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# The New CANADIAN ORGANIC REGULATIONS and The Case for Equivalency

By Katherine DiMatteo and Matthew Holmes

June 30, 2009 marks a big day for Canada—and all the organic companies that do business with Canada. On this day, Canada's new organic regulations become official.

Currently, the United States supplies roughly 80 percent of Canada's organic produce, and almost 90 percent of its organic grocery products, making it the United States' largest and most important trading partner in the organic industry. Worldwide, Canada is also a major player, ranking as the fifth largest agricultural importer and the fourth largest agricultural exporter, supplying a major share of the world's grains.

With this said, the introduction of a new mandatory standard for organic products and marketing has raised serious questions about the impact this may have on international trade of organic products, in particular, bilateral trade between the United States and Canada. To help companies prepare for these changes, we have outlined the key features of the new regulations, including the similarities and differences that exist between the U.S. and Canadian programs.

Looking at trade from a broader viewpoint, the important issue of "equivalency," which allows countries to accept each other's organic seals interchangeably, is also brought to the table. A U.S.-Canadian equivalency agreement on organic products would be a first in world trade. This agreement, which is currently being discussed by the two countries, would not only significantly open up trade between Canada and the United States, but it would also set a precedent for trade throughout the entire international organic community.

## CANADA'S ROAD TO REGULATION

Prior to the development of these regulations, Canadian consumers could easily become confused by the wide array of organic claims in the marketplace. Canadian organic producers and processors chose voluntary self-regulation verified by private-sector certifiers or compliance with other national organic regulations. Two provinces of Canada, British Columbia and Quebec, even had separate definitions of what "organic" meant. To top this off, imported organic products added more seals and claims for the shopper to sort out. In addition, because the sector was not regulated and had no single definition of what an organic product was, the Canadian government was only able to take enforcement action on products that made misleading or fraudulent claims (e.g. used an organic claim when the product or ingredients were not certified to any standard).

This situation began to change in 1999 when the government's standard-setting body, the Canadian General Standards Board, first published Canada's voluntary national organic standard. By 2003, an initial proposal for regulation was complete. After conducting a cost-benefit analysis and extensive consultations with stakeholders in the organic sector, the government determined that a regulated mandatory standard needed to be established. Work on this standard soon got under way, and on December 21, 2006, the Canadian Organic Regulations were published in the *Canada Gazette*. This officially ended the era of the voluntary system and began a new phase whereby organic would fall under a federal regulatory framework.

As outlined in 2006, Canada's Organic Products Regulations (OPR) require all organic food imported into Canada, or crossing provincial boundaries, to be certified to the Canadian standard by an accredited certifier recognized by the Canadian Food Inspection Agency. To be certified, processors and producers must follow the practices outlined in the Canadian standards, several of which—ranging from inputs to processing aids—differ from NOP requirements.

Initially, the plan had been for the OPR to take effect in December 2008. Due to an unexpected call for general elections, the implementation date was pushed to June 30, 2009. In addition, Canadian officials have developed a "stream of commerce" policy in order to facilitate the transition, sustain international organic trade, control non-compliance and protect consumers. The policy, which is proposed to be in effect until June 2011, will grandfather organic products produced and labeled prior to June 30, 2009. This policy will also provide producers and processors the time to become certified to the new requirements at their next scheduled annual inspection, and to continue to sell organic products already in the marketplace or

in storage that were not certified to Canada's standard. For more information on Canada's new organic regulations, standards, requirements and market reports, visit: [www.ota-canada.ca](http://www.ota-canada.ca).

## U.S.-CANADA COMPARISON

Given the uncertainty around what the new regulations will mean for U.S. businesses, it's worthwhile to step back and examine the two nations' organic regulatory systems as they exist today. On the macro level, many similarities exist. While the structure of the Canadian system can seem complex and involves a large number of government agencies, both systems have mechanisms for the development and enforcement of rules and regulations. Similarly, both systems place the growth of the organic sector, the preservation of organic integrity, and consumer protection as top priorities.

## PREPARING FOR CHANGE: STEPS YOU NEED TO TAKE TO BE READY

With the implementation of the new Canadian Organic Products Regulations around the corner, there are some key steps that those involved in organic trade can take to ensure a smooth transition.

