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국제학석사학위논문

**A Legal Analysis of the Prospective
Korea-China Equivalence Agreement on
Organic Products**

향후 한중 유기동등성협정 체결에 대한 법적 분석

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Master's thesis

**A Legal Analysis of the Prospective
Korea-China Equivalence Agreement on
Organic Products**

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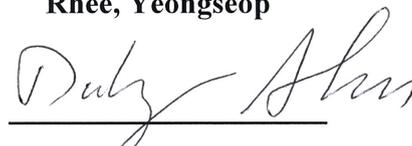
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ABSTRACT

The Equivalence Agreement on Organic Products is concluded on the basis of the concept of equivalence and the principle of mutual recognition. Nowadays, Equivalence Agreements are evident in the sector of organic products. For example, the US-EU (2012), the Korea-US (2014), and the Korea-EU (2015) Equivalence Agreement on Organic Products have been concluded and these agreements are reviewed in this thesis. In case of Korea, Korea mainly concluded the Equivalence Agreement on Organic Products with its FTA partner countries such as the US and EU. As China is a neighboring country of Korea and also is the FTA partner country of Korea, there exist possibilities of negotiating on the conclusion of the Korea-China Equivalence Agreement on Organic Products. Thus, the Korea and China organic regulations are analyzed from the legal perspectives.

Mainly, the legal analysis centers on the core concept of organic regulations, such as “organic labeling, conversion period, GMOs, accreditation, certification, etc.” The legal differences are found by the legal analysis, and then compare those “legal differences between the two countries” with Codex Guidelines in order to resolve issues for the conclusion of the prospective Korea-China Equivalence Agreement on Organic Products.

Keywords: organic, equivalence, equivalence agreement, Korea, China, mutual recognition

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I. INTRODUCTION

There are numerous measures in the world, but they could achieve the same “regulatory goals” in a specific situation even those measures are within the jurisdiction of different countries. This is, actually, related with the concept of “Equivalence”.¹

Equivalence Agreement is evident in the sector of organic products. Why has the conclusion of the Equivalence Agreement on organic products increased, exclusively? It is because that “organic” itself is “more of a technical measure (such as labeling and production related requirements) than a sanitary measure (requirements related to the health hazards of the product itself)”². In comparison with other agricultural products or foods, organic products specifies technical measures, thus it is easy to evaluate the equivalence of “regulatory goals” of the organic product sector.

Then, there are some cases of Equivalence Agreement on Organic Products. For example, (1) from 1 June 2012, certified organic products in the US could be marketed in the EU, and vice versa, by the conclusion of the US-EU Equivalence Agreement on Organic Products.³; (2) From 1 July 2014, certified organic products in Korea could be marketed in the US, and vice versa, by the conclusion of the

¹ Veggeland, Frode, and Christel Elvestad. “Equivalence and mutual recognition in trade arrangements: relevance for the WTO and the Codex Alimentarius Commission.” No. 9. Norwegian Agricultural Economics Research Institute(2004):8.

² Veggeland, Frode, and Christel Elvestad. “Equivalence and mutual recognition in trade arrangements: relevance for the WTO and the Codex Alimentarius Commission.” No. 9. Norwegian Agricultural Economics Research Institute(2004):16.

³ <http://www.usda-eu.org/trade-with-the-eu/trade-agreements/us-eu-organic-arrangement/>

Korea-US Equivalence Agreement on Organic Products⁴; and (3) From 1 February 2015, certified organic products in Korea could be marketed in the EU, and vice versa, by the conclusion of the Korea-EU Equivalence Agreement on Organic Products.⁵

Who will be the next partner for the conclusion of the Equivalence Agreement on Organic Products? From above examples, we could see that Korea has concluded the agreement with its FTA partners. As China is a neighboring country of Korea, and has concluded Korea-China FTA in November 2014, there are good possibilities to discuss on the prospective Korea-China Equivalence Agreement on Organic Products.

Furthermore, the organic production of China has increased rapidly. China has produced 0.2 million tons, 0.3 million tons, and 9.2 million tons of organic products, separately in 2012, 2013, and 2014.⁶ Its increasing trends of organic product productions in China also indicate that China could demand the conclusion of the Equivalence Agreement on Organic Products with a foreign country in order to increase organic farmers' revenue by exporting its domestic organic products.

In case of Korea, the ministry of agriculture of Korea, in March 2015, published its vitalization plan of organic products to achieve the amount of export

⁴ <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5108191>

⁵ <http://www.enviagro.go.kr/portal/content/html/import/eu.jsp>

⁶ 2012-2014年我国有机食品产量数据分析. (2015, April 21). Retrieved July 26, 2015, from <http://www.chinabgao.com/k/youjishipin/16149.html>

of them as 20 million dollars until 2020.⁷ Thus, Korea needs an organic partner by concluding Equivalence Agreement on Organic Products to find a new market.

Thus, in this thesis, the prospective Korea-China Equivalence Agreement on Organic Products are discussed from the perspective of legal analysis, in order to understand legal differences between the two countries and then to resolve them.

The structure of this thesis is as follows: Chapter II introduces some background information on the Equivalence Agreement on Organic Products. Chapter III provides case study on the Korea-US, US-EU and Korea-EU Equivalence Agreement on Organic Products. Chapter IV analyses legally on Korea and China organic regulations in order to prepare the prospective Korea-China Equivalence Agreement on Organic Products, in the near future. Chapter V presents implications and conclusions.

II. BACKGROUNDS FOR EQUIVALENCE AGREEMENT ON ORGANIC PRODUCTS

There are numerous factors constituting the Equivalence Agreement on Organic Products, and the firstly significant notion is the equivalence. Particularly,

⁷ 유기농식품산업, 시장개방 두렵지 않다. (2015, March 11). Retrieved July 26, 2015, from http://mafra.go.kr/list.jsp?&newsid=155446550&ion_id=b_sec_1&pageNo=2&year=2015&listcnt=10&board_kind=C&board_skin_id=C3&depth=1&division=B&group_id=3&menu_id=1125&reference=2&parent_code=3&popup_yn=N&tab_yn=N

the equivalence principle is embodied in the SPS and the TBT Agreements within the framework of the WTO. Also, Codex cites on the equivalence beyond the structure of the WTO.

The SPS measures are not coincident with TBT measures, and the concept of equivalence needs to be distinct that whether it is based on the SPS or TBT agreements.

The SPS Agreement establishes distinct criteria in utilizing the sanitary and phytosanitary regulations, such as “requirements regarding scientific evidence, risk assessments, appropriate level of protection” in order to make sure that the impact of the barriers to trade of sanitary and phytosanitary regulations are applied at the minimum level.⁸ The TBT Agreement handles “technical regulations, standards and conformity assessment procedures”. Technical regulations mean obligatory requirements relating to “product characteristics, processes and methods”.⁹

Though the SPS and the TBT Agreements contain the equivalence principle in its legal texts, it is revealed and considered differently because of the discrepancies between them. A SPS measure focuses on its objectives, while TBT measure considers the characteristics of “a product-specific” as important. The objective of the SPS measures between countries is to reach at the equivalent level between countries; however, the TBT measures pay attention to non-discrimination obligation instead of underlining the equivalence principle owing to the “product-

⁸ Ahn, Dukgeun. *Comparative Analysis of the SPS and the TBT Agreements*. KDI School of Public Policy and Management (2001): 6.

⁹ Annex I of the TBT Agreement

specific basis”.¹⁰

In addition to the understanding the equivalence principle and its characteristics of the WTO Agreements, it is necessary to recognize the notion of “organic, accreditation, certification” consisting the equivalence agreement and the section provides background.

A. Equivalence in the WTO/SPS, WTO/TBT and Codex

Equivalence signifies the acceptance of other systems’ differences in comparison with a system, only if the “the respective systems’ objectives” are satisfied. (WTO, 1994)¹¹ As the concept of equivalence is not equal to the notion of “harmonization”, governments should not misquote equivalence as harmonization; however, this problem frequently occurs. Equivalence exists with the “information exchange” of countries to conduct risk assessment and would be “an engine of transnational governance”.¹²

1. Equivalence of the SPS Agreement

“Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those

¹⁰ Ahn, Dukgeun. *Comparative Analysis of the SPS and the TBT Agreements*. KDI School of Public Policy and Management (2001): 10-11.

¹¹ http://r0.unctad.org/trade_env/itf-organic/meetings/itf3/ITF-DEF&WTO_0411.pdf

¹² Scott, J. (2007). *The WTO agreement on sanitary and phytosanitary measures: A commentary* (p. 164). Oxford: Oxford University Press.

*used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures .”*¹³

The important factor in determining the equivalence of the SPS Agreement is the “Appropriate Level of Protection (ALOP)”, and the achievement of ALOP is evaluated by risk assessment on a variety of SPS measures which are not identical. If the ALOP satisfies different kinds of SPS measures, it is regarded that the equivalence exists between those SPS measures.¹⁴

Pursuant to the Article 2.2 of the SPS Agreement, the aim of the equivalence in the SPS Agreement is to “facilitate trade, and builds upon the necessity” such as the “protection of human, animal or plant life or health”.¹⁵¹⁶

2. Equivalence of the TBT Agreement

“Without prejudice to the provisions of paragraphs 3 and 4, Members shall ensure, whenever possible, that results of conformity assessment procedures in

¹³ Article 4.1 of the SPS Agreement

¹⁴ Veggeland, Frode, and Christel Elvestad. “Equivalence and mutual recognition in trade arrangements: relevance for the WTO and the Codex Alimentarius Commission.” No. 9. Norwegian Agricultural Economics Research Institute(2004):16.

¹⁵ Scott, J. (2007). The WTO agreement on sanitary and phytosanitary measures: A commentary (p. 163). Oxford: Oxford University Press.

¹⁶ Article 2.2 of the SPS Agreement

*other Members are accepted, even when those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures”.*¹⁷

Article 6.1 of the TBT Agreement is quite specific as to the application of equivalence in relation to “conformity assessment”. The purpose of the “Conformity assessment procedures” is to verify that pertinent requirements in technical regulations or standards are satisfied. “Certification and accreditation” are strongly associated with “conformity assessment”.¹⁸

As the equivalence concept in the TBT Agreement is pertinent with conformity assessment procedures rather than technical regulations, the procedures of equivalence determination are connected with the evaluation procedures of the “achieving the same level of conformity assurance”.¹⁹

3. Equivalence of the Codex Alimentarius

“Equivalence is the capability of different inspection and certification systems

¹⁷ Article 6.1 of the TBT Agreement

¹⁸ Veggeland, Frode, and Christel Elvestad. “*Equivalence and mutual recognition in trade arrangements: relevance for the WTO and the Codex Alimentarius Commission.*” No. 9. Norwegian Agricultural Economics Research Institute(2004): 11.

