

Organic Orders Review

Consultation paper

**Deloitte, for the Department of Agriculture and Water
Resources**

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Introduction

The Agricultural Competitiveness White Paper is the Australian Government's plan to grow agriculture. By 2060, over one billion people will shift into the middle classes in the developing Asia region alone. Future growth in global demand presents a significant opportunity for Australian agriculture, as populations and incomes increase in developing countries.

As a net agricultural and food exporting country, Australia can, and must, capture a greater share of the growing demand in our region. Australia must complement our existing trade and produce the premium agricultural products that increasingly affluent consumers in overseas markets want. We must supply these products regularly and reliably. We need to target high end food segments by producing differentiated products built around a reputation for safety, integrity and quality. The future profitability and competitiveness of our farmers depends on this.

Australia's exporters will need to seek out markets that offer premium returns and then out-compete exporters from other countries. Organics is one of those premium markets.

Organic farming is a type of agriculture that seeks to produce food and fibre that has not been subject to application of synthetic chemicals (e.g. synthetic herbicides, fertilisers, drenches), and aims to achieve an integrated production system where increased biodiversity and a functioning soil ecosystem promote plant and animal health.

The global market for organic products is worth more than USD 80 billion. Organic food sales should grow roughly three times faster than overall food sales in the largest markets for organics in the world, the United States and Europe, over the next 10 years. Australia has an estimated 53 per cent of the world's certified organic farmland, along with a strong reputation for the underlying integrity and safety of our food systems.

This paper has been prepared for use in the consultation phase of the Organic Orders Review being undertaken by Deloitte for the Department of Agriculture and Water Resources (DAWR). This Review is aimed at getting the regulatory settings right to support industry accessing the premium markets that organics represents.

As part of a wider initiative to strengthen agricultural exports and market access, DAWR is updating the agricultural export legislative framework. This includes replacing the *Export Control Act 1982* (Cth) ('the Act'), and updating and consolidating the Export Control Orders that support the Act. The export of organic products is currently regulated under the Export Control (Organic Produce Certification) Orders and associated instruments, and these are the

subject of this Review. The regulation of the domestic organics market is not within the scope of this review.

This consultation paper is structured as follows:

- Chapter 1 provides background on the Australia’s organic industry and how organic exports are regulated.
- Chapter 2 describes the problem that regulation in this space seeks to address.
- Chapter 3 lists the regulatory options that are being considered as part of this Review (including the option of not changing the current regulations).
- Chapter 4 provides information on the next steps in the Review process.

The Terms of Reference for this Review are included as Appendix A.

1 Australia’s organic exports

This chapter provides information on what organic products Australia exports, and where to, as well as the current regulation of organic exports.

