

PRIVATE STANDARDS AND THE WTO COMMITTEE ON SANITARY AND PHYTOSANITARY MEASURES

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Summary: *Private standards have been under discussion in the SPS Committee since June 2005. The discussions have focused on three themes:*

- *Market access: Some Members have taken the view that standards set by the private sector can help suppliers improve the quality of their products and gain and maintain access to high-quality markets. Other Members have argued that private standards can be both more restrictive (e.g. requiring lower levels of pesticide residues) and more prescriptive (e.g. accepting only one way of achieving a desired food safety outcome) than official import requirements, thus acting as additional barriers to market access.*
- *Development: Many Members have expressed the concern that the costs of complying with private standards, and the additional cost of certification, sometimes for multiple sets of standards for different buyers, can be a problem, especially for small-scale producers and particularly (but not exclusively) in developing countries.*
- *WTO law: While some Members are of the view that setting standards for the products they purchase is a legitimate private-sector activity with which governments should not interfere, others insist that the SPS Agreement makes governments in importing countries responsible for the standards included in the scope of this Agreement and set by their private sectors. The latter are concerned that these standards do not meet WTO requirements such as transparency and scientific justification of sanitary and phytosanitary (mainly food safety) measures and are more trade-restrictive than necessary to protect health.*

Key words: World Trade Organization – WTO – SPS Agreement – SPS Committee – private standard – international trade in animals and animal products

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The views expressed in this paper are those of the author only and do not necessarily represent the views of the World Trade Organization nor of its Members.

1. Introduction: discussion of private standards in the SPS Committee

At meetings of the SPS Committee, Members of the World Trade Organization (WTO) have the opportunity of raising specific trade concerns, for example if they believe that another country's sanitary and phytosanitary (SPS) measures are more trade-restrictive than necessary for health protection. In June 2005, St.-Vincent-and-the-Grenadines raised such a concern with respect to EurepGAP (now GlobalGAP) pesticide requirements for the importation of bananas, enquiring about the relationship between GlobalGAP and official EU requirements². Other developing countries shared this concern, wondering what recourse was available to affected developing countries. The European Communities replied that GlobalGAP standards were not official EU requirements and even if they went beyond official EU regulations, they were not in conflict with EU legislation.

Since June 2005, private standards have been on the agenda of every meeting of the SPS Committee. At Members' request, the Secretariat organized two informal information sessions; a first one in October 2006 with the participation of GlobalGAP and UNCTAD³ representatives, and a second one organized jointly with UNCTAD in June 2007. Several private standards' schemes provided information to WTO Members at this second session, and a number of speakers presented case studies on the impact of private standards in different countries and sectors. These illustrated the different coping strategies adopted by exporting countries. For example, several countries have developed national GAP schemes, with varying levels of government involvement. The information sessions have provided the opportunity for two-way education and awareness-raising: increasing the knowledge and understanding of government regulatory officials about the operation of various private standard schemes and their objectives, while at the same time making the operators of the private schemes aware of the concerns and effects of these on developing countries.

Although the SPS Committee first started considering private standards through a specific trade concern raised by a developing country Member, since then very few specific examples have been submitted. So far, no concrete example of difficulties with private standards related to animal health has been provided — discussions have either been very general or have focused on fresh fruits and vegetables. At the last meeting of the SPS Committee, the Director General of the World Organisation for Animal Health (OIE) made a statement to launch a discussion on private standards in the animal health area, emphasizing that there was no need to go beyond OIE standards to address animal health risks and zoonoses. Many Members spoke to stress the importance of international standards in facilitating safe trade and to express concern about the role of private standards.

2. Background: private standards in international trade

In January 2007, the WTO Secretariat prepared a background note on private standards for the SPS Committee⁴. Some of the information from that document is reproduced in this section. At the time, UNCTAD estimated the number of private schemes at 400 and rising. Schemes range from those developed by individual firms to collective industry-wide international schemes and are not exclusive to a particular country, geographical region or even level of development. Private standards have very diverse objectives, in many cases related to social and environmental concerns or to animal welfare, which are not covered by the SPS Agreement. In the context of the SPS Agreement, the focus is on sanitary or phytosanitary aspects of private standards, which in the large majority of cases relate to food safety. In this respect, the same factors and companies driving the use of private standards are at work in developed, developing and least-developed countries.

