



**Global Organic Market Access**  
a project of FAO, IFOAM and UNCTAD



## **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**

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## TABLE OF CONTENTS

Preface .....	iv
Acknowledgements .....	iv
GOMA Steering Committee .....	v
Definitions & Abbreviations .....	1
Executive Summary .....	2
Introduction .....	4
The Initiatives .....	5
Structure of the Assessment Process .....	6
High Hurdles .....	12
Factors in Achieving The Goals of Equivalence .....	13
Structure of the Equivalence Arrangements .....	15
Maintaining the Arrangements .....	16
Resource Requirements for Equivalence Processes .....	16
Lessons Learned .....	17
Outlook for Equivalence Arrangements .....	18
Conclusions and Recommendations .....	18

## **PREFACE**

The Global Organic Market Access (GOMA) project, a joint FAO, IFOAM and UNCTAD initiative, works towards reducing the barriers to trade in organic products. In seeking to reduce those barriers, GOMA promotes and facilitates harmonization and especially equivalence between countries' systems for organic standards and conformity assessment. Between 2009 and 2012, Canada, the European Union and the United States entered into equivalence arrangements with one another relative to their regulation of organic products and labeling. The technical details of these arrangements are public and readily accessible. As a further contribution to information about these arrangements, GOMA reviewed the processes leading to the conclusions of the equivalence negotiations including the steps involved, the identification and resolution of issues, and factors contributing to the final equivalence decisions. The aim of this study is to expand the transparency of the arrangements and disseminate knowledge to other governments who may consider engaging in equivalence processes with their trading partners.

This paper is published in electronic format, and provides web-links to supporting information.

Cooperation on this paper with the Canadian Food Inspection Agency, the United States Department of Agriculture and the European Commission was vital to the preparation and is highly appreciated.

This paper was prepared by Diane Bowen, GOMA Project Manager, and Matthew Holmes, Executive Director, Canada Organic Trade Association.

Further information on GOMA and an electronic version of this review paper is available at [www.goma-organic.org](http://www.goma-organic.org).

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## DEFINITIONS

Critical Variance:

an identified variance between two regulations that remains unresolved in an equivalence judgment and therefore constitutes an exception to the equivalence arrangement.

Equivalence:

acceptance that technical regulations, although different, achieve the same objectives, even if through different means.

Equivalence Arrangement:

terms by which two or more trading partners (governments or jurisdictions) recognize each other's technical regulations as equivalent for the purpose of trade.

## ABBREVIATIONS

CFIA	Canadian Food Inspection Agency (houses the organic regulatory program in Canada)
COR	The Canada Organic Regime (the regulatory program in Canada)
EC	European Commission
ITF	International Task Force on Harmonization and Equivalence in Organic Agriculture
USDA	The United States Department of Agriculture
NOP	The National Organic Program of the United States Department of Agriculture
USTR	Office of the United States Trade Representative (agency formally responsible for negotiating trade agreements on behalf of the US government)

## **EXECUTIVE SUMMARY**

This paper reviews the processes for bilateral equivalence arrangements concluded in the past several years between Canada and the United States, Canada and the European Union, and the European Union and United States. These arrangements suggest a trend from unilateral equivalence declarations of an importing country toward an exporting country, to negotiations in which export and import considerations are at play on the part of both countries, and where the question becomes “can we recognize each other?” The review is based on interviews with key actors in the negotiating delegations from the Canadian Food Inspection Agency (CFIA), the United States Department of Agriculture (USDA), the European Commission (EC), and several others who had roles in supporting and reviewing the technical assessments. The focus of the paper is on process rather than on specific details of the discussions or final arrangements.

### **Initiation and timeline of the equivalence processes**

Canada and the United States initiated discussion in 2007 in anticipation of the enactment of new Canadian organic regulation, which threatened the significant trade flow of organic products between the two countries. The process was concluded in 2009. Early dialogue on equivalence between Canada and the EU turned into a more structured process following completion of the US-Canada arrangement, and the arrangement was finalized in 2011. Discussions between the EU and US begun in 2000 failed to achieve an arrangement by 2005, but in 2009 the US and EU decided to start a new process, which led to an arrangement that came into effect in 2012.

### **Structure of the processes**

Blueprints for the processes were defined by the parties early in the discussions. There were few general protocols applied from higher levels within the relevant government agencies. However, the delegations drew from the experiences of the trading partners in facilitating import approvals prior to the bilateral equivalence arrangements, e.g. the EU third-country list, US approval of governments to supervise NOP compliance. Early in each process, side-by-side comparisons of production and processing standards were prepared on the basis of self-assessment to the other’s standards. Other categories of the regulation were identified for information exchange and comparison. Overall, these included:

- framework and legal structure of the regulation
- administrative authority and function for implementation – including related authorities and functions;
- conformity assessment – accreditation and certification;
- monitoring, enforcement and surveillance – including how imports are controlled.

The scope for the assessment, including which standards to include, was identified. The parties then further refined information through dialogue, with the objective of understanding each other’s system. The parties noted self-identified gaps in standards and questions for clarification. Site visits proved a critical step for all the teams in



understanding each other's system and gaining confidence in their performance.

