



# **Mechanisms to avoid or settle trade disputes**

**Regional Workshop: OIE Standards - Facilitating  
Safe International Trade**

**Nairobi, Kenya, 20-22 March 2018**

## Topics to be covered:

- International trade – main constraints
- Animal health related trade disputes
- How to avoid trade disputes
- How to settle trade disputes

# International trade – main constraints

## *Trade in animals and animal products*

- Some of main animal diseases are trade-sensitive (e.g. FMD, BSE, HPAI)
- Difficulties in establishing a disease free zone or compartment within infected countries
- Difficulties in establishing recognition of free zones with trading partners
- Difficulties of exporting from infected countries or from countries that are free of specified diseases but carry out vaccinations

# Animal health related trade disputes

**Common situations where importing countries impose unjustified trade measures to prevent imports from one or more countries**

- Importing countries impose requirements that are not based on OIE standards
- Importing countries suspend imports (complete ban) without justification or for political or commercial motives
- Importing countries do not recognise that exporting countries meet the recommendations in the *Code*
- Importing countries delay evaluation of compliance with requirements and fail to explain the final decision



# Animal health related trade disputes

## *Analysis of causes of trade disputes*

- Complex issue and not always easy to determine the causes
- The importing country is not fully aware of the standards and the scientific basis for the recommendations (failure in interpretation)
- The importing country defines a higher ALOP than those in OIE standards , but not supported by a risk analysis
- The importing country applies the standards strictly, and does not consider equivalence requests
- The importing country applies the precautionary principle (insufficient scientific evidence) but does not seek necessary information in reasonable lapse.
- The importing country has political or other unjustified reasons

# How to avoid or manage disputes

- Harmonise trade measures with OIE standards
- Build negotiation competencies and capabilities in Veterinary Services
- Build trust with trading partners
- Raise specific trade concerns at the WTO SPS Committee
- Use the OIE voluntary dispute mediation process



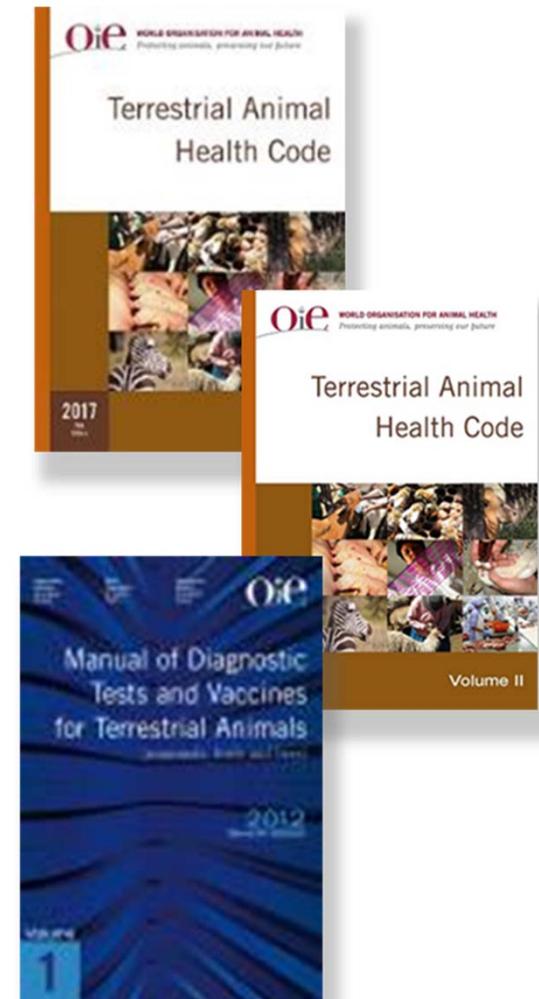
# Plan ahead and be prepared

## Implement sanitary measures from the Code

Establish sanitary agreements between trading partners for important diseases in advance, i.e. during 'peace times' before such diseases occur:

- zoning/compartmentalisation can facilitate trade especially during an outbreak
- This approach makes it easier for exporting countries to retain some access to their markets during an outbreak

***This approach is based on mutual trust, good governance and a quality Veterinary Service***



# Build strong VS capacity to negotiate

## *Legal and technical capacity*

- to varying degrees, developing countries still lack strong legal/technical capacity to challenge measures
  - ✓ Exporting and importing countries must be able to engage in negotiations to ensure they can respond appropriately to technically demanding, dynamic and complex situations
- use the OIE PVS Tool for evaluating the Performance of VS in order to identify the needs for remedying certain weaknesses, in the areas of health management and sanitary negotiations