Table 1 gives examples of private standards. The list of standards given in the table is an illustrative one; it is far from exhaustive. The twelve schemes identified serve to demonstrate some of the diversity of the 400 plus schemes in operation.

2 GAP standards for good agricultural practices, and the GlobalGAP standard is required by several retailers in Europe and elsewhere.

3 UNCTAD: United Nations Conference on Trade and Development

4 Document G/SPS/GEN/746

Table 1.– Examples of private standards

Individual firm schemes	Collective national schemes	Collective international schemes
Tesco Nature's Choice Carrefour Filière Qualité	Assured Food Standards British Retail Consortium Global Standard - Food QS Qualität Sicherheit Food and Drink Federation/British Retail Consortium Technical Standard for the Supply of Identity Preserved Non-Genetically Modified Food Ingredients and Product	GlobalGAP International Food Standard Global Food Safety Initiative ISO 22000: Food safety management systems Safe Quality Food (SQF) 1000 and 2000 ISO 22005: Traceability in the feed and food chain

The categorization used in the table between individual firm schemes, collective national and collective international schemes is one of several possible categorizations. Distinctions can also be drawn between pre- and post-farm gate standards, or between business-to-business standards or standards tied to a particular labelling or logo scheme intended for consumers. Collective schemes may also tackle a particular supply chain issue or objective, at a national or international level. The schemes listed above cover all these categories. For example, while GlobalGAP is primarily a pre-farm gate standard, the British Retail Consortium (BRC) Global Standard and International Food Standard are aimed at packing and processing facilities. Similarly, while the Assured Farm scheme is linked to logos displayed on food packaging, the GlobalGAP scheme is not. Likewise, the joint Food and Drink Federation/British Retail Consortium Technical Standard and the ISO 22005 scheme tackle specific supply chain issues —at both a national and international level.

Table 1 serves to demonstrate the diversity of private standards. It also highlights the rise of private standard-setting collations which are seeking to harmonize industry-wide efforts to control particular risks. The proliferation of standards schemes nationally and internationally is also stimulating a trend towards 'benchmarking' —which provides a means to compare requirements. For example, GlobalGAP has a process through which other schemes may be 'benchmarked' against it —such as the ChileGAP scheme for fresh fruit. Another example of this process is the Global Food Safety Initiative (GFSI). The GFSI was founded with the idea of 'benchmarking' national schemes internationally against a set of key elements. However, benchmarking does not necessarily imply equivalence.

Private standards are not mandatory. Suppliers are not required by law to meet private standards. Compliance with private standards is a choice on the part of the supplier. Where private standards become the industry norm, however, choice is limited. Consolidation in food retailing may be a key factor to consider in this context. Where a small number of food retailers account for a high proportion of food sales, the options for suppliers who do not participate in either an individual or collective retailer standard scheme can be considerably reduced. Furthermore, the retailer scheme may be de facto applied as the industry norm by all actors in the supply chain. Thus the choice of whether or not to comply with a voluntary standard becomes a choice between compliance or exit from the market. In this way, the distinction between private voluntary standards and mandatory 'official' or 'public' requirements can blur.

3. Issues raised in the SPS Committee

The discussions of private standards in the SPS Committee have focused on three themes:

a. Market access

Some Members have taken the view that standards set by the private sector can help suppliers improve the quality of their products and gain and maintain access to high-quality markets. Other Members have argued that private standards can be both more restrictive (e.g. requiring lower levels of pesticide residues) and more prescriptive (e.g. accepting only one way of achieving a desired food safety outcome) than official import requirements, thus acting as additional barriers to market access.

b. Development

Many Members have expressed the concern that the costs of complying with private standards, and the additional cost of certification, sometimes for multiple sets of standards for different buyers, can be a problem, especially for small-scale producers and particularly (but not exclusively) in developing countries.

c. WTO law

While some Members are of the view that setting standards for the products they purchase is a legitimate private-sector activity with which governments should not interfere, others insist that the SPS Agreement makes governments in importing countries responsible for the standards included in the scope of this Agreement and set by their private sectors. The latter are concerned that these standards do not meet WTO requirements such as transparency and scientific justification of sanitary and phytosanitary (mainly food safety) measures and are more trade-restrictive than necessary to protect health. This last point is taken up in more detail in the following section.