### **Reconciling gaps**

There were no sets of pre-determined criteria for reconciling gap and issues. However, various measures and considerations were employed in the reconciliation process.

The following factors were also taken into account when reconciling whether an identified "gap" or issue remained so in the discussions:

- fulfillment of common objectives despite differences in detailed requirements;
- reference to international organic standards and conformity assessment norms;
- keeping a level playing field for the market actors in each country, taking trade volumes into account when an issue was related to particular organic products.

### **Factors in achieving the goals**

A pre-condition of the successful outcomes was in all cases a high level of political will. Other contributing factors were:

- orientation toward learning and understanding process or outcome;
- positive relationships among delegation members based on open and honest communication and trust;
- high technical expertise and historical perspective in the delegations;
- a degree of common history and shared culture between the countries;
- avoidance of the overall trade balance agenda.

### **Maintaining the Arrangements**

These arrangements have created partnerships that are oriented to the long-term. A working group was established for each of the arrangements in order to maintain them. As the equivalencies continue in practice, effort will be needed to maintain their dynamic and transparent nature. The ongoing partnerships will require enduring political will and allocation of resources—they are therefore subject to shifts of politics and policies at high levels of government, as well as the more everyday challenge of ensuring that the three government offices and their program staff maintain strong relationships and effective communication between them.

### **Conclusions and Recommendations**

The equivalence arrangements reviewed herein—major achievements in that they cover a high proportion of the international market for organic products—are among countries that share a common cultural and political history. Countries should consider measures to build communication, familiarity and trust when dealing with their counterparts. The level of resources required for the processes so far is likely to limit the number of equivalence arrangements that can be undertaken by and with Canada, the EU and US, and by extension other countries. Reaching across cultural and political gaps may require even more steps in the process and therefore resources. The urgency for organic trade solutions through equivalence and harmonization remains critical. Means should be sought to achieve a high rate of equivalency among countries with rigorous but differing organic regulations, and should favor inclusion of developing countries. Multilateral arrangements present the next level of opportunity for accelerating the rate of equivalence of organic regulatory systems.

## INTRODUCTION

### Background and Purpose

During the period from July, 2009 to June 2012 three major bilateral equivalence arrangements for the trade of organic products were enacted. Canada and the United States (hereinafter called “US”), established an arrangement in June 2009. Following that, Canada and the European Union (hereinafter called “EU”) announced an arrangement, which went into effect in June 2011. In February 2012 the US and EU jointly announced that they had agreed to an arrangement, which became effective in June 2012. Collectively, these arrangements are estimated to cover more than 90% of the international market for organic products and projected to increase greatly the global volume of organic trade, thus also positively affecting the further development of organic agriculture. These are the first bilaterally negotiated equivalency arrangements for organic trade, following one other bilateral agreement between the EU and Switzerland, which is part of a general agricultural trade agreement between the parties.<sup>1</sup> These bilateral arrangements suggest a trend from unilateral equivalence declarations of an importing country toward an exporting country, to negotiations in which export and import considerations are at play on the part of both countries, and the question is “can we recognize each other?”<sup>2</sup>

Other countries have sought and achieved unilateral recognition of their organic standards and technical regulations as equivalent to those of importing regions. In addition to Canada, US, and Switzerland, the EU lists in its regulation, No 1235/2008 and subsequent amendments, nine “third countries” as providing regulations and controls equivalent to the EU regulation. These are Argentina, Australia, Costa Rica, India, Israel, Japan, Switzerland, Tunisia and New Zealand. Japan was added to the EU third country list in 2010.<sup>3</sup> Japan has granted equivalence on a unilateral basis and with some restrictions, to organic regulatory systems in Argentina, Australia, the original 15 countries of the EU, New Zealand, Switzerland and the US. A

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<sup>1</sup> Annex 9 of the Agreement between the European Community and the Swiss Confederation on trade in agricultural products of 21 June 1999.

<sup>2</sup> Unilateral equivalence processes, such as those used by the EU Commission to recognize third countries, have similarities to the bilateral processes, but lack the complexities that arise from the question “can we recognize each other?”. For example, India, which was added to the EU third country list in 2009 prepared technical dossiers, demonstrated alignment with Codex Organic Guidelines and described how the controls in India accomplished the same objectives as controls specified in the EU regulation. The EU Commission conducted site visits to verify the system of control. Throughout the process, APEDA, the lead agency for the Indian National Program for Organic Production (NPOP) provided further information and clarifications in response to issues identified by the Commission, eventually reconciling these sufficiently to achieve the threshold for a determination of equivalence.

<sup>3</sup> Commission Regulation (EU) No 471/2010 of 31 May 2010 amending Regulation (EC) No 1235/2008.

comprehensive overview of equivalence among organic regulations worldwide is tracked and published on the GOMA website.<sup>4</sup>

There are more than 60 countries with organic standards and technical regulations, most developed with a goal to increase access to export markets, including many countries with low resources and experience in making trade arrangements to achieve market access in other regulating countries. For the benefit of these actors and other stakeholders, GOMA has prepared a review of the processes of bilateral equivalence arrangements involving Canada, EU and US. The objective is to provide insight into these processes, identify factors contributing to the successful outcomes, and offer recommendations for future equivalence dialogues in, and perhaps beyond, the organic sector.

