
Committee on Sanitary and Phytosanitary Measures

Original: English/
French/
Spanish

44TH MEETING OF THE SPS COMMITTEE

Communication from the World Organization for Animal Health (OIE)

The following communication, received on 16 February 2009, is being circulated at the request of the World Organization for Animal Health (OIE).

1. The key topics covered in this update are: a new OIE advisory document on the rights and obligations of OIE Members with regard to international trade and trade disputes; work on OIE standards for bovine spongiform encephalopathy, foot and mouth disease and avian influenza, and a progress report on key OIE capacity building activities.

I. THE RIGHTS AND OBLIGATIONS OF OIE MEMBERS WITH REGARD TO INTERNATIONAL TRADE AND TRADE DISPUTES

2. The OIE has prepared a guide to the rights and obligations of OIE Members with regard to international trade and trade disputes.

3. In this advisory document, the OIE explains the obligations of its Members in conducting international trade and the informal OIE mechanism for mediating trade disputes between Members. The OIE mediation procedures are different and independent from the World Trade Organization (WTO) procedures for dealing with trade disputes. The WTO provides formal and informal approaches to solve trade disputes arising in relation to its Agreements. The OIE's informal procedure provides for OIE Members, on a voluntary basis, to seek to resolve their differences by using an approach that is based on science and on the application of the OIE's standards for safe international trade in animals and animal products.

4. A copy of the guide may be found in Annex 1.

II. DEVELOPMENTS IN OIE STANDARD SETTING WORK

5. The Terrestrial Animal Health Standards Commission (the Code Commission) met in October 2008 to consider OIE Member comments on texts presented at the 76th OIE General Session, which took place in May 2008. In the light of these comments and input from other specialized OIE Commissions, the Code Commission proposed several amendments to standards. The modifications proposed to the standards for three diseases of key importance to international trade are set out below. The Code Commission will review Member comments on these proposals at its next meeting (3-6 March 2009) and will propose revised texts for Members' consideration and possible approval at the 77th General Assembly, 25-29 May 2009.

A. BOVINE SPONGIFORM ENCEPHALOPATHY (BSE)

6. The Code Commission proposed to extend the current standard, which provides that de-boned skeletal muscle meat from cattle less than 30 month of age is considered as safe. If this change is accepted, such meat would be considered as safe regardless of the age of cattle from which it is obtained. The Code Commission emphasized that the removal and avoidance of contamination with specified risk materials (SRM) are paramount to manage human and animal health risks. The Code Commission also proposed to remove the words "protein-free" from the description of tallow as a safe commodity, but to maintain the current provision that such tallow contain no more than 0.15% insoluble impurities by weight. The Code Commission proposed to modify the article on gelatine derived from bone to avoid unnecessary restrictions and take account of current scientific knowledge of the risks associated with this product.

B. FOOT AND MOUTH DISEASE (FMD)

7. The Code Commission proposed to delete the term "buffer zone" and to introduce a clearer description for the term "protection zone", which is a zone implemented at the interface of countries/territories/zones having different FMD status. Appropriate measures should be implemented in the protection zone to prevent the spread of FMD.

C. AVIAN INFLUENZA (AI)

8. The Code Commission proposed a new article on feather meal and undertook to develop recommendations on the safety of trade in processed pet food with respect to avian influenza.

III. PROGRESS REPORT ON THE OIE'S KEY CAPACITY BUILDING ACTIVITIES

A. LABORATORY TWINNING PROGRAM

9. The OIE laboratory twinning program is about sustainable capacity building. The programme establishes and supports direct sustainable links between OIE Reference Laboratories or Collaborating Centres and Candidate establishments in developing or transition countries. The aim is to develop expertise and capacity in these Candidate establishments, through an exchange of knowledge and skills, to allow them to provide support to their region or sub-region. Each project focuses on a specific disease or topic that is a priority for the recipient region. The ultimate aim is for the Candidate establishment to become an OIE Reference Laboratory or Collaborating Centre in its own right for that specified disease or topic.