***OIE PVS Tool:** “...basis for comparing performance of VS in the region or globally, in order to explore areas for cooperation or negotiation. OIE standards: a framework for importing countries to audit exporting countries, and to check their compliance with OIE standards on quality and evaluation of VS;”*

***Equivalence & sanitary agreements:** The authority and capability of the VS to negotiate, implement and maintain equivalence and other types of sanitary agreements with trading partners.*

# Building trust with trade partners

- Build confidence in the quality of VS in the exporting country
  - ❖ Confidence in VS is the cornerstone of international trade
- Provide the necessary assurances to trading partners
  - ❖ Demonstrate good governance by ensuring transparency in disease reporting and efficiency of disease control management
- Credibility of certification is critical to international trade
  - ❖ ensures confidence in exporting country and safe trade



# WTO SPS specific trade concerns

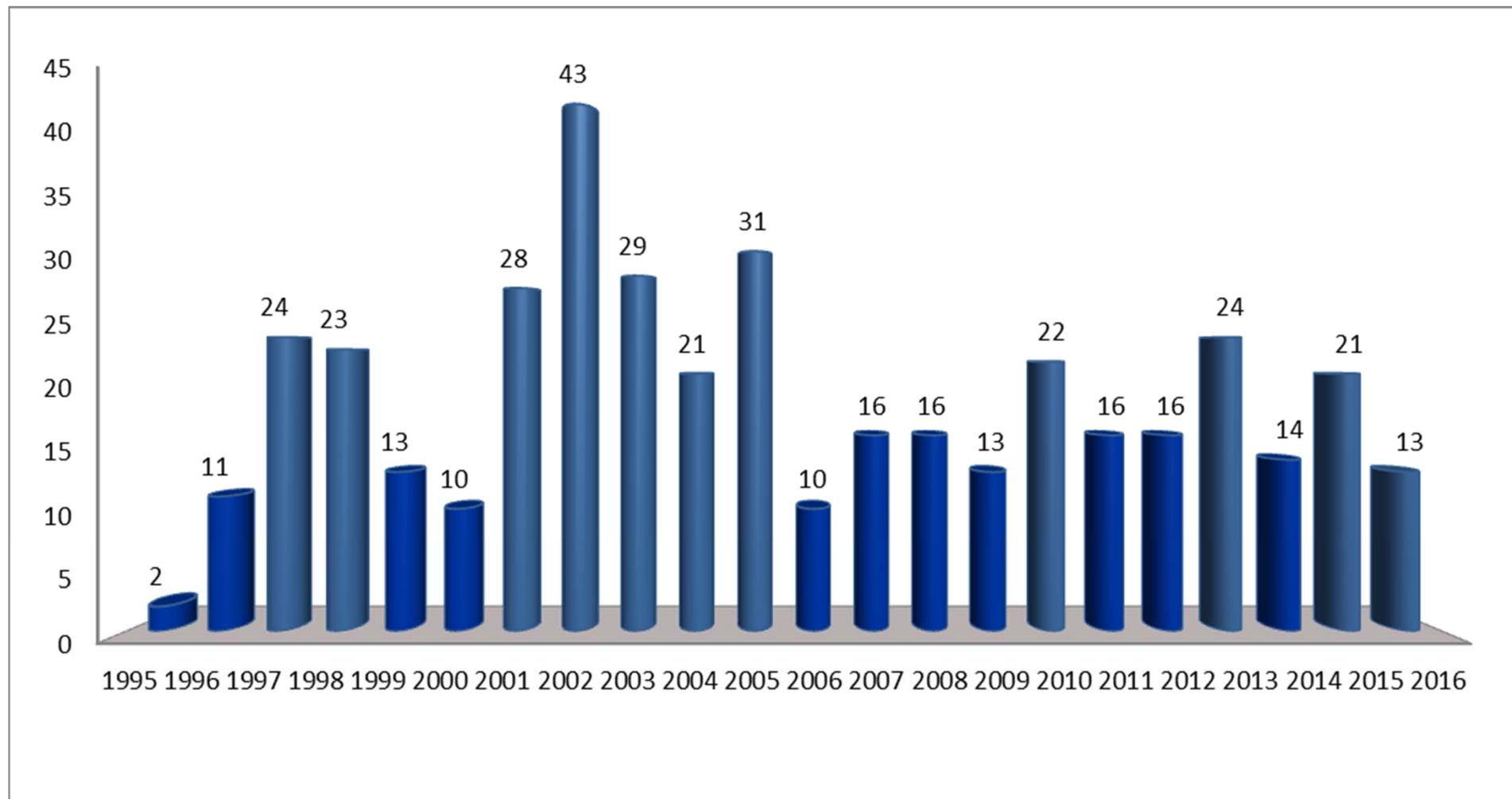
## *Raised at the WTO SPS Committee meeting*

