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Canada, Norway Press Ahead with EU Seal Ban Challenge

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Canada and Norway surprised many in the trade community last week by proceeding to the next formal stage in their challenge of the EU's ban on seal products (DS400, DS401). In requesting the WTO Director-General to appoint a panel of experts to review the case, Ottawa and Oslo re-ignited a dispute that has not advanced at the global trade arbiter since March 2011 (see Bridges Trade BioRes, 4 April 2011).

Adding to the growing list of recent disagreements between trading partners under the WTO's Technical Barriers to Trade (TBT) Agreement, this emotionally-charged row could be the first of its kind to ask the WTO to specifically rule on considerations of animal welfare or public morality as justifying limits on trade.

The panel nominations are expected to become public during the following days.

Dormant disputes

The case, arising from a complaint launched by Canada and Norway in November 2009, concerns a 2009 EU Regulation banning the marketing of seal products from commercial sealing operations in the 27-country bloc. In their WTO complaints, the Canadian and Norwegian governments argue that the ban breaches the WTO's fundamental non-discrimination principles, as well as Articles 1 and 2 of the TBT Agreement, which mandate that technical regulations be non-discriminatory and not be more trade restrictive than necessary.

While the directive justifies the ban on the basis of the allegedly inhumane nature of seal hunting, Canada and Norway have long argued that seal hunting is a legitimate economic pursuit, and that the hunting methods in question are sustainable. (See Bridges Weekly, 4 November 2009)

"The Atlantic and northern harvests are humane, sustainable, and well-regulated activities that provide an important source of food and income for coastal and Inuit communities," the Canadian Ministry of Fisheries and Oceans said in a statement. "The Government of Canada is firmly committed to defending our sealing industry and the coastal and northern communities that depend on the seal harvest."

"For the Norwegian authorities, this issue involves important principles, such as our right to sustainably harvest our living marine resources and to sell products derived from hunting and fishing," the Norwegian Minister of Fisheries and Coastal Affairs added in a statement.

Ottawa's and Oslo's move, however, has been lambasted by animal welfare groups, who also question the political and economic motives behind the decision. Detractors estimate the legal bill to Ottawa of pursuing the complaint at as much as C\$10 million (US\$10.16 million in today's currency), while the total value of Canadian seal products in 2010 was reported as only being C\$1.3 million.

"The Harper government claims to be fiscally responsible, yet they are spending more to defend the commercial seal hunt than it can ever hope to bring in," argued Sheryl Fink, Director of the Seal Program at the International Fund for Animal Welfare (IFAW) in a press release. "Rather than wasting more tax dollars on an industry that is clearly failing and for which markets continue to slam shut, the government should be helping sealers to transition out of the industry and into other jobs."

TBTs on the rise

Disputes brought under the TBT Agreement have been on the rise in recent years as countries increasingly turn to technical regulations and standards to achieve policy objectives, such as protecting human safety or health. In 2012 alone, several WTO decisions have looked at TBTs, attempting to provide further clarity on the balance between

regulation and permissible trade barriers.

In April, the WTO Appellate Body delivered its judgment in *US-Clove Cigarettes*, ruling on a US ban on flavoured tobacco products; May saw the long-awaited decision on ‘dolphin-safe’ labels for tuna products in *United States-Tuna II*; and in *US-COOL* in July, the WTO ruled on US country of origin labels for meat (see Bridges Weekly, 11 April 2012, 18 June 2012 and Bridges Trade BioRes, 4 July 2012, respectively).

Some experts, however, have argued that the seal ban may not be considered a technical regulation and should thus be examined under the WTO’s General Agreement on Tariffs and Trade.

Although panellists are to be appointing in the coming week, a ruling, however, is not expected until next year.

ICTSD reporting; “Canada forges on against EU seal ban,” THE GLOBE AND MAIL, 25 September 2012; “Norway, Canada call in WTO on EU seal products ban,” AFP, 25 September 2012.

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