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FOREWORD

Organic agriculture has generated increasing global interest.[1] It is believed to produce significant social, economic and environmental benefits. It can provide an additional avenue for climate change mitigation through such measures as enhanced soil carbon sequestration. Broadly, it is also considered ecosystem-friendly because of its emphasis on minimum tillage and reduced use of pesticides, herbicides and synthetic fertilizers. Organic agriculture is also expected to play a major role in fighting against desertification, preserving biodiversity, contributing to sustainable development and promoting animal and plant health. The growing interest of consumers and markets worldwide in organic products has also opened new trade opportunities for developing countries, through internationally recognized certification.

The work of FAO in the field of organic agriculture started in the late 1990s. This work was inspired by and is in keeping with FAO's mandate of ensuring food security for all. Collaboration was initiated with organizations like the International Federation for Organic Agriculture Movement (IFOAM) and UNCTAD. Internally, there have been several initiatives to enhance the knowledge-base, including through the Inter-Departmental Working Group on Organic Agriculture, which was created to facilitate cross-departmental linkages and the sharing of experiences.

In 2005 the Codex Committee on Food Labelling developed the *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods* in view of the growing production and international trade in organically produced foods. These guidelines have proven very useful as a basis for countries to develop regulatory mechanisms for organic agriculture. They have also been

1 In the recent past for instance, an International Conference on Organic Agriculture and Food Security was held in FAO (May 3–5 2007), which concluded that organic agriculture had a great potential to contribute to global food security. In addition, the World Bank issued the World Development Report 2007, which is the first in 25 years to focus on agriculture. The report also underscores the importance of the organic agriculture sub-sector, by pointing out, amongst other facts that organic crops now cover more than 31 million hectares and organic products now constitute about 47 per cent of all developing country exports.

useful in FAO's advisory work during projects. The Development Law Service has been involved in various projects and has been providing advice to FAO members on the review and drafting of organic agriculture legislation and the setting up of organic certification bodies.

In the course of these projects, one of the main problems identified, however, has been the limited information available to countries regarding best practices and issues to consider in the design of appropriate regulatory frameworks for organic agriculture. Often, beneficiaries of these technical assistance projects wished to know what legislative approaches other countries had taken, and what issues other countries grappled with in drafting their legislation. They were interested in knowing what legal requirements major potential markets, such as the United States, the European Union and Japan, have for organic products.

To fill this information gap, the Development Law Service carried out an initial study on the legal aspects of organic agriculture that will capture and summarise the practical lessons learned in advising countries on organic agriculture legislation. This publication seeks to identify and explain the different legal issues related to organic production, including a comparative analysis of selected public and private legal sources of international relevance, as well as recommendations on the issues to consider in the design of national organic agriculture legislation. It is a first step in unravelling the complex and highly technical issues related to drafting national legislation on organic agriculture, and it is hoped that comments from readers will contribute to refining and enriching the preliminary findings presented in this volume.

The study was written by Elisa Morgera, Carmen Bullón Caro (FAO Legal Office) and Gracia Marín Durán (consultant), with the contribution of Markus Arbenz (IFOAM), Ong Kung Wai (IFOAM), Andre Leu (IFOAM) and Joelle Katto (IFOAM); Sophia Twarog (UNCTAD), Diane Bowen on behalf of the Global Organic Market Access (GOMA) project, Nadia Scialabba (Natural Resources Officer, FAO), Ambra Gobena and Nathaniel Greeson (FAO Legal Office). The study authors would like to thank to Pascal Liu (Economist, FAO), Victor Mosoti, Margret Vidar and Jessica Vapnek (FAO Legal Office), Christine Barbeau (French Embassy in Egypt), Arnaud Bilen (French Embassy

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PART I

I

INTRODUCTION

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Organic agriculture is a system for crops, livestock and fish farming that emphasizes environmental protection and the use of natural farming techniques. It is concerned not only with the end-product, but with the entire system used to produce and deliver the agricultural product. To this end, the entire farm cycle, from production and processing, to handling and delivery, excludes the use of artificial products such as genetically modified organisms (GMOs) and certain external agricultural inputs such as pesticides, veterinary drugs, additives and fertilizers. Organic farmers rely instead on natural farming methods and modern scientific ecological knowledge in order to maximize the long-term health and productivity of the ecosystem, enhance the quality of the products and protect the environment. Proponents of organic methods believe that it is a more sustainable and less damaging approach to agriculture.

Organic agriculture has its roots in traditional agricultural practices in small communities around the world. Farmers passed down knowledge of effective practices onto subsequent generations. Organic agriculture became visible on a wider scale in the 1960s, when farmers and consumers became concerned that the amount of chemicals used in crop and animal production could have negative consequences for human health and the environment. Since then, it has developed into a more cohesive and organized movement and it is now the fastest growing food sector globally.

As organic foods cannot be distinguished from conventional products at a glance, consumers depend entirely on third-party certification, i.e. the process according to which public or private certification bodies provide assurance that organic products have been produced and handled according to applicable standards. Organic standards have long been used to represent a consensus about what an "organic" claim on a product means, and to convey that information to consumers. Certification not only leads to consumer trust in the organic system and products but also gives organic farming a distinct identity and makes market access easier. Thus, in contrast with food labelled as "environment-friendly", "green" or "free range", the organic label denotes compliance with very specific production and preparation methods. For farmers to use the organic label, they must receive certification that the product complies with applicable standards following third-party inspections of their operations. Organic standards usually include the use of only natural agricultural enhancers, conservation of natural resources, maintenance of biodiversity and preservation of the ecosystem. Owing to the fact that organic

farmers must take into account their impact on their immediate ecosystems, these methods are generally adapted to local conditions.

Overall, the benefits of organic agriculture are expected to be environmental, social and economic. After reviewing these benefits in further detail, the history of the organic movement and of the work of the Food and Agriculture Organization of the United Nations (FAO) on organic agriculture will be briefly outlined in order to provide a background to this study on national legislation on organic agriculture.

1. ENVIRONMENTAL BENEFITS OF ORGANIC AGRICULTURE

Land management has a significant impact on the environment. Conventional agriculture prioritizes high yields and does little to harmoniously interact with and preserve its immediate environment. These practices can result in widespread environmental degradation, commonly resulting in soil erosion, water, soil and air pollution, biodiversity loss, and desertification. They also contribute to global warming – agriculture today accounts for more than thirteen percent of global anthropogenic greenhouse gas emissions.[2] Conversely, organic agriculture uses an individualized approach to land management that emphasizes preservation of a land's natural ecosystem, while consuming less energy and reducing the risks of pollution common to conventional agriculture. Organic agriculture, therefore, seeks to offer a responsible alternative to conventional practices in the face of ever-growing concerns over climate change and environmental degradation.

Soil erosion is a main cause of loss of yield capacity and fertility. Long-term comparisons between conventional and organic farms have found that organic methods improve the fertility and overall health of the soil. Organically managed soils also demonstrate better moisture-retention capacity than those of conventional farms, which is important in arid climates and to reduce the risk of desertification. **Soil conservation** is therefore one of the key concepts in organic agriculture. Soil fertility is actually a cornerstone of

2 Intergovernmental Panel on Climate Change, Fourth Assessment Report (2007) available at: www.ipcc.ch.

organic farming by necessity because farmers cannot use synthetic products to restore degraded lands. They rely instead on maintaining and building soil fertility through multi-cropping systems, crop rotations, organic fertilizers, and minimum tillage. Organic farming has the ability to increase organic content in the soil, enhancing its capacity to retain water and circulate pollutants. Organic methods also counter soil erosion because they use natural pesticides and maintain a permanent soil cover, restoring even degraded soils quickly. Although there is little scientific evidence demonstrating that organic agriculture can reverse desertification, there are several practical examples of organic agriculture systems returning degraded lands back to fertility. This suggests that organic farming may prove to be an effective means to counter desertification.

Water pollution in agriculture is also due to soil erosion and nitrate and synthetic products leaking into water supplies. In light of the fact that organic farms do not use synthetic products, the risk of water pollution is greatly diminished. Organically-tended soils also show reduced rates of nitrate pollution in the water supply, as organic farms use fewer nitrates than conventional farms, and organic soils have an increased capacity to retain that

Organic farms also aim at consuming less **energy** and being more energy efficient than conventional farms. Studies show that they consume about forty-five to sixty-four percent of the non-renewable energy (fossil fuels) consumed by conventional farms. Depending on the climate and crops studied, organic farms were found to be between twenty-five and eighty-one percent more energy-efficient.

The environmental benefits of organic agriculture can also extend to **climate change**. The International Panel on Climate Change has strongly advocated the adoption of sustainable cropping systems such as those used on organic farms to reduce carbon emissions. Organic methods are indeed expected to result in lower emissions – carbon emissions are between forty-eight to sixty-six percent lower than on conventional farms. This is due to the high levels of organic matter found in organic soils, which allow the soil to trap and convert carbon, lowering emissions over time. Organic farms also tend to reduce nitrous dioxide emissions, simply because they use less nitrogen than conventional farms. This is particularly significant in light of the fact

that agriculture today is responsible for sixty-five to eighty percent of nitrous dioxide pollution, which contributes to the depletion of the ozone layer.

Organic agriculture is beneficial to **nature protection and biodiversity conservation**. The use of synthetic products and emphasis on mono-crop specialization and intensive yields that characterizes conventional agriculture has led to a considerable reduction in the number and variety of animals and plants used in agriculture. The International Union for Conservation of Nature's (IUCN) Red List of threatened species noted that habitat loss is the main threat to biodiversity, and that agriculture affected seventy percent of all threatened bird species and forty-nine percent of all plant species. Organic farmers, on the other hand, rely on biodiversity for their success. To insure against crop-failure, for example, organic farmers plant genetically diverse crops, thus perpetuating a diverse gene pool while also learning which seeds will be the most resilient and productive in the long term. Organic farmers depend on wildlife for pollination, pest control and maintenance of soil fertility. The absence of synthetic pesticides provides an improved natural habitat for birds, insects and micro-organisms in the soil. As a result of such practices, studies show that bird densities, plant populations, earthworms and insect populations are much higher on organic farms than elsewhere.

Organic agriculture eschews the use of artificial synthetic pesticides, supporting the use of local species and traditional techniques of pest management. These practices are known as **Organic Pest Management** (OPM). OPM requires informed decision-making and careful planning. It includes: promoting populations of natural predators that contribute to controlling weeds, disease and insects; growing the most resistant varieties of crops; improving soil health to resist pathogens; growing plants in the proper seasons, which also contributes to biodiversity; using organic-approved pest-reduction and curative products, such as larvae of pest predators. These are considered effective means of controlling pests, while also promoting a healthy and diverse ecosystem.

Furthermore, organic agriculture rejects the use of **genetically modified organisms** or products, including plants and animals, although the possible risks posed by such products are debated widely (and in some cases such as in the EU and Tunisia, exceptions are provided for some veterinary medical products). This is because organic principles consider that the use of GMOs

de-emphasizes biodiversity and is an unnatural addition to the gene pool of cultivated crops, animals and micro-organisms living on farms. As a result, the exclusion of GMOs applies to every stage of production, processing or shipping of organic products. There is the risk that GMOs may enter organic products through cross-pollination. Organic farms can thus only ensure that there has been no intentional use of GMOs in their products.

Finally, **animal health and welfare** is another key issue in organic agriculture. Generally speaking, organic agriculture relies on disease preventive measures while restricting the administration of veterinary drugs to livestock. Organic livestock standards further require that animals receive adequate space, fresh air and suitable shelter. They also require specific nutritional programs using primarily organic feeds. This is a more humane and natural approach to livestock farming, which conventional agriculture does not necessarily take into consideration. There are also possible health benefits to this approach, as these techniques reduce stress in animals which is thought to prevent diseases.

2. SOCIAL BENEFITS OF ORGANIC AGRICULTURE

Organic agriculture may have a significant social impact on rural communities. To begin with, organic farming may lead to improved **employment opportunities** in local communities. Organic farming often requires more manual labour to compensate for the loss of synthetic fertilizers and pesticides, and thus generates more jobs in rural communities. The amount of extra labour required varies based on the product and farm in question – figures within Europe alone have been found to vary between countries and even studies. In general, however, the labour needed to manage an organic farm is ten to twenty percent higher than on comparable conventional farms. Organic farmers also diversify their crops and spread their planting schedules throughout the year in order to maintain biodiversity and enhance the health of the soil. This creates opportunities for year-round employment, reduces turnover and may alleviate problems related to migrant labour. Crop diversification also mitigates the effects of crop failure by spreading the risk among a wider variety of crops and products. Greater job opportunities on organic farms contribute to strengthening rural communities as well, by halting exodus to urban areas for jobs.

Organic farming has the effect of strengthening local communities and supporting **rural development**. In order to remain competitive, farmers must adapt to local conditions by managing labour, land and resources in a way that maximizes production and remains sensitive to the environment. Doing so requires constantly experimenting with new techniques and pooling local knowledge to learn best practices. Farmers also rely on their neighbours to maintain certain standards in order to ensure the integrity of their own air, water and soil. Collaboration on these issues strengthens ties within the community, which leads to partnerships and greater organization among organic farmers. Organized groups or cooperatives can thus pool their resources, enjoy greater access to markets, and gain leverage in trade negotiations. There is some evidence that increased co-operation results in more active participation in local government and new businesses among rural communities.

Many organic farms also incorporate fair trade principles with respect to **labour welfare**. Through the implementation of labour rights related to organic agricultural practices, organic producers agree upon minimum social and labour standards. To that end, farmers contribute to providing labourers with liveable wages, safe and healthy working conditions and access to social services. The organic movement believes that these social requirements are important, but recognizes that specific standards can be controversial and difficult to implement across numerous countries.

Consumer protection is another cornerstone of organic agriculture. Consumers prefer organic products to those made on conventional farms because they know that organic products avoid synthetic pesticides and fertilizers, are good for the environment, and are perceived to produce foods that are healthier and taste better. Strong regulatory frameworks, whereby the government verifies organic certifications, are necessary for consumers to trust the products they purchase.

Finally, organic agriculture can contribute to **food security**. Although the global food supply is adequate, 850 million people still go hungry. In addition, the cost of food has risen dramatically in the past decade and there is less genetic diversity in our foods due to conventional agricultural methods. Consequently, large populations are increasingly exposed to the risk of food shortage due to disease and poverty. Organic agriculture may have the potential to meet these challenges. Considering the fact that organic methods do not require

expensive chemical inputs, organic production is considered a more accessible means for rural farmers to become self-sufficient. Organic agriculture also improves access to food by reducing risks of disease, increasing biodiversity and productivity over the long term, and providing a means for local production and access to food. Advocates for conventional farming argue that organic farming decreases yields. Organic advocates, on the other hand, believe that yields are equal to those of conventional farms over the long term and that it is a more sustainable system because the health of the environment must be factored into any agriculture measurements.

3. ECONOMIC BENEFITS OF ORGANIC AGRICULTURE

Organic agriculture has seen tremendous economic growth in the last decade. This has been mainly demand-driven, as consumers have become increasingly concerned with the safety of conventionally-grown foods and the ethical downfalls of industrial agriculture. Farmers, in turn, have realized that consumers are willing to pay a premium for organically-grown foods. This is particularly attractive to farmers in developing nations, as it is expected to provide access to lucrative and emerging markets. Income constraints currently limit consumer demand mainly to the industrialized world: organic products are generally priced higher than their conventional counterparts both to cover the higher cost of production and processing and to capture unseen savings linked to issues such as environmental protection, animal welfare, and rural development. At present, North America, Japan and the European Union represent the bulk of global sales in organic products. Nevertheless, as more countries develop economically and as their populations become increasingly educated and more affluent, demand for organic products can be expected to rise. Continued growth, however, is dependant on economic swings and food safety concerns. As a result, organic farmers must carefully plan how best to enter such markets and obtain certifications that will be recognized where they wish to sell their products. Governments have also contributed to this growth, by subsidising conversions to organic farming, as they have recognized that organic farming can help them achieve environmental, food security, and rural development goals.

Today, organic agriculture is the fastest growing food sector in the world in both land use and market size, although this fact is tempered by the fact that it

was virtually non-existent until very recently. That being said, growth rates in organic food sales have been in the range of 20–25 percent for the last ten years. In 2002, the total market value of certified organic products was estimated at US$20 billion. By 2006, that value doubled to US$40 billion, and is expected to reach US$70 billion by 2012. Supermarkets have also begun to supply organic foods, an indication that the movement has reached the mainstream. Organic agriculture is now practiced in approximately 120 countries throughout the world.

Organic methods can be used to produce foods and plants as well as **non-traditional agricultural products**. This includes non-wood forest products (NWFP), such as nuts, mushrooms, fruits, herbs, bush meat and plant and animal products used for medicinal or cosmetic purposes. The NWFP market is estimated to be worth US$11 billion annually. The use of organic methods in woodlands and forests also promotes environmentally-friendly uses of natural resources. Organic methods are also used for fish from fish farms and honey from apiculture farms. These are both nascent markets, which have found willing consumers in developed countries.

Consumers buy organic products because they expect a certain standard of production that is environmentally-friendly and free of any artificial inputs. **Organic certification** ensures those standards are met and is essential for consumer-trust and expansion of the organic market. Organic consumers are attuned to the type of certification a product receives in order to assess what quality of product they purchase. Organic certification also ensures inspection and compliance, harmonizes standards across different countries and facilitates sales agreements. Certification bodies ascertain that the products meet the standards that are set by either private or public institutions. As will be seen, these standards are created either by in-country legislation or by entities at the international level.

4. HISTORY OF THE 'ORGANIC MOVEMENT'

The values of organic agriculture – no chemical inputs, crop rotations, environmental preservation – have probably been practiced in traditional forms for centuries. Those methods were largely abandoned, however, during the first half of the 20th century with the advent of engine-powered tractors

and synthetic farming chemicals. Some, however, remained critical of the trend and potentially harmful effects of such chemicals on food and the environment. Sir Northbourne, an Oxford University agriculturalist, was the first to use the term "organic agriculture" in his 1940 book, *Looking to the Land*, which he wrote in response to the industrialisation of agriculture.

Northbourne and others derived their theories from the principles of biodynamic agriculture, first advanced by Rudolf Steiner in 1924. Steiner believed that farmers play an important role in balancing the use of land for agriculture with environmental preservation. The unifying principle between these critics of industrial agriculture was that organic methods led to the long-term health of soil, production of higher quality goods and a more sustainable form of land use.

These ideas gained popularity in Europe and the United States from the 1940s through 1960s among those concerned about the effects of chemicals and pesticides on their foods, most notably after scientist Rachel Carson's 1962 book, *Silent Spring*, which illustrated the effects of pesticides and other chemicals on food and the environment.

Prior to the 1980s, the organic agriculture movement was driven by a collection of grassroots organizations, farmers and traders, who formed national associations to advocate for their cause – Demeter International in Germany; the Soil Association in the United Kingdom; and Rodale Press in the United States, to name a few. Many of these associations banded together in 1972 to form the International Federation of Organic Agriculture Movements (IFOAM), an international umbrella organization for the movement. IFOAM today unites over 750 organizations in 108 different countries.

The organic movement was especially concerned with the quality of the food and standards that were needed to create consumer trust and to provide assurance that production processes were similar across different farms. Governments were slow to draft legislation to set these standards, however; the first such legislation appeared in Oregon and California in the United States, in 1974 and 1979 respectively. Consumers created a persistent demand for organic agriculture and beginning in the 1980s, local and national governments responded to it with legislation on organic agriculture. The recognition that organic agriculture could help countries achieve environmental objectives

further encouraged governments to adopt agri-environmental laws to promote organic farming (e.g. 1992 reform of the European Community's Common Agricultural Policy).

5. FAO'S INVOLVEMENT WITH ORGANIC AGRICULTURE

FAO's interest in organic agriculture stems from its potential to contribute to the goal of greater food security and rural development. At the 2007 International Conference on Organic Agriculture and Food Security in Rome, FAO member countries noted organic agriculture's ability to increase access to food in rural communities, create a more stable food supply, and sustain natural resources.

FAO has been involved in organic agriculture since the late 1990s, when the Committee on Agriculture recommended that an inter-disciplinary program be developed on the topic. Organic agriculture was officially included onto FAO's agenda as a means to promote sustainable development in March 1999. These first FAO activities were mainly concerned with disseminating information on organic agriculture to allow actors – legislators, producers, consumers – to make informed decisions. To that end, the FAO website[3] was launched in 2000 and is regularly updated with publications and information on organic agriculture. FAO has also tried to harmonize standards and requirements for organic agriculture through partnerships with IFAOM and the United Nations Conference on Trade and Development ("UNCTAD"). To that end, the International Taskforce on Harmonization and Equivalence in Organic Agriculture, compromising representatives from ministries of agriculture and trade as well as actors in the field, was established in 2002 to facilitate international trade.

FAO's involvement in organic agriculture has also included providing assistance to member countries, upon their request, in establishing legislative and regulatory frameworks, provide information on accessing markets and agricultural expertise on improving quality and performance of organic farms.

3 See www.fao.org.

6. SCOPE OF THE STUDY

The growth of organic agriculture production and trade has been accompanied by an increase in national legislation in order to set the minimum requirements for organic agriculture and create the institutional framework for certification, thus giving the organic label greater credibility. Government intervention can take the form of public inspection and certification, or the accreditation of private inspection and certification bodies. Legislation also ensures fair competition among producers and facilitates equivalence with other countries for international trade. Because of the health and environmental benefits and trade opportunities associated with organic agriculture, governments sometimes also pass regulations that encourage farmers to shift to organic methods, through tax reductions/exemptions, subsidies, or support in research and marketing. In sum, national legislation may allow organic agriculture to grow from localised products to national and international trade commodities.

Organic agriculture legislation is fairly technical. It has the aim of protecting consumers and farmers against the misuse of organic labelling. The development of organic standards without adequate legal protection may result in fraudulent uses of indications referring to organic production. Farmers may find that after following the highly demanding organic standards, their products are sold with references similar to those used by other producers who are not following the organic standards. Consumers may find it difficult to differentiate between claims and indications suggesting the use of organic, biological or ecological methods of production. Organic legislation provides consumers and farmers with a tool to claim against the authorities. Organic legislation further regulates the market of organic certification, ensuring that certification bodies are suitable to certify organic production, and follow the national or the international standards referred to in the legislation. For this purpose, they can include a small amount of technical information to provide a legal basis to non-legally binding instruments such as standards. Organic standards vary across countries, depending on the targeted markets for trade and on the immediate environment where the products are grown. Although based on international standards, organic standards must always be adapted to in-country conditions.

The Development Law Service of FAO has been involved in various projects to provide advice to FAO members on the review and drafting of organic

agriculture legislation and the establishment of certification systems. A common challenge that has emerged during the course of this work has been the limited information available to countries on issues and approaches to be considered in the design of appropriate regulatory frameworks for organic agriculture. To fill this gap, the present study seeks to identify the legal dimension of organic agriculture and share the practical lessons learned in those countries that have developed or enhanced their legal framework on organic agriculture. The study illustrates international guidance on organic agriculture, makes a comparative analysis of selected laws in a representative group of countries, identifies and explains the different elements of national legislation on organic agriculture, and formulates broader recommendations for drafting national organic agriculture legislation.

The study is thus set out in two parts. In the first part, the first chapter identifies international sources in the field of organic agriculture, including both the public and private sector, indicating the international bodies concerned with organic agriculture and reference documents that may inspire national drafters. International treaties that have a direct or indirect bearing on organic agriculture are also addressed, including those related to environmental protection and international trade. The second chapter identifies essential elements of national legislation for organic agriculture, outlining different drafting options. The third chapter draws the attention of national legislators' to the need to ensure consistency of proposed legislation on organic agriculture with other national or regional laws on labelling, registration of trade marks, plant production and protection, inspections, food controls, environmental protection, etc. The conclusions will summarise the key recommendations that should be borne in mind when devising or enhancing national legislation on organic agriculture. The second part collects case studies on organic agriculture legislation in selected exporting and importing countries or regional organizations (in particular, the European Union, the United States, Japan, Canada, India, Tunisia, Argentina and South Africa).

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II

INTERNATIONAL GUIDANCE ON ORGANIC AGRICULTURE

Contents

This chapter introduces the reader to the sources of international guidance on organic agriculture. These sources comprise inter-governmentally approved guidelines (such as those elaborated by the Codex Alimentarius Commission), as well as standards developed by international private organizations (such as IFOAM and ISO). Although all these recommendations are of a voluntary (or non-legally binding) nature, they are characterized by a different status in the international arena, which should be well understood by national legislators, policy-makers and experts. Notwithstanding these differences, they are all highly influential in the framing of national laws and standards on organic agriculture. In addition, this chapter identifies the international legally-binding treaties that have a bearing on organic agriculture, in the areas of biodiversity, desertification and international trade. While the environmental treaties support the inclusion of certain legal tools or approaches in national legislation leaving much flexibility to countries, international trade law places some limits to national legislators when international commerce is at stake. There are, however, several open questions with regard to the applicability of international trade law to national frameworks on organic agriculture.

1. CODEX ALIMENTARIUS GUIDELINES

1.1 What is the Codex Alimentarius?

Heightened consumer interest in food quality and safety as well as increased concern about the potential for food standards to be applied as trade barriers led to the establishment of the *Codex Alimentarius* Commission (Codex) by a resolution of the governing bodies of the Food and Agriculture Organization of the United Nations (FAO) in 1961 and the World Health Organization (WHO) in 1963. Its primary objectives are to protect consumer health and to ensure fair practices in food trade through the elaboration, harmonization and publication of food standards and other related texts. Codex brings together scientists, technical experts, government regulators and international consumer and industry organizations to develop food standards.

Codex operates based on its Procedural Manual, which includes the Codex Statutes, the Rules of Procedure and the Procedures for the Elaboration of Codex Standards and Related Texts, as well as guidelines and other provisions applicable by Codex subsidiary bodies which should be read in conjunction

with the Procedures The Codex Alimentarius Commission meets in principle every year, alternately in Rome and in Geneva,. Membership is open to all members of FAO or WHO, and currently includes 184 countries and one regional economic integration organization (the European Union).

Members are represented by delegations led by senior officials appointed by their governments, and each member state has one vote. Countries which are not yet members may attend meetings of Codex and its subsidiary bodies as observers, and international organisations representing industry, consumer associations and international academic institutes granted observer status may also participate, although no observers may vote. According to the Rules of Procedure, decisions should be taken by a majority of the votes cast, although in practice most standards, guidelines, and codes of practice are adopted by consensus.

The Executive Committee acts on behalf of the Codex Commission between its sessions, generally meeting once before each Commission session and convening other sessions if required. It consists of the Chair of the Commission, three Vice-Chairs, Coordinators appointed by the Commission for certain regions or groups of countries plus seven further members, one from each of the following areas: Africa, Asia, Europe, Near East, North America, South-West Pacific, and Latin America and the Caribbean. The Executive Committee may make proposals to the Commission regarding the general orientation, strategic planning and work plan of the Commission, and may also assist in the management of the Commission's standards development programme. The Executive Committee may establish such sub-committees from among its members as it may deem necessary to enable it to exercise its functions as effectively as possible.

More than forty years after its creation, the *Codex Alimentarius* (Latin for food code) has become the authoritative collection of internationally adopted food standards and related texts covering foods traded internationally, whether processed, semi-processed or raw. The *Codex Alimentarius* includes many maximum residue limits established for pesticides and veterinary drugs in foods and animal feeds, acceptable levels of food additives and maximum levels for contaminants..

The preparation of draft food standards and related texts, whether they be intended for worldwide use, for a given region, takes place in Codex committees. Membership in these committees is open to all Codex members, and international organizations may attend, as observers, committee sessions that are of interest to them. Generally, committees are financially maintained and hosted by member states.

Codex Commodity Committees develop standards that apply to aspects of specific foods or classes of food. Such standards generally concern quality factors such as the composition or presentation of certain products. The Codex Commodity Committee subject matters range from fresh fruits and vegetables to processed fish and fishery products. General subject Committees focus on so-called "horizontal" subjects – such as food hygiene, labelling, additives and contaminants. These committees develop concepts and principles applicable to foods in general (or applicable to specific foods or food groups) review provisions in Codex commodity standards as required

Committees addressing food safety issues often rely on expert advice, consulting internationally recognized experts in special subject areas and seeking guidance from independent FAO/WHO expert committees or consultations. National inputs into the contents of the many Codex standards and guidelines are solicited and taken into account through the system of Codex Contact Points (CCPs), units responsible at national level not only for circulating information received from the Codex Secretariat to national stakeholders but also sending country comments back to the Secretariat. Although the establishment of a CCP is a requirement imposed on all Codex member states, the effectiveness of CCPs varies greatly, as their operation depends on national policies and legislation as well as on government structures, practices and decisions on resource allocation. The main functions of CCPs, as outlined in the Codex Procedural Manual, are to ensure information exchange and effective coordination on Codex matters and other food-related issues at national level.

In addition to the CCP scheme, a number of countries have established a National Codex Committee to assist in the elaboration of Codex standards. Such a committee can serve as a national forum in which relevant government authorities, representatives of food industries, consumers and other relevant sectors discuss the implications of proposed standards and thus contribute to Codex deliberations and establishing a national position. Many National Codex

Committees are also charged with proposing draft standards, regulations and other requirements to update and improve the country's legislative framework for food.[4]

1.2 *Codex Alimentarius* Guidelines on organically produced food

Organically produced food has been addressed by the Committee on Food Labelling, established as this question is related to a labelling claim. The Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods (Codex Guidelines) were developed in light of the growing production of and international trade in organically produced food, with a view to facilitating trade and preventing misleading claims. The Guidelines are intended to facilitate the harmonization of requirements for organic products at the international level, and may also provide assistance to governments wishing to develop national legislation in this area (Preface, Codex Guidelines). They were adopted in 1999, but provisions on livestock and livestock products were adopted in 2001. Revisions were undertaken in 2003, 2004 and 2007 and amendments in 2008, 2009 and 2010.

The Guidelines have multiple aims, namely to:

- protect consumers against deception and fraud in the market place and unsubstantiated product claims;
- protect organic producers against misrepresentation of other agricultural produce as being organic;
- ensure that all stages of production, preparation, storage, transport and marketing are subject to inspection and comply with the guidelines;
- harmonize provisions for the production, certification, identification and labelling of organically grown produce;
- provide international guidelines for organic food control systems in order to facilitate recognition of national systems to find equivalence for the purposes of imports; and
- maintain and enhance organic agricultural systems in each country so as to contribute to local and global preservation (Preface, Codex Guidelines).

4 FAO. 2005, *Perspectives and guidelines on food legislation, with a new model food law*, Legislative Study 87 (2005) (hereinafter, FAO LS 87).

The Guidelines comprise:

- an introductory section describing the concept of organic production;
- a statement of scope and a list of definitions (secs. 1–2);
- general provisions on labelling and claims (sec. 3);
- rules on production and preparation (sec. 4), which are to be read in conjunction with principles of organic production (annex 1) and with the list of permitted substances for the production of organic foods (annex 2);
- a list of permitted substances for the production of organic foods, including inputs for soil fertilizing and conditioning, plant pest and disease control, food additives and processing aids (annex 2), and requirements for inclusion of substances in Annex 2 and criteria for the development of lists of substances by countries (sec. 5);
- general provisions on inspection and certification (sec. 6), which are complemented by minimum inspection requirements and precautionary measures under the inspection or certification system (annex 3) – which differentiates between production units, preparation and packaging units, and imports; and
- general provisions on imports (sec. 7).

Although **'organic agriculture'** is not included in the list of definitions, the Guidelines illustrate the concept as a "holistic production management system which promotes and enhances agroecosystem health, including biodiversity, biological cycles, and soil biological activity. It emphasizes the use of management practices in preference to the use of off-farm inputs, taking into account that regional conditions require locally adapted systems. This is accomplished by using, where possible, cultural, biological and mechanical methods, as opposed to using synthetic materials, to fulfil any specific function within the system." An **organic production system** is thus mainly designed to:

- enhance biological diversity within the whole system;
- increase biological activity in soil;
- maintain long-term soil fertility;

- recycle wastes of plant and animal origin in order to return nutrients to the land, thus minimizing the use of non-renewable resources;
- rely on renewable resources in locally organized agricultural systems; promote the healthy use of soil, water and air as well as minimize all forms of pollution thereto that may result from agricultural practices; and
- handle agricultural products with emphasis on careful processing methods in order to maintain the organic integrity and vital qualities of the product at all stages (Preface, Codex Guidelines).

Organic production methods are further described as management practices that seek to nurture ecosystems and achieve sustainable productivity by maintaining and enhancing soil fertility, recycling plant nutrients for fertilization, using biological and mechanical controls and removal of pest and disease management; and basing livestock husbandry on a harmonious relationship between land, plants and livestock and on the respect for physiological and behavioural needs of livestock (sec. 2.1, Codex Guidelines).

The Guidelines, furthermore, stress that 'organic' is a labelling term, and that certification and inspection are integral components of the organic management system. Accordingly, requirements for organically produced foods differ from those of other agricultural products in that production procedures are an intrinsic part of the identification and labelling of, and claim for such products (Preface, Codex Guidelines). **Labelling** is defined as the written, printed or graphic matter that is present on the label, accompanies the food, or is displayed near the food, including for the purpose of promoting its sale or disposal. **Inspection** is defined as the examination of food or systems for control of food, raw materials, processing, and distribution including in-process and finished product testing, in order to verify that they conform to requirements, thereby specifically including the examination of the production and processing system. **Certification** is defined as the procedure by which official certification bodies, or officially recognized certification bodies, provide written or equivalent assurance that foods or food control systems conform to requirements. Certification of food may be, as appropriate, based on a range of inspection activities which may include continuous on-line inspection, auditing of quality assurance systems and examination of finished products (sec. 2.2, Codex Guidelines).

The Guidelines are intended to apply to unprocessed plants and plant products, livestock and livestock products, and to processed agricultural crop and livestock products intended for human consumption, when they carry, (or are intended to carry), descriptive labelling referring to organic production methods (sec. 1.1, Codex Guidelines). From the outset, the Guidelines also specify that all materials or products produced from genetically engineered/ modified organisms are not compatible with the principles of organic production (sec. 1.5, Codex Guidelines).

The principles on organic production included in the Guidelines are three-fold: plants and plant products (including conversion, choice of seeds and vegetative reproductive material, maintenance of soil fertility and biological activity, control of pests, diseases and weeds, collection of edible plants); livestock and livestock products (including livestock sources/origin, conversion, nutrition, health care, housing and free-range conditions, manure management, record-keeping and identification, and species-specific requirements for beekeeping and bee products); and handling, storage, transportation, processing, and packaging.

Other key concepts embedded in the Codex Guidelines concern 'conversion' and 'equivalence'. The **period of conversion** is not actually defined by the Guidelines, but it can be inferred that it is the length of time between the start of organic management and the moment in which certification of products as organic can be obtained. The Guidelines, on the other hand, specify that the appropriate length of the conversion period is determined by site-specific factors such as the history of the land, and type of crops and livestock to be produced (Preface, Codex Guidelines). Furthermore, the Guidelines also specify the minimum conversion periods that should be complied with, irrespectively of these factors (see Annex 1, A.1 for plants, and Annex 1, B.12 for different animal-species). This allows for the labelling and marketing of in transition/conversion products under certain conditions (secs. 3.5, 3.7, Codex Guidelines). **Equivalence**, on the other hand, refers to the capability of different inspection and certification systems to meet the same objectives, and apply when importing organic agriculture products.

1.3 Other relevant Codex Alimentarius standards and guidelines

It should be noted that the Guidelines make explicit reference to three other texts elaborated by the Codex Alimentarius Commission and that have a bearing on organic agriculture. One is the **Codex General Standard for the Labelling of Pre-packaged Foods** (CODEX STAN 1-1985), which provides general standards on labelling, compared to which organic labelling is additional. Labelling is considered the primary means of communication between the producer and the seller of food, and also between the intermediate purchaser and the final consumer. The general principles embedded in the Standard aim to ensure that:

- labels do not describe or present products in a way that is false, misleading or deceptive or is likely to create erroneous impression regarding its character in any respect; and
- labels do not use words, pictorial or other devices that refer to or are suggestive either directly or indirectly of any other product with which such food might be confused, or in such a manner as to lead the purchaser or consumer to suppose that the food is connected with such other product (secs. 3.1–3.2).

The second is the **Principles for Food Import and Export Inspection and Certification** (CAC/GL 20-1995), which sets out the principles of equivalency and transparency on the basis of which countries accepting imports of organic products are expected to assess the inspection and certification procedures and the standards applied in the exporting country. The Principles take into account the fact that inspection and certification requirements may significantly impede international trade in foodstuffs. Thus, food inspection and certification are expected to ultimately aim at protecting consumers against food-borne hazards and deceptive marketing practices and to facilitate trade on the basis of accurate product description (para. 5). The principles address:

- fitness for purpose (inspection and certification systems should be fully effective in achieving designated objectives);
- risk assessment (inspection systems should be operated on the basis of objective risk assessment appropriate to the circumstances, in line

with internationally accepted approaches and based on current available scientific evidence);

- non-discrimination (avoiding arbitrary and unjustifiable distinctions at the level of risk deemed to be appropriate in different circumstances);
- efficiency (inspection and certification systems should have adequate means to perform their task, and should be no more trade-restrictive than is necessary to achieve the required level of protection);
- harmonization (using Codex standards, recommendations and guidelines, as well as those elaborated by other international organizations whose membership is open to all countries);
- equivalence (countries should recognize that different inspection/certification systems may be capable of meeting the same objective, while the obligation to demonstrate equivalence rests with exporting countries);
- transparency (while respecting legitimate concerns to preserve confidentiality, principles and operations of food inspection and certification systems should be open to scrutiny by consumers and their representative organizations, and other interested parties);
- special and differential treatment (the capabilities of developing countries to provide necessary safeguards should be taken into account by importing countries);
- control and inspection procedures should be completed without undue delay, and information requirements and fees should be limited to what is reasonable and necessary; and
- certification validity (measures to this effect should be taken by countries certifying exports of food and by those importing countries relying on export certificates).

The third text mentioned in the Codex Guidelines on Organically Produced Food is the **Guidelines for the Exchange of Information between Countries on Rejections of Imported Food** (CAC/GL 25-1997), which apply when irregularities or infringements are found during inspection by importing countries. The Guidelines identify minimum information that should be provided in order for the exporting country to understand the reason of the rejection. Minimum information should include: identification of the food concerned, importation details, the name of the authority that

rejected the import, the date of the decision, and its reasons for rejection with reference to the regulations or standards that are considered contravened (sec. 3).

Specifically relevant for equivalence are also the Codex **Guidelines for the Designation, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification Systems** (CAC/GL 26-1997), which call upon countries to facilitate the recognition of equivalence of inspection and certification. In particular, importing countries are expected to avoid unnecessary repetition of controls when these have been validly carried out by the exporting country, and the exporting country to provide access to enable the inspection and certification systems to be examined and evaluated upon request of the importing countries' relevant authorities (paras. 11–12). The Guidelines support the elaboration of agreements or letters of understanding between governments on the application of equivalence principles for inspection or certification of production areas. Thus, the Codex also elaborated **Guidelines for the Development of Equivalence Agreements regarding Food Import and Export Inspection and Certification Systems** (CAC/GL 34-1999).

2. INTERNATIONAL FEDERATION OF ORGANIC AGRICULTURE MOVEMENTS (IFOAM)

2.1 What is IFOAM?

The International Federation of Organic Agriculture Movements (IFOAM), established in 1972 and located in Bonn, Germany, is the international non-governmental organization providing an umbrella for all organic agriculture organizations. Currently uniting around 700 member organizations in more than 100 countries, its goal is the worldwide adoption of ecologically, socially and economically sound systems based on the principles of organic agriculture. Through international conferences, meetings and other fora, IFOAM facilitates an ongoing dialogue about the status and future of organic agriculture. IFOAM has developed and maintains the Organic Guarantee System, which seeks to provide a common system of standards, verification and market identity for the organic world. IFOAM also implements specific projects that facilitate the adoption of organic agriculture methods, particularly in developing countries,

and represents the organic agriculture movement at the United Nations and other intergovernmental agencies.

The IFOAM General Assembly, which is IFOAM's decision-making forum, meets every three years in conjunction with the IFOAM Organic World Congress and elects the World Board. The World Board, based upon the recommendation of the IFOAM membership, appoints members to IFOAM's many official committees, working groups and temporary task forces, which address specific aspects of organic agriculture management. The Standards Requirements Committee, the IFOAM Standard Committee and the Accreditation Requirements Committee play an essential role in the development and continual improvement of the Organic Guarantee System. These Committees work on the development and maintenance of the IFOAM Norms, composed of the IFOAM Standard, the IFOAM Standards Requirements – Common Objectives and Requirements of Organic Standards, and the IFOAM Accreditation Requirements. Recognising the positive role participatory guarantee systems play, IFOAM recently installed the Participatory Guarantee System (PGS) Committee to support PGS development worldwide.

Members of IFOAM are free to organise themselves in sector specific or geographical groupings to collaborate between each other. Four geographical groups (the Mediterranean, the European Community as a whole, Latin America and Japan), deal with organic agriculture at the regional and national level. Sector-specific groups and initiatives include, *inter alia*, the Organic Retailers Association, the Aquaculture Group, Organic Trade Forum and the Intercontinental Network of Organic Farmers' Organisations (INOFO).

The IFOAM **Organic Guarantee System** is a collection of products and services offered by IFOAM, designed to facilitate the development of quality organic standards and certification worldwide, and to provide an international assurance of those standards and certification. To that end, the IFOAM Organic Guarantee System includes the following:

1. The IFOAM Family of Standards
2. The IFOAM Standard for Organic Production and Processing
3. The IFOAM Community of Best Practice Standards

4. The Global Organic Mark
5. IFOAM Accreditation and the Global Organic System Accreditation (GOSA)

1. **The IFOAM Family of Standards** is a collection of standards, both private and public, that are recognized as organic based on equivalence with the IFOAM Standards Requirements. IFOAM encourages members whose standards are included in the Family of Standards to recognise other included standards as equivalent to reduce transaction costs of multiple equivalence assessments. The IFOAM Family of Standards provides an efficient and trusted means to recognize a large number of private and governmental standards as equivalent.

   The IFOAM Standards Requirements are composed of the Common Objectives and Requirements of Organic Standards (COROS), which were developed as a joint venture of the IFOAM Organic Guarantee System (OGS) and the GOMA (Global Organic Market Access) project undertaken by FAO, IFOAM and UNCTAD. (For more information on COROS see Section 4.2 below)

   In the context of the IFOAM Organic Guarantee System, COROS serves as an international reference against which organic standards and technical regulations can be assessed for the purpose of inclusion in IFOAM's Family of Standards. Governments could also consider using the Family of Standards as a basis for authorizing imports of organic products. Governments may also use the equivalence assessments done by IFOAM against COROS as a resource to facilitate their own unilateral or bilateral assessments on equivalence.

2. **The IFOAM Standard for Organic Production and Processing** is an off-the-shelf organic certification standard maintained by IFOAM for use by private certification bodies. It is a globally applicable organic standard that can be used directly for certification. Certification bodies and standard managers can sign a contract with IFOAM to obtain the right to use the IFOAM Standard for certification or to claim compliance with it. It will replace the IFOAM Basic Standards (IBS) as the basis for obtaining IFOAM Accreditation in the IFOAM Accreditation Program.

Instead of compliance to the IBS, certification bodies wishing to keep or obtain IFOAM Accreditation will have to use the IFOAM Standard or ensure compliance of their private standard to it.

3. **The IFOAM Community of Best Practice Standards** describes 'state of the art' organic farming, processing and trading, covering aspects of sustainability including environmental, social, economical and cultural dimensions. This recognition acknowledges that organic standards are developing, following the principle of constant improvement. Some organic standards cover more aspects and set more rigorous requirements than others. Standard holders may obtain this additional recognition by IFOAM, based on an assessment of their standard against the Best Practice module developed by IFOAM.

4. **The Global Organic Mark** is available to operators for use on products certified against a standard or a regulation recognized by IFOAM as listed in the IFOAM Family of Standards and certified by an accredited certification body or one under government supervision system recognized by IFOAM.

5. **IFOAM Accreditation and the Global Organic System Accreditation (GOSA)** are two means to accredit certification bodies. Both accreditations are based on the IFOAM Accreditation Requirements for Certification of Organic Production and Processing (IFOAM Accreditation Requirements). The IFOAM Accreditation Requirements is the new name for the former *Accreditation Criteria for Certification of Organic Production and Processing* (IAC), which derive from the ISO norms for the operation of certifying bodies (ISO 65), but also reflect the particular circumstances of organic production and processing. It establishes requirements for certification bodies seeking the IFOAM or Global Organic System accreditations, with regards to their conduct of organic certification activities.

   Certification bodies can apply to the International Organic Accreditation Service (IOAS, a daughter company of IFOAM) to obtain either:

- IFOAM Accreditation, if their procedures are in compliance with the IFOAM Accreditation Requirements AND they use the IFOAM Standard or a compliant standard to certify operators.
- Global Organic System Accreditation if their procedures are in compliance with the IFOAM Accreditation Requirements AND they use any standard listed in the IFOAM Family of Standards to certify operators.

Although IOAS operates as an independent body, it is a key organ of the Organic Guarantee System accepting and reviewing accreditation applications, conducting site evaluations and granting accreditation.

The IFOAM Norms are subject to periodic revision under the supervision of the IFOAM World Board. Specific revisions or new areas of the IFOAM Norms may also be initiated by IFOAM members. Draft revisions (normally two drafts) of the normative document under revision are circulated to the membership and other key stakeholders for comments, which the relevant Committee takes into account in the preparation of the next draft. The final version is approved by the IFOAM membership by simple majority through an electronic vote.

2.2 The IFOAM Standard for Organic Production and Processing

The IFOAM Standard for Organic Production and Processing (The IFOAM Standard) is utilized by private certification bodies to assess organic production and processing facilities.

The IFOAM Standard is based on four **principles** that IFOAM considers the 'roots' of the organic agriculture movement in its full diversity. The principles include:

- health: organic agriculture is expected to "sustain and enhance the health of soil, plant, animal, human and planet as one and indivisible", with the understanding that health is not only the absence of illness, but also the maintenance of physical, mental, social and ecological well-being (thereby including the concepts of regeneration, immunity and resilience). This principle underlines the need to avoid in organic

agriculture the use of fertilizers, pesticides, animal drugs and food additives having negative health effects;

- ecology: organic agriculture is expected to be "based on living ecological systems and cycles, work with them, emulate them and help sustain them." This principle calls for reducing agricultural inputs by reusing, recycling and efficiently managing materials and energy with a view to maintaining and improving environmental quality, conserving natural resources, and maintaining genetic and agricultural diversity;
- fairness: organic agriculture is expected to rely on relationships that ensure fairness toward the environment and life opportunities, being therefore characterized by equity and respect, contributing to food sovereignty and poverty reduction, requiring open and equitable production, distribution and trade, and accounting for real environmental and social costs; and
- care: organic agriculture is expected to be managed in a precautionary and responsible manner to protect the health and well-being of current and future generations and the environment. This should be not only based on scientific knowledge, but also on practical experience and traditional and indigenous knowledge.

Besides providing definitions (sec. 1), the IFOAM Standard covers the following:

- organic ecosystems: ecosystem management, soil and water conservation, genetic engineering, wild harvested products and common/public land management;
- general requirements for crop production and animal husbandry: conversion requirements, split production and parallel production, maintenance of organic management;
- requirements specific to crop production: choice of crops and varieties; length of conversion period; diversity in crop production; soil fertility and fertilization; pest, disease, weed and growth management; contamination avoidance;
- requirements specific to animal husbandry: animal management, length of conversion period, animal sources/origin, breeds and breeding, mutilations, animal nutrition, veterinary medicine, transport and slaughter, bee keeping;

- processing and handling: ingredients; processing methods; pests and disease control; packaging; cleaning, disinfecting and sanitizing of food processing facilities; and textile fibre processing;
- labelling;
- social justice (concerning labour and human rights, non-discrimination and equal opportunities);
- criteria for the evaluation of inputs, additives and processing aids authorized in organic production and processing (appendix 1); and
- lists of permitted substances, including fertilizers and soil conditioners (appendix 2), crop protectants and growth stimulators (appendix 3), additives and processing aids (appendix 4, Table 1), and equipment cleansers and disinfectants (appendix 4, Table 2).

2.3 IFOAM Accreditation Requirements (formerly called IFOAM Accreditation Criteria) for Certification of Organic Production and Processing

The IFOAM Accreditation Requirements for Certification of Organic Production and Processing (IFOAM Accreditation Requirements) are the requirements for organic certification programmes seeking accreditation by IFOAM. The Accreditation Requirements include general criteria developed by specific criteria. It should be noted that specific criteria may not be considered essential when the national regulatory framework, economically less favoured areas, and cultural, traditional or social conditions render their application impossible. In this case, the general criteria must still be met to maintain the integrity of organic production and certification.

The general accreditation criteria include the following:

- competence: accredited certification programmes shall have adequate resources, sound financial management and demonstrate professional competence based on adequate training and experience of officers and personnel;
- independence: structures and procedures should enable the programme to be free from undue influence from vested interests;

- accountability and responsibility: clear lines of authority and accountability of officers should be defined, and the programme shall take full responsibility for all activities operated or sub-contracted out;
- objectivity: the programme shall be impartial, base its inspection and certification on objective assessments of facts and on documented procedures, and shall have procedures for the consideration of appeals;
- credibility: the programme shall exercise control over the use of its licenses, certificates, and marks of conformity;
- quality improvement and internal review: the programme shall demonstrate adequate arrangements for continuous quality improvement and procedures for evaluation of its development and performance and for dealing with complaints and undertaking remedial action;
- access to information related to production standards, organizational structures, financial resources, rules and procedures for granting certification, training arrangements for personnel, procedural records, which should be published or made otherwise available. A list of certified producers should also be published;
- confidentiality: the programme should have adequate arrangements to ensure confidentiality of information regarding specific operators;
- participation: the programme shall put in place adequate procedures for enabling input from affected parties, and
- non-discrimination: the programme shall develop and administer policies and procedures without reference to race, national background, religious affiliation, gender, age, marital status, sexual orientation or physical challenge.

The specific criteria concern management, standards, inspection, certification and licensed operators. Among these, it may be singled out that programmes should have a clear division of the functions related to inspection, certification and appeals, so that decisions on certification are taken by persons different from those who carried out inspections, and that persons responsible for deciding upon an appeal may not be have been involved in the decision that is appealed against. In addition, it is indicated that programmes should keep records for a minimum period of five years in a transparent and easily retrievable manner; and that they must have access to any non-organic production in the

unit or related unit in the proximity. Each step in the handling of a product is to be inspected annually.

3. INTERNATIONAL ORGANIZATION FOR STANDARDIZATION (ISO)

3.1 What is ISO?

In 1946, 25 countries met to create an international organization to "facilitate the international coordination and unification of industrial standards," which led to the establishment of the International Organization for Standardization (ISO). ISO is a nongovernmental organization whose membership is currently made up of the national standards institutes of 162 countries, overseen by a central secretariat in Geneva. In some cases the member institutes are governmental while in others they are entirely private industry initiatives. Membership of ISO works on the basis of one member per country, whichever national standards institute or similar organization is the most representative of standardization in the participating state.

There are three levels of membership within ISO. Full members, known as 'member bodies', each have one vote, whatever the size or strength of the economy of the country concerned. Member bodies can exercise full voting rights in any policy or technical committee of the ISO. In addition, ISO has two categories of membership for countries with fewer resources which therefore pay reduced membership fees. Although such members do not have a vote, they participate in order to remain up to date on standardization developments. The first category – correspondent members – usually concerns organizations in countries which do not yet have a fully developed national standards system. Such members do not take an active part in the technical work, but are entitled to be kept fully informed about the work of interest to them. The second category – subscriber members – concerns institutes from countries with very small economies that nevertheless wish to maintain contact with international standardization. Such members have full access to information about the international standardization process, which assists them in learning about the standards that their products will need to meet on the export market.

All strategic decisions are referred to ISO members, which meet in an annual General Assembly. Proposals are developed by the ISO Council, which is drawn from the members and meets three times per year. Membership of the Council is rotated to ensure that it continues to be representative of the ISO membership as a whole. Operations of the ISO are managed by a permanent Secretary General that in turn reports to the President, who is elected for two years.

ISO will only begin development of a new standard when there is clearly a market requirement for it. An industry group or other interested parties will communicate the perceived need for a new standard to ISO via one of ISO's members, which then proposes the new work item to ISO as a whole. If accepted, the proposal is then referred to the relevant technical committee (made up of experts from the relevant industry, business and technical sectors) which will apply its specialized expertise to the development of the standard. The work of the technical committees is guided by three general policy development committees which ensure that the broader interests of conformity assessment, consumer policy and developing-country matters are considered alongside the specific technical aspects of standard development.

The technical committee meets to discuss and debate until it has reached a consensus draft, which is then submitted as a draft international standard to the entire ISO membership for comment and voting. This is a five-month procedure, during which time many members, in formulating their positions on the draft standard, employ public review procedures at national level designed to make draft standards known. These are made available to interested parties and the general public at country level. Thereafter any feedback received is taken into account. Those members which have chosen to be participating members of the technical committee are under an obligation to vote, while all other members are entitled to vote if they so wish. A draft standard is approved if two-thirds of the participating members of the committee vote in favour of the standard and not more than one quarter of all votes cast are negative. The text of the final draft international standard, with eventual modifications, is then submitted again to the entire ISO membership, this time for a two-month vote. However, this vote can only constitute approval or rejection of the standard and may be omitted if the draft international standard received full approval during the first round and the modifications made were minimal. If the result is positive, a new international standard is created.

As the world's main formulator of technical standards for many industrial, technical and business sectors, ISO has published since 1946, more than 17 500 international standards across a diverse range of sectors. Although ISO standards are voluntary, they may be adopted as part of a national regulatory framework or incorporated into national legislation. Furthermore, in many sectors, peer pressure or the wish to gain access to export markets can make even voluntary standards into *de facto* mandatory ones. Similarly, large companies often make voluntary standards a mandatory requirement for small suppliers, thereby heightening the importance of such standards.

3.2 ISO 65 – General requirements for bodies operating product certification systems

ISO 65[5] – *General requirements for bodies operating product certification systems* became important for organic certification bodies when national legislation of major organic agricultural products importers (such as the EU, Japan and Canada) required or made reference to complying with accreditation targets. Certification bodies are required to demonstrate their competence for regulatory reasons and must perform against a reference standard. The reference standard may be a national standard or private standards.

ISO 65 covers the following items:

- certification body: general provisions, organization, operations, sub-contracting, quality system, conditions and procedures for granting, maintaining, extending, suspending and withdrawing certification; internal audits and management reviews; documentation; and confidentiality (sec. 4);
- certification body personnel, including qualification criteria (sec. 5);
- changes in the certification requirements (sec. 6);
- appeals, complaints and disputes (sec. 7);
- application for certification (sec. 8);

5 ISO/IEC 65 is currently being revised into ISO 17065, which is expected to be published by July, 2012. The draft text titled "Requirements for certification bodies certifying products, processes and services" contains two significant changes on the current ISO 65: ISO 17065 will be a standard, not just a guideline.
ISO 17065 will not only apply to product certification, but also to processes and services.

- preparation for evaluation (sec. 9);
- evaluation and evaluation report (secs. 10–11);
- decision on certification (sec. 12);
- surveillance (sec. 13);
- use of licenses, certificates and marks of conformity (sec. 14); and
- complaints to suppliers (sec. 15).

4. HARMONIZATION AND EQUIVALENCE

Despite bodies such as IFOAM, there still exist numerous and disparate national and private organic standards. Emergence of multiple organic standards and technical regulations, causing blockages in trade pathways between markets and regulatory systems have become among the foremost challenges for access to international organic agriculture markets. A product produced according to one set of organic standards and certification requirements may also need to comply with other organic standards and requirements in order to be traded. The labyrinth of requirements in both governmental and private sectors constitutes an obstacle to trade, which constrains organic market development and denies market access to many, including hundreds-of-thousands of small producers in developing countries.

4.1 International Task Force on Harmonization and Equivalence in Organic Agriculture (ITF)

The International Task Force on Harmonization and Equivalence in Organic Agriculture (ITF), jointly led by FAO, IFOAM and UNCTAD and convened from 2003 through 2008, was composed of individuals working in government agencies, inter-governmental agencies, and civil society and other private sector organizations involved in organic agriculture regulation, standardization, accreditation, certification and trade. Participants have come from government agencies of twenty-nine countries[6], eight inter-governmental agencies[7]

6 Argentina, Australia, Brazil, Canada, China, Costa Rica, Cuba, Denmark, Dominican Republic, Fiji, Germany, Greece, Guatemala, India, Indonesia, Italy, Japan, Kenya, Netherlands, Philippines, Russia, Samoa, Sweden, Switzerland, Tanzania, Thailand, Tunisia, Uganda and United States.

7 EU Commission, FAO, ITC, OECD, UNCTAD, UNECE, UNEP and WTO.

and twenty-five civil society and other private organizations. Together they constituted an open-ended platform for dialogue among public and private stakeholders.

The goals of the ITF were to address and seek solutions to trade barriers arising from the many different standards, technical regulations and certification requirements that function in the organic sector, and to enable developing countries to have more access to organic trade. It focused on opportunities for harmonization, recognition, equivalence and other forms of cooperation within and between government and private organic guarantee systems. The ITF's work progressed in two phases, the review phase and the solutions phase; and results include technical studies and briefing papers, recommendations, tools for solutions and a communications program.

During the Review Phase, the ITF identified and analysed:

- the impact of existing organic certification requirements, standards and technical regulations on trade;
- current models and mechanisms that enable organic trade;
- experiences of cooperation, recognition and equivalence in the organic sector; and
- potential models and mechanisms for harmonization, equivalence and mutual recognition.

In the Solutions Phase, the ITF produced two practical Tools for harmonization and equivalence:

- The International Requirements for Organic Certification Bodies (**IROCB**), a reference norm that can be used by governments and private accreditation and certification bodies as a means of accepting certification of organic products outside of their own system.
- Guide for Assessing Equivalence of Organic Standards and Technical Regulations (**EquiTool**), a set of procedures and criteria for deciding when a standard applicable in one region of the world is equivalent to a standard applicable in another region.

In the course of its meetings the ITF also made several recommendations. These include that:

- governments and the private sector make every effort to utilize the Tools and other ITF results in order to facilitate trade, and include them in their efforts to build or enhance the organic sector;
- governments commit to using international standards as the reference point for import approvals;
- public-private participation is improved in decision-making for both international organic standards (IFOAM and Codex Alimentarius Commission);
- governments should utilize and encourage mutual recognition on the level of conformity assessment in their regulatory systems;
- other forms of cooperation in certification, accreditation and regulation should be initiated, e.g. use of inspection (audit) and evaluation (assessments) for multiple purposes; and
- the International Requirements for Organic Certification Bodies, in addition to serving as a reference for equivalence and recognition, should be considered as a catalyst for convergence of certification requirements in the long term, and it can be used for direct accreditation.

The work and results of the ITF, including its technical papers and reports, have been chronicled in a series of publications, "Harmonization and Equivalence in Organic Agriculture." These publications are available free and can be downloaded in electronic format from the ITF website at: r0.unctad.org.

The ITF received funding support from the Swedish International Development Cooperation Agency (Sida), the Norwegian Agency for Development Cooperation (Norad), and the Government of Switzerland to conduct its work.

4.2 Global Organic Market Access (GOMA)

The GOMA Project follows up on the work and results of the ITF, which concluded in 2008. The project is jointly led by FAO, IFOAM and UNCTAD. It is overseen by a Steering Committee comprised of representatives from

each of the partners and funded by the Norwegian Agency for Development Cooperation.

The GOMA project seeks to assist and facilitate the process for trade flow of organic products among various regulatory and/or private organic guarantee systems through applying the ITF recommendations and use of the two practical tools developed by ITF for this purpose. The Guide for Assessing Equivalence of Standards and Technical Regulations (EquiTool, see Section 2.1 above) and the International Requirements for Organic Certification Bodies (IROCB) can be used by any government or private sector organic label scheme as tools for recognizing other organic standards and certification performance requirements as equivalent to their own.

Project activities include:

- outreach to share knowledge about the tools and possibilities for cooperation;
- pilot projects to test the tools in various environments;
- technical assistance to governments and private sector stakeholders to implement the tools and related recommendations;
- facilitation of new regional initiatives for cooperation on harmonized organic standards development and multi-lateral equivalence; and
- analysis of the organic trade system and evaluation of the trade-facilitating tools.

The Common Objectives and Requirements of Organic Standards

In the course of promoting the use of the EquiTool, the need to elaborate on and develop common objectives and requirements of organic standards was soon recognised by GOMA. The concept of COROS was first developed by the ITF as an Annex of the EquiTool in 2008. COROS was compiled on the basis of the IFOAM Basic Standards and Codex Alimentarius, the two pre-existing international reference organic standards, and included a review of a significant number of existing standards and regulations across the world as well as input and comments through a worldwide open stakeholder consultation process.

COROS aims to facilitate the flow of products among organic guarantee systems through equivalence. It is intended for use in international equivalence assessments of organic standards and technical regulations. In the context of the GOMA project, it is proposed as a template to guide governments and other stakeholders in conducting objectives-based equivalence assessments of two or more organic standards for production and processing.

COROS articulates broad objectives which production rules in organic standards and regulations commonly seek to achieve. It contains requirements that are commonly found in organic standards and regulations globally related to general organic management, crop and animal production, beekeeping, processing and social justice. Organic aquaculture, textile processing and cosmetics are not included in the scope of the COROS, primarily due to the fact that these are emerging scopes that are not yet covered by the majority of organic standards and regulations.

It is an annex to EquiTool (See Section 4.1 above). While EquiTool offers guidance to governments and other stakeholders on the process to conduct objective-based equivalence assessments, COROS provides a template for the actual assessment and equivalence determination.

