

# International trade: Rights and obligations of OIE Member Countries

## Introduction

This document is a guide to the rights and obligations of OIE Member Countries with regard to international trade, including in the situation of disagreements or formal disputes.

Part One deals with the rights and obligations of OIE Member Countries with reference to international trade in animals and animal products. Member Countries should base sanitary measures on the OIE standards, guidelines and recommendations because this provides conditions for safe trade, the avoidance of unjustified trade barriers and a strong presumption of compliance with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

OIE standards are contained in the *Terrestrial Animal Health Code (Terrestrial Code)* and *Aquatic Animal Health Code (Aquatic Code)* and associated *Manuals*, for terrestrial and aquatic animals respectively, and in Resolutions of the World Assembly of OIE Delegates.

In the case where there is no relevant international standard or where a Member country requires a higher level of sanitary safety, a science based risk analysis should be conducted in accordance with OIE recommendations. The use of key SPS concepts, such as equivalence, zoning and compartmentalisation, which are fully employed in the OIE standards, helps to facilitate safe international trade.

Confidence in the quality of Veterinary Services and national Aquatic Animal Health Services underpins international trade. Good governance, ensuring transparency in disease reporting, efficiency in disease surveillance, early detection and management and reliability in veterinary certification, is fundamental.

Part two sets out the mechanisms that WTO Members and OIE Member Countries may use to resolve differences and formal disputes affecting international trade. The WTO provides formal and informal approaches to the resolution of trade disputes and the OIE provides an informal mediation procedure for resolving differences between trading partners. This voluntary approach is based on science and emphasises the application of the OIE standards, to facilitate safe international trade in animals and animal products.

When differences arise, and particularly where these relate to failure to respect the OIE standards, Members are encouraged to consider using an OIE informal mediation to resolve their differences as a first step.

The steps in the OIE informal mediation procedure are outlined in Annex A.

## Part 1 – The rights and obligations of OIE Member Countries

### 1.1. Introduction

The entry into force in 1995 of the legal basis creating the World Trade Organization (WTO) established the rules-based system for international trade that applies to WTO Members today. The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement) specifically recognizes the OIE as the relevant standard-setting body for sanitary measures relating to animal health and zoonoses.

The Preamble to the SPS Agreement states “that it is desirable to further the use of harmonized sanitary (...) measures between Members, on the basis of international standards, guidelines and recommendations developed by the relevant international organizations, including (...) the International Office of Epizootics”. The SPS Agreement also refers to the OIE standards in Article 3 on Harmonization, and in Annex A, paragraph 3(b).

In the context of trade in animals and animal products, “sanitary measure” means “a measure, such as those described in various chapters of the *Terrestrial Code*, destined to protect animal or human health or life within the territory of the OIE Member from risks arising from the entry, establishment or spread of a hazard”<sup>1</sup>. The relevant standards are contained in the OIE *Terrestrial Code* and *Aquatic Code* and related OIE Manuals for terrestrial and aquatic animals respectively, in addition to various Resolutions adopted by the World Assembly of OIE Delegates (the Assembly).

The WTO recognises that each Member has the sovereign right to set its appropriate level of protection when applying sanitary measures for international trade. However, WTO Members should respect the provisions in the SPS Agreement when setting these measures. WTO Member countries may comply with their obligations under the SPS Agreement by basing their measures on relevant international standards. If a higher level of protection is required, a risk assessment should be carried out according to the provisions of Article 5 of the SPS Agreement and taking into account the risk assessment techniques developed by the relevant international organizations. The OIE standards on the import risk assessment are described in Chapter 2.1. of the OIE *Terrestrial Code* and Chapter 2.2. of the OIE *Aquatic Code*<sup>2</sup>.

The standards in the *Codes* are designed to facilitate safe international trade. The *Codes* are reference documents for use by veterinary authorities, aquatic animal health authorities, those responsible for making decisions on the import and export of animals and their products, and all those involved in international trade. Correctly applied, OIE standards provide for trade in animals and animal products to take place with an optimal level of animal health security, based on the most up to date scientific information and available techniques<sup>3</sup>. The application of the OIE standards is the best means of avoiding disagreements, disputes and other problems in international trade.

