



HUMANE SOCIETY INTERNATIONAL

A COMPLETE BAN ON SEAL PRODUCTS IS JUSTIFIED UNDER THE WORLD TRADE ORGANIZATION (WTO) AGREEMENTS

Humane Society International (HSI) strongly supports adoption of a complete trade ban on seal products with only a limited derogation for Inuit seal products. Commercial seal hunts are not conducted in controlled settings like abattoirs or laboratories. Instead, these hunts occur in remote environments, in extreme weather conditions, often amidst unstable sea ice. Veterinary experts say the physical environments in which commercial seal hunts operate, paired with the speed at which the killing must be conducted, prevents sealers from effectively and consistently applying humane slaughter techniques. As a result, veterinarians conclude that commercial seal hunting is inherently inhumane. Notably, international veterinary panels have consistently noted that the conditions in which commercial seal hunts operate also preclude authorities from adequately monitoring the killing and enforcing regulations.

Because sealers cannot consistently kill seals in a humane fashion, and adequate monitoring of commercial seal hunting is a practical impossibility, there is no way that any government can certify the seal products it imports have resulted from hunts that meet predetermined standards of humane slaughter. Therefore, a conditional ban cannot meet the public's demonstrated concern that they do not contribute to this cruel trade by purchasing seal products derived in an inhumane manner causing pain, suffering and distress to the animals. Accordingly, only a complete ban on seal products can achieve the desired level of protection of the public interest.

Such a ban is wholly justified under Article XX(a) of the General Agreement on Tariffs and Trade (GATT) (a WTO Agreement) as necessary to protect public morals, and is not discriminatory nor a disguised restriction on trade because it applies to all seal products and countries equally. A narrow derogation for non-commercial cultural exchanges by Inuit communities does not change this conclusion.

A Complete Ban on Seal Products is Justified under GATT Article XX(a) as Necessary to Protect Public Morals

Various WTO Agreements such as the GATT provide exceptions to the general principle that WTO Members should not restrict trade through the use of measures such as import or export bans. These exceptions, which include the protection of public morals, can justify measures that are otherwise inconsistent with WTO provisions. Should the EU adopt a complete ban on seal products, and should the measure be challenged as inconsistent with WTO provisions,¹ such a ban can be defended on grounds that it is "necessary to protect public morals" under GATT Article XX(a).²

The introductory clause to Article XX, or the chapeau, and sub-provision (a) state:

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...

To determine whether the Article XX(a) defense is available, a WTO panel or the Appellate Body will first analyze whether a measure is justified under a specific sub-provision (concerning the design of the measure) before considering whether the measure at issue meets the requirements of the chapeau (concerning the application of the

¹ This paper only outlines the analysis to be performed under GATT Article XX(a) and the Article XX introductory clause, or chapeau, but does not otherwise comment on whether a complete ban is inconsistent with WTO provisions.

² Other GATT Article XX exceptions may also be relevant defenses, such as Article XX(b), which covers measures necessary to protect human, animal, or plant life and health, or Article XX(g), which covers measures relating to the conservation of natural resources. As the Commission has relied on Article XX(a) in its draft regulation, this paper focuses on that provision.

measure). For a measure to be justified under GATT Article XX(a), the moral concern must be identified and shown to be within the type of policies Article XX(a) is designed to protect, and the measure must be “necessary” to protect the moral concern.³ As explained below, both of these considerations are satisfied.

In the context of a complete ban on seal products, the moral concern at issue is the EU public’s interest in stopping EU trade⁴ in seal products that have been derived in an inhumane manner. Citizens, governments and the European Parliament have expressed grave concerns about the animal welfare aspects of commercial seal hunting.

- Opinion polls consistently show the overwhelming majority of Europeans surveyed are opposed to the Canadian commercial seal hunt and want to see it ended.⁵
- Belgium and the Netherlands have banned seal product trade through legislation, while a number of other Member States are moving forward with their own national bans.
- In September of 2006, the European Parliament adopted the Resolution on the Community Action Plan on the Protection of Animals 2006-2010, which calls on the Commission to propose a total import ban on seal products.
- In November of 2006, the Parliamentary Assembly of the Council of Europe urged its Member States to ban cruel seal hunting methods that do not guarantee instantaneous death and prevent suffering, and to promote initiatives aimed at prohibiting trade in seal products.