A list of relevant documents circulated in the SPS Committee is contained in [Appendix I](#) to this paper.

4. Private standards and the SPS Agreement

Several WTO Members have expressed concerns that the proliferation of private standards could undermine some of the progress made in regulating sanitary and phytosanitary measures through adoption and implementation of the SPS Agreement. The SPS Agreement was negotiated by governmental food safety, plant and animal health regulators to impose significant disciplines on what restrictions can be applied to products moving in international trade in the name of health protection. The basic requirement under the SPS Agreement is that measures can be taken only to the extent necessary for health protection, with scientific evidence required to demonstrate this 'necessity' (except for emergency situations when temporary actions may be taken).

Under the SPS Agreement, the preferred way of meeting the scientific justification requirement is through the use of internationally developed food safety, animal and plant health protection standards—that is, those adopted by the OIE, the Codex Alimentarius Commission (Codex) and the International Plant Protection Convention (IPPC) Commission on Phytosanitary Measures (CPM). The harmonisation of national requirements on the basis of these international standards facilitates trade by reducing the proliferation of distinct national requirements.

Alternatively, governments can justify national requirements if these are based on an appropriate risk assessment, but the measures imposed must be no more trade restrictive than required to achieve the desired level of health protection. And the level of health protection sought by governments, while a sovereign decision, cannot be arbitrary and should be consistent in the face of similar health risks.

Importantly, the SPS Agreement contains a number of provisions to ensure the transparency of sanitary and phytosanitary requirements. Not only must governments give advance notice of their intention to modify SPS measures, but they must take into consideration any comments submitted by trading partners, provide associated documents upon request (including risk assessments and the scientific evidence underpinning measures), and ensure that all measures are published promptly.

In the WTO, sanitary and phytosanitary measures are subject to a different set of legal obligations than what is applied to quality and environmental measures or measures adopted to avoid the deception of consumers. These latter types of measures are covered by a different legal framework, the Agreement on Technical Barriers to Trade. The existence of these two agreements pushes governments to identify the objectives of their import requirements, and to more clearly separate and distinguish between requirements imposed for health protection and those imposed for other purposes.

Finally, the WTO agreement ensures that SPS requirements can be challenged by other trading partners, through the use of the WTO's unified dispute settlement procedures.

In contrast to these globally negotiated disciplines on governmental actions, some developing country Members have expressed the concern that private standards are going in a different direction. The private standards address a mix of SPS and other objectives – including social and environmental concerns that are not related to food safety or plant/animal health protection. These private requirements may have no scientific justification, but may address consumer perceptions of what is safe or unsafe. Or the requirements

may reflect production practices common in developed countries but unknown and perhaps unsuitable for developing country producers.

Some developing country Members have also expressed concerns that there is a proliferation of distinct private requirements, with little harmonisation. Certification is done by private companies, at much greater expense than governmental schemes which at most seek to recover costs. And certification must be renewed regularly, whether or not there is any reason to believe that the production conditions have changed.

The SPS Agreement encourages the participation of developing countries in the preparation and adoption of international standards, which has been addressed through the creation of trust funds and various assistance programs. Other provisions of the SPS Agreement require consideration of the special needs of developing countries, through the provision of special and differential treatment. The SPS Agreement also requires that there be no unjustified costs in testing, certification or approval procedures, to ensure that these do not function as barriers to trade.

Some developing country Members have argued that private standards bodies have apparently not taken into account the effects of their standards on developing countries or the degree of their trade restrictiveness. These Members have reported on growing concerns in the private sector within their countries regarding the effects of these private standards and the degree of their trade restrictiveness, especially in countries where meeting internationally agreed standards is still a challenge.

At the information sessions held for the SPS Committee, some representatives of private standard bodies indicated that they had recognized this problem and some efforts to 'benchmark' or accept other private standard schemes as equivalent are underway, as well as some efforts to improve transparency. Still, some WTO Members feel that compared to the disciplines that the SPS Agreement places on government regulations, there is little transparency in the development of private standards, and there is no forum for challenging private standards comparable to the SPS Committee or the dispute settlement mechanism of the WTO.

