Filière biologique du Québec

Analysis and Recommendations on the Proposed Organic Products Regulations

Document presented to

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Canadian Food Inspection Agency

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By

La Filière biologique du Québec

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1. INTRODUCTION OF LA FILIÈRE BIOLOGIQUE DU QUÉBEC

The mission of the Filière biologique du Québec is to promote the development and expansion of the Quebec organic food sector by the way of dialogue among all stakeholders and coordinated actions.

The presentation of this document is part of the Filière's mandate that is to represent the Quebec organic sector's interests. The Filière hopes that its unique expertise on regulatory affairs in the organic sector which has been developed in partnership with the government, the industry and consumers representatives will be of use in the implementation of the Canadian Organic Regulations.

2. MANDATE GIVEN TO THE FILIÈRE BY THE INDUSTRY

The mandate given to the Filière comes directly from Axis 2 of the Strategic Plan of the Organic Food Sector for 2004-2009. It aims at reaching Strategic Target 4 which reads as follows:

To help Quebec organic companies access the export markets through Canadian regulations that comply better with international requirements, by lobbying the Canadian government in order to obtain a regulatory environment in line with the provincial regulations, and by supporting, whenever appropriate, the work of the Canadian Organic Coalition, which is calling for mandatory Canadian regulations for the organic food sector.

It must be underlined that without a successful implementation of an organic certification system in Canada, or its recognition in January 2007 by the EU and Japan, the trade activities of many company could be affected both on the domestic and export markets.

3. ISSUES RELATED TO THE DEVELOPMENT OF THE SECTOR

In light of the expertise developed with the organic designation in the past two decades, and more specifically since the year 2000, the Filière biologique identifies 3 main issues that should guide the modifications that need to be made to the proposed Organic Products Regulations. These issues are related to the recognition of the organic designation by consumers, to the development of the industry and to the reputation of the organic designation.

Sections 4 and 5 provide a summary and conclusion of the analysis that follows (see pages 18 and next).

3.1 Issue related to the recognition of the organic designation

3.1.1 Context

The regulatory framework is essential to the development of organic agriculture since its future depends, on the one hand, on consumer choices and, on the other hand, on the ability of the different stakeholders to maintain a system in which consumers have confidence. In this regard, regulations become the cornerstone of the development of the organic sector.

More that in any other sector, the emergence of companies in the organic sector is in direct reaction to consumers' demand. Since there is no Canadian policy to encourage the development of the organic sector, the added value of organic products is entirely supported by the consumers.

Therefore, it becomes critical that the integrity of the organic products is guaranteed to the consumers in a simple and efficient way.

3.1.2 Issue related to the Organic Products Regulations

Regulations must provide recognition and protection of the authenticity and added value of organic products, and a regulatory framework that is easy to understand and similar to what is in place in other countries.

3.1.3 Objective of the Québec Organic Sector

In accordance with the sector's vision for the future, the Quebec organic sector aims to increase to 80%, the degree of consumer confidence in the organic designation in Quebec by 2009. In 2002, 51 % of Quebecers trusted the organic designation, according to a Léger Marketing poll done with 1500 Canadian adults. It was twice as much the percentage found in the rest of Canada.

3.1.4 Proposed Organic Products Regulations Analysis

Definition of organic "product" and interpretation.

The Filière believes that the definition of "organic products" may lead to misinterpretation.

According to the Canadian Organic Standards (and most other international standards), there are 2 categories of products that are subject to organic certification:

- Products that contain at least 95% organic ingredients and that may be labelled "organic products";
- Products that contain between 70 and 95 % organic ingredients and that cannot be labelled "organic products". They can only use a "*Made with organic ingredients*" statement related to the organic ingredients. Still, these products are subject to the same certification process used for products belonging to the 95 % + organic ingredients category.

It is unclear whether the definition will be interpreted as including both categories of products or not. In any case, both interpretations would cause some problems depending on what section of the regulation we analyse.

The definition of "organic products" needs to be reviewed.

Organic products, subsection 2.(1)

Products containing 70-95% organic ingredients

Subsection 2.(1) refers to the definition of "organic products" in section 1, and this definition might be interpreted as including products containing between 70-95% organic ingredients.

