

MODEL ANIMAL WELFARE PROVISIONS FOR EU TRADE AGREEMENTS

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TABLE OF CONTENTS

INTRODUCTORY NOTE	4
CURRENT APPROACH.....	4
PROPOSED APPROACH.....	5
MODEL ANIMAL WELFARE PROVISIONS	6
PREAMBLE.....	6
CHAPTER X: TRADE AND ANIMAL WELFARE	6
CHAPTER #: TRADE AND SUSTAINABLE DEVELOPMENT	10
EXPLANATORY NOTE	13

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INTRODUCTORY NOTE



This work consists of an innovative and ambitious set of model animal welfare provisions that Eurogroup for Animals proposes to include in EU free trade agreements (FTAs). Animal welfare is an issue of immense importance to European citizens but it has not, until now, been given sufficient attention in European trade policy. This set of model provisions should be inserted into EU textual proposals for FTAs negotiated with third countries. To the fullest extent possible, the Commission should work to ensure that these provisions, if proposed, are not subject to a ‘trade off’ during negotiations with the other party.

Addressing animal welfare in European bilateral trade agreements will bring benefits for farmers and other producers, consumers, and the animals themselves. Doing so will allow the EU to ensure that its animal welfare standards are not undermined by an influx of poor quality imported animal products that do not respect a level of animal welfare equivalent to that required in the EU. This will ensure that domestic producers are not exposed to unfair competition and are granted a level playing field. Moreover, tackling animal welfare in FTAs provides the EU with an opportunity to cooperate with its trading partners in order to improve the lives of animals abroad. These benefits will be applicable not only to farm animals but also to animals used in research, wildlife, and companion animals.

CURRENT APPROACH

While the EU-Chile Association Agreement contains language on animal welfare, the EU’s FTA with South Korea is the first agreement solely focusing on trade to feature a provision on animal welfare. Since then, it has been common practice for the EU’s FTAs to include, in addition to language on wildlife conservation, a single provision on animal welfare. This provision is typically aimed at improving cooperation between the parties in a non-obligatory manner. This approach cannot provide the benefits outlined above.

Further, if animal welfare is addressed in an FTA, it is most commonly within the chapter on sanitary and phytosanitary (SPS) measures or, more recently, in the chapter on regulatory cooperation. Placing such provisions in an SPS chapter may limit their applicability to considerations of animal welfare that relate to animal health. This encompasses only a subset of animal welfare issues. Further, the provisions proposed here on “conditional liberalisation” would be impossible to enact in an SPS chapter. The EU’s recent tendency to insert an animal welfare provision into the chapter on regulatory cooperation does away with this problem. Also, animal welfare maintains important links with sustainable development beyond wildlife conservation. These links are consistently ignored in EU FTAs. Wherever animal welfare provisions are placed, there are issues that must be addressed.

PROPOSED APPROACH

There is a strong argument that the impact of trade on animal welfare is significant enough that this issue should be dealt with in a standalone chapter in EU FTAs. Animal welfare is a cross-cutting concern that impacts on a number of types of trade and trade-related issues. For that reason, it would be beneficial to group all of these considerations together in a separate chapter so as to avoid confusion. The EU’s serious engagement with this issue is necessitated by Article 13 of the Treaty on the Functioning of the European Union. Article 13 requires the EU to recognise the sentience of animals. The EU, as a democratic union, should also place importance on the strong public support for animal welfare protection in European trade policy. This was proven in a special 2015 Eurobarometer survey (442) which showed that over 90% of European citizens believe that imports of animal products should meet the same standards of welfare as those applicable in the EU.

While agreeing on a standalone animal welfare chapter may not be achievable in negotiations the EU conducts with each and every trading partner, the EU should at least include the following animal welfare provisions in existing chapters. The animal welfare issues that arise through trade liberalisation would be best tackled in both the regulatory cooperation and the sustainable development chapters. The goal should be to include as many of the model provisions as possible in an agreement, even if that means they are spread between chapters rather than in a standalone animal welfare chapter.

This set of model provisions is split between, on the one hand, a “Trade & Animal Welfare” chapter and, on the other hand, provisions for inclusion within a “Trade & Sustainable Development” chapter. We are of the opinion that the former would be best enacted in a standalone chapter but, if this is impossible, they should be included within the regulatory cooperation chapter. The provisions on Trade & Sustainable Development may be included in the standalone “Trade & Animal Welfare” chapter, or in the Trade & Sustainable Development chapter.