- ✓ Verify that your company's certifier is accredited (or is making arrangements to become accredited) under Canada's new system, and will offer certification to Canada's standards. (See [www.ota-canada.ca](http://www.ota-canada.ca) for a list of pre-approved certifiers currently active in the Canadian market.)
- ✓ Familiarize yourself with Canada's organic standards. Attend seminars, workshops and webinars that are offered about the Canadian standard and timeline for implementation. Canada's organic standards contain unique elements that could affect your product's ability to be certified as organic in Canada. Remember, it's not only the processing that has to meet Canada's standards; every organic ingredient or processing aid must be certified to or compliant with the standards.
- ✓ Familiarize yourself with Canada's Permitted Substance List (PSL). This is a positive materials list, which means all materials used in organic production must appear on the list with the appropriate classification in order to be used.
- ✓ Familiarize yourself with Canada's labeling requirements. As with its organic standards, Canada's labeling requirements are similar to those in other countries, but also contain some noteworthy differences (e.g. no "100 percent organic" claim exists in Canada, bilingual organic claims, etc.).
- ✓ Visit [www.ota-canada.ca](http://www.ota-canada.ca) for copies of Canada's standards, the PSL, lists of accredited certifiers, the stream of commerce policy, and updates on what you need to know about the new Canadian system.

Commonalities also exist on the micro level. For example, both systems are founded upon the same organic principles and prohibit the use of irradiation, genetically modified organisms (GMOs), and sewage sludge. Additionally, both standards require a three-year transition phase. Labeling is much the same with two major exceptions: there is no provision for a 100 percent organic label, and “made with organic” labels must state on the front panel the actual percentage of organic ingredients used.

With recently proposed revisions and amendments, the standards are also converging. The newly proposed NOP pasture rule will result in a standard very similar to Canada’s stricter, more defined stocking and feed requirements, while many of the latest additions to Canada’s Permitted Substances Lists bring it more into line with the allowed and prohibited materials listed under the NOP.

In spite of these similarities, a number of differences exist between the structure and regulatory content of the two systems. For example, Canada’s OPR covers inter-provincial and international trade only, leaving agricultural jurisdiction in the hands of individual provinces, many of which do not currently regulate the

organic sector. By contrast, the Organic Food Production Act (OFPA) is the national legislation governing organic production throughout the United States and must be enforced in every state. Also, OPR is more limited in its scope than its U.S. counterpart. OPR applies only to food, feeds and primary crops, whereas the U.S. allows for organic claims on any product, food or non-food, that can comply with the NOP rule. In Canada, this means that products outside the scope of the OPR can make truthful third-party claims about their organic content until specific standards have been

	CANADA	UNITED STATES
<b>Labeling</b>	“Organic” = 95% or more “Made With” = 70-95% * Must include percentage on front panel Ingredient panel only < 70%	“100% Organic” = 100% “Organic” = 95% or more “Made With” = 70% or more Ingredient panel only < 70%
<b>Materials</b>	Natural and synthetic materials must be listed on PSL; annotations and usage limitations may be prescribed	Natural materials allowed unless specifically prohibited Synthetic materials prohibited unless specifically allowed Annotations and usage limitations may be prescribed.
<b>Parallel Production/ Split Operations</b>	Parallel Production (growing of organic and non-organic varieties of the same crop on the same farm) is prohibited to avoid possible commingling  Split operations (growing organic and nonorganic varieties of different crops on the same farm) is permitted but the farm plan should indicate the timeline for the full conversion to organic.	A portion of crop or livestock production or wild-crop harvesting operations can be certified organic.  Organic system plan must include a description of the management practices and physical barriers, such as buffer zones, established to prevent commingling and to prevent the possibility of unintended contact by prohibited substances on a parallel production or split operation.
<b>Nonorganic Agricultural Exceptions</b>	Organic unless commercially unavailable in sufficient quantity or quality. Cost cannot be a criterion to determine commercial availability.	Must be listed on the NOP 205.606 list as an allowed ingredient if it is a non-organically produced agricultural product. Even then, must still use organic if it becomes commercially available.
<b>Natural Sodium Nitrate (Chilean Nitrate)</b>	Not on Permitted Substances List	Restricted use: no more than 20% of total nitrates, with phase out in farm plan.
<b>Antibiotics</b>	Restricted use for dairy only, as a last resort for animal welfare, with written sign-off of vet and certifier. Milk must be discarded for at least 30 days, or twice the withdrawal period. Meat cannot be sold as organic.	Prohibited
<b>Sulfites in Wine</b>	Sulfurous Acid is permitted as a stabilizer in certified “Organic Wine” at specific levels (for free sulfites and total sulfites), based on the sugar content of the wine.	Wines which include added sulfites may only make “made with” claims.
<b>Manure Management</b>	Should be composted if applied within 120 days of harvest Off-farm preference for organic and GMO-free sources; no landless operations	Should be composted if applied within 120 days of harvest
<b>Livestock</b>	Transition from the last third of gestation for slaughter stock and one year for dairy animals Specific stocking rates by breed	Transition from the last third of gestation for slaughter stock and one year for dairy animals (origin of dairy livestock to be considered soon by NOP)