Furthermore, OIE experts are often asked to provide scientific advice to WTO Panels regarding OIE standards that are relevant to disputes under the WTO SPS Agreement.

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<sup>1</sup> <http://www.oie.int/index.php?id=169&L=0&htmfile=glossaire.htm>

<sup>2</sup> [http://www.oie.int/index.php?id=169&L=0&htmfile=chapitre\\_1.2.1.htm](http://www.oie.int/index.php?id=169&L=0&htmfile=chapitre_1.2.1.htm),  
[http://www.oie.int/index.php?id=171&L=0&htmfile=chapitre\\_1.2.2.htm](http://www.oie.int/index.php?id=171&L=0&htmfile=chapitre_1.2.2.htm)

<sup>3</sup> <http://www.oie.int/index.php?id=169&L=0&htmfile=guide.htm>

## 1.2. The procedure for developing OIE standards, guidelines and recommendations

The aim of the *Codes* is, *inter alia*, to ensure the sanitary safety of international trade in animals and their products by detailing science based health measures to be used by the veterinary authorities of importing and exporting countries to avoid the transfer of agents pathogenic for animals or humans, while avoiding unjustified sanitary barriers<sup>4</sup>.

The *Terrestrial Code* is prepared by the Terrestrial Animal Health Standards Commission and the *Aquatic Code* is produced by the Aquatic Animal Health Standards Commission. These Specialist Commissions work closely with other specialist commissions of the OIE, relevant international organisations and non-governmental organisations, and with OIE Delegates. Commission Members are elected by the World Assembly of OIE Delegates. Draft standards are circulated to National Delegates at least twice for comment before being proposed for adoption by the Assembly. Voting by Delegates respects the democratic principle of 'one country, one vote'. The transparent and democratic procedures followed by the OIE provide a basis for consensus and support implementation of the standards by OIE Member Countries.

More information on the OIE procedures for setting standards is available on the OIE website<sup>5</sup>.

## 1.3. Responsibilities of importing and exporting countries

The responsibilities of importing and exporting countries are set out in Chapter 5.1 of the *Terrestrial Code*<sup>6</sup> and Chapter 5.1 of the *Aquatic Code*<sup>7</sup>.

The World Animal Health Information Database (WAHID), accessible on the OIE Website<sup>8</sup> contains a comprehensive range of data relevant to assessment of risk and decision making on health measures, including the following:

- immediate notifications submitted by Member Countries
- follow-up reports submitted by Member Countries;
- six-monthly reports describing the situation for the OIE-listed diseases;
- annual reports providing information on animal health, veterinary services etc.

Using data in WAHID, the sanitary situation of the importing and exporting country can be compared for the purpose of establishing conditions of trade.

### 1.3.1. Responsibilities of importing countries

As stated in the WTO SPS Agreement, an importing country has the right to choose its appropriate level of protection in relation to animal and plant health and food safety.

Importing countries should not impose measures in relation to diseases or pathogens that are not listed by the OIE, unless the non-listed disease or pathogen has been identified as presenting a significant risk on the basis of an import risk analysis conducted according to OIE recommendations.

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<sup>4</sup> <http://www.oie.int/index.php?id=169&L=0&htmfile=preface.htm>

<sup>5</sup> <http://www.oie.int/en/international-standard-setting/overview/productionimplementation/>

<sup>6</sup> [http://www.oie.int/index.php?id=169&L=0&htmfile=chapitre\\_1.5.1.htm](http://www.oie.int/index.php?id=169&L=0&htmfile=chapitre_1.5.1.htm)

<sup>7</sup> [http://www.oie.int/index.php?id=171&L=0&htmfile=chapitre\\_1.5.1.htm](http://www.oie.int/index.php?id=171&L=0&htmfile=chapitre_1.5.1.htm)

<sup>8</sup> [http://www.oie.int/wahis\\_2/public/wahid.php/Wahidhome/Home](http://www.oie.int/wahis_2/public/wahid.php/Wahidhome/Home)

The recommendations in the *Codes* focus on the animal health situation in the exporting country, and assume that the disease is not present in the importing country or, if present, that the disease is the subject of official control programmes. Importing countries should not impose sanitary measures for diseases or pathogens that occur in the importing country unless they are the subject of official controls and, in this case, the measures applied to imports should be no stricter than the official controls applied to similar animals/animal products in the country.

