

## IMPLEMENTATION OF OIE INTERNATIONAL STANDARDS BY OIE MEMBERS

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**Summary:** *The OIE is the international organisation that sets reference technical standards to enable trade in animal products to be conducted on a scientifically sound basis. Importing countries draw up health requirements based on OIE guidelines, while exporting countries furnish importing countries with guarantees of compliance with these requirements. In spite of OIE efforts, countries do not always comply with international standards for trade, resulting in scientifically unfounded barriers to trade between countries. This is detrimental to exporting countries, especially those with fewer technical and organisational capabilities for resolving them. It is not always easy to pinpoint the reason or reasons for failure to comply with international standards. They may arise from the nature of the countries, their veterinary services or the standards themselves. One of the critical determining factors is thought to be some countries' desire to protect trade and another is the technical and organisational capacity of official veterinary services. As food safety is an issue closely linked with animal health and is a determining factor for trade, greater attention needs to be paid to it. The OIE and the region's Member Countries are recommended to take the lead in a number of areas. Some of the most important areas include promoting knowledge and use of the OIE Animal Health Code, building veterinary service capacities and strengthening all regional institutions that wish to establish joint strategies for controlling transboundary diseases and their links with trade. This document describes the problem of health-based barriers to trade arising between countries, as well as general principles, the background to the problem and theories concerning the various causes. It ends with a number of recommendations.*

**Key words:** World Organisation for Animal Health (OIE) – standards – Americas

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## Introduction

Using as a reference the standards of the World Organisation for Animal Health (OIE) for international trade in animals and animal products, this document describes and discusses the problem of health-based barriers to trade arising between countries. It discusses general principles, the background to the problem and theories concerning the various causes. It ends by exploring a number of recommendations that might help to resolve the problem.

### 1. Principles and basic concepts

#### 1.1. International standards

Under certain circumstances, animals and animal products entering a country for trade purposes can transmit pathogenic organisms that pose a potential risk to populations of susceptible animals, as well as to human health. In both cases, they can have an economic and social impact on the affected countries. (Morgan and Pakash, 2006); (Timbal *et.al.*, 2005).

In order to provide guidelines to promote trade between countries taking into account the animal health variables relating to trade in animal products, the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) has established guidelines and basic principles, which provide the framework for OIE international standards. These standards set out the scientific guidelines that countries should take into account for international trade.

The agreement establishes that countries can guarantee animal health in trade by setting their own standards, provided that the decisions are technically justified and scientifically based and use OIE standards as the benchmark. Where 'demonstrable' scientific uncertainty exists, they can establish the 'precautionary principle' and take preventive measures where no absolute certainty exists. Lastly, countries must not treat differently countries with similar conditions. In short, the aim is to minimise arbitrary behaviour by countries under any circumstances.

The guiding principles of the international standards in the SPS Agreement and detailed in the OIE *Codes* and *Manuals*, in support of trade free from unjustified barriers, are: 'transparency' (in standards, control procedures and health status); 'equivalence' (same level of protection, equal treatment); 'harmonisation' (staying in line with international reference organisations like the OIE regarding animal health issues); 'regionalisation' (applications differentiated on a regional basis) and 'risk analysis' (a demonstration and dialogue mechanism for sanitary matters). Zepeda, C. *et al.* (2003) discuss the application of these concepts to animal health and international trade.

Exporting and importing countries must take heed of the OIE and must consider its standards as it is the reference organisation for trade in animals and animal products. This international organisation is responsible for health information and one of its tasks is to link animal diseases with the risk of each animal commodity marketed. These standards represent a de facto risk analysis that guides the work of official veterinary services. The OIE has been adopted a global trade (Thiermann, 2005).

The OIE international standard-setting process is clear and enables all OIE Member to participate. Standards are set by means of proposals for new standards or for the amendment of existing standards, including comments on the reports of the OIE Specialist Commissions. Every proposal or comment must be backed by the respective scientific justification.

The OIE Members participate, according to an established procedure, in the analysis, prior discussion and subsequent adoption of OIE standards. As a principle, an OIE standard that is adopted by its Members must be complied with and incorporated for its effective application by OIE Members. All changes must adhere to the established procedure for the modification of these standards.

Figure 1 shows the specific obligations established by the *Terrestrial Animal Health Code* on exporting and importing countries.