10. Eleven projects are being implemented, four proposals are in the process of being approved and there are currently expressions of interest for a further six projects.

11. To facilitate applications and the management of Twinning Projects, OIE has published a Guide and a contract template. The Guide was distributed at the 76th OIE General Session in Paris in May 2008 and the most recent version is available at:

http://www.oie.int/download/LABREF/A_Guide.pdf

B. OIE PVS EVALUATIONS

12. The PVS evaluation is regarded as the "diagnostic step", with the main outputs comprising the description of levels of advancement for each of the 40 critical competencies related to a national animal health system (Veterinary Services). The critical competencies are designed in compliance with OIE standards on the quality of Veterinary Services, as democratically adopted by 172 national representatives of OIE Members. PVS evaluations are conducted by OIE trained and accredited

experts. The reports are based on referenced evidence and factual qualitative information, not on assumptions, and all reports are peer-reviewed.

13. The current status of the implementation of OIE PVS evaluations is summarized in Annex 2.

C. GAP ANALYSIS

14. After the diagnostic step (i.e. the initial PVS evaluation, which corresponds to a qualitative assessment), the OIE may at the request of the Member country/territory conduct a PVS Gap Analysis, which involves the identification of main priorities for the country, depending on the national economic and political context (e.g. disease eradication, control of zoonoses, export trade, food security); the pre-evaluation of specific objectives and the decision on the desired level of advancement for each critical competency the country considers to be of priority.

15. In a programme that is currently under development, as a first step the OIE is working with selected experts, partners and, when appropriate, potential donors on a quantitative assessment of needs. The difficulty lies in identifying the specific activities, tasks and resources required to address the specific priorities identified with the country, on the basis of the outcome of the country PVS Evaluation. This will be the subject of the "PVS Gap Analysis" program, i.e. to specify the actual needs of the countries, on a case-by-case basis, to meet OIE international standards for quality of Veterinary Services and relevant conditions to gain better market access using the OIE PVS Tool.

16. This analysis will be used by the countries, in collaboration with the OIE, partners such as FAO and when appropriate, potential donors, in the preparation and pre-evaluation of investment programs aimed at reaching the desired level of improvement and directly linked to the OIE international quality standards for Veterinary Services. Partners and potential donors will use these recommendations, specific to the countries concerned and based on international standards, using their own instruments and procedures to achieve the desired improvements.

17. In addition to country PVS Gap Analysis, the OIE may also provide complementary assistance by: (i) sharing models of appropriate veterinary legislation; (ii) conducting specific missions aimed at the improvement of national legislation; (iii) helping to develop North-South or South-South laboratory twinning proposals; (iv) OIE global or regional Vaccine Bank support; (v) regional/national training programmes for National Delegates, focal points and key stakeholders; and (vi) independent PVS follow-up missions to evaluate developments in compliance with standards and recommendations.

D. STRENGTHENING VETERINARY LEGISLATION

18. Veterinary legislation is an essential element of the national infrastructure that enables Veterinary Authorities to carry out their key functions, including surveillance, early detection and control of animal diseases and zoonoses, animal production food safety and certification of animals and animal products for export. In the face of increasing global trade, climate change and the emergence and reemergence of diseases that can rapidly spread across international borders, the Veterinary Services must be effectively supported by legislation to meet the OIE criteria for performance of essential functions. The OIE is currently preparing text for inclusion in the Terrestrial Animal Health Code on the key elements to be addressed in veterinary legislation.

19. The OIE is aware that in many developing countries veterinary legislation is outdated and inadequate to address the challenges of today and of the future. At the request of Members, the OIE is developing guidelines on the essential elements to be covered in veterinary legislation. Any Member that has participated in an OIE PVS Evaluation may request a follow-up mission dedicated to the provision of advice and assistance in modernizing the national veterinary legislation. Five OIE

missions on veterinary legislation have already been conducted at the request of Members and at least three more are expected to take place during the first six months of 2009.