¹⁹ Veggeland, Frode, and Christel Elvestad. “*Equivalence and mutual recognition in trade arrangements: relevance for the WTO and the Codex Alimentarius Commission.*” No. 9. Norwegian Agricultural Economics Research Institute(2004): 16.

*to meet the same objectives (CAC/GL 26-1997)".*²⁰

*"Equivalence is the state wherein sanitary measures applied in an exporting country, though different from the measures applied in an importing country, achieve, as demonstrated by the exporting country, the importing country's appropriate level of sanitary protection (CAC/GL 53-2003)".*²¹

The Codex Equivalence Guidelines encourage categorization of equivalence determinations according to a tripartite structure:

*"...infrastructure, including the legislative base and administrative system; program design, implementation and monitoring including documentation of systems, monitoring, performance, decision criteria and action, laboratory capability, transportation infrastructure and provisions for certification and audit; specific requirements, including requirements applicable to individual premises, processes(e.g. HACCP plans), procedures, tests and methods of sampling and inspection".*²²

B. Organic

"Organic" means that a product has been produced according to the organic production standards and certified by a certification body, and the term is related

²⁰ http://www.codexalimentarius.org/download/standards/354/CXG_026e.pdf

²¹ http://www.codexalimentarius.org/download/standards/10047/CXG_053e.pdf

²² Scott, J. (2007). The WTO agreement on sanitary and phytosanitary measures: A commentary (p. 172-173). Oxford: Oxford University Press.

with the labeling system of a product, also.²³

The concept of “Organic agriculture” is opposite to that of “Conventional agriculture”. While “Conventional agriculture” has used the “synthetic fertilizers and pesticides” in the production of agricultural products, “Organic agriculture” has not so. The “Organic integrity” of organic agricultural products has been maintained by all the partakers, who abide by organic certification criteria, from the production to the sale of those products.²⁴

“Organic products” are easy to recognize because of its organic labeling, which differentiates between organic products and non-organic products.²⁵

C. Accreditation

An accredited body authorizes certification bodies to allow them proceed certification.²⁶ Normally, the accreditation body could be a government agency, while most of the certification bodies are private entities.

D. Certification

“Certification” means that “the procedure by which a third-party (certification

²³ http://www.codexalimentarius.org/download/standards/360/cxg_032e.pdf

²⁴ http://www.codexalimentarius.org/download/standards/360/cxg_032e.pdf

²⁵ Canavari, M., et al. "Role of certification bodies in the organic production system." *Looking east looking west Organic and quality food marketing in Asia and Europe*, edited by Rainer Haas, Maurizio Canavari, Bill Slee, Chen Tong, and Bundit Anurugsa. Wageningen: Wageningen Academic Publishers(2010): 85.

²⁶ Canavari, M., et al. "Role of certification bodies in the organic production system." *Looking east looking west Organic and quality food marketing in Asia and Europe*, edited by Rainer Haas, Maurizio Canavari, Bill Slee, Chen Tong, and Bundit Anurugsa. Wageningen: Wageningen Academic Publishers(2010): 87.

body) gives written assurance that a clearly identified process has been methodically assessed in a way that provides adequate confidence that specified products conform to specified standards”.²⁷ And, the target of those standards could be “products, processes, systems or persons”.²⁸

III. CASE STUDY ON KOREA-US, US-EU AND KOREA-EU EQUIVALENCE AGREEMENT ON ORGANIC PRODUCTS

For the comprehension of the prospective Korea-China Equivalence Agreement on Organic Products, which will be concluded in the future, Korea-US (2014), US-EU (2012) and Korea-EU (2015) equivalence agreements on organic products need to be reviewed in this chapter, as China has not yet concluded any Equivalence Agreement on Organic Products.

A. The Korea-US Equivalence Agreement on Organic Products

The Korea-US Equivalence Agreement on Organic Products has allowed “organic processed products certified in the United States or Korea to be labeled as organic in either country” from July 1, 2014.²⁹

²⁷ ISO/IEC 17000/2004

²⁸ Canavari, M., et al. "Role of certification bodies in the organic production system." *Looking east looking west Organic and quality food marketing in Asia and Europe*, edited by Rainer Haas, Maurizio Canavari, Bill Slee, Chen Tong, and Bundit Anurugsa. Wageningen: Wageningen Academic Publishers(2010): 87.

²⁹ News Release. (2014, July 1). Retrieved July 26, 2015, from <http://www.usda.gov/wps/portal/usda/usdahome?contentid=2014/07/0139.xml&contentidonly=true>

1. Type of Recognition

1.1 Korea: Mutual Recognition

Pursuant to the Article 25 of the Act on Promotion of Environmentally-Friendly Agriculture and Fisheries and Management of and Support for Organic Food (herein after referred to as “KOFA”), Korea expresses, explicitly, its principle of “mutual recognition” in the process of negotiating organic product agreements with foreign countries.

1.2 The US: Unilateral or Mutual Recognition

The US has adopted the type of recognition as “mutual” or “unilateral” for the purpose of concluding agreements or arrangements on organic products, as the below table.

< Table 1. Distinction of the US Organic Trade Agreements>³⁰

	Equivalence Agreement	Recognition Agreement	Export Arrangement
Definition	An equivalence agreement is an agreement between two countries allowing products that are produced and certified according to	A recognition agreement allows a foreign government to accredit certifying agents in their country in adherence with the USDA organic regulations. The certifying	An export arrangement allows US organic products to be sold as organic in the receiving country, provided specific requirements

³⁰ "Agricultural Marketing Service - FAQ: Organic Trade Agreements." Agricultural Marketing Service - FAQ: Organic Trade Agreements. Retrieved May 10, 2015. <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&navID=NOPFAQsInternationalTrade&topNav=&leftNav=NationalOrganicProgram&page=NOPFAQsNOPInternationalTrade&description=FAQ:OrganicTradeAgreements&acct=nopgeninfo>

	one country's organic standards to be sold and represented as organic in the other country.	agents can then certify organic products <i>only in that country</i> to the USDA organic standards	are met. An export certificate (TM-11) must be filled out by USDA-accredited certifying agents and accompany shipments to these countries.
Partner countries	Canada, EU, Korea	India, Israel, Japan (through September 26, 2014), New Zealand	Taiwan
Type of Recognition	Mutual	Unilateral	Unilateral

Referring to the aforementioned table, with Canada, EU and Korea, the US concluded “Equivalence Agreements” on organic products in accordance with the principle of mutual recognition.

However, the US concluded “Recognition Agreements or an Export Arrangement” on organic products with foreign countries based on the principle of unilateral recognition.

2. Basic Laws

The basic laws of both countries for Equivalence Agreement on Organic Products are stated in the “Letter to the USA (from MAFRA of Korea)” by the Deputy Minister of MAFRA of Korea sent in 2014, as follows:

“Ministry of Agriculture, Food and Rural Affairs (MAFRA) of the Republic of Korea, has reviewed the United States’ program for certification of organic agricultural products produced and handled in accordance with the United States

*Organic Foods Production Act of 1990(herein after referred to as OFPA) and National Organic Program (herein after referred to as NOP) regulations. Base on that review, MAFRA has determined pursuant to Article 25 of the Korean Organic Food Act (herein after referred to as KOFA), that certain processed food products produced and handled in accordance with the OFPA and NOP, as in effect on July 1, 2014, are produced and handled under an organic certification program that provides requirements and standards governing the production and handling of such products that are at least equivalent to the requirements of the Korean Organic Food Act”.*³¹

From the review of the aforementioned text, there are three basic laws, which are the OFPA, NOP of the US, and KOFA of Korea.

3. Scope: Processed Organic Products

Processed organic products are covered under the Korea-US Organic Equivalence Agreement, but raw organic products are not within the scope of the Korea-US Organic Equivalence Agreement.

This is related to the fact that “raw organic agricultural products” of Korea are divided as “raw organic products” and “raw non-pesticide products” pursuant to the

³¹ The letter to the US US Department of Agriculture. Retrieved April 8, 2015. [http://www.ams.usda.gov/AMS v1.0/getfile?dDocName=STELPRDC5108176](http://www.ams.usda.gov/AMS%20v1.0/getfile?dDocName=STELPRDC5108176)

definition of “KOFA (2015),³² in which they are differentiated according to the level of using pesticide and chemical fertilizer in the procedures of producing or processing of them.

Korea separates “raw organic products” into two kinds of product categories, while the US has the only one kind of product category, which is simply named as “raw organic products”. From this reason, “raw organic products” had been excluded from the consideration of the scope of organic products for the Korea-US Organic Equivalence Agreement, and the scope was finally narrowed down as “processed organic products”.

4. Requirements to Follow

4.1 Ingredient and Final Processing

When organic processed products are exported from Korea to the U.S or vice versa, organic ingredients should be “at least 95 percent” among those organic processed products.³³ Also, the final processing procedures should be carried out in either of the two countries because organic ingredients are imported from numerous countries.³⁴

As organic ingredients could be imported from or processed in foreign countries prior to importation, it is important to differentiate that where the final processing of organic ingredients are undertaken in advance of the importation of

³² Article 2.2 of KOFA

³³ <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5108190>,
<http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5108191>

³⁴ Ibid.

organic processed products into domestic territories.

4.2 Antibiotics

The US requests Korea not to use “antibiotics” for the production of organic livestock products, and Korea demands the US not to apply “antibiotics” on organic apples and pears.³⁵

The request from the US is related with the fact that the US does not allow the use of antibiotics for organic livestock products, while Korea issues organic certification on livestock products contained antibiotics, if the “withdrawal period of antibiotics on livestock products” terminated or veterinarian provided the prescription of the antibiotics for animal care.

4.3. Audits and Notifications

Both Korea and the US will notify reciprocally for the changes to the accreditation status of the certification body as well as will carry out regular audits on the NOP-accredited or MAFRA-accredited certification body.³⁶

5. Labeling

The Korean certified organic processed products could be sold in the US as “organic” when they satisfy the requirements of the Korea-US Equivalence

³⁵ Ibid.