Article 13 of the SPS Agreement

Does the SPS Agreement apply to private standards? WTO Members are of different views about this question. This disagreement stems *inter alia* from different interpretations of Article 13 of the SPS Agreement. Some WTO Members are of the view that Article 13 obliges Members to ensure that private standard-setting bodies on their territories comply with the SPS Agreement, while others disagree.

Article 13

Implementation

Members are fully responsible under this Agreement for the observance of all obligations set forth herein. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of this Agreement by other than central government bodies. Members shall take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories, as well as regional bodies in which relevant entities within their territories are members, comply with the relevant provisions of this Agreement. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or non-governmental entities, or local governmental bodies, to act in a manner inconsistent with the provisions of this Agreement. Members shall ensure that they rely on the services of non-governmental entities for implementing sanitary or phytosanitary measures only if these entities comply with the provisions of this Agreement.

The last three sentences of Article 13 deal with 'non-governmental entities' and the role of Members in ensuring that such entities comply with the SPS Agreement. The term 'non-governmental entities' is not defined in the SPS Agreement. While some have argued that it would cover private standards bodies, others are of the view that only private entities that have been mandated by a government to carry out certain tasks would be included⁵.

5 For a more detailed analysis of Article 13 and of other articles of the SPS and TBT Agreement, please see document G/SPS/GEN/802, submitted by the United Kingdom. This document contains non official legal analysis carried out by O'Connor and Company, a law firm based in Brussels.

Of particular interest in this context is the third sentence of Article 13: “Members shall take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories, as well as regional bodies in which relevant entities within their territories are members, comply with the relevant provisions of this Agreement.” Even if this were found to apply to private standards bodies, it seems clear that the “reasonable measures” to be taken by a particular government to ensure that a specific non-governmental entity complies with the SPS Agreement would have to be studied on a case-by-case basis.

5. The way forward

The SPS Committee has discussed several possible ways to continue to address private standards, but has so far not made a decision. The following options have been suggested:

a. A focus on practical trade problems with particular standards

The Chairman of the SPS Committee encouraged Members to identify specific instances where a private standard seems to be restricting trade so that the Committee could study these examples and discuss possible solutions. Such an approach might also allow a better understanding of the problem in general, and thus help to identify horizontal approaches.

b. Finding another forum to discuss private standards

Since many private standards schemes address issues that go beyond sanitary and phytosanitary measures, some Members have suggested that different fora may be more appropriate their discussion, e.g. the TBT Committee, UNCTAD, OECD, the Trade Standards Practitioners Network of the World Bank, etc. Other Members have made it clear that they wish to continue discussing private standards in the SPS Committee.

c. Dialogue between government regulators and private standards bodies at the national and international levels

Informal information sessions and discussions in the SPS Committee and other fora have already led to increased awareness of concerns and objectives on both sides; this could possibly be enhanced through continued formal or informal exchanges.

d. Guidance on the implementation of Article 13 of the SPS Agreement

The SPS Committee has adopted decisions or guidelines on several subjects in the past, for example on the practical implementation of Article 4 on equivalence. Some Members have suggested that the SPS Committee could attempt to develop similar guidance for the implementation of Article 13, or a code of good practice for private standards bodies similar to that contained in the TBT Agreement. Given Members’ diverging positions on the issue it would presumably not be easy to reach the required consensus. According to Article 12.7 of the SPS Agreement, the Committee could also elaborate a proposal to amend the text of the SPS Agreement, but the possibility of reaching consensus on such an amendment seems remote.

e. Dispute settlement

A Member who believes that another Member is violating its WTO obligations can begin a formal dispute settlement process at the WTO. However, the findings of such a case are likely to be highly specific to the particular situation of the case examined and may not be very helpful to clarify the issue in general.

At the April 2008 meeting of the SPS Committee, there was a proposal to establish a small working group to discuss the way forward, while continuing to keep private standards on the agenda of future meetings of the Committee. This proposal received much support and will be discussed at an informal meeting prior to the regular SPS Committee meeting during the week of 23 June 2008. Given the widespread interest in the issue, any working group that may form is unlikely to be very small.

