

Animal Welfare, Bilateral Trade Agreements, and Sustainable Development Goal Two

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Abstract

Animal welfare is integral to a number of the Sustainable Development Goals set out in the UN 2030 Agenda for Sustainable Development. This article sets out the ways in which animal welfare is closely linked to sustainable development with particular regard to sustainable agriculture, climate change, environmental protection, biodiversity protection, conservation, and social and ethical considerations. This essay further explores how international trade and investment policy can contribute significantly to the achievement of the Sustainable Development Goal two (eradication of world hunger) by pursuing animal welfare protection through trade policy. Specifically, bilateral free trade agreements between developed and developing countries.

Keywords

sustainable development, trade, agriculture, animal welfare, animal health, food security, biodiversity, climate change

Introduction

We, the human species, are fortunate to share our planet with a rich and diverse range of non-human animal species. These animals act as sources of food and clothing. They are put to work on farms and in industry. They are our companions in the home. They are absolutely essential to the sustainable

development of humankind. The value of animal life to the earth, its ecosystems, and humankind, is immeasurably significant and extends far beyond mere economic value.

This essay will first explore the close association between safeguarding animal welfare and sustainable development. The intrinsic value of protecting individual animal welfare as opposed to animal species conservation has been neglected in the policy and literature on sustainable development. Animal welfare protection is vital to the successful implementation of many of the United Nation's Sustainable Development Goals (SDGs), particularly the goals to eradicate hunger (two) and to, inter alia, halt biodiversity loss (15).

Then, this essay will move on to explore how bilateral trade agreements between developed and developing countries can contribute to the achievement of sustainable development goal two to eradicate world hunger by addressing animal welfare issues.

The Sustainable Development Goals and Animal Welfare

Sustainable development is an open-term with no single legal interpretation. However, it is generally thought that there are two themes in public international law that are "specific and recurrent enough to act as definitions".¹ First the Brundtland report emphasises inter-generational equity in stating sustainable development "meets the needs of the

¹ Emily Barrett Lydgate, 'Sustainable development in the WTO: from mutual supportiveness to balancing' (2012) 11:4 World Trade Review 621, 627.

present without compromising the ability of future generations to meet their own needs.”² Second, a three-pillared interpretation of sustainable development consists of: economic development, social welfare and environmental protection.³

The complications were exacerbated by a range of exemptions in the legislation, benefitting those selling pedigrees, the offspring of pet animals and animals unsuitable for showing or breeding, with the net result that the commercial sale of animals from private dwellings became so difficult to monitor that it was, in effect, largely unregulated.

The recent and ambitious United Nations 2030 Agenda for Sustainable Development is capable of encompassing animal welfare in a number of the SDGs and associated targets.⁴ Some international organisations recognise the significance of the 2030 Agenda’s language for animals.⁵ However, there is a measure of discontent amongst civil society because the Sustainable Development Goals do not explicitly reference animal welfare or recognise the sentience of animals.⁶

The link between animal welfare and sustainable development is multi-faceted and well-documented. The Farm Animal Welfare Council⁷ has set out how farm animal welfare might be influenced by (and

impact upon) sustainable development.⁸ It notes that “sustainable agriculture cannot truly be achieved without ... key farm animal welfare principles.”⁹ This is centrally due to the impact of animal welfare on animal health and climate change.¹⁰ The economic and ethical importance society has placed on animal welfare is also significant in this regard.

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On the latter point, Michael Bowman, Peter Davies, and Catherine Redgwell posit that a general principle of law on animal welfare now exists because animal welfare pervades almost every legal system in the world as well as cultural and religious traditions.¹¹ There is a wealth of literature on the ethics surrounding animal welfare protection and the World Trade Organization’s (WTO) Dispute Settlement Body has now accepted animal welfare as an issue of public morality.¹²

² United Nations (UN), Report of the World Commission on Environment and Development: Our Common Future, Annex to General Assembly document A/42/427, 2 August 1987, <<http://www.un-documents.net/wced-ocf.htm>> accessed 07/06/2019 (Brundtland Report).