### **Approach and Methodology**

This review is based on interviews with key actors in the negotiating delegations from CFIA, USDA and the EU Commission, and several others who had roles in supporting and reviewing the technical assessments. Interviews were based on a common template of questions, although questions were slightly adapted based on which government was interviewed, and questions were selectively addressed to some interviewees in light of their role in the process and/or order in which they were interviewed. The interviews obtained input of some actors from each of the three governmental/intergovernmental entities for each of the bilateral processes, except that of the EU Commission with the Canadian equivalence process. Due to the rotation of Commission personnel involved in this dialogue, relevant interviews were not possible. Responses were compiled, analyzed and synthesized into a narrative. The focus of this paper is on process rather than on specific details of the discussions or final arrangements. However, some detailed examples from a specific discussion or regarding a technical issue are interspersed to aid understanding of the general analysis. The paper does not attribute specific responses to any individual. The approach of the review is thematic and synthetic as opposed to being presented as a separate review of each of the three equivalence processes. The section on defining the scope of the equivalency and the recommendations presented in the concluding section of the paper were formulated by GOMA and are not attributed to the parties to the equivalence arrangements.

## **THE INITIATIVES**

### **Initiation of the equivalence processes**

The equivalence process between the US and Canada was initiated in 2007 at a time when Canada was finalizing its organic regulations. Establishing equivalence was seen by the organic sector in the two countries as imperative due to the high volume of trade of organic products between the neighboring countries. It is estimated that 60% of organic products on the market in Canada are imported from the US and Canada is clearly the most important export market for the US organic sector. Were this trade to

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<sup>4</sup> <http://www.goma-organic.org/harmonization-tracker>

become blocked or seriously compromised by new compliance requirements to the Canadian regulation, there would have been serious consequences for both US producers and traders and for Canadian distributors, retailers and consumers. Prior to the Canadian regulation and the equivalence arrangement, organic products originating in Canada were traded to the US based on compliance to US requirements by USDA accredited certification bodies, several of which operated in both countries, and through recognition agreements with accreditation bodies in Canada. However, with the advent of the new Canadian regulation, compliance to two regulations was projected to increase complexity and costs for both Canadian and US producers and traders. The organic industry in both countries, represented by the Organic Trade Association, requested both governments to initiate a discussion on mutual recognition based on equivalence, and the process began with a letter from USDA to CFIA. In April, 2007 at the All Things Organic Conference in Chicago, the Executive Directors of the Organic Trade Association and the Canada Organic Trade Association announced the formation of a jointly chaired bilateral industry task force to collect information and articulate the benefits of an equivalency to the two national governments. The final arrangement was later announced at this same industry event two years later.

An intention by the EU to phase-out import authorizations originating in member states catalyzed the Canada-EU equivalency process. CFIA responded by establishing contact with the EU Commission and identifying the terms of reference for an eventual agreement, but delays in the finalization of the Canadian regulation, and later changes by the EU on how it proposed to recognize products from third countries and approved certification bodies factored into the timeline for a formal and comprehensive process.

The process between the EU and US followed after an earlier process, begun in 2000, which failed to produce an equivalence arrangement by 2005 and was terminated, mainly due to inability to resolve issues concerning the prohibition of antibiotics in livestock production. In September 2009, the EU Agriculture Commissioner sent a letter to the US Trade Representative proposing a second equivalence process, to which the USTR, in consultation with USDA, promptly agreed after industry consultation. The parties committed to a first meeting to do a general review of the regulation and further assess the political will to move forward. By this time the arrangement between Canada and the US had been completed and equivalence discussions between Canada and the EU were well underway. From the outset there was a high level of political will to complete the equivalence arrangements, and especially in the case of the arrangement between the EU and US, subsequent to a negative outcome of an earlier equivalence process.

## **STRUCTURE OF THE ASSESSMENT PROCESSES**

None of the three government entities reported having a pre-ordained process for structuring the dialogue and assessments. However, the parties discussed and agreed early on to the basic components for each assessment process, which were very similar, and the delegations from each entity and their respective roles were identified.

## The Delegations

USTR (Office of the US Trade Representative) and USDA personnel comprised its delegations. Responsible for all international trade negotiations, USTR was formally the lead agency in the equivalence processes; and in both instances with Canada and the EU, USTR led the discussions. From USDA there were representatives from the National Organic Program and the Foreign Agriculture Service (FAS), which is responsible for all international matters at USDA. FAS provided much of the overall coordination of the process with the other parties. NOP was responsible for the technical aspects. The EU Commission's delegations included senior staff of the Organic Farming Unit from the Directorate General for Agriculture and Rural Development (DG-Agri), and for the process with the US, the officer in charge of the "US Desk" within DG-Agri, who led the discussions from the EU side. Also engaged by the EU Commission in the role of reviewers, were co-reporters from two EU Member States for each of the equivalence processes. The co-reporters reviewed the desk assessments in an advisory capacity and were part of the site visit teams. DG-Agri gave oral progress reports on process outcomes to the Standing Committee on Organic Farming, composed of representatives of all the Member States. For Canada, the delegation included a number of departments: the CFIA (Canadian Food Inspection Agency) included two of its units—the Canada Organic Office, technical lead in the negotiations, as well as the department for Bilateral Relations and Market Access, involved in any international trade discussions; Agriculture and AgriFood Canada had representation from its Organic and Beverages division as well as the officer responsible for Market Access to the US and Europe, depending on the negotiation; additionally, the Department of Foreign Affairs and International Trade included a member of its Technical Barriers and Regulations Division.

