

Public morals in private hands?

A study into the evolving path
of farm animal welfare governance

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List of Abbreviations

| | |
|--------------|--|
| AB | Appellate Body |
| ABCS | Brazilian Association of Swine Breeders |
| ABIEC | Brazilian Association of Beef Exporters |
| ABIPECS | Brazilian Association of Pork Industries and Exporters |
| ABNT | Brazilian National Organisation for Standardization |
| BBFAW | Business Benchmark on Farm Animal Welfare |
| BR | Federative Republic of Brazil |
| BRC | British Retail Consortium |
| BSE | Bovine Spongiform Encephalopathy |
| BTSF | Better Training for Safer Food |
| CIWF | Compassion in World Farming |
| COPA-COGECA | European Farmers and European Agri-cooperatives |
| DG-SANCO | Directorate General for Health and Consumers of the European Commission |
| DG-TRADE | Directorate-General for Trade of the European Commission |
| DIPOA | Department of Inspection of Products of Animal Origin (Brazil) |
| DSU | Understanding on Rules and Procedures Governing the Settlement of Disputes |
| DS | Dispute Settlement |
| EC | European Commission |
| EEC | European Economic Community |
| EFSA | European Food Safety Authority |
| EMATER | Institute of Technical Assistance and Rural Extension (Rio Grande do Sul, Brazil) |
| EMBRAPA | Brazilian Agricultural Research Institute |
| EPAGRI | Rural Extension and Agricultural Research Enterprise (Santa Catarina, Brazil) |
| ETCO | Ethology and Animal Ecology Research Group (São Paulo, Brazil) |
| EU | European Union |
| EUROCOMMERCE | European Retail and Wholesale Association |
| FAO | United Nation Organization for Food and Agriculture |
| FAWAC | Farm Animal Welfare Advisory Council |
| FAWC | Farm Animal Welfare Committee |
| FSC | Forest Stewardship Council |
| FVO | European Food and Veterinary Office |
| GATS | General Agreement on Trade in Services |
| GATT | General Agreement on Tariff and Trade |
| Global GAP | Global Good Agriculture Practice |
| GTPS | Brazilian Roundtable on Sustainable Livestock |
| HFAC | Humane Farm Animal Care |
| IDF | International Dairy Federation |
| IEC | International Egg Commission |
| IFC | International Finance Corporation |
| IMS | International Meat Secretariat |
| IN | Normative Instruction (Brazil) |
| IR | International Relations |
| ISO | International Organization for Standardization |
| MAPA | Ministry of Agriculture, Livestock and Food Supply (Brazil) |

| | |
|--------|--|
| MoU | Memorandum of Understanding |
| MRE | Ministry of Foreign Relations (Brazil) |
| MSC | Marine Stewardship Council |
| NGOs | Non-governmental organisations |
| OECD | Organisation for Economic Co-operation and Development |
| OIE | World Organisation for Animal Health |
| PPMs | Production and Processes Methods |
| RAWS | Regional Animal Welfare Strategy |
| RDA | Raad voor Dierenaangelegenheden |
| RSPCA | Royal Society for the Prevention of Cruelty to Animals |
| SAG | Chilean Agricultural and Livestock Service |
| SIF | Brazilian Federal Inspection Service |
| SPS | Sanitary and Phytosanitary Measures |
| SSAFE | Safe Supply of Affordable Food Everywhere |
| STEPs | Brazilian Program for Humane Slaughter |
| TBT | Technical Barriers to Trade |
| TNC | Transnational Corporations |
| UBABEF | Brazilian Poultry Association |
| UDESC | Santa Catarina State University (Brazil) |
| UECBV | European Livestock and Meat Trades Union |
| UFSC | Federal University of Santa Catarina (Brazil) |
| UFSM | Federal University of Santa Maria (Brazil) |
| UK | United Kingdom |
| UN | United Nations |
| UNESP | São Paulo State University (Brazil) |
| US | United States of America |
| VCJD | Variant of Creutzfeldt-Jacob disease |
| WAP | World Animal Protection |
| WEO | World Environment Organisation |
| WSPA | World Society for the Protection of Animals |
| WTO | World Trade Organization |
| WWF | World Wide Fund |

1

Research Introduction

1. Research Introduction

Historically speaking, the protection of animals against cruelty is an ancient societal concern. Discussions among Greek and Roman philosophers have already raised questions of the moral status of animals and ideas of possible human duties to protect them. However, it is only in the modern era that the idea of protecting the welfare of animals has gained societal attention. In the following sections, I will outline the change from animal cruelty to animal welfare and the consequences of this development in terms of public policy goals. Next, I will explain why governmental policies addressing growing societal demand for the protection of animals have become controversial at the international level and why non-governmental policy instruments to uphold public morals regarding the treatment of animals developed. I then elaborate on the research presented in this study, detailing the research questions, applied theoretical framework and research design.

1.1. A historical overview about animal protection: from cruelty to welfare

Approaches to animal protection exist in a continuum that runs from animal exploitation to animal liberation. Broadly speaking, animal protection can be pursued through the prevention of animal *cruelty*, the promotion of animal *welfare* or the establishment of animal *rights*. Animal cruelty has long been the object of regulation, however there is no universal definition of cruelty since each country has its own concept of what constitutes inappropriate behaviour towards animals. Nonetheless, we find that in general, national legal statutes concerning animal cruelty refer to actions intended to cause harm, distress, pain, suffering, or death to an animal. Usually, cruelty to animals is typified as a criminal offence for which one may be subject to a financial penalty or imprisonment. At the extreme end of the continuum are animal rights, which reflect a philosophical approach that rejects all forms of animal use. The doctrinal basis for this rejection is the belief that denying rights to non-human animals based on their species is morally wrong. For the animal rights movement, *speciesism*¹ is unjust just as racism and sexism. Therefore, the social movement for animal rights seeks to outlaw the use of non-human animals as

1 The term speciesism was coined by psychologist Richard Ryder in 1973, "I use the word 'speciesism' to describe the widespread discrimination that is practised by man against other species ... Speciesism is discrimination, and like all discrimination it overlooks or underestimates the similarities between the discriminator and those discriminated against". The most common manifestation of speciesist discrimination is moral anthropocentrism, which is the devaluation of the interests of those who do not belong to the human species. Philosophers Peter Singer and Tom Regan define speciesism as bias against all non-humans. To learn more about the abolitionist position see, e.g., Francione and Garner (2010) or Svård (2008).

resources², be it for food, clothing, sport, companionship or medical research. In contrast, animal welfare seeks to ensure that all animals used by humans have their basic needs fulfilled in terms of food, shelter and health and that animals experience no unnecessary suffering in providing for human needs. It is important to note that, while animal rights are pursued by policies that eliminate all forms of animal use and thus the consumption of all products derived from animals, the fulfilment of animal welfare is pursued by policies that improve the conditions under which animals are used. The American philosopher Tom Regan (2005) has illustrated the different positions between animal rights and animal welfare by saying that while the former advocates for *no cages*, the latter advocates for *bigger cages*.

The emergence of the animal welfare movement is associated with the publication of "Animal Machine: an exposé of factory farming and its danger to the public" by Ruth Harrison³ (1964). In her book, Harrison denounced the dreadful side of intensive livestock production. She described not only the animal pain and suffering that intensive farming has caused to animals but also alarmed the public on unsafeness of products originating from animals raised under miserable conditions. Published in Britain in 1964, this book had a considerable impact in the public debate over "factory farming" and its inhumane methods of production, such as battery cages for hens, individual crates for veal calves and tether stalls for sows (Woods, 2012). In response to public outrage over the conditions of animals raised for human consumption, the British government appointed a technical committee under the chairmanship of Professor Brambell to "examine the conditions in which livestock is kept under systems of intensive husbandry and to advise whether standards ought to be set in the interest of their welfare, and if so what they should be" (HMSO London, 1995). That committee confirmed that animals were raised under poor conditions and in a cruel manner and recommended that new general and specific legislation was necessary to safeguard the welfare of farm animals. In the words of Prof. Brambell, all animals should have the freedom "to stand up, lie down, turn around, groom themselves and stretch their limbs" (HMSO London, 1995). Following Brambell's recommendation, the British government created the Farm Animal Welfare Advisory Committee (FAWAC) in 1967 and introduced some statutory provisions for the welfare of livestock in the 1968 Agriculture Miscellaneous Provisions Act. In 1979, the FAWAC

-
- 2 Movements, such as the abolitionist (or animal liberation) movement, established an international vegan standard trademark in 1991. This scheme is operated by The Vegan, which requires companies displaying the trademark to adhere to specific criteria, such as the abstinence from non-human animal ingredients, testing, genetically modified organisms, and contamination from non-vegan sources in production. For more information on this movement, see WRENN (2011). Resisting the globalization of speciesism: Vegan abolitionism as a site for consumer-based social change. *Journal for Critical Animal Studies* 9: 9-27.
 - 3 The book includes a foreword by Rachel Carson, author of "Silent Spring" (1962), which is widely recognized for awakening environmental consciousness in United States and elsewhere.

was replaced with the Farm Animal Welfare Council (FAWC), an organisation that later refined Brambell's idea on how animals should be kept as the *five freedoms of animals*⁴. These are described in Table 1.1.

Table 1.1. Five freedoms of animals

| | |
|--|---|
| 1. Freedom from Hunger and Thirst | - by ready access to fresh water and a diet to maintain full health and vigour. |
| 2. Freedom from Discomfort | - by providing an appropriate environment including shelter and a comfortable resting area. |
| 3. Freedom from Pain, Injury or Disease | - by prevention or rapid diagnosis and treatment. |
| 4. Freedom to Express Normal Behaviour | - by providing sufficient space, proper facilities and company of the animal's own kind. |
| 5. Freedom from Fear and Distress | - by ensuring conditions and treatment which avoid mental suffering. |

In the years since Ruth Harrison and Roger Brambell's publications, a new social ethic towards animals has begun to evolve. Merely preventing cruelty and avoidable suffering is no longer enough; it is necessary to complement the anticruelty approach of animal protection with the promotion of animal well-being by ensuring that their physical, behavioural and psychological needs are met (Horgan and Gavinelli, 2006; Rollin, 2004; Veissier, Butterworth, Bock, and Roe, 2008). This new ethic based on care and responsibility has stimulated a range of scientific and technical efforts to study, assess, and improve the level of individual quality life of animals (Fraser, 1999; Fraser and Weary, 2004). Initial studies have focused on quality of life issues stemming from common husbandry practices, such as the production of eggs in battery cages and rearing of pigs and veal calves in close confinement. By trying to identify space or high stocking densities affect the conditions and behaviours of animals, scientists such as Dawkins (1983) and Appleby and Hughes (1991) have found that cage size and shape can increase the risk of stress, disease and suffering in animals. Over the years, the scope of research in animal welfare has progressed beyond investigations of space allowances and types of flooring. Currently, it encompasses a variety of putative welfare problems in intensive agriculture, biomedical research and product testing. As scientific investigations into animal welfare gradually increased, it became commonly accepted by scientists that animals are sentient⁵ beings that are capable

4 <http://www.fawc.org.uk/freedoms.htm>

5 Sentience is the ability to experience pain or pleasure.

of experiencing positive and negative senses and emotions and have consciousness of this experience (Duncan, 2006). In addition, a new discipline with its own courses, textbooks, journals, research departments emerged. The publication of "The science of animal welfare" by Marian Dawkins in 1980 is considered a symbol of the establishment of this distinguished scientific field of research (Duncan, 2005).

Scientists have strived to define the meaning of welfare and to elaborate indicators to measure it since the earliest days of animal welfare science. Various conceptions and definitions of animal welfare have led to different research methods and different ways of interpreting results (Duncan and Fraser 1997). According to Fraser (1999, 2008, 2009; Fraser and Weary, 2004), the different conceptions that scientists (and members of society) hold in relation to animal welfare can be clustered under three main lines of reasoning: physiological functioning, affective states and natural behaviour. In the first line, animal welfare corresponds to animals being healthy and thus physiological parameters, such as productivity, behaviour, and other health-related aspects, are the main indicators for assessing the welfare of animals. For those who approach animal welfare as affective states, the presence or absence of pain, distress, joy, or other emotion determines whether an animal is experiencing a good quality of life. In another approach, living conditions, which includes the ability of animals to live reasonably natural lives, must be taken into consideration. Thus, animal welfare for this group relates to the ability of an animal to perform a wide range of natural species-specific behaviours. In implementing animal welfare practices or developing animal welfare standards, Duncan (2005) and Fraser (2009) argue that it is important to keep all the above viewpoints in mind. In that sense, in debating the direction of animal welfare research and public policies, it is valuable to engage a broad definition of animal welfare that includes biological, affective and environmental aspects. The World Organisation for Animal Health (OIE)⁶ has adopted the following working definition:

"Animal welfare means how an animal is coping with the conditions in which it lives. An animal is in a good state of welfare if (as indicated by scientific evidence) it is healthy, comfortable, well nourished, safe, able to express innate behaviour, and if it is not suffering from unpleasant states such as pain, fear, and distress. Good animal welfare requires disease prevention and veterinary treatment, appropriate shelter, management, nutrition, humane handling and humane slaughter/killing. Animal welfare refers to the state of the animal; the treatment that an animal receives is covered by other terms such as animal care, animal husbandry, and humane treatment" (OIE, Terrestrial Animal Health Code Chapter 7.1)⁷.

6 OIE stands for Office International des Épizooties. In May 2003, the Office became the World Organisation for Animal Health but kept its historical acronym.

7 The OIE's Terrestrial Animal Health Code 2010 is available at <http://www.oie.int/index.php?id=169&L=0&htmfile=chapitre_1.7.1.htm>.

An important point to remember is that animal welfare is 'inextricably connected' with certain moral values (Fraser, 1997, 1995; Tannenbaum, 1991). Hence, although science is of paramount importance to identifying, solving and preventing animal welfare problems, this field cannot be approached from a purely objective perspective (Duncan, 2005; Fraser, 1999). In Duncan's own words, "the driving force behind this science is society's ethical concern about the quality of life experienced by farm animals" (2005, p. 483). Blokhuis et al. (2000), Matthews and Hemsworth (2012) and Ohl and van der Staay (2012) further emphasize important interactions between science and society. In short, they all argue that assessing whether certain practices hinder animal welfare involves a complex interplay between public moral values and factual evidence.

1.2 Protecting animals in a internationalized economy: constraints and alternatives

In response to increasing scientific research and political activity around the idea of animal welfare, governments in many countries, notably in Europe, started to reform their national regulatory frameworks for animal protection. Henceforth, the domestic legal scope of animal protection in several jurisdictions began to include minimum welfare requirements for the use of animals in addition to pre-existing anti-cruelty provisions. Consequently, a series of well-established practices, including the use of animals in the cosmetics and fur industries, the confinement of calves in veal crates and pregnant sows in gestational stalls, among others, began to be restricted or banned under animal welfare considerations. Table 1.2 offers a short overview of some relevant legal provisions enacted between the mid-1960s and the mid-1990s with the objective of protecting and promoting the welfare of animals in different contexts.

Over the years, however, enacting domestic animal welfare policies became a complex matter with far-reaching political-economic implications because national economies have increasingly become integrated through international trade agreements. As a result, the ability of governments to maintain restrictive measures on the grounds of animal welfare has, to a certain extent, become constrained. This occurs because in a context of internationalised economies, maintaining animal welfare provisions stricter than those of trading partners may harm national producers, as compliance with these provisions generally implies extra production costs (Eurogroup for Animal Welfare, 2000; WTO, 2000; Horgan and Gavinelli, 2006). The option of demanding that trading partners follow equivalent animal welfare standards is not less problematic, as the disciplines of trade agreements subject governments to a complex set of commitments that, if violated, may result in trade disputes (Blandford and Fulponi, 1999; Hobbs et al., 2002a). One of the first countries to

Table 1.2. Summary of legislative developments concerning animal protection

| Year | Region | Relevant development |
|-------------|---------------|---|
| 1966 | US | Animal Welfare Act (also known as the Laboratory Act) regulated the transport, sale and handling of dogs, cats, guinea pigs, nonhuman primates, hamsters and rabbits intended for research or other purposes. |
| 1968 | UK | Agriculture Act (Miscellaneous Provisions) provided for farm inspections and required record keeping, animal freedom of movement, standards for buildings and equipment, and feeding and watering. |
| 1971 | Europe | European Convention for the Protection of Animals during International Transport. |
| 1972 | US | Marine Mammal Protection Act prohibited the taking and harassment of sea otters, seals, sea lions, walruses, whales, dolphins, and porpoises. |
| 1976 | Switzerland | Animal Protection Act limited the circumstances under which animals could be used in experimentation. |
| 1978 | Europe | European Convention for the Protection of Animals Kept for Farming Purposes. |
| 1986 | Europe | Council Directive 86/609/EEC on the approximation of laws and administrative provisions of the Member States regarding the protection of animals used for experimental and other scientific purposes. |
| 1987 | UK | Veal crates and iron deficient diets for veal calves are outlawed. |
| 1988 | Sweden | Enacts sweeping animal agriculture reforms, including a ban on gestation crates, and requirements that cows and pigs have access to straw and litter in their stalls and that cattle older than six months be permitted to graze. |
| 1988 | Europe | European Convention for the Protection of Animals Kept for Farming Purposes. |
| 1988 | Europe | Council Directive 88/166/EEC laying down minimum standards for the protection of laying hens kept in battery cages. |
| 1988 | Sweden | Animal Welfare Act mandated that by 1994, all battery cages for laying hens must be fitted with a claw shortening system and a perch. |
| 1991 | Europe | Council Directive 91/629/EEC laying down minimum standards for the protection of calves. |
| 1991 | Europe | Council Directive 91/628/EEC on the protection of animals during transport. |
| 1991 | Europe | Council Directive 1991/3254/EEC prohibiting the use of leghold traps in the Community and the introduction of pelts or manufactured goods from certain wild animals species originating in countries that catch them by means of leghold traps or trapping methods that do not meet international trapping standards. |

Table 1.2. Continued

| Year | Region | Relevant development |
|------|---------|---|
| 1992 | US | Animal Enterprise Protection Act. |
| 1993 | Europe | Council Directive 93/119/EC on the protection of animals at the time of slaughter or killing. |
| 1996 | Finland | Animal Welfare Act providing general guidelines for the housing and care of animals. |

experience this economic-political impasse was the United Kingdom (UK). In the years following UK accession to the European Economic Community (EEC) in 1972, UK policy makers felt that domestic achievements in animal welfare were undermined by the Treaty of Rome, which, as interpreted at that time, precluded UK restrictions on imports from other Community Members on the grounds of animal welfare conditions⁸ (Barclay and Hughes, 1998; Harrison, 1993). Thus, soon after the UK adopted strict national animal welfare standards, there was a partial reallocation of British livestock production to the Continent, mostly to the Netherlands, where animal welfare standards were lower than in UK. Over the years, animal welfare measures were increasingly adopted at the EEC level, ameliorating this situation within the European internal market. However, the political-economic impasse of adopting strict domestic animal welfare measures remained (and even deepened) outside the European Community (now the European Union) with the formation of new disciplines on international trade.

With the conclusion of the Uruguay Round of Multilateral Trade Negotiations (1986-1994) and the consequent establishment of the World Trade Organisation (WTO) in January 1995, the multilateral trading system was greatly strengthened. Prior to the creation of the WTO, international trade was conducted under the auspices of a provisional agreement drafted in 1947 known as the General Agreement on Tariff and Trade (GATT). Substantively, the core disciplines did not change with the move from the provisionally applied GATT to the permanent WTO because the provisions of the former had been incorporated into the latter. However, the scope and force of the multilateral trading systems had significantly increased with the new institutional arrangement. Embodied in the WTO's legal framework are a number of other agreements that establish additional disciplines to the GATT (e.g., the Agreement on

8 For a full explanation of why UK animal welfare legislation could be interpreted as an infringement of EEC law, read the report elaborated by the British Science and Environment Section of the House of Commons Library. Available at: <<http://www.parliament.uk/briefing-papers/RP00-11.pdf>>.

the Application of Sanitary and Phytosanitary Measures – SPS – and the Agreement on Technical Barriers to Trade - TBT) as well as agreements that expand the coverage of international trade law to areas that had not been subject to GATT discipline, such as agricultural products. Furthermore, unlike the GATT, which had relatively informal procedures for adjudicating legal disputes between signatory countries, the creation of the WTO marked the establishment of an enhanced mechanism for dispute resolution that is detailed in an agreement known as the “Understanding on Rules and Procedures Governing the Settlement of Disputes” (DSU). Despite having the same basic elements of the GATT resolution system, the new WTO’s DSU greatly improved the enforcement of multilateral trading rules by introducing an element of automaticity. Previously, the findings of a GATT Panel would only have legal effect and become binding on the parties to the dispute if the Panel report was adopted by a consensus among all GATT contracting parties. Under the new system, decisions from the WTO Panel or the Appellate Body (AB) are adopted ‘automatically’ unless there is a consensus to reject it. In other words, the WTO applies a negative consensus approach to its dispute settlement procedures, thereby making a ruling automatically binding upon the parties. Consequently, within the first six years of the WTO system there were more dispositive reports⁹ adopted than over the previous twenty years of the GATT dispute system (Goldstein and Steinberg, 2009, p. 227). The above features contributed to a greater consideration of international trade law in domestic policy-making processes, particularly when a restriction or ban on trade is at stake (Princen, 2004).

In the agreements administered by the WTO, there is no explicit reference to animal welfare measures. Nonetheless, the increased salience of international trade law in domestic policy making appeared as an obstacle to further progress in this policy domain. As the jurisprudence of the GATT/WTO unfolded, there was growing uncertainty among scholars and policymakers about whether a trade measure grounded in animal welfare considerations would survive a challenge under the WTO legal framework¹⁰. As a result of this uncertainty, reluctance to implement measures to protect and promote the welfare of animals has emerged, notably, in the European Union, where at least three animal welfare regulatory measures that restricted trade were changed or conditioned to ensure conformity with WTO law (Búrca and Scott, 2000; Stevenson, 2002; Princen, 2004). The first measures related to the use of leghold traps. In 1991, Council Regulation 3254/91 prohibited the use of leghold traps

9 By dispositive reports, Goldstein and Steinberg (2009) mean adopted panel reports in cases in which there was no appeal and adopted Appellate Body reports in all other cases.

10 Three cases have particularly contributed to such a perception: Tuna-Dolphin, Shrimp-Turtle and EC-Beef Hormones. For a detailed explanation of how these cases have contributed to the formation of a negative perception of the compatibility between animal welfare measures and the WTO legal framework, see, for instance, Archibald, 2008; Stevenson, 2002.

in the European Community (now the European Union). The Regulation had also foreseen a ban on the import of pelts and manufactured goods from certain wild animal species originating in countries that catch them by leghold traps or trapping methods that did not meet international humane trapping standards. The import ban was to enter into effect on 1 January 1995, with the possibility of a one-year postponement. In 1994, the Canadian government requested consultations¹¹ with the EC under the GATT. The transition from the GATT to the WTO in 1995 contributed to increase the sensibility of the Commission regarding the lobbying of fur producing countries because the EC would no longer unilaterally block the establishment of a dispute resolution or the implementation of an unfavourable Panel ruling. Despite the overwhelming majority in the European Parliament supporting a total ban on imports of fur caught in leghold traps, the Commission decided to enter into negotiations with Canada, the United States and Russia because the prospect of a WTO Panel was not attractive. There was serious doubt about whether the European leghold trap regulation would be found legitimate under the GATT/WTO discipline as the context very much resembled the *Tuna-Dolphin* case in which the United States embargo on non-dolphin-friendly tuna was found inconsistent with GATT rules.

Another European measure affected by the urge to comply with international trade law was a ban on the animal testing of cosmetic products. In 1993, the Council Directive 93/35/EEC, which amended Directive 76/768/EEC, had introduced a ban on the marketing of cosmetic products containing ingredients or combinations of ingredients that had been tested on animals. The ban was to come into force on January 1st, 1998. However, the date of the ban was postponed until June 30th, 2000 (by Directive 97/18/EC) and then again until June 30th, 2002 (by Directive 2000/41/EC). The basis for postponement was twofold: insufficient alternative testing methods and ensuring that the measure was WTO-compliant. In relation to the latter, the Commission, in its explanatory memorandum on the proposed delay of the ban, highlighted, “WTO rules forbid any discriminatory measures between similar products. [...] As the test method does not have any physical effect on the product, discrimination on this basis [animal testing] could be considered to be contrary to WTO rules, in particular Article III of the GATT” (EC, 2000, p. 4). In addition, as the Commission explains, “it is doubtful¹² whether Article XX of the GATT 1994 could provide sufficient justification for measures of this nature” (EC, 2000, p. 5). The ban of battery cages for laying hens has also been affected by WTO concerns. In 1999,

11 The request for consultation formally initiates a dispute in the GATT/WTO framework.

12 The GATT 1994 Article XX presents some general exceptions from international trade obligations for unilateral measures considered to be necessary to (a) protect public morals and (b) protect human, animal or plant life or health, among other things. It was not until May 2014, when the AB report on the EC-Seals Product case (DS 400 and DS 401) was circulated, that it became recognized that Article XX(a) can legitimate trade restrictions grounded in animal welfare. Further details on this decision are given in the chapters, especially in section 6.4

Council Directive 99/74/EC, which defined minimum standards for the protection of laying hens, stipulated that as of January 1st, 2012, the use of battery cages in the territories of Member States would be prohibited. Notwithstanding, in Article 10, one reads that no later than January 1st, 2005 the Commission should submit a report on the various systems of rearing laying hens to the Council. The report was to draw upon the opinions from the Scientific Veterinary Committee and on studies of the socio-economic implications of the various systems as well as their effects on the Community's economic partners. In addition, the report was to be accompanied by "appropriate proposal taking into account the conclusions of the report and the outcome of the World Trade Organization negotiation" (Directive 99/74/EC). The explicit reference to a WTO negotiation outcome in the text of the Laying Hens Directive and the adoption of a partial ban (that is, a ban that applied only to eggs produced within the EU rather than a total ban that included eggs imported from third countries) have been interpreted by animal welfare advocates as additional signs of the detrimental impact of the WTO in the advancement of animal welfare policies. In the view of Peter Stevenson, legal adviser to the Compassion in World Farming (CIWF), Article 10 of Directive 99/74/EC suggests that "if no progress is made at the WTO level on the animal welfare issue by 2005 [...] the EU may decide not to go ahead with its ban on the battery cage" (Stevenson, 2000, p.1). Stevenson explains that under current interpretations of WTO rules, a country or, in the case of the EU, a block of countries, cannot require imported products to adhere to the same welfare standards required of domestic producers, which functions as a "powerful disincentive" for further progress in animal welfare (2000, p. 1).

In June 2000, in an effort to ensure that trade rules do not undermine measures to improve animal welfare protections, the EU (at the time, the EC) submitted a proposal during the special session of the WTO's Committee on Agriculture (WTO, 2000). The EU highlighted the growing importance of animal welfare and the need for the WTO to provide a framework within which its Members could address animal welfare issues. The 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. Similar efforts have been made by civil society organisations, such as the Royal Society for the Prevention of Cruelty to Animals (RSPCA), CIWF and EuroGroup for animal welfare, which have tried to inform policy discussion at the Community level as well as within the WTO through a number of publications. These publications include, 'WTO food for thought: farm animal welfare and the WTO' (2000b); 'Hard boiled reality: animal welfare-friendly egg production in a global market' (2000a); 'Farm Animal Welfare and the WTO' (2000); and 'WTO: the greatest threat facing animal protection today' (2002). In brief, these publications argue that the system of rules enshrined in the WTO is blocking progress on animal protection because it

prevents domestic measures from discriminating against imported animal unfriendly products¹³. Thus, a plea is made to alter the WTO rules that damage attempts to improve welfare standards. The complaints and frustrations of animal protection activists greatly coincide with those of environmental and human rights advocates¹⁴.