We believe that this section allows an operator to use the designation "Canada Organic" and the logo for products containing between 70-95% organic ingredients.

In our opinion, both the definition of "organic products" and this subsection must be reviewed. It is clear that the organic designation and the logo can only be used for products containing more than 95% organic ingredients which would be similar to EEC 2092/91, section 10 and NOP, section 205.311 regulations).

Organic products, subsection 2.(1)

Imported products using the "Canada Organic" designation or logo

Since subsection 2.(1) refers to the definition of "organic products" in section 1, and considering that this definition includes imported products, we believe that this section allows imported products to display the "Canada Organic" designation and logo.

However, in light of some answers and interpretations by various participants, we understand that the intent is that only products that qualify as being from Canada (in reference to other labelling rules) will be allowed to use the "Canada Organic" designation and logo.

In our opinion, subsection 2.(1) does not support this intention and therefore must be reviewed.

Organic products, subsection 2.(2)

Since subsection 2.(2) refers to the definition of "organic products" in section 1, and considering that this definition is imprecise and incomplete, we believe that it will be very difficult to prosecute for some types of infraction. Here is a probable case to illustrate this:

A processor sells a blueberry pie that contains several ingredients. One ingredient (flour) is organic. The other ingredients are not. The % of flour in the product is more or less than 70% (it probably doesn't matter for the outcome). On the principal display of the packaging, we read "Blueberry Pie, Made with Organic Flour". The product is not certified.

CFIA receives a complaint and contacts the processor. He/she has read the regulation and believes that he/she can win the case. CFIA must go ahead with the legal procedures based on subsection 2.(2).

Before the court, the processor argues that the product is not labelled as organic. He/she only makes the claim that the flour is organic with invoices supporting the claim. The processor adds that no section in the regulation prohibits the use of the organic claim associated to a certified organic ingredient. Will the judge agree?

We believe that the regulation must be clear enough to deal with cases like this one that are bound to happen. The definition of “organic products” and subsection 2.(2) must be reviewed to get better control of the use of the organic designation.

Here is an excerpt of the European regulation for guidance (EEC 2092/91, Article 1, 1):

This Regulation shall apply to the following products, where such products bear, or are intended to bear, indications referring to the organic production method.

3.1.5 Results of the Analysis

The organic designation is only protected by a trademark or a certification mark under the proposed Regulations. The main objective of the proposed regulation is to give consumers an improved protection against false claims. We believe that, as worded, Section 2 does not give that protection.

Indeed, Section 2 of the proposed Regulations would only protect the designations “Canada Organic” and “Biologique Canada”, and not the generic terms “organic” and “biologique”. This level of protection is not in accordance with the directives of the Codex Alimentarius Commission regarding production, processing, labelling and trade of food from organic agriculture, whereas these directives act as guidelines for the international harmonization of organic policies. We want to underline that this is not in accordance with what is currently in place in Quebec either.

Moreover, we believe that an operator could use the designation “Canada Organic” and the logo for products containing 70-95% organic ingredients, which is contrary to international standards.

Therefore, we ask that the proposed Regulations be modified to explicitly cover the generic terms “biologique”, “organic”, “écologique” and “ecological” in order to facilitate the monitoring and control of the designation.

We consider that the Canadian Standards only apply to certified products, and that the proposed Regulations must also control non-certified products and all fraudulent uses of the organic designation.

As for the review of the definition of “organic product”, the Filière agrees with any of the following proposals from the Conseil des appellations agroalimentaires du Québec:

Replace the concept of “organic product” by the following one: “*product bearing indications referring to organic production methods*”, which complies with *Codex Alimentarius;* and withdraw the “as organic” in “certified as organic”.

Or

Replace the definition of “organic product” with this one: “*agricultural product intended to be sold, labelled or presented with indications referring to the organic production method and which has been certified in conformity to the present Regulations”.*

In addition to these modifications, the *Organic Products Regulations* must absolutely ensure that the control of the organic designation is equivalent to what exists in other countries, so that consumers don't get confused. Consumer's confidence in the organic designation is essential to the growth of the sector. We must absolutely avoid creating distrust of the Canadian organic products, simply because they are managed differently of what is generally recognized and practised in the organic sector anywhere else in the world.

