

## OIE animal welfare standards and the multilateral trade policy framework

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### Abstract

With the mandate granted by its Member Countries, the OIE has taken a global leadership role in setting global animal welfare standards and has made an impressive number of achievements. In addressing the theme of animal welfare, the OIE built upon its existing standard setting framework with the establishment of a permanent Animal Welfare Working Group (70th OIE General Session, 2002). This provided a forum for interested industry and NGO sectors to sit 'around the table' with representatives of the scientific community, academia and the official veterinary services. Based on recommendations from the Working Group to the elected Terrestrial Animal Health Standards Commission and with the consensual support of OIE Member Countries, the first standards on animal welfare were adopted in the *Terrestrial Animal Health Code* (the *Terrestrial Code*) in 2004. The guiding principles state that animal health is a fundamental component of animal welfare'. Consistent with this fact, the *Terrestrial Code* also contains much information that is of general relevance to animal welfare, including, for example, recommendations on the quality of Veterinary Services and on disease prevention and control.

The 22<sup>nd</sup> edition of the *Terrestrial Code* (2013) contains general principles and specific recommendations on animal welfare, covering key topics relevant to the systems of livestock production, stray dogs, and animals used in research and education. The 16<sup>th</sup> edition (2013) of the *Aquatic Animal Health Code* (*Aquatic Code*) contains general principles and specific recommendations on the welfare of farmed fish. All OIE standards are regularly updated to take account of latest scientific findings.

The multilateral trade policy framework, for the purposes of this paper, comprises the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization Agreements, specifically the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (the TBT Agreement). These Agreements establish disciplines that must be respected by WTO Members when imposing measures on international trade in animals and animal products.

This paper discusses the relevance and implications of the OIE animal welfare standards in the context of the multilateral and bilateral trade policy framework.

### Introduction

In 2001, Member Countries mandated the OIE, as the international reference organisation for animal health, to take the lead in developing global standards and guidelines on animal welfare practices, reaffirming that animal health is a key component of animal welfare. Animal welfare was first mentioned as a priority for the OIE in the Strategic Plan 2001-2005.

The OIE, created in 1924, approached this new challenge with more than seventy years of experience in setting standards for animal health and in accordance with the OIE Organic Rules. This approach has been fruitful, as evidenced by the establishment of general animal welfare principles and eleven standards, covering terrestrial animals and farmed fish, in less than a decade.

The extent and nature of coverage of animal welfare under the multilateral trade policy framework are unclear. Many consider that the imposition of animal welfare measures would not be consistent with the trade liberalisation principles of the General Agreement on Trade and Tariffs (GATT) and the World Trade Organization (WTO). This may be a factor influencing the growth of private standards and specifications for animal welfare in relation to trade in animal products, a development that has been viewed with concern by many OIE Member countries.

Given the uncertainty about the consistency of official or private animal welfare measures with GATT and WTO principles; the continuing growth of private sector requirements, driven by consumers, for animal welfare; and the need to improve animal welfare globally; the ongoing work of the OIE in setting animal welfare standards and in supporting Member countries in their efforts to implement them is of critical importance. The OIE is using innovative and resourceful approaches, as outlined in this paper. Governments, regional and international organisations and donors should fully support the OIE in this area of work.

## **1. The OIE animal welfare standard setting programme**

### 1.1 OIE standard setting procedures

OIE standards are based on the work of expert ad hoc Groups, which are convened to draft science-based texts for eventual adoption in the OIE *Terrestrial Code*. Draft texts are reviewed by the OIE Terrestrial Animal Health Standards Commission, with input from other elected Commissions and working groups, as appropriate. OIE Member countries are invited to comment on draft new standards, following a minimum two year cycle (although urgent matters can be addressed more rapidly). Using the same procedures, all standards are regularly updated to take account of latest scientific information. Standards for aquatic animals, which are published in the *Aquatic Code*, are the responsibility of the Aquatic Animal Health Standards Commission, whose procedures are similar to those outlined above. This paper covers the OIE animal welfare standards for terrestrial and aquatic animals.

