

Opportunities and risks of the revised European import regime

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Remark: Any development regarding the implementation rules for the import regime prior the conference will be considered and the presentation adapted if necessary.

Abstract

The EU has new requirements for the import of organic products replacing the import authorizations by a system where certification bodies operating in Third countries will be approved by the EU Commission. The new system has the potential to increase the efficacy of the control system in Third Countries, to reduce the bureaucracy for international trade and competitive disadvantages for non-European certification bodies. However clear criteria for the assessment of compliancy and equivalency and thorough supervision of certification bodies are necessary to maintain and improve the organic integrity for imported products.

Introduction

Most organic products imported in the European Union are yet imported under the so called important authorizations. A system mainly based on document evaluation from a retroactive perspective by European competent authorities. It is a bureaucratic system not sufficiently considering the efficacy of the control system applied in the Third Country and indirectly supporting Western certification bodies through its unclear criteria which require good relationships and knowledge of the competent European authorities' expectations (the vast majority of import authorizations are based on certification by European certification bodies).

Yet the implementation of the EU Regulation requirements in Third Countries is not satisfactory. For example in a lot of Third Countries the conversion period is hardly applied. On the basis of questionable documents and soil analysis most areas are subject of retroactive recognition. But on the other side farmers from Western countries usually receive subsidies during the conversion period whereas farmers from developing countries have no support and subsequently the conversion period results in an economically heavy burden.

Results

At the end of December 2006, the EU published new regulations on imports of organic products. The revised import procedures replace the current (temporary) system of import authorizations by an approval system for inspection bodies operating in countries outside of the EU. The existing system for approval of countries in the so called "Third Country List" will be maintained although amended.

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For imported products in the EU the products must have been certified by an inspection body or authority recognized by the European Commission. The EU will publish lists of approved inspection bodies and authorities as well as approved third countries. There will be three different lists:

- 1) List of inspection bodies which have been accredited according to EN 45011/ISO 65 and which apply an inspection system and production rules **compliant** with the EU regulation.
- 2) List of inspection bodies which apply an inspection system and production standards **equivalent** to the EU regulation.
- 3) List of countries whose system of production complies with rules **equivalent** to the EU production and inspection provisions. This list corresponds to the existing Third Country List, and procedures to become listed will presumably remain the same.

Under option 1) and 2) the inspection bodies can either be located within or outside the EU. Inspection bodies or authorities shall provide to the EU the assessment reports issued by the accreditation body or, as appropriate, the competent authority on the regular on-the-spot evaluation, monitoring and multi-annual re-assessment of their activities. The EU provides the option to assign experts to conduct "on-the-spot" examinations and shall ensure appropriate supervision of the recognized inspection bodies by regularly reviewing their recognition.

Under option 2) and 3) (equivalency-option) the imported products have to be covered by a certificate of inspection, this provision is not described under option 1).

The new import scheme has not yet been implemented since the EU did not yet publish the implementation rules. The derogation for import authorizations runs out with the revised regulation 834/2007 coming into force.

Discussion

Compliance: The provision on compliance with the EU regulation is new and has been implemented because of WTO requirements requesting equal access to EU markets for non-European countries. So far the EU only requested equivalency with the EU requirements. It is not yet clear what will fall under compliance – does the respective exporting country have to have a competent authority with the same responsibilities as the European countries? If so the compliant rule can hardly be applied and it may be further questioned whether such a requirement would be in line with WTO agreements. But if not - where to draw the line? How can a compliant system be applied in other climatic conditions such as the tropics or in case of Internal Control Systems? At a first glance compliance with the EU Regulation seems to be the best option to protect organic integrity. But full compliance in regions with completely different climate, crops, socio-economic conditions is impossible and would be against the objectives and principles of organic agriculture which require a locally adapted system.

Equivalency: Equivalency is the capability to meet the same objectives and principles by applying rules which ensure the same level of assurance of conformity.² Although all imports so far fall under the equivalency provision there are no guidelines on how equivalency may be determined. What does it mean for example in the case of seeds?

