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Plurilateral Regulatory Cooperation on Organic Agriculture and Trade

Diane Bowen, in collaboration with Ulrich Hoffmann

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Preface

This paper underpinned dialogue at an invited workshop of government organic regulatory authorities and private organic sector experts on 12 February 2015 in Nuremberg, Germany. The workshop concluded that steps should be taken by the authorities to identify practical, plurilaterally cooperative measures that can be undertaken within the context of current bilateral equivalence arrangements. As a basis for discussion among experts, this paper does not provide a comprehensive history and analysis of organic standards and technical regulations. This background information is provided in UNFSS Discussion Paper #2, Review of key systemic issues and findings resulting from the International Task Force on Harmonization and Equivalence in Organic Agriculture (ITF) and the Global Organic Market Access (GOMA) project, which is available on the UNFSS website.

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Terms

Bilateral: Involving two countries.

Equivalence: The acceptance that different standards or technical regulations on the same subject fulfill common objectives.

Equivalence Agreement/Arrangement: For the purpose of this paper, a contractual norm between governments to accept the regulatory scheme of a country based on equivalence of its technical regulations and mutual recognition of conformity assessment. An "agreement" has a higher diplomatic status (usually in the form of a treaty) than an "arrangement."

Harmonization: A process that aims at the establishment of identical standards, technical regulations and conformity assessment requirements.

Multilateral: involving or open to all member states in the WTO.

Mutual Recognition: The term is often used more restrictively with reference to results of conformity assessment. However, in the context of this paper it refers to recognizing technical regulations on the same subject, and associated conformity assessment, as equivalent. Reference in this paper to mutual recognition agreements and equivalence agreements are synonymous except when otherwise annotated as otherwise.

Organic sector: All non-governmental parties that are involved in the production, distribution, promotion, education and other functions to develop organic agriculture.

Plurilateral: Involving three or more countries but not all WTO member states.

Unilateral: Undertaken by one country without the agreement of others.

Abbreviations

APEC: Asia Pacific Economic Cooperation

ASEAN: Association of SouthEast Asian Nations

MRAs: Mutual recognition agreements

NOP: National Organic Program (of the United States)

TBT: Technical Barriers to Trade

VSS: Voluntary sustainability standards

WWTG: World Wine Trade Group

Executive Summary

The global organic market in 2013 accounted for $63 billion, as compared to $26 billion in 2001. Today's organic value chains depend on standards, conformity assessment, identity preservation and labeling – now mostly regulated by governments. Currently 46 countries fully regulate organic agriculture and labeling, and approximately 20 more are in the process of developing full regulations. Equivalence and mutual recognition are a prime solution for organic agriculture in overcoming trade problems caused by the proliferation of regulations. Governments, mostly from developed countries, have so far developed twelve bilateral equivalence arrangements, and several more are in late stages of negotiation. But the proliferation of these solutions gives rise to a new set of challenges. For example, there is the complexity of developing and managing multiple equivalence arrangements, and there are factors that militate against scaling up these types of arrangements, especially with developing countries.

This paper aims to kindle a dialogue on the new challenges and opportunities in the era of equivalence. In particular, it looks at the possibility to address these challenges and opportunities by considering engagement in plurilateral cooperation among national trading partners, especially those who have multiple bilateral equivalence arrangements/agreements with common partners. Plurilateral cooperation can range from developing mutual processes for managing existing bilateral arrangements and harmonizing regulations to replacing of some or all bilateral arrangements/agreements with a plurilateral agreement.

The paper starts with an overview of mutual recognition in the context of global governance for trade. Mutual recognition agreements (MRAs) are now expanding worldwide bilaterally, in regional intergovernmental organizations, and other plurilateral platforms. Some of these are "enhanced" recognition agreements encompassing both technical regulations and conformity assessment in specific product sectors. Recognition agreements not only represent a most effective approach to addressing the impact of differences in national regulatory systems as barriers to trade, but they also constitute a powerful impetus for improving such systems through regulatory cooperation. Bilateral MRAs now account for a high percentage of the trade volume between developed countries, but relatively few MRAs have been signed between developed and developing countries. The reason is that MRAs require a level of trust in a nation's technical competence and its certifying bodies that few developing nations are likely to be able to provide. Regionalization enables developing countries to deal with these realities, with the aim to create their own regional plurilateral trade agreements for harmonization and recognition. The long term goals of these regional initiatives is to enhance their capacity and stature to negotiate as a block on trade-related agreements with developed countries, such as for mutual recognition.

Sustainable mutual recognition agreements will be ones that are actively managed through continued involvement, ensuring that the parties abide by the letter and spirit of the contract and supporting one another in this regard. In this sense, MRAs can be seen more as framework for mutual technical and regulatory assistance than for regulatory competition.

Several challenges and controversies on mutual recognition have developed. The growing tangle of bilateral and overlapping plurilateral agreements has been described as resembling a "spaghetti bowl" of management challenges. Also, development of bilateral and plurilateral agreements outside the multilateral WTO framework is controversial. Some see it as threatening good global governance through multilateralism while others see these agreements as pieces of a jigsaw puzzle that will eventually be connected to form a coherent global governance system.

Recognition agreements have trade diverting effects, especially away from developing countries, which are largely excluded. Without imposition of some international discipline on recognition deals the result could be a two-tier world trading system delineated by preferential treatment. Requirements by the WTO for a high degree of transparency and prohibition of country-of-origin rules in these agreements would provide much of this discipline. Provision of developing countries with capacity development for technical regulation and their access to recognized international conformity assessment may also address the problem.

The World Wine Trade Group is a model of both plurilateral and public-private cooperation to maintain an open course for the wine trade. Comprised of members from both developed and developing countries, the Group has developed a mutual recognition agreement on winemaking processes and an agreement on labeling. It also monitors wine trade issues worldwide and coordinates joint policy representation in regional and global platforms.

The second part of the paper addresses recognition in the organic sector, which encompasses both standards and the control systems for conformity assessment, and generally called "equivalence arrangements." The paper describes elements of the twelve current bilateral arrangements and features an Annex with a detailed comparison of them. Trading partners are generally satisfied with their arrangements, most of which are actively managed through working groups. The structured management of these bilateral arrangements, the confidence among the trade partners and their representatives, and the participation by several of the same trade partners in multiple bilateral arrangements sets the stage for moving toward a plurilateral agreement, starting first with developing plurilateral cooperation to enhance the current arrangements. Plurilateral cooperation could provide leadership toward global governance of organic trade that is credible, non-discriminatory and inclusive of many more countries. Cooperation could lead to minimizing the spaghetti effect of proliferating bilateral arrangements, improving the regulatory systems, gaining efficiency in making and managing the arrangements, and extending arrangements to other trading partners. Potential functions of plurilateral cooperation include further harmonizing the regulations, harmonizing the

recognition arrangements, conducting joint site visits, joint site evaluations for other countries seeking recognition arrangements, developing a means to track organic trade, and providing technical assistance to developing countries. Ultimately a plurilateral agreement could replace the bilateral ones. It is proposed for the trade partners to determine if there is a coalition of the willing to work on plurilateral cooperation and if so, to take steps to organize it.

Introduction

The nexus between UNFSS and organic agriculture

The global organic market in 2013 accounted for $63 billion, as compared to $26 billion in 2001.[1] Today's organic value chains depend on standards, conformity assessment, identity preservation and labeling – now mostly regulated by governments. Widespread government regulation of the organic sector distinguishes it from all other VSS systems, producing unique advantages of credibility and demand for organic products and unique challenges for market access and sector growth through trade. At the same time, organic markets constitute opportunities for developing countries and their producers to access premium pricing and beyond that to achieve a broad range of objectives related to their environmental and societal health. These factors make organic agriculture and trade an attractive space for investigation, analysis and experimental activities by the United Nations Forum on Sustainability Standards (UNFSS).

