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Banning Israel's International Trade in Reptiles and Birds

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EXECUTIVE SUMMARY

This report addresses the international wildlife trade in reptiles and birds. Reptilia and Aves are the most widely traded of all animal classes and they suffer extremely high mortality rates. Their capture in the wild inflicts extreme suffering, causing them high stress levels and physical injury as well. Captive breeding is no less cruel than wild capture and as tradable commodities, reptiles and birds undergo harsh breeding conditions, extensive handling in preparation for transport, and the transport itself, all stages that cause them both physical and mental harm, if not death.

The focus of the report is a commercial trade ban for reptiles and birds into and from Israel, designed to withstand a challenge under the WTO Dispute Settlement Body (DSB) on grounds of violation of the General Agreement on Tariffs and Trade (GATT). While the purpose of the ban is primarily to stop the inherent cruelty of the trade, the ban could also deter future pandemics, as well as confront global biodiversity loss threatening the survival of many wildlife species. To align these goals under GATT, the report explores the use of exceptions under Art. XX. The public morals exception under Art. XX(a) could be invoked by drawing on *EC - Seal Products* and Israel's own entrenched legal and cultural commitment to animal welfare and abhorrence of animal cruelty. The protection of human and animal health exception under Art. XX(b) provides a robust legal grounding, in light of the risks posed by the wildlife trade to human and animal health, and the links between the trade and the outbreak of pandemics. The third exception could be the contribution of the ban to the protection of natural resources under Art. (XX(g)), invoking *US-Shrimp* and given that species of commercially traded reptiles and birds constitute threatened or endangered species, thus qualifying as exhaustible resources under WTO jurisprudence.

A comprehensive ban of this nature not only aligns with Israel's legal and moral commitments to animal welfare, the prevention of cruelty to animals, avoiding future pandemics and deterring biodiversity loss, but also contributes meaningfully to the growing recognition of the emerging global norm for animal welfare under international law.

1. INTRODUCTION

This report assesses the prospects of Israel successfully imposing a ban on the commercial trade in reptiles and birds within the limits set by international trade law, and primarily considers how to minimize the likelihood of a challenge to the ban under the WTO Dispute Settlement Body (DSB) on grounds of violation of GATT.¹ This report further evaluates the use of exceptions to GATT trade rules if such a challenge materializes, including exceptions for the protection of human and animal health under Art. XX (b), and the protection of natural resources under Art. XX (g). We concentrate in particular on the Art. XX (a) exception regarding “public morals”.

We note that the goal of the WTO in reducing barriers to trade has historically created tension between international trade and environmental protection, as well as animal welfare. The protection of animals in particular under the GATT/WTO has been controversial, as exemplified by the Tuna-Dolphin dispute brought by Mexico against the US², and the Shrimp-Turtle dispute brought by India, Malaysia, Pakistan and Thailand also against the US,³ These cases are considered environmental disputes that focused on the conservation aspects of wildlife species. The first dispute to address the cruelty of international trade to individual animals was *EC-Seal Products*, brought by Canada and Norway against the EU.⁴ The DSB decisions in this case are recognized as landmark decisions in promoting international norms for animal welfare.⁵

While we focus on Israel and use data drawing on the Israeli experience, this report, based on GATT principles and WTO case law, could have far broader implications as it expands the discussion on the public morals exception to what might otherwise be challenged as a violation of the GATT, in the context of animal welfare. The Art. XX(a) "public morals" exception has been

¹ General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, 55 U.N.T.S. 194 (Hereinafter: **GATT**).

² *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, Appellate Body Report, WT/DS381/AB/R, adopted 13 June 2012, DSR 2012:IV [hereinafter – *Tuna-Dolphin*].

³ *United States—Import Prohibition of Certain Shrimp and Shrimp Products* (WT/DS58/AB/R, November 6, 1998) [hereinafter "*US-Shrimp*"].

⁴ AB Reports, *European Communities—Measures Prohibiting the Importation and Marketing of Seal Products* (a), WT/DS400/AB/R/ WT/DS401/AB/R, adopted 18 June 2014 (Hereinafter: *EC- Seals Case*).

⁵ "Ever since demonstrators dressed up as endangered sea turtles at the Seattle protests against the ... WTO... in 1995, the fate of animals has been linked to the expansion of international trade governance. In those days, perhaps the connection between trade and animal *welfare* was not so obvious ... But that is no longer the case. The landmark EC – Seal Products decision of the WTO confirmed that animal welfare, a moral concern distinct from the conservation of animal species, is an important question in international trade discourse," Katie Sykes, *ANIMAL WELFARE AND INTERNATIONAL TRADE LAW: THE IMPACT OF THE WTO SEAL CASE* (2021), 1.

invoked twice under GATT, in *China — Publications and Audiovisual Product*⁶, and in *EC — Seal Products*,⁷ and once under the “public morals” exception in the General Agreement on Trade in Services (GATS), in *U.S.-Gambling*.⁸ A ban imposed by Israel on commercial trade in wildlife grounded in public morals, could help advance the protection of animals in the international trade law context, as well as promote the development of global animal welfare law. It should be noted that the present research does not distinguish between the varied purposes of the trade (such as for pets, for food, for leather, for processed products etc.) and concludes that all commercial trade should be banned.⁹

The discussion proceeds as follows. The first section discusses the issues arising from the trade in reptiles and birds that put both animals and humans at risk. Section two focuses on the current trade regulations outlining countries’ minimal obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and its capacity to restrict trade under GATT. Section three focuses on GATT, assessing the prospects of Israel imposing a wildlife trade ban in accordance with the general exception clause in Article XX of the agreement. In doing so, we attempt to justify the said ban under the Art. XX (a) public morals exception,¹⁰ building upon the noted above landmark ruling in *EC- Seal Products*, which for the first time in an international law context declared that animal welfare is “a globally recognized issue”.¹¹

7.409. The evidence presented by the European Union, taken as a whole, illustrates in our view “standards of right and wrong conduct maintained by or on behalf of [the European Union]” concerning seal welfare. In reaching this conclusion, we observe that ascertaining the precise content and scope of morality in a given society may not be an easy task. ... As the panel in *US – Gambling* stated, we are mindful that Members should be given some scope to define and apply for themselves the concepts of “public morals” in their respective territories, according to their own systems and scales of values. ... [T]he evidence as a whole sufficiently demonstrates that animal welfare is an issue of ethical or moral nature in the European Union. International doctrines and measures of a similar nature in other WTO Members ... illustrate that animal welfare is a matter of ethical responsibility for human beings in general.

⁶ *China—Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WT/DS363/AB/R, adopted Dec. 21, 2009.

⁷ *EU- Seals Case*, *supra* note 4.

⁸ AB Report - United States — Measures Affecting the Cross-Border Supply of Gambling and Betting Services (*US-Gambling*), WT/DS285/AB/R, adopted 20 April 2005.

⁹ Commercial trade, to differ from exchange between zoos or service pets for people with disabilities etc.

¹⁰ GATT, Art. XX(a).

¹¹ Panel Reports, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/R / WT/DS401/R / and Add.1, circulated to WTO Members 25 November 2013, 125 [hereinafter: *EC- Seals Case Panel Report*].

...

7.420. In support of its position that the stated objective is legitimate, the European Union also refers to various measures on animal welfare and seal products adopted by other WTO Members as well as international instruments on animal welfare. ... We need not determine whether these examples as such exhibit the existence of a global social norm ("a universal value" according to the European Union) on animal welfare in general or seal welfare in particular. Nevertheless, these various actions concerning animal welfare at the international as well as national levels suggest in our view that animal welfare is a globally recognized issue."¹²

In addition, we analyze justifications for the trade ban under the exception clauses for the protection of human and animal health in Art. XX(b),¹³ and for the protection of natural resources in Art. XX (g) as implemented in *US-Shrimp*.¹⁴

We further note that regarding global wildlife trade regulation, a shift is emerging toward categorical prohibitions such as the 2005 EU trade ban on wild birds, following the outbreak of the avian flu epidemic.¹⁵ Under this model, all trade is banned by default unless a species is explicitly listed on a "Positive List". Belgium was a pioneer in this field, introducing a Positive List for mammals by Royal Decree in 2001.¹⁶ When challenged by Belgian animal breeders for hindering free trade, the European Court of Justice, in 2008, ruled in favour of the Belgium Positive List since its goal was to promote animal welfare, provided that the list was based on objective and non-discriminatory criteria (the *Andibel* Ruling).¹⁷ The final Royal Decree of 16 July 2009 maintains 42 mammal species and includes an Annex of specific evaluation criteria.¹⁸

Based on the criteria of the 2008 *Andibel* ruling, the Netherlands adopted its own "Positive List" for mammals in 2015 and updated it in 2024. The Dutch model evaluates risks to animal welfare, human health, and the recognized "intrinsic value" of animals, as recognized by national law.¹⁹

¹² *Id.*, 12, 125.

¹³ GATT, Art. XX(b).

¹⁴ GATT, Art. XX(g); *US-Shrimp*, *supra* note 3.

¹⁵ European Commission, https://ec.europa.eu/commission/presscorner/detail/en/ip_05_1351.

¹⁶ [Eurogroup for Animals](#), Exotic Pet Trade: Analysis of the Problems and Identification of Solutions, (2020), p. 13.

