

**CONSIDERATIONS RELEVANT TO PRIVATE STANDARDS IN THE FIELD  
OF ANIMAL HEALTH, FOOD SAFETY AND ANIMAL WELFARE**

Submission by the World Organization for Animal Health (OIE)

The following communication, received on 14 February 2008, is being circulated at the request of the OIE.

1. The World Organization for Animal Health (OIE) is the international reference organization for the safety of trade in animals and animal products worldwide, a role recognized by the WTO through formal reference in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement). In the context of its normative role in SPS standard setting, the OIE notes with concern that the so-called private standards are increasingly coming into play in international trade. Based on discussions within the SPS Committee and other fora, the OIE understands that some private standards relate to sanitary measures (plant health, animal health and food safety), some cover animal welfare, and others address issues such as protection of the environment and labour practices. This paper discusses the implications of private standards for animal health, food safety and animal welfare.

**Consistency with SPS Obligations?**

2. The OIE standards are developed on the basis of a scientific risk assessment and adopted through the democratic procedures of the OIE. In contrast, private standards, which are mainly based on commercial quality schemes, are developed to meet the needs of commercial parties (especially supermarkets) and consumers and tend towards a non-scientific, zero-risk, marketing approach that is not consistent with the disciplines of the SPS Agreement.

3. The OIE views with concern the entry into effect of private standards in the fields of animal health, food safety and animal welfare. Private standards have not, to date, been tested for compliance with the disciplines of the SPS Agreement and there is reason to believe that many private standards are not consistent with SPS obligations. Growth in the implementation of private standards could undermine the hard won improvements in market access arrangements that followed the establishment of the SPS Agreement in 1995.

4. There are reasons to consider that private standards in the sanitary field represent unjustified restrictions to trade. The implementation of private standards effectively introduces new (or stricter) sanitary measures, compared with those applied by the Competent Authority according to the recommendations of relevant international standard-setting bodies (OIE, Codex and IPPC). The private standards may or may not be applied in a consistent manner to domestic and imported goods, or to all exporters, potentially leading to discriminatory treatment of certain products or countries. The OIE considers that private standards seldom have a scientific basis, especially if they are

introduced for purely commercial reasons (e.g. to differentiate in the marketplace products that are equivalent in sanitary terms). Moreover, private standards are essentially private transactions, primarily between suppliers and retailers, and may not, therefore be implemented or managed in a transparent manner (as the objective is to establish a preference for products from certain producers, there is little to be gained by publishing details of how the supposed positive characteristics have been obtained). There is no obligation and sometimes little possibility (as they are part of confidential specifications / contractual commercial terms and conditions) for governments to notify trading partners or to provide an opportunity for them to comment on private standards, including those that relate to health risks.

### **Disproportionate effect on developing countries**

5. Many studies have noted that the main problem with private standards is the relatively high cost of certification required, which is particularly burdensome for small producers and there are many more small producers in developing countries. Another concern is that many private standards tend to require the use of specific processing and testing techniques that are based on state-of-the-art technologies not available (or too costly) for small producers. A further concern that has emerged from studies is that export consignments from many developing countries are consolidated from many small producers - and some of the private schemes require that the individual producer be certified, rather than accepting certification of exporters in aggregate.

6. In addition, developing countries are often less capable of mounting arguments against measures that are considered to be inconsistent with SPS obligations. Big companies in developed countries tend to be proactive in seeking market opportunities. Through intensive market research, such companies may find out about private standards and fairly quickly take steps to meet them or seek modifications that allow them to comply, while small enterprises and those in developing countries may be unaware of the existence of private standards, or learn about them long after their competitors, by which time both the opportunity to present alternative approaches and the potential market access have been lost.

7. As previously stated, the OIE standards are developed on the basis of a scientific risk assessment and adopted through the democratic procedures of the OIE. For the purposes of international trade, consignments of animals and animal products are accompanied by veterinary certification that provide needed guarantees relevant to animal health and public health risks associated with animal pathogens (zoonotic diseases). While countries may adopt different administrative models (the Veterinary Authority may, for example, authorize private veterinarians to provide elements of sanitary certification to official veterinarians), the validity and credibility of the certification system rests with the national Veterinary Authority, which is also responsible for compliance with OIE standards and SPS disciplines in the case of OIE and WTO Member countries.

8. In contrast, private standards, which are mainly based on commercial quality schemes, depend upon the wishes of commercial parties and consumers and tend towards a non-scientific, "zero-risk", marketing approach that is likely to stifle trade in animals and animal products. Certification in regard to these schemes is the responsibility of private organizations, not of a Competent Government Authority. Commercial considerations underpin the validity and credibility of private certification schemes and there is no obligation to comply with OIE standards or SPS disciplines.

### **Private standards for animal welfare**

9. The OIE is aware that some private standards relate to animal welfare and these warrant specific mention. The OIE has, since 2001, assumed a leadership role in regard to the elaboration of international animal welfare standards. This mandate was granted by 172 OIE members in the

knowledge that animal welfare is closely linked to animal health and that better animal welfare can have a positive effect on food safety and quality. Moreover, animals managed in accordance with the OIE recommendations on animal welfare may be more productive, with associated benefits for food security and poverty alleviation.

10. Animal welfare measures, like sanitary measures, should be based on sound science and implemented in an open and transparent manner.

11. The OIE does not prescribe the systems to be used to deliver good animal welfare outcomes. Rather the OIE aims to establish guiding principles and practices, which can be applicable to Members having varying social, economic, religious and cultural contexts. This approach also facilitates decisions on equivalence of systems to achieve the desired objectives – which should be based on the outcomes for the animal, not on the design of the system.

12. Animal welfare measures are not sanitary measures as defined in the SPS Agreement. However, animal health, animal welfare, food production and food safety are all linked. The OIE encourages Members to give effect to the OIE democratically adopted animal welfare recommendations within their territories, through legislation or other means (e.g. private sector codes of practice) and encourages trading partners to use the OIE recommendations as a reference point in negotiating market access and trade agreements.

13. The OIE rejects private animal welfare standards that lack a proper scientific basis. Such measures may not have a beneficial effect for the animals and may even have a negative effect on welfare if industries or sectors are obliged to implement prescribed standards that are inappropriate to the animal health and environmental conditions of the exporting country.

### **Conclusions and recommendations**

14. The OIE has serious concerns about the potential for private standards to have trade limiting and trade distorting effects. The OIE therefore recommends that the SPS Committee analyze the use of those private standards that relate to health and safety in international trade and ascertain if this practice is increasing globally or within certain regions. If this is the case, it will be important to analyze if and how private standards are undermining the operation of the SPS Agreement. While this is a global issue, the OIE recommends that the SPS Committee focus on the effects that private standards are having on developing countries' capacities to access markets.

15. In the OIE's view, the SPS Committee should be used as a forum for countries to identify and discuss specific problems that they have experienced relating to private standards. Countries and other organizations could also use this forum to share the results of relevant studies. On the basis of discussion, it may be possible for the SPS Committee to develop recommendations on future action for Members' consideration.

16. The OIE considers that it is important to prevent the haphazard introduction of non science-based measures, in relation to both animal health and welfare. With this in mind, the OIE urges countries, regional organizations and international organizations to strongly support the OIE's standards, including its recommendations on animal welfare, as the appropriate references for the purpose of international trade.

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