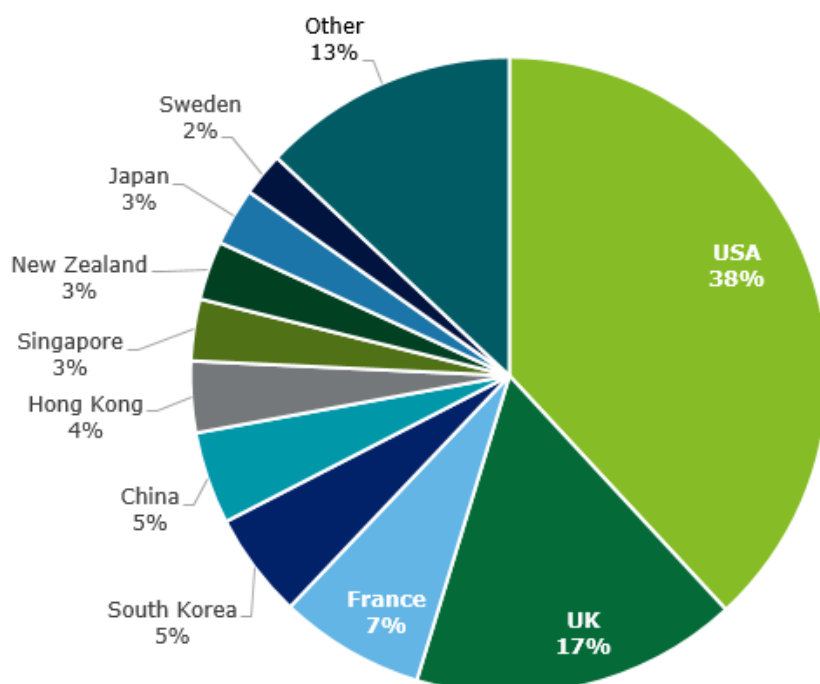
1.1 Australia’s organic exports

In 2016, over 55,000 tonnes of organic products were exported to over 65 countries worldwide. This is a significant increase on the volume of product exported in 2014, which was around 18,000 tonnes. These statistics, and all figures cited in section 1.1, are based on Organic Produce Certificate (OPC) data supplied to the DAWR by approved certifying organisations, and relates to all products exported from Australia and marketed as organic or biodynamic (including food, fibre and cosmetic products). There is no authoritative data available on the value of Australia’s organic exports.

The USA is Australia’s top export destination, receiving over 38% of total export volume (see Figure 1 below). The UK was the second-top destination (17% of total volume), primarily due to it holding 79% of the wine export market. Other key markets are predominantly located in Asia, including South Korea, China and Singapore.

While the USA has been the primary export destination for some time, Australia is gradually exporting a greater share to other countries, reducing the USA share of total exports from 51% in 2014 to 38% in 2016.

Figure 1 Destination for Australian organic products - 2016



Source: OPC data supplied by DAWR.

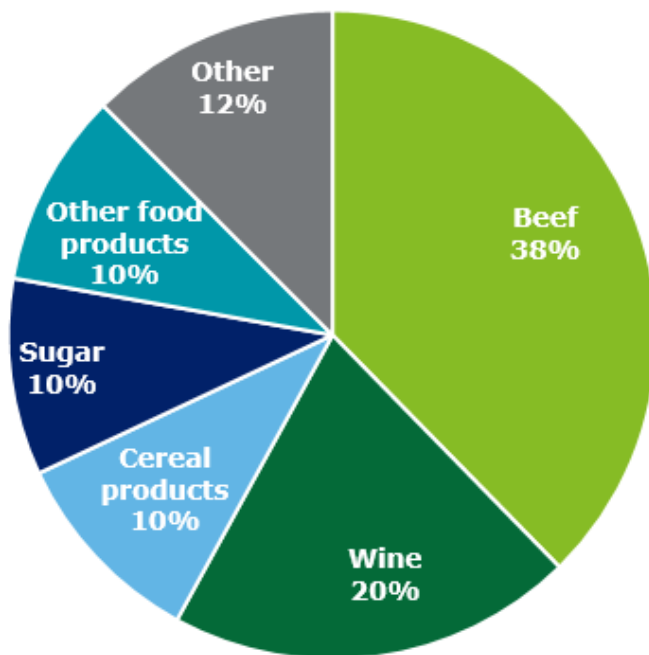
Beef is Australia’s most exported organic commodity (by volume), making up over 20,000 tonnes of total organic exports by volume (38%) in 2016 (see Figure 2). This share has remained relatively stable over the last three years.

The export market for beef is dominated by the USA, with 91% of all beef exports sent to the USA in 2014. However, over time, Australia is exporting a greater share of total beef exports to other countries. The Middle-East is a growing beef market, with an increasing proportion of beef heading to the UAE, Kuwait and Saudi Arabia.

Wine is the second-most exported commodity by weight, making up 20% of total exports in 2016. Cereal products make up a smaller, declining proportion of total exports, dropping from 16% of total volumes in 2014, to 10% in 2016.

