



# International Trade Law and emerging trade-related issues:

## The case of Animal Welfare Concerns

✉ By: María Alejandra Calle-Cook

### **Abstract**

*This article aims to address the main concerns on the plausibility (legality and legitimacy) for WTO Member States when adopting trade related measures (mandatory ecolabeling schemes). Such measures are intended to enhance or to provide animal welfare regulations in the course of trade, especially in the context of the WTO covered agreements, like in the case of GATT, the agreement on Sanitary and Phyto-sanitary measures and the agreement on Technical Barriers to Trade. This article is also intended to identify the main forces and challenges beyond market driven initiatives related to labeling animal welfare standards, considering the fact that this bundle of concerns are mostly based on ethologic and veterinary criteria, and also taking into account that they are subject to ethical based analysis, specially dependent on socio economical structures and cultural values that play a decisive role when deciding if animal welfare (or even compassion to certain animals) has a room in domestic policy and then in trade politics.*

### **Key words**

International Trade Law, International Animal Welfare Standards, Eco-Labeling, Trade Related Measures, Trade Policy.

The relation between ethical issues and trade remains as one of the most important challenges not only for domestic decision-making but for the stability and predictability of the multilateral trading system. Nature and biodiversity lost its ancient divinity in order to be treated as goods and raw-material to trade with. The mere intent of protecting domestic “natural resources” has its consequences under the trading system, since globalization and the presence of supply chains are intrinsically dependent of nature as the main source of trade. In this context, animals are not an exception, as a matter of fact, trade on animal products is an important component of international trade and dispute resolution under the WTO covered agreements.



According to Weiss, even more is expected of the contemporary world trading system for which the WTO provides the common institutional framework and its main negotiating forum increasingly, that system intersects with issues directly affecting peoples' lives, such as investment and competition policies, environmental and development policies. Human rights, labor, standards, health, animal welfare, distribution of resources, ethical issues, and even national security. All these issues are raised with 'sovereignty of purpose' by particular interest groups seeking regulatory intervention, unconcerned about possible 'limits to the growth' and utility of such activity in the global economy.<sup>1</sup>

Many trade related issues are strongly related to social and cultural identity. Recent trade disputes dealing with food (use of artificial growth hormones in beef production and application of biotechnology –GMOs) are particularly grounded in the cultural perceptions and social meaning of food (resistance towards artificial growth hormones and GM-food is in this sense not strictly science based but also culture based).<sup>2</sup> In the same way, animal welfare standards or animal-cruelty awareness among consumers is deeply enrooted in culture and socio economical realities. Thus, if such values (concerns) exist in a given society, citizens (consumers and taxpayers) have the legitimacy to demand governmental intervention in order to protect their concerns even if third countries expectations related to trade are at stake.

In this sense, the basis of animal welfare ideas could be described as the moral consideration of animals as sentient beings. Embedded in philosophic and ethical theories<sup>3</sup> such as Bentham's Utilitarian approach, the rationale of this notion is not merely posing the question of if animals can reason but if they can experiment suffering.<sup>4</sup> According to this approach, the capacity to feel pain will be the condition to identify interests in animals (e.g. pain, stress and fear).

The central point that can be extracted from Bentham's and Singer's argument is that animal interests should be –prima facie- considered in the course of moral deliberation as animal interest in avoiding pain are very similar to those of humans. Drawing the line at interests-in pain and displeasure-is seen a the only possible line of demarcation as all other supposedly

---

1 Weiss, F, 2006. "The limits of the WTO: Facing non-trade issues", in Sacerdoti, G, Bohanes, J, Yanovich, A. (eds.), *The WTO at 10: The Role of the Dispute Settlement System*, Cambridge University Press, WTO, May 2006.

2 See Brom, Frans "WTO, Public Reason and Food, public reasoning in trade conflict on GM-Food". 2004

3 'Philosophers, theologians, and others have long debated the interrelationships between man and animals in terms of the position and role of animals in the world, the obligations of man towards them (if any) and the uses to which animals should be put. Much of the early writings on these matters took the ethical position that animals exist for the sake of man (e.g., Aristotle) and that man can, and should, use animals anyway that he pleases (e.g., Saint Thomas Aquinas). Indeed, some writers have gone as far as asserting that animals are nothing more than machines that lack speech and hence cannot reason (e.g., Rene Descartes). Regan and Singer (1989) provide a useful brief review of these early writings. The more-recent debate has centered largely around animal sentience and cognition, various forms of utilitarianism and contractualism and how they relate to the question of rights. In his well-known treatise, Jeremy Bentham (Bentham, 1789), the "father" of utilitarianism, contends that the key issue is that animals are capable of pleasure and pain. He writes that "animals stand degraded into the class of things" and states that "the day may come, when the rest of the animal kingdom may acquire those rights which never could have been withholder from them but by the act of tyranny" (Bentham, 1789, p. 283).' (Bennet et al, 2002:187-88)