These concerns do not appear to be aimed at ensuring the hunt is slightly more humane, but rather at ending the inherent pain and suffering connected to commercial seal hunting. A complete ban on seal products trade responds to these moral and ethical concerns, establishing a direct nexus between the measure pursued and the interest protected. Accordingly, the moral concern at issue falls within the type of policies that the GATT Article XX exception on “public morals” is intended to cover.

Next, a complete ban on seal products trade is “necessary.” First, animal welfare concerns such as those expressed by the EU public, Member States, and the Parliament with respect to commercial seal hunting are well-established and legitimate objectives entrenched in European tradition and policy (e.g., Amsterdam Protocol on the Protection and Welfare of Animals, Community Action Plan on the Protection and Welfare of Animals 2006-2010).⁶ Second, as explained, a complete ban on seal products trade directly contributes to addressing these concerns. Third, while a full ban is trade-restrictive, no reasonably available less-trade restrictive measures are viable to achieve the level of public moral protection sought.

Seal hunts are not conducted in controlled settings where application of humane slaughter methods could occur and would be open to inspection. Instead, commercial seal hunting occurs in uncontrolled field settings plagued by factors such as moving ice floes, extreme weather conditions, poor visibility, and high ocean swells. These conditions prohibit hunters from predictably and consistently applying humane slaughter methods designed to protect animal welfare and avoid pain and suffering. These conditions also preclude authorities from adequately monitoring the hunt and enforcing regulations. Even the strictest and most well-intentioned regulations will fail to ensure the commercial seal hunt is conducted in an acceptably humane manner on a consistent basis. Because commercial seal hunts are inherently inhumane, less trade-restrictive measures such as certification or labeling schemes are insufficient to address the public concern that trade in seal products is not resulting in pain and suffering to the animals on a consistent basis. *Thus, a complete ban on seal products trade is necessary because it is the only way to protect the public interest.*

³ There is no jurisprudence regarding the GATT Article XX(a) defense. However, an equivalent exception was the subject of *US-Measures Affecting the Cross Border Supply of Gambling and Betting Supplies*, a dispute involving the General Agreement on Trade in Services (GATS). That dispute, as well as numerous others involving other GATT exceptions, is instructive.

⁴ If the EU adopts a complete ban, it will be responding to the concerns of its citizens and stopping the trade in seal products into, from, and within its own markets. Such a ban will not seek to regulate the trade in seal products in other markets.

⁵ In addition, the explanatory section accompanying the Commission’s draft regulation states that “[t]he Commission received during the last years a massive number of letters and petitions on the issue expressing citizens’ deep indignation and repulsion regarding the trade in seal products in such conditions.” Draft Regulation at 3.

⁶ Animal welfare concerns also underpin the EU’s ban on trade in cat and dog fur.

A Complete Ban on Seal Products is Not Discriminatory nor a Disguised Restriction on Trade

In addition to meeting the requirements of GATT Article XX(a), a complete ban on seal products also satisfies the GATT Article XX chapeau. As long as the ban is applied equally to all EU Member States and third parties, and to all seal products, it cannot fairly be said to be discriminatory in design or application. A limited derogation for Inuit seal products traded for non-commercial cultural exchange purposes, such as education or ceremony, does not change this conclusion as such products are not in competition with products from commercial seal hunts.⁷ It is also the case that the EU has discussed the seal hunt in other fora with Canada, a major exporter of seal products.⁸ This demonstrates that the EU is not trying to protect its domestic industry, but rather is trying to reach an open solution about its concerns over the seal hunt. *In sum, a complete trade ban on seal products is not discriminatory nor a disguised restriction on trade.*

Conclusion

For the reasons stated herein, a complete ban is the only measure that can satisfy the moral concern of the EU public. Even if adoption of such a ban is inconsistent with provisions in the WTO Agreements, it can be defended under GATT Article XX.

While HSI welcomes the Commission's draft regulation, we are gravely concerned about the derogation for humane slaughter and the vaguely defined Inuit derogation. Under separate cover, we provide our recommendations for modification of the draft proposal: namely, removal of the derogation for humane slaughter, and revision of the wording concerning the Inuit derogation.

⁷ A complete trade ban does not undermine or interfere with subsistence hunting, which is hunting for local use and consumption, with trade only in limited circumstances for non-commercial purposes.

⁸ For example, in the 2008 Canada –EU summit, both countries agreed to continue dialogue on the EU proposal to ban trade in seal products under certain conditions. See <http://news.gc.ca/web/view/en/index.jsp?articleid=421819>.