UNFSS aims to facilitate and strengthen the effective and active participation by developing countries in the international dialogue on voluntary sustainability standards (VSS). UNFSS thematic working group activities add a dimension of public-private collaboration and efficiently deliver practical results in key strategic areas of VSS. The thematic activities and their results also bring to light broader and/or more specific issues and opportunities that should be addressed by the Forum.

A UNFSS Working Group on Enhancing Interoperability of VSS, including their harmonization and equivalence, now serves as the laboratory for continuing innovation to address regulatory and trade challenges, starting with the organic sector and GAP (good agricultural practice) standards systems. The Working Group carries on thematic activities in organic agriculture and trade that were undertaken by the International Task Force on Harmonization and Equivalence of Organic Agriculture (ITF) and the Global Organic Market Access (GOMA) Project.[2] These initiatives have been innovative in implementing WTO TBT guidance, public-private dialogue

[1] Data from reports published by The Organic Monitor.

[2] A comprehensive review of these projects is a available in UNFSS Discussion Paper No. 2, *Review of Key Systemic Issues and Findings Resulting from Activities of the International Task Force on Harmonization and Equivalence in Organic Agriculture (ITF) and the Global Organic Market Access (GOMA) Project, at* http://unfss.org/documentation/discussion-paper-series/

and cooperation, meta-governance of VSS and geopolitical regionalism. In the context of proliferating regulation of organic agriculture they have been instrumental first in organizing a global dialogue and then in developing and promoting practical solutions for reducing barriers to trade of organic products through harmonization and equivalence. Regional approaches to organic standards harmonization, such as in ASEAN, are direct results of these projects. Equivalence arrangements/agreements between organic trade partners have also emerged not only as a result of the initiatives but certainly influenced by them. By the end of 2014, there were twelve such arrangements/agreements, and more on the horizon.

The new era of equivalence in organic agriculture

Equivalence and mutual recognition are prime solutions for organic agriculture in overcoming trade problems caused by the proliferation of regulations. But the proliferation of these solutions gives rise to a new set of challenges, for example, the complexity of developing and managing multiple equivalence arrangements, and the related forces that weigh against scaling up these types of arrangements, especially with developing countries. Also, heterogeneity among these arrangements and unanticipated effects from them have sparked dialogue about consistency and fairness. The notion of taking plurilateral approaches to equivalence and its management has emerged as a potential answer to the new challenges and opportunities in the era of equivalence. In particular, plurilateral cooperation may be able to set the stage for orderly global-scale governance of organic trade.

This paper aims to kindle a dialogue on the new challenges and opportunities in the era of equivalence. In particular, it looks at the possibility to address these challenges and opportunities by considering engagement in plurilateral cooperation among national trading partners, mainly those who have multiple bilateral equivalence arrangements with common partners. Plurilateral cooperation can range from developing mutual processes to manage existing bilateral arrangements to replacing some or all bilateral arrangements with a plurilateral agreement.

Approach

The paper lays a foundation for examination of the organic sector by first reviewing mutual recognition and equivalence and other related regulatory cooperation in the context of global governance. This review includes issues that are relevant for the discussion on the organic sector in the second part of the paper. It also includes one model from the wine sector on regulatory cooperation aimed at facilitating trade, which could assist discussion on the next stages of regulatory cooperation in the organic sector.[3] Following this, the state of equivalence and mutual recognition in the organic sector is examined, including a comparison of the current bilateral equivalence arrangements and the emerging challenges of managing mutual

[3] This model was chosen due to its collaborative public-private approach, which is relevant to the organic sector.

recognition. Some objectives and potential functions of plurilateral cooperation are proposed, followed by an outline of potential next steps.

Some comments about terminology

Terms like "mutual recognition" and "recognition agreement" in the international trade policy context such as the WTO, generally refer to the scope of conformity assessment rather than to recognition of a complete technical regulation including product or process method requirements. In this paper unless otherwise indicated the term refers to recognition of whole regulatory regimes, including technical requirements and conformity assessment, a definition aligned with its historical roots.[4] Mutual recognition of regulatory schemes is commonly based on the principle of equivalence, which is the acceptance that different standards or technical regulations on the same subject fulfill common objectives. In this paper, mutual recognition agreements (MRAs) and equivalence arrangements (the typical terminology used in the organic sector) are synonymous unless otherwise indicated. All current bilateral arrangements for the organic sector acknowledge both equivalence of technical requirements and recognition of conformity assessment. These arrangements and agreements are a major form of regulatory cooperation among trading partners.

Managed mutual recognition in the context of global governance

Beginnings: historic role of the European Community

The principle of mutual recognition entered the world stage largely as a result of a landmark decision by the European Court of Justice in 1979 relative to a dispute over lack of market access for Cassis de Dijon, a French fruit liqueur which did not meet Germany's requirement for the minimum amount of alcohol in fruit liqueurs sold in Germany. By ruling that "there is therefore no valid reason why, provided that they have been lawfully produced and marketed in one of the Member States, alcoholic beverages should not be introduced into any other Member State", the Court paved the way for the development of a single European market, at first facilitated through mutual recognition and later, within the framework of the European Union, also by centrally harmonized European regulations. In its ruling the Court also made a

[4] A paper from New York University Institutes on the Park (Nicolaidis 1997) offers a similar perspective, saying that "mutual recognition can be defined as a *contractual norm* between governments whereby they agree to the transfer of regulatory authority from the host country (or jurisdiction) where a transaction takes place, to the home country (or jurisdiction) from which a product, a person, a service or a firm originate (jurisdictions are generally sovereign states but they can also be sub-national units in federal entities). This in turn embodies the *general principle* that if a product can be sold lawfully in one jurisdiction, it can be sold freely in any other participating jurisdiction, without having to comply with the regulations of these other jurisdictions. The "recognition" involved here is of the "equivalence", "compatibility" or at least "acceptability" of the counterpart's regulatory system; the "mutual" part indicates that the reallocation of authority is reciprocal and simultaneous. Finally, *mutual recognition agreements* are specific instances of application of this general principle, between specific parties, applying to specific goods and services and including more or less restrictive constraints and caveats."

note that laid a foundation for defining the principle of equivalence. It observed that some obstacles to trade in the European Community must be accepted if they are related to mandatory requirements of fiscal supervision and fairness in commercial transactions, the protection of public health, and the defense of the consumer[5]. Thus, the European Community became the first functioning plurilateral example of mutual recognition and equivalence.

The WTO context

Two WTO agreements concluded at the end of the Uruguay Round, 1994, furthered the provisions to reconcile the differing regulatory regimes of members with trade liberalization. One is the food-related Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the other the Agreement on Technical Barriers to Trade (TBT). Although it is unclear whether and to what extent provisions of the TBT apply to standards, technical regulations and conformity assessment for organic products, discussions at WTO involving organic agriculture standards and regulatory regimes have taken place in the context of the TBT Agreement (Daugjberg, 2012).[6]

The TBT Agreement includes both the concept of equivalence and mutual recognition. Article 2.7 addresses equivalence, as follows: "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 fulfill the objectives of their own regulations." Conformity assessment is addressed in Article 6.1 as follows: "Without prejudice to the provisions of paragraphs 3 and 4, 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 an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures."

[5] Source: http://worldtradelaw.typepad.com/ielpblog/2007/02/cassis_de_dijon.html. This decision followed from the reasoning of the 1957 Treaty establishing the European Economic Community in Articles 28-30, prohibiting the general restriction of trade but also establishing the grounds for exceptions to this, adding that any such restrictions "shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States" (Journal of European Communities 2002). This EEC provision can be linked to a more general provision in Article XX of the GATT, originally outlining general reasons for taking measures against certain imports, including "public moral grounds; health; prison labor; and national historic/cultural treasures", and which was substantially amended in the Uruguay Round, 1994.

