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# **DRAFT**

## **Best practices for organic marketing regulation, standards and certification: Guidance for developing countries**

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## **Acronyms and abbreviations**

IFOAM	International Federation of Organic Agriculture Movements <sup>1</sup>
ITF	International Task Force on Harmonization and Equivalence in Organic Agriculture, a joint FAO, IFOAM and UNCTAD initiative.
ISO 65	ISO/IEC Guide 65: 1996(E), General requirement for bodies operating product certification systems.
NOP	National Organic Program (of USA)
TBT	The agreement on Technical Barriers to Trade (part of the WTO agreements)

## **Terms**

The following terms are used in this report and in the organic sector with the following meaning:

**Accreditation:** A third-party formal recognition that a body or person is competent to carry out specific conformity assessment tasks (in the scope of this document; certification).

**Certification:** A third party written assurance that a clearly identified process has been methodically assessed such that adequate confidence is provided that specified products conform to specified requirements.

**EU regulation:** Council Regulation (EEC) no 2092/91, with amendments and additional regulations. The regulation for marketing of organic products in the EU.

**IFOAM accreditation:** Accreditation by the International Organic Accreditation Service (IOAS) of a certification body to the IFOAM Norms. The status of which is often referred to as "IFOAM Accredited".

**ISO 65 accreditation:** Accreditation (by an accreditation body) of a certification body for compliance with the ISO 65 (see above). The status is often referred to as "ISO 65 accredited".

**Organic regulation:** Governmental rules for products marketed as organic. When there is a *mandatory* organic regulation, sales of organic products that do not fulfil the requirements of the regulation are unlawful. If the regulation is *voluntary*, producers can claim adherence to the regulation and therefore have to follow the regulation, but other organic producers are not prevented from selling their production as organic.

**NOP accreditation:** Accreditation of a certification body by the USDA, having met requirements of the National Organic Program (NOP). The status is often referred to as "NOP accredited".

**Regulation:** Is used to cover the whole regulatory package i.e. laws, decrees, regulations, ordinances and public standards, recognising the regulatory practices differ.

**Third-country list:** The list of the non-EU of countries that have been recognized as having an equivalent organic regulation as the EU, according to Article 11.1 of the EU regulation.

Note: The terms "IFOAM accredited", "NOP accredited" and "ISO 65 accredited" are used throughout this report as abbreviated forms of the more complete phrasing, such as "Accredited by the USDA to the NOP". This kind of use is widespread not only in the organic sector but also in other sectors, e.g. "ISO 9001 certified".

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<sup>1</sup> A sector association with 750 member organisations in 108 countries. [www.ifoam.org](http://www.ifoam.org)

## Introduction and Scope

This paper identifies best practices and lessons learnt in countries around the world, regarding standards, certification and marketing regulations on organic agriculture. It is to a very large extent based on a paper developed for the UNEP UNCTAD CBTF project on 'Promoting Production and Trading Opportunities for Organic Agricultural Products in East Africa'.<sup>2</sup> Within that framework, national policy recommendations for organic agriculture are developed, for possible adoption by the Governments of Kenya, Tanzania and Uganda respectively.

The scope is about regulations about the claim in the market place for a product to be organic. There may be other kinds of regulations relevant for organic sector, e.g. regulations for support programs for organic farming. Those kinds of regulations are outside the scope of this paper. The paper doesn't deal with other aspects of government policy and intervention for the organic sector. Such other interventions may in fact be more important than marketing regulations.

Countries are different and have different priorities and therefore their policy choices will be different. Nevertheless there are common elements in a good policy as well as in a bad policy. It is perhaps in some cases easier to recommend what *not* to do than what to do. The paper first presents facts and discussion around organic regulations and the main components of such regulation and finally it presents options for the organic sector can be regulated. It also asks the question if organic regulation at all is needed. No direct answer is given as the paper rather tries to elaborate what the objectives of regulations can be and in which case a regulation may be called for and if there are regulations how they can be constructed.

The paper makes reference to seven case studies from Chile, Costa Rica, Denmark, Egypt, Malaysia, South Africa and Thailand. These and other experiences and literature form the basis for the analysis and the following recommendations. The full case studies are found in the above-mentioned paper.

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<sup>2</sup> "Best practices for organic policy: what developing country governments can do to promote the organic sector", to be published autumn 2006. will be available at [www.unep-unctad.org/cbtf](http://www.unep-unctad.org/cbtf)

## The extent of organic regulations

In a few countries and in some US states, governments became involved already in the nineteen-eighties in establishing a regulatory framework for the organic market in order to protect consumers from misleading claims and producers from unfair competition. The EU established an organic regulation in 1991<sup>3</sup> and the USA in 2002<sup>4</sup>. By 2005, 70 countries had organic regulations in various stages of implementation (Table 2). The first regulations normally contained some basic production standards and very simple rules for certification, if any. Regulatory objectives such as strengthening the competitive position of domestic producers, increasing farm income, and protecting the environment have been added to the initial ones relating to truthful labelling. Most notably, in the EU, the regulation for organic marketing also forms the foundation for directed support to organic farmers under the agri-environmental programs of the Common Agriculture Policy.

