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Caught in a Trap: The European Union Leghold Trap Debate

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In 1991, the European Union (EU) Council of Ministers¹ passed a regulation² concerning traps used to catch wild animals.³ The regulation prohibits persons in EU nations from using leghold traps⁴ or trapping methods that do not meet "internationally agreed humane trapping standards."⁵ Annex i of the regulation lists the animal species included in the prohibition.⁶ The regulation also bans the importation of pelts and

1. The institutions of the European Community include the Council of Ministers, the European Parliament (which has the power to recommend laws and limited power to amend or veto Council legislation), the Commission (which creates "bills" submitted to the Council) and the Court of Justice (which interprets EU law). DAVID MEDHURST, *A BRIEF AND PRACTICAL GUIDE TO EC LAW* 17 (2d ed. 1994). The Council, as a legislative body, considers bills proposed by the Commission. *Id.* Decisions require a qualified majority of the Council for passage which means that each member country has a weighted vote (e.g., the United Kingdom has a weighted score of 10 and Belgium has a weighted score of 5). *Id.* at 18.

2. A regulation can be passed either by the Council or the Commission. *Id.* at 19. Unlike directives, which allow each member state to enact the law as it sees fit, regulations are binding and directly applicable to each of the member states of the EU. *Id.* at 22.

3. Council Regulation 3254/91 Prohibiting the Use of Leghold Traps in the Community and the Introduction Into the Community of Pelts and Manufactured Goods of Certain Wild Animal Species Originating in Countries Which Catch Them By Means of Leghold Traps or Trapping Methods which Do Not Meet International Humane Trapping Standards, 1991 O.J. (L 308) 1 [hereinafter Regulation].

4. The regulation defines "leghold trap" as a "device designed to restrain or capture an animal by means of jaws which close tightly upon one or more of the animal's limbs, thereby preventing withdrawal of the limb or limbs from the trap." *Id.* at art. 1.

5. *Id.* at annex i.

6. Annex i of the regulation lists the following species to which the regulation applies: beaver, otter, coyote, wolf, lynx, bobcat, sable, raccoon, musk rat, fisher, badger, marten and ermine. *Id.*

Members of the fur industry note that the fox and the mink are two animals curiously missing from the list of protected animals. Bud Jorgenson, *Kohl Stroked on Fur Trade: Canada's Soft-Sell Approach Differs from U.S. Sanctions First, Dialogue Last, Attitude*, FIN. POST, June 20, 1995, at 1. European trap-

other goods⁷ originating in countries that allow the animals to be caught by means of "leghold traps or trapping methods which do not meet international humane trapping standards."⁸ If a country allows either the use of leghold traps or "trapping methods which do not meet international humane trapping standards," that country cannot export *any* fur into the EU.⁹

January 1, 1995, was the designated date of the regulation's implementation.¹⁰ By July of 1994, however, the EU Commission decided that the development of international humane trapping standards would not be completed until late 1995.¹¹ Therefore, the Commission enacted a regulation postponing the effective date of the regulation until January 1, 1996.¹²

In late 1995, the EU Commission unanimously voted to further postpone the effective date of the regulation for another year until January 1, 1997.¹³ The EU Parliament, however, is opposed to any further postponement of the regulation and wants it enforced immediately.¹⁴

In this controversy, the EU Commission claims it has authority to delay the implementation of the leghold trap regula-

pers trap these animals extensively for their fur and are not subject to the ban. *Id.*

7. Annex ii defines "other goods" as: "other raw hides and skins (fresh, or salted, dried, limed, pickled or otherwise preserved, but not tanned, parchment-dressed or further prepared), whether or not dehaired or split, other than those excluded by note 1(b) or 1(c) to chapter 41"; raw furskins (whole with or without head and including heads, tails, paws or other pieces or cuttings) assembled and unassembled; and "articles of apparel, clothing accessories and other articles of furskin." Regulation, *supra* note 3, annex ii.

8. Regulation, *supra* note 3. The regulation states that "the abolition of the leghold trap will have a positive effect on the conservation status of threatened or endangered species of wild fauna both within and outside the community." *Id.*

9. *Id.*

10. *Id.*

11. The International Standardization Organization (ISO) is the international body which is attempting to develop the standards. *Fur Flies Over European Pelt Ban EC*, NEW SCIENTIST, Apr. 13, 1996, available in WESTLAW, EURONEWS database.

12. Commission Regulation 1771/94 Laying Down Provisions on the Introduction Into the Community of Pelts and Manufactured Goods of Certain Wild Animal Species, 1994 O.J. (L 184).

13. Danny Penman, *Americans Oppose EU Fur Ban*, LONDON INDEPENDENT, Dec. 15, 1995, at 4.

14. *Id.* The European Parliament voted to oppose the EU Commission action by a vote of 262-46. *Id.* On June 19, 1996, the Parliament, by a vote of 407-33, demanded immediate implementation of the EU ban. *Vote in European Parliament Could Renew Dispute Over Fur*, 13 Int'l Trade Rep. (BNA), No. 26, at 1066 (June 26, 1996).

tion because it is a trade matter and therefore within its jurisdiction.¹⁵ The EU Parliament, on the other hand, claims that the leghold trap regulation is an environmental matter and thus falls under its jurisdiction.¹⁶ If this dispute is not resolved, it will ultimately be heard by the European Court of Justice.¹⁷

Contrary to the EU Commission's Decision, the Netherlands announced that it will not abide by the Commission's postponement and stated that the leghold trap ban became effective within its territories as of January 1, 1996.¹⁸ It is unclear at this time whether other European countries will feel forced to "take matters into their own hands" over the leghold trap issue given the numerous implementation delays.

Conflict over the EU leghold trap ban has existed since the EU Commission first proposed the regulation in 1991. Animal activist groups support the ban, arguing it prevents cruelty to animals. The world fur industry, including aboriginal tribes who trap animals, as well as free trade supporters, believe the ban contravenes the General Agreement on Tariffs and Trade (GATT) as a discriminatory restriction on trade.¹⁹

Part I of this Note examines leghold traps, explains the impetus behind the proposed EU leghold trap regulation, and describes the rationale of the interest groups supporting the leghold trap ban. Part II explores the rationales of the groups opposing the ban. Part III discusses WTO/GATT involvement and explores step-by-step how a WTO/GATT dispute panel may address the leghold trap issue. Part IV discusses possible alternative solutions to a leghold trap dispute panel and alternative measures which are GATT-compatible. Part V concludes that a solution acceptable to all parties is unlikely to be found.

I. INTEREST GROUPS SUPPORTING THE EU LEGHOLD TRAP REGULATION

Leghold traps are steel traps consisting of a powerful spring "jaw" which fur trappers open into a circle and set in the wild.²⁰

15. Penman, *supra* note 13.

16. *Id.*

17. *Id.*

18. *Fur Imports Banned*, MONTREAL GAZETTE, Jan. 12, 1996, at B1.

19. General Agreement on Tariffs and Trade, *opened for signature* Oct. 30, 1947, 61 Stat. pts. 5, 6, T.I.A.S. 1700, 55 U.N.T.S. 188 [hereinafter GATT]. See *Pressure Mounts on EU over Planned Fur Imports Ban*, ENVTL. WATCH W. EUR., Oct. 7, 1994, available in WESTLAW, EWWE database.