¹⁷ *Id.*, p. 12

¹⁸ *Id.*, p. 13

¹⁹ *Id.*, p. 14

2. DEFINING THE PROBLEM

The trade in live animals is a multi-billion-dollar industry.²⁰ Between 2004-2014 approximately 20.8 million individual reptiles were imported into the European Union (EU) alone,²¹ as well as an annual import of approximately 1-2 million birds preceding the EU's 2005 ban on bird trade following an outbreak of avian influenza. The goal of the ban was to protect public health as well as animal welfare.²² More current data reveals that between 2010-2021 approximately 15 million individual live reptiles were imported into the EU.²³ This data is limited to the reported trade under CITES which lists only a small percentage of wildlife species traded internationally.²⁴ Reptiles are a case in point: CITES Appendices list only about 8% of the 10,711 globally recognized reptile species.²⁵ Hence, the real number, which includes smuggling and unreported import, will be substantially bigger. Beyond the millions of animals traded annually, as described below the wildlife trade is a very cruel trade, causing suffering, injury, and death to animals traded as commodities.

While there is also a large animal-derivative processing industry, most live species are in fact traded for the international pet trade.²⁶ The following section outlines the main risks and moral issues posed by this industry. While most of the following data applies to the general trade in birds and reptiles, on occasion it will focus on a particular case study such as the trade in the African Grey Parrot, more commonly known as the Jaco Parrot.

2.1 ANIMAL MORTALITY AND ANIMAL CRUELTY

First and foremost, the trade in both birds and reptiles is alarmingly deadly, making the practice morally reprehensible. Animals may die during any stage of the trade chain, starting with their harvest (i.e. collection in the wild or captive breeding), following with preparations for transit, the

²⁰ CITES, *Ground-breaking report draws first overall picture of global wildlife trade*, CITES SITE (16.11.2022).

²¹ Mark Auliya et. al., *Trade in live reptiles, its impact on wild populations, and the role of the European market*, 30 BIOLOGICAL *Scientific Opinion of the Panel on Animal Health and Welfare on a Request from the Commission Related with Animal Health and Welfare Risks Associated* CONSERVATION 17 (2016) 3 (Hereinafter: Auliya).

²² *Scientific Opinion of the Panel on Animal Health and Welfare on a Request from the Commission Related with Animal Health and Welfare Risks Associated with the Import of Wild Birds Other than Poultry into the European Union*, 410 EFSA JOURNAL 1, 22-23 (2006), <https://doi.org/10.2903/j.efsa.2006.410> (Hereinafter: EFSA).

²³ Eurogroup for Animals, *The Current Pet Trade in the EU and Its Variation between Member States*, 10-11 (31.1.2023).

²⁴ *Id.*

²⁵ Jordi Janssen, Chris R. Shepherd, 'Challenges in documenting trade in non-CITES-listed species: A case study on crocodile skinks (*Tribolonotus*spp.)' (2018) *Journal of Asia-Pacific Biodiversity*, 476.

²⁶ Auliya, *supra* note 21, 4.

transit itself, retail, and finally ending with the consumer (particularly pet owners). Mortality rates vary depending on a variety of factors, especially sourcing methods, since wild captures entail a more violent starting point. Another significant factor is the level of specialized husbandry required by each species.

Data on mortality due to the trade in birds is quite comprehensive due to the extensive research that preceded the EU's blanket ban.²⁷ Birds, most specifically parrots, are usually poached out of nests in the wild as nestlings. Accordingly, mortality during harvest varies greatly between species, from nearly 0% to 50%, due to differences in nesting methods.²⁸ Birds suffer an additional mortality rate during transit that averages out at around 1.36%-5%.²⁹ It is important to note that these figures vary greatly depending on species as well. For example, Jaco parrots suffer post-capture pre-export mortality rates of around 30%-40%, yet following their transport the overall death rate rises to around 60%-66%.³⁰

Data on reptile mortality has been less researched. Assessments of mortality during harvest range between 5%-100% in cases of wild capture, and between 5%-25% in captive breeding depending on the species.³¹ What is commonly accepted is that wild capture leads to far higher mortality and injury, and so some find the general decrease in wild capture and move towards breeding in the 1990s and early 2000s as a positive trend.³² Assessments of mortality rates during transit are also inconsistent depending on the species.³³ Evidently, there are occasional disasters,³⁴ and the most comprehensive studies so far indicate an overall average mortality rate of up to 3.14% during

²⁷ EFSA, *supra* note 22.

²⁸ *Id.*, 35.

²⁹ *Id.*, 39-40 & 69.

³⁰ "McGowan (2001) concluded that for every 100 birds trapped, 43 would be dead before leaving the trapper and of the surviving 57, 34-40 would reach a market such as Calabar. That is a mortality rate of 60-66% by the time the birds reach a major domestic town or city.", Phillip McGowan, *African Grey Parrot Psittacus erithacus Case Study, Case Study no. 1, CITES—Non-Detriment Finding (NDF) Workshop, Working Group 6 (WG6 – Birds)* (2006), 7, para 3.2.1.

³¹ Clifford Warwick, *The Morality of the Reptile "Pet" Trade*, 4(1) JOURNAL OF ANIMAL ETHICS 74 (2014), 79 (Hereinafter Warwick); Helen Lambert, Gemma Carder & Neil D'Cruze *Given the Cold Shoulder: A Review of the Scientific Literature for Evidence of Reptile Sentience*, 9(10) ANIMALS, 11 (2019).

³² Janine E. Robinson et. al., *Dynamics of the global trade in live reptiles: Shifting trends in production and consequences for sustainability*, 184 BIOLOGICAL CONSERVATION 42 (2015).

³³ Elaine Toland, Clifford Warwick & Phillip Arena, *Animal Hate: Exotic pet-keeping is on the rise despite decades of initiatives aimed at reducing the trade of exotic and rare animals. Three experts argue that urgent action is needed to protect both animals and ecosystems* 59(3) THE BIOLOGIST 14 (2012).

³⁴ E.g., BBC, *Hundreds of dead animals found at South Africa airport*, BBC NEWS <https://www.bbc.com/news/world-africa-25877368> (31.1.14).

transit.³⁵ Studies have reported an additional mortality rate of 1.69% to 4.4% in retail outlets prior to sale.³⁶ Finally, assessments vary wildly as to death rates after acquisition. While a 2012 study states that up to 75% of reptiles perish within a year of their purchase,³⁷ more recent studies indicate that the mortality rate ranges between 2%-28% depending on the species. In fact, the latter study claims that mortality rates of reptile-pets are actually lower than in the wild.³⁸ It should be noted that even if they live longer, it is a life of suffering amidst unnatural physical conditions that continues longer.³⁹ In summary, while the specific numbers are not definitive, it is clear that the trade in reptiles entails a high risk for the animals themselves. It should be noted that even lower estimates entail millions of deaths considering the ubiquity of the trade.⁴⁰

Beyond their lethality, trade practices inflict extreme suffering, causing both mental and physical stress. An animal's capture (or attempted capture) in the wild inflicts great fear, as well as pain and possible injury, and has lasting effects. For example, the practice of separating nestlings from their parents causes lasting trauma. Following their capture many animals suffer from poor upkeep and develop nutrition and health issues because their needs are not met.⁴¹ For example, snakes are commonly raised in drawers, where they suffer bodily deformities because of their inability to stretch.⁴² Another heartbreaking example is that of the Jaco Parrot. These parrots are highly intelligent, with a mental capacity similar to that of a human child. As a very social bird, in nature these parrots roam throughout the forest in groups, and so their sole confinement in captivity does not meet their basic mental and physical needs. Sadly, many captive Jacos develop mental

³⁵ Chairman of CITES Secretariat Animal Committee Transport Working Group, *Study on transport losses of CITES-protected and non-protected animal species (AC19 Inf. 4)* (2003).

³⁶ Janine E. Robinson et. al., *Captive Reptile Mortality Rates in the Home and Implications for the Wildlife Trade*, 11(6) PLOS ONE (2015), 2 (Hereinafter: Robinson, Lower Than in the Wild)

³⁷ "... [T]he data appear to suggest that the annual mortality rate in the home is very high – we found at least 75%." Toland, Warwick & Arena, *supra* note 27, 16.

³⁸ "Our study shows that among the commonly kept pet reptile groups, snakes had the lowest overall mortality rates in captivity, followed by chelonians, and then lizards. When this is compared with the wild, a comprehensive published study ... reported annual adult survival rates to be lowest among lizards ... followed by snakes ... and then chelonians ... If these survival rates are expressed as mortality rates, then mortality in nature far exceeds our estimated mortality rates for reptiles in captivity." Robinson, Lower Than in the Wild, *supra* note 36, 9.

³⁹ "... [R]eptiles will often appear to be "thriving" physically in poor conditions, when they are actually suffering considerably. The slow metabolism of reptiles means that they can tolerate poor welfare for longer than a mammal could, but this means that they suffer for longer.", Lambert, Carder, D'Cruze Given the Cold Shoulder: A Review of the Scientific Literature for Evidence of Reptile Sentience, *Animals* 2019, 9, 821; doi:10.3390/ani9100821, 11.

⁴⁰ "... [I]t is important to consider that even a 1% transport mortality rate is likely to refer to millions of animals, given the scale of the industry.", Id., at 11.

⁴¹ Shawn Peng and Donald M. Broom, *The Sustainability of Keeping Birds as Pets: Should Any Be Kept?*, 11 ANIMALS 582 (2021).