**Table 1. Overview of countries with organic regulations**

Region	Fully implemented	Final not implemented	In draft
EU-25	25		
Rest Of Europe	6	5	1
Asia & Pacific	7	1	5
Americas & Caribbean	3	5	7
Africa	1	1	2
Middle East	1	-	1
Total: 60	43	12	16

Source: Commins, 2004 & Kilcher et.al. 2006

## Why organic marketing regulations?

When they start to get interested in organic agriculture, most governments embark on an 'organic regulation'. Of the 7 cases, Denmark has had a mandatory organic regulation since 1987, Costa Rica since 2001. Chile and Egypt are in the process to establish their regulations, also mandatory. In Thailand and Malaysia, governments are pursuing voluntary regulations while in South Africa there is no regulatory activity. These regulations are typically market regulations that try to limit the use of a word, 'organic', to products produced according to standards set by the government and certified by an organisation approved by the government. In OECD countries these regulations are often, but not always, triggered by a concern for the domestic market, while in most developing countries they have been installed mainly, and in some case apply only, for exports. The main push for organic regulations comes from producers or organic certification bodies that want to have fair competition; consumers are rarely involved.

Three main reasons are quoted for why mandatory regulations are considered to be the right policy response to develop the organic sector:

- giving organic agriculture a more respectable and credible image
- access to export markets
- development of the local market

These three aspects are discussed in the following:

In addition to these three reasons there may be additional reasons such as defining organic for the purpose of supporting organic farming. However that falls outside the scope of this paper, as there is no need for a marketing regulation to accomplish this.

<sup>3</sup> Council Regulation (EEC) 2092/91

<sup>4</sup> National Organic Program (7 CFR Part 205)12

## ***Giving credibility to the sector***

It is quite obvious that the introduction of an organic regulation means an official recognition of organic, that will strengthen the sector, make it visible and credible and remove some biases against organic both in the public and private sectors. Once the government has acknowledged organic farming through an organic regulation, it is hard to ridicule or ignore organic farming. However, a mandatory regulation is hardly the *only* way for a government to accomplish this.

## ***Export market access***

The EU, Japan and the USA have implemented systems for import approval of organic products. As these are based on mandatory governmental regulations it can be assumed that the easiest way to get access to these markets is to implement similar systems also in the exporting country and through equivalence get market access. However in all three markets very few products<sup>5</sup> enter the markets through an equivalence agreement. Not even between these three markets is there any equivalence agreement: Japan has granted limited equivalence to the EU and the USA, while neither the EU nor the USA has granted any equivalence to the others. Some countries have been granted equivalence by the EU based on export regulations, i.e. the use of the claim organic has not been regulated in the domestic market. Australia and Argentina are two such countries. To negotiate equivalence is very resource-demanding and time consuming. Of the countries studied only Costa Rica<sup>6</sup> has managed to get a limited EU approval<sup>7</sup> and Denmark has managed to get a limited recognition by the USA<sup>8</sup>.

The main way for products to get access to the US and EU markets, is by certification by a certification organisation that has got acceptance in those markets (Diane Bowen 2004).<sup>9</sup> The case studies also show that exports of organic products are flowing from the countries without regulations, e.g. Chile, Egypt, Thailand and South Africa. In addition there are promising markets for organic products, which do not have mandatory regulations, such as South Africa, New Zealand, the Gulf States, Malaysia, Singapore and Russia.

Regulation is seen as a tool for assisting organic producers to access export markets through equivalence agreements, but the real need is not obvious. In any case, it is not a quick solution (e.g. Chile applied for EU recognition 2000 and this is still pending) and it is very resource consuming. Often the result of national regulation is just another layer of complication for producers, who apart from having to fulfil the export market requirements, now also have to fulfil a domestic regulation. Finally there is no need to make a mandatory regulation if the aim is to support the export sector, it is sufficient to make a governmentally supervised system for export marketing of organics. The key to export market access lies in competent and qualified certification agencies and efforts to strengthen them should have priority.

## ***Development of domestic markets***

The demand for a domestic organic regulation would arise from any of these situations or a combination of them:

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<sup>5</sup> In the EU the estimate is that less than 20 percent of the imported products come from approved countries, in Japan even less.

<sup>6</sup> Of developing countries, the EU has since 1994 only approved Argentina and Costa Rica and lately India.

<sup>7</sup> This approval is partial, i.e. not all producers certified in Costa Rica are accepted, only those certified by two (out of six) named certification bodies.

<sup>8</sup> The Danish authorities have the mandate to certify producers to the NOP. i.e. the Danish system itself is not recognised - only the ability of the inspection service to control producer to the US rules.

<sup>9</sup> The details of the import regulations in the US, the EU and Japan are complicated but well explained in other papers and therefore not expanded on here. In addition the EU and the Japanese systems are in a process of change.

- the marketing of many different organic products claiming adherence to different standards and thereby creating confusion in the market place;
- the wide-spread selling of non-organic products as organic in the market place, i.e. fraud or consumer deception;
- lack of confidence in the credibility of organic products by consumers;
- lack of confidence in the credibility of organic products by organic producers, fearing that they compete with other organic producers that are not following the same standards.

It is believed by some that the consumers will not trust organic products unless the government has set standards and a mandatory system of certification; this is also expressed in some of the case studies. However there is little empirical evidence for this assumption. Until year 2001 the US market for organic products developed to a USD 7 billion value without a federal regulation in force. There were however several state regulations. Also the EU countries had developed quite an organic market in the early nineties, at a time where only Denmark and France had national regulations. Looking at European Union (EU-12) averages for the period 1989-1991 (when there was no regulation), 1992-1994 (just after the EU regulation was implemented), 1995-1997 (when there was ample subsidies allocated to organic farming) we see that the total growth in organic farming during these three-year periods were as follows:

1989-1991	107%
1992-1994	60%
1995-1997	70%

Because of the weakness of the data it is difficult to draw any far reaching conclusion, but in any case there is little support for the opinion that on an EU wide level the introduction of the regulation dramatically changed the market conditions, or the spread of organic farming. Comparisons of Denmark and France with early regulations (mid 1980s) with Sweden and Italy (with regulations from 1995 and 1992 respectively) also show no direct positive impact of regulation on the development of the sector (Rundgren 2002).

