MFL
367
DAI



澳門大學

UNIVERSIDADE DE MACAU

UNIVERSITY OF MACAU

Trade Liberalization and Emerging Non-trade Concerns: the Case of Animal Welfare

Master Thesis of International Business Law

Faculty of Law

WEI DAI

Student No.: MB350734

June 2016

澳門大學圖書館

ABSTRACT

As the WTO and its predecessor the GATT have been remarkably successful in reducing tariffs over the past decades, non-tariff measures have replaced tariffs as a major form of trade barriers. Armed with its moral superiority, legal legitimacy and economic particularity, animal welfare trade barrier emerges as a new type of non-tariff trade barrier and has been widely used by countries—especially the developed world—to counter import of animal products from other countries. The deployment of animal welfare trade barrier has become a severe strike against developing countries that rely heavily on export of animal products. Despite the fact that the articles of various WTO agreements render certain level of legal support and basis for the adoption of animal welfare measures as adopted by the developed countries, these same WTO agreements further require that the application of such animal welfare measures to be properly construed so that neither would they constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail nor would they serve as a disguised restriction on international trade. In this thesis, several cases are analyzed under the WTO legal framework in order to demonstrate the interaction of WTO rules and this new creature of non-tariff trade barrier and to illustrate the evolvement of the WTO's attitude toward animal welfare issues with respect to international trade. Considering the unique non-economic feature of animal welfare trade barrier, this thesis discusses from the perspective of the international community as a whole, how the international community addresses the tension between the need to foster trade liberalization and the honoring of animal welfare. As a typical agriculture-based economic body, China is already facing a series of challenges in its painful process of integrating with the global economy. In recent years, the export of China's agricultural products is often restricted by the non-tariff trade barriers of the target countries, of which animal welfare trade barrier is one of the most typical and damaging ones. Compared to the developed countries where animal welfare law has been construed for a relatively longer period of time, China has not yet established a real animal welfare law and its legal system unfortunately has many deficiencies with respect to supporting implantation of animal welfare and corresponding concepts.

Key words: Animal Welfare, Non-tariff Trade Barrier, WTO, GATT

Table of Contents

Chapter 1 Introduction **1**
1.1 The Background of the Research 1
1.2 The Objectives of this Thesis 3
1.3 The Structure of this Thesis 4
Chapter 2 Animal Welfare and Animal Welfare Barriers **11**
2.1 The Definition of Animal 11
2.2 The Definition of Animal Product 12
2.3 The Definition of Animal Welfare and History of Animal Welfare Law 14
2.4 Different Theories of Animal Protection 17
2.4.1 Animal Rights Theory 17
2.4.2 Animal Welfare Theory 18
2.4.3 Anti-Cruelty to Animals Doctrine 19
2.5 The Legal Status of Animals under the Current Legal Frameworks 21
2.5.1 Animal as the Subject of Legal Relation 21
2.5.2 Animal as Common Object of Legal Relation 22
2.5.3 Animal as Special Object of Legal Relation 23
2.6 What is Animal Welfare Barriers 24
2.7 The Cause and Characteristics of Animal Welfare Barriers 26
2.7.1 The Cause of Animal Welfare Barriers 26
2.7.2 The Characteristics of Animal Welfare Barriers 28
2.7.2.1 The Legitimacy of Animal Welfare Barriers 28
2.7.2.2 The Rationality for Animal Welfare Barriers 30
Chapter 3 Trade-restricting Measures Related to Animal Welfare **33**
3.1 Restriction or Prohibition of Animal Products Import 33
3.2 Animal Welfare Labelling 34
3.3 State Subsidies 37
Chapter 4 The legal basis for animal welfare barriers **38**
4.1 Typical Current Legislation of Animal Welfare in Some Countries and Regions All over the World 38
4.1.1 Current Legislation of Animal Welfare in European countries 38
4.1.2 Legislation of Animal Welfare in Asian Countries 41
4.2 WTO Rules Relating to Animal Welfare 42
4.2.1 The General Agreement on Tariffs and Trade 1994 (GATT) 43
4.2.2 Agreement on the Application of Sanitary and Phytosanitary Measures 46
4.2.3 Agreement on Technical Barriers to Trade of The World Trade Organization 47

4.2.4 Other Trade Agreements....48
Chapter 5 Case Analysis....49
5.1 European Communities –Measures Prohibiting the Importation and Marketing of Seal Products (DS400 / DS401)....49
5.2 United States — Restrictions on Imports of Tuna (Tuna / Dolphin I&II)....58
5.2.1 Tuna / Dolphin I : United States - Restrictions on Imports of Tuna (DS21/R)....59
5.2.2 Tuna / Dolphin II : United States — Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (DS381)....62
5.3 Legal Comments and Analysis of the Cases....67
5.3.1 The Application of Article XX of GATT 1994....67
5.3.1.1 The Chapeau and the Four Exceptions....68
5.3.1.2 The Interpretation and Application of the Exception Clauses of Article XX.70
5.3.2 The Issue of the Processes and Production Methods (PPMs)....74
5.3.3 The Extraterritorial Jurisdiction (hereinafter referred as "ETJ") of Animal Welfare Regulations of the Importing Countries....80
Chapter 6 Measures of Balancing Trade Liberalization and Animal Welfare from the Perspective of the International Community....87
6.1 International Agreement on Animal Welfare outside WTO System....88
6.1.1. The Role of the International Agreement....88
6.1.2 How to Establish the International Agreement....89
6.2 Incorporating Animal Welfare into WTO Paradigms and Rules....92
6.3 Resolving the Conflicts between Animal Welfare and Free Trade through Bilateral and Multilateral Cooperation....94
Chapter 7 Current Situation and Countermeasures against Animal Welfare Barriers in China....98
7.1 Current Situation of Animal Welfare in China....98
7.2 The Current Animal Welfare Legislation of Mainland China....100
7.3 The Countermeasures Against Animal Welfare Barriers in China....102
7.3.1 Establishing Research Centers and Institutes of Animal Welfare and Raising Public's Consciousness of Animal Welfare....103
7.3.2 The Establishment of Animal Welfare Legislation According to the Social and Economic Reality of China....105
7.3.3 Settling Disputes Related to Animal Welfare under the WTO Dispute Settlement System....106
Chapter 8 Conclusion....108