Before detailing the provisions for both chapters, this document presents preambulatory terms that may be used, if appropriate, in introducing an animal welfare chapter or at the head of an FTA. They are included here primarily to introduce the aims and motivations of this model animal welfare chapter.

MODEL ANIMAL WELFARE PROVISIONS¹

PREAMBLE

The Parties, as defined in Article X:

- Desiring to improve animal welfare in their respective territories;
- Reaffirming their rights and obligations under the WTO Agreement and its Annexes;
- Recognising that they have the right to adopt or enforce animal welfare standards necessary to protect public morals in a manner consistent with the WTO Agreement and its Annexes;
- Recognising the importance of minimising possible negative effects of animal welfare standards on trade and of improving market access opportunities;
- Recognising that failing to offer protection for animal welfare in free trade agreements may: lead to a subversion of domestic standards, negatively impact producers who comply with high welfare standards by tilting the level playing field, and result in a chilling effect on animal welfare legislation;
- Noting that animal welfare standards are generally applied on a unilateral basis;
- Desiring to establish bilateral cooperation in the field of animal welfare standards with a view to facilitate access to their respective markets;
- Recognising that the exporting Party may encounter difficulties in complying with the animal welfare measures of the importing Party, and as a consequence in market access, and desiring to establish cooperation such as through technical assistance and capacity building in this regard;
- Reaffirming the objective of the WTO Agreement to allow for the optimal use of the world's resources in accordance with the objective of sustainable development;

Hereby agree as follows:

CHAPTER X TRADE AND ANIMAL WELFARE

Article X.1

Objectives

1. The Parties recognise that animals are sentient beings. The Parties commit to give full regard to promotion of animal welfare in the conduct of their trade relations.
2. The objectives of this chapter are to:

- a. Ensure that encouraging trade between the Parties does not lead to the weakening or the reduction of the levels of protection afforded to animal welfare;
- b. Ensure enhanced market access is offered only for those products of the exporting Party that comply with the animal welfare laws of the importing Party and thus facilitate trade between the Parties to the greatest extent possible while preserving each Party's right to adopt or enforce animal welfare standards.
- c. Provide a framework for dialogue and cooperation with a view to improving the protection and welfare of animals and reaching a common understanding concerning animal welfare standards with a view to facilitating access to their respective markets.

¹ Presented here as one standalone chapter, which would allow for the most effective implementation of these provisions. If a standalone chapter cannot be agreed with trading partners, the EU should at least include this set of provisions in multiple existing chapters, along with the chapter specific provisions included herein.

Article X.2

Scope and coverage

1. This Chapter shall apply to all trade between the Parties to this Agreement, including trade-related aspects of: farm animals, animals used in research, wildlife, companion animals, and products derived therefrom.
2. Nothing in this Chapter shall affect the rights and obligations set out in Chapter Z [Trade and Sustainable Development], Article Y [“Trade in species of wild fauna and flora and derived products”].

Article X.3

Definitions

For the purposes of this Chapter, the following terms shall have the meaning as detailed below:

1. **“animal”**: Any mammal, bird, reptile, amphibian, fish, insect or other multi-cellular organism that is not a plant or fungi.
2. **“animal product”**: Any product consisting of an animal or derived primarily, whether in mass or value, from an animal.
3. **“animal welfare”**: How an animal is coping with the conditions in which it is living. For animal welfare to be satisfactory, the animal must be in a state of overall well-being, which is a condition of physical, mental and emotional harmony, and which includes the ability to live naturally and to meet all species-specific and ethological needs including but not limited to provision of the “Five Freedoms” as set out by the World Organisation for Animal Health (OIE), namely:
 - a. Freedom from hunger and thirst and malnutrition
 - b. Freedom from physical and thermal discomfort
 - c. Freedom from pain, injury and disease
 - d. Freedom to express normal patterns of behaviour
 - e. Freedom from fear and distress.
4. **“animal welfare standards”**: Standards, as developed and applied by the Parties, for the protection of the lives or well-being of animals, including safeguarding animals from cruel treatment and acts that cause the animal harm, injury, loss, pain, suffering or fear and distress.