From the case studies it is hard to conclude anything about the merits of a mandatory regulation for domestic market development. Only Denmark and Costa Rica have mandatory regulations, and there is no indication that the domestic market in Costa Rica therefore is more dynamic than the domestic markets in Egypt, Thailand, Malaysia or South Africa. Nevertheless, it sounds plausible that in a situation with real market confusion and widespread fraud, in countries with a general high confidence in government, that a domestic market regulation might be of some use. Still, also in countries with regulations in place for ten years, there is consumer scepticism about the reliability of organic products and there is also fraud. In countries with a wide-spread scepticism against government one might even see some negative reactions on a governmental regulation<sup>10</sup>.

An additional market development aspect regarding organic regulations has been that in some countries other regulations may have impeded on the right to market a product as organic, e.g. the wine classification system in France<sup>11</sup>, pasta classifications in Italy, and meat labelling rules in the USA<sup>12</sup> didn't allow any further quality claims regarding a product than those defined by law. In those scenarios has an organic regulation been important to clear those obstacles. Obviously, there are also other regulatory solutions to this situation than an organic market regulation, e.g. that the regulation causing the problem in the first place is amended.

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<sup>10</sup> In the USA, there have lately been expressions from some organic activists that the USDA has 'sold out' organic to big industry etc.

<sup>11</sup> In the case of wine the organic regulation in the EU didn't overcome the problem as it is still not allowed to market organic wine in the EU.

<sup>12</sup> This is till to be verified.

# The components of organic regulation

An organic regulation will normally address issues relating to:

- use of organic statement in the market place;
- production standards and other requirements the operators have to fulfil;
- conformity assessment systems and procedures;
- the responsibilities of authorities;
- the use of a special organic label;
- market surveillance<sup>13</sup>.

Of these, standards and conformity assessment often represent the focus of regulations. They are therefore introduced with some detail in the following. Market surveillance and organic label is also discussed. The responsibility of authorities is cross-cutting and addressed in many places in the document.

The use of **one** organic label and market surveillance mechanisms are often more important for the development of the sector than refined systems for conformity assessment or very detailed standards.

## Standards

There are currently two international standards for organic agriculture, the Codex Alimentarius Guidelines for the production, processing, labelling and marketing of organically produced foods (GL 32 – 1999, Rev. 1 – 2001) - CAC/ GL32<sup>14</sup> - and the IFOAM Basic Standards (published as part of the IFOAM Norms, latest revision July 2005<sup>15</sup>). There is no data available for how many different organic standards there are in the world, but there are perhaps 60 countries with some kind of official standards and another 100 private sector standards. Most of the standards are quite similar. Some of them clearly reference the mentioned international standards (e.g. the Indian regulation is basically identical to the IFOAM standards of 2002, the Brazilian regulation uses the list of inputs from Codex, Malaysia's standards reference both), but a number of them reference also other foreign standards, in particular the EU regulation (e.g. South Africa).

Of the case studies, Costa Rica, Chile and Denmark have mandatory organic standards, i.e. standards that have to be followed by anybody that markets organic foods. In Costa Rica private bodies also have their own standards. Chile has had voluntary official standards since 1999, and they are becoming mandatory from 2006. In Thailand there are both private standards and voluntary governmental standards. In Malaysia there are also voluntary official standards, but most certified products are imported and certified to the standards of the exporting country. There is no indication that the voluntary official standards are in much use. In the same time, the South African standards for organic agriculture were drafted in 2001, and although never approved by the government, they are actively used in the domestic market in South Africa. In Egypt products are certified to the EU regulation, and to various private sector standards in the EU – a few also to local standards. In all the countries, producers for exports normally follow and are certified for conformity to the export market standard. Even in Denmark, producers wanting to export to the USA have to follow the NOP rather than the EU regulation.

Whether through mandatory regulation, voluntary public programmes or by the private sector, one organic standard that is applied by all organic producers, certified or not, helps to build energy and joint activities in the sector. It also facilitates extension and information to producers and consumers

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<sup>13</sup> Market surveillance refers here to the monitoring of the market place to discover possible fraudulent statements by non-organic producers, or the proper labelling etc by organic producers.

<sup>14</sup> Available at [http://www.codexalimentarius.net/download/standards/360/CXG\\_032e.pdf](http://www.codexalimentarius.net/download/standards/360/CXG_032e.pdf)

<sup>15</sup> Available at [http://www.ifoam.org/about\\_ifoam/standards/norms.html](http://www.ifoam.org/about_ifoam/standards/norms.html)

alike. It can also form the basis for a common mark, one of the success factors for market development. In order to ensure that the standard is actively used, the full participation of the organic sector is needed. Also, there is a need to be clear about the scope of the standards and their intended use: is it for the domestic market; for the export market or is it for both? It should be recognised that for export markets, the simplest solution is to follow the standards of those markets, and that standards in importing countries can be too demanding for the domestic situation.

