

BOOK REVIEW

The WTO, Animals and PPMs

Laura Nielsen

Martinus Nijhoff Publishers, 2007,
355 pp., €115.00/US\$115.00
ISBN 978-1-57105-186-8

This impressive volume analyses the application of the law of the World Trade Organization (WTO) to governmental measures affecting trade in animals. The acronym PPMs refers to internal or trade measures that are conditioned on a process or production method. The book distinguishes between environmental measures aimed at species protection and sustainable development, on the one hand, and animal welfare measures aimed at the protection of animals or animal specimens, on the other. The environmental measures, the book explains, can be validated by science, while the animal welfare measures are justifiable only on the basis of values or morals. Both groups of measures can be legitimate government policies that affect trade, but the world trade law to be applied to each of the two groups may differ.

The book is appropriate for experts in the field as well as those not in the trade field (or students) who want to learn about how the WTO supervises the protection of animals.

With its excellent organisation, the book builds analytically chapter by chapter so readers can jump in at the point where they want to. The author,

Dr Laura Nielsen, is an assistant professor at the University of Copenhagen Faculty of Law.

Another nice feature of the book is that it provides some coverage of all of the major trade controversies in the past 20 years regarding animals. The infamous shrimp-turtle and tuna-dolphin disputes are discussed extensively, and the book also examines measures regarding dog and cat fur, baby seals, animals in leg-hold traps and the testing of cosmetics. In addition, the book discusses PPMs regarding the slaughter of animals for food.

Even today, 10 years after the landmark WTO Appellate Body decision in the *United States-Shrimp* case, one can still find authors who maintain that the WTO forbids environmental PPMs. Nielsen's book suffers none of the old misconceptions. She recognises that a trade measure aimed at safeguarding animals can survive WTO challenge if well designed, and her analysis will help readers understand the dividing line between the WTO-legal and illegal measures. At several points in the book, she makes points that are original or at least that have not been made in exactly the way that she explains them. For example, she makes the point that although commentators sometimes refer to multilateral environmental treaties as being challengeable in the WTO, that would not occur because WTO litigation is vertical not horizontal (p.114).

Much of the book is devoted to analysing Art.XX of the General Agreement on Tariffs and Trade (GATT). Article XX provides "General Exceptions", including exceptions for measures necessary for the protection of public morals, measures necessary for the protection of animal life or health and measures relating to the conservation of exhaustible natural resources. The book explains that all three of these exceptions can come into play with regard to animals and takes the reader step by step through how a WTO panel might analyse a measure that is being challenged. A strength of the book is how it takes the reader through the intricacies of the case law and marks out the points that have not been settled as well as those that have been.

Nielsen is properly critical of the untidiness of WTO case law for allowing the sub-paragraphs of Art.XX to overlap. She recognises, however, that it is probably too late to fully correct this problem. Instead, she puts forward some creative solutions. One is that:

"... [I]f a country labels a measure as a moral measure, but it is in fact a health or environmental measure, this measure could be argued to be within the definition of human health or environmental protection, regardless what the country labels it to be" (p.236).

She also calls for the WTO to revise Art.XX so that one subsection covers moral issues; another, human health; and a third, environmental issues.

The book also suggests a revision of WTO law regarding the use of the Art.XX exception for measures relating to public morals. Although Nielsen notes that only one WTO case so far has involved a defence on moral grounds, she is aware that many more cases could occur in the future. She expresses concern, the reviewer thinks rightly, that the WTO judicial branch would have a difficult time adjudicating such cases because of the absence of criteria in Art.XX as to the extent to which outwardly direct interests can be accommodated by the moral exception (she terms these non-product-related PPMs). Instead, she proposes that WTO members provide an authoritative interpretative rather than leave politically sensitive issues up to independent panels.

In summary, this book covers material important to the trading system and does it well. Nielsen's writing style is clear and concise and readers will be treated to interesting background material provided on many key issues, e.g. the philosophy of animal protection.

Steve Charnovitz
George Washington University

international trade law & regulation

ISSN 1357-3316

Volume 14 Issue 5 2008

articles

Lawyers on Lumber: Were they Worth It?
Elliot J. Feldman

Canada Enters New Trade Agreements with
South America
**Greg Kanargelidis, Elysia van Zeyl and
Maha Hussain**

An Unreasonable Restraint of Trade?
Dafydd Nelson

book review

news section

THOMSON



TM

CONTENTS

International Trade Law & Regulation

Volume 14 Issue 5

ISSN 1357-3136

Articles

ELLIOT J. FELDMAN

Lawyers on Lumber: Were they Worth It?

95

Some Canadians believe Canada should have settled the softwood lumber war with the United States without a legal defense. Canadians won the litigation, but Canada gave the United States a settlement anyway on US terms, imposing permanent trade restrictions. Legal representation nevertheless saved Canadians nearly \$27 billion, including at least \$1 billion for each phase of the investigations and appeals.

GREG KANARGELIDIS, ELYSIA VAN
ZEYL AND MAHA HUSSAIN

Canada Enters New Trade Agreements with South America

102

Canada recently concluded free trade agreements with Peru and Colombia. These new agreements will offer significant benefits to companies active in international trade, as opportunities for improved market access at less cost will become available not only through these agreements directly but also through the maze of bilateral and regional trade agreements to which Canada is a party.

DAFYDD NELSON

An Unreasonable Restraint of Trade?

105

Dwayne Chambers, a British 100 metres sprinter, recently brought his fight to take part in the forthcoming Beijing Olympic Games to the High Court in London. Banned for life from the competition after testing positive for the steroid THG, he argued that his exclusion was an unreasonable restraint of trade. This article examines the merits of Chambers' claim.

Book Review

LAURA NIELSEN

The WTO, Animals and PPMs

107

News Section

N-41