.../Appendix

Appendix I**Documents on private standards circulated in the SPS Committee**

Author / document symbol	Title and date
WTO Secretariat G/SPS/GEN/746	Private Standards and the SPS Agreement 24 January 2007
ISO G/SPS/GEN/750	Submission by the International Organization for Standardization (ISO) to the SPS Committee Meeting – 28 February and 1 March 2007 16 February 2007
UNCTAD G/SPS/GEN/760, G/SPS/GEN/761&Corr.1	Typology of Global Standards 26 February 2007 Private Sector Standards and Developing Country Exports of Fresh Fruit and Vegetables 26 February 2007
OECD G/SPS/GEN/763	Private Voluntary Standards and Developing Country Market Access: Preliminary Results 27 February 2007
Bahamas G/SPS/GEN/764	Report by the Commonwealth of the Bahamas to the WTO-SPS Committee on Private Standards and the SPS Agreement: the Bahamas Experience 28 February 2007
St. Vincent & the Grenadines G/SPS/GEN/766	Private Industry Standards 28 February 2007
Ecuador G/SPS/GEN/792	Private and Commercial Standards 5 July 2007
DFID G/SPS/GEN/802	Private Voluntary Standards within the WTO Multilateral Framework 9 October 2007
OIE G/SPS/GEN/822	Considerations Relevant to Private Standards in the Field of Animal Health, Food Safety and Animal Welfare 25 February 2008

All documents are available in English, French and Spanish from the WTO website at <http://docsonline.wto.org/> or from the SPS Information Management System: <http://spsims.wto.org/>

Information on the Joint UNCTAD/WTO Informal Information Session on Private Standards held on 25 June 2007 is available at:
http://www.wto.org/english/tratop_e/sps_e/private_standards_june07_e/private_standards_june07_e.htm

More information on sanitary and phytosanitary measures is available through the WTO SPS gateway at http://www.wto.org/english/tratop_e/sps_e/sps_e.htm

PRIVATE STANDARDS IN THE SANITARY AND PHYTOSANITARY AREA

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***Summary:** Private standards oblige suppliers to meet certain requirements in relation to the production of their products. These requirements usually concern quality, environmental, social and ethical issues, but may also include food safety, animal health and animal welfare issues. They reflect in particular the strategies of major retailers towards meeting consumer demands and fulfilling “due diligence” requirements while also increasing their own profitability and market share. There are concerns, especially among developing countries, that private standards represent a new barrier to international trade in food products. Official regulators, including at the multilateral level, are faced with requests to monitor private standards and to tackle any unjustified requirements. This includes demands to address such measures at the multilateral level, in particular in the World Trade Organization. However, it is disputed whether official regulatory authorities, including at the multilateral level, are competent to intervene in the setting of such requirements. There may also be other mechanisms which could reduce the tensions arising from private standards, notably a greater commitment to respect of existing official regulatory requirements.*

Key words: World Trade Organization – WTO – SPS Agreement – SPS Committee – private standard – international trade in animals and animal products – international trade in plants and plant products

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1. Background

This paper sets out the background to private voluntary standard schemes in the sanitary and phytosanitary sphere and the concerns that they have created new barriers to trade with developing countries.

Private standards cover a wide range of issues, which include quality, ethical, social, environmental and food safety issues. This note concerns only the latter. Private standards are a response to various factors, including food safety concerns, legal requirements to demonstrate 'due diligence' in the prevention of food safety risks and the increased concentration of the retail market in the hands of major retailers. They are also increasingly a marketing strategy designed to reassure customers and win market share by creating a good brand image of corporate responsibility. While voluntary and not required by law they are, *de facto*, mandatory if producers wish to access markets. They range from pre farm-gate measures, to business-to-business standards, to labelling provisions. They are especially common in relation to fruit, vegetables, tea, coffee and sugar but can also be found in the area of animal products.

Private standards impact on trade at all levels, i.e. within individual countries, within trading blocs and at the international level. As the largest share of trade continues to be 'local', by definition their main impact falls on domestic producers. Nonetheless, there is an increasing focus at the international level on their impact on trade. Developing countries in particular have raised consistent concerns that private standards are acting as a barrier to trade. This is reflected in ongoing discussions in the Sanitary and Phytosanitary (SPS) Committee of the World Trade Organization (WTO). In parallel, a number of other multilateral bodies including the World Bank, the United Nations Conference on Trade and Development (UNCTAD) and the Organization for Economic Cooperation and Development (OECD) have led research on their impact.

