



## On the regulatory potential of regional organic standards: Towards harmonization, equivalence, and trade?

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### ABSTRACT

The growing demand for organic produce has augmented the international trade for organic products. At the same time, the label ‘organic’ has increasingly become legally protected as standards specify the exact requirements for organic production and labelling. While private labels were the first to proliferate, many countries now have organic standards as well, quite a number of them in the form of public regulation. The plethora of available standards, labels, and certifications has led to a complex and fragmented system of regulations. The duplication and overlaps between the systems has created compliance problems and barriers to trade. The absence of full harmonization of organic standards induced governments, traders, and certification bodies to develop complex pathways to facilitate trade. These include compliance, equivalence, and mutual recognition based mechanisms. Another pathway that has been recognized as overcoming problems of regulatory complexity is regionalization. This article examines the public and public-private regional standards that have thus far been established in the European Union, (East) Africa, Central America, the Pacific, and Asia. Based on interviews and document analysis this article evaluates if the promise of regionalization can make the regulatory field of organic standards more cohesive and whether it is conducive for regional and international trade. The findings indicate that as a system of governance, regionalization contributes to normative coherence while allowing for regional adaptation of organic standards. Ineffective enforcement and inadequate allocation of legal, political, and funding resources seriously imperil the institutional alignment necessary for trade purposes.

### 1. Introduction

Organic production is a highly regulated policy domain. The label ‘organic’ has increasingly become legally protected, as not only private standards but also public regulations specify the exact requirements for organic production and labelling. Organic regulation is unique among self-regulatory regimes because organic labelling was once the exclusive domain of private organizations, but has since evolved into a regime where the establishment of minimum standards has become the prerogative of public actors in a growing number of countries (Arcuri, 2015). The plethora of available standards, labels, and certifications (e.g. Castka and Corbett, 2016; Janssen and Hamm, 2011) has led to a complex and fragmented system of regulations. Of serious concern is that the duplications and overlaps between the systems have led to compliance problems and barriers to trade (Courville, 2006). Consequently, debates in the organic field during the last decade were characterized by the need to harmonize organic standards (Fouilleux and Loconto, 2017).

In the meantime, the absence of global harmonization has induced governments, traders, and certification institutions to develop complex

pathways to facilitate cooperation in trade. These include compliance, equivalence, and mutual recognition based mechanisms (Winickoff and Klein, 2011). Another pathway that has gained interest from international organizations and developing countries is the regionalization of organic standards. These regional arrangements are public or public-private partnerships within geographical regions with at least two neighboring countries. Through either a common regional standard or the harmonization and recognition of each other’s national standards, regionalization is assumed to bring more cohesion - here understood as unity - in the norms and values that underlie organic production and its codification. Regionalization of organic standards thus enables countries to deal with complex regulatory realities (Bowen and Hoffman, 2015a), which can stimulate intra- and inter-regional trade.

The European Union’s (EU) common framework for organic production is the most notable example of this regionalization as it integrates regulations in its central legislative structure. However, several other regional standards that are not placed in an economic-political union with an internal single market have been initiated in the last decade. This phenomenon, including the causes and effects of regionalization of standards, has thus far received scant scholarly

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attention. Filling this gap, this article will evaluate if regional standards and the system as a whole make the regulatory field of organic production more cohesive, and whether it is conducive to regional and international trade. It will provide an analysis of regional attempts thus far, and identify drivers for regionalization. Then, the ability of regionalization to reduce regulatory fragmentation will be assessed.

The article first provides an overview of the regulatory field on organic production and places it within the context of fragmentation and cohesion in global governance theory. It will then focus on what regionalization is, and its advantages and disadvantages in relation to organic standards. After an overview of the research methods, a comparative analysis will lay the basis for the discussion and conclusion.

## 2. The organic regulatory field

### 2.1. The rise of private and national standards

The origins of modern organic agriculture can be traced back to the 1920s when initial concern was raised about the direction of industrial agriculture (e.g. Kristiansen, 2006; Lockeretz, 2007). Organic agriculture developed as an alternative form of farming compatible with natural systems. The first organic standard (Demeter) was introduced in 1928. Other informal regulatory tools developed in the 1950s (Courville, 2006), and associations of farmers and consumers started to develop guidelines and standards based on organic principles. From the 1970s onwards, the first private organic labels spread across Europe and the United States. Around this time, organic farmers founded growers' associations with the International Federation of Organic Agriculture Movements (IFOAM) as their transnational umbrella organization (Schmidt, 2011). IFOAM became the main organization to set organic standards, and it issued its 'Basic Standards for Organic Agriculture' in 1980. The need for an independent guarantee of compliance - spurred on by consumer demand - increased the amount of private certification bodies (Courville, 2006).

