

Necessity under the GATT 1994



Benn M^cGrady, PhD
O'Neill Institute for National and Global Health Law
Georgetown University Law Center
bm363@law.georgetown.edu

Article XX – General Exceptions

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, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:

...

(b) necessary to protect human, animal or plant life or health;

...



Benn McGrady, PhD
O'Neill Institute for National
and Global Health Law

Article XX – General Exceptions

- Does the measure fall within the range of policies considered to protect human health?
- The panel must ‘weigh and balance’ the trade restrictiveness of a measure with the contribution to achievement of the objective in light of the importance of the regulatory goal.
- Are less trade restrictive alternative measures reasonably available?
- Is the measure 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 upon trade?



Benn McGrady, PhD
O'Neill Institute for National
and Global Health Law

Example 1: *EC - Asbestos*

- France prohibited the import and sale of asbestos and asbestos products.
- Canada challenged the measure, arguing that it discriminated against Canadian asbestos products in favor of French asbestos substitutes.
- The panel found the measure discriminatory, but this finding was overturned on appeal due to an error of law.
- The Appellate Body also held that the exception in Article XX(b) protected the measure.



Benn McGrady, PhD
O'Neill Institute for National
and Global Health Law

Example 2:

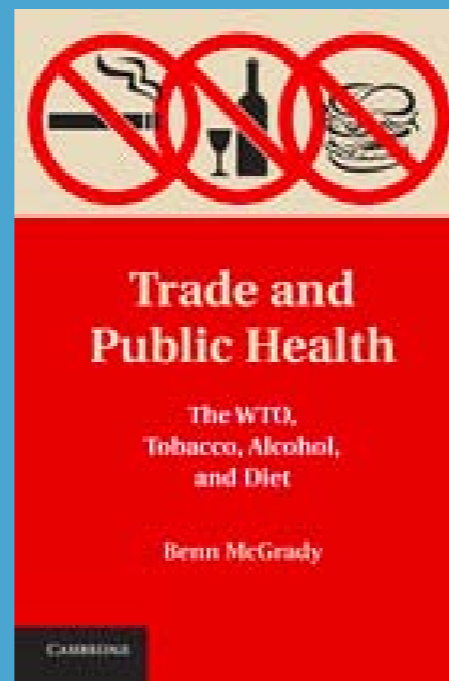
Brazil – Retreaded Tyres

- Brazil banned the importation of used and retreaded tyres on the basis that they have a short lifespan, increase waste accumulation and provide a breeding ground for mosquitoes that spread dengue.
- The measure violated Article XI, but was found to be necessary under Article XX(b).
- The measure was ultimately found unlawful due to arbitrary and unjustifiable exemptions, such as for tyres from MERCOSUR countries.



Resources

- <http://www.law.georgetown.edu/oneillinstitute/TIH>



Benn McGrady, PhD
O'Neill Institute for National and Global Health Law
Georgetown University Law Center