Article X.4

Right to regulate and levels of protection

1. Each Party shall have the right to set its animal welfare priorities including those necessary to protect public morals, to establish its levels of animal welfare protection, to adopt or modify its laws and policies, and to apply these laws to imported products accordingly and in a manner consistent with this Agreement.
2. Each Party shall seek to ensure that their animal welfare laws and policies provide for and encourage high levels of animal welfare protection and shall strive to continue to improve such laws and policies with the goal of achieving high levels of animal welfare protection. The Parties have the freedom to refer to the non-binding standards and principles of animal welfare developed by the World Organisation for Animal Health (OIE) as appropriate in these laws and policies. Nothing in this Agreement shall preclude the Parties from improving their animal welfare laws.

Article X.5

Upholding levels of protection

1. The Parties recognise that encouraging trade or investment should not be achieved by weakening or reducing the levels of protection afforded in their animal welfare law.
2. A Party shall not waive or otherwise derogate from, or offer to waive or otherwise derogate from, its animal welfare law, with a view to encouraging trade or promoting the establishment, acquisition, expansion or retention of an investment in its territory.
3. A Party shall not, through a sustained or recurring course of action or inaction, fail to effectively enforce its animal welfare law to encourage trade or investment.

Article X.6²

Conditional liberalisation

1. The Parties shall require that imports of animals, products tested on animals and animal products meet animal welfare standards at least equivalent to those applicable within the importing Party's territory.
2. The importing Party shall accept the animal welfare standards applicable to the imports of animals, products tested on animals and animal products as equivalent to its own if the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's animal welfare standards applicable to the imports of animals, products tested on animals and animal products. These standards shall include, inter alia, standards applicable to the breeding, holding, handling, use in research, transportation and slaughter of animals.
3. The objective demonstration of equivalence is a precondition for the preferential tariff treatment granted by a Party under this Agreement with respect to the imports of animals, products tested on animals and animal products exported from or produced in the territory of the other Party.
4. The Parties shall use their best endeavours and make use of the mechanisms provided for in Article X.10 to establish whether the animal welfare standards applicable to the imports of animals, products tested on animals and animal products of the exporting Party are objectively equivalent to the importing Party's which include, inter alia, standards applicable to the breeding, holding, handling, use in research, transportation and slaughter of animals.
5. Should the Parties fail to agree whether the animal welfare standards applicable to the imports of animals, products tested on animals and animal products of the exporting Party are objectively equivalent to the importing Party's, which include, inter alia, standards applicable to the breeding, holding, handling, use in research, transportation and slaughter of animals, the Parties shall request in writing that the [Equivalence Expert Panel,] determine whether the exporting Party has objectively demonstrated such equivalence, in accordance with the procedures established in Article X.11.

² If it is not possible to reach an agreement with a trading partner on this Article, the EU should at least implement conditional liberalisation for specific products where identifiable risks to animal welfare are most significant.

³ Paragraph to be included in negotiations with developing countries.

Article X.7

Cooperation on animal welfare issues

1. Nothing in this Article shall affect the rights and obligations set out in Article X.4. For greater certainty, nothing in this Article shall lead to either Party lowering their animal welfare standards.
2. The Parties shall exchange information, expertise and experiences in the field of animal welfare and work towards equivalence of their animal welfare standards relating to, inter alia, breeding, holding, handling, use in research, transportation and slaughter of animals.
3. The Parties will strengthen their research collaboration in the area of animal welfare to develop adequate and science-based animal welfare standards related to animal breeding and the treatment of animals in holding and use in science, during transport and at slaughter.
4. The Parties also undertake to collaborate in international fora such as the World Organisation for Animal Health (OIE) with the aim to promote the further development of good animal welfare practices and their implementation.
5. The Parties agree to cooperate on animal welfare as necessary to ensure compliance with the requirements of Articles X.4, X.5, X.6 and X.7. The Parties also agree to cooperate to enhance compliance with the OIE's Terrestrial Animal Health Code and Aquatic Animal Health Code as a minimum, in particular, but not limited to section 7 of both Codes on animal welfare. Cooperation may include, but is not limited to, technical assistance and capacity building for the development of animal welfare standards.³

Article X.8

Public information and awareness

1. Each Party shall encourage public debate with and among non-state actors as regards the development and definition of animal welfare policies.
2. Each Party shall promote public awareness of its animal welfare law, as well as enforcement and compliance procedures, by ensuring the availability of information to stakeholders.