⁴² Noga Shani et. al., *Notes on policy draft by the Israeli Nature and Parks Authority on trade in wildlife and natural values* (2023) (Hebrew) (Hereinafter: Shani).

disorders out of boredom, including plucking out their own feathers, and requiring psychiatric drugs.⁴³

Reptiles and birds are wildlife, and their rightful place is in their natural habitats, not in breeding farms, warehouses, pet stores, or homes where if they survive, they could spend years suffering both physically and from boredom in cages totally inappropriate to their natural needs.

2.2 ZOONOTIC DISEASES AND PANDEMICS

The effects of the international wildlife trade are not limited just to animals but extend to human health as well.

Birds and reptiles traded in vast quantities, serve as reservoirs of zoonotic pathogens such as influenza viruses and salmonella bacteria, which can cross the barriers and infect humans. The trade, which is often crowded and under unsanitary conditions, contributes to distribution of these diseases and could trigger pandemics.⁴⁴ It is estimated that around 60% of infectious diseases in humans are zoonotic (i.e. originated in animals and transferred to humans), and 75% of all the new diseases are zoonotic and causing millions of death cases every year.⁴⁵

Both birds and reptiles also serve as rich breeding grounds for many viruses, bacteria, parasites and pathogens. Just to name a few, birds tend to carry strands of influenza (most famously bird flu), as well as germs with pandemical potential such as H5N1,⁴⁶ while reptiles tend to carry Salmonella.⁴⁷ Hence, the trade in live birds and reptiles, and in some conditions even the trade in dead specimens, serves as a severe health hazard. In fact, health concerns served as one of the main

⁴³ M Engebretson, *The welfare and suitability of parrots as companion animals: a review*, 15 ANIMAL WELFARE 263 (2006); Emma L Mellor et. al., *Nature calls: intelligence and natural foraging style predict poor welfare in captive parrots*, 15(3) PROC BIOL SCI 263 (2021).

⁴⁴ P. Daszak et. al., *Workshop Report on Biodiversity and Pandemics of the Intergovernmental Platform on Biodiversity and Ecosystem Services*, IPEBS, 23 (2020) (Hereinafter: IPEBS 2020); Jairo A. Mendoza-Roldan, David Modry and Domenico Otranto, *Zoonotic Parasites of Reptiles: A Crawling Threat*, 36(8) CELLPRESS REVIEW, TRENDS IN PARASITOLOGY 677 (2020); Tamar Raviv and Simon Nemtsov, "Restricting the trade in wildlife – this is how we prevent the next pandemic", 11 ECOLOGY AND ENVIRONMENT, vol. 1 (13 May 2020) (Hebrew) (hereinafter "Raviv and Nemtsov").

⁴⁵ CDC, *Workshop Summary: Prioritizing Zoonotic Diseases for Multisectoral, One Health Collaboration in the United States*, 25 (2017).

⁴⁶ A. Cristalli & I. Capua, *Practical problems in controlling H5N1 high pathogenicity avian influenza at village level in Vietnam and introduction of biosecurity measures*, 51(s1) AVIAN DISEASES 461 (2007).

⁴⁷ *Id.*, 677.

reasons for the European ban on bird imports.⁴⁸ It seems that these health hazards are a two-way street, as human-caused diseases have been spotted in pet animals and wildlife as well.⁴⁹

To demonstrate just how severe the health hazards posed by the wildlife trade are, it should be noted that many global pandemics, such as the Swine Flu, the Avian Flu, SARS-CoV-2 and COVID-19, originated in viral interchanges between humans and animals.⁵⁰ In fact, one of the reasons these deadly viruses mutate so rapidly is because of this ricochet between humans and animals. Some of the problem stems from illegal trade practices; however, given the gaps between trade regulations and their enforcement, the legal wildlife trade also bears a significant share of the responsibility.⁵¹

2.3 BIODIVERSITY LOSS AS A RESULT OF TRADE

The trade in birds and reptiles (and any living animal) poses severe risks to the biodiversity of both the animal's country of capture and their destination.

As for the animal's countries of capture, recent studies indicate that both legal and illegal trade is estimated to affect one in every four native bird (and mammal) species globally (i.e. both trade practices have dramatic effects on bird species in the world, and constitute an existential threat).⁵² First and foremost the sheer number of individuals exported directly diminishes the species' wild population. Furthermore, the trade has severe indirect effects that tend to snowball. For example, smaller wild populations entail lower genetic diversity, which in turn can cause genetic diseases and other problems.⁵³ In addition, trade practices cause deforestation and habitat loss, thus destabilizing the local ecosystem as a whole. This is why the harm caused by the trade is not even limited to the traded species but also impacts other species residing in their native habitat. In fact,

⁴⁸ IPBES (2020) *Workshop Report on Biodiversity and Pandemics of the Intergovernmental Platform on Biodiversity and Ecosystem Services*. Daszak, P., Amuasi, J., das Neves, C. G., Hayman, D., Kuiken, T., Roche, B., Zambrana-Torrel, C., Buss, P., Dundarova, H., Feferholtz, Y., Földvári, G., Igbinsosa, E., Junglen, S., Liu, Q., Suzan, G., Uhart, M., Wannous, C., Woolaston, K., Mosig Reidl, P., O'Brien, K., Pascual, U., Stoett, P., Li, H., Ngo, H. T., IPBES secretariat, Bonn, Germany, DOI:10.5281/zenodo.4147317., pp. XVI - XIX, XXXI - XXXIV (hereinafter: IPBES (2020), 42, 24.

⁴⁹ *Id.* 37; A. Messenger, A. Barnes, & G. Gray, *Reverse zoonotic disease transmission (zooanthroponosis): a systematic review of seldom-documented human biological threats to animals*. 9(2) PLOS ONE(2014).

⁵⁰ IPBES (2020), *id.*, 37.

⁵¹ *Id.*, 41 - 52; See also the critical discussions in the following sections of this report.

⁵² The Center for Biological Diversity and the Natural Resources Defense Council, *Petition to Ban Trade in Wild Mammals and Birds*, 4 (2021).

⁵³ Ioannis Magouras et. al., *Emerging Zoonotic Diseases: Should We Rethink the Animal-Human Interface?*, 7 FRONT VET SCI 748 (2020).

the trade may also destabilize the fine natural balances between different species and thus trigger species outbreaks.⁵⁴

On the other hand, the traded animal's destination country faces significant risks as well to its biodiversity. Numerous studies have established a direct correlation between the international wildlife trade and the rise of invasive alien species, noting a 40% increase in such invasions since 1980.⁵⁵ Native species adapt to the local ecosystems and pathogens, but lack such defenses against unfamiliar, foreign species.⁵⁶ Newly introduced alien species carry novel and lethal diseases, and may disrupt the ecological balance as they compete for resources while lacking natural predators within their new environment.⁵⁷ Thus, the rise of alien invasive species may lead to drastic declines in native species population, and in extreme cases their extinction, particularly in areas of high endemism (i.e. with unique species found nowhere else).⁵⁸

One notable example is the invasion of the American grey squirrel (*Sciurus carolinensis*) into Europe, which has dramatically diminished native red squirrel (*Sciurus vulgaris*) populations in Britain.⁵⁹ This displacement occurred through various mechanisms, such as the transmission of diseases, and aggressive competition for food and nesting sites.⁶⁰ Another, more local, example is the invasion of the Common Myna (*Acridotheres tristis*) in Israel. Throughout the last decade Israel has seen a 17% decrease in the biodiversity of common native birds (a pace four times faster than in Europe).⁶¹ This process is mostly fueled by the wildlife trade,⁶² which resulted in invasions such as that of the Common Myna, which has experienced a parallel population increase of 585%,⁶³

⁵⁴ S. Diaz et. al., *Summary for policymakers of the global assessment report on biodiversity and ecosystem services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*, IPEBS, CIV-XVII (2019) (Hereinafter: IPEBS 2019).

⁵⁵ Associated with trade and other affects such as increase in human population and trends. Id., XVII.

⁵⁶ EFSA, *Invasive alien species*, EFSA SITE (accessed 21.8.2025) <https://www.efsa.europa.eu/en/topics/topic/invasive-alien-species>.

⁵⁷ IPBES, *supra* note 48.

⁵⁸ Id., XV.

⁵⁹ Sandro Bertolino, *Introduction of the American grey squirrel (Sciurus carolinensis) in Europe: A case study in biological invasion*, 95(7) CURRENT SCIENCE 903 (2008).

⁶⁰ S. Grossbard & I. Renan (Eds), *State of Nature Report 2023 - Biodiversity. Hamaarag - Israel's National Ecosystem Assessment Program*, HAMAARAG SITE (2024) <http://hamaarag.org.il/> (in Hebrew).

⁶¹ Id., 13.

⁶² Hadass Marshall, *The Silent Invasion*, JEWISH NATIONAL FUND GLOBE BLOG (Jan. 20, 2015) (Hebrew), <https://www.kkl.org.il/travel/globeblog/2448/>.