4 See, Bentham, J., *An Introduction to the Principles of Morals and Legislation* (Russell, London, 1962)



unique human qualities, such as rationality, etc., are not in fact shared by all humanity, i.e. infants or the mentally disabled. Nevertheless, despite all humanity not sharing the “higher” capacities like intelligence-which animals are traditionally supposed not to have-all humans from infants and imbeciles to “normal” functioning people have an interest in the avoidance of physical suffering. However, this is characteristic of all the sentient creatures, and not just humans. Therefore, membership of the human species cannot justify a difference in moral treatment, as the relevant consideration, the avoidance of pain, is also applicable to non-human beings which are sentient, throughout the ages; this has been noted by Montaigne, Primatt, Rosseau, Hume, J.S. Mill and Henry Salt.<sup>5</sup>

Animals are defined as living natural resources and are nothing different from goods in terms of trade. Animal exploitation occurs in different economic sectors: agriculture, the fashion industry, entertainment services (zoos, circus and even controversial activities as bullfighting, horse, dogs races, etc) pharmaceuticals (as many experiments are conducted with animals) and of course, the mere exhibition and breeding are also considered as a form of animal exploitation. “Hence, unlikely species protection, specimen protection issues forces people to consider –on a personal level-where his or her limits are regarding abuse or neglect of animals; i.e., what do I think is ok-what is not-and why.”<sup>6</sup>

Those questions emerge as the basis of animal welfare -wellbeing- concerns that would be formally expressed as standards and therefore having the possibility of limiting the scope and extension of economic activities depending of animal exploitation.

Generally, it is true that animal welfare standards are mostly based in scientific evidence (ethologic and veterinary criteria) but it is also evident the fact that they are subject to ethical based analysis, especially socio economical structures and cultural values play an important role when deciding if animal welfare (or even compassion to certain animals) is a legitimate goal within domestic policy. In this sense, it is possible to say that global animal welfare standards are non-existent. However, some multilateral and unilateral attempts have been made (specially by the United States and the European Union and its member states) in order to have a more predictable and certain set of standards for the alleviation of suffering of animals in industries and laboratories. Such standards will raise certain obligations on producers, especially in the agriculture sector, based on the idea that ‘welfare of farm animals is dependent on human care, this raises the ethical issue of what are the duties of humans to animals, given generally accepted moral principles in a society. The usual premise is that while animals can be used for the benefit of humans, such use carries certain obligations.’<sup>7</sup> These are the provision of essential food, water and shelter, healthcare and maintenance,

---

5 Gillespie, Alexander. *International Environmental Law Policy and Ethics*. Oxford University press, 1997.

6 Nielsen, Laura. 2007. “Animal Welfare”, en: University of Copenhagen . *Series on International Law and Development*. Martinus Nijhoff Publishers. Leiden.

7 Sandoe, P., R. Crisp and N. Holtug. 1997. *Ethics in Animal Welfare*. In *Animal Welfare*, eds. Appleby, M and B. Hughes. Wallingford: CAB International.



alleviation of pain and suffering, and the ability to enjoy minimal movement. ‘Such obligations are reflected in the so-called “five freedoms” elaborated by the Brambell Committee of the U.K. Parliament in 1965 and in subsequent conventions on animal welfare agreed in the Council of Europe.<sup>5</sup> These conventions have been extremely important in guiding legislation on animal welfare in the European Union.’<sup>8</sup>

In this context, the World Organization for Animal Health emerges as the international-setting standard body for animal welfare. Therefore, it is possible to say that even if this topic have been studied and presented as a low-profile issue, their implications to trade liberalization shall not been underestimated . Especially because the driven force that increasingly advocates for animal welfare as a trade related issue is based on consumer´s autonomy and in some cases, as a “policy space” matter (animal welfare standards are commonly regulated by domestic legislation). In other words, animal welfare standards are often perceived as a Non Trade Barrier in WTO jargon.