20. KEITH E. JACKSON, ILL. LEGISLATIVE COUNCIL, LEG-HOLD TRAP LEGISLATION: U.S. AND OTHER COUNTRIES, RESEARCH MEMORANDUM FILE 9-295 (Sept.

The trappers place bait within the steel circle. When an unsuspecting animal happens upon the trap, the steel spring activates and the trap closes on the animal.²¹ Often the trap only catches the animal by a limb and does not kill it immediately. These trapped animals die painfully from exposure, shock, thirst or loss of blood.²² A study of the Canadian fur industry revealed that in 1986-1987 4.85 million animals were caught in leghold traps and an estimated 600,000 "chewed off their own limbs in desperate attempts to escape."²³

Given the high probability of animal suffering, most animal activists condemn the use of leghold traps.²⁴ As early as 1863, British naturalist Charles Darwin spoke out against these traps, stating that they are "a system which consigns animals to acute agony, probably of eight to ten hours duration before it is ended by death."²⁵ Modern animal activists argue that "leghold traps inflict unnecessary pain and anxiety on animals, both physically and mentally."²⁶ These activists claim that many fur trappers are negligent in checking traps on a regular basis and trapped animals often spend days in needless agony as a result.²⁷ Activists also argue that even animals in frequently monitored leghold traps unduly suffer the severe pain of broken skin and crushed bones.²⁸ As a result of this widespread opinion against leghold traps, at least five states in the United States now ban these traps, and several other states restrict the size of

20, 1982). "Steel jaw leghold traps were invented in the 1820s. . . . Approximately 50 models of leghold traps are available. They differ in their quickness, strength, concealment, weight, and jaw characteristics, with different versions designed for capturing different animals." M. LYNNE CORN, CONG. RESEARCH SERVICE, *THE STEEL JAW LEGHOLD TRAP: ISSUES AND CONCERNS*, 93-356 ENR 3 (1993).

21. CORN, *supra* note 20.

22. CANADIAN ASSOCIATION FOR HUMANE TRAPPING, TRAPPING AND CANADA'S FURBEARERS (1983).

23. *Animal Welfare Groups Campaign Furiously for Fur Ban*, Eur. Info. Service, July 19, 1995, available in WESTLAW, EURONEWS database. "In order to hold the animal securely [in a leghold trap], substantial pressure must be kept on the captured leg. Frantic efforts to escape the torment and stress of capture cause further injury by tearing tendons and other tissue." ANIMAL PROTECTION INSTITUTE OF AMERICA, *THE LEGHOLD TRAP: HARVESTER OF TORMENT* (n.d.).

24. CORN, *supra* note 20, at 2.

25. *Animal Welfare Groups Campaign Furiously for Fur Ban*, *supra* note 23.

26. CORN, *supra* note 20, at 2.

27. *Id.*

28. *Id.* at 3.

leghold traps allowed.²⁹ More than sixty countries worldwide also ban the use of leghold traps within their borders.³⁰

Numerous animal welfare³¹, animal rights³² and anti-fur associations³³ support the EU leghold trap regulation.³⁴ These associations argue that the EU regulation should take effect immediately. They contend the use of leghold traps is indefensible since more humane traps are available for hunters to use.³⁵

Animal activist groups also note that despite eight years of effort, the International Standardization Organization (ISO)³⁶ has failed to define "humane" trapping standards.³⁷ These

29. CORN, *supra* note 20, at 6. The five states which have a limited ban on leghold traps are Florida, Massachusetts, New Jersey, Rhode Island and South Carolina. *Id.* at 2. Bans in these states only allow the use of leghold traps "by property owners or in situations involving health hazards, destructive furbearers, or other 'animal problems'." *Id.* Thirty-six other states have restrictions on leghold traps prohibiting trapping in certain areas (e.g., near a residence); requiring trappers to check set leghold traps periodically, ranging from 24 to 96 hours; requiring the trappers' name and address to be on every set leghold trap and limiting the number of leghold traps an individual trapper can set. *Id.* at 4-5. Some states also limit the use of steel "teeth" on leghold traps. *Id.* at 5. In addition, Massachusetts had a complete leghold trap ban initiative on its ballot in the 1996 general election. *Massachusetts Groups Seek Ban on Animal Traps*, BANGOR DAILY NEWS, Dec. 26, 1995, available in WESTLAW, BANGDRON database.

30. CORN, *supra* note 20, at 5. For instance, 24 countries in Africa ban the leghold trap (19 of these 24 countries ban *all* trapping). JACKSON, *supra* note 20, at 8. Other countries which have total bans on leghold traps include Brazil, Costa Rica, India, Israel and 11 countries in Europe. *Id.* at 9. In addition, such countries as France, Italy, and three states within Australia have limited bans on leghold traps. *Id.*

31. Animal welfare groups have been defined as groups which "strive to legislate humane and ethical treatment of both wild and domesticated animals." CORN, *supra* note 20, at 3 n.6.

32. Animal rights groups not only share many of the same beliefs as animal welfare groups, but also "oppose any nonessential human use of animals." *Id.*

33. Anti-fur groups believe that animals should not be raised or trapped for the eventual purpose of using their fur as a garment. Phillip J. O'Connor & Jim Casey, *Anti-Fur Group Admits Arson*, CHICAGO SUN-TIMES, Nov. 30, 1993. One commentator argues that "removing animals from a population interrupts the social structure, resulting in more movement among survivors and increased ranging for mates," resulting in "predation of livestock" and the spread of disease. Michael Markarian, Editorial, *Our Ecosystem Can Get By Quite Nicely Without Trappers, Thank You*, WASH. TIMES, Feb. 11, 1995, at D2.

34. Among those groups which have voiced support for the EU leghold trap regulation include the Eurogroup for Animal Welfare, the International Fund for Animal Welfare and the World Society for the Protection of Animals. *Animal Welfare Groups Campaign Furiously For Fur Ban*, *supra* note 23.

35. *Id.*

36. *See supra* note 11.

37. *Id.* The ISO has also decided to exclude the words "without cruelty" from the trapping standards. *Britain Under Flak For Delays In Fur Import*

groups argue that such prolonged equivocation proves there is no "humane" way to trap and kill an animal.³⁸ The Scientific Veterinary Committee, which advises the European Commission, believes the ISO will inadequately define "humane" and erroneously legitimize many inhumane traps.³⁹ In addition, animal activist groups claim that the ISO is a "technical" group only concerned with "efficiency, not ethics."⁴⁰ Opponents of the ISO also assert that the experts who serve on the "humane" trap committee are members of the fur trade, i.e. trappers/hunter organizations.⁴¹

Finally, animal activist groups are concerned that further delay of the EU regulation could "be used as a toehold toward undermining current environmental, conservation, or animal protection laws . . . in contravention of prior assurances that no such use of [GATT] would be made."⁴² Environmentalists argue that increased participation is needed by all environmental groups in creating trade policies since "[t]oo often agencies responsible for foreign policy have clear priorities (for example, diplomatic relations, balance of trade, or the promotion of U.S. goods and services) that supersede environmental objectives."⁴³ Legislatures thus often develop trade policies with an eye towards increased trade volume at the expense of environmental concerns.⁴⁴ Ultimately, animal activists fear that important environmental objectives, such as preventing the undue suffering of animals at the hands of trappers, will be brushed aside by the powerful voices of the groups opposed to the regulation.

