

Equivalence of organic food standards in the European Union and the United States of America

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ABSTRACT

This study outlines the current situation of organic standards applied in the European Union (EU) and United States (US). The US as well as EU have their own regulatory schemes applied to labeling, certification and trade of organic food. The purpose of this study is to investigate the differences between their organic standards and gain more insight into their similarities.

Historic signing finalizes the organic equivalence arrangement between EU and US. This important bilateral agreement concluded in February 2012 will expand market access for organic producers by reducing double requirements of certification and avoiding long-lasting bureaucratic procedures. The agreement effective from June 1 will result in the free movement of certified organic products, provided that the European Union and United states meet the terms of the equivalency arrangement.

This study has two major purposes. Firstly, the organic standards of the United States and European Union will be discussed more in detail. This part of the study will investigate the organic labeling and certification standards in both the United States and European Union. Secondly, the primary purpose of this paper is to compare those standards and focus on their equivalency issues.

Finally, the study insists on the necessity of understanding importance of the emerging issues from organic equivalency in relation to organic trade between the US and EU. Thus, the main research question, namely, till what extent are the organic standards between EU and US equivalent will be answered and analyzed in this paper.

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INTRODUCTION

Organic is a term interpreted by consumers in a variety of ways and contexts. Some of the individuals are not even aware that the word ‘organic’ is strictly regulated. The main subject of my thesis is to examine the organic food regime from the legal point of view. In order to gain proper insight into the organic regulatory framework, two main actors with the most sophisticated legislation have been chosen.

The European Union (EU) and United States of America (USA) are two of the largest producers of organic food in the world. Organic trade has grown on importance in light of recently signed historical agreement between EU and US. The agreement represents a final outcome of long-lasting endeavor and compromise relating to the equivalence of organic food standards. I consider this new partnership between the EU and US as a first step to significant improvement of organic standard transparency on a global scale. Despite its long negotiation process, the year 2012 brought a change to the transatlantic organic trade. Therefore, the main question addressed in this paper is, whether the organic standards in the US and EU are equivalent and to what extent.

In order to assess the issue of equivalency, both European and US organic legal systems shall be examined and subsequently compared. To make clear, for the purpose of this paper I will refer to European standards, however it will be meant only for the 27 Member States that are in the EU. Comparative law is the most effective method used to compare different legal systems. Given that I am going to research equivalence of organic products in the different areas, this method represents the most suitable option for my thesis.

This paper has been divided into eight chapters that are dealing with both substantial and procedural aspects of organic food regime in the European Union and United States. Chapter 1 begins by laying out the theoretical dimensions of the organic certification and labeling with relation to the consumers perceptions. The subsequent two chapters seek to address EU and US organic legislation and labeling. Furthermore, chapters 4 and 5 look at the certification of the organic food from the theoretical as well as procedural point of view. On the detailed basis of the EU and US certification systems currently available, it is possible to compare them in later stage of the thesis.

The question of whether there are also international organic standards applicable and what is their relation with the World Trade Organization has caused much debate over the years. In

chapter 6, the discussion will point to the legal value of international organic standards and the WTO agreements concerning food safety. Moreover, much of the current debate revolves around public versus private organic food standardization. Thus, a closer look at the role of the public and private bodies will reveal the current complexity of the topic.

The next chapter first considers equivalency for organic trade in general and then looks at the equivalency arrangement between the EU and US. The second part of the chapter deals with the significance of the recent equivalency partnership with the connection to the future organic trade.

Using the information provided in the earlier sections, it will then be possible to analyze the differences between EU and US organic standards, and identify the gaps in the equivalency arrangement. Thus, the last chapter is divided into three sections: firstly, historical overview of the organic agriculture and differences between EU and US attitude toward organic production is considered; secondly certification and inspection systems in the EU and US are compared and analyzed; finally comparison of production standards with focus on livestock is done.

This study is an attempt to firstly compare organic standards and secondly address the issue of equivalence. I strongly believe that, even though the standards between the EU and US are approved as equivalent there is still room for improvement. On the basis of the equivalency gaps detected in this thesis, it seems to me evident that the organic legislation on the both continents should be amended and harmonized to reach the equal organic status.

CHAPTER 1: Certification and Labeling of Organic Foods with Relation to Public Perceptions

Organic food is a growing industry that needed to be codified. Certification schemes for organic food were invented in order to eliminate uncertainty and protect consumers from misleading standards. The corresponding labeling provides a competitive advantage for producers to show the consumers that the products have claimed quality features. The relevance of organic food regime and consumers view and preferences for organic products will be examined in this chapter.

Certification has always been an important signal of the quality of products or services. Certification systems provide a new perspective of improvement in the worldwide market. The main role of labeling is to have a common understanding of the product and identify its features and qualities. Labels claim to provide information about characteristics of these products, which consumers cannot directly observe but which many of them consider desirable. Labeling, however, differs according to the specific field and its standards.

The proliferation of certification and labeling initiatives has led to an inevitable need of harmonization of organic farming standards. According to the Cercost research project supported by the European Commission there was a lack of transparency and effectiveness in the organic food certification system. “In consequence, different actors and stakeholders are involved in shaping and managing the certification schemes, different approaches and tools have evolved, and different emphases put. Thus, alternative certification systems provide a new perspective on the organic certification scheme, potentially giving new ideas for how to improve the current organic certification system.”¹

Explanation of terminology step-by-step is the key of the ‘organic food labeling’ understanding. Organic agriculture is a rapidly growing industry that is expanding on day-to day basis. “The term ‘organic agriculture’ refers to a process that uses methods respectful of the environment from the production stages through handling and processing. Organic production is not merely concerned with a product, but also with the whole system used to produce and deliver the product to the ultimate consumer.”²

¹ H. Moschitz, F. Meinshausen et al. (2001) The Potential of the Alternative certification systems D21 Part A.,CERCOST Project, page 1

² Nadia El-Hage Scialabba and Caroline Hattam (2002) Organic agriculture, environment and food security.

Pursuant to The Organic Trade Association it is important to promote and protect organic trade to benefit the environment, farmers, the public, and the economy. Organic agriculture, a worldwide growth industry, can be a profitable, sustainable business for agricultural producers interested in going through the certification process necessary to enter this market. Organics have continued to expand during the last few years, and industry experts are forecasting steady growth of 9 percent or higher.³

Consumer, however, needs to be convinced in order to purchase labeled organic foods. Thus, it is important to understand what does ‘organic food’ stands for in general. “Organic food refers to food produced without using the conventional inputs of modern, industrial agriculture: pesticides, synthetic fertilizers, sewage, sludge, genetically modified organisms, irradiation or food additives.”⁴

The placement of organic products with labels and logos on the market is not already a novelty. Significant numbers of consumers believe that the label grants the quality of the product. In order to call the product organic it has to pass strict certification process that is different from non-organic foods production.

“Consumer trust is a crucial issue in the market for organic food, since consumers are not able to verify whether a product is an organic product, not even after consumption. An instrument to gain consumer trust is third-party certification of the supply-side, which has a long tradition in the organic sector in Europe.⁵ Organic certification logos are used to signal consumers that a product is a certified organic product.”⁶

Certification is a tool to provide a common understanding of similarities and differences between the organic food labels. “Still, calling certification a mode of regulation recognizes that it involves standards that are often precise and prescriptive, plus rationalized procedures for assessing compliance. In addition, certification initiatives’ structures for setting standards,

³ Organic Trade Organization, 2011, <http://www.ota.com/about/accomplishments.html>.

⁴ Allen, Gary J. & Albala, Ken, ed. (2007). *The Business of Food: Encyclopedia of the Food and Drink Industries*. ABC-CLIO. p. 288. ISBN 978-0-313-33725-3.

⁵ Roe, B. and Sheldon, I. (2007). Credence good labeling: The efficiency and distributional implications of several policy approaches. *American Journal of Agricultural Economics* 89(4):1020-1033.

⁶ Zorn et al. (2009) A comprehensive overview of the economic concepts surrounding organic certification is presented in another CERTCOST publication.

enforcing compliance, and adjudicating disputes have evolved to look strikingly similar to state and legal structures.”⁷

There is also an important role of state and non-state actors when certifying organic products. The question, of whether inspection bodies act as private expert bodies that have delegated powers by an official act and under government oversight or whether they operate as agents of government fully integrated into the public administration of the respective member state or whether their position is somewhere in between, varies among member states.

Unfortunately, it seems consumers do not have sufficient knowledge about the organic production and the organic control system. Some of consumers are not even aware that the use of the term ‘organic’ is strictly regulated. From the consumer’s perspective it is important to determine whether the trust to the official authorities who are responsible for the granting the ‘stamp of quality’ is sufficient for their choice of organic food products.

Consumers’ ideas about organic labeling can differ and it is not sure if it would make them buy such ‘value added’ products. Motivations for consumers can differ, starting from their own health benefit to better environment protection. Security, quality or better taste is another reason why would consumers go for organic foods. Beliefs about positive long-term effects of the consumption of organic food can change the attitude towards non-organic food forever. As the Centre for Microdata Methods and Practice stated the reasons that households are willing to pay for organic differ, with quality being the most important, health concerns coming second, and environmental concerns lagging far behind.⁸

Slightly higher price however, can discourage them even to get informed about the importance of organic products. Some of the consumers can perceive organic food labeling simply as a temporary ‘expensive’ trend. Another can consider organic labeling as a policy instrument to expand trade. Lack of knowledge and trust can lead to decline of the sales of organic products.

Demand for value-added products is highly segmented among different types of consumers. Those consumers can have different preferences and willingness to pay for specific organic products. Specific products can be purchased with motives that depend on every single

⁷ Meidinger, Errol (2006), 'The Administrative Law of Global Private-Public Regulation: the Case of Forestry ', *European Journal of International Law*, 17 (1), p. 47-87.

⁸ Rachel Griffith and Lars Nesheim, Cemmap (2008) Household willingness to pay for organic products, The Institute for Fiscal Studies Department of Economics, UCL.

customer. Understanding the types of consumers who purchase organic produce is particularly important for growers, processors, and retailers since organic produce has long been considered a ‘gateway’ product with consumers often entering the organic market by first purchasing organic produce and subsequently widening their purchases to include other organic products.⁹

“Consumer preferences for organic certification logos highlight the importance of understanding the consumer perspective on the organic food regime. Consumer perceptions of organic standards, certification and control are of subjective nature and in many cases not based on objective knowledge. It needs to be admitted that any organic certification logo which is neither mandatory nor already widely known among consumers will face severe difficulties in trying to attract consumer preferences”¹⁰

To finalize, it is of crucial importance to understand that legal framework regulating organic food standards protects consumer interests. It provides legal certainty that the products claimed to be organic are properly certified and inspected, and therefore operators are able to benefit from the consumer’s willingness to pay for the value added organic foods.

⁹ Hartman Group. 2000. The Organic Consumer Profile, The Hartman Group, Bellevue, WA. Hartman Group. 2002. Hartman Organic Research Review: A Compilation of National Organic Research Conducted by the Hartman Group. Bellevue, Washington.

¹⁰ Janssen, M. and Hamm, U. (2011b). Consumer preferences and willingness-to-pay for organic certification logos: Recommendations for actors in the organic sector. Report of the CERTCOST project.

CHAPTER 2: EU Organic Legislation and Labeling

The number of organic products is rapidly growing on the global market. Consumers can have a wider choice, however, no guarantee of quality. Therefore, it was important to establish organic labeling system in the European Union. The introduction of the new organic logo should give consumers space of mind, as they are sure that the product must adhere to EU standards on organic products.

This chapter will explain why is the organic labeling so significant and how is it regulated by EU law. Moreover, what are the requirements to be labeled with the new EU obligatory logo, and why it is important are questions that will be answered.

In order to provide sustainable development of organic sector and ensure the effective and efficient functioning of organic market, legal framework shall be established. Consumers' confidence and demand was steadily growing from 90s, and organic production had to be governed by the EU legal framework.

European Union entered the domain of regulating organic farming sector in the beginning of the 1990s with Council Regulation (EEC) No 2092/91. "In 1991 the European Council of Agricultural Ministers adopted Regulation (EEC) No. 2092/91 on organic farming and the corresponding labeling of agricultural products and foods. The introduction of this Regulation was part of the reform of the EU Common Agricultural Policy and represented the conclusion of a process through which organic agriculture received the official recognition of the 15 states which were EU members at the time."¹¹

In the following years organic production and labeling would be growing in importance. 'Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labeling of organic products and repealing Regulation (EEC) No 2092/91' were published as a new regulation that came into force in 2009.