The Brazilian organic movement is concerned that the organic regulation should be adapted to the country's geographic, climate, social, political and economic environment. It should not create internal barriers by adopting international standards established mostly by high income countries. At present a Brazilian organic producer wishing to export must follow the importing country's regulations. Consequently, a Brazilian regulation is not necessary for exports. Instead its purpose should be to develop a strong organic internal market. (TOS 2006)

For organic production it is widely recognised that local conditions vary too much to have one international very detailed standard (ITF 2005). The use of foreign organic standards is convenient for trade, but most of the time definitively not for the producers, and in particular not for small-holders. Government can support the development of a domestic (or regional, see further on) organic standard. It is recommended that, initially, such a standard be voluntary. Regardless if it is a governmental standard or a private sector standard, the stakeholders and especially the practitioners<sup>16</sup> should be heavily involved in the development of organic standards. If the standards are private, the government should participate as an important stakeholder. It is also recommended that the initial standard be developed with the local market development in mind, are not too demanding and relatively easy to apply by producers and to verify by certification bodies or by other mechanisms. If national standards are supposed to also apply for imports, they should reference Codex and IFOAM standards as a basis for import acceptance.

**Recommendation 1.** A national or regional standard for organic production should be developed.

**Recommendation 2.** A good starting point for a national or regional organic standard is that it be voluntary.

**Recommendation 3.** Standards should be developed with close cooperation between the private sector and government.

**Recommendation 4.** National organic standards should be well adapted to the conditions in the country and mainly focus the domestic market.

## Conformity Assessment

Third-party certification has been a very important tool for the development of the organic market. Through certification, organic products are given a distinct credible image, which is in particularly useful in marketing situations with a distance between producers and consumers, e.g. sales through supermarkets and in international trade. For international markets certification can be considered a must as all major markets require certification for products marketed as organic. Having said that, there is no direct evidence that third party certification is what the market or the consumers really ask for, and other kinds of quality assurance mechanisms might also be useful. There are 70 countries

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<sup>16</sup> It should be noted that there are many NGOs and other organisations that promote organic farming, without necessarily having any deeper understanding of it, and in particular not a good view on how it can be practically implemented by farmers. Therefore the direct participation of farmers and food processors should be encouraged.

that have a home-based organic certification organisation. Most of Africa and big parts of Asia still lack local service providers. There are only 7 certification bodies established in Africa; in South Africa, Kenya, Uganda, Tanzania and Egypt. Asia has 117 certification bodies, but 104 of these are based in China, India or Japan. Most Latin American countries have domestic certification bodies. See table 1.

**Table 2. Organic Certification Bodies**

<b>Number of Organic Certification Bodies</b>	2005	2004	2003
Africa <sup>17</sup>	7	9	7
Asia	117	91	83
Europe	157	142	130
Latin America & Caribbean	43	33	33
North America <sup>18</sup>	84	97	101
Oceania	11	11	10

(TOS 2005)

In all the 7 case studies there are domestic certification service providers. Denmark has a governmental control system and no private certification organisation; this is also the case with Finland and Malaysia. A number of states in the USA, Spain and Thailand have governmental certification agencies but also private bodies. In Egypt, South Africa, Chile and Costa Rica there are domestic private bodies supplying certification services. In all of them foreign bodies also offer certification. Domestic certification bodies are normally dominating the certification for the local markets, while the foreign ones are oriented towards the export market sector.

Cost of certification is often quoted as an obstacle, especially for small producers, and sometimes also requirements such as documentation. Certification costs often represents somewhere between 1 and 4 percent of the value of the products, but can go even higher. Moreover, they apply also to the conversion (transition) period when producers can't yet sell their products as organic. In a lot of projects in developing countries, certification costs are paid for in whole or subsidised by development projects, or in a few cases by exporters or importers (Damiani 2002, Giovannucci 2005, EPOPA 2006). In many EU countries as well as in the USA there are government programs to support certification costs. In Denmark, Thailand and Malaysia government certification is for free for the farmers and in Tunisia the government cover up to 70 percent of certification costs (Kheder and Belkheria 2006). In China, companies that are certified can get up to US \$ 4,000 from the state government<sup>19</sup>. Were premium prices to fall, costs for certification would need to be further considered.

Certification services are available globally. For export purposes, the simplest solution is to buy the services from international certification bodies. However, there are merits in a domestic certification body. Locally based certification bodies often play a big role in the local development of the sector and for the formulation of locally adapted standards. A branch of a foreign body is rarely engaged in local development in the same way, and as the service they offer is mostly uniquely for the export market, they have little interest in developing the local market. For producers wanting to access the home market, the only certification thus available is to foreign standards and at a cost level more adapted to the export sector. In some regards a local body can also exercise more efficient controls;

<sup>17</sup> The change between the years is only reflecting a difference in classification as regards to what constitutes a certification body and what is just a local agent.

<sup>18</sup> When the US NOP was implemented the number of certification bodies increased as a number of new organisations started to offer the service. However, over the years they realised that the organic certification market wasn't that lucrative, or that accreditation requirements are too demanding. The same pattern can be seen in Japan 2006.

<sup>19</sup> Wei Hua, personal message Feb 2006

only an organisation with local presence can follow the market on a day-to-day basis and react quickly to important developments — such as disease outbreaks, government pesticide distribution programmes — that can affect the certification (Rundgren 2005). Government can support capacity development for local certification bodies. This has been done e.g. in India, where the responsible authority, APEEDA, organises training for certification bodies.

## **Private or governmental certification?**

In most countries, certification is provided as a private sector service. However, in a number of US states, Malaysia, Thailand, Denmark and Finland as well as in China there are governmental certification services. The experiences and success of such governmental service seem to differ and it is hard to make any generalised statement about whether this service should be private or governmental. There are a number of potential advantages with private certification services such as competition, service orientation, better links to the organic sector etc. However, there are also merits in a governmental certification system, mainly its stability and its automatic “acceptance” as being independent.