2. Developing country concerns

There is no question that the number of private standards is multiplying. However, it is still disputed whether this is damaging to *overall* trade interests of developing countries. There are certainly imbalances in the process. Small scale producers are consistently identified as simply not having the resources, or the economies of scale, to meet private standards. There are also a range of problems which have their origin in the alleged conduct of the private standard setting bodies, for example:

- Increasing number of private standards to be met and the consequential overlap and costs of meeting multiple official and private standards.
- Frequent and unannounced changes in standards.
- Lack of consistency in the performance, charges and efficiency of the certifying bodies employed to certify compliance with private standards.
- Absence of training and technical assistance to enable producers to meet private standards.
- A lack of transparency and accountability in the setting of requirements, with little or no opportunity for producers, especially in developing countries, to question or challenge their need.
- The undermining of official standards agreed in a multilateral framework (WTO and the standard setting bodies, OIE, Codex and IPPC²) which have been negotiated under democratic and transparent conditions on the basis of sound science.
- An additional burden on the official competent authority, which is already frequently under-resourced to carry out its primary official responsibilities.

The main focus of these complaints has been in the SPS Committee of the WTO. However, it has equally to be acknowledged that many of the complaints are anecdotal and generic in nature. Discussion on the extent of the problems would be helped if clear, substantiated cases were available confirming allegations of negative impacts on trade arising from private standards.

3. The alleged benefits of private standards

The retail chains and private standard setting organisations point to the benefits of private standards. This includes the existing research which frequently points to benefits in terms of improved market access provided by private operators who seek out suppliers in developing countries, willing to meet their requirements. They highlight that imports are especially buoyant in those sectors where private standards are most prevalent, e.g. exotic fruits and vegetables and horticulture products.

2 IPPC: International Plant Protection Convention

Moreover, if developing countries wish to move up the ‘value-chain’ they argue that private standards can assist this process by increasing consumer willingness to pay higher prices for certain additional guarantees. They insist that private standards provide a real opportunity to developing countries to move beyond commodity-only type exports. They also point to increased efforts on their part to improve transparency, increase dialogue with stakeholders and promote the mutual recognition of private standards across the entire retail chain.

Finally, they also argue that private standards are a consequence of the obligations placed on them by regulatory authorities to meet official requirements, especially in the context of the ‘farm to table’ approach.

4. Official standard setting bodies and other stakeholders

The official standard setting bodies, at national, regional and multilateral level are increasingly called on to take a position on private standards. There are clearly, however, constraints on their ability or willingness to intervene. Private standards are frequently seen as private sector arrangements reflecting the normal business practices in a market economy. There is no reason to intervene provided that they do not undermine official standards and respect consumer and business legal provisions. There are also arguments that it is inappropriate to interfere in the efforts of retailers to meet their consumers' expectations by providing additional guarantees, especially where these involve demands for higher standards than the norm. There may, however, be grounds to improve dialogue with private standard bodies to ensure that their standards are compatible with official standards.

Conversely, there are also arguments that a more interventionist approach needs to be considered at national and regional level, by the following considerations in particular:

- Risks that consumers are misled into believing that there are different levels of safety in the market when the key objective of official policy-making is that *all* products on the market should be safe.
- The concerns of developing countries as highlighted in paragraph 2 above, notably in relation to transparency, lack of a scientific basis to private standards and the impact on smallholders.
- The risks that private standards are used to charge higher prices than justified by the underlying additional guarantees provided.
- The potential undermining of confidence in official standards, if private standards are promoted as providing additional benefits.
- The risk of discriminatory practices, especially between domestic and imported goods, where retailers respond to protectionist pressures from the former.
- Risks of competitive abuses if private standards are used to restrict market access or tie producers into supply arrangements under unfair or restrictive practices.