[6] This includes registration of concerns on trade. During several meetings the TBT Committee in 2010, it discussed the draft regulations of the Republic of Korea for organic processed products and raw ingredients. Several members expressed concern that the draft required compliance and accreditation by the Korean system for certification of all related organic products imported by Korea and that there were no options for import based on equivalence and recognition. The matter was addressed and the Republic of Korea has completed an equivalence arrangement with the United States and finalizing another with the European Union.

While providing general frameworks and guidelines, the WTO has not proven to be a space for forging multilateral recognition for regulatory schemes related to goods and services. These agreements have come about at bilateral or plurilateral levels. Some trade policy scholars have advocated that there are more roles to be played by WTO in fostering a worldwide scope of equivalence and recognition by ensuring transparency and openness of individual agreements, maximizing their geographic reach and providing an umbrella for eventual integration of different agreements in a global framework (Nicolaidis, 2005). However, practical activity on equivalence and mutual recognition is occurring outside the formal framework of WTO through bilateral and plurilateral initiatives. Taken as a "movement" these activities can be seen as constituting a new approach to global governance that advances at least to some degree the TBT principles and objectives. There is some debate about whether this signifies failures in WTO or rather the proper adjustment of the role of WTO (to govern on a level of principles and guidance) and its member states (to act bilaterally or plurilaterally on practical implementation).

Proliferation of Recognition

Mutual recognition agreements (MRAs) have proliferated, starting with agreements initiated by and with the EU, and now expanding worldwide bilaterally and in regional platforms. There are basically three options for market access in the TBT context, and mutual recognition agreements have come forward as the dominant mechanism. The others are harmonization and policed national treatment. Harmonization, while attainable in some cases, is often not applicable due to legitimate differences between countries in characteristics such as cultural factors, stage of development, governance constructs, and geography. Organic agriculture, which is site specific, provides a typical example. Policed national treatment requiring compliance with importing country requirements also limits market access for similar reasons.

There are now many recognition agreements, a substantial number of them limited to conformity assessment, but increasingly negotiated as "enhanced recognition"[7] which includes equivalence of technical regulations and recognition of conformity assessment. One such enhanced recognition agreement, a cornerstone of a single economic market, is the Trans-Tasman Mutual Recognition Agreement (TTMA) between Australia and New Zealand, which came into effect in 1998. Under TTMA a good that may be legally sold in Australia may be sold in New Zealand, and vice versa. This non-treaty arrangement is supported by overarching legislation, which means that all laws are subject to it unless specifically excluded or exempt. However, most mutual recognition agreements are not so broad. Generally they cover specific industry sectors such as medical devices, pharmaceuticals, telecommunications equipment, electromagnetic compatibility, toys, low voltage electrical equipment, pressure equipment, and organic agriculture.

[7] A term coined in a 2004 EU discussion paper

Recognition agreements lower trade costs for producers and traders in countries by eliminating the need for duplication of certification, reducing the amount of time needed to put new products in the market, and increasing the choice of products available to consumers in target markets. In short, MRAs save time and money for businesses. By 2005 the MRA between the United States and and the European Union alone saved about 40 billion Euro worth of transatlantic trade a year, producing savings around 200 million Euro a year (Amurgo-Pacheco, 2006).[8] "Mutual recognition agreements (MRAs) will likely be at the heart of trade diplomacy in the coming decade, Nicolaidis observed in 1997. "Not only do they represent a most effective approach to addressing the impact of differences in national regulatory systems as barriers to trade, but they also constitute a powerful impetus for improving such systems through regulatory cooperation."

Managed mutual recognition

Nicolaidis (1997) argues that sustainable mutual recognition agreements will be ones that are actively managed.

"Mutual recognition agreements are typical contracts under conditions of uncertainty and ambiguity negotiated between national governments. These are incomplete contracts in that they cannot spell out all the situations that may emerge during their implementations. The contracts are signed between countries that act simultaneously as home and host countries. Under MR contracts, host countries commit to granting some pre-defined degree of market access. In turn, home countries commit to adequate supervision of economic actors in exchange for such market access. The mutual commitments form 'insecure contracts' since these are just promises or expectation of effective access in the host state and sound regulatory supervision in the home state. This conceptual framework puts in sharper light four main mechanisms by which mutual recognition contracts can be made more sustainable.

First, contracts are obviously more sustainable when all parties are confident that the others abide by the letter and spirit of the contract. In the case of MRAs, such confidence is based on the initial familiarization and continued involvement with the foreign system, including through: obligations of transparency of regulatory systems, decision making process, and change in such system through the continued exchange of information between regulators; mutual monitoring that allows for the continued assessment of technical competence, capabilities, and efficiency as well as the foreign industries overall state of the art in its capability to comply with the importing country's requirements (host country accreditation inspectors must have a permanent right of access in the exporting country); and finally, since there will always remain some information asymmetry, there needs to be trust that the foreign

[8] At the time, the EU-US MRA covered the following sectors: telecommunications terminal equipment, electromagnetic compatibility, electrical safety, recreational craft, medical devices and pharmaceuticals.

authorities will continue to have adequate regard for public health, safety and environmental concern.

A second way in which mutual recognition contracts can be made more sustainable is to have parties commit to help each other abide by the terms and spirit of the contract. In this sense, MRAs should be seen more as framework for mutual technical assistance than for regulatory competition. Host countries can help home country enforce compliance, by readily transferring to the country of origin information about regulated actors obtained in the territory of sale (e.g. financial sector). More generally, parties can think of MRAs as a means of reallocating rights of control to ensure an optimal division of labor between regulators across jurisdiction. Ceteris paribus, quality control is better done by local authorities/inspectors who can come more often, know local conditions better, etc. A common culture of certification quality needs to be created through co-operation between labs. MRAs between private actors to supplement government to government MRAs and conditional on mutual confidence help increase incentives for the quality reputation of individual registration, licensing, certification or testing bodies. Collective guarantees of quality control backed up by peer enforcement in turn increase the confidence of the buyers in the soundness of control.

Third, there may be cases when even these two types of mechanisms are not sufficient to ensure compliance on the part of home regulators. The theory points out that the sustainability of contracts are highly affected by whether parties can convincingly threaten to "walk out" of an agreement if contractual terms cease to be respected. The advice is: when contracts are insecure, make contingency explicit and specify walk away conditions. This is why mutual recognition agreements must be designed more explicitly as contingent agreements that can be terminated should the situation change in a country that fails to produce the required regulatory results. At one extreme, MRAs could even include trial periods. Such overall reversibility of MRAs depends both on the rights --safeguard clauses- and capacities of parties to do so. Conditions for adequate reversibility include: 1) the possibility to observe "the state of the world" that is the soundness of home regulation, e.g. transparency clauses as well as a format to interpret data on foreign regulations. 2) the existence of fair arbitration mechanisms available in cases of alleged non compliance."

The landscape of recognition

Bilateral and plurilateral MRAs

Bilateral MRAs now cover a high percentage of the trade volume between developed countries. However, relatively few MRA have been signed between developed and developing countries.[9] The reason is that MRAs require a level of trust in technical competence and certification bodies that few developing nations are likely to be able to provide (Pachero, 2006). This is a

[9] One exception is the equivalence agreement between Canada and Costa Rica covering trade in certain organic products.

challenge to both equivalence and harmonization. In July, 2012 WTO Director General Pascal Lamy observed that, "The potential for harmonization among a large set of countries is limited by differences in preferences, levels of development, and the capacity to ensure good governance. The potential for mutual recognition, which requires a high degree of trust, is also limited to "clubs" of countries sharing a similar approach. These two options may take root more easily through regional cooperation agreements than multilaterally."