## Process Overview

The three equivalence discussion processes were highly similar. A composite description of them follows.

### *Deciding the process and scope:*

The blueprint for the process was defined by the parties during the early discussions and determined at the level of the parties engaged in the discussions. There were no general protocols applied from higher levels within the EU Commission, USDA or international agencies of these governments. Canada applied some general protocols established for international discussions and a protocol for industry consultation within a new framework called "Smart" regulation<sup>5</sup>. The EU Commission's prior experience in assessing regulatory systems for its third country list, and the USDA's experience in approving governments to supervise NOP compliance provided some basis for the bilateral processes.

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<sup>5</sup> Canada's "Smart" Regulation came as a form of renewal to how regulations were developed: with multiple stakeholder (e.g. industry, provincial government) involvement, and an eye to impacts on environment and small and medium enterprise.

Roles of team members were clarified, e.g. that designated individuals in the Canada Organic Office, the Commission's Organic Unit and USDA NOP would take the lead on technical matters. Communication between the governments was conducted through electronic mail, phone/video conferences, several in-person meetings, and site visits and peer reviews.

### *Compiling Information*

Early in each process, side-by-side comparisons of production and processing standards were prepared on the basis of self-assessment to the other's standards, in addition to the legislative acts that created the programs. The EU Commission included assessment of the EU standards also to the Codex Alimentarius Guidelines for the Production, Processing, Labeling and Marketing for Organically Produced Food (also known as Codex Organic Guidelines). USDA commissioned the Organic Trade Association and industry advisors to assist it in preparing its standards comparisons, with oversight and guidance from USDA and USTR, whereas CFIA and EU Commission staff prepared theirs.

Other categories of the regulation were identified for information exchange and comparison. Overall, these included:

- Framework and legal structure of the regulation;
- Administrative authority for implementation – including related authorities and functions;
- Conformity Assessment – accreditation and certification;
- Monitoring, Enforcement and Surveillance – including on imports.<sup>6</sup>

An important step was to identify and agree to a specific scope for the assessment, including which standards would be included (e.g. include or not include wine) and what aspects of conformity assessment/control and government supervision would be examined and discussed. Typically, limits in scope by a jurisdiction would be reflected in the final arrangement: e.g. the Canada-US arrangement does not extend to personal care products, as Canada does not include these within its regulatory purview at this time, and similarly the US-EU arrangement does not extend to aquaculture, for which the US has no standards at this time.

Certain reservoirs of information were tapped in compiling the information base. In the US case, pre-existing information from the approvals of Canada and two EU governments (Denmark and United Kingdom) for oversight of compliance to the NOP provided a baseline of knowledge about how the Canada and EU oversight systems are structured. The guidelines prepared by the EU Commission's Organic Unit in 2006 were also influential in the decision about compiling and organizing the information. The EU and US also took information from their prior equivalence process into account.

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<sup>6</sup> Included in these broader topics are reporting requirements to the governments from control bodies, enforcement (e.g. complaints and penalties), surveillance, and import controls.

### *Reviewing self-reported information*

The parties reviewed each other's information, noting the self-identified gaps in standards, and identifying topics for further development and questions for clarification.

The US and Canada began to include wider industry consultations at this stage, sharing certain information for feedback. Industry review and feedback was organized in the US and Canada through technical committees. From this point through reconciliation of issues, industry groups were deeply involved in reviewing and advising CFIA and USDA on technical and economic levels. Due to its multinational structure, the EU Commission engaged the Member State co-reporters to review the information and advise the Commission staff, but did not consult directly with member states' industry representatives or groups of other private stakeholders. The divergent approaches may have also been influenced by different conceptual frameworks for the equivalence arrangements. The US and Canada approach these arrangements from the standpoint of a trade negotiation requiring attention to stakeholder sensitivities, whereas in the EU regulation the listing of third countries is in the framework of a technical process, which is sufficiently handled by expert personnel.

### *Site visits*

Site visits proved a critical step for all the delegations in understanding each other's system and gaining confidence in performance of those systems. Also, during these activities, team members were engaged with one another for long periods of time and further developed their rapport and confidence in one another, a factor that is addressed later in this paper. From a technical standpoint, the site visits were critical to understanding how conformity assessment (accreditation and certification) are implemented as well as how the government implements oversight. For example, in the case of the EU, the Member States are a dimension of control and government oversight that do not apply in Canada and the US, so it was very important for CFIA and USDA to see the system at the Member State level. The EU regulation on which such equivalence assessments is based foresees such on the spot examinations.<sup>7</sup>

The delegations agreed ahead of time on what aspects of implementation they wanted to assess on the site visits. The visiting government specified the types of operations they wanted to see e.g. in the US, the EU wanted to see farming operations with diverse scales and both private and government certification bodies, whereas when conducting visits between Canada and the US, the review teams included operations that would be implicated in the "critical variances" which were anticipated in the eventual arrangement put in place at the standards level. The host government planned the sites to visit. Visits were made to supervising government offices, control authorities/accreditation bodies, certification bodies, farms and processing facilities. Reports of the visits were prepared by the visiting country and reviewed by the host country.<sup>8</sup>

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<sup>7</sup> Article 33(2) of Regulation (EC) No 834/2007.