³⁶ <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5108176>

Agreement on Organic Products, and vice versa. Also, the organic labeling should be compliance with the “requirements of USDA or MAFRA”, and it is optional whether or not to show the “USDA or MAFRA organic labels”.³⁷

< Table 2. Organic Labeling >

Product Composition by Weight	KOREA ³⁸		US ³⁹	
	Labeling	Organic Seal	Labeling	Organic Seal
100% organic	“Organic”		“100% Organic”	
More than 95% organic			“Organic”	
70% - 95% organic	“00% Organic Contents”	-	“Made with Organic”	-
Less than 70% organic		-	“00% Organic Contents”	-

B. The US- EU Equivalence Agreement on Organic Products

The US- EU Equivalence Agreement on Organic Products was concluded on June 1, 2012. Thus, organic products certified in the US could be marketed as “organic” in the EU market, and vice versa. And, both the US and EU organic industry could be benefited from the conclusion of the US-EU Equivalence Agreement on Organic Products because of the creation of the biggest organic market in the world.⁴⁰

³⁷ <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5108190>

³⁸ Annexes 3, 5 and 7 of the Enforcement Regulation of KOFA

³⁹ Subpart D of CFR PART 205

⁴⁰ Retrieved May 3, 2015, from <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5097062>

1. Type of Recognition

1.1. The US: Unilateral or Mutual Recognition

This part is mentioned beforehand in the Part A (The Korea-US Equivalence Agreement on Organic Products) of Chapter 3 of this thesis.

1.2. The EU: Unilateral or Mutual Recognition

Pursuant to the Chapter 1(the recognized third countries list) and Chapter 2(the recognized control bodies and control authorities) of EC No.1235/2008, equivalence could be divided as mutual and unilateral recognition.

The Chapter 1 of Title 3 of EC No.1235/2008 recognizes that “the EU organic systems” are equivalent with the foreign organic systems”, which are recorded under “the third countries list”, thus EU and foreign organic systems are “mutually” recognized between countries.⁴¹

However, the Chapter 2 of Title 3 of EC No.1235/2008, only, acknowledges “certified operators” certified by the enlisted control bodies or authorities under the Chapter 2, thus the EU requires the “foreign exporters to the EU organic market” to be certified “unilaterally” according to the EU organic system. This means that the EU does not accept the foreign countries’ organic products as “organic” unless they are certified under the EU organic system. Interestingly, the target of this requirement should be private entities including organic operators or certification bodies, excluding countries. Thus, the Chapter 2(List of Recognized Control

⁴¹ The Chapter 1 of EC No.1235/2008

Bodies and Control Authorities) articulates issues unrelated to the scope of Equivalence Agreement on Organic Products.⁴²

< Table 3. Distinction of the EU Organic Trade Agreements>

	Equivalence Agreement (=List of Recognized Third Countries)⁴³	List of Recognized Control Bodies and Control Authorities⁴⁴
Definition	The EU regulates both organic food and drink produced and/or processed within the EU and organic goods from elsewhere (Commission Regulation (EC) No. 1235/ 2008 with detailed rules concerning import of organic products from third countries). These can readily be imported from non-EU countries whose rules on organic production and control are equivalent to the EU's.	For countries that are not on the third country list, the option of exporting organic products to the EU is by having the product certified by a certifier that is recognized by the European Commission. Products certified this way are allowed to be sold as organic in all EU Member States.
Partner countries	Argentina, Australia, Canada, Costa Rica, India, Israel, Japan, New Zealand, Tunisia, Switzerland and the USA	- Not countries - However, partners could be the exporters certified by a EU certification bodies or authorities
Type of Recognition	Mutual	Unilateral

2. Basic Laws

The US-EU Equivalence Agreement on Organic Products is based on the OFPA and NOP of USDA, and EC No.834/2007, No.889/2008 and

⁴² The Chapter 2 of EC No.1235/2008

⁴³ International trade in organics. Retrieved May 2, 2015, from http://ec.europa.eu/agriculture/organic/organic-farming/what-is-organic-farming/international-trade-in-organics/index_en.htm

⁴⁴ Gain Report of USDA. Retrieved May 2, 2015, from <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5097063>

No.1235/2008.⁴⁵

3. Scope: Raw and Processed Organic Products

It is worthy to note that both “raw” and “processed” organic products are included in US-EU Equivalence Agreement on Organic Products.

In the case of the Korea-US Equivalence Agreement on Organic Products, however, only “processed” organic products are allowed within the scope of the agreement. This implies that the scope of organic certification under the US-EU Equivalence Agreement on Organic Products is broader than the Korea-US Equivalence Agreement on Organic Products.

Especially, products originated from aquaculture are excluded from the scope of the US-EU Equivalence Agreement on Organic Products.⁴⁶

Organic wine is included within the scope of the US-EU Equivalence Agreement on Organic Products, but it is a temporary measure, thus “the US-EU Organic Working Group” is deliberating on “how EU and US organic wines may fit into the agreement”.⁴⁷

4. Requirements to follow

4.1 Ingredient and Final Processing

“Organic processed products should contain at least 95 organic ingredients,

⁴⁵ EU law on organic production: An overview. (n.d.). Retrieved July 28, 2015, from http://ec.europa.eu/agriculture/organic/eu-policy/eu-legislation/brief-overview/index_en.htm

⁴⁶ http://ec.europa.eu/agriculture/organic/documents/eu-policy/faqs-eu-us-equivalence-2012_en.pdf

⁴⁷ <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5098493>

*and have their final processing occur in the US (when exporting organic products to the EU) or EU (when exporting organic products to the US)”.*⁴⁸

*Also, “raw” and “processed” organic products must be either produced or have had final processing or packaging occur with the EU (when exporting organic products to the US) or US (when exporting organic products to the EU)”.*⁴⁹

4.2 Antibiotics

“The EU Agricultural products derived from animals treated with antibiotics shall not be marketed as organic in the United States”,⁵⁰ thus the use of the antibiotics on livestock is prohibited in the agreement.

5. Labeling

The article 23.4(a) of EC No. 834/2007 allows organic labeling in the case that “at least 95% by weight of its ingredients of agricultural origin” are organic.⁵¹ Based on the article 205.301 of Code of Federal Register Part 205, for organic products containing at least 95% by weight, there are two options to label as “100% organic” or “organic”.⁵²

⁴⁸ http://ec.europa.eu/agriculture/organic/documents/eu-policy/faqs-eu-us-equivalence-2012_en.pdf

⁴⁹ http://ec.europa.eu/agriculture/organic/documents/eu-policy/faqs-eu-us-equivalence-2012_en.pdf

⁵⁰ http://ec.europa.eu/agriculture/organic/documents/eu-policy/faqs-eu-us-equivalence-2012_en.pdf

⁵¹ Article 23.4(a) of EC No. 834/2007

⁵² 205.301 of Code of Federal Register Part 205

< Table 4. Organic Labeling >

Product Composition by Weight	US ⁵³		EU ⁵⁴	
	Labeling	Organic Seal	Labeling	Organic Seal
100% organic	“100% Organic”		“Organic”	
More than 95% organic	“Organic”			
70% - 95% organic	“Made with Organic”		-	
Less than 70% organic	“00% Organic Contents”		-	

C. The Korea-EU Equivalence Agreement on Organic Products

The NAQS of Korea sent a request to the EU for “the acquisition of the third countries list” in order to facilitate organic trade with the EU on 18 February 2014. Then, the EU Commission reviewed the request from Korea and authorized Korea to be named in the third countries list pursuant to the Article 33(2) of Council Regulation (EC) No 834/2007 in December 2014”.⁵⁵

Thus, processed organic products certified in Korea could be marketed as “organic” in the EU, and vice versa.⁵⁶

⁵³ Retrieved May 16, 2015, from <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5 098493>

⁵⁴ Articles of 25.1 and 23.4(a) of EC No.834/2007

⁵⁵ Retrieved May 3, 2015, from http://www.bioagricert.org/images/doc-en/normativa/korea_organic_equivalency_eu_letter.pdf

⁵⁶ European Commission and South Korea agree to an equivalence arrangement on organic trade. Retrieved May 4, 2015, from http://ec.europa.eu/agriculture/newsroom/188_en.htm

1. Type of Recognition

1.1. Korea: Mutual Recognition

Pursuant to the Article 25 of KOFA, explicitly, Korea expresses its principle of “mutual recognition” as the procedures of concluding Equivalence Agreement on Organic Products with foreign countries.⁵⁷

1.2. The EU: Unilateral or Mutual Recognition

The EC No.1235/2008 acknowledges both unilateral (=list of recognized control bodies and control authorities) and mutual recognition (=list of recognized third countries), respectively, pursuant to Articles 7 to 9, and 10 to 12. This is also commented in the part B (The US- EU Equivalence Agreement on Organic Products) of the Chapter 3 of this thesis.

The Korea-EU Equivalence Agreement on Organic Products adopts the principle of the mutual recognition, as with the enlistment of Korea in the list of third countries, pursuant to Article 7 of EC No.1235/2008.⁵⁸

2. Basic Laws

The Korea - EU Equivalence Agreement on Organic Products is based on the EC No. 834/2007, No.889/2008, No.1235/2008, and KOFA.^{59 60}

⁵⁷ Article 25 of the KOFA

⁵⁸ The Korea – EU Equivalence Agreement on Organic Products. Retrieved May 4, 2015, from <http://www.enviagro.go.kr/portal/content/html/import/eu.jsp>

⁵⁹ Organic trade between the European Union and the Republic of Korea. European Commission. Retrieved May 3, 2015, from <http://ec.europa.eu/agriculture/organic/eu-policy/eu-rules-on-trade/non->

3. Scope: Processed Organic Products

Processed organic products are covered under the Korea-EU Equivalence Agreement on Organic Products, but raw organic products are not within the scope of the agreement.

This is related with the fact that raw agricultural products of Korea are divided as “raw organic agricultural products” of Korea are divided as “raw organic products” and “raw non-pesticide products” pursuant to the definition of “KOFA (2015),⁶¹ in which they are differentiated according to the level of using pesticide and chemical fertilizer in the production procedures of them. EU only has a unified raw organic product category, which is simply “raw organic products”. As the classification of categories of raw organic products between Korea and the EU is not equal to each other, the scope of the agreement should be “processed organic products”.