ANNEX 1

INTERNATIONAL TRADE: RIGHTS AND OBLIGATIONS OF OIE MEMBERS**I. INTRODUCTION**

1. This document is a guide to the rights and obligations of OIE Members with regard to international trade and trade disputes.
2. In part one, the OIE explains its informal mediation procedure for resolving trade disputes between Members. The OIE informal mediation procedure is different and independent from the World Trade Organization (WTO) procedures for resolving trade disputes. The WTO provides formal and informal approaches to solve trade disputes arising in relation to its Agreements. The OIE's informal procedure provides for OIE Members, on a voluntary basis, to seek to resolve their differences by using an approach that is based on science and on the OIE's standards for safe international trade in animals and animal products.
3. The revised OIE informal mediation procedure may be found in Annex A.
4. In part two the OIE presents the rights and the obligations of Members with reference to the conduct of international trade. Members should base their import measures on the OIE standards. This approach provides 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 (the SPS Agreement). The relevant OIE standards are contained in the OIE *Terrestrial Animal Health Code* and *Aquatic Animal Health Code*, for terrestrial animals and aquatic animals respectively, and in the respective publications on *Diagnostic Tests and Vaccines*. Members should refer to these normative publications when making decisions on the management of risks associated with international trade in animals and animal products.
5. This paper primarily references terrestrial animals and the *Terrestrial Code*. However, Members should follow the same principles in regard to trade in aquatic animals and their products, based on the standards set out in the *Aquatic Code*.

Part 1 - Dispute mediation procedure**1.1. Introduction**

Mediation is an informal procedure for resolving disagreements whereby a third party (a mediator) meets with parties to help them to resolve disagreements. The task of the mediator is to gain an understanding of the positions of the parties and to give advice and propose solutions to the disagreement. The mediator must be neutral and independent of the parties to the dispute. The use of this mechanism can help to minimise disagreements and promote effective trading relationships.

1.2. The WTO Framework

The WTO framework provides both formal and informal dispute settlement procedures.

WTO Members can raise SPS-related trade concerns with regard to other Members for discussion at meetings of the SPS Committee. This often concerns a situation where an importing country is thought not to have complied with a relevant international standard or not to have based an import measure on scientific evidence or, as appropriate, a risk

assessment. Raising concerns in the SPS Committee often triggers bilateral discussions and may be helpful in resolving a specific trade problem. However, if this step proves insufficient to resolve the matter, the parties may jointly request Good Offices by the Chair of the SPS Committee. By resorting to this pathway, WTO Members may arrive at a mutually agreed solution to their SPS-related trade problems and avoid initiating a formal dispute under the WTO Dispute Settlement Mechanism.

The WTO Dispute Settlement Mechanism covers, *inter alia*, matters relating to the application of SPS measures subject to the disciplines of the SPS Agreement. This mechanism is based on the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), which is conducted under the auspices of the WTO Dispute Settlement Body (DSB). Every WTO Member is represented with equal decision-making status in the DSB.

The WTO Dispute Settlement Mechanism is comprised of two main phases, a panel examination and, if requested, 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 address the form and content of the disagreement and to try to find 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 a panel be established by the DSB to examine both factual matters and issues relating to legal interpretation. The members of the panel are usually three well-qualified experts acting in their own capacities and who are normally chosen in consultation with the countries in dispute. The report issued by the Panel can be appealed by one or both parties, in which case it will be reviewed by the Appellate Body. The Appellate Body limits its review to issues of law and legal interpretation. The Panel report, or the Appellate Body report in case of appeal, is submitted for adoption by the entire WTO membership through the DSB. The DSB will adopt the final report unless there is a consensus among all WTO Members to reject, 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, conciliation or arbitration to try to solve the dispute.

The WTO Dispute Settlement Mechanism is vital for enforcing the trade rules and therefore for ensuring that trade flows smoothly. 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 allowed to impose commercial sanctions against the violating member. This mechanism underscores the rule of law, and it makes the trading system more secure and predictable. One recognized downside to this mechanism are the costs incurred to the parties in a dispute, since they normally require extensive involvement of well-qualified lawyers, specialized in trade law, as well as individuals with the necessary technical/scientific expertise, to defend a Member's position.