Ban, Eur. Info. Service, July 5, 1995, available in WESTLAW, EURONEWS database. Many supporters of the leghold trap ban say that this shows that it is impossible to trap at all "without cruelty." *Id.*

38. *Id.*

39. *Id.*

40. *ISO Not Competent to Judge the Cruelty of Traps, Say Lobby Groups*, Eur. Info. Service, Jan. 19, 1994, available in WESTLAW, EURONEWS database.

41. *Id.*

42. 12 Int'l Trade Rep. (BNA), No. 20, at 876 (May 17, 1995). The Humane Society of the United States authored the letter along with 21 environmental and animal welfare groups voicing their concerns. *Id.*

43. Frona M. Powell, *Environmental Protection In International Trade Agreements: The Role of Public Participation in the Aftermath Of the NAFTA*, 6 COLO. J. INT'L ENVTL. L. & POL'Y 109, 125 (1995).

44. *Id.*

II. OPPONENTS OF THE EU LEGHOLD TRAP REGULATION

Members of the fur industry, major fur-exporting countries, aboriginal tribes, and free trade supporters oppose the EU leghold trap regulation.⁴⁵ These groups claim the EU leghold trap regulation will devastate the fur industry and those who depend on it for their livelihood, in contravention of free trade principles.

A. THE FUR INDUSTRY AND MAJOR FUR EXPORTING COUNTRIES

Major fur exporting countries include Canada, the United States and Russia.⁴⁶ In addition, many Asian countries import raw fur pelts from these countries, turn the pelts into garments, and export the finished garments to the EU.⁴⁷ These countries allow at least limited use of leghold traps and claim that their fur exports would severely decline by implementing the EU regulation.⁴⁸

Canada and the United States are openly opposed to the EU leghold trap ban and have vowed to fight its implementation.⁴⁹ Canada has threatened to bring an action under the General Agreement on Tariffs and Trade (GATT).⁵⁰ The United States has stated that it will support such action in the newly created World Trade Organization (WTO).⁵¹ In addition, the United States may take separate action under Section 301 of the Trade

45. *Pressure Mounts On EU Over Planned Fur Imports Ban*, ENVTL. WATCH W. EUR., available in WESTLAW, EWWE database.

46. *Id.*

47. *Id.*

48. See *supra* notes 4-9 and accompanying text (explaining the regulation).

49. *U.S. Fur Industry Readies Petition Against EU Over Ban on Fur Imports*, 12 Int'l Trade Rep. (BNA), No. 37, at 1575 (Sept. 20, 1995).

50. GATT, *supra* note 19.

51. *U.S. Fur Industry Readies Petition Against EU Over Ban on Fur Imports*, *supra* note 49, at 1575. The WTO is a new organization which came into being January 1, 1995 as a result of the Uruguay Round, the latest round of international trade negotiations under the GATT.

The GATT is a multilateral agreement with a common goal of reducing trade barriers and restrictions among the member countries. See GATT, *supra* note 19, pmb. & art. I. This reduction of trade barriers addresses both tariff and non-tariff restrictions to trade. *Id.* arts. II, III & XI.

Even if Canada requests a dispute panel from the WTO, the process will be long; some say at least nine months. Jorgenson, *supra* note 6, at 1. Therefore, if the ban does go into effect before a WTO/GATT panel has heard the dispute, the fur industry will be hurt for many months before the issue is even decided.

Act of 1974⁵² and impose trade sanctions independently against the EU.⁵³

Canada and the United States argue that the EU leghold trap ban would have a serious negative impact on their economies. The fur trade industry in Canada is particularly large. In 1994, fur and furskin goods exported from Canada totaled Canadian \$194 million.⁵⁴ Canada exports approximately 75% of its fur to the EU.⁵⁵ The Canadian fur industry employs approximately 100,000 people.⁵⁶ In 1983, the "fur industry contribute[d] about [Canadian] \$600 million to the Canadian GNP."⁵⁷ United States figures are equally impressive. An EU leghold trap ban would cost "U.S. businesses more than \$4 billion a year and result in the loss of more than 200,000 American jobs."⁵⁸

Fur trappers oppose the ban citing a lack of adequate alternative traps.⁵⁹ Trappers claim that the leghold trap is the most effective, versatile and reliable trap available and therefore the least expensive to use.⁶⁰ In addition, alternative traps, like the Quick-kill trap which instantly kills the animal by "deliver[ing] a lethal blow to the animal's vertebrae or skull" with two steel scissor-like rectangles, are a more dangerous threat to non-target pets and children.⁶¹ Fur trappers contend the leghold trap is a necessity of the industry because of the unavailability of a safe, effective and cost-efficient alternative. They argue that a

52. Trade Act of 1974, 19 U.S.C. §§ 2253, 2411, 2415 (Supp. V 1975) (current version at 19 U.S.C. §§ 2101-2487 (1994)). The Trade Act of 1974 provides for trade sanctions against countries engaged in unfair trade practices. *Id.*

53. *U.S. Fur Industry Readies Petition Against EU Over Ban*, *supra* note 49. The Fur Information Council, the International Association of Fish and Wildlife Agencies, the National Trappers Association and the Fur Merchants Association will soon file a petition under Section 301 asking the United States to instigate trade sanctions against the EU. *Id.* at 1574.

54. Jorgenson, *supra* note 6.

55. Helen Branswell, *Canadians Take Message to Europeans That Trapping is Humane*, EDMONTON J., Sept. 30, 1996, at A12.

56. Jorgenson, *supra* note 6. About 85,000 of these people are trappers while the remaining 15,000 are in the fur processing and garment industries. *Id.*

57. CANADIAN ASSOCIATION FOR HUMANE TRAPPING, *supra* note 22.

58. *An Embargo on American Fur Products*, 12 Int'l Trade Rep. (BNA), No. 21, at 911 (May 24, 1995).

59. *See U.S. Fur Industry Readies Petition Against EU Over Ban On Fur Imports*, *supra* note 49.

60. CORN, *supra* note 20, at 2. For instance, the Aldrich legsnare trap, developed in 1962, and the Novak legsnare, developed in the 1970s, provide a more humane way to kill an animal; however, trappers consider such traps ineffective. *Id.* at 4-5.

61. *Id.* at 3.

complete ban on the use of the leghold trap would devastate the fur industry.

B. ABORIGINAL TRIBES

Aboriginal tribes would be severely affected by a EU leghold trap regulation. Such tribes commonly use leghold traps to capture animals sold for fur.⁶² The Native Canadian tribes of Cree and Inuit claim that their entire way of life will be irreparably harmed by the EU leghold trap regulation.⁶³

For many aboriginal tribe members, trapping is more than a cultural activity; it is a significant source of income. Many aboriginals involved in the fur industry have no transferable skills to begin a new career.⁶⁴ Thus, a ban on leghold traps will have an effect similar to that felt by Aboriginal Canadians when an EU whitecoat seal ban went into effect in the mid-1980s.⁶⁵ As a result of that ban, the combined income of Northwest Territories seal hunters fell from Canadian \$900,000 in 1981 to

62. *Brittan Under Flak For Delays in Fur Import Ban*, *supra* note 37.

