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Paving the way for farm animal welfare in international relations: an EU–Brazil case study

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As a sensitive area in international trade, animal welfare measures have encountered resistance in negotiations at the World Trade Organization (WTO). Consequently, alternative avenues have been pursued to reach international trade policy convergence. To further understand the contemporary trade politics of animal welfare, an empirical investigation was conducted on the interplay between European and Brazilian actors in the context of livestock production. By drawing upon diplomatic studies and the global governance literature, this study identifies and analyses initiatives that parallel the WTO approach and through which the development and implementation of mutually acceptable farm animal welfare measures have been pursued. Research findings indicate that a constellation of international non-diplomatic actors are currently engaged in influencing the future development of farm animal welfare measures. Among the initiatives that enable the alignment of European and Brazilian animal welfare policies and practices, there are soft instruments such as knowledge sharing and private standards. The rise of new actors and the use of soft instruments have been, to a certain extent, able to mitigate the tardiness of a WTO consensus regarding the use of animal welfare measures. However, there are concerns that the use of private standards has become a shortcut to circumvent the rigours of the multilateral trading system. This concern deserves a closer look because instead of paving the way, private standards may hamper trade relations which in turn hamper progress in animal welfare matters.

Keywords: animal welfare; trade relations; EU–Brazil; international governance; private standards

1. Introduction

As national economies grow more interconnected, domestic concerns over the welfare of animals used for food production have evolved into an international trade issue (Bayvel & Cross, 2010; Blandford, Bureau, Fulponi, & Henson, 2002; Cook & Bowles, 2010; Hobbs, Hobbs, Isaac, & Kerr, 2002; Thiermann & Babcock, 2005; Stevenson, 2009). The adoption of restrictive commercial measures based on animal welfare criteria is, however, a highly controversial topic for members of the World Trade Organization (WTO). The growing importance of animal welfare and the need for the WTO to provide a framework within which WTO members could address animal welfare issues were highlighted by the then-European Community in 2000 during a

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special session of the WTO's Committee on Agriculture (G/AG/NG/W/19). According to the European Community, there are several ways the issue of animal welfare could be addressed in the WTO framework, such as in the negotiations of article 20 of the Agreement on Agriculture. The European Union (EU) proposal, however, did not receive widespread support among WTO members. A number of countries indicated that they were not indifferent to animal welfare matters but rejected the EU proposal as a disguised barrier to trade. Addressing the subject of international trade and animal welfare is, as Hobbes et al. (2002) have said, a task that takes time and tortuous negotiations among WTO members.

Over the past two decades, the EU has made significant progress in terms of animal protection, with the recognition of animals as sentient beings. At the same time, Brazil has become one of the world's biggest meat producers and exporters. We argue that a study on the dyad perspective of European and Brazilian interactions can shed some light on how animal welfare has advanced within international relations (IR). With the objective of identifying and analysing actors and mechanisms currently involved in the articulation of animal welfare policies between Europe and Brazil, we created an analytical framework based on a combination of diplomatic studies and the global governance literature. According to scholars of diplomatic studies, the traditional state-centric approach of IR is no longer sufficient to capture patterns and trends in governance within modern world politics (Hernandez-Lopez, 2001; Hocking, 2006; Pigman, 2005; Stone, 2004). With the growing numbers of actors other than government trade ministry officials who nowadays embody a certain *de facto* diplomatic status, as described by Kelley (2010), it is necessary to account for the initiatives of state and non-state actors in our investigation of EU–BR relations. Likewise, Falkner (2003) and Vogel (2008) refer to the current reconfiguration of international politics not as a straightforward power shift away from state towards non-state forms of policy-making, but rather a movement towards a more complex relationship between private and public actors. In addition to identifying which actors within EU–BR relations are exerting efforts to coordinate farm animal welfare policies, this article aims to analyse how such efforts are exerted, or which mechanisms are employed. To do so, we rely upon the global governance literature. Within this literature, we find several studies concerned with how policies, ideas and instruments spread across nations that take place beyond the reach of the multilateral negotiation and unilateral coercion that are traditional of diplomatic studies.

In Section 2, we further detail our analytical framework. Next, we introduce our research design for investigating how European actors (known as world frontrunners on animal welfare) and Brazilian actors (known as the world's biggest exporters of meat) have attempted to advance animal welfare-related issues in their relations with each other. Our findings are presented in Section 4. Discussions about the findings are included in Sections 5 and 6, and our concluding remarks are presented in Section 7.