To date, thanks to its worldwide experts' network, the OIE has provided technical assistance and information on scientific matters to panels in every dispute taken to the WTO involving animal health issues.

1.3. The OIE Framework

The OIE has established a voluntary, science based approach to support resolving differences between Members. The OIE procedure does not aim to find fault. Rather, the goal is to find a mutually agreed compromise that will allow trade to be established (or re-established), preferably on the basis of compliance with OIE standards. The OIE mechanism is technically based and cost effective. However, any solution proposed is not legally binding on OIE Members.

The OIE mediation mechanism has been the subject of discussion within the SPS Committee (see SPS Committee paper G/SPS/GEN/437) and the 4th OIE Strategic Plan 2006-2010 calls for further development of this mechanism.

The OIE mechanism for mediation comprises the following steps.

Initiation of the procedure

The OIE publishes scientific and technical standards with which Members should comply. 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 can be asked to conduct an informal mediation process. This must be requested by both parties to the disagreement. OIE mediation cannot be initiated on a unilateral basis. In response to a request from parties to a disagreement, the OIE Director General designates one or more experts to conduct the mediation.

By initiating the OIE mechanism, Members create an environment conducive to friendly bilateral discussions, with the objective of finding a basis for compromise. The OIE contribution is to help identify approaches to resolve differences in Members' interpretation of the scientific issues and in the application of OIE standards.

A cooperative process

The consent of both parties is fundamental to the OIE mediation procedure. The process is voluntary and reports of all discussions remain entirely confidential unless both parties agree to release them.

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

The designation of experts likewise requires the consent of both parties.

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 outcome of the mediation may only be divulged with the consent of all parties.

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

The designation of experts

Following initiation of the OIE mediation procedure, the Director General (DG) of the OIE recommends a number of experts, usually from OIE Reference Laboratories or Collaborating Centres. The parties to the disagreement then mutually agree on the list of experts.

The experts must be neutral, independent and impartial. It is desirable that they are not of the same nationality as the parties to the disagreement and it is preferable to designate an odd number of experts to aid in reaching a majority recommendation.

The designated experts endeavour to find a consensus solution based on scientific considerations and relevant OIE standards. To assist them in their task, the experts may ask the parties for additional information or data and/or ask for data to be clarified.

Conduct of the mediation procedure

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 dispute and the consequences of it. In collaboration with the parties, the experts identify the scope of the discussions and draw up terms of reference and a work programme. A timetable and a schedule of meetings and their agendas are developed. These documents must be endorsed by both parties before discussions on the case can begin.

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

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

Developing a consensus

The OIE mediation mechanism provides a basis for a technically sound compromise acceptable to both parties. The parties, with the help of the designated experts, focus on the scientific and technical reasons for their differences rather than on legal aspects (which may be subjective, depending on the viewpoint and legal/administrative systems of each party). The search for a compromise is facilitated by referring to the OIE standards, which also provide the "legal" context for the mechanism.

If, at the end of the mediation procedure, it has not been possible to find a mutually agreed solution parties may still benefit from the work undertaken. Participation in the process can help to reduce the differences between the parties and normally gives each party a better understanding of the other's positions and concerns. The results of the mediation process can trigger subsequent discussions, which may assist in resolving the difference.

Conclusion of the mediation procedure

The experts draft a report on the OIE mediation procedure, detailing the discussions and recommendations and the status of the disagreement between parties at the end of the process.

The report is drafted in one of the three official languages of the OIE. Part one of the report summarises the scientific and technical aspects of the discussion while Part two presents the findings and recommendations of the experts. 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 had been confirmed by the parties at the outset). The parties decide how they will address the recommendations in the report.

Confidentiality

All discussions, including the final report, are confidential unless the parties decide otherwise.

All those associated with the procedure, including the parties, their representatives and the experts, must respect confidentiality. However, the findings may be cited in a formal WTO dispute case if one of the parties decides to do so.