Regionalization enables developing countries to deal with these realities, with the aim to create their own regional plurilateral trade agreements and arrangements for harmonization and recognition, two examples being ASEAN and Mercosur. Regionalization can help raise all boats when there is goal-driven dialogue and more developed nations interact with and provide technical assistance to less developed nations. A prominent case of regionalization, ASEAN is in the process of economic integration, which includes both harmonization and mutual recognition of technical regulations and conformity assessment systems.[10] While the short-term goals are their own economic integration, the long term goals of these regional initiatives is also to enhance their capacity and stature to negotiate as a block on trade-related agreements with developed countries, such as for mutual recognition. APEC is an interesting case of a trade related regional platform that is inclusive of both developed and developing countries. APEC has developed guidance and model recognition agreements for conformity assessment and technical regulations in the area of telecommunications equipment and more recently for conformity assessment of electrical and electronic equipment. APEC members may then volunteer to enter into bilateral or plurilateral agreements accordingly. Only a few members of APEC have so far participated in bilateral agreements with each other on this basis, and these essentially constitute the most developed member countries.[11]

Spaghetti bowls, termites and jigsaw puzzles

Proliferation of agreements has come to have an effect akin to the proliferation of heterogeneous technical regulations and conformity assessment systems in individual countries. This problem in not unique to non-tariff agreements, and in fact it was first recognized as a problem primarily for trade agreements containing both tariff and non-tariff measures. Jagdish Bhagwati in 1991 famously described the maze of overlapping trade agreements as being akin to a 'spaghetti bowl' (analogously "noodle bowl" in the Asian context) that actually harms trade by increasing transaction costs for businesses through variable tariffs, complicated rules of origin, differential approaches to addressing technical barriers to trade and assorted bureaucratic requirements. Bhagwati has also called free trade agreements "termites" that are eating away at and are undermining the core international trade principle of non-discrimination. (Bridges, 2014). Others see the problem as temporary, and speculate that

[10] This includes developing recognition of the organic regulations of member states, which is in process.

[11] Vietnam is the exception, having implemented recognition of conformity assessment with several other APEC members.

multiple bilateral agreements will be harmonized on a regional basis, and beyond that, regional agreements will eventually be multilaterized. The process of coherently making plurilateral agreements out of bilateral ones and eventually multilateralizing those has been compared to that of constructing a global jigsaw puzzle (Menon, 2014).

A 2007 OECD paper study of TBT-related rules in regional agreements demonstrated that while provisions are generally consistent with WTO TBT principles and rules, they demonstrate significant variability. The study observed that, "when overlapping agreements promote different criteria for the harmonization of standard-related measures and when bilateral or regional initiatives are conducted in isolation from international efforts and divert attention from multilateral trade and standards-related negotiations, new obstacles may arise both for regulators and businesses. Such constraints are further magnified for low income countries afflicted by administrative and technical capacity-related problems" (Lesser, 2007). By extension, the same concerns could apply to heterogeneous bilateral and plurilateral MRAs, as will be examined later in the specific case of organic equivalence and recognition.

Avoiding trade discrimination in mutual recognition

Amurgo-Pacheco published a model in 2006, which in combination with empirical evidence demonstrates that recognition agreements between developed countries harm exports from developing countries. The factor cited is the trade diverting effect of these agreements. Using OECD estimates that the cost of meeting different standards and conformity assessment requirements across international markets for regulated goods is between two and ten percent of the cost of production, the author points to distinct economic advantage in trade covered by mutual recognition. But almost all mutual recognition agreements are between developed countries. Without imposition of some international discipline on recognition deals, he says, the result will be a two-tier world trading system delineated by preferential treatment.

Amurgo-Pacheco makes some proposals for avoiding this fate. The "international discipline" suggested is first, that the WTO should prohibit rules of origin in recognition agreements, enabling any MRA-authorized certification body to certify any good (or process for producing such a good) anywhere.[12] A second discipline is that the WTO should enforce the notification of these agreements and provide for more transparency on their details. Another proposal is that a global third party certification agency could be established to provide an accountable and acceptable certification in the third countries that is universally accepted for trade. This agency could cooperate with competent local auditing and inspection functions to implement some of the certification functions. Such a cooperative arrangement could both provide capacity development for the local providers and incentive for them to develop their capacity if indeed

[12] This proposal is asserted based on empirical work demonstrating that mutual recognition agreements promote trade between trading partners in a region and with the rest of the world unless they contain restrictive rules of origin in which case the benefit is confined to the parties to the agreement at the expense of imports from other countries (Chen, 2008).

the result is market access. A last proposal is for intense allocation of aid to developing countries from international development organizations for capacity and infrastructure development towards certification and testing.

Nicolaidis (2005) comments along the same lines. "The lack of multilateral MRAs thus raises the following key questions: How open are mutual recognition regimes? Are only those states with advanced regulatory systems or large markets the exclusive beneficiaries of mutual recognition regimes? Are developing countries once more shut out of lucrative markets? Is non-discriminatory mutual recognition an oxymoron?" He offers two proposals for avoiding discrimination. Firstly, partners to these agreements could cooperate on a plan and process for progressive opening of these agreements to others. This could include a category of "associate partners" who could participate in cooperative networks, evaluation missions, and meetings in order to gain knowledge beneficial to their eventual full inclusion in the agreement. Secondly, there could be transitivity among MRAs. A hypothetical example is that if the United States and European Union have a recognition agreement in a particular sector, and the United States has a recognition agreement with Japan for the same sector, then transitivity could be the basis for an agreement between the European Union and Japan. This could lower the complexity for developing countries seeking to gain access to multiple markets. However, the author notes that there may be legitimate objections due to imbalanced trade benefits or because the actual trade benefits may not be balanced or the regulatory variances compounded through chain of recognition may exceed a threshold of tolerance.

A model for plurilateral recognition and other cooperation

An illustration from the wine sector is presented to give practical perspective to the next discussion on plurilateral regulatory cooperation in the organic sector. This model is of special note because it focuses on trade facilitation, it includes mutual recognition agreements, and its public-private collaborative approach also relates also to Discussion Paper No. 4 in the UNFSS series, entitled Public-Private Collaboration on Organic Agriculture and Trade. Readers of this paper are encouraged to refer to the other as well.

The World Wine Trade Group (WWTG)[13] is a unique plurilateral body that is structured by the participating members as an informal group that brings together industry, trade negotiators and government regulators with its principal aim to facilitate worldwide wine trade. It focuses on negotiating agreements and coordinating government activities to reduce unwarranted trade and regulatory barriers including both tariff and non-tariff measures. Present members include Argentina, Chile, Canada, Australia, New Zealand, South Africa, United States and

[13] Information on WWTG is available on the industry WWTG website, http://www.wwtg-gmcv.org and on the government WWTG website, http://ita.doc.gov/td/ocg/wwtg.htm

Georgia. Relative to regulation it operates on the premise that there is a fundamental difference between the necessity of governments to regulate wine in order to protect the health and safety of consumers and regulatory requirements over non-health related production methods of how wine is made. Therefore its cooperative activities include establishing trade facilitating mechanisms, particularly recognition, regarding certain types of regulations impacting members and avoiding establishment of other types of regulations within its ranks. Specifically it advocates that differences in winemaking practices should not be barriers to trade. WWTG also monitors the regulatory landscape in non-member wine producing and importing countries, and advocates its positions to them. In implementing its work, WWTG recognizes and upholds the role and rule of WTO and its agreements including SPS, TBT and TRIPS.

WWTG is organized in two sections, one for government and the other for industry. The sections conduct separate and joint activities in coordination with one another. The WWTG avoids written operating procedures or rules. In general, member countries take turns to chair the Group and its meetings for a twelve-month period. Decision-making is by consensus. Meetings feature both joint and separate sessions of the government and industry sections, at which participants share information on matters such as market developments and international trade issues. This information sharing, which is generally very free and open, provides a basis for all discussions of the group. Usual issue topics include: trends in wine production and trade, developments in wine regulation and labeling, intellectual property, sustainability issues, changing viti-vinicultural practices, bilateral and regional trade negotiations, and wine issues in multilateral fora such as the Codex Alimentarius and WTO.