*This table is meant as a basic comparison only; for actual requirements refer to the regulations and standards applicable within the appropriate jurisdictions.*

Table 1

## PROCESSING AIDS/ADDITIVES ALLOWED UNDER NOP **NOT** INCLUDED ON CANADA'S PERMITTED SUBSTANCES LISTS (PSL)

(Please note: This list is not exhaustive, and does not reference variances in usage limitations for materials that do appear on both lists. Omissions from the PSL mean the substance cannot be used under Canadian certification.)

- Calcium sulfate
- Egg white lysozyme
- Glucono delta lactone
- Calcium hydroxide
- Cellulose
- Tetrasodium pyrophosphate
- Sodium acid pyrophosphate
- Boiler chemicals (such as cyclohexylamine, diethylamino-ethanol, and octoadecylamine)
- Activated charcoal
- Nonorganic lecithin (must be organic)

developed for those other sectors.

While the NOP groups all crops under one umbrella of the rule, Canada has specific standards for a variety of specialty crops including mushrooms, maple, honey, sprouts and wild-harvested goods, as well as strict definitions and limits on hydroponic production. Perhaps more controversial are the differences that exist with respect to organic feed and permitted

allow livestock to be fed 80 percent organic feed in the first nine months of transition. Table 1 on page 36 offers a comparison of these and other differences and similarities in the two standards.

### OVERCOMING DOMESTIC DIFFERENCES: THE CASE FOR EQUIVALENCY

In light of the similarities to U.S. organic regulatory systems, and the strong trade relationship between the two countries, Canadian officials have begun to consider whether organic products produced in the United States must conform to Canada's own organic rules and standards, or whether the fact that such goods have achieved organic status in the U.S. accomplishes the same objectives as required under Canadian law. Such a determination would be sufficient to recog-

inputs. Canada prohibits the use of natural sodium nitrate (Chilean nitrate) as a fertilizer in organic production, whereas U.S. laws permit restricted use of this substance.

By contrast, Canada permits the emergency use of antibiotics in organic dairy cows (but never meat animals), while the NOP prohibits the use of antibiotics in all organic animals. With respect to feed, U.S. laws now require that animals are fed 100 percent organic feed during transition, whereas Canadian laws

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Companies that sell both in Canada and the United States, such as Amy's Kitchen and Nature's Path, are big proponents of an equivalency agreement.

then technical requirements can be different in accordance with the agro-ecological needs of each country's public policy goals. To simply require everyone to meet your standard and only your standard is reductionist and runs counter to the principles on which both organic movements were founded. As Dr. Sophia Twarog, an economist with the United Nations Conference on Trade and Development (UNCTAD) puts it, "We should accept that organic production standards will, and indeed should, vary as each is tailored to local conditions. In short, expect the best, but don't force the entire world to be like you." As with any trade negotiation, equivalency agreements allow governments to reaffirm their policy objectives. If irreconcilable differences remain at the technical level, they do not have to compromise the entire agreement—and equivalency is still possible for everything else.

While seemingly straightforward, this issue can still become a source of widespread debate. Some prefer a policy of mandatory "full compliance" rather than one of equivalence, as a means of maintaining the absolute consistency of organic products available in a given market. Often, though, differing approaches may, in fact, share the same goal.