4. Requirements to follow

4.1 Ingredient and Final Processing

Organic processed products should contain at least 95 organic ingredients, and have their final processing occur in Korea (when exporting organic products to the EU) or EU (when exporting organic products to the Korea).⁶²

eu-trading - partners/countries/korea-organic-equivalency-arrangement-qa_en.pdf

⁶⁰ Retrieved May 4, 2015, from http://www.enviagro.go.kr/portal/content/en/html/sub/eu_en.jsp

⁶¹ Article 2.2 of KOFA

⁶² The Korea – EU Equivalence Agreement on Organic Products. Retrieved May 4, 2015, from <http://www.enviagro.go.kr/portal/content/html/import/eu.jsp>

4.2 Pesticides, Irradiation, and GMOs

Organic processed products must be verified by Korea (or EU) under the Korean Organic Food Act (or EC No.834/2007) and its regulations, to be produced and processed without the use of methods and substances prohibited under the Korean Organic Food Act (or EC No.834/2007), including prohibited pesticides, irradiation, and genetically modified organisms.⁶³

< Table 5. Organic Labeling >

Product Composition by Weight	KOREA		EU ⁶⁴	
	Labeling	Organic Seal	Labeling	Organic Seal
100% organic	“Organic”		“Organic”	
More than 95% organic				
70% - 95% organic		-	-	
Less than 70% organic	“00% Organic Contents”	-	-	

IV. A LEGAL ANALYSIS ON KOREA AND CHINA ORGANIC REGULATIONS FOR THE PROSPECTIVE KOREA-CHINA EQUIVALENCE AGREEMENT ON ORGANIC PRODUCTS

A. Legal Analysis

The organic products laws and regulations of Korea and China would be the basis for the legal analysis in this section. The legal analysis will be carried out by

⁶³ The Korea – EU Equivalence Agreement on Organic Products. Retrieved May 4, 2015, from <http://www.enviagro.go.kr/portal/content/html/import/eu.jsp>

⁶⁴ Articles of 25.1 and 23.4(a) of EC No.834/2007

way of comparing legal texts between the two countries, and then Codex GL 32-1999(Guidelines for the production, processing and marketing of organically produced foods) would be the judgment criteria which could narrow down legal differences on organic laws of both countries

1. Basic Laws

< Table 6. Basic Laws >

	Korea	China
Laws and Regulations	<ul style="list-style-type: none"> - Korean Organic Food Act(KOFA) - Enforcement Decree of KOFA - Enforcement Regulation of KOFA by MAFRA 	<ul style="list-style-type: none"> - Organic Product Certification Management Rule - National Standard of the People's Republic of China * GB/T 16930.1-2011 : Production * GB/T 16930.2-2011 : Processing * GB/T 16930.3-2011 : Labeling and Marketing * GB/T 16930.4-2011 : Management System

2. Scope of Organic Products

There exist differences between the “objectives and product groups” of organic products between Korea and China in the legal texts. Firstly, from the standpoint of objectives, Korea only recognizes “food products for human consumption” as organic, but China acknowledges “food products for non-human consumption such as animal feeding products” as organic. Secondly, from the perspective of product groups, Korea only recognizes food products as organic; On the contrary, China acknowledges non-food products such as textile products as organic.

However, it is common that both organic produces and organic processed products are within the scope of organic products in Korea and China.

< Table 7. Scope of Organic Products >

Organic Products	Korea	China ⁶⁵
Objectives	Intended for <u>human consumption</u> ⁶⁶ and <u>non-human consumption</u> ⁶⁷ As with complying organic certification standard in Article 19.2 of KOFA and using minimum level of <u>allowed materials</u> ⁶⁸	Intended for human consumption and <u>animal feeding</u>
Scope	1. Organic Food products ⁶⁹ - Organically <u>produced</u> agricultural, livestock, or aquaculture products ^{70 71} - Organically <u>processed</u> products made with “organically produced agricultural, livestock, or aquaculture products” ⁷² 2. Organically Processed Non-Food Products made with “organically produced agricultural, livestock, or aquaculture products” to use and consume for non-human consumption ⁷³ including animal feed)	Products that are produced, processed and <u>handled</u>
Subjects	* Plant(including both cultivated and wild) , animal, and aquaculture products * animal feed	* Plant(including both cultivated and wild), animal, and aquaculture products, * animal feed
Product Group	Beekeeping and Textile : Not included	* Beekeeping and Textile : Included
Legal basis	* KOFA(2015) * Enforcement Regulation of KOFA by MAFRA * Enforcement Regulation of KOFA by MOF	In accordance with GB/T 16930.1-2011

⁶⁵ Article 3.2 of GB/T 16930.1–2011

⁶⁶ Not directly mentioned but deferred from the definition of “organic” in article 2.3 of KOFA

⁶⁷ Article 2.5 of KOFA

⁶⁸ Article 2.3 of KOFA

⁶⁹ Article 2.3 of KOFA

⁷⁰ Article 2.4 of the Enforcement Regulation of KOFA by MAFRA

⁷¹ Article 2.3 of the Enforcement Regulation of KOFA by MOF

⁷² Article 2.4 of KOFA

⁷³ Article 2.5 of KOFA

⁷⁴ Article 2.3 of the Enforcement Regulation of KOFA by MAFRA

3. Calculation Equation of the Percentage of Organic Ingredients

It is important to compare both countries' organic ingredient calculation. The percentage of organic ingredients is a critical evaluation tool to determine whether a product is organic. Also, certification bodies of organic products will provide organic certification to organic producers, based on the percentage of organic products of them.

< Table 8. Calculation Equation of Percentage of Organic Ingredients >

	KOREA ⁷⁵	China ⁷⁶
Equation	$\frac{I_o}{G - WS} = \frac{I_o}{I_o + I_c + I_a} \geq 0$	$Q = \frac{W_1}{W} \times 100\%$
Factors	<ul style="list-style-type: none"> * G : Total weight of an organic product (G= I0+ Ic + Ia + WS) * I0: Weight of organic ingredients including organically produced agricultural and livestock products, and organically processed products; * Ic: Weight of non-organic ingredients which are equal to those not being certified as organic); * Ia: Weight of non-organic food additives; * WS: Weight of artificially-added water and salt 	<ul style="list-style-type: none"> * Q: Percentage of Organic Ingredients (%); * W1: Total weight of the organic ingredients excluding water and salt (kg); * W0: Total weight of product excluding water and salt (kg)

Equations of organic ingredients of Korea and China, seemingly, are not common. However, they have something in common, essentially, if we look into more about the meaning of this equation.

⁷⁵ Annex 3 of Enforcement Regulation of KOFA

⁷⁶ Article 6 of GB/T 16930.3-2011

Firstly, both Korea and China excludes the inclusion of water and salt when calculating the total weight of organic product and organic ingredients. Also, according to calculation equation of Korea and China, denominators and numerators of both equations indicate the same.

Secondly, the percentage of organic ingredients of both Korea and China should be at least 95% to be certified as organic.

Thirdly, as Korea and China prohibit using GMOs to process organic products, factors in equation also have the identical meanings. Thus, essentially, calculation equations, which are a tool for determining organic products, of both countries, are the same.

4. Organic Labeling

While China does include the “conversion to organic labeling” under the scope of organic labeling, Korea does not contain for any conversion to organic labeling. From the definition of “organic” from Codex GL 32-1999, it is questionable that why the concept of “conversion”, which could be against organic, has to be included in organic labeling.

In addition, Korea allows organic labeling for individual materials as well as products containing organic ingredients, while China permits organic labeling for products containing organic ingredients. This means that Korea has broader subjects for organic labeling in comparison with China’s organic labeling.

< Table 9. Organic Labeling >

Product Composition by Weight	KOREA ⁷⁷		China ⁷⁸	
	Labeling	Organic Seal	Labeling	Organic Seal
100% organic	“Organic”		“Organic”	
More than 95% organic				
70% - 95% organic	“00% Organic Contents”	-	“00% Organic Contents”	-
Less than 70% organic		-	“Organic” ⁷⁹ (in product specification)	-

Unlike Korea, China allows the use of “Conversion to Organic” organic seal as well as its labeling on its products, when those products contains no less than 95% of conversion to organic ingredients that are certified as “conversion to organic”.⁸⁰

This means that Chinese organic certification systems are consisted of two kinds: the one is an “organic” certification system, and another is a “conversion to organic” certification system. The latter should be differentiated with the concept of the former because the latter includes products, which are not organic products, currently, but will be organic products after some period of time after satisfying the Chinese organic certification requirements.

⁷⁷ Annexes 3, 5 and 7 of the Enforcement Regulation of KOFA

⁷⁸ Article 5 of GB/T 16930.3-2011

⁷⁹ Paragraph 3 of article 32 of Organic Product Certification Management Rule of China

⁸⁰ Article 5.3 of GB/T 16930.3-2011

< Table 10. “Conversion to Organic” Labeling >

Product Composition by Weight	KOREA		China ⁸¹	
	Labeling	“Conversion to Organic” Seal	Labeling	“Conversion to Organic” Seal
100% Conversion to Organic	-	-	“Conversion to Organic”	
More than 95% Conversion to Organic				
70% - 95% Conversion to Organic			-	-
Less than 70% Conversion to Organic			-	-

5. Conversion Period

Conversion period is necessary for a non-organic product to be certified as organic. Conversion period could be an important factor in the prospective negotiation between Korea and China because it determines whether a product is organic or not, then some organic products are not recognized and sold as organic in the another foreign country, even though those products are certified, recognized, and sold as organic.

In this section, crop production, and livestock and poultry production are the main subjects to review for conversion period.