EquiTool encourages equivalence assessments to be based on COROS, an approach that is consistent with WTO guidance for judging equivalence. By basing equivalence discussions and assessments on objectives, parties may avoid tedious line-by-line assessments of one detailed standard against another. Instead parties can assess whether the details of one standard, although they may vary from those of another standard, meet common objectives.

ITF and GOMA documents are available for public use, free of charge. To read more or download, visit the GOMA website, www.goma-organic.org.

4.3 Regional cooperation and organic production

Harmonization and equivalence are capable of being achieved through a variety of mechanisms. The ITF and GOMA, as well as private sector efforts such as the IFOAM Family of Standards, all aim towards facilitating access to organic markets and reducing the transaction costs associated with multiple standards through harmonization and equivalence measures.

Regional cooperation can assist countries to realize the benefits of harmonization at the regional level. Regional harmonization might entail the utilization of common organic standards, an equivalence mechanism or regional recognition of organic certification, or involve the approval of regional agreements.

Countries may decide to approve regional organic standards. Regional standards help achieve equivalence and may facilitate trade. The regionalization of organic regulation may also better address specific climatic or labour issues unique to the region in a way that a readymade standard could not.

These standards might be prepared and approved through a **supranational private-public task force** setting up voluntary reference standards, as in the case of the East African Organic Products Standard (EAOPS), which was developed by a community of public and private stakeholders from the countries of Uganda, Tanzania, Kenya, Burundi and Rwanda[8].

Regional standards might include only production and processing standards or include other areas such as the rules on certification or a common system to grant equivalence.

Apart from rules on production, certification and equivalence, countries may agree to include **other elements** in regional standards, such as a common label or indications or harmonized procedures for the registration of organic producers. For instance, the European, Central American, Asian and East African norms all comprise a section on organic labelling.

Regional standards shall be implemented in the countries through national legislation, either specific organic legislation or other legislation governing implementation of standards, labelling requirements and certification mechanisms. Governments who have agreed on common regional agreements, may need to revise or augment their **national legislation** to ensure that (1) national legislation refers to the regional standards as reference standards; (2) national legislation is sufficient to implement and monitor compliance with the regional standards.

8 www.goma-organic.org.

Countries which are members of a regional organization, might decide to approve **regional-level legislation.** Regional governmental bodies or agreements may implement regional strategies, facilitate administration, and provide lower institutional costs from which to regulate and monitor compliance.

There are a number of possible ways to structure regional agreements. There may be a **regional organization** that has the authority to directly enact legislation enforceable on the national governments. The European Union (EU) has in their foundational treaties the capacity to approve regional legislation with direct applicability on national legal frameworks. The EU has approved a common framework for organic production (see the case study in part II) in Council Regulation (EC) No. 834/2007. Regional organizations which do not have the capacity to approve legislation directly applicable, such as MERCOSUR, might need to revise or augment their **national legislation** to ensure that national legislation is sufficient to implement and monitor compliance with the regional agreements.

A look at some of the existing regional instruments illustrates the difference between standards-harmonization and legal-harmonization. On one hand, the East African Organic Production Standard contains detailed provisions concerning organic production (general requirements, besides specific rules for crop production, animal husbandry, bee-keeping and wild collection) as well as handling, storage and processing. In contrast with EOAPS, the European Regulation goes further, also including other areas such as certification (Title V) and equivalence (Title VI).

It is important that the regional framework specifies what will be made at the regional and at the national level both in terms of standard setting and compliance monitoring. The production standard may be harmonized but other important areas such as equivalence or accreditation and certification may be left to individual national governments, either for political or administrative reasons, to enact and/or to implement. Title V of the EU regulation enacts regulations that establish inspection and certification systems with the purpose of verifying compliance with the prescribed organic standards. However the task of implementation is largely delegated to the EU member states.

Similarly, Chapter 6 of the proposed "Reglamento Regional de Producción Orgánica" for Central America, the Dominican Republic and Panama outlines the conditions for a certification system, but leaves each member country to design and establish their own competent accreditation and certification authorities.[9]

There are **challenges** that arise whenever countries begin to legislate jointly or delegate power. Sovereignty issues arise especially in the context of trade. If the regional organization already harmonizes common trade agreements, the issue likely has been addressed; however, countries that only agree to a common standard need to decide how to recognize equivalence with third countries. Harmonizing internal control measures, such as competent certification authorities, quality assurance monitoring and compliance mechanisms can also be problematic for countries in which regional the structure is not sufficient to ensure compliance.

5. RELEVANT INTERNATIONAL ENVIRONMENTAL CONVENTIONS

All voluntary international instruments on organic agriculture make reference to the contribution of organic agriculture to the protection and sustainable use of biodiversity and to the prevention of land degradation. These issues have been enshrined at the international level in two international legally-binding treaties, namely the Convention on Biological Diversity (CBD) and the United Nations Convention to Combat Desertification (UNCCD). These instruments, in virtue of their general nature, are implicitly relevant for organic agriculture. The following sub-sections will introduce the reader to the objectives and main provisions of the two Conventions, and highlight issues that may be particularly relevant for national drafters of organic agriculture legislation.

5.1 Convention on Biological Diversity

The Convention on Biological Diversity (Rio de Janeiro, 1992) reflects the increased awareness worldwide of the interdependence among species. The

9 www.agricultura.gob.do.

Convention is not limited to particular species or habitats, but provides for the conservation and sustainable use of biodiversity, defined as "the variability among living organisms", including "diversity within species, between species and of ecosystems" (art. 2). With regard to its State parties, the Convention provides guiding principles that should be taken into account in developing national policy and laws.[10] The CBD has three objectives, which include not only the conservation, but also the sustainable use of biodiversity components, as well as the fair and equitable sharing of the benefits arising out of the utilization of genetic resources (art. 1).

Some of the definitions of the CBD may be relevant in the context of organic agriculture:

- "Biological diversity" means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.
- "Biological resources" includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity.
- "Ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.
- "Sustainable use" is defined as using biodiversity components in a way and at a rate that does not lead to the long-term decline of biological diversity, thus meeting the needs and aspirations of present and future generations.

Biodiversity conservation and sustainable use are to be pursued by adopting specific strategies, plans and programmes and by incorporating relevant concerns into any plans, programmes and policies (art. 6). Sustainable use of biodiversity must also be a consideration in national decision-making (art. 10(a)). In addition, parties must rehabilitate and restore degraded ecosystems and promote recovery of threatened species. To this end, the role of national legislation is emphasized (art. 8).

10 Birnie, P. and Boyle, A. 2002. *International Law and the Environment*, Oxford University Press.

Another salient feature of the CBD is the importance attached to people and their relationship with biodiversity (including agricultural biodiversity), in particular **local and indigenous communities**. Particularly with reference to sustainable use, the Convention calls for cooperation between national authorities and local communities and the private sector. In addition, parties are to protect and encourage the customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements, as well as support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced (art. 10). Finally, the Convention has a pivotal role in promoting the respect, preservation and maintenance of traditional knowledge and practices relevant for the conservation and sustainable use of biological diversity. Furthermore, it calls upon national governments to ensure communities' approval and involvement when such knowledge is applied, as well as the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices (art. 8(j)).

The implementation at the national level of CBD obligations may take several forms, as the Convention provisions are drafted in general terms and leave a significant degree of flexibility for national legislative options and strategies to be adapted to local situations. Organic agriculture, which explicitly builds upon several key concepts of the CBD, therefore, may significantly contribute to national implementation of the CBD and should be developed so as to support other efforts in the conservation and sustainable use of biodiversity across other sectors. In addition, legislation on organic agriculture may be influenced by the specific guidelines adopted by the Conference of the Parties of CBD in the framework of the CBD work programme on agricultural biodiversity.

Agricultural biodiversity is defined as including all components of biological diversity of relevance to food and agriculture, and all components of biodiversity that constitute the agro-ecosystem: that is, the variety and variability of animals, plants and micro-organisms at the genetic, species and ecosystem levels, which are necessary to sustain key functions of the agro-ecosystem, its structure and processes (CBD Decision III/11). Accordingly, the CBD has developed a specific programme of work related to agricultural biodiversity, with a view to ensuring conservation, sustainable use and benefit-sharing from the use of agricultural biodiversity, which effectively halts the

human-induced loss of agricultural biodiversity. The work programme thus aims to increase the capacity of agricultural ecosystems to provide food security and support other ecosystem services for the benefit of human well-being, and to minimize negative impacts on other ecosystems, both in the present and future generations. In practice, the work programme on agricultural biodiversity supports the application of the ecosystem approach to the agricultural sector and the cooperation between agriculture and environmental sectors at the national level. Accordingly, agricultural activities should contribute to the sustainable production of food and to a balanced provision of ecosystem services including food, feed and fibre in providing a source of alternative energy and environmental services such as watershed, climate and soil regulation (UNDP/CBD/SBSTTA/13/2).

The **ecosystem approach** is considered the primary framework for action under the Convention, as its application is expected to help reach a balance of the three objectives of the Convention. It is a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way. Furthermore, the ecosystem approach entails a social process: different interested communities must be involved through the development of effective structures and processes for decision-making and management. Against this background, the ecosystem approach calls for intersectoral cooperation, decentralization of management, equitable distribution of benefits, and the use of adaptive management policies that can be modified in light of experience and changing circumstances (UNEP/CBD/COP/5/INF/11). Case studies have already been compiled with regards to the application of the ecosystem approach in the specific case of organic agriculture: experience has been accrued with respect to traditional and community-based management; *in-situ* conservation and sustainable use of centres of diversity; rescue of under-utilized species and varieties for quality diets and culinary traditions; selection of biodiversity adapted to local ecological conditions and resistant to disease; and alternative breeding criteria and participatory research (FAO 2002).

In light of the CBD Principles of the Ecosystem Approach (CBD Decision V/6), national legislators working on organic agriculture may focus on clarifying the role of relevant authorities and making them accountable, ensuring institutional cooperation, identifying mechanisms for multi-stakeholder consultation and for solving conflicts, and creating incentives to

promote practices that contribute to biodiversity protection and sustainable use such as organic agriculture.

In the framework of the ecosystem approach, the parties to the CBD have further adopted specific principles and operational guidelines on sustainable use (Decision VII/14: the **Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity**), which provide guidance to ensure that the use of the components of biodiversity will not lead to its long-term decline. The Addis Ababa Principles and Guidelines have been drafted with a view to generating incentives for the conservation and restoration of biodiversity because of the social, cultural and economic benefits that people derive from it, and are considered as applying to both consumptive and non-consumptive use of biodiversity. Although not legally binding, these guidelines comprise several elements that may inspire national legislators. Indeed, Principle 1 stresses the important role of legislation in ensuring sustainable use. Furthermore, the Principles call for the consideration of local customs and traditions when drafting new legislation and regulations, and the development of new supportive incentives measures. They, moreover, underline the need to resolve any overlaps, omissions and contradictions in existing laws and policies; and highlight the benefits of creating cooperative and supportive linkages between all levels of governance in order to avoid duplication of efforts or inconsistencies. In analysing how to implement the Addis Ababa Principles and Guidelines in the agricultural sector, the parties to the CBD have explicitly highlighted the role of organic agriculture. Specifically, with reference to Practical Principle 2, parties have discussed the need for a governing framework consistent with international and national laws, to sufficiently empower local users and make them accountable for use of the resources concerned, as is the case with sustainable farming practices such as those of organic farming. In addition, in line with Practical Principle 11, users of biodiversity components should seek to minimize waste and adverse environmental impacts. Management costs should be internalized through economic instruments such as the certification of organic products (UNDP/CBD/ SBSTTA/13/INF/4).

5.2 UN Convention to Combat Desertification

The **UN Convention to Combat Desertification** (United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, Paris, 1994, UNCCD) calls upon parties to adopt and implement long-term integrated strategies that focus simultaneously, in affected areas, on improved productivity of land, and the rehabilitation, conservation and sustainable management of land and water resources, leading to improved living conditions, in particular at the community level (art. 2.2).

The Convention also provides key definitions that are relevant for organic agriculture, such as:

- "land degradation" as the reduction or loss, in arid, semi-arid and dry sub-humid areas, of the biological or economic productivity and complexity of rainfed cropland, irrigated cropland, or range, pasture, forest and woodlands resulting from land uses or from a process or combination of processes, including processes arising from human activities and habitation patterns, such as: (i) soil erosion caused by wind or water; (ii) deterioration of the physical, chemical and biological or economic properties of soil; and (iii) long-term loss of natural vegetation;
- "desertification" as land degradation in arid, semi-arid and dry sub-humid areas resulting from various factors, including climatic variations and human activities; and
- "combating desertification" as the activities which are part of the integrated development of land in arid, semi-arid and dry sub-humid areas for sustainable development which are aimed at: (i) prevention or reduction of land degradation; (ii) rehabilitation of partly degraded land; and (iii) reclamation of desertified land.

Organic agriculture may well be part of national plans and strategies to combat land degradation and desertification. To this end, the Convention also calls upon parties to facilitate the participation of local populations (art. 5). Indeed, the Convention places major emphasis on a bottom-up approach to combating desertification, calling for land users' participation in the development of policies and programmes to combat desertification, their involvement in the review of these policies and in their implementation. To

this end, decentralization may be necessary to ensure close contacts between the government and local communities. National action programmes to combat desertification shall be updated through a continuing participatory process on the basis of lessons from field action, as well as the results of research (art. 9(1)). In addition, the Convention expects that desertification programmes be closely interlinked with other efforts to formulate national policies for sustainable development.

Organic agriculture can significantly contribute to the implementation of the UNCCD. Similar to the Convention on Biological Diversity, national legislators may draw upon the UNCCD to justify provisions in national legislation on institutional cooperation, public participation in decision-making and decentralization.

6. RELEVANT INTERNATIONAL TRADE AGREEMENTS

As most organic products find their way to consumers via established trade channels, rather than directly from the farm, governments have increasingly adopted regulatory measures on organic agriculture in an attempt to protect consumers from deceptive practices and ensure fair competition in the market place. Whereas these policy objectives are generally recognised as legitimate and necessary, there are also fears that national or regional organic legislation may become a source of contention in international trade relations. To put it simply, the question that arises, and that is not always easily resolved, is: How can organic agriculture measures further their stated objectives without creating unnecessary barriers to international trade or being used as an excuse for protectionism? In fact, as mentioned in section 1.1, the Codex Guidelines were adopted with the purposes of, *inter alia*, promoting the harmonization of requirements for organic products at the international level, and thereby facilitating international trade in such products while preventing misleading organic claims (Preface and Foreword, Codex Guidelines).

The provisions in international trade law that are of most relevance to national/regional organic legislation are essentially derived from the General Agreement on Tariffs and Trade (GATT) and the Agreement on Technical Barriers to Trade (TBT Agreement), both integral parts of the World Trade Organization (WTO) framework. In addition to discussing relevant WTO instruments,

this section offers some reflections regarding the implications or provisions contained therein for national and regional organic legislation, although these are not always clear-cut. It should be clarified that this section does not seek to provide an assessment of the WTO-consistency of a particular measure on organic agriculture, but rather to indicate which provisions in WTO law should be taken into account, and in which manner, when drafting national and regional organic legislation.

6.1 Basic principles under WTO Law: GATT

The basic principles of WTO law with respect to trade in goods are primarily derived from the GATT. By virtue of its general nature, GATT applies to all regulatory measures – both internal and external – affecting international trade in goods, and thus applies to national legislation on organic agriculture. Nonetheless, it should be noted that in case of conflict between GATT and other more specific WTO-covered agreements dealing with the trade in goods, such as the TBT Agreement examined in section 6.2., the latter prevails (General Interpretative Note to Annex 1A).

Of the basic rules of GATT, the most relevant to organic laws is the principle of non-discrimination embedded in Articles I and III. As will be seen, Article XX GATT provides for a number of exceptions to this general rule of non-discriminatory treatment in international trade relations.

6.1.1 Non-discrimination of 'like products'

Article I GATT which enshrines the 'General Most-Favoured-Nation Treatment' provides:

"*1. With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation, or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all areas referred to in paragraph 2 and 4 of Article III,* ***any advantage, favour, privilege, or immunity*** *granted by* ***any Member*** *to* ***any product*** *originating or destined for* ***any other country shall be accorded*** *immediately and unconditionally to the* ***like product*** *originating in or destined for the territories of* ***all Members***" (emphasis added).

In addition, Article III GATT, entitled "National Treatment on Internal Taxation and Regulation", reads:

"*1. Members recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.*

...

4. The ***products*** *of the territory of any Member* ***imported*** *into the territory of any other Member* ***shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale****, offering for sale, purchase, transportation, distribution or use*" (emphasis added).

The general obligation of most-favoured-nation (MFN) treatment and that of national treatment reflect two distinct, but complementary, aspects of the cornerstone principle of non-discrimination under WTO law. The former seeks to ensure equal treatment of foreign "like products" at the border, while the latter operates internally and requires that imported foreign products be subject to a regulatory regime no less favourable than that applied to domestic "like products". In simple terms, whereas the MFN treatment obligation prohibits a WTO member from discriminating *between* other members, the national treatment obligation prevents it from discriminating *against* other WTO members. In both cases, however, non-discriminatory treatment is only required insofar as the products concerned can be considered "like products".

As to the implications of these GATT provisions for national organic legislation, there is no doubt that legislation needs to be drafted in an origin-neutral manner. In other words, WTO law does not, *à priori*, allow for regulatory differences *between* organic products solely on the basis that such products originate from different countries (art. I, GATT), or that they are imported, as opposed to domestically produced (art. III, GATT). This general requirement of non-discrimination is not, of course, limited to regulatory measures on organic products, but is equally applicable to any piece of domestic legislation that is likely to have an impact on international trade in goods.

Conversely, it is less clear whether, and to what extent, *organic* and *conventional* products can be considered as distinct product categories, and thus treated differently, under WTO law. This is mainly due to the fact that there is no one precise and absolute definition of what constitutes a "like product", but this concept has been interpreted on a case-by-case basis, depending on the applicable WTO provision and the specific facts of the case. It is beyond the scope of this study to fully account for the substantial GATT/WTO jurisprudence on the notion of "like products"[11] In essence, four basic criteria have been often used in WTO case law for determining the likeness of products: the properties, nature and quality of the products; the end-uses of the products; consumers' tastes and habits; and the (international) tariff classification of the products. This basic framework for analysing the 'likeness' of products was first elaborated by the Working Party on *Border Tax Adjustments* and thereafter followed and applied (adding *inter alia* the fourth criterion) in almost all Panel and Appellate Body reports, mainly in the context of Article III GATT. In a number of international trade disputes that preceded the establishment of the WTO, GATT Panels held that a 'like product' determination under Article III:4 GATT would also include an examination of whether the measure at issue has a protective aim or effect.[12] However, this 'aims and effects' test has not (as yet) been followed by WTO judicial bodies.[13]

Against this background, it should be noted that organic products are *not* classified separately by the World Customs Organization. Furthermore, the 'unlikeness' of organic and conventional products could hardly be demonstrated on the basis of the other three criteria in order to justify regulatory differences between them. Nonetheless, WTO panels and the Appellate Body could consider that other criteria, in addition to the basic four indicated above, are also relevant for assessing "unlikeness" in this particular case. In this respect, it is important to underscore that process and production methods (PPMs) are not (as yet) part of the basic criteria for establishing the likeness of products

11 See WTO Analytical Index-Guide to WTO Law and Practice, available at www.wto.org; and Choi, W-M. 2003. '*Like products' in international trade law: towards a consistent GATT/WTO jurisprudence* (Oxford University Press).

12 See *United States-Measures Affecting Alcoholic and Malt Beverages* (BISD 39S/206, adopted 12 June 1992) and *United States-Taxes on Automobiles* (DS31/R, 11 October 1994, unadopted).

13 See Appellate Body Report on *Japan – Alcoholic Beverages*, where the Appellate Body reasoned that there is no textual basis for the "aims and effects" test in Article III: 2 GATT.

under WTO law. Thus, products would not be considered "unlike", and should not be treated differently, solely on the basis of how they are produced or processed.[14] Indeed, the main reason why national organic legislation may prove contentious from a GATT perspective is precisely because organic products are differentiated from conventional ones only on the basis of how they are produced and handled. That is, the process of organic certification is essentially related to production methods. Organic labels, while placed on the end product, are not a claim on the intrinsic characteristics or qualities of the product itself. In fact, whereas there is consensus that organic production practices are more environmentally-sustainable, it is still under debate whether the nutritional or health qualities of organic products are significantly different from conventional ones.

Although PPMs are not generally accepted as a valid ground for product differentiation under WTO law, it does not follow that importing WTO members are prevented from making any kind of regulatory distinction based on production processes and methods. Whether or not PPM-based distinctions are allowed under the GATT depends on the nature of the measure at issue, and in particular whether and how its application affects trade in the product(s) concerned. For instance, while a PPM-based import ban would clearly violate the GATT, the same is not necessarily true for PPM-based labelling schemes, which are generally less trade restrictive than most other regulatory measures.

Indeed, in the well-known *Tuna-Dolphin I* case, the GATT Panel found the US dolphin-safe labelling scheme to be consistent with the GATT because it was *voluntary* and *non-discriminatory*. This scheme was based on the Dolphin Protection Consumer Information Act, which prohibited the marketing of tuna products bearing the "dolphin-safe label" (or any other term falsely suggesting that the tuna contained therein was fished in a manner not harmful to dolphins), if it contained tuna that had not been harvested in accordance with the prescribed methods. The Panel reasoned that such a scheme was voluntary because it did not restrict the sale of tuna products in the US market:

14 The product-process distinction was drawn at the time of the old GATT and reiterated in two WTO Panel decisions (*United States-Reformulated Gasoline and Canada-Periodicals*), although the Appellate Body has not (as yet) expressly ruled on it. This distinction has been criticized by some scholars, see e.g. R. Howse and D. Regan, 'The Product/Process Distinction-An Illusory Basis for Disciplining Unilateralism' (2000) 11 *European Journal of International Law* 249.

"tuna products can be sold freely both with and without the "Dolphin Safe" label .... Any advantage which might possibly result from access to this label depends on the free choice by consumers to give preference to tuna carrying the "Dolphin Safe" label. The labelling provisions therefore did not make the right to sell tuna or tuna products conditional upon the use of tuna harvesting methods".[15] In fact, the US measure that was held to be GATT-illegal was a ban on imports of yellowfin tuna using methods that also kill dolphins, but not the labelling scheme. It should be recalled that, as a result of the GATT positive consensus rule and US opposition, this panel report remained unadopted and hence without legal authority in GATT/WTO law. Nonetheless, it is one of the few panel reports dealing with the application of MFN and national treatment principles to PPM-based labelling, and thus it may guide future interpretation. Applying this reasoning to organic legislation, organic certification and labelling requirements would not violate the GATT provided that: 1) these requirements do not restrict the sale of covered products in the market of the importing country (i.e. such products can be sold freely both with and without organic labels/claims), and 2) they are applied in a non-discriminatory manner (i.e. both MFN and national treatment). In addition, as will be seen in section 6.2., the TBT Agreement allows WTO members to adopt, under certain conditions, measures which regulate product-*related* PPMs, including regulation through labelling schemes.

6.1.2 General exceptions

Article XX GATT, entitled "General Exceptions", allows WTO members to deviate from GATT basic disciplines in limited circumstances, including the general obligation of non-discrimination seen above. Thus, a measure regulating organic agriculture that fails to meet the requirements of Article I or/and Article III GATT could still be compatible with WTO law if two conditions are met: 1) The measure in question must fall within one of the listed exceptions in Article XX GATT; and 2) Such a measure must not constitute "a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail" or a "disguised restriction on international trade".[16]

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15 *United States-Restrictions on Imports of Tuna* (DS21/R - 39S/155, 3 September 1991, unadopted), para. 5.42.

16 On this requirement known as Article XX-chapeau, see Appellate Report on *US-Shrimp* (WT/DS58/AB/R), paras. 150–159.

Article XX GATT enumerates ten permitted exceptions, including: "*measures necessary to protect human, animal and plant life or health*" (art. XX(b), GATT); "*measures necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement, including those relating to…the prevention of deceptive practices*" (art. XX(d), GATT); and "*measures relating to the conservation of exhaustible natural resources*" (art. XX(g), GATT). It is doubtful that national organic legislation could qualify as protection or conservation measures under (respectively) Article XX (b) and (g) GATT, particularly in light of how these provisions have been interpreted in WTO case law.[17] That is, while organic agriculture may well have some health-related and environment-related benefits, it does not necessarily follow that conventional agriculture poses a genuine risk to human, animal and plant life/health, or to the conservation of exhaustible natural resources. Conversely, it could be argued that organic certification and labelling requirements are "necessary to prevent deceptive practices": namely, the use of misleading organic claims in the market place. However, the term "necessary" in Article XX (d) GATT has been strictly construed in WTO jurisprudence: enforcement measures would only meet this necessity test if no other WTO-consistent measure can guarantee the same level of enforcement is available.[18]

It can thus be concluded that organic legislation should not discriminate, neither *de jure* nor *de facto*, between organic products originating in different WTO members (MFN treatment obligation) nor against imported organic products in favour of domestically-produced ones (national treatment obligation), or it would otherwise be found in violation of GATT and unlikely justified under Article XX GATT. In addition, national organic legislation should meet the more specific requirements of the TBT Agreement, to be examined in the subsequent sections.

6.2 Specific requirements under WTO LAW: the TBT Agreement

The TBT Agreement also deals with trade in goods but it is more specific than GATT, in that it contains rules on technical regulations, standards and

17 On Article XX (b) GATT, see Appellate Body Report on *EC-Asbestos* (WT/DS135/AB/R); on Article XX (g) GATT, see Appellate Body Report on *US-Gasoline* (WT/DS2/AB/R) and Appellate Body Report on *US-Shrimp* (WT/DS58/AB/R).

18 See Appellate Body Report on *Korea-Various Measures on Beef* (WT/DS 161&169/AB/R), paras. 161–172.

conformity assessment procedures related to product characteristics and their related PPMs. The TBT Agreement recognizes WTO members' right to pursue legitimate policy goals through the adoption and application of technical regulations or standards, for example to protect human, animal and plant life, the environment, or consumers' interests, at the level each country considers appropriate (Preamble, TBT Agreement, para. 6). That being said, the Agreement also imposes a number of restrictions on WTO members in order to ensure that national regulations, standards and conformity assessment procedures do not create "unnecessary obstacles to international trade" (Preamble, TBT Agreement, para. 5). In other words, the TBT Agreement seeks to prevent that such measures are adopted with the sole purpose of protecting domestic industries. It also aims at reducing the costs for producers and exporters of having to comply with divergent regulatory requirements by encouraging the development of international standards and conformity assessment systems (Preamble, TBT Agreement, paras. 3–4).

Another WTO instrument also related to product regulation is the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), which specifically applies to measures aimed at protecting human, animal, plant life or health from pests and diseases. Thus, the TBT and SPS Agreements define the type of product regulations/standards that WTO members may adopt and the manner in which they should apply these measures. In the context of this study, the TBT Agreement appears most relevant to organic legislation which, in light of its objectives, does not easily qualify as a SPS measure. That is, the principal policy goal of organic legislation is not "to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs" (art. 1(b), annex A, SPS Agreement). Accordingly, the subsequent sections only present the main provisions of the TBT Agreement, which applies to all product-related regulations or standards except for SPS measures (art. 1(5), TBT Agreement).

6.2.1 National and regional organic legislation: 'technical regulations' or 'standards'?

As noted above, the TBT Agreement imposes legal restrictions on two types of product-related measures that WTO members may adopt: *technical regulations* and *standards*. To avoid confusion, the terms regulation and standard are

used here as defined in the TBT Agreement. In order to determine whether national organic legislation comes under the scope of the TBT Agreement, it is necessary to examine the definitions of the terms "technical regulations" and "standards" provided for in Annex 1 of the Agreement:

"*1. Technical regulation: document which lays down product characteristics* ***or*** *their related processes and production methods, including the applicable administrative provisions, with which* ***compliance is mandatory****. It may also include or deal exclusively with terminology, symbols, packaging, marketing or labelling requirements as they apply to a product, process or production method.*

2. Standard: document approved by a recognised body, that provides, for common and repeated use, rules, guidelines or characteristics for products ***or*** *related processes and production methods, with which* ***compliance is not mandatory****. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.*" (emphasis added)

In the *EC-Asbestos* and *EC-Sardines* cases, the Appellate Body set out the following three cumulative criteria for a measure to fall within the definition of "technical regulation":[19]

- it must apply to an identifiable product or group of products (they do not need to be expressly identified in the relevant document);
- it must lay down one or more characteristics of the product. These product characteristics encompass not only features and qualities intrinsic to the product but also those that are related to it (including labels and other means of identification), and may be prescribed or imposed in either a positive or negative form; and
- compliance with such product characteristics must be mandatory. In other words, a technical regulation must regulate the product characteristics in a binding or compulsory fashion.

Thus, whereas both technical regulations and standards have the purpose of establishing rules on product characteristics *or* their related processes and production methods, the crucial difference between them lies in compliance.

19 Appellate Body Report on EC-Asbestos (WT/DS135/AB/R), paras. 67–70; Appellate Body Report on *EC- Sardines* (WT/DS231/AB/R), paras. 175–176.

As clarified in the (unofficial) technical explanation of the TBT Agreement on the WTO website: "While conformity with standards is voluntary, technical regulations are by nature mandatory. They have different implications for international trade. If an imported product does not fulfil the requirements of a technical regulation, it will not be allowed to be put on sale. In case of standards, non-complying imported products will be allowed on the market, but then their market share may be affected if consumers' prefer products that meet local standards such as quality or colour standards for textiles and clothing."

Even if organic legislation does not address the end characteristics of the product, it is likely to come under the purview of the TBT Agreement as "documents" containing rules on product-related production methods, including marketing and labelling requirements. What is less clear is whether it does so as technical regulations or as standards. This is, however, a threshold issue because, as will be seen in the following sections, the TBT Agreement establishes different requirements for technical regulations and for standards. How organic legislation should be classified for the purpose of applying the TBT Agreement ultimately rests on the interpretation and application of the terms "mandatory" and "voluntary". At the time of writing, there is no significant guidance on this question from WTO jurisprudence. One indicative factor of how WTO members perceive their own national organic legislation is the legal basis under which they have notified it (if at all) to the WTO: namely, under Article 2(9)(2) of the TBT Agreement (as technical regulations; and under para. J of Annex 3, TBT Agreement (as standards); and under art. 5(6)(2), TBT Agreement (as "procedures for assessment of conformity with technical regulations or standards").[20] As we have seen in Part 2, the design of national organic legislation does indeed vary across the selected countries. Most of them have integrated organic standards and labelling/certification rules into one or more legally-binding prescriptive instruments, which could qualify as "technical regulations" under the TBT Agreement. Conversely, Canada (NOS) and India (NPOP) have defined national organic standards by means of instruments that have no legal force *per se*, and thus which would fall under the definition of "voluntary standards" in the TBT Agreement. However, both of these countries have also adopted separate regulations establishing organic

20 See, for instance, the notification of the new EU Regulation pursuant to both Article 2.9.2 and Apean Communities-Agricultural and Aquaculture Products', Notification of 27 February 2006, (G/TBT/N/EEC/101).

certification systems, which refer to the formally voluntary organic standards and render them mandatory for the labelling and marketing of products as organic. Thus, in all cases, compliance with national organic standards is clearly compulsory for operators wishing to obtain organic certification and the right to use organic claims or labels. And yet, does it necessarily follow that national organic legislation, regardless of how it is formally enacted, is *de facto* a mandatory technical regulation in the TBT-sense? As will be argued next, the answer to this question appears to depend on whether compliance with organic rules is *also* considered a condition to access the market of the country concerned, and not only to obtain organic certification.

In fact, the WTO explanation of the TBT Agreement quoted above seems to indicate that the critical difference between mandatory regulations and voluntary standards lies in whether compliance constitutes a condition for market access. That is, can national organic rules be considered "mandatory" in the sense that if not fulfilled imported products are not allowed on the market? Again, this issue remains (as yet) unresolved in the WTO and thus two opposed approaches are possible depending on what is understood by 'the market':

a) On the one hand, all national legislations compliance with organic rules is only mandatory for operators choosing to label and market the product(s) concerned as organic, but not a *sine qua non* condition for accessing the market of the importing country. In other words, compliance with the organic standards of an importing country could be seen as a voluntary choice of the operator insofar as it would still be possible to put the product(s) concerned on sale in that market (i.e. as conventional). Exporters would thus have the discretion of deciding whether the market advantage of carrying organic labels/ claims is worth the costs of compliance with the organic requirements of the importing country. This proposition follows the GATT Panel's reasoning in the *Tuna-Dolphin I* case seen earlier.

b) On the other hand, compliance with national organic legislation could be argued to be mandatory if organic products are considered a distinct product category, in which case organic certification and labelling schemes would *de facto* restrict exporters' access to the market in organic products. In fact, some WTO members have questioned the practical

significance of the distinction between mandatory regulations and voluntary standards made in the TBT Agreement. They have contended that, if a "voluntary" standard has the effect of product differentiation and market segregation, compliance with it becomes factually mandatory for a producer wishing to access the new market segment.[21] Following this line of reasoning, all national organic measures would qualify as mandatory technical regulations under the TBT Agreement.

An illustrative example is probably warranted to clarify the two divergent views: compliance with US organic standards is not *a sine qua non* condition for an exporter of apples to access the US market in apples (i.e. apples can still be sold freely with or without the organic label), but it is a condition for this exporter to access the US market in *organic* apples.

Another unsettled matter is the WTO approach to *unrelated* process and production methods. PPMs are generally divided into two categories –namely, product-related or non-product related (unrelated) – depending on whether the production process eventually affects the end characteristics of products. For instance, pesticides used on crops produce residues on foodstuff and thus organically produced products are differentiated by the absence of such pesticide residues when compared to conventional ones. Similarly, livestock raised on growth hormones produces meat with hormone residues, whereas meat derived from organic livestock is free of such residues. Thus, PPMs are considered related to the product when adherence to a particular process is somehow detectable in the product itself. By contrast, other PPMs, such as environmentally-sustainable production processes, do not affect the identifiable and testable characteristics of the associated product in the same way. For instance, the use of certain fishing gear may be very valuable from an ecological perspective but cannot possibly affect the characteristics of fish as such or its nutritional and gustatory values for the consumer.

21 See for instance, WTO Committee on Trade and Environment, "Marking and Labelling Requirements, Submission from Switzerland", 19 June 2001, (WT/CTE/W/192 and G/TBT/W/162).

As indicated above, only related PPMs are explicitly covered in the definitions of technical regulations and standards under the TBT Agreement.[22] As a result, there have been some discussions in the WTO as to whether technical regulations or standards could or could not include unrelated PPMs, but no consensus has been reached at the time of writing. While this question may be of some relevance to national organic legislation, it is arguably not a critical one as these tend to address mostly product-*related* PPMs.[23] Nonetheless, as pointed out by some commentators, the related/unrelated PPMs distinction is at times flawed for its simplicity as it overlooks the fact that some regulatory measures, including those on organic agriculture, may be enacted for multiple policy purposes.[24]

In light of the above discussion, it can be concluded that the TBT Agreement is applicable to organic legislation, at least in so far as it covers product-related PPMs. However, whether a given national organic measure qualifies as a 'mandatory technical regulation' or 'voluntary standard' under the TBT Agreement can only be established by practice and on a case-by-case basis, and depends on the design of the measure and its effects on international trade. Accordingly, the next two sections present the TBT provisions dealing separately with technical regulations and standards, while section 6.2.4 turns to the requirements that are commonly applicable to both.

6.2.2 Legal requirements for technical regulations

As a result of their mandatory character, technical regulations are assumed to be more trade-restrictive; hence the TBT Agreement imposes more specific conditions on their adoption and application when compared to voluntary standards. These requirements are both substantive and procedural in nature.

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22 See WTO Committee on Technical Barriers to Trade. *Negotiating history of the coverage of the Agreement on Technical Barriers to Trade with regard to labelling requirements, voluntary standards and processes and production methods unrelated to product characteristics*, 29 August 1995, (G/TBT/W/11).

23 Dankers, C. 2003. The WTO and environmental and social standards, certification and labelling in agriculture. FAO Commodity and Trade Policy Research Working Paper N°2, at pp. 7–8 and 14, also pointing to discussions on this issue within the TBT Committee.

24 See for instance Charnovitz, S. 2002. The law of environmental 'PPMs' in the WTO: debunking the myth of illegality. 27 *Yale Journal of International Law* , at p. 65–70, proposing a "how-produced standard" as a new category of PPMs.

Concerning the manner in which technical regulations shall be applied and the objectives they may pursue, Articles 2(1)–2(2) of the TBT Agreement state:

2.1 Members shall ensure that in respect of technical regulations, ***products imported*** *from the territory of any Member* ***shall be accorded treatment no less favourable*** *than that accorded to like products of national origin and to like products originating in any other country.*

2.2 Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall ***not be more trade-restrictive than necessary*** *to fulfil a legitimate objective, taking account of risks non-fulfilment would create. Such* ***legitimate objectives are****,* ***inter alia****: national security requirements; the* ***prevention of deceptive practices****; protection of human health or safety, animal or plant life or health, or the environment…* (emphasis added).

With respect to the substantive content of technical regulations, Articles 2(4)–2(5) of the TBT Agreement provide:

2.4 Where technical regulations are required and ***relevant international standards exist*** *or their completion is imminent, Members* ***shall use them****, or the relevant parts of them,* ***as a basis for their technical regulations except when*** *such international standards or relevant parts would be* ***an ineffective or inappropriate means*** *for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.*

2.5 …Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in paragraph 2, and is ***in accordance with the relevant international standards****, it shall be* ***rebuttably presumed not to create an unnecessary obstacle to international trade****.* (emphasis added).

(It should be noted that Article 2.8 of the TBT Agreement also requires WTO members to specify, "where appropriate", technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics. This requirement, however, does not appear "appropriate" in the case of organic regulations.)

As to the possible conclusion of equivalency arrangements among WTO members, Article 2(7) of the TBT Agreement reads:

Members shall give positive consideration to accepting as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.

In addition, Articles 2(9)–2(12) of the TBT Agreement impose a number of procedural obligations on WTO members enacting technical regulations. Essentially, these relate to *ex-ante* and *ex-post* transparency requirements, including:

- notification (at the earliest stage possible) to be provided to other WTO members (through the Secretariat) of the envisaged regulations, including a brief indication of the products covered, its objectives and rationale;
- without discrimination, allowing reasonable time for other WTO members to make comments, discuss these comments upon request, and take these comments and the results of these discussions into account; and
- duty to promptly publish all technical regulations once adopted (or make them otherwise available in such a manner as to enable interested parties in other WTO members to become acquainted with them) and, except for cases of urgency (art. 2.10), allow reasonable time for producers in exporting WTO members, particularly in developing-countries, to adapt their products or methods of production to the requirements introduced by the regulation.

In light of the above provisions, WTO members have two options when enacting organic regulations: either to base them on existing international standards or to develop national and regional ones. In both cases, organic regulations shall respect both aspects of the general obligation of non-discrimination (MFN and national treatment). That is, treatment of organic products imported from one WTO member shall be no less favourable than that accorded to organic products originating in any other country and to those of national origin. In addition, such regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective. From the list of objectives specifically mentioned in Article 2(2) of the TBT Agreement, the "prevention of deceptive practices"

is of most relevance to organic regulations, which are generally aimed at protecting consumers from fraudulent organic claims. This list, however, is non-exhaustive and thus organic regulations may also pursue other objectives, the legitimacy of which would be determined on a case-by-case basis.[25]

Whereas WTO law does not prevent countries from developing their own organic standards, it clearly favours recourse to international ones, unless their use would be "ineffective or inappropriate" to fulfil a given policy objective. The logic behind this preference is that it would lead to harmonization of organic rules across WTO members, something which would benefit operators (by reducing costs of compliance) and consumers (by increasing product choice).[26] Indeed, with a view to harmonising such regulations on as wide basis as possible, WTO members are required to play full part in the preparation of product-related international standards concerning a subject matter for which they have adopted (or expect to adopt) technical regulations (art. 2(6), TBT Agreement). The main legal advantage of basing organic regulations upon existing international standards is that they will be *ipso facto* presumed to meet the necessity requirement in Article 2(2) TBT (i.e. not more trade-restrictive than necessary to achieve the stated legitimate objective). That being said, unlike the SPS Agreement, the TBT Agreement does not mention by name the international standard-setting bodies it recognizes as competent to issue "relevant international standards". Nonetheless, it should be noted that standards developed by the Codex Alimentarius Commission have been held to constitute "international standards" in the TBT-sense.[27] But this does not mean, of course, that other international organic standards, such as those of IFOAM, would not be equally accepted.

The recognition of organic equivalency is also encouraged under WTO law, whether through the conclusion of bilateral agreements or other means.[28] However, it should be noted that such organic equivalency arrangements are

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25 Appellate Body Report on *European Communities- Trade Description of Sardines* (WT/DS231/AB/R), para. 286.

26 WTO. *Technical information on technical barriers to trade*, available at www.wto.org .

27 Appellate Body Report on *European Communities- Trade Description of Sardines* (WT/DS231/AB/R), para. 7.66.

28 See for instance, WTO Committee on Technical Barriers to Trade. '*Agreement reached by a Member with another Country or Countries on issues related to Technical Regulations, Standards or Conformity Assessment Procedures*'. 18 April 2002 (G/TBT10.7/N/36).

subject to the general obligation of MFN treatment prescribed in Article 2 of the TBT Agreement (and art. I, GATT). In other words, whenever an organic equivalency arrangement is in place, any WTO member taking the view that it can comply with its requirements can legitimately request to benefit from its extension, even through WTO dispute settlement proceedings. To this effect, however, the requesting WTO member would have the burden of proving equivalency between its own regulation(s) and that of countries benefiting from the arrangement at hand.

Finally, it should be noted that the TBT rules on technical regulations do not only apply when these are adopted by central government bodies but also by local and non-governmental ones. WTO members shall take all "reasonable measures as may be available to them" to ensure compliance by these bodies with TBT disciplines (art. 3, TBT Agreement). The main TBT-based requirements for technical regulations are summarised in the box below in order to facilitate comparisons with those established for voluntary standards, which will be examined in the next section.

MAIN TBT-REQUIREMENTS FOR MANDATORY ORGANIC AGRICULTURE REGULATIONS

Organic agriculture regulations:

- must lay down rules on product-related production methods and processes, compliance with which is (considered) mandatory;
- shall be necessary (i.e. not more trade-restrictive than necessary to achieve the stated legitimate objective(s)) and non-discriminatory (i.e. both MFN and national treatment);
- must be based upon relevant international standards, unless these are deemed 'inappropriate or ineffective' to fulfil the stated legitimate objective(s). If based upon international standards, organic regulations are *ipso facto* presumed not to create 'unnecessary obstacles to international trade'; and
- must notify WTO before adoption in order to allow for comments by WTO members and made public once adopted;

WTO members are encouraged to recognize the equivalency of each other's organic regulations and shall do so in a non-discriminatory manner.

6.2.3 Legal requirements for standards

When adopting and applying non-mandatory standards on product characteristics and their related PPMs, WTO members are required to ensure that their central and local government standardising bodies, as well as non-governmental and regional ones established within their territory, comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards (Code of Good Practice). This Code of Good Practice is found in Annex 3 to the TBT Agreement and is open to acceptance by any standardising body operating within the territory of a member of the WTO. Standardizing bodies that have accepted (or withdrawn) from this Code must notify this fact to the ISO/IEC Information Centre in Geneva (annex 3, B–C).[29] However, the aforementioned obligation of WTO members to ensure compliance with the Code of Good Practice applies irrespective of whether or not such bodies have accepted the Code (art. 4(1), TBT Agreement). Compliance with this Code amounts *ipso facto* to compliance with the principles of the TBT Agreement (art. 4(2), TBT Agreement).

Concerning the manner in which standards shall be adopted and applied, paras. D and E of Annex 3 provide:

"D. In respect of standards, the standardising body shall accord ***treatment*** *to products originating in the territory of any other Member of the WTO* ***no less favourable*** *than that accorded to like products of national origin and to like products originating in any other country.*

E. The standardising body shall ensure that standards are ***not*** *prepared, adopted or applied with a view to, or with the effect of,* ***creating unnecessary obstacles to international trade****."* (emphasis added)

With regard to the substantive content of standards, paragraph F of Annex 3 states:

"F. Where ***international standards exist*** *or their completion is imminent, the standardising body* ***shall use them****, or the relevant parts of them, as the basis for the*

29 A list of these notifications is available at: www.wto.org. Note that IFOAM has accepted the TBT Code of Good Practice.

standards it develops, ***except where*** *such international standards or relevant parts would be* ***ineffective or inappropriate****, for instance, because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems."* (emphases added).

With a view to harmonising product standards on as wide basis as possible, WTO members are also required to play a full part in the preparation of international standards by 'relevant standardising bodies' and to avoid duplication of the work of standardising bodies established within their territory with that of international and regional ones (annex 3, G–H).[30]

In addition, paragraphs J–Q of Annex 3 lay down a number of procedural obligations on standardising bodies based in WTO members when preparing and adopting voluntary standards. Essentially, such bodies shall:

- publish at least once every six months their "work programme" on the standards adopted or being prepared and notify it to ISO/IEC Information Centre, indicating the international standards taken as basis and explaining any deviation from them;
- make every effort to become a member of ISONET (or to associate itself with a national member of ISONET);
- except in cases of urgency, allow for a 60-day period before adopting the standard(s) so that any interested party within the territory of WTO members can submit comments on the draft standard(s) and take into account the comments received when drafting the final text;
- promptly publish the standard(s) once adopted; and
- make an objective effort to solve any complaints presented by other standardising bodies that have accepted the Code of Good Practice.

As in the case of organic regulations, WTO members have two options when adopting non-mandatory standards on organic agriculture: either to rely on existing international standards or to develop national or regional ones. In either case, such organic standards shall be applied in a non-discriminatory manner (i.e. respect both MFN and national treatment obligations) and must

30 Note: the additional requirement in para. I of Annex 3 that standardizing bodies specify, "where appropriate", standards based on product performance requirements, is not possibly applicable to organic products.

not create "unnecessary obstacles to international trade". Owing to their voluntary character, standards are assumed to be less trade-restrictive than mandatory regulations. Thus, the TBT Agreement does not indicate what kind of policy objectives may be pursued by these standards or the factors that should be taken into account for assessing whether they constitute unnecessary barriers to international trade.

WTO law encourages countries to use international standards as the basis for the development of voluntary organic standards at the national or regional levels. That being said, it does so in a less decisive manner than for technical regulations. For instance, WTO members have more discretion in deciding whether or not existing international standards are sufficiently "appropriate or effective" to be taken as a basis for national or regional standards. Most importantly, the use of international standards does not *ipso facto* lead to a presumption that no "unnecessary obstacle to trade" is being created.

Unlike in the case of technical regulations, the TBT Agreement contains no substantive provisions on equivalency arrangements for non-mandatory standards. The box below summarizes the main TBT disciplines presented in this section:

MAIN TBT REQUIREMENTS FOR NON-MANDATORY ORGANIC STANDARDS:

- organic standards must lay down rules on product-related production methods and processes, compliance with which is (considered) voluntary;
- organic standards shall be prepared and applied in a non-discriminatory (i.e. both MFN and national treatment) and without creating "unnecessary obstacles to international trade";
- organic standards must be based upon relevant international standards, unless these are deemed "inappropriate or ineffective" by WTO members. Basing organic standards upon international ones will not *ipso facto* lead to a presumption that no "unnecessary obstacle to international trade" is being created; and
- national/regional standardising bodies shall publish and notify their work programme to ISO/IEC Information Centre and make every effort to become a member of ISONET.

6.2.4 Common requirements

The TBT Agreement also contains a set of provisions that are applicable to both technical regulation and standards. These relate to: conformity assessment procedures (arts. 5–9); information and assistance to other WTO members (arts. 10–11); special and differential treatment of developing countries (art. 12); and institutional arrangements and dispute settlement (arts. 13–14).

Conformity assessment procedures are technical procedures — such as testing, verification, inspection and certification — which confirm that products fulfil the requirements laid down in regulations and standards. Generally, exporters bear the costs, if any, associated with these procedures. Thus, non-transparent and discriminatory conformity procedures can become effective tools of domestic protectionism and create "unnecessary obstacles to international trade". To prevent these risks, the TBT Agreement establishes a set of substantive and procedural requirements on the operation of procedures for assessing conformity with regulations and standards.

With regards to the manner in which these procedures shall be adopted and applied, Article 5(1) of the TBT Agreement provides:

"5.1 Members shall ensure that, in cases where a positive assurance of conformity with technical regulations or standards is required, their central government bodies apply the following provisions to products originating in the territories of other Members:

> *5.1.1 conformity assessment procedures are prepared, adopted and applied so as to grant* ***access for suppliers of like products*** *originating in the territories of other Members* ***under conditions no less favourable*** *than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation; access entails suppliers' right to an assessment of conformity under the rules of the procedure, including, when foreseen by this procedure, the possibility to have conformity assessment activities undertaken at the site of facilities and to receive the mark of the system;*
>
> *5.1.2 conformity assessment procedures are* ***not*** *prepared, adopted or applied with a view to or with the effect of* ***creating unnecessary obstacles to international trade****. This means, inter alia, that conformity assessment procedures shall not be more strict or be applied more strictly than necessary to give the importing Member*

adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create." (emphasis added).

In addition to these general non-discrimination and necessity requirements, WTO members must also ensure that:

- conformity assessment procedures are undertaken and completed as expeditiously as possible and in no less favourable order for imported than for domestic products (art. 5(2)(1), TBT Agreement);
- information requirements are limited to what is necessary to assess conformity and determine fees (art. 5(2)(3), TBT Agreement);
- confidentiality of information obtained about imported products is respected in the same way as for domestic ones and in such a manner that legitimate commercial interests are protected (art. 5(2)(4), TBT Agreement);
- any fees imposed for assessing the conformity of products imported from WTO members are equitable to those charged to like products of national origin or originating in any other country, taking into account communication, transportation and other costs arising from differences between location of facilities of the applicant and the conformity assessment body (art. 5(2)(5), TBT Agreement); and
- a procedure exists to review complaints concerning the operation of a conformity assessment procedure and to take corrective action when a complaint is justified (art. 5(2)(8), TBT Agreement).

Concerning the substantive content of conformity assessment procedures, Articles 5(4)–5(5) of the TBT Agreement stipulate that:

"*5.4 In cases where…**relevant guides or recommendations issued by international standardising bodies** exist or their completion is imminent, Members **shall** ensure that central government bodies **use them**, or the relevant parts of them, **except where**, as duly explained upon request, such guides or recommendations or relevant parts are **inappropriate** for the Members concerned, **for**, inter alia, **such reasons as**: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems.*

5.5. With a view to harmonising conformity assessment procedures on as wide basis as possible, Members shall play a full part, within the limits of their resources, in the preparation by appropriate international standardising bodies of guides and recommendations for conformity assessment procedures." (emphasis added).

As to the recognition of conformity assessment procedures of other WTO members, Article 6 of the TBT Agreement states:

"*6.1 …Members* ***shall ensure, whenever possible, that results of conformity assessment procedures in other Members are accepted****, even when those procedures differ from their own, provided they are satisfied that those procedures offer assurance of conformity with applicable technical regulations or standards* ***equivalent to their procedures****…*

6.3 Members are ***encouraged****, at request of other Members, to be willing to enter into negotiations for the* ***conclusion of agreements for mutual recognition of results*** *of each other's conformity assessment procedures…*

6.4. Members are encouraged to ***permit participation of conformity assessment bodies located in the territories of other Members*** *in their conformity assessment procedures* ***under conditions no less favourable*** *than those accorded to bodies located within their territory or the territory of any other country.*" (emphasis added).

In addition, a number of procedural obligations are prescribed in Article 5 of the TBT Agreement. Essentially, these relate to *ex-ante* and *ex-post* transparency requirements when adopting conformity assessment procedures that are *not* based upon "relevant international guides or recommendations" (art. 5(6), TBT Agreement). These include obligations to:

- notify (at the earliest stage possible and when amendments can still be introduced) other WTO members (through the Secretariat) of the proposed conformity assessment procedure, including a brief indication of the products covered, its objectives and rationale (art. 5(6)(2), TBT Agreement);
- without discrimination, allow reasonable time for other WTO members to make comments, discuss these comments upon request, and take these comments and the results of these discussions into account (art. 5(6)(4), TBT Agreement); and

- promptly publish all technical regulations once adopted (or make them otherwise available in such a manner as to enable interested parties in other WTO members to become acquainted with them) and, except for cases of urgency (specified in art. 5(7)), allow reasonable time for producers in exporting WTO members, and particularly in developing-country ones, to adapt their products or production methods to the newly-introduced requirements (arts. 5(8)–5(9), TBT Agreement).

The absence, as yet, of WTO case law on the TBT provisions dealing with conformity assessment procedures renders difficult an evaluation of their implications for organic certification systems. (This term is used in a generic manner in this section, including organic inspection and certification activities as well as official accreditation of certifying bodies). Some general remarks can nevertheless be made. First, procedures for assessing conformity with organic regulations or standards need to observe both aspects of the general obligation of non-discrimination (MFN and national treatment). That is, suppliers of organic products from one WTO member shall have access to these procedures under conditions no less favourable than suppliers of organic products of national origin or from any other country. In addition, such procedures shall not be applied more strictly than necessary or create unnecessary barriers to international trade.

Where relevant guides or recommendations issued by international standardising bodies exist, WTO law clearly favours their use as the basis for national and regional organic certification systems, except if the former are considered "inappropriate" by a given WTO member. Among the indicative list of grounds for determining inappropriateness, the "prevention of deceptive practices" is of most relevance to organic certification programmes. Most significantly, the set of transparency requirements in Article 5 of the TBT Agreement does not apply to organic certification systems based upon "relevant international guides or recommendations." However, the Agreement does not specify which international standardising bodies are considered competent to issue such guides or recommendations.

Although there is no strict obligation upon WTO members to accept the results of organic certification undertaken in other members, they are encouraged to do so whenever possible. In addition, WTO members are encouraged to conclude mutual recognition agreements or to allow for the

accreditation of foreign certification bodies within their organic certification systems, or both. The logic behind this is to avoid the need to obtain organic certification twice (in the exporting country and in the importing one), and thereby reduce the associated costs for traders. Accreditation criteria shall be applied in a non-discriminatory manner to domestic and foreign certification bodies. In principle, the general obligation of MFN treatment applies to mutual recognition agreements, but there are some difficulties as to how it can be complied with in practice.

Lastly, it should be noted that the TBT rules on conformity assessment procedures do not only apply when these are adopted by central government bodies but also by local, regional and non-governmental ones. WTO members shall take all "reasonable measures as may be available to them" to ensure compliance by these bodies with TBT disciplines (arts. 7–9, TBT Agreement).

MAIN TBT REQUIREMENTS FOR ORGANIC CERTIFICATION SYSTEMS:

- organic certification systems must not discriminate between suppliers of organic products (whether foreign or domestic), including, *inter alia*, in terms of access to conformity assessment procedures, processing time and chargeable fees;
- organic certification systems shall not be more strict than necessary to give the importing Member adequate confidence that products conform with the applicable organic regulations or standards;
- organic certification systems shall only require information about imported products to the extent necessary for assessing conformity and fees, confidentiality of information shall be respected and a complaint/review procedure made available;
- organic certification systems shall be based upon relevant international guides or recommendations, unless these are duly justified as "inappropriate" by the WTO member concerned. If based upon relevant international guides/recommendations, organic certification systems are exempted from procedural requirements;
- if not based upon international guides or recommendations, organic certification systems must be notified to the WTO before adoption in order to allow for comments by interested WTO members and must be made public once adopted; and

- whenever possible, WTO members should accept the results of organic certification undertaken in other members, and are encouraged to conclude mutual recognition agreements or to allow for the accreditation of foreign certification bodies within their organic certification systems. This must be done in a non-discriminatory manner.

With respect to **information and assistance**, WTO members are required to establish national enquiry points in order to address all reasonable enquires by other members (or interested parties within them) regarding: proposed or adopted technical regulations; proposed or adopted standards; proposed or adopted conformity assessment procedures (arts. 10(1)–(2), TBT Agreement).[31] In addition, agreements reached among WTO members on issues related to technical regulations, standards, or conformity assessment procedure shall be notified to the WTO (art. 10(7), TBT Agreement).

As to the **special and differential treatment of developing countries**, developed WTO members are expressly required to take into account the interests of developing-country members when preparing and applying technical regulations, standards and conformity assessment procedures (art. 12(3), TBT Agreement). More specifically, developed WTO members shall ensure that such measures do not constitute unnecessary obstacles to the expansion and diversification of exports from developing-country members, through, *inter alia,* the provision of adequate technical assistance (art. 12(7), TBT Agreement). They must also take "such reasonable measures as may be available to them" to ensure an active participation of developing countries in international standardising bodies and international systems for conformity assessment and ensure that, upon request, international standards are developed for products of special interest to developing countries (arts. 12(5)–(6), TBT Agreement). WTO law also allows developing-country members to adopt technical regulations, standards and conformity assessment procedures aimed at preserving indigenous technology and production methods and processes compatible with their development needs, even if this implies departing from relevant international standards. More generally, developing-country WTO members may request to the TBT Committee the granting of specified

31 A list of these national enquiry points, available at: www.wto.org.

time-limited exceptions, in whole or in part, from their obligations under the TBT Agreement. (The TBT Committee is composed of representatives from each WTO members and is in charge of reviewing annually the implementation and operation of the Agreement with a view to recommending an adjustment of the rights and obligations of the Agreement where necessary (art. 13, TBT Agreement)).

Finally, it should be noted that TBT disputes are enforceable through the WTO dispute settlement proceedings (art. 14, TBT Agreement).

6.3 Concluding remarks on WTO law and organic agriculture legislation

As we have seen, there are two WTO covered agreements that are most relevant for national and regional organic legislation: GATT and the more specific TBT Agreement. It is clear that GATT non-discrimination provisions are generally applicable to national legislation, whether it covers related or unrelated PPMs. It is also clear that national organic agriculture legislation comes under the purview of the TBT Agreement, at least in so far as it deals with related PPMs. What is less clear is whether it does so as a mandatory technical regulation or as voluntary standards. Accordingly, it appears most useful to recall here those substantive and procedural requirements in the TBT Agreement that are applicable in both cases.

In general terms, both organic regulations and standards shall be drafted and applied in an origin-neutral manner so as not to discriminate, neither *de jure* nor *de facto*, between organic products originating in different WTO members or against these in favour of domestically-produced ones (i.e. principles of MFN and national treatment). In addition, organic regulations and standards shall not be adopted or applied with a view to creating "unnecessary obstacles to international trade", and thus must not be more trade-restrictive than necessary to fulfil their stated legitimate objectives. Lastly, WTO law imposes a series of *ex-ante* and *ex-post* transparency requirements on the development of national laws, whether enacted as mandatory regulations or voluntary standards.

Whereas WTO law does not prevent countries from developing their own organic standards and rules, it clearly favours recourse to international ones, and particularly so in the case of mandatory organic regulations. In principle,

WTO members basing their organic legislations upon "relevant international standards" would be (rebuttably) presumed to have complied with their obligations under the TBT Agreement. That being said, this Agreement does not specify the international standard-setting bodies recognised as competent to issue "relevant international standards". Nonetheless, standards developed by the Codex Alimentarius Commission have been held to constitute one of such standards in WTO case law.

WTO law also comments on the procedures for the assessment of conformity with organic regulations and standards. Generally speaking, suppliers of organic products from one WTO member shall have access to these procedures under conditions no less favourable than for domestic suppliers or those from any other country (i.e. national and MFN treatment obligation). "Relevant guides or recommendations" issued by international standardising bodies shall be used as the basis for national or regional organic certification systems, whenever "appropriate". In addition, WTO members are encouraged to accept the results of organic certification undertaken in other members, to conclude mutual recognition agreements or to permit the accreditation of foreign certification bodies within their organic certification systems in a non-discriminatory manner. Finally, WTO law prescribes a set of procedural obligations pertaining to the notification and publication of conformity assessment procedures.

That being said, a number of general and specific issues remain uncertain:

- To what extent are organic and conventional agricultural products "unlike", and thus may they be treated differently under WTO law?
- Are national organic laws mandatory or voluntary for the purpose of applying the TBT Agreement?
- Can these measures contain requirements on production process and methods that are "unrelated" to organic products, and in that case would the TBT Agreement (or only GATT) be applicable?
- How exactly can organic equivalency arrangements – particularly if based on the conclusion of bilateral agreements – meet the MFN-treatment obligation?

7. CONCLUDING REMARKS

There are several sources of international guidance on organic agriculture, which may be either specific to this sector or may be nonetheless relevant because of their general nature. Relevant international instruments are very different in nature, ranging from voluntary guidelines to legally binding agreements.

The sources that are specifically devoted to organic agriculture comprise intergovernmentally approved guidelines (such as those elaborated by the Codex Alimentarius Commission), as well as standards developed by international private organizations (such as IFOAM and ISO). The Codex Alimentarius Guidelines on organically produced food are an authoritative source meant to provide assistance to governments wishing to develop national organic agriculture legislation. The IFOAM Organic Guarantee System is a private endeavour to facilitate the development of quality organic standards and certification worldwide, and to provide an international guarantee of those standards and certification. The IFOAM norms are generally respected as the international guidelines for the elaboration of national standards and inspection systems, and they are often used as a reference by standard-setters and legislators in national and international arenas. Similarly, ISO voluntary standards on certification systems may be adopted as part of a national regulatory framework or incorporated into national legislation. The basic elements of national legislation on organic agriculture can therefore be derived from these international instruments, and the next chapter will analyse each element in turn (objectives and principles; scope of application; labelling and claims; requirements for organic production, handling and processing; accreditation and certification; and import requirements) by making reference to the specific guidelines of these international instruments and then to comparative legislation.