In response to the above-mentioned shortcomings of traditional state-centred regulation that resulted from strengthening the international trade legal framework, alternative arrangements to advance animal welfare have been explored. Governments have sought to find ways beyond domestic legislation and other interested stakeholders have attempted to find innovative means to protect and promote animal welfare. The identification and assessment of these alternative arrangements undertaken by state and non-state actors is at the core of the research outlined below. This research, however, is particularly interested in the growing use of private standards¹⁵ by retailers to address animal welfare issues both within and across countries. The practice of applying private animal welfare standards is part of an increasing tendency to use certification schemes to meet societal demands, which began in the early 1990s and has since increased steadily. Within today's wide array of private standards, animal welfare issues appear both as the sole goal of a private standard certification scheme (e.g., Freedom Food¹⁶ and Beter Leven¹⁷) and intertwined with other policy issues, such as food safety and environment protection (e.g., Red Tractor¹⁸ and Filière Qualité¹⁹). Therefore, even though the overall objective of this research is to identify

13 For instance, under the contemporary interpretation of WTO rules, an egg that originated from a chicken raised in a free-range system is considered like an egg that originated from a chicken confined in a battery cage.

14 Widespread discontent with the evolving trading system resulted in massive wave of civil society opposition to the WTO. For instance, violent street manifestations marked the WTO Ministerial Meetings in Seattle in 1999, Cancun in 2003 and Hong Kong in 2005.

15 In general, private standards refer to standards designed and owned by non-governmental entities, be they for-profit (businesses) or non-profit organisations. Typically, the implementation of private standards involves the certification, verification, and enforcement of specified production practices. Legally speaking, compliance with private standards is voluntary. Conversely, governmental standards (also known as technical regulations) may be either mandatory or voluntary (Liu, 2009). At the WTO level, since 2011, there has been discussion with the aim of reaching a consensual definition of private standards related to sanitary and phytosanitary measures (SPS). The latest proposed working definition is "An SPS-related private standard is a written requirement or a set of written requirements of a non-governmental entity which are related to food safety, animal or plant life or health and for common and repeated use" (G/SPS/GEN/1334/Rev.1).

16 Freedom Food is a food labelling scheme operated by the Royal Society for the Prevention of Cruelty to Animals (RSPCA), a UK-based animal protection organisation. For more information, see: <http://www.freedomfood.co.uk/>.

17 Beter Leven is a food labelling scheme operated by the Dutch Society for the Protection of Animal (Dierenbescherming). For more information, see: <http://beterleven.dierenbescherming.nl/>.

18 Red Tractor scheme is a food labelling scheme operated by Assured Food Standards, a British organisation. For more information, see: <http://www.redtractor.org.uk/home>.

19 Filière Qualité is a food labelling scheme operated by Carrefour, a French food retailer. For more information, see: <http://www.filiere-qualite.carrefour.fr/>.

and analyse both state and non-state initiatives to advance the policy field of animal welfare, special attention is given to private standards.

1.3. Research outline

As Bayvel and Cross (2010) have noted, the evolving field of animal welfare poses a complex domestic and international public policy issue with significant and far-reaching implications for international trade considerations. To identify and understand some of these implications, a study was designed to investigate farm animal welfare developments in and between Europe and Brazil from a governance theoretical perspective. In the following section, the selection of this theoretical and geographical focus is justified, and the conceptual framework elaborated. Subsequently, the research questions as well as the methods used for data collection and analysis are presented. This chapter closes with a brief outline of the research outcomes of this doctoral thesis.

1.3.1. Main research focus

The subject of animal welfare involves considerations of animal treatment in many different areas, including, but not restricted to, the use of animals for experimental and scientific purposes; for entertainment in zoos, circus and sports; for companionship at home; and for the production of food. This research focuses on the latter use, that is, on the welfare of farmed animals such as pigs, birds, and cattle that are raised for the production of food for human consumption. Note that in some parts of this research, the welfare of animals used for other purposes may be covered. The choice of a focus on farm animal welfare rests on the rapid pace with which the livestock sector has been and will be growing. In 2009 – when this research was first outlined – a publication of the United Nations Organisation for Food and Agriculture (FAO) indicated that the production of meat would have to grow by 200 million tonnes to a total of 470 million tonnes between 2009 and 2050 to meet the expected demand of a world population of 9.1 billion (FAO, 2009a). This projection implies a significant increase in the number of animals that will be raised for meat. It is of paramount importance to focus on how animal welfare policies will unfold in this scenario, particularly because, in the view of FAO experts, “the speed of change [in the livestock sector] has often significantly outpaced the capacity of governments and societies to provide the necessary policy and regulatory framework to ensure an appropriate balance between the provision of private and public goods” (FAO, 2009b, p. vi).

The FAO report also indicates that 72 per cent of the expected growth in meat production will take place in developing countries (FAO, 2009a). Rapidly emerging

economies, such as Brazil, China and India, have already shown considerable growth in their livestock sectors. Brazil, for instance, is a country in which the production, consumption and export of livestock products has increased dramatically over recent decades. In Brazil, per capita consumption of livestock products has nearly doubled. In 1980, the annual consumption of livestock products in Brazil was 41.0 kg/capita, which had increased to 80.8 by 2005 (FAO, 2009b, p. 11). Brazil's performance in livestock product exports has also registered a considerable increase. Over the last decade, the country has increased its poultry meat exports fivefold, and exports of pig and bovine meat have risen by factors of 8 and 10, respectively (FAO, 2009b p. 21). In terms of nominal value, Brazil's net exports of livestock products increased from US\$435 million in 1995 to US\$7 280 million in 2006. In 2006, Brazil's net exports accounted for 6 per cent of global exports of pig meat, 20 per cent of bovine meat and 28 per cent of poultry meat. In view of this distinguished performance within the global livestock market, this research will focus on developments in the field of animal welfare in Brazil.

This research also concentrates on assessing animal welfare developments in Europe. As explained in the first section, animal welfare is a relatively young policy field and, as such, is surrounded by uncertainty and suspicion. Nonetheless, milestones in protecting and promoting the welfare of animals have been achieved across European countries. A particularly significant development in the legal protection of animals in Europe was the recognition that animals are sentient beings. This recognition first emerged in an animal welfare protocol annexed in the 1997 EU Treaty of Amsterdam (which became effective in 1999). In the Treaty of Lisbon, which entered into force on 1 December, 2009, reference to animal sentience was incorporated into the main body of the treaty as follows: "In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage" (Article 13 of the Treaty on the Functioning of the European Union).

The continuous effort of the European Commission (EC) and Member States to improve conditions for animals has led to a worldwide recognition of the EU as a global leader in the field of animal welfare. According to Jänicke (2005), pioneer status is a reputation, which tends to result not only from the *plurality* of policy innovations a country has but also from their *visibility* within the international community, that the country acquires by demonstrating the political and economic feasibility of certain policies under conditions of uncertainty. Most importantly, Jänicke (2005) has noted that pioneer countries usually function as "intellectual leaders" and "trend-setters" in the field they pioneer. It is thus important for this

research to focus on developments in the field of animal welfare in the European Union, as they are likely to influence the development of animal welfare in other countries.

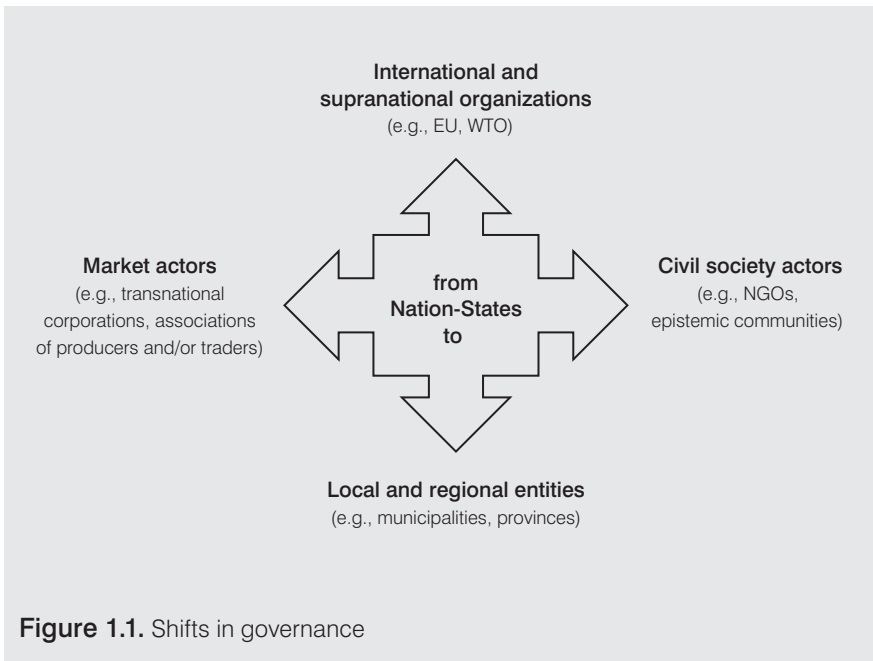
Having Brazil and the EU as reference points to explore the structures and processes involved in farm animal welfare policy making, enriches this research by simultaneously providing insights from both industrialised and emergent countries. This research is further enriched by the conceptual framework of (global) governance, which allows the researcher to move beyond the traditional state-based approaches of International Relations (IR) and thus to cover a wider range of actors and instruments involved in the process of governing. Further detail on the value of the governance perspective is provided in the next section.

1.3.2. Conceptual framework: governance

Throughout the 1990s, several path-breaking academic works in the field of International Relations (IR) provided significant insights into the trends of “governance without government” (Rosenau and Czempiel, 1992), “reinventing government” (Osborne and Gaebler, 1992), “retreat of the state” (Strange, 1996), “death of the state” (Albrow, 1996), and “hollowing-out of the State” (Rhodes, 1997). The central feature of the above set of scholarly work was the observation and theorization that long-standing state-led governing practices via ‘command-and-control’ instruments of regulation were losing centrality within the policy-making process. The decline of a central government’s ability to steer society is manifested as a series of shifts in the locations of governing practices. The literature makes reference to *upward* shifts from national states to international public institutions; *downward* shifts to local entities; and *outward* shifts to other actors not traditionally involved in regulatory activities. Figure 1.1 illustrates these shifts in central government’s ability to steer society²⁰.

The term *governance* gradually became a conceptual reference point for scholars and practitioners to consider changes in the role of nation states and emerging innovative forms of governing (Bevir, Rhodes, and Weller, 2003; Colebatch, 2009; Dingwerth and Pattberg, 2006; Jordan et al., 2005; Kersbergen and Waarden, 2004; Peters, 2011). In contrast to the narrower term *government*, the concept of *governance* offers a frame within which a wide range of actors, institutions and instruments can be included in an analysis of the process of articulating policy goals and implementing policies because, as noted by Dingwerth and Pattberg (2006, p. 191), governance “acknowledges that a plethora of forms of social organisation and political decision making exists that are neither directed towards the state nor emanated from it”. According to Pattberg (2005), by moving beyond the traditional state-based approach, the concept of (global) governance enriched the IR scholar’s

20 This figure draws upon insights from Adaptgov.com, 2012; Jordan, Wurzel and Zito, 2005; Kersbergen and Waarden, 2004.



analytical toolkit for world politics. The author highlights four features of the concept of global governance that enabled researchers to depart from traditional IR approaches and thus capture the wider range of actors and instruments that are currently involved in policy making. First, the concept includes non-state actors; second, it provides the possibility of analysing multiple spatial and functional levels of politics; third, it is also concerned with new mechanisms of producing and maintaining global public goods; and fourth, it covers the establishment of new spheres of authority beyond the nation-state (Pattberg, 2005, p. 77). In a similar vein, Weiss and Thakur (2010, p. 7) refer to global governance as “the sum of laws, norms, policies, and institutions that define, constitute, and mediate relations among citizens, society, markets, and the state in the international arena” through which “collective interests are articulated, rights and obligations are established, and differences are mediated”. For Weiss and Thakur (2010), global governance is a term that encompasses the complex of formal and informal institutions, mechanisms, relationships, and processes between and among states, markets, citizens and organisations, both inter- and non-governmental, through which collective interests on the global plane are articulated, rights and obligations are established, and differences are mediated. This encompassing characteristic allows the concept of global governance to be used as “a heuristic device to capture and describe the

confusing and seemingly ever-accelerating transformation of the international system” (Thomas G. Weiss, 2000, p. 808)

In addition, Van Kersbergen and Van Waarden (2004) suggest that the term governance could bridge different strands of literature that have sought to examine the destabilization of traditional governing mechanisms and the advancement of new arrangements of governance. Indeed, the apparent decline in the governing ability of nation-states has attracted the attention of scholars well beyond the field of IR. The concept of governance has yielded new analytical insights in a wide range of disciplines, including but not limited to political science, law, economics, sociology and geography. For instance, in the field of sociology, the debate on governance has connected to theories of modernity and has resulted in the conceptualization of political modernization. Studies of political modernization, in particular the work of Jänicke (1986, 1993) and Arts and van Tatenhove (2006) in the field of environmental governance, have offered fruitful insights on the interplay between macro-processes of social and political change and day-to-day policy processes. Changes in the practice of policy making observed by Arts and van Tatenhove (2006) include the appearance of new policy instruments, such as certification schemes jointly developed by NGOs and businesses to address environment-related concerns. The increased use of private standards as global governance tools has become a recurrent subject of analysis, particularly among political scientists and legal scholars. To account for this phenomenon of “private-rule making,” a number of studies have sought to investigate and analyse the causes and consequences as well as the legitimacy and effectiveness of regulatory arrangements that do not rely on traditional sovereignty-based form of political authority. Three certification schemes have received the most in-depth attention within this line of investigation²¹. These are the Forest Stewardship Council (FSC), the Marine Stewardship Council (MSC) and the Global GAP (former EurepGAP). Another closely related strand of literature has been dedicated to examining whether private governance reduces or alters the scope and authority of traditional domestic and international public policy-making processes. Within this line of inquiry, scholars have, for instance, investigated whether and how the WTO should consult NGOs and business actors as well as whether and how the standards elaborated by the latter shall be addressed within the WTO legal framework.

Despite the existence of a vast governance literature that crosses several disciplinary fields, the governing facets (and possible governance shifts) in the realm of animal welfare policies have only been superficially contemplated. Until now, animal welfare policies have only been featured in the governance literature as occasional references in studies concerned with shifts in the field of environment and

21 See, for instance, Bernstein and Cashore, 2004; Casey, 2009; Cashore, Auld, Bernstein and McDermott, 2007; Chan and Pattberg, 2008; Gulbrandsen, 2004; Kalfagianni and Pattberg, 2013; Marx, 2012; Moyo, 2010; Pattberg, 2005; Ponte, 2006.

food safety governance (e.g., Busch and Bain, 2004; Daugbjerg and Botterill, 2012; Fuchs, Kalfagianni and Havinga, 2011; Fulponi, 2006; Hatanaka and Busch, 2008; Ponte, Gibbon and Vestergaard, 2011; Wouters, Marx and Hachez, 2008). While, I acknowledge that studies on environment and food safety governance offer precious insights that enhance our understanding in many aspects of animal welfare policies, I argue that it is also important to place animal welfare at the centre of the analysis. As discussed above, animal welfare has evolved into a separated field of public policy, and therefore, the governing trends and developments within this policy field may or may not be similar to other fields.

1.3.3 Research questions and objectives

Along with the evolving role of animal welfare in science and society, various constraints and alternatives have emerged in the realm of domestic and international politics. Therefore, growing numbers and types of actors and instruments have appeared in the political realm of animal welfare. This research aims to critically assess how and to what extent the policy field of farm animal welfare has been affected by this dynamic. Moreover, this research seeks to determine whether constraints associated with government legislation shift animal welfare regulation into private hands. To fulfil these research objectives, the following questions guide the development of this study:

1. How have European animal welfare policy-making processes been affected by the engagement of non-state actors in regulatory activities?
2. Which factors explain the rise of farm animal welfare governance in Brazil?
3. How are farm animal welfare policies advanced within the EU-Brazil dyad?
4. To what extent do private farm animal welfare standards fall within the scope of WTO Member States' obligations encountered in Article 13 of the Sanitary and Phytosanitary Agreement (SPS)?

1.3.4. Research design and methods of data collection

This research aims to enhance political and legal knowledge on the governing animal welfare measures, especially the influences and implications of shifts in governance. To achieve this objective, a combination of qualitative research methods has been adopted in the four studies that form this thesis. In the first three, case studies were utilized, whereas in the fourth study a legal doctrine was employed. Case study method can be defined as "an in-depth study of a single unit (a relatively bounded phenomenon) where the scholar's aim is to elucidate features of a larger class of similar phenomena" (Gerring, 2004, p. 341). Accordingly, by adopting a case study method, one can narrow a very broad field of research into an easily researchable context. In addition, a case study offers the opportunity to study complex phenomena in their real-life context. For the purposes of this investigation, the units of analysis in

farm animal welfare governance are the EU, Brazil and the EU-BR dyad. As explained in section 1.3.1 of this thesis, the selection of Europe and Brazil lies in the relevant role of these two regions in the field of animal welfare and livestock production, respectively.

The data for the case studies were collected through three different interview formats (see DiCicco-Bloom and Crabtree, 2006; Sewell, 2008). At the beginning of the research project, *unstructured interviews* with local key informants were conducted with the aim of eliciting information about the research field. This step was important to identify knowledge gaps, design semi-structured questionnaires for subsequent interviews and identify future relevant informants. Then, *semi-structured* interviews were conducted with over 70 stakeholders in the following categories: national governmental bodies, intergovernmental organisations, animal protection organisations, food retailers, slaughterhouses, farmers and academics. The interviews with these informants were guided by a set of predetermined, open-ended questions regarding animal welfare policy making. The set of questions varied according to the respondent's role in animal welfare governance. The length of interviews varied depending on the time availability of the respondents; however, on average, the interviews lasted between 90 and 120 minutes. In addition, throughout the course of the research, a series of *informal conversational interviews* were conducted at seminars and conferences. This third format of informal interviews contributed to refining the data and keeping the researcher updated on developments in the field. A list of the participants in each interview format is presented in Annex 1. The conceptual framework of (global) governance has oriented the data collection and analysis. The literatures of political modernization, policy diffusion, policy convergence, and private governance have been of particular importance.

The final study in this thesis consisted of doctrinal research. This type of research can be defined as "a systematic exposition of the rules governing a particular legal category" (Huchinson and Duncan, 2012, p. 101). Within this method, the legal system itself functions as a theoretical framework for the legal researcher to examine a situation and assess whether the situation is within the purview of legislative provision at stake.

Figure 1.2 illustrates the overall design on this research. Further details on the research methods are provided in the corresponding chapter.

1.3.5 Thesis outline

The research has been developed in steps that eventually led to the elaboration of four scientific articles and a concluding chapter that synthesizes the outcomes of the four studies and answers the research questions. In **Chapter 2**, the European policy domain of animal welfare is analysed in light of a shift from a state-centred to a market-centred approach. This analysis was undertaken within the theoretical framework of political modernization and the so-called four dimensions of a policy arrangement

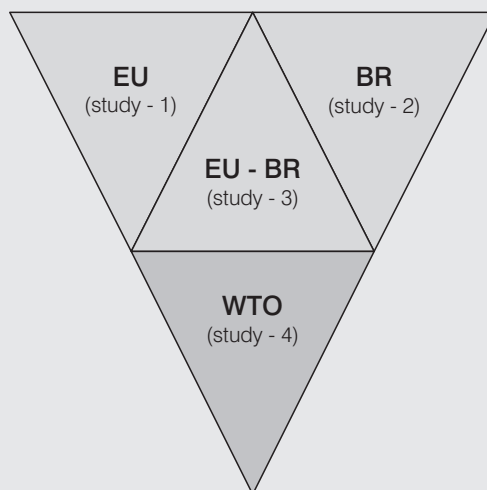


Figure 1.2. Overall research design

(discourse coalitions, rules, resources and power). In **Chapter 3**, the rise of farm animal welfare governance in Brazil is explored with the objective of identifying the relevant factors in this policy development. Understanding the dynamics driving the development of farm animal welfare policies in Brazil yields insights into how to improve farm animal welfare in other developing countries because such policy development is normally observed in developed countries. In **Chapter 4**, the different governmental, societal and market relations that are currently in use in the EU-BR dyad are analysed as a basis from which to assess different forms of coordinating animal welfare policies across countries. In **Chapter 5**, a three-fold legal analysis of WTO provisions is performed with the objective of assessing the possibility of using private standards to address animal welfare concerns in exporting countries. **Chapter 6** of this thesis provides the overall conclusions drawn from the preceding chapters. Furthermore, it discusses how the findings of this research contribute to the (environmental) governance literature. In addition, it reflects on the initial problematic of this research (WTO compatibility with governmental animal welfare measure) in light of new facts. In both discussions, topics for future research are suggested.

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Modern politics in animal welfare: the changing character of governance of animal welfare and the role of private standards

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Abstract

Political scientists generally agree that there has been a change in the political arena of modern societies: with a shift from government towards governance, a process often referred to as political modernization. Some evaluate this development as positive, allowing for more direct democracy and more effective policymaking, whereas others are concerned about democratic legitimacy and accountability. This paper examines if the rise of private standards in animal welfare politics does provide a good example of political modernization and if it indeed creates a more democratic and more effective mode of policymaking. Using the framework of political modernization, we examine if the collaboration of retailers and NGOs in developing private standards in Europe, and especially in the Netherlands, can be interpreted as a new political arrangement involving a new coalition of actors, a new discourse about animal welfare and new rules of the game. Our analysis of these private animal welfare standards confirms, but also challenges, the assumptions often made about the modernization of politics. Our analysis shows that private standards have indeed replaced the implementation of stricter animal welfare legislation. The collaboration of retailers with NGOs and farmers' unions may, to some extent, be interpreted in terms of more direct political participation by citizens and stakeholders. But, given the powerful position of retailers in the European food market (a power that massively transcends that of farmers, consumers and citizens) there is also a clear need to carefully analyse the social, economic and legal consequences of this governance shift, which gives private actors regulative authority without them being bound by the democratic rules that serve as a check on whether state regulation serves the common good.

2.1. Introduction

Animal welfare is a significant policy issue, notably in Europe where citizens, governments, producers and traders are making efforts to protect animals from unfriendly farm practices (Buller, 2003; Bayvel, 2004; Thiermann and Babcock, 2005). The globalization of animal production and trade has, however, made animal welfare a global issue (Bayvel, 2004; Thiermann and Babcock, 2005; Fraser, 2008). In the context of national and international discussions on the regulatory options for animal welfare, the traditional national regulatory tools (such as legislation) are challenged by trade liberalization and governments' international commitments. Stricter national animal legislation may weaken the competitiveness of national production in the world market, as it generally implies extra production costs (EC, 2000; Horgan and Gavinelli, 2006). Equally, imposing domestic legislation on imported products may lead to governments into trade conflicts since it is unclear how non-trade concerns, such as animal welfare, should be accommodated within the WTO legal framework (Blandford and Fulponi, 1999; Hobbs et al., 2002a).

The case of Europe provides a fruitful platform for exploring the regulatory evolution of animal welfare governance. Animal welfare receives more legislative attention in Europe than in any other region (van Horne and Achterbosch, 2008). Europe has a comprehensive body of legislation aimed at ensuring the welfare of farm animals during farming, transport and slaughter (Blandford and Fulponi, 1999). But increasingly animal welfare measures are being enacted by non-state actors. Several European supermarkets, NGOs and industries are involved in joint initiatives to protect animal welfare (Blandford and Fulponi, 1999; Veissier et al., 2008). The engagement of private actors in developing measures that address societal concerns is not an exclusive feature of animal welfare governance. Non-state actors are involved in a similar fashion in several policy fields, such as forestry (see Forest Stewardship Council); fisheries (see Marine Stewardship Council), food safety and food quality (see GlobalGap, Tesco's scheme Nature's Choice, Carrefour's scheme Filière Qualité) and third world producers (see Max Havelaar). Some scholars (e.g., Cashore et al., 2007) suggest that the private actors' engagement with emerging social concerns may well be explained by frustration with failing in national governments and public policies as well as with intergovernmental agreements. But there are also other explanations. Ransom (2007), for instance, identifies the rise of private animal welfare standards as a case of institutional isomorphism, with standards being adopted as a result of institutional pressures from other organisations (e.g., WTO, OIE²², competing food retailers). In contrast to many studies, which view the emergence of animal welfare standards as a mere response to

22 Refers to the World Organisation for Animal Health, which is still be known by its French acronym Office International des Epizooties.

consumer demands, Ransom's analysis (2007) emphasized how isomorphism, which involves coercive, mimetic and normative processes, may provide a better explanation of the emergence of private (animal welfare) standards. While this approach is relevant to understanding how organizations influence each other, and why some develop private standards, it has a limited value for understanding the political implications of the engagement of non-state actors in animal welfare governance. The latter is what this article focuses on: we want to advance our insights into what the emergence of private standards means for animal welfare politics and how it interrelates with changes in the policymaking process.

The pursuit of improvements on the welfare of farmed animals by means of private standards reflects the on-going reorganization of policy processes that derives from the changing interrelations between state, market and civil society. The emergence of new formal and informal institutional arrangements between state and non-state actors and the emergence of new policy instruments such as private standards has been described in most political science literature as shift from government to governance. The notion of 'governance shift' draws attention to the new set of self-governance and co-governance mechanisms, involving state and non-state actors, which has been developed alongside traditional government regulation. Among the emerging governance mechanism are the private scheme standards. In legal terms, private scheme standards is conceived as a regulatory instrument known as soft law or private regulation (Boström and Klintman, 2006; Henson, 2008). In political science they are referred to as innovative policy instruments (Arts, 2002; Cashore, 2002; Newell, 2009; Wouters et al., 2009).

To explore the on-going transformation of animal welfare policy in a way that contemplates the new practices of governance we apply the framework of 'political modernization'. Originally developed in studies of environmental policy and ecological modernization (Mol, 1995), the framework of political modernization may also be applied to other domains (Arts et al., 2006), including animal welfare. It is a useful framework to explain the occurrence of new policy practices and development of new arrangements in relation with broader structural changes in politics and society at large. A short introduction to 'governance shift' and political modernization is presented at the beginning of the article. Next, the article brings an overview of the evolution of animal welfare policies in Europe, indicating the most salient periods in terms of governance shift. The next section explores the on-going transformation in animal welfare policymaking in Europe (and especially in the Netherlands) by focusing on the emerging coalition of actors, the rules of the game, the distribution of power and resources, and the discourses surrounding animal welfare. The article then explores the potential consequences of modern governance for the democratic processes of policymaking before concluding by discussing the significance of private governance for international trade.

2.2. Governance shift and the renewal of policy arrangements

Over the last decade, the notion of *governance shift* has become a widely used and popular concept in policy studies. Although used slightly different in every study, it has at its basis some generally accepted core ideas, assumptions and propositions (van Tatenhove and Leroy, 2003; Walters, 2004; Arnouts and Arts, 2009; Arnouts et al., 2011). According to Rhodes (2007), governance shift refers to a *new* process of governing, a *changed* condition of ordered rule and *new* method of governing society. Walter (2004, pp. 31) describes it as a change in the 'mechanics of governing'. In most publications, this change is depicted as a threefold trend that embraces: a move beyond the 'classical/traditional' model of state-led government; the development of formal and informal institutional linkages between governmental and other actors (known as a 'policy network'); and the blurring of boundaries between state, market and civil society (Rhodes, 2007; Arnouts and Arts, 2009). These trends result in the increasing participation and influence of non-state actors – such as NGOs and business – at all levels of policy-making (Arts, 2002). As a consequence, doing politics is no longer the exclusive privilege of the representatives of state institutions.

This is part of a broader process in which a constellation of 'sub-politics' (Beck, 1992) is emerging alongside state centred politics. Outside the formal political sphere of action, private actors are making use of innovative arrangements to 'sub-politically' rule or alter some policy domains. This gives rise to different modes of governance, such as self-governance and co-governance, which are challenging, transforming and complementing traditional steering mechanisms (Mol, 2003, van Tatenhove and Leroy, 2003; van Leeuwen and van Tatenhove, 2010). Examples of these new governance tools include public-private partnerships, voluntary agreements, covenants and soft law. These new governance tools are described, with some enthusiasm, as being more effective, more participatory and, hence more directly democratic than traditional hierarchical government (Swyngedouw, 2005; Arnouts and Arts, 2009). But there are also concerns since these new forms challenge the traditional position and monopoly of the state as the primary source of regulatory authority (Walters, 2004; Pattberg, 2005).