For organic crop production in Korea, conversion period shall be at least 3

⁸¹ Article 5 of GB/T 16930.3-2011

years prior to harvest, in case of perennial crops with exception of grass. Conversion period shall be at least 2 years prior to sowing and planting in case of non-perennial crops. Using prohibited substances shall not be allowed, and managing for soil fertility, crop nutrition, disease and insect pest, and weeds.⁸²

For organic livestock and poultry production in Korea, conversion periods for livestock and poultry are as follows: (a) At least 12 months, from the date of instruction into an organic farm to shipment for sale, in case of Korean native cattle and beef cattle, and at least 6 months in case of 6 months old calf of Korean native cattle and beef cattle, for meat production; (b) 90 days, in case of dairy cattle which has experienced pregnancy, for milk production; and 6 months, in case of dairy cattle which has not experienced pregnancy, for milk production; (c) At least 5 months, from the date of instruction into an organic farm to shipment for sale, in case of mountain goat for meat production; 90 days, in case of mountain goat which has experienced pregnancy, for milk production; and 6 months, in case of mountain goat which has not experienced pregnancy, for milk production; (d) At least 5 months, from the date of instruction into an organic farm to shipment for sale, in case of pigs for meat production; (e) At least 3 weeks, from the date of instruction into an organic farm to shipment for sale, in case of broiler chickens for meat production; (f) At least 3 months, from the date of instruction into an organic farm to shipment for sale, in case of layer chickens for egg production; (g) At least 6 months, from the date of instruction into an organic farm to shipment for sales, in

⁸² Annex 3 of Enforcement Regulation of KOFA

case of ducks for meat production; and 3 months from the date of introduction into an organic farm, in case of ducks for egg production (h) At least 3 months from the date of introduction into an organic farm, in case of quails for egg production; and (i) At least 12 months from the date of instruction into an organic farm to shipment for sale, in case of deer for meat production; and 4 months old for antlers in case of deer for antlers production.⁸³

For organic crop production in China, the conversion period shall begin with submitting an application for certification. Conversion period shall last at least 24 months in case of annual crops, and at least 36 months for perennial crops.⁸⁴ Conversion period shall last at least 12 months for the fields of newly reclaimed; fallow for a long term; under traditional operation for a long time, or having been proved without any input prohibited materials for several years.⁸⁵

For organic livestock and poultry production in China, conversion periods for livestock and poultry are as follows: (a) 12 months in case of equines, bovines and camels for meat production; (b) 6 months in the case of sheep and pigs for meat production; (c) 6 months in the case of livestock for milk production; (d) 10 weeks in the case of poultry for meat production; (e) 6 weeks in the case of poultry for egg production; (f) Longer than three quarters of their breeding periods in the case of other animals.⁸⁶

Legal differences exist between the two countries.

⁸³ Annex 3 of Enforcement Regulation of KOFA

⁸⁴ Paragraph 1 of article 4.1.4 of GB/T 16930.1-2011

⁸⁵ Paragraph 2 of article 4.1.4 of GB/T 16930.1-2011

⁸⁶ Article 8.1.2 of GB/T 16930.1-2011

Firstly, in case of crop production, Korea stipulates the ending point of conversion period as “harvest”. However, China spells out the starting point of conversion period as “the time when an application for organic certification is submitted”. The former considers the ending point as important, while the latter regards the starting point as important. Another discussion point is that the criteria for starting point or ending point are not identical. Then, what kind of problem could be induced from this situation? In case of China, it is not possible to verify whether a crop is organic from the time of submitting an application for organic certification to starting investigation on the crop by an organic certification body. Equally, in case of Korea, it is hard to prove when a crop is started to be produced as organic. Thus, both countries have arbitrary factors, which are dependent on farmer’s discretion, determining conversion period.

Secondly, in case of livestock and poultry production, China specifies equines, camels unlike Korea. Similarly, Korea particularizes mountain goat for meat and milk production, and deer for meat and antlers production, whereas China doesn’t.

Thirdly, Korea specifies “production” as meat, milk and egg production, whereas China singly refers “production”. Also, Korea subdivides cattle in three parts, that is, Korean native cattle, beef cattle and dairy cattle, while China just mentions on “cattle”.

6. Genetically Modified Organisms (GMOs)

Basically, Korea and China adopts the principle of the prohibition of the use

of GMOs for organic products.

In case of Korea, however, the targets of GMOs should be clarified and complemented when compared with the GMO provision of China. Korea articulates the targets of the prohibition of the use of GMOs as animal feeds and plant seeds, while China specifies them with eight kinds of detailed items. So, the legal gap in GMOs between the two countries should be resolved.

< Table 11. Genetically Modified Organisms >

GMOs	Korea ⁸⁷	China ⁸⁸
Usage	Prohibit input or use * however, allowed for <u>non-intentional adulteration</u> into animal feeds	Prohibit input or use
Scope	genetically modified organisms(GMOs) and products derived therefrom	genetically modified organisms(GMOs) and products derived therefrom
Target	Animal feeds and plant seeds	Including plants, animals, seeds, individual ingredients, propagation materials, fertilizers, soil amendment products and plant protection products
Legal basis	Article 9.1 and the appendix no.3 (=organic certification criteria) of Enforcement decrees of KOFA	Article 4.1.6 of GB/T 16930.1-2011

7. Accreditation

“Official accreditation is the procedure by which a government agency having jurisdiction formally recognizes the competence of an inspection and/or

⁸⁷ Article 9.1 and the appendix no.3 of Enforcement decrees of KOFA

⁸⁸ Article 4.1.6 of GB/T 16930.1–2005

certification body to provide inspection and certification services”.⁸⁹

“Certification body means a body which is responsible for verifying that a product sold or labeled as “organic” is produced, processed, prepared handled and imported according to these guidelines”.⁹⁰

< Table 12. Accreditation >

Accreditation	Korea (NAQS)	China (CNAS)
Function	Functions both as * the accreditation body * one of the certification bodies in Korea	Functions as * the accreditation body
Approval	by MAFRA	by CNCA under the jurisdiction of the AQSIQ
CBs	CBs in Korea should be accredited only by NAQS	CBs in China should be both accredited by CNAS and approved by CNCA

In case of Korea, the accreditation body for organic certification bodies is the NAQS, and the MAFRA approves the NAQS as the accreditation body.⁹¹ The NAQS is under the control of MAFRA and accredits organic certification bodies.

Interestingly, the NAQS also performs as one of the organic certification bodies in Korea.⁹²

In case of China, the accreditation body for organic certification bodies is the China National Accreditation Service for Conformity Assessment (CNAS), and the

⁸⁹ Article 2.2 of Codex GL 32–1999

⁹⁰ Article 2.2 of Codex GL 32–1999

⁹¹ Article 26.1 of KOFA and Article 26.1 of Enforcement Regulation of KOFA

⁹² Article 10 of Enforcement Regulation of KOFA

Certification and Accreditation of China (CNCA) approves the CNAS as the accreditation body.⁹³ The CNCA is directly under General Administration of Quality Supervision, Inspection and Quarantine of People's Republic of China (AQSIQ).⁹⁴ The CNCA shall be in charge of the overall management, comprehensive coordination and supervision of organic products certification activities.⁹⁵ Organic product certification activities of certification bodies shall only be undertaken after being accredited by the CNAS, which was approved by CNCA.⁹⁶

It's noteworthy that certification bodies shall be accredited only by the NAQS in case of Korea. However, certification bodies in China shall be approved by CNCA and must be accredited by CNAS according to international standard ISO 65.⁹⁷ This means, at the current stage, that Korean organic certification bodies accredited under KOFA shall be approved by CNCA, and also be accredited by CNAS, if they enter in Chinese organic market. The additional procedure by CNCA unlike in Korea could induce trade barriers for Korean organic exports to China, and also is the legal gap between the two countries. Thus, it's important to resolve this issue for the conclusion of prospective Korea-China equivalence agreement for organic products.

⁹³ Paragraph 1 of Article 7 of Organic Product Certification Management Rule of China

⁹⁴ Paragraph 2 of Article 4 of Organic Product Certification Management Rule of China

⁹⁵ Paragraph 1 of Article 4 of Organic Product Certification Management Rule of China

⁹⁶ Paragraph 1 of Article 7 of Organic Product Certification Management Rule of China

⁹⁷ Canavari, M., et al. "Role of certification bodies in the organic production system." *Looking east looking west Organic and quality food marketing in Asia and Europe*, edited by Rainer Haas, Maurizio Canavari, Bill Slee, Chen Tong, and Bundit Anurugsa. Wageningen: Wageningen Academic Publishers(2010):162-163.

8. Certification

*“Certification is the procedure by which official certification bodies, or officially recognized certification bodies, provide written or equivalent assurance that food or food control systems conform to requirements. Certification of Food may be, as appropriate, based on a range of inspection activities which may include continuous on-line inspection, auditing of quality assurance systems and examination of finished products”.*⁹⁸

Korea stipulates that an organic producer, processor or handler shall apply for an organic certification to the NAQS or the accredited certification bodies under KOFA.⁹⁹ General requirements for an organic producer, processor or handler to be certified as organic for his/her products are preparing organic handling plans for the purpose of minimizing the pollution of atmosphere, water and soil by the organic producer’s production activities. Secondly, an organic producer, processor or handler shall not destroy of the authenticity of an organic product in the procedures of producing and processing of the organic product. Thirdly, the organic producer, processor or handler shall not mingle organic ingredients with non-organic ingredients, and shall handle those ingredients in order not to be contacted with each other.¹⁰⁰

In China, an organic producer, processor or handler shall have legal land use

⁹⁸ Article 2.2 of Codex GL 32–1999

⁹⁹ Article 10 of Enforcement Regulation of KOFA

¹⁰⁰ Annex 3 of Enforcement Regulation of KOFA

rights and legal business certification documents.¹⁰¹ The organic producer, processor or handler shall develop and maintain management system for organic production, processing and handling activities according to the requirements set forth in GB/T 19630.1~ GB/T 19630.3.¹⁰² Documents requested for management system for organic production, processing and handling shall include; (a) Location map of production base, processing and handling facilities; (b) Quality management manual for organic production, processing and handling operations; (c) Operation guidelines for organic production, processing and handling; and (d) Records of organic production, processing and handling facilities.¹⁰³

Below are the detailed explanations on the specific aspects of certification.

8.1 Documentation Requirement of a Candidate for Certified Operator

A person who wants to be a certified operator for organic products should submit an application for certification to a certification body.

In case of Korea, an applicant for organic certification should submit those documents on: (a) Organic production and/or processing system plans; (b) Maps for organic production and/or processing operation sites; (c) The Management of operation sites; (d) Floor plans detailed with the structure of the operation site; and (e) Others that are required under the law.¹⁰⁴

¹⁰¹ Article 4.1.1 of GB/T 19630.4–2011

¹⁰² Article 4.1.2 of GB/T 19630.4–2011

¹⁰³ Article 4.2 of GB/T 19630.4–2011

¹⁰⁴ Introduction Manual on the Korean Certification System for Organic Processed Products, P.5 (2014.2)

Similarly, in case of China, an applicant for organic certification should submit documents including: (a) Name, address and contact information of the applicant; (b) Location and scope of production base, scale of production and processing; (c) Plan of production, processing and marketing; (d) Environmental quality of production base, processing and marketing sites; (e) Quality management system documents in compliance with the requirements of organic product production and processing; (f) Qualification proof documents of production and management technical staff members, (g) Agreement to observe organic certification, technical rules and other applicable requirements; and (h) other documents required.¹⁰⁵

It seems, however, that the documentation gap exists between Korea and China. Though both countries require “production or processing system plans”, Korea highlights on the “demarcation between an organic and non-organic site, and the structure and purposes of an applicant’s operation”, and these documentation requirements of Korea cannot be found in those requirements of China.