Figure 1.– Summary of OIE Member Countries' main trade-related obligations

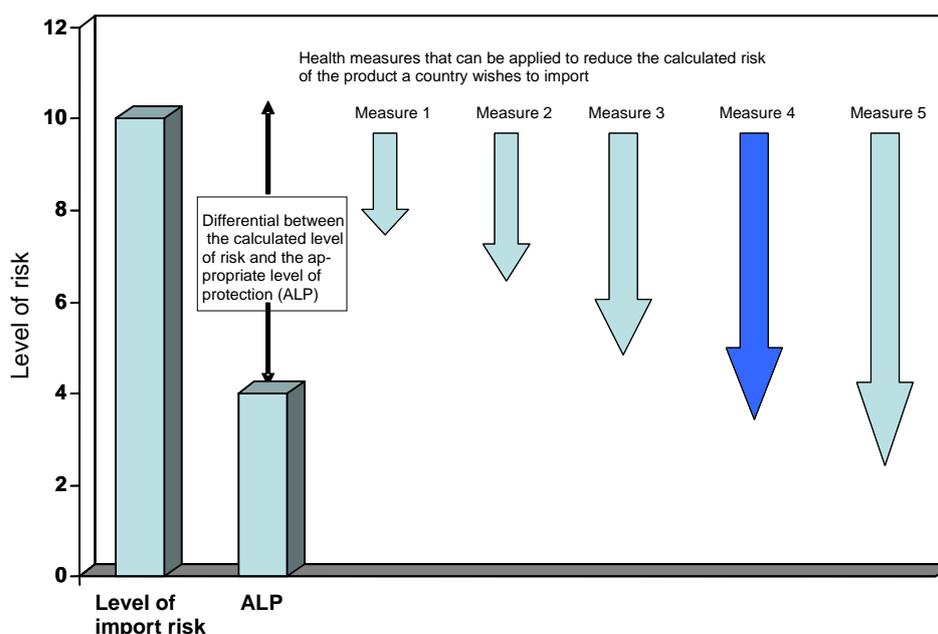
| Obligations   | Mention in the <i>Terrestrial Code</i> |
|---|--|
| Disease notification and epidemiological information. Members must make information available to other Members via the OIE to enable them to take preventive measures.  | Article 1.1.2                          |
| <b>General:</b> <ul style="list-style-type: none"> <li>To maximise harmonisation in accordance with OIE standards.</li> <li>To consider the health status (exporters, transit and importers) before taking measures.</li> <li>Clear, concise certification agreed between the parties.</li> </ul>   | Chapter 5.1.                           |
| <b>Importers:</b> <ul style="list-style-type: none"> <li>Measures must accord with the appropriate level of protection.</li> <li>Import requirements should not include diseases already in the importing country and not subject to a control programme.</li> <li>Diseases not on the OIE list should not be included. If non-listed diseases are included they must be justified by a risk analysis.</li> </ul> | Article 5.2.1.                         |
| <b>Exporters:</b> <ul style="list-style-type: none"> <li>At the request of the importing country, exporters must provide relevant information on the commodity or commodities marketed.</li> </ul>  | Article 5.1.3                          |

Source: (OIE, 2008)

## 1.2. Health requirements

In accordance with OIE standards and the WTO's SPS Agreement on these international principles, importing countries must impose requirements on exporting countries in order to minimise the risk of introducing diseases and of these diseases having an impact on the country. These requirements represent a de facto risk analysis, the basis of which is a definition by the importing country of an appropriate level of protection (ALP)<sup>1</sup>. This is the risk that the country is willing to take as a result of importing products and the preventive measures it has established (see Figure 2). The requirements must be in line with the OIE standards and they can only be modified following changes in the ALP, new scientific evidence or improved guarantees.

Figure 2.– Relationship between acceptable level of risk and appropriate level of protection



Source: Pharo (2003)

<sup>1</sup> Acceptable level of risk for each country.