3.2 Issue related to the development of the industry

3.2.1 Context

Thanks to the work of the pioneers of the Quebec organic sector, the province has developed an expertise that can support a significant development of the industry. These pioneers have gradually introduced their organic products in the natural and health food sections of specialized retailers. These retailers have expanded over the years and are taking advantage of the growing demand for organic products in Quebec.

3.2.2 Issue related to the proposed Regulations

The proposed Organic Products Regulations must provide and organized and cost effective framework to the small and medium sized production and processing companies that will support the specificity of organic products.

The proposed Organic Product Regulation must not create unfair competition among provinces.

3.2.3 Objectives of Québec Organic Sector

In accordance with the sector's vision for the future, the following major objectives for growth were set. Here are the targets for the development of the industry to be met by the year 2009:

- triple the number of organic farms and transitional farms in Québec;
- increase fivefold the value of Québec organic processed food products;
- increase fivefold the value of Québec organic food products sold in domestic markets;
- triple the value of exports of Québec organic products.

To achieve its objectives, the industry needs sound regulations that will allow the sector to develop and be able to compete with foreign companies.

3.2.4 Analysis of the proposed Organic Products Regulations

Remark on products not presently included in the definition of agricultural products

The definition of agricultural product reads as follows:

(*a*) an animal, a plant or an animal or plant product,

(*b*) a product, including any food or drink, wholly or partly derived from an animal or a plant, or

(*c*) a product prescribed for the purposes of this Act;

According to this interpretation, the Filière is concerned that the regulation does not seem to apply to products from aquaculture, natural health products, body care products, and products made with agricultural inputs (e.g. clothing).

We ask that CFIA provides an exact list of categories of products that would not exactly fit the definition of "agricultural product" provided in the Act in order to clarify this situation as soon as possible.

We also ask that products that have been certified organic under the Quebec law maintain their status, even if they don't meet the definition of «agricultural product» to avoid major trade problems.

The certification of these products must be recognized. It would be unacceptable that the proposed Organic Products Regulations would be implemented without regard to this segment of the industry.

Update of the Standards

CFIA has confirmed that it is the industry's responsibility to maintain and update the Organic Standards, and it does intend to take any responsibility in this regard. CFIA's role would be limited to making sure that there is no contradiction among the Organic Standards and other acts and regulations that CFIA administers and enforces.

The Filière would like to indicate to CFIA that many important aspects of the Standards have been put in the Future Work List (FWL). Therefore, the current Standards are incomplete, and it would be difficult to use it as is on the Québec territory.

Moreover, The Filière thinks that the Canadian organization responsible for updating the Standards has shown, in the past, that it is unable to fulfill that role. Indeed, after four consultations, the Filière thinks that the Standards are still deficient in many aspects. Furthermore, the Canadian Organic Regulatory Committee (CORC) does not have the required structure to take on this essential role, in regard to the continuous adaptation of the Standards to new market requirements and new business practices. The Filière is very concerned about this issue and asks CFIA and Agriculture and Agri Food Canada (AAFC) to resolve the matter so the industry can work with fully operational Standards that will be updated on a timely basis.

Administrative costs of the proposed Regulations and the Standards

The Filière considers that the administrative costs of the proposed Regulations are likely to be prohibitive if the Regulations and associated procedures are not simplified. The Filière also believes that the technical feasibility and the financial impact of these Regulations on businesses should be evaluated through simulation. It is important that all parties can take well-informed decisions that have to be based on both short-term and long-term scenarios. If the regulations are not affordable, this could restrict the access of new businesses in the Canadian organic sector.

Even if CFIA is planning to cover the administrative costs during the first two years, the situation remains very worrying for the companies that must plan for the longer term, and we deeply regret that no sufficient detailed information was provided to this central issue.

With regard to the companies located in Québec, the Filière believes that the costs of the Regulations must be fair among all organic companies in every province. The regulatory framework must not create a competitive advantage for some in the industry.