2. World trade politics: drafting an analytical framework

Traditionally, theorists of IR have interpreted nation-states as the main or even sole actors in world politics. Hence, to explain patterns and trends in world politics, this body of research has largely focused on the role of appointed emissaries of nation-state governments and their diplomatic institutions. In terms of commercial diplomacy in the aftermath of the Uruguay Round, this state-centric approach resulted in a research focus on the newly created WTO and its primary actors, who are ministers (who meet at least once every two years) ambassadors and delegates (who meet regularly in Geneva). However, the environment in which 'diplomacy' is exercised has changed drastically over the last decade (Heine, 2006; Hocking, 2006; Kelley, 2010; Murray, Sharp, Wiseman, Crikemans, & Melissen, 2011; Pigman & Vickers, 2012). This environment includes a broad range of actors, among which non-governmental organisations

(NGOs) and multinational corporations are currently exerting influence in diplomatic milieu (Hocking, 2004; Langhorne, 2005). The emergence of actors other than official diplomats has allowed for innovative ways to tackle differences and build cooperation between countries in several policy areas. To understand this changing mode of international trade politics, some scholars have examined the role of NGOs and corporations in trade negotiations and trade disputes (e.g. Dunoff, 1998; Esty, 1998; Hernandez-Lopez, 2001; Sapra, 2009; Sherman & Eliasson, 2006). While it is of paramount importance to understand how the outcome of trade negotiations and disputes can be influenced by non-governmental actors, we seek a broader perspective to uncover more subtle ways of exerting influence over international trade policies and disputes. Thus, instead of focusing on the activities of non-traditional trade ‘diplomats’ at the conventional WTO landscape, as the above body of literature does, we propose an investigation into initiatives outside the WTO used by state and non-state actors to tackle differences and advance rule-making in relation to cross-border issues.

In striving for a framework that could enable us to comprehensively analyse initiatives in the field of animal welfare in EU–Brazil relations, we combined the Abbott and Snidal (2009) governance triangle with the Busch and Jörgens (2005; 2012) triad of global governance mechanisms. Figure 1 illustrates our proposed analytical framework.

As mentioned above, a number of different types of actors are currently engaged in initiatives that aim to advance policy-making at the international level. The Abbott and Snidal (2009) governance triangle offers taxonomy for these initiatives based on the participants. In Abbott and Snidal’s governance triangle, each pole represents one group of actors – state, civil society and market – and the surface represents the policy-making space. Taking Abbott and Snidal’s governance triangle as a methodological guide enables us to adequately account for the governance activity of ‘old’ and ‘new’ actors in IR studies. We are interested in identifying initiatives carried out by government officials and activities driven by civil society actors such as NGOs and epistemic communities as well as activities led by market actors like transnational corporations and financial institutions. In addition to taxonomy for actors, we felt the need for a taxonomy of mechanisms to enable us to assess the manner used by each actor’s initiative. Busch and Jörgens (2005; 2012) proposed a typology of three broad classes of mechanisms: harmonisation, imposition and diffusion. In our analytical framework, Busch and Jörgens’ (2005; 2012) typology of global governance mechanisms comes in the form of added pillars at the base of the governance

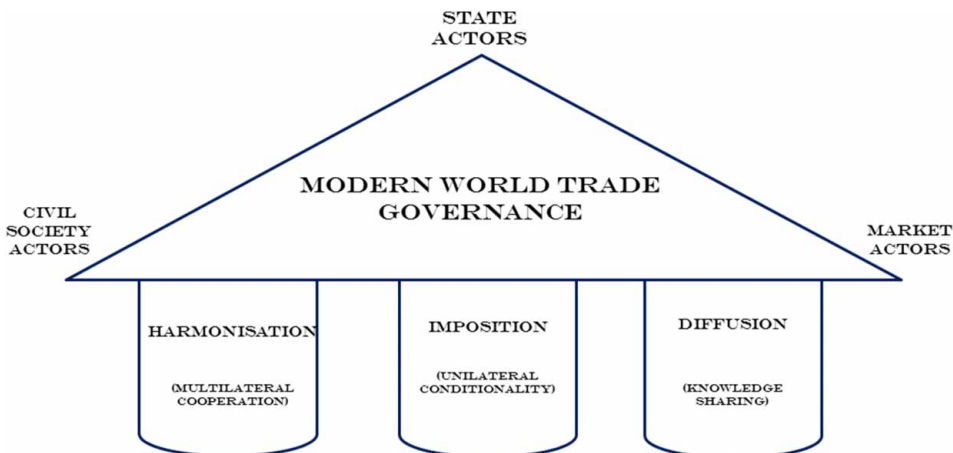


Figure 1. Framework for analysing modern world trade governance.

triangle. Within that context, the *harmonisation* pillar refers to cooperative mechanisms that are driven by common interests and where parties take joint decisions through highly centralised processes; the second pillar (*imposition*) refers to coercive mechanisms where one party exploits an asymmetry in political or economic power to unilaterally place a condition upon the other party; and the last pillar refers to an emerging mechanism that enables actors and institutions to trigger domestic policy change in countries through policy *diffusion*. Bush and Jörgens' typology comes close to what other scholars have classified as domestic policy change through international interaction and convergence (e.g. Bennett, 1991; Bernstein & Cashore, 2012; Börzel & Risse, 2012; Holzinger & Knill, 2005; Knill, 2005; Knill & Tosun, 2009; Lavenex & Schimmelfennig, 2009; Schimmelfennig, 2007). However, Bush and Jörgens view diffusion as a facilitating factor rather than an outcome of policy convergence. Normally, policy diffusion is conceived as an effect of convergence mechanisms, such as institutional membership wherein legally binding requirements defined in international agreements trigger a socially mediated spread of policies. Within Busch and Jörgens' perspective, it is possible to account for a reverse process. To them, policy diffusion is a distinctive mechanism of global governance, whereby the international spread of policy innovations is driven by information flows (rather than by hierarchical or collective decision-making within international institutions). That is, the dissemination of knowledge, values, norms and ideas across nations can trigger international processes to enable legally binding harmonisation requirements.

