

FEATURED ARTICLE

Farm to fork strategy: Animal welfare, EU trade policy, and public participation

Alexandra Molitorisová^{1,2} | Ciarán Burke^{3,4}

¹Faculty of Life Science: Food, Nutrition and Health, University of Bayreuth, Bayreuth, Germany

²Faculty of Law, Masaryk University, Brno, Czech Republic

³Jena Center for Reconciliation Studies, Friedrich Schiller University, Jena, Germany

⁴EFTA Surveillance Authority, Brussels, Belgium

Correspondence

Alexandra Molitorisová, University of Bayreuth, Bayreuth, Germany.

Email: alexandra.molitorisova@uni-bayreuth.de

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Abstract

This article presents an analysis of the Farm to Fork Strategy (F2F Strategy) on animal welfare matters through the lens of EU trade policy and public participation. It shows that the mix of cooperation tools contained in bilateral agreements with trade components support in aggregate the Strategy's actions on animal welfare. However, individual bilateral agreements may need to be renegotiated and modernised to include more powerful cooperation tools to achieve sustainable food systems through the adoption and implementation of animal welfare standards. One way of achieving this is to negotiate the inclusion of sustainable food systems chapters that highlight the linkages between animal welfare, agriculture, sustainability, climate, environment, and public health. However, such robust chapters should be monitored and enforced in a correspondingly robust manner, for example, by restructuring chapters' committees and work groups. The article concludes that enhanced public participation, both at the level of legislative proposals (public consultations) and at the level of trade policy (domestic advisory groups, standardisation committees), may better support achieving policy

Ciarán Burke, Professor and Senior Research Fellow, Jena Center for Reconciliation Studies, Friedrich Schiller University and Legal Officer, EFTA Surveillance Authority. The views expressed in this article are those of the author alone, and do not represent the position of the EFTA Surveillance Authority.

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objectives of animal welfare measures of the F2F Strategy.

KEYWORDS

animal welfare, EU trade, public consultations, Farm to fork strategy

JEL CLASSIFICATION

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The Farm to Fork Strategy (F2F Strategy), an underlying policy blueprint setting out how sustainable food systems may be implemented, was published by the European Commission in May 2020 (European Commission, 2020a). The F2F Strategy represents a centerpiece of European Union (EU) policy action on sustainability and “continental” carbon neutrality, the so-called European Green Deal (European Commission, 2019a). The F2F Strategy has strong extraterritorial aspects, and it is not merely an internal policy blueprint but also a foreign policy action plan. The F2F Strategy emphasizes a fair, as well as global, transition towards sustainable food systems. Some of its extraterritorial aspects are explicit, while others are only implicitly derived. If, for example, the F2F Strategy plans to achieve at a significant increase in organic production in the EU, a decrease in yields will likely occur that could be compensated for by increased food/feed imports (Purnhagen et al., 2021). It is apparently not possible for all the world's food systems to become organic without negative impacts on food security. Despite the anticipation of such effects, the EU has long been interested in the gradual export of its sanitary and phytosanitary standards, including animal welfare standards. It is widely recognized that animal welfare is a domain in which a strong Brussels effect has been generated (Preusse et al., 2020), although it has not been subject to systematic empirical analysis. The “Brussels effect” connotes a de facto pressure toward high standards by which businesses employ the same (high) standards also in jurisdictions outside of those standards formally applied (Bradford, 2021). Such an effect is foreshadowed in the F2F Strategy, which confirms the regulatory hegemonic efforts of the EU and includes several policies and legal tools for this purpose. The EU is set to persevere in casting the Brussels effect, as exports from third countries continue to violate EU standards due to insufficient EU support of countries' capability to meet those standards (European Commission, 2022a). This article examines the F2F Strategy's trade-related tools, especially as regards the revision of bilateral trade agreements. In that regard, the article focuses on animal welfare as a discrete element of sustainable food systems and as a discrete matter of bilateral agreements with trade components. What has been already achieved and what can be realistically achieved for animal welfare in EU bilateral agreements as a matter of trade policy that is positioned in the domestic EU animal welfare law revision?

ANIMAL WELFARE AND THE F2F STRATEGY

The EU stands at the forefront of animal welfare standards due to its history of animal protection legislation (European Union, 1974) and the comparatively high standards provided for by

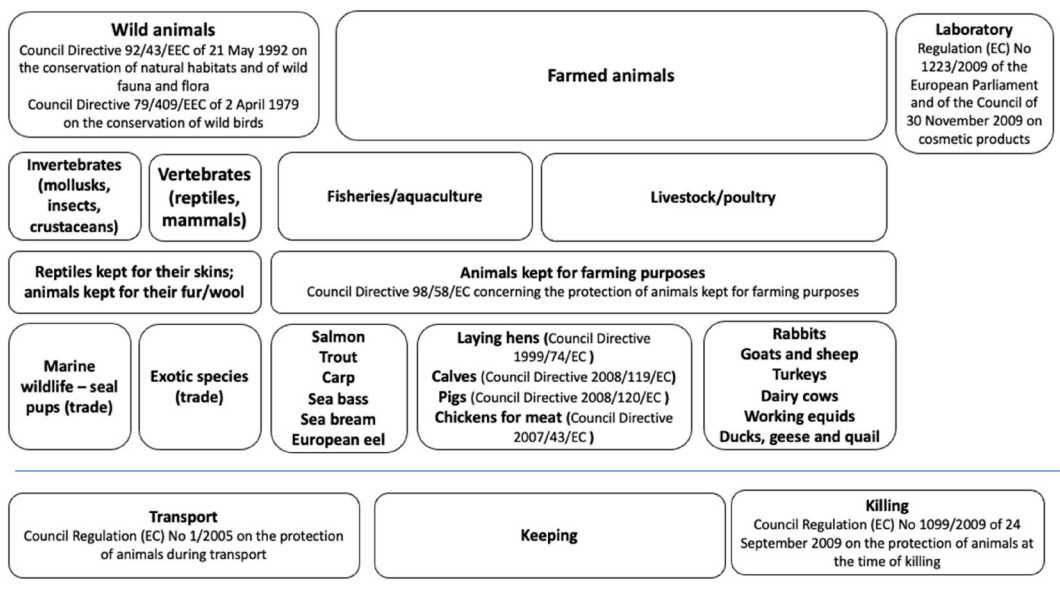


FIGURE 1 Areas of animal welfare regulation in the EU

such legislation (Caporale et al., 2005). It may be argued that the EU affords animals a high degree of moral consideration, underlined by the recognition of animals as sentient beings at the constitutional level, and that this is an important value underpinning EU external action in this area (Leone, 2020). Despite the high standards, the F2F Strategy recognizes that there is an urgent need to improve animal welfare via legislative revision. If a sustainable EU food system, that is, a system that is climate/environment-neutral/positive, is to be built, consumers need to have access to food that upholds high standards of animal health and welfare, as the Strategy purports. Therefore, the Commission intends to align EU animal welfare legislation (see Figure 1) with the general sustainability goals, namely to “reduce the environmental and climate footprint of the EU food system and strengthen its resilience, ensure food security in the face of climate change and biodiversity loss” (European Commission, 2020a). However, the way in which animal welfare relates to, or contributes to, sustainability is not self-evident. The relationship is, rather, indirect: animal welfare contributes to the improvement of animal health, and therefore food quality (Boyle & O’Driscoll, 2011). Animals in better health require less medication, in particular antimicrobials, which could prevent antimicrobial resistance (Marshall & Levy, 2011). Further, animal welfare leads to better preservation animal species, and helps to sustain biodiversity (Keeling et al., 2019). Industrial animal agriculture, associated with low welfare standards, is one of the major drivers of climate change (Rojas-Downing et al., 2017). It is generally regarded as unsustainable (Stoll-Kleemann & O’Riordan, 2015). Such considerations prompt the question of policy coherence with related EU policies, notably with other agri-food chain rules, environmental legislation, and the functioning of the single market¹ as well as trade policies. It follows that achieving a fundamental policy transformation requires attaining multiple policy objectives through carefully prepared policy mixes, as Bazzan et al.’s (Bazzan et al., 2023) contribution to this special issue demonstrates.

Standardization is an important tool to achieve higher levels of animal welfare, and the Commission pledges to encourage the production of agri-food products complying with such

standards, as well as supporting small-scale farmers in meeting those standards.² Modalities of this commitment have not yet been published. For the EU, it is essential to answer the question of whether the current animal welfare legislation contributes to the global competitiveness of EU farmers and producers (European Commission, 2018). If strict EU animal welfare standards were applied only domestically and not to imported goods, the EU would run the risk of undermining its own production. The fear on the part of EU-based producers is that the imposition of high animal welfare standards would undermine their sales by substitution by imports from low-standard countries (Peters, 2016). A drop in income levels of domestic producers may further hinder their ability to invest in animal welfare. Importing cheaper products resulting from less sustainable practices could therefore also weaken sustainable production in the EU (Gonzalez, 2011).