Some scholars have theorized governance - as an arrangement of governing beyond the state - as representing a political shift towards government without the state (Rhodes, 1996; Stoker, 1998). Others conceptualize it in terms of political modernization that creates a new role for the state but does not imply its complete withdrawal (Mol, 2003, Arts et al., 2006, Arnouts et al., 2011). Political modernization refers to processes of 'structural conditioning' that renews policy arrangements and implements a new style and practice of governance. The policy arrangement

approach is a useful tool for obtaining insights into how these structural processes of change are reflected in new policy practices (Arts et al., 2006; Arnouts et al., 2011). We use this approach to explain the changes in the animal welfare policy domain in Europe in terms of its content and organisations based on four analytical dimensions. The first dimension focuses on the *actors* involved in a policy domain and the *coalition(s)* they form with each other. The second dimension deals with the *power relations* between actors, where power constitutes the ability to mobilize *resources* in order to influence policy outcomes. The next dimension involves the *rules of the game* in terms of formal procedures for establishing policy. Finally, the fourth dimension explores the enacted *discourses* of the involved actors: their views, values, narratives, definitions of problems and approaches to solutions. However, before analysing the changes in each of these dimensions, we present a brief overview of the recent evolution of the animal welfare policy domain in Europe.

2.3. The animal welfare policy domain in Europe

In the early days of animal welfare policy, regulations were predominantly implemented by state-agencies. Today, however, the progressive emergence of private standards suggests that animal welfare is changing from a state-centred to a market-centred policy domain. In this section we present a brief overview of the development of European animal welfare policy, highlighting those periods which are most indicative of this transformation.

The establishment of the Brambell Committee in 1965 by the British government marks the beginning of a European animal welfare policy domain (Mench, 1998; Buller and Morris, 2003; Ransom, 2007; Veissier et al., 2008). This committee attempted, for the first time²³, to look beyond the prevention of cruelty to animals and elaborated the concept of animal welfare (Woods, 2011). The Commission was established in the wake of the publication of the book *Animal Machine* by the British journalist Ruth Harrison in 1964. This book exposed the poor conditions under which farm animals were raised, and accused producers of placing profitability above animal welfare considerations. The author also questioned the quality of the food derived from animals raised under these conditions. The Brambell report initiated the debate on suffering and the behavioural needs of animals (Mench, 1998) and gave rise to the idea of 'five freedoms' for animals. This concept was later refined by the Farm Animal Welfare Council (FAWC), the UK government's advisory body on farm animals; today

23 Concerns for the treatment of animals can be traced back to ancient Greek philosophy and the writings of Aristotle. However, from a policy perspective, it seems reasonable to say that a European animal welfare policy domain emerged with the established the Brambell Committee since specific welfare policy measures began from that time onwards.

the 'five freedoms' serve as a guideline for governmental and commercial policies for animal welfare (FAWC, 2009).

In the following decades there was an increase in public regulation, with the establishment of specialized public institutions and an increase in national and supranational legislation to implement minimum standards to ensure animal welfare in modern livestock systems (Mench, 1998; Appleby, 2003; Veissier et al., 2008). In several European countries governmental departments were created to specifically work on animal welfare policies. These include the FAWC (Farm Animal Welfare Council) in the United Kingdom and the RDA (Raad voor Dierenaangelegenheden²⁴) in the Netherlands. In addition, several European governments implemented animal welfare acts: the United Kingdom in 1968, Sweden in 1988 and the Netherlands in 1992. Supranational public policies also emerged including: the 1968 EU Convention for international transport of animals, the 1976 EU Convention for animals kept for farming purposes and the 1979 EU Convention for slaughter. A significant change in European Law regarding animals occurred 1997 with the inclusion of an animal welfare protocol in the Treaty of Amsterdam. Notably, this protocol refers to animals as sentient beings, a big change considering that in the previous treaty animals figured as commodities.

Another important period started with the outburst of several farm animal epidemics, specifically the outbreaks of Bovine Spongiform Encephalopathy (BSE) and the discovery of a variant of Creutzfeldt-Jacob disease (vCJD)²⁵ in 1996. The BSE crisis undermined consumers' trust in food safety but also in the government and public systems for controlling food safety (Latouche et al., 1998; Guivant, 2002; Oosterveer, 2002, 2005). In an attempt to recover their credibility in these areas, national and European policymakers implemented more stringent policies. The significance of these policies in the context of this article is that they led private actors to become more actively engaged in regulating farm animal welfare (Hobbs et al., 2002b, Maciel, 2009). This move was partly motivated by the inclusion of business responsibility in European legislation of food safety, alongside the UK's notion of the 'due diligence' defence (Hobbs et al., 2002b). The 'due diligence' defence protects actors from liability if they can prove to have done their utmost to avoid causing damage²⁶. This leads food companies to establish systems to demonstrate that they take sufficient measurements and precautions to assure that the food they purchase,

²⁴ In English: the Council for Animal Affairs

²⁵ Variant Creutzfeldt-Jacob disease (vCJD) is a rare and fatal human neurodegenerative condition. In contrast to the traditional forms of CJD, vCJD is not related to a gene mutation, but rather to the consumption of meat from cattle infected with Bovine Spongiform Encephalopathy (BSE). This disease in cows - Bovine Spongiform Encephalopathy, popularly called Mad Cow Disease - is thought to have originated from the sheep disease *scrapie*. This event is linked to animal welfare because according to some scientific evidences the animals became infected by BSE through inappropriate feeding.

²⁶ Previous legislation referred to a 'warranty' defence, which required proof of negligence.

handle and sell is safe for human consumption (Vuylsteke et al., 2003, Henson and Humphrey, 2010). They began to introduce various private scheme standards or quality assurance schemes, which have proliferated rapidly ever since. The introduction of these private voluntary production schemes marks the beginning of a gradual and on-going shift towards private governance.

Today, food retailers play a very important role in food governance (Lang and Heasman, 2004) and retailers are constantly expanding the range of animal friendly products on their shelves, thereby contributing to the diffusion of animal welfare measures throughout the meat production chain (Buller, 2010). Animal welfare concerns have become part of the Corporate Social Responsibility agendas of many food companies, to the extent that corporate brands specifically include animal welfare criteria (Buller and Roe, 2011). Animal welfare appears as a component within the following retail brands: *Nature's Choice* of Tesco (UK), *Filière Qualité* of Carrefour (FR), *Naturama* of Esselunga (IT) and *Puur en Eerlijk* (Pure and Honest) of Albert Heijn (NL). All these examples are private standards schemes that are led by the retailer, acting alone or in cooperation with an NGO. The collaboration between these two private actors reflects another major change in policymaking on animal welfare. In the past, most NGOs tried to influence policymaking by means of educational campaigns about ethical issues in livestock production that were aimed at consumers. Nowadays, the work of many NGOs entails lobbying and awards. For instance, since 2000 Compassion in World Farming (ciwf.org) has run the *Compassionate Supermarket Award*, the *Most Improved Supermarket Award* and the *Best Volume Retailer Award*. These biennial awards are based on a survey of British supermarkets, which tracks their commitment to improving the lives of farm animals. Some NGOs even engage in regulatory activities and developing private standards. For example, the (British) Royal Society for the Prevention of Cruelty to Animal (RSPCA) created the *Freedom Food Scheme*, and the Dierenbescherming (the Dutch Society for the Protection of Animals) has designed the *Beter Leven (Better Life)* quality scheme. This scheme will be further discussed in the next section alongside an exploration of the extent to which these developments can indeed be interpreted as a shift from government to governance.

2.4. Toward a new animal welfare policy arrangement

The concept of a policy arrangement allows one to analytically distinguish between the content and the organisation of a policy domain. The organisational aspect is analysed along three dimensions: (1) the actor coalition involved, (2) their power relations and resources and, (3) the rules of the game that regulate their behaviour. The content of a policy arrangement is analysed as a fourth dimension that regards

(4) the policy discourse enacted (Arnouts et al., 2011). Applying this analysis to animal welfare politics reveals the following features. In the early years of animal welfare policy, the policy arena was dominated by state agents, the main and most powerful actors; non-state actors could exercise influence through elections and lobbying elected representatives (Arts et al., 2006). Recently, however, the general process of political modernization has allowed for non-state actors to directly participate and be actively involved (e.g., Mol, 2000; van Tatenhove and Leroy, 2003; Arts et al., 2006). This has offered opportunities for the collaboration of new and sometimes unexpected coalitions. Indeed, in the case of animal welfare, many actors who previously were in conflict with each other now approach each other and there are a number of examples where NGOs and businesses have turned from confrontation to collaboration.

The awards system run by CIWF, mentioned above, which gives 'good' supermarkets positive publicity (instead of calling out the 'bad' ones) is one example. The collaboration of the Dutch animal protection organisation (Dierenbescherming) with major Dutch food enterprises is another. In 1988 Dierenbescherming and Van Drie, the world's largest veal producer, began to work together in developing a new, animal-friendly veal production programme. The production of 'baby beef' is a highly contested animal welfare issue because the animals – veal calves – are kept in conditions that severely restrict their movement and strictly controls their diet, obtain the desired white colour and soft structure of the meat. Together these actors have come up with a programme to enhance the welfare of veal calves. The agreed points include an enriched diet, to prevent anaemia, and group housing to allow greater mobility and group interaction. This led to the introduction of a new product on the market – pink veal meat. This meat was expected to be considered more acceptable by Dutch consumers because of the more animal friendly production circumstances but still meeting the expectations of a tender meat quality of Italian consumers, who constitute the most important market for Dutch veal. Veal producers were actively involved in establishing these regulations, which ensured their support and commitment to the scheme.

Looking for partners, who are willing to see (and work) for change through developing a common definition of problems and look for solutions, is vital step in establishing a stable policy arrangement and a coalition that may be expanded. Here, the collaboration between Dierenbescherming and Van Drie provides an interesting example. The partnership, which was initially based on knowledge exchange and advice, has expanded through the years with the inclusion of supermarket chains and the development of a large range of standards for various farm animal products²⁷. The scheme is now known as *Beter Leven* (Better Life)²⁸. It is owned by Dieren-

27 See: <http://www.vandriegrup.com/guarantees/better-life-hallmark/>

28 See: <http://beterleven.dierenbescherming.nl/home>

bescherming and functions in the following way: the NGO compiles a list of criteria for the welfare of a given farm animal species; farmers and meat industries interested in having their produce certified as welfare-friendly ask to be evaluated against those criteria. The NGO awards producers between one and three stars, (according to their performance against the criteria) which are published on the packaging of the products sold in the participating supermarkets.

Another Dutch example of multi-actor collaboration for raising the welfare of farm animals is the Rondeel²⁹. The Rondeel is a circle shaped layer house for chickens that was developed through close cooperation between public and commercial agencies. This alternative housing was designed with a view to balancing public acceptance, the wellbeing of the farmer and the welfare of the birds. The Rondeel concept is the result of a government project that was launched in 2003. It involved livestock specialists from Wageningen University Research, farmers, the Dierenbescherming, consumer organisations and the Albert Heijn supermarket chain. Rondeel eggs are sold in a seven-piece pack made of coconut fibre and sold exclusively by Albert Heijn. Albert Heijn also launched a new corporate brand in 2009: AH Puur en Eerlijk (AH Pure & Honest). AH Pure & Honest consists of five different categories of products that have been "produced, grown or sourced with extra care for people, animals, nature or the environment"³⁰. Compliance with these standards is certified by an external organisation, which in the case of animal products is the Dutch NGO Dierenbescherming.

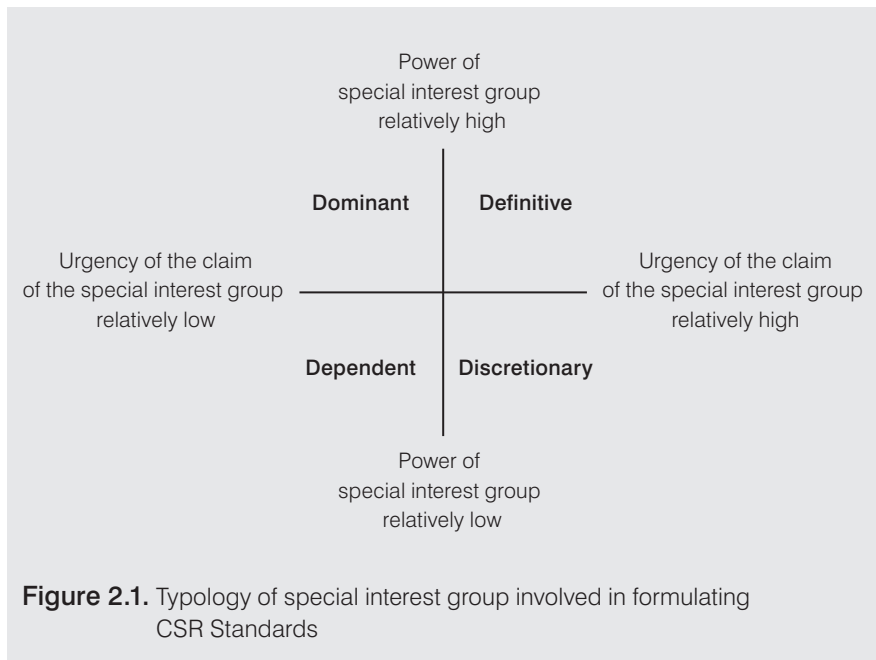
Glasbergen and Gorenember (2001) suggest several reasons why such coalitions are emerging now. Businesses have an interest in the new economic opportunities that market differentiation (such as private labels) brings. In addition, private labels are also important for building a reputation. Such coalitions are attractive to NGOs as they seem to be more effective in achieving real results than their traditional education and lobbying activities. Each group sees a real benefit from joining forces and exchanging resources within such a policy coalition. The NGOs provide political legitimacy to businesses working with farm animals and their products, while the businesses can develop economic and pragmatic strategies for improving animal welfare (Ingenbleek and Immink, 2010). Returning to the example of Beter Leven, we can say that Dierenbescherming depends upon the readiness of other chain actors to put their standards in practice, while the producers and retailers depend upon Dierenbescherming to validate their trustworthiness and create 'public acceptance'. Thus, to some extent, as Arts et al. (2006) state, coalition actors are dependent on each other's resources to achieve policy goals and to strengthen their position in a policy network. The idea of resources is intrinsically linked to the concept of power

29 See: <http://worldpoultry.net/news/production-has-begun-in-rondeel-layer-house-7576.html>

30 See: <http://www.ahold.com/node/3260>

which is why, in the operationalization of policy arrangements, power and resources are tied together (Arts et al., 2006). Policy-making is “a multi-level power game” in which actors need to mobilize resources (e.g., money, knowledge, expertise, reputation, bargaining,) to be able to act together to create a desired policy outcome. (Arts and van Tatenhove, 2005, pp: 353).

Ingenbleek and Immink’s study of corporate social responsibility standards in the Netherlands (2010) illustrates this aspect well. Drawing upon the concepts of power and urgency³¹ derived from stakeholder identification theory and decision process analysis, their study examined four animal welfare standards in the Netherlands. According to their findings, NGOs can acquire four different positions (shown in Figure 2.1 below) that are defined by their relative power and the perceived urgency of their claim.



31 Power is defined as “a relationship among social actors in which one social actor, A, can get another social actor, B, to do something that B would not otherwise have done” (Pfeffer 1981 as cited in Ingenbleek and Immink 2010). Urgency is defined as “the degree to which stakeholder claims call for immediate attention” (Mitchell, Angle, and Wood 1997, p. 864 as cited in Ingenbleek and Immink 2010).

In a case of low urgency NGOs with little power will be in a position of *dependency*. Ingenbleek and Immink (2010) use the example of minimum standards for pork sold in supermarkets to illustrate this position. Common standards for pork were established by the Dutch retail association without any significant involvement of the animal protection group. By contrast, for veal, the NGO holds a *discretionary position*, because of the contested nature of veal and the resultant high urgency of the claim. Whereas in the first example, the NGO needed to rely on the willingness of businesses to implement animal welfare criteria above the legal requirements, in the second example they could use their legitimacy and credibility among consumers to negotiate for higher production standards for veal calves. In cases where NGOs have considerable power, and the claim is urgent, they can gain a *dominant* position. When a new brand of poultry³² ('volwaard') was being formulated the Dutch NGO held a *dominant* position as poultry welfare was a high profile public issue. Lastly, when negotiating standards for organic pork the Dutch NGO held a *definitive* position because organic production is of interest to many Dutch citizens. Being in a powerful position also generates the possibility of effectively influencing the policy discourse, (e.g., Liefferink, 2006; Arts et al., 2006).

Policy *discourses* constitute an important dimension of a governance arrangement as they reflect the way in which a policy issue, such as animal welfare and its solution, is framed (Ingenbleek et al., 2007). When entering a policy coalition the actors import their norms and values, which eventually affect the formulation of the agreed policy instrument (Liefferink, 2006; Ingenbleek and Immink, 2010). Private policy instruments, such as scheme standards, contain discourses about animal welfare that range from focusing on the credentials of the end-product to a heuristic concern with the naturalness of animals' lives. The Welfare Quality® project analysed various examples of private standards and their discourses about animal welfare (Veissier et al., 2008). It identified three main story lines around animal welfare. First, in a large number of private standards, animal welfare was discursively presented as a quality and/or safety component of the end product. These standards usually include animal welfare as one among many criteria regarding quality and safety in farm assurance schemes, and offered little improvement beyond existing legal regulations. Most of the standards within this discourse are designed by retailer or farm associations (Veissier et al., 2008). The second discourse, presenting animals as sentient beings is mainly found in standards designed by NGOs. Because animal welfare is the main (if not the only) goal of the standard, they tend to surpass legislative (national and European) standards. Examples of this category are *Freedom Food* in the UK designed by the RSPCA (an NGO) and the *Beter Leven* standard in the Netherlands designed by Dierenbescherming. Thirdly, animal welfare has also been

32 See: www.volwaard.nl

framed as a component of organic production. Organic standards generally prescribe animal welfare practices that are above the level of existing legislative standards but do not focus exclusively on animal welfare; it is included as one of the pillars of organic production. Examples include KRAV in Sweden, Debio in Norway, the Soil Association in the United Kingdom, Agriculture Biologique in France, SKAL in the Netherlands and AIAB in Italy. Besides these three narratives about animal welfare, these arrangements also include two other major discourses. The first is a discourse about political innovation and the changing relationships between state, market and civil society actors, now acting as partners in a coalition for a shared goal instead of as competitors or opponents (Arts, 2002). Secondly, all three schemes include a discourse of animal welfare as representing added value: an opportunity for market differentiation and additional quality, rather than as being an additional burden to the meat production economy (e.g., Fearne, 1998; Lindgreen and Hingley, 2003)³³.

Finally, the entrance of non-state actors into the policy field of animal welfare and their shift from a position of confrontation to one of collaboration reflects a change in the *rules of the game*. The rules of the game determine how policy outcomes are achieved, and which procedures are to be followed (Arts et al., 2006). Private standards differ from legally set public national standards in two ways. First, state policies aiming to protect animals are usually set within the framework of administrative or criminal law (Bloom, 2008). Thus, a breach of public animal welfare standards is framed as an animal cruelty offence or a failure to comply with administrative requirements for farm animals. By contrast, private standards frame animal protection in terms of a voluntary agreement between parties, placing it (in legal terms) in the realm of contract law between non-state actors (van der Meulen and van der Velde, 2008). Secondly, private standards diverge from traditional government regulatory structures by employing a different form of authority for assuring compliance. While the state uses its sovereign authority to ensure conformity with its regulations, non-state actors use their 'market authority' (Cashore, 2002; Mol, 2010). These two distinct characteristics of private governance are often portrayed as giving it an advantage over public standards (e.g., Fulponi, 2006; Garcia Martinez et al., 2007). They presume that a voluntary commitment increases compliance and, hence, assures better results. In addition, it is argued that private scheme standards are more flexible as they can rapidly adapt in response to new socio-economic opportunities or pressures. In contrast, changes in public regulations take a long time as they require lengthy bureaucratic (inter)national negotiations (Arts, 2002).

33 This discourse has its root in a line of thinking that rejects the conflict between economic progress and environmentally responsible firm management. Scholars sympathetic with the tenets of ecological modernization tend to reframe environmental reform by interpreting pollution reduction as a means of enhancing economic competitiveness rather than an extra cost (for more information on ecological modernisation see e.g. Mol, 1995; Cohen, 1997; Murphy and Gouldson, 2000).

Our analysis of the four dimensions of policy arrangement, leads us to conclude that the practice and institutional organisation of the political arena for animal welfare in Europe has indeed changed. Private scheme standards for animal welfare are a clear example of modern policy arrangements. The establishment of new coalitions of actors, the mobilization of resources, the redefinition of rules of the game and the enactment of new animal welfare discourses are all, to a varied extent, embodied in every private standard. Since these private policy instruments are gaining more importance as a complement to (or even replacement of) traditional 'command-and-control' state instruments (Veissier et al., 2008) we can also consider private standards as a manifestation of political modernization: entailing a shift from primarily state-initiated regulatory strategies towards new styles and practices of animal welfare governance (van Tatenhove and Leroy, 2003). Such a shift offers new opportunities for using the market to achieve animal welfare, as the examples above have demonstrated. But there are also reasons for concern.

2.5. The implications of a market based governance of animal welfare

The emerging European policy arrangement seems a very promising way to deliver improved animal welfare. Modern governance tools have proved effective in changing the behaviour of actors along the chain (Cashore, 2002; Konefal, 2010) and in pushing standards beyond the minimum legal requirements (Codron et al., 2005). A survey carried out by Fulponi (2006) revealed that 33% of retail-driven animal welfare standards in the EU are significantly higher than state regulations and 50% of them are slightly higher. It has also been argued that private standards contribute to reducing transaction costs, as they promote coordination along the chain (Farina et al., 2005; Henson and Reardon, 2005). Furthermore private standards have no jurisdictional boundaries and so can be implemented at any geographical scale. This characteristic is of particular importance as it enables private actors to act where governments generally lack competence for regulating production processes in third countries. With all these features, it is not surprising that market-based governance is gaining prominence over public regulation (van der Meulen, 2011). However, there are equally important aspects of private governance that give reason for concern.

The opening up of the political process for non-state actors, in theory, enhances democracy. Nonetheless, given the current imbalance of power among the chain actors and the undemocratic institutional design of most private standards systems, one may question if political modernization benefits all actors equally. One may also question what sort of standards and rules are likely to be generated in such circumstances. One should not forget that the shift from government to governance

is taking place in an economic scenario that favours transnational corporations (TNCs). In many countries food retailing corporations are privileged actors when becoming oligopolies through the process of on-going concentration in this sector (Busch and Bain, 2004; Konefal et al., 2005). This is particularly evident in Europe (Henson, 2008). In Norway, for instance, four retail groups account for 82% of the total grocery market. The Swedish market is dominated by three major organisations that together control 95% of the market. In the Netherlands 75% of total food sales take place in supermarkets. Similar scenarios are found in the United Kingdom, where four big retailers dominate the market (Roex and Miele, 2005).

This high market share has enabled food retailers to increase their bargaining power in relation to their suppliers (Lang and Heasman, 2004; Konefal et al., 2005; Henson, 2008; Bain, 2010). The unequal power relation between food retailers and suppliers allows the former to arrange governance (of animal welfare) in a way that best serves their interests. Oligopolistic conditions influence the content and the organisation of a policy domain, since the actor with the most power (and resources) can influence the three other dimensions of a policy arrangement. Food retailers are more powerful than their suppliers³⁴ and are in the privileged position of choosing which actors to include in a coalition, which discourses to enact and the rules of the game. Research on the Chilean fresh fruit export industry illustrates this dynamic where “a handful of retail giants” has the authority to establish and enforce standards and rules, and, in doing so, determines who can (and cannot) participate in the export chain (Bain, 2010, pp.17). Equally the Dutch examples of animal welfare governance (discussed above) revolve around the same group of actors: the biggest Dutch supermarket and a Dutch NGO with a moderate approach. NGOs with ‘fundamentalist or radical’ ideologies are marginalised (Mol, 2000, pp. 51).

The prevalence of these groups of actors results in a reformist discourse of animal welfare that defines animal welfare in terms of extra product quality, instead of a discourse that aims to abolish animal exploitation (Francione and Garner, 2010). Rather than viewing animal welfare as a goal in itself the discourse frames it as a tool for market differentiation. As such, animal welfare becomes part of a ‘value-engineering’ strategy of food retailers (Veissier et al., 2008, pp. 287) aimed at generating a competitive advantage. Konefal et al. (2005) and Henson (2008) explain how private standards allow food retailers to compete on quality rather than on price. When a retailer introduces a quality standard scheme it strengthens its corporate image by associating its name with ethical products. This is most apparent when these quality schemes are coupled with the retailer’s own brand, (such as Albert Heijn’s Puur & Eerlink, Tesco Nature’s Choice and Carrefour Guarantee of Origin). These are all

34 And arguably, more powerful than consumers, who may also experience less freedom of choice as a result of retail concentration.

ethical product lines owned by food retailers which are part of a quality standards scheme governed by the retailer or in cooperation with a NGO. Retailers can use these own brand ethical product lines to present themselves as responsible enterprises dealing with societal concerns such as animal welfare and thereby build a 'charismatic authority' (Fuchs and Kalgagianni, 2010, pp.22). This again raises concerns about the re-allocation of authority that results from the modernization of politics.

Retailer led governance (through policy formulation and implementation) of social concerns show a serious democratic deficit (and a complete absence in some scheme standards). Several scholars (e.g., Konefal et al., 2005; Bain, 2010; Marx, 2012) have identified that private governance regimes do not adequately include the fundamental principles of a democratic regime - such as, direct or indirect participation, accountability, rule of law and transparency. Two other principles also seem to be at stake: political pluralism and a separation of powers. While traditionally formulated policy is based on procedures underpinned by political pluralism - through which alternative policies and preferences are voiced by elected representatives of citizen - private governance arrangements are led by the interests and preferences of the food retailers that have acquired the 'dominant voice' (Fuchs and Kalfagianni, 2010, pp. 23) through their oligopoly in the food market. Furthermore, whereas the traditional separation of power between legislative, executive and judicial branches preserves a distinction between the democratic elaboration, application and interpretation of rules, the accumulation of these powers in some quality standard schemes reinforces the power of retailers. Hence, it is important to further investigate to what extent do private standards schemes provide a clear separation between the auditing personnel and the standard setting and decision-making personnel? It is worth noting that only very few quality schemes have a well-developed complaint procedure or dispute settlement mechanism (Marx, 2012). These aspects raise concerns about the transition from government to governance, and suggest that it is not an unequivocal step forward for democracy.

Finally it is important to note that private retail governance, through quality standard schemes, affects a wide range of actors across the globe (Fuchs et al., 2011; Fuchs et al., forthcoming). Some of the implications may be beneficial: better payments for suppliers who enhance the welfare of animals and an expansion of consumers' choice in animal friendly products. However, the authority of food retailers to regulate how food is produced, processed and consumed requires close scrutiny. The authority of governments to regulate production and consumption practices derives from nations' sovereignty and ability to follow established democratic procedures. These characteristics confer legitimacy to the regulatory acts of a government within its territory. Private governance is not similarly legitimized, but tends to be justified by its ability to provide effective results. Fuchs et al. (2009, pp.

359) argue that it is misleading to assess private governance in terms of 'output legitimacy', as effectiveness cannot be objectively measured without prior democratic processes that guarantee that (all) affected stakeholders can participate in the definition of an 'effective outcome'. Following on from this critique, we add that; the ability of food retailers to turn non-legally binding practices into contractually binding obligations relies on a different sort of authority than the regulatory authority of state actors to bind parties to undertake (or refrain from) certain actions. Food retailers depend on the support of 'socially shared legitimacy belief' (inspired by Scharpf, 2009) since the rules and standards they create rely on voluntary compliance. To gain such social belief, retailers make use of their 'market authority' over suppliers and 'charismatic authority' over consumers. The way in which retailers exercise these two forms of authority is of interest, although we will limit ourselves here to discussing 'market authority', since this provokes much controversy in the area of international trade.