### 1.2 The role of the permanent OIE Working Group on Animal Welfare

The OIE permanent Animal Welfare Working Group (AWWG) was inaugurated in 2002.

Since the beginning of its global animal welfare initiative, the OIE has recognised the important role played by the livestock industries and by non-governmental organisations (NGOs) in relation to animal welfare. In the case of industry organisations, it is clear that the owner/keeper of livestock has a major bearing on the welfare of the animal, regardless of the regulatory framework that may apply. In the case of NGOs, it is recognised that in many countries, especially developing countries, NGO-initiated programmes and projects make a major contribution to improving animal welfare.

With the objective of giving both industry and NGO representatives 'a seat at the table', the AWWG has included representation from the international animal production industries (the International Dairy Federation, the International Meat Secretariat and the International Egg Commission) and the international NGO community (the World Society for the Protection of Animals, WSPA, a global animal welfare NGO with more than 1000 member organisations in more than 150 countries<sup>1</sup>).

The first text prepared by the AWWG, the 'Guiding Principles on Animal Welfare', was adopted in the *Terrestrial Code* in 2004.

### 1.3 The OIE Animal Welfare Standards: current state of play

The OIE continues to make steady progress in the adoption of animal welfare standards and all standards are regularly updated to take account of latest scientific findings. Boxes 1 and 2 illustrate the status of standards in the *Terrestrial* and *Aquatic Codes* as at June 2013. Details of these standards can be found on the OIE internet website<sup>2,3</sup>.

#### Box 1

The OIE *Terrestrial Animal Health Code* contains chapters on:

The transport of animals by land

The transport of animals by sea

The transport of animals by air

The slaughter of animals for human consumption

The killing of animals for disease control purposes

The control of stray dog populations

The use of animals in research and education

Animal welfare and beef cattle production systems

Animal welfare and broiler chicken production systems

#### Box 2

The OIE *Aquatic Animal Health Code* contains chapters on:

The welfare of farmed fish during transport

The welfare aspects of stunning and killing of farmed fish for human consumption

The killing of farmed fish for disease control purposes

Priorities of the OIE 2012-2013 work programme include the development of standards for livestock production systems (broiler chickens, dairy cattle) and for working animals.

In addition to publishing standards, which are formally adopted using the OIE democratic and transparent procedures, the OIE also produces guidance and recommendations. The following two topics are of particular relevance to the OIE animal welfare work programme:

#### *OIE Discussion paper on the animal welfare related provisions of Islamic Law*

With the objective of raising public awareness and supporting an active role for veterinary services in improving animal welfare globally, the OIE produced a Discussion paper<sup>4</sup> on the requirements of Islamic law that relate to the humane handling of animals, including at transport and slaughter. With this paper, the OIE encourages National Veterinary Services to enter into dialogue with religious authorities with the objective of improving animal welfare globally.

#### *OIE Policy on laboratory animal welfare*

The OIE supports the use of laboratory animals in education and research, under appropriate conditions of animal health and welfare management and respect of the internationally accepted Three 'Rs'<sup>5</sup>, as outlined in the *Terrestrial Code*. The use of laboratory animals makes a significant contribution to medical and veterinary research. The establishment of national regulatory frameworks for the welfare of laboratory animals is important to assure the health and welfare of the animals and to safeguard the health and safety of people working with the animals.

The OIE published a discussion paper<sup>6</sup> on air transport of laboratory animals, particularly dogs, cats and non-human primates. This topic is controversial - many commercial airlines refuse to carry laboratory animals mainly for fear of reprisals by extremist animal rights groups. However, air transport of these animals is needed to support scientific research programmes that are key to human and veterinary medicine.

The OIE has established standards for air transport of animals and specific recommendations on the transport of laboratory animals. The OIE also urges Members to comply with the Regulations of the International Air Transport Association (IATA), with which the OIE has an official agreement. Compliance with OIE and IATA recommendations provides appropriate safeguards for animal health and welfare, and public safety.