An OIE Member may authorise the importation of animals or animal products into its territory under conditions more or less stringent than those recommended in the *Codes*. Where the conditions are more restrictive, they should be based on a scientific risk assessment, taking into account OIE standards.

Importing countries should publish a list of their border posts for imported animals and animal products. This information helps exporting countries to make arrangements for the consignment of shipments and thus facilitates international trade.

More detailed information may be found on the OIE website in the document: *Devising Import Health Measures for Animal Commodities*<sup>9</sup>.

### 1.3.2. Responsibilities of exporting countries

At the request of importing countries, exporting countries should provide the following information, to enable trading partners to verify exporting country claims regarding the national health status and, as appropriate, the existence of specific disease free zones or compartments:

- the animal health situation, including regular and prompt updates on the occurrence of notifiable diseases;
- national animal health information systems, including the legislative framework, programmes and procedures in force;
- the country's ability to apply measures to prevent and control relevant listed diseases;
- information on the structure of the Veterinary Services/Aquatic Animal Health Services and the authority that they exercise, as outlined in Chapters 3.1. and 3.2. of the *Terrestrial Code* and Chapter 3.1. of the *Aquatic Code*;
- technical information, particularly on biological tests and vaccines applied in all or part of the national territory.

Consignments of animals and some animal products are normally inspected by an official veterinarian (or a private veterinarian holding an appropriate official delegation) before export. The veterinarian issues a veterinary health certificate<sup>10</sup> according to the arrangements agreed between the Veterinary Authorities of the exporting and importing country. The OIE provides certification models<sup>11</sup> and Member Countries are encouraged to use these as the basis for trade.

The Veterinary Authority of the exporting country is ultimately accountable for veterinary certification used in international trade.

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<sup>9</sup> [http://www.oie.int/fileadmin/Home/eng/International\\_Standard\\_Setting/docs/pdf/EN\\_commodity-based\\_approach.pdf](http://www.oie.int/fileadmin/Home/eng/International_Standard_Setting/docs/pdf/EN_commodity-based_approach.pdf)

<sup>10</sup> [http://www.oie.int/index.php?id=169&L=0&htmfile=chapitre\\_1.5.1.htm](http://www.oie.int/index.php?id=169&L=0&htmfile=chapitre_1.5.1.htm) (terrestrial animals)  
[http://www.oie.int/index.php?id=169&L=0&htmfile=chapitre\\_1.5.2.htm](http://www.oie.int/index.php?id=169&L=0&htmfile=chapitre_1.5.2.htm) (aquatic animals)

<sup>11</sup> [http://www.oie.int/index.php?id=169&L=0&htmfile=chapitre\\_1.5.10.htm](http://www.oie.int/index.php?id=169&L=0&htmfile=chapitre_1.5.10.htm) (terrestrial animals)  
[http://www.oie.int/index.php?id=171&L=0&htmfile=chapitre\\_1.5.10.htm](http://www.oie.int/index.php?id=171&L=0&htmfile=chapitre_1.5.10.htm) (aquatic animals)

Based on *Terrestrial Code* Article 5.1.3., Veterinary Authorities of exporting countries should:

- have official procedures for authorisation of certifying veterinarians, defining their functions and duties and the conditions of oversight and accountability, including procedures for suspension and termination of authorisation;
- ensure that the relevant instructions and training are provided to certifying veterinarians; and
- monitor the activities of certifying veterinarians to verify their integrity and impartiality.