⁶³ Id.

alongside nine other established invasive bird species and five additional emerging invasive species.⁶⁴

It should be noted that the threat posed by invasive species is not limited to biodiversity, as their emergence may also lead to economic consequences (and is deeply correlated with the spread of diseases as expanded below). In particular, invasive species disrupt the agricultural sector as well as generally damage property, and pose a risk to humans (e.g., crocodiles and snakes). In addition, a decrease in local biodiversity may harm tourism.⁶⁵ For example, the annual costs of the damages caused by alien species in Israel has been estimated at 473,000,000 shekels annually (about 141,668,000 USD).⁶⁶

2.4 THE LEGAL TRADE VERSUS THE ILLEGAL TRADE

Beyond these problems that the international wildlife trade poses to animal welfare, biodiversity loss, and the prevention of pandemics, another critical issue is the illicit trade in wildlife and their derivatives. This trade is estimated at an annual mind boggling 23 billion dollars⁶⁷ - the fourth largest global black market (after drugs, weapons, and human trafficking).⁶⁸ This lucrative trade has many catastrophic effects that go far beyond “mere” animal welfare and environmental issues. These include social and economic costs, mostly in developing countries, in addition to the fostering of governmental corruption.⁶⁹ Furthermore, the trade serves as a source of revenue for organized and transnational crime, and so constitutes a threat to both national and global security.⁷⁰ Much of the illicit traffic is done on the open web, and is considered a low risk business.⁷¹

⁶⁴ *Id.*, 14.

⁶⁵ E. Hadass et. al., *Economic Assessment of the Feasibility of Managing Invasive Species*, MINISTRY OF ENVIRONMENTAL PROTECTION (2020) <https://static.parks.org.il/wp-content/uploads/2021/01/polshim.pdf>.

⁶⁶ *Id.*, 3.

⁶⁷ World Economic Forum, *Wildlife crime: a \$23 billion trade that's destroying our planet*, WORLD ECONOMIC FORUM SITE (28.9.2016), <https://www.weforum.org/stories/2016/09/fighting-illegal-wildlife-and-forest-trade/>.

⁶⁸ John Wilson & Richard Primack CONSERVATION BIOLOGY IN SUB-SAHARAN AFRICA, 439-455; INTERPOL, *Wildlife and forestry crime: Worldwide seizures in global INTERPOL-WCO operation*, INTERPOL SITE (2020) <https://www.interpol.int/News-and-Events/News/2020/Wildlife-and-forestry-crime-Worldwide-seizures-in-global-INTERPOL-WCO-operation>

⁶⁹ Tanya Wyatt et. al., *Corruption and Wildlife Trafficking: Three Case Studies Involving Asia*, 13 ASIAN JOURNAL OF CRIMINOLOGY 35 (2018) (Hereinafter: Wyatt)

⁷⁰ *Id.*; U.S. ICE, *Wildlife Trafficking: Wildlife trafficking is the fourth largest organized crime in the world, after drug trafficking, counterfeiting and human trafficking*, ICE SITE (accessed 21.8.2025), <https://www.ice.gov/about-ice/hsi/investigate/wildlife-trafficking>

⁷¹ Anita Lavorgna, *Wildlife trafficking in the Internet age*, 3(5) CRIME SCIENCE (2014)

While there are both legal and illegal markets that exist in parallel, it should be noted that they tend to overlap. In many cases the legal trade (in particular legal captive-breeding facilities) is used to launder illicit activity, in particular through falsification of permits and certificates.⁷² It should be noted that the illicit trade is ubiquitous, and in many cases overtakes legal activity. For example, experts have estimated that up to 85% of the wildlife trade in Israel is conducted illegally, and up to 35% of traded individuals belong to endangered species (under CITES and Israeli law).⁷³ Such illicit activity flourishes mainly due to insufficient enforcement.

2,5 FINDING AN OPTIMAL SOLUTION

When addressing the challenges posed by the international wildlife trade, the environmental community is divided between two main approaches: imposing a total ban or enhancing regulation.⁷⁴ Each option carries its own advantages and drawbacks. A total ban is the only way to truly end animal suffering; however, since consumer demands tend to remain constant, a legal ban may merely drive the industry underground, shifting activity to illegal channels that are often far more destructive. On the other hand, regulatory frameworks have proven ineffective, and in many instances, the legal wildlife trade functions as a cover for laundering illicit activities.⁷⁵

This report assumes that a blanket ban is the optimal solution for the moral issues and physical hazards posed by the wildlife trade. In the authors' opinion, the risks outweigh the benefits of the trade. Considering the inability to regulate the trade due to the vast infiltration of criminal activity under the guise of licensed activity, as well as the lack of international oversight, national bans on the trade seem to be the most efficient option. Although this is the most appropriate solution in our opinion, in principle our analysis may also be applied to less restrictive solutions such as further regulation of trade or a partial ban.

⁷² Wyatt, *supra* note 69.

⁷³ Shani, *supra* note 42.

⁷⁴ For a similar discussion but regarding animals as food, see: GARY L. FRANCIONE & ROBERT GARNER, *THE ANIMAL RIGHTS DEBATE: ABOLITION OR REGULATION?* (2010).

⁷⁵ For further reading see: Dilys Roe et al., *Beyond banning wildlife trade: COVID-19, conservation and development*, 136 *WORLD DEVELOPMENT* (2020).

3 REGULATORY OBLIGATIONS AND LIMITS

3.1 ANIMAL WELFARE OBLIGATIONS UNDER CITES

While international environmental law has developed rapidly in preceding decades, many normative documents in this field are formulated in a flexible and non-binding manner, creating “soft law”.⁷⁶ Even so, states have come to recognize the transnational character of the challenge of conservation and in 1973 adopted the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).⁷⁷ CITES is an international convention that regulates the international trade in wildlife, while focusing on the conservation of species. Nearly all UN member states (185 out of 193) are parties to CITES, including Israel.⁷⁸ This treaty does not apply to trade in all species of animals, but rather regulates the trade in species listed under three appendixes.⁷⁹ These three appendixes specify a tiered system of strict regulations, adjusted to the conservation status of each species:

Appendix I - includes “species threatened with extinction which are or may be affected by trade”, and so enacts “particularly strict regulation in order not to endanger further their survival”.⁸⁰ A species may be added to this appendix according to a two thirds majority vote of CITES member parties.⁸¹

Any trade in Appendix I species requires both a prior export and import permits subject to several conditions. First and foremost, a permit requires the prior recommendation from the national scientific authority (a body of professionals that all parties to the treaty are required to maintain)⁸² of both the exporting and importing state, stating “that such export will not be detrimental to the

⁷⁶ In contrast to other fields in international law (such as Human Rights), the existing general international documents in the environmental field (such as the Stockholm Declaration and the Rio Declaration) are not binding. All international agreements which countries ratify are binding, such as CITES, the Convention on Biodiversity, the UNFCCC, etc. The problem is in compliance and implementation, and there are no international environmental crimes (and thus the campaign for ecocide). Declarations are not binding and are soft law; Pierre-Marie Dupuy, *Soft Law And The International Law of The Environment*, 12 MICH. J. INT’L L. 420 (1990-1991).

⁷⁷ 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; 12 I.L.M. 1085 (1973) [hereinafter – CITES].

⁷⁸ CITES, *List of Parties to the Convention*, CITES SITE (accessed 21.8.2025) <https://cites.org/eng/disc/parties/index.php>

⁷⁹ CITES, Art. II

⁸⁰ CITES, Art. II(1)

⁸¹ CITES, Art. XV

⁸² CITES, Art. IX

survival of that species”.⁸³ It should be noted that trade in such specimens is seen as exceptional, and while varying between states, will usually be recommended only in cases perceived as crucial for the preservation of the species.⁸⁴ Second, the animal must be acquired legally. Third, the shipment must minimize any risk of injury or cruel treatment to the animal itself. Fourth, the recipient of the animal must be “suitably equipped to house and care for it”.⁸⁵ Finally, any importation for commercial purposes is prohibited.⁸⁶

Appendix II: includes “species which although not necessarily now threatened with extinction may become so [unless their trade] is subject to strict regulation”,⁸⁷ as well as “other species which must be subject to regulation in order [to bring their trade] under effective control”.⁸⁸ Species are added to this appendix according to a two thirds majority vote as well.⁸⁹

Similar to appendix I species, the trade in appendix II species requires an export permit, yet it does not require an import permit. Therefore, it requires only: a non-detrimental recommendation from the national scientific authority of the exporting state; that the animal was acquired legally; and that the shipment must minimize any risk. It should be noted that this provision does not prohibit trade for commercial purposes, nor does it regulate the welfare of the animal following its arrival.⁹⁰ In practice, CITES guidelines have interpreted the non-detriment recommendation provision broadly, and require scientific regulation of sustainable trade, usually enforced by setting export quotas.⁹¹

Appendix III: includes “species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the co-operation of other Parties in the control of trade”.⁹² Accordingly, unlike the other two appendices, states may add species to this appendix unilaterally.⁹³

⁸³ CITES, Art. III(2)(a)

⁸⁴ Alexander Gillespie CONSERVATION, BIODIVERSITY AND INTERNATIONAL LAW, 82-84 (2011) (Hereinafter: Gillespie).

⁸⁵ CITES, Art. III(2)(c) & III(3)(b).

⁸⁶ CITES, Art. III(3)(c).

⁸⁷ CITES, Art. II(2)(a).

⁸⁸ CITES, Art. II(2)(b).

⁸⁹ CITES, Art. XV.

⁹⁰ CITES, Art. IV.

⁹¹ Gillespie, *supra* note 84, 86-89.

⁹² CITES, Art. II(2)(c).

⁹³ CITES, Art. XVI.