Administrative procedures

At the first meeting, the parties and the OIE agree upon the administrative procedures for the dispute mediation, 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* (2008) states that the parties shall agree to meet all expenses incurred by the OIE during the procedure. In accordance with established OIE procedures, the experts assisting the mediation will not receive an honorarium. They will however be compensated for the cost of their intervention (travel and per diem) by the OIE. The parties must pay a fixed fee in order to defray the costs assumed by the OIE. This fee will increase in 2009 to 8000 euros.

Part 2 - The rights and obligations of OIE Members

2.1. Introduction

The adoption, in 1995, of the WTO SPS Agreement provided the legal framework for international trade that applies to WTO Members today. In the Preamble to the SPS Agreement it is stated "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 further refers to and recognises the OIE standards in its Article 3 on Harmonization, and in Annex A, paragraph 3(b). Thus, the SPS Agreement recognizes the OIE as the relevant standard-setting body for SPS measures relating to animal health and zoonoses.

The relevant recommendations are contained in particular in the OIE *Terrestrial Code* and *Aquatic Code*, for terrestrial animals and aquatic animals respectively, and in the OIE *Manuals of Diagnostic Tests and Vaccines*.

The WTO recognises that each Member has the sovereign right to set its appropriate level of protection when applying sanitary measures for international trade as long as they comply with the provisions established in the SPS Agreement. In the OIE context, the term "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".¹

OIE Members who are WTO Members may comply with their obligations under the SPS Agreement either by basing their measures on relevant OIE international standards, or by carrying out a scientific risk analysis as outlined in Section 2 of the *Terrestrial Code* (2008).

¹ http://www.oie.int/eng/normes/mcode/en_glossaire.htm#sous-chapitre-2

The standards and recommendations contained in the *Code* are designed to facilitate and promote international trade. The OIE *Code* is a reference document for use by veterinary authorities, those responsible for making decisions on the import and export of animals and their products, and all those involved in international trade.² The application by Members of the OIE standards is the best means of avoiding disagreement and other problems in international trade.

2.2. The procedure for developing OIE standards and recommendations

The aim of the *Code* is, *inter alia*, to ensure the sanitary safety of international trade in terrestrial animals and their products by detailing science based health measures to be used by the veterinary authorities of the importing and exporting countries to avoid the transfer of agents pathogenic for animals or humans, while avoiding unjustified sanitary barriers.³

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 relevant international organisations and non-governmental organisations, and with the National Delegates of OIE Members. Members of the Commission are elected by the General Assembly of national Delegates of OIE Members. Draft standards and recommendations are circulated to Delegates at least twice for comment before being proposed for adoption by the OIE International Committee, comprising all National Delegates. The transparent and democratic procedures followed by the OIE provide a basis for consensus and support implementation of the standards by OIE Members.

2.3. Obligations of importing countries

Importing countries should consider the exporting country's sanitary status, as relevant to the animals or animal products that are to be traded. Relevant data are contained in the WAHID database, which is accessible on the OIE Web site.⁴ WAHID contains much useful information, including in the six monthly reports describing the status of each country with regard to OIE-listed diseases and in other useful information provided by Members. It is useful for Members to compare the sanitary situation between the importing country and the exporting country, based on data in the most recent six monthly reports.

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

As stated in the *Code*, import conditions must take account of the animal health situation of both the importing country and the exporting country, as relevant to the animals/animal products to be traded.

The importing country should not impose measures in relation to diseases or pathogens that are not listed by the OIE, unless the disease or pathogen has been identified as presenting a significant risk on the basis of an import risk analysis conducted according to Section 2 of the *Terrestrial Code*⁵ (2008).

The importing country should not impose sanitary measures for diseases or pathogens that occur in the importing country and are not the subject of official controls. Where official

² http://www.oie.int/eng/normes/en_mcode.htm

³ http://www.oie.int/eng/normes/en_mcode.htm

⁴ <http://www.oie.int/wahid-prod/public.php?page=home>

⁵ http://www.oie.int/eng/normes/mcode/en_titre_1.2.htm

controls are implemented, the measures applied to imported animals/animal products should not be more restrictive than those applied nationally to similar animals/animal products under the official control programme.