At the request of the importing country, the exporting country should supply information on export consignments, including:

- the estimated date of entry into the territory of the importing country;
- the animal species;
- the quantity;
- the means of transport; and
- the border post in the importing country where the consignment will arrive.

Compliance with these recommendations helps to assure safe international trade.

#### **1.4. The OIE PVS Pathway for Good Governance of Veterinary Services and Aquatic Animal Health Services**

The OIE PVS Pathway<sup>12</sup> is a global programme for the sustainable improvement of national Veterinary Services (VS) and Aquatic Animal Health Services (AAHS), based on compliance with the quality standards in the *Terrestrial Code* and *Aquatic Code*, respectively.

High quality VS/AAHS are the foundation for improving animal and public health and enhancing compliance with SPS standards at the national, regional and international level.

Effective VS and AAHS are also needed to assure safe international trade. Not only must these Services be capable of promptly and efficiently detecting and managing OIE listed diseases, including those that threaten human health, they must also provide guarantees as to the sanitary safety of export consignments via the issuance of health certification. The maintenance of confidence between trading partners relies on consistent performance by VS and AAHS in these and other areas.

With the goal of strengthening capacity and good governance, the OIE developed the PVS Tool for the Evaluation of Performance of Veterinary Services (OIE PVS Tool, 6th Edition, 2013), with its legal base in the *Terrestrial Code*, Section 3., and a related Tool for the Evaluation of the Performance of Aquatic Animal Health Services (OIE PVS Tool – *Aquatic*, 1st edition, 2013) with its legal basis in the *Aquatic Code*, Chapter 3.1.

Following the initial PVS evaluation, a country may request other missions under the PVS Pathway. These missions, conducted by OIE experts, may include more detailed evaluation of technical/infrastructural aspects, such as missions to assess the quality of the national veterinary legislation or the performance of the Veterinary Statutory Body, as well as aspects relating to budget and investment. The conduct of a PVS Gap Analysis is valuable to establish priorities for investment and strengthening of the national infrastructure.

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<sup>12</sup> <http://www.oie.int/en/support-to-oie-members/pvs-pathway/>

OIE Member Countries and donors strongly support the PVS Pathway and by the end of 2012, more than 200 missions had been carried out globally. As at January 2013, more than two thirds of OIE Member countries are engaged in the PVS Pathway (official request for an initial PVS evaluation) and two thirds of Members have requested a PVS Gap Analysis (second step of the Pathway).

## 1.5. SPS Principles and OIE standards to facilitate safe trade

The SPS Agreement is premised on the use of science and risk assessment, as well as harmonisation with relevant international standards, as the basis for the development of sanitary and phytosanitary measures. In addition, the Agreement contains several key concepts that, when put into practice, help to facilitate safe international trade. The OIE standards, which give full expression to these SPS concepts, are regularly updated and benefit from scientific research and risk analyses conducted by Member countries.

### 1.5.1. Equivalence

The concept in SPS Agreement Article 4 of “equivalence” as applied to sanitary measures refers to the acceptance by an importing country that the measure(s) proposed by an exporting country achieves the appropriate level of protection required by the importing country, even though the measures may be different to those applied by the importing country<sup>13</sup>.

Recommendations of the SPS Committee on the implementation of equivalence may be found in Committee paper G/SPS/19/Rev.2<sup>14</sup>. Consistent with these recommendations, *Terrestrial Code* Chapter 5.3. provides guidance to Member Countries when making decisions on the equivalence of health measures.

The OIE informal mediation process may be used to help resolve differences between Member Countries regarding the equivalence of different health measures.

### 1.5.2. Zoning and compartmentalisation

It is recognised that the eradication of diseases from the entire national territory presents major difficulties for many countries. To help manage diseases and facilitate safe trade, the OIE has built upon the SPS principle of ‘adaptation to regional conditions’, or ‘regionalisation’ (Article 6), with the development of the concepts of zoning and compartmentalisation. WTO guidance on the practical implementation of Article 6 may be found in SPS Committee paper G/SPS/48<sup>15</sup>.

