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# DRAFT

## Discussion Paper

# Potential Negative Effects of Equivalency in the Context of Organic Agriculture

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## Potential negative effects of equivalence agreements in the context of organic agriculture

This report was prepared in response to a decision by the 6th (Stockholm) meeting of the ITF. Participants agreed (Report, p 16) to a “brief review of the potential negative effects of equivalence on the regulatory system”, being prepared and brought to the next meeting.

The term “equivalence” is used in accordance with the ITF Glossary to mean “The acceptance that different standards or technical regulations on the same subject fulfil common objectives”. “Standards” are defined in the Glossary to be voluntary, “technical regulations” are mandatory.

ITF has discussed the question of equivalence in its earlier work, see especially Bowen: “Current mechanisms that enable international trade in organic products”, March 2004; Courville, Crucefix: “Existing and potential models and mechanisms for harmonisation, equivalency and mutual recognition”, March 2004, and Els Wynen: “Impact of organic guarantee systems on production and trade in organic products”, July 2004.

There seems to be no previous dedicated studies made of possible negative effects on equivalence agreements. One could speculate that this might be because the conclusion of such agreements normally lead to short term advantages in the form of increased trade, thus reducing academic, regulatory or commercial interest in longer term consequences.

However, some areas worthy of ITFs consideration can be identified.

### **Transparency and non-discrimination**

One obvious negative effect of the practice of concluding equivalence agreements instead of using multilaterally agreed standards is the (relative) loss of transparency.

Equivalence agreements are bilateral, negotiated and signed between governments. In principle, they should be notified to the WTO, giving details of contracting parties and content of the agreement. This does not always happen, which of course contradicts both WTO-agreed transparency and non-discrimination rules.

For instance, the EU has not notified its “third country list”, consisting of 8 countries. If notification does not take place, competitors could be left unaware of the fact that an agreement exists. Details of the negotiations between the USA and EU concerning their agreement have not been disclosed, even though the agreement text is publicly available.

Stakeholders, private or NGOs, may or may not be involved in the domestic preparations and negotiations taking place leading to the bilateral agreement. The agreement itself once concluded may, or may not, be published and publicly available for interested parties. If the agreement itself is not easily available, this places exporter and importer operators in a quandary, making it difficult to know whether exports will be accepted in the importing country.

This is fundamentally different to a multilateral approach, where negotiations are conducted much more in the public eye. Once concluded the texts, including lists of signatories, are published and available for everyone to see.

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### **Equivalency agreements are time-consuming and costly to negotiate.**

Equivalency agreement negotiations involve detailed studies of trade flows, technical regulations and control mechanisms. Each party to the agreement must form a detailed understanding of the other party's regulations and expectations. This takes a great deal of time and expertise, and requires a bureaucratic machinery. This is recognised within WTO, where two agreements (the Agreement on Sanitary and Phytosanitary Measures, SPS) and the Technical Barriers to Trade Agreement, TBT) make references to such agreements.

Article 2.7 in the WTO Agreement on Technical Barriers to Trade concerns "measures", such as technical regulations. It does not cover standards as such. Some WTO members have suggested that standards should also be included, perhaps by a mention in Appendix 3, Code of Good Practice, to the TBT Agreement.

The SPS Committee, in a decision dated 4 June, 2001, recognizes that developing countries have faced difficulties applying equivalency measures. The decision specifically mentions the fact that developing countries have had problems getting importing countries to accept the equivalence of measures taken. This implies that negotiating does not always take place between two equal partners. The SPS Committee, in its decision, notes that 1) there may be other less time-consuming and resource-intensive means of enhancing trade opportunities than equivalency agreements, and 2) developed importing countries should give "full consideration" to requests from developing countries for technical assistance.

The potential number of equivalency agreements is of course very large, if every trading partner should conclude one such agreement with every other trading partner. In reality the number is smaller, as Japan, USA or the EU tends to be one of the partners to such agreements. The number is still significant, though. For instance, organic imports into the EU come from more than 100 countries.