Moreover, market driven responses and constituencies claims over governments are increasingly consisting in ethical and cultural concerns. According to Hobbs, as concerns relating to ethical issues in production have increased for some consumers, so too have demands for information concerning production methods. Intense lobbying efforts by non-governmental organizations (NGOs) have been the most visible manifestation of these demands. In response to these efforts, the EU has adopted a new and more stringent set of legislative initiatives regarding the welfare of animals. Council Directive 98/58/EC is the main law protecting animals kept for farming purposes; it lays down standards for the conditions in which farm animal are to be kept and bred in Member States. Additional legislation exists regarding the protection of laying hens and veal calves. The Treaty of Amsterdam also contains a protocol on the Protection and Welfare of Animals.<sup>9</sup>

Thus, Animal welfare concerns are arguably interpreted as trade barriers-disguised protectionism-, but nevertheless it is also plausible to say that they might be also considered as legitimate domestic responses to common concerns embedded inter alia in ‘laws restricting import of (specimens of) endangered animals, skins, of pups of harp and hooded seals and derived products, wild birds, cosmetic tested on animals, animals transported under inhumane conditions, meat from animals slaughtered or transported in “inhumane” ways, or shrimp caught in a way that harmed endangered sea turtles..’<sup>10</sup>

---

8 Blanford, David, Bureau, J.C., Fulponi, Linda, Henson, Spencer. Potential implications of animal welfare concerns public policies in industrialized countries for International Trade.

9 Hobbs, A.L., Hobbs, Jill E., Isaac, G.E., Kerr, William, A., 2002. Ethics , domestic food policy and trade law: assessing the EU animal welfare proposal to the WTO. *Food policy* 27, 437-54.

10 Nollkaemper André, “The Legality of Moral Crusades Disguised in Trade Law: an analysis of the ec ‘ban’ on furs from animals taken by Leghold traps”, *Journal of Environmental Law*, vol.8, issue.2, 1996, p.237-256



## Unilateral attempts in setting Animal Welfare Standards: Merciful vindication or hidden protectionism?

According to Matsushita, Shoenbaum & Mavroidis <sup>11</sup>, there are four schemes in which trade and market access barriers can be grouped. The first scheme is related to governmental border measures (tariffs, quotas, customs regulations, import licensing, testing and certifications). The second scheme includes internal regulations and practices that have potential protective effects. Those regulations usually include certain conditions related to product and services, distribution channels, technical standards, subsidies, state-trading monopolies, and bio-security measures. The third scheme relates to private business practices and customs affecting business behavior and consumer preferences, whereas the fourth scheme includes economic and structural characteristics of the importing country (government credit, macro-economic, investment and industrial policies).

However is not upon the WTO to reach all those categories in the sense that “the WTO has tended to concentrate on explicit and obvious governmentally imposed trade obstacles, such tariffs, quotas and customs regulations and practices. In the later rounds on trade negotiations, however, notably the Tokyo and Uruguay Rounds, the WTO addressed less obvious governmental measures, such as import licensing, subsidies and technical barriers to trade. Nevertheless, many trade barriers remain outside the purview of the WTO agreements” <sup>12</sup>

Domestic regulations on animal welfare matters are often included seem as technical barriers to trade. These types of regulations are nothing different from requirements related to certain characteristics that products should meet in order to be allowed within the market. It is important to say that technical regulations are not considered as barriers per se under the WTO law. That is to say that in order to be considered as barrier, a regulation must be unrealistic or unreasonable and the procedures to verify compliance with those regulations could be also considered as barriers according to their nature. In some cases the barrier lingers on the proliferation of non standardized certification processes.

In order to solve those kinds of problems, the Agreement on Technical Barriers to Trade (hereinafter TBT) seeks to strike a balance between the policy space of Member States and the discipline that such measures must observe in order to minimize their impact on trade liberalization. According to the TBT Agreement “technical regulations” are “mandatory laws or provisions specifying the characteristics of products, the processes or production methods for creating products or the terminology, symbols, packaging, marking, or labeling requirements for products.”<sup>13</sup> Additionally, “the TBT Agreement requires the WTO members to apply national treatment and MFN standards with respect to technical regulations. It also requires

---

11 Matsushita, Mitsuo., Schoenbaum, Thomas J., and Mavroidis, Petros C. *The WTO Law, Practice and Policy*, USA, Oxford University Press, 2003, p.258-285

12 *Ibid.*, p.258-259

13 TBT Agreement, Annex.1, para.1, p.16



WTO members to use international standards when such standards are available, except when such standards would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued.”<sup>14</sup> Furthermore, technical regulations must fulfill certain requisites in terms of: transparency, prompt publication (to make them generally available), shall not create “unnecessary obstacles to international trade” or be “more trade-restrictive than necessary to fulfill a legitimate objective”.<sup>15</sup> It is still problematic if the above mentioned definition will include the polemical non-production-related standards and most generally Product Production Methods (hereinafter PPMs) in which animal welfare concerns have their most prominent expression.<sup>16</sup>

In relation to adoption preparation and application of standards, the TBT also contain a Code of Good Practices. In this Code, the term standard is defined as a voluntary guideline for characteristic of products<sup>17</sup> (Annex 1, para.2) and requires Member States to participate in and comply with standards code being formulated by international bodies like the International Organization for Standardization (ISO). Nevertheless, this organization is not certainly deeply related with ecological issues or animal welfare. Animal welfare often assumes the form for technical regulations and standards embedded in eco-labeling initiatives.