These health requirements can be divided into the three main groups described in the following table:

Figure 3.– Main components of health requirements

| Types of requirement | Standard  |
|----------------------|---|
| Sanitary service     | The service must have the necessary technical and management skills to comply with the requirement provisions, and must be transparent and respond to health emergencies.   |
| Health status        | The specific disease must not already exist in the territory and it must always be demonstrable that it does not exist, that there is a mechanism for its timely detection and that the response capacity exists should it be detected. If specific diseases exist, the OIE standards are applied in order to avoid the transmission. |
| Product              | The product can represent no risk in relation to certain diseases or all the safeguards must be in place in the product's production process to minimise the transmission of pathogens, as per the OIE standards.   |

For each component of the requirement there must be methods for verification and proof to demonstrate that there is proper compliance with requirements. This must be provided by the importing country and accepted by the exporting country.

Acceptance of the import requirements for a specific commodity is the outcome of a process of *sanitary negotiations*, in which the exporting country must demonstrate via its official veterinary service that it will be capable of certifying what the requirement demands and that the importing country will accept it. This process can be conducted in a number of ways. For instance, it may take place in successive phases, or parallel phases, with or without an evaluation and approval period, and so on. There is usually a documentary phase followed by on-site verification.

Should there be changes in any of the prerequisites of the importing country's requirements (such as the health status), the importing country may, provided that it complies with OIE standards, suspend trade temporarily until the exporting country once again meets the requirement.

In bilateral or multilateral agreements, countries set up joint mechanisms for dealing with one or more animal health- and trade-related issues. These include agreements on the application of sanitary and phytosanitary measures (SPS Agreements) in free-trade agreements (FTAs) between countries in the region or between these countries and countries outside the region. As a minimum, these agreements incorporate compliance with international standards, explain the importance of transparency and better communication between countries and periodic meetings to review possible complaints from any of the parties and to resolve any disputes regarding animal health and trade. In recent years, health equivalence agreements have also been concluded between blocks of countries outside the region and countries in the region, which actively incorporate OIE principles<sup>1</sup>.

While trade disputes can of course be settled directly between countries without the need for mediation, the OIE has established a purely technically-based non-confrontational mediation mechanism for resolving disputes between countries. By mutual agreement, countries can ask the Director General of the OIE to provide experts on the subject to analyse the problem and suggests means for resolving it. The OIE is urging its Members to refer to this body whenever health-related trade problems emerge, and it is promoting this concept as part of the WTO's SPS Agreement.

The official veterinary services of exporting and importing countries must be organised to lay down the requirements and to enforce compliance with the requirements respectively. In addition, both exporting and importing countries must be organised to establish sanitary negotiation processes, also based on OIE principles.

1 One example is the health chapter in the European Union–Chile economic and political Association Agreement concluded in 2003.

## 2. Non-compliance with international standards

In spite of the efforts, advances and instruments contained in OIE international standards for preventing health matters being used as unjustified barriers to trade or as an excuse to refuse to trade in animals or animal products, there is still some way to go. There are still situations where international principles and recommendations for making animal health and trade compatible are not followed. That is to say, some countries prevent or hinder the importation of products for unjustified, scientifically unfounded reasons.

Even though there is no officially documented information on situations of non-compliance with OIE standards<sup>1</sup>, it is an ongoing topic of discussion at national and international meetings. Information on non-compliance is published in the press, with statements by veterinary services, producer organisations and public authorities. According to this information at least one of the parties believes that no agreement exists on the grounds for trade protection for health reasons.

Such disputes have occurred and are still occurring between some of the countries in the region, as well as between them and other countries or blocks of countries from other regions of the world<sup>2</sup>. The increasing frequency of disputes may be a response to the reduction in other barriers to trade, such as tariff barriers.

Different circumstances can be identified where importing countries use health grounds to prevent imports from one or more countries. Some of the most common situations are as follows:

- a) Importing countries impose requirements that are not based on OIE technical principles or are not technically justified. In this case, either they fail to give the veterinary service full jurisdiction, or they do not accept the health status, or they impose higher requirements than those recommended in the OIE standards for a specific disease/commodity, or they use the precautionary principle with no technical justification.
- b) The importing country suspends imports from the exporting country arbitrarily without justification or for political or commercial motives. Importers can do this by applying an unjustified precautionary principle or by citing a technically unfounded health reason.

In other situations it is unclear whether the OIE principles are being flouted, so the matter is open to debate. Some of the most common causes are as follows:

- c) Importing countries do not recognise that exporting countries meet the established requirements. There is no agreement between the parties for compliance with guarantees.
- d) Importing countries give no credibility to the exporting country's compliance with requirements. Importers do not trust the procedures or results demonstrated by the exporting country.
- e) Importing countries delay evaluation of compliance with requirements and fail to explain the final decision. This results in unreasonable delays in the sanitary negotiation process, under the pretext of non-compliance with technical requirements.