Zoning and compartmentalisation provide for Members to define subpopulations of animals that have a favourable health status as compared with those in the national population, and to establish conditions for trade that reflect the health status of this subpopulation.

Chapters 4.3. and 4.4. of the *Terrestrial Code* and Chapters 4.1. and 4.2. of the *Aquatic Code* contain standards and recommendations on zoning and compartmentalisation. In addition, guidance on the practical implementation of compartmentalisation in terrestrial animal populations may be found on the OIE internet site:

- 1) Checklist on the practical implementation of compartmentalisation<sup>16</sup> and
- 2) Compartmentalisation for avian influenza and Newcastle Disease<sup>17</sup>.

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<sup>13</sup> <http://www.oie.int/index.php?id=169&L=0&htmfile=glossaire.htm>

<sup>14</sup> [http://www.wto.org/english/tratop\\_e/sps\\_e/equivalence2001\\_e.htm](http://www.wto.org/english/tratop_e/sps_e/equivalence2001_e.htm)

<sup>15</sup> [docs.wto.org/directdoc.asp?D=DFDocuments/t/G/SPS/53.doc](https://docs.wto.org/directdoc.asp?D=DFDocuments/t/G/SPS/53.doc)

<sup>16</sup> <http://www.oie.int/en/our-scientific-expertise/specific-information-and-recommendations/application-of-compartmentalisation/>

To support a decision by an importing country to base health conditions on the existence of a disease free zone or compartment in an exporting country, the latter must be able to demonstrate that it has complied with the relevant OIE standards. Detailed documentation should be provided by the exporting country for review by the importing country with a view to the establishment of appropriate health measures and certification provisions.

The outcome of a request for recognition of a zone or compartment depends on the importing country's veterinary authority having confidence in the exporting country's veterinary services and the procedures used to maintain the health status of the defined sub population. The findings, endorsed by the beneficiary country of an OIE PVS Evaluation and any subsequent missions, should be taken into account in considering a request for recognition of a zone or compartment.

### 1.5.3. Risk analysis

The SPS Agreement, in Article 5, requires that Members base their sanitary measures on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations. As defined by the OIE, 'risk assessment' means the evaluation of the likelihood and the biological and economic consequences of entry, establishment and spread of a hazard within the territory of an importing country and 'risk analysis' means the process composed of hazard identification, risk assessment, risk management and risk communication.

In the situation where relevant international standards have not been developed or an importing country considers that it requires a higher level of protection than that provided by the international standards, the importing country should carry out an import risk analysis. The OIE standards for import risk analysis are found in *Terrestrial Code* Section 2 and *Aquatic Code* Section 2. More detailed guidance is provided in the OIE *Handbook on Import Risk Analysis for Animals and Animal Products*, which may be purchased from the OIE Bookshop<sup>18</sup>.

The import risk analysis should take into account the quality of the Veterinary Services of the exporting country and in particular the results, endorsed by the beneficiary country, of any OIE PVS evaluation conducted. The use of zoning and compartmentalisation by the exporting country should also be addressed, as appropriate.

The OIE standards, guidelines and recommendations are updated annually, taking account of scientific research and developments in knowledge. This process benefits from the increasing number of Member countries conducting import risk analyses, the results of which provide a valuable input to the OIE standards.

The ongoing updating and publication of OIE standards particularly on animal diseases provides Members and stakeholders with the tools and information needed to conduct risk analyses in accordance with the provisions of the WTO SPS Agreement.

### 1.5.4. Safe commodities

With the objective of facilitating safe trade, the OIE is systematically including, in individual disease chapters in the *Codes*, a list of the animal products ('commodities') that are considered to be safe for international trade, regardless of the exporting country's status for the disease in question. This approach is sometimes called 'commodity-based trade'.

