Minutes of the AFI 7 meeting - 13 October 2011 in Brussels

Workshop on the European Import Scheme for Organic Products

Introduction/Welcome by Bo van Elzakker.

AFI stands for Anti-Fraud Initiative. Why does AFI organize a workshop on this topic? AFI is not only about fraud, it is also about irregularities. We have an interest in the import regulation as imports from third countries are a source of fraud and irregularities besides those occurring in the EU itself. We were patiently waiting for the implementation but started to feel uneasy in May-June when a number of stakeholders started to become irritated. We were afraid that the working relationship between the private sector, mainly the control bodies (CB) and the Commission (COM), was going to be lost - and a good relationship is a condition for being able to address irregularities and fraud. We also feared that some of the Commission decision making could become politically motivated, rather than based on facts. AFI is a discussion platform of the different stakeholders; hence the idea came up to organize a meeting on this topic.

We are happy with the interest shown in the topic, with the good spread of types of stakeholders (see participants list). As usual there are presentations, Q&A, discussions, breakout groups and then we try to summarize and plan the way ahead. This workshop is entirely financed by the participation fee.

Presentation Beate Huber, FiBL, "Stakeholder Assessment of the revised import scheme – results of the Certcost project" see
http://www.organic-integrity.org/fileadmin/afi/docs/afi7/Presentation_Certcost_2011-10-13.pdf

Beate spoke of some of the results of the Certcost project related to imports. Details can be found in the Certcost reports, see www.certcost.org .

Presentation Paul Axmann, EU COM, "The new list of equivalent control bodies in third countries: Problems and solutions encountered during the application process"

For the presentation of the Paul Axmann see http://www.organic-integrity.org/fileadmin/afi/docs/afi-workshop-2011/Presentation_European-Commission_2011-10-13.pdf. As this is a critical presentation some explanations not described in detail in the slides are summarized in the following text.

Paul Axmann assured that the aim of the Commission is to have all seriously interested and qualified control bodies on the list of Approved control bodies for operations in Third countries before the Import authorization system expires. The Commission has agreed that the new system will come into force on 1/07/2012 once the first list is updated.

The Commission informed that applications respectively technical dossiers are preferred in English language but other main EU languages would also be accepted. Regarding the quality of the dossiers he informed that the main problem was lack of completeness of the dossiers. Some dossiers were well made, not comprising too many pages and were complete. Other dossiers were kilos of paper but it was not clear where what information was to be found.

In some cases the requirements of the Regulation were not satisfied, e.g. the control bodies are supposed to publish the list of the certified operations in Third Countries; a database with search functions which shows only single operators would not be sufficient.

Paul Axmann further stressed that the control bodies (and not the assessment bodies) are responsible for the completeness and quality of the dossier. Yet, the statements concerning the assessment of equivalence have to be issued by the assessment body. Regarding the reports from the assessment bodies the main problem was quality, less the completeness. There were problems for example when an assessment body confirmed the equivalence for standards but the standards were inconsistent and/or had requirements impossible to be fulfilled by the control body. The specific items/details of the Import Guidelines which go beyond EN 45011 have sometimes not been considered, sometimes office audit reports did not include third Country activities (e.g. file check on EU operators instead of third country operators) and sometimes assessment bodies just informed what they have been checking but not the results/assessment. Another problem was that witness audits were often conducted in the EU but not in the Third country. In some cases it was not indicated where the audit took place. In a few cases witness audit reports appeared to be copy paste from different operators.

The Commission recommended to the assessment bodies to agree on a harmonized report structure.

Discussion:

Tom Nizet, Certisys, expressed his gratitude for the clarification and wanted to know how the applications were distributed among the MS. Answer: There were several approaches for selecting the co-reporters. There were two co-reporting MS per application. Main issue was language (e.g. Spanish to Spanish speaking countries). There was a ranking of dossiers; the more difficult ones were given to the more experienced MS's. MS did not receive the applications of their own countries.

