
	2002 and 2007	2007 only	2002 only	Total	As complainant	As respondent	Total
EU	18	9	18	45	17	37	54
Japan	45	7	21	73	12	8	20
USA	48	25	4	77	31	23	54
Total	111	41	43	195	60	68	128

Source: Hanson, D. (2010): Limits to Free Trade, Non-Tariff Barriers in the European Union, Japan and United States, Edward Elgar Publishing Limited, USA, p.174

According to the data in this table, a relatively small number of trade issues were resolved in relation to the ones which were raised. By analyzing the status of the raised trade issues within the framework of WTO, it may be stated that the number of the existing trade issues is four times greater than the number of resolved complaints. The number of the newly submitted complaints is one and a half times greater than the number of resolved complaints. This especially refers to the USA where were registered the largest number of newly submitted complaints and the

smallest number of solved problems. Basically, the number of solved problems is a little bit greater than the number of newly submitted complaints against the EU and Japan. The number of trade complaints submitted against the USA gives evidence for their seriousness. Thus, the issues that were raised against the trade policies of the USA are much more in comparison with those which were raised against the other two countries, the EU and Japan. The research has been consecutively supplemented by analyzing the submitted trade complaints against the EU, Japan and the USA in the period of 2008-2013. The total number of submitted trade complaints in the period of 2008-2013, in accordance with the records of all trade disputes submitted within the framework of WTO, is presented in table 2.

**Table 2: Total number of submitted trade complaints in 2008-2013**

Number of WTO cases			
	As complainant	As respondent	Total
EU	14	18	32
Japan	7	0	7
USA	17	22	39
Total	38	40	78

Source: Author's calculations based on WTO DISPUTE SETTLEMENT [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm) (accessed in January, 2014)

By analyzing the status of submitted trade complaints within the framework of WTO in the period of 2008-2013, it is proved the previously mentioned statement that a relatively small number of trade issues were resolved in relation to those which were raised. Many of the raised trade issues are in a process of consultation whereas the report on few of them was adopted by recommendation of the panel in order to reach an agreement between the affected parties. In the analyzed period the largest number of trade complaints were submitted against the USA again, because of the large number of antidumping measures imposed at the import of various products. No trade complaint was submitted against the trade policies of Japan. If we make a comparison between the two periods which are subject of analysis, we will come to the realization that the functionality of the mechanism for settling trade disputes within the framework of WTO has been brought into question because the number of raised trade issues greatly exceeds the number of resolved trade issues.

There are also national differences in the areas of the three countries where the trade complaints were submitted. The same ones, for the period from 2002 to 2007, are presented in table 3.

**Table 3: Raised issues of various areas in 2002 and 2007**

Issue	Respondent			Total
	USA	EU	Japan	
Import-related				
Trade administration	8	6	19	33
SPS requirements	<b>7<sup>1</sup></b>	<b>10</b>	23	<b>40</b>
Access to service markets	10	6	<b>14</b>	<b>30</b>
Government procurement	<b>7</b>	<b>1</b>	<b>1</b>	<b>9</b>
Safeguard issues	<b>12</b>	<b>1</b>	<b>0</b>	<b>14</b>
Domestic-related				
Standards, technical requirements	5	10	<b>4</b>	<b>19</b>
Pharma, medical devices	3	1	<b>13</b>	<b>17</b>
Market regulation	<b>5</b>	<b>0</b>	<b>7</b>	<b>12</b>
Intellectual property	<b>10</b>	<b>8</b>	<b>10</b>	<b>28</b>
Export-related				
Export barriers	<b>3</b>	<b>1</b>	<b>0</b>	<b>4</b>
Export incentives	8	1	<b>0</b>	<b>9</b>
Total	<b>79</b>	<b>45</b>	<b>91</b>	<b>215</b>

Source: Hanson, D. (2010): Limits to Free Trade, Non-Tariff Barriers in the European Union, Japan and United States, Edward Elgar Publishing Limited, USA, p.176

As it can be seen in the table, the trade issues which were raised against the practices of Japan are the most serious, those raised against the USA are characterized by certain tolerance, whereas those which were raised against the EU are the least serious.

The areas, in which the trade complaints were submitted in the period of 2008-2013 in the analyzed countries, are shown in table 4.

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<sup>1</sup> The results of the country against which filed the largest number of trade complaints in the respective areas are marked with bold.