- Raising a specific trade issue may help to avoid disputes between trading partners or potential trade issues
- the following steps are recommended before raising issues at the SPS Committee:
  - 1) Request a copy of the measure in question from the SPS Enquiry Point of the notifying Member;
  - 2) Disseminate the information to interested parties , exporters/ local producers;
  - 3) Collect comments;
  - 4) Send comments to the notifying Member;  
If the agreement is not satisfactory, Members may consider:
  - 5) Raising the issue at the SPS Committee.



# Specific Trade Concerns (1995-2016)

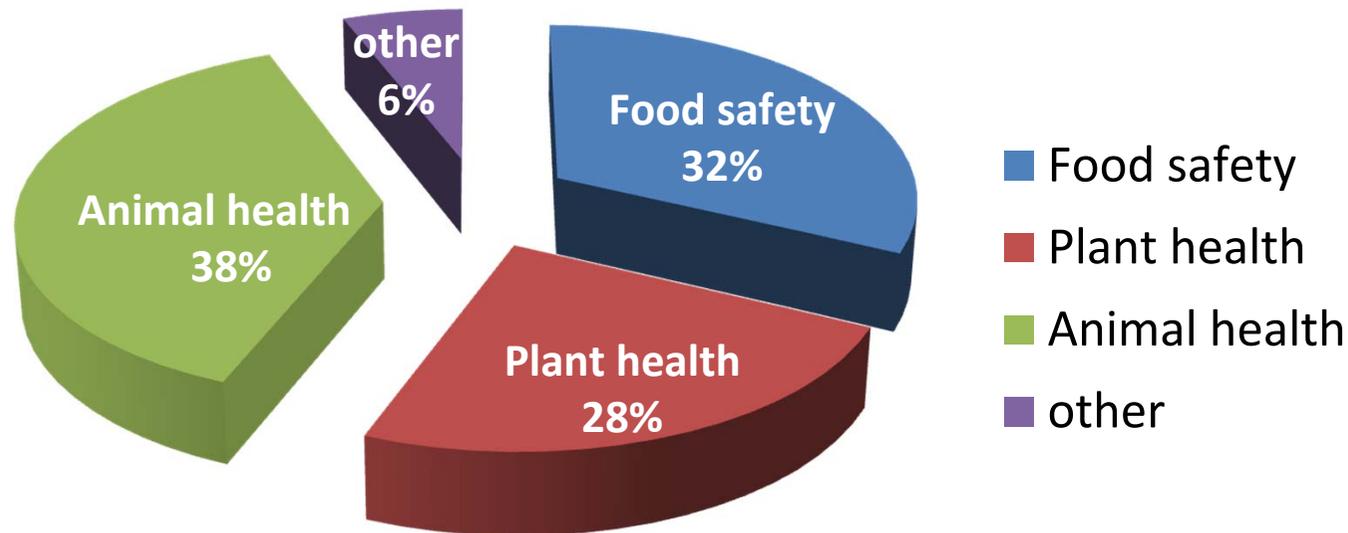
*Number of New STCs Raised: 416 in total*