The eco-labeling case in animal welfare is becoming quite popular as a market driven mechanism to pursue ethical values related to environmental protection.

In this sense it is possible to say that ecological labels are market-based environmental policy instrument informing consumers about environmental characteristics of goods. Labels are granted by different private or governmental organizations to producers for different product categories. Many eco-labels not only inform about product quality itself, but also the whole life cycle, including generation of inputs, production processes, consumption and waste disposal. The number of countries applying eco-labels has been growing constantly. However,

---

14 Matsushita, Op. cit., p.279

15 According to the TBT Agreement, those objectives include concerns to: National security requirements, prevention of deceptive practices, protection of human health or safety, animal or plant life or health and environment.

16 According to Dröge, is not that clear “whether non-product-related standards, which are applied in life cycle labeling schemes, are subject to TBT-rules. The definition in Annex 1.2 TBT names ‘products or related processes and production methods’. An interpretation has to consider the negotiation history of the agreement. Chang (1997; 147) states that non-product-related PPMs were explicitly excluded, already during the negotiation of the amendment to the TBT-Agreement, and thus cannot be considered when interpreting the text. During negotiations of the Uruguay-Round, negotiators used the expression ‘or related’ in order to exclude ‘non-related’ processes and production methods. According to these findings, non-product-related criteria in eco-labeling schemes are not covered by TBT-rules for standards and technical regulations and are therefore to date not a valid criterion to differentiate otherwise like products...Should there be any dispute, the TBT-Agreement would only cover those parts of labeling programs that determine product or product-related criteria. Such criteria could then be justified for both voluntary and obligatory labels with reference to the TBT preamble. More specifically, for compulsory schemes a country can refer to Article 2.2 TBT which names ‘the environment’ as a legitimate objective for which a certain degree of trade restrictions could be justified. However, also the requirement of non-discrimination between like products from national origin and abroad (Article 2.1 TBT) needs to be fulfilled.”(Dröge 2001:11)

17 TBT Agreement, Annex.1, para.2, p.16



with the increasing international integration, especially growth in trade in goods and services, consumers as well as producers demand compatibility and transparency of labels on an international level. Also, eco-labels from industrialized countries are subject to increasing criticism from developing countries, which regard labels as a new non-tariff trade barrier.<sup>18</sup>

From the analysis of the TBT Agreement it is evident that consequences of both dimensions –technical regulations and ecol-labeling initiatives- would have different impacts due to the voluntary nature whereas technical regulations are compulsory. According to Dröge, ‘criteria for voluntary eco-labeling can be interpreted as standards and those in mandatory schemes as technical regulations’<sup>19</sup>

When trying to find an alternative mechanism to avoid possible unilateralism in this type of measures (design and implementation of technical standards or eco-labeling schemes related to animal welfare) the most evident and popular option is usually linked to multilaterals efforts intended to negotiate an international agreement on animal welfare or even the creation of an organization in the similar fashion of ISO, in order to harmonize the different criteria when measuring animal welfare standards related to trade. However, According to Hobbs ‘this alternative of having such organization to establish a baseline international standard is unlikely to satisfy the EU because any common standard agreeable to developing countries would be too low to satisfy concerned EU consumers.’<sup>20</sup> However, even if an international agreement on animal welfare is unlikely to be challenged in the WTO, the volumes of trade that could be affected will be considerable.<sup>21</sup>

## Animal welfare as a trade policy issue driven by consumer activism

Having an international agreement on animal welfare matters is often seen as a real utopia, nevertheless, the Agreement on International Humane Trapping Standards between the European Community, Canada and the Russian Federation and the International Agreement in the form of an Agreed Minute between the European Community and the United States on humane trapping standards, may be regarded as the first international agreements concerned exclusively with animal welfare<sup>22</sup>

18 Dröge, Susan, 2001. Ecological labeling and the world trade organization. Deutsches Institut Für Wirtschaftsforschung, berlin. Discussion paper No. 242, 2-29.

19 Ibid.

20 Hobbs, A.L., Hobbs, Jill E., Isaac, G.E., Kerr, William, A., 2002. Ethics , domestic food policy and trade law: assessing the EU animal welfare proposal to the WTO. Food policy 27, 437-54.