The WWTG generally meets twice a year. Non-member countries and industry organizations are encouraged to participate in the meetings as observers. Members agree jointly on a set of objectives, which guides work programs in each section. The industry section often produces agreed statements during its discussions and formally communicates them to the government section at the closing session of the meeting. These statements often generate agenda items and discussions at subsequent meetings of the government section. Governments often conclude their discussions by reporting an agreement to produce various papers prior to the next meeting of the group. Regulatory representatives from member countries meet in their own forum concurrently with WWTG's biannual meetings to share updates and exchange views on developments in wine trade regulations. If it is agreed that governments should undertake official agreements to achieve objectives, the governments then initiate their own plurilateral agreement processes.

Mutual recognition achievements

The WWTG countries have so far entered into two mutual recognition agreements (called "mutual acceptance agreements" by the WWTG), one on oenological practices and the other on labeling. The agreement on practices is most relevant to the topics of this discussion paper. The

WWTG claims that the 2002 agreement on oenological practices was the first plurilateral equivalence agreement in any sector, and is fully compliant with the TBT section 2.7. The agreement covers both technical regulations and conformity assessment for the relevant practices. It establishes that if a wine sold in the domestic market meets health and safety/good manufacturing requirements of that market, when exported, the importing authorities do not need additional detail and testing as to how the wine was produced. The agreement is limited to wine whose final production is in the territory of the member signatories to the agreement. A Council of the Parties aided by four appointed industry experts is established to manage this agreement.

Other achievements

In addition to the two mutual recognition agreements, the WWTG cites other achievements. These are:

- Memorandum of Understanding on Certification
- Protocol to the 2007 Agreement on Requirements for Wine Labeling
- Improved Understanding of Global Wine Issues
- Joint Action at WTO, OIV, Codex
- Outreach to developing Wine Economies
- Strategic Initiatives and Action Plans

In its relatively short life, the World Wine Trade Group has proven to be an important force in influencing the regulation of the international wine trade. Beginning with a shared vision and a commitment to open international trade, participating countries have begun to reshape the regulatory environment in which the international wine business operates.

Towards Global Governance of Trade of Organic Products

Mechanisms for facilitating trade of organic products through equivalence

It is reported that 46 countries have fully implemented organic regulations.[14] This normally would mean that the countries have technical regulations for organic production, processing and labeling and a control system for conformity assessment. However, some countries such as India currently regulate only exports of organic products, some countries' legislation omits provisions on controls on imports, and other countries do not enforce their regulatory requirements. All countries with significant imports of organic products regulate and control them, including Australia, Brazil, Canada, China, Costa Rica, all European Union member and EFTA states, Japan, Malaysia, Mexico, New Zealand Republic of Korea, Switzerland, Taiwan, and

[14] Source: Willer, H, 2015. *The World of Organic Agriculture - 2015*, Research Institute for Organic Agriculture and IFOAM-Organics International, Frick, Switzerland and Bonn, Germany.

the United States.[15] In some countries such as Brazil, Malaysia, and China imports are authorized solely on the basis of compliance with the regulations of the importing country. Other countries have various bilateral arrangements/agreements acknowledging equivalence (both technical regulations and controls) with trading partners and some countries have also unilaterally determined equivalence of certain other countries. For a long time, the EU and Switzerland have unilaterally recognized certain (and mostly the same) third countries as having equivalent technical regulations and control systems, and list these countries and the terms of the recognition in their respective regulations.[16] These countries are Argentina, Australia, Costa Rica, India, Israel, Japan[17], New Zealand, and Tunisia. Several determinations of equivalence have been made unilaterally by other countries. For example, Taiwan unilaterally recognizes Australia, Japan, New Zealand, and the United States, and Japan unilaterally recognizes the European Union. The current EU organic regulation also provides for approval of control bodies operating equivalent controls in third countries. The proposed revision of the EU organic regulation would restrict new equivalence measures to bilateral agreements and start a process for replacing current unilateral equivalence determinations with bilateral arrangements. Moreover, the draft revised EU Action Plan on Organic Farming suggests that plurilateral agreements and enhanced regulatory cooperation should be considered as potential future initiatives. Regionalization initiatives that include the organic sector, particularly the formation of the ASEAN Economic Community, are also indicative of a trend toward plurilateral models for recognition. Will global governance of organic trade be accomplished through stepwise implementation of unilateral, bilateral and plurilateral forms of recognition? Further examination of this scenario will benefit from first surveying the landscape of regulatory cooperation through bilateral equivalence arrangements.

Bilateral equivalence in the organic sector

Bilateral recognition agreements are largely political agreements that depend on the will and political negotiations of the governments, but are also based on technical assessments. In the organic sector, these agreements (or arrangements as most of them are called) recognize equivalence of technical regulations and the related control systems, and they are commonly called equivalence arrangements. The European Union and Switzerland were the first to establish bilateral equivalence in 2002 as part of a trade agreement (treaty) on agricultural products. Since then, these relationships are formalized via the exchange of letters, and they have a different status than treaty agreements, which are generally subject to ratification processes. From here on in this paper, the term “arrangement” will apply to these bilateral relationships, whether they are technically agreements or arrangements. It was not until 2009,

[15] Australia and New Zealand control imports through consumer protection laws rather than specific organic regulations.

[16] Equivalent countries as agreed under bilateral processes are also listed.

[17] Switzerland has a bilateral arrangement with Japan. The European Union and Japan unilaterally recognize one another.

that another equivalence arrangement was established, the arrangement between Canada and the United States, which was virtually concurrent with the implementation of the Canadian Organic Regime. This arrangement was bolstered by a high degree of political will due to the large volume of trade between the two countries and significant trade barriers that would have arisen for both trading partners in absence of a mutual recognition arrangement. That arrangement provided impetus to arrangements between Canada and the European Union and between the European Union and United States. Currently, the following bilateral arrangements have been fully implemented:

- European Union-Switzerland (2002)
- Canada-United States (2009)
- Canada – European Union (2011)
- European Union – United States (2012)
- Switzerland-Canada (2012)
- Japan-United States (2013)
- Japan-Switzerland (2013)
- Canada-Costa Rica (2013)
- Korea-United States (2014)
- Canada-Japan (2015)
- Korea-European Union (2015)

Elements of the equivalence arrangements

Scope of Products: The arrangements always specify the scope of products covered by the arrangements. These describe whether they include plant and/or animal products, raw and/or processed products, and if they include seeds and propagating materials and feed. They may also specify if the products specifically include or exclude certain product categories such as aquatic animals and wine. In general, these scopes are the organic products that are in the scope of both regulations. In cases where one country has a scope that the other country does not, the particular products (e.g. aquatic animals) usually may be sold as organic in the other country without the scope, but cannot be labeled with the government organic label.

Transaction requirements: The arrangements specify the documentation that must accompany the product at import. Commonly, the requirements are for the product to be accompanied by import certificates containing information prescribed by the importing competent authority. However, there are exceptions. For example, the arrangement between Canada and the United States requires an attestation statement, which does not have to be a prescribed import certificate. The statement can be included on other documents or labels that accompany the product.