Heike Renner, bio.inspecta, said that the procedures were very difficult to understand. Information was missing e.g. deadlines, contact point. The problem was also that the assessment bodies were not fully informed. Answer: The structure of requirements was not easy (4 relevant documents). Some assessment bodies did a good job and tried hard to understand the demands of the Commission. The Commission has made an internal checklist for checking the dossier, covering all requirements. It shall be presented to the next SCOF meeting and hopefully it can be published/be accessible for the CB's. It is very time-consuming for Commission to get permission to publish documents. The Commission is further working on a standardized application form and annual report form. It is agreed that more communication is needed.

Bo van Elzakker asked about the situation for new applications. Answer: The next deadline is 31.10.2011. The checklist cannot be published prior this deadline. The Commission only got one application so far in 2011 (2 weeks before the deadline) and is surprised about that. It would like to see more applicants.

Peter Grosch, BCS, made a general comment asking why there would be such a time pressure. A longer transition period would be better. The procedure is completely new and will take time to be implemented. It was for example just not possible to have a witness audit for each country. The problem was that the assessment bodies were not aware of this requirement. Answer: the sector has been asking for a fast approach. The applications made in 2009 have to be closed soon since the information is going to be outdated. Also Regulation deadlines are coming up. Meanwhile there was enough time to clarify open issues. The Regulation does not require a witness audit in each country of operation. It is sufficient to have one witness audit per product category in one of the countries the CB is applying for.

Jan Deane, IOAS, asked whether it is correct that there were three application periods so far. Was there one in 2010? Answer: Yes, there was one in 2009, 2010 and 2011. One application was submitted in 2010. This was accepted but there are still open issues.

Bo van Elzakker asked whether there will be one red, yellow, green list? Or whether there will three such lists per application round. Answer: There are just the three lists. The Commission does first a check on completeness, then a check on quality. The screening of the 2011 applications will start in November 2011. The duration for the application procedure to finish will be 1-1.5 years the longest if there are lot clarifications to be made. The fastest is expected to be 9 months.

Ricardo Cozzo, BioAgriCert, asked whether the experience of the CB is taken into consideration, e.g. accreditation by other assessment bodies or US NOP? It should be differentiated between CB's which are working since long with the European regulation and those outside which have less experience. There seems to be a very equal treatment – not considering previous experience. Answer: all applicants are treated in a fair and similar way. No discrimination of third countries. The requirements for the new system are clearly described in the regulation and guidelines. The EU has additional requirements; just the accreditation certificate is not sufficient.

So far there are 74 applicants. 70-80 % are more formal problems (documents missing or not responding to requirements since they were not clear). The rest were quality problems. The experience shows that the European CB's were not always the superior CB's. Smaller CB outside the EU sometimes provided better/complete information. It is not possible to treat them differently.

Bo van Elzakker stresses that AFI demanded more surveillance in third countries as CBs sometimes behave quite different in third countries. Paul Axmann added that so far only very few witness audits have been conducted in third countries. Compared to the huge activities in Third Countries this is very little. Commission is working on a risk-assessment tool for the on-the-spot visits.

Heike Renner, bio.inspecta, commented on the Commissions requesting an equivalent standard. This is a problem for CB's since they applied so far the EU Regulation. CB's are not allowed to develop their own standard and become a standard setter. How does this fit? Why does the Commission not provide an equivalent standard? Answer: It is not the idea to have a unique standard all over the world – the standard should be adapted to local conditions. It is correct that we will end up with 20-30 equivalent standards.

Bo van Elzakker asked whether there was an IFOAM certification standard that could be used. Clarification that a couple of IFOAM accredited CB's developed a standard. Tom Nizet mentioned one should carefully read the EU regulation: The CB does not have to submit standards but the production rules and control measures. That is sufficient. Paul Axmann responded that the

commission wants to know which standards are applied. They need to know the standard for the on-the-spot visit in the third country.