Trade in Appendix III species requires a certificate of origin, and when imported from a state which has included that species in Appendix III requires an export permit. This permit is similar to export permits under the other two appendices, excluding the fact that it doesn't require the recommendation of the national scientific authority.⁹⁴ In general these regulations are meant to augment national regulations, and are seen as a regional steppingstone towards possible future inclusion under other appendices.⁹⁵

To conclude, CITES operates through a regulatory structure based on a system of permits. The treaty is primarily a trade agreement that aspires to coordinate international conservation efforts, while taking into minimal consideration the welfare of the traded animal. This system is effective, yet not foolproof (as noted above, illegal trade in CITES species still continues), and sadly applies only to a limited number of pre-listed species.⁹⁶ Finally, it should be noted that the treaty explicitly states that parties may enforce even stricter measures, and so CITES only sets countries' minimal obligations in regulating the wildlife trade.⁹⁷

3.2 LIMITS OF INTERNATIONAL TRADE UNDER GATT/WTO

GATT is a multilateral treaty, concluded in 1947 following the Second World War, to promote international trade by reducing or eliminating trade barriers such as tariffs and quotas.⁹⁸ Ever since the WTO's establishment in 1995 nearly all UN member states have joined. There are presently 166 members, and membership in the WTO is contingent on accepting a package of mandatory agreements including the GATT.⁹⁹ The GATT outlines several general principles governing international trade, that reflect a liberal worldview aspiring to promote global open trade. These principles include:

Limits on Tariffs: While less relevant for our purposes this is GATT's main focus, since tariffs are the most common trade barriers. When joining the WTO, each member agrees

⁹⁴ CITES, Art. IV.

⁹⁵ Gillespie, *supra* note 84, 93-95.

⁹⁶ See for example Pervaze A. Sheikh & M. Lynne Corn, *The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)*, CONGRESSIONAL RESEARCH SERVICE, (2016)

⁹⁷ CITES, Art. XIV

⁹⁸ GATT, *supra* note 1.

⁹⁹ As well as several other agreements, as set by Article II of the Marrakesh Agreement Establishing the World Trade Organization, Including: The General Agreement on Trade in Services (GATS), The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Agreement on Trade-Related Investment Measures (TRIM).

to maximum tariff rates in a country specific schedule. Maximum tariff rates vary by member.¹⁰⁰

Ban on Quantitative Trade Restrictions (QRs): Countries are prohibited from setting any quantitative limits (including general bans) on import products.¹⁰¹

Most Favored Nation Principle (MFN): All parties to GATT should be considered Most Favored Nations subject to equal trade conditions (i.e. every advantage given to a specific country must be given equally and unconditionally to the same goods from all other member countries);¹⁰²

National Treatment: Once a product has passed customs, internal regulations imposed by a country may not discriminate between locally produced and imported products.¹⁰³

While GATT's principles set the basic rules of international trade, they are not absolute, and certain exceptions may be justified under certain conditions, including those listed under Article XX to the treaty. The initial burden of proof lies on the party wishing to invoke Article XX to defend itself in a WTO dispute.¹⁰⁴ First and foremost any deviation from GATT rules must fulfill one of several listed exceptional purposes. Most relevant to the present discussion is the **Public Morals** exception,¹⁰⁵ the exception for **Protection of Human, Animal, Plant Life or Health**,¹⁰⁶ and finally the exception for **Conservation of Exhaustible Natural Resources** (under which CITES' trade limits are seen as justified according to *US-Shrimp*¹⁰⁷). It should be noted this is not just a technical requirement, as it requires proof of "a genuine relationship of ends and means between the objective pursued and the measure at issue"¹⁰⁸

Second, any WTO- inconsistent measure restricting international trade must be justified as necessary. The **necessity** analysis sets an objective standard, enforceable through a judicial review

¹⁰⁰ GATT, Art. II.

¹⁰¹ GATT, Art. XI.

¹⁰² GATT, Art. I.

¹⁰³ GATT, Art. III.

¹⁰⁴ Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, WTO DOC. WT/DS2/AB/R, pp. 22-23 (adopted 20 May 1996).

¹⁰⁵ GATT, Art. XX(a) - Such as pornography, drugs, alcohol and pork (mainly in Muslim countries) etc.

¹⁰⁶ GATT, Art. XX(b)

¹⁰⁷ GATT, Art. XX(g); *US-Shrimp*, *supra* note 3.

¹⁰⁸ Appellate Body Report, *Brazil – Measures Affecting Imports of Retreaded Tyres*, WTO DOC. WT/DS332/AB/R, para.145 (adopted 17 December 2007) (Hereinafter: *Brazil - Tyres*).

process of weighing and balancing of relevant factors. The contribution of the measure to the realization of the pursued ends, taking into account its relative importance, must be proportionate or outweigh the restrictive impact of the measure on international commerce.¹⁰⁹ Since trade bans are "by design as trade-restrictive as can be", generally they may only be justified when a material contribution to the aspired objective can be proven, or when projections supported by sufficient evidence show it is likely to produce an apt material contribution.¹¹⁰ After a measure has been found to be initially necessary, the complainant (i.e., the party in a WTO dispute challenging the measure) may also challenge it by proposing less trade-restrictive alternatives. These alternatives must also achieve an equivalent contribution to that of the original measures, and the respondent (i. e., the party trying to justify the measures) may also claim in defense that the alternatives are not "reasonably available" as they require significant further funding.¹¹¹

Finally, the measures taken must meet a two-tier test: first, the measure must fall under one of the exceptions listed in Art. XX as discussed above; second, the measure must meet the requirements of the chapeau (introductory paragraph) of Article XX, a requirement often conceptualized as a duty to act in good faith: "*Subject to the requirement that such 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 ...*".¹¹² As part of this obligation, trade restrictions must not be applied in an arbitrary manner and must be imposed fairly and consistently, based on objective and relevant considerations. Likewise, such measures must not be applied in a way that constitutes protectionism, i.e., disguised discrimination or unfair favoring of domestic products.¹¹³ This requirement is similar (yet not identical) to the MFN principle set in Article I and the National Treatment principle set in Article III.

To conclude, the GATT sets the limits of international trade. The treaty determines a liberal overview by opening local markets to international trade by defining equality between countries

¹⁰⁹ Appellate Body Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WTO DOC. WT/DS285/AB/R, paras. 304-306 (adopted 20 April 2005) (Hereinafter: *U.S. - Gambling*); Appellate Body Report, *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WTO DOC. WT/DS161, WT/DS169/AB/R paras. 162-166 (adopted 11 Dec. 2000); Appellate Body Report, *Brazil – Measures Affecting Imports of Retreaded Tyres*, WT/DS332/AB/R, adopted 17 December 2007.

¹¹⁰ *Brazil - Tyres*, *supra* note 108, para. 150-151.

¹¹¹ *US - Gambling*, *supra* note 8, paras. 308-311.

¹¹² GATT, *supra* note 1, Art. XX.

¹¹³ *Brazil - Tyres*, *supra* note 108, paras. 214-215.

and removing trade barriers such as tariffs and quotas. Despite this liberal perspective, GATT recognizes certain exceptions that may justify deviations from said obligations, provided such measures are necessary, and adopted in good faith to pursue certain objectives.

4 PROSPECTS OF BANNING THE TRADE - ISRAEL AS A TEST CASE

Theoretically speaking, Israeli law already provides the domestic legal groundwork needed to ban the international trade in wild birds and reptiles. Israel's Wildlife Protection Law (1955) and National Parks, Reserves and Memorial Law (1998) explicitly requires a state-issued license for any handling or trade involving non-domesticated animals or their derivatives.¹¹⁴ Furthermore, the Law authorizes Israel's Minister of Environmental Protection to enact regulations that may limit or prohibit the trade in certain species or their derivatives.¹¹⁵ In fact, these authorities have even already been implemented, as the Wildlife Protection Regulations (1976) prohibit trade in primates and fur, subject to exceptions specified in the regulations.¹¹⁶

Even so, any trade ban is at odds with GATT's prohibition on QRs. In addition, a ban only on international trade without an equivalent ban on domestic wildlife trade would be considered arbitrary and seen as preferential treatment for local businesses. Therefore, it remains to be determined whether such a ban is consistent with Israel's international obligations under GATT, and whether it can be justified under the exceptions listed in Article XX.

We note once again that this report addresses only issues pertaining to the international commercial trade in birds and reptiles. Accordingly, its conclusions are confined to these categories of animals. Nevertheless, there is no conceptual or legal impediment to conducting analogous research and extending the analysis to mammals and other animal groups. In fact, the authors of this report support further research in this area and the possible expansion of a comprehensive ban to additional sectors of the international animal trade, in accordance with its specific risks (as shown in section 2 above) and the legal analyses as shown below.

¹¹⁴ Wildlife Protection Act, 5715-1955, §8 (Isr.); National Parks, Reserves and Memorial Act (5758-1998) §33(d) (Isr.).

¹¹⁵ Wildlife Protection Act, 5715-1955, §16(5) (Isr.).

¹¹⁶ Wildlife Protection Regulations, 5736-1976, §12b (Isr.)

4.1 JUSTIFYING A BAN FOR THE PROTECTION OF PUBLIC MORALS

The leading precedent in which the public morals exception was invoked in the context of animal welfare was *EC – Seal Products*. This case revolved around the EU ban on trade in seal derivatives (subject to several exceptions), due to excessively cruel hunting practices. The WTO Panel and the Appellate Body accepted the EU's arguments, stating that animal welfare and prevention of excessive harm to animals truly constituted a matter of European public moral concern. Can the logic of *EC – Seal Products* also be applied to Israel's trade in birds and reptiles?