³ United Nations, Plan of Implementation of the World Summit on Sustainable Development A/Conf.199/L.7, 4 September 2002, <https://www.un.org/ga/search/view_doc.asp?symbol=A/CONF.199/L.7&Lang=E> accessed 07/06/2019.

⁴ United Nations, Resolution adopted by the General Assembly: Transforming our world: the 2030 Agenda for Sustainable Development (2015) A/RES/70/1 <http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E> accessed 07/06/2019 (2030 Agenda).

⁵ World Animal Protection, ‘UN incorporate animal protection into 2030 Agenda for Sustainable Development’ (25 September 2015, World Animal Protection) <<https://www.worldanimalprotection.org/news/un-include-animal-protection-2030-agenda-sustainable-development>> accessed 07/06/2019.

⁶ Janet Cox, ‘Sustainable Development Goals and Animal Issues: Preparing for the UN’s High Level Political Forum’ (10 May 2017, World Animal Net) <<http://worldanimal.net/world-animal-net->

[blog/item/439-sustainable-development-goals-and-animal-issues-preparing-for-the-un-s-high-level-political-forum](http://worldanimal.net/world-animal-net-blog/item/439-sustainable-development-goals-and-animal-issues-preparing-for-the-un-s-high-level-political-forum)> accessed 07/06/2019.

⁷ Now called the Farm Animal Welfare Committee. This body advises the UK Government Department for Environment, Food & Rural Affairs (DEFRA).

⁸ Farm Animal Welfare Council, ‘Sustainable agriculture and farm animal welfare’ (2016) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/593479/Advice_about_sustainable_agriculture_and_farm_animal_welfare_-_final_2016.pdf> accessed 07/06/2019

⁹ *Supra*, 3.

¹⁰ Farm Animal Welfare Council, ‘Farm Animal Welfare: Health and Disease’ (2012) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/324616/FAWC_report_on_farm_animal_welfare_-_health_and_disease.pdf> accessed 07/06/2019.

¹¹ Micheal Bowman, Peter Davies and Catherine Redgwell, *Lyster’s International Wildlife Law* (2nd edn, Cambridge University Press, 2010), 678-682.

¹² Appellate Body Report, European Communities - Measures Prohibiting the Importation and Marketing of Seal Products (2014) WT/DS400/AB/R, WT/DS/401/AB/R (EC - Seal Products).

One of the most famous accounts of the impact of livestock on the environment is the report “Livestock’s Long Shadow” by the UN Food and Agriculture Organization.¹³ This report sets out the contribution of livestock farming to land degradation. It also explores the consequences for climate change of carbon and nitrogen emissions from livestock farming, livestock’s impact on water depletion and pollution, and livestock’s significant role in biodiversity loss.

Generally, extremely high productivity in livestock systems is associated with poorer welfare. This is *not*, however, a solution to world hunger.

In order to eradicate world hunger, the 2030 Agenda sets out a target to double the agricultural productivity of small-scale food producers by 2030. This will be particularly significant and impactful in the developing world where the use of intensive livestock farming methods is on the rise.¹⁴ The 2030 Agenda also includes a target to, by 2030, “ensure sustainable food production systems and implement resilient agricultural practices that increase productivity and production, that help maintain ecosystems, that strengthen capacity for adaptation to climate change [etc] ...”

These targets can only be achieved simultaneously if animal welfare-friendly farming techniques are adopted (and promoted through trade and investment policy to tackle a lack of resources in the developing world). If livestock farming progresses in a way concerned only with productivity of the animal, disregarding detrimental welfare impacts associated

with high-intensity farming, production systems could collapse as animals are pushed beyond their biological limits.¹⁵

Further, relying heavily on livestock production in order to tackle food demand is not sustainable. This is because 36 percent of the world’s crop calories are fed to animals but only 12 percent of those calories are returned to humans as meat or milk.¹⁶

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Poor animal welfare does not directly cause environmental harm. Rather, many unsustainable agricultural practices are also damaging to animal welfare. Therefore, pursuing welfare-friendly systems is consistent with pursuing sustainable agriculture.