The export market for cereal products is vastly different. South Korea has a large, but declining share (51% in 2014 to 39% in 2016), while NZ is importing a growing amount (14% in 2014 to 16% in 2016). The remaining three destinations in the top 5 for cereals are primarily Asian markets; namely Taiwan, Malaysia and Japan.

Figure 2 Major organic exports, by volume - 2016



Source: OPC data supplied by DAWR.

1.2 Australia’s organics export control framework

While producers (from primary producers through to retailers) have information about the production methods they have used in their own business, buyers along the supply chain (including final consumers) do not have the same level of information.

For this reason, a range of measures have been used to assure buyers of the veracity of organic claims (and so establish the trust necessary to induce production of organic products). These include contractual arrangements up and down the value chain, vertical integration, and, certification systems according to established standards. A requirement for certification to an established standard is the main feature of Australia’s organic export regulations of interest in the current review.

The regulatory regime that governs the export of organic products has several components, illustrated in Figure 3 below.

Figure 3 Regulatory regime for organic exports



The *Export Control Act 1982 (Cth)* ('the Act') provides the basis for the Australian government to regulate the export of certain goods from Australia. The Act is administered by the DAWR. Legislative instruments called Orders, made under the Act or regulations, specify requirements for exporting particular goods. This legislation aims to establish greater credibility for Australian

products, and provide greater reassurance of quality to meet importing countries requirements.

The Act coexists with some other Commonwealth legislation that further regulates exporters of particular commodities. For example, the Australian Meat and Livestock Industry Act 1997 (Cth) requires exporters of meat or livestock to be licensed.

The Export Control (Organic Produce Certification) Orders ('the Orders') prohibit the export of products described as organic in the absence of an organic produce certificate (OPC) issued by an approved certifying organisation, or by an authorised officer.

An OPC will only be issued if an approved certifying organisation certifies that the production of the produce has complied with an approved quality management system and meets importing government requirements. Compliance with the National Standard for Organic and Bio-Dynamic Produce ('the National Standard') satisfies the requirements for a quality management system. This is determined based on the ability to demonstrate that relevant businesses along the supply chain (starting with the place of primary production) are certified to the National Standard.

The National Standard is not the only standard in Australia for organics certification. AS 6000 is a voluntary standard that businesses can choose to become certified to, and was initially modelled off the National Standard. It is, however, maintained and modified independently of the Australian Government.

The Government Administrative Arrangements for Approved Certifying Organisations Managing and Inspection and Certification Programs for the Export of Certified Organic and Biodynamic Produce ('the Administrative Arrangements') outline the requirements for interpretation and application of the National Standard. The Administrative Arrangements also set out requirements for the internal processes of approved certifying bodies – for instance, that they avoid conflicts of interest. All certifying organisations must have a documented Quality Management (QM) manual which details the responsibilities and duties, procedures and policies of their organisation.

Approved organic certifiers are obliged to give effect to the QM manual under the Orders. DAWR has the power under the Export Control (Organic Produce Certification) Orders to assess organic certifying bodies and recognise them as approved certifying organisations for export. These bodies are assessed at least annually to ensure their compliance with the QM manual.

The aim of this regulatory regime is to ensure that all products exported from Australia making organic claims have been produced using systems complying with the National Standard. They also aim to ensure that all products making organic claims comply with importing country requirements. Insofar as the

regulations achieve their aims, they provide Australia with a high degree of assurance over the reputation of Australian organic products in export markets.

However, meeting the National Standard is of itself not sufficient to gain market access for products with organic claims in many important export markets. Other jurisdictions can regulate the use of the term organic in accordance with their obligations under the World Trade Organization, and there is no onus on them to recognise certification to the National Standard.

The Australian National Organic Mark represents an industry effort to help to maintain the standard and reputation of Australian organics in export markets. It is a registered certification trademark under the Trade Marks Act 1995 (Cth), indicating that the product conforms to the requirements of the National Standard. If a producer uses the Mark on a product that does not meet the requirements of the National Standard, industry may enforce their claim to the trademark through courts.