63. Rosemarie Kuptana, newly elected President of the Inuit Circumpolar Conference (ICC), has stated that the ICC will formally protest the EU regulation to the EU Parliament. *Inuit Name Canadian Leader as New President*, Associated Press Political Service, July 31, 1995, available in WESTLAW, ALLNEWS database. The ICC is the international organization of Inuit, representing Inuit people in Alaska, Canada, Greenland and Russia. *Id.* In Canada, the majority of the Inuit live in the eastern Arctic region of the Northwest Territories. Groups of Inuit also live along the coastlines of Quebec and Labrador. John Bissonnette, *Canada's Aboriginal Peoples*, 23 CAN. TODAY/D'AUJOURD'HUI 1 (1993). Approximately 45,000 Inuit live in Canada, totaling 1/4 of the world's Inuit population. *Id.*

In 1991, an estimated one million persons belonged to the Aboriginal population of Canada, including Indians, Inuit and Metis. *Id.*

Aboriginal Canadians already face grim news regarding the fur industry. In 1993, the value of wild fur pelts in Canada dropped 63%. Cynthia Osterman, *Trappers Harvest Slim Profits*, CALGARY HERALD, Jan. 19, 1995, at D6.

64. Anita Christoff, Editorial, *Fur Protest Brings Destitution to Natives*, CALGARY HERALD, Sept. 20, 1994, at A5. Northwest Territories' Dene national chief Bill Erasmus, who holds the Assembly of First Nations' wild fur issue portfolio, has stated:

The impact of the anti-fur movement has been enormous. Our people are destitute. Just over a short number of years a tremendous culture shock has been forced upon them. Some of our people can't speak English as well as they'd like to; western ways are completely alien to them. They were equipped to live off the land, but now have lost their livelihoods. They're lost when they go into town. Many people don't understand and expect them to instantly amalgamate into Canadian society.

Id.

65. *Id.*

\$17,000 in 1989.⁶⁶ The leghold trap regulation would be the second piece of EU legislation to have a direct negative impact on Canadian native tribes.⁶⁷ Given the available data on the widespread economic loss felt by Canadian Aboriginals as a result of the EU whitecoat seal ban, it is not an exaggeration to predict that a leghold trap ban could result in economic devastation to large groups of aboriginal tribes.

Supporters claim that aboriginal fur trappers are “scrambling” to comply with the potential EU regulations. Buying alternative types of traps and learning to use them “is difficult for the financially strapped trappers.”⁶⁸ Placing overwhelming importance on the painless killing of animals may ignore the serious plight of aboriginal tribes.⁶⁹ One commentator has stated that “[i]f too many more people begin believing that animals are more important than humans, then Canada will literally go to the dogs.”⁷⁰

At the 1992 *United Nations Conference on Environment and Development*, member nations adopted a declaration which stated as its first principle: “[h]uman beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.”⁷¹ This statement concentrates on the health and life of humans, relegating nature to a secondary role.⁷² Supporters of aboriginal tribes state that allowing the EU regulation to go into effect would ignore this principle.⁷³ Furthermore, aboriginal tribes trap animals which are plentiful. Thus, they have the role of “watching over the wilderness and monitoring animal populations.”⁷⁴ Therefore, focusing on the interests of aboriginal tribes does not necessarily neglect environmental concerns.⁷⁵ Aboriginal tribes “obviously have a direct interest in protecting wildlife habitat and are very conscious of keeping balance in nature.”⁷⁶

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. United Nations Conference on Environment and Development: Rio Declaration on Environment and Development, 31 I.L.M. 874, 876 (1992).

72. *Id.*

73. See Christoff, *supra* note 64.

74. *Id.*

75. *Id.*

76. *Id.* (quoting Linda Lundstrom, Canadian designer).

In the Inuit culture, “[a] hunter who abuses or who fails to show respect to the animals he takes will not be successful in the hunt. Failure in the hunt is failure in life.” Nancy Doubleday, *Aboriginal Subsistence Whaling: The Right*

Similar concern for the needs of aboriginal tribes occurred as a result of international whaling regulations implemented in 1946.⁷⁷ The international whaling restrictions excepted certain species of whales hunted by aboriginal tribes in order to avoid destroying the tribes' livelihood.⁷⁸ Thus, the whaling treaty recognized "that a human right to cultural heritage may conflict with an animal species' right to survival."⁷⁹ The aboriginal exception to the whaling restrictions recognized the need to sustain the culture of aboriginal tribes.⁸⁰

In recent years, many world organizations have voiced their support for indigenous persons' rights. Trade regulations affecting aboriginal persons adopted by countries without aboriginal input conflict with this growing support.⁸¹ The United Nations' Study of the Problem of Discrimination Against Indigenous Populations states that the aboriginal right to self-determination is "linked to a number of rights whose recognition [wa]s vital to the survival of an indigenous population, such as the right to develop its own culture, its own language, its own traditions and its own way of life."⁸² The EU leghold trap regulation may be an infringement of this right.

of Inuit to Hunt Whales and Implications for International Environmental Law, 17 DENV. J. INT'L L. & POL'Y 373, 391 (1989).

77. Stephen M. Hankins, Comment, *The United States' Abuse of the Aboriginal Whaling Exception: A Contradiction in United States Policy and a Dangerous Precedent for the Whale*, 24 U.C. DAVIS L. REV. 489, 493 (1990). The International Convention for the Regulation of Whaling (1946 Convention) was a treaty signed by 15 major world nations and addressed restrictions on whaling activities. *Id.* at 490-91.

78. *Id.* at 493-94. In addition, recent debate has focused on Norway's resumption of commercial whaling. Clay Erik Hawes, *Norwegian Whaling and the Pelly Amendment: A Misguided Attempt at Conservation*, 3 MINN. J. GLOBAL TRADE 97 (1994). Norway has argued that "whaling is an important means of livelihood for Norway's small coastal communities" and although the whaling industry is not of great economic importance to Norway per se, "it is of great importance to the families and local communities involved." *Id.* at 112-13.

79. Hankins, *supra* note 77, at 529.

80. *Id.* *But see id.* at 522 (theorizing that the United States used the aboriginal whaling exception for its own economic and political advantages).

81. Maureen Davies, *Aboriginal Rights in International Law: Human Rights, in ABORIGINAL PEOPLES AND THE LAW: INDIAN, METIS AND INUIT RIGHTS IN CANADA* 745 (Bradford W. Morse ed., 1989).

82. *Id.* at 756. *But cf.* Hankins, *supra* note 77, at 522 (arguing that by allowing exceptions based on "cultural dependence" on the whale by aboriginal tribes sets a precedent for other nations to argue "cultural dependence" and gain an exception).