Nune Darbinyan, Ecoglobe, represents a CB outside EU. She was very grateful for the presentation. She asks what they have to do when they want to extend their activities to new countries. Will a CB be listed for a new country when it intends to work in a new country or only when it is already operating in this country? Answer: for the time being there is the option for an import authorization. For the new system you have to proof that you are already active in a country. Once you are on the list, you can apply for a new product category (a small new application). The Commission has not yet decided on how to deal with application for extension of the geographical scope.

Beate Huber, FiBL, asks whether a CB who has taken up operations in new countries since October 2009 should notify this activities to the Commission. Answer: yes, this should be notified with the form (excel sheet) given. It cannot be promised whether and how this will be considered. To be on the safe side the Commission recommends to still apply for import authorizations.

Presentation Jan Deane, IOAS, "Evaluation of third countries certification bodies for EU-recognition by IOAS", see
http://www.organic-integrity.org/fileadmin/afi/docs/afi-workshop-2011/Presentation_European-Commission_2011-10-13.pdf

Presentation Jochen Neuendorff, DAkkS, "Evaluation of third countries certification bodies for EU-recognition: the example of an EA accreditation body", see
http://www.organic-integrity.org/fileadmin/afi/docs/afi-workshop-2011/Presentation_DAkkS_2011-10-13.pdf

Some information not described in the slides is summarized here.

Jochen Neuendorff explained the approach used by DAkkS to deal with applicant CB's. The procedure consisted of an equivalence assessment of the third countries CB standard applied in third countries, office audits and witness audits in third countries. He said that requirements for witness audits were not clear. For example DAkkS did a witness audit in a country which is on the third country list and was not aware that it should have been in a country the CB has applied for. He said also that the German Ministry for Agriculture and Consumer Protection wants DAkkS to play an active role in the international cooperation between accreditation bodies (AB's) to support and have an effective surveillance of certification bodies active in third countries. DAkkS is willing to cooperate with other AB's to draw up a code of good practice to ensure a harmonized approach. Cooperation is for example needed for surveillance on the spot visit to lower costs for the CB operating in third countries.

Robin Fransella, DEFRA, Problems with third countries imports from the perspective of a competent authority", see
http://www.organic-integrity.org/fileadmin/afi/docs/afi-workshop-2011/Presentation_DEFRA_2011-10-13.pdf

Here too some information not described in the slides is summarized in the following text. He expressed his doubts whether the compliance approach will really come if the equivalence approach turns out to be sufficient.

A point of concern is when there is not sufficient cooperation among CBs, e.g. when a new CB just steps in. In case of cross-border issue communication among Member States (MS) will continue. It is foreseen to intensify formal communication e.g. via OFIS. At the moment MS have fairly precise controls. The Member States exert some control through the applications for import permits. A CB submitting a huge pile of documents creates suspicion and slows down the screening process. It is therefore recommended to only submit those documents needed for evaluation of the application.

In the new situation, has the Commission the experience to deal with the complex/serious issues? There are already cases where specific problems showed up again and the Commission has shown that they have the capabilities to deal with such problem cases.

Discussion

Bo van Elzakker missed the role of the assessment bodies in critical/fraud cases? Answer: It is a discussion how AB's can be stronger involved. Often it is not the problem of a specific CB. It is more that the structures within the CB don't support working together. That's a point which should be taken up by AB's.

Tom Nizet, Certysis, asked where the new points of stress will be and pointed out the issuance of the certificates of inspection. He recommends that AB's and authorities check this point in-depth. Answer: very good point. There is awareness about this among Commission and MS.

Jochen Neuendorff, asked whether the certificate of inspection is defined as being a certificate or a technical document. Tom Nizet said it would be a certificate since one could not import without it. Technical document would be an understatement. Paul Axmann agreed with Tom Nizet. There is often the discussion whether the certificates of inspection are really needed. The organic unit is of the opinion that the certificate of inspection (or transaction certificate) is very important and will become more important since it provides a lot of data necessary for the risk analysis. It is further very important for traceability. The Commission is considering allowing electronic certificates.

