



What are the WTO rules that affect animal welfare? Can you have trade bans?

FROM THE PUBLIC AFFAIRS DEPARTMENT

Overview

This briefing covers trade bans under World Trade Organisation (WTO) rules and is part of the series produced by the RSPCA on the impact of trade rules on animal welfare. Other briefings cover agriculture and the WTO trade rules.

Animal welfare has only recently begun being considered by the WTO; its first and only animal welfare dispute was in 2012. This decision allowed the EU to continue its trade import ban on seal products despite it being a trade barrier, allowing it on moral grounds. However many trade bans have not been upheld. As the UK starts its trade negotiations with the EU, USA and others, and looks to exit the EU, this briefing looks at what trade bans are allowed to protect animal welfare.

A History of WTO bans relevant to animal welfare

The WTO, since it was established in 1995, has incorporated and set up over 20 different agreements into its rules. The most relevant for animal welfare are the General Agreement on Tariffs and Trade (GATT '47), the Agreement on Technical Barriers to Trade (TBT), the Agreement on Applying Sanitary and Phytosanitary Measures (SPS) and the Agreement on Agriculture (AoA). These interlink, so challenges to trade bans may be taken on the basis of any of these agreements through the Trade Dispute Settlement Board (DSB). Any of the WTO's 164 countries can challenge a trade measure enacted by any other member country. Any measure that is not challenged is left intact, though this doesn't mean it is WTO compliant. The DSB interprets the WTO rules and give clear indications as to which trade measures are allowed and which ones are not.

Below are set out the main trade ban disputes which are relevant for animal welfare:

Trade dispute	What is concerned	What was the result	What implications for animal welfare?
US-Mexico Tuna-dolphin I 1991	USA banned imports of tuna from Mexico caught with dolphins a method prohibited under US legislation	The ban was inconsistent with GATT but the decision was not ratified so the ban remained in force	Import bans not allowed on method of production. This is crucial for animal welfare as there is no difference between a product produced to high welfare standards from one at low standards.
US-EU Tuna-dolphin 2 1994	USA banned imports of tuna from EU	The ban was inconsistent with GATT but never ratified so not implemented	Agreed that dolphins were an exhaustible natural resource that bans can be applied extra jurisdictionally
EU Regulation 3254/91	The EU banned the import of fur caught in leghold traps from other countries	The ban was never instated as Canada and USA threatened to take it to the WTO	The EU Canada and USA drew up standards on trapping which were never implemented by the EU as they were too weak; they have also not been implemented by the USA.
Thailand, Malaysia-US Shrimp-turtle 1998-2001	USA banned imports of shrimp as there were caught with turtles, an endangered species	The ban was upheld	Import bans could be applied to how a product is produced if the species was endangered; import bans allowed if a country is negotiating an agreement; Import bans can be done outside the country's jurisdiction if they are not trade distorting
EU-US Beef-hormones 1997-2012	EU banned imports of beef as they were treated with hormones	The ban was inconsistent with the SPS but EU kept the ban and agreed new import quotas	A ban on animal health grounds is not allowed without scientific proof there is a health threat; applying the precautionary principle is not