Administrative burdens

As previously stated by the Conseil des appellations agroalimentaires du Québec (CAAQ), the system, as described in the proposed Organic Products Regulations, consists of three levels of control: the «certification body», the «accreditation body», and the Agency. Although, all parties will participate in the functioning of the system, CFIA keeps the ultimate power to give, suspend or withdraw product conformity certificates, as well as to accredit certification bodies.

We note that many activities are delegated to the accreditation and certification bodies without the required authority to fully assume their responsibilities. CFIA may step in at any time and at any level and, therefore, keeps a tight control on these bodies. This duplication at all levels imposes numerous additional obligations and administrative burdens to the industry.

The duplication and administrative burdens identified in the Regulations are confirmed in the Quality Manual, and we fear that this will prevent many companies from accessing the industry. Moreover, in Québec, the risks of duplication are even greater due to the current regulatory framework. The Filière wants to stress that administrative burdens have already prevented companies from accessing the industry, and we must not make things worse.

Therefore, we recommend that the Regulations be modified in order to simplify as much as possible the administrative procedures. We also recommend that any new requirement be subject to a cost-benefit analysis before being implemented.

Import and export

Use of the expression «organic product»

Sections 9.(1), (2), (3); 10 and 12 refer to the definition of “organic products” in section 1, and this definition might be interpreted as including products containing between 70-95% organic ingredients.

When a certified product contains between 70-95% organic ingredients, it cannot be certified as an “organic product” nor should it be identified as such on a certificate.

The expression “organic product” should not be used in the regulation for products containing between 70-95% organic ingredients. Such use is in contradiction with established practices in the organic certification industry where the term “organic product” is reserved for products that contain more than 95% organic ingredients.

As indicated in point 3.1, the definition and use of the term “organic products” need to be reviewed.

Subsection 9.(1) (2) (3)

Following the October 11, 2006 meeting with CFIA representatives, we understood that this subsection refers to a certificate for exportation, and that it would not be mandatory (only if a foreign country requests it for example). CFIA would develop a certificate to be used by certification bodies. Any costs for delivering the certificate would be born by the industry (e.g. certified operator, exporter).

Currently some exporters are under the control of a certifier and some exporters are not (they sell certified products from other companies). In the first case, we understand that this certificate for exportation would be in addition to their current organic certificate. To avoid confusion, we recommend that the expression “certificate for exportation” be used.

If the intention is not to make this process mandatory, therefore the term “*shall”* should not be used in this subsection. We also believe that this process should not be mandatory.

We question the usefulness of this section. We are afraid that if it is not mandatory, this will create confusion. If it remains mandatory, we will be imposing additional costly documentation to Canadian exporters that already have to fill out documents required by the foreign countries that control their importations.

Section 10

We understand that this section will be completely reviewed, therefore we will not comment on the submitted text. However, here are two issues that the regulation must address:

- Imported products must be compliant to the Canadian Standards, or a Standard equivalent to the Canadian Standards.

- The certification process in foreign countries must be controlled by a competent authority or meet international standards. Basic requirements to be met by foreign certifiers must be defined in the regulation.

We would like to see prescriptions on minimal requirements that a foreign attestation must meet (operator's address, name of products, trade mark, identification of certifier, and info prescribed in ISO 65).

Section 12 – Required Importation Documents

We understand from section 12 that the attestation described in section 10 must be obtained each time products are shipped to Canada. We acknowledge that this practice is currently done in the industry. However, we prefer a regulation that would impose less paperwork. We recommend that the importer gets an updated certificate before the first shipment and then once a year.

We also recommend that importers be somehow listed at CFIA. For example, in Europe, importers get a licence from local authorities and it is renewed annually. During the year, it may be amended for new products or suppliers.

Section 15(a) Labelling

Accreditation number

The requirement of having an accreditation number on the label would be costly for the operators and would not provide any significant improvement to the inspection program. We strongly recommend withdrawing this requirement from this subsection.

Section 15(b) Labelling

% of each ingredient on the label

In light of some reports, we understand that the "% of each ingredient" requirement will be withdrawn, and we strongly support this.

Regulations and Standards on intra provincial markets

With the proposed Regulations, there will not be a fair regulatory environment and common Standards in most intra-provincial markets. Organic products certified in accordance with the proposed Regulations will have to compete with similar non-certified products. Such competition would be unfair to Quebec companies that sell on these non regulated provincial markets.