If high animal welfare standards are not achievable by third-country producers, considerable market pressure will be created (Peters, 2019). This may be accompanied by a race to the bottom amidst international regulatory or jurisdictional competition arising under conditions of economic interdependence, where factors of production move to or remain in a jurisdiction with lower standards (Radaelli, 2004). Put succinctly, higher animal welfare standards may render the EU market less attractive (Grethe, 2007). A legislative framework would be therefore required to incentivize farmers to adopt such standards (Błażejczyk-Majka et al., 2012), and incentives must be calibrated in a way that preserves a competitive environment for both domestic and third-country producers. If standards are to be adopted by producers, they need to be fair, non-discriminatory, and transparent and convey comparable information based on scientific knowledge (Branch, 1994; Egan, 2001). It has been suggested that adjusted legislative arrangements at the Member States' level would be required, with the usage of directives or performance-based norms, thereby providing the Member States with the opportunity to take account of *sui generis* features of farming in their territories (Csaki & Jámor, 2009). If, for example, an animal welfare label is to be considered fair, different conditions for animal keeping must be considered, including taking into account geographical and climatic conditions (Simonin & Gavinelli, 2019). Further, local specificities can affect transport and slaughter. The argument may be equally valid for animal welfare standards potentially applicable to imported products arriving from third countries.

The F2F Strategy is explicit about the fact that animal welfare represents a key area in which EU trade policy should contribute to enhance cooperation and obtain commitments from third countries.³ The aspiration of the F2F Strategy is that EU law should become a global standard for animal welfare. However, actions relating to EU trade policy are not part of the published action plan accompanying the F2F Strategy. As a part of the CAP reform (2021–2027), the European Parliament and the Council requested a report assessing the rationale and legal feasibility of applying EU health and environmental standards (including animal welfare standards) to imported agricultural and agri-food products. The report will form the basis of further EU action in the areas identified by the F2F strategy.⁴

BACKGROUND—EU AS A FRONTRUNNER IN ANIMAL WELFARE STANDARDS

EU animal welfare initiatives

Awaiting stricter regulatory requirements and responding to rapidly forming consumer expectations, the industry has been gradually shifting to low-intensity farming practices and established systematic welfare certification schemes (European Parliament, 2021a; PPILOW

Project, 2021). In addition to these initiatives, the Commission launched the EU Code of Conduct on the responsible food business and marketing practices, one of the first deliverables of the F2F Strategy. It covers key aspects of sustainability within food systems and was developed by food business operators with input from civil society and other stakeholders.⁵ The Code sets out several aspirational targets, such as producing more food products in a sustainable manner, and identifies indicative actions of European businesses to achieve those targets, including improving animal welfare standards, sustainable fisheries/aquaculture, and animal health (European Commission, 2021a). Without clear legislative text, such commitments embodied in a code of conduct remain non-specific and unenforceable.

Other voluntary commitments have been more specific, for example, those promoting farmers' competitiveness based on the Rural Development Regulation, which allows active farmers to receive payments if they undertake to carry out operations consisting of one or more animal welfare commitments for a renewable period (European Union, 2013, Art. 16). Moreover, from the perspective of policy coherence, organic labeling schemes could further valorize treating animals beyond the legal minimum standards, and considering animals' mental states and meeting the species-specific behavioral needs of animals (European Union, 2018, Art. 4(2)). The Organic Production Regulation must be considered in the context of the F2F Strategy, which pledges to reach 30 percent of organic production by 2030. It is, therefore, necessary to align the animal welfare objectives with the objectives of the F2F Strategy, notably those that are susceptible to objective measurement.

The European Commission's revision of animal welfare legislation

Amidst these efforts to improve animal welfare, the Commission prepared a plan to review the applicable EU legislation (European Commission, 2021d). The Commission will assess whether the legislation in question remains fit for purpose and effective for the pursuit of the EU's animal welfare objectives, that is, whether it has ensured the intended level of protection, considering the evolution of scientific knowledge and citizens' expectations. The revision aims at farmed animals and does not cover wild animals, experimental or laboratory animals, or invertebrate animals (European Commission, 2021b). The exclusion of invertebrate animals can be considered a serious shortcoming (Carere & Mather, 2019) given the broader scope in which the revision is taking place—the F2F Strategy, which mentions insect-based proteins as meat substitutes.

The proposed revision is well illustrated by an EU consultation, which deserves a reflection on meaningful participation of the EU public in decision-making concerning animal welfare. On one hand, views, and experience on the fitness of the current rules could be considered a matter of expert opinion. On the other hand, animal welfare is a public concern within the EU, and EU citizens' expectations as a political factor may be driving up the level of protection that the Commission intends to achieve. The consultation activity raises interest from the perspective of “framing” (Alemanno, 2020). The Commission specified at the onset of the questionnaire that the revision aims at improving animal welfare and ensuring sustainable production while soliciting opinions on the level of protection of farmed animals that has been reached across the EU in the last 25 years.⁶ The public could also express opinions concerning whether EU rules on animal welfare were easy to apply and understand; whether increased animal welfare had contributed to a more sustainable food system; and whether a set of common rules had facilitated trade and improved competition in Europe.⁷ It is uncertain what role, if any, private

standards and national rules should have played in this evaluation (Lundmark et al., 2018). Questions were asked as to whether EU animal welfare legislation ensured adequate and uniform protection of all animal species, whether businesses could compete fairly across the EU given the set of rules, and whether the existing rules met future challenges in relation to sustainable food production—a set of difficult questions for which only “Yes”/“No”/“I do not know” answers were enabled. Certain questions in the questionnaire provided only a limited range of options, seemingly to limit answers to those considered relevant by the Commission. For example, the use of modern technologies to improve animal welfare was suggested merely as one of the actions, indicating that the legislative proposals fall short of seriously considering innovation for the improvement of animal welfare. This could be viewed in light of Reinhardt's findings in this special issue that the strategy fails to propose proper market incentives for innovation and punishes those who fall behind in adopting innovative approaches in agriculture (Reinhardt, 2023), including animal welfare.

Moreover, it was possible to comment on the idea of an animal welfare label as a consumer information tool.⁸ It was unclear from the question asked whether the labeling was conceived as mandatory or voluntary, and how the existing national labeling systems should have been considered. Despite soliciting layperson's opinions, it is regularly questioned whether labeling can contribute to sustainability by encouraging sustainable consumption (Stein & de Lima, 2021). On this issue, a subgroup will assist the Commission in collecting data and opinions, assuming a behavioral perspective as suggested by Purnhagen in this special issue (Purnhagen, 2022), and hopefully a more robust methodology than that employed in the consultation (European Commission, 2021b).

Overall, the consultation questions were tightly framed and lacked a presentation of trade-offs, with a risk of creating a positive bias towards the Commission's proposal. Issues of animal welfare were presented selectively, according to the Commission's actual legislative plans. This ran the risk that other, potentially more salient, animal welfare issues, such as the lack of availability of veterinary medicines, were omitted (Heads of Medicines Agency, 2007; Holden, 2006). As regards the design of the public consultation, it must also be remembered that fewer and fewer citizens and consumers have any kind of direct experience of keeping animals for farming purposes. If citizens and consumers are relevant consultation stakeholders (Alonso et al., 2020), more information and context could be provided to them in the online survey. This was done for some questions; for example, before asking about views on transport and animal welfare in farms, the Commission explained the essence of legislative provisions pertaining to these areas of concern. However, certain questions also implied an uneven knowledge on the part of the respondents. In Table 1, the presented question assumed that respondents were not familiar with the term “tail-docking” and explained the term in the brackets while presupposing sufficient knowledge for ticking one of the boxes with suggestions to address the practice (European Union, 2008).