21 ‘It is possible that the trade provisions of an animal welfare agreement would not be challenged at the WTO (Isaac et al., 2002). This has been the case for the (CITES). However, the volumes of trade affected by CITES are small. In the case of products covered by animal welfare regulations, the volumes of trade affected could be very large and countries who feel aggrieved will likely use the option to defer to the WTO given the lack of clarity over which international agreement would have primacy.’(Hobbs et al., 2002:448)

22 Stuart R Harrop, “The Agreements on International Humane Trapping Standards –Background, Critique and the Texts”, Journal of International Wildlife Law & Policy, vol.1, núm.3, 1998, p.387-394



Nevertheless, multilateral efforts are deemed necessary to address the importance of animal welfare concerns as trade related issues (especially for consumers). In the frequent reaction in order to enforce environmental standards and act accordingly consumer´s demands by means of trade policy responses, governments generally fall in unilateralism and sometimes in double morals arguments, which generally arises the discontent of other countries –particularly developing countries- in the sense that such actions are perceived as nothing different from the projection of the own countries’ values, (even the mercifulness over certain species). “The US government (and to some extent the European Union) falls back on unilateral action because there is no established international mechanism to enforce environmental standards or policies. Moreover, the need to achieve unanimity for decisions taken in the international realm can make multilateral agreements bland, inoffensive, and ineffectual.

The intrinsic difficulty of multilateral decision making and the lack of existing institutional structures for effective international environmental policymaking therefore makes unilateral action a necessary, if unfortunate, policy option in some circumstances. Even Robert Hudec, accepts the inevitability of some unilateral actions, concluding that under certain circumstances, intentional disregard of GATT obligations may be useful in ‘breaking legal deadlocks and stimulating improvements in GATT law. Such justified disobedience should, in Hudec’s view, be conditioned by a requirement that the disobeying country imposes the same standard on itself that it seeks to mandate for others.’<sup>23</sup>

In this context the tension between domestic policy, morals and trade liberalization emerge when understating the rationale and the consequences of animal welfare standards. What issue should prevail upon the other? The WTO has been traditional producer oriented even if some the ideas of democracy and inclusion of the civil society has been common components of its discourse, nevertheless this topic will be driven by consumers. How ready is the WTO to attend certain governmental measures motivated by nothing different of moral and philosophical questions?

Contrasting Esty’s view, Charnovitz pose additional questions: should local morals be able to trump economic globalization? Should international morals be able to trump the exercise of power by local elites?<sup>24</sup> Policymakers trying to answer these questions will want to examine the potential effectiveness of trade measures as well as their legality under international trade rules. Assessing effectiveness requires a specification of the moral goal -... Once the goal is specified, an important variable will be the number of states involved. Multilateral action will probably be more effective if the goal is to change behavior. With unilateral action, the potential usefulness of a trade measure can be undercut through trade diversion. As one political scientist explained, “[a] single state may adopt what it deems to be effective measures to combat certain evils, only to find that its policies are largely defeated by the failure of neighboring states to adopt similar measures.”<sup>25</sup>

23 Esty, Daniel, C., 1994. *Greening the GATT: Trade, Environment, and the Future*. Institute for International Economics. Washington, DC.

24 Charnovitz, Steve. 1998. *The Moral Exception in Trade Policy*. *Virginia Journal of International Law*. 38 Va. J. Int’L. 689.

25 *Ibid.*



Thus, moral dialogs and consumer concerns are inevitable for governments; consumers express them in order to give voice to their moral beliefs and ideals. According to Meijboom and Brom, governments and industries, therefore, cannot adequately deal with consumer concerns without engaging in a moral dialogue about these concerns. Answering the question whether consumer concerns are reconcilable with the current WTO framework remains problematic. Some consumers happen to fit perfectly within the current WTO aims.<sup>26</sup>

In this context, it is important to say that environmental protection and animal welfare are different but interdependent concerns and also that every action intended to protect the nature has an ethical dimension.<sup>27</sup> The so called animal welfare standards are intrinsically moral oriented concerns and hence, the awareness upon animal life is not necessarily driven by an environmental aim (although it is scientifically argued that animal welfare standards have a deep implication on human and animal life and health). Therefore, the question of animals and the WTO entails a complex multidimensional approach: philosophical, legal and economical.

Animal welfare issues are a relevant for the international trade law and therefore to the WTO, especially because those concerns could be addressed as a “legitimate policy objective” being invoked as public morals issues and in this sense being considered as trade barriers (independently of its successful inclusion on Article XX of GATT). Animal welfare concerns may produce different trade measures - trade barriers- inter alia. bans on imports of furs and pelts from wild animals skinned alive (foxes, raccoons, ermines, seals, etc); bans on import of furs and pelts from domesticated animals (cats and dogs) bans on furs and pelts from animals caught in leg-hold traps, etc. This trade measures are often motivated in the process of production rather than in the product.