A key factor which justifies a non-interventionist approach is the lack of concern among consumers, consumer organisations and civil society in relation to private standards. In general, there is little or no public criticism that private standards are damaging to consumer interests. On the contrary, there are claims that private standards are frequently justified by concerns raised by NGOs and civil society regarding the food products on the market and their conditions of production.

Producer organisations have raised some concerns. These are focused in particular on the additional costs, lack of transparency, discriminatory application of private standards and differences with official standards. Nonetheless, these concerns are not yet significant, especially when compared with other competitiveness issues —prices, market supports, market access, etc.

5. Animal health and animal welfare

Animal health and animal welfare have not featured strongly in relation to private standards *in international trade* in animals or animal products. While, as outlined above, there is a shortage of concrete examples of private standards which impact negatively on trade in general, this is even truer in these policy areas. Nonetheless, there is clear potential for such standards to emerge, which could create barriers to international trade and/or complicate efforts to promote high and consistent standards. A non-exhaustive list includes the following:

1. Assurances of non-vaccination in cases of control and prevention measures in disease outbreak situations, even where such vaccination presents no risk to human health and can reduce animal disease and suffering.

2. Traceability and identification requirements which although intended for food safety and/or quality assurance purposes, have in some cases no real relevance for animal disease purposes.
3. Assurances of certain production requirements such as 'reared without antibiotics' or 'zero residues' when this offers no food safety or animal health benefits but may instead create misinformation regarding the legitimate use of such antibiotics for animal health purposes or of the safety status of the animals concerned.
4. Animal welfare requirements, an especially sensitive issue as animal welfare is not considered a trade concern for WTO purposes but is a major concern for many consumers.

There is nonetheless one important factor which suggests that the impact of private standards in the area of animal health in particular will be limited. This is the reluctance or inability of private standard setting bodies to provide assurances on animal health. This is an area where assurances can only be provided by an official competent authority, due to the sophisticated nature of animal disease surveillance systems and the controls in place. This is reflected also in the fact that the animal health status of live animals and animal products in international trade is certified exclusively on the basis of certification from the official competent authority, taking as a basis the relevant provisions of the OIE *Terrestrial Animal Health Code*. There is no accepted alternative to this official certification. Private standards cannot therefore replace or substitute for this official certification. This is likely also to be the case for provisions under consideration in relation to compartmentalisation where the official competent authority will play an indispensable role.

It is important to keep in mind that a strong multilateral framework in the area of animal health is in itself a strong argument against the need for private standards. This in turn requires trust and confidence in the performance of the official veterinary services in carrying out their tasks. If Member States fully respect and implement their multilateral obligations it clearly reduces the need for private standards, as it can be highlighted that there are sufficient official provisions in place to ensure that trade can take place under safe conditions and without any additional requirements. It is equally important that this multilateral framework is seen to be up-to-date, including in relation to consumer demands. An example is animal welfare where consumers are increasingly insistent on high standards. If the multilateral framework is not seen to take these concerns seriously, there is a risk that private standards will fill the vacuum.

6. Issues for discussion

It is appropriate for policy makers in the field of animal health and animal welfare to anticipate and plan for the potential impact of private standards in these policy areas. The OIE has itself taken the initiative to present a paper on private standards in general to the SPS Committee of the WTO at its meeting in April 2008, which was presented by the OIE Director General. The discussions in the SPS Committee are continuing (see, pp 71-79, the paper of Christiane Wolff of the WTO Secretariat). Some of the key issues which arise for consideration are as follows:

1. Are private standards a problem in the areas of animal health and animal welfare in international trade?
2. Is the current framework at multilateral level sufficient to ensure that trade can continue to take place on the basis of official certification only?
3. What actions can help improve trust and confidence in the official veterinary services and thus the credibility of official controls and certification?
4. How can Competent Authorities improve the credibility of official measures and their adequacy in providing assurances that food meets consumer requirements, especially in the area of animal health and animal welfare?
5. Are there particular problems for developing countries in relation to private standards and how might these be addressed?
6. Are there gaps in the current multilateral framework in relation to animal health and animal welfare which risk to be filled by private standards?
7. How can official standards meet the increasing demands of consumers for guarantees in relation to the production standards of food, including animal health and animal welfare issues?
8. How can private standard bodies be encouraged to ensure that their standards take as a basis official standards and do not create conflicts with such official standards?