The Commission has thus far not run a dedicated survey on the knowledge and awareness of animal welfare legislation that would provide a basis for the proper formulation and framing of questions in public consultation activities. The Commission only conducted a special survey (European Commission, 2005) which showed that 31% of EU citizens (EU25) had never visited a farm where animals are reared. A further survey (European Commission, 2006) revealed that 12% of EU citizens (EU25) knew a lot about conditions under which animals are farmed, while 57% knew a little, 28% nothing at all, and 3% did not know about such conditions. Another survey (European Commission, 2016) did not contain similar questions. The 2006 Eurobarometer acknowledged that forming opinions on changes in animal welfare protection is strongly linked

TABLE 1 Presentations of a public consultation question by the commission and as suggested by the authors

Original question of the Commission: Currently, certain procedures are only allowed in the EU under specific circumstances and/or if not performed routinely. How do you think the following mutilation practices should be addressed?				
	Prohibition	Additional restrictions	No action needed	Do not know
Tail-docking (removing part of the pig's tail, to reduce the risk of tail biting in older pigs)				
Alternative question of the authors: Tail-docking, removing part of the pig's tail, is not allowed to be carried out routinely under EU law, but only where there is evidence that injuries to sows' teats or to other pigs' ears or tails have occurred. Before carrying out these procedures, other measures must be taken into account to prevent tail-biting and other vices, taking into account environmental and stocking densities. Tail-docking must be carried out by a veterinarian or a person with appropriate training. If the docking of tails is performed after the 7th day of life, it must be performed under anesthetic and additional prolonged analgesia by a veterinarian. This means that EU law does not automatically allow tail-docking, only justifies its necessity in some situations. In some EU member states (Finland, Lithuania, and Sweden), tail-docking is banned, unless justified by veterinary reasons. How do you think tail-docking practices should be addressed?				
	Prohibition	Additional restrictions (here specific suggestions could be named)	Current legislation remains with no change	Strengthen policy options such as more training
Tail-docking				Do not know

to knowledge of farming conditions. Another survey from 2016 on education and information activities on animal welfare, contracted by the Commission and run in 8 EU Member States, found that all categories of respondents felt poorly informed on animal welfare and scored below 50% on questions assessing their knowledge of national legislation on animal welfare (IRTA, 2016). Low levels of consumer knowledge concerning agricultural practices have also been reported in other studies (Gross & Roosen, 2021). Public consultations are not a minor issue of domestic policy rationale but may serve as an important justification for a trade measure involving ethical issues, such as animal welfare, and corroborate a social objective pursued by a trade measure, for example, product labeling (Conrad, 2011). Therefore, different levels of knowledge and experience with the subject matter should be considered to ensure their sound design. This is more so, if the F2F Strategy considers the consumer and consumer behavior as pivotal for the sustainable food systems' transformation.

Animal welfare and trade rules

In the consultation, the Commission dedicated several questions to EU trade, including whether exports of live animals to non-EU countries for breeding or slaughter should be prohibited, or whether it should be limited only to non-EU countries whose requirements on animal welfare are at least equivalent to those in the EU, or whether such transport should be allowed only under stricter control conditions.⁹ Several measures for the improvement of animal welfare

during transport for unweaned calves and for other vulnerable animals, such as pregnant cows, were suggested.¹⁰ These propositions represent certain changes to the current trade regime and must be considered in a broader framework of international economic law, most importantly WTO law (Sykes, 2014). Currently, except for standards for slaughter/killing and the prohibition on the use of antibiotics for human use, EU animal welfare rules apply only to EU production and not to imported products (European Commission, 2018). Furthermore, when live animals are exported, only certain requirements on animal transport are applicable outside the EU (European Commission, 2009).

The articles of the WTO Technical Barriers to Trade Agreement (TBT) and those of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), together with the General Agreement on Tariffs and Trade (GATT), form the basis for the adjudication of international disputes that arise in the context of measures adopted to protect animal life or health, as well as human and plant life. These agreements provide for basic obligations in international trade which are embedded in the principle of non-discrimination and specifically the Most Favored Nation principle and the National Treatment principle (see notably Article I and Article III of GATT). In these contexts, animal health (except for conservation measures) functions as a defense against the breach of an obligation rather than as a separate interest worth protecting in the execution of international trade (Blattner, 2021). This is also reflected by the fact that the “public morals” exception in Article XX(a) GATT is thought to represent a better justification for policy measures designed solely to protect animal welfare (Serpín, 2016), seemingly situating such concerns in the domain of cultural or ethical choice rather than climate, sustainability, or health. It would therefore be pertinent to ask whether animal welfare standards on animal product imports required by the EU based on demonstrable ethical grounds would be compliant with WTO law, provided that they are proportionate to the problem that they seek to address (Foote, 2021). It should be noted, however, that case law on the breadth of the notion of “public morals” indicates that a WTO member enjoys broad discretion to determine for itself what “public morals” entails (WTO Appellate Body Report, 2014, *EC–Seal Products*; WTO Panel Report, 2010, *China–Audiovisuals*). In that regard, *EC–Seal Products*, the first case to examine animal welfare measures with trade implications for WTO law, confirmed that “WTO law does indeed allow generous scope for the expression of moral positions in legislation” and recognized that animal welfare could serve as justification for measures with effects on trade (Sykes, 2021, p. 12).

Further, the SPS Agreement provisions are concerned only with the protection of animal life and health if risks are posed by pests and diseases or food-borne risks.¹¹ It is questionable whether the SPS Agreement also covers standards for animal welfare, that is, whether measures based on animal welfare are justified under the SPS Agreement (Epps, 2008). On one hand, the extrapolation of health to welfare under the SPS Agreement is uneasy, as the SPS Agreement explicitly differentiates the two (Peters, 2021, pp. 284–286). However, certain evolutionary interpretations are possible as it was suggested that animals could also be protected from non-sanitary, for example, welfare risks, by a WTO panel (WTO Appellate Body, *EC–Seal Products*; Howse et al., 2014). The reading of the WTO Appellate Body’s reasoning in the *EC–Seal Products* case could suggest that WTO members are allowed “to legislate progressively on animal welfare without violating trade obligations” (Sykes, 2021, p. 155). An evolutionary interpretation may further acknowledge that improving animal welfare is a prerequisite for good animal health (Peters, 2021, p. 289). Moreover, because of the existing links between animal diseases and public health, measures undertaken in order to protect the health or life of animals might also be argued, in some circumstances, as taken to protect the health or life of humans

under the SPS Agreement (Peel, 2006; Tauseef et al., 2020). If this interpretation is accepted, the next question is from which standards that serve as the basis of measures could one draw, where no risk assessment is performed. The World Organization for Animal Health (OIE) could represent a relevant organization in this regard, as it produces relevant standards, for example, the Terrestrial Animal Health Code. It is also directly mentioned by the SPS Agreement (notably in Article 4(3) and in the preamble, as well as regarding the reference to international standards per Article 3(2) and (3)). Although the quality of these standards is sometimes questioned, they are considered relevant by the Commission for the purposes of the revision of EU animal welfare legislation (Blattner, 2021). Such an interpretation of the applicable WTO law is favorable to EU advanced animal welfare policies in the trade sector and could give way to further export of EU animal welfare standards.

Furthermore, animal welfare labeling as a measure essentially linked to processes and production methods must be considered in the framework of the TBT Agreement. The TBT Agreement applies to technical standards and technical regulations (as defined in Annex of 1.1 TBT Agreement) posing barriers to trade. Annex 1.1 provides that a technical regulation is a document “which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory.” Per Annex 1.1, labeling requirements seem to fall within the definition. However, unlike production methods that leave a trace in the final product, for example, pesticides, the way in which animals are kept, transported, and slaughtered may be considered “unincorporated process and production methods” (WTO Panel Report, 1991, *United States—Tuna I*; WTO Panel Report, 2019, *United States—Tuna II*: 7.363, referenced in both US and Mexico submissions, and recently dealt with by the WTO’s Committee on Trade and Environment). For that reason, they may be considered to fall outside the scope of the TBT Agreement. On the other hand, veterinary practices that may affect the safety of meat products, that is, product characteristics, may be considered product-related production methods, and as such, fall within the scope of the TBT Agreement (Isaac, 2007).

Without taking sides on this issue in this article, a debate exists on whether animal welfare labels can be adopted consistent with WTO agreements (Ghislain, 2021). Voluntary labeling schemes, which are often required in contractual relationships with retailers, remain a contentious point from the perspective of WTO law, as well as bilateral agreements concluded by the EU (Justyna & Żakowska-Biemans, 2020; EU-Viet Nam Free Trade Agreement, Art. 16.3; EU-Ukraine Association Agreement, Art. 293).¹² Extending certain voluntary product labeling or other requirements to a significant market share can create de facto mandatory standards (Maidana-Eletti, 2014). An obvious trade-related objection is that any labeling obligation would represent a barrier to trade, particularly with respect to the due diligence obligations imposed upon producers (Morita, 2016). Trade retaliations could be imposed, including dumping (Howse & Trebilcock, 2018). Therefore, the application of the Code of Good Practice for the Preparation, Adoption, and Application of Standards must be considered. Voluntary labeling may not become a disguised restriction on trade and must be based on international criteria where possible and notified to standard-setting bodies in order to allow them to comment on the criteria prior to adoption (Isaac, 2007). In this regard, the EU’s work on international standard-setting and through bilateral agreements as analyzed in section IV below, becomes indispensable. Moreover, if a positive trade impact of animal welfare labeling is to be anticipated, producers in developing countries should have their concerns reflected in the scheme’s development (Jansen, 2010)—an issue that may be echoed in bilateral agreements through public participation.

Also, under the CAP, Member States shall design interventions (eco-schemes) under their strategic plans, including schemes on animal welfare, in such a way that they qualify under the criteria of Annex 2 of the WTO Agreement on Agriculture (European Union, 2021a).¹³ Depending on how an eco-scheme is granted, an eco-scheme follows a different set of conditions according to which it can be exempted from the reduction commitment, that is, a commitment to reduce domestic support volume (the so-called Green Box) (European Union, 2021a). Such exemptions are identified as having no or minimal trade-distorting effects (Matthews, 2018). This is an additional green light for EU policies on animal welfare from the perspective of international economic law (Verdun & Skogstad, 2013).