The mission of the new legal instrument is continuous and sustainable development of organic farming and production. Another goal of this new legal framework is to reach high standard of the quality of the products, environmental protection, biodiversity, and animal protection. Therefore, the organic labeling is the important aspect of European organic food law.

¹¹ European Commission, Agriculture and Rural Development, Organic Farming, 2012

Area of the applicability of the Council Regulation (EC) No. 834/2007 of 28 June 2007 on organic production and labeling of organic products and repealing Regulation (EEC) No. 2092/91 is reaching agricultural products including yeast and aquaculture. This Regulation applies to living or unprocessed products, processed foods and animal feed. Furthermore, seeds and propagating material as well as collection of wild plants and seaweed is also included in the scope of the Regulation.¹²

There have been additional Regulations adopted connected to the legislation mentioned above. Those Regulations go more into the technical details. One of them is Commission Regulation (EC) No. 889/2008 of 5 September 2008 with detailed rules on production, labeling and control including its first amendment on production rules for organic yeast First amending Regulation, establishing new production rules for the production of organic yeast. Another one is Commission Regulation (EC) No. 1235/2008 of 8 December 2008 with detailed rules concerning import of organic products from third countries.

Furthermore, organic production is the part of the General Food law. Therefore, organic food must also comply with Regulation (EC) No 178/2002 “laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety.”¹³ Organic production has to comply also with general legislation on food controls. Regulation (EC) No 882/2004 that was amended by Commission Regulation (EC) No 776/2006 is a basis for “official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules.”¹⁴

“Food security is one of the most compelling global challenges. The rapid growth of the world’s population puts great pressure on critical resources such as water, energy and food. Food security will become an ever greater priority for the EU and the world as the global demand for food increases and the challenges of sustainable production and equitable distribution become increasingly acute.”¹⁵

¹² European Commission, Agriculture and Rural Development, Organic Farming.2012

¹³ Council Regulation (EC) No 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, L 31/1,

¹⁴ Commission Regulation (EC) No 776/2006 of 23 May 2006 amending Annex VII to Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards Community reference laboratories, L 136

¹⁵ Special Eurobarometer 389 “Europeans’ attitudes towards food security, food quality and the countryside” , Conducted by TNS Opinion & Social at the request of the European Commission, Directorate-General for Agriculture and Rural Development, Survey coordinated by the European Commission, Directorate-General for Communication (DG COMM “Research and Speechwriting” Unit) , Special Eurobarometer 389 / Wave EB77.2 – TNS Opinion & Social, July 2012.

“The new rules include the mandatory use of the EU organic logo on pre-packaged organic products, and it can be accompanied by national or private logos. One of the key developments of the European Organic Sector in 2010 was the launch of the new EU Logo for organic products. Since July 1, 2010, the organic logo of the EU has been obligatory on all pre-packaged organic products that have been produced in any of the EU Member States and meet the necessary standards.”¹⁶

Before the new logo came into consumer’s awareness there was an old logo that was voluntary. Producers that satisfied the European organic food standards could use the first logo, however, it was not well-known. Too many national organic logos created confusion among consumers. There was a need to have one common European logo for all 27 Member States. Thus, European Union introduced its new EU organic logo that will help to avoid divergences and to guarantee the uniform application of the organic production standards.

The all idea behind it started in 2009, when the European Commission introduced a new competition for art and design students from all 27 Member States. The competition was about creation of a new organic logo that would be used officially throughout the Union. It can be better explained as Mariann Fischer Boel, European Commissioner for Agriculture and Rural Development, said: "The new organic logo will bring identity to the organic sector in the EU. It will help in creating the single market, and that's good news for producers and consumers.”¹⁷

Another interesting question is, once we have introduced new organic logo that is mandatory basis for producers of organic foods, what are the requirements to be labeled as such. Products certified as ‘organic’ must meet special organic standards. If the processed products fulfill the European requirements for the organic farming sector, then they can be considered to be in full conformity with the European Union law.

Basic requirement for legal use of the EU organic logo is that the ingredients of the product should be at least 95% organic. EU labeling system does not recognize products that are below 95%, nor products labeled ‘Made with organic ingredients’.

European organic labeling system is more focused on production aspect that on the product itself. There is no indication how to measure or calculate if the product is organic.

¹⁶ IFOAM and FiBL ‘The World of organic agriculture-statistics & emerging trends 2011’ ISBN PDF version 978-3-940946-84-3 (IFOAM) and 978-3-03736-194-8 (FiBL).

¹⁷ European Commission (2009) Mariann Fischer Boel, European Commissioner for Agriculture and Development , Press Release, Brussels.

However, the general organic farming rules remain. To illustrate, crop rotation, the prohibition of the use of chemical pesticides and fertilizers, livestock shall have free range and no antibiotics are allowed to treat the animals.

Organic production shall not use genetically modified organisms (GMO's) and must uphold natural cycles and systems. If the product contains GMO's it must not be labeled as organic. However, there is an exception of unintentional entrance into the organic product and the proportion of the genetically modified organisms in the ingredient shall not be more than 0.9%.

Since 2012 the organic logo has to comply with the special model standard. EU organic sector has two years for the transition of the new rules of labeling. In order to meet the necessary standards in organic sector in the European Union it is inevitable to use the new organic logo. It became obligatory starting from 1 July 2012 for all pre-packaged organic foods that were produced within Member States. In case of non-packed and imported products the organic logo will remain optional.¹⁸

Even though the new common organic logo was introduced, other national or private logos are still allowed to come along with the 'Euro-leaf'. Format of the logo should include also the code of the controlling body and identify the Member State or the third country origin of the farming. Moreover it has to present its organic production method such as product, its ingredients or feed materials that were obtained in accordance with the organic farming rules. The code number shall consist of reference number issued by the competent authority and it has to be situated just below the organic logo.

According to the Commission Regulation (EU) No 271/2010 of 24 March 2010 format of the logo is strictly defined. It can be defined as a combination of the European flag that has been a symbol of the European Union since 1986 and a green leaf that represents sustainability and nature.¹⁹

General organic logo appears as a white leaf created from twelve European stars on a green background. The logo should be applied on the background of any color as far as it is easy to distinguish. In case the background is in the same green color and it is not distinguishable, the white outer line version shall be used. The EU organic logo can appear also in black or in dark

¹⁸ European Commission, Agriculture and Rural Development, Organic Farming, 2012

¹⁹ Commission Regulation (EU) No 271/2010 of 24 March 2010 amending Regulation (EC) No 889/2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007, as regards the organic production logo of the European Union, L 84/19

color if the printing process does not accept the application of the main green color. This version can be printed on the light colored background only. In case a product's package has a dark background it is possible to print the logo in the light or white version. Any other colors are not allowed.

European organic labeling policy defines a special size of the logo. It can appear in every scale; however, the minimal size represents 13,5 mm by 9 mm. The EU Organic logo may be associated also with private or regional organic logos; if they do not change the shape or view of the main logo. European organic logo should not be changed by any text, visual elements or shape.

The organic logo is getting well known and it should be regarded as unchangeable. According to the EU Commissioner for Agriculture & Rural Development Dacian Cioloș public awareness of a new symbol plays a crucial role: “Our hope is that the EU logo can further develop into a widely recognized symbol of organic food production across the EU, providing consumers with confidence that the goods are produced in-line with the strict EU organic farming standards”²⁰

To conclude, European organic labeling is growing on the importance and therefore, European legal framework is expanding rapidly. It was explained in this chapter, that producer who wants to represent his product as ‘organic’ within European Union must meet certain requirements laid down in the Regulation 834/2007 (EC). It is inevitable to mention that, the introduction of the new EU mandatory organic label provides more transparent and trustful organic market not only for consumers but also for producers. Consequently, organic labeling and its new EU logo is a crucial part of current organic national and international regime.

²⁰ European Commission (2012) Dacian Cioloș, Commissioner for Agriculture and Development , Press Release, Brussels.

CHAPTER 3: US Organic Legislation and Labeling

Consumers are becoming increasingly concerned with the quality, safety and production attributes of their food.²¹ Organic food industry within USA is growing since early 1990's. Organic products are simply an outcome of many U.S distributors and manufacturers that put an effort in specializing in processing and marketing within organic sector. This steep growth of the industry has led to various new governmental activities such as research, education, and regulatory programs on organic agriculture in the U.S. Department of Agriculture.

“The U.S. Department of Agriculture (USDA) introduces the Organic Foods Production Act (OFPA) as part of the 1990 Farm Bill. The three main goals of the OFPA were to establish standards for marketing organically produced products to assure consumers that organic products meet a consistent standard, and to facilitate interstate commerce”²²

OFPA created National Organic Standards Board (NOSB) in order to have clearer rules and standards of which substances can be used in organic production and which not. NOSB's main activity is to recommend to the National Organic Program (NOP) about whether the substance should be forbidden in organic production. There was also created National List of Allowed and Prohibited Substances.

Organic products that want to access the market must be processed and produced in accordance with the NOP standards. National Organic Program introduced its own labeling requirements that apply to fresh, raw products and processed products that contain agricultural ingredients.

The implementation of the NOP national standards, labeling guidelines and uniform USDA organic seal has created a stronger consumer confidence and transparency in the organic agricultural sectors. All the products that are labeled, purchased or presented as organic must comply with the USDA regulations. “These regulations require that organic growers and handlers (including food processors) be certified by a State or private agency accredited under the uniform

²¹ Caswell, J.A. (1998) How Labeling of Safety and Process Attributes Affects Markets for Food, Agricultural and Resource Economics Review 27(October): p. 151-158.

²² Carl K. Winter and Sarah F. Davis (2006) Organic Foods, Journal of food science, Vol. 71 Nr. 9.

standards developed by USDA, unless the farmers and handlers sell less than \$5,000 a year in organic agricultural products.’²³

Even though I had already defined what the term ‘organic’ means in general, it is important to see how the legislation was made in the United States. National Organic Program (NOP) regulation offers a codified set of requirements for agricultural products to be labeled as organic. According to the NOP regulation, section §205.300 states that the use of the term ‘organic’ and its derivations “may only be used on labels and labeling of raw or processed agricultural products, including ingredients that have been produced and handled in accordance with the regulations in this part. The term ‘organic’ may not be used in a product name to modify a nonorganic ingredient in the product.”²⁴

In line with USDA regulation, producers and handlers must meet the specific organic standards whether they want to use the word ‘organic’ or the USDA organic seal. The use of the USDA seal is in comparison to the ‘Euro leaf’ not compulsory on food, feed or fiber. In accordance with the USDA rules all the organic procedures have to reveal that biodiversity is conserved and natural resources are protected. Moreover, it must be shown that only permitted substances pursuant to National List of Allowed and Prohibited Substances were used. Consequently, all organic foods are coming from certified farms or handling operations.

U.S. labeling system recognizes four types of organic indications conforming to the product composition. Firstly, if there is a claim of ‘100% organic’ the product must be composed from 100% organically produced and certified ingredients. Any processing aids must be organic as well and it may not contain any additives from the National List of Allowed and Prohibited Substances.²⁵

Secondly, if the product is represented as ‘organic’ it must contain at least 95% “organically produced raw or processed agricultural products. Any remaining product ingredients must be organically produced, unless not commercially available in organic form or must be

²³ Carolyn Dimitri and Catherine Greene (2000) Recent Growth Patterns in the U.S. Organic Foods Market, Agriculture information bulletin.

²⁴ NATIONAL ORGANIC PROGRAM Title 7: Agriculture; PART 205—;Subpart D—Labels, Labeling, and Market Information; 7 C.F.R. § 205.300(a); (effective in November 2011)).

