

## Three approaches to import regulations

### Implications and impacts

*The three major markets for organic produce, the European Union, USA and Japan, each have organic regulations in place that have three methods of meeting import requirements for imports into their respective markets. The numerical similarity is merely coincidental as the different emphasis reveals different approaches to regulating and facilitating imports.*

In the EU, equivalency agreements with other countries are the preferred *modus operandi*. Governments are recognised as the primary actors with national regulations as the basis for negotiations. Approved certification bodies in one Member State are not automatically approved to work in another Member State, nor is the approval sufficient per se for the acceptance of certification in third countries. In lieu of an equivalency agreement with a country, authorisation is delegated to Member States' competent authorities for import permits. Member States can also propose approval of certification bodies in third countries.

Notwithstanding national regulations and governments, the US recognises certification bodies as the main actors. It invites and offers certification bodies (government as well as private) equal access to direct accreditation and equal treatment of certified products for imports thereafter.

Japan appears to attempt a balance of according higher regard to national regulations and governments with allowances for collaboration with certification bodies where no regulations are in place or no formal agreement has yet been reached. It also differen-

tiates treatment between registered domestic-based and foreign-based certification organisations as regards areas of certification.

#### **The diplomacy approach (equivalency)**

The EU was the first to implement organic regulations and a system where the Approval of Third Countries, based on equivalency agreements, is the main option. It is the normal way of doing business between nations, supposing other countries will do as the EU did, *i.e.* set national organic regulations. The option was ahead of its time as no other country had implemented organic regulations when the system was set up. Interest and the need to gain access into the EU market, nevertheless, set off a flurry of national organic regulations setting activity, even in countries with little organic production or no domestic market. Ten years after the implementation of the EU regulation, 17 non-EU countries have implemented regulations, another 24 are reported to have either finalised or started drafting regulations (see *The Organic Standard*, issue no. 11, page 4). Negotiating equivalency agreements, however, lags behind and the process

works at a snail's pace. It reportedly took six to seven years for the Czech Republic to achieve Third Country status. To date there are only six countries, *i.e.* Argentina, Australia, Czech Republic, Hungary, Israel and Switzerland, that are on the EU Third Country list.

The pressure from domestic activists and operators on their governments to do 'something' is indirectly being fuelled by EU importers' preference to use EU certification bodies instead of local certifiers. This takes place under the second option, Member State authorisation of products, also known as the importer's derogation. Thought to be a temporary measure and scheduled to expire on 31 December 2005, this method is currently the main means for products to enter the EU, accounting for over 80% of imports. Although requirements do not disqualify the use of local certifiers in third countries, there are only seven non-EU based certification bodies listed amongst the top thirteen certification bodies used (year 2000/2001). Of the seven, five are US certifiers, one is from New Zealand and one from Brazil. The EU import organic products from over 90 countries (see EU import report, page 7).

The figures may be an indication of the scarcity and inexperience of local certification bodies in third countries. There are certainly fewer elsewhere than there are in the EU. They may also be indicative of the difficulty in acquiring authorisations through certification bodies in third countries or, conversely, the ease at which authorisations can be obtained by using certification bodies known to the importer's Member State competent authority. Three of the top four certification bodies used are based in France, Germany and the Netherlands, all countries that are within the

top four EU importing countries, importing a combined share of 68% (year 2000/2001).

Those advocating national regulations in third countries have several different motives. Operators hope for lower certification costs through the use of a local certification body or some form of support from their government. For some activists, it is a matter of national esteem or self-respect. There is some resentment towards having to comply with foreign standards, as well as being inspected and certified by foreign bodies. Critics from developing countries label this as Bio-colonialism. They see the establishment of national regulations and acceptance based on equivalency agreement between countries as far more acceptable.

However, establishing national regulations and achieving equivalency is not a simple or straight forward procedure. There is no clear international mechanism for determining and establishing equivalence of standards in the organic sector. Exporting countries are consequently in a weaker position than importing countries during

the bilateral talks. It is also far from clear that implementation of an organic regulation augurs well for the growth of a domestic organic sector that is still at an early stage of development. To start with, there is the dilemma how does a country set appropriate standards and framework rules, if the domestic organic sector is undeveloped and has little to draw competency and experience from? The internal debates that typically arise between local movements regarding standards, certification and regulatory development, can be lengthy and draining, causing much friction.

### **The do it my way, comply and be counted equal approach (direct certification)**

The EU may have harboured noble intentions of not exporting or imposing its regulations where it may not be appropriate by not requiring direct certification for imports. Few operators in non-listed third countries, however, are probably able to deduce the intention from the resultant implementation.

The US, perhaps taking a lesson

from the EU's difficulties with Approval of Third Countries, has taken the approach of direct certification by an accredited or approved certification body. Consequently, its final rule has adopted direct accreditation of certification bodies worldwide by the USDA as its first option to facilitating imports. According to the rule, once accredited, all certifiers are to be treated equally, regardless of whether they are based inside or outside the US, and regardless of whether they are government or private programmes. The operations they certify must comply with the requirements of OFPA and the Rule in order for the products they certify to be sold in the US.