International environmental treaties such as the Convention on Biological Diversity and the Convention to Combat Desertification are also relevant for national legislation on organic agriculture. They are legally binding instruments, but have been drafted in general terms so that there is much flexibility in their implementation at the national level. They therefore provide some guiding principles that should be taken into account in developing national policy and laws on organic legislation, such as intersectoral cooperation, decentralization

of management, equitable distribution of benefits, and the use of adaptive management policies that can be modified to accommodate new experience and changing circumstances. In light of the ecosystem approach and the objective of sustainable use, national legislation can therefore be used to: clarify the role of relevant authorities and make them accountable; ensure institutional cooperation; identify mechanisms for multi-stakeholder consultation and for solving conflicts; and create incentives to promote practices that contribute to biodiversity protection and sustainable use, such as organic agriculture.

International trade law is also very relevant when drafting national legislation on organic agriculture: there are two WTO instruments that are most relevant for national laws, namely GATT and the TBT Agreement. Although the exact implications of these WTO agreements for national or regional legislation on organic agriculture are not always clear, three general remarks can nonetheless be made. The WTO principle of non-discrimination implies that national legislation on organic agriculture needs to be drafted and applied in an origin-neutral manner so as not to discriminate, neither *de jure* nor *de facto*, between organic products originating in different WTO members or against these in favour of domestically-produced ones (i.e. in application of the principles of MFN and national treatment). In addition, organic regulations and standards shall not be adopted or applied with a view to creating "unnecessary obstacles to international trade", and thus must not be more trade-restrictive than necessary to fulfil their stated legitimate objectives. Lastly, WTO law imposes a series of *ex-ante* and *ex-post* transparency requirements on the development of national or regional organic laws, whether enacted as mandatory regulations or voluntary standards.

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III

ELEMENTS OF NATIONAL LEGISLATION

Contents

This chapter will guide the reader through the main features of national legislation on organic agriculture. Based on the international instruments analysed in the previous chapter, in particular the Codex Alimentarius guidelines and the IFOAM standards, this chapter will identify key elements to be addressed by national drafters and will also provide drafting options. The recommendations are based on national legislation on organic agriculture from a group of representative countries discussed in detail in Part II of this book, as well as on national legislation included in the FAO database of natural resources legislation – FAOLEX.[32]

As a starting point, national drafters should clarify the goal(s), objective(s) and desired outcome(s) of establishing organic agriculture legislation. Consultation should be conducted with the organic private sector and related civil societies to this purpose, also taking into consideration alternative regulatory mechnisms. Many regulations, including those in the accompanying case studies, are set to regulate the various stages of the organic agriculture chain so as to provide legal certainty to organic operators and protect consumers from misleading practices. Regulations for domestic market or for export market access differ in their goal(s), objective(s) and desired outcome(s). While regulations in Europe and the US were set for domestic market purposes, legislation set by developing countries, e.g. Argentina, was promoted to facilitate on-going export to the EU under the EU 3rd country listing provision for import.

Organic agriculture legislation for the purpose of regulating market labelling of organic claims normally include provisions that regulate: (i) what an organic product is, and the manner in which it can be differentiated from a conventional product in the market; (ii) who is the competent authority or authorities; governance structure and participation of private sector; (iii) the need for conformity assessment and permitted type(s) of conformity assurance systems [a number of latin american countries allow Participatory Guarantee Systems]; (iv) sanctions for violations; and (v) support provisions.

This chapter will start with some general advice on good practices in legislative drafting, and then illustrate different provisions that may be incorporated in organic agriculture legislation with alternative options. The sequence of

32 FAOLEX is a comprehensive and up-to-date computerized legislative database, one of the world's largest electronic collections of national laws and regulations on food, agriculture and renewable natural resources, available at faolex.fao.org.

provisions will vary depending on the legislative practice in each country, as will the overall design of the legislation.

1. GENERAL ADVICE TO LEGAL DRAFTERS

Legislators should aim at developing clear legislation to foster compliance. Legal instruments must be written in accessible language, and the legal discipline should be presented in a logical order, with general rules preceding specific ones. Legal drafting should thus be undertaken from the perspective of end users. This will also avoid or minimize doubts or conflicts in the interpretation of legislation by national courts.

Secondly, the process by which legislation is written can facilitate or obstruct its future implementation. New legal provisions should be drafted in a participatory manner to increase understanding among stakeholders regarding the substance of the law and the exercise of their rights. Participatory legislative drafting involves the genuine involvement of all categories of stakeholders at the central and local level, in urban and rural contexts (different government entities, central and local institutions, farmers, local and indigenous communities, traditional users of natural resources, private sector organizations, NGOs, etc.). It also requires a true commitment to understanding the needs, objectives, insights and capacities of intended users of the law and to find ways to accommodate multiple interests. Participatory legislative drafting greatly contributes to the quality and clarity of legislation as a result of the information and perspectives gathered through public consultations. More importantly, as a result of the sense of ownership and legitimacy nurtured by participatory legislative drafting processes, public acceptance of and compliance with legislation are likely to increase.

Legislation regulating organic production and the labelling of organic products (herein after organic agriculture legislation) covers a wide array of technical subject matters, which calls for an interdisciplinary approach in the preparation of legislation. Legislative drafting should not be the job of lawyers alone, but

rather a joint effort of lawyers, technical experts and end users. And because organic production and labelling touches on a number of other areas of law (environment, land, traditional agriculture, standards, food security, animal and plant health, trade, etc.), the drafting exercise should include a range of relevant experts, including industry players, civil society and users.

Furthermore, organic agriculture legislation should be realistic: legal provisions should be capable of implementation and being complied with, taking into account the capacity of public authorities and the citizenry. On the other hand, when national capacities for the implementation of the proposed legal innovations are weak, legal requirements can be introduced in an incremental fashion and be reviewed and added to in time as capacity increases.

In many countries in the world, implementing regulations are often absent or their enactment is significantly delayed. This can affect implementation of the primary law. Therefore, drafters need to carefully identify provisions that should be included in the primary law and those that should be left to subsidiary legislation (rules, decrees, by-laws, regulations, etc.). The level of detail in the main law should suffice for it to be operational on its own, but it should not include so many technical issues that it will become outdated too quickly. At a minimum, the main law should spell out the basic objectives and principles, the powers and responsibilities of the relevant public authorities, the duties of citizens and the procedures applicable under the law. Technical matters should be promulgated as regulations or other subsidiary instruments to avoid the need to return to parliament to make any changes. In deciding what exactly should be contained in the principal law and what should go into the subsidiary instruments, legal drafters should follow the legal tradition in the country, and take into consideration existing legislation.

Legislators should also consider if there are possibilities to make direct reference to existing standards, national or international in the legislation instead of specifying the actual requirements in the regulation. For example, the EU legislation makes reference to the ISO 65 and The East African Standards make reference to the IFOAM and Codex Alimentarius lists of inputs.

2. ANALYSIS OF EXISTING LEGISLATION WITH POTENTIAL IMPLICATIONS FOR ORGANIC AGRICULTURE

Before developing new legislation, it is essential to identify and analyse all of the existing legal provisions that are directly or indirectly related to the organic sector. This helps determine the parameters within which new legislation will be developed and the legal mandates of the different institutions likely to be involved in the organic sector. The analysis can also help identify gaps in coverage as well as insufficient or outdated legislation that may affect production, processing and labelling of organic products. It is also useful to identify and take into account instances in which existing laws have proven difficult or even impossible to implement or enforce, with a view to avoid repeating past mistakes.

The analysis should start with national policy guidelines and strategies regarding organic agriculture and environmental protection, as well as market labelling, quality assurance and fair trading practices. National policies will specify relevant national priorities and objectives as well as provide useful indications on the relevant institutional set-up for the organic sector. Bearing in mind the policies while analysing the relevant legislation can serve to identify gaps or legislative provisions which may have hindered the implementation of the policy objectives. Involving different government agencies, experts, industry and end users in the analysis of the existing legal framework and in the development of new or amended legislation for the organic sector will help drafters better understand how existing laws are interpreted and implemented, while at the same time ensuring the proposed legal texts on organic agriculture complement the existing legal framework. It will also assist in determining whether any amendments to related legislation are called for.

National drafters should thus start by screening existing national legislation in the areas directly or indirectly affecting different stages of the organic production chain, such as:

- plant production and phytosanitary protection;
- animal health and production (including aquaculture);
- food industry;

- food safety;
- packaging and labelling;
- marketing and advertising;
- quality assurance and/or certification;
- supervision of certification and/or accreditation;
- rules for import and export of agricultural inputs and products;
- land use and environmental protection;
- irrigation water and soil quality; and
- legislation on farmers' groups.

The review could start by focusing on legislation governing primary agricultural production (crops and animals). This will include legislation covering the designation and functions of the entities competent for monitoring primary production and regulating conventional agricultural inputs such as pesticides and fertilizers. Legislation pertaining to soil, water and environmental protection may also be relevant (see section 3.1.3 below).

For food products, legislation on food should be reviewed to understand the existing framework for regulating the food control system, including inspections, use of food additives, traceability of ingredients and foods and labelling. If there is consumer protection legislation it may regulate related issues such as labelling of pre-packaged foods, unpackaged foods, food storage and food advertisement. Food legislation may also contain provisions on quality certification. National provisions on import and export requirements may also be relevant, as well as legislation on accreditation and certification. Feed and non-food products (such as textiles) may also be regulated under specific rules of production, labelling and commercialization.

National drafters may also need to take into consideration existing provisions on the establishment of new government/public entities or the attribution of new powers and responsibilities to existing entities, since organic legislation will have to identify an authority for implementation of the law. Legislation on the delegation of powers and on supervision is also relevant for systems allowing third party certification.

3. BASIC ELEMENTS OF NATIONAL LEGISLATION ON ORGANIC AGRICULTURE

This section will address elements of national legislation on organic agriculture. A government's decision on what to include will depend on the national legal system, national policies and national practice, so the following analysis should be taken as a broad guideline. The specific elements addressed in the following sections are: opening provisions (including objectives, scope of application, principles and definitions); institutional issues (including the designation and mandate of one or more authorities, mechanisms for institutional coordination and public participation); labelling and conformity assessment; requirements for organic production (rules on plant and animal production, rules on handling and processing and prohibitions of or restrictions on using certain substances or production methods); labelling, packaging and marketing; supervision and conformity assurance; import and export of organic products; violations and penalties; promotion of organic products; and concluding provisions.

3.1 Opening provisions

General provisions are usually placed at the beginning of a law to provide a statement of regulatory goals, objectives, desired outcomes, definitions of key terms used in the law and a description of the scope of the law. These opening provisions are useful in clarifying the policy aim of the legislation for the reader, and in linking the piece of legislation at issue with other relevant laws or regulations. In the case of organic agriculture legislation, which is a relatively new area of law, it may be important to help citizens as well as public officials understand the innovative aims and underlying philosophy of organic agriculture legislation.

3.1.1 Objectives

The ultimate goal of organic agriculture legislation is to facilitate the accomplishment of organic agriculture objectives, and enhance the trade of organic products. Specific objectives of organic legislation are to regulate organic production claims, to implement organic certification and to aid the organic trade import and export markets.

One of the most common objectives of organic agriculture legislation to-date is regulating the labelling of organic products, with a view to protecting consumers' interests. In the United States, legislation refers to governing the labelling of certain agricultural products as organically produced goods, assuring consumers that such products meet a consistent standard and facilitating interstate commerce in fresh and processed food that is organically produced (Organic Production Act, sec. 2102).

The statement of objectives in organic legislation may also emphasize the environmental benefits of organic agriculture. The Canadian Organic Standard simply states that the principal goal of organic agriculture is to develop enterprises that are sustainable and harmonious with the environment (Canadian Organic Standard, Introduction, I, p. iii).

European Union Regulation 834/2007 incorporates both of these objectives. The Preamble and Article 1(1) refer to setting the conditions for the sustainable development of organic agriculture while ensuring the effective functioning of the internal market, guaranteeing fair competition, fostering consumer confidence in organic products and protecting consumer interests (Preamble; art. 1(1)). Article 3 further refers to a variety of environmental objectives: respecting nature's systems and cycles; sustaining the health of the soil, water, plants and animals and the balance among them; contributing to a high level of biological diversity; ensuring responsible use of energy and natural resources; and respecting high animal welfare standards. Turkey's legislation also addresses both objectives: the principal piece of organic agriculture legislation has the objective of ensuring high-quality and safe organic products (Organic Farming Law, art. 1), while its implementing regulation also makes reference among its objectives to the protection of the ecological balance (Regulation on Essentials and Implementation of Organic Farming, art. 1).

3.1.2 Principles

Often national legislation identifies general principles that help in interpretation and implementation. Legal principles may also be useful in developing subsidiary legislation.

National organic agriculture legislation may include the principles of the Codex Alimentarius Guidelines, as for example in the Canadian Organic

Standard. The Standard sets forth principles related to the protection of the environment, soil fertility, biodiversity, recycling, health and behavioural needs of animals, maintaining organic integrity and reliance on renewable resources in locally organized agricultural systems (Canadian Organic Standard, Introduction, I–II). National legislation may also make reference to the IFOAM principles – health, ecology, fairness and care. The East African Organic Products Standards, which were issued in 2007 by the East African Community to support the standardization of organic agriculture production according to East African conditions,[33] reproduce the IFOAM principles in an annex (annex A).

EC Regulation 834/2007 makes reference to an elaborate series of principles (see art. 4), *inter alia*: the exclusion of the use of GMOs; design and management methods based on precautionary and preventive measures; the restriction of the use of external inputs; the strict limitation of the use of chemically synthesized inputs except in exceptional cases; and the possibility to adapt organic agriculture standards, where necessary, to regional differences in climate and local conditions. As a legally binding text intended to be implemented by each member state, the principles in the regulation play a significant role in guiding the development of national legislation at the member state level.

In Japan, legislation lays down specific principles for production methods for different products, usually focusing on the **environmental** benefits of organic agriculture. Similarly, in Switzerland, explicit reference is made to respect of natural cycles and processes, and to other Swiss legislation related to the protection of animals, water, the environment, nature and landscapes (Ordonnance du Conseil Federal Suisse du 22 septembre 1997, art. 3). In Australia, the principles set out in the National Standard include highest quality products, sustainable use of land and other natural resources, non-use of synthetic or artificial products, the maintenance of biodiversity and prevention of contamination of organic products from conventional agricultural products (National Standard for Organic and Bio-Dynamic Produce).

33 The standards are not legally binding, but are considered a useful reference in the preparation of national legalisation. Their full text is available at: www.unep-unctad.org.

Principles may also be useful in drawing the attention to **social** issues related to organic agriculture. The above-mentioned East African Organic Products Standards make reference to social justice, including respect for human rights and fair working conditions, freedom of association, right of workers to organize themselves and bargain collectively, the prohibition of discrimination and child labour and the provision of health and safety measures for employees, casual workers and contractors (art. 4(5)).

3.1.3 Scope

The scope of organic agriculture legislation is usually circumscribed by two criteria: (1) which production systems and products thereof are governed by the legislation and (2) the operations requiring formal conformity assurance audit for products produced to qualify for labelling as organic.

(1) As to **which production systems and products are covered**, all countries include unprocessed and processed products from crop cultivation and wild collection for human consumption. Not all countries include livestock and aquaculture among the products that can be certified as organic. Certain countries (Japan, United States, Switzerland and the European Union) also include products destined for animal consumption. Argentina's legislation specifies that semi-processed products are also included.

As regards processed products, the European Union limits its scope to those products used for consumption as food. Argentina explicitly excludes fibres, wood and paper. The United States instead allows organic certification of fibres, and Croatia issued a specific ordinance on organic agriculture in fibre processing in 2005 covering different categories of textile products as well as processing agents and other substances that would become part of the textile. Where it occurs, drafters should also think about silk production. Other emerging market segments for consideration include body care products, cosmetics and mass food catering services. As a general guide, it is best not to include a scope of production and processing which has not reached a stage of development in the country to foster the competence and experience required for standard setting.

National laws differ on whether to include products that are derived from the hunting of wild animals. These are included within the scope of organic

agriculture legislation in Argentina and the United States, whereas they are specifically excluded in India, Tunisia and Canada. Bees are included within the scope of organic agriculture legislation in Argentina, Canada, India, Tunisia and South Africa. Along similar lines, the European Union includes products of aquaculture, but excludes the products of fishing. In Turkey, crops gathered from forests and natural areas are included in the scope of organic legislation (Regulation on Essentials and Implementation of Organic Farming, art. 2).

(2) With regard to **organic operations**, in principle only operations that affect the organic quality of the product in the product chain of custody, from primary production to reaching the consumer should be regulated in the scope of the organic legislation, to ensure the integrity of the organic product. Operations that handle but do not add or make any changes to the products handled, such as transportation companies, normally do not need to be regulated. Not all national laws analysed for this study specifically mention all of these operations. Some national legislation emphasizes only a certain stage of the organic production chain, leaving to private non-binding standards the regulation of other stages.

Often, "production", "preparation" and "distribution" of products covered by the legislation are mentioned in the provision addressing the scope of the law. Marketing, import and export are also included in the legislation in Argentina and Japan, the latter of which also refers to re-packaging. Turkey's legislation refers to transportation and storage (Regulation on Essentials and Implementation of Organic Farming, art. 2).

"Handling" is also often referred to in national organic legislation among operations, although the definition of handling may differ. The Canadian Organic Standard defines "handling" as an operator receiving or otherwise acquiring organic agricultural products for sale, including final retailers that process, transform, repack or re-label such products. In the United States, legislation distinguishes between "producing" (which includes growing) and "handling."

Legislation may expressly exclude some operations from its scope. This is the case of the European Union Regulation 834/2007 which explicitly excludes "mass catering operations", defined as the preparation of organic products in restaurants, hospitals, canteens and other similar food business at the

point of sale or delivery to the final consumer. The regulation then specifies that member states may wish to apply national rules or private standards on labelling and control of products in mass catering operations.

3.1.4 Definitions

Definitions are crucial to the understanding of a law, to prevent confusion and ambiguity in its implementation and enforcement. When a word has a range of possible meanings, the definition serves to narrow its use down to a single clear meaning. In other instances, a complex concept which is referred to repeatedly may need to be defined so as to create a simpler (shorter) way to make reference to it in the rest of the operative part of the text. Certain defined terms may also be useful to delineate the scope of application of the legislation. On the other hand, it is important to avoid defining terms or concepts that are unnecessary, either because they do not appear in the law or because they are terms in common usage in the language of the country.

Legal drafters should carefully assess whether a technical or scientific definition would be a useful aid in interpreting the law, or whether another more tailored definition may be preferable in light of the desired policy. Where various specific terms or expressions are defined, attention must be paid to avoiding the inclusion of unnecessary details or subtle distinctions which, although commonly utilized as technical terms, do not have practical consequences in the interpretation of the law. Finally, definitions should not include operative provisions.[34]

Another recommendation is to make sure that the terminology used is consistent with other relevant sectoral laws. This is a general rule that is particularly true for organic agriculture legislation, which is tightly linked to a variety of areas of law. General definitions such as food, animals, drinking water, labelling or packaging materials should be drafted in a manner consistent with the relevant national legislation. Definitions may be made by reference to other laws to avoid duplication both at the drafting stages and during amendment processes. It is more precise and more manageable for parallel definitions to be drafted once and then referenced to in subsequent legislation. This is also

34 K. Rosenbaum, Legislative drafting guide: A practitioner's view, Legal Paper Online No. 64, 2007 (available at www.fao.org).

the case for industry-oriented definitions, such as accreditation, certification or quality control.

International texts, such as the Codex Alimentarius Guidelines or IFOAM Standards, could be relied upon in drafting definitions. Using international definitions will foster harmonization, which may facilitate the international trade of organic products. When the intention is to export organic products to a specific country or region, the drafter may also take into consideration the definitions adopted by legislation applicable in the target region or country.

Different definitions may be necessary to facilitate the implementation of a law. Of major importance for organic legislation is the definition of **"organic"**. Both South Africa and the Philippines (Philippines National Standards Specification for Organic Agriculture) define the term "organic" in a similar manner to the Codex Alimentarius Guidelines, i.e. it refers to management practices that take into account biodiversity, soil biological activity, long-term soil fertility, recycling opportunities, reliance on renewable resources in locally organized agricultural systems, minimizing all forms of pollution and careful processing methods. In Argentina, legislation defines in the same way a range of terms used in organic agriculture such as "ecological, biological or organic." They all refer to any system of agricultural production that is sustainable in the long-run, avoids the use of chemically synthesized substances and other substances with a toxic effect (real or potential) on human health, provides healthy products, maintains or increases the fertility and biological activity of the soil, maintains water resources, intensifies the biological cycles of the soil for the purpose of plant and animal nutrition and provides the necessary conditions to meet the biological needs of plants and the biological and behavioural needs of animals. The Canadian Organic Standard defines organic production as a holistic system designed to optimize the productivity and fitness of diverse communities within the agro-ecosystem, including soil organisms, plants, animals and people. Croatia includes in the definition of organic production not only sustainable management in agriculture but also in forestry, and makes reference to "commercially and socially justified technological methods, operations and systems" (art. 2).

Legislation may include definitions of the different organizations or units in the institutional framework for organic agriculture (see section 3.2 below). The Codex Alimentarius Guidelines simply state that **"competent authority** means

the official government agency having jurisdiction". Competent authority is defined by EU Regulation 834/2007 as the central authority competent for the organization of official controls in the field of organic agriculture, or any other authority on which that competence has been conferred. Together with the competent central authority, the Regulation introduces the concept of "control authority", defined as any public administrative organization of a member state to which the competent authority has conferred, in whole or in part, its competence for the inspection and certification in the field of organic agriculture (and, if relevant, in third states). This further level of definition likely represents the more complex markets and administrative capacities of the EU, for most national legislation the actual authority (e.g. the Ministry of Agriculture) is explicity stated in the legislation.

The legislation will have to define the body or bodies which carry out certification or accredidation, if certification requirements are part of the legislation. The Codex Guidelines define **"certification body"** as the entity responsible for verifying that a product sold or labelled as "organic" is produced, processed, prepared, handled and imported according to the Guidelines. The United States National Organic Program (NOP) uses the term "certifying agent", defining it as "any entity accredited by the Secretary of Agriculture ... for the purpose of certifying a production or handling operation as a certified production or handling operation".

3.2 Institutional set-up

As noted above, organic agriculture legislation serves to define the role and functions of different actors involved in labelling and conformity assessment in the organic sector. These usually include a public entity or joint public-private sector board designated to implement or coordinate implementation of the legislation (competent authority); an advisory inter-sectoral body representing the different interests related to the organic production chain if the competent authority is only a public entity; control bodies (certification bodies) authorised to certify operations and products comply with the referent national standards or technical requirements; and organic operators. A number of legislative frameworks, particularly in Latin America, e.g. Brazil, also recognise self-organised comunity based guarantee systems also known as Participatory Guarantee Systems (PGS) as an alternative to third party certification.

This section will address two key issues related to the institutional set-up: the selection of a lead public institution and mechanisms for inter-institutional coordination and public participation in decision-making.

3.2.1 Competent authority

Countries may designate an existing national institution or establish a new body to be responsible for implementation of the legislation. In the former case, countries need to take into consideration the scope and capacity of the existing institution. The organic sector is cross cutting and can potentially include a wide scope range even if the starting scope is only crop production. The institution should preferably have regulatory experience over a similar scope of activities as intended in the legislation, i.e. oversight over development of a sector, including primary production, product processing, handling, marketing and trade.

In Argentina, the Ministry of Agriculture, Livestock, Fishery and Food, through its National Service for Agricultural Health and Quality, is designated by legislation as the sole regulatory body for all organic products. The ministry of agriculture is also the designated competent authority for organic agriculture in Croatia, South Africa, Tunisia and Turkey, whereas in India it is the Ministry of Commerce. In Canada, the responsibility for enforcing organic agriculture legislation is entrusted to the Canadian Food Inspection Agency. In the United States, the Secretary of Agriculture is mandated to establish an organic certification programme.

Overall, the question of which ministry or agency should take the lead in the administration of organic agriculture legislation will depend on the circumstances at play in each country. The amount and kind of resources which each ministry or unit possesses is relevant, although the institutional capacity should not be considered static or immutable. It is necessary to make a very fair and real assessment of the kinds of resources – physical, financial, human – available within each entity before making such a determination.[35] Similarly, multiple existing and competent institutions can complicate the initial assesment of authority delegation. In a number of countries there are many authorities with a role in organic production, e.g. one for plant production

35 Vapnek, J. & Spreij, M., 2005. Perspectives and guidelines on food legislation, with a new model food law, FAO Legislative Study No. 87.

and another for animal production, or regional competent authorities. This can create confusion and extra costs (e.g., if certification bodies have to be approved by several authorities, possibly to conflicting demands).

As it is a cross cutting sector, instead of a single institution as the competent authority, some countries can establish a joint governing body comprised of representatives from relevant public institutions, the private sector and civil society. The Philippines' legislation establishes a National Organic Agriculture Board comprised of related public institutions and producers as well as NGO representatives as the top policy making and sector goverance body.

After designating the competent authority, the legislation must define its mandate. The legislation may assign executive functions to the authority or limit its role to the coordination of the system of organic agriculture. In any case, national legislation should provide the competent authority with adequate powers to serve its given function.

Tasks assciociated with governance and implementation include the following:

- approve or update standards for organic production and processing. This includes approving or updating the list of substances and external inputs that may be used for organic production, taking into consideration the international lists of reference (see section 3.4.5 below). When necessary, authorize exceptions and inform operators of risks to the organic integrity of the product;
- ensure that all producers have access to relevant information and equal opportunities to carry out organic production;
- establish norms and approval/registration systems for conformity assessement;
- conduct approval/registration and supervision of certification bodies and community based guarantee systems as applicable;
- maintain registries of operators, certification bodies and community based guarantee systems;
- maintain survielliance of certification bodies, community based guarantee systems and implement sanctions accordingly;
- promote organic labeled products in domestic markets and monitor use of the national organic mark (if one is established), organic claims and

like labelling indications in domestic markets and initiate legal action against violations accordingly; and

- enhance the exports of organic products, facilitate equivalence agreements and the recognition of organic systems by foreign trading partners.

Depending on its institutional set up, countries may vest implementation powers to the competent authority over the full range of tasks or a mix of implementation power and oversight role as it relates to the organic sector where existing implementing institutions exist.

The competent authority may also be empowered to represent the country in international fora on organic agriculture; and undertake other activities necessary for implementing the national organic policy.

3.2.2 Institutional coordination and public participation

Given the cross-sectoral nature of organic agriculture, institutional coordination is an essential component of the legal framework. Mechanisms of institutional coordination also facilitate public participation in decision-making related to organic agriculture, when they allow members of the public or specific non-governmental stakeholders to be represented in such mechanisms, so that the interests of organic producers, consumers, environmental interest groups and other concerned stakeholders can be taken into account. Institutional coordination is particularly necessary when a sole institution instead of a joint board model is adopted as competent authority. Both models will also depend on other central or decentralized entities for implementation of the legislation.

Where a sole institution model is adopted, one legal option for institutional coordination and public participation is to establish a **multi-stakeholder advisory committee or commission**, mainly tasked with the provision of recommendations to the competent authority. In Argentina, an Advisory Commission is composed of representatives from various ministries and other public bodies as well as from the private sector, including associations of producers, traders, certifiers, consumers and environmental groups. Similarly, in the United States, a National Organic Standards Board is composed of representatives of organic farmers, handlers and retailers, representatives of consumer interest groups, and experts in areas of environmental protection

and resource conservation. Along the same lines, in Croatia, a Commission for Organic Production is composed of representatives of relevant government agencies, as well as producers, consumers, NGOs and researchers. In Australia, an Organic Industry Export Consultative Committee has been created so that the competent authority can interact with research institutions, associations of organic farmers and retailers.

Another legal option is the creation of a **deliberative body** with some collective executive functions, made up of a variety of stakeholders, that may approve modifications to the organic agriculture standards and the lists of authorized inputs, or monitor the accreditation of certification bodies. This is the case in Japan, where the Council for Agricultural and Forestry Standards – which is composed of consumers, producers, distributors, academic experts and other stakeholders – has final authority over the establishment of, and subsequent amendments to, standards. Similarly, in Canada, a standard-setting committee includes governmental and non-governmental representatives. In this regard, it should be noted that when private parties are involved in decision-making committees, legal provisions should address potential conflicts of interest.

Whenever private or non-governmental sectors are invited to participate in some capacity, it is important to determine the role of each actor. It is important to specifically circumscribe the power delegated to non-public fuctionaries and the need to ensure public monitoring in these cases. A deliberative body composed of a range of institutions should not be able to dictate or capture the regulatory processes. Clear delineations between advisory and executive powers and functions should be drawn.

A third alternative is for legislation to establish **two or more committees** with different functions. In Tunisia, the legislation has established both a consultative body, with the main tasks of making proposals for developing organic agriculture methods and giving advice With regard to the granting or withdrawal of accreditation, and an advisory body which plays an important role *vis-à-vis* organic producers and processors.

Two committees have also been established in Turkey. The Organic Farming Committee, under the Ministry of Agriculture, is a public body composed exclusively of representatives of relevant government entities (including foreign affairs). It is empowered to evaluate applications for accreditation; register

accredited institutions; supply identification cards to inspectors and certifiers; grant and revoke auditor and certifier accreditations; perform inspections of accredited institutions; propose appropriate penalties to the ministry in case of violation of the organic farming legislation; support the development of organic farming in Turkey; and follow up on international developments and propose modifications, as needed, to national legislation. Decisions of the Organic Farming Committee become effective after the approval of the Ministry of Agriculture (Regulation of the Ministry of Agriculture, art. 45). In addition, the Organic Farming National Guidance Committee is in charge of promoting organic agriculture and of coordinating actions with organizations and agencies outside the Ministry of Agriculture (Organic Farming Law, art. 4). The committee's membership is mixed: members represent private and public bodies such as governmental agencies, professional associations, civil society organizations, universities, etc. (Regulation on Essentials and Implementation of Organic Farming, art. 46).

An alternative approach to creating a coordinating body is simply to include legal provisions that **require cooperation** among governmental actors in specific circumstances. This is the case in Tunisia, where ministerial orders have been adopted on institutional cooperation for the promotion of organic agriculture. Further provisions call for cooperation with the ministries of economy and trade with respect to organic production of fibres, and with the Office of Standardization and Metrology on conformity assessment systems for organic production. In Switzerland, cooperation clauses are drafted in discretionary terms: the Federal Department of Economic Affairs "may cooperate" with the Federal Department of Home Affairs on the labelling of products (Ordonnance du Conseil Federal du 22 septembre 1997, art. 18(10)), while the Federal Office for Agriculture "may consult" the Federal Office of Public Health when intending to allow the use of ingredients that are not accredited by the Federal Department of Economic Affairs (art. 18(2)). In addition, the Federal Office for Agriculture may recognize foreign certification bodies after consultation with the Swiss Accreditation Service (art. 33). In Croatia, provisions call for cooperation between the ministry of agriculture and the ministry of environment on the definition of minimum soil management requirements for organic production, on organic production of fibres and edible plants (Law on organic production of agricultural products and foodstuff, arts. 9(2) and 11(2); Ordinance on organic production of 2001, art. 12).

3.3 Labelling

Provisions on labelling provide the legal means to regulate the marketing of national and foreign organic products, with the aim of protecting consumers from being misled about the organic identity of a product. To this end, subsidairy legislation needs to clearly establish (i) what is organic and can be labelled as such; (ii) how organic products should be labelled; (iii) a system of claims and remedies for cases of labelling not in compliance with the law. In developing labelling rules for organic products, national legislators should consult the Codex Alimentarius Guidelines as well as other international standards, such as IFOAM standards.

In addition to the topics just listed, labelling provisions may also cover in-conversion products or in-conversion ingredients (i.e. products by producers not yet fully certified but on the way to being such). Other elements that may be addressed are the labelling of organic animal feed, vegetative material or seeds. The legislation will usually distinguish categories of organic products, and may identify a pictogram to be used as the logo for compliant organic products and set out the rules for its use and the use of additional pictograms, such as private certification logos. Specific rules regarding selling unpackaged organic products may also be required. Labelling provisions for organic products should be consistent with other national legislation on labelling of food and food products.

As noted, the main purpose of the labelling regime for organic products is to ensure that products that are labelled as organic have been produced according to set requirements or their equivalent. For example, European Union Regulation 834/2007 states that reference to organic agriculture on labels (or in advertising) is only allowed for products that satisfy production and processing requirements established under the legislation. In addition, the Regulation prohibits terms or practices in labelling and advertising that are liable to mislead consumers, such as "bio" or "eco". Similarly, in Canada, the legislation provides that the use of "biodynamic," "biological," "ecological," or "organic" on labels or in advertising means that the product has been labelled as "organic".

With regard to processed **products**, most countries require that 95 percent of the ingredients be organic in order for a product to be labelled as organic (e.g. Japan). There are, however, significant variations.

- In the United States, raw or processed products that contain 100 percent organically produced ingredients can be labelled "**100 percent organic;**" those with at least 95 percent organically produced ingredients can be labelled "**organic**" and those with at least 75 percent can be labelled "**made with organic**".
- In Argentina, single-ingredient 100 percent organic products can be labelled "**product of organic agriculture**" or "**ecological product of animal origin**" on the sales display; multi-ingredient products with at least 95 percent organic ingredients can bear the same label but need to specify which ingredients are not organic; and multi-ingredient products with less than 95 percent organic ingredients may only contain an indication in the ingredients list for the ingredients used that are organic.
- in India, single-ingredient 100 percent organic products can be labelled "**product of organic agriculture**"; multi-ingredient products with at least 95 percent organic ingredients can be labelled "**certified organic**"; multi-ingredient products with at least 75 percent organic ingredients can be labelled "**made with organic ingredients**"; and multi-ingredient products with less than 75 percent organic ingredients may only contain an indication in the ingredients list for ingredients used that are organic.
- In Canada, the Philippines and South Africa, multi-ingredient products with at least 95 percent organic ingredients may be labelled as **organic**; multi-ingredient products with 70–95 percent organic ingredients can only be labelled with the statement "**contains X percent organic**" or **"made with organic ingredients"**; whereas products with less than 70 percent organic ingredients may only contain an indication in the ingredients list for ingredients that are organic.

In the European Union, a differentiation is made between:

- unprocessed single ingredient agricultural products, for which organic labelling and advertising is only permitted if the entire product has been produced in accordance with the prescribed organic requirements;
- processed multi-ingredient products, for which the term "organic" can only be used on the sales description for products that contain at least 95 percent organically produced agricultural ingredients; and the term "organic" can only appear in the ingredients list for products that contain less than 95 percent organically produced agricultural ingredients; no single ingredient may be composed of organic as well as non-organic parts; and
- processed products whose main ingredient derives from hunting and fishing, for which the term "organic" can only be used on the ingredients list near the sales description only if all other agricultural ingredients are also organic.

Additional requirements on how organic claims can be made should also be spelled out in subsidiary legislation. In Canada, for instance, it is clarified that all labels must specify the name of the certification body that certified the product as organic, and for imported organic products it is necessary to include the statement **"Product of... (country)"** or **"Imported"**. European Union legislation spells out a number of requirements for organic labels and claims, such as the need to include the code number of the accredited certification body. In India, the label should identify the person or company responsible for the production and processing of the organic product, and all raw materials of multi-ingredient products, including additives, should be listed on the label by their percentage of the product's weight. In Turkey, the label must include the name of the product and information about its certification; the fact that the product has been produced in accordance with relevant legislation; the name, code number, certificate number and logo of the competent certification body; information on the ingredients; the origin of the product; the place and date of production; and the expiration date. Even imported products must be labelled in Turkish (Regulation on Essentials and Implementation of Organic Farming, art. 24(a)). In general, it is recommended that rules regarding labelling of organic are streamlined with general labelling rules instead of having different requirements which potentially can create conflicts and confusion, e.g. that country of origin rules,

rules on how ingredients are listed and rules regarding language of labels are the same for organic and non-organic.

Australian law addresses the size of the wording on organic labels: organic ingredients must appear in the same colour, style and size as other listed ingredients; and the ingredients must be listed in descending order with respect to the amount the product contains (National Standard, 7. 3).

Certain countries allow the labelling of **in-conversion products.** In Japan, in-conversion organic products (except for animal products) can be labelled as "organic under conversion period" if they have been under organic management for at least 12 months. In the European Union, references to organic agriculture methods for in-conversion products are explicitly prohibited.

Use of marks

Organic agriculture legislation regulates the use of the word "organic" and associated terms. Some legislation includes the use of a pictogram (mark or logo). Use of such a mark can be compulsory or optional. Besides the national public marks, producers or private organic certification bodies may want to include their private marks on the labels or claims. In drafting rules for the use of marks, it is important to note the different types and usage of marks. Marks may be:

a) an organization or company logo, used on the product packaging to represent the certification body that has done the final certification of the product chain.

b) a symbol representing a certification scheme, used on the product packaging to represent compliance of the product to applicable production and certification requirements of a specific organic certification scheme.

c) a national/regional/international organic mark, used as a common promotion tool related to a national, regional or international promotion scheme for products originating from different qualified certification schemes, implemented by different authorised certification bodies.

In countries where there is no prior certification activity before legislation and the government intends to establish a monopoly governmental certification programme it may establish a single national organic mark that also represents the national certification scheme. In countries where there are established private organic certification and community based labelling schemes, and government only intends to supervise them, there is only need for a national organic mark, not a national certification mark. Use of a national organic mark should be made optional instead of mandatory. Should a government intend to also offer a governmental organic certification scheme, it should establish a separate mark for the government's certification programme distinct from the national organic mark. In this case, while private certification schemes have to be in compliance to the national rules they can still retain their private standards and separate identities if they wish to. Compliant operators can use the national organic mark together with the private marks if they wish to.

In general, there is no harm in allowing existing private marks to continue. Private schemes serve an important function in development of additional requirements and new areas before the sector is ready for regulation. Over time the market will decide which will be the preferred mark.

Drafters will also need to address use of the national mark for imports. Separating the national organic mark from a national certification mark allows for the possibility of clear identification between different certifications, hence more flexibility in recognition agreements. Similarly keeping it optional for imports instead of mandatory will not add on unnecessary handling and packaging costs. Depending on the trade volume, it may or may not be economical for exporters to develop separate package design for export to every country with different mandatory marks. If manufacturers do not incorporate the mark in their packaging, importers will have to either repack or affix additional label stickers on each single package.

Inclusion of the official logo on the label is compulsory for all pre-packaged organic food produced in the European Union, whereas for imported products the use of the logo is optional. In India, the use of the logo is mandatory for all certified products originating in the country. In Japan, the use of the logo is voluntary, but when it is used, there are a number of compulsory indications that should accompany it. In the United States, inclusion of the logo of the

competent authority or certification body is voluntary for products labelled as "100 percent organic" or "organic".

3.4 Rules for organic production

As noted earlier, detailed rules on production are generally not included in parliamentary-level legislation, as it is harder to change. By contrast, implementing regulations and standards can be more easily amended as necessary. For this reason, many countries aprove their organic production requirements by national standards, which can be updated by the competent authority or the joint board as necessary.

In certain cases legislation, especially subsidiary legislation, incorporates some key elements of organic production processes which are then detailed in national standards. This is the case in the USA, where the NOP details national organic production standards under the framework of the Organic Food Production Act of 1990 (OFPA). In the EU system, subsidiary legislation is legally binding and incorporates the detailed rules of production, Commission Regulation (EC) No. 889/2008 details the rules on organic production laid down by Council Regulation (EC) No. 834/2007.

Drafters will need to address the question: should requirements reflect the minimum baseline or best practice leading standard? Private organic labelling schemes usually refer to their requirements as best practice leading standards. While that may be appropriate for a voluntary private sector market based business model, it is not appropriate for a mandatory labelling legislation. Mandatory requirements should be appropriate to the development of organic agriculture and the domestic organic sector in the country. Requirements need to reflect local conditions to be feasible, e.g. a 100 percent organic feed requirement for livestock or use of only organic seeds are not possible where organic production development is in an early stage. Many requriements have to evolve over time. Drafters need to balance idealogically preferred practices, i.e. activist and consumer interests, with what is economically feasible and enforceable, i.e. practitioners and policy interests. Requirements as a whole should represent a qualitative difference in the marketplace that is acheiveable by mainstream local producers and processors under local conditions and economically feasible for the respective product chains. Where legislation is set for the purpose of export recognition, drafters will need to manage what

the importing country expects with what is appropriate to the development of organic agriculture and the domestic organic sector in the country.

It is often not possible to fully appreciate the implications of enforcing paper requirements onto actual farming or processing practices. Besides public paper consultation, norm setting should also include field testing before finalisation. It is advisable for authorities to conduct a sample inspection of a representative range of organic operators in the country on the feasibility of compliance to the proposed requirements as well as the means to verify compliance, including additional incurred cost (e.g. if testing is necessary) to flesh out and resolve arising issues before finalising normative text for adoption. The East African community conducted mock inspection exercises which assisted in refining a number of proposed requirements.

The next sections examine the possible contents of subsidiary organic agriculture legislation on general production; production of plants and plant products; production of animals and animal products. Other possible organic production rules such as fibres, silk, or cosmetics have not been included.

3.4.1 General production

When the pioneers of organic agriculture published their writings as early as in the 1920s, organic agriculture was the agriculture part of a wider philosophical basis for the development of society. They advocated for development of agriculture production based wholly on biological systems and ecological processes in nature as the best means to sustain the health of soils, ecosystems and people. Since then, requirements of organic agriculture represent a consensus on good and prohibited practices set amongst practioners and interested parties at a certain time and place.

The basic rules of organic production generally consist of both positive requirements and prohibited measures and substances. Positive requirements for organic production normally include measures to:

- sustain the health of soils, ecosystems and people;
- rely on biological systems adapted within ecological processes and conditions in nature;
- maintain biodiversity and ecosystem in their respective locations; and
- offer just treatment and fair compensation of workers and operators in the value chain.

Organic rules may also outline prohibited measures and use of materials based on the precautionary principle that they may have an undesired impact to soil, ecosystem or human health and biodiversity, such as:

- chemically synthesized substances must not be used unless explicitly authorized;
- GMOs and their derivatives must not be used; and
- products or their ingredients must not be processed using ionizing radiation.

An example of prohibited measures and substances is found in Canada, where the Canadian Organic Standard, section 1.8 bans any form of sewage sludge; synthetic growth regulators; and synthetic veterinary drugs, including antibiotics and parasiticides, unless explicitly authorized under the Canadian Organic Standard. In the United States, the use of sewage sludge is also generally prohibited, as are sulphites, nitrates or nitrites added during the production and handling processes (except for wine). Furthermore for post-harvest practices, they also require that:

- organic products must not be produced using non-organic ingredients when organic ingredients are available, nor include organic and non-organic forms of the same ingredient; and
- organic products must not be mixed with non-organic products or contaminated through practices not permitted in organic farming.

3.4.2 Production of plants and plant products

This section discusses options for provisions addressing the production of plants and plant products in organic agriculture. The areas to be covered in general include:

- conversion period;
- partial conversion and parallel production;
- general crop management, including choice and diversity of production;
- cropping including use of planting material and seeds;
- fertility management including use of inputs;

- water management;
- pest and disease management including use of inputs;
- contamination including location;
- wild harvesting; and
- specific production, e.g. mushrooms, sprouting.

While it is not commonly done, drafters are advised to identify the objectives of each section to guide setting detail requirements related to the topic. This follows the standard setting by objectives approach. Section objectives should be related and developed from the general principles of organic agriculture to maintain a clear logical framework.

The first issue is the **conversion period**, i.e. the time period needed to produce according to organic procedures before the crop can be certified as organic. Standard setting debates on the function and objective of a conversion period include biological rehabilitation, management assessment, and prevention of short term opportunists through a market barrier. The debate is not conclusive. In crop production, IFOAM took the approach of setting a minimum of one year for annual and two years for perennial crops.

In many countries (India, South Africa, Tunisia, Turkey), where legislation was enacted with an EU recognition agreement objective, the requirement is similar to the EU minimum of "at least two years" for annual crops and "at least three years" for perennial crops. In Canada and Croatia, the conversion period is "at least one year" for annual crops and "at least three years" for perennial crops, but prohibited substances must not have been used for at least three years before the first harvest of either type of crop.

In the United States, the law requires that no prohibited substances are applied to the land for a period of three years immediately preceding the harvest of the crop (section 2105, Organic Production Act (OPA); sec. 205.202 NOP). Unlike the Codex Alimentarius guidelines (annex 1, A.1-2), United States law does not explicitly demand active organic management throughout this three-year conversion period, nor that the conversion period start only after the production unit has been engaged under an inspection system.

In India and South Africa, in line with the Codex Alimentarius guidelines, the in-conversion unit is placed under the inspection system throughout the conversion period. The accredited certification body may nonetheless extend or reduce the applicable conversion periods in light of the previous status of the land or environmental conditions. In addition, in South Africa, conversion periods may be retroactively acknowledged by the accredited certification body if guarantees/proof can be obtained that organic practices were being applied before the beginning of the certification process. In Tunisia, the accredited certification body may, after obtaining ministerial consent, reduce or extend the conversion periods in light of previous parcel use. In Turkey, as suggested by the Codex Alimentarius guidelines, the timelines for control and certification may be extended or shortened under special circumstances, such as previous parcel use, conditions and crops in the region and risk situation, although a minimum of 12 months must be observed (art. 8(b)–(e), Regulation on Essentials and Implementation of Organic Farming).

The European Union's rules vary depending on the species of plants and animals. Article 36 of Regulation 889/2008 states that conversion periods will be two years for non-perennial plants and plant products and forage, and three years for perennial crops other than forage. The Regulation contains detailed rules for determining the start of these two- and three-year periods, and also sets out potential exceptions. For example, the time periods are different for pasturages and open air areas used by non-herbivore animal species, which may be reduced to one year and even to six months in specific circumstances. With regard to **parallel production** (i.e. organic production alongside non-organic production), the rules vary depending on the jurisdiction. Standard setting debates revolve around the issue of conversion based on active adoption of the principles of organic agriculture, which imply a full farm conversion as expression of such a committment in contrast to accepting partial conversion depending on market opportunity and economical considerations with compliance to set conditions. While idealogically inclined to the former, IFOAM took a pragmatic position not to restrict partial conversion (conditions apply) as a means to facilitate and encourage application of organic management regardless of the driving factor of interested parties.

In Turkey, conventional and organic production can coexist, but only with respect to perennial crops and only if four conditions are met: the operator undertakes to convert the whole farm to organic production within five years;

measures are in place to separately store products harvested from each type of production; the certification body is informed of the harvest at least 48 hours beforehand, and of the exact quantities and any particular aspect of the harvest; and the operator obtains an authorization from the authority to carry out parallel production (art. 8(f), Regulation on Essentials and Implementation of Organic Farming). Parallel production is also allowed in Croatia, where clear separation of the two parts, non-use of GMOs even in the conventional part, inspections of the organic part and good record-keeping are required (art. 9, Ordinance on organic production of plants and plant products). In Argentina, organic producers must notify other producers in neighbouring areas of their organic activities so that the latter can adopt the necessary measures to prevent contamination (art. 5(7), Resolution 82/92). Unlike in the Codex Alimentarius guidelines (annex 1, A.4), the Argentinean, United States and Tunisian laws do not explicitly prohibit the coexistance of organic and conventional production methods in areas converted (or in conversion) to organic. In Japan, farmers must protect organic crops from drifting and flowing of prohibited substances from "surrounding areas" (art. 4, Notification N°59).

In the European Union, adequate records need to show a clear separation of organic and non-organic production areas (art. 11, Regulation 834/2007). Article 40 of Regulation 889/2008 permits parallel production "where ... necessary in order to ensure that organic production can be initiated or maintained on holdings confronted with climatic, geographical or structural constraints" provided certain enumerated conditions of separation, record keeping and authorization are fulfilled.

In Argentina, producers are required to maintain or improve the **fertility and biological activity of the soil** through a number of cultivation methods. Following the Codex Alimentarius guidelines (annex 1, A.5), these include the cultivation of legumes, green manures or deep-rooting plants; the adoption of appropriate multi-annual rotation programmes; and the incorporation in the soil of organic material from holdings producing in accordance with the prescribed organic standards (art. 4, Regulation annexed to Decree 206/2001). In a similar vein to the Codex Alimentarius guidelines (annex 2, table 1), Resolution 423/92 contains a list of organic and mineral substances permitted for use in soil fertilizing and conditioning (annex A).

In Turkey, it is prohibited to unnecessarily cultivate the soil in a way that causes erosion. The fertility and biological activity of the soil is maintained by an approved list of methods indicated in the regulation. These include a multi-annual rotation programme and an indication of the amount of manure that should be used per hectare and per year. When sufficient soil productivity and biological activity cannot be ensured, the use of fertilizers and soil amelioration substances mentioned in an Annex is allowed. The approval of the Ministry of Agriculture is required to produce, import or export organic manure and soil amelioration substances (art. 9, Regulation on Essentials and Implementation of Organic Farming).

In Australia, fertility and biological activity can be maintained or increased by application of bio-dynamic preparations and methods and tillage techniques which preserve or improve soil structure (National Standard, 3.5.1).

In Croatia, certain provisions specifically address the **location of the production unit**. Production must take place in an area where industrial pollution is reduced to the minimum and at a certain distance from roads depending on the intensity of road traffic (Ordinance on organic production of plants and plant products, art. 13).

National requirements may also address **water management** in organic production. Croatian regulations underline the importance of taking relevant measures to prevent erosion by water, salination, excessive and improper use of water and the pollution of soil and surface water. All relevant measures must be taken to minimize the contamination of soil and plants by conventional chemical products carried by water (Ordinance on organic production of plants and plant products, art. 14).

Turkish regulations also set out specific rules concerning irrigation: neither industrial and urban wastewater nor water from drainage systems can be used in organic farming. Irrigation should not produce environmental pollution, destroy the soil structure or cause erosion (Regulation of the Ministry of Agriculture, art. 12). Attention should be spent on how to address flood prone and common irrigation scheme areas. In general, producers should not be unduly burdened with reconstructive requirements or sanctioned where prevention of general contamination is not fully within their management control.

In line with the Codex Alimentarius guidelines (annex 1, A.8), producers are usually required to use **seeds and vegetative reproductive material** derived from organic production systems, although when they cannot be obtained, the competent certification body may authorize the use of conventional seeds. In India, accredited certification bodies establish minimum requirements in order for seeds and other vegetative planting material to be considered organic. The use of genetically engineered seeds, pollen and transgenic plants or plant material is not allowed (NPOP, sec. 3.3.1).

The Philippines includes in its legislation rules for when chemically treated seeds may be used: where the treatments are limited to materials on the permitted substances list; where the use of treated seeds is required by government authorities or phytosanitary regulations as a necessary measure to prevent the spread of endemic diseases; or where a natural disaster like a flood, drought, earthquake or other unanticipated circumstance has occurred, causing a destruction of organic seed production (The Philippine National Standards Specification for Organic Agriculture (PNSSOA), 2.4.1). In contrast to other national legislation, Japan's does not require a previous authorization by the Ministry of Agriculture Forestry and Fisheries or the competent certification body for the use of conventional seeds and other vegetative planting materials. However, under no circumstances can seeds or other vegetative planting materials be produced by recombinant DNA technology (Notification N°59).

In the United States, recourse to non-organically produced seeds and other vegetative planting materials may be had, provided they are untreated, or if treated then only with substances included on the List of Permitted Substances. Authorization must be obtained from the Administrator for the Agricultural Marketing Service of the United States Department of Agriculture before using non-organically produced seeds. In Tunisia, the use of conventional seeds and other vegetative planting material was permitted for a transition period where: 1) producers were able to demonstrate to the competent certification body that organic seeds and other vegetative reproductive material were unavailable on local and foreign markets; and 2) the plants from which these were derived were grown in accordance with organic practices for at least six weeks before harvesting (art. 5 of the Law; art. 8 of Ministerial Order of 2001). Considerable resources will be needed to maintain a system where farmers shall seek permits before using non-organic seeds, and governments that choose such a system should ensure that there is a mechanism in place

that can quickly respond to requests in a few days time at no cost to farmers. Alternatively it may be left to the certification body to establish that the farmer made sufficient efforts.

According to the Codex Alimentarius Guidelines, national legislation should list natural means of controlling **pests, diseases and weeds** in organic production. For example, in Argentina, plant pests, diseases and weeds should be managed through measures including the increase and conservation of diversified ecosystems; the choice of appropriate species and varieties; appropriate rotation programmes; mechanical cultivation; and the protection of natural enemies of pests and diseases (Regulation annexed to Decree 206/2001, art. 4). Secondary legislation contains a list of products permitted for the purpose of pest and disease control (annex B, as amended by Resolution 116/94 of 4 March 1994). In addition, the competent certification body may authorize the use of products not listed in the Annex if they are indispensable for controlling pests and diseases, if their use is legally permitted and if it does not cause unacceptable effects on the environment (Resolution 423/92, art. 5(b)).

In the European Union, plant pests, diseases and weeds are primarily managed and controlled through preventive measures. The use of plant protection products is authorized only if included in the European Union List (Regulation 834/2007, arts. 5(f) and 12(1)(g)–(h)), and only where there are threats to a crop that have been identified as such by authorities. In South Africa, recourse to listed substances is limited to cases of immediate threat to crops and where control through the preventive measures is not effective, and may be further restricted if the use of listed substances risks having detrimental effects on the environment, soil organisms and the quality and safety of the final product. In India, physical methods (including thermal sterilization of soil) and the products listed in an appendix are permitted for purposes of pest and disease control, albeit subject to any conditions specified by the competent certification body. Conversely, the use of synthetic regulators, synthetic and genetically engineered organisms or products is prohibited (NPOP, sec. 3.3.5).

In the Philippines, synthetic growth regulators and dyes are prohibited, but products used to regulate growth and development of plants prepared on the farm itself, and made with local products, are allowed. In Japan, only in

cases of imminent or serious threat to plants and where the aforementioned methods are ineffective, may recourse be had to listed chemical substances.

With regard to **harvesting plants from natural environments also known as wild collection or wild harvest,** some countries have enshrined in national legislation all the conditions set forth by the Codex Alimentarius Guidelines (annex 1, part A.9). Australian legislation, for instance, contains the following conditions: plants from natural environments must be sourced from a clearly defined collection area subject to inspection; the collection areas may not have received treatments with products (except permitted ones) for at least three years before collection; and the collection of plants does not disturb the stability of the natural habitat or the maintenance of species in the collection area. In Argentina, only the first and latter apply. In Tunisia, the first does not apply. In the Philippines, all Codex requirements have been included in the national system, with the addition of another condition: the harvest/collection area shall be at an appropriate distance from conventional farming or other sources of pollution or contamination (PNSSOA, 4(10)(4)).

In Croatia, the conditions for harvesting plants from natural environments are the following: areas must not have been treated with fertilizers others than those permitted and have received no treatment with products other than those authorized for three years; the collection must be approved by the Ministry of Environmental Protection and Physical Planning, and is subject to the consent of the land owner; and harvesting must not disturb the stability of the natural habitat (Ordinance on organic production of plants and plant products, art. 12). Along similar lines, in India, harvesting or gathering of such products shall not exceed the sustainable yield of the ecosystem, nor threaten the existence of plant and animal species (NPOP, sec. 3.3.8). In Turkey, the collection area must not have been affected by fire for the previous two years (Regulation of the Ministry of Agriculture, art. 13(c)). In both Australia and Croatia, the operator must include landscape management and biodiversity considerations within management planning for harvesting plants from natural environments (National Standards, 3.4.1; Ordinance on organic production of plants and plant products, art. 2).

3.4.3 Production of animals and animal products

This section discusses options for legal provisions on organic production of animal and animal products. The areas to be covered normally include:

- farm sourcing of conversion and brought in animals
- breed and geographical origin of animals;
- partial conversion and parallel production;
- general animal husbandry, including housing and movement;
- mutilation;
- nutrition;
- health care and veterinary medicine;
- transport and slaugther; and
- specific production, e.g. bee keeping, aquaculture.

For **conversion periods**, national requirements tends to pursue two options: either referring solely to the time period in which animals have been under active organic production, or referring both to that time period plus the time period during which the land on which the animals are being raised has been under organic production methods. In line with the former approach, in Argentina, animals must have been under active organic management for at least two years. In the United States, animals must have been under continuous organic management from the last third of gestation or hatching in order to be sold or labelled as organic on the United States market.

Canada follows the second option, requiring that the time period for land intended for feeding crops or pasture and for organic animals must equal the conversion periods applicable to plant production, and animals must receive a minimum of 80 percent organic feed during the first nine months of the one-year transition period and only organic feed during the final three months. Croatia, South Africa and Tunisia also address the land question, and establish different conversion periods for different animal species.

In Japan, no prohibited substances can be applied on the land intended for pasture for a period of at least two years. Minimum conversion periods are then defined for different animal species, following the Codex Alimentarius

Guidelines (annex 1, B.12). In India, only the land-based criteria apply: the farm (or relevant part of it) should have been under active organic management for at least 12 months.

Partial conversion is allowed in Argentina as long as organic and non-organic production are clearly separated. In the European Union, records must be kept to document separation, and different species should be used for different types of production. The latter requirement also applies in Tunisia. Prohibitions on alternating between organic and conventional productions methods are in place for India, Canada and South Africa. The United States allows parallel production within the same farm but requires that physical barriers, including buffer zones, be established to prevent commingling of organic and conventional animals and animal products as well as unintended contact with prohibited substances.

General and specific rules usually address **animal geographical origin or breed**. Following the Codex Alimentarius Guidelines, national legislation often requires that the choice of breeds and strains take into account their adaptation to local conditions, vitality and resistance to diseases (Argentina, Canada, European Union and South Africa). In Australia (National Standard, 3.13(i)) and Turkey (Regulation of the Ministry of Agriculture, art. 15(a), (j)), the absence of specific diseases or health problems in some breeds and strains must also be taken into account. In the European Union, in addition to the above-mentioned requirements, the choice of breeds must contribute to the prevention of suffering and avoid the need for the mutilation of animals. In Croatia, preference is given to breeds and strains that are indigenous to the production area (Ordinance on Organic production of animal products, art. 11).

In some jurisdictions (Canada, European Union, South Africa), organic animals must be born or hatched on organic production holdings, although in the European Union non-organically raised animals may be brought into an organic holding for breeding purposes. In India, animals should be, as a matter of principle, born and raised on holdings conforming to national organic standards. Nonetheless, when organic animals are not available, the certification body may authorize conventional animals to be brought onto the farm, subject to specified conditions in terms of age and quantity. In Japan, animals from non-organic sources may be brought into organic holding for

specific purposes, namely the starting of husbandry or renewal of a herd following natural disasters or diseases or for considerable expansion of the farm (at least by 30 percent).

Rules on animal production also address **nutrition**. Animals are generally expected to be fed with organically grown feed. In Argentina and the European Union, the majority of the animal feed should come from the same organic farm. In Argentina, in addition, only a maximum of 20 percent can be sourced from other organic farms. In extreme cases, when organic feed is unavailable, the competent certification body may authorize recourse to a maximum of 10–15 percent of non-organic animal feed or 25–30 percent if extreme conditions persist. In Canada, in cases of emergency, such as severe events or extreme climatic conditions, upon the request of an organic producer the competent certification body must set lower maximum percentage of allowable non-organic feed and maximum time periods for its provision. Such non-organic feed must nonetheless conform to basic organic requirements, e.g. not contain GMO ingredients.

In India, organic animal feed should come from the same farm or be produced in cooperation with other organic farms in the region. Where this proves impossible, the NPOP establishes maximum percentages of feed that can be sourced from conventional farms for each animal category. The competent certification body may nonetheless grant time-limited derogations from these percentages in cases of unforeseen severe natural or man-made events or extreme climatic conditions, or for areas where organic agriculture is in the early stages of development. In Japan, a maximum of 30 percent of in-conversion to organic feed is allowed, but non-organic feed may nonetheless be provided up to maximum of 50 percent (in dry weight) of the average intake when organic feed is difficult to obtain due to natural disasters or suspended imports. In Tunisia, the amount of in-conversion to organic feed that may be used in animal feed depends on whether it is obtained from the same farm (60 percent) or other organic operations (30 percent). Where producers can demonstrate to the certification body their inability to comply with the aforementioned requirements, conventional animal feed can be provided during a limited period and within the percentage limits established for each animal category. In Australia, where there is a demonstrated shortage of feed produced according to organic standards, five percent non-organic feed can be used (National Standard, 3.14.4).

In the United States, the List identifies synthetic and non-synthetic substances allowed for use as feed additives and supplements in organic animal production, provided that they are in the quantities needed for adequate nutrition and health maintenance of the different species. In the Philippines, percentages of conventional fodder tolerated in the case of low availability of organic fodder are set for successive years (40 percent during the first year, 20 percent during the second year and 10 percent during the third) (PNSSOA, part 3, para. 4.4.1.)

National organic legislation also prescribes basic **housing and free-range conditions**, allowing for sufficient free movement, protection against excessive sunlight, temperatures and wind and easy access to grazing, watering and open-air runs. In Argentina and Canada, these general provisions are further elaborated on by more specific requirements for different animal species. In the European Union, it is simply provided that establishment of housing facilities meet the developmental, physiological and behavioural needs of animals and allow permanent access to open-air runs and pasture. In Japan and South Africa, instead, specific indoor and outdoor space requirements for the different animal species are specified.

In Croatia, legislation provides that the number of animals per farm should not cause environmental pollution, and that indoor space be sufficient for the animals to stand freely, lie down, turn around and assume all natural postures (Ordinance on Organic production of animal products arts. 4 and 31). In Turkey, a provision calls for removing faeces, urine and uneaten or spilt food as often as necessary to minimize smell and avoid attracting insects or rodents (Regulation of the Ministry of Agriculture, art. 18(j)).

With regard to **health care of animals**, the Codex Alimentarius Guidelines (annex 1, B.20) emphasize disease prevention through good husbandry practices. Veterinary medicinal products should be used only when no alternative treatment or management practice exists for a particular disease. Usually national legislation relies on the list of preventive measures identified by Codex (annex 1, B.20). In the European Union, for instance, disease prevention measures include an adequate selection of animal breeds and strains; the application of appropriate husbandry practices; the use of high quality organic feed together with regular exercise; the provision of appropriate housing, stocking densities and hygienic conditions. In Switzerland and Turkey, health care requirements include the use of good quality organic feed and

allowing regular exercise with a view to encouraging the natural immunological defence of the animal.