**Table 4: Raised issues of various areas in 2008-2013**

Issue	Respondent			Total
	USA	EU	Japan	
<b>Import-related</b>				
Trade administration	/	<b>3</b>	/	3
SPS requirements	<b>5</b>	2	/	7
Access to service markets	/	/	/	/
Government procurement	/	/	/	/
Safeguard issues	<b>13</b>	6	/	19
<b>Domestic-related</b>				
Standards, technical requirements	<b>4</b>	3	/	7
Pharma, medical devices	/	<b>2</b>	/	2
Market regulation	/	/	/	/
Intellectual property	/	/	/	/
<b>Export-related</b>				
Export barriers	/	/	/	/
Export incentives	/	<b>2</b>	/	2
<b>Total</b>	22	18	/	40

Source: Author's calculations based on WTO DISPUTE SETTLEMENT [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm) (accessed in January, 2014)

As it can be seen in the table, the trade issues which were raised against the USA are the most serious. Generally, this is due to the large number of trade issues raised by different countries because of antidumping and due to the compensatory measures which are imposed by the USA at the import of various products. The trade accusations against the USA are mostly concentrated in the category measures of protection.

By analyzing the frequency of trade complaints submitted by either one of the two countries against the third one, it is obtained a rough indicator of the extent to which the countries reached an agreement on trade issues. This data is summarized in table 5.

**Table 5: Trade issues about which was reached an agreement in 2002-2007**

Complainants	EU/USA	EU/Japan	Japan/USA
Respondent:	Japan	USA	EU
<b>1. Import-related</b>			
Trade administration	3/9	1/4	2/5
SPS issues	3/22	1/9	1/5
Access to services	2/13	0/12	0/6
Government procurement		0/5	0/1
Safeguard issues		9/13	0/1
<b>2. Domestic-related</b>			
Standards and tech. requirements	0/5	2/4	2/10
Pharma and medical devices	5/13	0/3	0/1
Intellectual property	0/10	4/9	1/8
Market regulation	0/7	0/5	

3. Export-related		
Export impediments	0/3	
Export subsidies	3/5	0/2

Source: Hanson, D. (2010): Limits to Free Trade, Non-Tariff Barriers in the European Union, Japan and United States, Edward Elgar Publishing Limited, USA, p.183

The number before the slash refers to the number of cases about which both countries as potential complainants reached an agreement. Thus, for instance, “1/4” in the area of U.S. trade restrictions indicates that the EU and Japan reached an agreement on one of the four raised trade issues. By looking at the table, it can be stated that more agreements were reached between the EU and Japan against the U.S. trade restrictions rather than between the USA and the EU or the USA and Japan. The consensus reached between the EU and Japan was particularly expressed in the critiques of the U.S. measures of protection, intellectual property and the U.S. export subsidies as well. The lowest level of consensus about trade issues was reached between the USA and Japan. The standards and technical regulations were the only area in which both countries reached an agreement against the trade policies of EU. Japan and the USA did not reach a consensus about half of the issues raised against the trade policies of EU. The USA and EU showed great aggressiveness when submitting trade complaints against each other.

The data of the reached agreement on trade issues raised in the period of 2008-2013 is presented in table 6.

**Table 6: Trade issues about which was reached an agreement in 2008-2013**

Complainants	EU/USA	EU/Japan	Japan/USA
Respondent:	Japan	USA	EU
1.Import-related			
Trade administration	/	/	2/3
SPS issues	/	1/5	0/2
Access to services	/	/	/
Government procurement	/	/	/
Safeguard issues	/	13/13	2/6
2. Domestic-related			
Standards and tech. requirements	/	3/4	2/3
Pharma and medical devices	/	/	0/2
Intellectual property	/	/	/
Market regulation	/	/	/
3. Export-related			
Export impediments	/	/	/
Export subsidies	/	/	0/2

Source: Author’s calculations based on WTO DISPUTE SETTLEMENT [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm) (accessed in January, 2014)

As it can be seen in the table, in the analyzed period, the EU and Japan reached some sort of agreement on the trade issues raised against the USA in different areas. A maximum

consensus was reached among the EU and Japan about the trade issues which were raised because of the measures of protection imposed by the USA. It was reached an agreement on one of the five raised trade issues about the restrictive sanitary and phytosanitary practices imposed by the USA, whereas a higher consensus was reached about the standards and technical requirements i.e. about one of the four raised issues. The level of consensus among Japan and the USA about the trade issues raised against the EU varies in different areas. It is registered the agreement reached on the trade issues raised against the EU tariff treatment of certain information technology products as well as in the area of discriminatory standards imposed by the USA.

The basic issue which has been raised in relation to the seriousness of trade complaints is whether the number of issues raised against the trade policies of a particular country expresses, as a matter of fact, the level of trade restrictions imposed by the same one. If that is the case, then it would be logical the conclusion: *more raised issues against the trade policies = less trade*. On the other hand, there is a probability that the international trade appears to be an instigator of that process. This can occur under conditions when the trade restrictions are the result of domestic resistance against foreign competition. Then, the following situation arises: *a larger trade leads towards more raised issues against the trade policies*. Most of the issues which have been raised against the trade restrictions are allegedly based on violation of the international trade agreements. There is a possibility that these agreements do not point out to serious trade restrictions. If that is the case, it follows the claim that: *there is no relation of the volume of raised trade issues to the level of trade*. It is raised the question: which of the mentioned hypotheses is the most consistent with data. One of the approaches is to compare the data of the ratio of trade to GDP with the number of trade complaints. On one hand, if the submitted complaints were the reason for trade problems, then it could be expected that the countries against which has been submitted the greatest number of trade complaints would have the lowest level of trade as a share of the GDP. On the other hand, the trade complaints may be the consequence of trade, and in that case, a larger number of trade complaints would be associated with greater trade dispersion.