Although the situations described above occur under different circumstances, as a general rule the result is that trade fails to take place on health grounds. However, it is not easy to ascertain whether trade fails to take place because of non-compliance with OIE principles or because there is room for interpretation and differences concerning some aspects of international standards.

## 3. Analysis of causes

It is not easy or straightforward to determine the reasons for a country refusing to trade on health grounds. Clearly this is a highly complex situation which may have a variety of causes. Nevertheless, we could posit the following general hypotheses:

- a) The importing country is not fully aware of the standards and the scientific basis for the recommendations. As a result, it takes decisions of omission or overreaction, not to intentionally block trade but rather out of lack of knowledge of its obligations in respect of the standards.
- b) The importing country defines a high appropriate level of protection because of the perceived risk of introducing diseases and/or their impact. It imposes higher requirements than those in OIE standards, with or without full technical justification. The importing country feels convinced that this guarantees its ability to manage risk while the OIE guidelines do not. The country is not prepared to run risks,

<sup>1</sup> Such information usually remains within the private realm of bilateral relations or multilateral meetings.

<sup>2</sup> Unofficial information gathered by the author from a number of direct sources.

either because of the impact this would have, or because of the additional measures that it would need to apply.

- c) The importing country applies the standards strictly, leaving no room for equivalence opportunities. The country deems that the standards should be applied in strict adherence to its own interpretation, which differs from that of the exporting country. In addition it does not accept equivalent measures for similar situations.
- d) The importing country uses the precautionary principle. Consciously or unconsciously, with or without justification, and often under domestic pressure (from producers or public authorities), the country applies the precautionary principle until it can evaluate and decide at a later date.
- e) The importing country has commercial motives, since it considers that importing the said product will affect its domestic industry. Depending on the quality of the veterinary service and the importing country's trade policy, some countries can make effective use of international standards in their arguments. This may be a systematic or ad hoc practice.
- f) The importing country closes or suspends exports from another country in response to what it sees as similar action by that country (retaliation). This could be for commercial or political motives or for other technically unfounded reasons.

Each of these components could be used as grounds in different situations, either individually or in combination. Wilson, D. and Thiermann, A. (2003) have published an analysis on trade disputes.

Trade disputes tend to arise as a result of changes in the disease status of exporting countries, especially in the case of transboundary diseases, clearly because of their impact on the economy and on trade. Recent examples include the occurrence of foot and mouth disease in some South American countries, cases of bovine spongiform encephalopathy (BSE) in two North American countries, and the risk of BSE in other countries of the region and of highly pathogenic avian influenza in countries in North America and one country in South America. Trade responses to all these situations have been highly variable or at least 'debatable' in countries both inside and outside the region.

In all health-based trade disputes, the determining factor has been the technical capability of the official veterinary services, in the case of both importing countries (to justify their decisions) and of exporting countries (to argue and defend themselves against the importers' decisions).

Some **importing countries** have the infrastructure and personnel that make it easy for them to take restrictive trade measures, irrespective of their economic justification. For instance, some have the technical capability to justify raising the appropriate level of protection, or even to propose changes to OIE standards. The capacity to delay, audit and find errors in the evaluation of an exporting country is also an ability that is not shared by all countries.

Furthermore, **exporting countries** can be affected to a greater or lesser degree by their capacity both to enter markets and to reverse a trade restriction situation. Depending on a country's system and capabilities, it can present amendments to the OIE standards and change the animal health code or provide sound technical arguments for reversing a decision. Its capabilities determine whether or not it can use the OIE's trade facilitation instruments effectively. Examples include risk analysis, zoning and compartmentalisation. Similarly, the State's capacity to negotiate as a whole plays an important role in the ability to resolve health-based and trade disputes.

With specific regard to the capacity to amend OIE standards, it is mainly the developed countries (both exporters and importers), with their superior technical and negotiating capabilities, that have taken the lead. First, with their participation in expert groups, their predominant role in international centres of reference, their comments and proposals for amending the OIE standards, and their participation in technical and *ad hoc* groups. They make effective use of OIE principles for their commercial interests, which other countries with fewer capabilities are unable to do. In spite of the efforts of the Regional Representation and the OIE Central Bureau, not all countries in the region have the same possibilities and, with a few rare exceptions, have played a secondary role in these amendments. The following figure summarises regional participation in recent years.