A perfect example is the practice of parallel production in organic agriculture, in which the same or similar crop varieties are grown in both organic and nonorganic form on the same farm. Canada's organic standards strictly forbid it; the U.S. rule allows it. Because this production model can be used for almost any organic crop grown in the U.S., the ramifications of this being considered a critical difference could be monu-

nize and treat such products as organic within Canada's borders, without the need to certify to a second standard. In turn, the United States would also recognize Canadian products. This is the concept of equivalency, in which domestic standards may differ at the technical level, but trading partners view the systems and objectives as equivalent. To put it more simply: equivalency considers two systems as comparable, though not always identical.

From an organic perspective, this makes sense since organic growing standards have always been developed for specific growing conditions depending on regional variances. If the principles and processes are the same, then technical requirements can be different in accordance with the agro-ecological needs of each country's public policy goals. To simply require everyone to meet your standard and only your standard is reductionist and runs counter to the principles on which both organic movements were founded. As Dr. Sophia Twarog, an economist with the United Nations Conference on Trade and Development (UNCTAD) puts it, "We should accept that organic production standards will, and indeed should, vary as each is tailored to local conditions. In short, expect the best, but don't force the entire world to be like you." As with any trade negotiation, equivalency agreements allow governments to reaffirm their policy objectives. If irreconcilable differences remain at the technical level, they do not have to compromise the entire agreement—and equivalency is still possible for everything else.

mental—equivalency suddenly seems very far away. However, with further consideration of the rule's actual objective, it's not so clear that the difference is really all that pronounced. In Canada, the objective is to safeguard against possible commingling of organic and nonorganic crops at the farm level; In the United States, the rule has specific protocols in place to avoid any commingling on a farm that grows the same crop in both organic and nonorganic form. Although the methods may differ between the two approaches, the end result is very much the same.

Opponents have also raised concerns about an increase in competition as a potential drawback of equivalency agreements. As such, they advocate protectionist measures to maintain their market share. Additionally, some opponents of equivalency have expressed reservations about its potential to lead to consumer confusion. Be-

### ANALYZING SIMILARITIES AND DIFFERENCES IN INTERNATIONAL ORGANIC REGULATORY SYSTEMS

With the growth of the international marketplace for organic products has come the development of national organic regulations that are, in many ways, as varied as organic products themselves. Some are characterized by strict regulations and extensive bureaucratic structures, while others are loosely defined and contain few, if any, mechanisms for oversight. While arguably beneficial at the domestic level, such diversity has the potential to erect trade barriers between nations and impede the growth of the international organic market.

Over the past several years, the USDA's Foreign Agricultural Service (FAS) has taken concrete steps to better understand international regulatory differences and improve the position of U.S. organic products on the world market. In October 2008, FAS awarded the OTA, in partnership with the consulting group, Sustainable Strategies, \$750,000 to fund projects that analyze technical trade barriers for U.S. organic products. With this funding, Sustainable Strategies will conduct side-by-side comparisons (also known as GAP analyses) of U.S. national organic standards and those of designated countries. USDA will then use the analyses in its negotiations with other nations with which the U.S. would like to initiate or continue trade of organic products.

As David Gagnon, OTA's chief operating officer and project leader on U.S. organic export projects notes, "OTA envisions that this research and analysis will go a long way toward understanding the hurdles that impede the trade of organic products and help find solutions to open trade for U.S. organic producers."



cause equivalency would allow competitors to meet a different set of technical requirements than those to which domestic producers and handlers must adhere, such opponents argue that consumers might struggle to understand the definition of organic, or have less faith and trust in products labeled organic and therefore hurt the overall market for organic goods. However, this argument seems specious considering the significant amount of NOP-compliant products already sold in the Canadian market, and the rate at which demand continues to outpace supply in both countries.

Other stakeholder groups, such as the International Federation of Organic Agriculture Movements (IFOAM) and UNCTAD, have offered a decidedly different—and in many cases more compelling—perspective on equivalency. From their standpoint, equivalency not only strengthens the domestic market for organic goods, but also serves to spur the growth of the organic market in general. Instead of having to certify products to multiple standards, organic producers in the U.S. or Canada could instead certify products to the standard of the country in which their products were produced, reducing paperwork and streamlining the certification process.

Jake Lewin, certifications services director with CCOF, believes “equivalency with Canada is critically important to farms and processors of all sizes,” and adds “Maintaining multiple certifications is often costly, inefficient and complicated. Equivalency allows everyone involved to focus their energies on producing organic products.” Because it would reduce the cost, proponents argue that this equivalency would enable more small-and medium-sized companies to sell their products beyond their domestic market. For Canadian producers and processors, this promises access to a market 20 times the size of their own. For U.S. producers and processors, continued access to their most important buyer is at stake.