<sup>8</sup> An example of a site evaluation report is available at <http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5097355>

The visits were perceived as a peer review and learning activity rather than a control exercise. They filled many gaps in information and understanding of the systems and their implementation, as well as the effective chains of responsibility between the various players (i.e. the relationship of the regulator to certifiers to operators) and the result was to considerably reduce the lists of issues for further clarification and/or reconciliation.

#### *Reconciling gaps and other issues*

In no case were there sets of pre-determined criteria for reconciling gaps and issues. However, various measures and considerations were employed in the reconciliation process.

*“Digging Deeper”*: Technical expertise in organic agriculture on the team was an important factor. Because of this, and in combination with positive relationships that enabled honest communication, the connections between requirements or sets of requirements were discerned and communicated, leading to reconciliation of issues. For example, the EU production standards, especially in animal welfare, take a prescriptive approach, whereas the USDA production standards are framed more in outcome-based language. But because of the considerable expertise in organic agriculture within the delegation, gaps in details could be narrowed considerably because delegations were able to bridge the specifics in one regulation and the generalities in another.

*Fulfillment of Objectives*: WTO TBT guidelines point to fulfillment of objectives as a determinant of equivalence.<sup>9</sup> Taking this into account, the parties to these processes were able to reconcile gaps in standards and other aspects of regulations if they could feel satisfied that the gap did not seriously compromise the fulfillment of an objective of their production and processing standards or other aspects of the regulatory scheme.<sup>10</sup> In many respects, this approach employed “same end, different means” thinking. The regulations did not in all cases spell out principles and objectives for the standards, so in seeking to rationalize differences based on objectives, these objectives were sometimes inferred.

*Reference to International Standards and Conformity Assessment Norms*: The EU Regulation No 834/2007 specifies that the provisions of Codex

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<sup>9</sup> Article 2.7 of the WTO-TBT agreement states that “Members shall give positive consideration to accepting as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfill the objectives of their own regulations.”

<sup>10</sup> These objectives are not always readily apparent and it appeared that there were no pre-set lists of objectives presented and agreed in either the areas of standards or the regulatory control and enforcement process.



Alimentarius CAC-GL 32 *Guidelines for the Production, Processing Labeling and Marketing of Organically Produced Food* shall be taken into account in the determination of equivalence for purposes of its third country list. Although Codex Guidelines were seldom directly employed to reconcile issues, in all three of the equivalence processes the parties were always mindful of Codex principles. The inputs lists in the Codex Guidelines were sometimes directly consulted. However, as the Codex lists are indicative, the inclusion (or not) of an input in another regulation was not a hard criterion.

For conformity assessment, international norms referenced during the process were ISO Guide 65 (and its EU counterpart EN 45011) and ISO 17011. The regulations in Canada and the EU require the certification bodies to be accredited to the requirements of ISO Guide 65 whereas the US regulation, although it incorporates many provisions of ISO 65, requires only USDA accreditation to the terms of the National Organic Program.

*Level Playing Field:* Care was taken not to dismiss any gaps and issues that might create any other unintended consequences in the market. Input on this matter through the industry advisory processes in Canada and the US was sought and taken into account. In the US case, the Organic Trade Association through a group of specialized task forces, provided input on this point through the technical advisors to the US delegation. In Canada, three separate elements of consultation took place: groups or strategic alliances provided direct input to the delegations on specific concerns or lines of inquiry; additionally, a regular open conference call with all stakeholders in the sector was hosted by CFIA: providing updates on the process of negotiation and an opportunity to voice areas of concern; while finally the industry-run Organic Technical Committee for Canada's organic standard discussed and finalized the list of "critical variances" proposed for the final arrangement: removing some and maintaining others.

*Trade Volumes and "Market Relevance":* Some production and processing standards apply primarily or even specifically to certain categories of products. In cases where an identified gap applied mainly to production or processing of products with low or no trade flows to the country, the gap or issue tended to be dismissed. Similarly, a difference in practical approach, which might be viewed as significant but which could be avoided through administrative means might be dismissed (e.g. a Canadian prohibition of parallel production could be avoided in the US through registration of separate farm units, and therefore it was concluded that the creation of a variance would accomplish little in practice, while it could also erode the trust and goodwill needed in reaching an effective agreement).

*"Seeing is Believing":* In the case of issues on government supervision and conformity assessments, the site visits were reported to be valuable factors in reconciling issues in all three equivalence processes. The experiences and knowledge from these visits increased understanding and trust in these areas,

which had proved challenging based only on documented descriptions. Thus, the peer review exercise contributed to better understanding of the specific practices while providing reassurance on the integrity, functionality and accountability of the system under review.

*Goal Orientation:* Although presented last, this was identified by all parties as first order for reconciling the gaps. In all three processes, the teams were committed to the positive goal of achieving equivalence: and their strong will extended into the ancillary advisory groups – industry bodies in case of Canada and the US and the Member State authorities in case of the EU. As a result, there was a willingness to focus on the big, goal-oriented picture and avoid long discussions on small differences.