Figure 4.– Member Country participation of in key OIE proceedings

|                                       | 2000-2006     |                  | 2007          |                  | 2008          |                  |
|---------------------------------------|---------------|------------------|---------------|------------------|---------------|------------------|
|                                       | Notifications | Comments on Code | Notifications | Comments on Code | Notifications | Comments on Code |
| Total                                 |               |                  |               |                  |               |                  |
| Canada                                |               |                  |               |                  |               |                  |
| United States                         |               |                  |               |                  |               |                  |
| Central American countries and Mexico |               |                  |               |                  |               |                  |
| South American countries              |               |                  |               |                  |               |                  |

Source: OIE Regional Representation for the Americas

By acting in unison, countries have better diplomatic or political mechanisms to reverse a trade restriction situation. Where concepts, the appropriate level of protection, national strategies and diplomatic representation are harmonised, it is often decisive in resolving health-based and trade disputes, for both sides. In some cases the negotiations may even include agricultural health matters, in a bid to reach a more comprehensive solution.

In spite of substantive advances in recent years, it may be that the principles and instruments contained in international agreements, especially OIE instruments, are not sufficiently detailed or comprehensive to enable the necessary dialogue and understanding to be established between the parties. Some countries in the region, with their lesser technical capability, are still unable to use them to the full.

The OIE *Code* addresses very effectively such aspects as the evaluation of veterinary services, determination of the overall health status and the status of specific diseases, disease notification mechanisms, the production of risk analyses, zoning, compartmentalisation and the development of epidemiological surveillance programmes. The amendments to the foot and mouth disease, avian influenza and BSE chapters have been helpful. Nevertheless, the limited technical and inadequate organisational capacities in countries of the region could be a key reason for non-compliance with the standards themselves. On this sense, it is of relevant importance the reinforcement of Veterinary Services in line with the OIE standards of quality. For this the work and commitment of countries is of paramount importance.

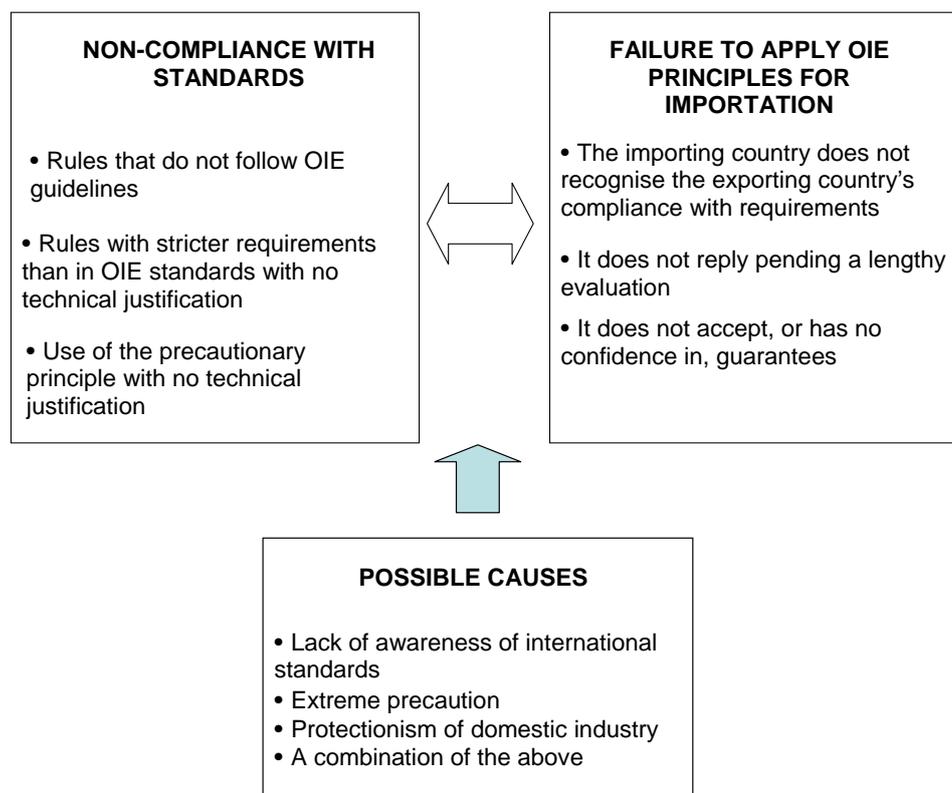
The concepts of risk analysis, zoning and compartmentalisation are a specific example of this. They represent a great stride forward in facilitating trade between countries, making it easy for exporting countries with capabilities for demonstrating certain situations to enter or remain in a market. In contrast, while an importing country with capabilities could allow the said instruments to be used, in practice it is difficult for importing countries without these capabilities. The same problem arises with epidemiological surveillance systems for certain diseases (like BSE). In the author's view, this calls for an in-depth technical and economic analysis to determine countries' real use and effectiveness.