1.3 Import market requirements

In addition to the Australian export controls, any exporter must also meet the requirements set by the relevant importing country authority for their products. There is a range of different approaches used to assess imported organic produce, with a varying degree of administrative burden resulting from each approach.

No import market requirements

Some importing countries (for example, Hong Kong) do not regulate the use of the term 'organic' in relation to imported produce. For these countries, in the absence of Australia's export controls, there would be no regulation to ensure that the product met its 'organic' claim. In these markets, once an Australian product is awarded an OPC (based on the relevant businesses along the supply chain being certified to the National Standard), they can export to these countries.

Meeting import market requirements

Exports to a number of important export markets, notably the USA, are made possible by Australian producers becoming certified to that market's organic standard. Some markets (for example, Singapore) may recognise certification to the Australian National Standard, or certification by a particular certifying organisation, as sufficient to import and sell a product as organic. Authorities in these countries are, in effect, reliant on the National Standard.

Equivalency arrangements

Australia has negotiated equivalency arrangements with several trading partners. Under these arrangements, certification to the National Standard is deemed to also meet the standard of the importing market. In the absence of this arrangement, Australian producers would need to meet both the National Standard and importing market requirements. This gives Australian producers an

advantage over producers from countries without equivalency arrangements, who must separately obtain approval to the standard of the importing market.

Australia currently has equivalence arrangements with: the European Union (plant based products), Switzerland (plant-based products), Japan (plant-based products) and Taiwan (all products – plant-based, animal-based (including livestock, fresh and processed, but not offal and bones)). Negotiations are ongoing with a number of markets, but they can be drawn out processes.

2 The purpose of regulation

The purpose of Australia's current regulatory regime for organic exports is to ensure that all products that are exported meet a certain minimum standard. The underlying objective is to safeguard the reputation of Australian organic products in export markets.

The current regulations are largely successful in this regard. It is possible, however, that they are imposing unnecessary costs on Australian businesses. Certification to the National Standard is necessary to export organic products from Australia, but it is not sufficient to obtain access in all markets. Over half of Australia's organic produce (by volume) goes to the USA, which does not recognise the National Standard as equivalent to its own US Department of Agriculture (USDA) National Organic Program (NOP).

The potential benefits of any modification to the current regulatory regime (including reduced certification costs) will be weighed against the potential costs of that modification (which could include, for example, reputational damage or increased difficulty in negotiating equivalency arrangements).

3 Regulatory options being considered

In order to assess the Organic Orders and make recommendations to DAWR on the net benefit of changing Australia’s approach to regulation and standards applied to the export of organic products, this Review will assess four regulatory options for their costs and benefits including:

- Option 1: Keeping the status quo
- Option 2: Selected recognition of other countries’ standards
- Option 3: Removing certification requirements for organic exports
- Option 4: Replacing the National Standard with AS 6000-2009

These options were prepared by Deloitte and were tested and refined with the DAWR and the Australian Organics Industry Working Group through consultation. Each option is described in more detail below.

Concerns have been expressed by some industry members that regulation of the domestic organic market should be increased, but the regulation of the domestic market is not within the scope of this Review.

3.1 Option 1: The status quo

As in all regulatory analyses, the status quo is an option that must be considered. Under the status quo, all products exported and marketed as organic must be certified to the National Standard (via certification by one of the third party certifiers recognised by the DAWR). The current regulation of organic exports is described in more detail in section 2.2.

3.2 Option 2: Selected recognition of other countries’ standards

Under Option 2, all products exported and marketed as organic would be certified to the National Standard or another standard recognised by the Australian Government.

The regulation of organic exports would be modified so that, instead of requiring all products exported and marketed as organic to be certified to the National Standard, the regulations would also allow products to be exported and marketed as organic if they meet certain other defined standards.