National legislation also indicates conditions under which medications and vaccines can be used, when preventive practices prove inadequate to prevent animal diseases. In the United States, producers may administer synthetic medications allowed in the List. In the European Union, phytotherapeutic and homeopathic products should be preferred to chemically synthesized conventional veterinary drugs or antibiotics. Departing from the Codex Alimentarius Guidelines (annex 1, B.22(c)), the European Union Regulation does not explicitly demand that such medicinal products be administered under the responsibility of a veterinarian and withholding periods (i.e. the period after vaccination during which the animal may not be slaughtered or products such as milk and eggs may not be taken/collected) are not specified. In contrast, in India and South Africa, conventional veterinary drugs or antibiotics may only be administered under the responsibility of a veterinarian and withholding periods must be double that required by law with, in any event, a minimum of 48 hours. In India and South Africa, treatments may include GMOs and their derivatives or products, contrary to the Codex Alimentarius Guidelines (sec. 1.5). In India, natural medicines and methods, including homeopathic and ayurvedic products, are generally preferred to conventional veterinary medicines. In Tunisia, the use of micronutrients, phytotherapeutic (excluding antibiotics) and homeopathic products is authorized without restrictions, unlike the Codex Alimentarius Guidelines (annex 1, B.22(b)).

National legislation may also provide for certain restrictions once animals have been treated. In Switzerland, products coming from animals that have been treated with conventional veterinary drugs or antibiotics more than two or maximum three times a year cannot be sold as organic products and will need a period of conversion according to Article 16f, paragraph 2 (Ordonnance du Conseil fédéral suisse du 22 septembre 1997, art. 16). In Australia, animals treated with conventional drugs cannot be sold as organic (although their products or progeny can, after a conversion period). If any conventional drugs are used which contain GMO or GMO-derived substances, neither the animal nor products derived from it can regain their organic status. All animals treated with substances not listed in the National Standard must be identified and quarantined (National Standard, 3.15.6–3.15.8). In the Philippines, records of sick animals treated conventionally should be kept clearly identified. All

treatment with synthetic drugs must similarly be documented. On the basis of such records, the certification programme shall set conditions for the farm in question to minimize the need for use of conventional medicines (PNSSOA, part 3, para. 4.6.7). Similarly, in Croatia, documentation of treatment shall be undertaken every time an animal is treated, including information on the treatment methods, medication prescribed, etc. (art. 63, Ordinance on organic production of animal products, 2002).

Departing from the Codex Alimentarius Organic Guidelines (annex 1, B.20), the Canadian Organic Standard also includes the administration of vaccines in the list of preventive measures (sec. 6.7.1). If these measures prove inadequate to prevent sickness or injury, phytotherapeutic, homeopathic and similar products must be preferred to conventional veterinary drugs or antibiotics. The latter may only be administered if explicitly authorized in the Canadian List and under veterinary supervision, as provided for in the Codex Alimentarius Guidelines (annex 1, B.22). The use of immunological veterinary medicines, including vaccinations, is also permitted in the European Union. In India, vaccination of organic animals is generally allowed when required by national law, or if the accredited certification body deems it necessary against a particular disease and within a particular region. However, genetically engineered vaccines are prohibited in all circumstances. In Tunisia, vaccination of animals is permitted in cases required by law, or if the farm is in an area where the existence of a given disease has been officially acknowledged.

In Canada, in accordance with the Codex Alimentarius Guidelines (annex 1, B.23–24), hormonal treatment is generally only allowed for therapeutic reasons and under veterinary supervision, while synthetic compounds used for the purpose of stimulating or retarding growth/production are strictly prohibited.

With regard to animal welfare during the **husbandry, transportation and slaughter of organic animals**, Argentina and Canada follow the Codex guidelines in explicitly prohibiting embryo transfers, techniques and mutilations (including physical castration and dehorning). In Argentina although reproduction through natural methods is generally preferred, artificial insemination is permitted (this is also the case in South Africa, Switzerland and Turkey). In Australia however, artificial insemination is not recommended (National Standard, 3.13(ii)).

The European Union also explicitly prohibits cloning. In Canada, in line with Codex, a number of other practices are explicitly prohibited: breeding techniques using genetic engineering or related technology, electrical stimulation and conventional tranquilizers during transportation and slaughter. Departing from the Codex Alimentarius guidelines, the Argentinean measures do not explicitly prohibit the use of electric stimulation during transportation of animals, nor do they establish specific conditions to ensure that transport of live animals is managed in a manner that avoids stress, injury and suffering. By contrast, Canada does require this.

More generally, the European Union introduces animal welfare related issues. Any suffering, including mutilations, shall be kept to a minimum during the entire life of the animal, including at the time of slaughter. Surgical operations (including tail docking, teeth and beak trimming, castration, ear tagging and dehorning) shall only be performed when absolutely necessary to improve the health, welfare and hygiene of animals, at the youngest age possible and in a manner that minimises pain, stress and suffering. In the Philippines, mutilations are not allowed. However, a certifying body may allow exceptions where it would improve the welfare, health or hygiene of the animals, or for safety reasons (tailing cutting of lambs, trimming of beaks, de-horning, ringing, cutting of teeth, tattooing) (PNSSOA, part 3, para. 4.3.1). In Croatia, tail-docking, cutting of teeth, trimming of beaks and dehorning must not be carried out systematically on the farm (art. 19, Ordinance on Organic production of animal products). Tethering can be authorised by the inspection body (arts. 22–23). In Switzerland, operations such as attaching elastic bands to the tails of sheep, tail-docking, cutting of teeth, trimming of beaks, dehorning, use of nasal rings are not allowed except in particular cases when it is intended to improve the health and welfare of the animals. Physical castration is allowed in order to maintain the quality of products (Ordonnance du Conseil fédéral suisse du 22 septembre 1997, art. 16(e)). The East African Organic Agricultural Product Standards provides that tethering must not affect the well-being of the animal (art. 6.3.6).

In the European Union, the duration of organic animal transport must be minimised. More explicitly, in India and Tunisia, handling during transport and slaughter is required to be calm and gentle, minimising stress and suffering to animals. Similarly, in Canada, organic animals must be managed with care and respect, stress and suffering shall be minimized in all handling

operations and the duration of transportation kept to the shortest possible. In the Philippines, requirements related to the transport of animals address the animal's fitness, stress, grip of feet on the floors, mixing of animals, and individualized needs of the animals (PNSSOA, part 3, para. 4.7.3); there is also a specific requirement for one person to be responsible for the well-being of the animals (part 3, para. 4.7.1). Transport by axle shall not exceed 8 hours (para. 4.7.6), and no chemically synthesized tranquilizers or stimulants shall be given prior to or during transport (para. 4.7.4). In Turkey, transport must be carried out in a short time and in a way which limits the stress suffered by the animals. Loading and unloading must be done without the use of any type of equipment to coerce animals (Regulation of the Ministry of Agriculture, art. 19(a)).

With regard to **slaughtering**, in Turkey legislation provides that if possible, separate slaughterhouses must be used for animals reared conventionally and for those reared organically (Regulation of the Ministry of Agriculture, art. 19(b)). In Argentina, the slaughter of organic animals shall be undertaken only in slaughterhouses approved by SENASA and organic animal lots must be clearly identified and separated from conventional ones (Regulation annexed to Decree 206/2001, art. 20). In Tunisia, the minimum ages for the slaughter of animals are set forth in secondary legislation.

Not all legislation include animal husbandry in their scope. Of those that do, the majority reflect European and North American animal husbandry tradition and industry set up. There are wider differences in animal husbandry traditions than in crop production in different parts of the world. Drafters are encouraged to study their local animal husbandry and slaugthering traditions and industry setup before rule setting. The East African standards address tethering, however use of common pasture lands and pastoral systems have yet to be fully addressed.

3.4.4 Handling and processing

The areas to be covered in general include:

- composition of ingredients;
- processing methods, including permitted inputs and cleaning;
- pest and disease control;

- packaging;
- maintainence of organic integrity; and
- specific production, e.g. textiles.

According to the Codex Alimentarius Guidelines (annex 1, C.82, 88), national legislation generally requires that the **organic integrity** of products should be maintained during any handling, storage and processing operation by preventing co-mingling with products from conventional farming. National laws also generally prohibit the use of **ionizing radiation** in the processing of organic food as well as considering contrary to organic provisions the contact of the organic product with prohibited substances. In Canada, these general provisions are qualified by the requirement that the organic quality of a product must be maintained through processing and handling techniques appropriate to the specific ingredients, by limiting the degree of refinement and minimizing the use of processing additives and aids. In South Africa, exposure to prohibited substances, pollutants and contaminants throughout the whole process should also be avoided.

Some countries also **address pest management at the processing stage**. When they do, generally national legislation (Canada and India, for instance) demands that pests be controlled through the following measures in order of preference: (1) preventive management practices (e.g. removal of pest habitat and food); (2) if the aforementioned prove inadequate, mechanical/physical methods, lures and repellents included in national lists; and (3) if the aforementioned prove insufficient, pest control substances permitted under national lists. With regard to the latter, in the United States, synthetic substances that are not included in the List can be used, provided that an agreement is reached between handlers and certification bodies on the conditions of application. In South Africa, in addition, a fourth alternative is the use of substances used in traps (other than those explicitly prohibited). In Canada, the use of unauthorised pesticides on organic products for post-harvest or quarantine purposes will generally cause such products to lose their organic status. The law further specifies the conditions under which, pursuant to a federal or provincial emergency pest or disease programme, prohibited substances may be used for treatment purposes that will not affect the organic status of the product (Canadian Organic Standard, secs. 8(2), 9). In India, persistent or carcinogenic pesticides and disinfectants are not permitted. The certification body will establish which products may be used

for decontamination, cleaning or disinfection of facilities where organic products are kept, handled, processed and stored (NPOP, sec. 3.4.2). In Japan, legislation simply identifies physical and biological methods as the first choice for controlling pests and diseases, or if physical and biological methods prove inadequate, listed chemical agents may be used while preventing mixture with organic products and ingredients.

With regard to **packaging, storage and transport**, the Canadian Organic Standard generally requires a physical separation of organic products to prevent contamination or substitution of the content with non-organic products or prohibited substances. More specifically, storage sites and transport containers must be cleaned using substances allowed under the Canadian List and transport equipment must be free of non-organic (and other) residues, and invertebrate and vertebrate pests.

In Argentina, the legislation requires packaging materials to be chosen from biodegradable sources with no negative impact on the environment and forbids the re-use of packaging materials that have previously contained products from conventional farming. In addition, secondary legislation contains a list of authorised products for the cleaning and disinfecting of facilities where organic products are handled and processed. Along similar lines, in India, the NPOP generally favours the use of ecologically sound materials for the packaging of organic products. In addition, packaging materials must not affect the organic integrity and quality of the product, nor transmit to it any substances in quantities that may be harmful to human health (NPOP, sec. 3.4.5). In the United States, legislation prohibits the use of packaging materials, storage containers or bins containing synthetic fungicides, preservatives, or fumigants, as well as the use or re-use of any bag or container that has previously been in contact with substances that risk compromising the organic integrity of a product. In Croatia, it is forbidden to use PVC and packaging needs to be recyclable and environmentally friendly. Aluminium is permitted but only if the inspection body authorizes it (Ordinance on organic production processing, art. 16).

In India and in South Africa's proposed legislation, permitted conditions of storage are also specified, such as controlled atmosphere, cooling, freezing, drying and humidity regulation. In South Africa, a list is also provided of the cleaning, disinfecting and sanitising agents allowed for use in organic

facilities and the necessary precautions that must be taken to protect organic products from contamination by unauthorized substances. In the Philippines, in accordance with the Codex Guidelines (annex 1, C.91), environmentally-friendly measures and products should be used for the cleaning and disinfection of storage facilities (PNSSOA, 4.2.2). Furthermore, certain special conditions are permitted for storage: storage at ambient temperature; cooling or freezing in refrigerated containers equipped with temperature measurement devices; pure ice made from water which fulfils the WHO standards for drinking water; and controlled atmosphere (with gases like carbon dioxide, or oxygen-nitrogen) (4.2.3). Only natural ripening agents are allowed (4.2.4). In Croatia, legislation states that storage areas must be protected from sunlight, must be kept dry and if possible cool, with recommended humidity levels at 60 percent and temperatures at 19°C (Ordinance on organic production of plants and plant products, arts. 76–77).

With regard to transport, legal provisions usually indicate how to prevent contamination through the mixing of organic and non-organic products. In Croatia, for instance, organic products must be transported separately from other products; if they are transported together with other products, they shall be clearly labelled (Law on organic production of agricultural products and foodstuffs, art. 20). In Switzerland, plant products should be handled by other operators in closed packaging and with a tag indicating the name and address of those responsible for the organic production and labelling of the product (Ordonnance du Conseil, annex 1, part A.1.5). When animal feed is transferred to another production, processing or storage unit, the operator must ensure that containers used for transport have been cleaned, certified, and the quantity of the product checked before and after each transport (Ordonnance du Conseil, annex 1, D.5). In Australia, transport vehicles should be exclusively dedicated to the transport of organic animals or be cleaned before the loading of any organic animals (National Standard, 3.18.1).

As to **processing methods**, generally legislation requires organic processors to use mechanical, physical and biological methods rather than chemical ones. In addition to these, proposed legislation in South Africa also permits smoking; extraction (subject to certain limitations); precipitation; filtration (insofar as it does not contain asbestos or other substances negatively affecting the organic integrity of the product); distillation; and microwaving. In Canada, a requirement is in place to minimise reliance on non-agricultural ingredients,

food additives and processing aids authorised for use in the Canadian List. Food additives and processing aids must be of organic origin only and used to maintain nutritional value, food quality and stability, and product composition and appearance provided they are not misleading to the consumer concerning the nature of the product. In the European Union, legislation explicitly prohibits substances and processing techniques that reconstitute properties lost in the processing of organic food, or that correct the results of negligence during this process.

3.4.5 Permitted inputs

Together with the rules of production, organic agriculture legislation should include a **list of permitted inputs** for organic production. Accordingly, organic operators will have to limit the use of inputs to those included in the approved list. Lists usually cover soil fertilisers and conditioners; plant pest and disease control products; nutritional elements, feed materials, feed additives and processing aids in animal systems; and products for cleaning and disinfection of buildings and installations. Lists may also differentiate between inputs for plant production (fertilizers, pesticides, pheromones, etc.), for veterinary production (veterinary drugs, feed substances, pesticides, etc.) and for processed products (additives, coadjutants, etc.). These lists should be interpreted restrictively, in light of the general principle of limited agricultural inputs in organic production.

Countries may decide to establish a list of permitted active substances or a list of formulated products (i.e. products used as inputs for organic production and processing). The former, which is used in the Codex Alimentarius Guidelines, for instance, has the advantage of simplicity for regulators. The latter permits the authority to take into consideration all the substances included in a formulated product (and not only the active substance). It also has the benefit of being more easily understood, as otherwise each individual user would have to look into the composition of each formulated product to find out whether permitted active substances are contained therein.

National legal provisions on lists are quite varied. European Union Regulation 889/2008 includes lists of permitted products and substances, specifying concentrations, descriptions and conditions of use. These substances can only be used if authorized by the competent authorities, if they are essential for

their intended use and in respect of the principles and objectives of organic agriculture. In South Africa's proposed legislation, listed ingredients of non-agricultural origin whose use is allowed in the processing of organic food and listed permitted processing aids can be used under two cumulative conditions: if they are indispensable for ensuring the safety of organic food; and if they are essential to prepare or preserve such food or are legally required.

In the United States, instead, lists of both permitted and prohibited substances are used. Thus, departing from other national legislation, the US lists are structured on the basis of the nature of substance (synthetic v. non-synthetic), rather than its use. Legislation includes a non-exhaustive list of mechanical and biological methods that may be used for retarding spoilage or otherwise preparing the product for the market. In addition, the list specifies both non-agricultural substances and non-organically produced agricultural substances allowed for use in the processing of organic food, insofar as these are not commercially available in an organic form. Finally, the use of volatile synthetic solvent or other synthetic processing aids not included on the list are prohibited.

In Australia, the use of additives and processing aids is permitted, but only where there is a demonstrated technological need; where they are essential for the safety, preparation or preservation of the product; where they minimize physical or mechanical effects on a product; or a commonwealth, state or territory law requires them (National Standard, 4.5.2). The East African Organic Products Standard provides that synthetically produced minerals, vitamins, amino acids and other nitrogen compounds may be used for food fortification purposes only where legally required, or in cases in which dietary or nutritional deficiency can be demonstrated.

National legislation should include a clear procedure to modify and update the list, as well as to declare the need to use specific products in case of emergency or unavailability in the market. The Codex Alimentarius Guidelines propose a list of permitted substances of an open-ended nature, being susceptible to review under certain circumstances. In the United States NOP, substances may be removed or included on the basis of individual petitions to the National Organic Standards Board which, after an evaluation, makes a recommendation to the Secretary of Agriculture responsible for taking a final decision.

In formulating the general rules for organic agriculture, in this respect, particular attention should be paid to legislation on plant production inputs (seeds, fertilizers, etc.), animal feed and veterinary drugs and food additives or processing aids. National legislation on inputs normally establishes systems of authorization, registration, release and marketing that may have an impact on organic agriculture legislation. To avoid potential conflicts of norms, drafters may include an indication in organic agriculture legislation that organic inputs must be consistent with the specific agricultural and production inputs legislation. In this regard, the categories under which inputs are listed can have importance. Many plant based materials are called "fertilisers", "growth enhancer", "bio-pesticides" etc. in the market place, but do not strictly belong in these categories. Incorrect categorization (e.g. a product that merely strengthens plant growth being listed as a pesticide) can lead to an otherwise acceptable input to be disallowed because its registered use is not that for which it was intended. Also, rules on agricultural and food production are quite relevant for drafting the specific standards on plant production, animal production and food processing. Exceptions and rules on seed availability will have to be drafted taking into consideration the general system governing the seeds market to avoid any potential conflict. Finally, good understanding of existing legislation pertaining to plant, animal and food production will be useful in drafting rules on the implementation of the organic agriculture legislation. Countries may decide whether or not to involve extension services or decentralized divisions in charge of animal or plant production in the monitoring of compliance of certification bodies and organic operators.

3.4.6 Excluded methods and exceptions

Organic legislation normally includes a list of **excluded methods**, such as the use of ionising radiation or of genetically modified inputs. Ionising radiation is prohibited or strictly limited in most legislation, such as the European Union (Regulation 834/2007, art. 10), in accordance with the Codex Alimentarius Guidelines (sec. C.82), and IFOAM Basic Standards (6.3.3). In Tunisia, conversely, there is no general prohibition on the use of ionising radiation on organic products.

Considered inconsistent with the fundamental principles of organic agriculture, "genetically modified organisms" (GMOs) are also commonly prohibited in the growing, manufacturing, or processing of organic products

(Codex Alimentarius Guidelines, sec. 1; Argentina: Decree 206/2001, art. 10). This is also the case in Croatia's Organic Law (art. 15.1). IFOAM´s wording is less strict when establishing that "Genetically Modified Organisms and their derivatives should be excluded from organic agriculture processing and handling to the fullest extent possible." Also European Union Regulation 834/2007 (art. 9(1)) includes a general prohibition of the use of GMO and products derived from GMOs, which are considered "incompatible with the concept of organic production and consumers' perception of organic products."

Finally, most international standards and national legislation contain provisions permitting certain **exceptions** to organic rules of production. The Codex Alimentarius Guidelines recognizes the possibility to set forth exceptions related to access to pasture for animals (annex 1, B.3), use of chemical substances in feedstuff (annex 1, B.18), or use of certain substances as food additives (sec. 3.5.1). EC Regulation 834/2007 includes a provision on exceptions which can be based on: (i) climatic, geographical or structural constraints, (ii) the need to ensure availability of seeds, feeds or other necessary inputs; (iii) to solve specific problems or to resolve temporary and exceptional situations that may hinder organic production.

Overall, exceptions must be carefully drafted, with a view to preserving the organic quality and integrity of the product. Legislation should make clear that exceptions should be applied restrictively and, if possible, be limited in time. Otherwise, operators would be able to circumvent organic agriculture rules and produce goods in ways similar to conventional agricultural practices. National legislators should be particularly careful when drafting exceptions also because foreign partners may consider the organic quality and integrity of the products to be compromised by unclear legal rules or by unduly wide margin of discretion.

3.5 Conformity Assurance

Further to requirements for organic production, processing and handling, legislation needs to regulate the compliance of conformity, assurance and certification bodies with set requirements.

The Codex Alimentarius Organic Guidelines define **certification** as "the procedure by which official certification bodies, or officially recognized certification bodies, provide written or equivalent assurance that either *products or product control systems* conform to certain defined requirements" (CAC/GL 20-1995). Conformity assurance in organic agriculture is generally associated with, but not limited to, third party certification by which the organic claim of the operator is validated by a professional third party, thus assuring consumers of the integrity of the product throughout the product chain of custody.

The term "**accreditation**" traditionally has been used to refer to the designation of legal entities or individuals as formally authorized to carry out a function or provide a service, based on their demonstrated capacity to do so in accordance with quality standards formulated by the body responsible for issuing accreditation. This is the context in which "accreditation" is used in United States legislation (e.g. in the NOP). However, contrary to internationally agreed standards, the use of this term has progressively evolved to denote the recognition of the capacity of organizations to provide certification, testing, inspection and calibration services. This latter use of "accreditation" generally refers to national and recognised international agencies (normally a single national agency), to which the state has delegated its power to carry out accreditation. Recently, the meaning of "accreditation" has evolved further to refer to international standards such as ISO. As a result, the term "accreditation" may be afforded a number of meanings, with a lack of consistency between countries. This is especially evident in countries in which the ministries in charge of trade are mandated to carry out accreditation (using the term "accreditation" to denote a body capable of providing certification), while the national agricultural legislation uses "accreditation" in its traditional sense, to refer to the designation of a variety of functions to professionals or other legal entities. To avoid such confusion, some countries have used different terms such as "authorization" to identify certification bodies.

Assurance of the credibility of conformity systems necessitates supervision of the certification process and/or other conformity verification systems that are permitted under the legislation. This may be achieved by use of an approval or registration process within which accreditation is a necessary element. Procedures and criteria should be established for approving and/or registering public or private bodies as competent to perform organic inspection and

certification tasks, including other community based conformity verification systems such as PGS. National legislation should address the main elements of the approval/registration procedure, defining the terms and conditions of the relationship between the competent authority and the certification body or PGS groups. The basic requirements should be defined in law and detailed by implementing legislation, which should address specific elements including: duties concerning reporting, information-sharing, the preservation of confidential information, the development of documented procedures to carry out verification and measures to address instances of non-compliance.

This section will present legal options related to the following:

- institutional aspects of accreditation and certification;
- the procedure and criteria for accreditation; obligations of accredited entities; minimum requirements for inspection and certification programmes;
- the procedure to obtain certification; and
- the obligations of certified producers and the list of measures and procedures to address cases of non-compliance.

Procedures and criteria for other conformity assurance systems, such as PGS, are new and therefore are not included within the scope of this guide. However, drafters are encouraged to follow developments in this field.

With regard to the **institutional aspects of certification,** countries may decide to set up a government certification programme through a new or existing public or semi-public control authority, to delegate these functions to private third-party certification companies under a regulated framework of accreditation, registration and monitoring; or to employ a combination of these methods. In the case of third-party certification, the certification body assumes the roles of providing operators with sufficient information on how to achieve organic production; enrolling them and monitoring compliance through a series of inspections and controls that will result in the certification of the operation and products thereof as organic. Legislation provides a means for governments to regulate and to supervise the entities which carry out third party certification in the country and to establish minimum requirements for access to the certification market.

While the ultimate responsibility for monitoring lies with the authority designated to implement and to monitor the law, supervision and/or accreditation of certification companies, monitoring their performance and ensuring their compliance with national legislation may be delegated to an existing national accreditation body. The authority or accreditation body may also employ the services of professional expert bodies or consultants to conduct monitoring or evaluation visits.

In all case studies analysed in Part II with the exception of Canada, public authorities remain responsible for the accreditation and supervision of certification bodies. In Argentina, both private and public bodies can be officially accredited for performing organic certification, but accreditation and supervision of the certification bodies is entrusted to the National Service for Agricultural Health and Quality, which also establishes the procedures and criteria for accreditation. Similarly, in India, the NSCOP functions as the National Accreditation Body, being empowered to approve and to supervise private agencies in charge of organic inspection and certification. However the actual supervision and evaluation visits are carried out by the Agricultural and Processed Food Products Export Development Authority (APEDA).

In the United States, the Secretary of Agriculture, assisted by the Administrator for the Agricultural Market Service, is responsible for the approval and supervision of certification bodies. In Croatia, the accreditation procedure is conducted by the Ministry of Agriculture and Forestry that appoints a standing commission, which is responsible for the accreditation procedure (Ordinance on the system of conformity assessment in organic production, art. 11).

In Australia, the Export Control Orders (Organic Produce Certification) charge the Australian Quarantine and Inspection Service (AQIS) with conducting audits of authorised certification organizations to ensure ongoing compliance with the National Standard and importing country requirements. AQIS-approved certifying organizations thus perform certification and inspection services, while AQIS itself verifies the aptitude of the certification organizations (The Australian Organic Industry: A Profile, 2004).

The Swiss Accreditation Service is a public body managed by the Secretariat for Economy that accredits local certification bodies (Ordonnance du 17 juin 1996 sur l´accréditation et la désignation, art. 5). The Service acts upon

advice from an accreditation commission, designated by the 'Ordonnance du Département fédéral de l´économie sur l´agriculture biologique'. This commission is composed of up to 11 members representing different relevant sectors (federal offices for economy, the private sector, inspection and certification bodies, health, insurance, etc.). Along similar lines, in Tunisia the process of organic certification is carried out by entities that have been accredited by the Minister of Agriculture, after receiving the opinion of a national commission.

In Canada, however, the function of accrediting and supervising private certification bodies has been delegated to a third-party accreditation body. To be officially recognised as a certification body, the body concerned is required to enter into an agreement with the Canadian Food Inspection Agency (CFIA), which operates under the supervision of the Ministry of Agriculture and Agri-Food. The CFIA delegates certain tasks to accreditation bodies such as assessing, recommending and monitoring the accreditation of certification bodies (Organic Products Regulation, sec. 1).

In addressing the **procedure for accreditation**, legislation usually includes details about the content of the application, the procedure for its submission and the need for the contextual payment of the application fee. Rules should require that once accredited, certification companies stipulate an agreement or contract with the competent authority, and determine the duration of the validity of the accreditation. The laws reviewed do not necessarily address the question of renewal of accreditation, although this should also be considered as an essential element that may significantly contribute to legal certainty.

With regard to the contents of the **application for accreditation**, an applicant's submission should demonstrate compliance with set criteria for inspection and certification. In Argentina, the application must include information on adequate professional competence (including formal registration of inspectors in the National Registry of Professionals); full implementation of the prescribed organic inspection and certification programme; establishment of an operating office in Argentina; adoption of measures to ensure independence from vested interests; sanctions foreseen in the event of operators' non-compliance; and record-keeping and reporting obligations. In India, any individual, firm, co-operative or society that has been engaged in the inspection and certification of organic production or processing

operations for a minimum period of one year may submit an application to the Agricultural and Processed Food Products Export Development Authority (APEDA), accompanied by the requisite accreditation fee and containing, *inter alia,* documentary evidence of applicants' ability to comply with the established criteria. In Tunisia, the application needs to substantiate the applicant's independence, impartiality and objectivity *vis-à-vis* the operators which the entity certifies; adequate professional competence and financial resources; composition requirements (clearly showing a distribution of responsibilities, in particular for administrative, inspection, testing and certification functions); inspection and precautionary measures *vis-à-vis* certification seekers; and registry system for certified operations. In the United States, public and private entities, both domestic and foreign, may apply for accreditation to the Administrator, by submitting the official application form and documentary evidence of their ability to comply with the established accreditation criteria and by paying the accreditation fees. In Canada, instead, the law clarifies that applicants' knowledge of the principles and practices of organic certification will be tested by CFIA.

As noted above, legislation should also set forth the **procedure to evaluate applications**. This amounts to the rules the authority shall follow themselves or expect the delegated body to do in their evaluation of certification bodies. For accreditation of 3rd party certification, there would be criteria for accreditation. The international reference for this is ISO 17011. Drafters may refer to ISO 17011 or prescribe specific criteria. Legislation in India provides a useful example in this regard. The Agricultural and Processed Food Products Export Development Authority (APEDA) carries out a preliminary screening of received applications, which is followed by a more thorough assessment by an Evaluation Committee, including thorough on-site visits to applicants' offices in order to verify that the certification programmes meet established requirements. All findings are incorporated in an evaluation report and submitted to the National Accreditation Body (NAB) for final decision.

The **criteria for certification** may be specified in national organic legislation, in order to provide certification bodies with legal certainty. It is the basis for accreditation and one of the key elements in the recognition of certification by international trade partners. To achieve international recognition of a certification system, countries may wish to harmonize their criteria with international reference standards. In 2003, an International Task Force on

Harmonization and Equivalence in Organic Agriculture (ITF) was created under the auspices of FAO, IFOAM and the UN Conference on Trade and Development, with the aim of laying down, *inter alia*, a set of essential international requirements for organic certification bodies, i.e. IROCB, as a basis for equivalence. There is also the ISO/IEC Guide 65:1996 on General requirements for bodies operating product certification, which lays down a internationally recognized system for certification companies.[36] ISO 65 requirements cover issues such as:

- effectiveness;
- objectivity and impartiality of bodies' activities (including the implementation of measures to prevent any conflicts of interest);
- adequate professional competence and sufficient number of qualified and experienced staff;
- availability of financial resources and sound financial management;
- accountability and responsibility for all activities;
- confidentiality of, and access to, information concerning certified operations;
- appropriate organisation's management system (including internal auditing, inspection and precautionary measures, and maintenance of appeal and complaints procedure); and
- compliance with record-keeping, reporting and confidentiality obligations.

Developed for industry manufacturing and product certification, ISO 65 does not fully address auditing of production and process aspects of organic agriculture. Legislation which references ISO 65 normally includes additional inspection and certification criteria, also known as organic scheme rules to augment ISO 65. IROCB is an integration of relevant parts of ISO 65 and key elements for organic agriculture inspection and certification to offer a complete general criteria for organic certification. For countries where the majority of producers are small holders, it is most helpful to include criteria for group certification, and this is not found in ISO 65.

36 The ISO Guide 65 is under revision and will become ISO Standard 17065 expected by July 2012; see Part I, Chapter 2, Section 3.2 of this publication for further details.

Some legislation requires formal accreditation of certification bodies to ISO 65 (European Union, India, Japan and South Africa). However this is not always the case, as evidenced by the Argentinean, Canadian, Tunisian and US systems. Those that do require such accreditation also contain augmenting rules to include organic sector- specific rules. National legislators should bear in mind that the existence of a national accreditation system is a prerequisite to be accredited to ISO 65. It will add overhead costs to local certification bodies which will likely be passed down to operators. The cost of certification may inhibit access to certification in developing economies. Unless the requirement also guarantees export market access, which depends on recognition by trading partners, exporters will have to continue to use the services of foreign certification bodies. Drafters will need to clarify whether compliance with the same requirements or equivalent ones will be the basis of recognising foreign certification bodies operating in the country and outside the country.

Legal drafters should take into consideration the general national legislation on access to certification services, especially in countries where certification services are limited to companies which, *inter alia*, are recognised as having legal personality under the laws of the particular country.

In India, an additional requirement for accreditation includes the establishment of mechanisms to enable participation of affected parties and to ensure non-discriminatory application of decisions. In the Philippines, criteria for accreditation include: ownership or control by Filippino citizens; lack of engagement in the production of organic agriculture at the time of the application for accreditation and during the lifetime of the accreditation authority as certifying body; engagement in organic agriculture production or related extension services for at least one year; completion of training in organic certification; ability to deploy at least one inspector per region; possession of adequate financial resources to undertake certification activities in its areas of coverage; a clean track record in financial dealings in previous transactions; and capacity of conducting inspection work in accordance with the approved Operating Manual of Certification Procedures (Admin. Order 13, § 3, 2003).

In Argentina, applicants are **registered** in the National Registry upon successful completion of the procedure, and are issued with an "accreditation certificate" by SENASA. In Canada, an accredited certification body is provided with an "accreditation number", and similarly in the European Union with a "code

number". In Tunisia, successful applicants are registered in a list ("*liste des organismes de contrôle et de certification*"), which is published in the *Journal Officiel de la République Tunisienne*. In the United States, accredited certification bodies must sign a "statement of agreement" prepared by the Administrator, through which they undertake to comply with the indicated accreditation criteria and obligations. In India, inspection and certification agencies need to sign an "accreditation contract" with APEDA (acting on behalf of the NAB), which thereafter issues a "certificate of accreditation" and an "accreditation number" (that may not be transferred or re-assigned) to the agency concerned.

Often legislation specifies that accredited entities are then subject to ongoing oversight and auditing, including on-site inspections (United States, European Union and Tunisia). In India, accredited certification bodies are subject to annual surveillance and review evaluations by APEDA and the Evaluation Committee, which reports to the NAB regarding observance of the established accreditation criteria and certification programme.

With regard to the **duration** of accreditation, in Japan, India, and the Philippines accreditation is granted for a period of three years, with the possibility of renewal. If it has not been renewed, accreditation is automatically invalidated upon expiration. In Argentina, accreditation is granted for one year, with the possibility of renewal subject to receipt of the annual registration fee. In the United States, accreditation shall not exceed five years, with possibility of renewal in accordance with an established procedure.

Certification bodies are separate entities that can be pre-existing public authorities, newly created public authorities, private organizations, or any mixture of the three. Certification bodies are permitted by the accreditation body through the requirements described above. Once accredited, these bodies certify producers, as well as production and processing facilities, to be able to market their products as organic.

Usually, the **obligations of certification bodies** include:

- ensuring the full implementation of the prescribed inspection and certification programme;
- giving competent authorities access to information and office facilities for auditing purposes;

- ensuring impartiality and confidentiality of certification operations,
- record-keeping;
- compliance with relevant authorities' orders;
- ensuring observance of national organic standards in the operations under their control;
- ensuring confidentiality of information obtained during their activities;
- annual reporting to relevant authorities (including a list of certified operators); and
- informing relevant authorities of any irregularity or infringement in the application of the organic agriculture legislation.

Additionally, decisions on certification shall be taken by a person different from those responsible for reviewing documentary evidence and performing on-site inspections, as required by ISO/IEC Guide 65 (among others, India, European Union, South Africa and Japan).

National legislation then addresses minimum requirements and precautionary measures for developing organic inspection and certification programmes. Legislation in this respect may include general provisions, as well as detailing specific procedures to obtain certification and to carry out inspection before and after certification. With regard to the **procedure of certification,** ISO 65 requires certification bodies to have documented procedures for issuing certification, and a detailed programme of inspections. These inspections are normally based on risk analysis. For countries which do not refer to ISO 65, the Codex Alimentarius Guidelines (annex 3, sec. 9) provide a set of minimum inspection requirements that should be implemented to issue certification. Accordingly, most countries require that a full physical inspection is undertaken at least once a year, and many also require that additional unannounced visits be made. In Canada, interested operators are required to send an application to the accredited certification body, containing, *inter alia,* a report detailing the methods and substances used in the production of the agricultural product as well as the control mechanisms adopted to ensure conformity with the Canadian Organic Standard. Whenever granted, organic certification remains in effect for a period of one year and the applicant concerned is provided with a certificate. However, the Regulation fails to specify whether certified operators need to apply for renewal. In India, when organic certification is granted, a "certificate of registration" is issued to the operator concerned,

specifying, *inter alia,* their personal details, the product(s) covered and the validity (NPOP, sec. 4).

In Japan, accredited certification bodies shall assess, on the basis of on-site inspections and documentary evidence received, whether applicants comply with the organic standards and technical criteria. Accredited certification bodies shall report positive decisions on organic certification to the Ministry of Agriculture, Forestry and Fisheries (MAFF). As in the Codex Alimentarius Guidelines (annex 3, sec. 9), only one annual full physical inspection of certified operations is mandatory unless "special circumstances" are identified by the MAFF. MAFF may, if it judges necessary, request reports from certified operators and carry out on-site inspections of certified operations (arts. 20(1)–(2), Law N°175).

In the Philippines, according to the website of the Organic Certification Centre of the Philippines (OCCP),[37] the procedure for receiving organic certification is as follows:

1. Producers must complete relevant application forms and compile other documentation, submit them to the OCCP's certification division and pay the application fee.
2. The certification division assigns an inspector to the applicant's production/processing sites. A relevant inspector makes contact and sets an appointment with the applicant.
3. The inspector prepares all necessary materials, equipment and documents and conducts field and processing-site inspections.
4. The inspector submits reports to the certification committee via the Agriculture or Processing Division. Certifiers examine the completeness of the report.
5. The certifier prepares a certification summary, including an evaluation and any recommendations, for submission to a certification committee. The certification committee determines whether the producer is in compliance with relevant standards, and makes a certification decision accordingly.

37 www.occpphils.org.

6. OCCP informs the producers or processors of the decision. If certification is approved, the right to label the product as organic is granted and the OCCP Seal is allowed for use, after signing a seal agreement with OCCP.
7. If certification is denied, an appeal in writing can be submitted to the appeals committee. The Executive Director reviews the decision and informs the certification committee whether they confirm the original decision, or reverse the committee's decision.

The OCCP requires annual inspections. In addition, unannounced and more detailed inspections are carried out at random. The OCCP can also conduct such inspections in response to allegations, formally submitted to the OCCP, concerning the violation of PNSSOA standards (Certification Contract, OCCP).

In the United States, besides a full physical inspection at least once a year, additional (announced or unannounced) inspections may be undertaken at the discretion of the certifying agent or, if required, by the Administrator. Inspection and testing of agricultural products to be sold as organic may also be carried out by the Administrator or the competent state official, not only by certification bodies. When organic certification is granted, the certifying agent must issue a "certificate of organic operation", specifying the name and address of the certified operator, the effective date of certification and the categories of covered organic products. Continuation of certification is subject to compliance with the updated organic production or handling system plan with national standards and payment of annual certification fees. The NOP also regulates instances where organic certification is denied, including the rights of applicants to file an appeal and to re-apply for certification. European Union operators (with the exception of wholesalers dealing only with pre-packaged food and operators selling to the final consumer) are to be subject to a "verification of compliance" at least once a year (art. 27(3), Regulation 834/2007).

Regarding **inspection reports,** in Switzerland, every time there is an inspection, a report shall be made and certification bodies shall have a list of all the operators submitted for their inspection (Ordonnance du Conseil fédéral suisse du 22 septembre 1997, art. 30(3)). In the case of plant production, the

report must include: a full description of the farm; the practical measures to be taken to ensure compliance with the ordinance; guarantees that unauthorized products have not been used for at least three years (only applicable to edible plants); information about the products used which do not comply with the ordinance; and the conversion plan for farms in the conversion process (Ordonnance du Conseil, annex 1, A.1.1). For animal production, the report must include: information about the storage of fertilizers; a management plan; information concerning the storage of veterinary medicinal products; identification of the animals; and a register about the animals (Ordonnance du Conseil, annex 1, A.2.1, 5, 7*)*.

In Argentina, at the beginning of the certification process, operators are required to prepare an organic production and handling plan that must be submitted to the certifying agent. In addition, they must sign an "agreement" with that agent to undertake to comply with the applicable national organic standards. Following the Codex Alimentarius Guidelines (Forward, sec. 9 and annex 3, sec. 9), a full physical inspection shall be undertaken at least once a year and decisions on certification shall be taken by a person different from those reviewing documentary evidence and carrying out on-site inspections. This is also the case in the United States. In Tunisia, when organic certification is granted, a conformity certificate and a license are issued to the operator concerned, indicating that the product lot was obtained in accordance with the prescribed organic standards, as a product of an operation that is subject to the established inspection system (art. 29). Then, at the beginning of the certification process, an organic plan is elaborated by operators and the accredited certification body concerned, who shall both sign an inspection report committing operators to comply with the applicable national organic rules (art. 2, Decree 2000-409). Testing during inspection is only required if there is a suspicion that prohibited substances are used (art.9, Decree 2000). An inspection report shall be drawn up and signed by the inspector and the operator after each of these visits. Similarly, in Turkey a "control plan" is prepared by the certification body prior to the inspection, and then an investigation report is issued. On that basis, when certification is granted, an organic farming entrepreneur certification and a product certificate may be issued (arts. 31–32, Regulation of the Ministry of Agriculture).

Finally, certification bodies should also **document procedures for addressing cases of non-compliance** by the organic operators, and submit

them to the competent authority for approval. These procedures should specify the measures that the certification body will adopt in the event of non-compliance by the organic operator, the consequences of such measures depending on how the non-compliance affects the organic integrity of the product, and those measures to be institututed in the case of operators who are found repeatedly or intentionally to fail to comply. National authorities may request these lists of measures for cases of non-compliance, to monitor their efficacy and to ensure that the organic integrity of the certified product will not be compromised. Authorities may also request certification bodies to define **penalties** for operators found to be in non-compliance (see also section 3.8 below).

Laws may also address other forms of organic certification. In India, guidelines for **group certification** have been incorporated to the benefit of small-scale producers and processors of organic products (NPOP, sec. 5). Provision for group certification is also made in Tunisian legislation, but no further details are provided. IFOAM standards recognize participatory systems of self-certification based on farmers groups. Group certification implies a third party certification in which small-scale farmers are certified in groups under an Internal Control System (ICS) based on an approved standard for group certification.[38] The proper functioning of the ICS is verified and monitored by an external certification body which also performs spot inspections on a sample of farms.

Participatory Guarantee Systems (PGS) are another alternative to third party certification. They are self organised multi-stakeholder organisations or networks of organisations that comprise of producers, NGOs, community village/township authorities, buyers and consumers. Production standards are normally based on the respective national organic standards where available or developed by the group based on international norms such as the IFOAM Standard, including social justice elements. Verification systems are group-specific, and include documentation, record keeping, peer audits and decision making that are usually very transparent and open to group members. PGS represents a social-based approach to the adoption and application of organic principles, where interested parties are encouraged to work together and to improve their farming practices through the sharing of knowledge and

38 www.ifoam.org.

experience. PGS groups focus on awareness-building, sharing, interpersonal and community trust building through direct participation opportunities for all interested parties in the development and governance of a shared agriculture production enterprise. PGS groups normally distribute their products in short-chain markets, i.e. direct delivery, farmers or local markets. Each member of the group can sell their production individually using a common logo.

Alternatives to third party certification whether it is self certification, group certification or participatory guaruntee systems, represent an important opportunity for small scale producers to participate in the national and international organic markets. For countries beginning to grow their organic sector, third party certification may be too onerous or costly. In such situations, previously developed and established guaruntee systems can be an excellent place to begin oversight implementation and institution building.

National organic labelling legislation should serve to establish the legal basis for the development of self-certification and other forms of community based asssurance systems possible and reliable. To this end, farmers' groups, cooperatives, organic associations, etc., must be recognised by the system through, at a minimum, legal personality and guarantees of participation in decision making processes.

3.6 Organic operators

Often the law requires operators to become enrolled in a recognised verification system, e.g. a third-party certification system or PGS in order to be recognized as organic operators.

Registration and de-registration of operators are normally the responsibility of authorised certification bodies, although competent authorities may decide to maintain a registry of organic operators for their own purposes. Legislation should, at least, establish the right of the competent authority to have access to the registries maintained by the authorised certification bodies. As noted above, when drafting provisions on registries, national drafters may need to take into consideration general rules on record keeping, privacy, confidentiality of information and access to data in the country.

Once the operator has enrolled in this system, there is a direct relationship between the operator and the certification body, which will be governed by a contract under private law. In Turkey, for instance, the law expressly calls for the establishment of a contract between the operator and the accredited institution: the contract is a written agreement in which the operator agrees that agricultural activities should comply with organic agriculture legislation (arts. 5–6, Regulation on Essentials and Implementation of Organic Farming).

Notwithstanding the contractual obligations between the certification body and the operator, organic legislation should define who will be liable if a product is found to be not to be in compliance with the organic rules and regulations, including claims made by operators who are not part of any authorised certification systems. Legislation may set forth principles governing the relationship between the operator and the competent authority, such as the duty to maintain the confidentiality of business information, rights of public inspectors to monitor, control and take samples of organic products, or rights to receive adequate information.

Operators must comply with the organic legislation and the requirements specified by the certification body. These obligations generally include, *inter alia*, to:

- comply with the applicable organic production and handling standards;
- keep records related to their organic production operations;
- comply with the reporting duties;
- permit on-site inspections with complete access to production and/or handling facilities by the certifying agent of the authorised certification body or the competent authority;
- adopt corrective and disciplinary measures as identified by the certification body in cases of non-compliance; and
- immediately notify the certification body of changes in the certified operation having repercussions on compliance.

Some national systems, like the USA NOP, permit exclusion from the registration system of small producers marketing directly or through local farmer's markets. Imposing compulsory third party certification on every producer, big or small would be both difficult (if not impossible) to enforce,

and undesirable. It could also serve to encourage the use of conventional rather than organic production. Hence the need to consider alternative community based systems such as PGS or waiving the need for really small scale producers and local farmers markets. Drafters need to make a risk assessment when considering whether it is necessary to impose compulsory individual certification or registration.

3.7 Import and export

The two most used channels for importation of organic products are equivalency recognition of foreign countries organic regulatory and organic compliance systems, and direct organic certification by accredited/recognized bodies. The former applies between the authorities of different countries: a country's organic standards and control system are recognised as equivalent by the importing country. This recognition of organic equivalency may take place through a negotiated bilateral agreement (Argentina, India and US) or through the unilateral inclusion into an official list by the importing country (European Union, Japan). The latter applies between authorities of the importing country and certification bodies operating outside the country. Importers must obtain organic certification from a public or private certification body formally approved by the competent authority of the importing country (Argentina, US, India, Japan, South Africa). This method is found in all national legislations dealing with the importation of organic products and provides an alternative to country-to-country equivalency. In this case, certification is normally assessed against the organic standards of the importing country, but may also be based on the use of equivalent local standards.

In the United States three channels exist for organic certification of foreign products:

- Direct accreditation by USDA: organic certification is performed by US or foreign certification bodies operating in a foreign country that have been directly authorised (accredited) by the USDA; or
- USDA recognition of foreign accreditation or the accreditation system: organic certification is performed by foreign certification bodies recognised by USDA, upon request of the third-country government, as having been accredited in that country in a manner that satisfies the NOP accreditation requirements; or

- Bilateral equivalency agreement: organic certification is performed by foreign certification bodies that are authorised or accredited by a foreign governmental authority pursuant to an equivalency agreement with the United States.

In the European Union, interested countries can apply to the European Commission for inclusion into the state-based **equivalency list**, providing sufficient evidence that their organic legislations are equivalent to that of the European Union. Assessments of equivalency take into account the Codex Alimentarius Guidelines. Products imported from these countries shall be accompanied by a certificate of inspection issued by a competent authority, attesting that such products were produced and inspected in accordance with rules recognised as equivalent by the European Union. If products originate from countries not on the above-indicated list, they need to be certified as equivalent or compliant with all the production and processing requirements of Regulation 834/2007, including its implementing measures. Two lists will be established of bodies competent to carry out the necessary inspection and certification activities in third countries, one for bodies certifying to a system that is equivalent to the system of the European Union and one for bodies certifying to a system that is compliant with the system in the European Union. Such certification bodies shall be accredited to the most recent version of European Standard EN 45011 or ISO Guide 65 and shall undergo regular on-the-spot evaluations, surveillance and multi-annual re-assessments by the accreditation authority (art. 32).

In Japan, lists are available of countries whose organic legislation have been recognised by MAFF as equivalent to that of Japan. Foreign operators need first to obtain certification against the organic standards and rules of the third country concerned. Such organic certification must be performed by governmental or quasi-governmental entities designated by MAFF for each of the listed countries. The export certificate issued by these competent third-country entities and the national organic logo need to be attached to the certified product before it is exported to Japan. Japan-based importers must in turn be certified by accredited Japanese certification bodies in order to import such foreign products (art. 37, Ministerial Ordinance N°62). Once certified, importers shall put the JAS organic logo on the product in question before it is placed on the Japanese market (art. 15(2), Law N°175; arts. 37–38 of Ministerial Ordinance N°62). In the case of certification by

MAFF-accredited bodies, operators from foreign countries whose organic systems have not been recognised as equivalent to that of Japan need to obtain organic certification by certifying bodies in Japan or overseas that have been accredited by MAFF (see section 3.6 above). Once the foreign products concerned have been certified as compliant with the JAS Organic Standards, the JAS organic logo is attached to them and they may be imported and placed on the Japanese market (art. 19(3), Law N° 175).

In Croatia, importers of organic products can be legal and natural persons registered as traders. They also need to be included in **the Register of Importers of Organic Products**. They must possess a certificate for their organic products delivered by an accredited certification body of the exporting country. The organic products imported to Croatia must meet the import requirements of the Trade Act, of the Law on organic production of agricultural products and foodstuffs and the pertinent regulations.

In Canada, legislation only demands that every imported product identified as organic be accompanied, at the time of its importation into Canada, by an **"attestation"** issued by the competent authority of the country of origin confirming that the product concerned meet the requirements of the Canadian Regulation.

Regarding exports, some countries do not require exports to comply to domestic labelling regulations, e.g. China. Some bilateral equivalency agreements may contain their own export requirements. In some systems, export organic certification procedures will be dealt with by the certification body, and meet the regular export measures.

There are about eight different methods for recognizing or facilitating **import of organic products** which governments, competent authorities, accreditation bodies or certification bodies can employ.

1. Systems recognition (equivalence) agreements between governments
Equivalence agreements between governments are applicable where similar legislation is in place. Negotiations are conducted on a bilateral basis, where the exporting country is the weaker party and may be at a disadvantage. As a diplomatic discourse, it is resource demanding. It can be slow and not reciprocal as is the case with the EU third country list or fully reciprocal as in

the USA-Canada agreement. The USA-Canada agreement was the first fully reciprocal agreement in the organic sector.

2. Foreign government as agents

The recognition of other national authorities as equivalent to USDA accreditation for certifying according to the NOP is an example of employing foreign government as agents. It is applicable where national accreditation for organic certification is set up. Certification is to the importing country's rules, not local national standards.

3. Acceptance of international accreditation

Australia's recognition of IFOAM Accreditation is the only example of acceptance of international accreditation to-date. Meanwhile there are examples of acceptance of evaluations done by international accreditation bodies, e.g. the International Organic Accreditation Service (IOAS) for accreditation by the Quebecois and Canadian authorities for approval of certification bodies working in third countries by the European Commission.

4. Recognition between accreditors

Accreditation bodies can normally negiotiate recognition agreements with peer bodies. Besides legislated markets with accreditation systems, this is applicable where national accreditation for organic certification is set up without compulsory certification legislation, e.g. Thailand and Indonesia. Unlike the Foreign government as agents option, recognition can include use of compliant or equivalent national or private standards.

5. Direct approval of foreign certification bodies

This is currently the main means governments employ to facilitate certification for imports. Certification bodies are required to apply for separate approval/registration with each regulatory regime. This necessitates multiple accreditation for certification bodies and multiple certifications for operators.

6. Recognition/collaboration agreements between certification bodies

Through collaboration and sub-contracting inspections, certification bodies can facilitate one inspection for multiple certifications amongst themselves to facilitate exports. Products are certified in accordance with importing country rules. However, this can be a problem for countries that require national

registration of inspectors as a mandatory requirement, as is the case in China and South Korea.

7. Mandate authority to certification body
Instead of direct approval of foreign certification bodies, authorities can mandate their respective certification bodies to make the necessary approval, based on the recognition of equivalent certification, use of prior reports for re-certification or use of inspection services. This will boost collaboration between certification bodies and facilitate access between legislated and non-legislated markets without the need for non-legislated markets to rush to set premature legislation.

8. Unilateral acceptance of products from equally credible systems
Australia has adopted unilateral acceptance of what they consider to be an "equally reliable imported organic or biodynamic product", such as products compliant with the EU, NOP, Organic JAS or IFOAM Accreditation. (Australian Standard, A S 6000)

Globally, there is a diverse mixture of highly developed regulatory frameworks and non-regulated markets with involvement of government certification programmes, private local and international certification bodies operating under national requirements as well as private standards. Countries will be required to to employ a combination of the above to facilitate import and export worldwide, namely

a) country systems recognition with legislated markets including those with national standards and accreditation systems in place, and

b) recognition of government or private inspection/certification from non-legislated markets.

A. *Systems Recognition*

Systems recognition includes equivalence of (a) standards and technical requirements; and (b) certification, i.e. certification requirements and supervision of certification.

National standards and technical requirements are usually drafted and adopted with the national or regional conditions in mind. Owing

> to global diversity regarding national geographic and agronomic conditions, cultures and stages of development, differences in technical requirements and standards for organic production and processing are often justified and may even be considered to be. Equivalence, i.e. the acceptance that different standards or technical requirements can fulfill common objectives, is a well-applied and common pathway in international trade agreements. Use of an international standard as a reference for determination of equivalence is recommended by the WTO. Both WTO and Codex mention that determination of equivalence should be based on objectives.

Having mapped and studied issues related to harmonisation and equivalence in organic standards and certification, the International Task Force on Harmonisation and Equivalence in Organic Agriculture (ITF) has developed two tools to facilitate systems recognition. The EquiTool for Equivalence of Organic Standards and Technical Regulations and the International Requirements for Organic Certification Bodies (IROCB). They can be used by public regulators and private sector organic scheme owners. The European Commission's guidelines on imports of organic products into the European Union refer to the EquiTool and the IROCB as examples of international best practice to be used in assessing equivalency of organic guarantee systems.

B. *Equivalence in Standards*

Equivalence in standards and technical requirements between two parties is generally determined by means of a side by side comparison of the parties' standards and technical requirements, and by employing criteria for variations to review differences and negotiate acceptance. For a multi-party process, comparing every set of requirements with each other would be tiresome and inefficient. It is necessary to use a common procedure and basis for evaluation that can be used by all parties. Drafters can reference use of the EquiTool as part of the means for establishing equivalence in standards and technical requirements. There is need to use a common basis for evaluation for all sets of requirements. This can be an international reference standard, e.g. Codex Guidelines or The IFOAM Standard, or a common set of objectives for organic production and processing in the region. Where consensus on full equivalence cannot be reached, provision can be made for exclusions, e.g. full compliance to prohibit the use of specific materials. The standard equivalence assessment can also apply to private standards.

C. *Equivalence in Certification*

Credibility in certification is generally based on applicable certification norms and supervision of certification. Recognition of certification in general is based on adequate monitoring.

D. *Certification requirements*

Many but not all major regulations reference ISO 65 plus additional sector-specific requirements for their respective organic certification scheme rules. Parties can develop minimum requirements for recognition of certification from their respective scheme rules. Alternatively, drafters can consider adopting the IROCB, which has the additional sector-specific requirements already incorporated, as the basis for recognition of equivalence in certification requirements.

E *Supervision of certification*

The common measure of credible accreditation is peer reviewed compliance to ISO 17011. Parties can conduct peer review of each other's supervision according to ISO 17011 or accept proof of equivalent peer review against ISO 17011 done by others. Similarly, drafters can also include recognition of international accreditation bodies who are ISO 17011 compliant and peer reviewed.

F. *Recognition of inspection/certification from non-regulated markets.*

While recognition of import certification with legislated markets may be achieved on a system recognition basis, recognition of imports from non-legislated markets may be done as follows.

G. *Accreditation to a recognised supervision system*

Products certified by certification bodies that are accredited by a recognised country system operating outside of the legislated country would presumably be recognised. For example, if system recognition is reached within the EU, certification done by EU approved certification bodies outside of the EU should qualify. Drafters may also consider recognition of international accreditation systems. If not directly, they can be approved to provide expert reports for recognition of certification bodies by the competent authority,

as in the case of the EU and Canada. This will reduce the need for multiple accreditation.

H. *Certification bodies mandate to develop equivalent certification*

Products from some non-legislated markets may not be of sufficient volume for local certification bodies in the non-legislated countries to apply for direct approval or registration. To facilitate small trade flows, legislation can allow the competent authority to mandate certification bodies within their supervision to collaborate and develop equivalent certification with local certification bodies in non-legislated markets. This can be based on use of similar or equivalent standards and supervision of certification by the responsible certification body in a collaboration contract.

I. *Use of prior inspection and contract inspectors*

For ad-hoc intermittent trade, where there is not enough activity to establish on-going collaboration, certification bodies could be allowed to use prior inspection reports for re-certification (as allowed for in Japan through Organic JAS) and not be restricted to using contracted inspections through local certification bodies.

3.8 Non-compliance and offences

National legislation on organic agriculture should distinguish between instances of non-compliance, actual offences committed by organic operators and fraudulent claims of organic status by operators that are not part of the system. Given that organic operators decide on a voluntary basis to comply with organic agriculture provisions, non-compliance should simply lead to non-certification or withdrawal of certification. However, national legislation should also protect general interests, such as environmental protection or the protection of the consumers against fraudulent or misleading practices: in these instances, civil or economic sanctions would be more appropriate.

Certification bodies will normally be responsible for detecting and addressing non-compliance by organic operators. As discussed above, certification bodies draw up their own documented procedures and measures to be employed in cases of non-compliance by organic operators as a part of their certification process (see section 3.6 above). This may be an internal mechanism of the

certification body used in the process of certification, implemented in the framework of its contractual relationship with the organic operator. Conversely, if the conduct of the operator goes against a principle protected by the state through the law, the government, through the designated authorities, will be responsible for the detection of offences and the imposition of a sanction or an administrative measure on the responsible operator.

National drafters should take into consideration general national legislation on administrative procedure for drafting provisions regarding offences and sanctions. They should bear in mind, *inter alia,* legislation protecting consumers against misleading practices, agricultural markets against fraudulent production, fraudulent uses of labelling or indications, and in particular they should think about how the authorities will deal with fraudulent organic claims by those that are not part of the system, i.e. have not submitted themsleves to supervision.

Furthermore, if certification bodies act in a discriminatory manner or break the rules governing accreditation and certification, they create risks for the credibility of the national organic market. Thus, offences should also be devised with specific regards to certification bodies which fail to comply with the law. In drafting these provisions, national legislators should bear in mind potential consequences of the withdrawal of accreditation to a certification body in respect of the organic operators which they have certified.

While the above distinctions may appear clear in theory, in practice it is difficult to discern relevant provisions in the reviewed national legislation. National legislation identifies the conduct leading to suspension or cancellation in a detailed manner only in a few cases, and seldom addresses possibilities of appealing against decisions of suspension or withdrawal, which is an essential element to ensure legal certainty.

In the European Union, in line with the Codex Alimentarius Guidelines (sec. 6.9), there is a differentiation between "irregularities" and "severe infringement or infringements with prolonged effects" in terms of legal consequences, without however specifying the grounds or conduct that may lead to one or the other. In India, "infringements" are distinguished from "violations", without however indicating the specific grounds or conduct that may lead to one or the other.

Legislation often imposes penalties such as fines, **suspension and cancellation of accreditation status upon certification bodies**. In Argentina, for instance, if certification bodies are found in violation of the established accreditation criteria and obligations, they may be sanctioned by SENASA with fines, suspension of accreditation status and withdrawal from the National Registry for a period of one year, and the temporary or permanent closure of offices (art. 24, National Law 23.899). However, the specific conduct or grounds that constitute violation are not detailed. In Canada, on the basis of a recommendation by the accreditation body or of its own initiative, the Canadian Food Inspection Agency (CFIA) shall suspend accreditation of a certification body that fails to comply with legal provisions. Once again, however, the specific grounds or conduct that constitute non-compliance are not specified. Suspension of accredited status remains in effect until the required corrective measures have been implemented and verified. If the certification body fails to implement such measures, accreditation shall be cancelled by the CFIA (art. 7, Organic Products Regulation). In India, when the accredited status of a given certification agency is suspended, the NAB has the power to nominate another agency to continue the work of certification in order to protect the interests of the operators affected by the suspension (NPOP, sec. 4).

In the United States, a procedure to be taken in cases of non-compliance by certification bodies, which may result in suspension or revocation of their accredited status by the Secretary of Agriculture, is briefly described in the legislation. Certification bodies must cease all certification activities and, in cases where accreditation has been revoked, will be ineligible for accreditation for a period of at least three years (sec. 205.665, NOP). The Secretary of Agriculture is competent to determine, on a case-by-case basis, whether farming or handling operations certified by these agents may nonetheless retain their organic certification (sec. 2116(j), OPA). Lastly, a peer review panel, established by the Administrator, is entrusted with, *inter alia*, the annual evaluation of US accreditation procedures against ISO/IEC Guide 17011, 'General requirements for assessment and accreditation of certification and registration bodies' (sec. 2117, OPA; sec. 205.509, NOP).

As highlighted above, only certain countries detail the **conduct** that is considered as being non-compliant with the law. In Tunisia, failure to report any infringements of the law on the part of operators may lead to the

(temporary or permanent) withdrawal of accredited status from certification bodies, and possibly also the imposition of a fine (arts. 20, 22, Organic Agriculture Law). In India, grounds for withdrawal of accreditation are specified in detail. Conduct providing grounds for withdrawal of accreditation include (but are not limited to): non-observance of the accreditation criteria and national organic standards; misuse of accreditation status; refusal to allow or hinder full access to information by the Evaluation Committee; failure to pay accreditation fees or charges on time; failure to comply with any sanctions imposed in the event of non-compliance with the accreditation contract. If violations are severe, the NAB may revoke accreditation without allowing future rectification (NPOP, sec. 4). In Japan, MAFF must cancel accredited status of both domestic and foreign certifying bodies if these are found to have obtained accreditation by improper means, or for failure to comply with the established accreditation criteria and obligations. In the Philippines, failure by an accredited entity to submit "year-end and other periodic reports" of its activities (AO 13, 4.2.7) is a basis for accreditation revocation.