The role of market forces in assuring contractual performance was theorized in the early eighties by Klein and Leffer (1981), but has since gained relevance with the evolving role of private governance in addressing domestic societal goals that require actions in foreign territories. Animal welfare is one of these cases where a domestic (European in this case) concern requires measures to be taken beyond Europe's territory (since meat imported from third countries is also available on the European market). As mentioned in the introduction to this paper, the international trade regime places constraints on the traditional regulatory activities of states. By contrast, food retailers operate in an 'institutional void' (inspired by Hajer, 2003): there is, at present, no clarity about the relationship between the voluntary standards implemented by retailers and the legal framework of the WTO. Arguments abound on both sides, but the lack of case law makes it difficult to determine which argument will prevail (Roberts, 2009). While this issue remains unresolved private standards that affect international trade continue to proliferate. One could argue that, in a competitive free market, there is no legal issue with European retailers requiring their foreign meat suppliers to comply with private animal welfare standards, as this requirement is embedded in a voluntary commercial agreement between two parties. However, since the global food market is dominated by an oligopoly, this leaves farmers and slaughterhouses with few choices. Either they accept all the conditions imposed by the retailers or they are out of business (Bock and van Huik, 2007; Wolff and Scannell, 2008). In short, given the 'market authority' acquired by food retailers as a result of global capital concentration, voluntary arrangements become *de facto* mandatory ones (Busch and Bain, 2004; Hatanaka et al., 2005; Wolff and Scannell, 2008; Henson, 2008; Hobbs, 2010a; Hatanaka et al., 2011; van der Meulen, 2011). The effect is that private regulatory instruments achieve a virtually compulsory status in the global food arena, which strengthens our argument about the ambivalent effects

of a shift from government to governance. In effect, transnational food corporations have acquired the capacity to act as 'quasi-states' (Busch, 2011), while their actions lack the democratic legitimacy of state actions.

2.6. Conclusion

The article has examined the entry of NGOs and food retailers into the arena of animal welfare politics, and sought to establish the extent to which the changes observed in Europe, and especially in the Netherlands, accord with the modernization of governance practices and styles. Drawing upon political modernization theory, and more specifically the four dimensions of policy arrangement theory, we have analysed the changing roles of state and non-state actors and the emergence of private quality schemes. We conclude that these developments do indeed reflect a modernization of governance arrangements. In addition our analysis showed that this shift towards modernized governance has an ambivalent effect on food policy and actors in the food supply chain.

Although the widening of the political sphere provides new opportunities for non-state actors to actively participate in the formulation and implementation of policies (and thereby potentially increase democratic processes), it has in reality empowered food retailers, elevating them to the status of global food regulators. The application of European private standards in global food markets may bring positive outcomes, such as the diffusion of more stringent animal welfare measures beyond Europe's territory. However, the imbalance of power between food retailers and their suppliers compromises the democratic legitimacy of the way in which private standards are formulated and implemented. As such, we argue, more attention should be paid to the shift from government to governance, especially with regards to the way in which this leads to a reallocation of regulatory authority from sovereign states and towards the power of market dynamics.

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3

Farm animal welfare governance on the rise: a case study of Brazil

This chapter is based on a draft manuscript.

Abstract

Over the last two decades, the Brazilian Ministry of Agriculture, Livestock and Food (MAPA) has enacted a series of provisions to establish animal welfare standards at varying stages of animal husbandry. Because Brazil is a developing country, such policy developments are very interesting, as the literature usually considers this a developed country phenomenon. With the objective of gaining an understanding of which factors have triggered the development of farm animal welfare policies in Brazil, I conducted an exploratory empirical study. Data from 36 semi-structured interviews among seven different groups of Brazilian stakeholders suggest that explaining the rise of Brazilian farm animal welfare governance requires an explanatory framework based on a combination of different exogenous mechanisms. I consider cross-policy convergence a powerful theoretical frame to explain the development of farm animal welfare governance in Brazil.

3.1. Introduction

Farm animal welfare is a policy issue that has grown more important over the last few decades. This is indicated by the increasing number of countries that has taken the initiative of strengthening its domestic animal protection legal framework. This type of policy development, which is characterised by the adoption of specific welfare standards at varying stages of production, such as handling, transport and slaughter, is most frequently observed in developed countries (McGlone, 2001; Nielsen and Zhao, 2012; White, 2013). According to von Keyserlingk and Hötzel (2014) and the United Nations Organisation for Food and Agriculture (2009a), emerging economies have lagged in addressing the role of animal welfare in farm animal production. For Nielsen and Zhao (2012), this has occurred because animal welfare standards are often lower on the list of societal concerns in developing countries than in fully developed nations. Although the strengthening of farm animal protection is considered incipient in emerging economies, there are cases in which the domestic regulatory frameworks of these countries have been found comparable with those of developed countries. This is the case in Brazil. Within a period of approximately two decades, Brazil has significantly increased its domestic regulatory framework to enhance the protection of farm animal welfare. According to two international assessments, the Brazilian farm animal welfare regulatory framework establishes levels of protection equivalent to those of developed countries. The first assessment was conducted by EconWelfare³⁵, a European research project that examined eight livestock-exporting countries that export to the European Union (EU) market, and the Brazilian animal welfare framework was found to be 'slightly below EU legislation'. This is the same evaluation received by Australia and Canada. The Brazilian animal welfare framework also scored well on the 2014 Animal Protection Index³⁶ developed by a group of European animal protection civil society organisations. In this latter assessment, 50 national animal protection frameworks were classified according to a scoring system ranging from A to G. The score attributed to Brazil was C, which is the same score achieved by two European countries – France and Spain.

This article explores Brazil with the objective of identifying and analysing the factors that have contributed to increasing farm animal welfare in this country. Understanding the dynamics behind this policy development in Brazil is of great importance, as it can yield insights on how to improve farm animal welfare in other developing countries. For von Keyserlingk and Hötzel (2014), the clock is ticking for developing countries to address farm animal welfare. According to a study by the United Nations Organisation for Food and Agriculture (FAO), between 2009 and 2050

35 For the full research report, see: http://www.econwelfare.eu/publications/EconWelfareD1.2Report_update_Nov2010.pdf.

36 For the Animal Protection Index, see: <http://api.worldanimalprotection.org/>.

the production of meat will increase by 200 million tonnes to a total of 470 million tonnes to meet the expected demand of a world population of 9.1 billion of people (FAO, 2009). This study also indicates that 72 per cent of the expected growth in meat production will take place in developing countries (FAO, 2009). Considering this scenario, it becomes important to find ways of ensuring that countries take measures to ensure continuous improvement in the realm of farm animal welfare while increasing their livestock production.

To examine the dynamics behinds Brazil's farm animal welfare developments, an empirical investigation was conducted among Brazilian stakeholders. In the subsequent sections, a brief description of Brazil's improving farm animal welfare governance is presented and followed by the introduction of the design and methods adopted in this research. Subsequently, the main research findings are reported and assessed in light of contemporary theoretical considerations on policy change. The article closes with an agenda for future research.

3.2. Setting the scene: Brazil's improving farm animal welfare governance

Brazil is currently one of the largest producers and exporters of animal protein in the world. The country has a herd estimated at 208 million heads of bovine cattle, 46 million heads of poultry and 35 million heads of pig³⁷. In terms of animal protection, livestock activity in Brazil was, until recently, conducted within a legal framework preoccupied with preventing cruel practices. In that context, governmental efforts for protecting farm animals were basically punitive measures based upon the following provisions: (a) article 225 (para. 1, VII) of the Brazilian Federal Constitution, which provides that both the government and the community have a duty to protect fauna and flora and that all practices that may endanger the environment or submit animals to cruelty are forbidden; (b) federal Environmental Crimes Law (n° 9.605/98), which provides in Article 32 that practices against wild, domestic or domesticated, native or exotic animals that are abusive or that cause injury or mutilation constitute a crime punishable by detention (from three months to one year) in addition to fines; and (c) Decree n° 24.645, adopted in 1934, which lists thirty-one situations that constitute the ill treatment of animals. These provisions have been (and remain) of central importance to animal protection in Brazil. Nonetheless, the Brazilian Ministry of Agriculture, Livestock and Food Supply (MAPA) has sought to enhance domestic protection of farm animals by undertaking various initiatives to foster developments concerning animal welfare.

37 < http://www.abiec.com.br/3_pecuaria.asp> and < <http://www.ubabef.com.br/noticias/916?m=62>>

Among the initiatives taken by MAPA to boost farm animal welfare governance in Brazil are regulatory measures such as Normative Instructions (IN) n° 03/2000, which provides for mandatory animal welfare requirements for the handling of animals prior and during slaughter procedures, and Normative Instruction (IN) n° 56/2008, which provides for the elaboration of Manuals of Good Practice with welfare recommendations for rearing systems and transport of different species. In 2008, the Permanent Technical Commission on Animal Welfare with focal points in each of the country's 27 federal states has been established by MAPA with the objective of coordinating the development and implementation of animal welfare policies at both the national and local levels. Within its administrative competences, MAPA has also engaged in a series of partnerships with non-governmental organisations, research groups and producers associations to capacitate various actors in the subject of animal welfare. One of these partnerships resulted in the development of a National Humane Slaughter Programme – known as STEPs – which has trained over 7300 actors in the technical and legal aspects of animal welfare measures during pre-slaughter and slaughter procedures³⁸. Among the participants of the STEPs programme are governmental meat inspectors, slaughterhouses personnel, and academics. Animal welfare measures concerning the transport of animals were the core of another programme initiated by MAPA, which provided training for over 350 drivers who transport animals from farms to slaughter plants. Moreover, over the last few years, MAPA has allocated financial resources to offer credit lines for farmers (individuals or companies) and cooperatives to adapt their production systems to meet good agricultural practices and animal welfare recommendations.

The initiatives undertaken by MAPA signal that there is government will to move from a general level of farm animal protection towards a detailed approach that ensures that the needs of animals are met at various stages of livestock activity. To a certain extent, this is a counterintuitive development. As previously mentioned, animal welfare does not usually rank high on the list of a developing country's societal concerns. Indeed, unlike more developed countries, such as the United Kingdom, the Netherlands and the United States, where civil society protests and campaigns have been defining factors driving improvements in animal welfare regulation, in Brazil, activism in the realm of animal welfare appears meagre³⁹. The rise of animal welfare governance in Brazil is also counterintuitive from the perspective of economic

38 For more information, see: http://www.abatehumanitario.org/perguntas-frequentes/Default.aspx?area=perguntas_frequentes

39 In my search of scholarly and media publications, I found only two manifestations of animal protection activism in Brazil. One focused on the rescue of beagles from a pharmaceutical institution in Sao Paulo (SP) and the other consisted of a protest at an agribusiness fair in Porto Alegre (RS). Both protests were organized by animal rights activists, which are distinct from animal welfare activists in the sense that while the latter seeks improvements in the practice of using animals, the ultimate goal of the former group is to end all forms of using animals for human needs.

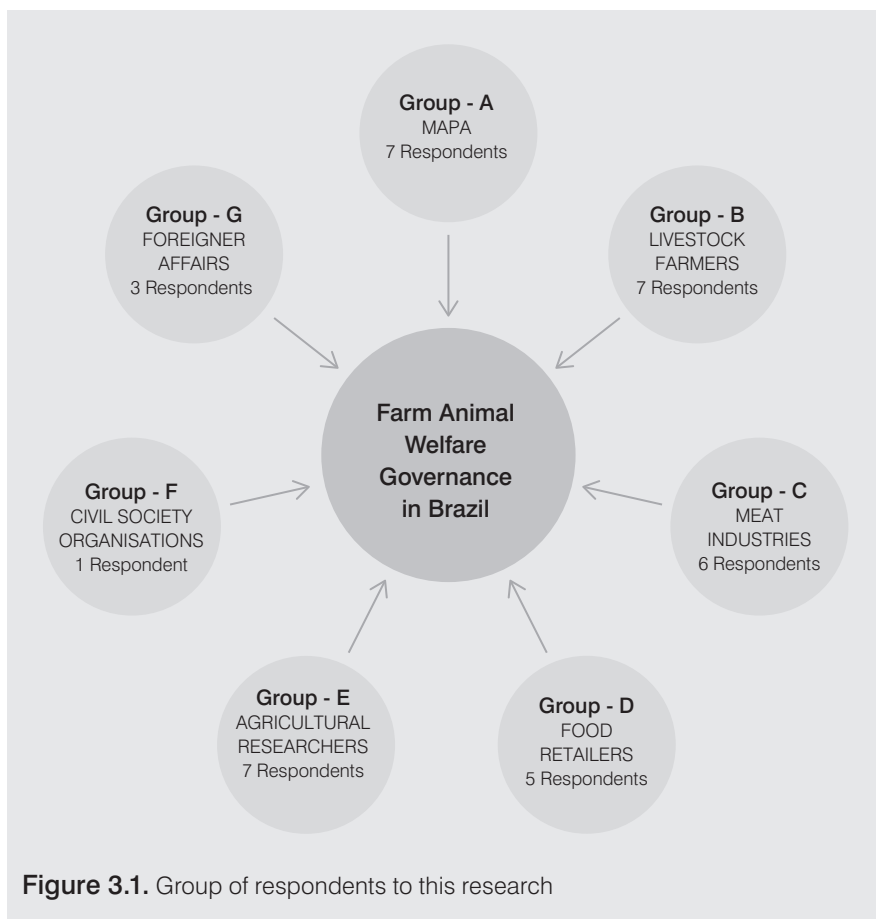
internationalization. According to critics of globalization, greater participation in world markets leads to weakening of national regulatory measures as part of the so-called race to the bottom. However, the strengthening of animal protection regulations in Brazil coincides with a period during which the country has transformed from a marginal meat exporter into a global market leader in livestock production and export. Thus, what has motivated MAPA to take such measures to foster the development of farm animal welfare? Are there other actors in Brazil contributing to the development of domestic farm animal welfare governance? Who are they and why have they decided to do so?

In reviewing the literature on farm animal welfare in Brazil, I found that most of the knowledge generated about this development derives from life sciences. Thus, studies concerning IN n° 03/2000 and IN n° 56/2008 have focused on how such provisions have impacted the welfare of animals (e.g., Neves, 2008; Panzenhagen et al, 2013). However, I found no studies seeking to identify and analyse the specific causal factors driving the increase in farm animal welfare governance in Brazil. This study is an attempt to redress this knowledge gap by exploring the factors that have fuelled interest in farm animal welfare and contributed to the development of animal welfare policy in Brazil. The dynamics leading to policy change are of renewed interest in the political science literature, especially among scholars in the field of International Relations and Comparative Public Policy. Thus, it is not surprising that a wide range of theoretical explanations for why policy change occurs have been developed. Choosing one theoretical orientation and testing the validity of its explanatory power through an empirical investigation could be an interesting way of studying the development of farm animal welfare in Brazil. However, this parsimonious approach could thus lose sight of a larger picture. Given the scarcity of studies focusing on the political dynamics of farm animal welfare policies in Brazil, I chose to take an exploratory rather than a theory testing approach. Thus, instead of departing from one specific theoretical framework and focusing on one potential variable, I follow a grounded theory approach, which develops theoretical considerations based on empirical exploration (see Glaser and Strauss, 2009).

3.3. Research design and methods

The rise of farm animal welfare in Brazil is explored in this article through a qualitative research design. The strength of qualitative research is its ability to provide rich textual descriptions of the phenomena under study, which ultimately enables the researcher to make sense of the reality at stake and develop explanatory models and theories (Knafel and Howard, 1984). The data for this research were mainly collected through semi-structured interviews. The initial sampling of interviewees for this research was

identified through a literature review and expanded using snowball sampling. Eventually, 36 people across seven different groups of stakeholders were interviewed. Figure 3.1 below shows the stakeholders groups interviewed and the table in Annex 2 provides a detailed list of the respondents as well as the dates and locations of the interviews. Every interview was guided by two key questions: (a) Is there an increasing trend in farm animal welfare in Brazil? (b) What can explain this policy development? On average, these interviews lasted 90 minutes, and most respondents elaborated upon other matters, such as their job functions. The interviews were conducted during the period from January to April 2012. Follow-ups and complementary talks were held during the 2nd International Transdisciplinary Congress on Fauna Protection (in Goiania-GO, Brazil, on 25-26 April 2013); the International Workshop on Farm Animals Welfare (in São Pedro - SP, Brazil, on June 11-13, 2013) and the IV



South Brazilian Conference on the Poultry, Pig Farming and Dairy Products Industry and Equipment, Services and Innovation Trade Fair (Avisulat) (in Porto Alegre-RS from November 4-6, 2014).

3.4. Summary of the collected empirical data

In this section, I briefly report the responses obtained from each category of actors. The content of this section is by no means an exhaustive account of all the material collected during the interviews, but the data reported represent the relevant key findings for this study.

3.4.1. Findings from Group A – Brazilian Ministry of Agriculture and Livestock Supply (MAPA)

Respondent 1 indicated that discussions on farm animal welfare governance began in 2000 due to external pressures. Nevertheless, he affirmed that provisions on animal protection have existed in Brazil since 1934. He reported that around 2011, there were European Food and Veterinary (FVO) missions to Brazilian slaughterhouses for equid meat to verify compliance with animal welfare requirements. He argued that, in terms of import requirements on animal welfare and health, Brazil seeks equivalence, and therefore, the recommendations of the World Organisation for Animal Health (OIE) are considered. Respondent 2 reported that discussions on farm animal welfare began in Brazil due to external demand. Henceforth, provisions on inspections of animal husbandry and meat started to be updated and made more stringent. She argued that these new provisions are not a 'foreigner receipt' simply translated but a reflection of a growing local scientific development on animal welfare. She considered that the creation of the Permanent Technical Commission on Animal Welfare to be of paramount importance for raising awareness about farm animal welfare issues among Brazilian stakeholders. She indicated that MAPA's efforts to improve farm animal welfare in Brazil are not concentrated in the export sector. Respondent 3 reported that farm animal welfare has been improved considerably in Brazil over the last decades as a consequence of measures, such as the IN n° 03/2000 that introduced new requirements for slaughter. He believes that European Directives and Regulations have played an important role in MAPA's governance of animal health in general and animal welfare in particular. He indicated that the slaughterhouse that he inspects is qualified to export to the European Union, but for commercial reasons, it prefers to sell its meat to other countries. He says that currently, the slaughterhouse is selling mostly to Russia, China and South Africa. He argues that this multiplicity of trading partners gives leverage to Brazil in light of EU requirements. Nonetheless, he explained that the slaughterhouse complies with

European import requirements because being qualified to export to the EU opens up other markets. For example, he claims that South Africa and Nigeria 'automatically' approves slaughterhouses that are qualified for the European market for export to their market. He also expressed the opinion that animal welfare is a cultural issue in Europe but not in Brazil. In Brazil, there is not (yet) a culture around the theme of animal welfare. Finally, he said that for over 20 years he has inspected slaughterhouses and has never noted a private certification. Respondent 4 understands that farm animal welfare was introduced into Brazil's legal framework long ago but not under the name of 'welfare'. As an illustration, he refers to Decree nº 30.691/1952. For him, animal welfare is like a 'flavour of the month' in international markets, meaning that previously, sanitary concerns topped import requirements and now it is animal welfare. Respondent 5 said that since he started working as a government meat inspector approximately 5 years ago, it has been part of his working duties to determine whether slaughterhouse personnel are handling the birds during pre-slaughter and slaughter practices in line with MAPA animal welfare recommendations. He has no knowledge on the origins of farm animal welfare debates but is of the opinion that more legislation and education programmes are needed to raise awareness about the importance of protecting the welfare of farm animals. His previous job was at a pet shop, which made him aware of the difference. While a dog is seen by many people as a family member, a chicken is seen as food. Finally, he indicated that an animal welfare training programme was performed by a non-governmental organisation (NGO) at the slaughterhouse on its request. Respondent 6 indicated that MAPA initiatives on farm animal welfare encompass the entire food chain; however, mandatory requirements are mostly related to slaughter practices. In other stages of animal husbandry, MAPA initiatives are preoccupied in educating actors and fostering research. She explained that MAPA's Technical Commission on Animal Welfare was created out of the need to coordinate the various animal welfare initiatives that were taking place in different parts of Brazil as well as out of the need to respond to questions from importing countries and intergovernmental bodies regarding these policies. She indicated that, in terms of international trade, animal welfare is an incipient matter and, thus, requirements are not yet restrictive on imports but are informative. She explained that European animal welfare requirements are felt more strongly in Brazil because they are in the form of legislation that is through directives and regulations; whereas animal welfare requirements from the United States are demanded by private actors through voluntary initiatives. She mentioned that until approximately four years ago, there was much resistance to discussion of animal welfare in Brazil. She recalled that during her undergraduate studies as well as during her first years at the MAPA's Commission, she encountered many people who held prejudices on the subject of animal welfare. Currently, she thinks people are more open to discussing farm animal welfare, including representatives from the industry.

She indicated that the industry is increasingly supportive of farm animal welfare policies; however, it argues for a gradual implementation of policies. Respondent 7 indicated that animal welfare is of growing interest at both the national and international levels. He reported that there is considerable divergence and distrust upon the introduction of farm animal welfare measures to import requirements among trading countries. Nonetheless, he affirmed that as long as animal welfare requirements imposed by importing countries are in line with those standards recommended by the World Organisation for Animal Health (OIE), the Brazilian government will raise no objection.

3.4.2. Findings from Group B – Farmers and their associations

Within this group, the subject of farm animal welfare was mostly perceived as an 'upcoming market tendency'. For respondents 1 and 3, Europe is the sources of this animal welfare tendency. Animal welfare was referred to as a forthcoming tendency because, for respondent 1, there are not yet animal welfare provisions in his current contract with the slaughterhouse and, for respondents 4, 6 and 7, because they are engaged in initiatives whose focus lies on the cattle breed or on the geographic region. According to respondent 6, the association between meat quality and cattle breed is a longstanding practice in the United States, which has been embraced in Brazil by the national associations for Angus and Hereford beef in partnership with some slaughterhouses and food retailers. Respondents 6 and 7 informed that animal welfare is not a specification in this meat quality certification process. For this certification programme, the requirements are associated with the animal genotype, age and fat deposit in the meat. Nonetheless, the representatives of the Angus and Hereford associations reported that among their members, there is an on-going awareness of the need to respect animal welfare when handling the animal at the farm level. With regard to the association between meat quality and geography, respondent 4 explained that this is a well-known practice in the European market. According to respondent 4, the certification process that the association he represents is developing follows European practice. He indicated that animal welfare is one specification in this meat quality certification process, and for that purpose, compliance with Good Agricultural Practices and the welfare standards elaborated by EMBRAPA will be mandatory. Respondents 2 and 5 acknowledged that the handling of animals has improved over the years; nonetheless, they do not consider Brazil as having farm animal welfare governance. For them, Brazilian citizens have not yet achieved the socio-economic conditions to begin to care about the welfare of animals.

3.4.3. Findings from Group C – Meat industry (slaughterhouses and exporters associations)

For respondent 1, farm animal welfare governance is increasing in Brazil as a result of European veterinary missions. He recalled that in 2011, the European Food and Veterinary Office (FVO) had a specific mission on animal welfare, and due to this mission the Brazilian government and industry needed to be prepared. In his opinion, farm animal welfare is a genuine demand from Europe (rather than a trade barrier). Respondent 2 indicated that the company she represents has a programme that provides bonuses to farmers when farm animal welfare, traceability and environmental measures are followed. She mentioned that the checklist of this programme is based on EurepGAP (currently, GlobalGAP). According to respondent 3, the company has adopted farm animal welfare policies because of the various European missions conducted by FVO. She recalled that just before the 2011 FVO mission, MAPA organized a training programme. She said this training was executed in collaboration in the World Society for Animal Protection (WSPA⁴⁰) and that both meat inspectors from MAPA and industry personnel attended the training. She believes that this training course has made a great difference, as people came out of it more conscious about animal sentience and more knowledgeable of why certain practices are needed. She argued that animal welfare has arrived in Brazil rather late, given that in other parts of the world, it is a longstanding tradition. Finally, she said the company has a couple of certifications, including those from the British Retailer Consortium (BRC) and KFC's own quality scheme. In her opinion, the animal welfare requirements of these standards are of the same level demanded by MAPA. She said that many foreign clients ask for BRC certification, including those in the Far East. According to respondent 4, in Brazil, there is no societal concern about animal welfare. Few people are aware of intensive production and the controversies around some animal husbandry practices. She said that there are no campaigns on the streets or on televisions to promote animal welfare, as is the case in Europe. Nonetheless, the respondent reported that since 2007, the Association has had a protocol with recommendations for animal welfare standards and an animal welfare specialist on staff. This respondent also mentioned that amongst farm animal welfare issues, those related to slaughter practices are most advanced in Brazil because many European countries require them. Some export-oriented industries have, by their own initiative, sent members of their personnel to participate in animal welfare trainings at Bristol University in the United Kingdom. Many exporters are certified by the British Retailer Consortium (BRC) and GlobalGAP and thus have their own animal welfare protocols. This respondent reported that the Association closely follows animal welfare developments in the European Union, World Organisation for Animal Health (OIE)

40 This organisation is now called World Animal Protection (WAP).

and United Nations Food and Agriculture Organisation (FAO). Animal welfare appears to be a new subject in Brazil, but in fact, it has been present in Brazilian legislation since 1934, in Decree 24.645. For respondent 5, farm animal welfare is an issue that mostly impacts the beef chain because the intensive systems adopted in other countries have resulted in much societal criticism. He recalled that in Brazil, the extensive system, in which cattle are not confined but raised on pasture, prevails. In his opinion, it is because of this extensive system that the issue of farm animal welfare did not emerge earlier in Brazil. For him, exporting dynamics triggered the development of animal welfare policies among Brazilian stakeholders. He sees MAPA IN n° 56/2008 as an outcome of these dynamics. Animal welfare is an issue of great concern among European consumers and Brazil must be cautious in relation to European animal welfare requirements because the European Union is rather protectionist of its market. Respondent 6 sees animal welfare as a market issue rather than an ideological issue. Brazil is in a quite comfortable position to participate in this niche market because it produces beef using an extensive system. For him, Brazil can comply with all European animal welfare requirements; nonetheless, Brazil should not permit this issue to turn into an official import requirement because doing so would open the door to a cascade of protectionist measures.

3.4.4. Findings from Group D – Food retailers

In this group, only one company reported engaging in initiatives that seek to ensure the welfare of farm animals. According to respondents 3 and 4, who are the national manager and meat inspector, respectively, of this company's food certification programme, farm animal welfare is integrated into a certification scheme operated by this food retail company. When asked about the motive for adopting a certification scheme for farm animal welfare, the respondents explained that it was a company norm. The company seeks to ensure the safety and quality of foodstuff sold under the company's own label by adopting a certification scheme in all the countries in which it operates. In addition, the certification is based on an auditing system at the farm and industry levels, where compliance with safety, social, environment and animal welfare aspects is assessed. The certification checklist for animal welfare was not made available to the researcher. However, respondents 3 and 4 indicated that the certification scheme is based on national legislation. The other three companies⁴¹ did not consider farm animal welfare a relevant issue. Respondents 1, 2, and 6 are of the opinion that within their operational region, there is no consumer demand for animal welfare. For respondents 2 and 6, local consumers have no concern for animal welfare because 'poor welfare situations' are not common in the region. Although there is no local

41 In contrast to the first company, which operates internationally, these are companies operate solely at the municipal and regional levels.

demand for animal welfare, respondent 1 is of the opinion that it is possible that in the future, farm animal welfare will become a requirement for the commercialization of meat given the rising interest in other countries, which needs to be acknowledged in his view. None of the companies reported having been targeted by any 'shame and blame' campaign by animal protection organisations. Respondent 3 noted that in other countries, the company has already been the target of such activism.

3.4.5. Findings from Group E – Researchers at universities and rural extension institutes

All the respondents in this group are of the opinion that farm animal welfare is a topic of rapidly growing interest within Brazilian research institutions. Respondent 7 recalled that one of the first public tender offerings of funds for research in the area of animal welfare occurred around 2006. The subject of farm animal welfare reached Brazilian research institutions when the national livestock production grew in the scale of production and commercialization (respondent 6). Respondents 4, 5 and 6 explained that international trade makes it important to ensure that its national livestock producers address farm animal welfare. They noted that European consumers are particularly concerned with farm animal welfare, which resulted in a commercial pressure on the export sector of national meat production. Eventually, the exporting sector will introduce farm animal welfare policies into the domestic sector because it is not economically profitable to maintain distinct lines of production for national and international trade (respondent 1). Respondent 5 explained that within the international market, Europe and the United States are references for other countries in terms of import requirements, although Europe is no longer the main market for Brazilian meat. Respondents 2 and 6 claim that farm animal welfare is a subject that is here to stay. For respondent 7, a defining moment in the debate over farm animal welfare in Brazil occurred when the World Organisation for Animal Health (OIE) became involved in animal welfare, increasing the legitimacy of the subject and thus the openness of government and industry to discuss farm animal welfare issues. MAPA is concerned that farm animal welfare will become a trade barrier, and IN n° 56/2008 is an example initiative taken by MAPA in reaction to such concerns. Respondents 4, 5, 6 and 7 suggested that the subject of farm animal welfare would not have emerged in Brazil without external demand.