Arjon Kalter, Tradin, expressed his concern on how products could be withdrawn in the new system. It was suggested that the competent authorities explore this issue further in the afternoon.

Vanessa de Raedt, Vlaamse Overheid (CA), said that the certificate of inspection would be very important. The Belgium authority considers digitalizing it since this would facilitate the procedures and overview a lot. Reacting to a question whether every MS could develop its own system, Robin Fransella, DEFRA, confirmed that the regulation allows Member States to decide on their own on digitalizing the certificates of inspection.

Berdi Doornebosch, Control Union, was wondering of too many applications pending. Wouldn't it be easier to just reduce the scope? Paul Axmann: that's exactly what the Commission intends to do. Currently there are 30 CB's on the list, mostly with full scope. But if one single item is missing, e.g. a witness audit, the CB will still be approved for the remaining scopes.

Christian Vogel, Boku, asked about the qualification of the Member States. Are there any procedures to harmonize their qualification? Paul Axmann responded that most of the delegates in SCOF are also

in charge of issuing the import authorizations. If they feel they would not be competent in discussing a specific topic they can bring their experts to the SCOF meeting. Some Member States bring 5-6 experts to a SCOF meeting.

After the lunch break there were three break out sessions organized per stakeholder type. Following the tea break the three groups reported back to the plenary.

Assessment Bodies and Competent Authorities Group (report: Robin Fransella)

A number of issues were discussed and has raised many questions. Discussion of structural issues: *Quis custodiet ipsos custodies* – who will assess what the Commission is doing? Can the Commission take on these additional responsibilities? The COM has to reduce staff but the organic unit has increased in size – aware that field is now more important so greater resources are required. Supervision – internal discussions on topic but are developing scenarios as to how to handle supervision of control bodies recognised by the Commission. On the spot visits will be undertaken by the COM. There is a change of system in that the Commission formerly controlled competent authorities in MS or third countries but now there will be direct control of control bodies in third countries. Third countries are not as numerous as CBs on the list.

Risk based analysis of on the spot visits was raised. The COM has started to create a risk assessment tool. EA has also been working on this. Communication between the COM and assessment bodies could reduce the number of visits required.

Market surveillance by MS: criticism that this is not properly working. NL has SKAL that works with customs and provides risk profiles. Goods that have an irregularity and an authorisation are withdrawn then there is information provided to both SKAL and Customs. DE has a system of market surveillance but cooperation between food surveillance, control bodies, competent authorities and customs still remains an issue.

Irregularities will be placed on OFIS system along with irregularity type.

Possibility of withdrawal from import authorisation leads to questions to CB – often this leads to no good answers. Then if a trader investigates, a more serious issue is discovered than what was reported by the CB. Problems should be resolved more rapidly.

Discussion of whether import controls will be as effective. The new rules can be as effective as the old rules but have to show their worth in practice.

What of pesticide residues – who decides the levels that are acceptable? CB is operating in third country so has on the spot knowledge. But often it is found that there is a difference of opinion as to the severity of the case between EU operators and competent authorities and the third country control bodies.

Communication of problems – how can this best be achieved? In case of problems, can there be immediate direct communication betweenCB's ensuring competent authorities are copied in to this with a requirement to provide findings within 48 hours? How will information flow in future be organised between Commission and accreditation bodies?

What are next steps required to create harmonised approach to assessment? IOAS and EA will work together on harmonised approach to witness audits and publication of requirements. It seems

necessary to define role of accreditation bodies within control regime. Task force of EA would like input from stakeholders on this issue.

Concerns regarding the evaluation process were discussed. What is the method of assessment? The Commission is performing tasks similar to the Competent Authorities in MS with respect to CBs: does it have sufficient resources to undertake this. Can the Commission take on these additional responsibilities? Even at level of MS there is no harmonisation with regard to approval of CBs within the EU let alone in third countries. Can EU Commission and MS work together?

