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'Un-American' Trade Disputes

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Written by Simon Lester, Trade Policy Analyst for the Herbert A. Stiefel Center for Trade Policy Studies at the Cato Institute. Posted with permission from [Cato @ Liberty](#).

Borrowing the title from a [Stephen Colbert segment](#), this blog post is going to be about trade disputes not involving America. Given recent trade rhetoric, you might think that all trade disputes are about the U.S. and China, but that's not the case. Other countries have disputes, too, and some of them are very interesting, getting into the core issue of what international trade rules should be about.

First up is a [complaint by Canada and Norway](#) against the EU related to a ban on "seal products." According to the [EU regulation](#) on issue, seal products means "all products, either processed or unprocessed, deriving or obtained from seals, including meat, oil, blubber, organs, raw fur skins and fur skins, tanned or dressed, including fur skins assembled in plates, crosses and similar forms, and articles made from fur skins." Under the regulation, with limited exceptions, seal products may not be imported or sold in the EU.

Canada and Norway have a significant seal harvest, and are concerned about lost sales in the EU market (as well as the spread of the EU policy to other countries). The main legal claims (a very rough version, anyway) are that the EU Regulation discriminates against Canadian/Norwegian seal products in favor of competing EU products, and that the regulation is more trade-restrictive than necessary.

This case helps illustrate the scope of international trade rules. Writing about the case a couple years ago, blogger Matt Yglesias [wondered](#)

why the seal issue is being handled as a trade policy matter in the first place. In other words, why ban the import of seal products rather than simply ban selling seal products? Clearly the EU's concern here is with the existence of a commercial market for dead seals rather than with the transnational flow of seals per se.

In fact, the law involves both an import ban and a general sales ban. (Why separately ban imports when you have already banned sales? Most likely for administrative convenience. Importation is a good place to catch these things.) But regardless, even if the law had not mentioned imports, a general sales ban could have been challenged at the WTO. This is an important point that Yglesias doesn't seem to realize, and if he missed this, I suspect others might miss it as well. In what way are general product bans covered by WTO rules? For one thing, even facially neutral measures may in fact be cases of disguised protectionism, having a disparate impact on foreign products. For another, as noted, there are rules that prohibit domestic laws from being more trade restrictive than necessary. Such rules go beyond simple protectionism, and provide another way to challenge a general product ban. Do some of these rules intrude too far into domestic affairs? There is lot of debate about that in trade circles.

A second case has been brought by [Ukraine against Australia](#), involving Australia's "plain packaging" rules for cigarettes (the Dominican Republic and Honduras are likely to join the case), which require cigarettes to be sold in plain packages with no logos and a uniform font for the brand name. Here, there are the same trade arguments as in the seal products case: the measure is discriminatory, and more trade-restrictive than necessary. Also, there are

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claims that plain packaging interferes with the tobacco companies' trademarks, in violation of the WTO's rules on intellectual property.

I thought it was worth mentioning these cases here for the following reason. If international trade rules can be used to challenge any government law or regulation that *affects trade*, even if the measure is facially non-discriminatory, these international rules are going to be quite broad, and could have an impact on much, if not all, domestic governing. It may be worth thinking about these issues to make sure we properly balance international governance and domestic policymaking, and these cases provide a good opportunity to do so. (I wrote more about this in an *op-ed* for *The Jurist* on the plain packaging case.) The cases are at an early stage, and it's not clear how they will turn out. But the mere fact that they are being tried in an international court is noteworthy.

One final point: Just to be clear, I don't mean to defend the laws at issue—the seal products ban and plain packaging for cigarettes—as a matter of policy. Rather, I'm just focusing on whether they should be found in violation of international trade rules.

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