By combining Abbott and Snidal's (2009) governance triangle with Busch and Jörgens' (2005; 2012) typology of global governance mechanisms, we can interrelate actors and mechanisms and thus better assess the governance initiatives in the area of animal welfare that fall outside the traditional multilateral WTO trade agreements. We now introduce our case study.

3. An outline of the case study

Concerns about the treatment of farm animals have been the subject of significant regulatory and policy attention, especially in Europe where in the last 40 years a comprehensive governance structure was enacted to safeguard the welfare of farm animals at farms, during transport and at slaughter. This self-imposition of legislation for the protection of animals has, according to several studies (e.g. Grethe, 2007; Hobbs et al., 2002; Van Horne and Achterbosch, 2008), increased costs for EU livestock producers, thus placing European products at a competitive disadvantage relative to imported products from other countries. Consequently, European farmers and European agri-cooperatives began to put pressure on the European Commission to ensure that equal animal welfare regulations were required for imported products (Copa-Cogeca, 2012). NGOs of animal protection have also argued that animal products from other countries (which are generally regarded as facing lower welfare requirements) must follow EU equivalent standards, not only to avoid the losses of EU producers but also to respect consumers' ethical demands (Eurogroup, 2000). However, to ban or restrict the import of products based on animal welfare grounds raises critical disagreements within the international trade community. As the recent EC–Seal Products¹ case illustrated, adopting animal welfare measures consistent with the WTO legal framework is not an easy task. Although the EU ban on the marketing of seal products was considered to be justified under GATT Article XX (a) public morals exception, the Appellate Body concluded that the measure did not meet the *chapeau* requirements of GATT Article XX. Therefore, the EU was required to alter its measures in order to adequately comply with its multilateral trade obligations.

Extensive literature suggests that in a growing number of fields, frustration with the dynamics of the multilateral trade system has stimulated the use of innovative ways to advance rule-making in relation to cross-border issues. To find out whether animal welfare is one of these fields we

pursued a case study in the dyad perspective of EU–BR relations. The reasons for looking at the relation of European actors with Brazilian actors are that Brazil is the single biggest exporter of agricultural products to the EU (European Commission, 2013) and that Brazil represents an emerging international political and economic actor with whom the EU desires to enhance its relations (European Commission, 2007). The research followed a qualitative design in which data for mapping the IR between Europe and Brazil in the context of animal welfare were collected through a set of semi-structured interviews with individuals and organisations from the state, civil society (NGOs and researchers), and the private sector (producer associations, cattle farmers, slaughterhouses, retailers, restaurant chains). In total, 40 actors from a range of organisations were interviewed, face-to-face or via video calls, using a semi-structured interview guide. In Brazil, 29 interviews were conducted during the period of January to April 2012, including respondents from the Ministry of Agriculture, Livestock and Food Supply (MAPA) (9), the Ministry of Foreign Relations (2), the Brazilian Agricultural Research Institute (EMBRAPA) (2), the Association of Brazilian Beef Exporters (ABIEC) (1); the Brazilian Poultry Association (UBABEF) (2), the Brazilian Pork Industry and Exporter Association (ABIPECS) (1), slaughterhouses that export to the EU market (3), farmers (3), academic experts (4) and representatives of European NGOs working in Brazil (2).

In Europe, 11 interviews took place between September and December 2012, including respondents from the Directorate General of Health and Consumers of the European Commission (DGSanco) (1), the Directorate General for Trade (DG Trade) (2), the European retail and wholesale association (EuroCommerce) (1), the European farmers and European agri-cooperatives (Copa-Cogeca) (2), the European livestock and Meat Trades Union (UECBV) (2), World Society for the Protection of Animals² (WSPA) (1), Compassion In World Farming (1), and the Eurogroup for Animals (1). Furthermore, informal discussions were held with representatives of the World Organization for Animal Health (OIE), the European Food and Veterinary Office (FVO), the Royal Society for the Prevention of Cruelty to Animals (RSPCA), Safe Supply of Affordable Food Everywhere (SSAFE), Business Benchmark on Farm Animal Welfare (BBFAW) and with a representative of the animal welfare unit of the Chilean Agricultural and Livestock Service (SAG) during the following conferences: Enforcement of EU animal welfare-related legislation (Brussels, Belgium, 12–13 June 2012), the third OIE Global Conference on Animal Welfare (Kuala Lumpur, Malaysia, 6–8 November 2012) and the OIE Regional Conference on Animal Welfare and International Trade (Montevideo, Uruguay, 17–18 October 2013).

4. Advancing farm animal welfare: findings from EU–Brazil

In this section we describe some empirical observations regarding initiatives that are advancing the field of farm animal welfare within EU–Brazil relations. Our findings are presented in accordance with the edges of the governance triangle and thus are subdivided in the three subsections. Despite this analytical distinction, we acknowledge that some initiatives involved more than one type of actor.