		for high grade beef	sufficient
EU-Canada Asbestos 2000	France banned import of asbestos but allowed sale of domestic alternatives	The ban was consistent with the SPS and the EU kept it	Bans allowed if there are human health problems arising from the imported product
Korea-US Beef 2000	Korea disadvantaged imported beef by only allowing sales from certain shops	Korea changed its law	Non governmental schemes are allowed to segregate imported and domestic products
EU Regulation 5/2001	This is a mandatory labelling scheme, which bans the import of eggs not labelled with country of origin or in line with EU standards	EU changed its law to allow imports of country of origin labelled eggs rather than a ban on imported battery cage eggs	EU decided to make its import ban more flexible to prevent a WTO challenge
EU Regulation 2003/15	Bans the import of cosmetics tested on animals	EU banned marketing of cosmetics tested on animals from 11 March 2013	The US raised this issue as a trade ban but never formally took it to WTO
Brazil-EC 2007	Bans the import of used tyres as a threat to public health	The ban was inconsistent with the GATT and Brazil changed law	Animal health and life were important and measures can be flexible; Alternative measures have to be “reasonably available” but up to the defending country to demonstrate that these methods are not reasonable; a country must apply the same rules to all countries
US-EU chickens 1997; 2009	EU banned imports of chicken washed in chemicals eg chlorine to reduce pathogens, a process banned in the EU	Although a panel to examine its consistency to SPS was set up this has not convened	The EU has done no risk assessments on the treatments but Codex has given guidance on their safe use; this will still be an issue in the UK-USA FTA
US-Mexico tuna-dolphin labelling 2011-12	USA banned Mexico tuna as it was not allowed to be labelled as dolphin-safe	The ban was inconsistent with the TBT and the USA is amending the law	Government labelling schemes are allowed to inform the consumer, are allowed on any animal, can set a threshold higher than a international standard but must treat all products from all countries the same
US-Indonesia Clove cigarettes 2012-4	US banned imports of Indonesian cigarettes due to health concerns	The ban was inconsistent with the SPS US tweaked its law & other trade concessions agreed	A framework agreed to show when a products is like another product and so not allowed to be banned; this includes its end use, consumer tastes and tariff classification
EU-Norway, Canada Seals 2013-4	EU banned seal imports due to public moral concerns on how they are killed	The ban was consistent with the GATT; the EU tweaked its law to ensure it didn’t disadvantage Canadian Inuit seal exporters; ban kept.	A country is allowed to have an import ban based on public morals if there is a long history of public opposition. Animal welfare is treated as a moral issue.
Russia-EU pig products 2014-	Russia banned the import of pigs and products due to disease concerns	The ban was inconsistent with the SPS as it did not follow OIE guidance on the disease	Russia is appealing this decision
Indonesia-New Zealand, USA Imported food 2016	Indonesia banned the import of food kept more than 6 months after harvest	The ban was inconsistent with the GATT	Scientific proof is required; the reason for discrimination of the measure must relate to the purpose of the measure

What do the dispute resolutions tell us about trade bans?

Each trade measure is different and so its compatibility with the WTO regime can only be assessed once a panel has met and agreed a decision. Some 20 trade bans or restrictions relevant to animal welfare have been assessed in the past 25 years since the WTO was set up, seven directly concerned animals.

Restrictions to trade are increasingly being accepted by the WTO’s DSB when aimed at non-trade related societal values such as animal welfare.

Further, government trade bans will only be tested if a country is challenged by another WTO member. The existence of many trade restrictions not challenged at the WTO show that often the nondiscrimination requirements of WTO law can be met. The UK has a number of trade bans (all of which were implemented at the EU level) which have never been challenged or tested so can still remain in place. These include the import ban on fur produced from cats and dogs (implemented due to concerns on the killing methods used) and the import ban on cosmetics tested on animals, fully in place since 2013. All are part of UK law and will continue once the UK leaves the EU.

What are the rules governing trade bans arising from international agreements?

The UK has a number of trade bans on animal protection that are implemented as part of international obligations or agreements such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The relationship between bans under international obligations and the GATT has also never been tested but fears that CITES would be incompatible with the GATT now seem assuaged. The UK has had an import ban on products made from endangered species (eg tiger skins) since 1975 and this list is regularly updated (eg ivory from African elephants was added in 1989, pangolins and their products in 2016).

The Organisation for Animal Health (OIE) currently has adopted 13 global animal welfare standards including on transport and slaughter of farm animals and fish and the keeping of chickens, beef and dairy cattle. These have never been cited in any trade disputes, nor have any trade bans used them as a benchmark as there is no direct relationship between the OIE animal welfare standards and the WTO. But they could be referenced in the future and their importance should not be underestimated.

What trade bans are allowed under the GATT?

There have been 425 disputes involving the GATT since 1994 which has given a framework on the compatibility of trade bans under the regime. We know that trade bans are allowed to protect endangered species, are allowed for animal welfare including ensuring that animals are not killed inhumanely and can apply to other countries. Animal welfare measures are covered under the defence of protecting public morals in a country and so bans are allowed to be set by a country to protect its own moral standards. However a country may not be able to introduce a trade restrictive measure if it gives an unfair trade advantage to its own products, discriminates against imported products that are “similar” to the banned product or discriminates against any country. It remains unclear if trade bans are allowed based on how a product is produced but future cases could look at the relationship between this and the test of how “similar” products are treated, particularly as consumer preferences are now included in this test.

The EU largely successfully retained its seal products ban after the WTO challenge from Canada and Norway on the grounds that this was an important moral issue for the EU. The EU showed this not through opinion polls, but by demonstrating the legislation and public concern on the issue was long standing. The WTO also agreed that as this was a moral issue the EU could ban a product from another country, even if they have different moral values. However it did not rule on if it could ban a product based on how it was produced.