²⁵ NATIONAL ORGANIC PROGRAM, Agricultural Marketing Service, U.S Department of Agriculture, 2012

nonagricultural substances or non-organically produced agricultural products produced consistent with the National List...”²⁶

Both terms ‘100% organic’ and ‘organic’ may include USDA organic seal. However, there is a third claim- ‘made with’ organic – where use of the USDA organic seal is not allowed. The product in the ‘made with’ category must comprise of at least 70 % organically produced elements. That is to say, 30% could be any agricultural nonorganic product made without excluded methods, sewage sludge, or irradiation. Besides, use of synthetic fertilizers and pesticides that are not on the National list may be included into the 30% mentioned above.²⁷

In the last place there is a category of products with less than 70 percent organically produced ingredients. The term ‘organic’ may be placed only on ingredient placement together with the percentage of the organic substances. Residual ingredients are not requested to follow the USDA organic regulations. Multi-ingredient product that contains specific organic ingredients does not have to be certified.²⁸

All the labeling categories of the organic products noted above shall be produced without excepted methods such as genetic engineering, ionizing radiation, or sewage sludge. Those organic products sold, labeled, or represented as ‘100% organic’, ‘organic’, ‘made with’ organic, or products with less than 70 percent organic ingredient shall exclude water or salt. Product composition varies according to the certified organic ingredients expressed by the certain percentage.

Section § 205.302 of the NOP regulation provides how to calculate the percentage of organically produced ingredients. “The percentage must be determined by the handler who affixes the label on the consumer package and verified by the certifying agent of the handler. The handler may use information provided by the certified operation in determining the percentage.”²⁹

“Organic meat is a special field of organic farming where animals raised are not allowed to be fed antibiotics, growth hormones or other artificial drugs. It is also not allowed to be fed by genetically modified foods. Organic animal producers are generally prohibited from using antibiotics, and there is an argument that this prohibition could theoretically result in increased

²⁶ NATIONAL ORGANIC PROGRAM Title 7: Agriculture; PART 205—;Subpart D—Labels, Labeling, and Market Information; 7 C.F.R. § 205.301(b); (effective in November 2011)).

²⁷ NATIONAL ORGANIC PROGRAM, Agricultural Marketing Service, U.S Department of Agriculture,2012

²⁸ NATIONAL ORGANIC PROGRAM, Agricultural Marketing Service, U.S Department of Agriculture,2012

²⁹ NATIONAL ORGANIC PROGRAM Title 7: Agriculture; PART 205—;Subpart D—Labels, Labeling, and Market Information; 7 C.F.R. § 205.302(c); (effective in November 2011)).

pathogen levels and elevated microbiological safety risks. However, research findings in this area are inconsistent.”³⁰

“The prohibition of antibiotic use in organic animal production also appears to be responsible for the lower incidence of antimicrobial resistance in bacterial isolates from organically raised food animals compared with conventionally raised food animals. This has been demonstrated in several studies and is concisely summarized in an IFT expert report.”³¹

Healthier environment, wider range for the animals and better working conditions for the farmers can add value for the organic product. However, the organic meat products cost mostly twice as much as conventional meat, therefore, just a small amount of the buyers can afford it. Some of the consumers simply do not know the difference between conventional meat and organic meat and they do not perceive it necessary to pay more for them, for the same product. This is one of the reasons why the awareness about organic labeling is so important.

In accordance to the latest press release by Organic Trade Association: “awareness of the USDA Organic seal has also grown, with more consumers more likely to look for the seal when shopping for organic products. Moreover, over four in ten parents (42 percent) say their trust in organic products has increased, versus 32 percent who indicated this point of view a year ago. In fact, younger, new-to-organic parents are significantly more likely to report improved levels of trust in organic products. Consumer trust is on the upswing for organic as the gold standard when seeking to avoid toxic and persistent pesticides, antibiotics, synthetic hormones, genetically engineered ingredients, and additives.”³²

USDA organic label and U.S organic regulations were introduced as the standards of the organic agriculture were not applied uniformly; there was lack of data and limited resources for the proper organic industry. Therefore, National Organic Program goal was to set clear standards that would lead to better consumer protection. To conclude, uniformly labeled organic products can access the market better and more equivalence agreements with foreign countries can be concluded. Better technology and research can provide more economic opportunities and enhance local and regional connections.

³⁰ Carl K. Winter and Sarah F. Davis (2006) Organic Foods, Journal of food science, Vol. 71 Nr. 9.

³¹ Carl K. Winter and Sarah F. Davis (2006) Organic Foods, Journal of food science, Vol. 71 Nr. 9.

³² Barbara Hautman (2013) Eight in ten U.S. parents report they purchase organic products, Organic Trade Association’s (OTA’s) newly released 2013 U.S. Families’ Organic Attitudes and Beliefs Study, conducted Jan. 18-24.

CHAPTER 4: Certification of Organic Food According to American Standards

The organic certification system in the U.S was established in order to guarantee that the quality of organic products is ensured, and consumers are not misled when buying those foods. Formation of certification system is dating back to 90s when the first legal instrument was introduced. In this chapter will be described certification of American organic food from the substantive and procedural view.

The starting point of certification movement was in the 1980s, when multiple organizations in the United States offered certification to different, and often conflicting, organic standards. Coupled with fraud, and consequently resulting in consumer mistrust created a need for Federal standards and oversight. The Organic Food production Act of 1990 introduced national standards for the production and handling of organic agricultural products. The Act authorized USDA to create the National Organic Program, which is fully responsible for developing, and ensuring compliance with, the USDA organic regulations.³³

It is essential to examine what does organic certification means. It is a procedure by which a certification authority issues written affirmation that a service, process or product is in conformity with certain standards. Organic certification confirms that individual organic business situated anywhere in the world satisfy the USDA organic regulations. Compliance with the U.S Department of Agriculture organic rules allows the individual to label, sell and promote the products as organic. These organic regulations define exact standards that are required in order to use the USDA seal or simply word “organic” on food, feed or fiber products.

Some of the organic businesses must be certified and some not. If the gross annual organic sales represent more than 5000 dollars it is an obligation to be certified. If the farm or business gets less than amount mentioned it is optional to obtain organic certification. Owners of the organic businesses, however, need to know what types of products are eligible to be certified.

³³ Ann H. Baier, National Center for Appropriate Technology (NCAT) and Lisa Ahramjian Agriculture Specialist and, National Organic Program (NOP) Publications Manager, November 2012.

According to USDA standards there are four types of organic production: crops and wild crops, livestock, and processed or multi-ingredient products.³⁴

Entities that are granting certification are called certifying agents. These agents that could be private, foreign or State are accredited by the USDA and situated throughout the world, especially the United States. The responsibility of the certifying is not simple as it must be ensured that USDA organic standards are not violated. Agents are officially listed online and it is up to producer or handler to choose which possibility would be the most convenient.

When the producer or handler chooses the certifying agent it would be clever considering certain factors. Even though each of these agents is accredited to issue an equivalent organic certificate complying with USDA regulations, the distance might be important factor. Distance to the farm or business should not be inconvenient for both handler and certifier. Accreditation to other standards and fee structure can be another criterion. Owner of the organic business might also take into account additional services, such as educational and member benefits. After convenience considerations for the organic producer or handler there are some procedural requirements that should be followed in order to get the certification.

Firstly, application and fees must be submitted to a USDA accredited agent for organic certification. Submitted application must describe operation that wants to be certified together with list of substances used during the previous three years. Prohibited substances must not be used on any land to produce raw organic materials for the previous 36 months.

In addition, it is necessary to include into the application the names of the processed, raised, or grown organic products. Every applicant must also submit Organic System Plan (OSP) in written form. This plan must consist of detailed description of the practices and substances to be used to land.³⁵

Second step after the submitting of application is to wait for the agent to review the materials whether the practices are in compliance with the regulations. If the written application is according to USDA organic standards inspector will be scheduled to visit the farm or business to confirm it. Inspector must verify that the Organic System plan is pursued and records properly maintained in order to issue a report about the compliance of the USDA organic regulations.

³⁴ Ann H. Baier, National Center for Appropriate Technology (NCAT) and Lisa Ahramjian Agriculture Specialist and, National Organic Program (NOP) Publications Manager, November 2012

³⁵ Ann H. Baier, National Center for Appropriate Technology (NCAT) and Lisa Ahramjian Agriculture Specialist and, National Organic Program (NOP) Publications Manager, November 2012

Last step of the certification is evaluation of the application and inspector's report to ascertain if the handler or producer complies with the organic standards. If the materials submitted are in accordance to USDA organic regulation accredited certifying agent will grant the certificate. Organic certificate is valid only for one year and then all the procedure must be repeated.³⁶

It is important to bear in mind that if an operation violates the USDA organic regulation it is not possible to claim the products organic and sanctions can be applied. Sanctions have form of financial penalties or deprivation of organic certificate. "Certification provides 3rd-party assurance that a product was raised, processed, and distributed to meet the official organic standards. This process also reduces the practice of falsely labeling products as organic. In the United States, manufacturers can receive penalties of up to \$10000 for inappropriate use of the organic label"³⁷

This chapter provides information about organic certification policy in the United States. Certification process comprise of several procedural steps that must be followed by the producer or handler of organic business wishing to be certified. The certification is a key element of organic food chain and it is necessary to encourage more and more producers and handlers to be certified in order to raise consumers' confidence.

³⁶ Ann H. Baier, National Center for Appropriate Technology (NCAT) and Lisa Ahramjian Agriculture Specialist and, National Organic Program (NOP) Publications Manager, November 2012

³⁷ Carl K. Winter and Sarah F. Davis (2006) Organic Foods, Journal of food science, Vol. 71 Nr. 9.

CHAPTER 5: Certification of the Organic Food According to European Union Standards

Certification refers to the confirmation of certain characteristics of the product. It provides assurance for consumers that the products they pay the added value for are with the organic quality. There are strict rules when it comes to certification in the European Union, which will be described in this chapter.

Codex Alimentarius guidelines that state international food standards, define certification as “the procedure by which official certification bodies and officially recognized 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.”³⁸

As the organic market started to grow from the beginning of 90’s there was an urgent need to develop some rules that will assure some guarantee for both farmers and consumers. The relationship between the producers and consumers evolved into more impersonal stage. Simply verbal promise was not sufficient to protect both sides from fraud or unfair manners and therefore it could lead to an incentive to cheat. “The need for more formalized systems became apparent in order to, both; protect consumers from fraud and to protect producers from unfair competition.”³⁹

In the Europe binding standards for certification became prerequisite for more transparent organic market and confidence of the trading parties. “The first national private standard of organic farming was established in Great Britain in 1973 and the first national regulation that served as a public standard in the European Union was adopted in 1983 in Austria.”⁴⁰

Certification systems in the European Union did not have any significant changes even with the amendments. The first legal instrument was adopted in 1991 with the aim to have a competitive market between producers. It was apparent that the Council Regulation (EEC) 2091/91 on organic production of agricultural products and indications referring thereto on

³⁸ Codex Alimentarius Commission (1995). Principles for food Import and Export Certification and Inspection.

³⁹ Schmid, O. (2007). Development of standards for Organic Farming. In: Organic farming: an international history. p. 152-174, Ed. W. Lockeretz. Walingford, Cambridge: CABI.

⁴⁰ Lampkin, N.C. Foster, S. Padel and P. Midmore (1999) The Policy and Regulatory Environment for Organic farming in Europe. Stuttgart- Hohenheim: Universitat Hohenheim.

agricultural products and foodstuffs was issued to make sure that organic production methods would be handled in the most transparent way.

This regulation set for the first time a minimal standard for definition of how the organic food has to be processed and produced. According to the EU law, Member States have to prove the quality by setting up a reliable control system. This Regulation was subsequently amended in 2007 with the effectiveness from 1 January 2009. Article 27 of current Regulation says: “Member States shall set up a system of controls and designate one or more competent authorities responsible for controls in respect of the obligations established”⁴¹ As there are currently 27 EU Member States it is understandable that not every state can have exactly the same control system.

European legislation defines certification bodies as “control bodies”. Those bodies control the compliance and issue certificate or “approval”. There are three general types of the control systems within the European Union. Firstly, there is a system of approved private control bodies. Secondly, system of a designated public authority or authorities that is in place in some Member States. Lastly and the most often used is the system of a designated public authority and approved private control bodies.

Generally speaking, all three types of the controls share the same basic characteristics. According to the Regulation 834/2007 any operator who wants to place organic products on the market must notify his activity to the competent authorities of the Member State where the activity is carried out.⁴² This rule applies also for organic operator who produces, prepares or imports any organic products. In practice, however, it is not the operator himself to notify to the competent authority. Notification is usually carried out by the control body responsible for the operator.