4.1. Initiatives within international governmental relations

In Europe, the EU Directorate-DGTrade is the authority within the European Commission to engage in international trade negotiations. Maintaining trade relations with other countries is within the exclusive jurisdiction of the Commission; individual Member States are not allowed to create trade policy on their own. As far as the protection of the welfare of animals is concerned, the general position of the Commission is that animal welfare is a legitimate non-tariff measure

that must be addressed in the negotiation of trade agreements. Therefore, DG Trade made several efforts at the beginning of the agricultural negotiations of the Doha Round to include animal welfare measures in the debates. However, as negotiations over agriculture grew more heated and complicated, DG Trade's rhetoric on animal welfare measures became less strident. Conversely, the inclusion of animal welfare is being strongly pushed by DG Trade in the negotiation of bilateral and regional trade agreements. In the recent re-launched negotiations between the EU and Mercosur for an Interregional Association Agreement, European delegates have insisted on including animal welfare measures in the Sanitary and Phytosanitary (SPS) chapter of the agreement. However, this proposal faces resistance from Brazilian delegates and other Members of Mercosur who are of the opinion that dealing with animal welfare measures within the scope of trade measures related to SPS issues might negatively affect access to the European market for products of animal origin. It remains to be seen what the outcome of the EU–Mercosur bilateral trade agreement negotiations will be.

Parallel to the above-described diplomatic relations, the membership of the OIE formed an outstanding channel of interaction between Brazilian and European officials in the area of animal welfare. Originally an intergovernmental organisation exclusively dedicated to improving animal health by fighting animal diseases at the global level, OIE expanded its mandate to include animal welfare at the request of its Member Countries. Following the determination of animal welfare as a priority in the OIE 2001–2005 Strategic Plan, the World Assembly of OIE Delegates (representing the 180 Member Countries and Territories) adopted eight animal welfare standards into the Terrestrial Code and three into the OIE Aquatic Animal Health Standards Code. It is important to note that OIE, along with the Codex Alimentarius Commission and the International Plant Protection Convention, is one of the so-called 'three sisters', whose standards, guidelines and recommendations are specifically recognised in the World Trade Organization's SPS agreement. As such, OIE standards are references to international standards for animal health and zoonosis. However, the same status is not (yet) given to OIE animal welfare standards because measures of animal welfare are thought to fall outside the scope of the SPS agreement. In that regard, it is important to note that there is no authoritative interpretation regarding the inapplicability of the SPS Agreement for animal welfare measures. There are only remarks in some documents and scientific articles such as Prevost (2008, footnote) and the G/SPS/GEN/932. Parallel to that, it is relevant to add that OIE guidelines are currently being used as a basis for the development of the International Organization for Standardization (ISO) technical specification for animal welfare. ISO is an NGO with the national standards bodies of more than 160 countries as Members. In July 2011, OIE and ISO signed a cooperation agreement with the aim of facilitating collaboration between these organisations to develop voluntary international standards on animal welfare. The idea was to promote international harmonisation of animal welfare standards for food-producing animals as a way to prevent the multiplication of private schemes and certification systems.

Particularly relevant to note is that officials participating in OIE and ISO are not career diplomats. Unlike the WTO, which is a forum for emissaries from the Ministries of Foreign Affairs (from DGTrade in the case of EU), the OIE is a forum for the Veterinary Services of each Member. Thus, government officials from the Ministry of Agriculture, Livestock and Food Supply (MAPA) are representing Brazil and Europe is represented by government officials from the Veterinary Service of each EU Member State. The Directorate General of Health and Consumers of the European Commission (DG-Sanco), which is the EU authority to propose legislation and adopt policies in the area of animal welfare, is an active participant in OIE activities, though it holds no voting right over OIE standards as this is an exclusive prerogative of EU Member States. As for ISO, those who participate in the development of technical specifications for animal welfare measures are representatives of national standardisation bodies,³ government

officials engaged in OIE animal welfare standard-setting and experts named by international organisations with a liaison status within the ISO animal welfare working group. These organisations are the Food and Agriculture Organization of the United Nations (FAO), the International Dairy Federation, the International Meat Secretariat, the International Egg Commission, and the Eurogroup for Animals, the WSPA and the SSAFE.⁴ The latter organisation has taken the lead by officially proposing an ISO standard on animal welfare.

The United Nations FAO is another multi-stakeholder platform that engages internationally in animal welfare matters with the aim of establishing good animal welfare practices. As an inter-governmental organisation, the membership of FAO consists of sovereign states and regional economic integration organisations like the EU. Yet, programmes developed by FAO usually involve partnerships between governments, civil society representatives and the private sector. This is also the case for animal welfare capacity-building programmes, where local experts from different stakeholders are brought together to create mutual understanding on animal welfare issues. The capacity-building programmes in Brazil resulted in a joint effort from MAPA, the Ethology and Animal Ecology Research Group (ETCO) from the UNESP University and WSPA.