Importing countries should publish a list of their border posts for imported animals and animal products. This helps to promote international trade since it provides information that helps exporting countries to make arrangements for importation to take place effectively and efficiently.

2.4. Obligations of exporting countries

Exporting countries should provide the following sanitary information, as listed in Article 5.1.3. of the *Terrestrial Code* (2008)⁶, at the request of the importing country:

- the animal health situation and the national animal health information systems;
- the occurrence of notifiable diseases;
- the ability to apply measures to control and prevent the relevant OIE-listed diseases⁷;
- the structure of the Veterinary Services and the authority which they exercise;
- technical information, particularly on biological tests and vaccines applied in all or part of the national territory.

For trade in animals and some animal products, it is usual for an official veterinarian (or a private veterinarian holding an appropriate official delegation) to inspect the consignment prior to export. The veterinarian issues a veterinary health certificate⁸ according to the arrangements agreed between the Veterinary Authorities of the exporting and importing country, preferably using the models published in the OIE Code.

At the request of the importing country, the exporting country should supply information on the exported animals or animal products, including:

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

⁶ http://www.oie.int/eng/normes/mcode/en_chapitre_1.5.1.htm

⁷ List of transmissible diseases approved by the OIE International Committee and listed in Chapter 1.2. of the *Code*.

⁸ http://www.oie.int/eng/normes/mcode/en_chapitre_1.5.1.htm and
http://www.oie.int/eng/normes/mcode/en_chapitre_1.5.2.htm

Veterinary Authorities of exporting countries should⁹:

- have official procedures for authorisation of certifying veterinarians;
- ensure that relevant instructions and training are provided to certifying veterinarians; and
- monitor the activities of certifying veterinarians to verify their integrity and impartiality.

Exchange of this information helps to assure safe international trade.

2.5. The use of the OIE PVS Tool as a mechanism to support safe international trade

The performance of Veterinary Services (VS) is an important element assuring safe international trade. Not only must the VS be capable of promptly and efficiently detecting and managing OIE listed diseases, including those that present food safety and other public health risks, they must also provide effective sanitary guarantees via the veterinary health certificate. The maintenance of confidence between trading partners relies on consistent performance in these, and other, aspects.

The quality of VS is addressed in Section 3 of the *Terrestrial Code* (2008).

With this in mind, the OIE has developed a Tool for Evaluation of the Performance of the Veterinary Services (the PVS Tool). The legal basis for the PVS Tool is found in Chapters 3.1. and 3.2. of the *Terrestrial Code*.

The OIE PVS Tool may be used to evaluate the quality of VS, to assess their compliance with OIE international standards on quality and, if needed, to establish priorities for investment and strengthening of their infrastructure.¹⁰

OIE Members have strongly supported the PVS evaluation procedure and this mechanism has been very successful at global level to date.

2.6. The use of equivalence as a mechanism to facilitate safe trade

The concept 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.¹¹

Equivalence is referred in Article 4 of the SPS Agreement.¹² In addition, the SPS Committee has adopted a Decision on the Implementation of Article 4 of the Agreement on the Application of SPS Measures (Equivalence) (see SPS Committee paper G/SPS/19/Rev.2). The OIE has issued relevant standards, which Members should take into account when making decisions on trade measures. The OIE standards on equivalence may be found in Chapter 5.3. of the *Terrestrial Code* (2008).

⁹ http://www.oie.int/eng/normes/mcode/en_chapitre_1.5.1.htm

¹⁰ http://www.oie.int/eng/oie/organisation/EN_OIE%20PVS%20Tool_2008.pdf

¹¹ http://www.oie.int/eng/normes/mcode/en_glossaire.htm#sous-chapitre-2

¹² Equivalence is referred in Article 4 of the SPS Agreement. In addition, the SPS Committee has adopted a Decision on the Implementation of Article 4 of the Agreement on the Application of SPS Measures (Equivalence) (see SPS Committee paper G/SPS/19/Rev.2).