C. FREE TRADE SUPPORTERS

Free trade supporters oppose the ban and align themselves with the fur industry and aboriginal trappers. They contend the EU leghold trap ban hinders the free movement of goods and restricts access to foreign markets.⁸³

Despite the fact that EU trappers must also observe the leghold trap ban, non-EU countries face an undue burden and discrimination. For trappers to sell *any* fur to the EU, *all* leghold trap use must be banned within a country.⁸⁴ This is true even for leghold traps used on animals whose fur is not destined for the EU. Therefore, in order to sell fur to the EU, a trapper must quit all leghold trapping even if the versatile, cost-efficient leghold trap could be used for sales of fur within his home country. This may force the cost of fur to rise not only in the EU but in every market since less cost-efficient traps must be used 100% of the time.⁸⁵ Many argue that, in effect, the result is "the imposition on its trading partners of the EU's views of public morals" at an economic cost to all societies involved.⁸⁶ Domestic fur purchasers could face higher prices as a result of the EU's view of what is and is not acceptable.

Canada and the United States have threatened retaliation against the EU if the leghold trap regulation is implemented. The most likely course of action is a GATT complaint against the EU by Canada, with the support of the United States.

III. WTO/GATT DISPUTE PANEL ACTION CONCERNING THE LEGHOLD TRAP REGULATION: ONE POSSIBLE ANALYSIS

A. THE ARGUMENTS

If Canada files a complaint with the WTO, it could argue that the EU leghold trap regulation is a violation of GATT Arti-

83. Alexandra Haner, *Will the European Union Packaging Directive Reconcile Trade and the Environment?*, 18 *FORDHAM INT'L L.J.* 2187 (1995). In addition, many developing countries claim that environmental regulations are only protectionism and "are designed to increase manufacturing costs, thereby restricting their access to the markets of developed countries." *Id.* at 2191.

84. Regulation, *supra* note 3.

85. A similar incident was at issue concerning the beef hormone dispute between the United States and the EU. The prohibition of hormone-treated beef imports to the EU could have resulted in an increase in beef prices domestically.

86. *EU Taken to Task in Meeting of Trade Policy Committee*, 12 *Int'l Trade Rep. (BNA)*, No. 30, Aug. 2, 1995 (quoting Chris Marcich of the Office of the U.S. Trade Representative).

cle XI's prohibition of the imposition of "quantitative restrictions" on imports into a country or trade area.⁸⁷ The argument would be that prohibiting importation of *any* fur from a country which allows leghold traps is a quantitative restriction imposed by the EU.

A similar and relevant dispute, concerning tuna fishing, was addressed by two past GATT dispute panels which are usually referred to as TUNA I⁸⁸ and TUNA II⁸⁹. TUNA I and II involved, respectively, the 1991 allegation by Mexico, and the 1994 allegation by the EU and the Netherlands, that the United States' Marine Mammal Protection Act violated the GATT.⁹⁰ Similar to the EU leghold trap regulation, the Marine Mammal Protection Act restricted the importation of *all* yellowfin tuna into the United States from countries that allowed their fishing industry to catch tuna using methods which resulted in high dolphin mortality rates.⁹¹

B. THE FINDINGS OF TUNA I AND II

Both the TUNA I and II panels concluded that neither Article III nor the Article XX exceptions applied and therefore, the

87. Article XI of GATT provides that:

No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

GATT, *supra* note 19, art. XI.

88. GATT Dispute Settlement Panel Report on United States Restrictions on Imports of Tuna, BISD 39th Supp. 155 (1991), *reprinted in* 30 I.L.M. 1594 (1991) [hereinafter TUNA I].

89. GATT Dispute Settlement Panel Report on United States Restrictions on Imports of Tuna, 33 I.L.M. 839 (1994) [hereinafter TUNA II].

90. The Marine Mammal Protection Act (MMPA) protects "certain species and population stocks of marine animals [that] are, or may be, in danger of extinction or depletion as a result of man's activities." 16 U.S.C.A. § 1361 (1988). Mexico argued that the disputed restriction was a quantitative restriction in violation of Article XI of GATT, and the United States argued it was an internal restriction allowed by Article III of GATT. Thomas E. Skilton, *GATT and the Environment in Conflict: The Tuna-Dolphin Dispute and the Quest for an International Conservation Strategy*, 26 CORNELL INT'L L.J. 455, 468 (1993).

91. Commercial fishboats in many countries used a method known as "setting on dolphins". Paul J. Yechout, *In the Wake of Tuna II: New Possibilities for GATT-compliant Environmental Standards*, 5 MINN. J. GLOBAL TRADE 247, 249 (1996). The boats would locate schools of yellowfin tuna by finding schools of dolphins. *Id.* The fishermen would then encircle the dolphins with a purse seine net, in which inevitably many dolphin would become entangled and eventually die. *Id.*

tuna embargo violated the quantitative restrictions of Article XI.⁹² The TUNA I panel concluded that the tuna ban related to a method or process by which tuna was caught outside of the United States and was therefore outside the scope of internal regulation allowed by GATT.⁹³

C. A STEP-BY-STEP ANALYSIS OF THE GATT PANEL FINDINGS
IN TUNA I AND II

1. The Article XI Argument: Quantitative Restrictions

The TUNA I and II panels concluded that the tuna embargo could not be considered “duties, taxes or other charges” allowed under GATT, and therefore was a quantitative restriction in violation of Article XI.⁹⁴ Since the EU leghold trap regulation is a quantitative-type restriction (i.e. no fur can be imported into the EU if the exporting country allows leghold traps), a dispute panel, following TUNA I and II, could find that the EU regulation also violates Article XI of GATT.

2. The Article III Argument: National Treatment

In response to Mexico’s argument that the tuna restriction violated Article XI, the United States argued that the restriction was allowable under Article III of GATT. Article III allows a country to impose regulations on imported products if the imported products are accorded “national treatment”: “treatment no less favourable than that accorded to like products of national origin.”⁹⁵ In arguing that imported tuna was accorded national treatment, the United States noted that the American tuna industry was equally burdened by the restriction.⁹⁶ Similarly, the EU could argue that the leghold trap ban would apply equally to EU countries and therefore would not violate the “national treatment” clause in GATT.

The TUNA I and II panels analyzed the United States’ Article III claim and decided that Article III did not apply to the cases. The panels held that Article III only addresses the regulation of products as *products*, not the *process* by which they are produced.⁹⁷ Similarly, in the leghold trap dispute, the EU is attempting to regulate the *process* by which fur-bearing animals

92. TUNA I, *supra* note 88, ¶ 5.18.

93. *Id.* ¶ 5.25.

94. *Id.* ¶ 5.18; TUNA II, *supra* note 89, ¶ 5.10.

95. GATT, *supra* note 19, art. III.

96. TUNA I, *supra* note 88, ¶ 3.19; TUNA II, *supra* note 89, ¶ 3.93.

97. TUNA I, *supra* note 88, ¶ 6.2; TUNA II, *supra* note 89, ¶ 5.8.

are trapped. A GATT/WTO panel could conclude that the EU regulation is not covered by Article III, citing the product/process argument of TUNA I and II.

