



ANIMAL WELFARE VS. FREE TRADE

Presentation by Florian Sperling

THE ARTICLE

- GATT Article XX(a) Permits otherwise Trade-Restrictive Animal Welfare Measures
- Written and published by: Iyan I.H. Offor & Jan Walter
- Global Trade and Customs Journal (2017)

IMPORTANT ACRONYMS

- WTO = World Trade Organisation
- GATT = General Agreement on Tarrifs and Trade
- DSB = Dispute Settlement Body
- Chapeau = introductory paragraph
- EC = European Community

RESEARCH QUESTION

- The article investigates a central question by reviewing several other literature:

Can animal welfare-based trade restrictions be justified under Article XX(a) of the GATT?

- Why is this important?
 - Welfare standards differ between countries.
 - Animal welfare standards often increase production costs.
 - Governments frequently claim WTO laws limits their ability to act.

BACKGROUND: THE TRADE-ANIMAL WELFARE CONFLICT

- Traditional view: Animal welfare measures are often considered:
 - Barriers to trade
 - Protectionist instruments
 - Inconsistent with WTO obligations
- Consequence:
 - Governments may hesitate to adopt stricter welfare standards

TRADE PROBLEMS

- Countries with high welfare standards face challenges:
- Economic Challenges:
 - Higher production costs
 - Reduced competitiveness
 - Risk of relocation of production
- Political challenges:
 - Pressure from producers
 - Pressure from trading partners
 - Fear of WTO disputes

LEGAL FRAMEWORK

- The GATT is a law and one of the foundational pillars of the WTO
- The GATT promotes:
 - Non discrimination
 - Market access
 - Reduction of trade barriers
- General rule: Trade restrictions are prohibited
- Exception: Article XX allows certain justified restrictions

ARTICLE XX GATT

Subject to the requirement that such measures are not 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, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) necessary to protect public morals;
- (b) Protection of human, animal and plant life or health;
- (c) ...;
- (g) Conservation of natural resources;

ARTICLE XX GATT

Subject to the requirement that such measures are not 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, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) **necessary to protect public morals;**
- (b) Protection of human, animal and plant life or health;
- (c) ...;
- (g) Conservation of natural resources;

THE CHAPEAU OF ARTICLE XX

- A measure must still satisfy the Chapeau
- Requirements:
 - No arbitrary discrimination
 - No unjustifiable discrimination
 - No disguised restriction on trade

ARTICLE XX GATT

Subject to the requirement that such measures are not 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, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (a) **necessary** to protect public morals;
- (b) Protection of human, animal and plant life or health;
- (c) ...;
- (g) Conservation of natural resources;

NECESSITY TEST

- The measure at issue must be necessary to protect the public moral objective of the WTO Member State
- The WTO evaluates four factors:
 1. Importance of the objective
 2. Contribution of the measure
 3. Trade restrictiveness
 4. Reasonable available alternatives

PUBLIC MORALS

- No definition of public morals
- According to WTO jurisprudence (US – Gambling):
 - Public morals are standards of right and wrong maintained by a community
- Member states have freedom to define what public morality means
- Differing factors:
 - Social values
 - Culture
 - Religion
 - Ethical beliefs

THE JURISDICTIONAL LIMIT

- It is debated whether a jurisdictional limit applies to Article XX
- It defines the exact boundaries of where their legal power applies
- WTO Member States can protect societal values within their own jurisdiction but not outside of it
- Animal welfare measures often have the effect of improving welfare abroad – jurisdictional limit would be harmful
- No explicit jurisdictional limit in Article XX GATT
- DSB has to settle the issue

THE JURISDICTIONAL DEBATE-DSB

- No definite answer
- Early DSB rulings:
 - Unfavourable towards measures having extra-territorial effects
 - Importing states can't use trade measures to compel another country to change its policies
- Recent case law:
 - Jurisdictional limits eliminate at least most of the specific exceptions (US-Shrimp)
 - Importing states can require exporters to adopt policies that are comparable in effectiveness
 - There is in principle no prohibition in general international law that would bar states from passing such measures

EC-SEAL PRODUCTS CASE

- The EU Regulation 1007/2009:
 - Prohibited seal products
 - Restricted import (except for indigenous hunts)
- They reasoned with concerns about animal suffering during seal hunts



WTO FINDINGS

- The DSB recognized:
 - Animal welfare is an ethical and moral concern
 - The restriction is justified by Article XXa GATT
- Public morals can justify trade restrictions
- The necessity test was no problem
- Major development in WTO law



WHY THE EU FAILED

- The problem was not Article XXa GATT
- The Chapeau states that the exception can't include arbitrary discrimination
- Greenlandic Inuit were benefited in practice
- Norwegian and Canadian Inuit were disadvantaged
- De facto discrimination and violation of the Chapeau



MAIN FINDINGS

- Animal welfare qualifies under Article XX(a) GATT
- Public morals include concern for animals
- Passing the necessity test is manageable
- Chapeau remains the main challenge
- WTO law leaves significant regulatory space



CRITICISMS AND CONCERNS

- Moral Imperialism: Powerful countries „export their moral values“
- Impact on Developing Countries: Compliance costs may be substantial
- Trade Diversion: Animal products may simply be sold elsewhere

CONCLUSION OFFOR & WALTER

- WTO law does not prevent animal welfare trade restrictions
- Such measures are lawful when they:
 - Pursue genuine moral objectives
 - Are necessary
 - Avoid discrimination
- Final conclusion: The greatest obstacle is not Article XX(a) itself, but designing measures that comply with the Chapeau

PERSONAL OPINION

- It is a highly complex subject, no easy answer
- It should be easier to enforce changes in welfare
- A law contributing to animal welfare
- World standards of animal welfare should rise
- States should contribute together to increase animal welfare

ARE THERE ANY QUESTIONS?