Exceptions: Exceptions are related to critical variances in the technical regulations for production and labeling claims of the product that were not reconciled during the process for the arrangement. Negotiations seek to avoid these because they render the equivalence of standards less than whole, and they are a significant administrative burden for governments, certification bodies and traders, thus compromising the achievement of objectives of equivalence. Several exceptions are included in the bilateral arrangements between Canada and the United States and the European Union and United States. Also, Switzerland's conversion labeling is an exception in arrangements with Canada and agreement with the European Union. Exceptions may be reduced by harmonization of the technical regulations. For example, new rules in the United States on pasture for ruminant animals resulted in an adjustment to Canada's exception on stocking density requirements for livestock. The United States is also in the process of use of sodium nitrate and certain antibiotics in plant production, which are the subject of some exceptions to its equivalence arrangements with Canada and the European Union.

Labeling: The arrangements specify that imported products must comply with the labeling regulations of the importing country. Equivalence does not apply in this case.

Lists of authorized certification bodies: These lists are always provided as they are essential for the import control.

Maintenance of equivalence: Requirements, commitments and rights for maintaining the arrangements are laid out in the arrangements. These include periodic reporting of information, timely updating of changes in the regulations and list of authorized certification bodies, rights of site inspections by the parties, and rights of termination of the arrangement.

Working groups: Some arrangements establish working groups for maintaining the arrangements and working on other opportunities. The terms of references for the working groups is variable, for example their objectives and whether they meet periodically or communicate ad hoc. Terms for the current working groups are covered in Annex Two. This annex may be informative should there be interest in establishing a plurilateral forum or working group.

A comparison table of the current bilateral equivalence arrangements for organic products is featured in Annex One.

How have the bilateral arrangements fared and compared?

Bilateral partners in the equivalence arrangement have reported general satisfaction with their operation and no major complications or decline in the effectiveness of controls on imports. As to impacts, data on the direct effects of the arrangements are not yet available either for trade volume or for cost savings. However there have been positive indications for transaction costs. Anecdotal evidence suggests a significant decline in multiple certifications held by operations in

partner countries. In the case of USDA accreditation, a 20% decline in accreditation of non-domestic certification bodies has occurred although there are likely some other factors contributing to the drop. Lowering of transaction costs due to these arrangements is presumed. On the other hand, and as Canada observed in a 2014 presentation,[18] implementation of these arrangements is complex and it requires expertise and demands resources. Thus some of the transaction cost savings in the private sector may be offset by increased public costs. It is therefore worthwhile to consider how to gain efficiency in managing these arrangements.

What about costs external to the bilateral partners? Have there been trade diversion effects especially for developing countries? The paucity of trade data specific to the organic sector rules out empirical analysis of this question, and today's discussion would be mostly hypothetical and/or anecdotal. One visible trade diversion effect of a bilateral arrangement, between the European Union and United States, occurred not for a developing country, but for Switzerland. The so-called "chocolate problem" arose when EU powdered milk suppliers and developing country cocoa suppliers for Swiss organic chocolate dropped their United States NOP certification, needing only EU certification for market access to the European Union and United States. However, lacking an equivalence agreement between Switzerland and the United States, Swiss organic chocolate producers with markets in the United States could no longer source NOP certified milk powder and cocoa competitively from ingredient suppliers, compared to EU chocolate manufacturers. The result is that Swiss organic chocolate producers are virtually excluded from the United States market.[19] As to the effect of this particular situation on developing countries, one might presume that transaction costs are reduced for the cocoa suppliers, therefore creating a small positive effect for the supplying countries.

Exceptions and narrow scopes in a few of the arrangements and country-of-origin limitations in most of them inhibit the full flourish of trade facilitation. Examples are the scope for processed products only in the arrangement between Republic of Korea and the United States, and in the agreement between the European Union and United States, the respective exemptions for antibiotics in crop production and animal production. As for country of origin rules, the arrangement between Canada and the US is the most globally trade facilitating and least trade diverting. It enables products certified anywhere in the world according to one of the regulations to be labeled and sold in either country. Middle-of-the-road provisions include products certified in either of the trading partner countries or countries recognized by the exporting trading partner as equivalent e.g. Japan-Switzerland arrangement. The most restrictive rules limit product and product ingredient sources to the other partner country, e.g. applied to Canada in the Canada-European Union arrangement.

[18] Given at the Natural Products Expo, September 2014, Baltimore, USA.

[19] Talks on a bilateral equivalence arrangement between Switzerland and the United States are in process.

Plurilateral agreement and cooperation

Prerequisites

A paper for the Global Organic Market Access project (Bowen, 2013) reviewed the processes to establish equivalence between Canada and the United States, Canada and the European Union, and the European Union and the United States. Delegation team members for these arrangements highlighted some factors that were key to the achievements. They include a high degree of political will, a positive perspective on the goal, good personal relationships and trust, technical expertise and historical perspective among delegation members, the common history of the organic movement globally, and avoiding trade balance agendas in negotiations. Presumably, these factors apply to a great extent in other bilateral arrangements for organic trade. The twelve arrangements are mostly between a core of the same countries in different combinations. Two-thirds of these arrangements include working groups to ensure consistent communication and cooperation on the arrangements and some of the same personnel populate the various working groups. These factors are fine prerequisites for elevating at least some of the regulatory cooperation from the bilateral to the plurilateral level. Why plurilateral cooperation?

As reported earlier in this paper, plurilateral regulatory cooperation potentially constitutes a building block (or bigger chunk of the jigsaw puzzle) for assembling coherent multilateral governance of recognition. The current trade partners in these agreements already represent a large share of the regulated organic trade flows. For the organic sector, organizers of a dialogue on plurilateral regulatory cooperation could set the goal of providing leadership for the coherent global governance of organic trade. Cooperative work related to the bilateral equivalence arrangements could be undertaken as a first step, leading in the long-term to converting bilateral arrangements to a plurilateral agreement. Proposed objectives associated with this goal are:

- Minimizing the spaghetti effect of proliferating bilateral arrangements with diverse product scopes, exceptions, rules of origin, terminology, and administrative requirements;
- Improving regulatory systems of the partners;
- Gaining efficiencies in maintaining arrangements;
- Extending equivalence to other trade partners;
- Assessing and addressing the implications of the equivalence arrangements for developing countries.

The next section focuses on the first step of pluralizing cooperation in the context of the bilateral arrangements. Even if the arrangements were to persist in bilateral form, plurilateral cooperation could bring more coherence to the global scheme of recognition.

Potential functions of plurilateral cooperation

Some ideas on functions of plurilateral regulatory cooperation in the organic sector follow.

Harmonization of equivalence arrangements: Although it is unlikely that the terms of these arrangements will be fully harmonized, over time they could converge on certain documented provisions. Trade partners could seek agreement on best practices for provisions such as reporting, notification of changes, import certificates, and terms of reference for working groups. Trading partners could also seek harmonization of practices related to the equivalence arrangements, e.g. communication to the public and publicly available information.

Harmonization of technical regulations and control systems: By their nature, equivalence arrangements influence harmonization of technical regulations and control systems due to the discovery of best practices as a result of the knowledge exchange, and in the case of technical regulations, political will to rid arrangements of exceptions (critical variances). Already, the bilateral arrangements have had harmonizing effects. Plurilateral dialogue and cooperation could be undertaken to identify opportunities for greater harmonization.[20]

Joint and/or or shared peer review: A system of joint peer review audits could be planned, which reduce the number of site visits. Longer term, the site visits could be conducted by one trading partner on behalf of several, and the results shared.

Cooperative system for tracking of organic trade: Data on organic trade is scant, and this inhibits the organic sector. Trade partners could discuss plurilateral approaches to trade data collection and dissemination.

Systematize assessment and recognition of other countries: Plurilateral partners could share information on other countries in cases where these countries are in discussions with more than one of the plurilateral partners on bilateral equivalence arrangements. They could also conduct joint site evaluations.

Pool resources for regulatory capacity development for developing countries: Article 11 of the TBT Agreement calls upon developed countries to provide developing countries with technical assistance on developing technical regulations and conformity assessment systems. Assistance could center on helping these countries to develop their organic regulatory systems to the required level for recognition by major importing countries.