What animal welfare measures have been prevented because of the trade rules?

The EU has stepped back from improvement to animal welfare as it was felt they would lose a trade dispute. These include a ban on imports of furs caught in a certain way, a mandatory method of production labelling scheme on imported eggs and a mandatory method of production labelling scheme on meat. Trade measures including banning live exports of animals, banning imports of fur and banning imports of puppies based on how they are bred would have to be carefully constructed to ensure compatibility.

What trade ban rules are not allowed under the SPS?

There is no specific language on trade bans to protect animal welfare under the WTO but there is specific language on trade bans implemented to protect animal health or prevent disease. The SPS Agreement sets rules on any animal health measures taken by Parties (countries) linking them to agreed international standards such as the OIE's animal health standards. It sets a higher degree of test than the other WTO Agreements.

Over the past 22 years, the SPS has examined 44 trade bans taken for disease or health purposes of which nine directly involved the EU. These included the EU ban on the import of chicken from the USA, a dispute that still has yet to be solved and the 13 year dispute on the EU banning imports of American beef injected with hormones. It has allowed one trade ban, on asbestos imports from Canada, as the EU could prove this was taken for human health reasons. The disputes show that trade bans are not permissible if the country has undertaken no risk assessment of the effect of the prohibited measures, has introduced measures that are contrary to international regulations and measures are not allowed under the precautionary principle if there is no scientific evidence to back this position.

The results of these challenges has been to overturn all trade bans except the one on asbestos. Other disputes on animal trade include:

- Beef-hormone: The EU managed to keep its beef-hormone ban in place even though it lost the dispute as it negotiated an agreement with the USA to allow in more hormone free beef to compensate for trade lost.
- Chlorine chicken: the EU has a 20 year old ban on chickens from the USA washed with Pathogen Reduction Treatments (PRTs) such as chlorine. Although a panel was set up on this issue it has not convened and the dispute is being negotiated under the Free Trade Agreement (FTA) between the EU and USA. The EU has done no risk assessments on these PRTs and UN Codex Regulations have agreed they are safe. So the EU is vulnerable to any WTO ruling even though PRTs are banned in the EU. The UK will have to negotiate its own agreement with the USA once it leaves the EU.
- Russia pig imports: Russia banned imports of pigs and products from the EU in 2012 due to concerns on African swine fever. As this ban was inconsistent with the OIE's Guidance on places at risk from the disease, Russia may have to change this ban, pending its appeal currently being heard.

What animal welfare trade bans are allowed under the Agreement on Technical Barriers to Trade?

The aim of the TBT is to secure conformity in international standards, such as animal labelling, whilst allowing Parties to set their own standards. The TBT contains similar language to the GATT on what defences are allowed but Panels have agreed the test should be looked at from a TBT rather than GATT perspective. The test is two-fold: the measures not being "more trade-restrictive than necessary to fulfil a legitimate objective" and a risk assessment has to be done based on "available scientific and technical information". There have been 52 disputes involving the TBT since 1994 of which the EU has been directly involved in 24.

There have been a few cases involving labelling of animal products. The case law shows that trade bans under government labelling schemes are allowed on any animal if the purpose of the label is clear, it could not be met by using another label with lower standards and is to prevent consumers being misled. But any trade ban cannot give less favourable treatment to similar products from other countries. Crucially no panels have yet agreed if those "similar products" under the TBT include how the product is produced. For instance the EU decided not to implement a mandatory label on battery caged eggs entering the EU as it was not sure that such a label, reliant on method of production to differentiate between a free range and a battery cage produced egg, was permitted. The UK would have to ensure that any mandatory labelling

schemes it introduces to improve animal welfare meets the framework of the TBT.

Conclusion

The Government has said that they will maintain and, where possible, improve standards of animal welfare in the UK as we leave the EU¹. Areas where the RSPCA believe improvements can occur are on mandatory labelling of how an animal product is produced, prohibiting the export of live animals or prohibiting the import of farmed fur. All involve trade bans and all may need to be defended at the WTO. The Government must ensure that the threat of a WTO challenge does not have a chilling effect on our welfare standards. Political will is needed and this briefing gives a framework for any future improvements and to ensure that any free trade negotiations also allow the UK to defend its animal welfare and animal health standards.

¹ PMQs 8.2.17