Any organic operators are controlled for compliance with the organic standards. If the activities of the organic handler or producer comply with the standards, control authority, depending on the system of operation in every Member State will issue a certificate. The certificate gives the producer right to represent and label produced products as ‘organic’. It assures the cohesion to the European organic standard and provides for a quality recognized indicator.

⁴¹ Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labeling of organic products and repealing Regulation (EEC) No 2092/91, Art.27(1).

⁴² Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labeling of organic products and repealing Regulation (EEC) No 2092/91, Art.28.

Control bodies are not only appointed by the certain Member State but also have to be subject to the accreditation. Accreditation is a procedure by which private or public accreditation authority grants an official acknowledgment that a control body is able to provide certification and inspection services. It is stated that from 1 January 2009 approved control bodies in the European Union must be accredited to the European Standard EN 45011 or ISO Guide 65.⁴³

One of the options for the control body is to be accredited under the EN 45011 that stands for recognized standard for product certification in the Europe. The aim of this European standard is to ensure that the certification of the products is meeting identifiable quality criteria. The standard was maintained since 1989 with the objective of giving confidence to the final consumers. It is expected that inspections, testing and controls ensure that the quality standards are in compliance with the EU organic standards. The compliance with the standard should be approved by a certificate or license to a supplier. There are just a few main requirements of EN 45011. Inspections must be performed by a third party of independent inspectors. In addition, normative documentation should be available in order to measure the standards.

Another option for the control body to be accredited is to use ISO Guide 65. ISO is an international body for setting standards with a network of 162 national members out of the 205 total countries around the world. The International Organization for Standardization (ISO) is one of the oldest ones founded in 1940's and its headquarter is based in Switzerland. It is an independent, non-governmental organization developing an international standards on voluntary basis. According to ISO Guide 65 "accreditation shall only be granted to a body which is a legal entity, and will be confined to declared scopes and locations. The accreditation scope for a product certification body should identify the certification schemes, products and normative documents used for the certification."⁴⁴

After the control body is accredited by the European EN 45011 or international ISO 65 standards, the body has a competence to provide inspections and certification services. However, it still needs to be approved by the competent authority of a Member State. Currently applicable Regulation on organic production and labeling of organic products provides that the competent

⁴³ Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labeling of organic products and repealing Regulation (EEC) No 2092/91, Art.27(5)(c).

⁴⁴ IAF: International Accreditation Forum, Inc., IAF Guidance on the Application of ISO/IEC Guide 65:1996, General Requirements for Bodies operating Product Certification Systems, AF-GD5-2006 Issue 2.

authority may confer its control competences to one or more control authorities and/or delegate control tasks to one or more control bodies.⁴⁵

European organic control system has two dimensions: national dimension supervised by the Member States and European dimension supervised by the European Commission. Controls on national level shall be carried out objectively and independently. In addition, the competent authority shall verify the effectiveness of its controls, take notes of infringements found, and withdraw the organic certificate issued when necessary. Additionally, Member States shall attribute a code number to each control authority performing control tasks.⁴⁶

There is vague formulation of the part of the article defining how the competent authorities delegate powers of the control tasks. Article 27(8) of Regulation mentioned above in accordance with Article 5(3) of Regulation (EC) No 882/2004 states: “competent authorities delegating control tasks to control bodies shall organize audits or inspections of control bodies as necessary.” As far as I am concerned, word “necessary” does not define how often or when exactly the inspections should be carried out. So even though, the producers and handlers of organic farms and businesses are inspected every year the relevant control bodies are not.

Supervision of certification bodies is handled on the national level; however, information about effectiveness of the controls shall be reported to the European Commission on a yearly basis. All the control bodies and control authorities approved by both national authorities together with accreditation body are listed on the official List of Control Bodies issued by the European Commission. As provided in Article 35(b) of Council Regulation from 2007 Member States shall regularly transmit “lists of control authorities and bodies and their code numbers and, where appropriate, their marks of conformity. The Commission shall publish regularly the list of control authorities and bodies.”⁴⁷

To make clear, if the organic operator wants to place on the market product with the European organic logo, certification is compulsory. An operator that has been previously involved into the producing conventional products has to undergo a conversion period of two years. After successful compliance of the EU organic rules during the two year period, operators

⁴⁵ Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labeling of organic products and repealing Regulation (EEC) No 2092/91, Art.27(4).

⁴⁶ Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labeling of organic products and repealing Regulation (EEC) No 2092/91, Art.29(9).

⁴⁷ Council Regulation (EC) No 834/2007 of 28 June 2007 on organic production and labeling of organic products and repealing Regulation (EEC) No 2092/91, Art.35(b).

are granted a certificate and their products can be legally sold as organic. If there is a producer that wants to produce both conventional and organic products, both operations throughout all the production process must be separated from each other.

Moreover, it is possible to be certified on voluntary basis for private standards. As certification against Council Regulation (EC) No 834/2007 is obligatory for the products sold on the European market, private standards could be either stricter or equivalent. For example, Demeter that is a Danish organic standard exceeds and supplements the EU Regulation with its own production standards.

Even though the certification process is not simple and cheap alternative for organic operators, it provides consumers with reliable identifiable organic standard. Once a product has been certified in one of the Member States it has to be automatically recognized within all European Union. Certification of the organic business gives the producer advantage of using European organic label that is more and more recognizable by the consumers. Thus, buyers of organic food products have assurance of organic quality EU-wide.

CHAPTER 6: International Standards in Relation to the WTO and Public Versus Private Organic Standardization

This chapter critically examines, whether organic food trade is regulated by the international guidelines or whether the WTO agreements are applicable and till what extent. The chapter has been divided into three parts. The first part deals with the World Trade Organization and agreements related to food trade, namely The Technical Barriers to Trade Agreement (TBT) and Sanitary and Phytosanitary Measures Agreement (SPS).

Second part of the chapter will examine important role of The International Federation of Organic Agricultural Movement (IFOAM) and The Codex Alimentarius Commission. In addition, I will try to defend the view why one codified set of common rules of organic standards would not be a good idea. Third part will look at public versus private organic food standardization and current applicability and interconnection.

International harmonization of the organic standards can be perceived as a reasonable food policy goal. It could reduce barriers to trade and open the door for international organic market. However, organic standards are not in current state harmonized internationally. This chapter will outline that even if there are international standards in the organic sector, it is not enough to upheld international trade and the World Trade Organization rules.

Global trade in organic food is growing rapidly, and therefore the standards for organic products can represent a technical barrier to open trade used by the governments. It seems reasonable that specific organic standards are created on purpose, as international competition can be a significant threat for the domestic producers of organic food.

6.1 The TBT and SPS agreements within the framework of WTO

The World Trade Organization (WTO) is an organization that intends in the opening of international trade. The WTO was born in 1995 and acts as an organization handling the global trading rules between participating countries. The organization administrates a framework for negotiating trade agreements and tries to resolve disputes on the international trade field. There is a big endeavor to enforce the members in loyalty to WTO itself and its agreements.

The World Trade Organization concluded two important agreements that are integrated into the WTO legal framework. The Technical Barriers to Trade Agreement (TBT) and Sanitary

and Phytosanitary Measures Agreement (SPS) are multilateral agreements that are to be accepted as a whole. The major problem, however, with these agreements is that they do not address specifically organic standards, and therefore the common rules can be avoided by national measures causing barriers to trade.

The Technical Barriers to Trade Agreement (TBT) is an international agreement concluded in order to eliminate trade barriers that can potentially be caused by the regulations, certifications procedures, and standards and, testing. Despite its safety and efficacy, the question remains whether the TBT agreement also covers the organic food standards. “While the WTO agreements have rules for scientifically based policy measures adopted to protect human, animal or plant health or life, there is some disagreement on whether the WTO’s Agreement on Technical Barriers to Trade (addresses food labeling) covers production standards based on ethical values such as those defining organic food standards.”⁴⁸

Whether the organic standards are covered by the TBT agreement or not is a current discussion. However, in assumption of the fact that domestic standards shall be based on the international standards in general, organic standards would be covered by the international rules. Nevertheless, there is a possibility to introduce stricter standards on the national level.

Even though, WTO members of the governments are permitted to introduce stringent domestic standards than international ones, it should not lead to discriminatory practices. With the respect to the central government bodies, TBT agreement states: “Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favorable than that accorded to like products of national origin and to like products originating in any other country.”⁴⁹

The issue of less favorable treatment, however is not easy to solve as there are too many standards and certification systems in existence. Moreover, public health and safety justification by the national authorities is mostly accepted. Neither standards, nor certification rules are not binding and harmonized on the international level. Even if the current state of affairs is often criticized, there is simply no legal instrument to forbid members to use higher standards that could affect the international trade.

⁴⁸ Carsten Daugbjerg, (2012) The World Trade Organization and organic food trade: potential for restricting protectionism?, Institute of Food and Resource Economics, University of Copenhagen.

⁴⁹ Uruguay Round Agreement: Agreement on Technical Barriers to Trade (TBT), Technical Regulations and Standards, Article 2: Preparation, Adoption and Application of Technical Regulations by Central Government Bodies, (2.1).

It should be mentioned that trade restrictions related to health safety are addressed by both the TBT Agreement as well as by Sanitary and Phytosanitary Measures agreement. However, there is a difference of their applicability. SPS measures are typically focused on certification related to food safety, animal and plant health, while TBT measures are dealing mostly with the food composition and its labeling and packaging.

Another international agreement entitled Sanitary and Phytosanitary Measures Agreement (SPS) sets basic rules on food safety and animal and plant health standards. “It allows countries to set their own standards. But it also says regulations must be based on science. They should be applied only to the extent necessary to protect human, animal or plant life or health. And they should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.”⁵⁰

The trade of agricultural products has always been a delicate point in multilateral relations. Reluctance by the WTO members to stick to agreed international rules and apply them in their territories might lead to the irrational barriers to trade. Even though, it is often analyzed whether the WTO agreements discussed apply to organic food trade, it is at the heart of our understanding that imported products should not be treated less favorable than domestic products.

6.2 IFOAM and Codex Alimentarius Commission

In addition to the WTO agreements, there are two present international sets of organic food standards: The International Federation of Organic Agriculture Movements (IFOAM) and the Codex Alimentarius guidelines. Even though, neither of them is binding they are having significant influence on global trade of organic product.

The International Federation of Organic Agriculture Movements is a global trade institution for the organic agriculture action with around 750 member bodies from 116 countries. IFOAM stands for a private umbrella organization accepted worldwide. IFOAM guidelines are setting standards for production process as well as for accreditation bodies. Its mission is defined as: “leading, uniting and assisting the organic movement in its full diversity. Our goal is the

⁵⁰ WTO (2013) Understanding the WTO, Handbook at WTO official website, ISBN: 978-92-870-3748-0.

worldwide adoption of ecologically, socially and economically sound systems, which are based on the principles of Organic Agriculture."⁵¹

IFOAM developed its own guarantee system for common organic standards. "The Organic Guarantee System (OGS) unites the organic world by providing a common set of standards for organic production and processing, and a common system for verification and market identity. It fosters equivalence of participating certifiers and thereby facilitates the trade of organic products between operators certified by different participating certification bodies."⁵² OGS gives an opportunity to label organic products with the IFOAM seal and logo of accredited certifier.

The Organic Guarantee System's norms are divided into the IFOAM Basic Standards (IBS) and the IFOAM Accreditation Criteria (IAC). Those norms, however, are not binding. Their role is to provide a flexible guidelines instead of binding legal instruments.

"The IFOAM Basic Standards (IBS) provide a framework for certification bodies and standard setting organizations worldwide to develop their own certification standards and cannot be used for certification on their own. Certification standards should take into account specific local conditions and provide more specific requirements than the IFOAM Basic Standards."⁵³

Second set of norms is the IFOAM Accreditation Criteria that shall be met in order to be internationally certified. Under the IAC requirements certification authority must verify if the certification process that includes operator's practices and procedures are in accordance to IFOAM organic standards.

To clarify, IFOAM is a global organic actor that has its own standards of organic products. It is represented by the basic international standards and accreditation standards that are addressed to its members or potential members. Those standards are flexible and consequently do not have any legal power over the national governments.

Another important actor on the organic global scene is The Codex Alimentarius Commission. The body was appointed in 1963 by the World Health Organization (WHO) and Food and Agriculture Organization of the United Nations (FAO). It operates as an

⁵¹ International Federation of Organic Agriculture Movements(IFOAM) , Program 2011 at the official IFOAM website.