Can mutualisation of witness audits be undertaken? Would need to work together as accreditation bodies rather than the Commission on the spot inspections being part of this. Could this be in code of good practice to propose as a cost cutting measure? Organic task force in EA working on this. How are witness audits undertaken, can they be combined for different CBs in the same third country. Can more than one accreditation bodies work with a single auditor in third countries? How long should an audit take etc? What does "representative number" mean? How many visits to third countries will take place? Should only a full report be accepted in the process as opposed to a surveillance report?

Harmonisation of equivalence – how can it be achieved?

Why is it within the application portfolio that the competence and qualification of the accreditation body is requested? Is there a better way to confirm competence? Assessment bodies – how to come to an international harmonised approach to equivalence assessment process. Harmonisation of certificate of accreditation – minimum information requirements should be in place. Public checklist – providing criteria is needed to ensure commonality of assessment.

Will art 19 be prolonged if list of equivalent CBs is delayed?

Feedback from the Control bodies (report Tom Nizet)

A list of critical points was raised regarding the maintenance of integrity of imported organic products.

1. Standards and the correct implementation thereof;
2. Communication between CB's;
3. Description of the activity of the operator;
4. Which Assessment Body to choose?
5. Risk based approach in third countries;
6. Outsourcing of inspection;
7. Monitoring of imported goods.

Standards and the correct implementation thereof

In this context, standards should be seen as the production rules, control measures and the sanction system. Considering the current information, 3 types of standards can be identified:

- Standards which are based on EU Regulation and amended accordingly
- Standards which are based on existing international standards
- Standards which are developed by the CB's themselves, based on their own experience.

Once the new system will become operational, several standards will be accepted. This variety may lead to confusion and complications at operator and CB level where there is trade in third countries. Jochen Neuendorff responded in the plenary discussion of the WG results that it is a nice dream that only one standard is applied worldwide in organic agriculture, the experience from industrial sectors demonstrates that there is a variety of different technical standards applied in different countries.

One member of the group proposed the development of a baseline standard for third country certification. Such a baseline standard should take into account at least the critical points where competition between CB's is at stake. Examples for such critical points are management of conversion and group certification. The rest of the group did not object against the proposal but raised questions from a pragmatic point of view.

Communication between CB's

Communication (and by consequence thereof : cross checks) between CB's active at importer and/or exporter level remains crucial for maintenance of integrity. Although there are improvements compared to the past, still, communication between CB's can be improved. However, focusing on improving the communication between CB's only will not be sufficient. There is a need for addressing the third country activities of CB's (see further) as well.

Description of the activity of the operator

The description of the activity of the operator is the basis for the control measures of the CB. Absence, incomplete or inappropriate descriptions from operator's activities are important indicators for risky production systems and failing control systems from the very beginning. Taking into account practical difficulties in third country contexts, obtaining accurate descriptions may not always be possible before the end of the initial inspection. For this aspect, there is a big difference between NOP and EU certification of organic products.

Which Assessment body to choose?

The role of the assessment body is very important. Considering the quantitative limitations in choice but also the wide variety in quality of assessment reports delivered, it is important that the CB and the assessment body start from the requirements in the regulation (art 11 from Reg. 1235/08 and the guidelines from COM website) and establish a mutual understanding thereof. Only then, a successful assessment and assessment report can be envisaged.

Risk based approach in third countries

Unannounced inspections and sampling policy need to be addressed under the control measures of the CB in a third country. An explicit link to those aspects of the control system in third countries was established in the import guidelines of the COM.

Outsourcing of inspections

Outsourcing of inspections to local CB's does happen. This is considered as not allowed by the COM. CB's need to find solutions for this.

Monitoring of imported goods

With the disappearance of the authorizations for import, the new point of stress in the import system will be the certificate of control. The issuance of certificates of control being done at CB level will become the last and only 'real time' tool to prevent fraudulent or any other non-compliant organic products to enter the EU market. More support and monitoring regarding the issuance of the certificates of control may be needed. MS need to establish improved market surveillance.

