

GLOBALIZING ANIMAL LAW

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POP QUIZ

- Which international body said this?

“animal welfare is a matter of ethical responsibility for human beings in general ... [and] a globally recognized issue”

- A. The International Court of Justice
- B. The United Nations Environment Programme
- C. The International Animal Protection Tribunal
- D. The Dispute Settlement Body of the World Trade Organization

POP QUIZ QUESTION 2

- A new international agreement was recently announced to combat illegal wildlife trafficking. Is it:
 - A. A new protocol to the Convention on International Trade in Endangered Species
 - B. A non-binding UN General Assembly resolution
 - C. A new multilateral treaty negotiated to create a more effective framework to enforce prohibitions on wildlife trafficking
 - D. Part of a new international trade agreement

GLOBALIZING ANIMAL LAW

- The connotations of “globalizing” animal law:
 - **Animal law going global:** the emergence of animal-protective norms and principles in public international law
 - Wildlife protection: CITES, CBD
 - Animal welfare: a new concern
 - **The law of globalization:** international trade law
- Animal law and international trade: mortal enemies?



TWO OBSERVATIONS

1. “Traditional” international trade law (GATT/WTO) recognizes the need for policy space for national governments to enact animal-protective rules
 - Animal welfare and the protection of animals are legitimate policy goals
2. New trade agreements have the potential to create positive obligations (linked to trade relationships) regarding animal protection

TRADE VS. ANIMALS (?)

- “For many years now the free-trade rules of the World Trade Organisation (WTO) have been **wrecking progress on animal welfare**. And unless they are reformed, the WTO rules **will continue to be a major block** to attempts to achieve improved welfare standards”
 - Peter Stevenson, 2003

TRADE VS. ANIMALS (?)

- “[The new EU-US trade and investment partnership] is likely to **compromise the welfare of animals** and will accelerate the process of intensification of animal agriculture on both sides of the Atlantic by **lowering existing standards and freezing and even eliminating the possibility for future legislation protecting animals**”
 - Compassion in World Farming, 2014

WHAT IS INTERNATIONAL TRADE LAW?

- Trade treaties: binding obligations between states to reduce barriers to trade
 - Import / export bans
 - Quotas
 - Tariffs (border taxes, duties)
 - Internal laws or regulations that discriminate against imports, or between imports from different countries
- National treatment principle
 - Parties to a trade agreement can't discriminate against imports, in favor of their own domestic industries
- Most favored nation principle
 - All parties to the trade agreement are entitled to equally good treatment – no discriminating *between* different trade partners

DE FACTO DISCRIMINATION IN TRADE LAW

Country A's National Drink



20% Alcohol
15% Sales Tax

Import from Country B



25% Alcohol
65% Sales Tax

EC-SEAL PRODUCTS (2014)

- No seal products (imported or domestic) can be placed on the market
- Exception: seal products that result from hunts traditionally conducted by Inuit and other indigenous communities and contribute to their subsistence
- Country A has a significant Inuit sealing industry
- Country B exports seal products, but only a tiny proportion are from indigenous hunting



EC-SEAL PRODUCTS

Table 1: Group of like seal products

Distinction	Domestic Seal Products	Norwegian Seal Products	Canadian Seal Products	Other Foreign Seal Products	
				Greenland	Other
Non-conforming	A	B	C	D	E
Conforming (IC and MRM hunts)	F	G	H	I	J

ANIMAL WELFARE STANDARDS AND TRADE

- EU Laying Hens Directive
 - Requires hens to have a nest, perching space, litter for pecking and scratching, and unrestricted access to a feed trough
- EU Cosmetics Directive
 - No animal testing of cosmetic products or ingredients
 - No **marketing** finished cosmetic products and ingredients in the EU if they were tested on animals



GENERAL EXCEPTIONS

- GATT Article XX
 - Nothing in the Agreement prevents adoption or enforcement of measures:
 - (a) necessary to protect **public morals**;
 - (b) necessary to protect human, **animal** or plant **life** or **health**;
 - ...
 - (g) relating to the conservation of **exhaustible natural resources**...

BUT measures can't be applied in a manner which would constitute a means of **arbitrary or unjustifiable discrimination between countries where the same conditions prevail**, or a **disguised restriction on international trade** (the “**chapeau**”)

COMPARATORS – “LIKE” PRODUCTS

- Are eggs from battery hens “like” eggs from enriched-cage hens?
- Are cosmetics tested on animals “like” cruelty-free cosmetics
- What is the right comparator?
- Four criteria for determining likeness:
 - (i) properties, nature and quality of the products;
 - (ii) end-uses of the products;
 - (iii) consumers' tastes and habits / perceptions and behaviour
 - (iv) tariff classification of the products

NEW GENERATION TRADE DEALS

- Twenty-first century agreements (TTIP, TPP, CETA, CAFTA-DR)
 - “WTO-plus” commitments
- US trade policy since 2000s: “ensure that **trade and environmental policies are mutually supportive** and to seek to **protect and preserve the environment** and **enhance the international means** of doing so, while optimizing the use of the world’s resources”

NEW GENERATION TRADE DEALS

- TPP USTR summary:

“The 12 Parties agree to effectively enforce their environmental laws; and not to weaken environmental laws in order to encourage trade or investment. They also agree to fulfil their obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and to take measures to combat and cooperate to prevent trade in wild fauna and flora that has been taken illegally.”

NEW GENERATION TRADE DEALS

- **More:** Andrew Lurié & Maria Kalinina, “Protecting Animals in International Trade: A Study of the Recent Successes at the WTO and in Free Trade Agreements” (30:3 Am U Int’l L Rev 431 (2015))

TRADE AND ANIMAL PROTECTION: FRENEMIES?

- Conclusion: International trade law and global animal protection are not best friends, but nor are they mortal enemies
 - Trade jurisprudence on the place of animal welfare and conservation as a global value and legitimate policy concern has advanced the development of global normative principles of animal protection
 - Linking new trade initiatives to environmental protection, conservation and efforts to fight wildlife trafficking could be a powerful new way forward

GOODBYE AND THANKS!