3. Each Party shall be open to receive and shall give due consideration to submissions from the public on matters related to this Chapter, including communications on implementation concerns. Each Party shall inform its respective civil society organisations of those communications through the consultative mechanisms referred to in Article X.10.4.

Article X.9

Scientific and technical information

1. When preparing and implementing measures aimed at animal welfare protection that may affect trade or investment between the Parties, each Party shall take into account relevant scientific and technical information and related international standards, guidelines, or recommendations.
2. The Parties acknowledge that where there are threats of serious harm to animal welfare, the lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent such harm.

Article X.10

Institutional mechanisms

1. Each Party shall designate a contact point for the implementation of this Chapter, including with regard to:
 - a. cooperative programmes and activities in accordance with Article X.7;
 - b. the receipt of submissions and communications under Article X.8; and
 - c. information to be provided to the other Party, the Panel of Experts, and the public.
2. Each Party shall inform the other Party, in writing, of the contact point referred to in paragraph 1 upon entry into force of this Agreement.
3. [The Committee on Trade and Sustainable Development and the Committee on Sanitary and Phytosanitary Measures established under Article X and Article Y, respectively, shall, through their] OR [The Committee on Trade and Animal Welfare established under Article

Z shall, through its]⁴ regular meetings or dedicated sessions comprising participants responsible for matters covered under this Chapter:

- a. oversee the implementation of this Chapter and review the progress achieved under it;
- b. discuss matters of common interest; and
- c. discuss any other matter within the scope of this Chapter as the Parties jointly decide.

4. Each Party shall make use of existing, or establish new, consultative mechanisms, to seek views and advice on issues relating to this Chapter. These consultative mechanisms shall comprise independent representative organisations of civil society in a balanced representation of animal welfare groups, business organisations, as well as other relevant stakeholders as appropriate. Through such consultative mechanisms, stakeholders may submit opinions and make recommendations on any matter related to this Chapter on their own initiative.

Article X.11

Equivalence Expert Panel

1. This Article will apply if the Parties fail to agree on the equivalence of animal welfare standards required for the preferential tariff treatment under Article X.6 and paragraph 5 of Chapter # (Trade and Sustainable Development).
2. This Article will also apply if interested third parties submit to the Parties' point of contact a reasoned report which raises reasonable doubts about the equivalence of the animal welfare standards required for the preferential tariff treatment under Article X.6 and paragraph 5 of Chapter # (Trade and Sustainable Development).
3. The Equivalence Expert Panel shall be convened within two months of a Party's written request or receipt of a reasoned report submitted by an interested third party to the Parties' point of contact.
4. Upon the entry into force of this Agreement, the Parties shall agree on a list of at least 15 persons with expertise on the issues covered in Article X.6 and paragraph 5 of Chapter # (Trade and Sustainable Development), of

⁴ If this latter wording used, the Administrative and Institutional Provisions chapter of the relevant FTA should establish a Committee on Trade and Animal Welfare which will address matters concerning animal welfare.

whom at least five shall be non-nationals of either Party who will serve as chair of the Equivalence Expert Panel. The experts shall be independent of, and not be affiliated with or take instructions from, either Party. Each Party shall select one expert from the list of experts within 15 days of the written request for the establishment of the Equivalence Expert Panel. If a Party fails to select its expert within such period, the other Party shall select from the list of experts a national of the Party that has failed to select an expert. The two selected experts shall decide on the chair who shall not be a national of either Party.

5. The Parties and interested third parties may make submissions to the Equivalence Expert Panel. The Equivalence Expert Panel should seek information and advice from either Party and interested third parties (if applicable) and international organisations.
6. Unless the Parties otherwise agree, the Equivalence Expert Panel shall, within 90 days of the last expert being selected, present to the Parties a report showing whether or not the animal welfare standards of the exporting Party, required under Article X.6 or paragraph 5 of Chapter # (Trade and Sustainable Development) to enjoy preferential tariff treatment, are equivalent to the animal welfare standards of the importing Party.
7. The report shall also contain recommendations, guidance, observations and remarks which the Equivalence Expert Panel deems fit. The report from the Equivalence Expert Panel shall be published by [the Committee on Trade and Sustainable Development and the Committee on Sanitary and Phytosanitary Measures established under Article X and Article Y, respectively] OR [the Committee on Trade and Animal Welfare established under Article Z]⁵

Article X.12

Dispute Settlement

1. This Chapter is subject to the dispute settlement provisions of this Agreement.

⁵ If this latter wording used, the Administrative and Institutional Provisions chapter of the relevant FTA should establish a Committee on Trade and Animal Welfare which will address matters concerning animal welfare.