Finally, there are two important stand-alone channels, where the interaction between European and Brazilian actors does not rely on the common membership of Brazil and the EU. The first channel refers to establishment approval, which is the process used by importing countries to grant market access for imported products of animal origin. This process is based on individual countries' compliance with the importing country's requirements for food safety and quality. The conformity assessment for establishment approval is usually the responsibility of the veterinary services of the exporting country, whose first step is to make a list of establishments that are eligible for selling products in the market of the importing country. To ensure that the conformity assessment fully complies with the importing country's regulations, periodical audits are carried out on the spot by the importing country's official authorities. Thus, the establishment approval provides a mechanism for the exchange of expertise between veterinary officials from importing and exporting countries because they often interact while working towards the recognition of the latter's national control system. In the case of exporting animal products from Brazil to the European market, establishment approval promotes interaction between veterinary agents from the Department of Inspection of Products of Animal Origin (DIPOA) of the Brazilian Ministry of Agriculture and the European FVO, which is the Commission inspection service of DG-Sanco. For instance relevant in terms of animal welfare is compliance with European Regulation 1099/2009, which sets standards for the protection of animals at the time of killing. These standards are indispensable and must be checked by Brazilian authorities when evaluating eligible establishments. When FVO officers come to check compliance, a sample of farms are inspected to confirm compliance. Conversely, in the case of exports from Europe to the Brazilian market, the interaction during the process of establishment approval is between officials from DIPOA and the veterinary service of the specific country from which the product originates. For instance, if the establishment seeking to sell animal products to Brazil is located in the Netherlands, the compliance check with Brazilian import requirements will be carried by the Dutch national competent authority or the Food and Consumer Product Safety Authority (VWA).

The second stand-alone channel providing a bridge for government officials from Brazil and the EU to advance animal welfare policies and practices is a recently signed Memorandum of Understanding (MoU). This memorandum provides a formal framework for technical cooperation in the area of animal welfare between MAPA and DG-Sanco. According to this memorandum, the parties agree to exchange scientific knowledge and technical information about the welfare of farm animals in order to facilitate understanding and future negotiations about farm animal

welfare matters on both sides. Meetings in order to discuss and coordinate activities and projects relevant to this administrative memorandum are currently taking place, with unknown outcomes.

4.2. *Initiatives within international civil society relations*

The linkages providing opportunities for civil society actors to engage in the development and promotion of international animal welfare standards and guidelines originate either in international organisations (e.g. FAO, OIE, ISO, WTO) or at a more practical level. Illustrative examples in the case of EU–Brazil include the active participation of WSPA, an originally British organisation, in the Brazilian development of animal welfare policies and practices and the exchange of visiting professors and researchers between the European and Brazilian scientific institutions.

To ensure that animal welfare is addressed within the Brazilian livestock farming systems, WSPA engages with farmers, companies, producer associations, universities and governmental authorities. For instance, WSPA together with MAPA launched in 2009 STEPs, a National Program for Humane Slaughter. The programme includes training for federal inspectors and slaughterhouse personnel in animal-friendly pre-slaughter handling. The content of the training addresses animal welfare issues during the loading, unloading and pre-slaughter handling as stipulated by Brazilian law, OIE recommendation and EU regulations and directives. By late 2013, over 1128 professionals from 250 processing plants had already participated in the training. Another example is the partnership between WSPA, the Food Animal Initiative and researchers from ETCO for the development of The Model Farm Project located in Jaboticabal (Sao Paulo, Brazil). The Model Farm aims to demonstrate to governments and the public that humane and sustainable farming is a practical reality. As a centre of excellence for good farm animal welfare practice, the farm acts as a base for many welfare training programmes and research projects.

Scientific collaboration has also been a part of the Welfare Quality® project, an EU-funded project aimed at the development of reliable on-farm monitoring systems, product information systems and practical species-specific strategies to improve animal welfare. The project started in May 2004 with 40 institutions in Europe and incorporated four Latin America research institutes in 2006. The Brazilian participant was the Department of Animal Science Faculty of Agriculture and Veterinary Sciences from the Universidade Nacional do Estado de Sao Paulo (UNESP). The objective of bringing non-EU institutions on board was to broaden the collaboration among animal welfare specialists to develop, refine, standardise and calibrate welfare measures and to identify and validate practical remedial measures. Technical visits and workshops are another channel to enhance cooperation between European and Brazilian universities. For instance, students and professors from the Livestock Department of the Wageningen University and Research Centre (WUR) have visited farms and slaughterhouses in Brazil to discuss local experiences of beef cattle welfare during transport. Additionally, the School of Veterinary Sciences from Bristol University (United Kingdom) often welcomes research fellows from Brazil into their Animal Welfare and Behaviour research programme.