However under the WTO, ‘members may not be allowed to enact or maintain trade barriers to protect animals in the course of trade. The legality of trade measures depends on the analysis of the General Exceptions in GATT Article XX because trade barriers, most likely, violate the substantive obligations under the GATT.’<sup>28</sup>

---

26 Vedder, A, 2003. *The WTO and concerns regarding animals and nature*. Nijmegen: Wolf legal publishers, 173-82.

27 To understand why environmental protection has an ethical dimension it is important to mention the impact of theories as the “Radical Ecology” when interpreting the international environmental problematique. In this sense, “Radical ecology devolves into two parts. The first known as ‘deep ecology’ and the second as social ecology’. Very briefly, deep ecology is concerned with why the environment is protected, whereas social ecology is concerned with how to achieve this end..Deep ecology is also known as ‘land ethics’ or holistic environmental ethics. By virtue of the fact that deep ecology has evolved from the works of a number of theorists it is not a theory that is rigidly defined. There is however one common feature that is often agreed by all the relevant theorists, namely that environmental protection must be based upon the inherent (or intrinsic) value of non-human Nature. This is in contrast to what is known as ‘shallow environmentalism’ which justifies environmental protection on the grounds that Nature has an instrumental value to humans. This position, which revolves around anthropocentrism, proclaims that only humanity has an inherent value. It is this shallow environmentalism that forms the predominant basis of international environmental law and policy” (GILLESPIE, Alexander. 1997: 2)

28 Laura Nielsen, “The WTO & Animal Welfare: Sufficient Nexus” for Morally Based NPR-PPMs in GATT Article XX?”, ELSA SPEL(2004, ed. 1), pag.3, [on line], 2004, available in: [http://www.elsa.org/fileadmin/user\\_upload/elsa\\_international/PDF/SPEL/SPEL\\_2004-I-NIELSEN.pdf](http://www.elsa.org/fileadmin/user_upload/elsa_international/PDF/SPEL/SPEL_2004-I-NIELSEN.pdf)



The most famous WTO cases related to animal protection are Tuna/Dolphin<sup>29</sup> and Shrimp/Turtle<sup>30</sup> which have been by far the most polemic WTO precedents when addressing trade related issues. Those cases were mostly defended on environmental concerns rather than animal welfare matters, since the main interest was the conservation of the species (conservation of exhaustible natural resources<sup>31</sup>) rather the “humanity” or “morality” of the way in which those animals were killed; in other words, the cases were less connected to the “animal rights philosophy” than with international environmental principles. Nevertheless it is possible to affirm that even in the absence of “official” records in animal welfare cases under the Dispute Settlement Understanding, many potential disputes are about to come to the attention of the WTO, like in the case of the recent seal ban adopted by the EU which have again arisen the green tension and bitter responses from the governments of Canada, Norway and Greenland.

As a conclusion, it is possible to say that animal welfare and environment protection of animals have been waiting too long for their floor in Agriculture and NAMA,<sup>32</sup> multilateral negotiations and the covered agreements of the WTO (specially the SPS<sup>33</sup> and the TBT<sup>34</sup>), including the Dispute Settlement Mechanism. These multilateral tracks for dealing with animal welfare and environmental protection should be interpreted as the iceberg’s point since bilateral negotiations (especially in FTA’s and RTA’s) could deal with similar concerns in a wider and deeper context which may includes inter alia: eco-labeling, general exceptions, technical standards for products and processes (PPM’s and its impact in GATT and GATS interpretation).

---

29 United States-Restrictions on Imports of Tuna, DS29/R, 16 June 1994. Reprinted in 33 I.L.M. 839 (1994) (unadopted) [hereinafter Tuna Dolphin II].

30 U.S – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/R (1998). Appellate Body Report [hereinafter Shrimp-Turtle].

31 GATT Article XX (g)

32 Non-agricultural Market Access.

33 SPS stands for the WTO agreement on Sanitary and Phyto-sanitary measures

34 TBT stands for WTO agreement on Technical Barriers to Trade



## Bibliography

Animal Welfare Approved <http://www.animalwelfareapproved.org/standards/> Accessed August 8, 2009.

Bennett, Richard, M., 1997. Farm animal welfare and food policy. *Food policy*, 22 (4), 281-88. (ARTI)

Bennet, Richard, M., Anderson, J., Blaney, R. J. P. 2002. Moral intensity and willingness to pay concerning farm animal welfare issues and the implications for the agricultural policy. *Journal of Agricultural and Environmental Ethics* 15, 187-202.