#### 1.4 Engagement of OIE Member countries

Ten years ago, animal welfare was a new topic for the OIE and a topic on which OIE Member countries had widely varying perspectives and experience, based on the economic, legal, cultural, religious and social circumstances of each country. In 2002 the OIE recognised the need to raise awareness and improve understanding of the benefits that global standards could present to Member countries. To this end, the First OIE Global Conference on Animal Welfare was organised in Paris, in 2004. It was attended by representatives of the Veterinary Services of OIE Member countries, livestock producers and other actors in the meat sector, veterinary practitioners and international NGOs working in animal welfare. The conference helped the OIE to achieve its objectives. Improved acceptance on the part of Member countries led to the adoption in 2005 of standards covering key aspects of transport, slaughter and killing for disease control purposes and, subsequently, of standards on the humane control of stray dog populations and the use of animals in research and education.

The establishment of standards is one challenge. However, the implementation of the standards is even more difficult, especially in countries that face serious problems with animal health and food security. The OIE mandate does not include 'policing' the implementation of adopted standards (for animal health or animal welfare). However, it continues to encourage Members to implement the standards that they have adopted. This is also the case with sanitary standards but is even more important with animal welfare standards, due to differing cultural and religious perspectives on basic aspects, such as the behaviour, perception and ethical obligations of human society towards animals.

With the objective of identifying the state of play with implementation of the standards and the tools needed to strengthen Members' capacities to implement the standards, the Second OIE Global Conference on Animal Welfare (entitled "Putting the Standards to Work" ) was held in Cairo (Egypt), in 2008. Participants at this conference endorsed the fundamental role of national Veterinary Services (comprising both the private and public sector) and of the veterinary profession in improving animal welfare. This reality is reflected in the OIE Pathway for improving at national, regional and global levels the quality of Veterinary Services (OIE PVS Pathway), which, since 2010, includes specific critical competencies on animal welfare.

With the Third OIE Global Conference on Animal Welfare, in Kuala Lumpur (Malaysia) on 6-8 November 2012, the OIE maintained its focus on supporting the implementation of standards under the control of the Veterinary Services. The conference theme: "Implementing the OIE standards - addressing regional expectations", recognised the value of mechanisms for coordination and collaboration at the regional level. With active engagement of its Regional Representations, the OIE continues to support the development of regional animal welfare strategies.

## 2. Animal welfare and the multilateral trade policy framework

### 2.1 Introduction to this section

The multilateral trade policy framework, for the purposes of this paper, comprises the General Agreement on Tariffs and Trade 1947 (GATT) and the World Trade Organization Agreements, specifically the Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement) and the Agreement on Technical Barriers to Trade (the TBT Agreement). These Agreements set rules that must be respected by WTO Members when imposing measures on international trade in animals and animal products.

The formation of the World Trade Organization (WTO), with the signing of the Marrakesh Agreement Establishing the World Trade Organization (1994), strengthened the preceding legal framework for multilateral trade policy, the GATT. According to both Agreements, WTO Members should provide market access in a non-discriminatory manner and avoid 'unfair' trade measures.

The WTO SPS Agreement introduced more detailed and specific 'tests' with respect to measures for the protection of human, animal and plant life and health.

In the case of a conflict between the trade liberalising objectives of the WTO and other societal values and interests, the WTO Agreements provide a number of exceptions, which may, under specific provisions, provide a justification for WTO Members to use measures that are not WTO-consistent. The substantive rules and exceptions are set out in annexes containing 19 relevant WTO Agreements.

The consistency of animal welfare related measures with WTO rules has been the subject of active discussion in the past decade. In recent years, the growth of private standards and specifications for animal welfare, and the effect this has had on international trade in animal products have further stimulated interest in the question of WTO consistency.

### 2.2 Coverage of animal welfare by the GATT

The GATT (1947)<sup>7</sup> establishes the principle of 'most favoured nation' (Article 1) and the principle of 'national treatment' (Article III). These articles provide for equal opportunity amongst WTO Member countries and prohibit discriminatory treatment of 'like products', in terms of discrimination between exporting countries and of discrimination between imported and domestic products. In the case of animal welfare measures, a key question is whether the products (for example, meat or eggs) are substantially different, depending on the animal husbandry system. If products from 'low animal welfare' systems are considered to be 'like' products from 'high animal welfare' systems, the imposition of measures (such as mandatory labelling) on the former products would be discriminatory and such measures would not be consistent with the GATT rules.