When a government supervises and approves private bodies with the purpose to reach equivalence, e.g. with the EU, it will have to invest considerable resources for this. It has to train staff and develop systems. In contrast, a direct governmental certification organisation will not be requested by trade partners to have external approval or accreditation<sup>20</sup>. If the sector is small and there is not a market for more than say one or two certification bodies, then the resources spent for the total quality assurance system will be considerably less with a direct governmental certification than with private certification bodies that are approved by government as the latter creates an additional layer of costs.

It should be noted that government certification bodies often have problems when it comes to cooperation with private sector bodies in other countries, i.e. it is often difficult, formally but also conceptually, for government bodies to enter into e.g. multilateral recognition agreement with private entities in other countries or to submit themselves to the private sector IFOAM Accreditation Programme. Some governments may also have a credibility problem, i.e. that importing countries actually have less confidence in a government service than a private sector service, e.g. because of fear of corruption. The situation where there is considerable scope for a government certification is in particular where the government has a strong agenda for organic, but where the private sector is weak and where there is no certification service offered for producers for the local market. Government certification would allow the private sector to focus on market development and other pressing issues. Governments should be aware that there are greater expectations that certification shall be provided for free or for a very low cost (for the farmers) if performed by government, something that is also reflected in the fact that most countries with government certification provide it for free or for a subsidised cost.

**Recommendation 5.** Government should facilitate the access to certification services, either by stimulating foreign certification bodies to open their offices or by supporting the development of local service providers. In some countries, especially where the private sector is weak, the government could consider establishing a governmental certification service.

## **Group Certification**

Group certification is a concept developed over the last 10-15 years to allow producers to organise themselves in groups with an Internal Control System. It is not formally recognised in most regulations; however through a consultative process by IFOAM, it has reached more or less global de facto acceptance, at least for producers in developing countries. With group certification the role

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<sup>20</sup> However, many countries with governmental certification chose to also establish accreditation mechanisms, e.g. USA, Thailand and China.

of the external certification is mainly to verify that the Internal Control of the group is working rather than inspecting the individual farmers. All studied cases except Chile and Denmark<sup>21</sup> have systems for group certification. Through group certification, producers can get access to and assistance in the complicated organic certification. It can also result in substantial savings, e.g. in Costa Rica there can be a difference in costs of several hundred dollars for a small farm. However, there are substantial demands for qualification and resources at the group level, which pose limitations to its applications. IFOAM has developed a guide for the management of Internal Control Systems and training manuals<sup>22</sup>. In some places, e.g. in South Africa these organic Internal Control Systems are merged with other quality management systems (e.g. EurepGAP) and training programs are developed.

**Recommendation 6.** Special considerations should be taken for certification of small-holders. Training programs for farmer groups to set up Internal Control Systems should be supported.

## **Participatory quality assurance and other non-third party quality assurance system**

Brazil and Bolivia (TOS 2006) accept so-called “participatory certification” within their regulatory system. This is also under consideration in Costa Rica. It is a system for certification that emphasises the participation of stakeholders, including producers, in contrast with the “objective and independent” approach favoured under international norms (IFOAM, 2004). IFOAM uses the term Participatory Guarantee System to make a clearer distinction. They are often specifically designed for small producers. The standards used are often the same as for the third party certified production.<sup>23</sup> These and other non-third party quality assurances are now spreading quite rapidly in developed and developing countries alike. These systems often address not only the quality assurance of the product, but are linked to alternative marketing approaches (home deliveries, community supported agriculture groups, farmers markets, popular fairs) and help to educate consumers about products grown or processed with organic methods. Also from Thailand and South Africa (EPOPA 2006c) such alternative systems are reported. It is important that governments do not, through overly rigorous regulations, inhibit this development, as formal certification may not be what is demanded in the domestic market.

**Recommendation 7.** Compulsory requirements for mandatory third party certification should be avoided as it will not enable other alternatives to emerge. Other conformity assessment procedures, such as participatory guarantee systems, should be explored.

## **Market surveillance**

Assuming that the main reason to regulate the organic sector is to reduce fraud in the market place and the misuse of organic claims by non-organic producers, it is remarkable that most organic regulations have their emphasis in regulating the certified organic farmers, and that most of them are not clear about the responsibility of the market surveillance. Also regarding implementation, in most countries the main resources are allocated to check the organic farmers and the certifiers and very little resources to check the market place. The market knowledge rests mainly in the sector itself and organic actors will in most cases be the first ones to detect a scam or false claims. Therefore, it is recommended that governments work closely with the private sector to develop the market surveillance, regardless of which regulatory framework is chosen.

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<sup>21</sup> IFOAM has embarked on a project to develop group certification also in the EU.

<sup>22</sup> Available at [www.ifoam.org](http://www.ifoam.org)

<sup>23</sup> For the time being, there are no international norms for what constitute such a participatory guarantee system, and the variation in how they operate is high.

**Recommendation 8.** Government should work closely with the private sector to develop market surveillance, regardless of which regulatory framework that is chosen.

## **An organic mark**

A common mark (label) that is actively promoted has much more market impact than a common standard or a government regulation (but they can obviously be mutually supportive), as most consumers can easily recognise a mark, while they normally have little knowledge or even little interest in the standards and regulations. Such an organic mark can have many forms. It can be a governmental label accessible for producers certified by an approved body (USDA, JAS or Denmark), it can be a mark of the organic association available for its members, it can be a mark owned by the trade, or it can be the mark of a certification body (e.g. BioSuisse or Demeter). In Denmark 92 percent of the consumers recognise the governmental label for organic products and in Sweden 96 percent of the consumers recognise the private KRAV mark (KRAV 2006). Initially, the ownership or the underlying construction around a mark, is not very important. More important is that it is widely used on all organic products. Therefore an accessible ‘marketing mark’ is likely to be most successful<sup>24</sup>. By public ownership or collective ownership (e.g. by an organic sector business association or organisation) the future policies for its use can be adapted to the various stages of development.