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[20] An example from the wine sector is the 2007 World Wine Trade Group agreement on harmonization and simplification of labeling requirements. The Labeling Agreement recognizes that different markets will always have different labeling requirements. It addresses this issue by allowing a producer to have one label that can be used across all major wine markets, with a second label upon which the unique requirements of specific markets can be adjusted as required.

Explore topics of mutual interest: A discussion forum of the plurilateral partners could build mutual knowledge and understanding on trade policy issues, and generate new ideas for enhancing regulatory systems and the global governance of organic trade. For example, the forum could examine potential for transitivity of recognition arrangements and eliminating country of origin rules, which could further enhance trade facilitation among the trade partners and mitigate trade-diverting effects of the equivalence arrangements on developing countries. Other topics could include how to deal with the regionalization trend for organic standards and technical regulations, potential use of tools developed by the International Task Force on Harmonization and Equivalence (the International Requirements for Organic Certification Bodies and EquiTool) to achieve a high degree of efficiency in equivalence assessment, and the potential for replacing bilateral equivalence arrangements with a plurilateral agreement. The discussion forum could be organized along the lines of the World Wine Trade Group, incorporating both the public and private sector/civil society.

Next steps

It is proposed to learn if there is a coalition of willing trade partners to work on plurilateral regulatory cooperation in the organic sector. If so, these partners should identify a means of coordination and develop a plan for engagement. If the coalition wishes to include the private sector in its forum, then organizations such as IFOAM and its regional groups, the Research Institute on Organic Agriculture (FiBL), and the Organic Trade Association and its subsidiary Canada Organic Trade Association could be approached to participate.

The United Nations Forum on Sustainability Standards could be asked to provide coordination for the coalition. Alternatively, given that most of the trade partners in current bilateral equivalence arrangements are its members, the Organization for Economic Cooperation and Development (OECD) could be asked to provide coordination. This plurilateral initiative appears a good match to OECD's mission. A third option is for governments in the coalition to rotate chairing and coordinating it.

References

Amurgo-Pacheco, A, 2006. HEI Working Paper No 20/2007, Mutual Recognition and Trade Diversion: consequences for developing nations, Graduate Institute of International Studies, Geneva.

Bowen, D and Homes, M, 2013. Bilateral Equivalence Arrangements on Trade of Organic Products, UNCTAD/FAO/IFOAM Global Organic Market Access report.

Bridges, Vol. 14 No. 39, Nov. 2010. "As FTA's proliferate, suggestions that the "spaghetti effect" may not be so bad after all"

Chen, M and Mattoo, A, 2008. Regionalism in Standards: good or bad for trade?, Canadian Journal of Economics, Vol. 41 No 3.

European Community, 2002. Consolidated Version of the Treaty Establishing the European Community, Official Journal of the European Communities, 2002.

Daugjerg, C 2012. The World Trade Organization and Organic Food Trade: potential for restricting protectionism, Springer Science and Business Media Online.

Menon, J, 2014. From Spaghetti Bowl to Jigsaw Puzzle? Fixing the mess in regional and global trade. Vol.1 No 3 Asia and the Pacific Policy Studies, Australia University.

Nicolaidis, K, 1997. Mutual Recognition of Regulatory Regimes: some lessons and prospects, The Jean Monnet Paper Series, Harvard Law School, Cambridge, MA.

Nicolaidis, K, 2000. Non-discriminatory Mutual Recognition: An Oxymoron in the New WTO Lexicon?, in Cotteir, T. et.al., *Regulatory Barriers and the principle of Non-discrimination in World Trade Law*, University of Michigan Press, Ann Arbor.

Nicolaidis, K and Shaffer, G, 2005. Transnational Mutual Recognition Regimes: governance without global government, *Michigan Review of International Law* 68, 267-322.

Veggeland, F and Elvestad, C, 2004. Equivalence and Mutual Recognition in Trade Arrangements: relevance for the WTO and the Codex Alimentarius Commission, Norwegian Agricultural Economics Research Institute, Oslo.

Annex One: Comparison of Bilateral Equivalence Arrangements in the Organic Sector

* Working group is established

Trade Partners	Description and transaction requirements	WG*	Scope	Standards-related exceptions
Canada-United States	Letters on Arrangement exchanged in July 2009. Requires attestation statement to accompany products sold across borders, although not a special certificate.	Yes Steering Com and Tech WG	***Canada and United States*** mutually accept all unprocessed and processed agricultural products of plant and animal origin. Country of origin: No restrictions Wine in scope USDA accepts aquaculture products that fully meet NOP requirements, although it does not publish specific technical requirements on the topic.	***Canada:*** sodium nitrate, hydroponics, non-ruminant stocking rates ***US:*** animal antibiotics
Canada-European Union	Letters on arrangement exchanged in June 2011. EU requires import certificates for Canadian shipments.	No	***EU accepts:*** unprocessed plant and animal products for food and feed and vegetative propagating material/seed and processed products Products and ingredients must have been produced in Canada. ***Canada accepts:*** Agricultural products produced in the EU or imported to the EU under the EU regulation 834/2007 Wine in scope. Canada excludes "made with" claims in wines. Aquaculture in scope	

Trade Partners	Description and transaction requirements	WG*	Scope	Standards-related exceptions
Switzerland - Canada	Arrangement effective December 2011 per Letters of arrangement Switzerland requires an import certificate for Canadian shipments. Canada requires a basic organic certificate for shipments	Yes	***Switzerland accepts***: a) Live or unprocessed agricultural products and vegetative propagating material and seeds for cultivation; b) Processed agricultural products for use as food or feed. The products of category (a) must be grown in, and the ingredients of the products of category (b), must originate from, Canada, Switzerland or the European Union (EU). ***Canada accepts:*** Produced and processed in Switzerland, and/or; Processed in Switzerland and contains *ingredients originating from EU member states* certified to the European Union's Commission Regulation (EC) No 834/2007 and/or; Processed in Switzerland and containing ingredients originating from Canada certified to the Canadian Organic Products Regulations (OPR 2009) Wine not in scope Aquaculture not in scope	***Canada***: in-conversion labeling
Switzerland – European Union	Annex 9 of a European Community and Swiss Confederation Trade Agreement on agricultural products, dated April 2002	Yes	***Switzerland accepts:*** Unprocessed and processed agricultural plant and animal products (live animals included) for food or feed or propagation/seed if produced in Switzerland or the Union or if imported to EU from an EU-recognized third country or certified by an EU approved control	***EU:*** Products from in-conversion

Trade Partners	Description and transaction requirements	WG*	Scope	Standards-related exceptions
			body operating equivalence certification in a third country. ***EU Accepts:*** Unprocessed and processed agricultural plant and animal products (live animals included) for food or feed or propagation/seed if produced in Switzerland or the Union or imported to Switzerland from a Switzerland-recognized third country. Wine in scope Aquaculture not in scope	
United States – European Union	Letters on arrangement exchanged February 2012, in effect June 2012. EU and US require import certificates to accompany shipments	Yes	***EU accepts:*** Products originating in the US or the EU, *or imported to the US and packaged or processed there.* ***US accepts***: Products originating in EU or US Wine in scope - but verification requires that processing meets winemaking practices and inputs of the importing country's regulations. Aquaculture not in scope, except if it meets all NOP requirements.	***EU:*** apples and pears grown with antibiotics ***US:*** Agricultural products derived from animals treated with antibiotics
Japan-United States	Letters of arrangement, September 2013 and implemented January 1, 2014 Japan and the US require import certificates to accompany shipments	Yes	***United States accepts:*** Plants (including fungi) and processed products of plant origin that are either grown/produced in Japan or where the final processing or packaging occurs in Japan. ***Japan accepts*:** Plants (including fungi) and processed products of plant origin that are either grown/produced in Japan or where the final processing or packaging occurs in the United States.	