Failing to protect animal welfare can also be intrinsically unsustainable in itself when one considers the social and ethical implications this entails.¹⁷ It is increasingly recognised that endangering animal welfare is not ethically acceptable and societies across the globe are becoming more vocal in their opposition to this. Unethical development cannot be sustained if it is not deemed acceptable by sizeable groups of consumers and investors. Animal welfare, with its own non-anthropocentric merit, is not yet recognised as essential by sustainable development regimes. Thus, animal welfare must be anchored to other targets in the 2030 Agenda to ensure the benefits of protecting animal welfare for sustainable development will materialise.

¹³ Livestock, Environment and Development (LEAD) Initiative and the UN Food and Agriculture Organization (FAO), ‘Livestock’s Long Shadow: Environmental Issues and Options’ (2006) <<http://www.fao.org/docrep/010/a0701e/a0701e00.HTM>> accessed 07/06/2019.

¹⁴ Danielle Nierenberg, ‘Factory Farming in the Developing World’ (2003) 16(3) World Watch Magazine <<http://www.worldwatch.org/node/534>> accessed 07/06/2019.

¹⁵ John McInerney, ‘Animal Welfare, Economics and Policy: Report on a study undertaken for the Farm & Animal Health

Economics Division of Defra’ (2004, DEFRA) <http://webarchive.nationalarchives.gov.uk/20110318142209/http://www.defra.gov.uk/evidence/economics/foodfarm/reports/documents/animalwelfare.pdf> accessed 07/06/2019, 18.

¹⁶ Cassidy E.M et al, ‘Redefining agricultural yields: from tonnes to people nourished per hectare’ (2013) University of Minnesota Environ Res Lett 8, 1

¹⁷ For more information on this, see Werner Scholtz, ‘Injecting compassion into International Wildlife Law via a Welfare-Centric Ethic. From Compassion to Conservation?’ (2017) 6(3) Transnational Environmental Law 463.

The Sustainable Development Goals and Trade

From 2000 to 2011 the share of (non-least developed) developing countries in global agricultural exports increased from 34 percent to 45 percent.¹⁸ Thus, agriculture's impact on sustainable development is increasingly being determined by farming practices in developing states that do not have the resources, expertise, or (in some cases) motivation to safeguard animal welfare. Animal welfare protection may be improved through cooperation with developed nations through bilateral or regional free trade agreements.

Such agreements must be enacted in compliance with WTO rules. The WTO's founding treaty refers to sustainable development in its preamble.¹⁹ Animal welfare, however, is not explicitly mentioned in any of the WTO agreements. Instead, the WTO's Dispute Settlement Body has set out the parameters for animal welfare protection in trade policy. A number of cases have been decided concerning conservation measures with impacts on animal welfare.²⁰ Only the *EC – Seal Products* case has directly tackled the issue of animal welfare. This case permits trade restrictions based on public moral concern for animal welfare.²¹

Developed countries may use access to their markets as leverage to encourage improvement of animal welfare in a developing country. This would ultimately benefit the developing country by increasing the attractiveness of their exports to countries that value

animal welfare. It also allows the developing country to receive technical assistance from developed countries that have established effective animal welfare regulations, thus enabling sustainable and animal welfare-conscious development.

There is merit in other approaches, but they have associated problems: WTO agreements between all 164 members (negotiations are stalled), unilateral measures (less cooperative), and international or private standards (non-binding).

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The Association Agreement between the EU and Chile²² proves the potential effectiveness of the bilateral approach.²³ Amongst other things, the agreement sets up a Joint Management Committee to oversee harmonisation of animal welfare measures applicable to trade between the parties. The unit coordinator for the Chilean Ministry of Agriculture has said that this was an example of a “successful modus operandi” and that this has helped to highlight the

¹⁸ International Centre for Trade and Sustainable Development and World Economic Forum, 'Agriculture and Food Security: New Challenges and Options for International Policy' (2016) <https://www.ictsd.org/sites/default/files/research/WEF_Agriculture_and_Food_Security_POP.pdf>, 10.