Interestingly, China has more documentation requirement items than Korea, and “qualification proof documents of production and management technical staff members” is among one of them, but it has to be stipulated on the preconditions for being a qualified staff member in China, and has to be clear that whether the granting of qualification would practically ensure the abilities of the staff.

Thus, it could be concluded that Korea has stricter requirements on

¹⁰⁵ Article 13 of Organic Product Certification Management Rule of China

documentation than China, from the point of quality analysis, e.g., “the level of requirement”, even if China has more requirements from the perspective of quantity analysis.

8.2 Compliance Obligations of a Certified Operator

Korea requires a certified operator for organic products to submit sales records of certified organic products for the previous year.¹⁰⁶ Also, Korea obliges a certified operator to keep documents on the use of materials/ ingredients of organic products, and on the production/ processing/handling of certified organic products for 2 years from the following year of production.¹⁰⁷

In case of China, the obligation of a certified operator of submitting records of production is not explicitly mentioned in legal texts; however, it is obvious for keeping documents for a certified operator as mentioned below:

*“An organic producer, processor or handler shall keep business records in any event. The records shall be clear and accurate, and can be used as the valid evidence for the activities occurring in the production, processing and/or handling of organic products. The records shall be kept for at least 5 years”*¹⁰⁸

Overall, Korea and China have similarities on the compliance obligation of certified operators for organic products. The main purposes and contents are similar when comparing with both countries, even if legal texts are not the exact

¹⁰⁶ Article 22 of KOFA

¹⁰⁷ Article 17.2 of Enforcement Regulation of KOFA

¹⁰⁸ Article 4.2.6 of GB/T 19630.4–2011

the same one. Firstly, for example, China stipulates the obligations of keeping documents with 16 items. However, Korea simply mentions on “keeping documents” under Article 17.2 of Enforcement Regulation of KOFA, which details are melting down in the essence of certification criteria under KOFA and covers the keeping document scope of China. Secondly, the obligation of submitting documents are not explicitly mentioned in the Chinese legal texts, but it could be reasoned that China requires a certified operator to submit records for acquiring organic status for organic products when reading through all texts of GB/T 19630.4-2011. So, both countries are substantially equal in the obligations.

The only difference is time period for keeping records, e.g., 2 years in case of Korea, and at least 5 years in case of China. Thus, it could be concluded that China has stricter requirements on keeping records than Korea.

8.3 Review Procedures for Certified Products

The Review procedures for certified products should be conducted at least once a year by the certification body, and it is mandatory both in Korea and China.

Korea requests to review or check certified products, as follows, and these points are also required by China: (a) Documentation of management activities; (b) The status of checking delivery reports; and (c) The concordance status between sales report data and purchase report data for certified products.¹⁰⁹

¹⁰⁹ Introduction Manual on the Korean Certification System for Organic Processed Products, P.31 (2014.2)

Interestingly, the following review points are required to check for certified products in Korea, but are not requested in China: (a) The accuracy of organic labeling; (b) The purchase, storage, and/or usage status of prohibited materials; (c) The actual delivery status of raw agricultural or livestock materials from organic producers via organic processors or handlers' sampling for those raw materials; (d) The labeling or advertising of non-certified products as organic certified products; and (e) The storage, delivery, or display of organic certified products with non-certified products, ultimately for the purpose of sales.¹¹⁰

On the Contrary, it is required to check for the “Animal or plant disease status for operation sites for organic production, processing or management of for certified products” in China, but it is not mandatory in Korea.¹¹¹

Korea enumerates the review points such as “the compliance status for the certification criteria, the implementation status of organic implementation plan, and the marketing status of the products that were satisfied with organic certification criteria in the past but are now cancelled its organic certification or stopped using the organic labeling.”¹¹² Especially, it's worthy to note that China reviews for the notification status to the certification body of the cancellation of organic certification¹¹³; however, Korea checks even the marketing status for the certification-cancelled organic products, as well as the before-mentioned

¹¹⁰ Introduction Manual on the Korean Certification System for Organic Processed Products, P.31 (2014.2)

¹¹¹ Article 6.3.4 of Organic Product Certification Implementation Rule of China

¹¹² Introduction Manual on the Korean Certification System for Organic Processed Products, P.31 (2014.2)

¹¹³ Article 6.2 of Organic Product Certification Implementation Rule of China

notification status.

Interestingly, China explicitly emphasizes on the principle of food safety in the Articles of 6.3.5 and 6.3.6 of Organic Product Certification Implementation Rule of China. Considering that the principle of food safety is not written in the organic regulations of other countries, e.g., the EU, the US , Japan and Korea, it is supposed that China would, later, focus on the detailing of review criteria for certified products, after firstly resolving food safety issues on organic products in its territory.

Overall, Korea has stricter criteria on the review for organic certified products compared to China, and the legal differences between Korea and China should be resolved for the conclusion of prospective Korea-China organic equivalence agreement, in the future.

8.4 Renewal, Change or Succession of Certification Status

Korea requests that the operator should submit the application for the renewal of organic certification to the certification body, prior to 2 months from the expiry date of organic certification,¹¹⁴ whilst China requests to submit the application prior to 3 months the expiry date.¹¹⁵ Both Korea and China request that the organic certification is valid for one year.¹¹⁶

It is deemed that there's no legal difference between Korea and China, as there

¹¹⁴ Article 21.2 of KOFA

¹¹⁵ Article 7.1 of Organic Product Certification Implementation Rule of China

¹¹⁶ Article 21.1 of KOFA and Article 8.1 of Organic Product Certification Implementation Rule of China

exists only 1 month of time difference between the two countries for the date of submission of the application format for the renewal of organic certification.

In Korea, the operator should submit the application for change of organic certification to the certification body, when changes on certified products occur as follows: (a) The change of the certified item to another; (b) The downsizing of certified operation sites; (c) The change of the address or name of the operator, or of the additional conditions for acquiring organic certification.¹¹⁷ China specifies that the operator should submit the change of organic certification as follows: (a) The change of the name of the operator, or of organic production/ processing sites; (b) The change of the characteristics of corporation of the operator; (c) The reduced production of varieties and numbers of organic products; and (d) Other situations that are required to change the organic certification.¹¹⁸ It is common in both countries that the change of the name of the operator should be applied for the change of organic certification, but Korea has more detailed requirements than China, mentioning the change of address or certified items, which are not required in China. So, it could be concluded that Korea has stricter requirements on the change of organic certification compared to China.

Korea enumerates the condition for the succession of organic certification as follows: (a) When the operator of certified products passed away, a person, who wants to be a successor of the operator exists and to continue to produce the

¹¹⁷ Article 20.5 of KOFA

¹¹⁸ Article 28 of Organic Product Certification Implementation Rule of China

certified products of the original operator, succeeds the organic certification of the original operator ; (b) When the operator transfers his/her business to the assignee, then the assignee succeeds the organic certification of the original operator; (c) When the operator merges his/her corporation with other corporations, then the operator should apply for the succession of organic certification for the original corporation or the newly merged corporation of the operator.¹¹⁹ Interestingly, there are no regulations in China for the succession of organic certification, so China is needed to complement this part for the conclusion of the prospective Korea-China equivalence agreement.

8.5 Revocation of Organic Certification, and Removal or Suspension of Organic Labeling

When violations are discovered for certified products, as follows, then the certification body in Korea should revoke the organic certification of the operator: (a) Acquisition of organic certification after submitting “false documents on the application for organic certification and other required documents for the inspection” to the certification body¹²⁰; (b) Acquisition of organic certification by illegal means¹²¹; (c) Non-writing and non-keeping records on the management of the operation sites, or false writing and keeping records on them¹²²; (d) Non-submission of records on the management of the operation sites, when requested by

¹¹⁹ Article 33 of KOFA

¹²⁰ Article 24.1.1 of KOFA

¹²¹ Article 24.1.1 of KOFA

¹²² Article 24.1.2 of KOFA

NAQS or a certification body¹²³; (e) Mingling certified products with non-certified products, or marketing non-certified products as certified products¹²⁴; (f) Usage of raw materials, food additives and processing aids that are not allowed for producing organic products¹²⁵; (g) Usage of prohibitive materials or non-qualified methods on organic certification criteria, in the process of production¹²⁶; (h) Non-compliance of administrative orders for removal, suspension, change of organic labeling, for prohibition of sales of certified products, or for the change of specific items in the organic labeling¹²⁷; or (i) Discontinuation of production of certified products because of the change or close of the business of the operator.¹²⁸ China requires the revocation of organic certification under the situations as follows: (a) Non- reapplication for the organic certification after the expiry date of the certification; (b) Non-production of certified products; (c) The application for revocation of organic certification by the operator; or (d) other situations that are needed to revoke organic certification.¹²⁹ It could be concluded that Korea has stricter rules than China considering the detailed scopes and targets of revocation of organic certification, so China needs to be complemented in the legal gaps with Korea.

Interestingly, Korea only “revoke” organic certification when violations are

¹²³ Article 24.1.2 of KOFA

¹²⁴ Article 24.1.2 of KOFA

¹²⁵ Article 24.1.2 of KOFA

¹²⁶ Article 24.1.2 of KOFA

¹²⁷ Article 24.1.3 and 31.4 of KOFA

¹²⁸ Article 24.1.4 of KOFA

¹²⁹ Article 29 of Organic Product Certification Management Rule of China

found, but China has two options among “revocation” and “cancellation” of organic certification and the scopes of “cancellation” of organic certification in China are similar to the “revocation” of organic certification in Korea. For example, the usage of prohibitive materials, or the false documentation and/or reporting on certified products are under the scope of the cancellation of organic certification in China¹³⁰, which should be under the scope of the revocation in Korea, so it could be concluded that Korea has stronger rules than China.

Korea requests the removal of organic labeling when residues are detected that are not compliant with organic certification criteria¹³¹, while China simply requires the certification body to take appropriate measures to avoid the usage of invalid organic certificate and labeling.¹³² As the “appropriate measures” are not clearly stated in the legal texts, it is ambiguous that what measures the Chinese government wants to proceed, and how the appropriateness of measures could be measured and determined.

