

# SYSTEMIC IMPLICATIONS OF THE EU – SEAL PRODUCTS CASE

*Laura Nielsen\* & Maria-Alejandra Calle\*\**

## ABSTRACT

*This article concerns the systemic implication of the EU first written submission in the EU – Seal Products case. The article focuses primarily on the interpretations of the national treatment provisions in the GATT and TBT Agreement where the EU suggests to import the concept of “legitimate regulatory distinctions” from case law on the TBT Agreement into the interpretation of the GATT. Moreover, the EU suggests to compare sub-groups in the evaluation of the de facto discrimination—an approach that will lead to that de facto discrimination can never be established. Finally, the article also concerns the application of the public morals clause in the General Exceptions in Article XX(a) of the GATT to an animal welfare issue. The main argument of the article is that the policy of the EU, i.e., to protect seals from the worst kinds of inhumane seal hunt practices, would have been by more appropriately addressed by creating a certification scheme where countries, regions or individual hunters would have to get certified and prove that their hunting methods were in conformity with the EU animal welfare standards. A certification scheme is a so-called*

---

\* Laura Nielsen, LL.M (Arizona), PhD (Copenhagen), Associate Professor of WTO Law, Faculty of Law, University of Copenhagen, Denmark. The author can be reached at [laura.nielsen@jur.ku.dk](mailto:laura.nielsen@jur.ku.dk).

\*\* Maria-Alejandra Calle, LL.M (Barcelona), PhD(c) (Cork), Associate Professor, International Business Department, Universidad EAFIT, Colombia. The author can be reached at [mcalle@eafit.edu.co](mailto:mcalle@eafit.edu.co).

The authors would like to thank Rob Howse for discussing the issue at length during the iCourts Conference, *The Newest Trends in Global Trade Law: From Seals to Biofuels*, in Copenhagen at the Faculty of Law, University of Copenhagen, September 13, 2012.

*process and production method (PPM) measure. This would also have ensured a more fair treatment of the Canadian and Norwegian seal exporters—compared to the EU ban of all commercially hunted seal products.*

**KEYWORDS:** *WTO, seals, public morals, animal welfare, environment, PPMs, national treatment, de facto discrimination, legitimate regulatory distinctions, even handedness, general exceptions, public morals clause*