**Recommendation 9.** The introduction of an accessible organic label in the market should have priority

## **Assisting producers to comply with requirements**

The ability of farmers to comply with standards and certification requirements is often low. Simple “instructions” should be developed by government or NGOs where the organic “dos and don’ts” are presented in a way accessible for small-scale, often illiterate, producers, e.g. in pictorial form. Ensuring proper understanding and assistance in implementation to low-resourced farmers is likely to contribute to a more credible organic market, as many of the violations of organic standards emanate from misunderstandings or lack of information.

**Recommendation 10.** Producers, especially small-holders should be supported to comply with standards, certification procedures and regulations.

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See more under the section of regulation and certification

## Options for organic regulations

In this section the options for organic regulations are further elaborated and discussed. There are many different ways to regulate, but there are four basic options:

- No regulation
- Use of general consumer protection regulation
- Voluntary regulations
- Mandatory regulations

The scope can be for domestic markets (which would normally include requirements also for imported products) or for exports or both.

For each main regulatory option there are many options for how to regulate the various components of an organic regulation, in particular the aspects of standards and conformity assessment. **How they are regulated is perhaps often more important than if they are regulated or not regulated, or if the regulation is mandatory or voluntary.**

### Setting the objectives – agreeing on the problems

Before embarking on regulatory initiatives, governments and the sector should carefully assess the situation and see what added value a regulation can bring. It is important that there are common objectives agreed upon and that there is a joint analysis of what the main problems to be solved are, and to what extent these problems can be solved by regulations. For example, and as mentioned already, access to import markets is most often not achieved just by making a regulation. For another example, there is often the perception that there is a lot of fraud or false organic products sold, but the question is if that is really the case or if this perception is rather a result of lack of cooperation and transparency on the sector. Further it is, obviously, an illusion that fraud will disappear just because there is a regulation in place<sup>25</sup>. It is important that the impact of the regulation on all organic stakeholders is assessed and not only on the strongest lobby group, and that all stakeholders participate in the consultations.

**Recommendation 11.** Before establishing regulations government should clarify the objectives.

**Recommendation 12.** Governments regulating the sector should develop the regulations in close consultation with the sector and ensure that the regulation is enabling rather than controlling in nature.

## The regulatory options

### Options for the standard component

Reference	Standards	Comment
S1	Organic products have to be produced according to a standard equivalent to international standards, i.e. IFOAM or Codex Alimentarius.	Organic Producers have to follow defined organic standards. The standards-owner should ensure adherence to international standards. Authorities can demand demonstration of compliance.
S2	Organic Products have to be produced according to private sector standards registered (and approved) by the government.	The approval can be made based on a technical assessment by government or by another body, e.g. IFOAM is assessing standards for adherence to IFOAM standards.

<sup>25</sup> There are clearly incidences of fraud also in the regulated markets.

S3	Organic Product have to be produced according to a National Organic Standard, set by the National Standards body.	This can be either a prescriptive standard or a framework standard (standard for standards).
S4	Organic Products have to be produced according to general rules laid down in the regulation.	This leaves details open for interpretation by certification organisations.
S5	Organic Products have to be produced according to detailed standards set in the regulation.	The model chosen in most organic regulations.

### Options for the conformity assessment component

Reference	Conformity assessment	Comment
C1	Producers are allowed to make claim and are considered organic unless otherwise is proven.	This means that there is no active quality assurance mechanism, but rather that government can act on suspicion or complaints, quite similar to the case in many other trades.
C2	A producer shall be able to demonstrate conformity by adherence to some kind of conformity assessment/quality assurance system.	All producers bringing goods to the market has to be part of some quality assurance system, which can be 3 <sup>rd</sup> party certification, a sector organisations internal scheme, participatory certification etc.
C3	There is random inspection of producers by the government.	The government takes a more active role in ensuring compliance.
C4	Various conformity assessment systems can be registered and approved by the government.	Same as above with the difference that the government is more actively assessing and approving certain systems.
C5	All producers have to be certified by approved or accredited certification bodies.	The model chosen in most organic regulations.

Governments are advised to consider how the components will contribute to the objective of the regulation and the development of the sector. The strictest (most onerous) level of regulation is represented by the application of options S5 and C5. It is the solution chosen by the EU, Japan and the USA and most organic regulations so far. Options S1 and C1 represent the use of consumer protection legislation rather than any special organic regulations. The components can be combined in different combinations, e.g. option S3 for standards with any of the options for conformity assessment.

### No regulation

The biggest challenge for the organic sector is wide-spread real fraud. However, it is not so difficult for an organised sector association to approach shops selling fraudulent products and convince them to cease marketing of these products. Failing results, one can always go to the media. Most businesses are protective of their brands and would not, once exposed, risk loss of consumer confidence for minor short-term gains. This strategy was successful in Sweden (until the membership of Sweden in the EU 1995) and also fairly successful in Germany. Smaller scale fraud or road-side sales etc. are not likely to be identified and taken care of in a no-regulation scenario, but the question is if that is a major problem for the sector in the first place. In most non-regulated countries there is unfortunately no well-organised organic sector to take up this role and consumer awareness is generally low, both representing challenges for a no-regulation scenario. Government can support the sector to organise itself and in its efforts to take actions in the market place, as well as contributing to consumer education. These are essential in all scenarios, but even more so in an un-regulated scenario.