So far, Québec is the only jurisdiction in Canada where certification to harmonized organic Standards is mandatory. Consequently, the Québec organic companies of Québec have had to compete with companies from other provinces that were ruled by voluntary measures. This situation has allowed the Filière biologique du Québec to witness the negative impacts on the markets of such situation. Indeed, it was difficult for consumers to differentiate Quebec

organic products from other products subjected to voluntary measures. This situation created confusion and worked against the full recognition of the organic designation.

In light of this experience, we ask the federal government to develop memorandum of understandings with all the provinces as to ensure the full implementation of federal Regulations everywhere in Canada in order to avoid unfair competition among Canadian companies.

Transition period

The Filière was surprised to see that there is no transition period in the proposed Regulations although such a plan is essential for an orderly implementation. Considering the sound and stable regulatory environment that currently prevails in the organic industry in Québec, the Filière would like to inform CFIA that it will ask the representatives from the Québec government to get a transition period where the certification of organic products under the Québec act will be considered equivalent to certification under the federal Regulations. This transition period will have to be in effect as long as CFIA and the Québec government do not reach an agreement that will guarantee a fair treatment to the Québec companies that currently benefit from a stable regulatory environment.

3.2.5 Results of the Analysis

The analysis of the proposed Regulations indicates that the regulatory environment that is put forward do not encourage the development of the organic industry in Canada.

Firstly, the Filière believes that the ambiguity regarding the products covered by the proposed Regulations, the updating of the Standards and the real administrative costs of the system, will limit the access to the organic sector by the companies that need clear information to orientate their strategic planning.

Also, the Filière believes that the lack of delegation by CFIA at the accreditation and certification levels may lead to duplication and administrative burdens and create confusion.

In section 10 that refers to imports, there is no mention that a product must be compliant to the Canadian or equivalent Standards. This section of the Regulations is unfair to the Canadian organic industry.

As far as exports are concerned, the proposed Regulations will not make international trade easier considering the lack of harmonization between the Canadian Regulations and the international standards.

The development of the industry is also threatened by the proposed Regulations that do not ensure an even regulatory environment in all provinces. This lack of harmonization will create an unfair competitive environment.

Finally, the Filière was surprised to see that there is no transition period in the proposed Regulations although such a plan is essential for an orderly implementation and the protection of the reputation of the organic designation.

In summary, the Filière asks for a more streamlined regulatory environment that will support and foster the competitiveness and growth of the organic industry. Considering that, in a near future, the organic designation will have to compete with several other designations; the organic industry needs a regulatory environment that will be competitive at the administration and financial levels.

3.3 Issue related to the reputation of the organic designation

3.3.1 Context

On the international scene, the Codex Alimentarius Commission has adopted the *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods.* These guidelines set the minimum standards that must be met in most countries of the world, when a food product is sold as organically produced.

Between fifty and sixty countries have regulated the certification of organically produced foods or are in the process of adopting such regulations. In December 2002, the United States adopted the National Organic Program and made organic certification mandatory. In the EU, each country's organic standards must meet the basic EU guidelines, and organic certification is mandatory. In Asia, there were few regulations in place, but the situation is changing rapidly. In Japan, following the obligation to meet new organic national standards, the size of the organic industry shrunk from $3 billion US in 2000 to $250 million US in 2001. This levelling of the Japanese standards to international standards allowed to discriminate between organic an non-organic food. As for China and India, they are working on regulations for the organic food sector.

In Quebec, the *Loi sur les appellations réservées* is the regulatory tool for the recognition and protection of the reserved food designations. The organic designation was reserved in February 2000. Within this regulatory framework, the *Conseil d'accréditation du Québec* (CAQ)'s role was to accredit the certification bodies, to make recommendations to the Minister whether a designation should be reserved, and to monitor their use.

Quebec has put in place a regulatory framework that is ahead of what exists in other provinces. The CAQ has adopted the Quebec Organic Standards that are, at least, equivalent to the Codex Alimentarius Commission. The CAQ reviews and updates these Standards each year. It accredits the certification bodies according to its requirements and the ISO 65 guidelines on certification.