CHAPTER

TRADE AND SUSTAINABLE DEVELOPMENT

Context, Objectives and Scope

1. The Parties recognise that economic development, social development, environmental and animal welfare protection are interdependent and mutually reinforcing components of sustainable development, and reaffirm their commitment to promoting the development of international trade in such a way as to contribute to the objective of sustainable development, for the welfare of present and future generations.
2. Through the implementation of this Chapter, the Parties aim to:
 - a. Promote sustainable development through the enhanced coordination and integration of their respective animal welfare measures;
 - b. Enhance compliance with the World Organisation for Animal Health's Terrestrial Animal Health Code and Aquatic Animal Health Code;
 - c. Take all reasonable measures to prevent the use of unsustainable farming methods in the Parties' territories;
 - d. Halt the illegal trade in wildlife products in the Parties' territories;
 - e. Take all reasonable measures to prevent unsustainable fishing practices in the Parties' territories and contribute to the fight against illegal, unreported and unregulated fishing.

Definitions

3. For the purposes of this Chapter, the following terms shall have the meaning as detailed below:
 - a. **"Sustainable development"**: sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. This shall include, inter alia, protection of labour rights, environmental protection, wildlife conservation, sustainable fishing practices, and sustainable agriculture including the sustainable use of farmed animals in a manner which protects their welfare.⁶

⁶ For more information on the link between sustainable development and animal welfare, see Eurogroup for Animals, "Animal Welfare, Trade and Sustainable Development" (2017), available at: <http://www.eurogroupforanimals.org/eurogroup-animals-launches-new-report-animal-welfare-trade-sustainable-development>.

Animal Welfare

4. The Parties recognise the importance of and affirm their commitment to ensuring the conservation and sustainable use of farmed animals in a manner which protects their welfare in recognition of the OIE Terrestrial Animal Health Code.
5. To this end, the Parties commit to:
 - a. Promote and encourage the use of sustainable farming methods which ensure good standards of animal welfare.
 - b. Exchange information with the other Party on actions such as strategies, policy initiatives, programmes, action plans, consumers' awareness campaigns of relevance in a trade context aimed at halting the use of unsustainable farming methods and, where relevant, cooperate to maximise the impact and ensure the mutual supportiveness of their respective policies.
 - c. Cooperate to achieve sustainable farming through, where appropriate, technical assistance and capacity building.
6. The importing Party shall accept animal welfare standards applicable to animal products as equivalent to its own if the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's animal welfare standards applicable to animal products.
7. The objective demonstration of equivalence is a precondition for the preferential tariff treatment granted by a Party under this Agreement with respect to all animal products exported from or produced in the territory of the other Party.
8. The Parties shall use their best endeavours and make use of the mechanisms provided for in Article X.10 to establish whether the animal welfare standards applicable to animal products of the exporting Party and equivalent to those of the importing Party.
9. Should the Parties fail to agree on whether the animal welfare standards are equivalent, the [Equivalence Expert Panel] shall determine whether the Party has objectively demonstrated that its animal welfare standards achieve the importing Party's animal welfare standards applicable to animal products, in accordance with the procedures established in Article X.11.

Wildlife and Biological Diversity

10. The Parties recognise the importance of and affirm their commitment to ensuring the conservation and sustainable use of biological diversity and engagement in the fight against illegal wildlife trafficking, in accordance with the Convention on Biological Diversity (CBD) and its Strategic Plan for Biodiversity, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and other relevant international instruments to which they are party, as well as the decisions adopted hereunder.
11. To this end, the Parties commit to:
 - a. Promote and encourage the conservation of biological diversity.
 - b. Exchange information with the other Party on actions such as strategies, policy initiatives, programmes, action plans, consumers' awareness campaigns of relevance in a trade context aimed at halting the loss of biological diversity and reducing pressures on biological diversity and, where relevant, cooperate to maximise the impact and ensure the mutual supportiveness of their respective policies.
 - c. Adopt and implement appropriate effective measures, which are consistent with their commitments under international treaties to which it is a Party, leading to a reduction of illegal trade in wildlife, such as awareness raising campaigns, monitoring and enforcement measures.
 - d. Require that imports of relevant animal products are compliant with conservation and sustainability rules at least equivalent to those applicable within the importing Party's territory, as a precondition for the preferential tariff treatment granted by a Party under this Agreement with respect to all goods exported from or produced in the territory of the other Party.
 - e. Enhance cooperation, as appropriate, to propose new animal and plant species for amendment of appendices I and II to the CITES.
 - f. Cooperate at the regional and global levels, as appropriate, with the aim of promoting the conservation of biological diversity in natural or agricultural ecosystems, including endangered species, their habitat, specially protected natural areas, welfare and genetic diversity; the restoration of ecosystems; the elimination or reduction of negative environmental impacts resulting from the use of living and non-living natural resources, including ecosystems; the access to genetic resources and the