3.4.6. Findings from Group F – Civil society organisations⁴²

Respondent 1 indicated that his organisation is part of a programme known as 'green beef', which seeks to harmonize livestock activity with biodiversity conservation.

⁴² The researcher repeatedly attempted to book interviews with representatives from other organisations but did not succeed.

Specifically, the programme aims to reduce the impact of cattle ranching on the Pantanal biome in Brazil. The programme provides an organic certification scheme based on environmental and social requirements. With respect to animal welfare measures, the programme embodies the Brazilian Good Agriculture Practice recommendations developed by EMBRAPA, which means that animal-friendly practices are covered, according to the respondent. He reported that the programme was born out of international concerns regarding the destruction of Brazilian biodiversity. A farmers association, a slaughterhouse and a governmental research institute are partners in the project, and most of the organic meat certified through this project is exported.

3.4.7. Findings from Group G – Brazilian government foreign affairs

Farm animal welfare is not on the agenda of current trade agreements discussed by Brazilian authorities (respondent 1). Brazilian livestock represents a growing share of the global meat market, and some countries, in an attempt to protect their domestic production, are adopting protectionist measures related to, *inter alia*, animal welfare (respondent 2). For example, respondent 2 recalled that the government of Ireland has pressured the European Commission to impose stricter import requirements on Brazilian meat because the Irish livestock industry has lost market share in Europe to Brazilian meat. As a signatory of the World Trade Organisation (WTO), Brazil acts in light of the rights and obligations stipulated in trade agreements, which in the case of animal welfare means following the recommendations of the World Organisation for Animal Health (OIE). Brazil offers meat products that are high quality and low priced, but when selling its meat product portfolio at international food fairs, Brazil is not (yet) explicitly referring to farm animal welfare (respondent 3). Farm animal welfare is not widely discussed at such food markets by other countries.

3.5. Discussing the main empirical findings

Different levels of attention have been paid to the subject of farm animal welfare by Brazilian stakeholders. Whereas some respondents find farm animal welfare an issue of current interest, to others it is not an issue at all. This contrasting position was observed not only across different groups but also within a group such as in the case of food retailers. Only one food retailers interviewed indicated being currently engaged in farm animal welfare policies because these were part of the company brand. Two retailers reported no interest in the topic because they have observed no concern on part of their customers. The fourth expressed the opinion that it was possible that, in the future, such a European trend could flourish in Brazil. A similar contrast appears when we observe that while representatives of MAPA already feel

the urge to address importing countries' farm animal welfare requirements, the representatives of the Brazilian foreign affairs department have not yet discussed this subject in the context of negotiating international trade agreements. Interesting explanations have been offered as to why some actors are unconcerned with farm animal welfare. Notwithstanding the relevance of understanding the dynamics leading to the absence of such concerns, this study will focus on and try to explain the increasing interest in farm animal welfare among some Brazilian stakeholders. With this focus, we concentrate on the factors causing increasing interest, which ultimately may lead us to an analytical framework to account for this policy development in Brazil.

When elaborating why farm animal welfare has become (or is about to become) a relevant policy subject in Brazil, the words 'Europe', 'European Union', 'European Commission', 'European mission', 'European demand', 'European regulation', 'European consumers', and 'European trend' were most mentioned by respondents. In most cases, respondents' comments were about European influence in general, but respondents from MAPA, the meat industry and researchers have pointed to three distinct events as major influences of the development of farm animal welfare in Brazil. The first concerns an audit conducted by the European Food and Veterinary Office (FVO) in 2008. Several domestic regulatory and organisational measures had been taken by Brazilian authorities and industry representatives to prepare for this 2008 FVO audit. The importance of this audit was related to the fact that previous deficiencies found by the FVO in November 2007 in the traceability⁴³ system for cattle, had led to imports of Brazilian beef being suspended. Hence, a positive evaluation of the national cattle tracing system (called SISBOV - Brazilian Bovine and Bubaline Identification and Certification System) was of paramount importance to restore exports of beef to Europe. The second was a 2011 FVO mission on food safety and public health control system for equine and pig meat, which was recalled as contributing to the development of animal welfare in Brazil. This was considered an important event because it was one of the first times that a mission explicitly verified compliance with welfare standards. The third event consisted of European Commission Regulation 1099/2009, which was formally adopted at the end of

43 For some readers, the issue of traceability might seem to be unrelated to animal welfare. Indeed, strictly speaking, traceability is meant neither to enhance the well-being of animals nor to prevent cruelty. The primary aim of traceability requirements is to provide a safety assurance regarding animal identification and historical health conditions. In other words, traceability refers to measures aiming at the improvement of animal health and the prevention and control of animal diseases through a system of identification over the animal's life stage along the supply chain. However, one must keep in mind that there is a critical relationship between animal health and animal welfare. This link has been internationally recognised by the World Organisation for Animal Health (OIE) in 2003 and by the European Community in the White Paper on Food Safety (2002). As such, the relationship between animal health and welfare measures has been a basic principle underlying the development of such measures.

September 2009 with the requirements scheduled to come into force in January 2013. According to the respondents, since mid-2007, several discussions and capacity building activities had been organised by the European Union to ensure that European Member States and exporting countries would be able to comply with the new requirements established by this regulation. These new requirements concerned, among other things, the management and operational practices for stunning livestock as well as the training and appointment of an animal welfare officer for each slaughterhouse. In light of this upcoming European regulatory demand, MAPA updated IN n° 03/2000 and promoted training courses to ensure that MAPA inspectors and slaughterhouse personnel would have the necessary knowledge and skills to assess animal welfare issues during both the pre-slaughter and slaughter stages.

Our empirical exploration has also revealed that European private certification schemes played a role in improving the animal welfare governance profile in Brazil. The influence of European private certification has reached Brazilian slaughterhouses directly through requests from some importing customers and reached local food retailers and farm associations indirectly through trends in business practices. As reported by respondents 3 and 4 in the meat industry group, many exporting-oriented slaughterhouses are certified by schemes, such as the British Retail Certification (BRC), which, among other measures, requires compliance with animal welfare standards. According to respondent 3, private certification schemes such as BRC are broader than the official sanitary certification issued by MAPA but not stricter. They are broader because, next to food safety, which is covered by MAPA, other issues are included in this private certification checklist, such as the managerial, environmental and social aspects of meat production. However, she does not consider it stricter because the animal welfare provisions in this certification scheme are not more demanding than those requested by MAPA. An indirect influence of European private certifications schemes was observed in the responses given by respondents 1 and 4 in the food retailer group and by respondent 4 in the farmers group. According to their responses, the use of private certification schemes to enhance the quality and safety of food products is a common practice in Europe and has been considered when defining their own business practices in Brazil.

Another interesting finding that came out of the interviews concerns the role of the World Organisation for Animal Health (OIE). One of the respondents in the research group argued that the entry of the OIE into the policy arena of animal welfare has been a defining moment for the Brazilian government and industry on this subject. The subject of farm animal welfare enjoyed greater acceptance in Brazil after the OIE began to offer capacity building and recommended standards in this field. Reports from other interviewees seem to confirm the legitimizing effect of the OIE on the policy field of farm animal welfare. As reported above, two of the interviewed MAPA representatives referred to the OIE's farm animal welfare standards as

important references. One bluntly said that Europe can ask what it wants in terms of farm animal welfare, but Brazil will only agree to the extent that European Union requests are in line with OIE standards. A similar position was expressed by the Brazilian foreign trade diplomat who concluded that Brazil follows OIE recommendations.

3.6. Conclusion

Animal welfare is a topic of great interest and importance in many developed countries, whereas in developing countries, discussions are just beginning. This study has explored the case of Brazil, a country in which farm animal welfare governance is on the rise. The objective of this study was to empirically investigate which factors have driven this policy development in Brazil and, thus, to gain insights for devising an analytical framework to account for the emergence of Brazilian farm animal welfare governance. The data acquired in our exploratory empirical investigation have pointed us towards the influence of two external entities – EU and OIE – as key factors in the rise of farm animal welfare governance in Brazil. When asked why animal welfare policies have been adopted in Brazil, a significant number of respondents referred to European animal welfare developments in general and European import requirements in particular. In light of the responses obtained, we understood that European influence reached Brazil through different actors and formats, such as through the FVO in the form of inspection missions, through customer requirements in the form of certification schemes (e.g., BRC) and, more generally, through food retailing business practices.

The influence of European measures on Brazilian policy development is not a new finding. For instance, Lafisca et al. (2013) has found that European food safety requirements have led to policy changes in the sanitary framework for beef cattle in Brazil. The authors argued that there is great pressure to conform Brazilian production to European requirements because of the importance of the European market for Brazilian beef producers. In another study, Donovan et al. (2001) found that the sanitary levels of Brazilian fishery products have been impacted by European requirements related to Hazard Analysis and Critical Control Points (HACCP). However, contrary to the initial thoughts of Donovan et al. (2001), the Brazilian case could not be seen as a situation of ‘trading-up’, that is, a case where countries with lower standards adopt the higher standards of their important trading partners and thus enhance the general domestic regulation. The authors rejected their hypothesis because the stricter fishery safety standards adopted in Brazil were heavily concentrated in the export sector, and thus, they argued that trading up did not take place in the domestic Brazilian fishery sector. The findings from the above two studies

and the explanatory dynamics derived from them only partially correspond to my observations in farm animal welfare.

As Lafisca et al. (2013) argued, access to the European market is important for Brazilian meat producers. However, this importance reflects not only their market share within the European Union but also the ability to export to other non-European countries. As respondent 3 in the MAPA group, respondents 1 and 6 from the industry meat group and respondent 5 from the researcher group have indicated, the European Union is not the main destination of Brazilian meat. Nonetheless, Brazilian meat processors and exporters find it important to comply with European Union import meat requirements because these are used as references for other countries' import requirements. In relation to the study by Donovan et al. (2001), I argue that unlike in the fishery sector, farm animal welfare policies do not seem to be concentrated within the export sector. I conclude that there are farm animal welfare initiatives in Brazil that are not tightly related to exports, such as the measures taken by MAPA. The normative instruction, training and financial aid measures taken by MAPA are not restricted to the export-oriented meat sector. Likewise, the certification scheme reported by respondents 3 and 4 of the food retail group and respondent 4 of the farmers group are initiatives aimed at the domestic market. Hence, based on the data at hand, I do not disregard a possibility of a domestic trading-up in the field of farm animal welfare. Nevertheless, I consider that the trading-up framework is not sufficient to explain the increase in farm animal welfare, given the observation of other forms of European influence beyond the market mechanism. Thus, I argue that a broader theoretical framework is needed to account for the dynamics of EU-Brazil relations in the field of farm animal welfare, preferably one that includes mechanisms linked to international cooperation, given the findings concerning the OIE's role in the development of Brazilian farm animal welfare governance.

The finding on the role of the OIE in Brazilian governance of farm animal welfare is of great importance, particularly the position expressed by government representatives that the EU's animal welfare requirements would be accepted only to the extent that they comply with OIE recommendations. This Brazilian governmental standpoint is both surprising and understandable. It is understandable because under the legal framework of the World Trade Organisation (WTO), the standards recommended by the OIE enjoy a special status. This special status derives from the explicit reference to the OIE in the Sanitary and Phytosanitary Agreement (SPS Agreement) as one of the official international standard-setting bodies. Consequently, when an importing country defines its market access requirements in line with OIE standards, these are presumed to conform to WTO rules regarding the establishment of import restrictions with the objective of protecting human or animal life or health. From this perspective, it makes sense that the government of Brazil expect the EU's animal welfare requirements to be in line of those recommended by the OIE. However,

the Brazilian position is surprising because currently, only the OIE standards on animal diseases and zoonoses are recognised under the SPS Agreement. That means that only these standards on animal diseases and zoonoses hold a special status under the WTO legal framework. Additionally, there is no certainty over whether or when animal welfare standards will be given the same special status. The undefined situation on the status of OIE recommendations on animal welfare is related to the fact that during the Uruguay Round (1986 to 1994), when the agreements that comprise the WTO were negotiated and adopted, the mandate of the OIE was circumscribed to animal health. It was only in May 2000 that the OIE, at the request of its Member countries, extended its mandate to cover animal welfare. Hence, it was surprising to find that Brazilian authorities apparently attribute to OIE animal welfare standards the same status of 'presumption of conformity' that OIE animal disease standards enjoy under the SPS Agreement.

I find sufficient evidence to conclude that the development of farm animal welfare policies in Brazil resulted from external influences (in contrast to domestic factors), but further research is needed before a comprehensive explanation for the rise of farm animal welfare in Brazil is to be provided. As we have observed, different pathways of influence have been used to cause a policy change in Brazil regarding the protection of farm animals. However, to further analytically distinguish and assess the different pathways of influence it is necessary to examine these empirical findings through a theoretical lens. Given the evidence of external influence, I consider the literature on cross-national policy convergence an especially promising starting point to search for analytical distinctions on causal factors. This strand of literature provides rich analytical distinctions among the mechanisms used to transfer policy ideas from one jurisdiction to another. For instance, Knill and Tosun (2009) distinguish among *hierarchy*, *network* and *market* as potential mechanisms of policy convergence. Based on this analytical distinction, Knill and Tosun (2009) examined the influence of European environmental legislation on accession candidate countries. They found that hierarchical mechanisms the most significant and robust determinants of policy adoption in the EU's accession candidate countries. In the work of Busch and Jörgens (2005), *harmonisation*, *imposition* and *diffusion* appear as analytical categories to examine the spread of 22 environmental policy innovations. Busch and Jörgens (2005) found that all three mechanisms have played a role in simultaneously or subsequently affecting the international spread of environmental policy innovations. Busch and Jörgens (2005) argued that their findings reinforce the view that instead of selecting a particular cause or mechanism in the international system, it is conceptually necessary and analytically useful to integrate multiple conceivable mechanisms into a multidimensional perspective on the international sources of national policy change. Agreeing with this view, I suggest that when devising an analytical framework for assessing the rise of farm animal welfare governance in Brazil, different mechanisms must be integrated.

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4

Paving the way for farm animal welfare in international relations: An EU-Brazil case study

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Contemporary Politics.

Abstract

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 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.

4.1. 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 (Blandford et al., 2002; Hobbs et al., 2002; 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 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 European Union 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 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; 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 policymaking, 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 Section 5 and 6, and our concluding remarks are presented Section 7.

4.2. 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 World Trade Organization (WTO) and its primary actors, who are ministers (who meet at least once every two years) and 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 et al., 2011, Pigman, 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 non-governmental organisations and corporations in trade negotiations and trade disputes (e.g., Dunoff, 1998; Esty, 1998; Hernandez-Lopez, 2001; Sapra, 2009; Sherman and 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 4.1 illustrates our proposed analytical framework.

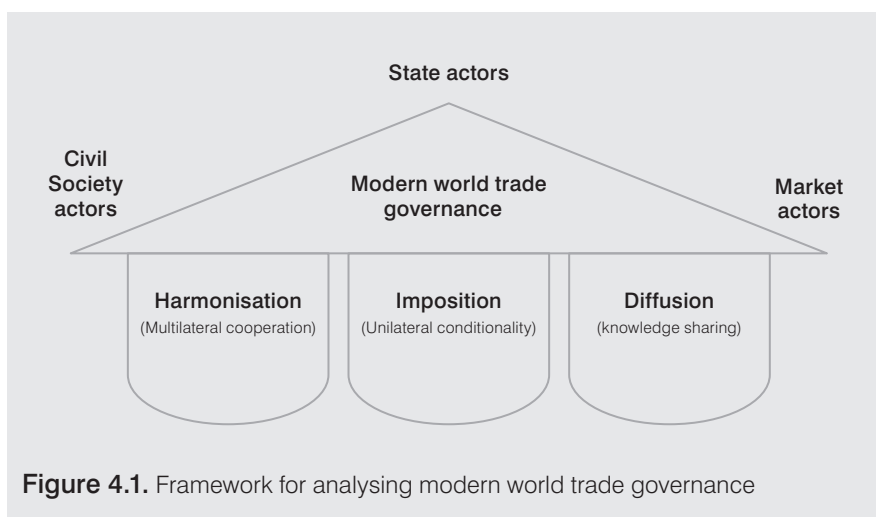


Figure 4.1. Framework for analysing modern world trade governance

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 non-governmental organisations (NGOs) and epistemic communities as well as activities led by market actors like transnational corporations (TNCs) 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 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*. Busch 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 and Cashore, 2012; Börzel and Risse, 2012; Holzinger and Knill, 2005; Knill, 2005; Knill and Tosun, 2009; Lavenex and Schimmelfennig, 2009; Schimmelfennig, 2007). However, Busch 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 farm animal welfare that fall outside the traditional multilateral WTO trade agreements. We now introduce our case study.

4.3. 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). Non-governmental organisations 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 Products⁴⁴ case illustrated, adopting animal welfare measures consistent with the WTO legal framework is not an easy task. Although the European Union ban on the marketing of seal products was considered to be justified under GATT Article XX (a) public morals exception, the Appellate Body (AB) 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 international relations 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 (non-governmental organisations 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 Association of Pork Industry and Exporter (ABIPECS) (1), slaughterhouses that export to the EU market (3), farmers (3), academic experts (4), and representatives of European non-governmental organisations working in Brazil (2).

44 European Communities – Measures Prohibiting the Importation and Marketing of Seal Products (DS 400 and DS 401).

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 (DG Sanco) (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 Animal Protection⁴⁵ (WAP) (1), Compassion In World Farming (CIWF) (1), and the Eurogroup for Animals (1). Furthermore, informal discussions were held with representatives of the World Organisation 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 European Union animal welfare related legislation (Brussels, Belgium, 12-13 June 2012), the 3rd OIE Global Conference on Animal Welfare (Kuala Lumpur, Malaysia, on 6-8 November 2012) and the OIE Regional Conference on Animal Welfare and International Trade (Montevideo, Uruguay, 17-18 October 2013).

4.4. 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.

4.4.1. Initiatives within international governmental relations

In Europe, the EU Directorate-General for Trade (DG Trade) 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

45 In 2012, when we carried out the research WAP was known as the World Society for the Protection of Animals (WSPA). The change in the name came in mid-2014.

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 strident⁴⁶. 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 Mercosur⁴⁷ 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 World Organisation for Animal Health (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 Sanitary and Phytosanitary (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

46 Consequently, trade measures regarding animal welfare were left out the agenda for the Ministerial Bali Conference.

47 The official position of Mercosur countries is that the subject of animal welfare measures should be included in the chapter of the agreement that deals with cooperation, instead of in the chapter dealing with Sanitary and Phytosanitary matters. It is worth noting that in the course of the negotiations, it may happen that animal welfare will no longer be a hurdle between the negotiating parties. This is so because the Association Agreement between EU and the Republic of Chile, signed in 2006, revealed that including animal welfare measures in the chapter on Sanitary and Phytosanitary measures does not obstruct market access. Quite the contrary. Although initially Chile resisted the inclusion of animal welfare in the Chile-EU agreement, the provision is now positively evaluated by the parties as a trigger to the institutionalisation of animal welfare in Chile. Today the EU-Chile Association Agreement is seen as a major international achievement in terms of international trade and animal welfare standards.

are thought to fall outside the scope of the SPS agreement⁴⁸. Despite this, 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 a nongovernmental organisation 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 DG Trade 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 activities⁴⁹. As for ISO, those who participate in the development of technical specifications for animal welfare measures are representatives of national standardisation bodies,⁵⁰ 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 (IDF), the International Meat Secretariat (IMS), the International Egg Commission (IEC), and the Eurogroup for Animals, the World Society for the Protection of Animals (WSPA), and the Safe Supply of Affordable Food Everywhere (SSAFE⁵¹). The latter organisation has taken the lead by officially proposing an ISO standard on animal welfare.

The United Nations Food and Agriculture Organization (FAO) is another multi-stakeholder platform that engages internationally in animal welfare matters with the aim of establishing good animal welfare practices. As an intergovernmental

48 Up to this moment there is no authoritative interpretation of the applicability of the SPS Agreement for animal welfare measures. However, many scholars and trade officials have made remarks that animal welfare measures fall outside the scope of the SPS Agreement. This is the case for instance of Prevost (2008) and the Secretariat of the SPS Committee on document G/SPS/GEN/932.

49 However, the EC holds no voting right over OIE standards, as this is an exclusive prerogative of EU Member States.

50 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

51 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.

organisation, the Membership of FAO consists of sovereign states and regional economic integration organisations like the European Union. 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 European Union. 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 Food and Veterinary Office (FVO), which is the Commission inspection service of DG Sanco. For instance relevant in terms of animal welfare is compliance with the 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 forms 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 European Union 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.

4.4.2. 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 WSPA⁵², 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, World Organisation for Animal Health (OIE) and European Union directives. By late 2013, over 1,128 professionals from 250 processing plants had already participated in the training. Another example is the partnership between WSPA, the Food Animal Initiative (FAI) 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,

52 The World Society for the Protection of Animals (WSPA) was founded in 1981 in the United Kingdom. Over the years, WSPA has expanded its operation to over 50 countries. In Brazil, the organisation started in 1989 and today stands out as the most active civil agent promoting the development and implementation of farm animal welfare policies and practices.

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 Research Department at 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 (AWB) research programme.

4.4.3. Initiatives within international economic relations

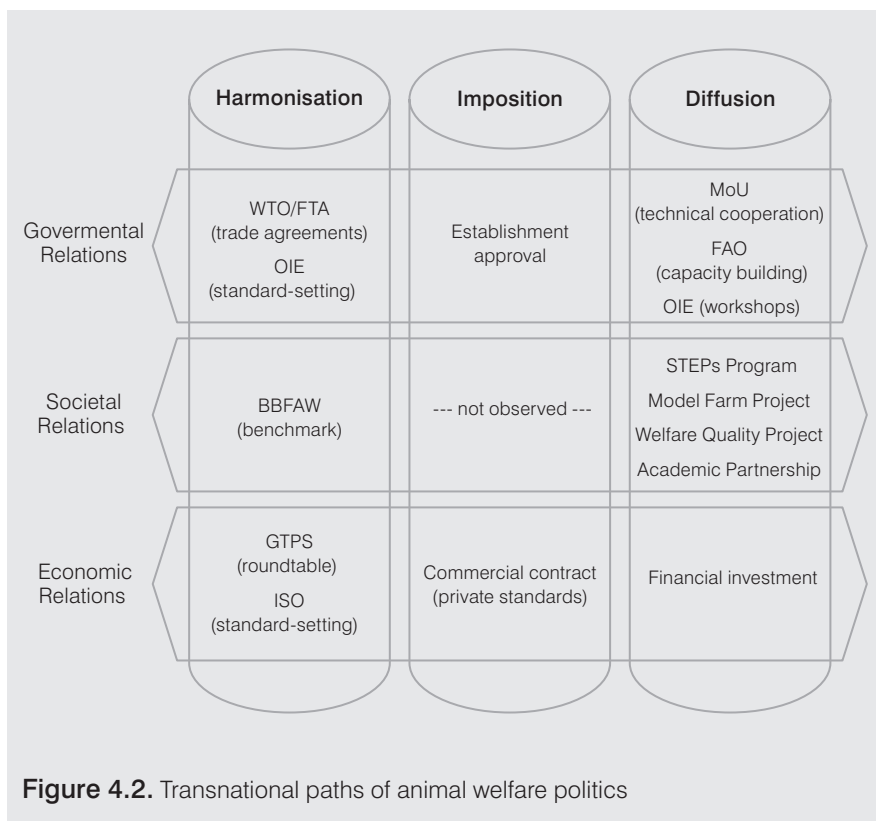
The growing commitment of companies to operate their businesses in a socially responsible manner is providing several opportunities for improving animal welfare worldwide. An increasing number of food companies (retailers, service companies, manufacturers, processors and producers) have started to integrate 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 (GlobalGAP) 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 is 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 (GTPS). 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 (IFC), 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, and Ngo 2012; Wagemans, van Koppen, and 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 Compassion in World Farming (CIFW). The Business Benchmark on Farm Animal Welfare (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 (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.

4.5. 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 international relations. 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 4.2 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 above 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.

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 Memorandum of Understanding (MoU) between DG Sanco 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 WUR 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 are legally enforceable commitments and thus considered *hard* instruments. According to the extensive literature (e.g., Footer, 2008; Rahman and Amin, 1999; Ramlogan, 2001; Shelton, 2003; Skjærseth, Stokke and 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; Stoker, 1998; Wolff and Scannell, 2008; Vogel, 2008; Henson, 2008; Woldd and Scannell, 2008; Funchs et al, 2009) 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 ‘hardiness loosened up’. For instance, the 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 and Hatanaka, 2005; Wolff and 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 and Bain, 2004; Fuchs and Kalfagianni, 2010; Hatanaka, Bain and Busch, 2005; Henson and Jaffee, 2008; Konefal, Mascarenhas and Hatanaka, 2005; Lang and Heasman, 2004; Stanton, 2012; van der Meulen 2011; Wolff and Scannell, 2008).

Private standards having the effect of a hard policy instrument is causing great concern among trade diplomats at the WTO.

4.6. 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 and Hingley, 2003; 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"⁵³, some scholars and practitioners of international law have suggested that private standards need to be

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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 and Geraets, 2012).

4.7. 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 currently 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 on-going 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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Private farm animal welfare standards: challenges and prospects for a WTO case

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Abstract

The use of private standards to address societal concerns such as farm animal welfare is increasingly becoming a matter of disagreement among trade officials. At the core of such discussions lies the question whether or not private standards fall within the scope of disciplines stipulated in the agreements administered by the World Trade Organization (WTO). This article aims to contribute to this discussion by examining the prospect of a WTO case to be built on the basis of Article 13 of the SPS Agreement in light of private farm animal welfare standards developed by a supermarket chain. To make such an assessment we examine three key challenges that will need to be overcome for such a case to be filed: (i) to convince that the SPS Agreement applies to farm animal welfare measures; (ii) to persuade that supermarkets are a 'non-governmental entity' in the sense of the SPS Agreement; (iii) to prove that the conduct of the WTO Member, which has jurisdiction over the supermarket, violates one of the obligations set forth in Article 13. Despite the challenges embodied in each of the above steps, we found some legal reasoning and factual evidence that suggest the possibility of such a case to be successfully built. In view of this finding, we consider it prudent that governments make sure that private actors operating within their territory will adopt farm animal welfare measures in the course of international transactions that are consistent with the WTO discipline.

5.1. Introduction

In recent decades, there has been a considerable increase in the number of private certification schemes intended to establish farm animal welfare standards. From the perspective of advancing the policy field of farm animal welfare, the steady increase in private schemes is met with enthusiasm by a number of scholars and policy-makers (e.g., Blandford et al., 2002, Fulponi, 2006, Sen and Donadelli, 2013, Amos and Sullivan, 2013). Indeed, many studies have shown that the inclusion of animal welfare standards in contractual arrangements between private parties, such as food retailers and suppliers, has served as a catalyst for the improvement of animal welfare conditions both within and beyond domestic jurisdictions (Lindgreen and Hingley, 2003; Fulponi, 2006; Sansolini, 2008; Maciel et al., 2015). However, from the legal perspective of multilateral trade relations, the evolving role of private regulatory arrangements is raising serious concerns among governmental officials at the World Trade Organisation (WTO) because many private standards are not developed or applied in accordance with the disciplines embodied in the agreements covered by the WTO, especially the rules of the Sanitary and Phytosanitary (SPS) Agreement.⁵⁴ Thus, some WTO Members fear that the proliferation of private standards will “undermine the hard won improvements in market access arrangements that followed the establishment of the SPS Agreement”⁵⁵. According to a survey⁵⁶ conducted by the WTO Secretariat, the SPS disciplines most commonly disregarded by private standards are harmonization (Article 3), equivalence (Article 4), scientific justification (Articles 5 and 6), and transparency (Article 7 and Annex B). However, discussions on whether private standards comply with the SPS disciplines are considered futile by some WTO Members, as they consider private standards to be beyond the scope of the WTO legal framework. This is a view also held by some scholars who describe standards such as GlobalGAP (formerly EurepGAP) and the British Retail Consortium (BRC) as outside the jurisdiction of the WTO (see dell’Aquila and Caccamisi, 2007, Botterill and Daugbjerg, 2011).