Despite the TUNA I and II panel decisions which reject allowing a country to regulate the *process* by which a product is "created", this type of restriction is used frequently. Current laws of many nations, including the United States, address animal "production" processes that ultimately affect human consumption.⁹⁸ In addition, a multilateral trade agreement regulates the treatment of many types of endangered species.⁹⁹ Other animal regulations address the conservation of certain animals, such as the International Whaling Commission's regulation of whale catches.¹⁰⁰

The EU leghold trap regulation is not the first restriction imposed by a country to regulate the *treatment* of animals. The U.S. Humane Methods of Livestock Slaughter Act¹⁰¹ requires all meat sold or imported into the United States to have been slaughtered in a "humane" way.¹⁰² However, the EU leghold trap regulation has raised the first international *dispute* concerning such extraterritorial restrictions based on inhumane treatment of animals.

98. See, e.g., U.S. Import Milk Act of 1927, 21 U.S.C. § 142 (1988) (governing the process by which dairy cows are kept and milked).

99. Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243 (CITES). CITES currently has 113 parties. Robert Housman & Durwood Zaelke, *Trade, Environment, and Sustainable Development: A Primer*, 15 HASTINGS INT'L & COMP. L. REV. 535, 581 (1992). Since "the intent of CITES is to alleviate trade-driven pressures on a species, its trade-related provisions are necessary to the achievement of its goal." *Id.*

100. Jeffrey L. Dunoff, *From Green To Global: Toward The Transformation Of International Environmental Law*, 19 HARV. ENVTL. L. REV. 241, 250 (1995). Nations which participated in the International Convention for the Regulation of Whaling set up a supervisory body to regulate the harvesting of whales, which were in danger of becoming extinct. *Id.*

101. 7 U.S.C. § 1902(a) (1988).

102. The Humane Methods of Livestock Slaughter Act states, in part, that "[n]o method of slaughtering [livestock] or handling in connection with slaughtering shall be deemed to comply with the public policy of the United States unless it is humane." *Id.* The Humane Methods of Livestock Slaughter Act states that for livestock killing to be humane, the livestock "[must be] rendered insensible to pain by a single blow or gunshot or an electrical, chemical or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut . . ." *Id.*

3. The Article XX Argument: Exceptions

If a WTO panel finds that the leghold trap regulation does not accord "national treatment" under Article III, but is instead a violation of GATT Article XI, the EU would have to argue that the regulation falls within the legal exception to Article XI. GATT allows a country to violate Article XI if it has a valid reason as outlined in Article XX.¹⁰³ In TUNA I and II, the United States claimed Article XX exceptions under section (b),¹⁰⁴ an exception necessary to protect animals, and section (g),¹⁰⁵ an exception necessary to conserve an exhaustible natural resource.¹⁰⁶ Given the similarity between the tuna/dolphin and leghold trap issues, the EU could also attempt to claim exception under the same sections.

a. Article XX findings in TUNA I and II

The TUNA I panel found that the Article XX exceptions only apply to the acts of a country to protect humans, animals and plants *within its boundaries* and, therefore, did not address the validity of the Article XX claims.¹⁰⁷ In contrast to the TUNA I panel's findings, the TUNA II panel concluded that it is possible to extraterritorially apply the Article XX exceptions.¹⁰⁸

In addressing Article XX sections (b) and (g), the TUNA II panel used a three-step analysis in determining the validity of the exception claim.¹⁰⁹ First, the TUNA II panel addressed whether the policy in question fell within the range of policies addressed by the Article XX exception.¹¹⁰ Second, the panel addressed whether the policy was "related to" the exception and

103. See GATT, *supra* note 19, art. XX. As long as a country's measures are not "applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade", a country may argue any of ten exceptions to the requirements of the GATT agreement. *Id.*

104. National laws are permitted which are "necessary to protect human, animal or plant life or health." *Id.* art. XX(b).

105. National laws are permitted which are required for the "conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption." *Id.* art. XX(g).

106. G. Richard Shell, *Trade Legalism and International Relations Theory: An Analysis of the World Trade Organization*, 44 DUKE L.J. 829, 874 (1995).

107. TUNA I, *supra* note 88, ¶ 5.27.

108. The panel held that based on past GATT decisions, GATT provisions and general international law, a member country can invoke the exceptions of Article XX even if the policy in question does not pertain to the area within the country's territorial boundaries. TUNA II, *supra* note 89, ¶¶ 5.20, 5.33.

109. *Id.* ¶ 5.12.

110. *Id.*

whether it was effective "in conjunction" with restrictions on domestic production and consumption.¹¹¹ The panel, relying on past decisions, decided that "related to" and "in conjunction with" meant "primarily aimed at."¹¹² Finally, the panel looked at whether the policy was applied in a "manner which would constitute a means of arbitrary or unjustifiable discrimination among countries where the same conditions prevail or in a manner which would constitute a disguised restriction on international trade."¹¹³

Upon analyzing these three steps, the TUNA II panel held that the United States' tuna restriction was neither "primarily aimed at" nor "strictly necessary for" the protection of dolphins and therefore was invalid despite the possibility of extraterritorial application.¹¹⁴ The panel reached this conclusion after noting that the United States banned *all* tuna imports from countries which did not follow the same process in catching their tuna as the United States and therefore was too indirect and overbroad.¹¹⁵ The TUNA II panel concluded that the United States, in pursuing valid environmental objectives which affected the world, could not accomplish these objectives by using trade barriers to force another country to change its internal policies.¹¹⁶

Similarly, the EU ban would prohibit *all* fur from a country which allows *any* use of leghold traps. In other words, even if the fur being exported to the EU was trapped by humane standards, the EU would not allow the fur into the Union if *any* fur is trapped by inhumane methods in the exporting country.

b. *Article XX(g) & the EU leghold trap ban*

In a WTO/GATT leghold trap dispute, the EU may invoke a section (g) exception. The EU would first have to prove that the policy was meant to conserve an "exhaustible natural resource" and was made in conjunction with "restrictions on domestic production and consumption." Although in TUNA I and II, dolphins were not in immediate danger of becoming extinct, many were being needlessly killed because of yellowfin tuna fishing meth-

111. *Id.*

112. *Id.* ¶¶ 5.21, 5.22 & 5.23.

113. *Id.*

114. TUNA II, *supra* note 89, ¶ 5.42.

115. *Id.* ¶ 5.36.

116. *Id.* ¶ 5.39.

ods.¹¹⁷ The issue in the leghold trap dispute, unlike the tuna-dolphin dispute, is not *if* one should kill an animal based on conservation issues, but rather, *how* one should kill an animal. While the tuna embargo intended to save the lives of animals, the leghold trap only bans one method of killing animals. Trappers can still kill the animals as long as they use an approved method.

