CHAPTER 5
ANIMAL WELFARE

There is not a moving (living) creature on earth, nor a bird that flies with its two wings, but are communities like you. We have neglected nothing in the Book, then unto their Lord they (all) shall be gathered.¹

1 INTRODUCTION

This chapter focuses on animal protection (specimen protection), which is not environmental protection of animals (species protection). The chapter is by no means an exhaustive description of specimen protection, but a series of examples chosen mainly due to their trade related nature, which can generate illustrative examples in the WTO analysis in Chapter 8, Section 8.

It is important to note that animal welfare discussions unfortunately often are sparked by an arising awareness of animal cruelty. The following citation makes it abundantly clear that one needs an advanced developed sense of imagination to find relevant animal cruelty examples: “Exploitation of animals occurs throughout the world and the reasons are varied. They include the need for food, for clothing and medicines. The quest for knowledge in basic research requires animals and they are also exploited for sport, for exhibition and for companionship.”² Hence, unlike species protection, specimen protection issues forces people to consider—on a personal level—where his or her limits are regarding abuse or neglect of animals; i.e., what do I think is ok—what is not—and why are questions that will penetrate nearly all analyses in this chapter.

1.1 Legal Status of Animals—Animals Are Items

The legal status of animals needs to be fully understood in order to comprehend how animals are protected and how they can be protected;


animals are “items,” i.e., private property. From this notion, it follows that wild animals are the property of whomever the laws of the country allow to catch them (dead or alive), and animals in common spaces can be caught by anyone with very few limitations.

1.1.1 Can Animals Have Standing in Cruelty or Neglect Cases?

The most prevailing legal order is that items cannot have rights or obligations. This means the obligation put on humans to protect animals does not per se give animals a correlative “right” as a legal subject, i.e., a capacity to sue or be sued.

Animal welfare protection is therefore an anthropocentric concept in the sense that the “obligation” is put on humans to act or refrain from acting in a certain manner in relation to animals. When a violation of an animal welfare rule occurs, it is the authorities that will bring a case against the person who neglected his or her responsibility to animals. In the United States, animal rights organizations may have standing to sue the authorities for not protecting animals, if the activists themselves suffered injury from observing this (and not if the animals suffered). This reasoning relies on the notion that there are certain standards of behavior that people must live up to in order not to offend others, such as indecent exposure. Consequently, if an animal is mistreated, but it was not directly witnessed, it is hard to guess whether a U.S. court will stretch the reasoning to include the notion of being “offended” by the mere “knowledge” that an animal was mistreated, e.g., a dog brought into a clinic with cigarette burn marks or the like. Theoretically, the authorities should be able to “catch” all those situations, but there are people who advocate that statutes to protect animals should be amended so as to grant private cause; i.e. let private parties sue the animal mistreater in the event the authorities fail to do their job.

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3 See, e.g., Mads Bryde Andersen, Praktisk Aftaleret 162 (Gjelleup, 2d ed. 2003); Vagn Greve, Om Kålorm og Andre Voldsmænd, Tyve og Røvere, in Kriminalistist Årbog 1998 93, 96 (University of Copenhagen); Joseph Lookofsky, Køb: Dansk Indenlandske Købsret 67 (Jurist- og Økonomforbundets Forlag, 2d ed., 2002); Vibe Ulfbeck, Erstatningsretlige Grænseområder, Professionsansvar og Produktansvar 164 (Jurist- og Økonomforbundets Forlag, 2004).

4 See Peter Pagh, Miljø Ansvar En Ret For Hvem 136 (Jurist- og Økonomforbundets Forlag, 1998), who describes how wild animals are res nullius and belongs to the one who catches it.