Bentham, J., *An Introduction to the Principles of Morals and Legislation* (Rusell, London, 1962)

Blanford, David, Bureau, J.C., Fulponi, Linda, Henson, Spencer. Potential implications of animal welfare concerns public policies in industrialized countries for International Trade.

Brom, Frans, W., A. 2004. WTO, public reason and food public reasoning in the 'Trade Conflict' on GM-FOOD. *Ethical Theory and Moral Practice*, 417-31.

Bureau, Jean, C., Marette, Sthepan, Schiavina, Alessandra. 1998. Non-tariff barriers and consumers' information: The case of the EU-US trade dispute over beef. *European review of agricultural economics* 25, 437-62.

Charnovitz, Steve. 1998. The Moral Exception in Trade Policy. *Virginia Journal of International Law*. 38 Va. J. Int'L. 689.

Curtin Tom. *Managing Green Issues*. Palgrave Macmillan 2007.

Dröge, Susan, 2001. Ecological labeling and the world trade organization. *Deutsches Institut Für Wirtschaftsforschung, berlin*. Discussion paper No. 242, 2-29.

Ecolabeling.org, Who's deciding what's green? <http://ecolabelling.org/ecolabel/milieukeur-ecolabel-the-netherlands> Accessed August 8, 2009.

Ecological Justice: Environmental standards and consumer protection.178.

Ecologo program, Third-party certification of environmentally-preferable products <http://www.terrachoice-certified.com/en/> Accessed August 8, 2009.

Ecomark Scheme of India. A Scheme on labeling of environment-friendly products. <http://envfor.nic.in/cpcb/ecomark/ecomark.html> Accessed August 8, 2009.

Emslie, John J., 2005. Labeling Programs as reasonably available least restrictive trade measure under Article XX's Nexus requirement.



Environmental Choice New Zealand. <http://www.enviro-choice.org.nz/index.html> Accessed august 8, 2009.

Esty, Daniel, C., 1994. Greening the GATT: Trade, Environment, and the Future. Institute for International Economics. Washington, DC.

EU Ecolabel, Industry and technology. [http://ec.europa.eu/environment/ecolabel/index\\_en.htm](http://ec.europa.eu/environment/ecolabel/index_en.htm) Accessed August 8, 2009.

Francioni, Francesco. 2006. WTO law in context: the integration of international human rights and environmental law in the dispute settlement process. 149-62.

FSC, Forest Stewardship Council. <http://www.fsc.org/> Accessed August 8, 2009.

GEN, Global Ecolabelling Network,. <http://www.globalecolabelling.net/> Accessed August 8, 2009.

Gillespie, Alexander. International Environmental Law Policy and Ethics. Oxford University press, 1997.

Green Council, Hong Kong Green Label. <http://www.greencouncil.org/eng/index.asp#> Accessed August 8, 2009

Green Seal, the mark of environmental responsibility. <http://www.greenseal.org/index.cfm> Accessed August 8, 2009.

Harrop, Stuart, "The Agreements on International Humane Trapping Standards –Background, Critique and the Texts", Journal of International Wildlife Law & Policy, vol.1, núm.3, 1998, p.387-394

Hobbs, A.L., Hobbs, Jill E., Isaac, G.E., Kerr, William, A., 2002. Ethics , domestic food policy and trade law: assessing the EU animal welfare proposal to the WTO. Food policy 27, 437-54.

Human Farm Animal Care, Certified Human Raised & Handled <http://www.certifiedhumane.org/> Accessed August 8, 2009.

Human Society International, The Dolphin safe label [http://www.hsus.org/hsi/policy\\_and\\_trade/treaties/the\\_dolphin\\_safe\\_label/](http://www.hsus.org/hsi/policy_and_trade/treaties/the_dolphin_safe_label/) Accessed August 8, 2009.

Jack, L., 2008. Green: turning into gold. Marketing week. 29.

Jahn, Gabriele, Schramn, Matthias, Spiller, Achim. 2005. The reliability of certification: quality labels as a Consumer policy tool. Journal of consumer policy 28, 53-73.



JEA, Japan Environment association, Eco Mark Office. <http://www.ecomark.jp/english/index.html> Accessed August 8, 2009.

KOECO, Korea Eco-products Institute. Eco-labeling program. <http://www.koeco.or.kr/eng/index.asp> Accessed August 8, 2009.

Label Rouge Poultry [http://www.poultrylabelrouge.com/012\\_volaille\\_LR.php](http://www.poultrylabelrouge.com/012_volaille_LR.php) Accessed August 8, 2009.