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<sup>17</sup> [http://www.oie.int/fileadmin/Home/eng/International\\_Standard\\_Setting/docs/pdf/En\\_final\\_Compartmentalisation\\_AI\\_ND\\_10\\_05\\_2007.pdf](http://www.oie.int/fileadmin/Home/eng/International_Standard_Setting/docs/pdf/En_final_Compartmentalisation_AI_ND_10_05_2007.pdf)

<sup>18</sup> [http://web.oie.int/boutique/index.php?page=ficprod&id\\_produit=995&fichrech=1&lang=en](http://web.oie.int/boutique/index.php?page=ficprod&id_produit=995&fichrech=1&lang=en)

When authorising the importation of designated safe commodities and products made from them, importing countries should not impose health measures for the disease in question, regardless of the status of the exporting country, zone or compartment for that disease.

In the *Aquatic Code*, Article 5.3.2., the concept of 'consumer ready products' has been used as a basis for determining the safety of aquatic products for the purpose of international trade. Such products are prepared and packaged for retail trade and intended for human consumption. Their safety, in terms of animal disease risk, depends on the minimal risk presented by waste material i.e. the residue of the product that is not consumed.

## 1.6 Conclusions

Sanitary measures based on the OIE standards provide a guarantee of safe international trade in animals and animal products. In the case where there is no relevant international standard or where Members require a higher level of sanitary safety, a science based risk analysis should be undertaken in accordance with OIE standards.

Key concepts, such as equivalence, zoning, compartmentalisation and safe commodities, as presented in the OIE *Codes*, should be accepted and used as the basis for sanitary measures to facilitate safe international trade.

Confidence in the quality of Veterinary Services and national Aquatic Animal Health Services underpins international trade. Good governance, ensuring transparency in disease reporting, efficiency in disease management and reliability in veterinary certification, is fundamental to the relationship of trust between an exporting and an importing country.

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## **Part 2 – Resolving differences and formal disputes relating to international trade**

### **2.1. The WTO Framework**

The WTO framework includes informal and formal procedures for addressing disputes.

#### **2.1.1. Informal WTO procedures**

WTO Members may raise concerns about the SPS measures applied by other Members under a specific standing item on the agenda of SPS Committee meetings. Frequently, this concerns a situation where a WTO Member considers that an importing country has not complied with a relevant international standard or has not based an import measure on scientific evidence or, as appropriate, a risk assessment. This procedure provides for discussion of trade concerns in the context of international standards and, frequently, acts as a trigger for bilateral discussions, which may be successful in resolving a specific trade problem. If this step proves insufficient to resolve the matter, the parties may request a meeting with the Chair of the SPS Committee, under the 'Good Offices of the Chair'. Using these procedures can help WTO Members to find a mutually agreed solution to SPS-related trade problems without initiating a formal dispute.

#### **2.1.2. Formal procedures - WTO Dispute settlement**

The WTO Dispute Settlement Mechanism, under the auspices of the WTO Dispute Settlement Body (DSB), covers trade disputes under the various WTO Agreements, including the SPS Agreement. The dispute settlement rules are set out in the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes. Each WTO Member has equal decision-making status in the DSB.

The WTO Dispute Settlement Mechanism comprises two main phases, a Panel examination and, if requested by a party to a dispute, an Appellate Body review. The process begins with a compulsory preliminary stage, wherein the parties to the dispute must participate in a consultation process to define the form and content of the disagreement and to seek a mutually agreed solution. A minimum of 60 days is available for this formal bilateral process. After 60 days, a WTO Member can request that the DSB establish a Panel to examine both factual matters and issues relating to legal interpretation. In most cases, the Panel comprises three experts in trade or WTO law, acting in their individual capacities. Panel members are normally chosen in consultation with the parties to the dispute and cannot be nationals of the countries involved in the dispute.

A Panel report may be appealed by one or both parties, in which case the appeal is considered by the WTO Appellate Body. The Appellate Body limits its review to issues of law and legal interpretation. The Panel report and the Appellate Body report (in case of appeal) is submitted through the DSB to WTO Members for adoption. The DSB adopts the final report unless all WTO Members agree to reject it, a procedure known as a negative consensus. At any time during the process, the parties may resort to the Good Offices of the WTO Director-General, to conciliation, or to arbitration, with the objective of resolving their differences, or may reach a bilateral settlement and end the formal process.