## Use of general consumer protection regulations

The simplest level of regulation is to work within existing consumer protection or marketing regulations, i.e. regulations that state that claims in the market should be truthful. By linking to such regulations (assuming that they exist), very little, if any, regulatory efforts are needed<sup>26</sup>. A regulation can basically state that any product that is marketed as organic must have been produced according to an organic standard which could be a private sector domestic standard, a standard adopted by the government or a standardising body<sup>27</sup> or a regional standard. In the simplest form it could state that

The New Zealand Standard for Organic Production was released in November 2003. At this stage it serves as a benchmark for certifiers operating in the domestic market. It is a voluntary standard. Consumer protection is through the Fair Trading Act, with reference to the New Zealand Standard as required. There are no specific organic labelling laws in New Zealand. (Seager Mason in Willer, Helga and Minou Yuseffi, *The World of Organic Agriculture* 2006)

any organic product should be produced according to standards which are equivalent to the IFOAM Basic Standards or the FAO/WHO Codex Alimentarius guidelines. Such a regulation doesn't need to have the requirement that products are also certified by an approved or accredited certifier.<sup>28</sup> In that way it would be open to both certified and not certified farmers and for participatory guarantee systems. This kind of regulation can be a good starting point, which can be built on later on. If it refers to a united national or regional standard it will promote coherence in standards and counteract fragmentation in labels and standards.

## Voluntary Domestic Organic regulation

If the main objective is to boost the credibility of organic products by a government-supported system, one option is to set up a voluntary organic regulation. Similarly, as the option above it can be based on different sets of standards and verification mechanisms. Thailand is probably the most clear example of a voluntary organic regulation.

Both the use of consumer protection regulations and the Voluntary Domestic Organic Regulation will have their main application for a domestic market. They can therefore be based on standards that are developed based on the local conditions, i.e. the conditions for the domestic producers and the expectation of the domestic consumers. However, for allowing imports to access the markets a clear reference to international standards (IFOAM and Codex Alimentarius) is recommended.

Exports can also take place based on a Voluntary Domestic Organic Regulation, to unregulated markets or markets with less demanding import rules. For access to the strictly regulated export markets, producers would have to rely on certification bodies, domestic or foreign, that certify production to these regulations. The weakness of voluntary regulations is mainly if they are not taken-up by the market actors and therefore there is a lot of trade with competing labels and systems. This is noted in the case study from Thailand. In the eco-labelling field there are many examples of voluntary regulations, e.g. the EU eco-label. In those cases the government credibility is invested in a voluntary scheme, but the regulation doesn't prevent others from making environmental claims. In this context voluntary regulations appear to be fairly successful. A voluntary regulation is also less likely to be challenged under the TBT agreement.

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<sup>26</sup> In many cases the responsible authority can use existing consumer protection regulations even without any amendments to existing laws or new implementing regulations.

<sup>27</sup> In some countries, e.g. in East Africa, Canada, New Zealand and some Latin American countries, organic standards have been formulated by national standards organisations, while in most others, the standards are embedded in regulations, mostly developed by the Ministry of Agriculture.

<sup>28</sup> This was the case for the first organic regulation in California 1979.

## Voluntary Organic Export Regulation

If the main objective is to support exports, one possibility is to make a voluntary government scheme to support exporters. The main way for this to be of any use is through achieving an equivalence agreement (speaking about EU and possibly US markets), or acting as an accreditor (speaking about the US market). It can also give credibility to products sold in other, not yet regulated, markets.

A voluntary export regulation is normally based on standards in line with the requirements for the export markets. In a simpler and most market-oriented form a Voluntary Organic Export Regulation doesn't set any standards at all, but will use the standards of the relevant import markets, i.e. it provides a framework for the government to take responsibility for the credibility of organic products exported from its territory to any standard demanded<sup>29</sup>. E.g. in the case of acting as an accreditor for the US NOP, the full NOP will be applicable and the domestic standard is of no relevance<sup>30</sup>. In this way the scope for recognition (of equivalence) is limited to the conformity assessment system only. Such a system will be much easier to implement and will be quicker to get recognised as there is no need for tedious comparisons of standards. The draw-back of this approach is that it does force producers to produce according to a standard that might be less well adapted to the local conditions.

Obviously, there is nothing hindering that the products certified for exports can be sold on the local markets<sup>31</sup>, with indications that they are produced under a system of government acceptance. In that way an export scheme could also be used for the domestic market. If the market shows appreciation it can become a *de facto* domestic standard over time.

## Mandatory Organic Export Regulation

In order to protect the credibility of exported organic products, governments may consider a Mandatory Organic Export Regulation, i.e. a regulation that requires that all products exported as organic from its territory should fulfil certain standards and conformity assessment procedures<sup>32</sup>. It can be constructed similarly as the voluntary export regulation. The main difference is that it will restrict exports to un-regulated markets – to the regulated markets, exports are already restricted by the rules of the importing country. It is hard to see that there are many advantages of a mandatory export regulation as opposed to a voluntary, apart from the possible increase in credibility. For both a voluntary and a mandatory export regulation it should be recognised that reaching equivalence is a very time consuming process, not only to put the system in place, but also to apply for recognition, to accommodate audits and to make necessary adjustments (see the main report). To get certification directly to the standards of the importing countries is always a quicker solution for producers.