⁵² "The IFOAM Basic Standards for organic production and processing", version 2005 at the official IFOAM website.

⁵³ "The IFOAM Basic Standards for organic production and processing", version 2005 at the official IFOAM website.

intergovernmental body that has more than 170 members from different countries. Codex Alimentarius is a set of international food standards that can be used by national governments as a basis for their own standards

This international food code has become the global reference point for consumers, national food control agencies and the international trade. The guidelines advice that: “When formulating national policies and plans with regard to food, governments should take into account the need of all consumers for food security and should support and, as far as possible, adopt standards from the ... Codex Alimentarius or, in their absence, other generally accepted international food standards”⁵⁴

The Codex Alimentarius likewise the IFOAM guidelines provide only helpful instruments for creation of national standards. Even though, there are strong intentions to become worldwide respected recognized standards, it seems to be less likely. The question is why would the member states simply allow one international organization to define the common standards? With good judgment, every state has its own culture, different legal order, and conditions for organic farming that cannot be liberalized.

Daugbjerg’s proposes that “binding Codex organic standards would clearly be the most powerful approach to create a level playing field for organic trade.”⁵⁵ However, it seems that it could also create inconsistencies in the common standards. More control and enforcement bodies would have to be established and it would be extremely difficult to discipline all the states to follow one set of binding standards applied to organic trade.

Needless to say, Codex Alimentarius can be a useful tool for trade disputes resolution.” The reference made to Codex food safety standards in the World Trade Organizations' Agreement on Sanitary and Phytosanitary measures (SPS Agreement) means that Codex has far reaching implications for resolving trade disputes. WTO members that wish to apply stricter food safety measures than those set by Codex may be required to justify these measures scientifically.”⁵⁶

Three main international legal instruments regulating organic food were analyzed in this chapter. WTO involvement together with international organizations as IFOAM or Codex

⁵⁴ Codex Alimentarius Commission’s booklet: “ Understanding The Codex Alimentarius”, third edition, Issued by the Secretariat of the Joint FAO/WHO Food Standards Program, FAO, ROME 2006, ISBN 978-92-5-105614-1.

⁵⁵ Carsten Daugbjerg, (2012) The World Trade Organization and organic food trade: potential for restricting protectionism?, Institute of Food and Resource Economics, University of Copenhagen.

⁵⁶ Codex Alimentarius (2013) Information found on official site: “About Codex”.

Alimentarius Commission lack legitimacy on the national level. Therefore, organic standards provided by those organizations are used more as a base for developing national standards instead of having binding legal power over the national governments.

Some argue that one codified set of common rules of organic standards would lead to more transparent and efficient organic trade around the world. However, in my opinion binding organic standards on the international level would create less transparency, confusion for consumers, and decrease of worldwide market demand of organic food. To illustrate, European organic standards or U.S standards of the organic products are set according to their own production conditions, consumer perceptions, culture, and different legal orders. Variations of those factors are apparent and liberalization of the international organic standards is impossible. Therefore, the most suitable approach for regulating organic standards is to have continental rules instead of having common international organic rules.

6.3 Public versus Private organic food standardization

Clear standards of organic production play a crucial role for the global market. Market transparency is upheld by consumer's confidence and trust into the control system. Therefore, the main objective of standardization is to avoid fraud and fake organic claims. The role of the private and state bodies in organic food standardization shall be described in this subchapter. In addition, relationship between WTO and private bodies will be examined.

Standardization of organic food can be understood as an endeavor of public or private bodies to issue common rules of organic farming and organic trade. Those standards are explicit and in written form, providing additional insurance for consumers that organically certified food has the claimed quality features.

The concept of standardization across borders can be described also as a particular type of governance. "Standardization can be seen as a new type of 'multi-level-governance' that cuts across national as well as organizational borders. Although, standardization, understood broadly, is far from a new phenomenon, we note an increasing demand and supply of standards aimed at efficient management, quality assurance, environmentally and socially responsible behavior, and so forth."⁵⁷

⁵⁷ Busch, L. (2000). "The moral economy of grades and standards" *Journal of Environmental Policy and Planning* 5: p. 165-180.

Moreover, standardization evolved into the certification and labeling schemes. Initially it was not state bodies to set specific organic standards. It had started with the private bodies or simply farmers that wanted to ensure consumers that the products they produce have certain quality. “Originally, most organic labeling schemes were based on the private sector governance model in which the private sector, typically organic producer associations sets the organic standards, operated the labeling schemes, certified and monitored organic producers and processors”⁵⁸

Private standards, in contrast to public standards are set by a certain private or umbrella organization and in general can be stricter than the standards adopted by public bodies. Regional, national or international private organic bodies can use their standards as a competitive advantage as being different from the state standards. Although different organic products with different labeling schemes does not guarantee better position on the market, consumers that are aware of the fact that the standards are stricter than the state ones, could show a high appreciation.

Even though, the private standards are step-by-step disappearing, some countries around the world did not introduce state standards until 2009. Therefore, it is becoming more likely to have basic state rules for organic production, which must be accepted and followed. Simply put, state body is acting as an authorizer of private bodies.

Daugbjerg is defining the current model in the most of the countries as an ‘arm-length governance’ model in which the government sets the minimum standards and licenses private certification bodies to monitor and certify the organic production.⁵⁹ These certification bodies might apply state baseline requirements, however, also adopt stricter standards for certain aspects of organic farming.

Both EU and U.S are currently using the ‘arm length governance’ model. Furthermore, thinking about private versus public standardization bodies it is not easy to say which one of them is in charge of organic food certification and labeling. “Therefore, the distinction between private and government standards becomes blurred because certification by private organizations

⁵⁸ Carsten Daugbjerg, (2012) The World Trade Organization and organic food trade: potential for restricting protectionism?, Institute of Food and Resource Economics, University of Copenhagen.

⁵⁹ Carsten Daugbjerg, (2012) The World Trade Organization and organic food trade: potential for restricting protectionism?, Institute of Food and Resource Economics, University of Copenhagen.

with their own add-on standards implies compliance with both private and government standards.”⁶⁰

Another question which remains unanswered is the legal power of WTO agreements over state or non-state actors. “While tariffs and quotas have been reduced significantly since the creation of the WTO the rise in public and private standards is one element contributing to the growing amount of non-tariff measures. So as to counter a trade impeding impact of non-tariff measures, a number of agreements were developed.”⁶¹

When it comes to public bodies it seems logical that governments being members of WTO are to stick to the international agreements such as The Technical Barriers to Trade agreement (TBT). However, private bodies are separate entities in their nature and therefore, they are not official members of WTO.

It is not only the main objective of TBT agreement to eliminate trade barriers but it is also mentioned in the Council Regulation (EC) No 834/2007 that: “the functioning of the internal market and control system, assessing in particular that the established practices do not leave to unfair competition or barriers to the production and marketing of organic products”.⁶²

Consequently, if there is a pure governmental governance over the organic sector their practices should be in compliance with the TBT Agreement. It is much easier to define and solve the relational question as the public bodies state the organic standards as well as grant certificate. In this case rules are regulated on one level and there are no inconsistencies and sharp differences.

In contrast to private organizations that have no obligations to comply with the WTO rules, question remains whether the non-state actors that got delegated power by the government are subject to TBT Agreement clauses or not. As Mbengue points out: “discussions on how to deal with private standards, let alone how to ‘integrate’ these standards with the WTO framework remain controversial.”⁶³

There are various discussions going on about private versus public standardization schemes. Some claim that private bodies acting behalf the state can misuse their status while

⁶⁰ Henson S, Humphrey J (2009) The impacts of private food safety standards on the food chain and on public standard-setting processes,(p.5), ALINORM 09/32/9D- Part II, Joint FAO/WHO Food Standards Programme, Codex Alimentarius Commission, Rome.

⁶¹ Oliver von Hagen and Gabriela Alvarez, International Trade Centre (ITC),The Interplay of Public and Private Standards. Geneva: ITC, 2011. x, 41 p. (Literature Review Series on the Impacts of Private Standards; Part III).

⁶² Council Regulation (EC) No 834/2007, article 41.

⁶³ Mbengue, M.M. (2011) Private standards and WTO law’, Bridges, 5, 1, ICTSD.

serving their own interests. However, in countries as UK or Sweden private organic labels are more dominant and influential on the national market.

There is also possibility that the stricter organic private standards can create barriers for organic trade, and therefore eliminate imports of organic products. To illustrate, Soil Association is one of ten private certifying bodies approved by the UK that was accused of unnecessary import restrictions.

Soil Association was roundly criticized that the procedures of accreditation of Danish organic livestock standards took too long and application was not progressing. Even though Danish importers considered the accreditation procedure unnecessary Soil association provided reasonable justification. Soil Association representatives pointed out that the global good image of organic food was at stake and therefore, more complicated procedures are necessary for imported products.⁶⁴

To sum up, roles of private and public bodies in organic sector are interconnected. As Hagen and Alvarez pointed out: “the interplay of private and public standards is a complex question due to, first, the amount, the complexity, and specificity of standards developed by the public domain and private entities and, second, due to the implications standards have on the international trade system and participation therein.”⁶⁵

⁶⁴ Bacon: ‘Danish anger at organic blocks’.

⁶⁵ Oliver von Hagen and Gabriela Alvarez, International Trade Centre (ITC), The Interplay of Public and Private Standards. Geneva: ITC, 2011. x, 41 p. (Literature Review Series on the Impacts of Private Standards; Part III).

CHAPTER 7: Equivalency for Organic Trade

One of the general principles applied in organic trade is a principle of equivalence. Establishment of the equivalence is a useful tool for the organic market growth. It means not only better market access for producers and manufacturers but also consumer's advantage of wider range of organic products. Historical event happened when two largest markets of organic food, European Union and United States acceded into the equivalency agreement in 2012.

“Agriculture Deputy Secretary Kathleen Merrigan announced that the United States and the European Union formed a partnership that will recognize the two organic programs as equivalent and allow access to each other's markets on Wednesday, Feb. 15, 2012 in Nuremberg, Germany. EU Commissioner of Agriculture and Rural Development Dacian Cioloș and Merrigan signed the formal letters creating the partnership”⁶⁶

The importance of this historical agreement and today's equivalency system shall be described in this chapter.

First of all, a definition of equivalency shall be provided. Equivalency itself can be defined as: “a mutual recognition in the form of bilateral arrangements between key trading partners that allows for successful trade by reducing trade barriers and supporting the strengthening of the supply chain.”⁶⁷

Needless to say, that equivalency does not mean identical mutually recognized standards. Standards can have slight differences; however for the purpose of effective trade they must be sufficiently similar.

Equivalency agreement is a bilateral agreement between trading partners that is based on the principle of mutual recognition. Agreements that are based on the mutual recognition principle facilitate promotion of global trade, by providing better and easier market access. However, equivalency arrangements need long negotiations that are also costly.

⁶⁶ United States Department of Agriculture (2012) USDA blog, ‘Organics take a major step forward with U.S- EU partnership’, Posted by Agriculture Deputy Secretary Kathleen Merrigan, on February 22.

⁶⁷ Organic Trade Association (2013)

Before negotiations, there have to be similar organic regulatory programs between the potential trading partners. Countries with similar organic regulatory programs are entering into equivalency agreements to facilitate trade of essentially similar organic products. At the time of writing there are seven such arrangements – Canada/US, Canada/EU, US/EU, US/Japan, US/Taiwan, Canada/Taiwan and Canada/Switzerland.⁶⁸ Therefore, we can see that US have concluded 5 bilateral agreements about organic equivalency trade already.

The European Union has much more organic trading partners than the United States. According to Commission Regulation (EC) No 1235/2008 that is concerned with the ‘arrangements for imports of organic products from third countries’ eleven countries are having open access to the European market. The oldest cooperating countries listed are Argentina, Australia, Costa Rica, India, Israel, and New Zealand. These countries entered the list as third countries’ after the approval granted by European Community. The next country listed in 2002 was not as a result of the approval but of the signing of bilateral agreement. “The European Community and the Swiss Confederation have concluded an Agreement on trade in agricultural product” which also included organic products.⁶⁹

After the bilateral agreement with Switzerland in 2002, it took 6 more years to have new members entering organic market in the European Union. It seems European governance ‘woke up’ after issuing Regulation No 834/2007 of 28 June 2007. Thus, another approved third countries listed were Tunisia in 2008 and Japan in 2010.