Source: G/SPS/GEN/204/Rev.17

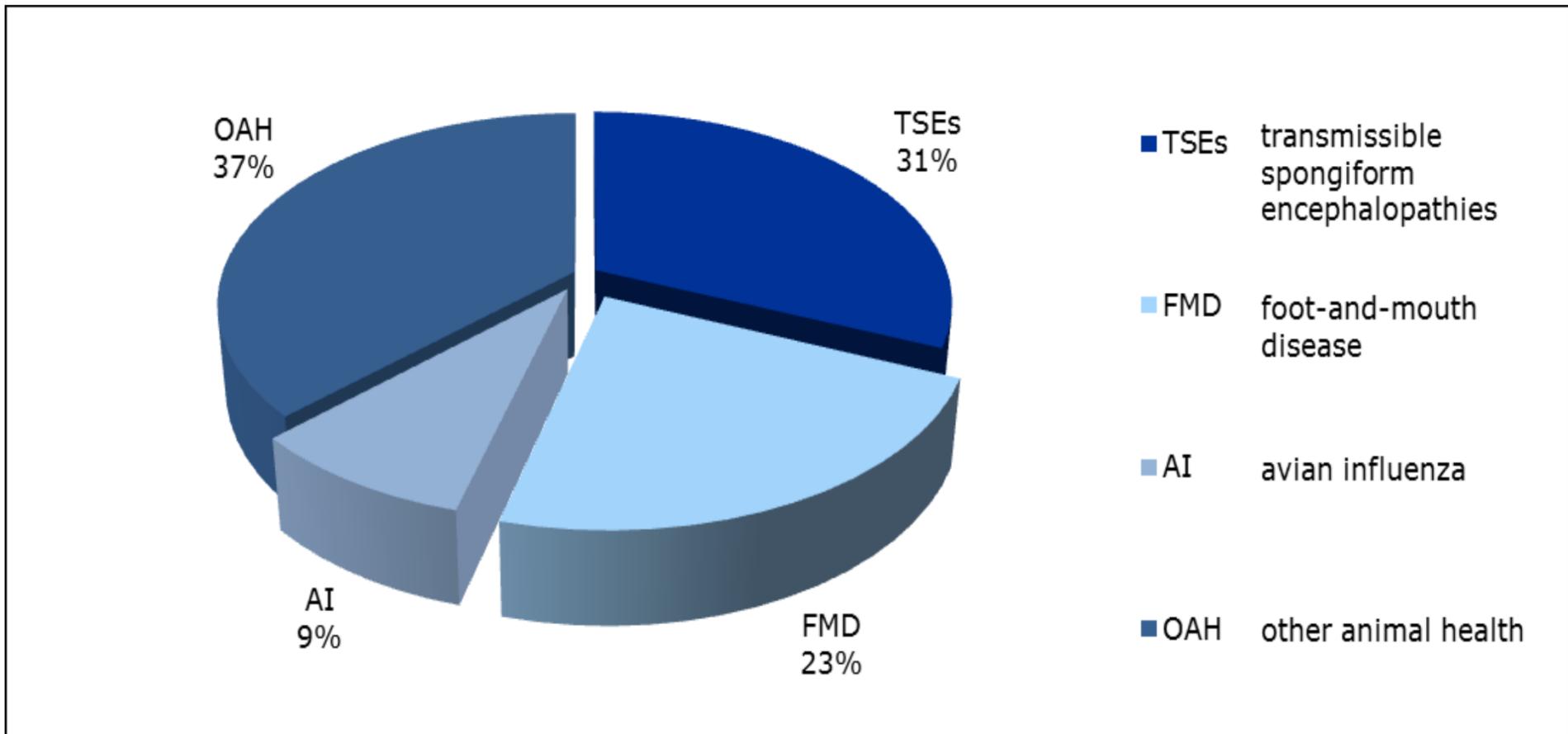
# STCs by subject (1995-2016)