First, it should be determined whether Israel has an equivalent moral principle regarding animal welfare. Generally speaking, the term 'public morals' denotes “*standards of right and wrong conduct maintained by or on behalf of a community or nation*”.¹¹⁷ It should be noted that due to social and cultural differences states have “scope to define and apply for themselves the concepts of ‘public morals’” with respect to various values prevailing in their societies at a given time.”¹¹⁸ By large, the best proof of a public morals concern can be found in a country’s legal sources. In particular, the strongest proof would be a dedicated law that explicitly frames the relevant morals concern as its objective, similar to the EU's 2009 Regulation on Trade in Seal Products (Regulation (EC) No 1007/2009).¹¹⁹ While the EU also brought public surveys as proof of public morals concerns in *EC-Seal Products*, it seems that the polls had little to no effect on the outcome, especially considering how distorted their results were.¹²⁰ Hence, according to *EC-Seal Product*, the “public morals” exception and any trade restrictions based on it, should be examined according to the specific country’s legal structure inclusive of its laws and court rulings.¹²¹

¹¹⁷ *U.S - Gambling*, *supra* note 8.

¹¹⁸ *Id.*, paras. 6.461-6.465; *EC- Seals Products* Panel Report, *supra* note 11, para. 7.3.8.1

¹¹⁹ Regulation on Trade in Seal Products (Regulation (EC) No 1007/2009). The regulation was updated in 2015 following the WTO decision. “The measure is explicitly based on EU citizens’ moral beliefs about animal welfare; the Preamble refers to ‘expressions of serious concerns by members of the public and governments sensitive to animal welfare considerations due to the pain, distress, fear and other forms of suffering which the killing and skinning of seals, as they are most frequently performed, cause to those animals.” Katie Sykes, *Sealing animal welfare into the GATT exceptions: The international dimension of animal welfare in WTO disputes*, 13 *WORLD TRADE REVIEW* 471, 475 (2014)

¹²⁰ Paola Conconi & Tania Voon, *EC–Seal Products: The Tension between Public Morals and International Trade Agreements*, 15(2) *WORLD TRADE REVIEW* 211, 230-232 (2016) (Hereinafter: Conconi & Voon). For further reading see Nikolas P. Sullheim *The Legal Question of Morality: Seal Hunting and the European Moral Standard* 25(2) *SOCIAL & LEGAL STUDIES* 141(2016);

¹²¹ R. Howse and J. Langille, *Permitting Pluralism: The Seal Products Dispute and Why the WTO Should Permit Trade Restrictions Justified by Non-Instrumental Moral Values*, 37 *YALE J. of INT. L.* 367,372 (2012): “[The goal is] to show that these moral concerns are deep-rooted and a common basis for legislation”.

Israel has a vast legal network protecting animals and outlawing animal cruelty, exemplified by the Animal Welfare (Animal Protection) Law (1994), and rulings by Israel's Supreme Court.¹²² It would be reasonable to claim that the Israeli public's abhorrence of animal cruelty can be at least one of the motives (as it does not have to be the sole motive) behind a possible ban on the trade in birds and reptiles.¹²³ In fact, the Wildlife Protection Law (1955) that comprises Israel's legal basis for such a ban explicitly names animal welfare as one of the concerns that may guide such action.¹²⁴

Second, it must be determined whether a full ban is necessary. As noted in the introduction in section 1, this report assumes that a total ban is the optimal solution. Given the inherent cruelty and dangers of the trade in birds and reptiles, including its staggering death toll, immediate action is warranted. As trade-restrictive as a total ban may be, it appears to be the most effective and expedient means of ending the excessive animal suffering caused by this trade. Even if, as feared, a significant portion of the trade were to shift into illegal channels, a total ban would still reach the needed threshold of a material contribution towards protecting animals, thus outweighing the restrictive impact of the measure on international commerce.¹²⁵

Next, in evaluating the measure's necessity, we must assess whether less trade-restrictive alternatives are reasonably available. Unfortunately, the accessible alternatives do not appear to achieve an equivalent level of contribution to the protection of animal welfare. Trade regulations may reduce mortality and injury rates but cannot eliminate them entirely. Likewise, a partial ban limited to the most vulnerable species would significantly reduce mortality yet would still fail to fully prevent the excessive suffering inherent to the trade. In any event, any claim that the alternatives are just as effective, seems to be of a speculative nature, as the burden of proof at this stage lies on the complainant.¹²⁶ It should also be noted that a total ban on international trade would set a simple rule, which can be more easily enforced, while regulations and partial bans require

¹²² See Oren Poraz, *Report on MP Ronit Tiroshes Bill on the Prohibition of Production, Import and Selling of Furs and Its Possible Expansion* (28 Dec. 2009) [Hebrew].

¹²³ Conconi & Voon, *supra* note 120, 232.

¹²⁴ Wildlife Protection Act, 5715-1955, §12a (Isr.)

¹²⁵ The EU also hesitated whether to impose a total ban or promulgate regulations, see Howse and Langille, *supra* note 121, 388: "As mentioned above, the legislative history also clarifies why the European Union thought that a ban was necessary, rather than a more limited measure. The original proposal to regulate the seal trade suggested banning only seal products that were the result of seals being killed in an inhumane manner. However, an extensive scientific and regulatory analysis conducted by the European Food Safety Authority (EFSA), which suggested that it would be difficult to distinguish between seals killed humanely and those killed in a cruel fashion, prompted the European Union to expand on its initial proposal and to institute a full ban."

¹²⁶ Brazil-Tyres, *supra* note 108, para 156.

further research and funding. Thus, it could be argued that the alternative measures are not reasonably available.

Moreover, enforcement is a major concern. Since even legal trade requires substantial and intensive enforcement,¹²⁷ the authorities may not possess the necessary resources to effectively monitor and regulate the trade.¹²⁸ Consequently, a total ban on such trade would take this limitation into account. By prohibiting all commercial trade, the authority's enforcement burden would be significantly reduced, since there would be no need to verify species identification, origin of the animals, or compliance with complex documentation requirements. Hence, imposing a total ban is practically effective.

Finally, the measure must comply with the terms of the chapeau of Art. XX.¹²⁹ It should be noted that any exceptions to the ban could undermine its justification at this stage, as they may constitute arbitrary or unjustifiable discrimination. In this context, a blanket ban on any trade in birds and reptiles would be easiest to justify. A significant problem may most certainly arise if the trade ban only applies to international wildlife trade, without equivalent restrictions on domestic trade. Such a measure might appear, *prima facie*, to be aimed at protecting the domestic market from international competition. Conversely, it could be argued that the domestic trade is less cruel, yet this would require hard data on local trade practices. In addition, such a claim may undermine the prior argument that a partial ban is not a viable alternative since any trade in wildlife is inherently problematic.

It could also be argued that the proposed measure does not go far enough. Why arbitrarily limit a trade ban only to birds and reptiles and not extend it to further species?¹³⁰ In this context one should note the distinctive brutality of this specific trade. While principles of animal welfare require the

¹²⁷ European Parliament, resolution on the EU strategic objectives for the 19th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Panama, 14 to 25 November 2022 (2022/2681(RSP)): www.europarl.europa.eu/doceo/document/TA-9-2022-0344_EN.pdf

¹²⁸ National Parks and Nature Reserves Authority, *Summary of Public Comments on Reptile Trade Policy*, 12 (18 Feb. 2020) [Hebrew]. See *U.S. - Gambling* supra note 8, para 308: "An alternative measure may be found not to be "reasonably available", however, where it is merely theoretical in nature, for instance, where the responding Member is not capable of taking it, or where the measure imposes an undue burden on that Member, such as prohibitive costs or substantial technical difficulties."

¹²⁹ Supra, text accompanying note 112.

¹³⁰ Tamara Perišin, *Is the EU Seal Products Regulation a Sealed Deal? EU and WTO Challenges*, 62(2) INTERNATIONAL & COMPARATIVE LAW QUARTERLY 373, 395 (2013).

protection of all species, as extensively discussed in Section 2.1 the trade in birds and reptiles is uniquely deadly and thus demands particularly urgent attention.

In conclusion, animal welfare and the abhorrence of animal cruelty are principles deeply entrenched in Israeli law and reflect its public morals. However, a partial ban on trade in birds and reptiles based on this principle may be hard to justify under the requirements of the chapeau. This was in fact the ruling in *EC - Seal Products*, where the ban was found in line with public morals and necessary, and yet failed to meet the chapeau's requirements. Public morals may necessitate a total ban on a certain trade, yet any exception would not likely pass. As a result of this discussion, and considering the challenges demonstrated by *EC Seal Products*, it is recommended that no exceptions be added to the proposed ban in order to avoid the legal and practical difficulties that arose in that case.

4.2 JUSTIFYING A BAN FOR THE PROTECTION OF PUBLIC AND ANIMAL HEALTH

Article XX(b) of the GATT permits, as an exception to GATT rules, measures “*necessary to protect human, animal or plant life or health*”. Traditionally, this exception has been invoked mainly in relation to human health, but it has gradually been expanded to cover broader dimensions, including aspects of animal welfare.¹³¹ For example, in *Brazil – Retreaded Tyres*, a Brazilian import ban was justified under XX(b), given the severe health and environmental risks posed by tyre waste.¹³² These cases underscore that the scope of XX(b) is wide and adaptable.

The WTO’s interpretative practice increasingly acknowledges that health concerns extend beyond immediate human risks to include animal welfare and ecological factors. Katie Sykes argues that the WTO has begun to integrate animal welfare into the interpretation of both Article XX(a) and XX(b), reflecting a shift towards recognizing animal welfare as part of the “international dimension” of trade law.¹³³

As discussed in Section 2.2 of this report, the trade in birds and reptiles creates health hazards. Birds are recognized vectors of avian influenza (H5N1), reptiles are frequent carriers of salmonella, and the wildlife trade more generally has been identified as a key channel for zoonotic

¹³¹ Sykes, *supra* note 119, 477 - 485.