Ironically, the text of the EU leghold trap regulation states that the abolition of these traps "will have a positive effect on the conservation status of threatened or endangered species of wild fauna both within and outside the community."¹¹⁸ The EU regulation, however, does not attempt to *conserve* an exhaustible natural resource. It only attempts to regulate the process in which the resource is "extracted."¹¹⁹ In regards to a section (g) exception, the EU leghold trap ban does not even seem to pass step one of the TUNA II three-step analysis.

c. *Article XX(b) & the EU leghold trap ban*

The EU could also attempt to justify the ban under a section (b) exception.¹²⁰ The EU would have to prove that the ban is necessary for the protection of "human, animal or plant life or health."¹²¹ Under the first step of the analysis used by TUNA II, the EU would have to prove that the ban on leghold traps is necessary for the protection of animal *health* since the ban does not protect animal *life*; the animal is still allowed to die.¹²² Depending on how the word "health"¹²³ is defined, a WTO/GATT dispute panel may or may not conclude that the purpose of the ban on leghold traps is to protect animal "health." The dispute

117. One article has stressed that, contrary to many commentators, the tuna/dolphin dispute is not merely an animal welfare issue since it cannot be claimed that "the slaughter of over seven million dolphins by the fishery since the late 1950s is not a serious conservation problem." William J. Snape, III & Naomi B. Lefkovitz, *Searching For GATT's Environmental Miranda: Are "Process Standards" Getting "Due Process"?*, 27 CORNELL INT'L L.J. 777, 783 (1994).

118. Regulation, *supra* note 3.

119. One could hypothesize that the inclusion of such language was either to appease animal rights groups or to ward off future GATT actions by other countries against the EU.

120. GATT, *supra* note 19, art. XX(b).

121. *Id.*

122. See *supra* notes 109-11 and accompanying text.

123. One definition of "health" is: "1. the general condition of the body or mind with reference to soundness and vigor. . . . 2. soundness of body and mind; freedom from disease or ailment." THE RANDOM HOUSE COLLEGE DICTIONARY 609 (rev. ed. 1982). Such a definition may include pain experienced by an animal while trapped in a leghold trap.

panel would have to conclude that by limiting the amount of pain an animal experiences as it is being killed, one is acting to protect the animal's "health."

Under step two of the TUNA II analysis of a section (b) exception, the leghold trap panel would have to determine whether the ban is *necessary* for the protection of animal health.¹²⁴ But, as the TUNA II panel held concerning the tuna regulation, the leghold trap ban would not be considered necessary since it only directs a country to implement a policy which is compatible with the EU's.¹²⁵ This is made clear by the EU requirement that *all* fur imports from a country which allows the use of leghold traps within its borders would be prohibited from importation, not just the fur trapped by inhumane methods. On this issue, the TUNA II Panel noted:

If however Article XX (b) were interpreted to permit contracting parties to impose trade embargoes so as to force other countries to change their policies within their jurisdiction, including policies to protect living things, and which require such changes to be effective, the objectives of the General Agreement would be seriously impaired.¹²⁶

Thus, to allow the EU to force other countries to follow its own policies concerning humane trapping in order to import fur into the EU would impair the objectives of GATT, including the elimination of trade barriers. The TUNA II decision suggested that it is possible to invoke an Article XX exception extraterritorially, provided a country does not impose its policies on other nations. The leghold trap ban, however, would impose EU policies on exporting countries unless the ban *only* prohibits the importation of inhumanely-trapped fur, rather than *all* fur from these nations.

Ultimately, even if a WTO/GATT leghold trap dispute panel adopted the reasoning of TUNA II, the section (b) exception of the leghold trap regulation would fail on the second step. The EU would be forcing other countries to adopt its own policies. This was disallowed by the TUNA II panel in regards to the United States' tuna regulation.

124. See *supra* note 122 and accompanying text. According to TUNA II, "necessary" is defined as whether or not another reasonable measure which is not "inconsistent with other GATT provisions" exists. TUNA II, *supra* note 89, ¶ 5.35.

125. See *supra* note 117 and accompanying text.

126. TUNA II, *supra* note 89, ¶ 5.38.

4. The paradox of environmental protection under the GATT

The environmental policy imposition by one country on another country is not in itself GATT-incompatible.¹²⁷ Unfortunately, most often, the only way to give such a policy “teeth” is to impose trade import and/or export restrictions in order to force another country to comply.¹²⁸ At that point, the policy becomes GATT-incompatible.¹²⁹

On the other hand, not allowing a country to regulate the products it imports is also incompatible with GATT’s primary goals.¹³⁰ If GATT forbids a country to enforce those environmental policies it considers important through import restrictions, the country may be left powerless to regulate an activity which concerns its citizens.¹³¹ In effect, the “collective morals” of the regulating country cannot be adequately addressed.¹³²

If a WTO/GATT leghold trap panel follows the TUNA I and II decisions, it would probably find a violation of GATT. If this happens, the future of environmental support by the WTO/GATT may be bleak not only for animal rights and welfare activists but for all environmental groups. A decision against the EU would signal a definite stand by the WTO/GATT against environmental actions and regulations which affect unrestricted trade in the world.¹³³ A WTO/GATT stand against the leghold trap restriction would seemingly limit a nation’s environmental regulations by allowing their application only within the country’s borders. Such was the holding of the TUNA I panel.

IV. ALTERNATIVE SOLUTIONS

If the ban goes into effect as scheduled, it is likely that more wild animals will be raised on large “fur farms.” Given the current conditions of “fur farms”, such an occurrence could result in continued mistreatment of animals. Instead of allowing an animal to roam free in the wild its entire life with the possibility that it will be caught in a leghold trap and suffer the last few

127. Snape & Lefkowitz, *supra* note 117, at 780.

128. *Id.*

129. *Id.*

130. *Id.* at 783.

131. *Id.*

132. *Id.*

133. See Alberto Bernabe-Riefkohl, “To Dream the Impossible Dream”: *Globalization and Harmonization of Environmental Laws*, 20 N.C. J. INT’L L. & COM. REG. 205 (1995). Bernabe-Riefkohl argues that the GATT’s approach to unilateral restrictions is inadequate because unilateral restrictions are an “effective way to address global environmental policies.” *Id.* at 224.

hours of its life, the animal will live on a fur farm where it suffers its entire life in a small cage only to be eventually killed. According to one commentator, animals raised on "fur farms" spend "the majority of their lives in overcrowded, filthy, wire-mesh cages before being killed by the cheapest — and cruelest — methods possible: genital electrocution, poisoning or suffocation. Sometimes these methods only stun the animals and they end up being skinned alive."¹³⁴ Thus, if the fur industry turns away from leghold traps and focuses on "fur farms", the next worldwide animal treatment conflict would then potentially involve the regulation of these "fur farms."

Human instinct, however, suggests that any pain and suffering by any living animal which *can* be avoided *should* be avoided. Animal activists state that this should be an easy policy to follow since "more humane" traps are available.¹³⁵ However, as discussed above, these traps are more expensive, more dangerous to children or pets who happen upon them and, according to many trappers, less effective.¹³⁶ In addition, the leghold trap can be used in many environments to catch many types of animals.¹³⁷ Currently, there is no one alternative trap which is as versatile.¹³⁸ However, a group of Canadians, Americans and Europeans are presently studying new kinds of animal traps which could be comparable to the versatile, effective and cost-efficient leghold trap.¹³⁹

As a solution to the tuna/dolphin dispute, one commentator proposed a regulation of the industry on a "boat-by-boat" basis. Neutral observers would be placed on each tuna boat to insure that the specific tuna crew is following the acceptable process.