Marwell, Jeremy, 2006. Trade and Morality: The WTO Public Moral Exception After Gambling. 806-26.

Matsushita, Mitsuo., Schoenbaum, Thomas J., and Mavroidis, Petros C. The WTO Law, Practice and Policy, USA, Oxford University Press, 2003.

Moynagh, James. EU Regulation And Consumer Demand For Animal Welfare. SCAHAW, Belgium.

MSC Marine Stewardship Council, the best environmental choice in seafood. <http://www.msc.org/> Accessed August 8, 2009.

Nielsen, Laura. 2007. "The WTO, Animals and PPMs". Series on International Law and Development. Martinus Nijhoff Publishers. Leiden.

Nielsen, Laura "The WTO & Animal Welfare: Sufficient Nexus" for Morally Based NPR-PPMs in GATT Article XX?", ELSA SPEL(2004, ed. 1), pag.3, [on line], 2004, available in: [http://www.elsa.org/fileadmin/user\\_upload/elsa\\_international/PDF/SPEL/SPEL\\_2004-I-NIELSEN.pdf](http://www.elsa.org/fileadmin/user_upload/elsa_international/PDF/SPEL/SPEL_2004-I-NIELSEN.pdf)

Nilsson, H., Tunçer, B., Thidell, Å., 2004. The use of eco-labeling like initiatives on food products to promote quality assurance--is there enough credibility?. Journal of cleaner production 12, 517-26.

Nollkaemper, André, "The Legality of Moral Crusades Disguised in Trade Law: an analysis of the ec 'ban' on furs from animals taken by Leghold traps", Journal of Environmental Law, vol.8, issue.2, 1996, p.237-256

Ridgley, Marie. 2008. Ethical packaging: the dash to bag a green image. Marketing week. 28.

Sacerdoti, Giorgio, Yanovich, Alan, Bohanes, Jan. The WTO at ten. The contribution of the Dispute Settlement System. Cambridge University Press, 2006

Sandoe, P., R. Crisp and N. Holtug. Ethics in Animal Welfare. In Animal Welfare, eds. Appleby, M and B. Hughes. Wallingford: CAB International, 1997.

TBT Agreement, Annex.1, para.1, p.16



TBT Agreement, Annex.1, para.2, p.16

Teisl, Mario, F., Roe, B., Hicks, R.L., 2001. Can Eco-Labels Tune a market? Evidence from dolphin-safe labeling. *Journal of environmental economics and management* 43, 339-59.

Thai Green Label Scheme, Green Label (Eco-label). <http://www.tei.or.th/greenlabel/> Accessed

The Blue Angel, <http://www.blauer-engel.de/en/index.php> Accessed August 8, 2009.

The Blue Angel, National Eco-labels Worldwide, [http://www.blauer-engel.de/en/blauer\\_engel/whats\\_behind\\_it/national\\_eco-labels\\_worldwide.php](http://www.blauer-engel.de/en/blauer_engel/whats_behind_it/national_eco-labels_worldwide.php) Accessed August 8, 2009

Thomas, E. M., 2007. Playing Chicken at the WTO. Boston College. *Environmental Affairs. Law Review*. Volume 34. Number 3.

Tuna-Dolphin. Unilateral measures to impose the own social, economic, employment standards as a criterion for accepting imports. 179-83.

Tibbets, J., O'Neil, P., Nguyen, L., 2009. Canada vows to take seal ban fight to WTO. <http://www2.canada.com/topics/news/story.html?id=1564814>. Accessed July 23, 2009.

United States-Restrictions on Imports of Tuna, DS29/R, 16 June 1994. Reprinted in 33 I.L.M. 839 (1994) (unadopted) [hereinafter Tuna Dolphin II].

U.S – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/R (1998). Appellate Body Report [hereinafter Shrimp-Turtle].

Van den Bossche, Peter. *The Law and Policy of the WTO. Text, Cases and Materials*. Cambridge University press, 2005.

Vedder, A, *The WTO and concerns regarding animals and nature*. Nijmegen: Wolf legal publishers, 2003, p. 173-82.

Wilkins, D., B. *Global animal welfare challenges: various perspectives*. Global Conference on Animal Welfare: an OIE initiative.

Zwerg-Villegas, Anne, M. AD-Minister. *Revista de la Escuela de Administracion de Negocios*. Universidad Eafit. Medellin Numero 13 Julio-Diciembre 2008. ISSN 1692-0279

Weiss, F, “The limits of the WTO: Facing non-trade issues”, in Sacerdoti, G, Bohanes, J, Yanovich, A. (eds.), *The WTO at 10: The Role of the Dispute Settlement System*, Cambridge University Press, WTO, May 2006.