The DSB oversees the implementation of the legal rulings. In the (rare) cases of non-compliance with a DSB decision, a WTO Member may be authorised to impose commercial sanctions against the non-complying party.

To date, the OIE has provided scientific and technical advice to all WTO Panels on disputes that concern animal health issues.

The WTO Dispute Settlement Mechanism has a well defined structure and timeframe. It underpins the WTO legal framework and helps to assure predictability in global trade. The findings of a WTO Panel are binding on the parties. WTO Members commit significant resources to making and defending their case, with the involvement of well-qualified trade lawyers as well as scientific or technical experts.

## **2.2. The OIE Framework for safe international trade in animals and animal products**

The OIE scientific and technical standards are democratically adopted by the World Assembly of OIE Delegates at annual General Sessions of the OIE. The national Delegates are responsible for taking steps to ensure that Member countries implement the adopted standards. When a Member considers that a trading partner has not complied with these provisions, or that its import policies are not based on science or, as appropriate, a risk analysis, the OIE may be asked to conduct an informal mediation process.

The OIE mediation process is entirely voluntary. No attempt is made to find fault. Rather, the goal is to find a mutually agreed compromise that will allow trade to be established (or re-established), preferably by application of the relevant OIE standards.

Use of the OIE mechanism provides an environment conducive to friendly bilateral discussions, with the objective of finding a basis for compromise. The key contribution of the OIE is to identify differences in Member Countries' interpretation of the scientific issues and in the application of OIE standards and seek common ground to resolve trade restrictions, where possible.

### **2.2.1. The OIE procedure for mediation of differences between Member Countries**

The procedure is initiated on the basis of a request from both parties to a difference. In response, the OIE Director General designates one or more experts and a mediator to conduct the mediation. The designation of the experts requires the consent of both parties

The OIE begins the process once all parties have given their consent in writing.

Confidentiality is maintained throughout the process.

The proposed means of resolving the disagreement are not binding on the parties, unless both have previously agreed to be bound by the adopted solution. The discussion and the outcome of the mediation may only be divulged with the consent of all parties (see also 2.2.5 below).

The OIE mediation process may be terminated at any time, based on a written notification by one of the parties.

### **2.2.2. The designation of experts**

Following initiation of the OIE mediation process, the Director General of the OIE recommends a number of experts, usually from OIE Reference Laboratories or Collaborating Centres. The parties should agree on the list and on the final selection of experts.

The experts must be neutral, independent and impartial. They should not be nationals of the countries that are party to the disagreement. It is preferable to designate an odd number of experts to aid in reaching a majority recommendation.

The designated experts, working with a mediator nominated by the Director General, endeavour to find a consensus solution based on science and the application of OIE standards. The experts may request any relevant information or clarification from the parties.

### 2.2.3. Conduct of the procedure

At the first meeting, the parties and the OIE agree the administrative procedures, including:

- the language(s) for the mediation; opting for more than one language means that interpreters and translators may be needed;
- where the mediation procedure will take place; this is normally but not essentially at the OIE headquarters in Paris;
- the cost of the process. Article 5.3.8. of the *Terrestrial Code (2012)* states that the parties shall agree to meet all expenses incurred by the OIE during the procedure. As at 2012, each party is required to pay a fee of 8000 euros to cover the OIE's costs.

To achieve a successful outcome, the parties must cooperate and act in good faith.

To commence, each party explains its position, the facts that have led to the difference and the consequences of it. In collaboration with the parties and the experts, the mediator defines the scope of the discussions and draws up terms of reference and a work programme. The timetable and the schedule of meetings and their agendas must be endorsed by the parties before discussions can begin.

The parties may nominate additional experts to help them present their case.

The mediator and the experts may hold joint or separate meetings with the parties.