Accreditation by USDA was offered free of charge for the first round; and 95 certification bodies applied, including 37 non-US certifiers from 19 countries. The first round of accreditation results came out at the end of April: only 42 certifying bodies have been approved, four of which are non-US (see page 16 for more information).

Equivalency is given as the third option. In the US rule, equivalency agreements with other countries allow certification bodies accredited by the respective foreign governments to be considered as approved, but not directly accredited by the USDA. It underlines option two, which is the USDA approval of accreditation by a foreign government.

The EU has a similar sounding third option, *i.e.* Commission approval of a third country's inspection body. It differs from the USDA option in that the request has to be made by an EU Member State, whilst foreign governments can make their request to the USDA. It begs the question, 'What would interest an EU Member State to recommend a small, little-

## ***Where can approved, accredited or registered certification bodies work?***

**I**n theory an approved EU-based certification body cannot accept certification in third countries. Approved certification bodies in one Member State are also not automatically approved to work in another Member State. Nevertheless, EU certifiers are *de facto* directly certifying most imports from third countries under option 2, the importer's derogation.

The US rules allows USDA accredited certifiers to certify world-

wide, and presumably for foreign certifiers to certify in the US.

The Japanese rules allow Japanese registered certification organisations (RCOs) to certify worldwide but place some geographical limitations on registered foreign certification organisations (RFCOs). RFCOs cannot certify in Japan, but may certify in countries besides their country of origin, provided these countries are mentioned at the time of applying for registration.

known certification body in a third country for approval by the Commission?' As it is, the EU's third option has scarcely been used, in fact only one certification body from Hungary has been approved.

## **The pragmatic collaboration approach (direct certification with allowance for delegation of inspection and use of previous inspection reports)**

If the US took a lesson from the EU, Japan, the last of the three to set regulations, may have taken a cue from the USDA. The Japanese regulations by and large follow the US preference for a direct certification approach. Although three methods are mentioned, they essentially amount to one option, *i.e.* certification by an organisation that has been registered by the Japanese Ministry of Agriculture (MAFF): Japanese registered certification organisations (RCOs) or registered foreign certification organisations (RFCOs).

Whilst the USDA invites applications worldwide for direct accreditation by the USDA, registrations of foreign certification bodies with MAFF are contingent on the foreign country having a system deemed equivalent to that of Japan. Japan, it appears, does not want to register foreign certification bodies directly. It seems to be trying to strike a pragmatic balance between the two approaches of direct certification and equivalence.

The Japanese rule allows Japanese and Foreign registered certification organisations to delegate inspections to certification bodies in exporting countries where no regulations are in place or no formal agreement has yet been reached. This is possible on the condition that they are recognised by an authority and have had consider-

able experience in organic certification. Accreditation is not explicitly required. The Japanese rule also allows a procedure for re-certification based on past inspection reports. The re-certification procedure allowance however applies only to RCOs for import of raw materials. Delegation of inspection and re-certification are by no means novel and widely practised by EU as well as US certifiers. That they are mentioned and addressed as official allowances is, however, new. There are reportedly 57 RCOs and six RFCOs (*The Organic Standard*, issue no. 12, page 19).

## **Questions arising**

Japan has an agreement with the EU concerning the recognition of equivalence of the EU regulation. At present the equivalency agreement applies only one way. Japanese certified organic products are not allowed the same treatment by the EU.

MAFF Japan and the USDA have also reached agreement on the acceptance of the US National Organic Program. This will enable USDA accredited certifiers to apply for MAFF Japan registration. On full implementation of all three regulations and related agreements to date, it would appear that EU and US organic products will have better access into the Japanese market than Japanese products will have to either the EU or US markets.

Equivalency negotiations are also on-going between the EU and US. It is not clear yet what will be the outcome of any agreement. Some questions being posed by many industry watchers are:

- Will accredited non-US certifiers be treated equally in the agreement?
- Will more third country certification bodies be 'approved' by the EU by way of such an agreement?

Should a similar agreement arise between the USDA and EU as with USDA and MAFF Japan, it is possible that there will be up to seventeen applicant certification bodies from fourteen non Japanese, EU and US countries (assuming they are all accredited by the USDA) being able to certify for the US, Japan and the EU markets.

Such an outcome will surely be good news for operators currently facing multiple inspections and certifications for the three markets. Should that be the case, it suggests that the shortest way for certification bodies to position themselves to service operators for all three markets, would be to seek direct USDA accreditation.

## **The rest of the world and private sector standards**

Whilst the US equivalence agreements may ease the burden of meeting regulatory requirements of the three major markets for some, such an eventuality would still leave the organic sector far from a harmonised international framework. Can the organic community rely on the diligence and clout of the US in equivalence agreement negotiations to resolve regulatory requirements for imports throughout the rest of the world? Even if they do, it would not address private sector standards dominance in the three markets. ■

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*The Organic Standard invites comments to the above as well as further input regarding harmonisation or process and architecture for further integration between regulatory requirements and voluntary private sector standards within an international framework.*