BILATERAL AGREEMENTS

Apart from compliance with WTO law, the EU advances its animal welfare agenda via the conclusion of bilateral agreements with third countries. Sykes writes in this regard that bilateral or multiparty agreements negotiated outside the WTO context offer a new impetus for advancing animal welfare standards with trade impacts (Sykes, 2021, pp. 155–156). In this section, EU agreements with third countries that contain trade components are reviewed for animal welfare provisions, including free trade agreements, association agreements, economic partnership agreements, trade, and investment partnerships, interim agreements, stabilization agreements, and others.¹⁴ Data collection of the relevant agreements was combined with a fine analysis of legal provisions. The analysis focuses on cooperation tools included in those agreements that have relevance for advancing the EU agenda in animal welfare matters. The purpose is to analyze whether cooperation chapters are drafted in a manner amenable to the “export” of heightening EU animal welfare standards by regulatory approximation.

Objectives and scope

EU bilateral trade agreements contain different provisions on trade policy in animal welfare. Provisions related to animal welfare often determine the cooperation framework between parties (EU-UK Trade and Cooperation Agreement, Art. 84; EU-Colombia/Peru Trade Agreement, Art. 102).¹⁵ Cooperation provisions are regularly drafted to enhance parties' mutual understanding of animal welfare matters (EU-Mongolia Partnership and Cooperation Framework Agreement, Art. 15(3)). For example, the parties' mutual understanding could be that animals are sentient beings, a matter of constitutional status in the EU (EU-UK Trade and Cooperation Agreement, Art. 84; EU-Mexico Trade Agreement, in principle, Article XX) or that mutually agreed standards are those reflecting the standards adopted by the OIE (EU-Chile Association Agreement, Annex IV). Further goals may be formulated on the basis of this understanding. For example, regarding Mercosur, the trade agreement stipulates that the goal of the cooperation is to promote the EU's global animal welfare agenda, which must be consistent with EU primary law (European Commission, 2019b).

Another important objective of animal welfare provisions, particularly those embodied in SPS chapters, is to improve access to the other party's market whilst safeguarding the level of protection of animals as well as animal welfare (EU-Central America Association Agreement, Art. 62). This is also expressed by the obligation to cooperate in order to facilitate and increase trade in goods by identifying, preventing, and eliminating obstacles to trade arising from SPS measures and to

facilitate compliance with SPS measures applying to exports (EU-Pacific Interim Partnership Agreement, Art. 34). Cooperation provisions may explicitly differentiate between SPS and animal-welfare measures, making it difficult to ascertain whether, in those agreements that do not make such a distinction, animal welfare may be considered an SPS measure (EU-Armenia Comprehensive and Enhanced Partnership Agreement, Art. 139(1), (2)). For example, in the EU-Singapore Free Trade Agreement, a provision makes explicit that the SPS chapter is to apply also to collaboration on animal welfare matters. A cooperation chapter may also specifically call for work focused on farmed animals, as distinct from other animals of animal welfare concern, such as laboratory animals or wild animals (Japan-EU Economic Partnership Agreement, Art. 18.17).

In the absence of explicit animal welfare provisions, chapters on the environment, agriculture, or sustainability may be deemed to cover some aspects of animal welfare. This is due to links between animal welfare standards, farming practices, and environmental standards. For example, the impact of agriculture on soil (Euro-Mediterranean Lebanon Association Agreement, Art. 45(1), (2)) and water quality, including pollution by agricultural chemicals (EU-Macedonia Stabilization and Association, Art. 103(1), (2)), are some of the principal areas of cooperation. Agriculture may include animal husbandry, while water quality is also a major animal welfare concern (Temple & Manteca, 2020). Parties may attempt to achieve a mutual understanding of agricultural and rural development policies, which may include animal welfare matters (EU-Ukraine Association Agreement, Art. 404). Cooperation in this context aims at the promotion of environmental sustainability (EU-Albania Stabilization and Association Agreement, Art. 108(1)) (ensuring sustainable development (EU-Bosnia and Herzegovina Stabilization and Association Agreement, Art. 108(1))), the preservation of bio-diversity (Euro-Mediterranean Algeria Association Agreement, Art. 52(2)), the prevention of deterioration of the environment (halting further degradation/improving (EU-Bosnia and Herzegovina Stabilization and Association Agreement, Art. 108(1))), controlling pollution (EU-Kosovo Stabilization and Association Agreement, Art. 115), ensuring the rational use of natural resources, as well as the protection of public health (Euro-Mediterranean Algeria Association Agreement, Art. 51(1), (2)).

One mentioned issue of cooperation is also anti-microbial resistance, a serious threat to human and animal health (EU-Mexico Trade Agreement, in principle, a chapter of which is the first example of provisions concerning anti-microbial resistance being negotiated).¹⁶ In such a case, parties may cooperate towards an international ban on the use of antibiotics as growth promoters. In the EU-Indonesia trade agreement proposal, parties go as far as to agree on phasing out such use (EU-Indonesia Free Trade Agreement, proposal of Art. X.7(2)). This is a forward-looking cooperation model, embodying a transnational and One Health approach (EU-UK Trade and Cooperation Agreement, Art. 86).

In certain other agreements, no provisions on cooperation in relation to animal welfare, sustainability, agriculture, or the environment were included (EU-Denmark-Faroe Islands Agreement¹⁷; EU-Switzerland Agreement¹⁸; EU-Macedonia Stabilization and Association Agreement¹⁹).

International standards

The goals of trade facilitation and sustainability can be achieved by using international standards and by agreeing in principle on the level of protection (of animals, including animal welfare). A bilateral agreement may specifically oblige parties to develop a common understanding on the application of international standards (similarly to SPS measures) with the view of minimizing negative effects on trade between them as well as promoting greater use of international

standards (EU-Southern African Development Community Economic Partnership Agreement, Art. 67). In the area of animal welfare, the baseline for this common understanding is that the import requirements are drawn from, inter alia, OIE standards, unless the import requirements are supported by a science-based risk assessment (EU-Armenia Comprehensive and Enhanced Partnership Agreement, Art. 136(2), (3)). Parties may cooperate in the development of animal welfare standards, guidelines, and recommendations (EU-Korea Free Trade Agreement, Art. 5.6), in particular with respect to the stunning and slaughter of animals (EU-Korea Free Trade Agreement, Art. 5.6, 5.9). Parties may also work towards harmonizing veterinary standards and checks (Euro-Mediterranean Algeria Association Agreement, Art. 58; Euro-Mediterranean Israel Association Agreement, Art. 46). Cooperation then takes place in international bodies, such as the Animal Welfare Cooperation Forum of the European Commission and the OIE (EU-New Zealand Partnership Agreement, Art. 16). The EU may also provide support for the participation of its trading partners in relevant international standards-setting bodies (EU-Southern African Development Community Economic Partnership Agreement, Art. 67). It is important to recall that the EU is a major contributor to the OIE standard-setting process and that the Commission plays an important role in promoting the implementation of OIE standards via the OIE Global Animal Welfare Strategy adopted in 2017 (European Commission, 2022b).

Trade facilitation tools

Cooperation chapters may help to establish trade facilitation tools, including the recognition by the EU of the inspection and certification systems of the exporting party and approval of exporting establishments based on guarantees given by the exporting party (EU-Kazakhstan Enhanced Partnership and Cooperation Agreement, Art. 36(1), (2)). The EU may also carry out its own cost inspections and audits on the territory of the exporting party to evaluate the latter's inspection and certification systems (EU-Armenia Comprehensive and Enhanced Partnership Agreement, Art. 138) in accordance with the relevant international standards, guidelines, and recommendations (EU-Kazakhstan Enhanced Partnership and Cooperation Agreement, Art. 37). This goes together with the recognition of conformity, in particular as regards sanitary standards for agricultural products and foodstuffs (Euro-Mediterranean Egypt Association Agreement, Art. 47). Conformity assessment bodies can be upgraded via cooperation efforts, with a view to the establishment of mutual recognition agreements in the area of conformity assessments (Euro-Mediterranean Egypt Agreement, Art. 47). Regulatory personnel of the trading partner may be trained for this purpose (EU-CARIFORUM Economic Partnership Agreement, Art. 59(1), (2)), for example at regional workshops on animal welfare. This is a strategy used by the EU in a lot of domains beyond animal welfare and could also be linked to the Brussels effect (Wittenberg, 2020).

A number of EU trade agreements are concerned with equivalency for organic products so that products certified in accordance with domestic requirements and certified by the authorities of the EU's trading partners can be marketed in the EU market as such.²⁰ Special agreements on trade in organic products were entered into with Chile, Switzerland, and the UK (European Commission, 2022e). In other countries, control bodies recognized by the Commission may, upon request, perform control measures equivalent to those undertaken by the EU (European Union, 2021b). Similar arrangements may be envisaged as regards animal welfare in renegotiated agreements.