There were two more and so far last bilateral agreements on organic trade concluded. Equivalency agreements were signed between EU and Canada in 2011 and in 2012 agreement between EU and US.⁷⁰ As the last bilateral agreements were between the biggest organic markets, it is inevitable to compare them.

Canada, USA and EU are the most important players when it comes to the equivalency agreements of organic trade. They all have one thing in common. USA, EU, and Canada are interconnected with the bilateral agreements about allowed organic trade in their territories. The agreement between EU and Canada is considered more open than the agreement between US and Canada. EU and Canada have simply open trading system of organic products and there is no

⁶⁸ Guide to Organic Equivalency. Pro- Cert Organic, January 2013.

⁶⁹ Commission Regulation(EC) No 1235/2008 of 8 December 2008 laying down detailed rules for the implementation of Council Regulation (EC) No 834/2007 regarding the arrangements for imports of organic products from third countries.

⁷⁰ OACC, Organic Agricultural Centre of Canada, “Equivalency for Organic Trade”, November 2011.

need for additional certification. It is restricted, however, to imported or exported products that must be processed and produced in the EU or Canada only. To illustrate, organic pineapple grown in Peru and legally certified on organic Canadian market cannot be shipped to the EU and other way around.

Equivalency agreement signed in 2009 between Canada and US will also provide with possibility to sell organic products on their territories. The partners that have similar culture and partially similar language will be now able to go forward and achieve organic market expenditure. However, there is one additional requirement that must be fulfilled. Even though their certification regimes are considered equivalent, additional certificate of equivalence shall be provided. This certificate will verify that possible critical variances between the standards of US and Canada are respected.

When comparing the agreements between EU/Canada and US / Canada there are slight equivalency differences. As Organic Agriculture Center of Canada explained, “Canada/US Agreement is different, because certifying bodies accredited by the Canada Organic Office can provide certification to the terms of the Canada/US agreement outside of Canada to organic products exported to US. So, the organic broccoli grown in Mexico that is certified organic to the terms of the Canada/US Agreement could be exported as “organic” on the US market.”⁷¹

All those agreements have one feature in common. The use of organic logo can be used between EU, US, and Canada. Simply put, products exported from Canada to EU can use ‘EU leaf’ logo and other way around. The same rule applies between Canada and US and EU and US and vice versa. The latest agreement revealing equivalence of organic standards between EU and US will be explained in following subchapter.

7.1 Organic equivalence arrangement between EU and U.S

After endless negotiations and long-lasting endeavor to have a cooperation agreement between European Union and United States, ‘historical equivalency arrangement’ came true. Certainly, this significant agreement provides easier access to the EU or US market with less costs for double certification and cutting through the red tape. After a long decade it seems ridiculous that

⁷¹ OACC, Organic Agricultural Centre of Canada, “Equivalency for Organic Trade”, November 2011.

only two letters and one official meeting with representatives from the both sides of Atlantic was finally ended up by the official signing of the agreement.

The official meeting was held in 15 February 2012 in at the BioFach event in Nuremberg, Germany. European Commission released the same day that there were formal letters signed “by Dacian Cioloș, European Commissioner for Agriculture and Rural Development; Kathleen Merrigan, U.S. Agriculture Deputy Secretary; and Ambassador Isi Siddiqui, U.S. Trade Representative Chief Agricultural Negotiator.”⁷²

U.S representative Deputy Agriculture Secretary Merrigan expressed her enthusiasm about the signed agreement by words: “It is a win for the American economy and President Obama’s jobs strategy. This partnership will open new markets for American farmers and ranchers, create more opportunities for small businesses, and result in good jobs for Americans who package, ship, and market organic products,”⁷³

EU Commissioner Dacian Ciolos was upbeat on the decision as well when he said: “This agreement comes with a double added value. On the one hand, organic farmers and food producers will benefit from easier access, with less bureaucracy and less costs, to both the U.S. and the EU markets, strengthening the competitiveness of this sector”⁷⁴

This new partnership is so important also because; previously if there was a will to trade with the organic products between European Union and United States, there were too many additional requirements that could simply discourage the producers and companies. Double burden to be certified on the other side of the Atlantic once again was too complicated, costly, and irritating.

The agreement is limited to the country of origin principle just like organic equivalence agreement between EU and Canada. Consequently, arrangement includes organic products that have been processed, produced or packaged in the country of origin only. Furthermore, “products processed or packaged in the U.S. or EU that contain organic ingredients from foreign sources

⁷² European Commission- Press Release: “European Union and United States agree to Historic New Partnership on Organic Trade” http://europa.eu/rapid/press-release_IP-12-138_en.htm (Last accessed 15.5.2013)

⁷³ Fresh Fruit Portal “US and EU sign historic organic food trade agreement”.

⁷⁴ United States Department of Agriculture, Office of Communications, European Union and United States Agree to Historic New Partnership on Organic Trade, News Release No. 0051.12, 2012

that have been legally imported as organic into the U.S. or into the EU are also covered by the arrangement.”⁷⁵

Moreover, there is one more sensitive topic for both parties considering organic products traded under the agreement. The delicate issue is a use of antibiotics not only for livestock, but also for fruit. Keith Ball shortly summarizes that current limitations are applied to livestock produced in the EU which have been treated with antibiotics. Those livestock products, such as meat or milk may not be exported to the United States. Conversely, the use of antibiotics for control of fire blight in organic apple and pear orchards are currently permitted in the US, whereas, it is prohibited for use on trees whose fruit is exported to the EU.⁷⁶

Equivalency agreements mostly have in their scope some limitations or differences. As far as, those little variances do not cause disruptions for both EU and US the goal of organic trade liberalization can be still achieved. Needless to say, close dialogue about the changes of the organic standards between EU and US can eliminate potential discrepancies and conflicts. Thus, it was agreed that the representatives from both continents shall meet at least once a year and inform each other about changed legislation about organic agricultural products

Therefore, equivalency partnership between United States and European Union opened up new possibilities from June 2012. Even though, arrangement is pending so far only one year, there were already plenty of producers waiting for this moment. Soon the organic producers and farmers will possess the financial means to enter the transatlantic market and they will not have to be afraid of double inspections and time-consuming bureaucratic procedures anymore. The barriers of entry will fall and consequentially, the market will become much more attractive to prospective suppliers.

⁷⁵ Guide to Organic Equivalency. Pro- Cert Organic, January 2013.

⁷⁶ Keith Ball, (2012) A summary of the different international standards and regulatory systems, IFOAM EU Group.

CHAPTER 8: Analysis of the Bilateral Equivalence Arrangement on Trade of Organic Products between the EU and US - A Comparison of Organic Standards

As explained in the previous chapter the last and the most important historical bilateral agreement came into force in June 1 2012. After more than 10 years of effort Equivalency arrangement between the biggest organic markets EU and US came true. The agreement, however have not been effective for decades but at the time of writing, only for 12 months. Indeed, there should be some variances and differences between the organic standards. This chapter will compare organic standards of the EU and US and analyze whether they can be considered equivalent. This study is divided into two sub-chapters focused firstly on detailed comparison of certification and inspection standards and secondly on production standards. In addition, it worth mentioning what lessons can be learned from each other and what could be possibly improved in future.

In order to understand current similarities and differences of organic standards, it is necessary to think about historical aspect of organic agriculture in Europe and America. Different cultures and attitudes towards food safety influenced the development of organic standards in both the EU and US. One thing they have in common for a long time is the importance of food safety assurance for their citizens. However, the citizen's attitude, trust and preferences of food products differ.

While many attitudes about food safety were based on tradition, some of challenges were posed by modern food safety threats. Food production and technologies were quickly evolving and genetic engineering and irradiation came into practice. The globalization of the food supply brought new questions about the safety of traditional methods of processing products. These challenges have been addressed by both the US and EU, but with slightly different regulatory approaches and results.⁷⁷

European culture has always been more traditional and closed to new technologies. Classical European way of behavior towards agriculture is to favor more traditional and acknowledged foods with as less processing as possible. This traditional approach and disbelief to new technology, however, can possibly slow the agricultural development down. American

⁷⁷ Marsha A. Echols (1998) Food safety regulation in the European Union and the United States: Different cultures, different laws, Columbia Journal of European Law, HeinOnline, Vol. 4, pages 525-526.

culture, in contrast to European culture in general, have always been more enthusiastic about new technological developments. Simply put, Americans have been more open-minded towards new technologies that could be helpful for business growth and innovation. Interestingly, American population was dubious of some traditional methods of processing instead.

Which approach can be considered as better one is not easily identifiable. On the one hand the US was the one who came with the genetically modified organisms, that is considered as a risky technology by a lot of Europeans. Therefore, when speaking about organic agriculture where use of GMO's is forbidden European skepticism was reasonable. On the other hand, new technology and innovations, based on proper research and expertise can improve organic production without being necessarily against organic principles.

Different cultures and history could be the potential reason for the differences between their regulatory schemes. Hence, another important comparison of EU and US will be focused on their regulatory schemes. M.A Echols maintained that the "US regulatory approach permits a great deal of industry regulation, while the Europeans usually adopt a more detailed regulatory scheme. In addition, the American approach focuses more on the product, while that of the EU focuses more on the production process."⁷⁸

Due to detailed descriptions of both regulatory regimes of organic agricultural products in this paper, some analysis can be done. First of all, as mentioned above European legislation have always been more detailed, however it appears to be less transparent and understandable for common citizens. As an example, European organic Regulation does not even define two important words: 'inspection' and 'certification', while the National Organic Program of the US has that terminology clearly defined.

In EU organic product's focus is shifted more on the production practices, while there is no indication in any legal act how is the final product measured. In contrast, the US has detailed legislation concerning calculation of the percentage of the ingredients used, to approve if the product is really organic. The duty to prove the percentage of the organic ingredients used is up to handler who puts the organic label on the product. This percentage must be verified by the certifying agent of the handler. The legislation is written so clearly that even the handler himself can calculate the percentage. To illustrate, this is how 100% organic foods shall be calculated:

⁷⁸ Marsha A. Echols (1998) Food safety regulation in the European Union and the United States: Different cultures, different laws, Columbia Journal of European Law, HeinOnline, Vol. 4, pages 525-526.

“Dividing the total net weight (excluding water and salt) of combined organic ingredients at formulation by the total weight (excluding water and salt) of the finished product.”⁷⁹

After digging through organic legal instruments issued in the EU and US sources a lot of differences can be detected. Relevant comparisons about organic agricultural history and regulatory schemes were provided. Moreover, this chapter needs to be divided into two following subchapters concerning detailed comparisons of certification and inspection practices as well as production and livestock standards.

8.1 Comparison of certification and inspection systems in the EU and US

According to above provided, separate, and detailed chapters about organic certification procedures in the EU and US it is now possible to compare them and draw conclusions. This subchapter will focus on differences between duties performed by the certification and inspection bodies.

The certification schemes are in general based on the same principle, with the accredited body that issues the certificate to the organic producer that complies with organic rules. Certification bodies, whether it is in the EU or in the US, can be both public and private.

While in the EU certification is handled on the national level, in the US it is handled by state or private agencies that must be approved by US Department of Agriculture. EU Member States must report and show adherence to the responsibilities stated in organic Regulation to the EU Commission on annual basis.

Therefore, EU Member States do not need to be approved by any European Committee but every state is solely responsible for the conduct of proper inspection or certification practices. Furthermore, there is a strong emphasis put on central competent authorities that shall be in close cooperation with the inspection bodies. Consequently supervision in the EU is mostly held on the national level, while it seems that in the US, Department of Agriculture has much more supervising power.

Moreover, for both parties applies the rule that the certification bodies or agents have to be accredited. Accreditation in European Union is based on international or European standards

⁷⁹ National Organic Program (NOP), Title 7 Agriculture, Subpart D—Labels, Labeling, and Market Information, § 205.302 “Calculating the percentage of organically produced ingredients”.

such as ISO 65/EN 45011.⁸⁰ American certification bodies should be accredited by the USDA only.⁸¹ Therefore, European legislation does not provide more guidance for accreditation, as it is handled on the international level by compliance to ISO 65 or EN 45011. USA in contrast have very wide legislation stating various criteria for accreditation. Thus, in this point USA and National Organic Program appears as more independent self-regulating actor, where the accreditation rules are not based on international organic standards.