## **HIGH HURDLES**

Collectively, the reconciliation phases of the three equivalence processes winnowed out hundreds of listed variances. For example, Canada reported that in the first phase of the process it identified 56 variances, which were reduced to 10 in the second phase, and 3 “critical variances” (unresolved) which were published in the final arrangement. Challenges along the way were met, but some were high hurdles.

### *Understanding the Control and Government Oversight Systems*

A particular challenge in the process for all was to understand complex administrative and control systems that are significantly different among the regulating governments. The controls, including on imports, were particularly important considerations, as it related to consumer confidence in the organic brand. In some cases, e.g. EU agencies other than the home units for the organic regulations are often involved in implementing the controls. This includes in case of the EU not only supervision at the member state level, but other EU regulations on oversight of control bodies. The chain of accountability from the EU Commission to the control bodies is non-linear. In case of the US regulation, which (in the absence of equivalence) requires direct USDA accreditation for both domestic and foreign certification bodies certifying to the NOP, the accreditation operation extends to more than 40 foreign certification bodies. The discussions between the EU and US resulted in some changes to the systems, e.g. more detailed oversight at the level of the EU Commission on the implementation in the Member States and in third countries. Trust, dialogue and understanding also play an important role here leading to reconciliation: some delegations described receiving questions during the review phase, which had led them to wonder “what is it that our trading partner is trying to find out by asking this question?”

### *Extra-Regulatory Issues or Authorities*

Given their distinct regulatory and jurisdictional models, all three parties encountered fundamentally different systems when they entered negotiations with their trading partners’ organic systems. As an extension of “understanding the control and government oversight systems,” at times unique situations arose in which a system was in place in one jurisdiction which required special attention and understanding from

the other party. For example, the US control on alcohol and, specifically, wine labeling in particular falls under separate regulatory authority and enforcement than the rest of the organic program. Also, questions on regulatory and enforcement systems related to genetic engineering arose as the EU encountered organic standards systems in two countries whose administrative agencies for the organic regulations also support and promote genetic engineering in agriculture.

#### *Livestock Production Standards*

A different approach to animal husbandry in the US standards, compared to the standards of Canada and the EU, created some challenges in these processes. The EU standards and to a lesser degree Canada's, focus prescriptively on aspects of animal welfare whereas the US addresses general outcomes in this regard and is only prescriptive regarding inputs. Other topics requiring much discussion in the processes of Canada and EU with the US were limitations on stocking densities and manure sources. However, after all phases of discussion, most of these issues were reconciled. Canada maintained a critical variance based on explicit maximum stocking density requirements from the Canadian standards in their equivalence arrangement with the US; however this variance has since been removed for ruminant livestock due to revisions to the US NOP standards on pasture requirements (while restrictions remain in place for other livestock and related products). This also demonstrates the dynamism of the arrangements.

#### *Inputs*

Overall, the lists of inputs did not end up becoming major hurdles, although their review took a considerable amount of time and some critical variances on inputs were established in all three of the arrangements. Although there were many differences among the lists, it was generally agreed that they were also reasonably consistent as a whole. Individual substances, unless there were major concerns on organic principles and integrity, or serious issues of level playing field, did not result in variances. In general, the concern was that similar criteria had been used when listing a substance. Antibiotics constituted the biggest obstacle in the EU–US process and resulted in a critical variation on use of antibiotics in crop production from the EU and from the US, a critical variation on use of antibiotics in livestock production (and dairy production in Canada). Provision for use of an amino acid feed additive (methionine) for poultry in the US also resulted in extended discussions with the EU which does not allow this additive, but it was eventually reconciled, being counterbalanced by the more generous allowance of conventional feed for non-herbivores in the EU Regulation. Sodium (Chilean) nitrate, a critical variance for Canada with the US, is scheduled for rulemaking in the US to prohibit it altogether, and therefore did not become a critical variance for the EU (and it is expected that Canada will remove this critical variance as soon as the prohibition comes into force).

## **FACTORS IN ACHIEVING THE GOALS OF EQUIVALENCE**

A number of key factors led to successful outcomes in all three equivalence processes.

### *Political Will*

A high level of political will on the part of the governments to get the job done was evident in all three of the processes. Evidence of this in the EU-US process is the level at which the process was initiated. As previously noted, high political will meant that all the actors in the process kept the goal paramount, and minimized descent into details that could otherwise have blocked the process. In the US and Canada, political will was established within the industry also, which resulted in an effective consultation between government and industry on the issues involved in the process. In the EU, the Member States also supported the goal, resulting in effective consultation and cooperation between the Commission and the Member States, and avoidance of detailed technical discussions among the Member States. In this respect, the first arrangement, that between Canada and the US, created momentum and a model that benefited the other two processes.

### *Positive Perspective*

At the outset, and throughout the processes, it was recognized that the regulations have far more in common than not. Whether it was in reviewing documents or on site visits, the delegations' orientation was toward learning and understanding as opposed to building lists of variances and potential obstacles to the goal. The positive perspective fostered persistence in reconciling the more difficult issues arising in the process.