The OIE has already tackled this as a critical issue. It has pushed to update the chapter on the evaluation of veterinary services and the guidelines for the evaluation of veterinary services. The OIE has also set in motion an ambitious programme for the strengthening of Veterinary Services using the OIE PVS tool. However, it would appear that not all veterinary services with shortcomings and/or higher political authorities fully understand the importance of this critical issue, or of pooling their efforts in this respect.

Occasionally, exporting countries, under huge efforts and relevant investment resources, align themselves to the OIE international standards, providing the guarantees needed for the international trade of animals and animal products, but this situation is not recognized by trade partners.

Figure 5 summarises the main situations of non-compliance with international standards and the possible causes.

*Figure 5.– Summary of situations of non-compliance with health and trade standards and possible causes*



#### 4. Food safety: the new trade challenge

From any modern, realistic and forward-looking perspective, it is impossible to address the important issue of animal health and trade without including the concept of food safety and trade. Animal health and food safety are two closely related issues that are linked with trade and governed by similar principles. In practice, they cannot be dissociated from health policies, from the concerns of veterinary services or from sanitary negotiations.

Animal products, besides animal pathogens, may also contain biological, chemical or metallic residues that could affect human health. For this reason they are also a source of concern in trade, probably much more than the animal health aspects, since those potentially affected are humans.

The same principles are used as the WTO's SPS Agreement and the technical reference organisation is Codex Alimentarius. In matters of food safety and trade the same situations occur as described earlier in this document. However, food safety and trade appears to be a less structured issue than animal health and its reference organisation does not have the same detail and instruments as are available to the OIE for animal health, or at the very least not with the same ease of access and use. As a result, there is enormous latitude for countries to treat food safety aspects subjectively and even arbitrarily as barriers to trade, either intentionally or otherwise, as explained earlier in this document.

In fact there is greater concern for and information about food safety among consumers. In parallel, and often exacerbating the situation, the media and new information technologies have come to play a more important role. Nowadays news can be spread very quickly throughout the world, with the possibility of large-scale interaction among the general public and the public authorities.

As scientific evidence has been made known, with greater or lesser guidance from reference organisations, consumers are pressuring importing countries to take a more active part in determining and managing risk. This has turned it into a highly variable and shifting issue, in response to which decisions are often taken with no scientific basis, leading to a complex trade problem.

Taking into account this aspect, the OIE underlines the key roll played by the veterinarians, and has promoted the work jointly coordinated with the Codex Alimentarius. Veterinarians have an essential

function concerning food safety, and are mainly responsible to ensure the control of pathogens agents and toxins of animal origin, that can be transmitted through food products, before they reach consumers. In that sense, the OIE has established a Permanent Working Group for Food Safety, which is also composed by Codex members. This group produces and adapts food safety standards to food products from animal production, including production and animal slaughter, based on the safety measures of food products applicable at animal production levels. These standards have been incorporated in the OIE *Code*. It is important that this work, undertaken jointly and in coordination between the OIE and the Codex, continues and be strengthened with the aim to reach an international integral direction involving all the stages.

Although the OIE code has gradually come to incorporate a few food safety aspects, it does not cover all aspects of the food chain, since this is currently the remit of Codex Alimentarius. While there have been efforts to coordinate the two international organisations, circumstances would appear to call for even greater coordination. This hampers the development of the ideal integrated international approach.