When it comes to the inspections of the organic producers, both European and American organic rules state that inspections must be held at least once a year. However, there is a big difference concerning definition of duties of the inspectors or control bodies responsible for the organic certification. In the European legislation control body must fulfill a few requirements in order to perform the controls. In contrast to EU organic inspection rules, National Organic Program in the US harmonizes criteria and responsibilities for the entity that is accredited as a certifying agent.

To illustrate the difference, there are just three subparagraphs in the EU organic Regulation stating that the control body must prove “the expertise, equipment and infrastructure required to carry out the tasks delegated, sufficient number of suitable qualified and experienced staff, and that the control body is impartial and free from any conflict of interest as regards the exercise of the tasks.”⁸² No further details are provided neither about the tasks of the controlling body nor about any conflict of interests in the EU level.

US National Organic Program provides that a private or governmental entity accredited as a certifying agent must not only have the expertise and ability to provide certification services, but also provide sufficient information to persons seeking certification. There is an annual performance evaluation of all persons who review applications for certification as well as annual program review of the certification activities conducted by the certifying agent’s staff. Strict confidentiality must be maintained with respect to their clients, and any business-related information shall not be disclosed to third parties.⁸³

⁸⁰ Commission Regulation (EC) 834/2007 of 28 June 2007 on organic production and labeling of organic products and repealing Regulation (EEC) No 2092/91, Official Journal of the European Union, L 189/1, Title V, Article 9,11.

⁸¹ National Organic Program(NOP), Title 7 Agriculture, Subpart F- Accreditation of Certifying Agents § 205.506.

⁸² Commission Regulation (EC) 834/2007 of 28 June 2007 on organic production and labeling of organic products and repealing Regulation (EEC) No 2092/91, Official Journal of the European Union, L 189/1, Title V, Article 27 (5)(b)(i-iii).

⁸³ National Organic Program(NOP), Title 7 Agriculture, Subpart F- Accreditation of Certifying Agents § 205.501(1-10).

In line with the EU organic Regulation, there are not much responsibilities put on the control bodies plus there are not granted any confidentiality rights to the organic producers or handlers either. In addition, it seems that EU legislation does not sufficiently prevent the conflicts of interests as nothing is mentioned in the organic Regulation about objectivity of the controls body's activities or simply discrimination clause.

Following this, there is in contrast to the EU quite strong emphasis put on prevention of the conflicts of interest in the US organic legislation. To illustrate, conflicts of interest stated by NOP can be prevented by: "not permitting any employee, inspector, contractor, or other personnel to accept payment, gifts, or favors of any kind, other than prescribed fees, from any business inspected" or by "ensuring that the decision to certify an operation is made by a person different from those who conducted the review of documents and on-site inspection." In addition, the discrimination clause provides that: "No private or governmental entity accredited as a certifying agent under this subpart shall exclude from participation in or deny the benefits of the NOP to any person due to discrimination because of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status."⁸⁴

Besides, little differences in the certification schemes in the EU and US, one more point worth mentioning. America as a continent is much bigger than Europe and I am comparing their organic standards only. However, it is interesting to see that continent that involves 50 states has only about 100 certifying agents, whereas European Union that is comprised out of 27 Member States has approximately twice as much. American bodies are more connected with the government while European certification bodies are more often private, however, latter are still controlled by the Member States official authorities. It can, as agricultural-economic researcher from the University of Saskatchewan J.L. Hobbs suggests, be due to the fact that "consumers in the US tend to trust the government, while recent food safety scares have led EU consumers to become more risk averse on issues of food safety and more distrustful of the government."⁸⁵

⁸⁴ National Organic Program(NOP), Title 7 Agriculture, Subpart F- Accreditation of Certifying Agents § 205.501(11-21)

⁸⁵ Hobbs J.E, (2006) Consumer decision making under risk and uncertainty", In Phyllips P.W.B., Smyth S., Kerr, W.A., (Eds.), *Governing Risk in the 21st Century*, Nova Science Publishers, New York, pp. 73-82.

8.2 Comparison of production standards with focus on livestock issue

After comparing certification and inspection procedures in the EU and US, it is also needed to see if there are also other differences concerning organic production. There are significant differences between production standards such as; use of antibiotics for animals and crops, livestock living standards, and condition for separation of organic production from conventional.

US allow growing organic and non-organic crops on the same production unit, while the EU does not. European general farm production rules provide that: “the operator shall keep the land, animals, and products used for, or produced by, the organic units separate from those used for, or produced by, the non-organic units and keep adequate records to show the separation.”⁸⁶ Consequently, in this regard lack of legislation about proper separation of organic production from conventional production in the US can lead to mistrust of exported products from the US for European consumers.

Turning now to the sensitive question of organic livestock production it is crucial to analyze and show current differences between EU and US standards. Provided that livestock welfare and healthcare are the most important aspects of the topic, serious criticism can arise if the organic standards are not equal. Generally speaking, organic livestock should have peaceful life with avoidance of stress or land limitations and should not be treated with any antibiotics or fed by chemical feed.

Firstly, livestock production rules in the EU provide that: “the livestock shall have permanent access to open air areas, preferably pasture, whenever weather conditions and the state of the ground allow this, the number of livestock shall be limited to minimize overgrazing, and transport of livestock shall be limited to the shortest time as possible. Any suffering including mutilation shall be kept to a minimum during the entire life of the animal, and what is absolutely prohibited is tethering or isolation of livestock”.⁸⁷

EU Regulation 834/2007 (EC), Article 14(2) (f) (ii) states with regard to veterinary treatment: “(ii) disease shall be treated immediately to avoid suffering to the animal; chemically synthesized allopathic veterinary medicinal products *including antibiotics* may be used where

⁸⁶ Council Regulation (EC) 834/2007 of 28 June 2007 on organic production and labeling of organic products and repealing Regulation (EEC) No 2092/91, Official Journal of the European Union, L 189/1, Title III, Article 11., L 189/1

⁸⁷ Council Regulation (EC) 834/2007 of 28 June 2007 on organic production and labeling of organic products and repealing Regulation (EEC) No 2092/91, Official Journal of the European Union, L 189/1, Article 14 “Livestock production rules”. L 189/1

necessary and under strict conditions, when the use of phototherapeutic, homeopathic and other products is inappropriate. In particular restrictions with respect to courses of treatment and withdrawal periods shall be defined.”⁸⁸

Secondly, US legislation seems to be less detailed about livestock production and living conditions. The National Organic Program provides that antibiotics use for sick animals is prohibited and in case of using it the organic status of the animal cannot be preserved anymore, and must be clearly identified and not sold as organic. Another relevant thing is livestock living conditions in the US. Producers must give livestock access to the outdoors and establish clean dry living conditions that accommodate the animal’s health and natural behavior.⁸⁹

Bearing in mind the previous points about livestock production in the EU and the US, it is possible to analyze them and see the crucial differences. The EU in contrast to the US is allowed to use antibiotics for sick animals when it is necessary and there is no indication in the legislation as to whether the livestock products can still be sold as organic in this case. The US thus secured this aspect in order to avoid any potential conflicts or inconsistencies by the exclusion clause provided in the signed equivalency arrangement between the EU and US. Consequently under the equivalency arrangement signed in 2012, agricultural products derived from animals treated with antibiotics in the EU must not be shipped to the US.

Thirdly, with regard to livestock welfare, it is worth noting that US standards for animals are not really equivalent, and there is no exclusion clause under the equivalency agreement that would prevent European consumers from eating organic meat shipped from the US. Simply put, if the organic meat imported from the US is on the shelves of the European supermarket with the same organic label, it seems unfair that the EU with its stringent standards for animal’s welfare had to put much more effort and expenses into the livestock living conditions, while the US did not.

Philip Lymbery, chief executive of the UK’s Compassion in World Farming, the animal welfare charity organization, was strongly criticizing organic animal welfare standards and the EU-USA equivalency agreement. In his opinion EU provides much better living conditions for livestock than US.

⁸⁸ Council Regulation (EC) 834/2007 of 28 June 2007 on organic production and labeling of organic products and repealing Regulation (EEC) No 2092/91, Official Journal of the European Union, L 189/1, Article 14(2)(f)(ii).

⁸⁹ Agricultural Marketing Service-(USDA) (2012) Brian Baker, Organic Materials Review Institute, Jim Riddle, University of Minnesota, “National Organic Program Summary”.

The current situation can be illustrated also by a negative view of Philip Lymbery after his return from the USA in 2012: “Whilst in the US, I was deeply concerned to learn about a recent announcement stating that the world’s two largest organic markets – the EU and the US – had entered into an ‘equivalency’ agreement,” he said. “This means that organic farm animal welfare products from the U.S. can be sold as ‘equivalent’ to EU farm animal welfare products, and vice versa.”⁹⁰

In Lymbery’s opinion the main problem is that US organic standards fall well below those in the EU and therefore, the standards are simply not equivalent. He is providing several examples showing that some of the practices that are forbidden in the EU are allowed in the US. To illustrate, electric goads are banned outright in EU organic standards, while not in the US. Another example provided by Mr. Lymbery can be unfortunately quite influential: “That’s a far cry from what the EU consumer expects from an organic label. Ducks on U.S. organic farms don’t have to be given access to a pool or lake to swim in. The list goes on.”⁹¹

Assuming that this is the case, equivalency agreement can actually destroy the good reputation of organic products across the Atlantic board. The fact that US animal products are considered equivalent, while they are not can undermine the trust of consumers that are especially concerned about animal welfare. Therefore, it seems inevitable to revise these standards in near future or just simply exclude American organic meat from European market.

Finally, there is one more issue concerning antibiotics. However, this time it does not concern livestock but crops instead. Given that organic producers in the US are allowed to spray apple and pear trees with antibiotics called tetracycline and streptomycin, whereas EU organic farmers are not, these apples and pears are not included in equivalency arrangement. Accordingly, organic crops that were treated with antibiotics may not be exported to the European Union under the ‘historical agreement’ between the EU and US.

Some of the differences between standards can be simply solved by counterbalancing allowance versus prohibition and vice versa. For instance, provision for use of an amino acid feed additive (methionine) for poultry in the US resulted in extended discussions with the EU which does not allow this additive. However, it was eventually reconciled, being counterbalanced by the more generous allowance of conventional feed for non-herbivores in the EU Regulation.

⁹⁰ O.W.N. News Organic Network, The international Newspaper for Organic trade, June 2012.

⁹¹ O.W.N. News Organic Network, The international Newspaper for Organic trade, June 2012.

Consequently, there was a willingness to focus on the big, goal-oriented picture of the bilateral equivalency agreement and avoid long discussions on small differences.⁹²

It is clear from this chapter, that there are several differences between organic standards. Brief overview of the history of organic agriculture in both continents illustrated that there have been inherent differences already back then. Afterwards, regulatory approach was discussed and information provided suggests that European legislation is not transparent and clear enough, while US legislation is. By comparing the certification, inspection and production standards I conclude that they are very similar, but that there is still room for improvement with regards to equivalence.

The most crucial point so far was concluded by project Global Organic Market Access (GOMA) when summarizing that open discussions can lead to harmonization and continuous improvement. GOMA suggests that open and honest dialogue can create an orientation towards learning from each other, wherein the both EU and US can recognize opportunities to improve their standards and control systems.⁹³

⁹² United Nations Conference on Trade and Development (UNCTAD) , Food and Agriculture Organization of the United Nations (FAO) and International Federation of Organic Agriculture Movements (IFOAM), Project GOMA: Global Organic Market Access (2013) “Bilateral Equivalence Arrangements on Trade of Organic Products: a review of processes leading to arrangements between Canada and United States, Canada and European Union and European Union and United States”.

⁹³ United Nations Conference on Trade and Development (UNCTAD) , Food and Agriculture Organization of the United Nations (FAO) and International Federation of Organic Agriculture Movements (IFOAM), Project GOMA: Global Organic Market Access (2013) “Bilateral Equivalence Arrangements on Trade of Organic Products: a review of processes leading to arrangements between Canada and United States, Canada and European Union and European Union and United States”.

CONCLUSION

The present study was designed to determine the difference between organic standards in European Union and United States and evaluate their equivalency. Significance about the topic 'Equivalence of organic standards between EU and US' is its recently concluded Equivalency arrangement.