4 category of subject



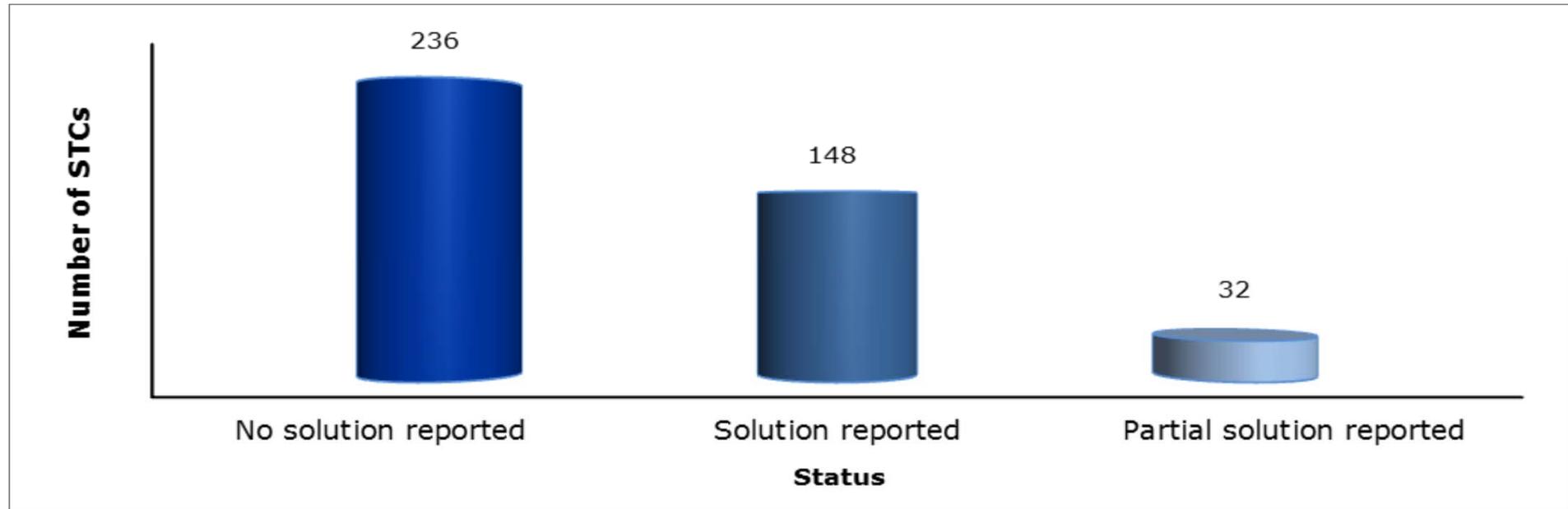
Source: G/SPS/GEN/204/Rev.17

# STCs by animal diseases (1995-2016)



Source: G/SPS/GEN/204/Rev.17

# Resolved STCs (1995-2016)



Source: G/SPS/GEN/204/Rev.17

***Though there is an increase in total number of STCs to the Committee, there still remain a number of unresolved STCs***

# WTO dispute settlement mechanism

*Only as a last resort*



- **Initiate WTO DS procedures**

- ✓ relatively time consuming and expensive procedure, mostly reserved for the serious and complex trade issues
- ✓ One or more Members (complainants) against another Member (respondent)
- ✓ Possibility for third party Members to join
- ✓ Confidential process
- ✓ Minimum time limits for complainant

## WTO DS: Time limits = Target

60 days	Consultations, mediation, etc
45 days	Panel set up and panellists appointed
6 months	Final panel report to parties
3 weeks	Final panel report to WTO members
60 days	Dispute Settlement Body adopts report (if no appeal)
Total = 1 year	(without appeal)
60–90 days	Appeals report
30 days	Dispute Settlement Body adopts appeals report
Total = 1y 3m	(with appeal)

Last 4 panels on animal health issues  
(fish diseases - salmon; AI - poultry;  
FMD - beef; ASF - pork)  
Expert advice from OIE &  
WTO rulings based on OIE standards

Then... «Implementation timing»,  
sometimes very long!

# OIE Dispute mediation process

## *Mechanism to resolve differences and facilitate safe trade*

- OIE voluntary in-house “non-confrontational” mediation mechanisms (Art.5.3.8.)
- complementary to, and does not conflict with, WTO DS
- initiation by mutual agreement of the parties
  - ✓ two parties jointly select three experts from a list presented by the OIE
  - ✓ two parties agree the scope of discussions
  - ✓ convene a meeting with two parties, experts and OIE
  - ✓ may result in an agreed set of measures for both parties or provide a basis for on-going bilateral discussion and offer a better understanding of the reasons for differences of position
  - ✓ report circulated among the parties and the OIE HQs
  - ✓ cost evenly shared by the two parties



# OIE process “vis a vis” WTO DSM

## Advantages for OIE Member Countries

- strictly science-based approach to finding solutions, rather than based on legal provisions
- Report / Results not binding, unless both parties agree on the opposite option
- confidential report on the findings and recommendations
- more friendly and less blaming (to the “defendant” party)
- more room/possibilities to accept alternative/ equivalent measures
- less costly
- shorter



Oie



# Conclusions

- Communicate directly with trading partners
  - Communicate and explain measures prior to implementation
  - Carefully analyse proposed/implemented measures
  - When in doubt, ask the counterpart to provide further explanation, including evidence or justifications
  - Analyse alternative equivalency measures together (exporting & importing partners)
- Enhance the VS capacity
- Raise STC at WTO's SPS Committee
- OIE Dispute mediation process
  - resolves differences at the technical level
- WTO Dispute Settlement Panel – the last resort!



# Thank you for your attention



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