The disagreement over whether standards developed by private actors must comply with the disciplines of the SPS Agreement has produced a completely new set of questions in WTO scholarship. Among the questions raised as part of this debate is whether a WTO Member can be held legally accountable for inconsistencies

54 The SPS Agreement, which came into force in 1995, is intended to ensure that the sovereign right of any government to protect human, animal and plant life and health is not misused for protectionist purposes. To this end, the Agreement provides a comprehensive framework to discipline the use of sanitary and phytosanitary measures to ensure that these measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade.

55 Citation taken from item 03 of doc G/SPS/GEN822 and item 07 of doc G/SPS/GEN843.

56 G/SPS/GEN/932 – item 51.

between private standards and SPS provisions, such as when the standards stipulated in a certification scheme operated by a supermarket chain are not based on standards recommended by the so-called Three Sisters⁵⁷. Searching for an answer to this question, a growing number of WTO scholars turn to Article 13 of the SPS Agreement⁵⁸, which stipulates the scope of WTO Member responsibilities regarding measures adopted by non-governmental entities (e.g., Wouters and Geraets, 2012; Epps, 2010; Arcuri, 2013; Casey, 2007; Bohanes and Sandford, 2008; Roberts, 2009). Examining Article 13 has led to additional questions concerning whether the term 'non-governmental entities' encompasses such diverse actors as animal producers, civil organisations, food retailers, and fast food chains (which are the most common developers of private food standards) and what types of obligations Article 13 imposes on WTO Members. The aim of this article is to contribute to this discussion by assessing the possibility that a WTO Member may pursue a case to hold the government of an importing country accountable for the trade distorting effects of private farm animal welfare standards that have been applied in a manner inconsistent with the disciplines of the SPS Agreement. To make such an assessment, this article explores three key challenges that any potential claimant will face when building a case on the basis of Article 13 in light of a situation in which a supermarket chain adopts a certification scheme that requires foreign suppliers to comply with stricter farm animal welfare standards than those recommended by the World Organisation for Animal Health (OIE). Any exporting country that resorts to the WTO dispute settlement system to remedy alleged violations of the SPS disciplines⁵⁹ will encounter the following challenges: first, convincing the Panel that the SPS Agreement applies to measures concerning farm animal welfare; second, persuading the panellists that the term 'non-governmental entities' found in Article 13 of the SPS Agreement covers supermarkets; third, proving that the conduct of the WTO Member that holds jurisdiction over the territory in which the supermarket operates falls short of complying with one or more of the obligations listed in Article 13; and, fourth, demonstrating that the measure at stake – private farm animal welfare standards – is applied in a manner that constitutes a unjustifiable trade restriction. This paper examines the three first challenges and explores the prospects for advancing some legal and factual considerations to overcome these challenges. The examination of the fourth challenge is beyond the scope of this article because its aim is to ascertain

57 The Three Sisters is an expression used in reference to the three international bodies indicated by the SPS Agreement as being responsible for setting standards relating to sanitary and phytosanitary concerns: the Codex Alimentarius Commission, the World Organisation for Animal Health (OIE), and the Secretariat of the International Plant Protection Convention (IPPC).

58 And to Article 3 of the Technical Barriers to Trade (TBT), which mirrors Article 13.

59 Article 3 – Harmonisation clause.

whether the SPS disciplines apply to private farm animal welfare standards and not to verify that such standards comply with the requirements of the SPS disciplines⁶⁰.

The structure of this article is as follows. The next section presents a brief overview of the increasing concerns regarding the use of private standards to address quality and safety issues related to food production. In the subsequent section, a three-fold legal analysis is performed to assess the prospects for formulating a claim that Article 13 of the SPS Agreement has been breached in the context of the private farm animal welfare standards applied by a supermarket chain. The final section presents the assessment and discusses its implications for WTO Members.

5.2. The rise and criticism of private food standards

Within the food sector, a substantial increase in the use of private standards has been noted since the early 1990s. Many of these standards include farm animal welfare requirements either as the sole object of regulation, such as Freedom Food⁶¹ and Beter Leven⁶², or as a part of a broader safety and quality scheme, where farm animal welfare appears intertwined with other issues. Examples of the latter include Filière Qualité⁶³, British Retail Consortium Global Standard (BRC), GlobalGAP, and Qualitat Sicherheit (QS), which are all schemes developed by supermarket chains, individually or in consortium. In the academic literature, the steady increase in private standards has been described as both cause and effect of the on-going reorganisation of policy processes within which non-state actors, such as nongovernmental organisations (NGOs) and businesses, begin to engage in regulatory activities (van Tatenhove and Leroy, 2003; Marx et al., 2012; Maciel and Bock, 2013). Therefore, private standards can be described as “a form of socio-political steering in which private actors are directly involved in regulating – in the form of standards or more general normative guidance – the behaviour of a distinct group of stakeholders” (Pattberg, 2009, p. 225). In political and social debates, the use of private standards to address societal concerns is often presented as an attractive alternative to overcome the limits of states’ abilities to regulate increasingly complex global chains of food production and distribution, especially regarding the restriction of trade based

60 Compliance verification of private farm animal welfare standards with each provision of the SPS Agreement is only relevant once the applicability of the SPS Agreement to such a measure is confirmed.

61 Freedom Food is a food labelling scheme operated by the Royal Society for the Prevention of Cruelty to Animals (RSPCA), which is a UK-based animal protection organisation. For more information, see <http://www.freedomfood.co.uk/>.

62 Beter Leven is a food labelling scheme operated by the Dutch Society for the Protection of Animals (Dierenbescherming). For more information, see <http://beterleven.dierenbescherming.nl/>.

63 Filière Qualité is a food labelling scheme operated by Carrefour, which is a French food retailer. For more information, see <http://www.filiere-qualite.carrefour.fr/>.

on societal concerns (e.g., Blandford et al., 2002; Cashore et al., 2007; Fulponi, 2006; Bernstein and Hannah, 2008). This is because, in contrast with traditional forms of state-based regulation, which can be readily challenged by an exporting country if not in conformity with the rules of the WTO, private standards are assumed to operate outside the realm of WTO trade rules.

The increasing reliance on private regulatory instruments, particularly on the part of developed countries, has become a contested issue among governmental trade officials because although private standards are non-legally binding regulatory instruments, they have become *de facto* mandatory requirements for importing into markets, such as the European Union⁶⁴ (Lang and Heasman, 2004; Konefal et al., 2005; Fuchs and Kalfagianni, 2010). Consequently, suppliers find themselves with no alternative but to comply with standards developed by private entities that are often applied in a manner that is inconsistent with international trade rules if they do not wish to be left out of the market (Wolff and Scannell, 2008). Concerns about this situation were first presented at a WTO meeting in 2005 when the representative of St. Vincent and the Grenadines reported that compliance with EurepGAP norms (currently, GlobalGAP) had become a condition for exporting bananas to the United Kingdom's supermarkets. The trade official from St. Vincent and the Grenadines thus inquired whether these measures were part of European Community (EC) general food law. The EC representative replied that EurepGAP was not an EC body but that the EC could not object to them because these measures did not conflict with EC legislation. The discussion was amplified when other countries indicated that they were experiencing similar problems in entering the European market for fresh fruits and vegetables. Hence, some Members raised the argument that under Article 13 of the SPS Agreement, WTO Members can be held accountable for SPS measures taken by private actors. For some countries, such as Egypt, India and the Members of MERCOSUR, the SPS Agreement renders the governments in importing countries responsible for the standards set by their private actors. In their view, most private standards have been encouraged by WTO Members, which should then bear responsibility for any SPS inconsistency that such standards present in the course of their application to exporting countries. In contrast, some countries, largely in Europe, are of the opinion that WTO Members can never be held responsible for private sector requirements (see Mbengue, 2011; Huige, 2011)

In the face of proliferating private voluntary standards and uncertainties regarding their legal status under WTO trade rules, the SPS Committee included the issue of private and commercial standards on the agenda as of its February 2007 meeting. Thereafter, over two dozen documents have been elaborated by the SPS Secretariat,

64 This situation resulted from growing market concentration in the food sector, which significantly expanded the bargaining power of retailers (e.g., Konefal, Mascarenhas, and Hatanaka 2005).

WTO Members, and international public and private organisations to advance knowledge of the relationship between private standards and international trade rules. Although animal welfare has been cited in several of the above documents as being part of the content of private food standards, the debate regarding the potential responsibility of WTO Members has tended to focus on standards for fruits and vegetables. The disregard of animal welfare requirements in the discussion of private standards began after the release of the revised version of the WTO document G/SPS/GEN/932 (circulated in December 2009), which reports WTO Member responses to a questionnaire on the effects of SPS-related private standards. Before the revision (including in the original version of G/SPS/GEN/932 that circulated in June 2009), private animal welfare requirements were referred to as a specific issue identified by some WTO Members as at odds with official international standards and thus allegedly in violation of the SPS disciplines. Although documents circulating within the SPS Committee still contain references to animal welfare content in private standards, each document holds that animal welfare standards fall outside the scope of the SPS Agreement. Arguably, these remarks have contributed to the exclusion of private farm animal welfare standards from the scholarly debate surrounding the question of whether private food standards fall within WTO Member obligations under Article 13 of the SPS Agreement. This study attempts to fill this gap. As we will elaborate in the next section, animal welfare may not be explicitly mentioned in the SPS Agreement, but in light of the judicial reasoning in the EC-Biotech case⁶⁵, which decided against the conventional wisdom regarding the scope of the SPS Agreement, it is reasonable to consider the applicability of this agreement to farm animal welfare measures.

5.3. Challenges and prospects for building the case

In the following section, we assess the prospects for building a WTO case based on Article 13 of the SPS Agreement with the purpose of remedying a situation in which private farm animal welfare standards are applied by a supermarket in an SPS-inconsistent manner. To provide such an assessment, we examine three key challenges that will need to be overcome for such a case to be filed: (i) arguing that the SPS Agreement applies to farm animal welfare measures; (ii) demonstrating that supermarkets are 'non-governmental entities' in the sense of the SPS Agreement; and (iii) proving that the conduct of the WTO Member that has jurisdiction over the supermarket violates one or more of the obligations set forth in Article 13. Before

65 Panel Report, European Communities – Measures Affecting the Approval and Marketing of Biotech Products, WT/DS291/R, WT/DS292/R, WT/DS293/R, Add.1 to Add.9, and Corr.1, adopted 21 November 2006, DSR 2006:III-VIII.

beginning the analysis, however, it is prudent to highlight that what follows is a simplified analysis based on the general features of private standards. Private standards differ significantly depending on their objective and scope, the customers they target, the type of companies and areas to which they apply, and the type of organisations that develop and require them (Liu, 2009). In an actual dispute, all these characteristics would need to be considered in the final assessment.

5.4.1. Applicability of the SPS Agreement to farm animal welfare measures

The first step for filing a claim under the SPS Agreement is to demonstrate that the measure at stake falls within the scope of this agreement. According to Article 1.1, the SPS Agreement “applies to all sanitary and phytosanitary measures which may, directly or indirectly, affect international trade.” The definition of a ‘sanitary and phytosanitary measure’ (henceforth SPS measure) is found in Annex A.1, which states that an SPS measure is any measure applied:

- a. to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
- b. to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;
- c. to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or
- d. to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.

Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, *inter alia*, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety.”

Taking this first step towards arguing for the applicability of the SPS Agreement is challenging because the term 'animal welfare' is not mentioned in the above definition of an SPS measure. Thus, it has been said that animal welfare measures fall outside the scope of this Agreement⁶⁶. Even the OIE, which has become the leading international organisation for the development of animal welfare standards and guidelines⁶⁷ and is the reference organisation for SPS measures on animal health, often notes that "animal welfare measures are not sanitary measures as defined in the SPS Agreement" in its public communications (doc G/SPS/GEN/822, item 12). However, the EC-Biotech case provides solid evidence that although the term has is not explicitly mentioned in the definition contained in Annex A.1 of the SPS Agreement, the applicability of the Agreement can be confirmed on an interpretative basis. In the EC-Biotech case, the United States, Argentina, and Canada challenged European regulatory control of genetically modified organisms (GMO) under the SPS Agreement. The complainants argued, *inter alia*, that the European regime was not supported by sufficient scientific evidence, which violated Article 2.2 of the SPS Agreement. One line of defence adopted by the EC was that its Biotech regime was not in breach of SPS provisions because it was not an SPS measure. The argument proposed by the EC was that its Biotech regime could not be considered an SPS measure because 'the protection of the environment' as stated in Directives 90/220 and 2001/18 exceeds the scope of SPS measures defined in Annex A⁶⁸. To support its argument that the SPS Agreement does not cover measures aimed at the protection of the environment, the EC recalled the negotiation history of the SPS Agreement and noted that the cover note of the Draft Text on Sanitary and Phytosanitary Measures circulated in 1990 by the chairman of the SPS Working Group questioned whether the SPS Agreement would be applied to the protection of environment. However, because the final text of the SPS Agreement makes no explicit reference to the environment, EC suggested that one must assume that the SPS

66 Postsript: this chapter was written before the Panel and AB reports on the EC-Seal Products case were released. The EC-Seal Products case represents the first time animal welfare measures were assessed under the WTO legal framework. The finding of the AB that European citizens' concerns about the welfare of seals fall within the scope of the general exception of Article XX(a) of the General Agreement on Tariffs and Trade (GATT) does not seem to compromise the argument raised in this section.

67 The OIE was originally an intergovernmental organization created in 1924 to improve transparency and international collaboration in the control of epizootic animal diseases. With the establishment of the WTO, and consequently, the SPS Agreement, the OIE became the official relevant international organization for the development of standards, guidelines and recommendations for animal health and zoonoses in 1995. However, in 2001, OIE Members decided to extend the mandate of the organisation to incorporate the role of developing standards, guidelines and recommendations on the subject of animal welfare.

68 The ultimate aim of the EC was to convince the Panel to assess the Biotech regime under the Agreement on Technical Barrier to Trade (TBT), which does not require scientific justification for the adoption of a measure.

Agreement does not apply to measures that aim to protect the environment⁶⁹. The Panel, however, did not support the EC's argumentation. The Panel explained that in the draft text cited by the EC contained two types of text in brackets, one that included and one that excluded environmental protection from the definition of SPS measures. Because neither bracketed text section was retained in the final version of the Agreement, the Panel decided to base its decision neither on the drafting history of the SPS Agreement⁷⁰ nor on the absence of the term environment in Annex A.1 of the SPS Agreement. Instead, the Panel followed an interpretative approach.

The draft of the SPS Agreement referred by the EC and the Panel reads as follows:

"Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, inter alia, end product criteria; processing and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; packaging and labelling requirements directly related to food safety; [*measures for the protection of animal welfare and of the environment, as well as of consumer interests and concerns*]. Requirements concerning quality, composition, grading, [*consumer preferences, consumer information, animal welfare, the environment or ethical and moral considerations*] are not included in the definition of sanitary or phytosanitary measures." (Underlined by the authors)

We underlined parts of the above passage to emphasize that the inclusion of animal welfare measures was also debated during the negotiation rounds. As the Panel in the EC-Biotech case noted, the mere absence of this term in the final text of the Agreement does not *prima facie* exclude animal welfare measures from the scope of the SPS Agreement. As Pauwelyn (1999 p. 643) noted, years before the EC-Biotech case, the decisive factor for a specific measure to be considered an SPS measure is "a subjective one". We thus consider it possible to overcome the challenge of asserting the applicability of the SPS Agreement by providing an interpretative link between an animal welfare measure and one of the purposes of an SPS measure as provided in Annex A.1. Although it is only on a case-by-case approach that the extent of such interpretative link can be fully explored, we believe it in the case of food producing animals the linkage has already been drawn in researches related to animal health and food safety. As indicated above, SPS measures include any measure applied to protect human or animal life or health from risks arising from diseases and some other situations. Within a specialised literature, studies indicating

69 EC-Biotech Panel Report – paragraph 7.199.

70 EC-Biotech Panel Report – paragraph 7.211.

an interrelationship among farm animal welfare, animal disease and human health abound. For instance, a study by Rostagno (2009) reveals that poor animal welfare increases stress levels, which negatively affect the animals' physiological fitness. Debilitated animals become susceptible to contamination by pathogens, such as *Escherichia coli* O157:H7, *Salmonella*, and *Campylobacter*, which subsequently enter the human food chain. The European Food Safety Authority (EFSA) has also released a number of studies indicating a correlation between animal welfare and risk of diseases⁷¹. Therefore, despite the absence of the term 'animal welfare' in the SPS Agreement, measures that aim to protect the health or life of humans or animals from risks of contaminants, toxins or diseases that derive from poor animal welfare can be considered sanitary measures for the purposes of the SPS Agreement. Additional relevant information indicating the possibility that animal welfare measures can be examined within the SPS framework comes from the respective Free Trade Agreements recently signed by the European Union with Chile and South Korea. In both of these international regulatory arrangements, provisions for farm animal welfare were included in the chapters on sanitary and phytosanitary measures.

Finally, in the case of a WTO dispute, it would be important for the complaining Member to refute the potential counterargument that the jurisdictional specification contained in the SPS Agreement would exclude animal welfare measures from the scope of this Agreement because in Annex A.1 letter 'b', the text refers to the protection of human or animal life or health "within the territory of the Member" imposing the measure. Hence, the argument for resisting the assessment of an animal welfare measure under the SPS Agreement would be that the welfare conditions of living animals in the exporting country pose no health risks for humans or animals in the importing territory. In other words, the assumption is that the handling of an animal does not alter the physical characteristics of the final product in a way that produces health risks for those in the importing country. Indeed, WTO panellists are usually reluctant to accept measures that target production processes and methods in the exporting country when there is no scientific evidence of a health risk in the importing country. To counter this argument, one can refer again to the scientific evidence presented above, which suggests that poor welfare is a potential threat to the health of the animal in the exporting country and thus a threat to the health of the consumer in the importing country. Hence, an argument can be made that the territorial element in the definition of an SPS measure is fulfilled when the animal welfare import requirements protect the "human life or health" of the consumers who are within the jurisdiction of the contracting party imposing the measure⁷².

71 EFSA scientific opinions are publically available at <http://www.efsa.europa.eu/en/topics/topic/animal-welfare.htm?wtrI=01>.

72 To further explore this line of reasoning, see Cook and Bowles (2010).

Having established, *in arguendo*, the possible applicability of the SPS Agreement to the legality check of animal welfare measures, the next condition to be addressed is the admissibility of measures taken by food retailers.

5.3.2. Interpretation of the non-governmental entities

The second challenge in building a case concerning the breaching of Article 13 is to form a convincing argument that there is a textual hook linking organisations, such as supermarket chains, with the provisions set forth in this Article. The need for such reasoning refers to the fact that under Article 13, WTO Members are bound to obligations only in relation to certain organisations, which are: (i) other than the central government bodies, (ii) regional bodies, (iii) local governmental bodies, and (iv) non-governmental entities. Thus, to successfully argue that a WTO Member has failed to comply with this obligation when private standards are being applied in an SPS-inconsistent manner, it is necessary that the organisation applying the standards be a type that falls within the categories to which WTO Members bear responsibility. The argument here must then be that a supermarket chain is a 'non-governmental entity'. The challenge, however, is that the SPS Agreement provides no definition of the term 'non-governmental entities'. To address this loophole, some scholars have sought guidance in the Agreement on Technical Barriers to Trade (TBT) where a similar term – 'non-governmental body' – is found. According to Annex 1(8), for the purposes of the TBT Agreement, a 'non-governmental body' is understood as a "Body other than a central government body or a local government body, including a non-governmental body which has legal power to enforce a technical regulation." It follows from the above definition that having 'legal power' may be considered a necessary trait of a 'non-governmental body'. This is, however, not what Casey (2007) and Gandhi (2006) conclude when analysing this TBT definition. For Casey (2007), the use of the word 'including' in Annex 1(8) suggests an addition. Thus, for him, a non-governmental body includes all other bodies not listed in the definition, including those bodies that have legal power. Gandhi (2006) proposes a similar interpretation; in his opinion, the use of the word 'including' within the definition signifies that the categories and/or characteristics of a non-governmental body are not exhaustive. Therefore, for Gandhi (2006), organisations such as the Forest Stewardship Council (FSC) fall within the descriptive scope of non-governmental bodies under the TBT. If a similar view were taken to interpret the SPS Agreement, then supermarket chains would also fall within the scope of the term non-governmental entity. If one understands that having legal power is necessary when considering whether an organisation is a 'non-governmental body' for the purposes of the TBT Agreement, does this mean that 'non-governmental entities' are only those organisations that hold 'legal power'? Not necessarily.

The expression 'non-governmental bodies' appears in the TBT Agreement and in the General Agreement on Trade in Services (GATS)⁷³. Both agreements refer to legal power. The expression in the SPS is 'non-governmental *entities*' and there is no passage concerning legal power. If the intention of the drafters was to characterize 'non-governmental entities' in the SPS in a similar fashion as in the TBT and GATS, that is, having legal power, then why did the drafters adopt a different expression in the SPS? Note that this remark regarding drafter intention was made by the European Communities in the EC-Biotech case when attempting to persuade the Panel on the applicability of the TBT Agreement. According to the panel report, the EC defended the view that "when the drafter of an international agreement uses a term in one instrument but not in another, the drafter intended to exclude that term from the latter instrument"⁷⁴. Following this line of reasoning, one can argue that possessing legal power is only a relevant characteristic for analysing non-governmental measures under the TBT and GATS and not under the SPS Agreement. This appears to be the direction in which discussions in the SPS Committee are heading when one reads G/SPS/W/265/ Rev2, where a working definition of a non-governmental entity is suggested as "any entity that does not possess, exercise, or is not vested with governmental authority. Non-governmental entities are private entities, including private sector bodies, companies, industrial organisations, enterprises and private standard-setting bodies"⁷⁵. To strengthen the argument that the characterization of a 'non-governmental entity' does not require legal power, one can refer to Article 1.1. of the SPS Agreement where no explicit reference to legal power is made when delimiting the applicability scope of the Agreement. Similarly, no explicit limitation for measures taken under legal power is made in Annex A, which provides an illustrative list of SPS measures. Therefore, it appears reasonable to assume an interpretation of the term 'non-governmental entities' according to the words' everyday meanings, that is, an entity that is not governmental. It follows from this interpretation that WTO Members have an obligation to ensure that the SPS disciplines are observed by supermarkets and any other non-governmental entity. As Roeben (2007) suggests, interpreting otherwise would jeopardize the aim of Article 13, which is to provide an effective compliance regime to prevent WTO Members from circumventing the Agreement by relying on private action. For Roeben (2007), the expression 'non-governmental entities' is to be understood broadly as to encompass situations in which a WTO Member delegates its standard-setting activities to non-governmental entities; he adds, "delegation need not be formal, but may be factual in nature" (Roeben, 2007, p. 543).

73 GATS Article 1(3) states, for the purposes of this Agreement "(a) 'measures by Members' means measures taken by: (i) central, regional or local governments and authorities; and (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities[...]."

74 EC-Biotech Panel Report paragraph 7.198.

75 G/SPS/W/265/ Rev2 -Footnote 2.

The above argumentation could be reinforced with reference to the principle of 'good faith' and effective interpretation. According to Article 31(1) of the Vienna Convention on the Law of Treaties, "A treaty shall be interpreted in good faith in accordance with the ordinary meaning given to the terms of the treaty in their context and in the light of its object and purpose." As stated earlier in this article, the *object* of the SPS Agreement is that measures are developed and applied with the aim of protecting human, animal or plant life or health, and the *purpose* of the SPS Agreement is to provide a set of rules to ensure that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade. Interpreting Article 13 as providing an obligation for WTO Members to ensure that when supermarkets enact farm animal welfare requirements, they do so in a manner consistent with the rules established by the SPS Agreement appears consistent with the good faith principle. Not doing so would mean dismissing the purpose of the SPS Agreement because non-governmental entities, such as supermarket chains, would be able to adopt SPS measures in an unlawful manner. In this respect, the Appellate Body (AB) in the US-Gasoline⁷⁶ case (p. 23) indicated, "An interpreter is not free to adopt a reading that would result in reducing whole clauses or paragraphs of a treaty to redundancy or inutility." The above reasoning is consistent with the principle of effective interpretation. As the Appellate Body in the Korea-Dairy⁷⁷ case opined, "[T]he principle of effectiveness in the interpretation of treaties (*ut res magis valeat quam pereat*⁷⁸) requires that a treaty interpreter... must give meaning and effect to all terms of the treaty. In light of the interpretative principle of effectiveness, it is the duty of any treaty interpreter to "read all applicable provisions of a treaty in a way that gives meaning to all of them, harmoniously."⁷⁹ Thus, to give full effect to the obligations contained within Article 13 of the SPS Agreement, private standard setters must be defined as non-governmental entities; otherwise, Article 13 would be an empty provision. As Pauwelyn (2004 p. 21) notes, "if the WTO is so adamant about striking down wasteful and unjustified trade distortions enacted by *governments*, why ought it tolerate with equanimity similar trade distortions enacted or brought about by *non-state* actors? [...] those non-state sources of protectionism not destined to equal or even surpass the importance of governmental protectionism?" It is also worthwhile to refer to the Japan-Film⁸⁰ case in which the WTO Panel noted, "what may appear on

76 Appellate Body Report, United States-Standards for Reformulated and Conventional Gasoline, WT/DS2/AB/R, adopted 20 May 1996, DSR 1996:I, 3.

77 Appellate Body Report, Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products, WT/DS98/AB/R, adopted 12 January 2000, DSR 2000:I, 3.

78 This Latin expression is usually translated as 'that the thing may rather have effect than be destroyed'.

79 Paragraph 80.

80 Panel Report, Japan – Measures Affecting Consumer Photographic Film and Paper, WT/DS44/R, adopted 22 April 1998, DSR 1998:IV, 1179.

their face to be private actions may nonetheless be attributable to a government because of some governmental connections to or endorsement of those actions”⁸¹. In addition, the Panel noted the risk of WTO Members evading their trade obligations through the delegation of quasi-governmental authority to private bodies.

5.3.3. Establishing a mismatch between a Member’s obligation and its conduct

The third challenge for a successful claim of a breach of Article 13 depends on the existence of factual evidence that a WTO Member’s conduct falls short of the obligations provided in this Article. In that case, it is important to first review the text of Article 13 to identify which obligations bind Members:

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

A plain reading of the text above indicates that WTO Members are bound by multiple obligations: three positive obligations (items i, ii, iv) and one negative obligation (item iii)⁸². In view of the existence of these multiple obligations and the opening statement, which explicitly states that WTO Members bear full responsibility for the observance of this Agreement, it appears that the greater challenge in this third step may lie with the respondent rather than on the complainants because the number of positive and negative actions required in this Article appears to have trapped WTO Members into

⁸¹ Paragraph 10.52.

⁸² Broadly speaking, a positive obligation denotes a State’s duty *to do* something as opposed to a negative obligation, which imposes a duty *to refrain* from doing something. For instance, in the context of human rights, a positive obligation denotes a State’s responsibility to engage in an activity to secure the effective enjoyment of a fundamental right as opposed to the classical negative obligation to merely abstain from human rights violations.

a *pentagonal web of obligations* concerning their responsibility for the implementation of the SPS Agreement. Consequently, it will likely be more difficult to defend a WTO Member from a claim of breach of Article 13 than to mount a complaint based on this article.

As aforementioned, WTO Members are bound to multiple obligations under Article 13. Thus, there are multiple options for assessing the prospects for bringing a case based on this provision. For instance, the complainant can argue that another WTO Member is in breach of its obligation by demonstrating that the Member has failed to *adopt reasonable measures* to ensure that supermarkets operating within their territory comply with the SPS provisions (item iii); alternatively (or simultaneously), the complainant can argue that the other Member has breached its obligation because the adopted measures had *the effect of, directly or indirectly, encouraging* food businesses to proceed in a manner inconsistent with the provisions of the SPS Agreement (item iv). For the sake of brevity, this analysis focuses on assessing the prospect of the latter scenario by exploring the conduct of the European Commission for two reasons. First, the aforementioned survey conducted among WTO Members concerning the effects of private standards (G/SPS/GEN/932), reports that most of the supermarkets imposing private food standards are based in the United States and European Union (see item 10). Second, there is an extensive body of literature indicating that the 'due diligence' provision enacted in the United Kingdom (UK) in 1990 and later incorporated into the European Union's food law regime was the main trigger for the increase in private food standards. This causal linkage provides a promising line of reasoning when establishing a breach of the *non-facere* obligation that WTO Members are bound by the effect of Article 13 (iv).