For example, the regulations could be modified so that certification to the USDA NOP is recognised alongside the National Standard. This would mean that products could be exported to markets recognising the USDA NOP, with no requirement to also be certified to the National Standard. Note that this would

not, necessarily, immediately facilitate exports to jurisdictions that have negotiated equivalence between their own organic standards and USDA NOP (and likewise for other standards in operation around the world). For example, the equivalence negotiated between the USDA NOP and the EU Organic Program is limited to organic products of USA origin.

This change would, however, potentially reduce the regulatory burden experienced by Australian businesses by not requiring them to hold multiple organic certifications to access any given market. Australian businesses would, of course, be free to hold certification to the National Standard, but it would not be mandatory for export to all foreign markets.

The precise set of other standards that would be recognised under this option are not known at this stage. Maintaining Australian products' reputation would be a key criterion in choosing which standards to recognise.

3.3 Option 3: No certification requirements for organic exports

Option 3 involves a complete relaxation of regulation of the export and marketing of products as Australian and organic. Under this option, the only constraint to the export and marketing of products as organic would be the need to meet importing requirements, including organic certification requirements, where they exist. This would reduce the regulatory costs on Australian businesses, but also involve losing legislative control of the standards under which products exported and marketed as organic are produced.

3.4 Option 4: Replace the National Standard with AS 6000-2009

This option aims to address the problem of confusion in the market due to the co-existence of multiple certification systems. This would not address the issue of regulation in the domestic market, but would align the standards that products must meet whether exported or certified to AS 6000-2009. Though the standards are similar (AS 6000-2009 was modelled off the National Standard), there are advantages and disadvantages to the ongoing use (and modification) of each. These factors would be considered.

4 Next steps

The public consultation phase for the organic export orders is operating from 22 December 2017 to 23 February 2018. You can participate in this process by registering at <https://haveyoursay.agriculture.gov.au/organic-orders-review>. This will allow you to participate in a survey, make a submission, and indicate whether you would like to be contacted to share your views further with Deloitte.

Deloitte will supply a draft Organic Orders Review to the DAWR on 23 March 2018. This will include analysis of the costs and benefits of each of the four regulatory options.

The final Organic Orders Review will be released after July 2018.

Appendix A: Organic Orders Review Terms of Reference

As part of a wider initiative to strengthen agricultural exports and market access, the Department of Agriculture and Water Resources is improving the current agricultural export legislative framework.

Improvements to the export legislative framework will make it easier to understand, administer and use, and to safeguard Australia's reputation as a reliable, high-quality source of exports for our trading partners.

This involves consolidating existing export-related provisions into a new agricultural export legislative framework made up of an Export Control Bill (the Bill) and Export Control Rules (the Rules). This will replace the existing Export Control Act 1982 and legislative instruments (such as Orders and Regulations).

- The Export Control Bill — will set out the overarching principles for the operation of the export control system. It will incorporate the parts of existing export legislation and the export control orders that are common across commodities.
- The Export Control Rules — will be based on the current Export Control Orders and will outline operational requirements that agricultural exporters must meet—such as where and how products are to be prepared, and when permits and certificates are necessary to export from Australia.

One of the Orders that the department is looking at is the Export Control Orders (Organic Produce Certification) Orders (Organic Orders) (Organic Orders). The purpose of a separate review of the Organics Orders is to examine ways to improve access for Australian organic products into premium markets, and increase the competitiveness of the Australian organics sector.

We have chosen an independent consultant, Deloitte, to assess the Organic Orders and make recommendations to the department on the net benefit of changing Australia's approach to regulation and standards applied to the export of organic products that meets the requirements of the Australian Government. The review will determine whether the export of organic products should continue to be regulated and, if so, to what standard (National Standard or AS6000).

The department will remain engaged in the project at all stages to ensure that Deloitte is providing advice which is fit for purpose to enable the Minister for Agriculture and Water Resources to make a decision on the future of the Organic Orders.

The Organics Orders review will inform the drafting of the Export Control Rules. Work on the Rules will be undertaken in 2018 and 2019.