With regard to the **suspension and cancellation of organic certification for non-compliant producers**, in Canada the competent certification body or the CFIA must suspend organic certification if its holder fails to comply with the provisions of Canadian Agricultural Products Act, the Organic Products Regulation and the National Organic Standard (NOS). However, no specific grounds or conduct that constitute non-compliance are detailed. Suspension of organic certification remains in effect until the required corrective measures are implemented and verified. If the operator fails to undertake such measures, certification shall be cancelled by the CFIA or the competent certification body (art. 13, Organic Products Regulation). In Japan, certification bodies whose accredited status has been suspended shall cease all certification activities and are ineligible for accreditation for a period of at least one year (arts. 17(12), 19(9), Law N°175). Failure to do so may lead to domestic certification bodies being sentenced to a fine not exceeding one million yen or to imprisonment for a period of time not exceeding one year. The legal consequences of non-compliance by foreign certification bodies are not specified. In addition, MAFF may cancel the accredited status of entities that fail, without justifiable cause, to start certification operations within one year from the granting of accreditation (art. 17(12), Law N°175). In Tunisia, the Minister of Agriculture, after obtaining the opinion of the National Commission, may (temporarily or permanently) withdraw organic certification from operators if they fail to

comply with national organic standards and control system. Such operators may be further sanctioned with the payment of a fine (arts. 20, 22, Organic Agriculture Law). However, once again, the specific grounds or conduct that constitute non-compliance are not specified.

In Australia, the following measures can be imposed on organic producers by certification organizations: conditions imposed on producers, timelines for compliance, additional inspections as determined by certification organization, suspension of operations if the organic integrity of the operation is believed to be compromised, loss of the right to use organic labelling including the removal of already-labelled produce, and/or de-certification of an organic producer. The OCCP certification contract also lists the following sanctions for those who do not comply with PNSSOA standards:

- OCCP is entitled to impose sanctions including a cancellation of the certificate for the affected standard.
- In the event that the OCCP logo is used to label products that have not been verified and certified by OCCP, the contracting client will be subjected to the sanctions and penalties provided in the Consumer Act of the Philippines.
- OCCP may conduct renewed inspections upon presentation of suspicious facts of a violation of the Philippine National Standard for Organic Agriculture and Processing or any provisions for its implementation (Certification Contract, OCCP, para. 6).

In the European Union, findings of irregularities result in the **withdrawal of all organic indications** from the entire lot or production unit affected by that irregularity. In the case of infringements, the operator concerned will be ineligible for organic certification during a period to be determined by the competent authorities of the member states (art. 30, Regulation 834/2007). In India, where an infringement that affects the organic integrity of a product is found, the competent certification body shall ensure that all indications of organic certification are removed from the entire production lot affected by the infringement in question. Where a violation is made by the operator, the competent certification agency shall withdraw certification from the operator for a specified period and inform the NAB about the decision (sec. 4, NPOP).

Operators' conduct that is considered as being non-compliant is not always specified in the legislation – such specification is an essential element to provide legal certainty. In Japan, organic certification shall be suspended by the competent certification body in the following cases: (i) when the certified operator no longer complies with the organic standards and technical criteria, or fails within one year to take the measures that are requested by the certifying agent in order to ensure compliance; (ii) when the certified operator has provided false documentary evidence to the certification body or impeded on-site inspections; (iii) when the certified operator refuses to comply with orders issued by the Ministry of Agriculture, Forestry and Fisheries (MAFF), fails to make a report requested by MAFF, or impedes on-site inspections by MAFF; (iv) for any other grounds stipulated in ISO/IEC Guide 65 (art. 46, Ministerial Ordinance Nº 62). Certifying bodies must report cancellation decisions to the MAFF and affected operators are ineligible to obtain organic certification for a period of at least one year. In addition, violations of certification obligations or labelling requirements may be sanctioned with a fine.

In Croatia, a fine is imposed on an operator that, *inter alia*:

- produces, declares and labels organic products within the meaning of the law without being entered in the register of producers;
- fails to observe provisions on the conversion period;
- uses reproduction material in organic production in violation of the law; and
- imports organic products in violation of the law.

Some national legislation specifies the **procedures** related to non-compliance by operators. In the United States, when an inspection, review or investigation by a certifying agent reveals an instance of non-compliance with national organic standards, a written notification of non-compliance is sent to the certified operator concerned, who may rebut or correct the non-compliance. If the rebuttal or correction is unsuccessful, a written notification of proposed suspension or revocation is sent to the certified operator concerned. The NOP does not specify the grounds or conduct that may lead to either suspension or revocation of organic certification, although their consequences differ in terms of future eligibility. Operators whose certification has been suspended can at any time submit a request to the Secretary of Agriculture for a reinstatement

of their certification, accompanied by evidence of correction of previous non-compliance. Conversely, operators whose certification has been revoked are ineligible to receive certification for a period of five years. In addition, any certified operator that knowingly misuses organic labelling is subject to a maximum civil penalty of US$10,000 per violation (sec. 205.662, NOP).

The Australian National Standard also includes a procedure for **appealing** the decisions of a certification organization (National Standard, 6.3, 6.5). In Switzerland, the certification body shall prepare a plan on offences and sanctions as well as a plan for non-compliance, and shall notify irregularities to the Federal Office for Agriculture and to the cantonal authorities (arts. 28, 30, Ordonnance du Conseil).

Overall, national legislation on organic agriculture should clearly establish the conduct that qualifies as instances of non-compliance and as offences under organic law for operators, and offences for certification bodies. After identifying what constitutes non-compliance and offences under the law, the legal consequences of each should be spelt out – some options include suspension, withdrawal of accreditation or certification, withdrawal of organic indications, fines, etc. The misuse of organic indications may also be considered as a specific offence or a special type of consumer fraud. Criteria to limit discretion in the application of consequences should also be included, taking into account current and anticipated enforcement capacities. Finally, procedures for the detection and treatment of non-compliance and violations of the law should be spelt out, including opportunities for appeal.

3.9 Promotional measures

Legal provisions may aim at supporting the development of the organic agriculture sector. These provisions may therefore entrust an awareness-raising function to specific bodies or simply encourage this, for example by providing funding, incentives and training opportunities.

According to Article 8 of Turkey's Organic Farming Law on **advertising** and promotion of organic products and inputs, the Higher Board of the Turkish Radio and Television Corporation shall take necessary measures and initiatives to ensure that various Turkish media outlets provide airtime for educational programs about organic farming (at least 30 minutes a month).

In Croatia, the government, at the proposal of the relevant ministry, shall define **incentives** for the development of organic agriculture (art. 8, Law on organic production of agricultural products and foodstuffs). Legal provisions on **training** may also be included in the law. In Turkey, provisions are in place for the periodic training of inspection personnel at the central level and training of farmers at the provincial level (arts. 40, 42, Regulation on Essentials and Implementation of Organic Farming).

Finally, in Argentina, the possibility of preferential **tariff policies** in order to encourage the international trade of organic products is contemplated in the law (art. 7, National Law 25.127).

3.10 Final provisions

Final provisions generally aim at regulating and facilitating implementation, including provisions on the issuance of regulations; a provision on derogation of former legislation superseded by the proposed law; financial provisions; and an indication of the date on which the law will enter into force.

Often final provisions will include transitional measures for affected governmental agencies, and perhaps more importantly for affected private parties being impacted by the new regime. Transitional measures may include lead time for certain new programs or a time frame in which certain out-moded claims of organic production will be phased out with impunity. Transitional measures are an important and convienent way to communicate directly and clearly with affected parties who may be overwhelmed by the prospect of a new regulatory regime.

Final provisions should be drafted in accordance with national legislative practice. The forms for requesting licenses or permits could be annexed to the draft legislation as schedules.

PART II

CASE STUDIES

Contents

The main objective of this part is to offer an analysis of national and regional regulatory frameworks for organic agriculture.[39] Seven countries have been selected as case studies, namely: Argentina, Canada, India, Japan, South Africa, Tunisia and the United States of America. The European Union is also included in the scope of the analysis as an example of organic legislation adopted at the regional level, binding its (at present) twenty-seven Member States. This selection of case studies proceeds from the relative importance of organic agriculture in the countries/regions concerned and their position as importers or exporters of organic products, while keeping a representative balance in geographical terms.

For comparative purposes, the analysis of each country is divided into seven sections, beginning with an overview of the legal and institutional framework on organic agriculture (section 1) and thereafter following the structure of the *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods*.[40] Thus, the six remaining sections deal with: general objectives and principles (section 2);[41] scope of application (section 3);[42] organic labelling and claims (section 4);[43] organic production, handling and processing rules (section 5);[44] accreditation and certification (section 6);[45] and import requirements (section 7).[46]

An additional methodological remark appears necessary concerning the terminology used. Differences in wording are, of course, found across the various national/regional laws and legislations, something which in most cases

39 The law and policy developments in this chapter are reflected as they were on 11 June 2009.

40 Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods (GL 32-1999, Rev. 1-2001), available at: ftp.fao.org/codex hereinafter, Codex Alimentarius Guidelines. The Guidelines were developed by the Codex Committee and adopted by the Codex Alimentarius Commission at its 23rd Session in 1999. Note that the provisions for livestock and livestock products were only adopted by the Codex Alimentarius Commission at its 24th Session in 2001. In addition, several revisions (including the tables of permitted substances in the Annexes) have been made and adopted from 2003–2009.

41 Codex Alimentarius Guidelines, Foreword.

42 Ibid., Sections 1 and 2.

43 Ibid., Section 3.

44 Ibid., Section 4 and Annex 1.

45 Ibid., Section 6 and Annex 3.

46 Ibid., Section 7.

can be attributed to linguistic reasons, but in others reflect divergences in the substantive content of organic standards and rules. For the purpose of facilitating comparisons, the study is based on the terminology of the Codex Alimentarius Guidelines (marked in bold), although specific terms used in each national/regional law or legislation will be accounted for.

It should also be a preliminary note, with regards to the type of legal instruments used, that organic agriculture has generally been regulated through secondary/subsidiary legislation, such as regulations, ministerial decrees or notifications. In some cases, these are, however, based on hierarchically superior legal instruments specifically adopted for organic (and not all) agricultural products (Argentina's National Law 25.127 and US Organic Food Production Act). Another significant source of divergence relates to the degree of regulatory fragmentation. Some countries have integrated most organic standards and rules into one single legal instruments (EU, South Africa, US), while others present a highly fragmented regulatory framework (Japan, Tunisia). In addition, Canada (NOS) and India (NPOP) have established national standards on organic production and handling/processing by way of instruments that have no *per se* legal force. Nonetheless, in both cases compliance with these national standards is rendered mandatory by the legal requirement of organic certification, usually laid down in a separate regulation. In others words, only products that have been duly certified as conforming to national organic standards may be marketed as organic in these two countries.

ARGENTINA

1. OVERVIEW OF THE LEGAL AND INSTITUTIONAL FRAMEWORK

The origins of Argentina's legal framework on organic agriculture have to be traced back to a series of resolutions adopted in the early 1990s by the (former) Argentine Institute for Plant Health and Quality ("*Instituto Argentino para la Sanidad y Calidad Vegetal*") and the (former) National Service for Animal Health ("*Servicio Nacional de Sanidad Animal*"), both under the authority of the Ministry of Agriculture, Livestock, Fishery and Food ("*Secretería de Agricultura, Ganadería, Pesca y Alimentación*").[47] The prevailing institutional fragmentation led to legislation being adopted separately for organic products of plant origin and those of animal origin. Regarding the former, Resolutions 423/92, 82/92 and 331/94[48] established: standards on organic production, processing and handling methods, the criteria and procedure applicable to the accreditation of inspection and certification entities, minimum requirements for inspection and certification programmes, and rules pertaining to organic labelling and claims. Resolutions 1286/93 and 68/94[49] regulated these same matters for organic products of animal origin. These measures were subsequently reviewed and complimented by other resolutions, with the last one adopted in 2007.[50]

Argentina's regulation of organic agriculture thus developed relatively early and quickly, something which can be attributed to two main factors. First, it became apparent at the 1990 Trade Congress of IFOAM that there was growing global demand and price surpluses in organic products against which Argentina had a comparative advantage thanks to physical conditions that

47 Please note that these are not official translations. During the 1990s, it was in fact the Ministry of Agriculture and Fisheries only, but for the benefit of simplification only the most recent designation will be used here.

48 Resolution 423/92 of 3 June 1992 (organic standards and labelling requirements); Resolution 82/92 of 3 June 1992 (accreditation procedure and criteria); Resolution 331/94 of 4 August 1994 (minimum precautionary measures in inspection and certification programs), all available at: www.alimentosargentinos.gov.ar.

49 Resolution 1286/93 of 19 November 1993 (organic standards and labelling requirements); Resolution 68/94 of 10 January 1994 (accreditation procedure and criteria), all available at: www.alimentosargentinos.gov.ar.

50 Resolution 184/2007 of 18 September 2007, available at: www.alimentosargentinos.gov.ar. For an overview of the content of these resolutions, visit: www.fao.org.

allowed for a relatively easy and costless conversion from conventional to organic production (Resolutions 423/92 and 1286/93, preambles). Second, in 1992, Argentina was among the first countries to apply for inclusion into the EU list of three countries with organic equivalency, pursuant to Article 11(1) of EEC Regulation 2092/91. Against this background, it is not surprising that the above-indicated Resolutions were modelled upon the EEC Regulation 2092/91. On 26 March 1996, Argentina's organic standards and control system were officially recognised as equivalent by the EU, thereby becoming the first developing country to have been included in the Article 11(1) list.[51] Since then, the EU has successively extended the inclusion of Argentina onto such a list until 30 June 2013.[52] As a result, Argentinean organic exports to the EU have grown significantly and accounted for almost 80 percent of organic exports in 2001.[53] A more recent study of IFOAM ranks Argentina among the ten countries in the world with the greatest organic agricultural space, approximately 3.1 million hectares of certified organic land in 2005.[54]

The growing significance of organic farming in Argentina during the 1990s was codified into law with the adoption of the National Law 25.127,[55] which was passed by Congress in 1999 and subsequently implemented by Decrees 97/2001 and 206/2001.[56] The National Law 25.127 and its implementing decrees are set to act as a "framework law" ("*ley marco*") for all organic products, whether of plant or animal origin. In substantive terms, the National Law 25.127 provides for:

- A definition of the concept of "organic" (art. 1);[57]
- A general prohibition on the marketing of products as organic unless duly certified by accredited entities (art. 2);[58]

51 Commission Regulation (EC) No 522/96 of 26 March 1996, OJ [1996] L77/10.

52 Commission Regulation (EC) No 345/2008), OJ [2008] L108/17.

53 See further CTA, FAO, ITC, *World Markets for Organic Fruit and Vegetables. Opportunities for Developing Countries in the Production and Export of Organic Horticultural Products*, (2001), pp. 234–235.

54 H. Miller and M. Yussefi (eds.), *The World of Organic Agriculture. Statistics and Emerging Trends 2007,* (IFOAM, 2007), p. 9.

55 National Law 25.127 of 4 August 1999, available at: www.alimentosargentinos.gov.ar. Note that, pursuant to Article 31 of Argentina's Constitution, such National Laws (together with international agreements and the Constitution itself) constitute the "supreme law of the land".

56 Decree 97/2001 of 25 January 2001; Decree 206/2001 of 16 February 2001, both available at: www.alimentosargentinos.gov.ar.

57 See Section 2 below.

58 See Section 4 below.

- The designation of the Ministry of Agriculture, Livestock, Fishery and Food as the implementing authority, through its National Service for Agricultural Health and Quality ("*Servicio Nacional de Sanidad and Calidad Agroalimentaria,*" SENASA), which acts as a single regulatory body for all organic products (art. 4);[59]
- The creation of an Advisory Commission within the ministry ("*Comisión Asesora*") in an attempt to reflect stakeholders' views in the decision-making process (art. 5);[60]
- The promotion of organic agriculture and international trade in organic products (Title II);[61] and
- Minimum requirements on the control system (Title III).[62]

In addition, Decree 206/2001 creates a National Programme on Organic Production (PRONAO) with specified objectives. Furthermore, it prescribes the fundamental principles and standards that shall underpin the adoption of new legislation in the organic field. The latter having been incorporated in a regulation annexed to the decree.

At the time of writing, no amendment has been made to the above-indicated resolutions following the National Law 25.127 and its implementing decrees. In accordance with Article 6 of Decree 206/2001, such resolutions remain in force. As will be seen, some of the provisions of these resolutions have been incorporated into the National Law 25.127 or Decree 206/2001, but not all of them. For instance, the lists of permitted substances in organic agriculture or the accreditation procedure and criteria are only stipulated in the resolutions. Thus, an accurate picture of Argentina's legal framework requires an examination of these resolutions in addition to the National Law 25.127 and Decree 206/2001. That being said, it is important to bear in mind that the resolutions have a subordinated legal status and may be amended more easily. The chart below provides an illustration of these different legal instruments, to be analysed in greater detail in the subsequent sections.

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59 See Chapter I and II of Decree 97/2001 for their attributed competences.

60 See Chapter II of Decree 97/2001 for its composition and functions. In terms of composition, the Commission is composed of representatives from various ministries and other public bodies as well as from the private sector, including associations of producers, traders, certifiers, consumers and environmentalists.

61 See Section 7 below.

62 See Section 6 below.


ARGENTINA' S LEGAL FRAMEWORK
Definitions
(National Law 25.127)
Scope of Application
(Decree 260/2001; Resolutions)
Organic Production, Processing and Handling Standards
(Decree 260/2001; Resolutions)
Accreditation and Certification System
(National Law 25.127; Resolutions)
Organic Labeling Requirements
(National Law 25.127; Decree 260/2001; Resolutions)
Lists of Permitted Substances
(Resolutions)

2. OBJECTIVES AND PRINCIPLES

In a similar vein to the Codex Alimentarius Guidelines (Foreword, 7),[63] the National Law 25.127[64] specifies, from the outset, the main functions of an organic production system, thereby defining "organic" as a general concept. Article 1 of the National Law 25.127 defines the terms "ecological, biological or organic" as referring to any system of agricultural production sustainable in the long-run, which by means of a rational use of natural resources, avoids the use of chemically synthesised substances and others with a harmful toxic effect (real or potential) on human health, and at the same time provides healthy products, maintains or increases the fertility and biological activity of the soil, maintains water resources, intensifies the biological cycles of the soil for the purpose of plant and animal nutrition, and offers the necessary conditions to meet the biological and behavioural needs of plants and livestock.

Article 2 of Decree 206/2001 prescribes the following objectives for Argentina's National Program for the Development of Organic Production (PRONAO):

a) To promote the development of organic production throughout the national territory;

b) To support and promote the national competitive advantages in organic production;

c) To facilitate international trade in organic products;

d) To increase the availability of organic products on the domestic market;

e) Reinforce the control system and enhance consumers' confidence.

3. SCOPE OF APPLICATION

Regarding **covered products**, Article 2 of the Regulation annexed to Decree 206/2001 encompasses any agricultural commodity or product, whether raw, semi-processed or processed, including any commodity

63 Note that there are definitional differences between the two.

64 See also Article 2 of Resolution 423/92; and Article 2 of Resolution 1286/93.

or product derived from livestock, that is marketed (or intended to be placed on the market) in Argentina. The definition of livestock in Article 1 of Resolution 1286/93 covers virtually all animals, including bovine, buffalo, porcine, caprice, equine, poultry, fishery and other living organisms of non-plant origin (such as frogs and snails), raised for food or in the production of food. Unlike in the Codex Alimentarius Guidelines (sec. 2.2), the products derived from the hunting of wild animals are also included and thus can be marketed as organic in Argentina. Annex VIII to Resolution 270/00 further extended the scope of product coverage to include bees. Conversely, Article 10 of Decree 206/2001 excludes fibres, wood and paper that cannot be labelled or otherwise presented as organic on the Argentinean market.

As to **covered operators**, Article 1 of the Regulation annexed to Decree 206/2001 extends the scope of application to any person involved in organic activities, at any stage of production, preparation, distribution, internal marketing, exportation and importation of covered products.[65]

4. ORGANIC LABELLING AND CLAIMS

Article 2 of the National Law 25.127, together with Article 9 of its implementing Decree 206/2001, clearly prohibits the use of organic labelling and other claims on products that have not been duly certified by accredited bodies as compliant with the established organic national standards (see sections 5 and 6 below). The label of "product of organic agriculture" ("*producto de agricultura orgáni*ca," only if of plant origin) or "ecological product of animal origin" ("*producto ecológico de origen animal*") are only permitted on two types of products with the following organic composition:[66]

- *Single-ingredient products 100 percent organic*: raw or processed agricultural products containing 100 percent certified organic ingredients shall bear the label "product of organic agriculture," or "ecological product of animal origin" (as applicable), on the sales display;

65 See also Article 1 of Resolution 423/92 and Article 1 of Resolution 1286/93.

66 Article 5 of the Regulation annexed to Decree 260/2001; Article 9 of Resolution 423/92; Article 9 of Resolution 1286/93.

- *Multi-ingredient products with at least 95 percent organic ingredients*: raw or processed agricultural products containing a minimum of 95 percent (by weight) certified organic ingredients shall bear the label "product of organic agriculture," or "ecological product of animal origin" (as applicable), on the sales display. In addition, the list of ingredients must clearly specify which ingredients are not organic through the inclusion of the word "conventional". [67]

Multi-ingredients products containing less than 95 percent organic ingredients may only contain indications that an ingredient is organic on the ingredients list, but cannot be labelled as organic. Resolutions 423/92 and 1286/93 prescribe additional compulsory indicators for products containing at least 95 percent organic ingredients, including the registration number of the certifier in the National Registry.[68] There are no specific rules pertaining to the labelling and composition requirements of in-conversion plant products, as provided for in Codex Alimentarius Guidelines (sec. 3.7). Finally, Article 7 of Decree 206/2001 empowers the Ministry of Agriculture, Livestock, Fisheries and Food to further elaborate and reinforce labelling requirements, which may include the compulsory use of an official logo, in order to enable a clear identification of such products on the part of consumers and to prevent unfair competition among operators involved in organic activities. No major development in this respect has occurred at the time of writing.

5. ORGANIC PRODUCTION, HANDLING AND PROCESSING RULES

5.1 General requirements

The Regulation annexed to Decree 206/2001 contains a number of general prohibitions relating to organic agriculture:

- Organic products must not be produced using non-organic ingredients when organic ingredients are available, nor include organic and non-organic forms of the same ingredient (art. 5).

67 Article 6.d of Resolution 423/92 (for organic production of plant origin).

68 Article 9 of Resolution 423/92 (for organic products of plant origin); Article 9 of Resolution 1286/93 (for organic products of animal origin).

- Such products must not be mixed with non-organic products or contaminated through practices not permitted in organic farming and handling (art. 7).
- Such products or their ingredients shall not be processed using ionising radiation (art. 5).
- Chemically synthesised substances shall not be used unless explicitly authorised by SENASA (art. 9). As will be seen in the subsequent sections, permitted substances are listed in the Annexes to Resolutions 423/92, 1286/93 and 270/00 with respect to: soil fertilising and conditioning; feed additives and processing aids; cleaning and disinfections of facilities where organic products are produced, handled and processed; pest and disease control. Following the Codex Alimentarius Guidelines (sec. 5.3), these lists of permitted substances are of an open-ended nature, being open to future amendments by SENASA.[69]
- Genetically modified organisms (GMOs) and their derivatives shall not be used in organic production (art. 10). GMOs are defined as organisms whose genetic material is modified in a way that does not occur naturally by multiplication and/or natural recombination, including (but not limited to) the following techniques: recombinant DNA techniques that use vector systems; techniques involving the direct introduction into the organism of genetic material prepared outside the organism (including microinjection, macroinjection and microencapsulation); cell fusion (including protoplast fusion) and hybridization techniques that create live cells with new combinations of genetic material through fusion of two or more cells by means other than natural methods (art. 11).

5.2 Production of plants and plant products

As to **conversion periods**, Article 4 of Resolution 423/92 requires a minimum of two-year conversion period for crop production, during which the farming system must be under active organic management. No distinction is made for perennial crops (other than grassland), unlike in the Codex Alimentarius Guidelines (annex 1, A.1). The conversion period may only begin once the production unit has been placed under the established control system (Annex I to Resolution 331/94), as contemplated in the Codex Alimentarius

69 Article 9 of National Law 25.127; Article 11 of Resolution 423/92; Article 11 of Resolution 1286/93.

Guidelines (annex 1, A.2). Such period may be extended or reduced by the competent certification entity, with the previous consent of SENASA. Annex VI to Resolution 270/00 establishes the applicable procedure and minimum time periods for plant and animal production below which the conversion period cannot be reduced.

As in the Codex Alimentarius Guidelines (annex 1, A.3), **partial conversion** of the farm is permitted insofar as the holding is split into clearly separated production units (Resolution 331/94, art. 1(6)), although the means to ensure such separation are not specified. Simultaneous production of conventional and organic crops shall involve different varieties of plants. It should also be noted that, pursuant to Article 5(7) of Resolution 82/92, organic producers must notify other producers in neighbouring areas of their organic activities so that the latter adopt the necessary measures to prevent contamination. Unlike in the Codex Alimentarius Guidelines (annex 1, A.4), the Argentinean measures do not explicitly prohibit the alternation between organic and conventional production methods in areas converted (or in-conversion) to organic.

With regards to organic management practices, Article 4 of the Regulation annexed to Decree 206/200 essentially restates the provisions that were previously laid down in Resolution 423/92 concerning the following: soil fertility and biological activity; pest, disease and weed management; and the collection of wild plants (Resolution 423/92, arts. 5(a)–(b), (d)). The choice of seeds is only dealt with in Article 5 of Resolution 423/92.

In line with the Codex Alimentarius Guidelines (annex 1, A.8), producers are generally required to use **seeds and vegetative reproductive material** derived from organic production systems. When these are impossible to obtain, the competent certification body may authorise the use of conventional seeds (Resolution 423/92, art. 5(c)). No limits are placed on the application of this derogation.

Pursuant to Article 4 of the Regulation annexed to Decree 206/2001, producers are required to maintain or improve the **fertility and biological activity of the soil** through a number of cultivation methods. Following the Codex Alimentarius Guidelines (annex 1, A.5), these include: the cultivation of legumes, green manures or deep-rooting plants; the adoption of appropriate

multi-annual rotation programmes; and the incorporation in the soil of organic material from holdings producing in accordance with the prescribed organic standards. In a similar vein than the Codex Alimentarius Guidelines (annex 2, Table 1), Resolution 423/92 contains a list of organic and mineral substances permitted for use in soil fertilising and conditioning (annex A).

Article 4 of the Regulation annexed to Decree 206/2001 further demands that plant **pests, diseases and weeds** be managed through a combination of five measures, namely: the increase and continuity of diversified ecosystems; the choice of appropriate species and varieties; appropriate rotation programmes; mechanical cultivation; and the protection of natural enemies of pests and diseases. All of them are also included in the Codex Alimentarius Guidelines (annex 1, A.6), albeit other measures are identified therein, such as flame weeding, biodynamic preparations from stone meal, farmyard manure or plants, mulching and mowing, grazing of animals, mechanical controls and steam sterilization. In a similar vein to the Codex Alimentarius Guidelines (annex 2, Table 2), Resolution 423/92 contains a list of products permitted for the purpose of pest and disease control (annex B, as amended by Resolution 116/94). This list also applies to the control of pests and weeds in installations destined for organic livestock production (Resolution 1286/93, art. 7). In addition, the competent certification body may authorize the use of products not listed in Annex B if indispensable for controlling pests and diseases and insofar as their use is legally permitted and does not cause intolerable effects on the environment (Resolution 423/92, art. 5(b)).

Finally, Article 4 of the Regulation annexed to Decree 206/2001 addresses the **collection of wild plants**. As in the Codex Alimentarius Guidelines (annex 1, A.9), these products can only be certified organic if derived from a clearly defined cultivation area that is subject to the established control system. The collection of wild plants shall not disturb the stability of the natural habitat or the maintenance of species in the area. It should be noted that the Codex Alimentarius Guidelines contain two additional conditions: collection areas have not been treated with products other than those explicitly authorized for a period of three years before collection and the operator managing the harvesting or gathering of products is clearly identified and familiar with the collection area.

5.3 Production of livestock and livestock products

As to **conversion periods**, Article 4 of Resolution 1286/93 provides that livestock products can be sold as organic only if derived from a farming system that has been under active organic management for at least two years, without however specifying the exact length of conversion periods applicable to different animal species. The general two-year conversion period may only begin once the production unit has been placed under the established control system (Resolution 270/00, annex VI), as contemplated in the Codex Alimentarius Guidelines (annex 1, A.2). It may be extended or reduced by the competent certification entity, with the previous consent of SENASA. As in the case of crop production, **partial conversion** of the farm is allowed but organic livestock production units must be clearly separated from conventional ones.

With respect to organic management practices, Articles 14–20 of the Regulation annexed to Decree 206/2001 establish basic requirements concerning the nutrition, living and welfare conditions, sanitary treatment, husbandry and slaughter of organic livestock. As in the case of crop production, these provisions build on the previously adopted Regulations 1286/93 and 270/00 and are complimented by the more technical requirements found in the latter. Organic livestock origin is only dealt with in Article 7 of Resolution 270/00.

In terms of **livestock sources/origin**, Article 7 of Resolution 270/00 requires the choice of breeds and strains to take account of their adaptation to local conditions as well as their vitality and resistance to diseases, as provided for in the Codex Alimentarius Guidelines (annex 1, B.6). Departing from the Codex Alimentarius Guidelines (annex 1, B.7), the Argentinean measures do not explicitly require that organic livestock be born or hatched on organic production holdings. Nonetheless, Article 5(g) of Resolution 1286/93 establishes specific conditions, including with respect to age, on the bringing-in of livestock from non-organic sources. This possibility is also contemplated in the Codex Alimentarius Guidelines (annex 1, B.8), but there it takes the form of a derogation from the general requirement that organic livestock be born and raised on holdings complying with the established organic standards.

Concerning **nutrition**, Article 14 of the Regulation annexed to Decree 206/2001 generally demands livestock to be provided with organically

grown feedstuff, as provided for in the Codex Alimentarius Guidelines (annex 1, B.13). The prevailing part of such feedstuffs must be come from the farm itself and only a maximum of 20 percent can be sourced from other organic farms (Resolution 1286/93, art. 5). In terms of composition, Annex II to Resolution 270/00 lists feed materials allowed in livestock nutrition, which need to be provided in accordance with the specific rations set in Article 5 of Resolution 1286/93. In extreme cases where organic feed is impossible to obtain, the competent certification body may authorise recourse to a maximum of 10–15 percent (calculated on a dry matter basis) of non-organic feedstuff, or 25–30 percent if the extreme conditions persist (Resolution 1286/93, art. 5). The possibility for this derogation is also contemplated in the Codex Alimentarius Guidelines (annex 1, B.15). A list of approved feed additives is found in Annex III of Resolution 270/00. Finally, forced feeding, growth promoters or stimulants and feed-lot are all prohibited in organic livestock production.

Articles 15–16 of the Regulation annexed to Decree 206/2001 prescribes basic **housing and free-range conditions**, including sufficient free movement, protection against excessive sunlight, temperatures, and wind, and easy access to grazing, watering and open-air runs. These general provisions are further elaborated by more specific requirements for different animal species (e.g. maximum stocking densities and minimum surface areas in buildings) in Annexes IV and V of Resolutions 1286/93 and 270/00. Article 18 of the Regulation annexed to Decree 206/2001 deals with the **health care** of organic livestock. Following the Codex Alimentarius Guidelines (annex 1, B.20), emphasis is placed on disease prevention through good husbandry practices and recourse to veterinary medicinal products should be had only when no alternative treatment or management practice exists against a particular disease. Vaccination of organic livestock is permitted against endemic diseases while the use of parasites shall respect the conditions established in Annex A of Resolution 1286/93. Overall, these provisions are less detailed than those found in the Codex Alimentarius Guidelines (annex 1, B.22), where a preference is stated for the use of phytotherapeutic (excluding antibiotics), homeopathic or ayurvedic products and trace elements vis-à-vis chemical allopathic veterinary drugs or antibiotics, which shall only be administered under the responsibility of a veterinarian and only for curative (not preventive) treatments.

Article 16 of Regulation annexed to Decree 206/2001 generally requires that animal welfare be observed during the **husbandry, transportation and slaughter of organic livestock**. In addition, embryo transfers techniques and mutilations (including physical castration and dehorning) are explicitly prohibited, albeit the latter may be authorised by the competent certification body on a case-by-case basis (Decree 206/2001, annex, art. 17). Both of these general prohibitions are also found in the Codex Alimentarius Guidelines (annex 1, B.26–27). Also in line with the Codex Alimentarius Guidelines (annex 1, B.26), reproduction through natural methods is generally preferred, although artificial insemination is permitted (Decree 206/2001, annex, art. 17). Departing from the Codex Alimentarius Guidelines (annex 1, B.29), the Argentinean measures do not explicitly prohibit the use of electric stimulation and/or allopathic during transportation of livestock, nor establish specific conditions to ensure that transport of living stock is managed in manner that avoids stress, injury and suffering of animals. Lastly, slaughter of organic livestock shall be undertaken only in slaughterhouses approved by SENASA and organic livestock lots must be clearly identified and separated from conventional ones (Decree 206/2001, annex, art. 20).

Following the Codex Alimentarius Guidelines (annex 1, B.54–81), Annex VIII of Resolution 270/00 lays down specific requirements on bee-keeping.

5.4 Handling and processing

As in the Codex Alimentarius Guidelines (annex 1, C.88), Article 7 of Regulation annexed to Decree 206/2001 requires the **organic integrity** of products to be maintained during any handling, storage and processing operation by preventing co-mingling with products from conventional farming as well as contact with prohibited substances at all times. Also in line with the Codex Alimentarius Guidelines (annex 1, C.82), the use of **ionising radiation** is prohibited in the processing of organic food.

With regards to **pest management**, none of the measures under consideration specify the methods that should be used for controlling pests and diseases, unlike the Codex Alimentarius Guidelines (annex 1, C.83). In addition, it is

unclear whether the list of authorised substances for pest and disease control in organic production[70] also applies to the handling and processing phases.

Concerning **packaging, storage and transport**, Article 6 of the annex to Decree 206/2001 requires packaging materials to be chosen from biodegradable sources with no negative impact on the environment and forbids the re-use of packaging materials that have previously contained products from conventional farming. In addition to the general requirement that co-mingling with conventional products and contact with prohibited substances is to be avoided in all handling operations, Annex 1 of Resolution 270/00 contains a list of authorised products for the cleaning and disinfecting of facilities where organic products are handled and processed.

As to **processing methods**, Article 5 of the annex to Decree 206/2001 only lays down a general prohibition on the use of ionising radiation on organic products and ingredients. The remainder of this provision deals only with the final composition of organic foods rather than the processing methods themselves, unlike the Codex Alimentarius Guidelines (annex 1, C.86).[71] In terms of product composition, the quantity of non-organic agricultural ingredients shall not exceed 5 percent and must only be used in cases where organic ingredients are not available. In addition, organic products shall not contain chemically synthesised ingredients or ingredients contaminated by pesticides, nor sulphites, nitrates or nitrites. The use of synthesised colourings, flavourings and preservatives is also prohibited. Only drinking (and preferably chemically untreated) water can be used in the processing of organic products. To these composition requirements, the resolutions only add the lists of additives and processing aids allowed in the processing of organic food, following the Codex Alimentarius Guidelines (annex 2, Tables 3–4).[72]

70 Annex B to Resolution 423/92 (see section 5.2 above). That is, by virtue of the general requirement in Article 7 of the Regulation annexed to Decree 260/2001 that organic products be protected from contact with prohibited substances at all times.

71 This is also the case of Article 6 of Resolution 423/92 and Article 7 of Resolution 1286/93.

72 Annex C to Resolution 423/92 (for organic processed products of plant origin) and Annex B of Resolution 1286/93 (for organic processed products of animal origin).

6. ACCREDITATION AND CERTIFICATION

Pursuant to Article 8 of the National Law 25.127, the process of organic certification shall be carried out by public or private entities that are officially accredited to that effect. This same provision assigns to SENASA the tasks of approving and supervising inspection/certification bodies and establishing the procedure and criteria for their accreditation and inclusion into the National Registry of Certification Entities for Ecological, Biological and Organic Products (hereinafter, National Registry).[73] The National Law 25.127 and its implementing Decrees make clear that only entities listed in this National Registry are competent to engage in organic inspection and certification activities.[74]

The current procedure and criteria for the **accreditation** of inspection/ certification bodies is laid down in two resolutions implemented in the 1990s, namely Resolution 82/92 (for bodies certifying organic products of plant origin) and Resolution 68/94 (for those certifying organic products of animal origin). The substantive content of these resolutions is essentially the same. Interested public and private entities need to apply for accreditation to SENASA by compiling the official application form and paying the applicable accreditation fee. In addition, applicants must submit documentary evidence of their legal status and demonstrate their ability to comply with the established requirements for accreditation. Such requirements include:[75]

- adequate professional competence (including formal registration of inspectors in the National Registry of Professionals);
- full implementation of the prescribed organic inspection and certification programme (see below);
- establishment of an operating office in Argentina;
- adoption of measures to ensure independence from vested parties;
- sanctions foreseen in the event of operators' non-compliance; and
- record-keeping and reporting obligations.

73 This "*Registro National de Entidades Certificadoras de Productos Ecológicos, Biológicos u Orgánicos*" is available at: www.alimentosargentinos.gov.ar.

74 Article 8 of National Law 25.127; Article 7(b) of Decree 97/2001; Article 8 of the Regulation annexed to Decree 260/2001.

75 Articles 4 and 5 of Resolution 82/92; Articles 5–7 of Resolution 68/94.

In contrast to other national accreditation systems, formal accreditation of certification bodies to the ISO/IEC Guide 65 is not required by Argentinean law.

Successful applicants are registered in the National Registry and issued an "Accreditation Certificate" by SENASA. Accreditation is granted for one year, with the possibility of renewal against paying the annual registration fee. Accredited inspection and certification bodies are subject to annual oversight and auditing by SENASA.[76] If these bodies are found to be in violation of the established accreditation criteria and obligations, they may be sanctioned by SENASA pursuant to Article 24 of the National Law 23.899.[77] Such sanctions range from the payment of fines, the suspension of accreditation status and withdrawal from the National Registry for a period of one year, to the temporary or permanent closure of offices. However, the specific conduct or grounds for violation are not detailed.

In a similar vein to the Codex Alimentarius Guidelines (annex 3), Annex I to Resolution 331/94 and Annex VI to Resolution 270/00 prescribe minimum requirements and precautionary measures for developing organic **inspection and certification programmes**. Although these resolutions deal separately with the inspection and certification of unit production or handling of organic products of plant origin (Resolution 331/94) and those producing or handling animal products (Resolution 270/00),[78] there are some commonalities among them.

At the beginning of the certification process, operators need to prepare an organic production/handling plan to be submitted to the certifying agent[79]

76 Article 10 of National Law 25.127; Article 5(1) of Resolution 82/92; Article 7(1) of Resolution 68/94.

77 National Law 23.899 of 29 September 1990, Creación y Misiones. Organización. Dirección y Administración. Recursos. Patrimonio. Contrataciones. Infracciones. Sanciones y Recursos. Disposiciones Generales y Transitorias, available at: www.senasa.gov.ar.

78 Note that only some of the provisions of Resolution 331/94 have been incorporated into Chapter IV of the Regulation annexed to Decree 260/2001, entitled "Control System".

79 Articles 1(1) and 2(1) of Annex I to Resolution 331/94 (for producers and handlers of organic products of plant origin, respectively), specifying the minimum aspects that such documents must cover; A.1 and B.1 of Annex VI to Resolution 270/00 (for producers and handlers of organic products of animal origin, respectively), specifying the minimum aspects that such documents must cover.

and must sign an "agreement" ("*convenio*") with that agent whereby operators explicitly undertake to comply with the applicable national organic standards.[80] Additional obligations upon operators seeking organic certification include: the authorization of on-site inspections; record-keeping and annual reporting to the competent certification body; and the acceptance of disciplinary measures imposed by the certification body in cases of non-compliance. Following the Codex Alimentarius Guidelines (Foreword, 9; annex 3.9), a full physical inspection shall be undertaken at least once a year and decisions on certification shall be taken by a person different from those reviewing documentary evidence and carrying out on-site inspections.[81] There are no provisions regulating the (possible) withdrawal of organic certification.

7. IMPORT REQUIREMENT

The various measures under analysis deal briefly with the importation of organic products. Whereas Resolutions 423/92 and 1286/93 only contemplated the possibility of exporting organic products to Argentina on the basis of bilateral equivalency agreements,[82] Article 3 of the Regulation annexed to Decree 206/2001 has added a new importation channel, namely that of organic certification. Pursuant to the latter provision, organic products originating in third countries that have not concluded an equivalency agreement with Argentina may nonetheless be imported into this country after obtaining organic certification from bodies accredited by SENASA. In principle, foreign entities may also be accredited to that effect, but it should be recalled from section 6 above that it is mandatory to establish an operating office in Argentina in order to obtain accreditation by SENASA.

As in the case of most countries, there are no official statistics on the exact size of Argentinean exports and imports of organic products.[83] An IFOAM

80 Articles 1(3) and 2(2) of Annex I to Resolution 331/94 (for producers and handlers of organic products of plant origin, respectively); A.2 and B.2 of Annex VI to Resolution 270/00 (for producers and handlers of organic products of animal origin, respectively).

81 Articles 1(4) and 2(3) of Annex I to Resolution 331/94 (for producers and handlers of organic products of plant origin, respectively), A.3 and B.3 of Annex VI to Resolution 270/00 (for producers and handlers of organic products of animal origin, respectively).

82 Article 3 of Resolution 423/92; Article 3 of Resolution 1286/93.

83 This may be partly explained by the fact that organic products are not classified separately by the World Customs Organization.

study of 2007 has estimated that around 90 percent of organic production in Argentina is directed towards foreign markets, particularly the EU and the US. Argentina's most important organic exports are: cereals, oilseeds, meat, and some fruits and vegetables (both fresh and dried).[84] Nonetheless, it is interesting to note that Article 7 of the National Law 25.127 foresees the possibility of extending preferential tariff treatment to imported organic products in order to promote international trade in such products.

84 A.P. Lernoud and M. Piovano, "Latin America: Country Reports" in H. Miller and M. Yussefi (eds.), *The World of Organic Agriculture. Statistics and Emerging Trends 2007,* (IFOAM, 2007), pp.164–165.

CANADA

1. OVERVIEW OF THE LEGAL AND INSTITUTIONAL FRAMEWORK

According to a survey published (*inter alia*) by the Canadian Ministry of Agriculture and Agri-Food, in 2005 the total number of certified organic farms was 3618, accounting for 530,919 hectares of land, and an additional 47,955 hectares (118,500 acres) of land were in-conversion to organic production.[85] A 2004 study by the International Trade Centre (ITC) estimates organic retail sales to be about 1.3 billion Canadian-Dollars, making Canada the sixth largest organic market in the world. Since that year, organic production appears to have experienced annual growth rates of 20–25 percent, and the Canadian organic industry is aiming at a market share of 10 percent of the domestic retail market by 2010[86].

Prior to 2006, Canada had no specific legislation related to organic agriculture at the federal level,[87] but only the so-called "Organic Production Systems – General Principles and Management Standards" (hereinafter, the Canadian Organic Standard),[88] which was first developed by the Committee on Organic Agriculture of the Canadian General Standards Board (CGSB)[89] and approved by the Standards Council of Canada in the late 1990s[90]. The CGSB is a government agency within the Ministry of Public Works and Government

85 A. Macey, *Canadian Organic Growers. Certified Organic Production in Canada 2005*, available at: www.inspection.gc.ca.

86 International Trade Center, *The Canadian Market for Organic Food and Beverages*, (UNCTAD/WTO (ITC), 2004), pp. 4–6.

87 Organic legislation had been adopted at the provincial level in Quebec and British Columbia.

88 CAN/CGSB-32.310, *Organic Production Systems – General Principles and Management Standards*, (last version: September 2006), available at: www.tpsgc-pwgsc.gc.ca.

89 More information on the CGSB composition and standard-setting activities may be found at: www.tpsgc-pwgsc.gc.ca.

90 The Standards Council of Canada is the co-ordinating body of the National Standards System, a federation of independent, autonomous organizations working towards the further development and improvement of voluntary standardization at the national level. The principal objectives of the Council are to foster and promote voluntary standardization as a means of advancing the national economy, benefiting the health, safety and welfare of

Services, accredited by the Standards Council of Canada as a national standards-development organization. The CGSB is thus engaged in the production of voluntary standards in a wide range of subject areas through the media of standards committees. In an attempt to make standard-setting an inclusive process, these committees are composed of representatives of relevant interest groups, including producers, consumers and other users, retailers, governments, educational institutions, technical, professional and trade societies, and research and testing organizations. Any given standard, including organic ones, is developed on the consensus of views expressed by such representatives.

The Canadian Organic Standard is a detailed document describing production, processing and handling methods considered acceptable in organic farming. In addition, the CGSB has elaborated a separate document[91] containing the various lists of substances authorised for use in organic production and in the preparation and handling of organic products (hereinafter, the Canadian List). The Canadian Organic Standard and the Canadian List are commonly known as the National Organic Standard (NOS). As such, the NOS had no legal force and had been applied on a *voluntary* basis since 1999. The regulatory picture was significantly altered with the adoption of the Organic Products Regulation,[92] issued on 14 December 2006 by the Governor General in Council of Canada, by recommendation of the Minister of Agriculture and Agri-Food and pursuant to Section 32 of the Canada Agricultural Products Act.[93]

The main purposes of the Organic Products Regulation are to make *mandatory* certification against the NOS for all agricultural products marketed as organic (domestically and in international trade) as well as to regulate the use of the Canadian organic logo. As a result, the text of the Regulation is rather short and procedural in nature, with most provisions being dedicated to the establishment of an accreditation/certification system and labelling requirements. This measure came into force on 30 June 2009 and is enforced

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the public, assisting and protecting the consumer, facilitating domestic and international trade, and furthering international co-operation in the field of standards.

91 CAN/CGSB-32.311, *Organic Production Systems – Permitted Substances Lists*, (last version: September 2006), available at: www.tpsg-cpwgsc.gc.ca.

92 Organic Products Regulations, (SOR/2006-338), available at: laws.justice.gc.ca.

93 Canada Agricultural Products Act (1985, c. 20 (4th Supp.)), available at: laws.justice.gc.ca.

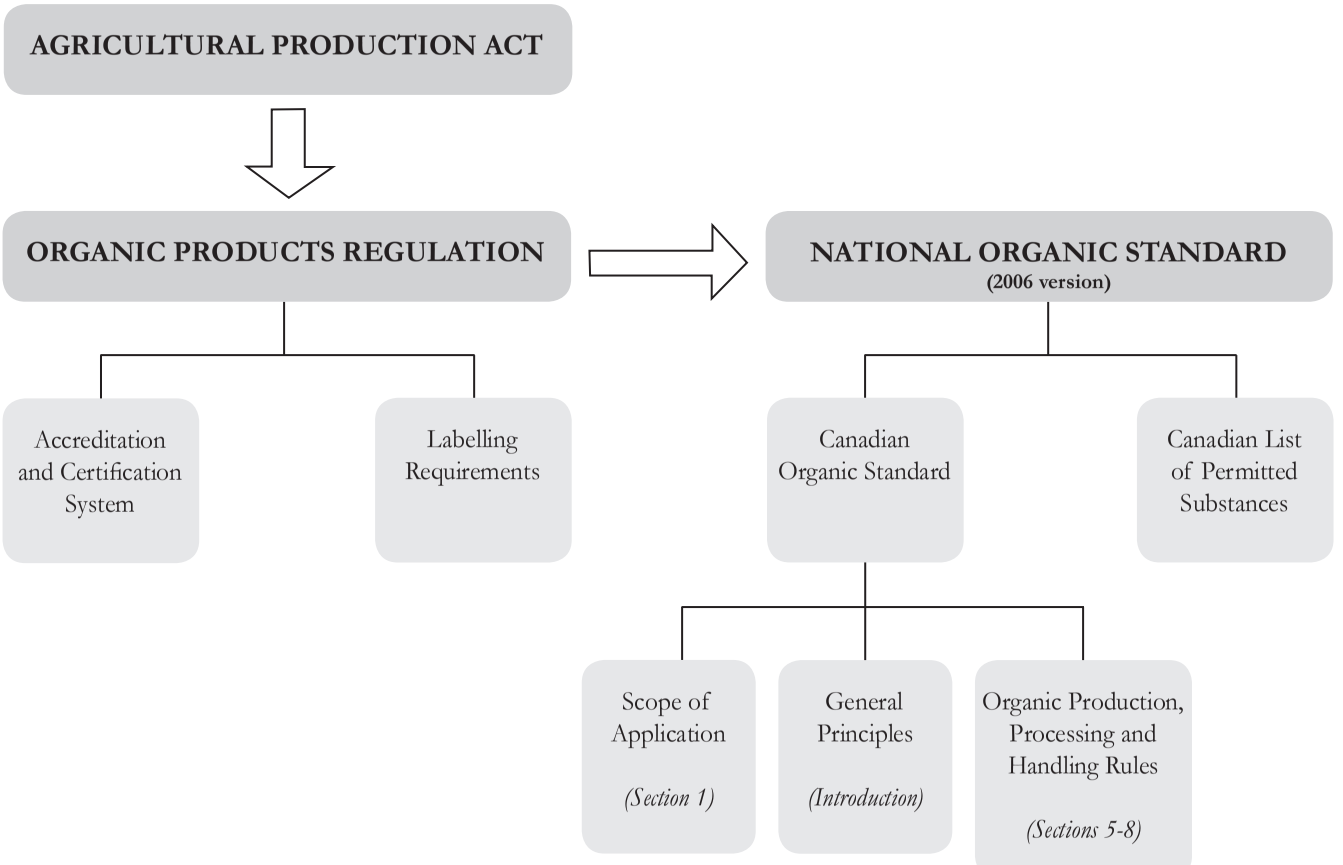
by the Canadian Food Inspection Agency (CFIA)[94] Thus, with the entry into force of the Organic Product Regulation, the NOS no longer applies on a voluntary basis: conformity with it has been rendered mandatory by the legal requirement of certification for all products marketed as organic in Canada. It appears that pressures for the adoption and implementation of mandatory national organic standards and certification had come *inter alia* from the Canadian organic industry, which hoped it would help expedite trade relations with major trading partners, such as the US, the EU and Japan.[95]

It should be noted that the NOS (including the Canadian List) undergoes periodical reviews by the CGSB in order to keep abreast of technological progress and other developments. The last substantive revision took place in 2006[96] and it is upon that version of the NOS that this study is based. The chart below provides an illustration of the main instruments of Canada's regulatory framework on organic agriculture, to be analysed in greater detail in the subsequent sections.

94 Information on the mandate, activities and organization of the Canadian Food Inspection Agency can be found at: www.inspection.gc.ca.

95 H. Willer and M. Yussefi (eds.), *The World of Organic Agriculture. Statistics and Emerging Trends 2007*, (IFOAM, 2007), p. 15.

96 Posterior amendments to the COS took place in October 2008, December 2009 and June 2011.


AGRICULTURAL PRODUCTION ACT
ORGANIC PRODUCTS REGULATION
Accreditation and Certification System
Labelling Requirements
NATIONAL ORGANIC STANDARD
(2006 version)
Canadian Organic Standard
Canadian List of Permitted Substances
Scope of Application
(Section 1)
General Principles
(Introduction)
Organic Production, Processing and Handling Rules
(Sections 5-8)

2. OBJECTIVES AND PRINCIPLES

The Canadian Organic Standard defines organic production as a holistic system designed to optimise the productivity and fitness of diverse communities within the agro-ecosystem, including soil organisms, plants, livestock and people. It also states that the principal goal of organic production is to develop enterprises that are sustainable and harmonious with the environment and identifies a non-exhaustive set of general principles for organic production, most of which are also found in the Codex Alimentarius Guidelines (Foreword, 7). Such principles are:[97]

a) protect the environment, minimize soil degradation and erosion, decrease pollution, optimise biological productivity and promote sound health;
b) maintain long-term soil fertility by optimising conditions for biological activity within the soil;
c) maintain biological diversity within the system;
d) recycle materials and resources to the greatest extent possible within the enterprise;
e) provide attentive care that promotes the health and meets the behavioural needs of livestock;
f) prepare organic products, emphasizing careful processing, and handling methods in order to maintain the organic integrity and vital qualities of the products at all stages of production; and
g) rely on renewable resources in locally organized agricultural systems.

3. SCOPE OF APPLICATION

As to **covered products**, the Canadian Organic Standard generally applies to: unprocessed plants and plant products; unprocessed livestock and livestock products; and processed agricultural crop and livestock products intended for human consumption (III.1). Thus, the Canadian Organic Standard defines the scope of application with respect to products using identical terms to

97 Canadian Organic Standard, Introduction, I–II, p. iii.

the Codex Alimentarius Guidelines (sec. 1.1). Also in accordance with the Guidelines (sec. 2.2), the Canadian Organic Standard defines "livestock" as referring to any domestic or domesticated animal, including bovine (e.g. buffalo and bison), ovine, porcine, caprine, equine, poultry and bees, raised for food or in the production of food. The products of hunting or fishing of wild animals are explicitly excluded from this definition (III.3).

As to **covered operators**, the Canadian Organic Standard addresses any person, firm or organization that produces, prepares or imports products that are intended to be marketed as organic (III.3). The Canadian definition of "operator" departs from that provided for in the Codex Alimentarius Guidelines (sec. 2.2) in that it does not include persons who actually market organic products. However, the Canadian Organic Standard contains a separate definition of "handling" relating to operators that receive or otherwise acquire organic agricultural products for sale, including final retailers that process, transform, repack or re-label such products (III.3).

Finally, it should be noted that the NOS applies in addition to, and not in substitution of, Canadian health, environmental, feed and food regulatory requirements applicable to all products sold (or imported into) in Canada (sec. 1.5).

4. ORGANIC LABELLING AND CLAIMS

Pursuant to Section 1 of the Organic Products Regulation, only agricultural products that have been certified as organic in accordance with the Regulation, or imported in conformity with the specified import requirements, may be placed on the Canadian market with indications referring to organic production methods. Following the Codex Alimentarius Guidelines (sec. 1.2), the Canadian Organic Standard clarifies that a product is regarded as bearing such organic indications where, in the labelling or claims, including advertising material or commercial documents, the product or its ingredients are described by the terms "organic," "organically grown," "organically raised," "organically produced" or by similar words, including abbreviations of, symbols for and phonetic renderings of those words, which suggest to the purchaser that the product or its ingredients were obtained according to organic production methods.

The use of organic labels and claims is voluntary, but it shall comply with the specific requirements prescribed in Section 15 of the Organic Products Regulation. Two categories of products are distinguished for labelling purposes on the basis of their organic composition:

- *Multi-ingredient products with at least 95 percent of organic ingredients*: products containing 95 percent or more (by mass or fluid volume, excluding water and salt) of (certified) organically produced agricultural ingredients may bear the Canadian official logo or the designations "Canada Organic" and "Biologique Canada" on the principal display panel. The Canadian Organic Standard further provides that the remaining ingredients of the product may only be non-organic if not commercially available in an organic form (sect. 10, para. 10.7.1).
- *Multi-ingredient products containing 70–95 percent of organic ingredients*: products containing 70 to 95 percent (by mass or fluid volume, excluding water and salt) of (certified) organically produced agricultural ingredients can only be labelled with the statement "contains X percent organic" (specifying the actual percentage of organic ingredients) on the principal display panel. The use of the Canadian logo or the above-indicated designations are not permitted on such products.

As provided for in the Codex Alimentarius Guidelines (sec. .3.2(d)), the Organic Products Regulation requires all labels to specify the name of the certification body that certified the product as organic (sec.25(a)). For imported organic products bearing the Canadian official logo, it is necessary to include the statement "Product of" or "Imported (specifying the name of the country of origin)" in close proximity to the logo (sec. 25(c)). Agricultural products containing less than 70 percent of organic ingredients are not eligible for organic certification under the Regulation and thus cannot be labelled or advertised as an organic product. Such products may nonetheless include indications of which ingredients are organic in the list of ingredients (sec. 24(3)). Finally, there are no provisions on the labelling of products in-conversion to organic, unlike in the Codex Alimentarius Guidelines (sec. 3.7).

5. ORGANIC PRODUCTION, HANDLING AND PROCESSING RULES

Detailed rules on the production, processing and handling of organic products are spelled out in the Canadian Organic Standard, not in the Organic Products Regulation itself. However, said Regulation renders compliance with these national organic standards mandatory, as of December 2008, in order to obtain organic certification.

5.1 General requirements

Before turning to detailed organic requirements, the Canadian Organic Standard first lists the following methods and substances as generally prohibited in organic agriculture (III.1.4.1):

- all materials and products produced from genetic engineering as these are not compatible with the principles of organic production (growing, preparing and selling). Genetic engineering is defined as techniques by which the genetic material of an organism is changed in a way that does not occur naturally by multiplication and/or natural recombination, including: recombinant DNA techniques that use vector systems; techniques involving the direct introduction into the organism of hereditary materials prepared outside the organism; cell fusion (including protoplast fusion) or hybridization techniques that overcome natural physiological, reproductive or recombination barriers, where the donor cells/protoplasts do not fall within the same taxonomic family (III.3.1);
- substances that are not included in the Canadian List, except if exceptionally permitted under the Canadian Organic Standard. The current version of the Canadian List identifies substances permitted for use in: crop production (as soil amendments, as production aids and materials, and for weed management purposes); in livestock production (as feed material, additives and supplements, as production aids and for health care purposes); and in the processing and handling of organic products (as organic and non-organic ingredients, as processing aids, as cleaners, disinfectants and sanitizers and for pest control purposes). Following the Codex Alimentarius Guidelines (sec. 5.3), the Canadian List of permitted substances is open-ended, being subject to review by

the CGSB in accordance with the criteria established in Section 10 of the Canadian Organic Standard;

- synthetic pesticides (e.g. defoliants and desiccants, fungicides, insecticides and rodenticides), wood preservatives (e.g. arsenate) or other pesticides, except as specified in the Canadian List;
- fertilizers or composted plant and animal materials containing prohibited substances (i.e. not included in the Canadian List);
- any form of sewage sludge as a soil amendment;
- synthetic growth regulators;
- synthetic allopathic veterinary drugs, including antibiotics and parasiticides, except if explicitly authorised under the Canadian Organic Standard;
- synthetic processing substances, aids and ingredients, food additives and processing aids (including sulphates, nitrates and nitrites), except as specified in the Canadian List;
- ionising radiation and forms of irradiation on products destined for food or their inputs, except as specified in the Canadian List;
- equipment, packaging materials and storage containers, or bins that contain a synthetic fungicide, preservative or fumigant;
- the same ingredient shall not be derived from an organic and a non-organic origin;
- cloned farm animals and their descendants; and
- intentionally manufactured nano-technology products, or nano-processes involving intentional manipulation of matter at the nano-scale to achieve new properties or functions that are different than the properties and functions of the materials at the macro scale.

5.2 Production of plants and plant products

Section 5 of the Canadian Organic Standard establishes organic production requirements applicable to plants and plant products.

As to **conversion periods**, the Canadian Organic Standard only allows plant products to be marketed or labelled as organic if they have been under active organic management for a period of at least one year before sowing, or in the case of perennial crops of at least three years before the first harvest.

In addition, prohibited substances shall not be used for at least three years before the harvest of any crop. The accredited certifying entity may reduce or extend such conversion periods depending on previous land use (III.5.1.1–5.1.2). Unlike the Codex Alimentarius Guidelines (annex 1, A.2), the Canadian Organic Standard does not require that the production unit be placed under the established inspection system for the entirety of the conversion period but only for at least one year (III.5.1.1).

As to **partial conversion**, the Canadian Organic Standard generally demands the entire farm to be converted to organic production, but allows nonetheless for simultaneous production of organic and conventional crops during the conversion period. In cases of (temporary) partial conversion of the farm, different varieties of plants that can easily be differentiated shall be involved and organic and conventional production units must be clearly separated through defined physical boundaries, including buffer zones, to prevent unintended contact with prohibited substances. Crops grown in buffer zones shall be considered non-organic and marketed as such. As in the Codex Alimentarius Guidelines (annex 1, A.4), production units shall not be alternated between organic and non-organic production methods (III.5.1.2–5.1.6).

With regards to organic management practices, the Canadian Organic Standard contains specific provisions on the following: seeds and planting stock; soil fertility and crop nutrient management; crop pest, disease and weed management; manure management; and environmental factors.

Producers are required to use organically produced **seeds and vegetative reproductive material**. As provided for in the Codex Alimentarius Guidelines (annex 1.8), the Canadian Organic Standard lays down a derogation from this general rule, whereby the accredited certification body may authorise, under specified conditions, recourse to conventional seeds and vegetative reproductive material if not commercially available in an organic form. The general prohibition on the use of seeds and vegetative reproductive material developed through genetic engineering is reiterated (III.5.3).

The **fertility and biological activity of the soil** shall be maintained (or increased) through tillage and cultivation practices that maintain (or improve) the physical, chemical and biological condition of the soil and minimise soil erosion. A number of cultivation methods are further spelled

out, following closely the Codex Alimentarius Guidelines (annex 1, A.5): the cultivation of legumes, green manures or deep-rooting plants in appropriate multi-annual rotation programmes and the incorporation of plant and animal matter, composted or not, from organic production holdings. The organic matter produced on-farm shall form the basis of the nutrient cycling program and may, when necessary, be supplemented by soil amendments and fertilizers permitted in the Canadian List. Lastly, producers must not use burning to dispose of crop residues on the operation, except when used to suppress the spread of disease or to stimulate seed germination (III.5.4).

The control of plant pests, diseases and weeds shall be primarily centred on organic management practices aimed at enhancing crop health and minimising losses caused by weeds, diseases and pest. These include cultural practices (e.g. rotations, establishment of a balanced ecosystem) and mechanical techniques (e.g. sanitation measures, traps, grazing), most of them also listed in the Codex Alimentarius Guidelines (annex 1, A.6). Only if these practices prove insufficient to prevent/control crop pests, diseases or weeds, may recourse be sought through biological, botanical and other substances included in the Canadian List (III.5.6).