While this historical arrangement opens the door for transatlantic organic trade, there are serious issues of equivalency that can lead to potential mistrust to organic standards at all. Thus, the work contributes to existing knowledge about organic food standards by providing current detailed comparisons of the biggest organic producers and by finding out critical differences that are neither excluded from the agreement nor planned to be amended. In this investigation, the aim was to assess the critical variances between organic standards from the legal point of view.

Organic labeling, certification and inspection standards were examined to help to understand the reader how are the EU and US organic rules designed and applied in practice. After the detailed overview of the both organic legal frameworks, conclusions can be drawn and the central research question can be answered. In addition, it is worth mentioning what lessons can be learned from each other and what could be possibly improved in future.

Returning to the question posed at the beginning of this study, whether the organic standards between the EU and US are equivalent and to what extent, is now possible to answer. The most significant finding to come from this study is that though organic standards are equal at first glance, after digging into the both EU and US organic legislation many differences emerged. Whilst this study did not have enough room to indicate all of them, the most important divergences are mentioned and analyzed.

The evidence from this study suggests that different cultures and history of the trading parties is the potential reason for the detected differences between the organic regulatory schemes and their attitudes towards organic agriculture in general.

Labeling chapters indicated that, while the European organic logo has to be used on mandatory basis as from 2010, the United States organic logo is simply used on a voluntary basis. In addition, the new organic label in the EU serves for the mutually recognized standards between Member States, whereas the US organic label represents just added value for the organic product. In general, therefore, it seems that the US does not need any transparency tools such as

mandatory organic labeling in order to have proper flow of organic products between all 50 states.

The second major finding was that EU still has much to learn from the US when it comes to the organic certification. Firstly, terminology such as ‘certification’ and ‘inspection’ needs to be harmonized and defined in the organic regulation, to provide more transparency on the EU level. While in the EU certification is handled on the national level, US certification is handled per state or by private agencies that must be approved by the US Department of Agriculture. There are also approximately 50% less certifying bodies in the US than in the EU.

I suggest that there should not be more controlling bodies established by the Member States themselves, however a special common European license should be granted to the existing bodies. What is now needed is the establishment of a separate EU agency to issue the approvals for the controlling bodies in the Member States and provide them supervision in the new equivalency system. Instead of reporting the European Commission once a year, the closer dialogue on regular basis between the newly established agencies, representatives of the Member states, and the Commission could be a good improvement for the whole European organic food regime. An implication of these suggestions is that certification system would be harmonized on the EU binding level, while providing the assurance of the equivalent certification schemes and transparency.

The present study provides additional evidence with respect to the inspection practices and roles of the certification bodies. Taken together, my findings suggest that certification bodies in the US have much more duties and responsibilities than the EU certification bodies. By granting strengthen role and more responsibilities to the control bodies on the EU landscape, all system of the certification of organic food could face significant future improvement.

Further findings suggest several courses of action for the United States. In this case EU is serving for an example. Question of separated organic agricultural units from the conventional units is still open. European organic Regulation states explicitly that the units shall be separated, whereas US does not. Another issue addressed was livestock standards that seem to be lacking equivalence at all. While the EU grants much better living conditions for the animals, US provide just the ‘basic package’ for the animal welfare. Thus, in case of raised awareness about unequal animal welfare standards among European consumers, serious consequences could be the absolute exclusion of organic meat imports from the US. Therefore, there is a definite need for

the future debate about moving forward the proper and equal harmonization of the organic livestock standards.

Whereas many international organic bodies are very enthusiastic about equivalency agreements, and their extensions to more developed or developing countries, in my perspective it could undermine the organic integrity completely. The findings about the critical differences that need to be improved by the EU and US trading partners, are serving for an example that equal standards from the first sight are not actually equal at all. There is still room for further improvements for the existing equivalency agreements about organic food instead.

A method of counterbalancing the differences between the organic legislation with the aim of the agreement conclusion is just a short-term solution for the organic trade. In other words, closing one's eyes to not to see the organic standard's differences or to avoid further amendments of legislation can lead to mistrust of organically labeled products by consumers on both sides of the Atlantic.

Some of the academics put forward the idea that one set of common international binding standards is the solution for more transparent and efficient organic trade around the world. In my opinion, however, it is just a dream that probably will never come true. One major drawback is that there are no international bodies that would have sufficient power to enforce the common organic rules. Therefore, an implication of one set of common rules is the possibility that binding organic standards on the international level would create less transparency, confusion among consumers, and decrease of worldwide organic market demand eventually.

A reasonable approach to tackle the present equivalency issue could be to schedule a meeting between the trading partners more than on an annual basis, in order to revise and improve their organic legal frameworks with the aim of the eliminating the critical variances between the organic standards.

To conclude my master thesis, I came up with the simple idea that the less is more. Less quality bilateral agreements, without overseen issues and critical differences can provide better and faster future development of the organic trade.

Thus, my suggestion is that instead of expanding organic equivalency agreements, or having common organic international standards, the door of the organic market for the new actors shall be simply closed until the existing agreements are sufficiently revised and improved.

ANNEX



February 15, 2012

Dacian Cioloș
Member of the European Commission
Rue de la Loi 200
B-1049 Brussels
Belgium

Dear Mr. Cioloș:

The United States Department of Agriculture (USDA), in coordination with the United States Trade Representative (USTR), has reviewed the European Union's (EU) organic system for agricultural products produced and handled in accordance with Council Regulation (EC) No 834/2007 and Commission Regulations (EC) No 889/2008 and 1235/2008. Based on that review, USDA has determined pursuant to the Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. Sec. 6501 et seq.), under authority delegated to the Secretary of Agriculture by the President, that agricultural products produced and handled in accordance with the EU's organic system, as in effect on June 1, 2012, are produced and handled under an organic certification program that provides safeguards and guidelines governing the production and handling of such products that are at least equivalent to the requirements of OFPA.

Accordingly, except as provided in Appendix 1 to this letter, and subject to the conditions set forth in Appendix 2 to this letter, agricultural products produced and handled in conformity with the EU's organic system, as in effect on June 1, 2012, are deemed by USDA to have been produced and handled in accordance with the OFPA and USDA's organic regulations under the National Organic Program (NOP) (7 CFR part 205). These products may be sold, labeled, or represented in the United States as organically produced, including by display of the USDA organic seal as well as the EU organic logo.

The United States is also pleased to acknowledge the EU's recognition of the United States' organic system. USDA's Agricultural Marketing Service and Foreign Agricultural Service and USTR are committed to working with the European Commission's Directorate General for Agriculture and Rural Development to carry out the terms of the determination as described in this cover letter and Appendices 1 and 2 and the arrangement regarding an Organics Working Group described in Appendix 3.

Sincerely,


Kathleen Merrigan
Deputy Secretary
U.S. Department of Agriculture


Islam Siddiqui
Chief Agricultural Negotiator
Office of the U. S. Trade Representative

Appendix 1

USDA grants this equivalence determination with the following exceptions:

1. Agricultural products derived from animals treated with antibiotics cannot be marketed as organic in the United States.
2. Aquatic animals (*e.g.*, fish, shellfish) are not included within the scope of this determination.
3. This determination is limited to organic products certified under the EU organic system as described in this determination and either grown in the EU, produced in the EU, or where the final processing or packaging occurs in the EU.

Appendix 2

USDA grants this equivalence determination under the following conditions:

1. Organic products must be labeled according to the USDA's organic labeling requirements.
2. Each shipment of product classified as organic pursuant to this determination must be accompanied by a certificate from control bodies recognized or control authorities designated by an EU Member State that attests to compliance with the terms of this determination.
3. The European Commission Directorate General for Agriculture and Rural Development must notify USDA and USTR in a timely manner of any:
 - a. Changes with respect to the control bodies and control authorities in the Member States of the European Union, as referred to in Article 35(b) of Council Regulation (EC) No 834/2007; or
 - b. Proposed EU legislation that would modify any of the EU regulations referred to in this determination.
4. Following advance notice from the United States, the European Commission Directorate General for Agriculture and Rural Development must permit U.S. officials to conduct on site evaluations in the EU to verify that the competent authorities and certification bodies of the EU's organic system are carrying out the requirements of the organic system, including through visits to competent authority offices, certification body offices, production facilities, and farms that certification bodies have certified in the EU Member States. The Commission must cooperate and assist USDA, to the extent permitted, in carrying out such evaluations.

Appendix 3

1. The United States is committed to working with the EU in an Organics Working Group consisting of representatives of USDA and USTR on the U.S. side and representatives of the European Commission on the EU side.
2. The Organics Working Group is to meet at least once a year in any manner that the representatives of the United States and EU decide and may meet more frequently as decided by the United States and the EU.
3. The task of the Organics Working Group is to enhance regulatory and standards co-operation between the EU and the United States on issues related to organics. The Organics Working Group is to:
 - a. evaluate the use of veterinary drugs in organic production;
 - b. monitor conversion practices;
 - c. implement import certification programs to facilitate trade and promote electronic certification programs;
 - d. establish cooperation arrangements on recognition of new third country arrangements;
 - e. initiate a common assessment exercise for third country evaluations;
 - f. exchange information regarding animal welfare, antibiotic-free dairy and other animal production issues, and cleaners and disinfectants;
 - g. exchange information on methods to avoid contamination of organic products from genetically modified organisms and other activities to enhance the integrity of organic production systems;
 - h. review instances of significant non-compliance with organic certification program requirements; and
 - i. review operation of the Organics Working Group and the operation of our mutual recognitions of each other's respective organic standards and control systems, no later than January 1, 2015.

Dacian CIOLOȘ

Member of the European Commission

Brussels,
DC/GJ/bdv/D(2012)178919

*Dear Deputy Secretary Merrigan,
Dear Ambassador Siddiqui,*

I would like to confirm that the European Commission has examined the United States request for recognition of the U.S. National Organic Program (NOP) in accordance with Article 33(2) of Council Regulation (EC) No 834/2007. Based on this review, the Commission has recognised that the NOP complies with principles and production rules equivalent to those laid down in Titles II, III and IV of Regulation (EC) No 834/2007 and that its control measures are of equivalent effectiveness to those laid down in Title V of Regulation (EC) No 834/2007.

As a result the Commission has amended Regulation (EC) No 1235/2008 and added the United States to the list of recognised third countries in Annex III of that Regulation. The relevant Regulation will be published in the Official Journal of the European Union on 15 February 2012.

In addition to the mutual recognition of our respective organic standards and control systems, I am delighted to further strengthen our regulatory and standards co-operation on organic agriculture in general.

*The Deputy Secretary of Agriculture
Dr. Kathleen Merrigan
U.S. Department of Agriculture
1400 Independence Ave., SW.
Washington D.C. 20250
United States of America*

*The Chief Agricultural Negotiator
Ambassador Isi A. Siddiqui
Office of the U.S. Trade Representative
600 17th Street, NW
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United States of America*

*Rue de la Loi 200 - B-1049 Brussels
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For this purpose, the EU is committed to working with the United States in an Organics Working Group consisting of representatives of USDA and USTR on the U.S. side and representatives of the European Commission on the EU side. This Organics Working Group will meet periodically (at least annually) to:

- evaluate the use of veterinary drugs in organic production,*
- monitor conversion practices,*
- implement import certification programs to facilitate trade and promote electronic certification programs,*
- establish cooperation arrangements on recognition of new third country arrangements,*
- initiate a common assessment exercise for third country evaluations,*
- exchange information regarding animal welfare, antibiotic-free dairy and other animal production issues, and cleaners and disinfectants,*
- exchange information on methods to avoid contamination of organic products from genetically modified organisms and other activities to enhance the integrity of organic production systems,*
- review instances of significant non-compliance with organic certification program requirements, and*
- review operation of the Organics Working Group and the operation of our mutual recognitions of our respective organic standards and control systems, no later than 1 January 2015.*

I am convinced that this arrangement will strengthen organic agriculture across the Atlantic and will help create new opportunities for organic farmers and thereby support the sustainable development of our rural areas.

I would also like to acknowledge the excellent co-operation between my services, the Department of Agriculture, in particular the Agricultural Marketing Service and the Foreign Agricultural Service, and the Office of the U.S. Trade Representative throughout the process.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "C. Hill", is written below the closing text.

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