Technical assistance

Cooperation can also be realized in the form of technical assistance (Euro-Mediterranean Algeria Association Agreement, Art. 51(1), (2)). This may include the provision of expertise on legislative and technical capacity to develop and enforce legislation as well as develop animal welfare control systems. Such cooperation can be defined as specific to the needs of a trading partner and can be conducted with the aim of assisting each party in complying with the EU's legal framework (EU-Kazakhstan Enhanced Partnership and Cooperation Agreement, Art. 38). The EU may support and enhance technical capacity as regards the improvement of monitoring, implementation, and enforcement of SPS measures (EU-CARIFORUM Economic Partnership Agreement, Art. 59(1), (2)).²¹ Technical assistance may also include the strengthening of administrative and institutional structures and procedures to ensure strategic planning and coordination between relevant institutions (EU-Kosovo Stabilization and Association Agreement, Art. 47). Institutional structures can also be developed for standardization and for setting quality standards (Euro-Mediterranean Egypt Association Agreement, Art. 47). In the area of environmental matters, the use of advanced tools of environmental management, environmental monitoring methods, and surveillance, including the use of certain information systems, can be promoted within the cooperation chapters (Euro-Mediterranean Jordan Association Agreement, Art. 65). One may think about how such cooperation may subsume digital agriculture and animal welfare issues.

Aside from trade agreements, separate bilateral technical cooperation agreements have been concluded with Argentina (Administrative Arrangement on Technical Cooperation in Animal Welfare signed in 2017) and Brazil (Administrative Memorandum of Understanding on Technical Cooperation on Animal Welfare signed in 2013), giving way to animal welfare projects such as on the housing of sows or establishing a network of experts.

Consultation and exchange of information

Cooperation can also take the form of communication, consultation, and exchange of information, in particular as regards SPS/animal welfare problems that may affect trade between parties with the aim of finding a mutually agreed solution (EU-CARIFORUM Economic Partnership Agreement, Art. 58(1), (2)). Consultations could take place upon request (EU-Georgia Association Agreement, Art. 60[4]), for example, where there is a situation of animal health risk. Exchange of information in epidemiological surveillance on animal diseases can be established (EU-Ghana Stepping Stone Economic Partnership Agreement, Art. 41). Discussions and exchanges of information take into account the SPS and OIE standards, guidelines, and recommendations, as appropriate (EU-Armenia Comprehensive and Enhanced Partnership Agreement, Art. 139(1)(2); EU-Ghana Stepping Stone Economic Partnership Agreement, Art. 41). Equivalent institutions on the part of each of the trading parties may further cooperate with respect to strengthening notification procedures and inquiry points (EU-Southern African Development Community Economic Partnership Agreement, Art. 67). As regards transparency, cooperation may entail the exchange of information between parties about any changes in their sanitary import requirements with a view to minimizing their negative trade effects (EU-Southern African Development Community Economic Partnership Agreement, Art. 63(2), (3)). If SPS measures are established, available scientific, technical, and innovation-related information should be considered (EU-Viet Nam Free Trade Agreement, Art. 16.3). This goes hand in hand with efforts to enhance mutual understanding of each party's sanitary measures

and their application and communicate the requirements that apply to the import of specific products (EU-Korea Free Trade Agreement, Art. 5.5). Regular exchange of information can also be supported via policy instruments funded by the EU.²²

Exchange of information is also important as regards the application of the Official Controls Regulation (European Union, 2017), requiring the Commission to request third countries that intend to export animals and goods to the EU to provide accurate and up-to-date information on the general obligations and management of SPS control systems in their territory, including rules and procedures (European Union, 2017, Art. 15). The Commission is further empowered to adopt delegated acts concerning the conditions to be respected by animals and goods entering the Union from third countries, which are necessary to ensure that the animals and goods comply with the relevant requirements, or requirements recognized as equivalent thereto. Such conditions may also include the requirement that certain animals and goods are allowed to only enter the Union from a third country or a region of a third country that appears on a list drawn up by the Commission. A third country may request to be included on such a list and must provide evidence and guarantees that the animals and goods concerned from that country comply with the relevant requirements (European Union, 2017, Art. 127(2)).

Training and research

Cooperation may establish appropriate arrangements for the sharing of expertise and experience, as well as training and information events for regulatory personnel. The objective is to build up capacities (EU-CARIFORUM Economic Partnership Agreement, Art. 59(1), (2)) and disseminate further knowledge (EU-Bosnia and Herzegovina Stabilization and Association Agreement, Art. 95). Cooperation may also focus on environmental education and awareness (EU-Ukraine Association Agreement, Art. 68(1)) which could include animal welfare aspects. Organizing training is an activity of the Commission specifically envisaged by the Official Controls Regulation to also extend to competent authorities of third countries (European Union, 2017, Art. 130(3)).

Cooperation may be also centered upon joint research and monitoring activities as well as programs and projects (Euro-Mediterranean Lebanon Association Agreement, Art. 45(1), (2)). The value of increased research collaboration in the area of animal welfare is particularly recognized (EU-Mexico Trade Agreement, in principle, Article XX). Research can specifically aim to further science-based animal welfare standards (EU-Indonesia Free Trade Agreement, proposal of Art. X.6[5]), or be aimed at innovation in the agriculture sector (EU-Ukraine Association Agreement, Art. 404). Particular areas of interest for training or research, such as breeding, holding, handling, transportation, and slaughter of food-producing animals, may be specified in a bilateral agreement (EU-UK Trade and Cooperation Agreement, Art. 84(3), (4)).

The Better Training for Safer Food (BTSF) program and the Technical Assistance and Information Exchange are the main EU instruments for training activities in the field of animal welfare, delivering sustained training missions and funding to animal welfare projects that support administrations for the transposition and enforcement of EU legislation.²³ Such projects can take the form of workshops, twinning, or study visits, that is, short-term exchanges of best practices, and their support can be requested by beneficiaries upon application. The instrument delivers assistance by providing funding to organize animal disease control simulation exercises and training in the rapid deployment of experts

or to establish delegated national authorities charged with the responsibility of administering trade mechanisms or farm support payments (European Commission, 2022c). The instrument was created in 1996 and states openly that it helps to promote EU standards and legislation in third countries. This means that the level of economic development of a trading partner is not the only reason to include technical assistance provisions in a bilateral agreement (LSE, 2022).

Approximation of legislation

The aim of cooperation efforts can be the alignment of a trade partner's legislation to the EU *acquis* (EU-Bosnia and Herzegovina Stabilization and Association Agreement, Art. 108(1)). This aim can also be framed in terms of a legal obligation on the part of a trading partner to gradually approximate its animal welfare legislation to that of the EU (EU-Ukraine Association Agreement, Art. 64).²⁴ For this purpose, advice and technical assistance on the EU regulatory system and the implementation of the standards required by the EU market may be provided (EU-Central America Association Agreement, Art. 62). The progress in the approximation process may be based, *inter alia*, on the technical and financial resources of the trading partner (EU-Moldova Association Agreement, Art. 181). There can be priority areas for approximation, such as control systems for domestic markets and imports, as well as animal health and welfare (EU-Moldova Association Agreement, Art. 181).²⁵

A gradual approximation of legislation related to agriculture is also placed on the trade agreement agenda (EU-Albania Stabilization and Association Agreement, Art. 95), as well as meeting EU's veterinary requirements (EU-Bosnia and Herzegovina Stabilization and Association Agreement, Art. 62). Apart from approximation of rules, cooperation could be dedicated to supporting the harmonization of sanitary legislation and procedures within a certain trading region, which would facilitate the movement of goods within the region (EU-Central America Association Agreement, Art. 62). On the other hand, in certain trade agreements, trading parties retain regulatory space to determine domestic policies and laws for the conservation of natural resources and animal and plant life (LSE, 2022).

Ratification of international agreements

Cooperation relating to animal welfare can also involve work necessary for the ratification and implementation of international agreements (EU-Montenegro Stabilization and Association Agreement, Art. 111), as well as enhancing the harmonization of issues addressed within the framework of international organizations (EU-Bosnia and Herzegovina Stabilization and Association Agreement, Art. 95). Admittedly, this type of cooperation cannot be tightly linked to the advancement of animal welfare standards. However, some loose linkages can be found.