Lastly, the **collection of wild plants** is separately dealt with in Section 7 of the Canadian Organic Standard, entitled "specific production requirements." In accordance with the Codex Alimentarius Guidelines (annex 1, A.9), a wild plant product that is intended to be labelled as organic shall be harvested from a clearly defined production area, which is isolated from non-production zones by a clearly defined buffer zone and on which no prohibited substances have been applied for a period of three years immediately preceding the harvesting. Further, such products must be harvested in relatively undistorted or stable natural settings and in a manner that promotes its growth and does not destroy the environment. Finally, operators harvesting or gathering these products are required to maintain auditable records, presumably making them subject to general inspection and certification measures applicable to organic production (III.7.6). However, the Organic Products Regulation contains only meagre provisions in this respect (see section 6 below).

5.3 Production of livestock and livestock products

Organic production rules for livestock and livestock products are spelled out in Section 6 of the Canadian Organic Standard.

As to **conversion periods**, the Canadian Organic Standard establishes conditions for both the land intended for feeding crops or pasture and for organic livestock itself, as provided in the Codex Alimentarius Guidelines (annex 1, B.10–12). The former must comply with the conversion periods applicable to plant production (see section 5.2 above), which may nonetheless be reduced by the approved certification body for pastures, open-air runs and exercise areas used by non-herbivores (III.6.3.2–6.3.3), as contemplated in the Codex Alimentarius Guidelines (annex 1, B.11(a)). To be sold as organic, livestock must receive a minimum of 80 percent organic feed during the first nine months of the one-year conversion period, and only organic feed during the final three months (III.6.3.1). Unlike the Codex Alimentarius Guidelines (annex 1, B.12) and other national legislations, the Canadian Organic Standard does not prescribe specific conversion periods for the different animal species. As to **partial conversion**, the Canadian Organic Standard generally demands the entire farm be converted to organic production, but it is not clear whether simultaneous production of conventional and organic livestock could be temporarily maintained as in the case of crops (see section 5.2 above).

With regards to organic management practices, the Canadian Organic Standard first lays down a set of general principles on organic livestock production (III.6.1), following closely the Codex Alimentarius Guidelines (annex 1, B.1–5). In addition, the Canadian measure contains specific provisions on the following: origin of livestock; livestock feed; livestock health care and living conditions; livestock breeding, transport and handling; manure and pest management.

In terms of **livestock sources/origin**, the Canadian Organic Standard generally requires the choice of breeds, strains and breeding methods to be consistent with the principles of organic production, and in particular take into account the adaptation of livestock to local conditions, the vitality and resistance of livestock to disease and the absence of disease and health problems specific to some breeds and strains (III.6.2.1), following closely the Codex Alimentarius Guidelines (annex 1, B.6). Also in line with the Codex

Alimentarius Guidelines (annex 1, B.7), the Canadian measure demands livestock used for organic products be born or hatched on organic production units and to be raised under such system throughout life (III.6.2.2). Livestock products that are removed from an organic operation and subsequently managed on a non-organic one must not be labelled as organically produced (III.6.2.4). Nonetheless, as foreseen in the Codex Alimentarius Guidelines (annex 1, B.8), specie-specific and purpose-specific conditions are set on brought-in animals from non-organic sources (III.6.2.2–6.2.3).

With regards to **nutrition**, livestock should be, as a matter of principle, provided with 100 percent organically produced feed ration, balanced to meet the nutritional needs of different animal species. As contemplated in the Codex Alimentarius Guidelines (annex 1, B.15), the Canadian Organic Standard contains an exception to this general rule applicable in cases of emergency, such as severe events or extreme climatic conditions, whereby producers may submit a request to the competent certification body for authorisation to use non-organic feed. When approving such requests, the certification body must set maximum percentage of allowable non-organic feed and maximum time-periods for its provision (III.6.4.1). Non-organic feed provided under this derogation shall nonetheless conform to basic organic requirements (see section 5.1 above). Producers may only use feed material, supplements and additives authorised in the Canadian List and only within the established limits. Conversely, the Canadian Organic Standard lists a number of products that cannot be used as feedstuff or otherwise provided to organic livestock. These include: feed medications or veterinary drugs, including hormones and prophylactic antibiotics, to promote growth; feeds chemically extracted or defatted with prohibited substances; synthetic appetite-enhancers or synthetic flavour-enhancers; mammalian or avian slaughter by-products; synthetic preservation and colouring agents; and feed formulas containing manure or other animal waste.

The Canadian Organic Standard deals in a very detailed manner with **housing/ free-range conditions** (III.6.8) and **health care** (III.6.7) of organic livestock. Concerning the former, organic livestock producers are generally required to establish and maintain living conditions that accommodate the health and natural behaviour of all animals, including access to open-air runs, pasture and fresh water. These general requirements are complemented by specie-specific conditions, including stocking rates for indoor and outdoor spaces. With

respect to livestock health care, emphasis is placed on preventive measures, including: the choice of appropriate breeds or strains of animals; the provision of an organic feed ration sufficient to meet nutritional requirements; the establishment of appropriate housing, pasture conditions, space allowance and sanitation practices; the provision of conditions that allow exercise and freedom of movement appropriate to the different animal species. However, and departing from the Codex Alimentarius Guidelines (annex 1, B.20), the Canadian Organic Standard also includes the administration of vaccines in the list of preventive measures (III.6.7.1). If these measures prove inadequate to prevent sickness or injury, phytotherapeutic, homeopathic and similar products shall be used in preference to chemical allopathic veterinary drugs or antibiotics. The latter may only be administered if explicitly authorised in the Canadian List and under veterinary supervision, as provided for in the Codex Alimentarius Guidelines (annex 1, B.22). Also in accordance with the Guidelines (annex 1, B.23–24), hormonal treatment shall only be used for therapeutic reasons and under veterinary supervision while synthetic compounds used for the purpose of stimulating or retarding growth/production are strictly prohibited (III.6.7.7–6.7.8). Surgical operations (including tail docking, teeth and beak trimming, castration, ear tagging and dehorning) shall only be performed when absolutely necessary to improve the health, welfare and hygiene of animals, at the youngest age possible and in a manner that minimises pain, stress and suffering (III.6.7.2). Lastly, organic livestock producers are also required to implement a comprehensive plan to minimise internal parasite problems (III.6.7.9).

As to the **husbandry, transport and slaughter** of organic livestock, a number of practices are explicitly prohibited as in the Codex Alimentarius Guidelines (annex 1, B.25–30). These include: embryo transfer techniques or breeding techniques using genetic engineering or related technology (III .6.5) and the use of electrical stimulation and allopathic tranquillisers during transportation and slaughter (III.6.6.2). Also in line with the Codex Alimentarius Guidelines (annex 1, B.26), reproduction through natural methods is generally preferred, although artificial insemination is permitted (III.6.5). More generally, organic livestock shall be managed with care and respect, stress and suffering shall be minimized in all handling operations and the duration of transportation kept to the shortest possible (III.6.6.1 and 6.6.5). Unlike the Codex Alimentarius Guidelines (annex 1, B.53), the Canadian Organic Standard contains no specific requirements on record-keeping and identification of organic livestock.

Finally, and following the Codex Alimentarius Guidelines (annex 1, B.54–81), Section 7 of the Canadian Organic Standard lays down specific production rules on apiculture. In addition, the Canadian measure prescribes product-specific production requirements, including for maple products, mushroom and sprouts.

5.4 Handling and processing

Section 8 of the Canadian Organic Standard is dedicated to the preparation and handling of organic products. In accordance with the Codex Alimentarius Guidelines (annex 1, C.82, 88), the **organic integrity** of products shall be maintained during their processing, handling and retailing by preventing co-mingling with conventional product as well as contact with prohibited substances at all times. In addition, organic qualities of a product must be maintained through processing and handling techniques appropriate to the specific ingredients, by limiting the degree of refinement and minimising the use of processing additives and aids (III.8.1, 8.3.4, 8.3.7–8.3.8, 8.4.2). Also in line with Codex Alimentarius Guidelines (annex 1, C.82), **ionising radiation** shall not be used on organic products for the purpose of pest control, food preservation and the elimination of pathogens and sanitation (III.8.1).

With regards to **pest management**, the Canadian Organic Standard demands that pests be controlled through the following measures in order of preference: (1) preventive management practices (e.g. removal of pest habitat and food); (2) if the aforementioned prove inadequate, mechanical/physical methods, lures and repellents included in the Canadian List; (3) if the aforementioned prove insufficient, pest control substances permitted under the Canadian List. The use of unauthorised pesticides on organic products for post harvest or quarantine purposes shall generally cause such products to lose their organic status (III.8.2). Conversely, the Canadian measure also specifies the conditions under which, pursuant to a federal/provincial emergency pest or disease program, prohibited substances may be used for treatment purposes without affecting the organic status of the product (III.9).

Concerning **packaging, storage and transport**, the Canadian Organic Standard generally requires a physical segregation of organic products to prevent contamination or substitution of the content with non-organic products or/and prohibited substances. More specifically, storage sites and transport containers shall be cleaned using substances allowed under Canadian

List and transport equipment shall be free of non-organic (and other) residues and invertebrate and vertebrate pests (III.8.3.4, 8.3.7–8.4.2). Unlike in the Codex Alimentarius Guidelines (annex 1, C.87) and other national legislations, the Canadian measure expresses no preference for the use of bio-degradable and recycled packaging materials.

Lastly, as to **processing methods**, the Canadian Organic Standard generally requires organic processors to use mechanical, physical and biological methods (e.g. fermentation and smoking) and to minimise reliance on non-agricultural ingredients, food additives and processing aids authorised for use in the Canadian List. Food additives and processing aids shall be of organic origin and only used to maintain: nutritional value; food quality and stability; product composition and appearance provided they are not misleading to the consumer concerning the nature of the product (III.8.3.1–8.3.4).

6. ACCREDITATION AND CERTIFICATION

Sections 3–10 of the Organic Products Regulation establish the rules for accrediting certification bodies as well as those pertaining to the suspension/cancellation of accredited status. Sections 13–18 and 20 of the Regulation provide the procedure for the granting, and eventual withdrawal, of organic certification.

An important peculiarity of the Canadian **accreditation** system is that the function of assessing and supervising private certification bodies has been delegated to a third-party accreditation body. To be officially recognised as an accreditation body, the body concerned needs to enter into an agreement with the CFIA, which delegates to it the administration of certain tasks, including assessing, recommending and monitoring the accreditation of certification bodies (OPR, sec. 1). The possibility for competent authorities to delegate certain accreditation tasks is recognised in the Codex Alimentarius Guidelines (sec. 6.4), but it has not been implemented under other national legislations included in this study.

Natural or legal persons wishing to be accredited as a certification body need to apply for accreditation to the officially recognised accreditation body and undergo an evaluation, approved by CFIA, that tests their knowledge of the

principles and practices related to organic certification. In cases of successful applications, the accreditation body makes a recommendation to CFIA, which formally accredits the applicant concerned as a certification body and provides it with an accreditation number (OPR, secs. 5–6). Unlike the Codex Alimentarius Guidelines (sec. 6, 6.5) and other national legislations, the Organic Products Regulation does not spell out the criteria for accrediting certification bodies.

Section 9 of the Organic Products Regulation deals with the (possible) suspension and cancellation of accreditation status. On the basis of a recommendation by the accreditation body or of its own initiative, the CFIA shall suspend accreditation of a certification body that fails to comply with the provisions of the Regulation. However, the specific grounds or conducts leading to non-compliance are not specified. Suspension of accredited status remains in effect until the required corrective measures have been implemented and verified. If the certification body fails to implement such measures, accreditation shall be cancelled by the CFIA. Thus, whereas certain assessment and monitoring tasks are delegated to officially recognised accreditation bodies, responsibility for final decisions on the granting and withdrawal of accreditation remains with the CFIA, in accordance with the Codex Alimentarius Guidelines (sec. 6.4).

Unlike the Codex Alimentarius Guidelines (annex 3) and other national legislations, the Organic Products Regulation is silent regarding minimum inspection requirements and precautionary measures to be undertaken within **inspection and certification programmes** and it is essentially limited to procedural matters. Section 12 of the Regulation describes the procedure for obtaining organic certification. Interested operators need to send an application to the accredited certification body, containing *inter alia* a report detailing the methods and substances used in the production of the agricultural product as well as the control mechanisms adopted to ensure conformity with the Canadian Organic Standard. This document demands operators seeking organic certification to prepare an organic plan and maintain records on inputs, production, preparation and handling of crop and livestock products intended to be marketed as organic. Records shall be maintained for not less than five years and the operator must guarantee the organic integrity of the product through a continuous audit trial, from the receipt of the raw material to the release of the product.

Organic certification shall be granted if the certification body determines that: 1) the product contains at least 70 percent of organic ingredients; 2) only permitted substances were used in its production and in the manner described in the Canadian List; 3) the production methods and control mechanisms employed comply with the requirements of the Canadian Organic Standard (see section 5 above). Whenever granted, organic certification remains in effect for a period of one year and the applicant concerned is provided with a certificate. However, the Regulation leaves unclear whether certified operators need to apply for renewal following the same procedure applicable to the original granting of certification.

Lastly, Article 20 of the Organic Products Regulation deals with the (possible) suspension and cancellation of organic certification. The competent certification body or the CFIA shall suspend organic certification if its holder fails to comply with the provisions of Canadian Agricultural Products Act, the Organic Products Regulation and/or the. NOS. However, the specific grounds or conducts leading to non-compliance are not specified. Suspension of organic certification remains in effect until the required corrective measures are implemented and verified. If the operator fails to undertake such measures, certification shall be cancelled by the CFIA or the competent certification body.

7. IMPORT REQUIREMENTS

The Organic Products Regulation does not contain detailed provisions on the importation of organic products from third countries. Sections 27 and 28 however provide three ways a foreign product may be marketed as Organic: 1) is an organic product under the Canadian Regulations; 2) originates from a country with which the CFIA maintains an equivalence agreement; or 3) if the product is certified by a private foreign certification agency which the CFIA recognizes and maintains an equivalence agreement with.

As for most countries, it is difficult to obtain detailed, reliable and up-to-date statistics on Canadian exports and imports of organic products. However, a 2004 study by ITC concluded that, although Canada is an important import market, its organic industry has (as yet) been largely production and export driven. According to estimates published by CFIA, reported exports

amounted to 63 million Canadian-Dollars in 2003, consisting of grains/seeds/flour (CAD 40 million); food and beverages (CAD 10 million); maple syrup (CAD 7 million); apples (CAD 3.2 million) and vegetables (CAD 2 million), most of them going to the US and EU. This may help explain why the Organic Production Regulation, in its 2008 version, does not extensively deal with the importation of organic products. While no data on the actual size of Canadian organic imports is available, the aforementioned ITC study estimates that at least 80 per cent of imports come from the US, most of which is packaged food followed by fresh produce. It should be noted, however, that in the case of fresh produce imported from the US, a considerable amount of this is first exported to the US from Latin America, and in particular from Mexico.[98]

98 International Trade Center, *The Canadian Market for Organic Food and Beverages*, (UNCTAD/WTO (ITC), 2004), pp. 5–6.

EUROPEAN UNION

1. OVERVIEW OF THE LEGAL AND INSTITUTIONAL FRAMEWORK

Since the beginning of the 1990s, organic farming has rapidly developed in almost all Member States of the European Union (EU). According to IFOAM survey of 2007, almost 6.3 million hectares are under certified organic management in the EU, distributed across 160,000 organic holdings and representing 3.9 percent of total agricultural area, at present the highest proportion of organically compared to conventionally managed land in the world. Italy stands out as the EU Member State with the highest number of farms and the largest organic area. EU retail sales of organic products were estimated to be around 13 billion Euros in 2005, with the biggest organic markets being Germany (3.9 billion Euros), followed by Italy (2.4 billion Euros), the United Kingdom (2.3 billion Euros) and France (2.2 billion Euros).[99]

After two years of inter-institutional deliberations,[100] the EU adopted a new Council Regulation on organic production and labelling of organic products on 8 June 2007.[101] This new Regulation 834/2007 came into force as of 1 January 2009, thereby succeeding that in place since 1991.[102] It was followed by Regulation 889/2008 which, promulgated by the EU Commission, provides implementation rules and additional complimentary provisions. Being one of

99 H. Miller and M. Yussefi (eds.), *The World of Organic Agriculture. Statistics and Emerging Trends 2007,* (IFOAM, 2007), p. 14.

100 See *inter alia*, European Commission, "Proposal for a Council Regulation on organic production and labelling of organic products" COM (2005) 671final, Brussels 21.12.2005; European Parliament, "Amendments. Organic production and labelling of organic products. Proposal for a regulation COM (2005) 671" (PE 380.703v01-00), Brussels 29.01.2007; European Parliament, "Report on the proposal for a Council Regulation on organic production and labelling of organic products COM (2005) 671" (A6-0061/2007), Brussels, 14.03.2007.

101 Council Regulation (EC) N° 834/2007 of 28 June 2007 on organic production and labelling of organic products and repealing Regulation (EEC) N° 2092/91, OJ [2007] L 189/1. Hereinafter, Council Regulation 834/2007 or new EU Regulation.

102 Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs, OJ [1991] L198/1. Hereinafter, Regulation 2092/91 or old EU Regulation.

the earliest attempts at regulating organic agriculture, the old EU Regulation 2092/91 has received considerable attention, and indeed was claimed to have provided the impetus for similar legislative developments in other countries as well as having influenced the expansion of the Codex Alimentarius Guidelines in the late 1990s.[103] The present analysis will focus on the new EU Regulations. It should be noted that, in addition to benefiting from legal protection under the old and new Regulations, organic farming is supported through the EU's rural development programmes and the Action Plan for Organic Food and Farming launched in June 2004.[104]

EU Regulations, such as the ones under consideration, are binding in their entirety and given force of law within all Member States of the European Union[105]. This does not mean that every aspect of Regulation 834/2007 will be handled in an identical manner in all (current) 27 EU Member States. Regulatory divergences may arise from different interpretations when it comes to implementing the specific provisions of the Regulation. In addition, the Regulation itself has delegated certain tasks to the Member States and allows for stricter rules on organic plant and livestock production to be applied at the national level under certain conditions[106]. Nevertheless, the EU experience may be of interest to other members of customs unions (or free trade areas) wishing to regulate organic farming at the regional level.

As illustrated in the chart below, the main text of Regulation 834/2007 follows closely the structure of the Codex Alimentarius Guidelines in that it contains a set of general objectives and principles, minimum rules for production,

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103 See *inter alia* , A. Sharpé, 'The EU Regulation'; O. Schmid, 'Comparison of EU Regulation 2092/91, Codex Alimentarius Guidelines for Organically Produced Food 1999/2001, and IFOAM Basic Standards 2000'; J. Riddle and L. Coody, 'Comparisons of the EU and US Regulations'; all in Ch. Westermayer and B. Geier (eds.), *The Organic Guarantee System. The Need and Strategy for Harmonisation and Equivalence*, (IFOAM, 2003).

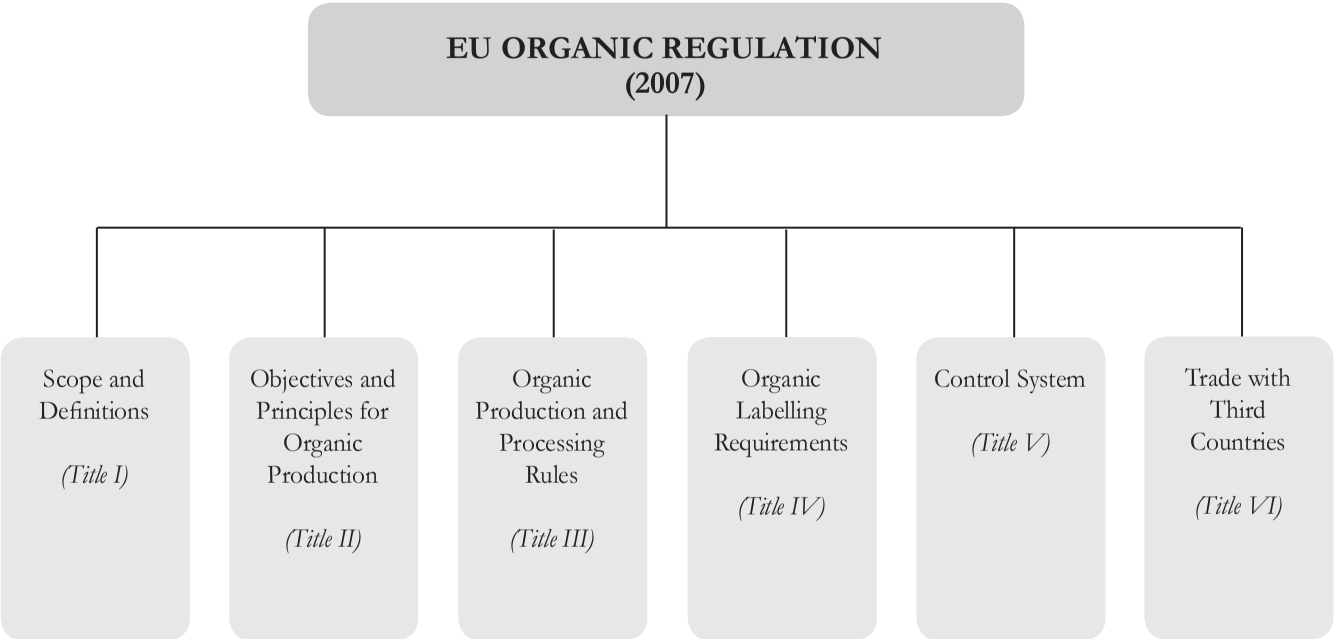
104 European Commission, "Communication to the Council and the European Parliament. European Action Plan for Organic Food and Farming" COM (2004) 415 final Brussels 10.06.2004.

105 Article 249 of the Treaty establishing the European Community, OJ [2006] C321E.

106 Regulation 834/2007, Article 34 provides: "Member States may apply stricter rules within their territory to organic plant and livestock, where these rules are also applicable to non-organic production and provided that they are in conformity with Community law and do not prohibit or restrict the marketing of organic products produced outside of the territory of the Member States concerned.

processing, labelling, inspection and certification of organic products, and a specific title on the importation of such products. However, EU legislation has now incorporated detailed technical provisions into the main body of the Regulation, as opposed to dealing with them within annexes. Only the instructions on the use of the term "organic" in the different EU languages are included in an annex[107]. Most provisions of the new Regulation are subject to further implementation by the European Commission and/or the EU Member States. Thus, a complete picture of EU regulatory framework would necessitate examination of these other implementing measures.

107 Annex 1 of Regulation 834/2007.


EU ORGANIC REGULATION
(2007)
Scope and Definitions
(Title I)
Objectives and Principles for Organic Production
(Title II)
Organic Production and Processing Rules
(Title III)
Organic Labelling Requirements
(Title IV)
Control System
(Title V)
Trade with Third Countries
(Title VI)

2. OBJECTIVES AND PRINCIPLES

The new Regulation 834/2007 aims at providing the conditions for a sustainable development of organic agriculture in the EU while ensuring the effective functioning of the internal market, guaranteeing fair competition, fostering consumer confidence in organic products and protecting consumer interests (preamble, 3; art. 1(1)). In addition, the Regulation seeks to promote the development of a harmonised concept of organic production across EU Member States (preamble, 28). To these ends, a set of overall objectives and principles on organic production are laid down in Title II, which underpins the application and implementation of the Regulation at both EU and Member State levels.

Article 3 of Regulation 834/2007 demands that organic production pursues the following general objectives:

a) Establish a sustainable management system for agriculture that:
   - (i) respects nature's systems and cycles and sustains and enhances the health of the soil, water, plants and animals and the balance between them;
   - (ii) contributes to a high level of biological diversity;
   - (iii) makes responsible use of energy and natural resources, such as water, soil, organic matter and air; and
   - (iv) respects high animal welfare standards and in particular meets animals' species-specific behavioural needs.

b) Aim at producing products of high quality.

c) (i) Aim at producing a wide variety of foods and other agricultural products that respond to consumers' demand for goods produced by the use of processes that do not harm the environment, human health, plant health or animal health and welfare.

Article 4 of Regulation 834/2007 requires that organic production be based on the following principles:

a) The appropriate design and management of biological processes based on ecological systems using natural resources which are internal to the system by methods that:

   (i) use living organisms and mechanical production methods;
   (ii) practice land-related crop cultivation and livestock production or practice aquaculture which complies with the principle of sustainable development of fisheries;
   (iii) exclude the use of GMOs and products produced from or by GMOs with the exception of veterinary medicinal products; and
   (iv) are based on risk assessment, and the use of precautionary and preventive measures, when appropriate.

b) The restriction on the use of external inputs. Where external inputs are required or the appropriate management practices and methods referred to in paragraph (a) do not exist, these shall be limited to:

   (i) inputs from organic production;
   (ii) natural or naturally-derived substances; and
   (iii) low solubility mineral fertilizers.

c) The strict limitation of the use of chemically synthesised inputs to exceptional cases, these being:

   (i) where the appropriate management does not exist; and
   (ii) the external inputs referred to in paragraph (b) are not available on the market; or
   (iii) where the use of external inputs referred to in paragraph (b) contributes to unacceptable environmental practices.

d) The adaptation, where necessary, and within the framework of the Regulation, of the rules of organic production taking account of sanitary status, regional differences in climate and local conditions, stages in development and specific husbandry practices.

The remainder of Title II prescribes specific principles on organic farming (art. 5), the processing of organic food (art. 6) and of organic feed (art. 7), to be examined in section 5 below.

3. SCOPE OF APPLICATION

As to **covered products**, Regulation 834/2007 (art. 1(2)) generally applies to products originating from agriculture, including aquaculture, that are intended to be placed on the market and belong to one of the following categories: live or unprocessed agricultural products; processed agricultural products for use as food; feed; vegetative propagating materials; seeds for cultivation; and yeasts used as food or feed. The term "livestock" encompasses any domestic or domesticated terrestrial animal, including insects. "Aquaculture" is defined as the rearing or cultivation of aquatic organisms using techniques designed to increase the production of the organisms in question beyond the natural capacity of the environment.[108] In line with the Codex Alimentarius Guidelines (sec. 2.2), the products of hunting or fishing of wild animals are excluded from the scope of application of the Regulation and thus cannot be considered as coming from, or related to, organic production.

As to **covered operators**, Regulation 834/2007 addresses any natural or legal person involved in organic activities, at any stage of production, preparation and distribution of covered products. Mass catering operations are however excluded from the scope of application of the Regulation (art. 1(3)). The term "mass catering operations" refers to the preparation of organic products in restaurants, hospitals, canteens and other similar food business at the point of sale or delivery to the final consumer (art. 2(aa)). Nonetheless, the new EU Regulation allows for the development of national or private rules on labelling and control of products originating from mass catering operations, insofar as they are compatible with Community law (art. 1(3)).

Finally, it should be noted that, in a similar vein with the Codex Alimentarius Guidelines (sec. 1.4), Regulation 834/2007 applies without prejudice to other EU and national provisions governing the production, preparation, marketing,

108 The applicable definition of aquaculture is that given in Article 3 (d) of Council Regulation (EC) N° 1198/2006 of 27 July 2006 on the European Fisheries Fund, OJ [2006] L 223/1.

labelling and control of covered products, including legislation on foodstuffs and animal nutrition (art. 1(4)).

4. ORGANIC LABELLING AND CLAIMS

Title IV of Regulation 834/2007 regulates the use of the term "organic," its derivates and equivalents in all EU languages, for the purpose of labelling and advertising agricultural products sold on the Community market. The use of indications referring to organic production is only allowed for the labelling and advertising of products that satisfy the production and processing requirements established under the EU Regulation. In particular, organic labelling and claims are explicitly prohibited on products containing genetically modified organisms (see section 5 below). Furthermore, no other terms or practices shall be used in the labelling or advertising of products that are liable to mislead consumers by suggesting that a product or its ingredients were obtained in accordance with organic production methods (art. 23).

In the case of live or unprocessed agricultural products, organic labelling and advertising is only permitted if *all* ingredients of that product have been produced in accordance with the prescribed organic requirements. As regards processed agricultural food, the term "organic" can only be used in the following cases:

- *On the sales description*: for processed products that comply with the established organic requirements and contain at least 95 percent (by weight) of organically produced agricultural ingredients. Note that non-agricultural ingredients are not included in the EU calculation method, which could result in products being labelled as "organic" when less than 95 percent (by weight) of their *total* ingredients are organic.
- *On the ingredients list only*: for processed agricultural products that comply with the established organic requirements and contain less than 95 percent (by weight) of organically produced agricultural ingredients. The list must clearly indicate which ingredients are organic and their total percentage in the product composition.
- *On the ingredients list and in the same visual field as the sales description*: for processed products whose main ingredient derives from hunting and fishing insofar as they also contain other agricultural ingredients that

are all organic and comply with the established organic requirements. References to organic production methods may only appear in relation to the organic ingredients and the list of ingredients shall indicate their total percentage in the product composition.

Article 24 of Regulation 834/2007 lays down a number of compulsory indications when using organic labels and claims. As in the Codex Alimentarius Guidelines (sec. 3.2(d)), the code number of the accredited certification body or authority must appear in the labelling. However, the new Regulation also makes the use of the official EU logo compulsory for all pre-packaged organic food produced within the EU. For organic products imported from third countries, the use of the EU logo is optional. Whenever the EU logo is used, it is necessary to indicate the place where the raw agricultural materials of which the product is composed have been farmed (i.e. "EU Agriculture," or "non-EU Agriculture," or "EU/non-EU Agriculture" for mixed products). The EU logo cannot be used in the labelling of in-conversion products or processed foodstuff with less than 95 percent organic agricultural ingredients. The use of national and private logos in the labelling, presentation and advertising of products that satisfy the prescribed organic standards remains optional (art. 25). Finally, Article 26 of Regulation 834/2007 demands that the Commission develops specific labelling and composition requirements applicable to: organic feed; in-conversion products of plant origin (i.e. transitional labelling); vegetative propagating material and seeds for cultivation. However, the Regulation explicitly prohibits references to organic production methods in the labelling and advertising of animals and animal products produced during the established conversion period (art. 17(1)(f)).

5. ORGANIC PRODUCTION, HANDLING AND PROCESSING RULES

Title III of Regulation 834/2007 lays down the rules for organic production and processing. The details of such rules are difficult to summarise and only their main elements will be addressed. It should be noted from the outset that Chapter 5 of the Regulation contains a so-called "flexibility clause," empowering the European Commission to grant temporary exceptions from general production and processing rules so as to permit adaptability to local climatic or geographical conditions, specific husbandry practices and stages of

development (preamble, 21). In addition, time-limitation exceptions must be kept to a minimum, granted only in specific circumstances, (art. 22(2)(a)–(h)) and must not contravene the objectives and principles of organic production laid down in Title II (art. 22(1)). Examples to which this clause is applicable will be noted in due course.

5.1 General requirements

Regulation 834/2007 does not contain a single heading on general requirements/prohibitions in organic agriculture. As seen in Section 2, the EU Regulation is exceptionally detailed in terms of identifying general principles and specific requirements applicable to the production and processing of organic products (arts. 4–21). For comparative purposes, only the basic requirements that are also common to the Codex Alimentarius Guidelines and/or other national legislations are highlighted below.

- Organic products must not be produced using non-organic ingredients when organic agricultural ingredients are available on the market, nor include organic and non-organic (or in-conversion to organic) forms of the same ingredient (arts. 6(a),19(2)(d)).
- Such products must be produced and handled only with authorised substances or products, although Regulation 834/2007 itself does not contain a positive list(s) of substances/products. Nonetheless, Articles 16 and 21 of the Regulation demand that the European Commission draws up a "restricted list" of substances and products authorised for use in organic farming, such as: plant protection products; fertilizers and soil conditioners; non-organic feed materials from plant origin; non-organic feed material and nutritional elements; feed/food additives and processing aids; non-organic agricultural in processed food; products for cleaning and disinfections of buildings and installations for plant and animal production (hereinafter, generally referred to as EU List). The authorisation/restriction of substances and products shall be decided on the basis of the established evaluation criteria for evaluation and of the general objectives and principles laid down in Title II. Following the Codex Alimentarius Guidelines (sec. 5.3), the EU List will remain open-ended thereby facilitating future amendments on a proposal by the European Commission or the Member States (arts. 16(3), 21(2)).

- Such products shall be protected from contact with prohibited substances as well as from co-mingling with non-organic products during production and processing processes (arts. 11, 18, 19).
- GMOs, and products produced from or by GMOs, shall not be used as food, feed, processing aids, plant protection products, fertilizers, soil conditioners, seeds, vegetative propagating materials, micro-organisms and animals in organic production (arts. 4(a)(iii), 9). GMOs are defined as organisms, with the exception of human beings, in which the genetic material has been altered in a way that does not occur naturally by mating and/or natural recombination.[109] For the purpose of this prohibition, operators must rely on the labels or any other indications accompanying products pursuant to EU regulations on the traceability and labelling of GMOs and products produced from them.[110]
- The use of ionising radiation for the treatment of organic food or feed, or of raw materials used in organic food or feed, is prohibited (art. 10).

5.2 Production of plants and plant products

Regulation 834/2007 itself does not specify the length of the **conversion period(s)** for crop production, which should be determined through subsequent implementing measures. In line with the Codex Alimentarius Guidelines (annex 1, A.2), Article 17 of the Regulation requires that the conversion period only begins once the production unit has been placed under the established control system and that organic production methods be applied throughout this period.

As to **partial conversion**, the new EU Regulation generally favours the entire farm to be converted to organic production. When the whole farm

109 The applicable definition of GMOs is that given in Directive 18/2001/EC of the European Parliament and the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms, OJ [2001] L/106/1. Annex I A of said Directive lists the techniques that are, and those that are not, considered to result in genetic modification under EU law.

110 Regulation (EC) of the European Parliament and the Council of 22 September 2003 on genetically modified food and feed, OJ [2003] L 268/1; Regulation (EC) 1830/2003 of the European Parliament and the Council of 22 September 2003 concerning the traceability of food and feed products produced from genetically modified organisms, OJ [2003] L 268/24.

is not converted, producers shall ensure a clear separation of organic and non-organic units and keep adequate records to show such a separation. Simultaneous production of conventional and organic crops shall involve different varieties of plants that can easily be differentiated (art. 11). Unlike other national legislations, the EU Regulation does not specify the means to split up conventional and organic holdings into clearly separated units and does not explicitly prohibit the alternation between organic and conventional production methods, as provided for in the Codex Alimentarius Guidelines (annex 1, A.3).

With regards to organic management practices, Regulation 834/2007 prescribes both general principles (Title II) and specific requirements (Title III) on the following: the choice of seeds and vegetative propagating material; the maintenance of soil fertility and biological activity; the prevention/control of crop pests, diseases and weeds; and the collection of wild plants (and of wild seaweeds).

Producers are only allowed to use organically produced **seeds and vegetative reproductive material**. As provided for in the Codex Alimentarius Guidelines (annex 1, A.8), conventional seeds and vegetative reproductive material can only be regarded as organic if obtained from plants grown in accordance with organic practices for one generation, or in the case of perennials, two growing seasons (art. 12(1)(i)). Pursuant to Article 22 of the Regulation, the Commission may exceptionally authorize the use of conventional seeds and other reproductive material if not commercially available in an organic form.

The **fertility and biological activity of the soil** shall be maintained (or increased) through tillage and cultivation practices that maintain soil organic matter, enhance soil stability and biodiversity and prevent soil compaction and soil erosion, as well as by minimising the use of non-renewable resources and off-farm inputs. In addition, a number of cultivation methods are further spelled out, following closely the Codex Alimentarius Guidelines (annex 1, A.5): the cultivation of legumes, green manures in an appropriate multi-annual rotation programmes and the application of livestock manure or organic material, both preferably composted, from organic production holdings. The use of biodynamic preparations is also permitted while that of fertilisers and soil conditioners is subject to explicit authorisation under the EU List. Lastly, mineral nitrogen fertilizers shall not be used and all plant production

techniques shall prevent or minimise any contribution to the contamination of the environment (arts. 5(a)–(b), 12(1)(a)–(f)).

In accordance with the Codex Alimentarius Guidelines (annex 1, A.6), plant **pests, diseases and weeds** shall be primarily managed and controlled through preventive measures, such as: the protection of natural enemies; the choice of appropriate species and varieties; appropriate crop rotation programmes; mechanical and physical methods and thermal processes. Only in cases of established threats to a crop, the use of plant protection products is authorised insofar as they are included in the EU List (arts. 5(f), 12(1)(g)–(h)). It should be noted that the EU provisions on plant pest and disease control are less detailed than those found in other national legislations. That being said, additional requirements on this matter may be elaborated once the EU List is drawn up, which should also identify authorised products for cleaning and disinfection in plant production facilities (art. 12(1)(j)).

Article 12(2) of Regulation 834/2007 regulates the **collection of wild plants**, following closely the Codex Alimentarius Guidelines (annex 1, A.9). The collection of wild plants (and parts thereof) is considered an organic production method insofar as such plants grow in natural/agricultural areas that have not received treatment with products other than those authorised under the EU List for a period of three years before collection. In addition, the harvesting or gathering of such products shall not affect the stability of the natural habitat or the maintenance of species in the collection area. Pursuant to Article 27(3) and 28 of the Regulation, operators engaged in the collection of wild plants are subject to the established inspection/certification system (see section 6 below).

Finally, it should be noted that the EU Regulation also establishes specific conditions for the collection of wild seaweeds to be considered an organic production method (art. 13), something not addressed in the Codex Alimentarius Guidelines or other national legislations. These conditions include: growing areas shall be of high ecological quality; the collection shall not affect the long-term stability of the natural habitat or the maintenance of species in those areas; sustainable practices must be used in all stages of production, from collection of juvenile seaweed to harvesting; and the use of fertilisers is prohibited, except in indoor facilities and insofar as they are authorised under the EU List.

5.3 Production of livestock and livestock products

As in the case of plants, Regulation 834/2007 itself does not specify the length of the **conversion period(s)** for livestock production, which should be determined through subsequent implementing measures. It does however require that the conversion period only begins once the production unit has been placed under the established control system and that organic production methods are applied during this period. As opposed to in-conversion products of plant origin, animals and animal products produced during the conversion period cannot be labelled or advertised as organic (art. 17).

Concerning **partial conversion**, the new EU Regulation generally encourages the entire agricultural holding, including livestock, to be converted to organic production. Nonetheless, producers may split up a single farm into clearly separated units which are not all managed under organic production, but must keep records to demonstrate such a separation. In addition, simultaneous production of conventional and organic livestock shall involve different species of animals, except for aquaculture where the same species may be involved insofar as there is a clear separation between production sites (art. 11). Unlike other national legislations, the EU Regulation does not specify the means to ensure a clear separation between conventional and organic units and does not explicitly prohibit the alternation between organic and conventional production methods, as provided for in the Codex Alimentarius Guidelines (annex 1, A.3).

With respect to organic management practices, Regulation 834/2007 prescribes both general principles (Title II) and specific requirements (Title III) on the following: origin of livestock; livestock feed; livestock disease prevention and veterinary treatment; and livestock husbandry practices and living conditions.

In terms of **livestock sources/origin**, Regulation 834/2007 generally requires the choice of breeds to take account of their adaptation to local conditions as well as their vitality and resistance to diseases (art. 5(j)), as provided for in the Codex Alimentarius Guidelines (annex 1, B.6). In addition, the Regulation demands that the choice of breeds contributes to the prevention of suffering and to avoiding the need for the mutilation of animals (art. 14(c)(iv)). Also in line with the Codex Alimentarius Guidelines (annex 1, B.7), livestock used in the production of organic products must have been raised on organic

holdings since birth or hatching and throughout life. Nonetheless, non-organically raised animals may be brought into an organic holding for breeding purposes (art. 14(1)).

With regards to **nutrition**, livestock should be, as a matter of principle, provided with 100 percent organically produced feed, with the prevailing part coming from the farm itself or produced in cooperation with other organic farms within the region (art. 14(d)(i)–(ii)). As provided for in the Codex Alimentarius Guidelines (annex 1, B.15) and other national legislations, the European Commission may exceptionally authorise the provision of conventional feed to organic livestock (art. 22). When drawn up by the Commission, the EU List should specify non-organic feed materials from plant, animal and mineral origin, nutritional elements, feed additives, and processing aids allowed for use in organic production (art. 14(d)(iv)). Conversely, the use of growth promoters and synthetic amino-acids is prohibited (art. 14(d)(v)).

Article 14(b) of Regulation 834/2007 lays down **housing and free-range conditions**, including the establishment of housing facilities that meet the developmental, physiological and ethological needs of animals and a permanent access to open-air runs and pasture. In addition, Article 14(e) of the Regulation deals with the **heath care** of organic livestock. Following the Codex Alimentarius Guidelines (annex 1, B.20), emphasis is placed on disease prevention measures, including: an adequate selection of animal breeds and strains; the application of appropriate husbandry management practices; the use of high quality organic feed together with regular exercise; the provision of appropriate housing, stocking densities and hygienic conditions. If despite these preventive practices an animal becomes sick or injured, it shall be treated with phytotherapeutic and homeopathic products in preference to chemically synthesised allopathic veterinary drugs or antibiotics. The use of immunological veterinary medicines, including vaccinations, as well as other treatments required by EU law for the protection of human and animal health, are permitted. Departing from the Codex Alimentarius Guidelines (annex 1, B.22(c)), the EU Regulation does not explicitly demand that such medicinal products be administered under the responsibility of a veterinarian and withholdings periods are not specified. Lastly, the EU List to be drawn up by the Commission should identify products authorised for the cleaning and disinfection of organic livestock buildings and installations (art. 14(f)).

As to the **husbandry, transport and slaughter** of organic livestock, Article 14(c) of Regulation 834/2007 establishes a preference for reproduction through natural methods (albeit artificial insemination is permitted) and prohibits cloning, embryo transfer techniques and hormonal treatments, in line with the Codex Alimentarius Guidelines (annex 1, B25). In addition, any suffering, including mutilations, shall be kept to a minimum during the entire life of the animal, including at the time of slaughter (art. 14(b)(viii)). Duration of transport of organic livestock must be minimised (art. 14(b)(vii)), but no maximum transport periods have been established, as foreseen in the Codex Alimentarius Guidelines (annex 1, B,29). Also in contrast to the Guidelines (annex 1, B.29) and other national legislations, the EU Regulation does not explicitly prohibit the use of electric stimulation or allopathic tranquillisers during the transportation of organic livestock.

Finally, Article 15 of Regulation 834/2007 lays down specific production rules for aquaculture animals, something not common to the Codex Alimentarius Guidelines and other national legislations. Conversely, the EU Regulation does contain specific requirements on bee-keeping and bee products.

5.4 Handling and processing

The new EU Regulation prescribes specific principles and requirements for the processing of organic food (arts. 6, 19) and feed (arts. 7, 19) but, unlike the Codex Alimentarius Guidelines (annex 1, C.82–91) and other national legislations, is silent regarding the handling of organic products more generally (i.e. pest management, packaging, storage and transportation). Processing requirements applicable to organic feed are less detailed and fairly similar to those established for organic food, and thus this section only examines the latter.

As to **processing methods** applicable to organic food, Regulation 834/2007 generally excludes methods and substances that might mislead the true nature of the product and expresses a preference for biological, mechanical and physical methods (art. 6(c)–(d)), as provided for in the Codex Alimentarius Guidelines (annex 1, C.86). Substances and processing techniques that reconstitute properties lost in the processing of organic food, or that correct the results of negligence during this process, are explicitly prohibited (art. 19(3)). In terms of product composition, the Regulation requires that organic processed food

contain mainly ingredients of agricultural origin (excluding added water and cooking salt) and only non-organic agricultural ingredients authorised in the EU List (arts. 19(2)(a), (c)), also following the Codex Alimentarius Guidelines (annex 1, C.86).

Next to these composition requirements, the EU Regulation demands the Commission to establish the substances allowed for use, and the conditions for their use, as additives and processing aids in the preparation of organic food. This EU List also specifies flavourings, water, salt, preparations of micro-organisms, enzymes, minerals and trace elements permitted in organic processing (art. 19(2)(b)). The products and substances to be included in the EU List may have undergone only mechanical, physical, biological enzymatic or microbial processes, except if not commercially available in sufficient quantities or qualities. Recourse to all these substances/products shall be made only when it would be otherwise impossible to produce or preserve the food, or to fulfil dietary requirements under other EU legislative measures (art. 21(1)). However, pursuant to Article 22 of the Regulation, the Commission may grant temporary derogations from these processing requirements. Lastly, the preparation of processed organic food shall be kept separate in time or space from non-organic food (art. 19(1)).

6. ACCREDITATION AND CERTIFICATION

In a similar vein to Section 6 of the Codex Alimentarius Guidelines, Title V of Regulation 834/2007 deals with the establishment of inspection and certification systems[111] with the purpose of verifying compliance with the prescribed organic standards. When compared to other national legislations, the EU provisions are significantly less detailed, mainly due to two factors. First, another EU Regulation, Regulation 882/2004[112] (establishing a general legal framework on official controls performed to ensure the verification of compliance with feed, food and animal law) is used as the legal instrument of reference for controls of organic products. Second, the task of setting-up an organic inspection and certification system is largely delegated to the

111 Note that the term "control system" is used instead in EU Regulation 834/2007.

112 Regulation (EC) 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure verification of compliance with feed and food law, animal health and animal welfare rules, OJ [2004] L191/1.

EU Member States. Thus, Regulation 834/2007 only identifies minimum conditions for establishing such a system at the national level, which are briefly examined in what follows.

In general terms, EU Member States are required to set up a "system of controls" and to designate one or more competent authorities responsible for ensuring compliance with the EU organic rules. This system shall be in conformity with the conditions laid down in Regulation 882/2004 and also comprise the application of precautionary and other measures to be adopted by the European Commission (arts. 27(1)–(2)). It shall allow for the traceability of each product at all stages of production, preparation and distribution in order to give EU consumers guarantees that organic products have been produced in conformity with the established organic standards (art. 27(13)).

As contemplated in the Codex Alimentarius Guidelines (sec. 6.2), the process of organic inspection and certification may be carried out by competent national authorities or officially recognised certification/inspection bodies.[113] When such control tasks are delegated, EU Member States shall designate one or more authorities responsible for the approval and supervision of inspection/certification bodies (see below). The EU Regulation does not therefore allow for the responsibility of supervising and auditing inspection/certification bodies to be delegated, unlike the Codex Alimentarius Guidelines (sec. 6.4). Article 27(7) of the Regulation also forbids the delegation of the competence to grant exceptions.

Concerning the **accreditation** of inspection/certification bodies, Article 27 of Regulation 834/2007 follows Section 6 of the Codex Alimentarius Guidelines (secs. 6.5–6.8) in that it spells out minimum criteria for approving such bodies as well as their basic obligations. In order to obtain approval as an officially recognised inspection/certification body, it is mandatory to be formally accredited to the most recent version of European Standard EN 45011 or ISO Guide 65. Additional criteria for assessing accreditation include: effectiveness, objectivity and impartiality of bodies' activities (including measures to prevent any conflict of interests); adequate professional competence and resources; measures to be applied in cases of irregularities or infringements. Once approved, inspection/certification bodies are attributed

113 Note that the term "control body" is used instead in EU Regulation 834/2007, without differentiating between certification and inspection roles.

a "code number" and are subject to ongoing oversight and auditing by the designated national authority (arts. 27(8), (10)). Such bodies shall give competent authorities access to information and office facilities for auditing purposes and shall transmit to that authority an annual report of their activities and a list of operators that are subject to their control (arts. 27(11), (14)).

As provided for in the Codex Alimentarius Guidelines (sec. 6.2), Article of Regulation 834/2007 makes adherence to the established inspection and certification system compulsory for any operator who produces, prepares, stores, imports or exports organic products or who places such products on the EU market. Individual EU Member States may however exempt from this general rule operators who only sell organic products directly to the final consumer or user, provided that they do not produce, prepare or store such products other than in connection with the point of sale or import from a third country.

Unlike the Codex Alimentarius Guidelines (annex 3) and other national legislations, the new EU Regulation is rather silent regarding minimum inspection requirements and precautionary measures to be undertaken within **inspection and certification programmes**. Article 27(3) of the Regulation merely requires that all operators (with the exception of wholesalers dealing only with pre-packaged food and operators selling to the final consumer) be subject to a "verification of compliance" at least once a year. Nonetheless, Article 27(2) of the Regulation calls upon the European Commission to elaborate minimum inspection measures and precautions through the adoption of a separate EU legislative act. Once this occurs, accredited bodies will be under an obligation to ensure that (at least) the measures established by the Commission are applied within their inspection and certification programmes (art. 27(12)).

Finally, and in line with the Codex Alimentarius Guidelines (sec. 6.9), Article 30 of Regulation 834/2007 differentiates irregularities from "severe infringement or infringements with prolonged effects" in terms of legal consequences, without however specifying the grounds or conducts that may lead to one or the other. Findings of irregularities result in the withdrawal of all organic indications from the entire lot or production unit affected by the irregularity. In the case of infringements, the operator concerned will be ineligible for organic

certification during a period to be determined by the competent authorities of the EU Member States.

7. IMPORT REQUIREMENTS

In a similar vein to Section 7 of the Codex Alimentarius Guidelines, Title VI of Regulation 834/2007 is exclusively dedicated to the importation of organic products from third countries into the EU territory. In order to ensure a uniform application of such import rules across the twenty-seven EU Member States, the European Commission adopted a new Regulation 1235/2008[114] in December 2008, which further details import requirements and procedures. For third country organic products to be placed as such on the EU market, they must have been produced in accordance with rules and subject to control systems that are considered by the EU as either compliant with, or equivalent to, those established under Regulation 834/2007. There are thus two options for exporting organic products to the EU market[115]:

1. *Through inclusion in a state-based equivalency list*: A list should be drawn up of third countries whose system of organic production and control measures are recognised as equivalent to those set out under Regulation 834/2007. Interested third countries can apply to the European Commission to be included in the list, providing they can demonstrate that their organic legislation is equivalent to that of the EU. Assessments of equivalency shall take into account the Codex Alimentarius Guidelines.[116] Products imported from these countries shall be accompanied by a "certificate of inspection"[117] issued by a competent authority/body, attesting that such

114 Commission Regulation (EC) No 1235/2008 of 8 December 2008 laying down detailed rules for implementation of Council Regulation (EC) No 834/2007 the arrangements for imports of organic products from third countries, OJ [2008] L334/25.

115 Note that the parallel scheme available under the old EU Regulation, whereby individual Member States could issue import authorisations for consignments from third countries not included into the EU list (the so-called Article 11(6) procedure) was only valid until 2005 and has not been renewed under the new Regulation. That parallel scheme should be gradually phased out and cease to exist once the measures necessary for implementing the new import rules are in place (Regulation 1235/2008, para. 8 of the Preamble).

116 Articles 7–12 and 16 of Regulation 1235/2008 further detail the rules and procedures for compiling and reviewing the list of third countries with organic equivalency.

117 A model of the certificate of inspection can be found in Annex V of Regulation 1235/2008.

products were produced and inspected in accordance with national rules that are recognised as equivalent by the EU (art. 33). However, experience under the old Regulation suggests that it is a difficult and long process for a third country to be included in the EU equivalency list. During the period 1992–2007, the EU granted organic equivalency only to the following 9 countries: Argentina, Australia, the Czech Republic, Costa Rica, Hungary, India, Israel, New Zealand and Switzerland.[118] Under the new Regulation[119], organic equivalency status has (as yet) only been renewed to 7 of these previously-listed countries, but this initial list may be extended as new requests for inclusion are received by the European Commission.

2. *Through certification by recognised bodies*: if products originate from third countries that are not included in the above-indicated list, they need to be certified as compliant with all the production and processing requirements of Regulation 834/2007, including its implementing measures. A list should be established of bodies recognised as competent by the EU to carry out the necessary inspection and certification activities against EU organic rules in third countries. Such certifying entities shall be accredited to the most recent version of European Standard EN 45011 or ISO Guide 65 and shall undergo regular on-the-spot evaluations, surveillance and multi-annual re-assessments by the accreditation authority (art. 32). It should be noted that while Regulation 1235/2008 further details the rules and procedures for drawing-up and reviewing the list of recognized control bodies, no such list has been elaborated at the time of writing (arts. 4–5; annex I).

Once imported into one EU Member State through one of the above-indicated channels, organic products benefit from the so-called 'free circulation clause'. That is, such products can move freely throughout the EU market without other Member States imposing additional controls or financial

118 Commission Regulation (EC) N°956/2006 of 28 June 2006 amending Regulation (EEC) No 94/92, as regards the list of third countries from which certain agricultural products obtained by organic production must originate to be marketed within the Community, OJ [2006] L175/41. Note that the Czech Republic and Hungary acceded to the European Union in 2004.

119 Regulation 1235/2008, para. 4–5 of the Preamble and Annex III.

burdens.[120] Although individual Member States may apply stricter rules and standards on organic production and processing than those established in Regulation 834/2007, they cannot do so in a manner that prohibits or restricts the marketing of organic products from outside their territory (art. 34).

There are no official statistics on the actual size of EU imports and exports of organic products. However, different industry surveys have revealed that imports play an important role in the EU organic market, and especially for off-season fresh vegetables and tropical fruit. For instance, in 2004 imports were estimated to represent 22 percent of total sales volumes, with organic fruit comprising the majority. With EU organic food sales increasing faster than domestic production, undersupply is expected to remain a feature of the European market, which thus continues to offer export opportunities for developing countries.[121]

120 In practice, however, there can be barriers to the movement of such products within the EU market as a result of result private rules or practices, imposed either by individual companies or interest-groups.

121 International Trade Center, "The European Market for Organic Fruit and Vegetables from Thailand", (UNCTAD/WTO (ITC), 2007), p. 11.

INDIA

1. OVERVIEW OF THE LEGAL FRAMEWORK

In 2000, the Ministry of Commerce and Industry of India launched the National Programme on Organic Production (NPOP).[122] The NPOP is developed and implemented by Ministry of Commerce and Industry as the apex body, which set up a National Steering Committee for the NPOP (NSCOP). The NSCOP is composed of members from the Ministry of Commerce and Industry, the Ministry of Agriculture, the Agricultural and Processed Food Products Export Development Authority (APEDA),[123] the Coffee, Spices and Tea Boards,[124] and other government and private organizations associated with the organic movement. As illustrated in the chart below, the NPOP document establishes: detailed standards on organic production, processing and handling and methods; the criteria and procedure applicable to the accreditation of inspection and certification agencies; requirements for inspection and certification programmes; and rules pertaining to the use of the National Organic Certification Mark (hereinafter, "Indian Organic" logo). Since its launch in 2001, the Indian organic programme has been periodically reviewed by the NSCOP, with the latest revisions incorporated in May 2005.

The legal value of the NPOP itself is unclear. While notified under the Foreign Trade and Development Act in October 2001,[125] it is formally presented as a "reference book" and does not appear to have been published in the Official

122 Ministry of Commerce and Industry, 'National Programme for Organic Production', available at: www.apeda.gov.in.

123 APEDA was established under the Agricultural and Processed Food Products Export Development Authority Act, passed by the Indian Parliament in December 1985. Pursuant to said Act, its main functions include: promoting the export oriented production and development of scheduled products (including fruits, vegetables, meat, dairy, cereal, cacao products and non-basmati rice); fixing of standards and specifications for the scheduled products for the purpose of exports; carrying out inspection of meat and meat products for quality purposes; and other matters. More information on the functions and composition of APEDA may be found at: www.apeda.gov.in.

124 These are three out of the five Statutory Boards under the Ministry of Commerce and Industry (the other two being on rubber and tobacco). More information is available at: commerce.nic.in.

125 Foreign Trade and Development Act N°22 of 7 August 1992, available at: dgftcom.nic.in.

Gazette of India.[126] Nonetheless, the Accreditation Regulation, adopted on 25 May 2001,[127] renders compliance with the NPOP mandatory. Only products certified by accredited bodies as conforming to national organic standards may be marketed as organic in India. In a similar vein, agricultural products are only allowed to be exported as organic if certified by an accredited agency as conforming to NPOP standards.[128]

As will be seen in the subsequent sections, the Indian organic programme was modelled after the IFOAM Basic Standards for Organic Production and Processing,[129] the Codex Alimentarius Guidelines and the EU Regulation 2092/91. It should be noted that India is among the few developing countries to have been included into the list of third countries with organic equivalency pursuant to Article 11(1) of EU Regulation 2092/91 until 30 June 2009[130]. In addition to the export advantages to the EU market, such inclusion opens the door for recognition of equivalency by other countries included in the EU list. In fact, as of 1 January 2007 until 30 June 2009, Indian organic rules and control system have also been recognised as equivalent by Switzerland.[131] According to a recent IFOAM survey, 150 790 hectares were under certified organic management in 2005, distributed across 5 147 organic farms and accounting for 0.08 of India's total farmland.[132]

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126 See FAO, "Country Profiles for Organic Agriculture-India", available at: www.fao.org.

127 The text of the Accreditation Regulation is reproduced in Section 4 of the NPOP document.

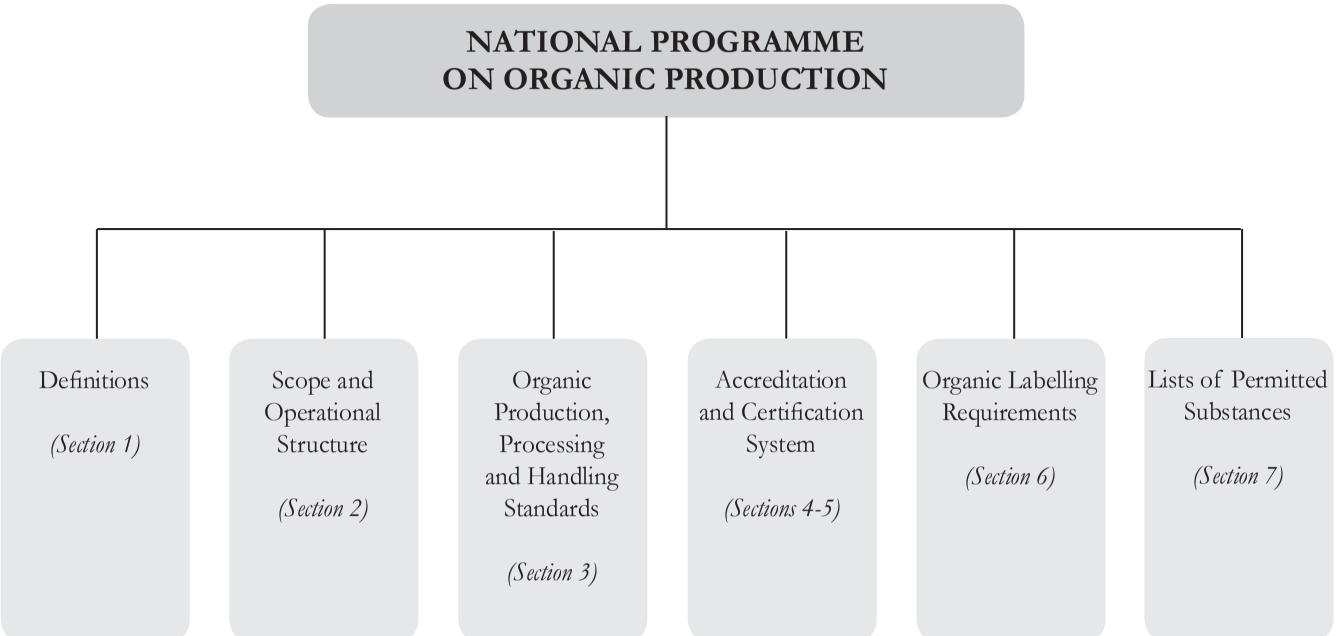
128 Ministry of Commerce and Industry, Public Notice N°19 (RE-2001)/1997–2002 of 11 June 2001; Ministry of Commerce, Public Notice N°72 (RE-2003)/2002–2007 of 21 July 2004, both available at: www.apeda.gov.in.

129 International Federation of Organic Agriculture Movement, 'Basic Standards for Organic Production and Processing' (version 2005), available at: www.ifoam.org. Hereinafter, IFOAM Basic Standards.

130 Commission Regulation (EC) 956/2006 of 28 June 2006 amending Regulation (EEC) No 94/92, as regards the list of third countries from which certain agricultural products obtained by organic production must originate to be marketed within the Community, OJ [2006] L175/41. A new list of countries with organic equivalency is to be drawn under the new EU Regulation (see section 7 in 'European Union').

131 See letter by the Swiss Federal Office of Agriculture regarding the inclusion of India in Annex 4 of the FDE Ordinance on Organic Farming, available at: www.apeda.gov.in.

132 O.K. Way, "Organic Farming in Asia" in H. Miller and M. Yussefi (eds.), *The World of Organic Agriculture. Statistics and Emerging Trends 2007,* (IFOAM, 2007), p. 111.


NATIONAL PROGRAMME
ON ORGANIC PRODUCTION
Definitions
(Section 1)
Scope and Operational Structure
(Section 2)
Organic Production, Processing and Handling Standards
(Section 3)
Accreditation and Certification System
(Sections 4-5)
Organic Labelling Requirements
(Section 6)
Lists of Permitted Substances
(Section 7)

2. OBJECTIVES AND PRINCIPLES

Section 2 of the NPOP describes the objectives of the programme as follows:

a) to provide the means of evaluation of certification programmes for organic agriculture and products as per approved criteria;

b) to accredit certification programmes;

c) to facilitate certification of organic products in conformity to the National Standards for Organic Products; and

d) to encourage the development of organic farming and organic processing.