The patchwork of differing organic standards and certifications appeared to be an obstacle to move organic foods into mainstream marketing channels (Ikerd, 2006). This stimulated organic communities to initiate political movements to advance national organic standards. The harmonization of organic standards came on the political agenda in order to stimulate trade based on different national and transnational standards. With the adoption of organic regulation by the EU in 1991, more countries followed suit. At present, there are 87 countries with organic standards, although not all countries have adopted them into national legislation or even have production standards (Huber et al., 2016; Möller and Huber, 2016). In principle, national organic regulations are binding for domestic producers and for foreign producers interested in entering the market. If national standards are not turned into national legislation or if regulations are not enforced - whether due to a lack of resources or political support - their binding authority is eviscerated. Nonetheless, national standards provide a national definition of organic products and serve as a reference point for certification activities (Huber et al., 2016). In the EU, national certification labels can still be used as long as they comply with (supranational) EU regulations. Private organic standards, which are voluntary in nature, also continue to operate in domestic markets but in countries where national standards are in place, a product can only be labelled as organic if the publicly enacted standards are respected (Arcuri, 2015). National and supranational regulations, therefore, function as benchmarks.

### 2.2. International demarcations and transnational guidance on organic regulation

In addition to private standards and national regulations, there are also various international provisions on organic regulation. These can be categorized in public, private, and public-private sources that are either binding or voluntary. To start off with public sources of law, two

legally binding instruments that do not specifically detail organic law but provide the context in which organic regulations are made, are trade agreements and international environmental agreements. The Technical Barriers to Trade (TBT) Agreement and the Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures of the World Trade Organization (WTO) are two trade agreements that are particularly important. The TBT Agreement aims to ensure that technical regulations, standards, and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to trade, while the SPS Agreement sets constraints on Member States' policies relating to food safety and animal and plant health with respect to imported pests and diseases. The purpose of the agreements is to ascertain whether barriers to trade based on health and safety standards should be regarded as compatible or incompatible with trade regulations.

International environmental agreements, on the other hand, generally deal with some aspect of the environment to prevent or manage human impacts on natural resources. The protection and sustainable use of biodiversity and the prevention of land degradation are enshrined in two internationally legally binding treaties, which are the Convention on Biological Diversity (1992) and the Convention to Combat Desertification (1994). All voluntary international instruments on organic agriculture principally include these issues (Morgera et al., 2012).

Recommendations for voluntary application are enshrined in the Codex Alimentarius (Codex), a public source first established in 1999 by the Codex Alimentarius Commission of the joint program by the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO). The Codex specifically covers guidelines for the production, processing, labelling, and marketing of organically produced foods. The guidelines are intended to facilitate the harmonization of requirements for organic products at the international level, and to provide assistance to governments for developing national regulations (Codex Alimentarius, 2007).

Transnational voluntary private instruments that provide guidelines to organic regulation and good managerial practices are the Conformity assessment (ISO/IEC 17065: 2012) requirements set by the International Organization for Standardization (ISO), the IFOAM Standard, and other standards set by transnational accreditation and certification bodies, such as the Standard-Setting Code by the ISEAL Alliance. ISO is the main developer of international standards and particularly ISO/IEC 17065 is of importance for organic certification bodies. The standard does not specifically deal with organic regulations but with technical requirements for certification. Certification bodies need to fulfill the described requirements in order to be recognized by ISO as reliable and reputable. The ISO standard allows them to demonstrate their competence and perform against reference standards, such as national or private organic standards. ISO/IEC 17065 accreditation is provided to organic certification bodies by accreditation organizations, such as the International Organic Accreditation Service (IOAS) founded by IFOAM. It is of particular importance for the trade of organic produce, since certain countries only permit the trade of organic products which have been certified by an ISO/IEC 17065 accredited certification body. Through this public-private interplay, voluntary standards can become mandatory, then referred to as legally-mandated private standards (Henson and Humphrey, 2009).

Differently, the IFOAM Standard can be used by standard setters and certification bodies to certify operators globally. It is intended to enable the trade of organic products between operators certified by different certification bodies (IFOAM, 2014b). The Standard-Setting Code of the ISEAL Alliance defines effective standard-setting processes for social and environmental standards and the ISEAL Alliance has become a global authority regarding the requirements for credible standards and certification systems (Bernstein and Van der Ven, 2017). Next to that, there are also numerous standards by certification bodies that either focus on organic agriculture or on organic components and ingredients used in products and services (see ecolabelindex.com for further

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