Proponents have identified increased availability of ingredients and raw materials as yet another benefit that equivalency has to offer. Whether it is a matter of finding livestock feed, organic seeds or the right ingredients in sufficient supply

### ENGAGING THE INTERNATIONAL EQUIVALENCY DEBATE

As equivalency has assumed a more prominent place in the international dialogue about organic, several groups have formed to examine the policy and its implications more thoroughly. Perhaps the most significant of these groups, from an international perspective, is the FAO-IFOAM-UNCTAD International Task Force on Harmonization and Equivalence in Organic Agriculture (ITF). Launched in February 2003, ITF consists of government, intergovernmental agencies, and key private-sector stakeholders who work together to both promote public-private sector dialogue, analysis and solution-seeking, with the goal of identifying ways to remove technical barriers to organic trade, particularly in regards to the vast amount of organic crops grown in countries which do not have their own organic regulations.

In October 2008, ITF presented two tools in support of this mission. The first of these tools is the International Requirements for Organic Certification Bodies, which serves as a “reference norm that can be used by governments and private accreditation and certification bodies as a means of accepting certification of organic products outside of their own system.” The second tool, entitled the “Guide for Equivalence in Organic Agriculture” or “EquiTool” for short, establishes procedures and criteria used to determine when standards applicable in one country are equivalent to those in another region. As UNCTAD economist Sophia Twarog describes it, the EquiTool is designed to “support governments and other actors in their efforts to ensure a transparent, rigorous, logical and predictable approach to judging equivalence of other organic standards.” For more information, visit [www.ifoam.org](http://www.ifoam.org).

and quality, processors and farmers in both the United States and Canada struggle to access the materials they need to produce organic products. Equivalency offers a means to enable greater, more reliable, and more efficient access to much-needed ingredients. Moreover, by facilitating the supply of ingredients and by opening up markets for export, equivalency will actually strengthen each domestic value chain, supporting domestic processors and farmers alike with a bigger, more fluid market.

Dag Falck, organic program manager with Nature’s Path Foods says, “There is no question that we follow the highest organic principles. However, dual and triple certifications along with labeling and import rules with their myriad requirements for documentation (which also affect our suppliers) are becoming so complex that they could threaten to impede our ability to bring healthy organic products to our customers. Equivalency would be one significant and positive step in the right direction to alleviate this.”

Representatives of the organic sectors in both Canada and the United States have brought these positions to their governments, urging them to discuss a possible trade agreement. Miles McEvoy, president of the National Association of State Organic Programs (NASOP), wrote in a letter to the U.S. Secretary of Agriculture that, “Establishing an organic equivalency agreement is extremely important to maintain trade between the U.S. and Canada, and to the continued success of the organic food industry in our country.”

Similarly, an April 2008 white paper issued to Canada’s minister of agriculture, Gerry Ritz, by the advisory Organic Value Chain Roundtable proclaimed the “continued success and access to markets for the organic sector will depend upon the negotiation of equivalency or other trade

agreements with Canada's major trading partners for organic products, to reduce administrative and technical barriers to trade for Canadian producers and manufacturers."

Already, Canadian and U.S. trade officials have taken steps demonstrating their interest in exploring the possibility of equivalency with each other. Two preliminary, government-to-government meetings have taken place over the past year, but the exact time-frame for the conclusion of these negotiations remains unclear. Although it is difficult to predict how long bilateral trade negotiations will take, the June 30, 2009 coming-into-force date of the Canadian regulation presents itself as a natural target.

This is most certainly not something U.S. companies can bank on though, and companies that wish to do business

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in Canada should still prepare to meet the new regulations. Even if an equivalency is attained, it will most likely include conditions. For instance, the United States may insist the prohibition on antibiotics in organic livestock production be met and conversely, Canada may maintain its prohibition on natural sodium nitrate (Chilean nitrate) in farm production.

Through their continued efforts to negotiate, the Canadian and U.S. governments are sending a positive signal that they support organic equivalency in principle and believe it is possible in practice. For the organic sectors in both countries, we may soon find ourselves standing on the edge of a rich new field of opportunity. □

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