It can be taken into account the ratio of export to import as an indicator of trade policy. The countries which practice mercantilism would stimulate the export and would limit the import. Hence, the ratio of their export to their import would be greater than 1. However, the countries which practice free trade would be far more tolerant and the ratio of their export to their import would be smaller than 1. This data is contained in table 7.

**Table 7: Trade liberalization and number of trade complaints in 2007**

	GNP (\$t) <sup>2</sup>	Imports	Imports/GNP (%)	Exports/imports (in ratio)	Issues
Japan	4,3	0,38	8,7	1,70	69
EU	13,0	1,13	8.8	0.92	45
USA	13.2	1.9	14.5	0.54	78

Source: Hanson, D. (2010): Limits to Free Trade, Non-Tariff Barriers in the European Union, Japan and United States, Edward Elgar Publishing Limited, USA, p.185

As it can be seen in the table, the data of import is taken as a subject of analysis because the problems arise there. Both the indicators contained in the table i.e. the import as a per cent of the GDP and the imbalance between the import and export suggest the same conclusion. The USA has the highest level of import and the lowest level of coverage of imports by exports. This data suggests that the point is a very open economy. Contrary to this, Japan has the lowest percentile coverage of imports in the GDP structure in comparison with the others and the largest coverage of imports by exports. This indicates the fact that the Japanese economy is the one which is most closed to foreign goods compared with the other countries. The data of the EU varies between these two extremes i.e. the EU is more prone to foreign trade in comparison with Japan, but less prone in comparison with the USA.

The data of trade performance of the three countries for 2012 is presented in table 8.

**Table 8 Trade liberalization and number of trade complaints in 2012**

	GNP (\$t)	Imports	Imports/GNP (%)	Exports/imports (in ratio)	Issues
Japan	5,9	0,88	14,86	0,90	0
EU	16,6	2,30	13,85	0,94	18
USA	15,6	2,33	14,89	0,66	22

Source: Author's calculations based on WTO TradeProfiles2013 [http://www.wto.org/english/res\\_e/booksp\\_e/trade\\_profiles13\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/trade_profiles13_e.pdf) (accessed in January, 2014)

The data in table 8 confirms the previously mentioned statement. Compared with the other countries, the USA has the highest level of import and the lowest level of coverage of imports by exports again although the percentile import share in the GDP of EU and Japan in comparison to 2007 has increased.

If it is made a comparison between the number of submitted trade complaints of all three countries and the level of trade transparency in both periods which are a subject of analysis, it can be stated that there isn't any important relation between these two indicators. The largest number of trade complaints was submitted against the USA which has the lowest coverage of

<sup>2</sup> GNP and import values are in trillions of US dollars.

imports by exports and the highest level of import. These measures suggest that the closed countries as Japan are less likely to submit trade complaints in comparison with the open countries as the USA. In other words, the frequency of submitted trade complaints does not have to be an accurate indicator of the actual trade restrictions. This confirms the third hypothesis. Generally, this data is in accordance with the other evaluations of non-tariff barriers.

In the analysis of trade relations made by World Bank in 2008, the USA was ranked eleventh out of all twenty ranked countries according to the criterion of lowest protection at import and eighth according to the degree of liberalization of trade in services. The overall level of protectionism in the USA decreased significantly in the period between 1984 and 1990. The conclusion that there is no relation between the number of submitted trade complaints and the country's degree of openness does not have to mean that the raised trade issues are not serious. According to the second above mentioned hypothesis, the pressure created by the international trade can be a motive for imposing additional trade restrictions. In such a situation, it would be expected a more restrictive policy in the more open countries.

#### **4. Conclusion**

The non-tariff barriers violate to a great extent the effectiveness of the multilateral trading system. Some of them are an example of direct protectionism (particularly in Japan and the USA), whereas some are by-products of domestic regulations which have probably no intention to limit the trade (particularly in the EU and the USA). New trade problems arise more quickly than the old ones are solved. The two basic instruments for their resolution are the bilateral negotiations and the center for settlement of disputes within the framework of WTO. However, there is some evidence that the bilateral negotiations are effective, whereas the process of settling disputes within the framework of WTO takes a lot of time and it is generally slow. Because of that, the open markets and modified rules within the framework of WTO have a key role in decreasing the violations caused by the non-tariff barriers.

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