¹⁹ Marrakesh Agreement Establishing the World Trade Organization (15 April 1994) LT/UR/A/2 <<http://docsonline.wto.org>> (WTO Agreement).

²⁰ Panel Report, United States - Import Prohibition of Certain Shrimp and Shrimp Products (1998) WT/DS58/R (US - Shrimp) Appellate Body Report, United States - Import Prohibition of Certain Shrimp and Shrimp Products (1998) WT/DS58/AB/R (US - Shrimp)

Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products – Recourse to Article 21.5 of the DSU by Malaysia (2001) WT/DS58/AB/R (US - Shrimp (Article 21.5 - Malaysia))

Panel Report, United States - Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (2011) WT/DS381/R

Appellate Body Report, United States - Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (2012) WT/DS381/AB/R

GATT Panel Report, United States - Restrictions on Imports of Tuna (unadopted, 1992) GATT BISD 39S

GATT Panel Report, United States - Restrictions on Imports of Tuna (unadopted, 1994) DS 29/R

²¹ For more information regarding the bounds of what is possible under WTO law, Iyan I.H. Offor and Jan Walter, 'GATT Article XX(a) Permits Otherwise Trade-Restrictive Animal Welfare Measures' (2017) 12(4) *Global Trade and Customs Journal* 158.

²² Chile was classed as a developing country when this agreement was first implemented but has now been promoted to developed country status.

²³ Agreement establishing an association between the European Community and its Member States, of the one part, and the Republic of Chile, of the other part (30 December 2002) OJ L 352/3.



“added value of animal welfare to livestock production.”²⁴

However, bilateral agreements can also cause problems for animal welfare if low welfare imports undermine domestic animal welfare standards. The availability of imports that do not safeguard animal welfare can also cause a chilling effect on domestic legislation, thus harming sustainable development.²⁵

For example, the EU has banned non-enriched battery cage egg farming since 2012.²⁶ However, the EU has now significantly increased imports of battery-farmed

eggs from Ukraine.²⁷ Shockingly, the EU has exported old battery cages to Ukraine to be used in battery-farming of laying hens.²⁸ For these reasons, it may be appropriate to restrict trade in certain circumstances to ensure effective animal welfare protection in pursuit of sustainable development.²⁹

Conclusion

Trade is essential to the implementation of the Sustainable Development Goals and it should be thoughtfully regulated with regard to animal welfare. This will prove particularly beneficial in overcoming a

²⁴ Cédric Cabanne, ‘The EU-Chile association agreement: A booster for animal welfare’ (2013, BioRes 7(1)) <<https://www.ictsd.org/bridges-news/biores/news/the-eu-chile-association-agreement-a-booster-for-animal-welfare>> accessed 07/06/2019.

²⁵ See Iyan Ofor, ‘The Chilling Effect of the World Trade Organisation on European Union Animal Welfare Protection’ (LLM Thesis, The University of Aberdeen 2017) and Iyan Ofor, ‘Chilling Effect of Trade on Animal Welfare’ (2017, Eurogroup for Animals) <<http://www.eurogroupforanimals.org/chilling-effect-trade-animal-welfare>> accessed 15/10/2017.

²⁶ Council Directive 99/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens [1999] OJ L203/53 (Laying Hens Directive), Art 5(2).

²⁷ This is in part due to the trade liberalisation entailed in the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (29 May 2014) OJ L 161/3.

²⁸ Iyan Ofor, ‘EU-Ukraine Trade and Animal Welfare’ (2017, Eurogroup for Animals) <<http://www.eurogroupforanimals.org/wp-content/uploads/EU-Ukraine-Trade-Animal-Welfare-Report-1.pdf>> accessed 07/06/2019.

²⁹ This must be done in accordance with the appropriate trade liberalisation and non-discrimination rules of the WTO, primarily found in the General Agreement on Tariffs and Trade (15 April 1994) LT/UR/A-1A/1/GATT/1 <<http://docsonline.wto.org>> (GATT), Arts I, III, XI, XX and XXIV.

lack of resources to protect animal welfare in developing countries. Especially as developing countries become increasingly significant in efforts to improve sustainable agriculture.