Apart from bilateral agreements, the ratification of international agreements comes to the fore as a requirement in the Generalized Scheme of Preferences, which has been proposed for revision for the period 2024–2034. The Generalized Scheme of Preferences is a policy tool that aims to support developing countries by unilaterally removing or reducing import duties on goods originating there.²⁶ Every arrangement under the Scheme has different conditions, such as treaty ratification, and different tariff preferences, and it is available upon application.²⁷ The

Commission's proposal extends the number of conventions countries must ratify in order to benefit from GSP+, for example, those supporting action to combat climate change.²⁸ Although no specific convention is added to reflect the requirements on animal welfare, the list of relevant conventions already includes the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the Convention on Biological Diversity (European Commission, 2021d). Thus far, no multilateral environmental agreement has established animal welfare standards for domestic animals (Peters, 2021). However, if animal welfare contributes to sustainability, which in turn helps to combat climate change, the ratification of climate change agreements may bring additional strengthening of animal welfare standards indirectly. The absence of any specific animal welfare commitments under the scheme is interesting from the perspective of Article 11 of the Commission's proposal of the Scheme for 2024–2035, which provides for the suspension of *ad valorem* duties on products included in the special incentive arrangement for sustainable development and good governance, such as poultry fat, fat of bovine animals, sheep or goats, goose and duck liver, sausages, ham, and shoulders of swine (European Commission, 2021d, Art. 12).

On the other hand, it must be recalled that in 2021, the EU and the United States launched the Global Methane Pledge – a collective goal now supported by more than 121 states to reduce man-made methane emissions by at least 30% by 2030 from 2020 levels. Such international commitments can have serious ramifications for animal welfare standards. First, it seems possible to achieve this reduction by continuing with intensive animal agriculture supplemented by new technologies, such as better feed additives or reusing animal waste (World Wild Fund, 2022). Second, free-ranging animals with better welfare that use up more land cleared by deforestation may frustrate the Global Methane Pledge. Therefore, climate commitments may be incompatible with heightening animal welfare standards globally (Llonch et al., 2017).

Agriculture and capacity-building

In the absence of special provisions on cooperation on animal welfare matters, animal welfare could be subject to cooperation in agriculture and the agro-industrial sector. In this area, cooperation aims at modernizing and restructuring the agriculture and agro-industrial sector of the trading partner (EU-Albania Stabilization and Association Agreement, Art. 24), including its infrastructure and equipment (Euro-Mediterranean Tunisia Association Agreement, Art. 54), and promoting modern and sustainable agricultural production, respectful of the environment and of animal welfare, including the extension of the use of organic production methods and the use of biotechnologies (EU-Ukraine Association Agreement, Art. 404). It also aims to support policies geared toward developing and diversifying production and promoting environmentally-friendly forms of agriculture and fisheries (EU-Iraq Partnership and Cooperation Agreement, Art. 90). Diverse cooperation methods are used, including (a) capacity building for public institutions at central and local levels and to producers' associations; (b) cooperation among rural regions, exchange of experience, good practices, and know-how concerning (sustainable) rural development, regional value chains (EU-Southern African Development Community Economic Partnership Agreement, Art. 68(3)) and food security (Euro-Mediterranean Jordan Association Agreement, Art. 71); (c) supporting trade promotion activities; and (d) measures relating to the preservation of agricultural traditional knowledge, including cooperation on geographical indications which may incorporate animal welfare standards (EU-Iraq Partnership and Cooperation Agreement, Art. 90).

As regards veterinary matters, special agreements have been concluded in this regard with the Faroe Islands (Faroe Islands Protocol on Veterinary Matters)²⁹ and the Principality of Andorra (Andorra Protocol on Veterinary Matters)³⁰ in which these partners undertake to apply EU veterinary legislation in respect to, *inter alia*, animal welfare. Other special agreements involve the US and Canada.³¹

Further technical and financial support in animal welfare matters is offered within the Instrument for Pre-Accession Assistance (IPA). The funds are used to support beneficiaries in adopting and implementing reforms in different thematic priorities, including in agriculture and rural development, which includes animal welfare and the transition towards sustainable food systems. The IPA is then used to fund actions that channel investments in animal welfare, environmental, and agricultural standards, among others (Kourtellis, 2016, pp. 304–306; Bazzan, 2020).

Sustainable development

In some bilateral agreements, environmental chapters emphasize environmental sustainability or sustainable development as the end goal. Moreover, sustainable development could be the objective of an entire economic partnership agreement, and sustainability considerations could be reflected in all its chapters (EU-Central Africa Interim Agreement with a view to an Economic Partnership Agreement, Art. 60(1), (2)). For that reason, a review of the sustainability impact of a trade agreement is particularly pertinent and presupposes the exchange of information and experience regarding methodologies and indicators for impact assessments on trade sustainability (EU-Viet Nam Free Trade Agreement, Art. 16.3). Parties may cooperate on the assessment of the impact of environmental laws, regulations, norms, and standards on trade as well as the impact of trade rules on the environment, on trade-related aspects of multilateral environmental agreements, green growth strategies, and policies (EU-Viet Nam Free Trade Agreement, Art. 16.3). However, it is important to note that sustainable development in the context of trade agreements is often centered on the human person, who is the main beneficiary of development (EU-Pacific States Interim Partnership Agreement, Art. 3(3)); therefore, the relationship to animal welfare could be limited. In some trade agreements, one may find specific provisions establishing a link between trade favoring sustainable development and animal welfare. In this respect, the UK trade agreement encompasses a forward-looking provision, explicitly recognizing the connection between improved animal welfare and sustainable food production systems and establishing cooperation with the aim of promoting sustainable food production methods and systems (EU-UK Trade and Cooperation Agreement, Art. 86). Also, the EU-Indonesia trade agreement negotiations resulted in the drafting one of the first stand-alone “sustainable food systems” chapters, in which cooperation is couched in terms of joint engagement in the transition towards “sustainable, inclusive, healthy, and resilient food systems” (EU-Indonesia Free Trade Agreement, proposal).³² Secondly, sustainable development provisions may facilitate and promote trade and foreign direct investment in environmental goods and services, including environmental technologies and eco-labeled goods, including through addressing non-tariff barriers (EU-Korea Free Trade Agreement, Art. 13.6). Also, within the sustainable development chapters, provisions of labor standards cannot be overlooked, as they establish a connection between decent work and animal welfare (EU-Ukraine Association Agreement, Art. 293). Finally, public consultations that led to the review of the Commission's Trade and Sustainable

Development (TSD) policy showed that stakeholders call for additional environmental or climate commitments covered by sustainability chapters, including animal welfare provisions (European Commission, 2022d).³³

Monitoring

Cooperation provisions in a trade agreement may be monitored on the basis of an action plan or work plan with established objectives and milestones for each action. This is an important monitoring mechanism considering that trade agreements may be designed on the basis of a whole-of-government approach (LSE, 2022). Cooperation progress could be monitored by a committee established under a trade agreement (EU-Central America Association Agreement, Art. 62), which can be tasked with the monitoring of an approximation of legislation and provide necessary recommendations (EU-Georgia Association Agreement, Art. 55). Committees may also advise and make recommendations, including modifications, in order to achieve the objectives of the respective chapters; provide a forum for discussion and exchange of information; and issues of cooperation (EU-Southern African Development Community Economic Partnership Agreement, Art. 65). Experts may be invited for specific activities, such as anti-microbial resistance (EU-Mexico Trade Agreement, in principle, Article XX). When additional expertise is required, ad hoc groups, including scientific groups, can be established (EU-Indonesia Free Trade Agreement, proposal). In the proposal for an EU-Indonesia trade agreement, for example, a committee is proposed to deal with SPS measures, with a subcommittee on sustainable food systems and a technical working group on animal welfare.

Apart from in-built monitoring mechanisms, the Commission conducts an *ex-post* evaluation of the implementation of trade agreements. However, specific animal welfare considerations are not systematically included in such evaluations. Only a few recent *ex-post* evaluations of trade agreements, such as those of 6 Mediterranean trade agreements, pointed to negative impacts on animal welfare, as free trade agreements contributed to increased EU exports of live animals which face poor conditions during transport, life, and slaughtering. OIE standards for slaughter are often not respected (European Commission, 2021c). Similar observations have been made with respect to CARIFORUM, where live animal transport has increased considerably (European Commission, 2021e).

Enforcement and sanctions

Provisions pertaining to cooperation on animal welfare generally do not include sanctions for non-compliance or failure to implement animal welfare provisions. However, the conclusion of any international agreement implies an understanding of the principle of good faith in the form of the doctrine of *pacta sunt servanda*, without which, international law, as well as civil law, would be without useful effect (Cheng, 1987). This principle is also a core tenet of customary international law, as well as a general principle of law recognized by civilized nations, per Article 38(1)(c) of the Statute of the International Court of Justice (Klabbers, 2001). This principle implies that states that entered into an agreement containing cooperation provisions on animal welfare matters are obliged to make an honest effort to facilitate such cooperation, and certainly may not obstruct such cooperation. This is particularly relevant in relation to obligations

resulting from results, such as the obligation to implement international standards. Certain cooperation provisions are drafted in terms that make it easy to understand what is prohibited, such as ratifying an international agreement or joining a standardization body. If a state does not ratify a designated international agreement, it would violate the respective provisions as well as the principle of good faith, in light of its earlier assurance to other states to do so. The practice of states should be observed when it comes to funding and financial obligations arising under cooperation provisions. For the enforcement of certain other provisions, it is necessary to ascertain the intent of the parties to the agreement at the time they engaged in good faith negotiations. Cooperation provisions may also be implemented *ex-ante*, that is, before the coming into effect of a bilateral agreement, for example, by means of certifications of compliance (LSE, 2022). Other mechanisms of enforcement that are commonly included in bilateral agreements are dispute settlement provisions. Violations of obligations are generally required to have affected trade or investment between parties for consultation or dispute settlement to take place. In some agreements, however, recourse to dispute settlement for a matter arising under an animal welfare chapter by either party is explicitly excluded (EU-Mexico Trade Agreement, in principle). Also, complaints about market access barriers, non-compliance with EU requirements, and infringement of commitments can be raised with the Commission (van Ommeren et al., 2021). The EU-UK agreement contains a provision on the enforcement of non-regression from levels of protection in the environmental chapter and allows temporary remedies in the case of conflicting interpretations. All in all, the enforcement practices vary significantly across the examined agreements. (European Commission, 2022d).