This solution, however, is not realistic for the leghold trap dispute. As discussed, much of the fur trapped in the world is trapped in remote regions by small groups of indigenous tribes. It would not be possible to implement the quantity of neutral observers needed to "police" this area.¹⁴⁰

134. Paula Moore, *Foe of Fur*, CHI. TRIB., May 26, 1995, at 24.

135. See CORN, *supra* note 20.

136. *Id.*

137. *Id.*

138. *Id.*

139. *U.S. Fur Industry Readies Petition Against EU Over Ban On Fur Imports*, *supra* note 49.

140. It would be unrealistic to assume that a "neutral observer" could assimilate into the foreign and unique culture of an indigenous tribe who base not just their employment on fur trapping but their entire lives on the fur trapping process. In fact, the EU may face such a problem within its own borders.

Another solution would be to use multilateral agreements to address the leghold trap dispute. Multilateral agreements offer "legitimacy", "harmonization of standards" and adequate "enforcement" of the regulations.¹⁴¹ On the other hand, some commentators have argued that it is unrealistic and improbable that countries with such differing views on the issues of animal rights, as well as what constitutes a "humane" trapping standard, could come to an acceptable agreement.¹⁴² Furthermore, it can be argued that multilateral agreements often encourage a "race to the bottom", since "[s]tandards negotiated by a large number of states must necessarily drop to the lowest common denominator."¹⁴³ In addition, multilateral agreements could also exclude indigenous tribes from the decision-making process, a group which has a large stake in the solution.¹⁴⁴ All countries would need to make a conscious attempt to consider the views of the indigenous tribes in their decision-making process.

The EU could attempt to regulate trapping standards by requiring all fur to bear a label stating whether the animal was trapped by "humane" standards. This approach would allow EU consumers to decide on an individual basis whether they care to support a specific company or fur-trapper based on its trapping policy. American tuna companies were forced by consumer groups to develop a similar labeling method (promoting "dolphin-safe tuna")—a labeling method which consumers widely praised.¹⁴⁵ In addition, American consumers did not seem bothered by the price increase of a few cents per can of tuna in order to cover the costs of the project.¹⁴⁶ Given the high

141. Dorothy J. Black, *International Trade v. Environmental Protection: The Case of the U.S. Embargo on Mexican Tuna*, 24 LAW & POL'Y INT'L BUS. 123, 151 (1992).

142. See generally *id.* (describing the criticisms of commentators).

143. *Id.*

144. "The Rio Declaration states that '[e]nvironmental issues are best handled with the participation of all concerned citizens . . .'" Dunoff, *supra* note 100, at 295 (emphasis added).

145. *Tuna Without the Guilt: Cannery Aim to Make the Seas Safer for Cetaceans (Dolphins)*, TIME, April 23, 1990, at 63. Until tuna companies took action, many consumers boycotted their product and refused to eat canned tuna. Christine Gorman, *Listen Here, Mr. Big! Corporate Misbehavior is Sparking a Fervent Outburst of Consumer Protests and Boycotts*, TIME, July 3, 1989, at 40.

146. *Tuna Without the Guilt*, *supra* note 145, at 63. American Tuna Companies primarily harvested "dolphin-safe tuna" by switching from yellow-fin tuna, which swim with dolphins, to skipjack tuna which do not swim near dolphins. Fay Fiore, *Activists Alarmed by Bid to Reverse Dolphin-Safety Law*, L.A. TIMES, Sept. 9, 1995, at A1. Most foreign tuna fleets, however, still harvest yellow-fin

price of fur garments in comparison to cans of tuna, it is unclear without further studies whether such a "labeling project" would be as widely accepted by consumers as was tuna labeling.

Given the success of "dolphin-safe tuna" programs, as well as other "environmentally friendly" programs initiated by American corporations, American consumers have shown that they are conscious of the environment and will support products which are aimed at protecting it.¹⁴⁷ In a 1989 Gallup Poll, 90% of American consumers surveyed said they exert extra effort to purchase products from companies which try to protect the environment.¹⁴⁸ Given the consumer consciousness of environmentally friendly products, proponents of fur trapping argue that real fur is more environmentally friendly than fake fur which "often is made from petrochemicals."¹⁴⁹ Anti-fur groups consider such an argument dubious.¹⁵⁰

One potential flaw in the labeling approach may be that it would be unrealistic for companies to be able to keep straight which specific furs were trapped by which methods. In addition, this solution would not help the aboriginal trapping problem since demand for their fur, trapped by leghold traps, could ultimately become non-existent if Europeans decide to support humanely trapped fur.

Currently, the EU Commission is debating a recent proposal which would exclude from the leghold trap regulation all fur pelts trapped by indigenous persons as well as all products made from indigenous tribe-trapped pelts.¹⁵¹ This exception would in-

tuna but use fishing methods which are more dolphin-safe than methods used previously. *Id.*

147. A recent article notes that free range turkeys (which are allowed to roam in flocks outdoors as opposed to turkeys raised in small indoor cages) are growing in popularity among turkey consumers and signal conscious consumer trends towards humanely-raised animal products. *Alternative Birds: Free-Range Turkeys Are Catching On This Thanksgiving Holiday, Along With Other Locally Produced Foods, Providing A Lift For The Farm Economy*, ST. PAUL PIONEER PRESS, Nov. 21, 1995, at E1.

148. Scott Hume & Patricia Strand, *Consumers Go Green*, ADVERTISING AGE, Sept. 25, 1989, at 3.

149. *Canada Trappers Struggle to Keep Fur Trade Alive in Northwest Territories: Depressed Prices and Anti-Fur Protests Have Hurt a Business Plied By Many Eskimos and Indians*, L.A. TIMES (Orange County ed.) Mar. 14, 1995, at D9.

150. See *supra* note 33 and accompanying text.

151. *Europe Considers Exemption From Fur Ban for Natives; Proposal Would Allow Indigenous Peoples to Use Leghold Traps*, OTTAWA CITIZEN, Dec. 22, 1995, at A11.

clude approximately 40% of all fur trapped in North America.¹⁵² One European diplomat, however, has stated that such a proposal is a “mockery of the ban” and “drives a coach and horse through [the ban].”¹⁵³ In addition, the exception, although solving the problems of the indigenous tribe trappers, would not adequately address the concerns of other fur trappers as well as free trade supporters.

V. CONCLUSION

Given the strong position of each side of the EU leghold trap dispute, it is doubtful that an amicable resolution can be reached. In addition, postponement of the leghold trap regulation, now scheduled to be implemented three years later than originally planned, has only caused each side to dig their heels in deeper.

Regardless, given the TUNA I and II decisions, it is doubtful that a WTO/GATT dispute panel could adequately resolve the leghold trap problem without either allowing the EU to enforce a regulation inconsistent with GATT or further alienating environmental groups. Therefore, the parties involved may need to seek a solution outside of the GATT dispute settlement process. Given the tension between the parties involved, as well as the inability of the WTO to adequately address the problem, the leghold trap debate appears to be caught in a trap.

152. *Id.*

153. *Id.*