fair and equitable sharing of benefits arising from their utilisation.

- g. Strive to go beyond the requirements of these agreements wherever possible in order to effectively and cooperatively tackle the illegal wildlife trade.
- h. Cooperate to protect biological diversity and to tackle illegal wildlife trafficking and wild animal mistreatment (including keeping in poor conditions) through, where appropriate, technical assistance and capacity building.

Trade and sustainable management of living marine resources and aquaculture products

12. The Parties recognise the importance of and affirm their commitment to ensuring the welfare, conservation and sustainable management of living marine resources and marine ecosystems, the promotion of responsible and sustainable aquaculture, and engagement in the fight against illegal, unreported and unregulated (IUU) fishing.

13. To this end, the Parties commit to:

- a. Comply with long-term conservation and management measures and sustainable exploitation of marine living resources as defined in the UN Convention on the Law of the Sea of 1982 (UNCLOS), encourage compliance with the objectives of the United Nations Agreement for the Implementation of the Provisions of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, and the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate IUU, and adhere to the principles of the FAO Code of Conduct for Responsible Fisheries of 1995.
- b. Cooperate, as appropriate, with and within Regional Fisheries Management Organisations to which they are members, observers, or cooperating noncontracting parties, including through effective application of their Monitoring, Control and Surveillance and enforcement of management measures and, where applicable, implement their Catch Documentation or Certification Schemes.

- c. Cooperate in and actively engage in the fight against illegal, unreported and unregulated (IUU) fishing and fishing related activities with comprehensive, effective and transparent measures to combat IUU. The Parties shall also facilitate the exchange of information on IUU activities and implement policies and measures to exclude IUU products from trade flows.
- d. Promote the development of sustainable aquaculture, taking into account its economic, social, environmental, and animal welfare aspects.
- e. Require that imports of relevant animal products are compliant with sustainable aquaculture and IUU fishing rules at least equivalent to those applicable within the importing Party's territory, as a precondition for the preferential tariff treatment granted by a Party under this Agreement with respect to all goods exported from or produced in the territory of the other Party.
- f. Exchange at the meetings of the Specialised committee on trade and sustainable development and, as appropriate, in other occasions, information on all new measures of management of living marine resources and fishery products that may impact on trade between the Parties.
- g. Cooperate to achieve sustainable aquaculture through, where appropriate, technical assistance and capacity building.

EXPLANATORY NOTE

Animal welfare is a legitimate policy objective that concerns, *inter alia*, public morals, human and animal life and health, environmental protection, and fair competition under a liberalised trade regime between contracting parties. From domestically conducted surveys, it is clear that EU citizens value strongly the protection and welfare of animals, including farm animals, wild animals, animals used in research, and animals kept as pets. Animals (products tested on animals and animal products) that are traded between contracting parties are subject to certain treatment during their breeding, handling, use in science, transport and slaughter. This treatment is directly linked with animal welfare. As a non-product related production and process method, the compliance with EU animal welfare standards is impossible to be determined upon entry to the EU market. Yet this compliance must be ensured, incentivised as well as – in the case of developing countries – supported.

Article X.1

Context and objectives

Inspiration for Article X.1.1 was sourced from the EU's Transatlantic Trade and Investment Partnership (TTIP) proposal for the SPS Chapter, Article 17 (made public on 7 January 2015).

Article X.3

Definitions

The definitions provided are sourced from the widely acknowledged Model Animal Welfare Act published by World Animal Net.⁷ Consistency should be aimed at wherever possible in defining concepts such as 'animal welfare' in order to minimise confusion.