GATT Article XX provides for general exceptions to the provisions of other articles, on several grounds, including 'the protection of public morals' and 'the protection of human, animal or plant life or health'. This article may be considered as a precursor to the SPS Agreement, which establishes disciplines in relation to sanitary and phytosanitary (SPS) measures and international trade.

The protection of animal life or health appears to offer the most appropriate grounds for exempting animal welfare measures under GATT Article XX. However, if an exemption cannot be clearly established on these grounds, it seems that the imposition of measures relating to animal welfare systems by an importing country would not be consistent with the GATT rules.

Of course, this matter is not as 'black and white' as this brief summary suggests. It is necessary to take into account the rulings of relevant WTO dispute settlement panels for a complete interpretation of the GATT. Take, for example, the determination of product 'likeness'. The WTO Appellate Body (EC-Asbestos, 2001) found that the determination of 'likeness' is, fundamentally, a determination about the nature and extent of a competitive relationship between and among products. The manner in which products are produced may have an impact on consumer preferences and, thus, on the competitive relationship between these products<sup>8</sup>.

This type of interpretation could, in a future arbitration, lead to a determination that animal products produced in 'low welfare' systems are, in fact, not 'like' the same products produced in 'high welfare' systems, in the GATT context, and the imposition of mandatory animal welfare certification (for example) could be GATT consistent.

### 2.3 Coverage of animal welfare by the SPS Agreement

The SPS Agreement concerns the application of sanitary and phytosanitary (SPS) measures, which are defined as any measures applied:

- to protect human or animal life from risks arising from additives, contaminants, toxins or disease-causing organisms in their food;
- to protect human life from plant- or animal-carried diseases;
- to protect animal or plant life from pests, diseases, or disease-causing organisms;
- to prevent or limit other damage to a country from the entry, establishment or spread of pests.

These include sanitary and phytosanitary measures taken to protect the health of fish and wild fauna, as well as of forests and wild flora.

Furthermore, the definition of an SPS measure, as it relates to protecting animal health, is limited to protecting animals within the territory of the importing country.

The SPS Agreement recognizes the OIE, the International Plant Protection Convention and the Codex Alimentarius Commission (the so-called 'Three sisters') as the reference international standard-setting organisations for animal health and zoonotic diseases; plant health and food safety, respectively.

The SPS Agreement requires that SPS measures be applied only to the extent necessary to protect human, animal or plant life or health and clarifies the factors that should be taken into account in the assessment of risk. WTO Members may comply with their obligations under this Agreement by basing their SPS measures on relevant standards of the 'Three sisters' or by carrying out a scientific risk analysis, on the subject of which the 'Three sisters' also provide guidance.

Clearly, animal health is a major determinant of animal welfare. However, evidence for the proposition that better animal welfare leads to better animal health is equivocal. Good animal welfare can contribute to good animal health – avoidance of stress is one example. However, extensive livestock production systems, which may be considered as providing better animal welfare, may in fact lead to worse animal health outcomes, due to the potentially greater exposure to pathogens, contaminants and other hazards (such as environmental extremes and predators) than intensive production systems, providing that the latter have effective biosecurity.

According to the WTO internet website<sup>9</sup>, animal welfare measures are not covered by the SPS Agreement.

## 2.4 Coverage of animal welfare by the TBT Agreement

The TBT Agreement<sup>10</sup> aims to avoid trade barriers arising from regulations, standards, testing and certification procedures, while also giving Members the right to implement measures to achieve legitimate policy objectives, such as the protection of human health and safety, or the environment. This agreement is considered to be innovative in that it covers processing and production methods (PPM) related to the characteristics of the product itself.

Unlike the SPS Agreement (see below), no standard-setting organization is explicitly recognized under the TBT agreement.

Like the GATT, the TBT Agreement requires identical treatment for 'like' products, regardless of the PPM (e.g. livestock husbandry system) of the country of origin. It also requires that imported products not be treated less favourably than 'like' domestic products. In this context, less favourable treatment could include, for example, requirements for specific labelling of imported animal products as to the animal welfare policies and standards of exporting countries.