Feedback from the traders, (Report Arjon Kalter)

It was questioned what the driving forces were behind this new regulation, that it might have been factors like reduction of bureaucracy, improvement of consistency but that better integrity might not have been the main driving force. It is too early to say that the new regulation will improve integrity. The trade sees some problems.

Some are sorry to see the process of import authorizations go as it did necessitate importers to go down the supply chain to get some information about the source of the supplies. Without import authorizations, the threat is that the business becomes again more anonymous. The mechanism of import authorizations allowed the CA to improve on the integrity of certain imports, and to ring fence certain lost, certain origins, in case of irregularities. There is a fear that this is no longer possible in the new system. One insists that it continues to be possible to work with the CA to address irregularities. Is there any change in the possibilities to deal with irregularities and fraud, what is the scale of measures, of sanctions under the new regulation? One sees the delisting of the control body but that is a last resort. (In a reaction Paul Axmann replied that there is a full scale of sanctions, there are procedures to deal with malfunctioning CBs.)

Until the decision of delisting there must be increasing levels of sanctions but also increasing transparency so that traders see major sanctions coming. The trade operates under a lot of obligations (e.g. to deliver) and unforeseen decisions made in Brussels can be damaging. Traders don’t want to be surprised; they like to know better what is going on. There must be a flow of information. Traders can force their suppliers to improve but need to know what needs to improve.

There is a feeling that some CBs are too big to fail, as non-listing or delisting would have serious implication for many operators, from farmers to trade. However, that status would allow big CBs to be more lax than smaller ones because they know that they will never be delisted.

There is a fear that the list of Approved CBs will become as static as the Third Country List. There are serious problems with certain countries on the Third Country List. Nobody knows what Brussels is doing about it. Delisting a country should be possible, but also in that case, advanced warning is required. In that case, import authorizations should be the fallback.

It is not clear how long the import authorization will continue. There is concern that the cancellation of the import authorization mechanism while there are not enough approved CBs will disrupt trade. The current applicants are in the range of 30-40. There are many more, often quite local certifiers that might be preferred over the big ones. Does the regulation provide sufficient guarantees that also small local certification bodies can be on the List?

One does not know the outcome of this regulation. Will there be a concentration of power in the big international certifiers, or will these shed scopes or countries with less business because of the cost

of maintaining the approval? Does the Commission guarantee that there will be a choice of qualified CBs in each country?

The approval mechanism is perceived as again more work for the CBs, more cost for the operators. There is no need for more work; workload should reduce because of higher efficiency and effectiveness. Just as inspections should be done smarter, like risk based, should the same not apply for the assessment of CBs? Patterns in irregularities can be used in more to the point assessments, instead of assessing everybody, everything, everywhere in the same fashion.

In a response, Robin Fransella confirms that there are no rules of how to deal with a failing CB. One is aware that delisting will affect trade, of all the operators certified by that CB. There should be an advance warning so that they can change certifier.

Paul Axmann said that there is an issue of data protection, or confidentiality restricting the amount of information that can be given out by the authorities. The experience is that there is a good communication among the traders. The COM is working on a real time list of listed CBs with countries and scopes, not just a paper copy.

Conclusions

Beate Huber concluded that the meeting had been very informative and she commended the open atmosphere and the active participation of all. Whereas a lot of information was shared, some of which had been lacking previously, there were also new questions raised that needed work. There has been a lack of communication from the Commission with the stakeholders, that all appreciated the open sharing of communication.

Co-operation is a core issue to make the new system successful. Traders should bring in major issues to ensure effective surveillance of third countries CBs; these inquiries can be directed to the COM, EA or IOAS.

AB's should start to develop a code of good practice for the evaluation of CB operating in third countries as soon as possible. It would be good if the COM could provide some space for this.

Operators in third countries and their CB are the first to ensure an effective implementation of organic standards in third countries. It is strongly encouraged that they identify and work on critical points like transparency of third countries standards for the operators, parallel production, retroactive recognition of conversion period, risk-based inspections, sampling and analysis and effective communication in case of critical cases.

All participants agreed that AFI should support these processes through its multi-stakeholder initiative.