The CAQ's accreditation gives the certification bodies the right to grant in Quebec certificates of organic conformity to companies that produce, process, or package agricultural and food products that will be sold with the organic designation.

3.3.2 Issue related to the proposed Regulation

The proposed Organic Products Regulations should further the recognition and credibility of the organic designation in Quebec and in Canada

3.3.3 Analysis of the proposed Regulations.

The added value of the organic products depends on the credibility and reputation of the organic designation in the marketplace. The reputation of the organic designation relies on an efficient certification process. Therefore, the monitoring of the use of the organic designation is critical and requires competence and expertise in that field.

The proposed Organic Products regulations are problematic to the preservation of the reputation of the organic designation. The following analysis of the main sections on accreditation and certification highlights once again the lack of harmonization with international general practices.

Part 1 Analysis of the sections on accreditation

Sections 1 and 5, definition of <u>accreditation body</u> and <u>organisme d'accréditation</u>

Section 1 states that the tasks of an "accreditation body" will be to assess, recommend and monitor the accreditation of certification bodies, and section 5 states that the Agency accredits the certification body.

It does not correspond to the ISO terminology that specifies that an accreditation body both assesses and accredits.

In light of this and to avoid misinterpretation about the role granted to these bodies regarding accreditation, we recommend that the term "accreditation body" be replaced by "evaluation or assessment body" and "organisme d'accréditation" be replaced by "organisme d'évaluation".

Sections 1, 4, 5, 6 and 7 – accreditation vs agrément

Given the previous statement, we question the use of the word "accreditation" in these sections. We recommend that the English word "accreditation" be replaced by the word "approval" in order to avoid any confusion. Moreover the term "approval" and its equivalent in French ("agrément") must be defined.

Section 1 (Interpretation) – number of accreditation bodies and monitoring

In reference to section 1 and in light of some answers provided by CFIA, we understand that the number of "accreditation bodies" that may enter into an agreement with the Agency will only be limited by the ability of the bodies to meet CFIA's requirements, the size of the market and competition. We also understand that CFIA cannot require a body having entered into an agreement with the Agency to have an office in Canada (discriminatory measure). However, India, China and Japan require that accreditation and certification bodies have an office in the country where they operate.

Although it is not in writing in the regulation, we also understand that CFIA intends to delegate the assessment of the certification bodies' activities including their monitoring as much as possible to the bodies having entered into an agreement with the Agency.

We believe that it is essential for an "accreditation body" to have at least one office in Canada to conduct meaningful monitoring activities. Therefore, we still question whether the discriminatory argument really applies in this regulation considering the surveillance role the "accreditation bodies" will have to play.

We recommend that the requirements related to the monitoring of the certification bodies be described with more details in the regulation, and that they ensure an adequate and effective level of surveillance.

Section 4 – Application for Accreditation

We understand that an applicant (certifying body) would directly apply for accreditation to a body having entered into an agreement with CFIA. Considering that the Agency ultimately accredits the applicants (section 5), we believe that the Agency should be made aware of the applications that are sent to the bodies that have entered into agreement with CFIA. We recommend that the regulation prescribes that the Agency gets a copy of any application sent to an "accreditation body".

We also recommend that a section be added before section 4 stating that the Agency will maintain and publish a list of the "bodies" that have entered into an agreement with the Agency.

The regulation does not specify the type of agreement the certification body will have to enter into and with who? With the Agency? The "accreditation body"? Both? We recommend that the regulation provides this information.

Section 4 – certification body shall undergo an evaluation approved by the Agency

In light of some answers, we understand that the requirements for the evaluation of the certification bodies are in the Quality Manual.

We believe that it would be better to have more details on the evaluation criteria in the regulation that would legally support CFIA's decisions on accreditation.

We recommend that some basic requirements for the evaluation be defined in the regulation (see NOP and EU regulations for guidance).

Section 4 – testing of knowledge of the principles and practices respecting organic certification

The regulation indicates that knowledge will be tested. The regulation should also indicate that expertise will be evaluated. Here is an excerpt of the Organic Foods Production Act of 1990, (SEC. 2115) for guidance:

(b)REQUIREMENTS. – To be accredited as a certifying agent under this section, a governing State official or private person shall –

> *(2) have sufficient expertise in organic farming and handling techniques as determined by the Secretary;*

Section 6 and 7 – Motives for Refusal, Suspension and Cancellation of Accreditation

In light of some answers, we understand that the motives for the refusal, suspension and cancellation of an accreditation are in the Quality Manual.