Accordingly, the literature⁸³ indicates that a 'due diligence clause' was introduced into the UK Food Safety Act in the wake of a series of food contamination crises in the 1990s, which shifted the liability for the safety of food products to the private sector. As a result, food companies became more proactive in the field of food safety, especially because this new regulatory framework provided that "[i]t shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control [...]" (Article 21 (1) FSA 1990). According to a number of scholars, it was in response to the 'due diligence' legal requirement that major UK supermarkets began to develop their own codes of practice concerning food safety standards and to employ third party auditors to conduct assessments. Over time, the British liability framework served as the basis for the reorganisation of EU food law disciplines that took place during the post-BSE crisis period. As Fulponi (2006)

83 For instance, Prevost 2008; van der Grijp, Marsden, and Cavalcanti 2005; Lee 2006; Casey, 2007; Fulponi 2000; Roberts, 2009.

indicates, although only a few other countries have 'due diligence clauses' *per se*, it is clear that the EU legislation has been drafted in the same vein as that of the UK. To meet the new statutory liability, most European retailers began setting food safety standards. Fulponi (2000, p. 10) argues that the new EU liability framework for food served as "an extremely important factor in the incentives for the development of food safety management systems." According to her empirical research, 70% of European retailers interviewed admitted that this new legal liability system has "stimulated the growth and stringency of standards" (Fulponi, 2006 p. 6). This finding is consistent with other publications indicating that the liability aspects of the EU General Food Law and Food Hygiene Regulations have constituted a major driving force in the development of EurepGAP⁸⁴ (currently, GlobalGAP). For Lee (2006 p. 31), collective initiatives, such as GlobalGAP, evolved into "a cheap and convenient 'due diligence defence' to protect business operators" from legal liability claims as well as from blame-and-shame civil society organisation campaigns. According to Hobbs et al. (2002), the vagueness of the new liability framework has encouraged retailers to develop private certification schemes. While the previous legislation referred to a 'warranty' defence, which required specific proof of negligence, the new 'due diligence' defence requires that one prove that "all reasonable precautions" were taken. For Hobbs et al. (2002), the term 'reasonable' is sufficiently vague to encourage food businesses to take extraordinary steps to ensure compliance with the food law. Hence, it is not surprising that retailers would increasingly exceed the minimum legally required and incorporate other attributes of food production, such as environmental protection, labour practices and animal welfare (Hobbs et al. 2002; Casey 2007; Fulponi 2006).

Based on the above scholarly explanation for the rise of private standards, one can argue that a clear link exists between the European food law regime and the use of private schemes with standards beyond the legal requirements. Therefore, one can reasonably claim that the European Commission has breached its negative obligation to "not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or non-governmental entities [...] to act in a manner inconsistent with the provisions of this Agreement (Article 13(iv)). A complainant may strengthen this claim by arguing that the European Commission has encouraged private regulatory development not only through the due diligence clause but also through other policy instruments. Scholten-Verheijen (2011) suggests that government procurement policies in many European countries provide for the adoption of private standards. In doing so, governments legitimize private standards. The interrelatedness of private certification schemes and European governmental

84 This is a certification scheme for good agriculture practices (GAP) created by a consortium of larger European food retailers.

policy is bluntly indicated in D'Hollander and Marx (2012). Their research on governmental procurement across European countries highlights an array of different governmental policies that 'facilitate' the development or uptake of private certification. Similarly, studies on forms of governmental engagement with standard-setting organisations suggest that governments can act as an interest group providing advice, expertise or even resources to standard-setting organisations in the development of standards (Bernstein and Cashore, 2007; Von Hagen and Alvarez, 2012). Furthermore, the complainant can refer to more subtle forms of encouragement on the part of the European Commission. According to van Der Grijp, Marsden and Cavalcanti (2005), David Byrne, an EU Commissioner from DG SANCO, has described EurepGAP's food approach as "complementing and reinforcing the Commission's own food safety initiative" (p. 43). For the authors, this is a manifestation of the European Commission's 'moral support' for EurepGAP. Casey (2007) makes a similar claim, arguing that there are 'tacit alliances' between European governmental regulation and private standard bodies. According to Casey (2007), the benefits that accrue to governments from such alliances concern enforcement, as the process-oriented approach of private food safety and quality standard schemes frees governments from the need to interfere with a third country's production methods. Thus, governments would be potentially shielded against WTO complaints from an exporting country.

5.4. Conclusions

The growing use of private standards to address societal concerns, such as farm animal welfare, is a matter of increasing attention among WTO officials and legal scholars. This attention has emerged from concerns that private standards would undermine or impair the international rules-based system of rights and obligations for the adoption of measures to protect human, animal and plant life or health. Such concerns are related to the fact that many private food standards are adopted in a manner that is inconsistent with the disciplines of the SPS Agreement. However, there is no consensus on whether the disciplines of the SPS Agreement are applicable to measures adopted by private actors. The emerging debates on the relationship between private food standards and the WTO legal framework are based on a high level of legal complexity (and political sensitivity). This article attempted to advance some of these debates by examining the possibility of addressing the three challenges that must be met to build a case based on Article 13 of the SPS Agreement in light of private farm animal welfare standards applied by supermarket chains in an SPS-inconsistent manner. The ultimate aim of this three-fold examination was to assess the prospects for a WTO Member to construct the argument that supermarket farm

animal welfare standards fall within WTO Member obligations under the SPS Agreement. We concluded that although it may seem counter-intuitive at first glance, private farm animal welfare standards could be the subject of WTO litigation.

We reached this conclusion by first examining whether the SPS Agreement could be applied to farm animal welfare standards. We argued that a solid argument for the application of this Agreement to animal welfare measures can be developed based on the judicial reasoning adopted in the EC-Biotech case, the negotiating history of the agreement and the extensive literature accounting for the close relationships among animal welfare, animal health and food safety. Having established, *in arguendo*, the applicability of the SPS Agreement to measures containing farm animal welfare provisions, we assessed whether the term 'non-governmental entity' may refer to entities such as supermarket chains. By exploring the similarities and differences between references to non-governmental entities in the SPS Agreement and in other WTO Agreements, we indicated that supermarkets could be considered non-governmental entities for the purposes of the SPS Agreement by WTO panellists and the AB. This allowed us to move forward and explore the evidence on a possible mismatch between WTO Member conduct and the obligations listed in Article 13. We noted that the text of Article 13 provides for multiple positive and negative obligations to prevent circumvention of obligations by WTO Members. As such, we considered that it would be a greater challenge to prove that such provisions have been fulfilled rather than to prove that a breach had occurred. We illustrated a potential form of conduct that could be construed as a WTO Member violating of its obligation by providing a scholarly explanation for the increase in private food standards in the European Union. Therefore, our overall assessment is that despite the challenges, there are strong legal arguments and factual evidence that can be raised for the purposes of filing a convincing WTO complaint of a breach of a Member's obligation. The assessment developed in this article does not predict the outcome of a decision on the part of WTO panellists or AB Members, but it raises important considerations for public and private policy-makers. In considering policy instruments for addressing farm animal welfare concerns, it is important to account for the rights and obligations associated with the establishment of the WTO. That said, it is advisable that WTO Members formulate and implement measures to prevent private standards from being applied in a manner that violates the disciplines of the SPS Agreement.

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6

Research Conclusion

Research Conclusion

The policy domain of farm animal welfare has faced a series of constraints that resulted in a number of alternative paths being explored for its advancement at both the domestic and international levels. This thesis has sought to investigate the actors and instruments involved in the evolving governance of farm animal welfare in and between Europe and Brazil with the aim of gaining insight into the current and future political and regulatory implications derived from alternative paths. This study was developed against the background of a growing belief that the strengthening of the multilateral trading system in 1995, with the creation of the World Trade Organization (WTO), created severe constraints in the development of policies to protect and promote the welfare of animals. The WTO constraints on animal welfare policy are particularly associated with the use of national legislation (a traditional government policy instrument). Therefore, animal welfare stakeholders felt the need to develop innovative arrangements and strategies to address animal welfare concerns. In that context, growing enthusiasm towards the possibility of addressing animal welfare concerns through private certification schemes has emerged. Therefore, this study has paid special attention to the use of private standards in regulating animal welfare internationally. Nonetheless, the identification and assessment of alternative arrangements and strategies for addressing animal welfare concerns in the context of internationalized national economies remained at the centre of this study. Brazil, EU and EU-Brazil interactions on animal welfare regulation were central focus of this study, and the following was the main research question governing it: how and to what extent has the policy field of animal welfare been affected by the shifts in governance? This central research question has been elaborated in four sub-questions:

1. How have European animal welfare policy-making processes been affected by the engagement of non-state actors in regulatory activities?
2. Which factors can explain the rise of farm animal welfare governance in Brazil?
3. How are farm animal welfare policies advanced within the EU-Brazil dyad?
4. To what extent do private farm animal welfare standards fall within the scope of WTO Member States' obligations encountered in Article 13 of the Sanitary and Phytosanitary Agreement (SPS)?

In the following section, these four sub-research questions are answered. Subsequently, the main research question is addressed in the context of an overall assessment of farm animal welfare governance. In the second section, the factual findings and analytical insights contained in this investigation are placed within the broader discussion of governance shifts, and the contributions of this research to that literature are highlighted.

Finally, this thesis closes with an assessment of latest developments in the field of animal welfare governance and suggestions for a succeeding research agenda.

6.1 Answers to the research questions

This research aims to critically assess how and to what extent the policy field of farm animals welfare has been affected by shifts in governance. Of particular interest was the enhancement of political and regulatory understanding of the evolving governance dynamics in farm animal welfare. Thus, a set of questions related to the political and legal aspects involved in the process of governing farm animal welfare policies at the domestic (EU and Brazil) and international (EU-Brazil and WTO) levels have oriented the development of this research. The main features investigated in and main insights gained from this research are as follows.

6.1.1. The engagement of non-state actors in animal welfare policy making

During the late 1990s and early 2000s, the occurrence of new policy practices associated with the engagement of non-governmental organisations and food retailers in the formulation of private regulatory arrangements was observed in Europe. The increasing involvement of non-state actors in animal welfare regulatory activities was analysed in this research, and the conclusion was that both the organisation and the content of farm animal welfare policy has been affected by such activities. The advancement of farm animal welfare by means of private led regulatory schemes was found to be both cause and effect of an organisational change from a confrontational towards a partnership strategy between animal protection NGOs and market actors. In that context, traditional and resourceful European animal welfare NGOs, such as RSPCA, CIWF, WSPA and Dierenbescherming, appeared in a number of collaborative arrangements with farmers, processors and retailers to promote differentiation of animal products based on their level of animal friendliness. For producers and retailers, product differentiation is an interesting marketing tool because offering ethical products enhances their reputation, even more so through the legitimacy provided by the NGO. For NGOs, the differentiation of products by animal welfare requirements appears effective in providing supply chain actors with incentives to incorporate animal welfare practices and is thus a pragmatic solution to improve the lives of animals. Throughout European countries, the increasing use of animal welfare as a component of overall business marketing strategies is reflected in the exponential growth in the implementation of well-established trademark labels, such as Freedom Food and Beter Leven, as well as in the development of labelling provisions with terms such as “natural”, “happy”, “free-range”, “farm fresh”, and “free-run”. However, the proliferation of private schemes

covering farm animal welfare has not happened without concerns from both consumers and producers. For the former, concerns are about the very confusing and, in some cases, misleading use of animal welfare claims, whereas for the latter, concerns are about the *de facto* mandatory nature of private standards. In addition to organisational changes in policy making, the advancement of the market-based governance of animal welfare also significantly interferes with the discourse of animal welfare policy. By increasingly intertwining animal welfare requirements with market differentiation, the discourse underlying the formulation and implementation of animal welfare policies shifts to the quality of the end product and away from the society's moral duty. There may be short-term advantages in adopting such a discourse, but over the long run, it may result in the reallocation of regulatory authority to determine the level of animal protection from sovereign states to the volatile dynamics of markets. In light of these findings, the study concluded that from a policy-making perspective, the scenario is much more complex than simply replacing government regulation with private policy tools. The rise of non-state actors and their engagement in standard-setting activities has ambivalent effects on the evolving path of animal welfare governance.

6.1.2. The rise of farm animal welfare governance in Brazil

The development of animal welfare standards for specific stages of livestock production is considered a recent phenomenon in developing countries. Brazil is among the developing countries that have undertaken initiatives to strengthen domestic farm animal welfare governance. Over the last couple of decades, a number of regulatory measures and capacity building programmes have been initiated by the Brazilian Ministry of Agriculture, Livestock and Food (MAPA) with the aim of fostering the governance of farm animal welfare. However, little is known about the factors leading to this policy development. To date, studies on farm animal welfare measures in Brazil have mostly been conducted by scholars of veterinary medicine and zootechnics. Given the scarcity of social science studies on the dynamics triggering the development of farm animal welfare policies in Brazil and in developing countries in general, I performed an exploratory empirical investigation. The objective was to gain a better understanding of how interest on farm animal welfare has arisen in Brazil and, thus, to find a suitable explanatory framework to account for this policy development. Data collected from 36 semi-structured interviews with different Brazilian stakeholders suggested that interest in farm animal welfare in Brazil arose due to the influence of external developments, in particular events associated with Europe and the World Organisation for Animal Health (OIE). According to our data, European influence has taken different forms, including, but not limited to, official import requirements, food retailer business practices and private certifications. The data also indicated that the engagement of the OIE in animal welfare governance had a legitimizing effect on the welfare requirements coming from Europe. In other words,

our data revealed that to the extent that European animal welfare requirements conform to OIE recommendations, they are perceived by Brazilian government and industry representatives as legitimate requirements (in contrast to perceptions of them as distorting trade requirements).

Based on these empirical explorations, I argued that to explain the rise of farm animal welfare in Brazil, it is necessary to develop a theoretical framework that can simultaneously consider different sources of external influences. In that context, I suggested that studies of cross-national policy convergence potentially provide a theoretical reference to develop an analytical framework for understanding the rise of farm animal welfare in Brazil.

6.1.3. The international coordination of animal welfare

In Europe, animal welfare became one of the most rapidly expanding policy areas, with a number of standards covering rearing, transporting and slaughtering practices for a range of species. For representatives of the European Parliament, farmers' organisations (Copa-Cogeca) and European civil society organisations for animal protection (Eurogroup), this comprehensive European animal welfare body of legislation must be applied to imported products. Their requests result from concerns that increasing globalisation of production and trade in animal products implies that having products produced in the EU under EU standards alongside products produced in non-EU countries (which presumably have lower welfare conditions) is detrimental to the global competitiveness of EU producers as well as a potential source of confusion and discouragement for European consumers and producers. Requiring exporting countries to comply with EU animal welfare standards is, however, neither simple nor easy. As extensively referred to in this thesis, restrictive trade measures based on animal welfare grounds are rather controversial among WTO Members. To avoid the risk of triggering a WTO trade dispute, alternative paths to advance the cross-national coordination of animal welfare measures have been sought by governmental and non-governmental actors. To acquire a comprehensive view of the actors and mechanisms engaged in transnational farm animal welfare initiatives, I built an analytical framework combining the International Relations literature with studies of Global Governance. Based on this analytical framework and on the findings from semi-structured interviews with European and Brazilian stakeholders, I mapped and analysed a variety of initiatives that enable cross-national coordination of animal welfare measures. These initiatives included, but were not limited to, commercial contracts, academic partnerships, roundtables, and capacity building programmes. A relevant update to this part of the investigation, which was not included in Chapter 03, refers to the Better Training for Safer Food (BTSF) programme that took place in Brazil in November 2014. This is a training initiative developed by the European Commission, under the supervision of DG-SANCO, with

the aim of enhancing the implementation of animal health and welfare rules within and beyond the European Union. At the time of the empirical investigation (in 2012), Brazil was not included on the list of beneficiary countries for this training, but by 2014, Brazil has been added to the BTSF list. In light of the research findings, I concluded that the current coordination of animal welfare policies between the EU and Brazil is embedded in a dynamic constellation of relations beyond the scope of WTO relations and where scientific and technical cooperation account for the majority of cross-national animal welfare alternatives.

6.1.4 Challenges and prospects for a WTO case about private farm animal welfare standards

The growing tendency to use private standards to address farm animal welfare concerns in exporting countries has become the subject of great controversy among government officials at the World Trade Organization (WTO). The concern expressed by some WTO Members is that although private standards are voluntary in the legal sense, they have become *de facto* mandatory import requirements, and worse still, most of private standards are applied in a manner that is inconsistent with the disciplines provided in the Sanitary and Phytosanitary Agreement (SPS). However, the relationship between private food standards and the WTO legal framework is unclear; thus, whether private standards must be in compliance with the provisions of the SPS Agreement is also unclear. In an attempt to provide some insight on this matter, a legal analysis of Article 13 of the SPS Agreement was conducted with the aim of assessing whether private farm animal welfare standards fall within WTO Member obligations under the SPS Agreement. Within this analysis, the prospects for a building a WTO case to remedy a situation in which a private farm animal welfare standard is applied in a SPS-inconsistent manner was examined in light of some legal reasoning and factual evidence. I paid special attention to three specific challenges that any potential claimant would face when building such a WTO case: (i) the applicability of the SPS Agreement to farm animal welfare standards; (ii) the interpretation of 'non-governmental entities'; and (iii) the realization of WTO Member's conduct inconsistent with the obligations provided in Article 13. I found that despite these challenges, there are strong legal arguments and factual evidence that can be raised to file a convincing WTO complaint of a breach of a Member's obligation. This finding implies that there is a chance that a WTO Member may be considered legally responsible for the farm animal welfare standards applied by a supermarket to foreigner suppliers when such standards are not in compliance with the disciplines provided in the SPS Agreement. Although my analysis suggests the existence of compelling arguments in support of a deliberation on the responsibility of a WTO Member for private animal welfare on the basis of Article 13 of the SPS Agreement, one can never fully predict how WTO panellists or AB Members will deliberate on this

matter. Nevertheless, from a public policy-making perspective, the above finding suggests that WTO Members must be careful to not encourage the use of private standards that are inconsistent with the multilateral trading system. Likewise, it is advisable that WTO Members formulate and implement measures that prevent private actors from engaging in regulatory activities that may deviate from the rules stipulated by the agreements covered by the WTO legal framework. These are important precautions that WTO Members, especially developed countries where the use of private standards is more prominent, must take if they wish to reduce the risk of WTO litigation, which are usually both economically and politically costly. My finding on the existence of plausible legal arguments and factual evidence to build a WTO case to obtain a judicial remedy to a situation in which private farm animal welfare standards have been used in a manner contrary to the SPS-discipline also suggests that private regulatory arrangements are not necessarily promising alternatives to traditional state-based regulation. This is so because some constraints limiting the ability of governments to address societal concerns may also be levied on private actors.

6.2. Overall assessment of farm animal welfare governance

In examining the engagement of non-state actors in the governance of farm animal welfare, this study found that the European toolbox to address this policy objective currently includes a series of innovative arrangements, especially regarding the protection of animal welfare in activities outside of Europe (Chapters 2 and 3). The alternative arrangements that were found and analysed in this research as currently in use to advance animal welfare include technical cooperation (e.g., MoU), capacity building (e.g., STEPs, BTSF) academic partnerships, private standards and investments incentives. To varying degrees, these arrangements all contribute to the expansion of animal welfare policies beyond the European territory, and thus, they can be considered relevant options for compensating for the limitations and partial retreat of the EU in adopting legislative animal welfare measures that also apply to imported animal products. Regarding the rise of animal welfare profile in an emergent economy such as Brazil, this research has found that the work of the OIE has been of paramount importance (Chapter 4). If European efforts to improve the animal welfare policy profile in Brazil were not underpinned by the political legitimacy stemming from OIE activities, these efforts could have been interpreted as attempts to distort trade and could have resulted in a trade dispute between EU and Brazil under the WTO. In addition to the aforementioned policy analysis, a legal analysis of the use of private standards under the WTO framework (Chapter 5) has shown that, contrary to the beliefs of private standards advocates, the advancement of animal welfare in third-party

countries through private measures is not necessarily beyond the scope of the importing country government's obligations to comply with WTO requirements.

Based on the above insights, the conclusion that can be drawn is that independent of the frustrations and stalemates at the WTO, the policy field of animal welfare has advanced in and between the regions studied. This advancement has occurred through a variety of public and private initiatives, which indicates that the advancement of animal welfare in cross-national settings beyond WTO provisions has been much more complex (and rich) than simply governmental regulation being replaced by private regulatory arrangements. In addition, this research has shown that there are various political and regulatory implications associated with the use of private standards that should make one cautious in relying solely on and advocating for the replacement of governmental regulation with private standards. Thus, to advance animal welfare in cross-national settings and international trade in general, it should be concluded that greatest efforts ought to be mobilized to ensure the ability of governments to legislate imports on animal welfare grounds. This requires the continuation of negotiations among nation-states representatives to find ways to accommodate animal welfare measures under WTO provisions. As will be discussed in the final section, accommodating animal welfare measures under the WTO is no longer a utopian ideal, which was the dominant perspective years ago when this research began.

6.3 Farm animal welfare and governance shifts: going private?

This research was triggered, among other things, by the growing use of private standards as a means to uphold the evolving public morality regarding the treatment of animals. As explained elsewhere in this thesis, the expanding role of private standards in the realm of animal welfare has resulted from an urge to find alternatives for bypassing the constraining WTO framework and from a need to comply with new liability provisions that placed upon retailers a *due diligence* requirement to ensure the safety of food products (Chapters 2, 3 and 5). Accordingly, throughout the late 1990s and early 2000s, private standards were on the rise in the field of farm animal welfare, particularly in the UK and other European countries. Enthusiasm concerning the possibility of addressing animal welfare through private certification convinced some scholars that “public regulation could largely become obsolete” in this field (Blandford et al, 2002, p. 88). This enthusiasm towards private standards was also greatly influenced by empirical and theoretical insights coming from the international environmental governance literature, where a shift towards private governance was seen as necessary to achieving progress. This was especially argued after repeated

failed attempts to forge a binding intergovernmental convention to manage the use and preservation of forests. Many scholars and practitioners considered arrangements, such as the Forest Stewardship Council, comparatively efficient forms of internationally governing political issues such as forest management. In light of this view and in a context of proliferating private standards of animal welfare, the expectation was that retailers, as the most powerful actors in cross-national animal product value chains, would become major actors in influencing and advancing animal welfare worldwide. However, the conclusions drawn from this thesis suggest otherwise.

It is widely agreed that private standards have enhanced the policy field of animal welfare in Europe and elsewhere. Nonetheless, their use has neither made public regulation obsolete nor made retailers the main force in animal welfare worldwide. The findings contained in this thesis clearly indicate that public-led initiatives have steadily grown in the regions examined (the EU and Brazil). The findings also suggest that the OIE has become the major engine of worldwide improvement in animal welfare through the development of science-based internationally agreed-upon standards and through the continuous promotion of local and regional mechanisms to implement these standards. As of 2014, ten chapters of animal welfare standards in the OIE Terrestrial Code and four in the OIE Aquatic Animal Health Code have been adopted. These standards cover sensitive areas, such as transport, slaughter methods, stray dog population control, use of animals in research and education, and production systems for beef cattle and broiler chickens. Currently, the OIE animal welfare working group is elaborating standards for dairy cattle production systems, working equids and wildlife. The broad coverage of OIE standards represents astonishing progress given that the OIE only began its work in the field of animal welfare in 2001 and that the adoption of standards depends on the unanimous consensus of all 180 Member states. The involvement of the OIE in the field of animal welfare offers valuable insights for discussions about shifts in governance in general and about shifts in environmental governance in particular.

The entry of the OIE into the policy domain of animal welfare represented the establishment of a central authority to assist Member countries in their efforts to advance animal welfare. The OIE has no enforcement power. Its work is based on the promotion of cross-border collaboration among sovereign states and other interested stakeholders. Following its years of experience coordinating global efforts to eradicate some animal diseases and prevent the transboundary movement of others, the OIE has put in place several mechanisms to address practical needs in developing legal and institutional frameworks for animal welfare at multiple levels – national, regional, international. This means that beyond the elaboration of international animal welfare standards (which offer a basis for trading partners to establish harmonisation and equivalence between their animal welfare measures, see Chapters 3 and 4), the OIE seeks to proactively support coordination and implementation of local policies

through the nomination of 'focal points' and regional programmes, such as the Regional Animal Welfare Strategy (RAWS). These mechanisms seem to greatly contribute to animal welfare governance, as in the governance of animal health. In light of the OIE's achievements, in particular, the institutional design that significantly facilitates consensus building among Member states and triggers hands on animal welfare policy making I suggest lessons could be taken from the OIE for the advancement of international environmental governance. For over 40 years, numerous proposals have been made to improve international environmental governance, including the establishment of a World Environment Organisation (WEO). However, disagreements over the institutional design of such organisation have prevented its establishment⁸⁵.

The OIE is among the oldest intergovernmental organisation; it is even older than the United Nations (UN). Nevertheless, it remains largely ignored by social scientist studying global (environmental) governance. This thesis has partially addressed this omission in relation to political science and international relations research. Nonetheless, much more study is required to identify and assess the role and scope of the OIE in relation to animal welfare governance and determine the lessons that can and cannot be transferred from this field into other policy fields. For now, what can be argued, based on the studies conducted for this thesis, is that with the entry of the OIE into the policy domain of animal welfare, the necessity of shifting to private regulatory arrangements has decreased. Currently, unlike the environmental policy field, which still displays a rather fragmented governance system (Vijge, 2013) with strong reliance on private regulatory arrangements, animal welfare policy is gradually building coherence around the intergovernmental authority of the OIE. In recent years, rather than creating their own private standards, NGOs, retailers, farmers and other interested stakeholders are increasingly acknowledging the leadership of the OIE in animal welfare governance by adhering to the recommendations and guidelines it elaborates. As we have observed in Chapter 03, some multinational food companies have taken the initiative to create not-for-profit organisations to engage in formal dialogue with the OIE. In doing so, they have opted to support the standard-setting mechanism of the OIE instead of pursuing individual standards. The medium- and long-term developments of this option remain to be seen, especially in relation to on-going discussions over using OIE animal welfare standards to elaborate ISO technical specifications. What could be expected is a *reverse shift* (that is, a shift away from private governance and back towards public governance) is perhaps a change in the discursive approach to animal welfare. When the development of animal welfare policies through governmental legislation became frustrated by the

85 For an overview of the discussions, see for instance, Vijge, M. (2013). The promise of new institutionalism: explaining the absence of a World or United Nations Environment Organisation. *International Environmental Agreements: Politics, Law and Economics*, 13(2), 153-176.

possibility of incompatibility with the WTO legal framework, a subtle discursive twist took place. Instead of emphasizing the public goods nature of animal welfare, the development of animal welfare policies increasingly began to be debated as a quality attribute of the end-product⁸⁶. Hence, the improvement of animal welfare gradually became to be perceived as an added value of products purchased by highly demanding consumers in niche markets to the detriment of a perception of animal welfare policies as societal moral requirements. In light of the evolving leadership role of the OIE and its nature of an intergovernmental organisation there could be a new discursive change towards a view of the protection and promotion of the welfare of sentient beings as a responsibility of national governments, irrespective of individual consumer willingness to buy animal products.

6.4 Animal welfare and the WTO: towards a renewed debate and research agenda

As extensively referred to in this thesis, the WTO trading system has long been perceived as a major obstacle to the progress of animal welfare policies. However, this perception may change in the light of a recent decision by the WTO adjudicatory bodies. In this final section, I examine some aspects of this decision in the EC-Seal Products case⁸⁷ to consider likely future developments in animal welfare in the context of the WTO framework. This dispute arose out of a challenge brought by Canada and Norway against European Union measures relating to seal products, namely, Regulation (EC) N^o. 1007/2009 of the European Parliament and Commission Regulation (EU) N^o. 737/2010. In brief, these Regulations prohibit the marketing of products derived from seals on the EU market. Canada and Norway, who are among the largest producers of seal products, claimed that the above measures are inconsistent with the obligations of the European Communities under the multilateral trading system because, among other provisions, these measures violate Article I:1, III:4 and XI: 1 of GATT 1994. In its defence, the EU invoked the 'public morals' exception in GATT Article XX(a). According to the EU, the Seal Regime is necessary to protect deep and longstanding moral concerns of the EU public with regard to the presence of seal products on the EU market that may have been obtained from animals killed in a way that causes excessive pain, distress, fear or other forms of

86 For more information on the public goods nature of animal welfare, see for instance, Norwood, F. B., & Lusk, J. L. (2008). The Farm Animal Welfare Debate. *Choices - the Magazine of food, farm, and resource issues*. Available at: <http://www.choicesmagazine.org/magazine/article.php?article=89>. Last accessed 05 Dec 2013.