Civil society participation

Similar to public consultation, civil society committees (domestic advisory groups and consultative committees) and fora have been established under a few free trade agreements and advise on environmental matters (Table 2). Recently, the EU has committed to a “balanced” set of interests represented in civil society committees whose members are usually appointed following a call for interest, and trade policy debates have seen increased participation among animal welfare advocates (LSE, 2022). Moreover, certain trade agreements, such as those with Canada and the UK, established more than one civic society committee: one in a domestic advisory group and one in a civil society forum in which members of a domestic advisory group may participate as well. However, the mechanism of participation differs from one bilateral agreement to another, and there are different stages at which it can take place (negotiating, implementing, enforcement) (LSE, 2022). As was shown by some studies, civil participatory mechanisms lack real impact on policy, and their capacities to monitor the execution of an agreement are limited (Drieghe et al., 2021). It has been suggested to break down domestic advisory groups into smaller thematic groups following different aspects of sustainability and trade, including animal welfare matters (Ashraf & van Seters, 2020), and provide funding to allow civil society to actively participate in such groups (BEUC, 2021; Potjomkina et al., 2020).

Sustainability impact assessments (SIAs) are another example of civil society participation in trade agreements' negotiations and assessment of their impacts (Hoekman & Rojas-Romagosa, 2022). An SIA enables the development of integrated policies that take account of economic, social, and environmental dimensions of policies prior to their formulation (European Commission, 2021f). SIAs are launched after the Council has formally authorized the Commission to enter into trade negotiations. A final draft SIA is consulted with domestic advisory groups,

TABLE 2 Overview of cooperation tools in EU bilateral agreements relevant to animal welfare matters

Mutual understanding of measures, including import requirements	<ul style="list-style-type: none"> Achieve common understanding of international standards Cooperate in the development of international standards Provide advice and assistance on the implementation of international/EU standards
Trade facilitation tools	<ul style="list-style-type: none"> Recognize inspection, control, and certification systems of the exporting party as equivalent Approve exporting establishments Carry out inspections and audits on the territory of the exporting party Improve monitoring, surveillance, and enforcement and develop control systems Improve administrative structures, procedures, and coordination
Training and research	<ul style="list-style-type: none"> Train regulatory personnel for certification, inspection, supervision, control, and conformity assessments Organize workshops, information events, training missions, study visits, twinning, simulation exercises, and rapid deployment of experts Set up common research programs and provide funding to research projects Dispense funding of training through Technical Assistance and Information Exchange
Capacity building	<ul style="list-style-type: none"> Provide expertise and build capacity to public institutions and producers Modernize/restructure agriculture, including by introducing sustainable agricultural methods, and extending the use of organic production methods and the use of biotechnologies Organize technology and know-how transfer Exchange of experience and good practices
Consultation and exchange of information	<ul style="list-style-type: none"> Lead regulatory dialogue Find a solution to an existing problem Exchange information and experience with regard to methodologies and indicators for impact assessments on trade sustainability
Approximation of legislation	<ul style="list-style-type: none"> Support approximation to EU legislation by amendment, elimination, or adoption of new laws
Monitoring	<ul style="list-style-type: none"> Monitor impact of regulations on environment and of a trade agreement on trade Monitor approximation of legislation Monitor ratification of international agreements Develop a plan of action for the effective implementation of international agreements

which may comment on the design of the bilateral agreement, including the strength of animal welfare commitments or cooperation mechanisms (European Commission, 2020b). The possibility to comment on a final draft SIA is important. However, comments come usually from a single representative—Eurogroup for Animal—an organization proposing model animal welfare

TABLE 3 Representation of animal welfare stakeholders in civil society mechanisms

Organization	EU animal welfare stakeholders
Cariforum-EU Consultative Committee	No (0)
EU-Korea Domestic Advisory Group under the Free Trade Agreement (FTA)	Yes (1) (Eurogroup for Animals)
EU-Japan Domestic Advisory Group	Yes (2) (Eurogroup for Animals, COTANCE/Euroleather)
EU-Georgia Domestic Advisory Group	No (0) (No EU stakeholder but 2 Georgian DAG Members: Elkana, Biological Farming Association, and Green Movement of Georgia—Friends of the Earth International)
EU-Ukraine Civil Society Platform	No (0)
EU-Colombia/Peru/Ecuador Domestic Advisory Group	Yes (1) (Eurogroup for Animals)
EU-Vietnam Domestic Advisory Group	Yes (2) (Eurogroup for Animals, Humane Society International/Europe)
EU-Singapore Domestic Advisory Group	Yes (1) (Eurogroup for Animals)
EU-Moldova Domestic Advisory Group	No (0)
EU-Canada Domestic Advisory Group	Yes (3) (Eurogroup for Animals, ClientEarth, Fondation Nicolas Hulot)
EU-Canada Civil Society Forum	Representatives of civil society organizations of EU and Canada + DAG
EU-Central America Domestic Advisory Group	No (0)
EU Domestic Advisory Group under the EU-UK TCA	Yes (4) (Eurogroup for Animals, Oceana [marine conservation], COPA-COGECA, Irish Environmental Network)
EU-UK Civil Society Forum	Representatives of civil society organizations of EU and Canada + DAG

provisions to be included in bilateral trade agreements so that access to the EU market is conditioned upon compliance with EU animal welfare standards.³⁴ For the participation in animal welfare matters to become effective, third-country stakeholders involved in the animal welfare agenda as well as consumer organizations should be encouraged to take part in the meetings. Moreover, increased financial support should be devoted to in-depth monitoring of animal welfare issues (Drieghe et al., 2021) (see Table 3).

RESULTS

The analysis revealed that, in aggregation, EU bilateral agreements present a great variety of tools that are at the Commission's disposal to support the EU Farm to Fork Strategy's actions

on animal welfare, notably standardization. However, these tools are unevenly represented in the analyzed bilateral agreements, with some containing more advanced forms of cooperation, such as research programs and approximation of legislation, and some only containing less intensive forms of cooperation, such as achieving mutual understanding on animal welfare matters or exchange of information. Also, as for the monitoring of cooperation chapters, some agreements contain more advanced forms of monitoring mechanisms than others, and even where domestic advisory groups are established, they could be better positioned to monitor cooperation chapters relating to animal welfare. It is also noticeable that civil society organizations are not part of committees established under agriculture, SPS, or other animal welfare-related chapters, which limits their impact on establishing work programs, timelines for actions, and actual work output. Furthermore, consumer organizations that would voice consumer concerns and expectations on animal welfare matters are absent, and animal welfare stakeholders from EU trading partners are underrepresented in domestic advisory groups established under bilateral agreements examined. This goes hand in hand with the fact that bilateral agreements presuppose limited participation of producers from third countries, although the EU recognizes that capacity building should be provided to producers to support their ability to comply with EU standards (European Commission, 2020c) and certain consultation opportunities are required as a matter of WTO law (TBT Agreement). Only a small number of bilateral agreements contain specific provisions to this effect. This is not to say that capacity building or participation cannot be provided without explicit wording. However, it is more difficult to monitor and enforce it as a cooperation tool in bilateral relations. Secondly, provisions related to the use of technology, technology transfer, and enabling innovation in the area of animal welfare could be more abundantly used in bilateral agreements and be given a more prominent place among the plethora of cooperation tools. This should be done in line with other international commitments of the EU, notably climate change obligations (the Paris Convention; European Parliament, 2021b). It might be that at the time of the conclusion of some of the analyzed bilateral agreements, the EU did not consider it necessary to include more advanced forms of cooperation on animal welfare and the monitoring thereof. However, as the EU will likely strengthen animal welfare standards to a higher level than those of most of its trading partners, bilateral agreements could be revised to include more advanced forms of cooperation, also in order to circumvent possible contentious WTO issues. A good example in this respect is represented by the EU-UK trade agreement framing the cooperation efforts on animal welfare within sustainable food production and the One Health approach. This enables us to view animal welfare as a cross-cutting issue related to aspects of agriculture, environment, climate, sustainability, and public health. Such framing can be particularly useful in the case of aspirational/best endeavor obligations represented in the analyzed cooperation chapters where a compliance gap persists (Prévost & Iveta, 2019). This does not preclude the possibility to draft provisions on cooperation in animal welfare as a stand-alone trade agreement chapter (EU-Mexico Trade Agreement, in principle). Finally, obligations arising from such provisions, drafted in the spirit of the One Health approach, could be more systematically evaluated in ex-ante (SIAs) and ex-post fashion.