Article X.4

Right to regulate and levels of protection

This Article is based on Article 24.3 of the trade and environment chapter of the agreed text for the EU – Canada Comprehensive Economic and Trade Agreement (CETA). This Article is included to mitigate concerns regarding the EU imposing its standards abroad and affirm the right of the EU to uphold its existing levels of protection and enact new measures.

Article X.5

Upholding levels of protection

The language of this Article is based on Article 24.5 of the trade and environment chapter of the agreed text for the EU – Canada Comprehensive Economic and Trade Agreement (CETA). This Article is the first of the 3 main substantive obligations contained in the model animal welfare chapter. This Article addresses the concern that liberalised trade will lead to a “race to the bottom” insofar as animal welfare standards are concerned.

Article X.6

Conditional liberalisation

The idea of conditional liberalisation is not new but it is introduced here without precedent with regard to animal welfare protection. In line with the terms of Article XXIV(8) (b) of the General Agreement on Tariffs and Trade 1995⁸ it aims at further liberalising trade to help encompass “substantially all trade” under the condition of compliance with importing Party's animal welfare standards. In case of non-compliance, Article X.5 of this model animal welfare chapter is also consistent with WTO law because Article XXIV(8)(b) incorporates the exceptions listed in Article XX of the GATT. Case law of the WTO's dispute settlement body has shown that Article XX can be used to justify animal welfare protecting trade restrictions.⁹

⁷ Janice J Cox and Sabine Lennkh, 'Model Animal Welfare Act: A Comprehensive Framework Law' (2016), available online at: <http://goo.gl/qne4RW>.

⁸ General Agreement on Tariffs and Trade (adopted 30 October 1947, entered into force 1 January 1948) 55 UNTS 194 (The GATT).

⁹ See generally: Appellate Body Report, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products* [2014] WT/DS400/AB/R, WT/DS401/AB/R.

Article X.7

Cooperation on animal welfare issues

This Article is based mostly on the EU's Transatlantic Trade and Investment Partnership (TTIP) proposal for the SPS Chapter, Article 17 (made public on 7 January 2015). Paragraph 1 is based on Article 17.2 of the EU proposal, paragraph 2 is based on Article 17.3 and paragraph 3 is based on Article 17.4. Paragraph 4 of this text was inspired by the cooperation and capacity building chapter, Article 3, of the agreed text for the EU – Vietnam free trade agreement.

It is important that cooperation be conducted in order to pursue the improvement of animal welfare standards globally. This Article allows for cooperation in aligning regulatory standards without lowering them in either Party. This Article also allows for specific technical assistance and capacity building to help developing countries to comply with EU animal welfare standards and hence enjoy the preferential market access.

Article X.8

Public information and awareness

The language of this Article is based on Article 24.7 of the trade and environment chapter of the agreed text for the EU – Canada Comprehensive Economic and Trade Agreement (CETA).

Article X.9

Scientific and technical information

The language of this Article is based on Article 24.8 of the trade and environment chapter of the agreed text for the EU – Canada Comprehensive Economic and Trade Agreement (CETA).

Article X.10

Institutional mechanisms

The language of this Article is based on Article 24.13 of the trade and environment chapter of the agreed text for the EU – Canada Comprehensive Economic and Trade Agreement (CETA). It is vital that provision be made for institutional mechanisms to ensure an effective and impactful implementation of this chapter. This will also show that the EU is cooperating with its trading partners consistently over time to ensure the protection of animal welfare.

Article X.11

Equivalence Expert Panel

The language of this Article is based on the Korea-EU FTA which also has an expert panel provision. The Article foresees a more open and enforceable dispute settlement system, with third parties being given the power to both constitute the panel and make submission before it, and with the panel being granted a role of adjudicator in cases where there are disagreements in relation to the equivalence of standards.

Article X.12

Dispute Settlement

It is necessary for the effective implementation of these model animal welfare provisions that they not be excluded from the dispute settlement mechanisms enacted through an FTA.

Other Chapters

Trade and Sustainable Development

The language of these model provisions is based on the Sustainable Development chapter in the EU-Vietnam Free Trade Agreement. These provisions address the scope of the trade and sustainable development chapter as well as the approach to sustainable farming and animal welfare, biodiversity conservation, and sustainable fisheries. These chapters can and should encompass issues of animal welfare that impact on sustainable development.



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