4.3. *Initiatives within international economic relations*

The growing commitment of companies to operate their businesses in a socially responsible manner is providing several opportunities for improving animal welfare worldwide. An increasing number of food companies (retailers, service companies, manufacturers, processors and producers) have started to integrate farm animal welfare into their management systems (Amos and Sullivan, 2013). For example, McDonald's, KFC, Burger King, Wendy's, Subway, Unilever, Nestlé, Cargill, Tesco, Royal Ahold, Carrefour, Safeway, Marks&Spencer and many other

major international food companies and retailers have publicly communicated their commitment to the welfare of animals across their food supply chain. Consequently, these companies increasingly require suppliers to ensure compliance with animal welfare practices. The process of setting these standards can be firm based, NGO based, or a joint venture. For instance, individual schemes for animal welfare standards have been developed by Carrefour (named *Filière Qualité*) and by McDonald's. Freedom Food and Beter Leven are examples of animal welfare standards that are developed by animal protection NGOs. These animal welfare standards have been incorporated in the brand of the major Dutch food retailer Royal Ahold. An example of a collectively developed standard is the Global Partnership for Good Agricultural Practice (GloBaGAP) and the British Retail Consortium (BRC). Against this background, the main cross-national economic channel that appeared in our empirical investigation was the client–supplier relation. That is, the contractual relation between one of the above food companies and a Brazilian processing plant serves as a channel through which alignment between client animal welfare policies and supplier animal handling practices is established. For instance, Marfrig, one of the largest Brazilian food processing companies, supplies processed meat to McDonald's, KFC, Tesco, Sainsbury's and Waitrose. As such, Mafrig must abide by a commercial contract with these companies to comply with specific animal welfare guidelines.

Another channel connecting European and Brazilian market actors in the field of animal welfare is the Brazilian Roundtable on Sustainable Livestock. Created in late 2007 and formally constituted in June 2009, this roundtable works as a multi-stakeholder platform that discusses ways to ensure that livestock operations in Brazil are conducted in a socially just, environmentally friendly and economically viable manner. The Brazilian Roundtable is attended by representatives of industries and industry organisations, associations of farmers, retailers, banks, civil society organisations, financial institutions, research centres and universities. Among the participant members are the International Finance Corporation, Rabobank Group and Banco Santander. These are international financial institutions, which have recently decided to take farm animal welfare issues into account in their investment decisions. The growing interest of investors in how companies in the food sector manage farm animal welfare is associated with NGO pressure and reputational damage that can occur for companies whose standards and practices have fallen short of the NGO's and other stakeholder's expectations (Sullivan, Amos, & Ngo, 2012; Wagemans, van Koppen, & Mol, 2014). In this context, investors have begun to exert influence on the companies in which they invest by encouraging them to follow the animal welfare recommendations of OIE, FAO, the European Convention for the Protection of Animals and/or the animal welfare directives of the EU. To help investors assess the performance of companies on farm animal welfare-related issues, a global benchmark project has been initiated by two of the world's largest animal welfare NGOs: WSPA and the Compassion in World Farming. The BBFAW evaluates company performance in managing farm animal welfare across three pillars: Management Commitment and Policy, Governance and Policy Implementation and Leadership and Innovation. The initial evaluation in 2012 assessed 68 global food companies and concluded that farm animal welfare is receiving far less attention than other corporate social responsibility issues. According to Nicky Amos and Sullivan (2012), the Business Benchmark's programme director, even though over 70% of the assessed companies acknowledge farm animal welfare as a business issue, many have yet to publish a formal policy and fewer still have specific commitments in this area.

5. Innovative paths for farm animal welfare

As elaborated above, world trade policy is no longer the exclusive arena of Geneva-based trade negotiators. The evolving international political landscape is marked by a growing number and variety of non-diplomatic participants that determine the structures and processes of transnational

governance. Our empirical investigation revealed that like other policy fields, there are several initiatives parallel to the traditional WTO setting that are currently advancing farm animal welfare policies within IR. We found that within EU–BR there are a string of state and non-state actors seeking to enhance the development and implementation of animal welfare measures through distinct channels of interaction. Figure 2 provides a schematic summary of the research findings to illustrate current initiatives in animal welfare policy between European and Brazilian actors.

The first interesting insight that comes by looking at the below picture is that although in theoretical debates there is an implicit tendency of some scholars to link modes of governance based on harmonisation and imposition with state actors, and civil society and market actors with modes of governance based on diffusion, we observed an indiscriminate use of modes of governance among actor categories. That is, governmental officials use diffusion mechanisms as much as non-governmental actors use mechanisms of multilateral harmonisation and unilateral imposition. In addition to the expected harmonisation via governmental officials, we found BBFAW, GTPS and ISO to be examples of privately driven harmonisation. These organisations serve as a platform for non-governmental actors collaborating towards the harmonisation of animal welfare standards in a similar way as the WTO and OIE do when providing instruments for governmental officials to multilaterally harmonise trade-related matters of animal welfare. Likewise, unilateral conditioning was a form of governance also exercised by both government agents and private actors. In the first case, the example is in conditions set by the European Commission to permit access into the EU market (the establishment approval procedure). In the case of private actors, the example is in the incorporation of animal welfare standards into commercial contracts between retailers and suppliers.