### *Personal Relationships and Trust*

Team members established positive relationships based on open and honest communication and this built trust. There was no attempt to hide potentially negative information, but instead a drive to be transparent. Relationships and communication moved well beyond formal diplomacy. There was already history of working together due to cooperation on previous mechanisms to support trade between the countries in the absence of equivalence arrangements, and so familiarity and a good rapport has been in place from outset of these equivalence processes.

### *Technical Expertise and Historical Perspective*

High technical expertise and historical perspective in organic agriculture within and supporting the delegations was a major factor leading to understanding of each other's standards and control systems, and ways to bridge gaps and reconcile other issues and concerns. This included an awareness of other regulatory or industry reference standards and precedents or approaches.

### *Common History of the Organic Movement*

Although there are some transatlantic differences between the organic movements of Europe and North America in philosophy (e.g. more emphasis in Europe on closed-loop farming systems), there is also a strong common history, shared dialogue and sense of community, which was evident in these equivalence processes as compared to most trade negotiations.

Within North America, the organic industry is self-organized in a similar structure for US and Canada, resulting in common purpose and perspectives.

### *Avoidance of the Trade Balance Agenda*

Most trade negotiations between countries are heavily influenced by an agenda to maintain overall trade balances. Trade data for organic products as a whole category have not been tracked and therefore this agenda did not play out in the organic equivalence processes.

## **STRUCTURE OF THE EQUIVALENCE ARRANGEMENTS**

The trading partners were concerned that the outcome of these equivalence determinations should not be regarded as “agreements,” as this term is reserved for treaties. There was also a desire to avoid requirements that the decision on these matters go through multiple layers of government review and approval. Therefore it was agreed to refer to “equivalence arrangements.” Formalization of the arrangement was in all cases by exchange of letters. The EU Commission also revised its regulation (EC) No 1235/2008 to add Canada and the US to the third country list in annex III of that regulation.

### *Defining the Scope of the Equivalency*<sup>11</sup>

Each of the three equivalencies discussed here have a unique “scope” of application, which has significant bearing on how trade is conducted under the arrangements. They all vary in the critical variances or additional requirements they place on product flow from either the standpoint of technical standards or country of origin. Equivalencies can be “full” or “partial” in terms of technical standards requirements, scope (or commodity coverage) and can also be “open” or “restricted” in terms of product provenance.

Thus, the Canada-US equivalency is best described as an “open partial equivalency”. It is “open” in that the equivalency is the only truly system-to-system equivalency: whereby any product certified by an approved body in accordance with the requirements of the arrangement, from anywhere in the world, can enter either or both jurisdictions. For example, a product certified in South Asia to the Canadian standards (and additional specific technical requirements demanded by the equivalency) can be sold and labeled for trade in the US. The equivalency is “partial” in that the US and Canada maintain critical variances in regards to their standards: requiring specific additional actions or technical requirements from products certified under one system which seek to be traded in the other.

The Canada-EU equivalency is best described as a “restricted full equivalency”. It is “limited” in that it has specific country-of-origin limitations put in place by the EU on products originating from Canada which, in practice, results in only single-ingredient commodities falling under the arrangement (or a very limited set of multi-ingredient

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<sup>11</sup> This section departs from the process orientation of the paper to cover certain technical outcomes on scope of the arrangements. This is due to the need for a clearer international understanding of this aspect of the the arrangements.

products whose ingredients are 100% Canadian origin). It should be noted that Canada did not put this same restriction on products under the EU system, which also means the arrangement is asymmetric. The Canada-EU arrangement is “full” in that there are no critical variances identified under the agreement—both standards are seen as fully equivalent.

Finally, the US-EU equivalency could be described as a “restricted partial equivalency”. Though more “open” than the Canada-EU arrangement, the arrangement between the US and EU still requires a specific country-of-origin prerequisite: the final point of trade must be a signatory of the arrangement: for example, products from South America must be imported into the US and processed or packaged there by an operator under the control of a US certifier before being shipped to the EU under the arrangement. The agreement is “partial” in that the arrangement includes technical critical variances as well.

### **MAINTAINING THE ARRANGEMENTS**

These arrangements have created partnerships that are oriented to the long-term. For each of the three arrangements a working group has been established to:

- deal with maintaining the agreements and handle issues arising, including follow up on commitments made during negotiations such as implementation of new US prohibition of sodium nitrate, periodic audits, consistent interpretation on both sides, and scope expansion such as wine and aquaculture;
- review changing standards and requirements (for instance, each change to the NOP’s lists of allowed and prohibited substances should theoretically be reviewed);
- identify and pursue opportunities of mutual interest, such as cooperation on equivalence assessment of other countries, and possibly tracking organic trade possibly through development of international trade codes;
- ensure that consistent and appropriate communications are issued to the private sectors impacted by the arrangements.

The ongoing partnerships will require endurance of political will and allocation of resources and are therefore subject to shifts of politics and policies at high levels of government. These partnerships may also be tested as the composition of the working groups shift.

### **RESOURCE REQUIREMENTS FOR EQUIVALENCE PROCESSES**

It is recognized that these three processes demanded significant time and other investments from the governments, but they were not seen as out of proportion to the positive results achieved. In the experience of the EU Commission, the number of in-person meetings and site visits were lower than for similar bilateral processes. Trade potential will be taken into consideration when considering future investments in new bilateral dialogues. Many third countries have submitted requests to Canada, EU and US to begin equivalence discussions, but the cost-benefit of engagement in processes for bilateral arrangements may not always be favorable or politically expedient.