Korea requires the suspension of organic labeling in cases where the non-compliances of the certification criteria for certified products are found,¹³³ while China simply requires the certification body to take appropriate measures to avoid the usage of invalid organic certificate and labeling.¹³⁴

¹³⁰ Articles 31.2 and 31.3 of Organic Product Certification Management Rule of China

¹³¹ Article 31.4 of KOFA

¹³² Article 8.9 of Organic Product Certification Implementation Rule of China

¹³³ Article 19.2 of KOFA

¹³⁴ Article 8.9 of Organic Product Certification Implementation Rule of China

9. Mutual Recognition

For the principle of mutual recognition, both Korea and China have specific legal provisions as below:

“Korea could recognize a foreign organic system as equivalent with its domestic system, when a foreign government or a certification body operates its organic certification system at least equivalent level of Korean organic certification system by applying the Korean organic principles and criteria to its system. Also, in this case, the principle of mutual recognition should be adopted. ”

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In case of China, “the State shall execute international mutual recognition on the basis of equality and mutual benefits.¹³⁶ Certification bodies undertaking organic product certification (hereinafter referred to as the Organic Product Certification Body) shall undertake activities of mutual recognition according to mutual recognition agreement signed by CNCA with other countries.¹³⁷”

As both countries specifies the principle of mutual recognition, it is important to note that how the Codex GL 32-1999 comments on the principle.

¹³⁵ Article 25.1 of KOFA

¹³⁶ Paragraph 1 of article 6 of Organic Product Certification Management Rule of China

¹³⁷ Paragraph 2 of article 6 of Organic Product Certification Management Rule of China

B. The Prospective Korea-China Equivalence Agreement on Organic Products and Codex

This part deals with main contents of the prospective Korea-China Equivalence Agreement based on Legal Analysis of Chapter IV of this paper. After comparing legal texts between Korea and China, legal differences were found, then those are discussed according to the “Guidelines for the Production, Processing, Labeling and Marketing of Organically Produced Foods (Codex GL 32-1999)” in order to narrow legal gaps and then to conclude the Prospective Korea-China Equivalence Agreement on Organic Products.

1. Basic Guidelines

The preface of Codex GL 32-1999 articulates its purpose and aim as below:

*“These guidelines have been prepared for the purpose of providing an agreed approach to the requirements which underpin production of and the labeling and claims for, organically produced foods”.*¹³⁸

*The one of aims of these guidelines are to provide international guidelines for organic food control systems in order to facilitate recognition of national systems as equivalent for the purposes of imports”.*¹³⁹

¹³⁸ Article 1 of preface of Codex GL 32-1999

¹³⁹ Article 2 of preface of Codex GL 32-1999

Considering the purpose and aim of the Codex GL 32-1999, Codex GL 32-1999 could be the reference for evaluating the equivalence between Korea and China, as preparing for the conclusion of the prospective Korea-China equivalence agreement, in the near future.

2. Scope of Organic Products

The Codex GL 32-1999 provides the scope of organic products as below:

*“These guidelines apply to the following products which carry, or are intended to carry, descriptive labeling referring to organic production methods: (a) unprocessed plant and plant products, livestock and livestock products to the extent that the principles of production and specific inspection rules for them are introduced in Annexes 1 and 3; and (b) processed agricultural crop and livestock products intended for human consumption derived from (a) above”.*¹⁴⁰

Actually, the scope of organic products of Korea and China satisfies with the Codex GL 32-1999. However, the scope of organic products could be different based on the national situations and regulations of a country.

Thus, even with the reference to the Codex GL 32-1999, at the same time, the differences on the scope of organic products between Korea and China should be resolved through negotiations for the prospective Korea-China organic equivalence

¹⁴⁰ Article 1.1 of Codex GL 32-1999

agreement.

3. Calculation of the Percentage of Organic Ingredients

Codex GL 32-1999 specifies the calculation on the percentage of organic ingredients as below:

*“Member Countries can consider the following with regard to products referred to in paragraph 1.1(b) marketed in their territory; (b) The calculation of the percentages in the article 3.4 (5%) and in the article 3.5 (95%) on the basis of the ingredients of agricultural origin (instead of all ingredients excluding only salt and water).”*¹⁴¹

As the two countries comply with the Article 3.5 of Codex GL 32-1999 having the calculation equation of the percentage of organic ingredients pursuant to it, so the Korea -China Equivalence Agreement on Organic Products could be concluded on this issue.

4. Organic Labeling

According to the Article 3.1 of Codex GL 32-1999, *“organic products should be labeled in accordance with the Codex General Standard for the Labeling of*

¹⁴¹ Article 3.5 of Codex GL 32-1999

Prepackaged Foods.”¹⁴²

However, the Article 3.7 of Codex GL 32-1999 articulates “labeling of products in transition/conversion to organic” as below:

*“Products of farms in transition to organic production methods may only be labeled as “transition to organic” after 12 months of production using organic methods providing that: (a) the requirements referred to in paragraphs 3.2 and 3.3 are fully satisfied; (b) the indications referring to transition/conversion do not mislead the purchaser of the product regarding its difference from products obtained from farms and/or farm units which have fully completed the conversion period; (c) such indication take the form of words, such as “product under conversion to organic farming”, or similar words or phrase accepted by the competent authority of the country where the product is marketed, and must appear in a color, size and style of lettering which is not more prominent than the sales description of the product; (d) foods composed of a single ingredient may be labeled as “transition to organic” on the principal display panel; (e) the labeling refers to the name and/or the code number of the official or officially approved certification body or authority to which the operator who has carried out the most recent preparation is subject”.*¹⁴³

¹⁴² Article 3.1 of Codex GL 32-1999

¹⁴³ Article 3.7 of Codex GL 32-1999

There are no different views that the organic labeling regulations of Korea and China are in compliant with the Article 3.1 of Codex GL 32-1999.

However, the legal difference on the “labeling of products in transition/conversion to organic” is that Korea does not have the aforementioned labeling, while China has it. Also, China comply with “the labeling of transition to organic” of the Article 3.7 of Codex GL-1999.

Thus, it is important to resolve this legal difference on the “the labeling of transition/conversion to organic” between Korea and China for the conclusion of prospective Korea-China organic equivalence agreement.

5. Conversion Period

Pursuant to the Article A.1 of Annex 1 in Codex GL 32-1999 for plant production, “the principles set out in this Annex should have been applied on the parcels, farm or farm units during a conversion period of at least two years before sowing, or in the case of perennial crops other than grassland, at least three (3) years before the first harvest of products as referred to in paragraph 1.1(a) of these guidelines. The competent authority, or where delegated, the official or officially recognized certification body or authority may decide in certain cases (such as idle use for two years or more) to extend or reduce that period in the light of previous parcel use but the period must equal or exceed 12 months”.¹⁴⁴

¹⁴⁴ Article A.1 of Annex 1 of Codex GL 32-1999

Pursuant to Article B.12 of Annex 1 in Codex GL 32-1999 for livestock production, conversion period is required as below;¹⁴⁵

- (a) Bovine and equine meat products: 12 months and at least $\frac{3}{4}$ of their life span in the organic management system;
- (b) Calves for meat production: 6 months when brought in as soon as they are weaned and less than 6 months old;
- (c) Bovine and equine milk products: 90 days during the implementation period established by the competent authority, after that, 6 months;
- (d) Ovine and caprine meat products: 6 months;
- (e) Ovine and caprine milk products: 90 days during the implementation period established by the competent authority, after that, 6 months;
- (f) Porcine meat products: 6 months;
- (g) Meat products of poultry and laying hens: whole of life span as determined by the competent authority;
- (h) Eggs of poultry and laying hens: 6 weeks

Comparing the legal analysis on the “conversion period” in part 1 of Chapter IV of this thesis with the above-mentioned Codex GL 32-1999, the two countries overall satisfies the Codex GL 32-1999. Thus, the point is that the two countries should reduce the legal differences reviewed in “conversion period” in part 1 of Chapter IV.

¹⁴⁵ Article B.12 of Annex 1 of Codex GL 32-1999

6. Genetically Modified Organisms (GMOs)

Codex GL 32-1999 provides the principle of the use of GMOs in organic products as below:

*“All materials and/or the products produced from genetically engineered/modified organisms (GEO/GMO) are not compatible with the principles of organic production (the growing, manufacturing, or processing) and therefore are not accepted under these guidelines”.*¹⁴⁶

Codex GL 32-1999 provides the definitions of “GMOs and Techniques of GM” as below:

*“**Genetically engineered/modified organisms:** Genetically engineered/modified organisms, and products thereof, are produced through techniques in which the genetic material has been altered in a way that does not occur naturally by mating and/or natural recombination.*

***Techniques of Genetically engineering/modification** include, but are not limited to: recombination of DNA, cell fusion, micro and macro injection, encapsulation, gene delegation and doubling. Genetically engineered organisms will not include organism resulting from techniques such as conjugation,*

¹⁴⁶ Article 1.5 of Codex GL 32-1999

transduction and hybridization. ”¹⁴⁷

Also, Codex GL 32-1999 comments on the targets of the prohibition of the use of GMOs as “micro-organisms genetically engineered/modified or enzymes derived from genetic engineering”¹⁴⁸ and “animal feeds that do not contain genetically engineered/modified organisms or products thereof”¹⁴⁹.

Firstly, from the perspective of the “definition” of GMOs, both Korea and China should articulate the definition into their organic laws, and then the scope and target of GMOs could be clarified more.

Secondly, Korea should classify the targets of the prohibition of the use of GMOs, in detail. China specifies those targets with eight specific items, separately, while Korea only mentions on two items. Also, pursuant to Article 4.1.6 of GB/T 16930.1-2005, China comments on the “propagation materials, fertilizers, soil amendment products and plant protection”, and those are not mentioned in the legal texts of Korea.

Thus, from the point of GMOs, China has stricter regulations compared to Korea, and the legal gaps should be resolved for the conclusion of the prospective Korea-China Equivalence Agreement on Organic Products.

¹⁴⁷ Article 2.2 of Codex GL 32-1999

¹⁴⁸ Article 3.4 of Annex 2 of Codex GL 32-1999

¹⁴⁹ Article 15 of Annex 1 of Codex GL 32-1999

7. Accreditation

In the section 6 (inspection and certification systems) of Codex GL 32-1999, the article 6.4 articulates that “countries should identify a competent authority responsible for the approval and supervision of such bodies (=certification bodies): (a) the identified competent authority may delegate, while maintaining the responsibility for the decisions and actions taken, the assessment and supervision of private inspection and certification bodies to a private or public third party hereafter referred as its “designate”. If delegated, the private or public third party should not be engaged in inspection and/or certification; (b) for this purpose an importing country may recognize a third party accrediting body when the exporting country lacks an identified competent authority and a national program”.¹⁵⁰

The article 6.4 of Codex GL 32-1999 solely mentions on the obligation of designating the accreditation body for managing the inspection and certification systems in a country.