Although food safety (in this case, the safety of animal-based foodstuffs) affects trade, international guidelines appear weak, especially in view of the great technical complexity of the food safety issue. This situation could have arisen from the increasing tendency to use *food safety as grounds for obstructing trade and consequently it is closely related with animal health*, seen from the standpoint of exporting and importing countries. As in the case of animal health, the quality of official veterinary services is a decisive factor in the strictly technical aspects and in sanitary negotiations.

## 5. Possible solutions

The key assumption we must make is that all countries are different: in terms of epidemiology, livestock industry objectives, technical capabilities, infrastructure and the extent of public/private linkages. Such a highly complex matter calls for an integrated approach that allows for closer relations among countries and more effective use and improvement of the OIE *Codes* and *Manuals*.

A number of aspects could help to expand the adoption, application and respect of the OIE standards and facilitate trade:

- a) Veterinary services, for both importing and exporting countries, must be highly competent and have technical and institutional management capabilities:
  - Importing countries should be capable of defining requirements. They should be able to interpret OIE standards and adapt them to their specific situation and to draw up requirements. They must be able to request and evaluate the information provided by exporting countries, to evaluate capabilities and to verify compliance with requirements. Lastly, they must adapt and change requirements in line with changes in international standards, or in the exporting country's health status or conditions.
  - Exporting countries should be capable of compliance with requirements. They should be able to implement the corresponding verifications and provide guarantees that requirements will be properly and continually complied with. Furthermore, the exporting country must establish confidence in its competence and honesty that, should there be non-compliance with the requirements, it will take the measures and inform the importing country, in accordance with OIE principles.
  - Exporting and importing countries must be able to engage in sanitary negotiations to enable them to respond appropriately to highly technically demanding, dynamic and complex situations. Amongst other things, this calls for progress on sanitary agreements between trading partner countries on a number of diseases which are established in advance, preferably during 'times of peace' before such diseases occur. In the event of diseases occurring, this would allow the previously agreed mechanisms to be set in motion, readjusting the requirements on line with the OIE standards referring to the new situation, to enable trade to continue. This approach is based on mutual trust between trading partner countries, mainly regarding good governance and the dependability of their veterinary services.
- b) Make widespread use of the OIE PVS Tool for evaluating the Performance of Veterinary Services in order to identify the needs for remedying certain weaknesses, in the areas of health management and sanitary negotiations.
- c) Promote and support the active participation of veterinary services in amendments to OIE standards, on a technical basis, with discipline and a strategic approach. To do this, it is essential to establish or improve programmes targeted at providing less developed countries with training and strategic technical assistance in the application of OIE standards for the purpose of international trade. It

would also be necessary to improve coordination and collaboration between the WTO and the OIE in activities to support these countries.

- d) Strengthen an effective regional approach to the control of transboundary diseases to avert disputes and prevent disease impact situations. Establish clear technical and trade-related protocols that build on OIE guidelines.
- e) Tackle disputed matters in the region that affect or could affect trade, including: vaccines with respect foot and mouth disease, wild fowl with respect to avian influenza, foodstuffs and traceability with respect to markets, animal welfare, wildlife and family and indigenous producers. All the regional and international experience should be harnessed to tackle these matters.
- f) Promote, improve and facilitate the use of the OIE's dispute settlement mechanism for mediating trade conflicts between countries in the region, complementing the provisions of bilateral or multilateral agreements with the inclusion of health management and its links with trade.
- g) Encourage and strengthen relations between the private and public sectors, by encompassing the different components within a single perspective. Cooperation in countries should focus on this aspect with major OIE involvement.
- h) Support the inclusion of animal health chapters in bilateral and multilateral relations between countries. Conduct a regional and aggregate analysis on the advantages and limitations of the new agreements as part of free-trade agreements.
- i) Analyse and enhance the role of regional technical reference organisations. Establish support networks and strategic alliances inside and outside the region to help to develop and build local capacities.
- j) Continue and reinforce coordination mechanisms between the OIE and Codex Alimentarius to improve the treatment of food safety and its links with trade, based on the principles of international standards.
- k) Lastly, record and analyse disputes over health (food safety) and trade regarding compliance with international standards. Conduct studies, draw lessons, pool accumulated experience, propose necessary amendments to the OIE standards following the pre-established procedure and promoting the participation of all OIE Members.

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