The OIE informal mediation process may be used to help resolve a difference between Members regarding the use of the equivalence principle.

2.7. The use of zoning and compartmentalisation as mechanisms to facilitate safe trade

In view of the difficulty for a country in maintaining disease free status for the whole of its territory, the OIE has developed the concepts of zoning and compartmentalisation to help manage diseases and facilitate safe trade. Zoning and compartmentalization enable Members to define, within the national territory, animal subpopulations with a different health status. Relevant standards and guidance may be found in Chapters 4.3. and 4.4. of the *Terrestrial Code* (2008). The OIE has also provided guidance on the practical application of compartmentalization to avian influenza and Newcastle Disease in a checklist, which may be found on the OIE internet site.¹³

For an importing country to recognise the existence of a zone or compartment in an exporting country as the basis for trade in animals or animal products, the exporting country should be able to demonstrate that it has complied with the relevant OIE standards. Detailed documentation should be provided by the exporting country for discussion between the Veterinary Authorities. As previously mentioned, the findings of an OIE PVS Evaluation should also be taken into account.

This concept is also recognized in the Article 6 of the SPS Agreement, and the SPS Committee has adopted Guidelines to Further the Practical Implementation of Article 6 of the Agreement on the Application of SPS Measures (Regionalization) (see SPS Committee paper G/SPS/48).

2.8. Risk analysis

"Risk analysis" means the process consisting of hazard identification, risk assessment, risk management and risk communication. "Risk" means the likelihood of the occurrence, and the likely magnitude of the biological and economic consequences of an adverse event to animal or human health in the importing country during a specified time period.¹⁴

The WTO SPS Agreement obliges Members to base their import measures on relevant international standards (of the OIE, in the case of animal health and zoonotic diseases) or a scientific risk analysis carried out according to relevant international standards.

The OIE provides guidance on the conduct of an import risk analysis in Section 2 of the *Terrestrial Code* (2008) and more detailed guidance is provided in the two volumes of the *OIE Handbook on Import Risk Analysis for Animals and Animal Products*.

In the situation where relevant international standards have not been developed and/or an importing country considers that it requires a higher level of protection than that provided by the international standard, the importing country should carry out an import risk analysis. This should take into account the results of an evaluation of the Veterinary Services of the exporting country, if one has been conducted. In some cases, the application of zoning and compartmentalisation must also be addressed.

¹³

http://www.oie.int/eng/info_ev/Other%20Files/En_final_Compartmentalisation_AI_ND_10_05_2007.pdf

¹⁴ http://www.oie.int/eng/normes/mcode/en_glossaire.htm#sous-chapitre-2

3. Conclusions

By adopting the OIE standards as the basis for their sanitary measures, OIE Members obtain guarantees for 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, science based risk analysis following OIE standards should be undertaken. The use of concepts such as equivalence, zoning and compartmentalization, according to OIE standards, can help to facilitate safe international trade.

In the event where OIE standards are not respected and differences arise, Members should first consider using the OIE informal mediation mechanism.

Confidence in the quality of veterinary services is the cornerstone of international trade. Good governance, ensuring transparency in disease reporting, efficiency in disease management and reliability in veterinary certification, is key to provide the necessary assurances to trading partners.