We believe that in the case a certification body would dispute the decision of the Agency, it would be better to have more details in the regulation about the requirements for accreditation.

Section 7 – Suspension and Cancellation of Accreditation

Section 7 states that the Agency may suspend the accreditation of a certification body following the recommendation of the "accreditation body" or based on the Agency's own decision. We recommend that the agreement between the "certification body" and the Agency as defined in Section 1 be meaningful and that any suspension or cancellation decision be always done in collaboration with the "accreditation body".

We recommend that the regulation allows "accreditation body" on behalf of the Agency to suspend or cancel a certification.

Subsection 7.3

There is no indication in subsection 7.3 on who verifies if corrective measures have been implemented. This subsection needs clarification.

Section 7– Suspension and Cancellation of Accreditation and implementation

We believe that the regulations should be more explicit on what can and can't be done following a suspension or cancellation of an accreditation. Here is a list of questions that illustrate what needs to be covered in the regulation:

In the case of a suspension, can the certification body still issue organic certificates? If not, what happens to the operators certified by this body if their current certificate is about to expire?

In the case of a suspension or cancellation, what will the operators have to do? Will their organic certificates become invalid immediately? Will they be allowed a minimum delay to find another certifier? How long will this delay be?

We recommend that basis guidelines that would manage the transition period be included in the regulation.

Part 2- Analysis of the sections on certification

When considering this interpretation, we are concerned that the requirement for certification in this regulation will not apply to products from aquaculture, natural health products, body care products, and products made with agricultural inputs (e.g. clothing). These categories of product do not exactly fit the definition of "agricultural product" provided in the Act and are not explicitly listed in the regulation.

Subsection 8(2)(b) – Agricultural product containing agricultural product

We recommend that the word "ingredient" be defined and used where appropriate in the regulation.

Subsection 8(2)(d) – … ensure that those methods comply at all times …

We believe that the expression "*at all times*" may potentially create some confusion under some circumstances. Sometimes, there are implementation periods after the adoption of updated standards. We consider that this expression is not essential and we recommend removing it.

Section 11 – Procedure for Organic Certification and Certificate

We recommend the following to replace the current title: *Procedure for Organic Certification and Organic Compliance Certificate.* We recommend defining the term "*Certificate*" in the regulation.

Section 8(1) – Applications for certification and notification to CFIA

There is no section in the regulation that ensures CFIA will get, on a regular basis, a complete list of operators and certified products currently on the market. We recommend that a section covering the collection of data be included in the regulation.

This can be done in the regulation in the detail, and here is an excerpt of the EU regulation for guidance (Article 8):

1. Any operator who produces, prepares or imports from a third country products as specified in Article 1 for the purpose of marketing them shall:

(a) notify this activity to the competent authority of the Member State in which the activity is carried out; such notification shall include the information specified in Annex IV;

…

2. Member States shall designate an authority or body for the reception of notifications. Member States may provide for the communication of any additional information which they consider to be necessary for effective supervision of the operators concerned.

3. The competent authority shall ensure that an updated list containing the names and addresses of operators subject to the inspection system is made available to interested parties.

Subsection 11(1)(a) – Procedure for Organic Certification and Certificate

A product cannot be certified as organic if it contains less than 95% organic ingredients.

This subsection needs to be reviewed along with the interpretation of "organic product" (section 1 and section 2.

Subsection 11(2) – Organic Certification in effect for one year

We recommend the review of this subsection keeping in mind that organic certification must be renewed on an annual basis, but operators and certifiers also need some flexibility.

The wording implies that certification bodies would have to audit their clients every year, one month before the date of the last visit. Consequently, after a few years, operators would have to be audited off-season, which is impossible. We suggest that a reference be made to an annual enterprise control by certification bodies instead.

We also recommend that the subsection takes into account that certification can be suspended or cancelled before it expires.