Both Korea and China comply with the article 6.4 of Codex GL 32-1999, by designating NAQS and CNAS, separately, in order to accredit certification bodies for organic systems. However, China also requires certification bodies in its territory to be authorized by CNCA, in order to perform their certification activities. This is exceptional when we consider the organic systems in other countries, including the US or E.U., that they only require certification bodies in their territories to be accredited by the only accreditation body, but does not request any

¹⁵⁰ Article 6.4 of Codex GL 32-1999

additional conditions, more. Secondly, this would form a technical barrier for blocking foreign certification bodies, who want to open their certification businesses in China, to enter into the Chinese territory.

Thus, China should weaken or replace the additional obligation, which is to be authorized by CNCA to start certification activities of certification bodies, in order to conclude the prospective Korea-China Equivalence Agreement on Organic Products.

8. Certification

“Inspection and certification systems are used to verify the labelling of, and claim for, organically produced foods. Development of these systems should take into account the Principles for Food Import and Export Inspection and Certification, the Guideline for the Design, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification Systems”.¹⁵¹

8.1. Documentation Requirement of a Candidate for Certified Operator

The documentation requirements for application for organic certification are not clearly articulated, but main points of the documentation requirements could be inferred from the texts of Codex GL 32-1999.

In fact, for the compliance obligations for organic operators, it is mentioned indirectly in the Article 3 of the Annex 3 (Minimum Inspection Requirements and

¹⁵¹ Article 6.1 of Codex GL 32-1999

Precautionary Measures under the Inspection or Certification System) of Codex GL 32-1999 as below:

*“Production according to these guidelines should take place in a unit where the land parcels, production areas, farm building and storage facilities for crop and livestock and clearly separate from those of any other unit which does not produce according to these guidelines; preparation and/or packing workshops may form part of the unit, where its activity is limited to preparation and packaging of its own agricultural produce”.*¹⁵²

Explicitly, Codex GL 32-1999 mentions on the needs of setting demarcation of a production or processing site, in order to separate organic and non-organic products, so Korea is in compliance with the Codex guideline, whilst China is not.

Thus, China has to complement the demarcation requirement after considering the guideline from the Codex, to be parallel with Korea for the prospective Korea-China Equivalence Agreement on Organic Products.

8.2. Compliance Obligations of a Certified Operator

Codex GL 32-1999 articulates the compliance obligations for a certified operator, who already acquired organic status for his/her organic products as below:

¹⁵² Article 3 of Annex 3 of Codex GL 32-1999

“Each year, before the date indicated by the certification body or authority, the operator should notify the official or officially recognized certification body or authority of its schedule of production of crop products and livestock, giving a breakdown by land parcel/herd, flock or hive.”¹⁵³

Written and/or documentary accounts should be kept which enable the official or officially recognized certification body or authority to trace the origin, nature and quantities of all raw materials bought, and the use of such materials; in addition, written and/or documentary accounts should be kept of the nature, quantities and consignees of all agricultural products sold. Quantities sold directly to the final consumer preferably accounted for on a daily basis.”¹⁵⁴

China is in compliance with Codex GL 32-1999 for keeping records of the “origin of all raw materials bought”, whilst Korea is not compliant with it. The legal texts of China under the Article 4.2.6 of GB/T 19630.4-2011, explicitly, specifies the “origin of the raw materials”, while Korea, merely, mentions on “the amount of storage and delivery of raw materials or organic products” under the Annex 1 of NAQS Notification No.2013-20. The amount of storage or delivery is not equivalent with the scope and meaning of the word “origin” in Codex GL 32-1999, so “origin” would complement Korean organic regulations if it is added into them.

Thus, Korea needs to be prepared for the “origin” part for preparing for the

¹⁵³ Article 5 of Annex 3 of Codex GL 32-1999

¹⁵⁴ Article 6 of Annex 3 of Codex GL 32-1999

prospective Korea-China Equivalence Agreement on Organic Products.

8.3. Review for Certified Products

Codex GL 32-1999 specifies the obligation of the certification body for reviewing certified products as below:

“a) ensure that, where an irregularity is found in the implementation of Sections 3(Labeling and Claims) and 4(Rules of Production and Preparation), or of the measures referred to in Annex 3, the indication provided for in paragraph 1.2 referring to the organic production method are removed from the entire lot or production run affected by the irregularity concerned;

*b) where a manifest infringement, or an infringement with prolonged effects is found, prohibit the operator concerned from marketing products with indications referring to the organic production method for a period to be agreed with the competent authority or its designate”.*¹⁵⁵

Korea is in compliance with the Article 6.9(b) of Codex GL 32-1999 by reviewing the marketing status of certified products in which infringements of labeling are found, while China is not compliant with it by solely mentioning the notification obligation of the operator for the change of organic status of organic certified products. Thus, China should revise this provision to be at the same level

¹⁵⁵ Article 6.9 of Codex GL 32-1999

of the Codex guideline for the conclusion of prospective Korea-China equivalence agreement in the future.

However, both Korea and China do not specify the legal texts related with the Article 6.9(a) of Codex GL 32-1999, and this provision should be established in both countries within legal frameworks, to be at the equivalent level with the Codex guideline , for the prospective Korea-China equivalence agreement.

8.4. Renewal, Change or Succession of Certification Status

Codex GL 32-1999 does not specify the conditions for the renewal, change, or succession of organic certification, so that the legal differences found in part 1.8.4 of this thesis should be resolved by bilateral negotiations at the time of concluding the Korea-China Equivalence Agreement on Organic Products.

8.5. Revocation of Organic Certification, and Removal or Suspension of Organic Labeling

The Codex GL 32-1999 does not explicitly stipulate the conditions for revocation/suspension of organic certification, and removal or suspension of organic labeling. However, those conditions could be inferred from the Article 6.9(b) of Codex GL 32-1999.

The Article of 6.9(b) provides as below:

“Where a manifest infringement, or an infringement with prolonged effects is found, prohibit the operator concerned from marketing products with indications referring to the organic production method.”¹⁵⁶

As both Korea and China has provisions which mentions the revocation of organic certification, removal or suspension of organic labeling in Korea, and also comments revocation and cancellation of organic certification in China, they are generally in compliance with the Article of 6.9(b) of Codex GL 32-1999. However, the legal differences between both countries still exist and should be narrowed for the conclusion of prospective Korea-China organic equivalence agreement.

9. Mutual Recognition

Codex GL 32-1999 provides the principle of mutual recognition from the perspective of an importing country as below:

“An importing country may require detailed information, including reports established by independent experts mutually agreed between competent authorities of the exporting and importing countries, on the measures applied in the exporting country to enable it to make judgments and decisions on equivalency with its own rules provided that these rules of the importing country

¹⁵⁶ 6.9(b) of Codex GL 32-1999.

meet the requirements of these guidelines”.¹⁵⁷

Neither Korea nor China does articulate the importance of providing “reports by independent experts mutually agreed between exporting and importing countries” in its regulations. So, it is important to establish evaluation procedures and requirement for determining the equivalence between Korea and China, and one of the requirements could be the submission of reports mentioned previously.

Also, the comparisons mentioned in this part (2.1~2.8) of this thesis should be considered for determining the equivalence of both countries.

V. CONCLUSION

The concept of Equivalence is not coincident with the concept of “sameness”. When a country ‘recognizes’ the regulatory goal of another country achieves the same level with its own regulatory goal, then the Equivalence Agreement on Organic Products could be concluded.

In this thesis, by the legal analysis on the Korea and China organic regulations, we could conclude that there exist legal differences between them. The legal analysis is carried out on the scope of organic products, calculation equation of the percentage of organic ingredients, organic labeling, conversion period, GMOs, etc. These are the core concept of organic certification system, so it is important to grasp those legal differences in order to prepare for the prospective Korea-China

¹⁵⁷ Article 7.4(a) of GL 32-1999

Equivalence Agreement on Organic Products.

Then, we compared those legal differences with the reference to the Codex Guidelines, and it is revealed that Korea should complement some provision that were not articulated in its regulations, such as “labeling of in transition/conversion to organic products, the management of the origin of organic products, GMOs.”

China also should articulate in legal texts on “succession or change of certification, and demarcation requirement for documentation of a candidate for a certified operator.”

Korea depends on China for importing organic products. From the published data from the Ministry of Agriculture of Korea, Korea imported 2,803 ton of organic products from China in 2012, and China ranked 3rd after the U.S (1st, 4,065 ton) and Brazil (2nd, 2,826 ton).¹⁵⁸ Also, at the same time, as it was mentioned in the introduction of this thesis, Korea has national plan to promote its organic industry by the exportation of organic products to foreign countries. Thus, the two countries both would have the willingness to conclude the prospective Korea-China Equivalence Agreement, when situations are allowed.

¹⁵⁸ 유기농식품산업, 시장개방 두렵지 않다. (2015, March 11). Retrieved July 26, 2015, from http://mafra.go.kr/list.jsp?&newsid=155446550&ion_id=b_sec_1&pageNo=2&year=2015&listcnt=10&board_kind=C&board_skin_id=C3&depth=1&division=B&group_id=3&menu_id=1125&reference=2&parent_code=3&popup_yn=N&tab_yn=N

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국문초록

유기동등성협정은 ‘동등성’ 개념에 근거하여 상호인정의 원칙하에 체결된다. 유기제품에서의 동등성협정 체결이 최근에 활발한 추세를 보이고 있다. 그러한 예시로서 미국-EU 유기동등성협정(2012), 한-미 유기동등성협정(2014), 한-EU 유기동등성협정(2015) 체결 등을 살펴볼 수 있다. 우리나라는 FTA 체결국가이면서 우리나라와 밀접한 경제적 관계를 맺고 있는 미국 및 EU 와 유기동등성협정을 체결하였다. 따라서, 한중 FTA(2014)가 타결됨에 따라 한국의 주요 무역상대국인 중국과의 유기동등성협정 논의 가능성이 높아졌으며, 이에 대한 대비를 양국의 유기농 법령에 대한 법률 분석을 바탕으로 진행하였다.

먼저 유기농 법령의 핵심개념, 즉 유기농 표시, 전환기, GMOs, 인정, 인증 등을 중심으로 양국의 법령을 비교 분석하였다. 분석을 통하여 양국의 법적 차이를 발견하고, 이를 Codex 기준과 비교 및 분석을 통하여 양국이 향후 한중 유기동등성협정 체결을 위한 해결점을 본 논문에서는 제시하고 있다.

주제어: 유기농, 동등성, 동등성 협정, 한국, 중국, 상호 인정

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