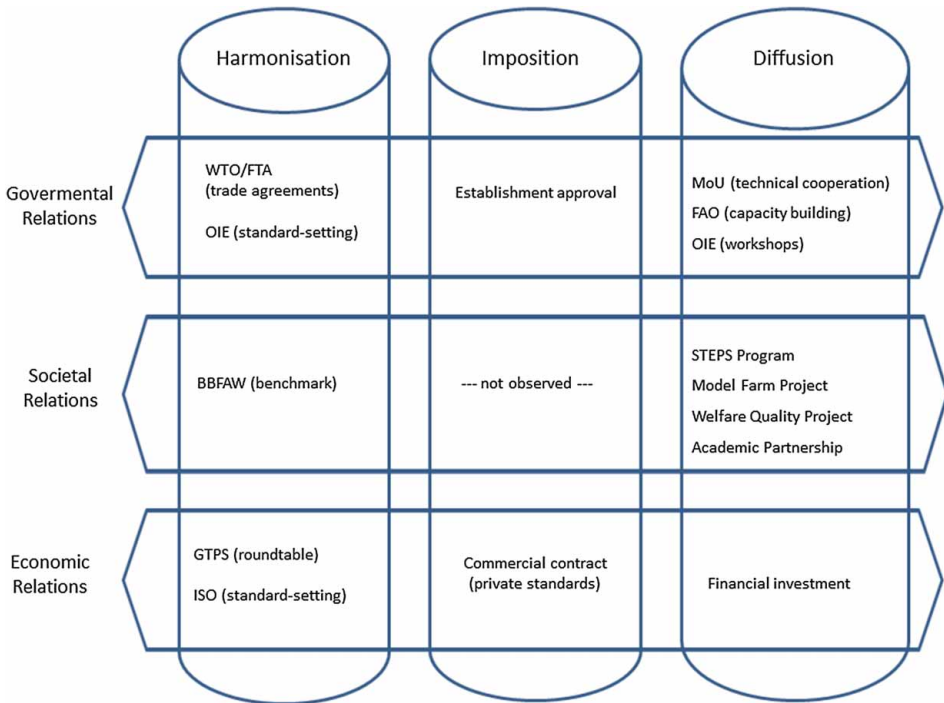


Figure 2. Transnational paths of animal welfare politics.

Another interesting observation coming from the diagram is that diffusion constitutes an important pillar in the architecture of international trade governance for animal welfare between Europe and Brazil. The majority of activities through which European and Brazilian actors are addressing the challenge of developing and implementing equivalent animal welfare policies and practices seem to be based on knowledge sharing and diffusion. The MoU between DGSanco and MAPA, the FAO capacity-building programme, the collaboration between WSPA and MAPA in the STEPS programme, the academic partnership among researchers from the Welfare Quality Project, ETCO group and Wageningen University and Research Centre livestock group, and the promotion of animal welfare practices through financial investments are all channels for the dissemination of information, best practices, policy instruments and concepts that enhance the development and implementation of measures to protect the welfare of farm animals. In the context of international law, the above initiatives fall within the nomenclature of *soft* instruments. In contrast, treaties and trade agreements that are legally enforceable commitments and thus considered hard instruments. According to the extensive literature (e.g. Footer, 2008; Kirton & Trebilcock, 2004; Rahman & Amin, 1999; Ramlogan, 2001; Shelton, 2003; Skjærseth, Stokke, & Wettestad, 2006), soft policy instruments are a suitable means to pave the way for subsequent multilateral agreements because of their non-legally binding character that facilitates cooperation between countries that may not be ready to enter binding legal agreements on a particular issue. It is then reasonable to expect that initiatives like the MoU, STEPs that are soft instruments based on knowledge sharing, are laying the groundwork for future diplomatic alignment in trade-related aspects of animal welfare.

Another finding from our research indicates that in the field of animal welfare the distinction between soft and hard instruments is becoming blurred. As several other scholars have noted (e.g. Evans, 1996; Falkner, 2003; Fuchs, Kalfagianni, & Arentsen, 2009; Henson, 2008; Stoker, 1998; Vogel, 2008; Wolff & Scannell, 2008) in a range of policy fields, the boundaries between state and non-state regulations, soft and hard instruments, voluntary and mandatory regulations, can no longer be sharply drawn. There are situations where 'soft laws can become "harder", and norms can become more law-like' (Vogel, 2006, p. 05). In our investigation we observed this sort of 'inversion' in the second pillar of governance modes. The imposition of conditions for establishment approval is considered to be a form of hard governance, given the obligatory character of compliance to these conditions to enter the EU market. However, some EU provisions regarding the need for imported products to meet equivalent animal welfare standards are currently having their 'hardness loosened up'. For instance, Council Directive 2008/119 for the protection of calves and Directive 2008/120 for the protection of pigs establish that:

In order to be imported into the Community, animals coming from a third country must be accompanied by a certificate issued by the competent authority of that country, certifying that they have received treatment at least equivalent to that granted to animals of Community origin as provided for by this Directive.

Some of our respondents explained that the above provision is currently not imposed upon countries exporting to the EU because of the uncertain status of animal welfare measures under the WTO. Hence, to avoid an international trade conflict in the WTO, officials from FVO are taking a cautious approach when imposing this animal welfare measure upon other countries. Conversely, the incorporation of animal welfare measures in a food company list of requirements for suppliers is, at least in theory, a soft mode of governance because suppliers are not required by law to enter into a commercial contract. However, the 'softness' of the commercial requirement has 'stiffened up' with market concentration. The high level of concentration among food retailers has generated asymmetric power relations along the chain, so suppliers have hardly any alternative but to comply with private standards in order to assure market access

(Konefal, Mascarenhas, & Hatanaka, 2005; Wolff & Scannell, 2008). Hence, some scholars have suggested that some private standards have become a *de facto* mandatory import requirement to access the European market (Busch & Bain, 2004; Fuchs & Kalfagianni, 2010; Hatanaka, Bain & Busch, 2005; Henson & Jaffee, 2008; Konefal et al., 2005; Lang & Heasman, 2004; Stanton, 2012; Van Der Meulen, 2011; Wolff & Scannell, 2008). Private standards having the effect of a hard policy instrument is causing great concern among trade diplomats at the WTO.