² Herman van Boxem, DG Agri at a presentation at BioFach 2007

What is an equivalent tool of a database? What in the case of treated seeds - not accepted in the EU Regulation but in some cases in Third Countries hardly to avoid – a problem currently solved by European certification bodies by requesting washing of treated seeds? What does it mean in the case of the conversion period? A three years conversion period is imposing an unbearable economic burden as long as the in-conversion products are not accepted by the market and in countries where no subsidies are paid. What does equivalency mean for the new flexibility rule – who is deciding on derogations? A thorough assessment of equivalency could be a powerful tool to allow an adapted application of the EU requirements in other regions without weakening the organic quality.

Supervision: So far there are no indications that the EU would establish a new authority for supervising certification bodies. It may be assumed that main burden of supervision will remain with the accreditation bodies. Accreditation in Europe is - according to the EU policy – conducted by national accreditation bodies organized in EA³ and insuring a quality level by signing MLA's. Only very few accreditation bodies from developing countries have signed so far MLA's on product certification (corresponding to ISO 65/EN 45011). Furthermore the ISO 65/EN 45011 is a norm for certification neglecting the important field of inspection. It is therefore of utmost importance that surveillance of certification bodies is not limited to ISO 65 accreditation by national accreditation bodies. A consistent on-the-spot assessment of the activities of certification bodies in Third Countries by auditors trained in the EU requirements and having at least the qualification of organic inspectors is necessary.

Non-organic requirements: Another issue relevant for imports is the application of requirements not defined in the EU Regulation 2092/91 respectively 834/2007 but in other EU Regulations. E.g. burning of crops, water quality, some aspects of animal welfare are not covered in the organic regulation since they are already defined in other regulations. Under the current regulation there was a provision that the other regulations also apply although it was never determined whether and how this is to be implemented for imported products, under the revised regulation this requirement is lacking. Although considering the organic principles obviously issues like water management also need to be considered for Third Countries inspections.

Third country Certification Bodies: The new system allows inspection bodies from non-EU-countries to apply for recognition at their own initiative, i.e. they can prove their recognition prior to the start of trade relationships and they do no longer depend on European importers for acceptance on the European market. The risk of importers for cooperation with non-European and/or less known inspection bodies will be reduced and thus the chances of certification bodies from Third Countries to enter the market for export certification will be improved. To use this business opportunity it will be important for certification bodies from Third Countries to apply for recognition by the EU already in the first application round.

Trade: The trade will be the winner of the new system: bureaucracy will be considerably reduced: it will be no longer the importer being responsible to proof the equivalency with the EU Regulation but the certification body. I.e. traders will no longer have to struggle with authorizations and in case of the compliance procedure there will be even no more accompanying certificates.

³ European Co-operation for Accreditation

Conclusions

The revised import regime of the EU has the potential to increase the efficacy of the control system in Third Countries, to reduce the bureaucracy for international trade and competitive disadvantages for non-European certification bodies. But there are also serious risks for the organic integrity if not implemented thoroughly: the new import scheme has less binding provisions for regular assessments. The current import authorizations are limited for a certain time period and to specified crops and producers. Re-assessment by authorities for each re-application was necessary so far. The intensity of the regular surveillance is not yet defined for the new import scheme. Clear criteria and sufficient financial and personnel capacities for implementation of the revised system respectively the supervision of certification bodies are necessary to avoid a two class organic quality.

To use the potential of the new import scheme the following measures are necessary:

- Guidelines must be developed on how to determine equivalency.
- Equivalency assessments as well as the determination of compliancy should be published to increase transparency and allowing a harmonized implementation of the EU regulation (e.g. by publishing tables describing how requirements are implemented)
- Guidance is further needed on how requirements related to organic production although regulated in other regulations shall be covered in Third Countries inspections.
- Measures which impose unbearable burden to farmers in Third Countries should be eliminated or defined by clear criteria in the flexibility rules in such a way to allow access to the European market without creating unfair competition.
- Most important is a consistent and consequent surveillance of European and non-European certification bodies. This requires qualified accreditation bodies and in addition a European supervision authority.

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