General principles of organic agriculture are found in Section 3 of the NPOP, preceding the specific requirements for the production, handling and processing of organic products. In this regard, the NPOP follows closely the structure of the IFOAM Basic Standards, where 'general principles', 'recommendations', 'basic standards' and 'derogations' are established for individual aspects of organic production, handling and processing (see section 5 below). However, this does not necessarily indicate that the substantive content of the NPOP is identical to IFOAM Basic Standards. In fact, the latter does contain an introductory set of four basic principles of organic agriculture that were not retaken as such in the Indian organic programme. [133]

3. SCOPE OF APPLICATION

As to **covered products**, the NPOP generally concerns raw and processed agricultural products, including those derived from livestock. Livestock is defined as domestic or domesticated animals, including bovine, porcine, caprice, equine, poultry and bees raised for food or in the production of food. In line with the Codex Alimentarius Guidelines (sec. 2.2), the products obtained by the hunting or fishing of wild animals are explicitly excluded from this definition and cannot not be marketed as organic (NPOP, sec. 1,).

133 Namely, the principle of health, the principle of ecology, the principle of fairness and the principle of care.

As to **covered operators**, the NPOP addresses any individual or business enterprise practicing organic farming or processing (sec. 1). Whereas the NPOP contains no general exemptions, operators may be granted limited derogations by accredited certification bodies from specific organic rules in order to allow for adaptation to local conditions or special circumstances (see section 5 below). It should be noted that definition of "operator" in the NPOP appears more restrictive than those found in the Codex Alimentarius Guidelines (sec. 2.2) and in the IFOAM Basic Standards (II.B.1), the latter also covering any person who imports, prepares or/and markets organic products. Nonetheless, Section 4 of the NPOP specifies that not only are farmers and processors subject to inspection (see section 6 below), but any person engaged in any stage of the handling of organic products (e.g. storage, packaging, importation, etc).

4. ORGANIC LABELLING AND CLAIMS

Section 3.5 of the NPOP lays down the general principles, recommendations and specific requirements for the use of organic labelling and claims. As a matter of principle, it is stated that labelling shall convey clear and accurate information on the organic status of the products. Following closely the IFOAM Basic Standards (II.B.7), **four categories of products** are distinguished for labelling purposes on the basis of their organic composition:

- *Single-ingredient products 100 percent organic*: raw or processed agricultural products containing 100 percent certified organic ingredients (excluding water and salt, but including additives) may be labelled "produce of organic agriculture" or similar description.
- *Multi-ingredient products with at least 95 percent organic ingredients*: raw or processed agricultural products containing a minimum of 95 percent certified organic ingredients (by raw material weight, excluding water and salt, but including additives) may be labelled "certified organic" or a similar description.
- *Multi-ingredient products with at least 70 percent organic ingredients*: raw or processed agricultural products containing between 70 percent and 95 percent certified organic ingredients (by raw material weight, excluding water and salt, but including additives) may be labelled "made with organic ingredients" or a similar description on the principal

display, provided that the proportion of organic ingredients is clearly indicated. Such products cannot be simply labelled "organic".

- *Multi-ingredient products with less than 70 percent organic ingredients*: raw and processed agricultural products containing less than 70 percent certified organic ingredients may only contain indications that an ingredient is organic on the ingredient list, but cannot be labelled "organic".

In all cases, the person or company legally responsible for the production and processing of an organic product shall be identifiable and no such product can be labelled as GE (genetic engineering) or GM (genetic modification) free in order to avoid potentially misleading claims about the end product. In addition, all raw materials of multi-ingredient products, including additives, must be listed on the product label in order of their weight percentage (NPOP, sec. 3.5). It should be noted that these requirements are also found in the IFOAM Basic Standards (II.B.7.1.1, 7.1.4, 7.1.7). However, and departing from the IFOAM Basic Standards (II.B.7.1.1) and Codex Alimentarius Guidelines (sec. 3.2), the NPOP does not demand that organic labels specify the name and/or code number of the accredited certification body to which the operator concerned was subject.

The use of the "Indian Organic" **logo** is regulated in Section 6 of the NPOP. This logo may only be attached to products that have been duly certified by accredited inspection and certification agencies as satisfying all organic standards prescribed in the NPOP (NPOP, sec. 6.1).[134] Whereas the use of certifiers' mark is voluntary, it is mandatory to place the "Indian Organic" logo on all certified organic products originating from India (NPOP, sec. 4.A.12).

Lastly, as in the IFOAM Basic Standards (II.B.7.1.2), a possibility is provided for the labelling of products that are **in-conversion** to organic production, followed by a requirement that it be clearly distinguishable from the label for organic products (NPOP, sec. 3.5.1.5). This provision is however less elaborate than those found in the Codex Alimentarius Guidelines (sec. 3.7), which demands, *inter alia*, that organic production methods be applied during a minimum 12-month period for products to be labelled as "in transition/ conversion to organic."

134 The remaining provisions of Section 6 detail the procedure for granting the license to use the "Indian Organic" logo.

5. ORGANIC PRODUCTION, HANDLING AND PROCESSING RULES

As mentioned in section 2, the structure of the NPOP closely follows the IFOAM Basic Standards in that 'general principles,' 'recommendations,' 'basic standards' and 'derogations' are established for individual aspects of organic production, handling and processing. The IFOAM Basic Standards defines general principles as intended goals of organic production and processing, recommendations as suggestions (but not requirements) to operators concerning desirable practices in organic farm and food systems, and basic standards as minimum requirements that an operation must meet in order to be certified as organic (II.A). Against this background, this section will primarily focus on the standards prescribed in the NPOP as there are more specific and generally worded in mandatory language. The NPOP also follows the IFOAM approach of setting "standards for standards," whereby a framework of minimum standards is provided for certification bodies to develop more detailed standards and/or derogations in order to take account of specific local conditions. Derogations are thus exceptions from minimum organic requirements that may be applied by the certification body under clearly defined conditions and a limited time-frame, and will also be dealt with in this section.[135]

5.1 General requirements

Although not explicitly listed, it is possible to identify a set of basic production/handling methods that are generally prohibited in organic farming throughout Section 3 of the NPOP:

- Organic products must not be produced using non-organic ingredients when organic ingredients are available, nor include organic and non-organic forms of the same ingredient.
- Such products shall be produced and handled without prohibited substances and shall be protected at all times from contact with these substances as well as from co-mingling with non-organic products. Various Appendices in Section 7 of the NPOP contain the lists of

135 Note that, as in the IFOAM Basic Standards, derogations are presented in italics in the NPOP.

substances permitted for use as: soil fertilisers and conditioners (appendix 1); pest and disease control products (appendix 2); additives and processing aids (appendix 4); approved additives for manufacture of packaging films for packaging of organic foodstuff (appendix 6); feed materials, feed additives and processing aids for animal nutrition (appendix 7); cleaning and disinfection products in livestock buildings and installations (appendix 8). Following the Codex Alimentarius Guidelines (sec. 5.3), these lists of permitted substances in organic agriculture are of an open-ended nature, being subject to review in accordance with the criteria and procedure established in Appendices 3 and 5.

- Such products must not be produced or handled using genetically modified organisms and derivatives thereof. GMOs are defined as defined as a plant, animal, microbe or their derivatives that are transformed through genetic engineering (NPOP, sec. 1).
- Such products shall not be processed using ionising radiation.

5.2 Production of plants and plant products

As to **conversion periods**, the NPOP generally requires that plant products that are to be certified as organic must have been under active organic management for a period of at least two years before sowing, or at least three years before the first harvest in the case of perennial crops other than grassland. The accredited certification body may nonetheless extend or reduce such conversion periods in light of the previous status of the land or environmental conditions. Under no circumstances can conversion periods be less than twelve months (NPOP, sec. 3.2.2). In line with the Codex Alimentarius (annex 1, sec. A.2), the NPOP demands the production unit to be placed under the inspection system throughout the conversion period to ensure that all organic standards are being met (NPOP, sec. 3.1.1).

Concerning **partial conversion**, the NPOP generally encourages the whole farm, including livestock, to be converted to organic management. When such total conversion is not undertaken, producers shall ensure that organic and conventional parts of the farm are clearly separate, including through buffer zones or other natural barriers. Simultaneous production of conventional, organic and in-conversion to organic crops or livestock products which cannot be clearly distinguished from each other is not allowed. In addition,

converted land and livestock shall not get switched back and forth between organic and conventional management (NPOP, sec. 3.1.2), as provided for in the Codex Alimentarius Guidelines (annex 1, A.4) and IFOAM Basic Standards (II.B.3.3.1).

With regards to organic management practices, Section 3.2 of the NPOP contains extensive provisions on the following: the choice of crops and varieties; diversity in crop production and fertilisation policy; pest, disease and weed management; contamination control; soil and water conservation; and collection of non-cultivated material of plant origin and honey.

Producers are generally required to use certified organic **seeds and vegetative reproductive material**. Only if these are unavailable can producers seek permission to use chemically untreated conventional materials. The NPOP entrusts accredited certification bodies with the task of establishing minimum requirements for seeds and other plant reproductive material to be considered organic. The use of genetically engineered seeds, pollen and transgene plants or plant materials is not allowed (NPOP, sec. 3.2.1).

The **fertility and biological activity of the soil** shall be maintained through an appropriate degree of diversity in crop production and the application in sufficient quantities of biodegradable material of microbial, plant or animal origin. Specific degrees and quantities are to be determined by the accredited certification body depending on the specific conditions of the land and surrounding ecosystem. Appendix 1 lists products permitted soil fertilisers and conditioners. The application of some of these products may nonetheless be restricted by accredited certification bodies. The use of manures containing human excreta, Chilean nitrate and all synthetic nitrogenous fertilizers is explicitly prohibited (NPOP, secs. 3.2.3–3.2.4).

The NPOP generally encourages **pests, diseases and weeds** to be controlled by preventive cultural techniques, including suitable rotations, green manures and a balanced fertilising programme. Nonetheless, physical methods (including thermal sterilisation of soils) and the products listed in Appendix 2 are permitted for purposes of pest and disease control, albeit subject to any conditions specified by the competent certification body. Conversely, the use of synthetic regulators, synthetic and genetically engineered organisms or products is prohibited (NPOP, sec. 3.2.5). Producers are also required to

take all necessary measures to minimise contamination from outside and from within the farm, to handle soil and water resources in a sustainable manner and to prevent soil erosion. Clearing of land through means of burning organic matter must be restricted to a minimum and the clearing of primary forest is prohibited (NPOP, secs. 3.2.6–3.2.7).

Finally, additional provisions regulate the **collection of wild plants**, which closely follow those found in the Codex Alimentarius Guidelines (annex 1, A.9) and IFOAM Basic Standards (II.B.2.4). These products can only be certified as organic if derived from a sustainable growing environment and clearly defined collection area, which is not exposed to prohibited substances and is subject to inspection. Harvesting or gathering of such products shall not exceed the sustainable yield of the ecosystem, nor threaten the existence of plant and animal species (NPOP, sec. 3.2.8).

5.3 Production of livestock and livestock products

As to **conversion periods**, livestock products can be sold as organic only after the farm (or relevant part of it) has been under active organic management for at least twelve months. The NPOP does not however establish the exact length of conversion periods applicable to different animal species, which instead is determined by the competent certification body. Only in the case of dairy and egg products is this period set at a minimum of thirty days. Whatever the length of the conversion period for other animal species, it shall only begin once the production unit has been placed under the established inspection system and organic production methods must be utilised throughout this period (NPOP, sec. 3.3.2.). As seen in section 5.2 above, the NPOP generally encourages the whole farm, including livestock, to be converted to organic production. Nonetheless, **partial conversion** is allowed insofar as organic and conventional parts of the farm are clearly separate and not switched back and forth.

With regard to organic management practices, Subsection 3.3 of the NPOP addresses the following: brought-in animals, breeds and breeding; animal nutrition; mutilations and veterinary medicine; animal husbandry management; and transport and slaughter.

In terms of **livestock sources/origin**, the NPOP generally encourages the choice of breeds that are naturally adapted to local conditions, in order to promote the health and wellbeing of the animals (sec. 3.3.4). In addition, livestock should be, as a matter of principle, born and raised on holdings that conform to national organic standards. Nonetheless, when organic livestock is not available, the accredited certification body may authorise conventional animals to be brought into the farm, subject to specified conditions regarding age and quantity. This possibility is also contemplated in the Codex Alimentarius Guidelines (annex 1, B.8) and IFOAM Basic Standards (II.B.5.3.1).

Concerning **nutrition**, livestock should be, as a matter of principle, provided with 100 percent organically grown feedstuffs of good quality, with the prevailing part coming from the farm itself or produced in cooperation with other organic farms within the region. Where this proves impossible, the NPOP establishes maximum percentages of feed that can be sourced from conventional farms for each animal category. The competent certification body may nonetheless grant time-limited derogations from these percentages in cases of unforeseen severe natural or man-made events, extreme climatic conditions and in areas where organic agriculture is in early stages of development. In addition, products that are prohibited as feed additives or supplements are listed in the main text of the NPOP. These include: synthetic growth promoters or stimulants; synthetic appetisers; preservatives (except if used as processing aid); artificial colouring agents; urea; feed formulas subject to solvent, extraction or the addition of other chemical agents; pure amino acids; and genetically engineered organisms or products thereof. Conversely, a list of approved feed materials and additives is found in Appendix 7. Finally, conditions for the use of vitamins, minerals and fodder preservative from unnatural sources shall be defined by the competent certification agency (NPOP, sec. 3.3.6).

Subsection 3.3.1 of the NPOP requires producers to establish **housing and free-range conditions** that take into account behavioural and biological needs of animals by providing, *inter alia*: sufficient free movement; protection against excessive sunlight, temperatures, rain and wind, and easy access to grazing, watering and open-air runs. Subsection 3.3.7 of the NPOP deals in turn with the **health care** of organic livestock. While a general emphasis is placed on management practices that encourage animals' resistance, the NPOP provisions are largely limited to the administration of veterinary medicinal

products, departing from the Codex Alimentarius Guidelines (annex 1, B.20). Natural medicines and methods, including homeopathic and ayurvedic products, are generally preferred to conventional veterinary medicines, recourse to which shall only be had when no other alternative is available. Unlike the Codex Alimentarius Guidelines (annex 1, B.22), the NPOP does not explicitly demand that veterinary drugs and antibiotics be solely administered under the responsibility of a veterinarian, but only that withholding periods be double of those prescribed by national law. Vaccination of organic livestock is generally permitted when required by national law, or if the accredited certification body deems it necessary in response to a particular disease or/and within a particular region. However, genetically engineered vaccines are prohibited in all circumstances.

As to the **husbandry, transport and slaughter** of livestock, a number of practices are explicitly prohibited, in line with the Codex Alimentarius Guidelines (annex 1, B.25–30) and IFOAM Basic Standards (II.B.5.4–5.7). These include: embryo transfer and hormonal reproductive techniques; breeding techniques employing genetic engineering; mutilations (albeit with limited exceptions to be granted by the competent certification body),[136] the use of electric stimulation and chemical tranquillisers or stimulants during transportation and slaughter. Finally, handling during transport and slaughter shall be calm and gentle, minimising stress and suffering to animals (NPOP, secs. 3.3.4– 3.3.5, 3.3.7–3.3.8).

As in the Codex Alimentarius Guidelines (annex 1, B.54–81) and IFOAM Basic Standards (II.B.5.9), the NPOP lays down specific requirements on bee-keeping (sec. 3.3.9). Departing from IFOAM Basic Standards, the NPOP does not contain specific provisions on organic aquaculture.[137]

5.4 Handling and processing

Subsection 3.4 of the NPOP establishes general principles and specific requirements for the handling and processing of organically produced products. Following the Codex Alimentarius Guidelines (annex 1, C.88) and IFOAM Basic Standards (II.B.6.1), the NPOP demands the **organic**

136 These are limited to: castration; tail docking of lambs; dehorning; ringing; mulesing. NPOP, sec 3.3.5.1.

137 IFOAM Basic Standards, II.B.9.

integrity of products to be maintained during their processing, packaging, transportation and storage by preventing co-mingling with products from conventional farming as well as contact with prohibited substances at all times (sec. 3.4.1). Also in line with the Codex Alimentarius Guidelines (Annex 1, C, para. 82) and IFOAM Basic Standards (II.B.6.3–6.4), the use of **ionising radiation** on organic products is prohibited for the purposes of pest/disease control and food processing (NPOP, secs. 3.4.2, 3.4.4).

With regards to **pest management**, the NPOP requires pests and diseases to be managed and controlled through the following measures, in order of preference: (1) preventive measures (such as disruption, elimination of habitat and access to facilities); (2) if the aforementioned prove inadequate, mechanical, physical and biological methods; (3) if the aforementioned prove insufficient, approved pesticides listed in Appendix 2. Persistent or carcinogenic pesticides and disinfectants are not permitted. The competent certification body shall establish which products may be used for decontamination, cleaning or disinfection of all facilities where organic products are kept, handled, processed and stored (NPOP, sec. 3.4.2).

Concerning **packaging, storage and transport**, the NPOP generally favours the use of ecologically sound materials for the packaging of organic products, as provided for in the Codex Alimentarius Guidelines (annex 1, C.87) and IFOAM Basic Standards (II.B.6.5). In addition, packaging materials must not affect the organic integrity and quality of the product, nor transmit to it any substances in quantities that may be harmful to human health (NPOP, sec. 3.4.5). Permitted conditions of storage are also specified, including: controlled atmosphere; cooling; freezing; drying; humidity regulation (NPOP, sec. 3.4.1.6).

As to **processing methods**, the NPOP generally requires the use of mechanical, physical and biological processes that maintain the organic quality of the product and provides an indicative list of such methods. In addition, ingredients of organic agriculture must be used whenever available while the use of minerals, vitamins and similar isolated ingredients is prohibited. Nonetheless, the competent certification body may authorise the use of non-organic raw materials that are not genetically engineered when organic ingredients are not available in sufficient quality or quantity. Finally, Appendix 4 contains a list of additives and processing aids that are

permitted in the processing of organic food, but recourse to them must be kept to a minimum, and they should only be used when necessary (NPOP, secs. 3.4.3–3.4.4).

Departing from the IFOAM Basic Standards (II.B.6.7), the NPOPcontains neither specific provisions dealing with the processing and handling of organic fibre, nor more general standards on social justice in organic agriculture and processing.[138]

6. ACCREDITATION AND CERTIFICATION

Section 4 of NPOP lays down the criteria and procedure that are applicable to the accreditation of inspection and certification agencies, together with minimum measures to be implemented during the inspection and certification of organic producers, processors and handlers. The NSCOP also functions as the National Accreditation Body (NAB),[139] which is responsible for approving and supervising private agencies in charge of organic inspection and certification (NPOP, sec. 4). It should be noted that establishment of an accreditation and certification system constitutes the most extensive part of the NPOP, but only its main elements will be addressed in the following text.

Accreditation is open to any individual, firm, co-operative or society that has been engaged in the inspection and certification of organic production and/or processing operations for a minimum period of one year. Applications shall be made to APEDA, must be accompanied by the applicable accreditation fee and must contain, *inter alia,* documentary evidence of the applicants' ability to comply with the established criteria (NPOP, sec. 4.A.4(a)). Such criteria for accreditation include:

- formal accreditation to the ISO/IEC Guide 65;

138 IFOAM Basic Standards, Section II.B.8, where it is stated that "social justice and social rights are an integral part of organic agriculture and processing" and operators are required to observe basic social standards, such as the prohibition of forced and child labour and the right to freedom of association, collective bargaining and equal treatment.

139 As noted in section 1, the National Steering Committee for the NPOP (NSCOP) is composed of members from the Ministry of Commerce and Industry, the Ministry of Agriculture, the Agricultural and Processed Food Products Export Development Authority (APEDA), the Coffee, Spices and Tea Boards.

- adequate professional competence and sound financial management;
- independence from vested interested;
- objectivity and impartiality of assessments;
- accountability and responsibility for all activities;
- confidentiality of, and access to, information concerning certified operations; and
- procedures to enable participation from affected parties and to ensure a non-discriminatory application of decisions (secs. 4.B.3–4).

APEDA carries out a preliminary screening of received applications against the above-mentioned accreditation criteria. A more detailed assessment is thereafter undertaken by the Evaluation Committee,[140] including on-site visits to applicants' offices in order to verify that their certification programmes meet established requirements (see below). All findings are incorporated into an evaluation report. The report is submitted to the NAB, which will then decide whether or not to grant accreditation (NPOP, sec. 4.C.11). Specific socio-economic and cultural conditions in less-developed areas will be taken into account by the NAB when considering certification, provided that the integrity of organic production and processing is maintained and that the criteria for accreditation are met (NPOP, sec. 4.B.4).

Accreditation may be granted for one or more of the following: (1) organic agricultural production; (2) organic processing operations; (3) organic animal production and processing; (4) wild products; and (5) forestry (NPOP, sec. 4.A.17). Inspection and certification agencies eligible for accreditation need to sign an "Accreditation Contract" with APEDA (acting on behalf of the NAB), which thereafter issues a "Certificate of Accreditation" and an "Accreditation Number" (that may not be transferred or re-assigned) to the agency concerned. The "Certificate of Accreditation" is valid for a period of three years from the date of issue, with the possibility of renewal on the basis of a procedure similar to that for initial accreditation (NPOP, sec. 4.A.6–8).[141] Accredited inspection and certification bodies are subject to annual surveillance

140 The Evaluation Committee is appointed by the National Accreditation Body and composed of members form APEDA, the Ministry of Agriculture and the Coffee, Spices and Tea Boards. (NPOP, sec. 2.2.3).

141 The current list of accredited inspection and certification agencies is available at: www.apeda.com.

and review evaluations by APEDA and the Evaluation Committee, which reports to the NAB regarding observance of the established accreditation criteria and certification programme (NPOP, sec. 4.C.11.5).

Additional provisions regulate the suspension, and possible revocation, of accredited status by the NAB. Conduct providing grounds for withdrawal of accreditation includes (but is not limited to): non-observance of the accreditation criteria or/and national organic standards; misuse of accreditation status; refusal to grant the Evaluation Committee full access to information; failure to pay accreditation fees or charges in a timely fashion; failure to comply with any sanctions imposed in the event of non-compliance with the accreditation contract. If violations are severe, the NAB may revoke accreditation without allowing future rectification (NPOP, sec. 4.C.12–14). When the accredited status of a given certification agency is suspended, the NBA has the power to nominate another agency to continue the work of certification in order to protect the interests of the operators affected by the suspension (NPOP, sec. 4.A.13).

The remainder of Section 4 of the NPOP prescribes minimum standards for developing **inspection and certification programmes**. Organic inspection and certification shall apply to the whole production and processing chain. Each step in the handling of an organic product must be inspected at least once per year, following the methods and procedures detailed in Appendix 9 (NPOP, sect. 4.B.8).[142] In line with the Codex Alimentarius Guidelines (Foreword, 9), the NPOP demands a clear separation of the inspection and certification functions of accredited bodies, with decisions on organic certification being taken by persons different from those who carried out the inspection (NPOP, sec. 4.B.9). Other minimum requirements for certification programmes address, *inter alia*: procedural steps in the processing of applications until final certification; monitoring mechanisms; record-keeping and reporting obligations; and the imposition of disciplinary measures and appeal procedures (NPOP, sec. 4.B.9.2). Fees for inspection and certification vary for different categories of operators and shall be applied as approved by the NAB (NPOP, sec. 4.C.7).[143]

142 Note that formal accreditation to ISO 17025 is mandatory for laboratories in charge of analysis and residue testing. NPOP, sec. 4.

143 A list of inspection and certification fees applied by different accredited agencies is available at: www.apeda.com.

When organic certification is granted, a "Certificate of Registration" is issued to the operator concerned, specifying, *inter alia,* its personal details, the product(s) covered and the validity (NPOP, sec. 4.B.9.6.3). Products certified by any accredited body as conforming to NPOP standards shall be recognised as organic by all other certification agencies operating in India (NPOP, sec. 4.B.16.1). Following the latest revision of the NPOP in May 2005, guidelines for group certification have been incorporated to the benefit of small-scale producers and processors of organic products (NPOP, sec. 5).

As to the possible withdrawal of organic certification, the NPOP differentiates "infringements" from "violations" in terms of legal consequences, without however indicating the specific grounds or conducts that may lead to one or the other. Where an infringement is detected that affects the organic integrity of a product, the competent certification body shall ensure that all indications of organic certification are removed from the entire production lot affected by the infringement in question. If an operator is found to be in violation, the competent certification agency shall withdraw certification from the operator for a specified period and inform the NAB about the decision (NPOP, sec. 4.B.9.5). The Codex Alimentarius Guidelines (sec. 6.9) establish a similar distinction in terms of legal consequences, but use different terminology. The term "irregularity" is used to denote situations where organic labels and claims need to be removed from the affected lot of production, and that of "manifest infringement or infringement with prolonged effects" for cases leading to the withdrawal of organic certification from an operator during a period of time.

Finally, it should be noted that the NPOP accreditation system has been recognised by the US Department of Agriculture as sufficient to meet the accreditation requirements of the US National Organic Program (NOP).[144] In practice, this means that, as of March 2006, inspection and certification agencies accredited by India's National Accreditation Body are competent to certify Indian organic products as compliant with the standards of the US NOP. The USDA seal may be attached to products certified as such, which can then be exported to the United States as organic.

144 See Section 7, point 2 in "United States" and the relevant letter by the US Department of Agriculture: www.apeda.gov.in.

7. IMPORT REQUIREMENTS

Unlike the Codex Alimentarius Guidelines (sec. 7), the NPOP does not contain separate provisions on the importation of organic agricultural products. This may be (partly) explained by the fact that India is becoming one of the global sources of organic foods and ingredients, while domestic demand for such products remains small. The recent inclusion of India in the EU list of third countries with organic equivalency, the recognition of its accreditation system by the US, and the new national provisions facilitating group certification, are all expected to further boost this country's exports in organic products.[145]

The importation of organic products into India is briefly dealt with in Section 4 (establishing the accreditation and certification system) under the heading of "Reciprocity-International". In essence, there are two channels for exporting such products to India (NPOP, sec. 4.A.18.2):

1. *Through bilateral equivalency agreement*: if organic products originate from a third country that has concluded an equivalency agreement with India, an import license would be granted by the NAB on the basis of that agreement. Products originating from third countries that have **not** concluded this type of agreement with India and which are certified against foreign organic standards cannot be imported as organic into India unless re-certified as conforming to NPOP standards.
2. *Through certification by NAB-accredited agencies*: in the absence of an equivalency agreement, foreign products need to be certified by an agency accredited by the NBA as compliant with NPOP standards. Appendix 10 further details precautionary measures that shall be taken by such agencies when inspecting and certifying imported organic products of plant origin.

145 A. Sahota, "Overview of the Global Market for Organic Foods and Drinks", p. 40; O.K. Way, "Organic Farming in Asia", p. 54, both in H. Miller and M. Yussefi (eds.), *The World of Organic Agriculture. Statistics and Emerging Trends 2007,* (IFOAM, 2007), p. 110.

JAPAN

1. OVERVIEW OF THE LEGAL AND INSTITUTIONAL FRAMEWORK

The Japanese legal framework on organic farming is based on the Law N°175 of 1950 concerning Standardisation and Proper Labelling of Agricultural and Forestry Products, implemented by the Ministerial Ordinance N°62 of 1950 and the Government Ordinance N°291 of 1951.[146] These measures have undergone a process of revision since 1999, with the latest amendments in force since 1 March 2006. They establish general criteria and procedures on accreditation and certification as well as labelling and import requirements for virtually *all* agricultural and forestry products (not only organic), generally referred to as the "JAS System." It should be noted that Article 2 of the Law N°175 defines "agricultural and forestry products" as including: agricultural, forestry, livestock and marine products; beverages and foods; oils and fats. It thus excludes: liquors, drugs, quasi-drugs and cosmetics. Article 7 of Law N° 175 further empowers the Minister of Agriculture, Forestry and Fisheries to designate specific categories of agricultural and forestry products and to establish Japanese Agricultural Standards for them.

From 2000 onwards, the Japanese Ministry of Agriculture, Forestry and Fisheries (MAFF) has adopted, and subsequently revised, a series of Notifications first on organic plants and organic processed foods, and later on organic livestock products and organic feeds.[147] These Notifications contain

146 Law Concerning Standardisation and Proper Labelling of Agricultural and Forestry Products (Law N°175 of 1950), as last amended on 1 March 2006; Enforcement Regulations for the Law Concerning Standardisation and Proper Labelling of Agricultural and Forestry Products (Ministerial Ordinance N°62 of 1950), as last amended on 1 March 2006; Enforcement Ordinance of the Law Concerning Standardisation and Proper Labelling of Agricultural and Forestry Products (Government Ordinance N°62 of 1951), as last amended on 1 March 2006, all available at: www.maff.go.jp.

147 Japanese Agricultural Standard for Organic Plants (Notification N°59 of 20 January 2000), last revised by Notification N°1463 of 27 October 2006; Japanese Standard for Organic Processed Foods (Notification N°60 of 20 January 2000), last revised by Notification N°1464 of 27 October 2006; Japanese Agricultural Standard for Organic Feeds (Notification

detailed technical standards on organic production, processing and handling methods, known as the "JAS Organic Standards". To reflect stakeholders' views in the decision-making process, Article 8 of Law N°175 enables any stakeholder to submit a written draft proposal to the MAFF concerning the establishment of a JAS standard for a particular agricultural or forestry product. In addition, the MAFF is to follow the resolutions of the Council for Agricultural and Forestry Standard ("JAS Council"), when establishing JAS organic (and other) standards (N°175, art.7(5)). The JAS Council is a deliberative body, appointed by the MAFF and composed of representatives of consumers, producers and distributors, academic experts and other stakeholders. The JAS Council has final authority over the establishment of, and subsequent amendments to, JAS standards (N°175, art. 10).

Until 2000, there was no legal definition of "organic products" in Japan: observance of the 1992 Guidelines on Sustainable Agriculture issued by the MAFF was voluntary and independent organic certification was not required. It is worth clarifying that "*Yuki Shokuhin*," the equivalent of "organic food" in Japanese, means a food product that contains low or no chemicals added in the production process, and thus it is not limited to organically grown and processed products but can also include other categories of products (e.g. reduced-pesticides or reduced-fertilisers grown products). This situation had led to considerable confusion as to which products on the Japanese market could be rightly claimed as grown and processed according to proper organic standards. In fact, the process of revision initiated in 1999 was undertaken with the purposes of aligning the Japanese organic system with the Codex Alimentarius Guidelines and of protecting consumers from false organic claims through mandatory compliance with JAS Organic Standards and independent organic certification.[148]

Because there was no clear definition of organic products for a long time, it is difficult to find estimates on the relative importance of organic agriculture

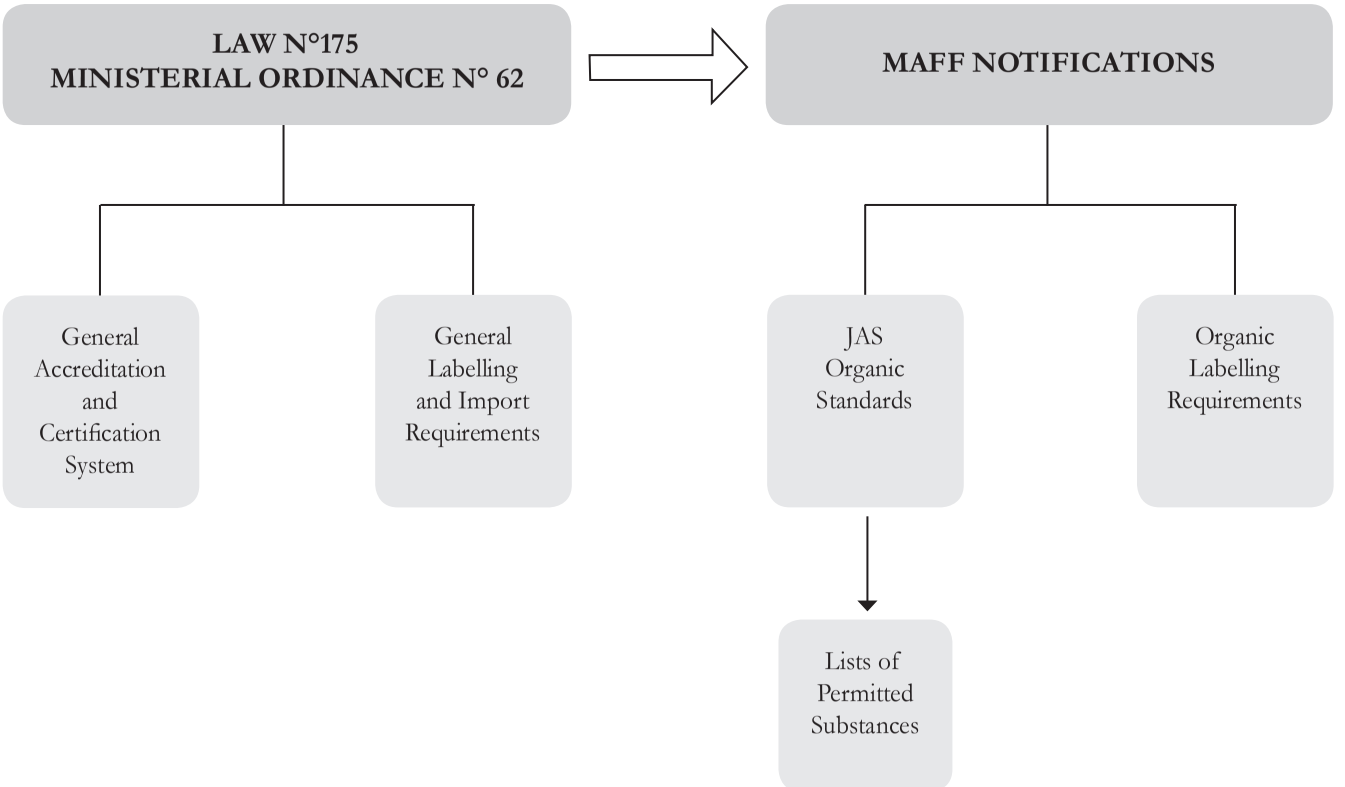
N°1607 of 27 October 2005), last revised by Notification N°1465 of 27 October 2006; Japanese Agricultural Standard for Organic Livestock Products (Notification N°1608 of 27 October 2005), last revised by Notification N°1466 of 27 October 2006, all available at: www.maff.go.jp.

148 CTA, FAO, ITC, *World Markets for Organic Fruit and Vegetables. Opportunities for Developing Countries in the Production and Export of Organic Horticultural Products*, (2001), pp. 119; FAO, "Country Profiles for Organic Agriculture-Japan", available at: www.fao.org.

and on the market value of organic sales in Japan. Nonetheless, an IFOAM survey of 2007 estimates that 8,109 hectares were under certified organic management in 2005, distributed across 4,636 farms and accounting for 0.16 percent of total Japanese agricultural production. Earlier studies offer different estimates on the value of organic retail sales in Japan, varying from US-Dollars 350 million to 1.3–1.5 billion in the late 1990s, depending on what accounted for as an organic product.[149]

The chart below provides an illustration of the main aspects of Japan's legal framework on organic farming, to be analysed in greater detail in the following sections.

149 O.K. Way, "Organic Farming in Asia" in H. Miller and M. Yussefi (eds.), *The World of Organic Agriculture. Statistics and Emerging Trends 2007,* (IFOAM, 2007), p. 111; CTA, FAO, ITC, *World Markets for Organic Fruit and Vegetables. Opportunities for Developing Countries in the Production and Export of Organic Horticultural Products*, (2001), pp. 121–122.


LAW N°175
MINISTERIAL ORDINANCE N° 62
MAFF NOTIFICATIONS
General Accreditation and Certification System
General Labelling and Import Requirements
JAS Organic Standards
Organic Labelling Requirements
Lists of Permitted Substances

2. OBJECTIVES AND PRINCIPLES

As indicated in section 1, the core function of the Notifications issued by the MAFF is to establish technical standards on organic production, handling and processing methods. A number of general principles are also stated for each type of organic products covered by these measures.

Article 2 of Notification N°59 lays down two alternative principles on production methods for organic plants:

1) to produce organic plants in fields with cultivation management methods so as to reduce the impact of agricultural production on the environment as much as possible, by avoiding the use of chemical synthetic fertilizers and substances for plant and disease control and by exercising the farmland productivity derived from original soils in order to sustain and enhance the natural recycling function of agriculture; or
2) to harvest organic plants by methods that do not to interfere with the preservation of ecosystems in collection areas.

With respect to organic livestock products, Article 2 of Notification N°1608 demands that they be produced from organic livestock who have had their physiological and behavioural needs respected. This includes providing feeds produced by reducing impacts on the environment as much as possible and avoiding the use of veterinary drugs, in order to sustain the natural cyclical function of agriculture.

Article 2 of Notification N°60 prescribes the principle of production of organic processed foods as follows: to produce organic processed foods by processing methods utilising physical and biological functions, avoiding the use of chemically synthesised food additives and chemical agents, and by preserving the characteristics of organic plants and organic livestock products as ingredients in the manufacturing and processing phase.

Finally, Article 2 of Notification N°1607 requires organic feeds to be generally used in a manner that preserves the organic characteristics of plants, processed foods and livestock products in the manufacturing and processing processes, as described in the JAS Organic Standards. It also demands that physical and

biological functions are applied as processing methods without use of chemically synthesized feed additives and substances.

3. SCOPE OF APPLICATION

As to **covered products**, separate MAFF Notifications deal with unprocessed plants and livestock products, processed foods of plant and/or animal origin, and organic feeds. Although Law N°175 covers virtually all agricultural, forestry, livestock and fishery products, the specific definitions found in the MAFF Notifications appear more restrictive. For instance, the definition of "organic plants" is limited to products destined for food and beverages (N°59, art. 3). "Livestock" is defined as encompassing bovine, equine, ovine, caprice, porcine animals, together with poultry, while fishery products are not covered (N°1608, art. 3). Unlike in the Codex Alimentarius Guidelines (sec. 2.2), the products obtained by the hunting or fishing of wild animals are not explicitly excluded from the definition of livestock.

As to **covered operators**, domestic and overseas producers, processors, re-packers, importers/exporters and distributors of organic products are all eligible for organic certification under the JAS System (N°175, art. 14).

4. ORGANIC LABELLING AND CLAIMS

As indicated in section 1, one of the purposes of the revision process initiated in 1999 was to control the use of organic labelling and claims on products marketed in Japan. Under the revised JAS System, the official JAS organic logo and other organic claims can only be attached to products that have been certified by accredited bodies as satisfying the JAS Organic Standards stipulated by the MAFF (see sections 5 and 6 below). Domestically-produced and imported products not certified as such shall not be labelled, or otherwise presented, as organic on the Japanese market (N°175, arts. 18, 19(5)).

Article 19(13) of Law N°175 requires the MAFF to define labelling requirements applicable to each of the agricultural and forestry products for which it establishes JAS Standards. The various MAFF Notifications identify three broad categories of products that may carry organic labels and claims:

1. *Unprocessed plant and livestock products*: such products shall be produced and handled in accordance with Notifications N°59 and N°1608, respectively (see section 5 below);
2. *Processed organic foods of plant or/and animal origin*: processed foods complying with the processing requirements in Notification N°60 (see section 5 below) and containing no more than 5 percent (by weight of total ingredients, excluding water, salt and processing aids) of non-organic ingredients; and,
3. *Organic feeds*: feeds produced in accordance with Notification N°1607 (see section 5 below) and containing no more than 5 percent (by weight if total ingredients, excluding water, salt and feed additives) of non-organic ingredients.

The use of the JAS organic logo is voluntary, but when used, it must be accompanied by a number of compulsory indications established by the MAFF. These include: the characters "Japanese Agricultural Standard" or their abbreviation (JAS); the Japanese equivalent of "organic" (or derivatives) followed by the name of the product in question; the name of the accredited body that has certified such product (N°62, art. 26). In line with the Codex Alimentarius Guidelines (sec. 3.7), a possibility is provided for the labelling of plants, processed foods and feeds of farms in conversion to organic production as "organic under the conversion period."[150] Conversely, no similar provision is made with respect to organic livestock products (N°1608, art. 5).

Finally, pursuant to the "Penal Clause" in Chapter 7 of Law N°175, any person violating these labelling requirements may be sentenced to a fine not exceeding one million yen or to imprisonment for a period not exceeding one year.

5. ORGANIC PRODUCTION, HANDLING AND PROCESSING RULES

As indicated in section 1, the Japanese legal framework on organic farming is highly fragmented: the accreditation/certification system and labelling and import requirements are established by a general law covering all

150 N°59, art. 5(2); N°60, art. 5; N°1607, art. 5(2).

agricultural and forestry products (N°175), while specific standards on organic production, handling and processing methods are dealt with by separate MAFF Notifications for different categories of organic products. This section provides an overview of the production methods prescribed for organic plants (N°59), for organic livestock products (N°1608) and for organic feeds (N°1607), as well as of the handling and processing requirements applicable to organic processed foods of plant and/or animal origin (N°60).

5.1 General requirements

When examining the various MAFF Notifications, it is possible to identify a number of production/handling methods that are generally prohibited in organic farming:

- Organic products must not be produced using non-organic ingredients when organic ingredients are available, nor include organic and non-organic forms of the same ingredient.
- The use of chemically synthesized materials and food additives shall generally be avoided and pesticides shall not be used in the production, handling or processing of organic products. Nonetheless, a series of Tables are attached to the various MAFF Notifications identifying the substances permitted for use as: fertilizers and soil amendments (N°59, Table 1); food additives (N°60, Table 1); pest and disease control products in plant and livestock production and in processing units (N°59, Table 2; N°1608, Table 2; N°60, Table 2; N°1607, Table 2). as well as chemical agents for pest and disease control that may be used, and the manner in which they may be used. Unlike other national legislations, the Japanese measures do not specify the criteria and procedure for drawing up, and eventually reviewing, such lists of permitted substances.
- Organic products must not be produced or handled using recombinant DNA technology, generally defined as technology to create recombinant DNA by connecting DNA through breakage and recombination using enzyme, transferring it into living cells and replicating it.[151]
- Such products shall not be processed using ionising radiation.

151 See for instance, N°59, art. 3.

5.2 Production of plants and plant products

Organic production requirements applicable to plants and plant products are laid down in Article 4 of Notification N°59. Overall, these are less detailed than those found under other national organic legislations.

As to **conversion periods**, Notification N°59 requires at least two years before the sowing or planting of crops and at least three years before the first harvesting in the case of perennial plants. During conversion, production must be free of prohibited substances and land under active organic management. However, there is no explicit requirement that the conversion period begins only once a production unit has been placed under the inspection system, as contemplated in the Codex Alimentarius Guidelines (annex 1, A.2). As to **partial conversion**, Notification N°59 does not make clear whether, and under which conditions, simultaneous production of organic and conventional crop is permitted. Article 4 of Notification N°59 only demands that the necessary measures be taken so as to protect organic crops from drifting and flowing of prohibited substances from "surrounding areas." This provision is less specific than that found in the Codex Alimentarius Guidelines (annex 1, A.3), which requires the actual splitting of operations when a whole farm is not converted at one time and explicitly prohibits the switching back and forth between organic and conventional production methods.

With regards to organic management practices, Article 4 of Notification N°59 addresses the following: seeds, seedlings and fungus sawn to be used in fields; manure practices in fields; control of noxious animals and plants in fields.

Concerning **seeds and other reproductive vegetative material**, producers must generally use organically grown seeds, seedlings and fungus spawn. If these are difficult to obtain, producers may have recourse to non-organic seeds, seedlings and fungus spawn, and preferably those that have not been treated with prohibited substances. In contrast to other national legislations, Notification N°59 does not require previous authorisation by the MAFF, or the competent certification body, for the use of conventional seeds and other vegetative reproductive materials. Under no circumstances can seeds and other vegetative reproductive materials produced by recombinant DNA technology be used.

The **fertility and biological activity of the soil** shall be maintained (or increased) through the use of compost from residues of plant products growing in the field and of methods effectively utilising biological functions of organisms inhabiting in that field or in surrounding areas. Only to the extent that these techniques prove insufficient, it is permitted to use fertilizers and soil conditioners listed in the attached Table 1. It should be noted that most of these are natural substances or derived from natural substances (e.g. fertilizers of animal and plant origins, fertilizers of mineral origin, soil conditioners of mineral origin) without chemical treatment or additives.

Finally, **pests, diseases and weeds** shall be primarily controlled through cultivation, physical and biological methods. These include: the choice of appropriate species and varieties; appropriate rotation programs; and the protection of natural enemies, all of them also listed in the Codex Alimentarius Guidelines (annex 1, A.6). Only in cases of imminent or serious threat to plants and where the aforementioned methods are ineffective may the use of chemical substances listed in the attached Table 2 be requested.

Unlike the Codex Alimentarius Guidelines (annex 1, A.9), Notification N°59 does not address the collection of wild plants.

5.3 Production of livestock and livestock products

Article 4 of Notification N°1608 establishes standards on organic production methods for livestock and livestock products. These requirements are more detailed than those applicable to organic plants and plant products, as in the case of most national legislations and of the Codex Alimentarius Guidelines (annex 1, B).

As to **conversion periods**, Notification N°1608 provides that no prohibited substances shall be applied on the land intended for pasture for a period of at least two years. In addition, and following the Codex Alimentarius Guidelines (annex 1, B.12), the attached Table 7 establishes minimum conversion periods for the different animal species. As to **partial conversion**, Notification N°1608 appears to allow for the simultaneous production of conventional and organic livestock but prohibits any contact between organically and non-organically raised livestock.

With respect to organic management practices, Article 4 of Notification N°1608 addresses the following: coverage of livestock and poultry; livestock feeding; livestock housing conditions, open-air runs; livestock health care control; general management practices.

In terms of **livestock sources/origin**, Notification N°1608 generally requires farm animals (other than poultry) to be born from mothers raised organically for no less than six months before their delivery. Poultry shall be raised organically after hatching. These conversion periods may be reduced under certain circumstances specified in the attached. Nonetheless, as provided for in the Codex Alimentarius Guidelines (annex 1, B.8), the attached Tables 8 and 9 lay down specific conditions under which livestock from non-organic sources may be brought into an organic holding for the following purposes: the starting of husbandry or renewal of a herb following natural disasters or diseases or for considerable expansion of the farm (at least by 30 percent).

With regards to **nutrition**, Notification N°1608 generally requires livestock systems to be provided with feedstuff that is organically produced and handled, with a maximum of 30 percent of in-conversion to organic feed being allowed. Non-organic feed may nonetheless be provided up to maximum of 50 percent (in dry weight) of the average intake when organic feed is difficult to obtain due to natural disasters or suspended imports. This conventional feed must not, however, be produced with recombinant DNA technology. Production and processing standards on organic feeds are detailed separately in Notification N°1607. In essence, organic feeds need to contain at least 95 percent (by weight of total ingredients, excluding water, salt and feed additives) organic ingredients and must not be processed with ionising radiation or put in contact with non-organic products and prohibited substances. Notification N°1608 further allows the use of non-chemically treated substances (except for those produced by using antibiotics and recombinant DNA technology) as feed additives and supplements in livestock nutrition but does not provide a list of these permitted substances, departing from the Codex Alimentarius Guidelines (annex 1, B.18). Conversely, the provision of growth stimulants and hormones is clearly prohibited.

Notification N°1608 establishes detailed **housing and free-range conditions** for organic livestock, including specific indoor and outdoor surface requirements for the different animal species (Table 5). In general

terms, housing must be constructed so as to keep appropriate temperature, ventilation and natural light and animals shall have free access to feeding, fresh watering and open-air runs. Notification N°1608 deals, in a less detailed manner, with the **health care** of organic livestock. Emphasis is placed on husbandry practices that strengthen animals' resistance to diseases, albeit without further specifications. The use of veterinary medicinal products is only permitted for therapy purposes and when no alternative permitted treatment or management practice exists. In addition, minimum withholding periods are set for "prescribed" drugs and antibiotics.

Concerning the **husbandry, transport and slaughter** of organic livestock, a number of practices are explicitly prohibited, following closely the Codex Alimentarius Guidelines (annex 1, B.25–30). These include: intentional physical injury (with the exception of certain permitted operations, such as physical castration), embryo transfer and hormonal reproductive techniques (in addition to those by recombinant DNA), and the use of electric stimulation or tranquillisers during transportation. Lastly, the slaughter of livestock shall be undertaken in a manner which minimises stress and suffering.

Unlike the Codex Alimentarius Guidelines (annex 1, B.54–81) and other national legislations, the JAS Organic Standards contain no species-specific production requirements.

5.4 Processing and handling

Notifications N°59 and 1608 establish general standards on the handling and processing of organic products of plant and/or animal origin, respectively. In addition, Notification N°60 lays down more specific processing requirements. In line with the Codex Alimentarius Guidelines (annex 1, C.88), the **organic integrity** of products shall be maintained during any processing, handling, packaging, transportation and storage by preventing co-mingling with non-organic products as well as contact with prohibited substances at all times.[152] Also in line with the Guidelines (annex 1, C.82), the use of **ionising radiation** on organic products is prohibited for the purposes of pest and disease control, food preservation or sanitation (N°60, art. 3).

152 Article 3 of Notification N°60 (processed organic foods); Article 4 of Notification N°59 (organic plants) and Article 3 of Notification N° 1608 (organic livestock products).

With regards to **pest management**, Article 3 of Notification N°60 identifies physical and biological methods as the first choice for controlling pests and diseases. No mention is made of preventive methods, as opposed to what is provided for in the Codex Alimentarius Guidelines (annex 1, C.83). If physical and biological methods prove inadequate, chemical agents listed in the attached Table 2 may be used while preventing mixture with organic products and ingredients. It should be noted that both Table 2 of Notification N°59 (organic plants) and Table 2 of Notification N°1608 (organic livestock) contain chemical substances authorized for pest and disease control purposes in addition to those listed in Table 2 of Notification N°60 (generally applicable to organic processed foods of plant or/and animal origin). Pursuant to Article 4 of Notification N°59 and Article 4 of Notification N°1608, these various Tables are supposed to apply in a cumulative manner, although this may create some confusion in practice.

As to **processing methods**, Article 3 of Notification N°60 states that only physical and biological methods can be used for the manufacturing and processing of organic products, without however specifying any such method. Permitted non-agricultural ingredients and food additives are listed in the attached Table 1. However, their use shall be kept to the minimum necessary and in accordance with the prescribed conditions. In addition, for the purpose of quality maintenance and improvement, a number of substances are permitted in the preparation of organic products of plant (N°59, Table 3) and animal origin (N°1608, Table 10).

6. ACCREDITATION AND CERTIFICATION[153]

Under the revised JAS System, the process of organic certification is exclusively carried out by private third-party entities that have been officially recognised by the MAFF. Section 2 of Law N°175, as developed by Articles 39–52 of Ministerial Ordinance N°62, details the criteria and procedure applicable to the **accreditation** of domestic certifying bodies, while Section 5 of

153 Note that Japanese measures use the term "registration", as opposed to "accreditation", and thus refer to "registered certifying bodies" (RCBs) and "registered overseas certifying bodies" (ROCBs). They also refer to "grading" for denoting the determination of whether a given product complies with the applicable JAS Standards.

Law N°175, as elaborated by Article 59 of Ministerial Ordinance N°62, deals with the accreditation of overseas certifying bodies.

Interested private entities shall apply for accreditation to the MAFF by submitting, *inter alia,* documentary evidence of compliance with the established accreditation requirements. Such requirements include (N°175, arts. 17(2), 17(7)):

- formal accreditation to the ISO/IEC Guide 65;
- "business operating rules" that meet the established "certification methods" (see below); and
- independence of economic and other interest with regard to the certification of operators.

When approved, accreditation is granted for a period of three years, with the possibility of renewal.[154] If not renewed, accreditation is automatically invalidated upon the lapse of such period (N°175, art. 17–3; N°62, art. 43). Additional provisions prescribe basic obligations of accredited certifying bodies, including impartiality and confidentiality of certification operations, record-keeping, reporting to and supervision by MAFF and compliance with MAFF orders.[155] Broadly speaking, the same criteria and procedure apply to the accreditation by MAFF of foreign certifying bodies (N°175, art. 19(8); N°62, art. 59). It should be noted that the requirement that overseas certifying bodies be based in third countries with organic standards and control systems recognized as equivalent by Japan has been abolished under the revised JAS System.

The MAFF shall cancel accredited status of both domestic and foreign certifying bodies if these are found to have been obtained by improper means or on grounds of non-compliance with the established accreditation criteria and obligations. Certifying agents whose accredited status has been suspended shall cease all certification activities and are ineligible for accreditation for a period of at least one year (N°175, arts. 17(12), 19(9)). Failure to do so may,

154 The current list of Japanese and foreign certification bodies accredited by MAFF is available at: www.maff.go.jp.

155 Articles 17(5), 17(9)–(11) and 20(1)–(2) of Law N°175; Articles 44–52 of Ministerial Ordinance N°62.

pursuant to the "Penal Clause" in Chapter 7 of Law N°175, lead to domestic certifying agents being sentenced to a fine not exceeding one million yen or to imprisonment not exceeding one year. The legal consequences of non-compliance by foreign certifying agents are not specified. In addition, MAFF may cancel accredited status of entities that fail, without justifiable reasons, to start certification operations within one year from the granting of accreditation (N°175, art. 17(12)).

Following the Codex Alimentarius Guidelines (annex 3), Article 46 of Ministerial Ordinance N°62 details minimum measures to be undertaken within **inspection and certification programmes**.[156] These relate to both the granting and eventual cancellation of organic certification. Interested operators shall apply for organic certification to accredited certifying bodies by submitting the required documents and paying the applicable certification fee.[157] Accredited certifying bodies shall assess on the basis of the documentary evidence received and on-site inspections whether applicants comply with the organic standards and technical criteria stipulated by MAFF.[158] Flowing from the requirement of formal accreditation to ISO/IEC Guide 65 (see above), decisions on certification shall be taken by a person different from those reviewing documentary evidence and carrying out on-site inspections. Accredited certifying bodies shall report positive decisions on organic certification to the MAFF.[159] As in the Codex Alimentarius Guidelines (annex 3.9), only one annual full physical inspection of certified operations is mandatory unless "special circumstances" are identified by the MAFF. The MAFF may, if it judges necessary, request reports from certified operators and carry out on-site inspections of certified operations (N°175 art. 20(1)–(2)).

156 Note that the term used in Ministerial Ordinance N°62 is "certification methods".

157 Such documents are detailed in Articles 25, 28, 32, 34 of Ministerial Ordinance N°62, depending on the operator concerned.

158 See Section 5 above. See also Technical Criteria for Certifying Domestic or Overseas Production Process Managers of Organic Plants and Organic Feeds (Notifications N°1830 and N°1831 of 25 November 2005); Technical Criteria for Certifying Domestic and Overseas Production Process Managers of Organic Livestock Products (Notification N°1832 of 25 November 2005), both available at: www.maff.go.jp, providing *inter alia* for educational requirements for operators in charge of the management and control of production/distribution processes and of organic labelling.

159 Form N°5 is attached to that effect in Ministerial Ordinance N°62.

In addition to providing conventional certification services, accredited certifying bodies are also responsible for decisions pertaining to the cancellation of certification. Pursuant to Article 46 of Ministerial Ordinance N°62, organic certification shall be suspended by the competent certification body in the following cases: 1) when the certified operator no longer complies with the organic standards and technical criteria established by the MAFF, or fails to take the measures requested by the certifying agent in order to ensure compliance within one year; 2) when the certified operator has provided false documentary evidence to the certification body or impeded on-site inspections; 3) when the certified operator refuses to comply with orders issued by MAFF,[160] fails to make a report requested by MAFF, or impedes on-site inspections by MAFF; and 4) for any other grounds stipulated in ISO/IEC Guide 65. Certifying bodies must report cancellation decisions to the MAFF[161] and affected operators are ineligible to obtain organic certification for a period of at least one year. In addition, under the "Penal Clause" in Chapter 7 of Law N°175, violations of certification obligations and/or labelling requirements may be sanctioned with a fine not exceeding one million yen or to imprisonment not exceeding one year.

Finally, it is interesting to note that the MAFF has expressed concerns regarding the fact that suspension of accredited status of a given certifying entity automatically leads to cancellation of certification for all operators that such body had certified, as there are no provisions concerning the succession of certified operators under the revised JAS System. It is deemed to be a (negative) consequence of having the certification process entirely undertaken by officially recognised private entities, with no direct involvement of the government.[162] In addition, an IFOAM survey of 2007 reveals that the revision of the JAS System has entailed a drop in the number of both accredited certification bodies and certified organic operators. As of December 2006, a total of 57 certification entities (52 domestic and 5 foreign) had been officially

160 Under Article 19-2 of Law N°175, these so-called "Improvement Orders" relate to the improvement or removal of (organic) labels.

161 Form N°8 is attached to that effect in Ministerial Ordinance N°62.

162 Ministry of Agriculture, Forestry and Fisheries of Japan, 'Overview of the Revised JAS Law', pp. 8, available at: www.maff.go.jp.

accredited under the revised JAS rules, while the number of certified organic operators was reported to total 1 256 in September 2006.[163]

7. IMPORT REQUIREMENTS

For foreign products to be placed on the Japanese market as organic, they need to be certified as having been produced and handled in accordance with standards and control mechanisms that are either equivalent to, or compliant with, those established under the JAS Organic System. There are two options for exporting organic products to Japan:

1. *Through third country equivalency list established by MAFF*: Article 37 of Ministerial Ordinance N°62 lists third countries whose organic legislation has been recognised by the MAFF as equivalent to that of Japan. As of March 2007, these include: Australia, Austria, Belgium, Denmark, Finland, France, Greece, Italy, Ireland, Luxembourg, Portugal, Switzerland, Sweden, Spain, the Netherlands, the United Kingdom and the United States of America.[164] Foreign operators need first to obtain certification against the organic standards and rules of the third country concerned. Such organic certification must be performed by governmental or quasi-governmental entities designated by the MAFF for each of the listed countries. The export certificate issued by these competent third country entities and the national organic logo need to be attached to the certified product before it is exported to Japan. Japan-based importers must in turn be certified by accredited Japanese certification bodies in order to import such foreign products. Once certified, importers shall put the JAS organic logo on the product in question before it is placed on the Japanese market (N°175, art. 15(2); N°62, arts. 37–38).[165]
2. *Through certification by MAFF-accredited bodies*: operators from foreign countries whose organic systems have *not* been recognised as equivalent

163 O.K. Way, "Organic Farming in Asia" in H. Miller and M. Yussefi (eds.), *The World of Organic Agriculture. Statistics and Emerging Trends 2007,* (IFOAM, 2007), p. 108.

164 MAFF, "Countries whose Organic Rules and Standards Japan Approved as Equivalent with the Organic JAS System" (March 2007), available at: www.maff.go.jp.

165 .See also Ministry of Agriculture, Forestry and Fisheries of Japan, "Flows of Imported Products with JAS Mark", pp. 2, available at: www.maff.go.jp.

> to that of Japan need to obtain organic certification by Japan-based or overseas certifying bodies accredited by MAFF (see section 6 above). Once the foreign products concerned have been certified as compliant with the JAS Organic Standards, the JAS organic logo is attached to them and they may be imported and placed on the Japanese market (N°175, art. 19(3)).[166]

As for most other countries, there are no official statistics on the actual size of Japanese imports and exports of organic products. According to an IFOAM study of 2007, Japan is (as yet) the largest consumer and importer of organic produce within the Asian region, with many imported organic products being already processed when entering the Japanese market. More specifically, in 2005 foreign production of processed organic food sold in Japan amounted to 216 059 tonnes while domestic production of such food was 149 811 tonnes.[167]

166 See also Ministry of Agriculture, Forestry and Fisheries of Japan, "Flows of Imported Products with JAS Mark", pp. 1.

167 O.K. Way, "Organic Farming in Asia" in H. Miller and M. Yussefi (eds.), *The World of Organic Agriculture. Statistics and Emerging Trends 2007,* (IFOAM, 2007), p. 108.

TUNISIA

1. OVERVIEW OF THE LEGAL AND INSTITUTIONAL FRAMEWORK

The Tunisian Law on Organic Agriculture (Law 99–30),[168] adopted on 5 April 1999, prescribes basic rules pertaining to the production, preparation and marketing of organic products (Chapter II), the establishment of a control and certification system (Chapter III) and of a "*Commission Nationale de l'Agriculture Biologique*" (National Commission for Organic Agriculture, Chapter IV), and infringements and applicable sanctions (Chapter V). Given the general character of this Law, the Minister of Agriculture[169] was empowered to further elaborate its basic requirements through the adoption of subsidiary legislation, after obtaining the opinion of the National Commission (Law 99–30, arts. 3, 12). At the time of writing, three main subsidiary instruments have been enacted:

1. Ministerial Decree N°2000–409, establishing the criteria and procedure for the accreditation of certification bodies as well as minimum requirements for inspection and certification programmes.[170]
2. Order No. 19, establishing technical standards on the production of organic products of plant origin.[171]
3. Order No. 57, establishing technical standards on the production of organic products of animal origin.[172]

168 Loi N°99-30 du 5 avril 1999, relative à l'agriculture biologique (J.O.R.T N°29-9 avril 1999), available at: www.onagri.tn/.

169 Note that the official name is « *Ministère de l'Agriculture et des Resources Hydrauliques* « (Ministry of Agriculture and Water resources).

170 Décret N°2000-409 du 14 février 2000, fixant les conditions d'agrément des organismes de contrôle et de certifications et les procédures de contrôle et de certification dans le domaine de l'agriculture biologique (J.O.R.T N°16-25 février 2000), available at: www.ctab.nat.tn.

171 Arrêté du Ministre de l'Agriculture du 28 février 2001, portant approbation du cahier de charges type de la production végétale selon le mode biologique (J.O.R.T N°19-6 mars 2001), available at: www.ctab.nat.tn.

172 Arrêté du Ministre de l'Agriculture du 9 juillet 2005, portant approbation du cahier des charges types de la production animale selon le mode biologique (J.O.R.T N°57-19 juillet 2005), available at: www.ctab.nat.tn.