¹³² *Brazil Tyres*, *supra* note 108.

¹³³ Sykes, *supra* note 119, at 491.

spillovers leading to pandemics, including COVID-19, SARS, Ebola and many others.¹³⁴ This poses a risk for both public health and animal health, falling squarely within the scope of Article XX(b).¹³⁵

Turning to necessity, the proposed measure must contribute materially to the conservation of either public or animal health, and that no reasonably available, less trade-restrictive alternatives would achieve equivalent results.¹³⁶ In the case of Israel, partial bans, licensing schemes, or enhanced sanitary inspections cannot adequately address the systemic risks posed by wildlife trade, given the porous boundary between legal and illegal markets.¹³⁷ Thus, a total ban would make a substantial contribution to health protection and may be deemed “necessary” in WTO terms.

The more challenging hurdle lies once again in the chapeau of Article XX. In *Brazil – Tyres*, exemptions granted under trade agreements with Mercosur undermined the consistency of the measure.¹³⁸ Likewise, in *EC – Seal Products*, the Appellate Body found that Inuit and marine management exceptions created discriminatory effects, even though the underlying objective was legitimate.¹³⁹ For Israel, the lesson is clear: a bird-and-reptile trade ban must be applied comprehensively and uniformly, covering both domestic and international trade and avoiding arbitrary exemptions. Such consistency demonstrates that the measure is genuinely health-driven and not a disguised restriction on trade.

In conclusion, Article XX(b) provides Israel with a strong doctrinal basis for justifying a comprehensive ban on trade in wild birds and reptiles.¹⁴⁰ The health risks are severe.¹⁴¹ WTO case law confirms that countries may adopt restrictive measures when they are necessary to protect health, provided no equally effective but less trade-restrictive alternatives exist. The jurisprudence, reinforced by scholarly commentary, further indicates that animal welfare concerns are increasingly recognized as part of this protective framework.¹⁴² However, to withstand scrutiny

¹³⁴ See section 1.c. above and also Raviv and Nemtsov, *supra* note 44.

¹³⁵ GATT, *supra* note 1, Art. XX(b): “...*necessary to protect human, animal or plant life or health*” (*underlines added*).

¹³⁶ See section 2.3. above and its references; Sykes, *supra* note 119, at 495 - 496.

¹³⁷ See section 2.4 above.

¹³⁸ *Brazil Tyres*, *supra* note 108, 83, 99.

¹³⁹ *EC- Seals Case* *supra* note 4, 175 - 191.

¹⁴⁰ Sykes, *supra* note 119, at 492.

¹⁴¹ See section 2.2 above.

¹⁴² Sykes, *supra* note 119, 131.

under the chapeau, the measure must be applied consistently and without arbitrary discrimination. A total, uniform ban offers the most defensible design.

4.3 JUSTIFYING A BAN FOR THE PROTECTION OF NATURAL RESOURCES

In order to assess whether a ban can be justified under Art. XX (g) “Natural Resources” exception, we must first consider the 1998 *US-Shrimp* case decided by the WTO’s Appellate Body.¹⁴³ In that dispute a number of countries complained about the United States’ import prohibition of shrimp harvested by methods harmful to endangered sea turtles. The US successfully defended it under Article XX(g) of the GATT as a measure “*relating to the conservation of exhaustible natural resources*”.¹⁴⁴ This applies not only to the protection of domestic ecosystems, but also to measures addressing the overexploitation of wildlife populations abroad and the preservation of global biodiversity.

The Appellate Body explicitly rejected the view that “exhaustible natural resources” should be limited to nonliving resources, holding instead that living species threatened with extinction (such as sea turtles) fall within the scope of the exception.¹⁴⁵ This ruling thus established a legal baseline: a trade ban may be defensible under WTO law when it aims to protect a species that is being depleted or endangered, provided that it satisfies the further requirements under Article XX and the chapeau.¹⁴⁶

In parentheses it should be noted that this case was “easy” in that the sea turtles are listed on CITES’s Appendix I and all the parties to the case were also parties to CITES.¹⁴⁷ However, in order to strengthen its ruling based on Art. XX(g) “Exhaustible Natural Resources”, the Appellate Body drew on¹⁴⁸ UNCLOS,¹⁴⁹ The Convention on Biological Diversity,¹⁵⁰ Agenda 21¹⁵¹ and the

¹⁴³ *US-Shrimp*, *supra* note 3.

¹⁴⁴ GATT, *supra* note 1. It should be noted that indeed the Appellate Body accepted this U.S argument but found that the measure could not be justified under the chapeau.

¹⁴⁵ *US-Shrimp*, *supra* note 3, para. 149.

¹⁴⁶ Robert Howse, *The Appellate Body Rulings in the Shrimp/Turtle Case: A New Legal Baseline for the Trade and Environment Debate*, 27 COLUM. J. of ENVIRONMENTAL L. 489, pp. 500-501 (2002).

¹⁴⁷ See *US-Shrimp*, *supra* note 3, paras 25, 72, 127 – 134, fn. 121.

¹⁴⁸ *Id.*, para 130.

¹⁴⁹ United Nations Convention on the Law of the Sea (1982), Done at Montego Bay, 10 December 1982, UN Doc. A/CONF.62/122.

¹⁵⁰ Done at Rio de Janeiro, 5 June 1992, UNEP/Bio.Div./N7-INC5/4.

¹⁵¹ Adopted by the United Nations Conference on Environment and Development, 14 June 1992, UN Doc. A/CONF. 151/26/Rev.1.

Convention on the Conservation of Migratory Species.¹⁵² These international normative sources define the term “natural resources” widely, regardless of CITES.¹⁵³ From this we can conclude that *US-Shrimp* ruling is not limited to the species listed on CITES’s Appendixes.

In practice, the *US-Shrimp* ruling means that Israel could theoretically defend a total ban if it demonstrates that the measure directly contributes to the protection of threatened bird and reptile populations and their ecosystems. As noted above, these taxa face acute risks of population collapse, invasive species proliferation, and cascading ecological harm. All of these are indicators that align closely with the “exhaustible” criterion identified by the Appellate Body.¹⁵⁴

Turning to the necessity requirement, the analysis must show that the proposed measure contributes materially to the conservation of the relevant resource, and that no reasonably available, less trade-restrictive alternatives would achieve equivalent results.¹⁵⁵ As explained in Section 2.1, incremental regulation or partial restrictions cannot fully address the existential threats posed by wildlife trade. Because legal and illegal markets are deeply intertwined, partial regulation would allow laundering of illicit activities and thus fail to halt resource depletion. A total ban, by contrast, establishes a clear and enforceable rule that makes a substantial contribution to halting overexploitation. In this sense, while highly trade-restrictive, such a measure appears necessary within the meaning of Article XX(g).

Moreover, the inadequacy of partial or species-specific restrictions stems not only from enforcement difficulties, but also from inherent scientific and predictive uncertainty. It is often impossible to determine *ex ante* which imported species will establish invasive populations and cause significant harm to local ecosystems. Ecological impacts frequently emerge only over time, and species initially regarded as low-risk may later become invasive, displacing native species, transmitting novel pathogens, and causing irreversible biodiversity loss.

As noted above, Israel’s experience with invasive bird species illustrates this dynamic. Several species introduced through trade, such as the Common Myna and the Ring-necked Parakeet, have

¹⁵² Final Act of the Conference to Conclude a Convention on the Conservation of Migratory Species of Wild Animals, done at Bonn, 23 June 1979.

¹⁵³ *US-Shrimp*, *supra* note 3, paras. 130 - 131.

¹⁵⁴ See the *Jaco Parrot* case in section 2.1 above.

¹⁵⁵ Report of the Appellate Body on *Korea – Measures Affecting Import of Fresh, Chilled & Frozen Beef*, WT/DS161/AB/R, WT/DS169/AB/R, para. 161 (December 11, 2000).

become well-established invasive species, causing substantial ecological and economic harm. These cases demonstrate the inherent limits of species-specific risk assessments.

In light of this uncertainty, selective bans targeting only “known” harmful species cannot provide an equivalent level of protection for biodiversity. A precautionary regulatory approach is therefore warranted (This precautionary regulatory logic reflects the precautionary principle as articulated in Principle 15 of the Rio Declaration on Environment and Development and widely applied in international environmental law). By prohibiting the import of reptiles and birds altogether, the proposed measure seeks to prevent serious or irreversible harm to exhaustible natural resources in circumstances where scientific certainty is unattainable. Accordingly, a comprehensive ban may be regarded as necessary within the meaning of Article XX(g), as no reasonably available, less trade-restrictive alternative can achieve an equivalent level of protection.

The decisive hurdle, as in an analysis of *EC- Seal Products*,¹⁵⁶ lies in compliance with the chapeau of Article XX. In *US-Shrimp*, although the US measure satisfied paragraph (g), its application was found inconsistent with the chapeau because it imposed coercive and discriminatory conditions on exporting states, and failed to treat countries in comparable situations alike.¹⁵⁷ For Israel, this precedent underscores that the design and application of a bird and reptile trade ban must be carefully structured to avoid any appearance of arbitrary discrimination or disguised protectionism. The main problem we are addressing is imposing strict restrictions on international trade. However, imposing restrictions only on international trade while permitting domestic trade would undermine the conservation rationale, and suggest a protectionist intent. Similarly, broad exemptions for certain traders or species would risk incoherence, raising the same difficulties noted in section 2.1 regarding partial bans.