Because the process used was not mandated, there could be some room to consider streamlining of future equivalence processes as long as credibility is not compromised.

The formation of working groups has facilitated ongoing discussions between countries and has been vital to the successful implementation of the arrangements. The working groups have discussed future cooperation on equivalence with other countries. This could include sharing information and other resources for assessments of additional countries, perhaps even conducting joint site visits and/or relying on the site evaluations of each other. There is also some openness to considering alternative, more efficient processes for equivalence assessment.

## **LESSONS LEARNED**

*Political will, positive relationships, and persistence matter.*

Although a good technical procedure for analyzing the standards and technical regulations is important, attention must be paid to the political and interpersonal factors, such as those described in the previous section. High-level support and strong political will should be in place before the technical phase. Attention should be paid throughout the process to establishing and maintaining personal relationships among the actors and building trust through open and honest communication.

*Documentation of all discussions and decisions will avoid problems later.*

The processes were compromised in a few instances due to different understandings and/or recollections of the key discussion points and the decisions. Thorough and consistent documentation of the discussions and decisions, reviewed by all parties to the discussion at all stages, can help to avoid such problems.

*Open discussions can lead to harmonization and continuous improvement.*

Some issues were resolved because of revisions to regulation and guidance during the process. Open and honest dialogue created an orientation toward learning from each other, wherein the parties could recognize opportunities to improve their standards and control systems. This is also the case as the partnerships continue through the working groups that are responsible for maintaining the arrangements.

*Consultation improves the process and outcome.*

By reaching out to the sector for review and input (in the case of Canada and the US) and the member states (in the case of the EU) for input, the core delegations were able to enrich the technical analysis, expand trust and confidence in the arrangements among constituents, and prepare for implementation of the equivalence arrangements.

*Teamwork after completing the arrangement is vital.*

A challenge in the early phase after the completion of all three arrangements has been for the countries to be consistent with one another in how they interpret implementation details to their organic sector and other constituents. It has been important to maintain communication among the team about the issues and questions arising in preparation for and during the implementation phase.

## **OUTLOOK FOR THE EQUIVALENCE ARRANGEMENTS**

The parties anticipate activities to expand the scope of operations and products covered in the agreements. These include wine, which is already subject to discussions, and aquaculture in the future. It is also envisioned to work towards fully equivalent arrangements by eliminating the current critical variances and achieving common scopes. This possibility is foreseen through continued development of the regulations and discussion among the trade partners. It is also important to note that an equivalency is only a starting point: as organic standards and regulations are typically “evergreen” there will be an ongoing need for each jurisdiction which enters into an equivalency to meet its commitments by regularly reviewing and considering any changes to the standards or requirements of its trading partners, while also communicating and engaging on any changes it has made to its domestic requirements as well.

## **CONCLUSIONS AND RECOMMENDATIONS**

This section presents conclusions and recommendations from the GOMA project relative to the equivalence processes reviewed in this paper. Insight into these processes show that equivalence determination is a function of political, personal and technical factors. The lessons should be instructive not only for those countries wishing to undertake equivalence discussions on organic regulations with Canada, EU and US, but in general for all countries engaging with other countries in equivalence discussions for organic regulations, and more broadly in other sectors.

The equivalence arrangements reviewed herein—major achievements in that they cover a high proportion of the international market for organic products—are among countries with a high degree of cultural and political commonality. These lessons include but are not limited to achieving high political will and high levels of government support from the outset among all parties to the process, developing strong communication and human relationships between the delegations, and engaging in consultation with stakeholders in the equivalence processes. It will be important for countries to consider measures to build communication, familiarity and trust when dealing with their counterparts. The resources required for the processes employed so far is likely to limit the number of equivalence arrangements that can be undertaken by and with Canada, the EU and US, and by extension any other countries wishing to enhance organic trade through equivalence arrangements with other countries. Reaching across cultural and political gaps may require even more steps and the process and therefore resources.

Given the worldwide proliferation of organic regulations, including their enforcement on imports, the urgency for organic trade solutions through equivalence and harmonization remains critical. GOMA is of the view that the needs of developing and emerging countries and their producers should be especially taken into account by those countries representing major organic markets.



The achievements of Canada, EU and US on these equivalency arrangements notwithstanding, means should be sought to achieve a high rate of equivalency among countries with rigorous but differing organic regulations and which favor inclusion of developing countries. GOMA has developed tools for equivalence of organic standards and technical regulations, which should be borne in mind as a reference for technical comparison of standards and certification requirements in regulations to common international objectives and requirements.<sup>12</sup> The tools can afford higher efficiency and standardization to equivalence processes, and they can be adapted to multilateral as well as bilateral equivalence processes. Even with efficiency gains, bilateral approaches are unlikely to function optimally at global scale. Multilateral arrangements, especially within regions, present the next level of opportunity for accelerating the rate of equivalence of organic regulatory systems.

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<sup>12</sup> The tools and information on their use are available at [www.goma-organic.org](http://www.goma-organic.org).