CONCLUSION

This article presented an analysis of the Farm to Fork Strategy on animal welfare matters through the lens of EU trade policy and public participation. Although the mix of cooperation

tools explored in this article may in aggregate well support the Strategy's actions on animal welfare, namely, to enhance cooperation, promote international standards, and obtain commitments from EU trading partners, individual bilateral agreements may need to be recalibrated via negotiations on modernization to include more powerful cooperation tools, such as approximation of legislation, promotion of innovation, or common research programs. One way of achieving this is to negotiate the inclusion of sustainable food systems chapters that highlight the linkages between animal welfare, agriculture, environment, climate, sustainability, and public health. However, these new robust chapters must be monitored and enforced in a correspondingly robust manner, for example by restructuring the chapters' committees and work groups. Moreover, the capacities of civil society committees to monitor cooperation provisions on animal welfare should be enhanced, including the promotion of the participation of animal welfare stakeholders from third countries. Participation of producers during the standardization process, even as regards voluntary standards, is also required as a matter of WTO law and practice. Animal welfare schemes, voluntary but to a greater degree mandatory, and stringent rules on animal transport may become the most contentious measures from the point of view of WTO law. Corresponding debates will continue as the Farm to Fork Strategy will convert into clear legislative actions. Standardization work in international bodies and as promoted through EU bilateral agreements is crucial for compliance in this regard, but the progress is often slow. A multilateral international agreement on animal welfare could strengthen commitments obtained from third countries through EU trade policy measures. Enhanced public participation, both at the level of internal law-making (public consultations) and at the level of trade policy-making (domestic advisory groups, standardization committees (European Commission, 2022a)), may better support the legitimacy and necessity of policy objectives of animal welfare measures with trade impacts besides scientific assessments.

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ENDNOTES

- ¹ This is also expressed by Article 13 TFEU, according to which “[i]n 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”.
- ² This follows Commission's previous initiative in the area: in 2017, the Commission established the expert group 'Platform on Animal Welfare' which focuses, inter alia, on the development and use of voluntary commitments by businesses to further improve animal welfare and the promotion of EU animal welfare standards at a global level.
- ³ Furthermore, Green Alliances on sustainable food systems will be pursued by the Commission.
- ⁴ As of April 2022, a call for evidence was published seeking evidence from the relevant stakeholders.
- ⁵ Eurogroup for Animals and its member organizations Compassion in World Farming, Four Paws and World Animal Protection, alongside representative industry associations and other NGOs, provided input and contributed with their expertise on animal welfare and sustainable food systems throughout the development of the Code.
- ⁶ Strongly agree, tend to agree, tend to disagree, strongly disagree or I do not know.
- ⁷ The costs and burden of abiding by certain animal welfare requirements were supposed to be assessed vis-à-vis producers, processors, retailers, small and medium businesses, and consumers when buying animal-welfare-compliant products.

- ⁸ Such label could be limited to indicating farming methods that use cage systems or not or be based on broader animal welfare criteria, including requirements on animal transport and slaughter.
- ⁹ As regards imports, respondents could agree or disagree with the proposition of import requirements (the same or equivalent to those applied to EU production), such as cage-free.
- ¹⁰ Respondents were asked, for example, whether or not the prohibition transport of such vulnerable animals would improve their welfare.
- ¹¹ In the presence of those risks, states imposing sanitary measures have two options to determine their measures of protection: either they base their measures on international standards, guidelines or recommendations developed by recognized international organizations or they implement stricter measures based on risk assessment.
- ¹² Certain bilateral trade agreements are also explicit about recognizing that voluntary initiatives can contribute to the achievement and maintenance of high levels of protection and complement domestic regulatory measures; therefore trade parties are under obligation to encourage the development of, and participation in, such initiatives, including fair and ethical trade schemes and eco-labels. Moreover, some bilateral trade agreements encourage parties to facilitate trade in such products that are the subject of fair and ethical trade schemes, as well as those respecting corporate social responsibility and accountability principles.
- ¹³ Eco-schemes are annual payments for all eligible hectares or livestock units covered by the commitments. They are granted either additionally to the basic income support or as a compensation for active farmers for the costs incurred and income foregone as a result of the commitments.
- ¹⁴ Agreements establishing customs unions and preferential arrangements with Turkey were not considered in this analysis as well as the EU-Norway Free Trade Agreement. All agreements may be retrieved at: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/negotiations-and-agreements_en.
- ¹⁵ Examples of this include Chile, Canada or New Zealand. Of particular interest are provisions on cooperation on animal welfare embodied in the EU-UK Trade and Cooperation Agreement.
- ¹⁶ The EU supports special policy projects in this area in Latin America and Asia within EU foreign policy instruments: Working Together to Fight Antimicrobial Resistance in Latin America. Working Together to Fight Antimicrobial Resistance in Asia.
- ¹⁷ Agreement between the European Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part.
- ¹⁸ Agreement between the European Economic Community and the Swiss Confederation.
- ¹⁹ Stabilization and Association Agreement between the European Communities and their Member States, of the one part, and the former Yugoslav Republic of Macedonia, of the other part.
- ²⁰ This is the case of Argentina, Australia, Canada, Costa Rica, India, Israel, Japan, Tunisia, Republic of Korea, New Zealand, USA.
- ²¹ Development of capacities for risk analysis, harmonization, compliance, testing, certification, residue monitoring, traceability and accreditation including through the upgrading or setting up of laboratories and other equipment to comply with international standards.
- ²² For example, the EU supports the project 'EU-Asia Cooperation on (Phyto-)Sanitary and Food Safety Regulation' that aims at strengthening regulatory dialogue between the EU and authorities of the targeted Asian countries. The project also promotes the acceptance of listing or pre-listing establishments upon guarantee provided by the exporting government and without prior inspection by the importing party.
- ²³ The Commission also established BTSF Academy—a cloud-based learning management system, offering e-learning courses in animal welfare at slaughter and killing for disease control: <https://ec.europa.eu/newsroom/chafea/newsletter-archives/18603>.
- ²⁴ Approximation of domestic rules to the EU *acquis* is either required by implementing and enforcing of additional domestic rules or procedures, or by amending relevant domestic rules or procedures to incorporate the rules in relevant EU *acquis*. Any laws, regulations or any other measures inconsistent with the approximated

domestic legislation could be required to be eliminated and the effective implementation of approximated domestic legislation to be ensured (EU-Georgia Association Agreement, Annex IV).

- ²⁵ In terms of the identification and the registration of animals and the registration of their movements; the control measures for animal diseases; domestic trade with live animals, semen, ova and embryos; animal welfare on farms, during transport and slaughter.
- ²⁶ The current systems will expire in 2023 and applies to 67 countries under three arrangements. Countries currently benefiting of GSP+ scheme include Bolivia, Cabo Verde, Kyrgyzstan, Sri Lanka, Mongolia, Pakistan, Philippines, and Uzbekistan.
- ²⁷ The Standard GSP, the GSP+ for sustainable development and good governance and the ‘Everything but Arms’ arrangement for least developed countries.
- ²⁸ Sustainable development is emphasized in accessing trade preferences by adding the Paris Convention on Climate Change, alongside already listed the United Nations Framework Convention on Climate Change.
- ²⁹ Protocol on the veterinary matters supplementing the Agreement between the European Community, of the one part, and the Government of Denmark and the Home Government of the Faroe Islands, of the other part.
- ³⁰ Protocol on veterinary matters supplementary to the agreement in the form of an exchange of letters between the European Economic Community and the Principality of Andorra.
- ³¹ Agreement between the European Community and the United States of America on sanitary measures to protect public and animal health in animals and animal products and Agreement between the European Community and the Government of Canada on sanitary measures to protect public and animal health in respect of trade in live animals and animal products.
- ³² The chapter is intended to be applied in addition and without prejudice to chapters on SPS measures and on sustainable development.
- ³³ Such chapters are already included in trade agreements with Canada, Colombia, Peru, Ecuador, Georgia, Japan, Mercosur, Mexico, Moldova, Singapore, South Korea, Ukraine, Central America or Vietnam.
- ³⁴ Eurogroup for Animals was founded in 1980, and include 82 members, covering all EU Member States + Norway and also including 2 from Australia, 2 from Switzerland, 1 from Kosovo, 1 from Serbia and 16 from the UK. See further “Animal welfare and Mirror Measures: Eurogroup for Animals calls for revised EU animal welfare rules to apply to imports” at <https://www.eurogroupforanimals.org/news/animal-welfare-and-mirror-measures-eurogroup-animals-calls-revised-eu-animal-welfare-rules>.

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