## Mandatory Organic Domestic Regulation

With a fragmented organic sector with many warring groups and with the use of many different marks and standards in the market place, a mandatory government regulation may be an appropriate measure to support the market development. This was the situation in the EU in the end of the 1980s, which triggered the introduction of the EU regulation, a Mandatory Organic Domestic Regulation. With a Mandatory Organic Domestic Regulation is understood that there are rules governing all sales and marketing of organic products. By this the strongest legal protection framework is established. The reason to embark on a Mandatory Organic Domestic Regulation would mainly be apparent fraud in the domestic market, or widespread confusion about different organic standards. Despite this most mandatory regulations do not specifically address direct fraud, e.g. the situation where non-organic producers sell their products as organic in the market place. Many governments exhaust their

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<sup>29</sup> Could also mean to a private standard.

<sup>30</sup> This is done e.g. by the Danish and Indian government.

<sup>31</sup> To foreign or local standards

<sup>32</sup> This is done by Australia

resources in checking the certified producers and the certifiers instead of actually monitoring the marketplace and what is sold there, i.e. they perhaps miss the most important objective of the regulation. If governments embark on a Mandatory Organic Domestic Regulation it should draw on the lessons from the last decades, and avoid repeating the mistakes made by others. They should also consider the situation of farmers, in particular small farmers and women farmer or other possibly disadvantaged groups and how they can cope with the requirements.

A Mandatory Organic Domestic Regulation requires substantial resources for the establishment and implementation, trained staff and it incurs high costs. It has the risk of being less conducive for development as details are set for all aspects, something that hampers innovation and development. In any case it is easier to start with a “lower level” of regulation and later make it more stringent than to start with the most onerous regulation.

**Recommendation 13.** Mandatory regulations should be considered when the need is clearly established and other simpler options have been ruled out. In the early stage of development, a mandatory organic regulation is neither likely to be a priority nor the best policy response.

### ***Scope and extent***

Another thing to consider is the scope and extent of the regulation regarding kind of sales, who needs to be certified etc. In some countries with mandatory regulation there are special rules for small farmers, e.g. in the US NOP, farmers selling organic products for less than US\$ 5000 annually are exempt from certification, i.e. they can make the organic claim, they have to follow the standards but don't have to be certified. In some countries retailers and transporters are also put under the certification regime, something that adds a lot of complication and costs for the sector and in the end may threaten a not yet well developed sector, where the motivation for retailers and transport companies to apply for certification is very low.

### ***Process and implementation***

There is widespread underestimation of the time and resources needed to put in place organic regulations. In many countries (e.g. the USA and Brazil), the process from the original act or standard until all pieces are put in place has taken 10 years. Many countries have passed mandatory regulations on organic, but then failed to implement them. This is worse than having no regulation at all, as an unimplemented mandatory regulation puts everything in limbo. If there is a law that requires mandatory certification for organic products, governmental standards and government approval of certification bodies no organic market can take place unless all these components are implemented. A domestic certification body can't develop its business as they are not yet approved, producers can't apply for certification if the standards are not yet defined, and the government can't approve certification bodies until it has established its supervision and approval system. All these things also need budget allocation and trained staff. Lack of implementation is reportedly the main factor for why countries fail to get approval as a third country by the EU (Crucefix 2005). If the country embarks on a mandatory organic regulation it is of critical importance that such a regulation is “farmer-friendly” and “trade-friendly”. A badly drafted organic regulation will most likely do more harm than good. To “import” an organic regulation, e.g. from the EU, is not likely to be successful as stated in the case study from Thailand.

Government should also consider working with and using existing institutions, e.g. instead of establishing a resource demanding national accreditation system for organic, governments may choose to work with the International Organic Accreditation Service, an off-shoot of IFOAM. This can be for the whole accreditation service or for the technical assessment parts of the accreditation

process. Such cooperation with international organisations can also contribute to increased export market access.

## **Imports**

As soon as there is an organic market, there will also be imports of organic products. Imports of organic products, as shown in Malaysia, but also in other countries, developed and developing alike, can play a role for the development of the domestic organic markets. Imports can provide high-quality exposure to organics for domestic consumers, they can be necessary raw material for processing organics, and they can have a demonstration effect (processed foods) or set benchmarks for the domestic industry to meet. Governments are encouraged to ensure that requirements for imports comply with the TBT-agreement. The ITF is in the process of developing useful recommendations for how an organic regulation can be developed, based on international standards and being enabling both for domestic markets and for international trade. Some of the recommendations are:

- The organic production standards should be equivalent to a single international “reference” standard (such as IFOAM or Codex Alimentarius);
- It should use international requirements (standards) for conformity assessment;
- There should be common international procedures for approval or accreditation of conformity assessment bodies which reduce duplication of work and enhance access to markets, including by countries in which regulatory infrastructure is absent or less well developed;
- Mutual recognition between certifiers and accreditors should be recognised in the regulatory systems;
- Redundancy in conformity assessment (certification and accreditation) can be largely reduced by one audit/inspection/evaluation leading to multiple approvals.

The producers of goods that are imported are almost never consulted as stakeholders in the regulatory process, and in many cases national producers are outright hostile to imports. Therefore there is an apparent risk that imported products will be discriminated against in regulations. Some national regulations that seem to be developed primarily to satisfy export market access, can in their turn become major hurdles for imports. E.g. the Chinese regulation for organic has set the standards for production so high that they should comply with the total requirements of the US, the EU and Japan., in addition to own requirements. This will also apply to imports to China, which in this case establishes the highest entry barrier of them all.(TOS 2006c).

**Recommendation 14.** The recommendations from the ITF for regulatory solutions should be considered.

**Recommendation 15.** Imports should be allowed based on equivalence to international standards

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