Many consider that restrictions on animal products on the basis of different animal welfare policies are not consistent with the principles of the GATT or the TBT Agreement. However, in the absence of a Panel ruling on pertinent issues, such as the definition of 'like' animal products with respect to animal husbandry systems, and the relevance of animal welfare measures to consumers, the consistency or inconsistency of animal welfare measures with the GATT or the TBT Agreement will probably remain unclear.

There are pending WTO disputes between Canada and the European Communities (DS 400) and Norway and the EC (DS401) regarding EU rules on the importation and marketing of seal products on animal welfare grounds<sup>11</sup>. Canada and Norway claim that EU Regulation 737/2010, which lays down detailed rules for the implementation of EC Regulation 1007/2009, either in itself or in combination with EC 1007/2009, is inconsistent with multiple articles of the TBT Agreement; Articles I:1, III:4 and XI:1 of the GATT 1994 and Article 4.2 of the Agriculture Agreement. The Dispute Settlement Panel that will rule on these disputes was established on 4 October 2012<sup>11</sup>. The Panel ruling on this case, and subsequent developments, should provide much needed clarification on the consistency of animal welfare measures with GATT and TBT rules.

## 3. Standards and specifications of the private sector

There has been gradual growth in private standards and specifications reflecting the concerns and interests of consumers, particularly those in developed countries.

Perhaps in part due to the reluctance of trading countries to introduce specific measures, due to uncertainty about WTO compliance, animal welfare has been one focus of attention for multinational food companies, with specifications relating to farm animal husbandry and transport increasingly applying to global trade in animal products. In some cases, these specifications are presented as detailed 'regulations' and 'rules', which have a rather close resemblance to provisions of EU Decisions and Directives – see, for example, the GlobalGAP standard for transportation of livestock<sup>12</sup>.

While these specifications are voluntary, in that exporters may choose whether or not they wish to meet them, the market power of multinational food companies provides a compelling incentive for compliance. Compliance comes at a cost; not only putting the measures into practice, but also buying certification services from one of the many certified auditing agencies. Small scale farmers generally have less capacity to meet detailed specifications than large companies, and developing countries are often at a disadvantage due to issues of organisation (public and private sector) and national infrastructure.

OIE Member countries have expressed concerns about the potential conflict between private standards and OIE standards. In 2008, following discussion of a Technical Item on the implications of private sector animal health and welfare standards for trade, the OIE World Assembly passed a Resolution (XXXII, 2008) calling upon the Director General to work with relevant public and private international organisations to ensure, *inter alia*, the consistency of private standards with those of the OIE<sup>13</sup>.

In 2009, the OIE convened an expert *ad hoc* Group on the topic of private standards and also distributed a questionnaire on this topic. A total of 68 countries and 8 international or regional organisations replied to the questionnaire. In addition to calling for greater efforts by OIE Members to implement the OIE animal welfare standards, three quarters of the respondents considered that private standards and certification could be a useful aid to the implementation of official standards. Nearly all respondents agreed that although animal welfare is not covered by the SPS Agreement, the OIE should continue to develop relevant standards. Three quarters of all respondents considered that the OIE animal welfare standards would have greater legitimacy if the SPS Agreement covered animal welfare<sup>14</sup>.

In 2012, the International Standardization Organisation (ISO), which has an official cooperation agreement with the OIE, commenced work on the development of technical specifications on animal welfare that will respect the OIE standards.

#### **4. Future challenges and engagement of the OIE**

Interest and concern about the welfare of food producing animals is likely to increase globally, in part driven by developments in the EU, where animal welfare has been a growing subject of legislation and standards since the signing of the European Convention on the Protection of Animals kept for Farming Purposes (78/923/EEC). European Council Directive 98/58/EC of 20 July 1998, which focuses on animals kept in intensive farming systems, provides for the establishment of common minimum standards for the protection of farm animals and also refers to the need to eliminate distortions of competition arising from different animal welfare provisions applied in EU and some non EU countries<sup>15</sup>. As of 2012, animal welfare is covered extensively in EU legislation and agriculture payments require strict compliance with these rules.