By virtue of Article 17 of Law 99–30, the National Commission was established as a consultative body tasked primarily with making proposals for developing organic production methods and giving its advice with regards to the granting/withdrawal of accreditation (see section 6 below). The National Commission is headed by the Ministry of Agriculture and composed of representatives from (*inter alia*) other national ministries (including that of Commerce, that of the Environment and that of Public Health), the "*Conseil National d'Accréditation*" (National Council for Accreditation), trade unions and other stakeholders (such as consumer and producer associations).[173]

Another significant institutional development since the adoption of the Law on Organic Agriculture has been the establishment of the "*Centre Technique pour l'Agriculture Biologique*" (Technical Centre for Organic Agriculture) in 1999.[174] It plays an integral role, *inter alia*, in advising organic producers and processors. In addition, several Ministerial measures have been adopted to promote the development of organic agriculture in Tunisia.[175]

It should be noted that, at the time of writing, Tunisia is the only African country with fully implemented organic legislation. It is also the country with the largest land area under certified organic management in Northern Africa, approximately 143 099 hectares in 2005, distributed across 515 organic holdings and representing 1.46 percent of total agricultural area. Tunisia's

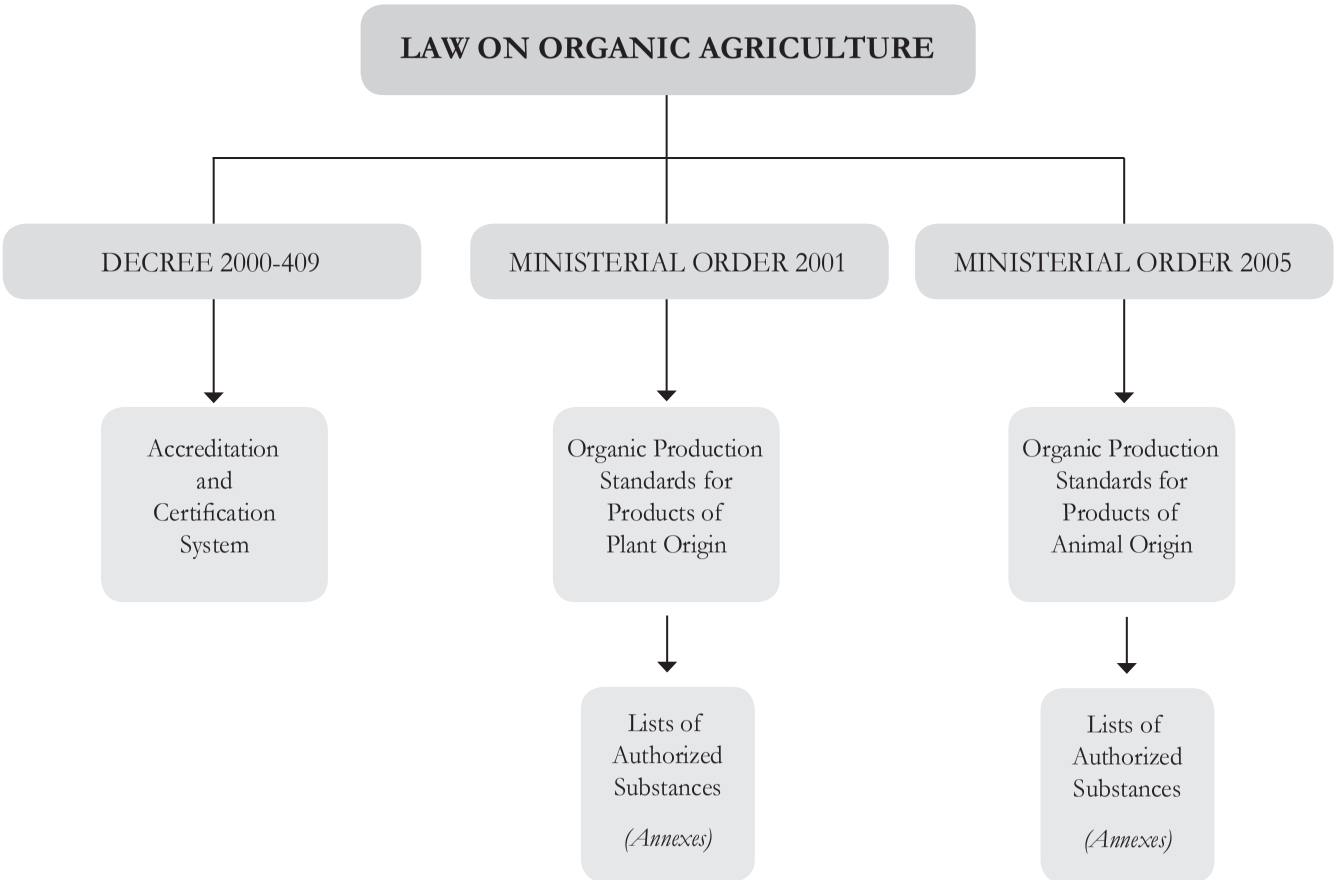
173 See further Décret N°99-1142 du 24 mai 1999, fixant la composition et les modalités de fonctionnement de la Commission Nationale de l'Agriculture Biologique (J.O.R.T N°45-4 juin 1999); Arrêté du Ministre de l'Agriculture du 29 octobre 1999 relatif à la désignation des membres de la Commission Nationale de l'Agriculture Biologique (J.O.R.T N°90-9 novembre 1999); Décret N°2001-2406 du 8 octobre 2001, modifiant le Décret N°99-1142 du 24 mai 1999 fixant la composition et les modalités de fonctionnement de la Commission Nationale de l'Agriculture Biologique (J.O.R.T N°83-16 octobre 2001), all available at: www.ctab.nat.tn.

174 Arrêté du Ministre de l'Agriculture du 2 octobre 1999, portant à l'approbation du statut du Centre Technique de l'Agriculture Biologique (J.O.R.T N°83-15 octobre 1999). For more information on CTAB, visit: www.ctab.nat.tn.

175 See for instance, Décret N°2000-1888 du 24 août 2000, complétant le Décret N°98-749 du 30 mars 1998, portant à la création des grands Prix du Président de la République pour la promotion des activités agricoles (J.O.R.T N° 70-1 septembre 2000); Décret N°2002-3274 du 17 décembre 2002, modifiant le Décret N°96-1563 du 9 septembre 1996, fixant les règles d'organization, de fonctionnement et les modes d'interventions du fond de développement de la compétitivité dans les secteurs de l'agriculture et de la pêche (J.O.R.T N°104-24 décembre 2002), both available at: www.ctab.nat.tn.

main agricultural produce include: fresh vegetables; dried fruits; olive oil; herbs and honey.[176] The chart below provides an overview of the Tunisian legal framework on organic farming proceeded by continued analysis.

176 B. Elzakker, N. Parrot, M. Chola Chonya and S. Adimado, "Organic Farming in Africa" in H. Miller and M. Yussefi (eds.), *The World of Organic Agriculture. Statistics and Emerging Trends 2007,* (IFOAM, 2007), p. 96–98 and 103.


LAW ON ORGANIC AGRICULTURE
DECREE 2000-409
MINISTERIAL ORDER 2001
MINISTERIAL ORDER 2005
Accreditation and Certification System
Organic Production Standards for Products of Plant Origin
Organic Production Standards for Products of Animal Origin
Lists of Authorized Substances (Annexes)
Lists of Authorized Substances (Annexes)

2. OBJECTIVES AND PRINCIPLES

Unlike the Codex Alimentarius Guidelines (Foreword) and other national legislations, neither the general Law on Organic Agriculture, nor its implementing legislation, explicitly state the policy objectives that have motivated their adoption. In addition, these measures do not offer a set of well-elaborated principles on organic agriculture. Article 2 of Law 99-30 just defines organic agriculture as relating to production methods of raw or processed agricultural products without the use of synthesised chemical substances. None of the Ministerial measures makes significant additions in terms of the definition and/or principles of organic farming. Order No. 57 does, nonetheless, contain a first Section entitled 'General Principles,' but these are specific to livestock production and will thus be dealt with in section 5.3 below.

3. SCOPE OF APPLICATION

As to **covered products**, Article 1 of Law 99-30 generally encompasses all raw and processed agricultural products of plant and animal origin, which carry (or are intended to carry) indications referring to organic production methods. Following the Codex Alimentarius Guidelines (sec.1.2–1.3), this provision further provides that a product will be regarded as bearing such organic indications when its labelling, advertising material, commercial documents or ingredients list suggest to the purchaser that the product or its ingredients were obtained in accordance to organic production methods. In addition, Order No. 57 contains a definition of organic livestock as including bovine, porcine, caprine, equine, poultry, bees and rabbits, as well as their products intended for human consumption (art. 1). Article 2 of Order No. 57 explicitly excludes from its scope of application the products of the hunting of wild animals, but not those obtained by the fishing of such animals, which are also excluded from the definition of organic livestock in the Codex Alimentarius Guidelines (sec. 2.2).

As to **covered operators**, the Article 2 of Law 99-30 addresses any natural or legal person who is involved in the production, preparation and marketing of (covered) organic (or in-conversion) products. Thus, this definition of operator does not explicitly include importers of organic products, as opposed to what

is provided for in the Codex Alimentarius Guidelines (sec. 2.2). Nonetheless, pursuant to Decree 2000-409, both importers and exporters of organic products are subject to organic inspection and certification requirements (see section 6 below).

The relationship between Law 99-30 (and its implementing Decrees) and other Tunisian laws/legislations applicable to covered products and operators is not specified.

4. ORGANIC LABELLING AND CLAIMS

Articles 3 and 11 of Law 99-30 clearly require products carrying the labelling "*produit biologique*" (organic product), or any other indications referring to organic production methods, to be certified by accredited bodies against national organic standards (see sections 5 and 6 below). In addition, Article 4 of Law 99-30 allows for the labelling of certified products of farms in conversion to organic production with the terms "*produit biologique en conversion,*" without however establishing a minimum time period during which organic production methods have to be applied, as instead provided by the Codex Alimentarius Guidelines (sec. 3.7).

In June 2010, Ministerial Decree N°51 was issued, establishing a logo concerning the Tunisian products of biological agriculture and fixing the conditions of its grant and withdrawal[177]. However, and unlike in the Guidelines (sec. 3) and other national laws/legislations, Tunisia has not (as yet) developed more detailed provisions on the use of organic labels and other claims.[178]

177 Décret N°2010-1547 du 21 juin 2010, portant création d'un logo pour les produits de l'agriculture biologique tunisiens et fixant les conditions et les procédures de son octroi et de son retrait (J.O.R.T. N°51-25 juin 2010).

178 Centre Technique de l'Agriculture Biologique, 'Réglementation', available at: www.ctab.nat.tn.

5. ORGANIC PRODUCTION, HANDLING AND PROCESSING RULES

5.1 General requirements

As indicated in sections 1 and 2, the Tunisian legal framework on organic agriculture is fragmented. The general Law on Organic Agriculture contains meagre provisions on organic production and handling methods. Technical standards in these areas have been subsequently developed through separate Ministerial Orders for plant (in 2001, Order No. 19) and livestock (in 2005, Order No. 57) products. When examining these Ministerial Orders, it is possible to identify two general prohibitions in organic agriculture:

- Organic products shall be produced and handled only with permitted substances. As will be seen in the subsequent sections, various Annexes attached to the Orders No. 19 and No. 57 list the substances authorised in organic plant and livestock production and specify the conditions for their use as/in: soil fertilisers and conditioners; plant pest and disease control; nutritional elements, feed materials, feed additives and processing aids in livestock systems; and cleaning and disinfection of livestock buildings and installations. Organic products must be protected at all times from contact with prohibited substances as well as from co-mingling with non-organic products (Decree 2000-409, arts. 1, 5; Order No. 19, art. 7; Order No. 57, art. 10);
- Genetically modified organisms (GMOs) and their derivatives shall not be used in organic agriculture, with the exception of certain veterinary medicinal products (see section 5.3 below). However, neither Law 99-30 nor its implementing legislation, offer a definition of GMOs (Law No. 99-30, arts. 1–2; Order No. 19, art. 14; Order No. 57, art. 12).

Unlike the Codex Alimentarius Guidelines (annex 1, C.82) and other national legislations, there is no general prohibition on the use of ionising radiation on organic products under Tunisian law, nor a list of substances authorised for use as food additives and processing aids. In fact, as will be seen in section 5.4 below, there are no requirements on the processing of organic products.

5.2 Production of plants and plant products

Production standards for organic products of plant origin are laid down in the Order No. 19, which was adopted on the basis of Article 3 of Law 99-30 to further elaborate the basic production requirements enshrined in Chapter II of Law 99-30.

As to **conversion periods**, Articles 2 and 6 of Order No. 19 generally require a period of at least two years before the start of the production cycle, or at least three years before the first harvest in the case of perennial crops, during which the production unit must be under active organic management. This is in line with the Codex Alimentarius Guidelines (annex 1, A.1). The accredited certification body may, after obtaining Ministerial consent, reduce or extend such conversion periods in light of previous parcel use. Departing from the Codex Alimentarius Guidelines (annex 1, A.1–2), there is no twelve-month limit to the (possible) reduction of conversion periods, nor is there an explicit requirement for conversion to begin only once the production unit has been placed under the established inspection system.

Concerning **partial conversion**, simultaneous production of organic (or in-conversion) and conventional products is permitted insofar as farm units are clearly separated (Law no. 99-30, art. 8). The means to ensure a clear separation between organic and conventional operations are, however, not specified. Nonetheless, conventionally produced plants shall be from different varieties than organically produced ones (Decree 2000-409, art. 5). Unlike in the Codex Alimentarius Guidelines (annex 1, A.4), there is no explicit prohibition of the alternation between organic, in-conversion and conventional production methods.

With regards to organic management practices, Order No. 19 addresses: the choice of seeds and vegetative reproductive material; maintenance of soil fertility and biological activity; pest, disease and weed control; and the collection of wild plants. These provisions, however, are not as detailed as those found under other national legislations.

Article 8 of Order No. 19 generally requires the use of organic **seeds and vegetative reproductive material** which are obtained from plants grown in accordance with organic practices for one generation, or two growing seasons

in the case of perennials, as provided by the Codex Alimentarius Guidelines (annex 1, A.8). However, the use of conventional seeds and other vegetative reproductive material was permitted for a conversion period, expiring on 31 December 2007, under two conditions, namely that: 1) producers could demonstrate to the competent certification body that organic seeds and other vegetative reproductive material were unavailable on local and foreign markets; and 2) the plants from which these were derived were grown in accordance with organic practices for at least six weeks before harvesting (Law No. 99-30, art. 5; Order No. 19, art. 8).[179]

Article 9 of Order No. 19 spells out a number of cultivation methods for maintaining or increasing the **fertility and biological activity of the soil**, following closely the Codex Alimentarius Guidelines (annex 1, A.5). These include the cultivation of legumes, green manures or deep-rooting plants in an appropriate multi-annual rotation programmes, and the incorporation in the soil of organic material of plant and livestock origin, compost or not, obtained from holdings producing in accordance with the prescribed organic standards. Only to the extent that these methods prove insufficient, may substances listed in Annex 1 be used as soil fertilisers and conditioners (Order No. 19, art. 9(3)).

Article 12 of Order No. 19 requires that plant **pests, diseases and weeds** be controlled through five preventive measures, all of which are also included in the Codex Alimentarius Guidelines (annex 1, A.6). Such measures are: the choice of appropriate species and varieties capable of adapting to regional conditions; appropriate rotation programmes allowing for the breaking-up of biological cycles of enemies to crops; mechanical cultivation procedures; the protection of natural enemies of pests through provision of favourable conditions to them; and flame weeding. As in the Codex Alimentarius Guidelines (annex 1, A.7), products authorised for pest and disease control in Annex 2 may be used only in cases of imminent threat to the crop and when the aforementioned preventive measures prove ineffective (No. 19, art. 11).

179 See also, Arrêté du ministre de l'agriculture du 28 février 2001, fixant la durée de la période d'autorisation d'utilisation des semences et des produits de multiplication végétative non obtenu selon le mode de production biologique, which sets 31 December 2007 as the expiration date for the transition period (J.O.R.T N°19-6 mars 2001), available at : www.ctab.nat.tn.

Lastly, Article 13 of Order No. 19 regulates the **collection of wild plants**, establishing only three of the four conditions found in the Codex Alimentarius Guidelines (annex 1, A.9) for these products to be considered organic. First, these products must be derived from a collection area that has not been treated with prohibited substances for a period of three years. Second, the harvesting or gathering of such products shall not affect the stability of the natural habitat or the maintenance of the species in the collection area. Third, pursuant to Article 2 of Decree 2000-409, the collection of wild plants is subject to the established inspection and certification system (see section 6 below).

5.3 Production of livestock and livestock products

As stipulated in Article 3 of Law 99-30, Order No. 57 details production standards for organic products of livestock origin, complementing the basic requirements enshrined in Chapter II of Law 99-30.

As to **conversion periods**, Section 4 of Order No. 57 establishes conditions for both the land intended for feeding crops or pasture, and the different animal species, as provided by the Codex Alimentarius Guidelines (annex 1, B.10–12). The land must comply with the conversion periods applicable to plant production (see section 5.2 above). To be sold as organic, livestock itself must be under organic management during a minimum period of time, the exact length of which varies for different species (Order No. 57, art. 25). As foreseen in the Codex Alimentarius Guidelines (annex 1, B.11), there are two derogations to these general conversion periods. The first applies to bovine, ovine and equine coming from extensive husbandry, for which standard conversion periods may be reduced under the conditions established in Article 27 of Order No. 57. The second derogation relates to cases of simultaneous conversion of livestock and land used for feeding within a same unit: it allows for a total conversion period for both livestock and land of two years under the conditions stipulated in Article 28 of Order No. 57. As in the case of crops, there is no explicit requirement for conversion periods to begin only once the production unit has been placed under inspection.

Concerning **partial conversion**, simultaneous husbandry of conventional and organic (or in-conversion) livestock is permitted insofar as farm units are clearly separated and different animal species are involved (Order no. 57, art. 10). As in the case of plants, Order No. 57 neither specifies the means

to ensure a clear separation between conventional and organic production units, nor explicitly prohibits the alternation between organic, in-conversion and conventional production methods.

With respect to organic management practices, Chapter I of Order No. 57 contains specific provisions on: livestock origin (sec. 2); breeding methods (sec. 3); livestock feeding (sec. 5); prophylactic and veterinary care (sec. 6); identification of living animals (sec. 7); husbandry installations and facilities (sec. 8); age of slaughter (sec. 9); transportation of livestock (sec. 10).

Concerning **livestock sources/origin**, Article 4 of Order No. 57 requires that biological diversity be maintained and that the choice of breeds and strains take account of their adaptation to local conditions, as provided for the Codex Alimentarius Guidelines (annex 1.6). Also in accordance with the Guidelines (annex 1, B.7), organic livestock products must be derived from production units complying with national organic standards. Nonetheless, as foreseen in the Guidelines (annex 1, B.8), a number of specific conditions, including with respect to percentage quantity and age, are set on brought-in animals from non-organic sources (Order no. 57, arts. 15–19).

With regards to **nutrition**, animals should be, as a matter of principle, provided with 100 percent organically produced feed, taking into account their physiological needs (Order no. 57, art. 5). The entirety of the feedstuff shall come from the same farm unit, although sourcing from other organic operations may be authorised by the certification body (Decree 2000-409, art. 31). There are also percentage limits on the quantity of in-conversion to organic feed that may be incorporated in livestock feedstuff, depending on whether it is obtained from the same farm unit (60 percent) or other organic operations (30 percent). Where producers can demonstrate their inability to comply with the aforementioned requirements to the certification body, conventional feedstuff can be provided during a limited period and within the percentage limits established for each animal category (Order no. 57 arts. 32, 37). In terms of composition, different specie-specific requirements are laid down in Articles 34–40 of Order No. 57, following closely those found in the Codex Alimentarius Guidelines (annex 1, B.16). In addition, Annex I identifies the products and conditions for their use as feed materials (Part A), nutritional elements (Part B.1), feed additives (Part B.2) and processing aids (Part B.3) in organic livestock production. Lastly, the provision of medicinal

or other substances aimed at stimulating livestock growth or production is forbidden (Order No. 57, art. 30).

Section 8 of Order No. 57 prescribes detailed **housing and free-range conditions**, both of general application (including respect for the behavioural and biological needs of animals and requirements on access to open-air runs and grazing) and species-specific.[180] Section 6 deals with the **health care** of organic livestock. Following the Codex Alimentarius Guidelines (annex 1, B.20), emphasis is placed on disease prevention practices in livestock production (including an appropriate choice of breeds/strains of animals and the provision of good quality organic feed), with the use of veterinary medicinal products being authorised only in exceptional circumstances (Order No. 57, arts. 6, 46). The use of oligo-elements, phytotherapeutic (excluding antibiotics) and homeopathic products is not only preferred, but authorised without restrictions, unlike the Codex Alimentarius Guidelines (annex 1, B.22(b)). In line with the Guidelines (annex 1, B.22(c)–(d)), allopathic veterinary drugs or antibiotics shall not be used for preventive treatments, but only if the aforementioned products prove ineffective in combating illness or injury and under the responsibility of a veterinarian. Vaccination of livestock is permitted in cases required by law, or if the production unit concerned is situated in an area where the existence of a given disease has been officially acknowledged (Order No. 57, arts. 50–53). Articles 55–56 of Order No. 57, further establish maximum numbers of allopathic treatments per year, beyond which livestock products cannot be sold as organic during the course of that year. Lastly, and departing from the Codex Alimentarius Guidelines (sec. 1.5), the use of GMOs (their materials or products) is authorised in veterinary drugs (Order No. 57, art. 12).

As to the **husbandry, transport and slaughter** of organic livestock, a number of practices are explicitly prohibited, as in the Codex Alimentarius Guidelines (annex 1, B.25–30). These include: embryo transfer techniques and hormonal reproductive treatments other than for veterinary purposes (Order No. 57, art. 21); mutilations, albeit they may be authorised by the

180 See also Annex IV to Order No. 57 establishing minimum surface areas indoors and outdoors and other characteristics of housing in the different specifies and types of livestock production.

accredited certification body under certain conditions (art. 11);[181] and the use of electric sticks and chemical/synthesised tranquillisers or stimulants during transportation (art. 86). Also in with the Codex Alimentarius Guidelines (annex 1, B.26), reproduction through natural methods is generally preferred, although artificial insemination is permitted (Order No. 57, art. 21). Handling during transport and slaughter shall be calm and gentle, minimising stress and suffering (Law 99-30, art. 7; Order No. 57, art. 86). Finally, Order No. 57 lays down minimum ages for the slaughter of animals (art. 85), as well as detailed species-specific identification requirements for organic livestock (sec. 7).

Following the Codex Alimentarius Guidelines (annex 1, B.54–81), Chapter II of Order No. 57 prescribes specific organic standards for bee-keeping and bee products.

5.4 Handling and processing

Articles 8–9 of Law 99-30 require the **organic integrity** of products to be maintained during their processing, storage, packaging, and distribution and retailing by preventing co-mingling with products from conventional farming. However, unlike in the Codex Alimentarius Guidelines (annex 1, C.82), the use of **ionising radiation** on organic products is not explicitly prohibited. As for organic production standards, Article 3 of Law 99-30 stipulates the adoption of a Ministerial Decree establishing more detailed requirements on the handling and processing of organic products. No such measure, however, has been adopted at the time of writing.[182]

6. ACCREDITATION AND CERTIFICATION

Under Article 11 of Law 99-30, any person producing, preparing or marketing organic products must place their operations under the established control system. Article 12 of Law 99-30 further provides that the process of organic

181 Prohibited mutilations include: tail-docking, cutting of teeth, trimming of beaks and dehorning. Following the Codex Alimentarius Guidelines (Annex 1, B, para. 27), these operations may be authorised for reasons of safety or if they are intended to improve the health and welfare of the livestock, provided they are carried out at the most appropriate age and suffering to the animals is reduced to a minimum (Order No. 57, Article 11).

182 Centre Technique de l'Agriculture Biologique, 'Réglementation', available at: www.ctab.nat.tn.

certification shall be carried out by entities that have been accredited by the Minister of Agriculture, after receiving the opinion of the National Commission. Decree 2000-409, adopted on the basis of Article 12 of Law 99-30, prescribes the criteria applicable to the accreditation of such entities (Chapter II), as well as minimum requirements for the inspection and certification of organic operators (Chapter I).

Interested public or private entities need to apply to the Ministry of Agriculture for **accreditation** which is accomplished by submitting documentary evidence of their ability to comply with the criteria laid down in Article 17 of Decree 2000-409, including:

- independence, impartiality and objectivity *vis-à-vis* the operators which the entity certifies;
- adequate professional competence and financial resources;
- composition requirements (clearly showing a distribution of responsibilities, in particular for administrative, inspection, testing and certification functions);
- inspection and precautionary measures *vis-à-vis* certification seekers; and
- registry system of certified operations.

Successful applicants are registered in a list («*liste des organismes de contrôle et de certification*»), which is published in the *Journal Officiel de la République Tunisienne*.[183] Formal accreditation to the ISO/IEC Guide 65 is not required. Decree 2000-409 is also silent with respect to accreditation fees and does not stipulate a time-limit to the initial granting of accreditation: thus, there are no provisions regarding its renewal. Accredited certification bodies are nonetheless subject to ongoing oversight and auditing by the National Commission. The Commission should submit a request to the Minister of Agriculture to withdraw accredited status should they no longer satisfy the accreditation criteria or/and fail to meet their obligations under Decree 2000-409. Such obligations include (Decree 2000-409, arts. 18–21):

183 Communication du11 mai 2009, fixant la liste des organismes de contrôle et de certification agrées par le Ministère de l'Agriculture et des Ressources Hydrauliques dans le domaine de l'agriculture biologique (J.O.R.T N°59-24 juillet 2009), available at: www.ctab.nat.tn.

- ensuring the full implementation of the prescribed inspection and certification programme (see below);
- ensuring observance of national organic standards in the operations under their control;
- ensuring confidentiality of information obtained during their activities;
- record-keeping and annual reporting to the National Commission (including a list of certified operators);
- allowing access to information and office facilities by the National Commission for supervision purposes; and
- informing the Minister of Agriculture of any irregularity or infringement in the application of Law 99-30 and its implementing legislation.

In a similar vein to the Codex Alimentarius Guidelines (annex 3), Chapter II of Decree 2000-409 prescribes minimum requirements and precautionary measures for developing **inspection and certification programmes**, complementing those established in Articles 14–15 of Law 99-30. Although these provisions deal separately with the inspection and certification of units dedicated to the production, the processing/handling and the importation/exportation of organic products, there are some commonalities among them. At the beginning of the certification process, an organic plan is elaborated by operators and the accredited certification body concerned, who shall both sign an inspection report ("*rapport d'inspection*") committing operators to comply with the applicable national organic rules (Decree 2000-409, art. 2). Additional obligations on operators seeking organic certification include allowing on-site inspections by the competent certification body, record-keeping and annual reporting to that body (Law 99-30, arts. 14–15). Following the Codex Alimentarius Guidelines (annex 3, 9), a full physical inspection shall be undertaken at least once a year, but Article 8 of Decree 2000-409 further demands that one additional unannounced visit be made to all operations each year. Testing during inspection is only required if there is a suspicion that prohibited substances are used (Decree 2000-409, art. 9). An inspection report shall be drawn up and signed by the inspector and the operator after each of these visits.

In contrast with the Codex Alimentarius Guidelines (Foreword, 9), Decree 2000-409 does not expressly require that decisions on certification be taken by a person different from those reviewing documentary evidence

and carrying out on-site inspections. When organic certification is granted, a conformity certificate ("*certificat de conformité*") and a license ("*licence*") are issued to the operator concerned, indicating that the product lot was obtained in accordance with the prescribed organic standards and in an operation subject to the established inspection system (art. 19). Decree 2000-409 is, however, silent regarding inspection and certification fees. In addition, it does allow for the possibility of group certification to the benefit of small operators, unlike the legislation of any other developing country (see India, for instance).

Finally, Chapter V of Law 99-30 lays down general provisions on infringements and applicable administrative and criminal sanctions. The Minister of Agriculture, after obtaining the opinion of the National Commission, may (temporarily or permanently) withdraw organic certification from operators if they fail to comply with national organic standards and control system. Such operators may be further sanctioned with the payment of a fine, raging from 1 000 to 10 000 dinnar (Law 99-30, arts. 20, 22). However, the specific grounds or conducts leading to non-compliance are not identified. Similarly, the Minister may (temporarily or permanently) withdraw accredited status from certification bodies if they fail to report any infringements of Law 99-30 on the part of operators. In addition, such bodies may be sanctioned with the payment of a fine, ranging from 1 000 to 20 000 dinnar, or/and one-month to one-year imprisonment (Law 99-30, arts. 20, 22).

7. IMPORT REQUIREMENTS

None of the Tunisian legal instruments under analysis contains provisions dealing with the importation of organic products, albeit these products remain subject to general import regulations. This lack of specific requirements on the importation of organic products may be partly explained by the fact that there is no (as yet) strong domestic demand for such products. As a result, over 90 percent of organic production is currently directed towards export markets, and particularly the EU, Tunisia's principal trading partner.[184] It is interesting to note that in 2001 Tunisia was accorded a preferential quota for exporting organic (and conventional) olive oil –the country's main agricultural

184 FAO Organic-AIMS, 'Tunisia-Country Profile for Organic Agriculture', available at: www.fao.org; International Trade Centre, 'Tunisia-Country Profile for Organic Products', available at: legacy.intracen.org.

export– to the EU.[185] For export purposes, domestic producers and other operators need to obtain certification –usually by foreign entities– against the organic standards of the importing country concerned.

185 Arrêté du Ministre de l'Agriculture du 4 juillet 2001, fixant les procédures d'octroi des autorisations aux exportateurs privés pour l'exportation de l'huile d'olive tunisienne biologique et de l'huile d'olive tunisienne mise en bouteille sous la marque tunisienne dans le cadre du quota annuel accordé par l'Union Européenne (J.O.R.T-13 juillet 2001), available at: www.ctab.nat.tn.

UNITED STATES OF AMERICA

1. OVERVIEW OF THE LEGAL AND INSTITUTIONAL FRAMEWORK

The origins of organic farming in the United States of America (US) have been attributed to J.I. Rodale, who began to popularise the term and methods of organic growing through the Soil and Health Foundation (currently, the Rodale Institute) founded in 1947. During the 1970s, the first membership organizations of organic farmers and consumers were formed at state level. As markets for organic products expanded beyond direct sales from farmers to consumers grassroots organizations begun to develop organic standards and certification as a tool to build trust in the marketplace. Voluntary standards and certification were, however, only successful to a certain point. Beginning in the 1980s, several states put in place laws or regulations on organic production and labelling, leading to a variety of organic standards and approaches to certification. As the organic market grew nationally, pressure mounted for the adoption of regulatory measures at the federal level. In fact, the "Alar Report," published in 1989, revealed that the US domestic market was flooded with produces fraudulently claimed to be organic. This revelation helped to solidify political and stakeholder support for a national organic program that would require certification to one common set of organic standards.[186]

In 1990, the US Congress passed the Organic Foods Production Act (OFPA)[187] (last amended in 2005). The OFPA prescribes basic rules pertaining to the production and handling of organic products, the setting up of an accreditation and certification system and of a National Organic Standards Board (NOSB). Under Section 2104 of the OFPA, the Secretary of Agriculture was mandated to establish an organic certification program for producers and handlers of organic products with the purpose of ensuring that such products are produced/handled only on certified operations and in accordance with national organic standards (OFPA, sec. 2107). The Secretary

186 For a more detailed account, see K. DiMatteo, 'Case-Study-USA' in I. Källander and G. Rundgren (eds.), *Building Sustainable Organic Sectors* (IFOAM, 2008), pp. 176–180.

187 Organic Foods Production Act of 1990 [As Amended Through Public Law 109-97, Nov. 10, 2005], available at: agriculture.senate.gov.

was equally entrusted with the task of appointing the members of the NOSB to assist him/her in the development and implementation of national organic standards. In an attempt to ensure stakeholder representation, the NOSB is composed of *inter alia*: organic farmers, handlers and retailers; representatives of consumer interest groups; experts in areas of environmental protection and resources conservation (OFPA, sec. 2119).

After ten years of intensive stakeholder deliberations, the Regulation establishing the National Organic Program (NOP)[188] was completed in 2000, entered into force in 2002 and was last modified in 2006. As the following chart illustrates, the NOP contains detailed provisions on organic production, handling and labelling requirements, on the accreditation of certifying agents and minimum requirements for organic certification programmes, and on administrative matters, including a National List of Allowed and Prohibited Substances in organic agriculture.

Whereas the US market for organic products has been developing for decades, it has been argued that the adoption of the NOP has significantly contributed to expediting its expansion as over 60 percent of US consumers look for the official seal of the US Department of Agriculture (USDA) when purchasing such products. According to IFOAM survey of 2007, retail sales of organic foods were estimated to total US$ 13.83 billion (approx. 10.5 billion Euros) in 2005, with meat (55.4 percent), condiments (24.2 percent) and dairy products (23.5 percent) comprising the majority of them. In that same year, retail sales of non-food organic products were estimated to reach US$ 744 (approx. 564 million Euros), mainly flowers (50 percent), pet food (46 percent) and fibber (44 percent).[189] Nonetheless, the proportion of US farmland under certified organic management is relatively small, estimated to be 0.2 percent in 2003.[190]

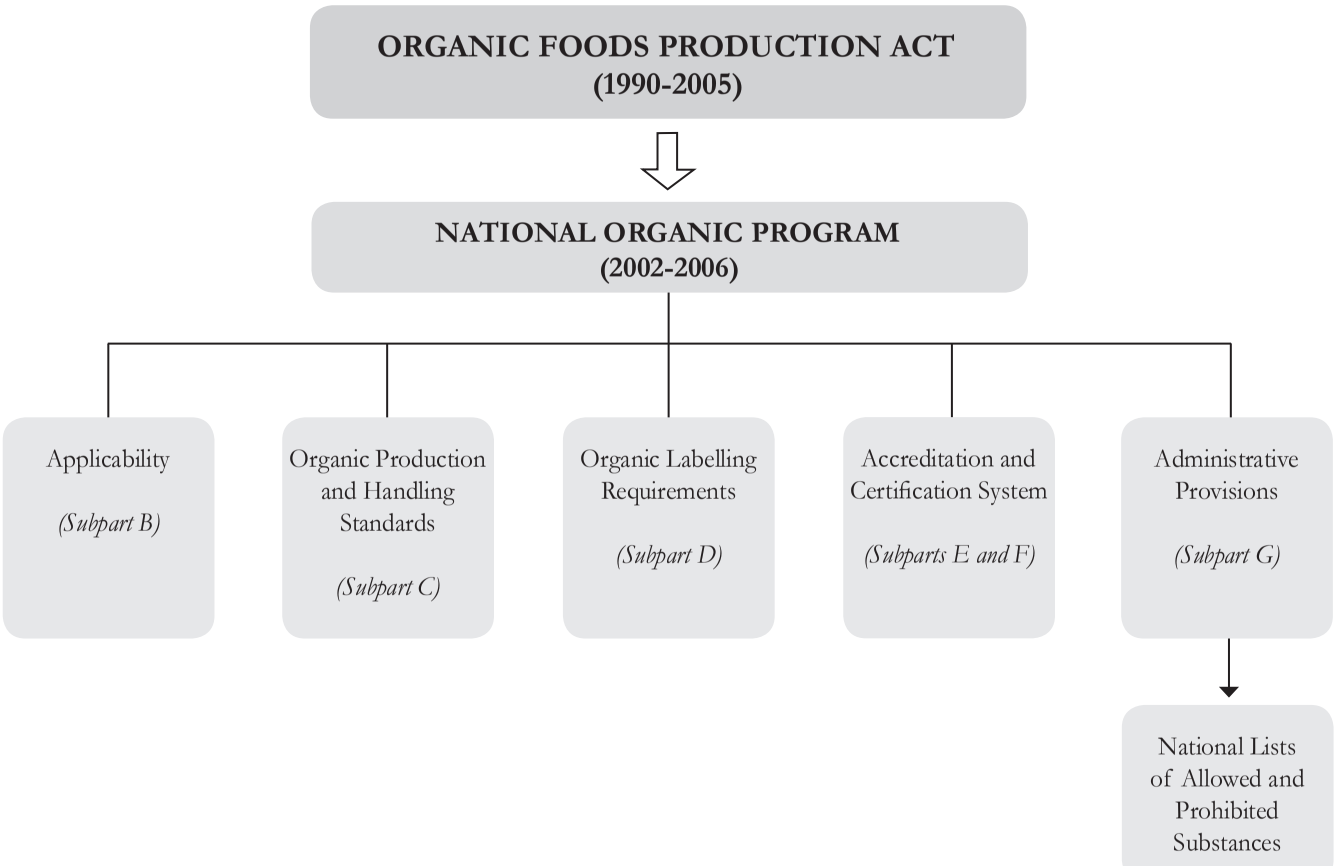
It should nonetheless be noted that individual federal states are still competent to adopt State Organic Programs (SOP) in order to enforce the

188 National Organic Program [as amended at 71 FR 53303, September, 11, 2006], available at: www.ams.usda.gov.

189 B. Haumann, "Organic Farming in North America" in H. Miller and M. Yussefi (eds.), *The World of Organic Agriculture. Statistics and Emerging Trends 2007,* (IFOAM, 2007), pp. 197–198.

190 K. DiMatteo, 'Case-Study-USA' in I. Källander and G. Rundgren (eds.), *Building Sustainable Organic Sectors* (IFOAM, 2008).

provisions of the NOP (OFPA, secs. 2104). Such programs are subject to the approval of the Secretary (OFPA, sec. 2108) and can contain more restrictive standards that those established at the national level on grounds of environmental conditions or the necessity of specific production and handling practices particular to a given state or region of the United States (NOP, secs. 205.620–205.622). An examination of these programs is, however, outside the scope of this study. This analysis focuses exclusively on the OFPA and the NOP, paying particular attention to the latter in light of its more extensive provisions. The chart below provides an overview of the US regulatory framework.


ORGANIC FOODS PRODUCTION ACT
(1990-2005)
NATIONAL ORGANIC PROGRAM
(2002-2006)
Applicability
(Subpart B)
Organic Production and Handling Standards
(Subpart C)
Organic Labelling Requirements
(Subpart D)
Accreditation and Certification System
(Subparts E and F)
Administrative Provisions
(Subpart G)
National Lists of Allowed and Prohibited Substances

2. OBJECTIVES AND PRINCIPLES

Section 2102 of the Organic Foods Production Act identifies the following three overall objectives for its adoption:

1) to establish national standards governing the marketing of certain agricultural products as organically produced products;
2) to assure consumers that organically produced products meet a consistent standard; and
3) to facilitate interstate commerce in fresh and processed food that is organically produced.

The main purpose of US organic law is thus to regulate the marketing of products sold or labelled as organic through the elaboration of national production and handling standards, together with the establishment of an inspection and certification program in order to ensure compliance with them. Being primarily concerned with the final sale of organic products, the Organic Production Act does not prescribe a set of general principles on the organic production system as a whole, unlike in the Codex Alimentarius Guidelines (Foreword, 7). The same applies to the NOP, which is considered by the US government as a labelling and marketing regulation rather than an official endorsement of organic farming.[191]

3. SCOPE OF APPLICATION

As to **covered products**, the OFPA and the NOP address any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock, that is marketed in the United States for human or livestock consumption (OFPA, sec. 2103; NOP, sec. 205.2). Whereas water and salt are not excluded from the definition of agricultural product –as in the Codex Alimentarius Guidelines (sec. 2.2) – they are explicitly excluded from the calculation of the percentage of organically produced ingredients (see section 4 below). In addition, the OFPA defines "livestock" as encompassing:

191 K. DiMatteo, 'Case-Study-USA' in I. Källander and G. Rundgren (eds.), *Building Sustainable Organic Sectors* (IFOAM, 2008), p. 180.

any cattle, sheep, goat, swine, poultry and equine animals used for food or in the production of food; fish used for food, wild or domesticated game; and other non-plant life. Unlike the Codex Alimentarius Guidelines (sec. 2.2), the products of hunting or fishing of wild animals are not explicitly excluded from this definition.

As to **covered operators**, the OFPA and the NOP address any producer or handler of crops, livestock, livestock products or other agricultural products that are intended to be sold, labelled or represented as "100 percent organic," "organic," or "made with organic" (OFPA, sec. 2103; NOP, sec. 205.2). The term "producer" is defined as including any person who engages in the business of growing or producing food, feed and other agricultural-based consumer products, including fibber (OFPA, sec. 2103; NOP, sec. 205.2). "Handlers" in turn refers to any person engaged in the business of handling agricultural products, except for final retailers that do not process such products (see below). Nonetheless, Section 205.101 of the NOP identifies three categories of operators that are exempted from the requirement of obtaining organic certification:

- Small producers and handlers: producers and handlers of organic products with gross sales equal to $5000/year or less are fully exempted from certification requirements but must comply with those applicable to the production, handling and labelling of such products (see sections 4 and 5 below).
- Final retailers: retail food establishments that handle organically produced agricultural products but do not process them are fully exempted from certification requirements.
- Handling operations of products containing less than 70 percent organic ingredients: handlers of such products are exempted from certification but must comply with certain prevention measures (i.e. protect organic products from commingling with no-organic ones and from contact with prohibited substances) as well as with labelling and record-keeping requirements (see sections 4 and 5 below).

Lastly, it should be noted that the OFPA and the NOP apply without prejudice to four other US Acts, namely: the Federal Meat Inspection Act; the Egg Products Inspection Act; the Federal Food, Drug and Cosmetic Act; and the Federal Insecticide, Fungicide and Rodenticide Act (OFPA, sec. 2120(f)).

4. ORGANIC LABELLING AND CLAIMS

Subpart D of the National Organic Program lays down labelling requirements for products to be sold or represented as organic on the US market. The use of the term "organic" is clearly restricted to the labelling of products that have been duly certified as compliant with national organic standards (OFPA, sec. 2107; NOP, sec. 205.300). For labelling purposes, the NOP distinguishes four categories of products on the basis of their organic composition:

- *Products labelled as "100 percent organic:"* raw or processed agricultural products that contain 100 percent organically produced ingredients (by weight or fluid volume, excluding water and salt).
- *Products labelled as "organic:"* raw or processed agricultural products that contain at least 95 percent organically produced agricultural ingredients (by weight or fluid volume, excluding water and salt). Any remaining product ingredients must be organically produced, unless not commercially available in an organic form, or must be non-agricultural substances or non-organically produced agricultural substances included the National Lists of Allowed and Prohibited Substances (see section 5 below).
- *Products labelled as "made with organic:"* multi-ingredient agricultural products that contain at least 70 percent organically produced ingredients (by weight or fluid volume, excluding water and salt). The remaining non-organic ingredients shall not be produced using prohibited practices (see section 5.1 below).
- *Products with less than 70 percent organically produced ingredients*: multi-ingredient agricultural products that contain less than 70 percent organically produced ingredients (by weight or fluid volume, excluding water and salt). The remaining non-organic ingredients may be produced and handled without regard to the prescribed production and handling standards.

In line with the Codex Alimentarius Guidelines (sec. 3.2), labels must include clear indications that they relate to a method of agricultural production and specify the name of the accredited agent that has certified the handler of the finished product. The use of the USDA seal and/or of certifying agents' logos is voluntary for products labelled as "100 percent organic" or

"organic." However, the USDA seal cannot be placed on agricultural products with 70 percent or less organically produced ingredients. Products with at least 70 percent organically produced ingredients may nonetheless carry the certifying agent's logo (NOP, secs. 205.303–305). The USDA seal and certifying agents' logos must not be used for agricultural products organically produced or handled on an exempted operation (see section 3 above), nor shall these products be otherwise presented as "certified organic products/ ingredients" to consumers (NOP, sec. 205.310).

Finally, specific requirements apply to the labelling of livestock feeds, of non-retail containers used for shipping or storage purposes and of non-packaged products at the point of retail sale (NOP, secs. 205.306–309). Although the Codex Alimentarius Guidelines (sec. 3.7) contemplate the possibility of labelling products of farms in conversion to organic production methods under certain conditions, there is no provision to that effect in US law.

5. ORGANIC PRODUCTION, PROCESSING AND HANDLING RULES

Sections 2105–2113 of the OFPA lay down general production and handling standards for products to be labelled or sold as organic on the US market. As indicated in section 1, these standards are complemented by the more detailed requirements of Subpart C of the National Organic Program. The subsequent sections present the main aspects of the US national organic standards.

5.1 General requirements

Sections 205.105 and 205.301 of the NOP identify a number of production/ handling methods and substances as generally prohibited in organic farming:

- Organic products must not be produced using non-organic ingredients when organic ingredients are available, nor include organic and non-organic forms of the same ingredient.
- Such products must be produced or handled without the use of substances forbidden in the National List of Allowed and Prohibited Substances (hereinafter, US List). The US List is found in Subpart G of the NOP and is composed of: synthetic substances allowed for use

in organic crop and livestock production (secs. 205.601[192],205.603); non-synthetic substances prohibited for use organic crop and livestock production (secs. 205.602, 205.604); non-agricultural (non-organic) substances allowed as ingredients in processed products labelled as "organic" or "made with organic" (sec. 205.605); non-organic agricultural ingredients allowed for use in processed products labelled as "organic" (sec. 205.606). Departing from the Codex Alimentarius Guidelines (annex 2) and other national legislations, the US List is not limited to "permitted substances" and is mainly divided on the basis of the nature of substance (synthetic v. non-synthetic), rather than its use. As contemplated in the Codex Alimentarius Guidelines (sec. 5.3), the US List is open-ended, being subject to review in accordance with the established criteria and procedure. Substances may be removed or included on the basis of individual petitions to the NOSB which, after an evaluation, makes a recommendation to the Secretary of Agriculture responsible for taking a final decision (sec. 205.600, 205.607).

- Such products must not be produced or handled with 'excluded methods' (except for vaccines), defined as "variety of methods used to genetically modify organisms or influence their growth and development by means that are not possible under natural conditions or processes and are not considered compatible with organic production" and include: cell fusion, microencapsulation and macroencapsulation, and recombinant DNA technology. They do not include: the use of traditional breeding, conjugation, fermentation, hybridisation, in vitro fertilization, or tissue culture (sec. 205.2).
- Such products must not be produced using sewage sludge;.
- Such products shall not be processed using ionising radiation and/or processing aids not approved in the US List.
- Such products shall not contain sulphites, nitrates or nitrites added during the production and handling processes (except in the case of wine).

192 A list of proposed as well as final amendments can be found at: http://www.ams.usda.gov.

5.2 Production of plant and plant products

The OFPA contains limited provisions concerning production standards for organic products of plant origin (sec. 2109), which have been mainly developed through Sections 205.202–237 of the NOP.

As to **conversion periods**, US law requires that no prohibited substance is applied to the land for a period of three years immediately preceding the harvest of the crop (OFPA, sec. 2105; NOP, sec. 205.202). Unlike the Codex Alimentarius Guidelines (annex 1, A.1–2), US law does not explicitly demand active organic management throughout this three-year conversion period, nor that it only begins once the production unit has been placed under an inspection system.

As to **partial conversion**, the NOP allows the parallel production of organic and non-organic crops within the same farm but requires that physical barriers, including buffer zones, be established to prevent co-mingling of organic and conventional products as well as unintended contact prohibited substances (sec. 305.201–202). US law does not explicitly prohibit the alternation between organic, in-conversion to organic and conventional production methods, as provided for in the Codex Alimentarius Guidelines (annex 1, A.4).

With regards to organic management practices, the NOP contains specific provisions on the following: seeds and planting stock practices; soil fertility and crop nutrient management practices; crop pest, weed and disease management practices; wild-crop harvesting practices.

Producers are under a general obligation to use organically grown **seeds and vegetative reproductive material**. Only if these are not commercially available, recourse to non-organically produced seeds and other vegetative reproductive materials may be had, provided they are untreated, or if treated with permitted substances in the US List. An authorisation shall be obtained from the Administrator for the Agricultural Marketing Service of the USDA. In addition, seeds and planting stock treated with substances prohibited in the US List may be used in organic crop production insofar as the application of these materials is required by federal or state phytosanitary regulations (NOP, sec. 205.204).

The **fertility and biological activity of the soil** shall be maintained through tillage and cultivation practices that maintain and improve the physical, chemical and biological condition of the soil and that minimise soil erosion. A number of cultivation methods are spelled out, including appropriate crop-rotation programmes and the application of plant and animal materials. In addition, there is a clear prohibition on the use of sewage sludge and of any fertilizer or composted plant, and animal material containing synthetic substances not included in the US List are all prohibited (NOP, sec. 205.203).

Following the Codex Alimentarius Guidelines (annex 1, A.6), Section 205.206 of NOP provides a non-exhaustive list of preventive methods for the purpose of controlling **plant pests, diseases and weeds**. However, the NOP differentiates between control methods of general application (including the choice of appropriate species and the implementation of adequate crop rotation programmes) and those specific to pest problems (including, protection of natural enemies), weed problems (including, mechanical cultivation, mulching and mowing) and disease problems (including the application of non-synthetic biological, botanical and mineral inputs). When these practices prove insufficient to prevent/control plant pests, weeds and diseases, synthetic substances allowed for use in organic crop production under the US List may be applied, provided that they are documented in the producers' organic system plan (see section 6 below).

Finally, Section 205.207 of the NOP addresses the **collection of wild plants**, albeit in a less detailed manner than the Codex Alimentarius Guidelines (annex 1, A.9). To be sold as organic on the US market, a wild crop must be harvested from a designated area that has not been treated with prohibited substances for a period of three years immediately preceding the harvest of the wild crop. Wild-crop harvesting and gathering practices shall not be destructive to the environment. Pursuant to Section 2113(f) of the OFPA, the collection of wild plants is also subject to the established inspection and certification system (see section 6 below).

5.3 Production of livestock and livestock products

As in the case of crops, the OFPA establishes general standards on organic livestock production (sec. 2110), which have been further elaborated through Sections 205.236–239 of the NOP.

As to the **conversion periods**, Section 205.236 of the NOP requires livestock products to have been under continuous organic management from the last third of gestation or hatching in order to be sold or labelled as organic on the US market. Poultry and milk products represent an exception for which specific conversion periods apply. However, no conditions are established on the conversion of the land intended for feeding crops or pasture, unlike in the Codex Alimentarius Guidelines (annex 1, B.10–11). As in the case of crop production, there is no explicit requirement that conversion periods for livestock only begin once organic standards are applied and the production unit placed under the established inspection system.

As to **partial conversion**, the NOP allows the parallel production of organic and non-organic livestock within the same farm but requires that physical barriers, including buffer zones, be established to prevent co-mingling of organic and conventional products as well as unintended contact prohibited substances (sec. 205.201).

With respect to organic management practices, the NOP contains specific provisions on the following: origin of livestock; livestock feed; livestock health care practices; and livestock living conditions.

In terms of **livestock sources/origin**, Section 2110 of the OFPA allows breeder stock to be purchased from any source provided that it is not in the last third of gestation. In addition, the NOP places little limitations on brought-in animals from non-organic sources (sec. 205.236), unlike in the Codex Alimentarius Guidelines (annex 1, B.8) and other national legislations. Also departing from the Guidelines (annex 1, B.6), there is no explicit demand under US law that the choice of breed strains and breeding methods be consistent with the principles of organic farming. Nonetheless, Section 205.236(b) of the NOP forbids the selling or labelling of livestock products as organic if they have been removed from an organic operation and subsequently managed on a non-organic one.

With regards to **nutrition**, Section 205.237 of the NOP generally requires livestock to be provided with a total feed ration composed of agricultural products that are organically produced and handled. Unlike the Codex Alimentarius Guidelines (annex 1, B.15) and other national legislations, no derogation is found in US law allowing for the provision of conventional

feedstuff under certain conditions. Nevertheless, the US List identifies synthetic and non-synthetic substances allowed for use as feed additives and supplements in organic livestock production, provided that it is done in the quantities needed for adequate nutrition and health maintenance of the different species. In addition, a number of practices are explicitly prohibited, including the use of growth promoters and hormones and of feed formulas containing urea or manure (NOP, sec. 205.237(b)).

Section 205.238 of the NOP deals with the **health care** of organic livestock. Following the Codex Alimentarius Guidelines (annex 1, B.20), emphasis is placed on disease prevention practices, including an appropriate selection of animal species, the provision of feed rations sufficient to meet nutritional requirements, regular exercise and freedom of movement, the establishment of appropriate housing and sanitation conditions. However, and departing from the Guidelines, the NOP also includes the performance of physical alterations and the administration of vaccines and other veterinary biologics in the list of preventive measures (sect 205.238(a)(5)–(6)). If these preventive practices prove inadequate to prevent animal diseases, producers may administer synthetic medications allowed in the US List. Conditions on the use of synthetic drugs are only found in the US List and not (also) in the provisions dealing with livestock health care practices, as in the Codex Alimentarius Guidelines (annex 1, B.22) and other national legislations. In addition, Section 205.239 of the NOP lays down livestock **housing and free-range conditions**, including the establishment of living facilities that accommodate the health and natural behaviour of animals and the facilitation of access to open-air runs and pasture. Lastly, Section 2110(f) of the OFPA establishes record-keeping and identification requirements for organic livestock production.

Unlike the Codex Alimentarius Guidelines (annex 1, B.25–30) and other national legislations, neither the OPA nor the NOP regulate the husbandry, transport and slaughter of organic livestock. In addition, there are no species-specific requirements under US law, similar to those on beekeeping found in the Codex Alimentarius Guidelines (annex 1, B.54–81).

5.4 Handling and Processing

Section 2111 of the OFPA spells out a number of practices that are generally prohibited in handling operations seeking organic certification. In addition,

Sections 205.270–272 of the NOP lay down more specific requirements with respect to processing of organic food, pest management practices and the prevention of co-mingling and contamination.

In line with the Codex Alimentarius Guidelines (annex 1, C.82), the NOP generally prohibits the use of **ionising radiation** in the processing of organic products (see section 5.1 above). Also in accordance with the Guidelines (annex 1, C.88), the NOP requires handlers to preserve the **organic integrity** of products through the implementation of measures necessary to prevent co-mingling with products from conventional farming as well as contact with prohibited substances.

With regards to **pest management**, Section 205.271 of the NOP demands that producers or handlers of organic facilities undertake the following measures, in order of preference: (1) preventive management practices (such as removal of habitat and access to facilities by pest organisms and management of environmental factors); (2) if the aforementioned prove inadequate, mechanical/physical methods; (3) if the aforementioned prove insufficient, using non-synthetic and synthetic substances permitted in the US List for the purpose of pest control; and 4) if the aforementioned prove ineffective, synthetic substances not included in the US List, provided that agreement is reached between handlers and certifying agents on the conditions of application.

Concerning **packaging, storage and transportation**, the NOP prohibits the use of packaging materials and storage containers or bins containing synthetic fungicide, preservative, or fumigant, as well as the use or re-use of any bag or container that has previously been in contact with substances that risk compromising the organic integrity of a product (sec. 205.272).

Finally, as to **processing methods**, Section 205.270 provides a non-exhaustive list of mechanical and biological methods that may be used to process an organically produced agricultural product for the purpose of retarding spoilage or otherwise preparing the product for the market. In addition, the US List specifies both non-agricultural substances and non-organically produced agricultural substances allowed for use in the processing of organic food, insofar as these are not commercially available in an organic form. Finally,

the use of volatile synthetic solvent or other synthetic processing aids not included in the US List is prohibited.

6. ACCREDITATION AND CERTIFICATION

As foreseen in the Codex Alimentarius Guidelines (sec. 6.2), Section 2115 of the OFPA mandates the Secretary of Agriculture to establish and implement an accreditation program for the purpose of organic certification. This Section also prescribes basic requirements for the accreditation of certifying agents which have been further elaborated in Subpart F of the NOP. The Secretary of Agriculture, assisted by the Administrator for the Agricultural Market Service (the Administrator), is responsible for the approval and supervision of inspection/certification bodies. In addition, Subpart E of the NOP establishes minimum requirements for developing organic inspection and certification programmes.

Public and private entities, both domestic and foreign, may apply for **accreditation** to the Administrator, by submitting the official application form and documentary evidence of their ability to comply with the established accreditation criteria and by paying the accreditation fees stipulated in Section 205.640 of the NOP. The Administrator evaluates received applications on the basis of general requirements for accreditation detailed in Sections 2116 of the OFPA and 205.501 of the NOP. These include:

- ability to ensure a full implementation of the organic inspection and certification program (see below);
- sufficient professional expertise and adequate internal management;
- adoption of specific measures to prevent conflicts of interest; and
- compliance with record-keeping, reporting and confidentiality obligations.

Unlike in other national legislations, formal accreditation of certification bodies to the ISO/IEC Guide 65 is not required under US law. In cases of successful applications, accreditation is formally granted by the Secretary of Agriculture and shall not exceed five years, with possibility of renewal in accordance with the established procedure (NOP, secs. 205.500(b), 205.510(c)). Accredited certifying entities must sign a "statement of agreement" prepared by the

Administrator, whereby they undertake to comply with the above-indicated accreditation criteria and obligations (NOP, sec. 205.505). In addition, such entities are subject to ongoing oversight and auditing by the Administrator, including through on-site inspections (NOP, sec. 205.508). Findings of non-compliance by certifying agents result in suspension or revocation of their accredited status by the Secretary of Agriculture. Such agents must cease all certification activities and, in cases of revocation, will be ineligible for accreditation for a period of at least three years (sec. 205.665 NOP). The Secretary is competent to determine, on a case-by-case basis, whether farming/handling operations certified by these agents may nonetheless retain their organic certification (OFPA, sec. 2116(j)). Lastly, a peer review panel, established by the Administrator, is entrusted with (*inter alia)* the annual evaluation of US accreditation procedures against the ISO/IEC Guide 61, 'General requirements for assessment and accreditation of certification/registration bodies' (OFPA, sec. 2117; NOP, sec. 205.509).

Following the Codex Alimentarius Guidelines (annex 3), the NOP prescribes minimum standards and precautionary measures for developing organic **inspection and certification programmes**. Pursuant to Section 205.400 of the NOP, an operator seeking to receive or maintain organic certification must:

- comply with the applicable organic production and handling standards;
- establish and implement an organic production and/or handling system plan that is submitted to the certifying agent and contains the information detailed in Section 205.200 of the NOP;
- permit on-site inspections with complete access to production and/or handling facilities by the certifying agent;
- maintain all records applicable to the organic operation for at least five years;
- immediately notify the certifying agent of changes in the certified operation having repercussions on compliance; and
- pay the certification fees charged by the certifying agent in accordance with Section 205.642 of the NOP.

Sections 205.401–2 further deal with the application procedure and documentary review by the certifying agent. Following the Codex Alimentarius Guidelines (annex 3.9), a full physical inspection is mandatory at least once a

year. Additional inspections (announced or unannounced) may be undertaken at the discretion of the certifying agent or if required by the Administrator/ Secretary (NOP, sec. 205.403). Inspection and testing of agricultural products that are to be sold as organic may also be carried out by the Administrator or the competent state official, not only by certifying agents (NOP, sec. 205.670). Also in line with the Codex Alimentarius Guidelines (Foreword, 9), the NOP demands a clear separation between inspection and certification functions of accredited bodies. That is, decisions to certify an operation must be made by a person different from those who conducted the review of documents and on-site inspection (sec. 205.501(11)(vi)).

When organic certification is granted, the certifying agent must issue a "certificate of organic operation," specifying the name and address of the certified operator, the effective date of certification and the categories of covered organic products (NOP, sec. 205.404). Continuation of certification is subject to compliance of the updated organic production/handling system plan with national standards and to payment of annual certification fees (NOP, sec. 205.406) The NOP also regulates instances where organic certification is denied, including the rights of applicants to file an appeal and to re-apply for certification (sec. 205.405).

As in the case of certification bodies, Subpart G of the NOP provides a non-compliance procedure applicable to certified operators. When an inspection, review or investigation by a certifying agent reveals a non-compliance with national organic standards, a written notification of non-compliance is sent to the certified operator concerned, which may rebut or correct the non-compliance. If the rebuttal or correction is unsuccessful, a written notification of proposed suspension or revocation is sent to the certified operator concerned. The NOP does not specify the grounds or conduct that may lead to either suspension or revocation of organic certification, although their consequences differ in terms of future eligibility. Operators whose certification has been suspended can at any time submit a request to the Secretary of Agriculture for a reinstatement of their certification, accompanied by evidence of correction of previous non-compliance. Conversely, operators whose certification has been revoked are ineligible to receive certification for a period of five years. In addition, any certified operator that knowingly misuses organic labelling is subject to a maximum civil penalty of US$ 10 000 per violation (NOP, sec. 205.662).

7. IMPORT REQUIREMENTS

Unlike the Codex Alimentarius Guidelines (sec. 7), none of the US legal measures exclusively dedicate a single section to the importation of organic products into the United States. Nonetheless, Section 205.300(c) of NOP does require organic products produced in a foreign country and exported for sale in the US to be certified and labelled in accordance with Subparts E and D of the NOP (see sections 4 and 6 above). Organic certification of foreign products can be performed through three alternative channels (NOP, sec. 205.500):

- *Direct accreditation by the USDA*: organic certification is performed by US or foreign certification bodies operating in a foreign country that have been directly accredited by the USDA; or
- *USDA recognition of foreign accreditation system*: organic certification is performed by foreign certification bodies recognised by the USDA, upon request of the third country government, as having been accredited in that country in a manner that satisfies the NOP accreditation requirements; or
- *Bilateral equivalency agreement*: organic certification is performed by foreign certification bodies that are accredited by a foreign governmental authority pursuant to an equivalency agreement with the United States.

There are no official statistics on the actual size of U.S. imports and exports of organic products. However, different industry surveys have revealed that imports of fresh vegetables and fruits are significant in the US organic market. For instance, it has been estimated that the US generally imports eight times as much organic products as it exports and that the retail value of such imports exceeded US$ 125 million in 2000–2001.

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Organic agriculture and the law is a legislative study that seeks to identify and explain the different legal issues related to organic production. The study includes a comparative analysis of selected public and private legal sources of international relevance as well as recommendations on the issues to consider in the design of national organic agriculture legislation. It is a first step in unravelling the complex and highly technical issues related to drafting national legislation on organic agriculture, and it is hoped that comments from readers will contribute to refining and enriching the preliminary findings presented in this volume.

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