### **Costs for exporting countries introducing technical regulations developed by importing countries for their own use.**

In principle this would cause problems, for several reasons.

The cultural and climatic sets of circumstances would likely be reflected in the technical regulations. If there are significant differences in these regards between importing and exporting countries, this would lead to the exporting country having technical regulations not fitting climatic and/or cultural circumstances.

It may not be strictly relevant for the organic integrity of the finished product, for instance, for South Africa to follow the very detailed rules for compost that are included in the South African technical regulations, emanating from the EU legislation. Another example is the rules for organic seed in the EU legislation, which are developed for and by markets with decades of experience of organic farming. It is very difficult to follow these rules, including the full documentation, for a country with shorter experience, even though the basics of organic production may be present, such as non-use of pesticides and synthetic fertilizers.

One must also remember that equivalence agreement normally applies only to products from the two agreeing countries. In effect this means that imported inputs are not covered. This could give the effect that exports of raw materials are possible, while ready-made products with multiple ingredients (if all the necessary inputs are not domestically produced in

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sufficient quantities) are not. In such a case, the exporter is reduced to being a supplier of raw materials and has no possibility to move upwards in the supply chain. For instance, in the case of the European Union's "third country list", only the agreements with New Zealand, Israel and Switzerland includes the possibility to use imported inputs.

Costs can also be said to include lost opportunities domestically, if the technical regulations introduced are too demanding, or come at a premature time in the process of growth of an internal production and/or market. Standards evolve over time, and introduction of ready-made standards likely hinders such a development. The first KRAV private standards, introduced in 1985, were printed on one page and concerned only vegetable production. The present ones are more than 100 pages and contain standards not only for vegetable production but also for animal husbandry, restaurants, textiles, wild and farmed fish production, etc. After Sweden's accession to the EU, the KRAV standards also have to take the (changing) EU standards into consideration, where applicable.

The acceptance of importing country standards by exporting countries diminishes the impetus for achieving harmonised international standards, at least for the importing country, leading to indirect costs for the exporter. On the other hand, the process of negotiating an agreement could lead to added knowledge and a desire from the exporting country to seek harmonisation in international fora.

The WTO in its report "Trade, standards and the WTO" (in World Trade Report 2005) point out that since countries differ in terms of levels of development, technology, environmental requirements and preferences, it is natural that optimal national standards (that is, the specification of the type of standard that solves a market failure) differ across countries. Standards may therefore have a negative impact on trade even if they have been designed to help certain markets to operate more efficiently. Costs may also fall disproportionately on foreign producers if standards result in a lower scale of operation, for instance because the producer has to meet a different standard at home than for export markets.

No examples of an exporting country copying an importer's organic legislation have been found in the limited time available for the preparation of this short paper. Many national technical regulations owe much to either IFOAM's IBS or the Codex Guidelines, which in turn are similar in many respects. Japanese and EU regulations reference Codex Guidelines.

### **Effects on harmonisation**

The TBT Committee in 2003 gave voice to concerns that equivalency agreements can hinder the development of international standards, and reminded the WTO members of their commitments concerning transparency and non-discrimination. No examples were however given.

Among countries which have concluded equivalence agreements, there seems to be general agreement that internationally agreed harmonisation is the preferred option. Until such harmonisation is achieved, equivalence agreements constitute a good interim measure, giving many of the positive effects, such as trade enhancement, predictability and a guaranteed access to markets. Such agreements can also have the positive effect to function as a stepping-stone to initiate the international work necessary for harmonisation. There will always be a gap between the time where a need for an international standard has been identified, and the standard is in place and functioning.

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The question of market demands and private standards, often with higher requirements than government ones, falls outside the scope of this short paper. It is worth considering, however, the situation of exporting country governments and operators who have spent time and money negotiating (with an importing country government) legal access to a market and then, when trying to start exports, encounter higher or different demands made by buyers or private certification organisations.

### References

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