6. Private standards: paving the way or deviating from it?

In the context of the global governance of animal protection, the use of private standards has brought substantial cross-border gains. According to several researchers, the inclusion of private animal welfare standards in contractual arrangements with suppliers has served as a major catalyst for the improvement in welfare conditions for animals within and across several countries (Fulponi, 2006; Lindgreen & Hingley, 2003; Maciel & Bock, 2013; Sansolini, 2008). The quickly evolving role of private standards in the regulation of international trade has, however, raised a series of questions and concerns regarding a possible deviation from the rule-based system of the WTO. In other words, there are growing concerns that some WTO members may be trying to escape their multilateral trade obligations by instructing, promoting or simply allowing private entities to develop regulatory measures which would otherwise be inconsistent with WTO regulations.

This discussion reached the WTO in 2005 when the representative of St. Vincent and Grenadines reported during a meeting among WTO trade officials that compliance with EurepGAP norms was a *de facto* condition for exporting bananas to the UK's supermarkets (see G/SPS/R/37). Since this meeting, the use of private standards as a means to address quality and safety food-related issues in exporting countries has become a recurrent topic of discussion at the SPS Committee of the WTO. Over a dozen reports have been circulated within this committee addressing the issue of private standards. See, for instance, G/SPS/GEN/802, G/SPS/W/247, G/SPS/GEN/932, G/SPS/GEN/1100 and G/SPS/W/256. Concerns over the use of private standards in the field of animal health, food safety and animal welfare have also been raised at the OIE level. Members of the OIE have voiced serious concerns about the potential for private standards to have trade limiting and trade distorting effects. In contrast with OIE standards that are developed on the basis of a scientific risk assessment and adopted through consensus among all the 180 members the OIE, private standards are adopted on the basis of commercial considerations and thus potentially lead to the discriminatory treatment of certain products or countries.

To prevent the use of private standards from undermining what it is considered 'the hard won improvements in market access arrangements' (Doc G/SPS/GEN/822, item 03), some scholars and practitioners of international law have suggested that private standards need to be developed and applied in congruence with the WTO rules. This is, however, a highly contested claim because there are different interpretations regarding a WTO Member's responsibility for measures enacted by non-governmental entities. While some hold the view that WTO Members bear the responsibility for private standards enacted within their own jurisdiction, others understand that private standards fall outside the WTO scope (Huige, 2011; Prevost, 2008; Wouters & Geraets, 2012).

7. Conclusion

Concerns relating to animal welfare have gained considerable attention across a number of countries. However, there is still uncertainty about how to accommodate animal welfare measures within the WTO legal system. This paper, through an empirical investigation with European and Brazilian

actors, has sought to identify and analyse the current initiatives beyond the WTO that are enabling countries to reach a common understanding about the development and implementation of animal welfare policies. Our analytical framework provided us with a tool for mapping a comprehensive set of initiatives involving governmental, societal and market actors that serve as alternatives for the conventional state-based harmonisation model of international trade governance.

From the EU–Brazil case, it can be concluded that knowledge sharing activities constitute a significant governance mechanism used by state and non-state actors to exert influence over the development and implementation of equivalent animal welfare practices. However, further research with different pairs of nations or within the same EU–Brazil relation but on a different sensitive trade issue, is needed before these empirical findings can be generalised. What can be concluded now is that the third pillar of global trade governance provides a path for non-diplomatic trade actors to mitigate the current impasse at the WTO regarding trade measures addressing animal welfare.

Moreover, our study contributes to an ongoing scholarly debate on the fluidity of policy instruments by providing empirical evidence on the softness of hard instruments (e.g. establishment approval) and the hardness of soft instruments (e.g. commercial contracts). A full analysis of the consequences of this fluidity falls beyond the scope of this article. However, the idea that private standards are a means to circumvent international trade obligations is a cause for concern. While scientific and technical cooperation could enhance the chance for future agreement on this matter at the WTO level, private standards, on the other hand, could potentially jeopardise relations among WTO Members and hamper future legal trade agreements.

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Notes

1. European Communities – Measures Prohibiting the Importation and Marketing of Seal Products.
2. This organisation has recently changed its name from World Animal Protection.
3. The Brazilian National organization for standardization is ABNT. To consult the national organization from other countries look at: http://www.iso.org/iso/home/about/iso_members.htm.
4. SSAFE is a not-for-profit organization with a membership comprising food companies that operate across global food supply chains. Current members include: Cargill, Danone, Fonterra, Keystone Foods, McDonald's, Nestle Purina, PetCare, Pfizer Animal Health and The Coca-Cola Company.

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