87 European Communities – measures Prohibiting the Importation and Marketing of Seal Products (WT/DS400 and WT/DS401).

suffering to the animals. Despite the exhaustive argumentation by Canada and Norway that the EU has failed to show that addressing public moral concerns is the objective of the EU Seal Regime, the Panel (on 25 November 2013) and the Appellate Body (on 22 May 2014) upheld the EU's public morals defence under Article XX(a).

The EC-Seal Products case ought to be considered a landmark in the relationship between the protection of animals and international trade rules. Unlike the Tuna-Dolphin and Shrimp-Turtle cases⁸⁸, where the protection of animals had been discussed in the context of environmental and biodiversity concerns, in the EC-Seal case the discussion revolves around concerns over the welfare of seals. From this perspective, the EC-Seal case represents the first case that specifically addresses animal welfare measures. The fact that the ruling in this pioneer case has positively correlated citizens' concerns over the level of welfare experience by animals with the meaning of the public moral exception sets an important legal precedent for future assessment of animal welfare measures under the WTO framework. This is not to say, however, that the justification of all animal welfare measures is guaranteed under GATT Article XX(a). The assessment of the WTO adjudicatory bodies comprises a series of tests that, in the case of the EU Seal Regime included, for instance, the analysis of (i) the necessity of the measure for the achievement of the policy objective of protecting EU public moral concerns regarding seal welfare and (ii) the consistency of the measures with the requirements under the *chapeau* of Article XX. To assess the necessity of the EU Seal Regime, the Panel analysed the *contribution* of the measure to the fulfilment of this objective as well as the availability of an *alternative* less-restrictive measures to pursue the objective. Upon proper consideration of the facts and arguments presented by the parties, the Panel concluded that the EU Seal Regime is capable of making, and does actually make, a contribution to the achievement of its stated objective of addressing the public moral concerns because its prohibitive aspect prevents, to a certain extent, the EU public from being exposed to and participating as consumers in commercial activities related to products derived from seals that may have been killed inhumanely⁸⁹. The Panel has also reasoned upon the complainants proposed alternative measures consisting of a market access for seal products conditional on compliance with animal welfare standards combined with certification and labelling requirements. The Panel has also asserted that the impacts of the alternative measures are closely related to the type of animal welfare requirements to be imposed, the feasibility of enforcement of such requirements, and

88 Although it is very common to refer to the Tuna-Dolphin and Shrimp-Turtle cases when discussing the relationship between animal welfare measures and WTO law, these two cases were built upon environmental arguments, that is, under Article XX(g) of the GATT 1994, which refers to measures relating to the conservation of exhaustible natural resources. A different approach was taken in the EC-Seal case, where animal welfare measures were argued to be justified under GATT Article XX (a) as necessary means to protect public morals.

89 Panel Report paragraph 7. 478.

the attendant risks of inhumane killing in seal hunts⁹⁰. After its overall assessment, the Panel concluded that although the proposed alternative measure can be considered less trade-restrictive, the alternative measure is not reasonably available after considering the risks associated with non-fulfilment⁹¹. In light of these conclusions, the Panel found the ban on the importing and marketing of seal products was necessary for the fulfilment of the EU's objective. The survival of the European ban of the WTO necessity test sends an unequivocal message that societal concerns related to the treatment of animals can be accommodated within a rules-based trading system. However, in view of the reasoning applied by the Panel (and endorsed by the AB), it is important to consider that an import ban, which is the most trade-restrictive measure a country can adopt, may not be deemed necessary in circumstances of a controlled environments, as in the case of farm animals.

In the analysis of the appropriateness of a ban on the importation and marketing of seal products in relation to proposed alternative measures (namely, the application of import conditions based on animal welfare standards and the use of certification and labelling schemes), the Panel gave considerable weight to circumstances, risks and challenges specifically associated with the hunting of seals. Despite the efforts of Canada and Norway to convince the Panel that the welfare risks associated with seal hunts are 'commonplace' in situations involving the killing of animals in other terrestrial wildlife hunts and in slaughterhouses, the Panel found sufficient evidence that the environmental conditions under which the hunting of seals takes places render it impossible to apply and enforce requirements of humane killing methods in an effective and consistent manner. Thus, the Panel concluded that the alternative measure proposed by the complainants, which may be considered as less trade-restrictive than the EU Seal Regime, is not reasonably available to the European Union, considering the risks that non-fulfilment of the European Union's objective would create⁹². Note, however, that if the complainants had succeeded in convincing the Panel or the Appellate Body that an import ban was more trade restrictive than necessary to fulfil EU's policy objective of addressing the moral concerns of its citizen regarding the welfare of seals, then the EU would have been requested to modify its Seal Regime and adopt other less trade-restrictive measures (e.g., animal welfare standards). In that sense, the ruling in the EC-Seal case marks a change in the set of questions posed in the discussion of the relationship between animal welfare measures and the trading system administered by the WTO.

For decades, the key question was whether trade could be restricted on the basis of animal welfare concerns. The Panel and the Appellate Body in the EC-Seal case both signalled that the answer for this question is yes: trade can be restricted on

90 Panel Report paragraph 7. 484.

91 Panel Report paragraph 7. 504.

92 Panel Report paragraph 7. 505.

the basis of animal welfare concerns. However, what is the degree of restrictiveness that ought to be deemed necessary in a given situation? Will the WTO adjudicatory bodies use the OIE animal welfare standards as a reference for their assessment? Will import requirements defined in conformity with animal welfare standards developed by the OIE be presumed WTO-consistent, as is the case with OIE animal health standards? As explained elsewhere in this thesis, the OIE is an inter-governmental organisation created in 1924 with the objective of improving transparency and international collaboration in the control of serious epizootic animal diseases. In 1995, with the establishment of the WTO trading system, the OIE became the relevant international organisation for the development of standards, guidelines and recommendations for animal health and zoonoses (SPS Agreement, Article 3(4) and Annex A 3(b)). In 2001, the Members of the OIE⁹³ decided that the organisation would also develop standards, guidelines and recommendations on the subject of animal welfare. However, until now the status of OIE animal welfare standards under the WTO agreement is unclear. To some extent, this uncertainty results from the status of the OIE as a reference organisation, which derives from a provision of the SPS Agreement, and there has been serious divergence among WTO Members concerning whether an animal welfare measure would eventually – through an amendment of the text or through an adjudicatory ruling – be considered to fall within the scope of the SPS Agreement. However, even if animal welfare is found to be outside of the scope of the SPS Agreement, questions about the relationship between the OIE's new role and the WTO agreement remain. Can OIE animal welfare standards be used as a reference in a context of a settlement of dispute in which an animal welfare measure is assessed against the disciplines of GATT Article XX or even against the disciplines of the TBT Agreement?

Finally, it is important to note that the EU Seal Regime, despite its success in complying with the GATT Article XX(a) necessity test, failed the *chapeau* test. According to the Appellate Body, some features of the EU Seal Regime, in particular, with respect to the different treatment granted to commercial and traditional indigenous hunting (IC exception) indicate that the regime is applied in a manner that constitutes a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail. Therefore, the AB concluded that EU Seal Regime did not meet the requirements of the chapeau of Article XX of the GATT⁹⁴. The EU has thus been requested to bring its Seal regime into conformity with its obligations under the GATT. The parties have agreed to a deadline of October 18, 2015 for the EU to implement the AB ruling.

93 The OIE currently has 180 Member States.

94 AB Report paragraph 5.339.

Annex 1

List of organisations contacted

Annex 2

List of interviews for Chapter 03

Executive summary

Resumo

Samenvatting

Acknowledgements

Annex 1

List of organisations contacted

Unstructured Interviews

| | |
|---|--------------------------------|
| Dutch Council for Animal Welfare (Raad Voor Dierenaangelegenheden) | 04 Jun 2010 – Utrecht, NL |
| Dutch Food Retail Association (Centraal Bureau Levensmiddelenhandel) | 15 April 2011 – Wageningen, NL |
| Dutch Food Retailer Royal Ahold (Product safety and compliance Department) | 17 April 2010 – Wageningen, NL |
| Dutch Ministry of Agriculture (Ministerie van Buitenlandse Zaken) | 13 Aug 2010 – The Hague, NL |
| Dutch Ministry of Economic Affairs (Ministerie van Economische Zaken) | 13 Aug 2010 – The Hague, NL |
| Dutch Political Party for Animals (Partij voor de Dieren) | 8 Dec 2010 – The Hague, NL |
| Dutch Society for the Protection of Animals (De Dierenbescherming) | 23 Nov 2010 – The Hague, NL |
| Federation of Veterinarians of Europe (FVE) | 29 Oct 2012 – Brussels, BE |
| Van Drie Group | 8 June 2010 – Oosterbeek, NL |
| Vion Food Group | 8 June 2010 – Oosterbeek, NL |
| Welfare Quality Project | 04 Jun 2010 – Utrecht, NL |

Semi-structured interviews

| | |
|---|-----------------------------------|
| Compassion in World Farming (CIFW) | 13 Dec 2012 - by video conference |
| Eurogroup for Animals | 14 Jan 2013 – Brussels, BE |
| European Commission Directorate- General for Trade (DG-TRADE) | 10 Jan 2013 - Brussels, BE |
| European Commission Directorate- General of Health and Consumers (DGSANCO) | 20 Dec 2012 - Brussels, BE |
| European Farmers and European Agri-Cooperatives (Copa-Cogeca) | 16 Jan 2013 – Brussels, BE |
| European Livestock and Meat Trade Union (UECBV) | 15 Jan 2012 – Brussels, BE |
| European Retail and Wholesale Association (EuroCommerce) | 6 Jan 2013, Brussels, BE |

* for Brazilian organisations see Annex 2

Informal conversational interviews at animal welfare events

| | |
|--|--|
| Business Benchmark on Farm Animal Welfare (BBFAW) | 11-13 June 2013 – Sao Pedro, BR |
| Chilean Agricultural and Livestock Service (SAG) | 6-8 Nov 2012 – Kuala Lumpur, ML |
| European Food and Veterinary Office (FVO) | 24 Oct 2012 – Brussels, BE |
| European Food Safety Authority (EFSA) | 11-13 June 2013 – Sao Pedro, BR |
| MacDonald's Corporation Supply Chain Management | 6-8 Nov 2012 – Kuala Lumpur, ML |
| Royal Society for the Prevention of Cruelty to Animals (RSPCA) | 12-13 June 2012 – Brussels, BE |
| Safe Supply of Affordable Food Everywhere (SSAFE) | 6-8 Nov 2012 – Kuala Lumpur, ML |
| World Organisation for Animal Health (OIE) | 6-8 Nov 2012 – Kuala Lumpur, ML 17-18 Oct 2013 – Montevideo, UY |
| World Animal Protection (WAP, former WSPA) | 11-13 June 2013 – Sao Pedro, BR |

Annex 2

List of interviews for Chapter 03

Group A – Ministry of Agriculture, Livestock and Food Supply (MAPA)

| | | |
|----|----------------------------|-------------------------|
| R1 | FFA (beef) | Jan 26, Porto Alegre/RS |
| R2 | FFA (poultry and broiler) | Jan 26, Porto Alegre/RS |
| R3 | FFA/SIF (beef) | Feb 14, Santa Maria/RS |
| R4 | FFA/SIF (beef) | Feb 16, Bage/RS |
| R5 | FFA/SIF (poultry) | Feb 20, Montenegro/RS |
| R6 | FFA/CTBA | March 12, Brasilia/DF |
| R7 | FFA/SRI (SPS negotiations) | March 13, Brasilia/DF |

Group B - Farmers and their associations

| | | |
|----|--|-------------------------|
| R1 | Poultry farmer | Jan 30, Lages/SC |
| R2 | Cattle farmer | Jan 20, Porto Alegre/RS |
| R3 | Cattle farmer (cota hilton) | Feb, 17, Bage/RS |
| R4 | Municipal farmers association | Feb 03, Lages/SC |
| R5 | Association of sheep farmers | Feb 03, Lages/SC |
| R6 | Association of Angus cattle breed farmers | Feb 16, Bage/RS |
| R7 | Association of Hereford cattle breed farmers | Feb 16, Bage/RS |

Group C – Meat industry (slaughterhouses and exporters associations)

| | | |
|----|--|---------------------------|
| R1 | Beef Slaughterhouse | Feb 14, Santa Maria/RS |
| R2 | Beef slaughterhouse (quality programme manager) | Feb 16, Bage/RS |
| R3 | Poultry slaughterhouse (food quality manager) | Feb 20, Montenegro/RS |
| R4 | UBABEF (Brazilian Poultry Association) | March 05, Sao Paulo/SP |
| R5 | ABIPECS (Brazilian Pork Industry and Exporter Association) | Abril 12, Porto Alegre/RS |
| R6 | ABIEC (Association of Brazilian Beef Exporters) | March 05, Sao Paulo/SP |

Group D – Food retailers

| | | |
|----|-------------------------------------|------------------------|
| R1 | Food quality manager | Feb 03, Lages/SC |
| R2 | Meat sector manager | Feb 03, Lages/SC |
| R3 | Food quality label national manager | March 07, Sao Paulo/SP |
| R4 | Meat quality auditor | Feb 15, Santa Maria/RS |
| R5 | Manager and owner | Feb 17, Bage/RS |

Researchers at universities and rural extension institutes

| | | |
|----|---|----------------------------|
| R1 | Lecturer in dairy production at UDESC (Santa Catarina State University) | Feb 01, Lages/SC |
| R2 | Lecturer in pig production at UFSM (Santa Maria Federal University) | Feb 15, Santa Maria/RS |
| R3 | Extensionist in cattle production at EPAGRI (Santa Catarina Agricultural and Rural extension institute) | Feb 02, Lages/SC |
| R4 | Extensionist in cattle production at EMATER (Rio Grande do Sul Agricultural and Rural Extension Institute) | Feb 16, Bage/RS |
| R5 | Researcher in meat production at EMBRAPA (Brazilian Agriculture Research Institute) | Feb 17, Bage/RS |
| R6 | Regional Director of EMBRAPA (Brazilian Agriculture Research Institute) | Feb 17, Bage/RS |
| R7 | Lecturer in animal welfare at UFSC (Santa Catarina Federal University) | March, 23 Florianopolis/SC |

Group F – Civil society organisations

| | | |
|----|--------------------------------|-----------------------|
| R1 | Project manager (Organic Beef) | March 14, Brasilia/DF |
|----|--------------------------------|-----------------------|

Group G – Brazilian government foreigner affairs

| | | |
|----|--|-----------------------|
| R1 | CAMEX (Brazilian Foreigner Trade Chamber) | March 12, Brasilia/DF |
| R2 | Brazilian Ministry of Foreigner Relations (Agricultural Sector) | March 14, Brasilia/DF |
| R3 | APEX (Brazilian Agency for Promotion of Exports and Investments) | March 15, Brasilia/DF |

Executive summary

The advancement of regulatory instruments providing for farm animal welfare measures has been marked by various political and regulatory constraints in both domestic and international settings. In an attempt to overcome some of these constraints, a number of innovative governance arrangements have been developed over the two last decades, such as the use of private standards. This thesis offers a critical assessment on how and to what extent the policy field of farm animals welfare has been affected by these innovative developments. The assessment provided in this thesis resulted from four independent (but inter-related) studies.

The **first study** consisted of a theoretical inquiry into the engagement of non-state actors in farm animal welfare policy making in Europe. This study sought to establish the extent to which the changes observed in Europe, specifically in the Netherlands, are consistent with political modernization theory. This study confirmed that the engagement of non-state actors in farm animal welfare policy-making in Europe corresponds to the modernization of governance practices, where a new collation of actors, policy discourses and rules come to the fore.

The **second study** consisted of an empirical investigation of the rise of farm animal welfare governance in Brazil. The main objective of this study was to gain insight into a development that remains largely unexplored in the current social science literature, that is, into the factors triggering policy change related to animal protection in developing countries. Data collected through 36 semi-structured interviews among different groups of Brazilian stakeholders suggested that the main factors leading to the rise of animal welfare governance in Brazil were related to Europe and the World Organisation for Animal Health (OIE). The insights gained from this exploratory empirical study helped produce an analytical framework for assessing how farm animal welfare measures spread across jurisdictions, which is further elaborated in the third phase of this doctoral research.

Accordingly, in the **third study**, an empirical and theoretical examination of animal welfare governance in the European Union-Brazil dyad is performed with the objective of assessing the actors and mechanisms currently in place to advance farm animal welfare in bilateral and international relations. Several initiatives have been identified as useful in coordinating animal welfare measures between the EU and Brazil. The study nonetheless found that initiatives based on policy diffusion mechanisms were the most prominent.

The **fourth study** entailed a legal analysis of the relationship between the regulatory framework of the World Trade Organisation (WTO) and the advancement of animal welfare measures through private standards. The objective of this study was to determine the possibility that private standards fall within the scope of WTO Member States' obligations listed in Article 13 of the Sanitary and Phytosanitary

Agreement (SPS). For that purpose, three fundamental factors for claims of breaches of Article 13 to be pursued were examined: (i) the applicability of the SPS Agreement to farm animal welfare measures; (ii) the scope of the term 'non-governmental entities'; and (iii) the existence of factual evidence that a WTO Member has not taken reasonable measures to ensure that SPS disciplines are observed by non-governmental entities or that a WTO Member has encouraged non-governmental entities or have relied upon the services of non-governmental entities that are not SPS compliant. The conclusion drawn from this examination is that convincing legal arguments and factual evidence exist to pursue WTO disputes over the use of private farm animal welfare standards.

Based on all the above findings, the overall assessment of this thesis regarding the evolving path of farm animal welfare governance is four-fold. First, the policy field of farm animal welfare has significantly advanced in and between Europe and Brazil through a variety of non-legislative instruments, such as intergovernmental technical cooperation, capacity building programmes and private standards. Second, the political and regulatory implications of this research regarding the use of private standards in animal welfare indicate that a cautious approach to the use of this policy instrument is required. Third, the policy field of animal welfare has greatly benefited from the entry of the World Organisation for Animal Health (OIE), especially in engaging governments and industries in developing countries in this area. Finally, a *reverse shift* (that is, a shift away from private governance and towards public governance) is likely to occur as the path of farm animal welfare policy evolves internationally.

Resumo

O avanço de instrumentos jurídicos para regulamentar a promoção e proteção do bem-estar de animais de produção tem sido marcado por inúmeros obstáculos jurídicos e políticos tanto em âmbito nacional quanto internacional. Como forma de contornar estes obstáculos, alguns arranjos inovadores para a governança de medidas de bem-estar animal foram desenvolvidos ao longo das últimas duas décadas. Por exemplo, o uso de certificação privada. Esta tese de doutorado oferece um exame crítico sobre como as políticas de bem-estar animal foram afetadas pelas inovações nos arranjos de governança. As considerações aqui apresentadas estão baseadas em quatro estudos que foram realizados de forma independente, mas interligada.

O **primeiro estudo** seguiu uma linha de investigação teórica sobre a participação de atores não governamentais na elaboração de políticas de bem-estar animal na Europa. Este estudo buscou verificar se as mudanças observadas na Europa, mais especificamente na Holanda, se enquadrariam na teoria da modernização política. O estudo confirmou que a participação de atores não governamentais na elaboração de políticas de bem-estar animal na Europa corresponde a uma modernização das práticas de governança, cuja manifestação se revela por meio de novas coalisões de atores, discursos políticos e regras.

O **segundo estudo** seguiu uma linha de investigação empírica e teve como principal objetivo a obtenção de uma visão geral sobre o fenômeno de ascensão de políticas de bem-estar animal no Brasil. O caráter exploratório se fez necessário uma vez que os fatores que levam ao desenvolvimento de políticas de proteção animal em países de economia emergente constituem um aspecto ainda pouco investigado no âmbito das ciências sociais. Os dados coletados por meio de 36 entrevistas semiestruturadas com diferente grupo de atores brasileiros indicou que os principais fatores que levaram a ascensão de uma estrutura de governança de bem-estar animal no Brasil estão relacionados à Europa e à Organização Mundial de Saúde Animal (OIE). O conhecimento obtido neste estudo contribuiu para a formulação de um quadro analítico para estudar a difusão entre jurisdições de medidas de bem-estar para animais de produção. A elaboração deste quadro analítico é realizada no estudo seguinte.

O **terceiro estudo** consistiu em uma investigação empírica-teórica da governança de bem-estar animal entre União Européia e Brasil, cujo objetivo foi a identificação e a análise dos atores e mecanismos que estão atualmente facilitando o avanço de políticas de bem-estar para animais de produção nas relações bilaterais e internacionais. Foram identificadas várias iniciativas, porém aquelas baseadas em mecanismos de difusão destacaram-se como mais proeminentes na coordenação de políticas de bem-estar animal.

No **quarto estudo** foi realizada uma análise jurídica sobre a relação entre o quadro regulatório da Organização Mundial do Comércio (OMC) e o avanço de políticas de bem-estar animal através de padrões privados. O objetivo deste estudo foi o de determinar se padrões privados estariam inseridos no âmbito de obrigações dos Membros da OMC que está disposto no artigo 13 do Acordo sobre Medidas Sanitárias e Fitossanitárias (SPS). Com este propósito, três importantes fatores para uma bem sucedida argumentação de violação do artigo 13 são examinados: (i) aplicabilidade do acordo SPS para medidas de bem-estar animal; (ii) o escopo da definição do termo 'instituições não-governamentais'; e (iii) existência de evidências factuais de que um membro da OMC não adotou medidas razoáveis para assegurar que as disposições constantes do acordo SPS fossem observadas por instituições não-governamentais, ou ainda evidências de que um membro da OMC tenha encorajado instituições não-governamentais a agirem de forma incompatível com as disposições do acordo SPS. A conclusão desta análise é de que há argumentos jurídicos convincentes e evidências factuais suficientes para dar entrada com uma disputa comercial na OMC relativa ao uso de padrões privados de bem-estar animal.

Com base no exposto acima, a avaliação final sobre o desenvolvimento da governança de bem-estar de animais de produção indica que: primeiro, o campo político de bem-estar animal avançou sensitivamente no Brasil e na União Européia, bem como entre eles, por meio de uma variedade de instrumentos não legislativos tais como cooperação técnica entre governos, programas de capacitação e padrões privados. Segundo, é necessária uma abordagem cautelosa em relação ao uso de padrões privados para promover o bem-estar de animais, tendo em vista as implicações políticas e jurídicas apresentadas ao longo deste estudo. Em terceiro lugar, tem-se que a entrada da Organização Mundial para Saúde Animal (OIE) no campo de políticas de bem-estar animal trouxe muitos benefícios, em particular para o engajamento do governo e da indústria de países em desenvolvimento. Finalmente, pode-se esperar a ocorrência de uma 'virada inversa' (isto é, uma virada de volta ao setor público ao invés de uma virada em direção ao setor privado) conforme políticas de bem-estar animal se desenvolvam no âmbito do direito internacional.

Samenvatting

Het ontwikkelen van regelgevende instrumenten om dierwelzijn in de veehouderij te ondersteunen wordt gekenmerkt door een aantal politieke en regelgevende beperkingen op zowel nationaal als internationaal vlak. In een poging enkele van deze beperkingen te overkomen zijn in de afgelopen 20 jaar een aantal innovatieve governance arrangementen ontwikkeld, zoals het gebruik van private standaarden. Deze thesis geeft een kritische evaluatie op de vragen hoe en tot welke hoogte het beleidsveld van dierwelzijn is beïnvloed door deze innovatieve ontwikkelingen. Deze thesis is het resultaat van vier onafhankelijke (maar samenhangende) studies.

De **eerste studie** bestaat uit een theoretische verkenning naar de betrokkenheid van niet-staat actoren in het ontwikkelen van dierwelzijnsbeleid in Europa. Het doel van deze studie was te onderzoeken in hoeverre geobserveerde veranderingen in Europa, en specifiek in Nederland, overeenkomstig zijn met de politieke moderniseringstheorie. De studie bevestigt dat de betrokkenheid van niet-staat actoren in het beleidsmakingsproces van dierwelzijn correspondeert met een modernisering van governance praktijken, waarbij nieuwe actorcoalities, beleidsdiscoursen en regels tot stand komen.

De **tweede studie** bestaat uit een empirisch onderzoek naar de opkomende dierwelzijn governance in Brazilië. Het belangrijkste doel van deze studie was het inzichtelijk maken van factoren die beleidsverandering stimuleren in ontwikkelingslanden. Data verzameld door middel van 36 semigestructureerd interviews met Braziliaanse belanghebbende suggereerd dat de belangrijkste factoren die leiden tot een opkomend belang van dierwelzijn in Brazilië gerelateerd zijn aan Europa en the World Organisation of Animal Health (OIE). De inzichten uit deze exploratieve empirische studie hebben geholpen om een analytisch raamwerk te ontwikkelen waarmee onderzocht kan worden hoe maatregelen omtrent dierwelzijn in de veehouderij verspreid zijn over jurisdicties. Dit analytisch raamwerk is verder is ontwikkeld in de derde fase van dit promotietraject.

De **derde studie** richt zich op empirisch en theoretisch onderzoek naar dierwelzijn governance in het samenspel tussen de Europese Unie en Brazilië. Het doel hierbij is welke actoren en mechanismen op het moment bestaan om dierwelzijn te verbeteren in bilaterale en internationale relaties. Verschillende initiatieven zijn geïdentificeerd als nuttig in het coördineren van dierwelzijnsmaatregelen tussen de EU en Brazilië. Een uitkomst van deze studie is dat initiatieven gebaseerd op beleiddiffusie het meest zichtbaar zijn.

De **vierde studie** omvat een legale analyse naar de relatie tussen het regelgevend raamwerk van de Wereld Handels Organisatie (WTO) en de vooruitgang van de dierwelzijn door middel van private standaarden. Het doel van deze studie was het uiteenzetten van de mogelijkheden van private standaarden binnen de verplichtingen

die de lidstaten van de WTO zijn aangegaan in artikel 13 van het *Sanitary and Phytosanitary Agreement* (SPS). Er zijn drie fundamentele stappen om aanspraak te maken op schending van artikel 13. Deze zijn: (i) de toepasbaarheid van de SPS Agreement op dierwelzijn maatregelen; (ii) het bereik van de term 'niet-gouvernementele entiteiten' en (iii) het bestaan van feitelijk bewijs dat een WTO lid geen redelijke maatregelen genomen heeft om zich ervan te verzekeren dat SPS disciplines geobserveerd worden door niet-gouvernementele entiteiten of dat een WTO lid niet-gouvernementele entiteiten aanmoedigt of vertrouwden op een niet-gouvernementele entiteit dat niet voldoet aan de SPS voorwaarden. De conclusie van deze studie is dat overtuigende wetgevende instrumenten en feitelijk bewijs een reden zijn voor actie in een WTO geschil over het gebruik van private dierwelzijn standaarden.

Op basis van de hierbovenbeschreven bevindingen, concludeerd deze thesis dat het te volgen pad voor dierwelzijn in de veehouderij bestaat uit vier delen. Ten eerste is er een indicatie dat het beleidsveld voor dierwelzijn significant vooruit gegaan is zowel in de EU als tussen de EU en Brazilië. Deze vooruitgang komt voornamelijk door een variatie aan niet-legislatieve instrumenten, zoals intergouvernementele technische samenwerking, capaciteit vergrotende programma's en private standaarden. Ten tweede laten de gevonden politieke en wetgevende implicaties omtrent het gebruik van private standaarden in dierwelzijn zien dat een voorzichtige aanpak van dit beleidsinstrument noodzakelijk is. Ten derde, het beleidsveld van dierwelzijn heeft in grote mate geprofiteerd van de ontwikkeling van de World Animal Health Organisation (OIE), in bijzonder met betrekking tot overheden en bedrijven in ontwikkelingslanden. Ten vierde is tekent er zich een omgekeerde verschuiving (dat is een verschuiving weg van private governance en terug naar publieke governance) af, dat zich waarschijnlijk gaat manifesteren bij een verdere internationale ontwikkeling van dierwelzijn in de veehouderij.

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95 * *In memoriam*

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