Representatives of the EU have acknowledged the difficulty of defending animal welfare concerns in the WTO and have called for the subject to be addressed in bilateral and multilateral agreements<sup>16</sup>.

WTO Members are likely to be hesitant about including animal welfare in WTO negotiations, in part due to concerns that this could `open the door` to the inclusion of various societal concerns, such as environmental issues and labour standards. These types of issues may not be amenable to the establishment of science-based standards in the same way as animal health and food safety. Provision of a formal framework whereby international trade could be subject to restrictions that have no clear scientific basis and that reflect societal concerns of a specific country or region, may be seen as undermining the `(more) level playing field` established by the SPS Agreement.

It is likely that countries and regional organisations will be cautious about imposing animal welfare requirements on international trade, due to the lack of clarity about the consistency of such measures with the GATT and WTO Agreements.

In view of this, animal welfare will probably continue to be addressed by private sector specifications and, in some cases, bilateral agreements. In both cases, the official standards, rules and regulations of developed countries tend to be used as the benchmark and there is little opportunity for conditions in developing countries to be taken into account. Other approaches are needed to avoid discrimination against developing countries. The use of alternate measures that provide equivalent animal welfare outcomes should be encouraged. In all cases, the OIE standards constitute a valuable basis for discussion in all public and private negotiations.



The OIE, with its recognised global leadership in animal health, scientific basis and inclusive and democratic standard setting process, is the obvious international organisation to continue to lead the development of global animal welfare standards. It is in the best interest of countries and regional and international organisations to support the OIE's work in this field. The EU continues to be a very strong supporter of OIE standard setting and capacity building activities, on both animal health and welfare.

The OIE has adopted many animal welfare standards and continues its standard setting work with a view to covering the major livestock production systems. Future standard-setting priorities include dairy, pork, veal and egg production systems.

Greater involvement of developing countries in animal welfare standards and related activities is an important goal for the OIE. One step is to identify topics that are more specifically relevant to developing countries – for example, the proposed development of welfare standards for working animals. Another step is training and capacity building, with a focus on veterinary services in developing countries. The OIE provides seminars and workshops for National Animal Welfare focal points appointed under the authority of the National OIE Delegate in the 178 OIE Member countries. A third and very important step concerns regionally focused activities. With the active input of OIE Regional Representations and the engagement of Member countries, the OIE supports regional animal welfare strategies. Following the successful model established in the Asia, the Far East and Oceania Region, regional strategies are under active development in the OIE regions of the Americas, Europe and the Middle East.

The OIE emphasises the important role of veterinarians, as champions of animal welfare, and of the veterinary services (public and private sector) for the preparation and implementation of legislation and appropriate programmes. Recognising the need to improve the competency and good governance of the veterinary profession, the OIE has undertaken important global initiatives directed at improving the quality of veterinary education and strengthening the role of Veterinary Statutory Bodies.

In training and capacity building activities, the OIE works closely with governments and donors within the framework of the OIE PVS Pathway for quality veterinary services.

## **5. Conclusions**

The interest of consumers in the welfare of food producing animals is likely to continue growing, particularly in countries where food safety and food security are assured. However, countries and regional organisations will be cautious about introducing official measures for animal welfare in international trade while the consistency of such measures with the GATT and WTO Agreements remains unclear. WTO Members are likely to be hesitant about including animal welfare in WTO negotiations, as this potentially allows for non-scientific issues of societal concern to be brought into play as restrictions on international trade. It is likely that animal welfare will continue to be addressed by private sector specifications and, in some cases, bilateral agreements - with the standards, rules and regulations of developed countries the effective benchmark at this time - but, more and more, with reference to the OIE standards, particularly as these will soon cover all aspects of animal welfare.

In view of this situation, and the need to improve animal welfare globally, the ongoing work of the OIE in setting animal welfare standards and in supporting Member countries in their efforts to implement them is of critical importance. Governments, international organisations and donors are urged to give their full support to the OIE in this important area of work.

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