Annex A - The OIE informal mediation procedure

1. When a Member considers that another Member is not applying relevant OIE standards or has adopted import measures that are not based on an import risk analysis according to OIE standards, the Member may send a written request to the OIE for mediation. The request should outline the grounds for requesting the mediation process. The OIE then forwards the request to the Member in question.
2. On receipt of the request, the Member in question should provide a written reply within a period of 20 days, stating whether or not it agrees to mediation.
 - Silence on the part of one of the parties is not taken to indicate agreement. The entire mediation process depends on the consent of the parties. Furthermore, if the Member in question does not reply within the given time limit, the OIE will take this as a refusal to engage in mediation.
 - If both parties agree to mediation, the OIE will initiate the process.
3. The mediation process takes place within a period of 90 days, with a single extension available at the request of both parties. The procedure begins once the Director General of the OIE confirms that the OIE will undertake the mediation.
4. The Parties select one or more experts (desirably an odd number), selected from a list provided by the Director General. The experts should be impartial and independent of the parties and, preferably, not be of the same nationality as the parties. The experts may request the provision by the parties of any information they deem to be relevant to the mediation.
5. At the first meeting the parties agree administrative arrangements for the mediation, including the venue for meetings, the language(s) to be used and the conditions to be established for meeting the cost of the mediation by the OIE. Needs for interpretation and/or translation should be agreed and the timeframes for the mediation procedure established. The mediator nominated by the Director General of the OIE should 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.
6. 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.
7. If they wish, 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 to the Director General.
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 drafts a report on the mediation in one of the three OIE official languages. This report is in two parts: part one summarises the technical issues discussed and part two presents the mediator's findings and recommendations to the parties.
 - A preliminary draft report will be sent to the parties for comment. Parties should provide their comments within 60 days of receiving the preliminary draft report. The mediator

will then produce a final draft report, taking account of comments provided by the parties. If a party provides no comments, the mediator may assume that the party is in agreement with the preliminary draft report.

- The final draft report is sent to the Director General, who then transmits it to the parties. This step will be completed within one month after the mediator receives comment from the parties (or one month after expiry of the 60 day period for comment, if no comment is received).

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- Devising import health measures for animal commodities:
http://www.oie.int/eng/normes/guides/EN_commodity-based%20approach.pdf
- Dispute mediation using the good offices of the OIE. *In The OIE international Standards*:
<http://www.oie.int/eng/normes/guide%20to%20OIE%20intl%20standards%20v6.pdf>
- VALLAT B., Editorial of the Director General, *Improving wildlife surveillance for its protection while protecting us from the diseases it transmits*:
http://www.oie.int/eng/Edito/en_edito_juil08.htm
- OIE *Tool for the Evaluation of Performance of Veterinary Services (OIE PVS Tool)*:
http://www.oie.int/eng/oie/organisation/EN_OIE%20PVS%20Tool_2008.pdf

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http://www.oie.int/eng/oie/organisation/en_vet_evaluators.htm
 - OIE dispute mediation process: Communication from the World Organization for Animal Health (OIE), G/SPS/GEN/731, presented at the 37th meeting of the Committee on Sanitary and Phytosanitary Measures, Geneva (Switzerland), 11-13 October 2006, available at the Document on line section of the WTO at <http://docsonline.wto.org/>
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ANNEX 2

PVS Evaluation Missions – (As at 16 February 2009)

Region	Official requests	Missions completed	Reports sent to countries
Africa	37	35	30
Americas	17	14	9
Asia/Pacific	13	12	11
Europe	12	9	8
Middle-East	12	8	4
Total	91	78	62

Official requests:

Africa (37): *Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Côte D'Ivoire, Congo (DR), Djibouti, Egypt, Eritrea, Gabon, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia (non OIE Member), Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Senegal, Swaziland, Sudan, Tanzania, Togo, Tunisia, Uganda, Rwanda, Zambia*

Americas (17): *Barbados, Belize, Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, El Salvador, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay*

Asia/Pacific (13): *Bangladesh, Bhutan, Brunei, Cambodia, Fiji, Indonesia, Korea (PDR), Laos (PDR), Mongolia, Nepal, Philippines, Sri Lanka, Vietnam*

Europe (12): *Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Kazakhstan, Kyrgyzstan, Romania, Tajikistan, Turkey, Ukraine, Uzbekistan*

Middle-East (12): *Afghanistan, Bahrain, Jordan, Lebanon, Kuwait, Qatar, Saudi Arabia, Palestinian National Authority, Oman, Syria, UAE, Yemen*

Italics: Completed missions