Trade Partners	Description and transaction requirements	WG*	Scope	Standards-related exceptions
			Wine not in scope (to use the domestic organic mark) Aquaculture to Japan not in scope Aquaculture to US not in scope unless product meets all NOP requirements	
Costa Rica - Canada	Letters of arrangement exchanged, March 2013 Basic organic certificate ok	No	***Costa Rica accepts:*** All organic products in scope of Canada organic regulation that have been produced *and certified* in Canada ***Canada accepts:*** Only products of plant origin, which *have been produced and processed* in Costa Rica under the national legislation.	
European Union - Japan	Structured as two unilateral arrangements EU unilaterally recognized Japan starting May, 2010 Latest revision by Japan effective April 2013 Import certificates required by both countries	No	***EU Accepts:*** Unprocessed and processed plant products for use as food, plus propagating material/seeds. Produced in Japan, *EU, or ingredients produced in a country that has an equivalence arrangement with Japan*. ***Japan Accepts:*** *Unprocessed and processed plant products for use as food, including fungi, produced in the EU, Japan.* *Wine not in scope*	
Canada - Japan	Letters of arrangement. Jan 2015 Import certificates required	No	***Canada Accepts:*** Plants (including fungi) and plant-based processed products whose final processing or packaging is done in Japan. ***Japan Accepts:*** Plants (including fungi) and plant-based processed foods that are certified under the Canada organic regime, *without restriction on country of origin.*	

Trade Partners	Description and transaction requirements	WG*	Scope	Standards-related exceptions
			Wine not in scope	
Japan-Switzerland	Letters of arrangement exchanged April 2013	No	***Switzerland Accepts:*** Unprocessed and processed products, plant origin only. Seed and propagation material. Unprocessed products and ingredients originating in Japan, Switzerland, or a country that Japan has recognized as equivalent. Japan Accepts: Unprocessed and processed products, plant origin only. Seed and propagation material. Unprocessed products and ingredients originating in Switzerland or a country that Switzerland has recognized as equivalent. Wine not in scope Aquaculture not in scope	
Korea – United States	Letters of arrangement exchanged. July, 2014 Korea and the US require import certificates	Yes	***Korea accepts:*** Processed product of plant and/or animal origin (as defined by Korean code) with minimum 95% organic ingredients. Final processing occurs in the US ***United States accepts:*** Processed product of plant and/or animal origin (as defined by Korean code) with minimum 95% organic ingredients. Final processing occurs in Korea Wine in scope Aquaculture not in scope	***Korea:*** Apples and pears grown with antibiotics. ***US:*** Agricultural products derived from animals treated with antibiotics

Trade Partners	Description and transaction requirements	WG*	Scope	Standards-related exceptions
Korea-European Union	Letters of arrangement exchanged Jan. 2015 Import certificates specified by the importing country are required with all transactions	Yes	***Korea accepts*:** Processed product of plant and/or animal origin (as defined by Korean code) with minimum 95% organic ingredients. Ingredients must have been grown in the EU or imported into the EU in accordance with the EU organic Final processing occurs in the EU ***EU accepts:*** Processed agricultural products for use as food. Ingredients in products must have been grown in Republic of Korea, or imported to Korea from the EU or other countries Korea has recognized as equivalent. Wine in scope Aquaculture not in scope	

Annex Two: Terms of Reference for Working Groups on Bilateral Equivalence Arrangements

The following terms of reference offer insight into the way in which trading partners manage their equivalence arrangements.

Canada-United States Steering Committee

The US /Canada Steering Committee group will be co-chaired by the USTR and the CFIA and will be comprised of members drawn from FAS, DFAIT and AAFC. The NOP Technical Working Group will develop proposals and other information for the consideration and approval of the Steering Committee. In addition, technical experts may be invited by agreement of the co-chairs to provide information or clarification on specific issues. The co-chairs will be responsible for scheduling and conducting meetings in accordance with the Terms of Reference and for preparing the meeting agenda.

Mandate

The mandate of the Steering Committee is to:

- Oversee implementation of the Arrangement.
- Provide policy guidance to the respective national organic programs.
- Work collaboratively on messages which are of importance to industry in both countries and agree upon common language and approaches in order to ensure consistency of messaging
- Monitor the development and implementation of a process to assess the effectiveness of each other's control system to fulfill the requirements of the above-mentioned arrangement.
- Approve ongoing assessment review criteria.
- Approve the assessment cycle that will identify the frequency of visits.
- Monitor progress on update mechanisms and offer guidance on the ongoing implementation and maturation of the US-Canada Organic Equivalence Arrangement.
- On occasion, to meet with interested stakeholders to explain the Arrangement and its requirements.

Guiding Principles

The following general principles will govern the Steering Committee:

- The Steering Committee will invite the Technical Working Group members to raise issues of concern regarding implementation of the Arrangement and participate in the decision making process.

- The Steering Committee will encourage and welcome a wide range of viewpoints from various stakeholders regarding implementation of the Arrangement.
- The working group will provide meaningful and timely delivery of draft requirements/policies/procedures

Canada-United States Technical Working Group

Structure

The US/Canada Technical Working Group will be co-chaired by the NOP and the CFIA and will be comprised of members drawn from the CFIA and the USDA NOP.

If necessary, technical experts may be invited by agreement of the co-chairs to provide information or clarification on specific issues.

The co-chairs will be responsible for scheduling and conducting meetings in accordance with the Terms of Reference and for preparing the meeting agenda.

Mandate

The mandate of the Technical Working Group is to:

- Discuss and provide guidance related to the Arrangement.
- Develop and implement a process to assess the effectiveness of each other's control system to fulfill the requirements of the above-mentioned arrangement.
- Establish and agree upon assessment review criteria.
- Establish an assessment cycle that will identify the frequency of the visits.
- Report progress on the implementation of the US-Canada Organic Equivalence Arrangement to the Steering Committee.
- Provide policy recommendations to the Steering Committee for their consideration.
- Obtain approval from the Steering Committee prior to communicating with the organic industry, posting items on websites, or implementing new projects.

Guiding Principles

The following general principles will govern the Technical Working Group:

- The Technical Working Group members have full opportunity to voice their opinions and participate.
- Discussions and decisions should be made acknowledging the range of viewpoints from various stakeholders who could be impacted by decisions taken by the working group.
- Discussions will take place in the spirit of cooperation and final policy will be approved through consensus.

- Members are encouraged to discuss and share information on issues that impact both programs.
- Members will provide meaningful and timely input on draft requirements, policies, and procedures when requested by the co-chairs or the Steering Committee.

Japan-United States Working Group

The United States and Japan intend to work together in an Organics Working Group consisting of representatives of USDA and USTR, and representatives of MAFF on behalf of Japan.

The Organic Working Group expects to meet as needed in any manner that the representatives of the United States and Japan decide.

The objective of the Working Group is to enhance regulatory and standards cooperation between Japan and the United States on issues related to organics, including reviewing the operation of the Organic Working Group and the operation of this arrangement, no later that Jan 1 2018.

Korea-United States Working Group

The United States and Korea are committed to working together in an Organics Working Group consisting of representatives of the United States Department of Agriculture (USDA) and the United States Trade Representative on behalf of the United States and representatives of the Ministry of Agriculture, Food and Rural Affairs (MAFRA) and the Ministry of Trade, Industry and Energy on behalf of Korea.

The mandate of the Organics Working Group is to promote bilateral trade and to enhance regulatory and standards cooperation between MAFRA and USDA on issues related to organic agricultural products.

The Organics Working Group should meet no later than one year after the signing of this letter to review operations of the arrangement, discuss the scope of the arrangement, assess progress on identified technical issues, and discuss best practices and other issues related to organic agricultural products. The Organics Working Group expects to meet annually thereafter unless otherwise decided.