A coherent approach would therefore require Israel to adopt a comprehensive ban, covering both international and domestic trade in birds and reptiles, applied uniformly without arbitrary exceptions. Such a measure would reinforce the genuine conservation objective that already exists under Israeli law, demonstrate evenhandedness in application, and reduce the risk of violating the chapeau.

¹⁵⁶ See section 4.1 above.

¹⁵⁷ *US-Shrimp*, *supra* note 3, para. 149.

Unlike the public morals exception, the protection of natural resources exception does not require specifying an equivalent local/domestic principle. However, Israeli law expresses the importance of protecting animals as a natural resource. The main recognition in Israel for that principle is in the National Parks, Reserves and Memorial Law (1998). The Law defines listed animals as “protected natural values” and bans their taking, including trade without a special permit from the director of the National Parks and Nature Reserves Authority.¹⁵⁸

Israel’s Coastal Environment Protection Law (2004) may be used as a significant basis to rely on for Israel’s equivalent principle. The Coastal Environment Protection Law recognizes the importance of the coastal environment and its natural treasures, and one of its goals is to “*To restore and preserve them as a resource with unique values, as well as to prevent and minimize damage to them to the extent possible*”.¹⁵⁹ The Law defines “Damage to the Coastal Environment” inter alia as “*Causing risk or damage to habitats of plant or animal species and their reproduction in the coastal environment*”.¹⁶⁰ Throughout this report, the trade in birds and reptiles is emphasized as a serious source of risk. Hence, the significance of the Coastal Environment Protection Law’s recognition of the importance of protecting animals as a natural resource, is that Israel has a powerful base for expanding this recognition and justifying a ban under Article XX(g) of GATT.

In conclusion, the conservation of birds and reptiles as exhaustible natural resources provides a strong legal basis for justifying a trade ban under Article XX(g) of the GATT. Supported by the reasoning of *US-Shrimp*, Israel may argue that these taxa face imminent depletion and ecological collapse, that a total ban materially contributes to their preservation, and that no less trade-restrictive alternatives are reasonably available. To withstand WTO scrutiny, however, Israel must ensure that the ban is applied consistently and non-discriminately, avoiding the pitfalls that undermined earlier measures in WTO jurisprudence. It already has a strong foundation for this in its domestic legislation. While challenging, this line of justification may ultimately offer a firmer footing than reliance on public morals alone, since it grounds the ban in concrete ecological necessity and established precedent.

¹⁵⁸ National Parks, Reserves and Memorial Act (5758-1998) §§1, 33 (Isr.).

¹⁵⁹ Coastal Environment Protection Act, 5764-2004, §1 (Isr.).

¹⁶⁰ Coastal Environment Protection Act, 5764-2004, §2(5) (Isr.).

This report has examined the prospects of Israel enacting a comprehensive ban on the commercial trade in reptiles and birds, and its compatibility with international trade law. The analysis demonstrates that the wildlife trade generates severe harm across multiple dimensions: extreme and inherent cruelty toward animals, grave threats to biodiversity and ecological balance, serious public health hazards through zoonotic disease transmission, and entanglement with organized crime and illicit markets. Against this backdrop, a total ban emerges as the most effective and enforceable response, since regulatory schemes and partial restrictions have consistently proven inadequate. Moreover, it is most likely able to withstand a challenge under WTO law.

In reviewing international trade obstacles to imposing a total ban, while GATT prohibits quantitative restrictions on trade under Art. XI, it does recognize limited exceptions under Article XX. Three potential justifications have been explored. First, the **public morals exception (XX(a))**: drawing on *EC - Seal Products*, this exception could be invoked given Israel's entrenched legal and cultural commitment to animal welfare and abhorrence of animal cruelty, though the measure would face strict scrutiny under the chapeau if inconsistencies or exemptions were introduced. Second, the **protection of human and animal health exception (XX(b))**, supported by jurisprudence such as *Brazil – Retreaded Tyres*, provides a strong doctrinal basis in light of the pandemic risks posed by wildlife trade; yet again, its validity depends on a uniform and non-discriminatory application. Third, the **protection of natural resources exception (XX(g))**, as developed in *US-Shrimp*, appears particularly robust, given that species of commercially traded reptiles and birds constitute threatened or endangered species whose depletion is causing grievous ecological harm, thus qualifying these animals as exhaustible resources under WTO jurisprudence.

We note that future research on the proposed ban should also address the **WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)**. While only a few WTO SPS cases involve the trade in live animals, the SPS framework is relevant because the international trade in reptiles and birds poses potential risks to both human and animal health, including the spread of zoonotic diseases. Accordingly, this report recognizes the SPS dimension of the proposed trade ban which should be addressed in more detail in future work.

In sum, Israel possesses both the domestic legal authority and the international legal basis to justify the proposed ban. While Israel can implement such a ban through the existing

administrative powers of the Director of the Nature and Parks Authority under the Wildlife Protection Act and the National Parks, Reserves and Memorial Act, enacting a dedicated primary law—akin to the European model banning the trade in seal products—would offer a more robust legal framework and serve as a stronger ‘defense brief’ against potential international trade challenges, rather than relying solely on administrative discretion.

The most promising legal grounds lie in the protection of health and natural resources, with the public morals rationale serving as an additional, though more fragile, pillar. To withstand WTO scrutiny, the measure must be designed as a total and consistent prohibition, covering both international and domestic trade, and avoiding arbitrary exemptions. A comprehensive ban of this nature not only aligns with Israel’s legal and moral commitments but also contributes meaningfully to the growing recognition of the emerging global norm for animal welfare under international law.

AFTERWORD

We choose to end this report by emphasizing the remarkable contribution of the WTO's decision to uphold the EU's trade ban on seal products, to the international discourse on animal welfare. This decision has transformed the WTO from an international institution historically distrusted by animal activists, to the only international forum that has vigorously considered animal welfare and animal cruelty. As noted by Katie Sykes in her book, *Animal Welfare and International Trade Law: The Impact of the WTO Seal Case*,

" ... The WTO arbitration panel ... made what is probably the most important statement on animal welfare ever to appear in international jurisprudence to this point.... that animal welfare is "an ethical responsibility for human beings in general" and "a globally recognized issue". ...that a WTO panel should be a source of a ground-breaking statement on animal welfare as an international concern – is remarkable when we think about the long-standing tension between international trade law and the animal movement. ...

And:

"... international trade law is one of the only places in international law where animal welfare has established any real presence in jurisprudence and in treaty language. The

WTO's dispute settlement body is the only international adjudication body so far to have paid serious attention to animal welfare as an ethical concern and a global value¹⁶¹

Hence, rather than fearing the response of the WTO to a trade ban, it could be a highly effective mechanism in promoting animal welfare at the international and national levels.

¹⁶¹ Supra, note 131, 5,

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Hebrew Abstract

הדו"ח בוחן הטלת איסור מוחלט ע"י ישראל, על הסחר הבינלאומי המסחרי בזוחלים ובעלי כנף, תוך עמידה בכללי הסחר הבינלאומיים של ה-WTO והסכם GATT. הדו"ח מתמקד בהצדקות המשפטיות האפשריות להטלת איסור כאמור, במיוחד לאור החריגים שבסעיף XX להסכם GATT ומנסה להעריך האם ישראל תוכל להגן על המהלך במקרה של תביעה במנגנון יישוב הסכסוכים של ה-WTO.

הדו"ח מציג שלושה נימוקים מרכזיים לאיסור: ראשית, הסחר גורם סבל ומוות בהיקפים עצומים לבעלי החיים, הן בשל לכידה מהטבע והן בשל תנאי רבייה, אחסון והובלה קשים. שנית, הסחר בחיות בר מגביר סיכון למחלות זואונוטיות ולמגפות, מאחר שבעלי כנף וזוחלים נושאים פתוגנים היכולים לעבור לבני אדם. שלישית, הסחר תורם לפגיעה חמורה במגוון הביולוגי, הן במדינות המקור והן במדינות היעד, כולל חדירת מינים פולשים והחלשת אוכלוסיות טבעיות.

מבחינה משפטית, הדו"ח קובע כי אמנם איסור כזה עומד בניגוד לעקרונות ה-GATT (ובעיקר לאיסור על מגבלות כמותיות), אך ניתן להצדיקו באמצעות שלושה חריגים שבסעי' XX: הגנה על תקנת הציבור (public morals), הגנה על חיי אדם ובעלי חיים ובריאותם, והגנה על משאבי טבע מתכלים. הדו"ח נשען בין היתר על פסק הדין EC-Seal Products שבו הוכרה רווחת בעלי חיים כערך מוסרי לגיטימי במסגרת דיני הסחר הבינלאומיים.

המסקנה היא שאיסור כולל ומוחלט, ללא חריגים מפלים, עשוי להיות ניתן להגנה משפטית אם ינוסח ויישם באופן עקבי ושוויוני. הדו"ח ממליץ על איסור גורף כפתרון היעיל ביותר להפחתת סבל בעלי חיים, סיכוני בריאות ופגיעה במגוון הביולוגי, ואף רואה במהלך כזה הזדמנות לקידום נורמה בינלאומית מתפתחת של הגנה על בעלי חיים במסגרת דיני הסחר.