### 2.2.4. Developing a consensus

The OIE mediation mechanism can provide a basis for a technically sound compromise that is acceptable to both parties. The parties, with the help of designated experts and a mediator, focus on the scientific and technical reasons for their differences rather than on legal aspects (noting that these may be subjective, depending on the viewpoint and legal or administrative systems of each party). The search for a compromise is facilitated by taking as a reference the OIE standards, which represent a 'legal framework' in the context of the OIE's standard setting role as recognised in the SPS Agreement.

### 2.2.5. The report

At the end of the process, the mediator, with assistance from the experts, drafts a report, detailing the discussions and recommendations and the final status of the difference between the parties.

The report is drafted in one of the three official languages of the OIE. Part one summarises scientific and technical aspects and Part two presents the findings and recommendations to the parties. Any dissenting views are explained in the report.

The report is handled in a totally confidential manner.

The draft report is provided to the OIE Director General, who transmits it to the parties. The report is not legally binding unless this outcome had been agreed and confirmed by the parties at the outset. The parties decide how they will address the recommendations in the report.

If, at the end of the mediation process, it has not been possible to find a mutually agreed solution, parties may still benefit from the process. Participation normally gives each party a better understanding of the other's position and concerns and, in some cases, a better understanding of international standards. Subsequent discussions may eventually lead to an agreement.

In summary, the OIE mediation procedure is characterised by the voluntary and confidential nature of the entire process. All discussions, including the final report, are confidential unless the parties decide otherwise. The objective is to resolve differences between parties based on expert advice, with a focus on science and the application of the OIE standards and recommendations.

### Steps in the OIE informal mediation procedure

1. When a Member country considers that another Member has adopted measures that are not based on relevant OIE standards, or an import risk analysis according to OIE standards
  - or has concerns about any other bilateral matter relating to the implementation of OIE standards, guidelines or recommendations

the Member may send a written request to the Director General, outlining the grounds for requesting mediation.

2. The OIE informs the other Member (the responding party) of the request for mediation.
3. Within 20 days the responding party should provide a written reply, stating whether or not it agrees to mediation.
  - Failure to respond does not indicate agreement;
  - If the responding party does not reply within 20 days, the OIE will not proceed with the mediation.

The process begins once the Director General confirms that the OIE will undertake the mediation, based on the written agreement of both parties.

4. The mediation process takes place within a period of 90 days. A single extension may be given at the request of both parties.
5. The parties may terminate the mediation process at any time. To do so, they should notify the other party in writing and send a copy of the notification to the Director General.
6. The Parties select one or more experts (desirably an odd number), from a list provided by the Director General. The experts must be impartial and independent of the parties and preferably not a national of either party. The experts may request that the parties provide any information they deem to be relevant to the mediation.
7. At the first meeting the parties agree the administrative arrangements for the mediation, including the venue for meetings, the language(s) to be used and the arrangements for meeting the OIE's costs. The needs, if any, for interpretation and translation should be agreed and the timeframes for the mediation established. The mediator nominated by the Director General will remind the parties that the findings of the mediation will not be published and the conclusions will not be binding without prior agreement of both parties unless they decide a different option. The position of both parties on these two points should be confirmed at this stage.

The parties explain their respective positions and provide relevant documentation to the mediator. Subsequently, the parties and the mediator draft the terms of reference and a work programme, including the framework for the mediator's involvement and the main issues to be dealt with during the mediation process.

8. Bilateral consultations between the parties take place in accordance with the agreed work programme and the undertaking on confidentiality. Unless the parties agree to the contrary, both the discussion and the final report will remain confidential.
9. The mediator, with assistance from the experts, drafts a report in one of the three OIE official languages. This report is in two parts: part one summarises the scientific and technical issues and part two presents the mediator's findings and recommendations to the parties.

- A preliminary draft report is sent to the parties, with a period of 60 days for comment.
  - If a party provides no comment, agreement with the preliminary draft report is assumed
  - The mediator produces a final draft report, taking into account the parties' comments, and sends it to the Director General.
10. The Director General transmits the report to the parties. This step is completed within one month after the mediator receives comment from the parties or one month after expiry of the 60 day comment period, if no comment is received.
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