Section 13 – Suspension and Cancellation of the organic certification by the Agency

According to section 13, the agency may suspend or cancel the organic certification. Under normal circumstances (i.e. when a certification body is duly accredited), the suspension or cancellation is usually done only by the certification body. We recommend that CFIA validates whether the European Union might see a conflict of interest that might adversely hurt CFIA's application to the EU third country list.

Section 13 – Suspension and Cancellation

We are concerned that the wording of this section may cause some problems because it implies that organic certification is always suspended or cancelled for all the products covered by the organic certification.

It may happen that certification is suspended or cancelled for a limited number of products, and we recommend the review of this subsection accordingly.

We also recommend that this subsection makes a clear distinction among different potential scenarios:

- Organic certification is suspended or cancelled because of cessation of production.
- Organic certification is suspended or cancelled because of unresolved non-compliances.
- Organic certification is suspended or cancelled because of fraud.

In the first scenario, we believe that an applicant should be eligible for certification if a new application is made.

In the third scenario, we believe that a person should not be eligible for certification for a period to be determined. In the United States, it is a period of 5 years (Organic Foods Production Act of 1990, SEC.2120 (c) (1) (C).

In the second scenario, we will forward our recommendation after further consultation. As guidance, Europe imposes no delays and there is a period of 5 years in the United States and Japan.

3.3.4 Results of the Analysis

Certification

Usually, a certification process includes an accreditor, a certification body and a company that seeks certification for its products, and each actor plays a definite role in the certification process. The fact that CFIA reserves the right to intervene at the certification level may disrupt the widely recognized functioning of the system. This will inevitably cause the process to be dysfunctional and bring about additional costs, and may weaken the certification process and harm the reputation of the organic designation.

Accreditation

Currently, five accreditation bodies, three based in Canada and two abroad, plus an American authority (USDA) assess the certification bodies that operate in Canada. These bodies accredit according to their specific set of requirements. There are no criteria in the proposed Regulations that would restrict the number of accreditation bodies that CFIA may approve to operate in Canada. Besides, these various accreditation bodies may not operate uniformly. Indeed, we could end up with accreditation bodies that could belong to the six following different categories:

- Accreditation bodies designated the federal government;
- Accreditation bodies designated by provincial governments;
- Accreditation bodies designated by foreign governments;
- Foreign private accreditation bodies based outside of Canada;

- Competent authorities that are designated by foreign governments and that act as accreditation bodies;
- Private verification firms based in Canada or abroad.

The Filière wants to underline the fact that, while in many countries, accreditation and certification bodies benefit from preferential treatment, the proposed Regulations do not offer any. Canada may become the only country in the world that does not offer any protection from international competition to its accreditation and certification bodies that operate in a very limited marketplace.

We believe that the monitoring of the operators and certification bodies will be remotely done by various accreditation bodies with different evaluation criteria. We fear the negative impact this will have on the reputation of the organic designation.

This approach may dilute the expertise of Canadian accreditation bodies to the advantage of foreign accreditation bodies that already have a clientele of certification agencies, which give them a competitive edge.

Finally, the proposed Organic Products Regulations do not put much emphasis on how CFIA evaluates the skills and expertise of the persons in charge of accreditation and certification. Yet, these evaluation criteria are essential to any efficient certification process on which is based the reputation of the organic designation.

4. SUMMARY OF THE ANALYSIS OF THE PROPOSED REGULATIONS

Given the impact that the proposed Organic Products Regulations will have on the future of the Québec and Canadian organic sector, la Filière Biologique du Québec has put a lot of time and effort to evaluate it. We have thoroughly analysed the proposed Regulations and discussed its legal implications with CFIA representatives and the Ministry of Agriculture, Fisheries and Food of Québec (MAPAQ). The Filière has also hired a consultant with a strong expertise in the organic sector. The evaluation and comments of the Filière on the proposed Regulations are part of a serious and rigorous process and the Filière sincerely wishes that its comments will be received with great attention.

The Filière biologique du Québec presents its analysis of the Regulations according to three major issues that should be addressed when the Regulations will be reviewed. These issues are related to the recognition of the organic designation by the consumers, the development of the organic industry, and the reputation of the organic designation.

4.1 Recognition of the organic designation

The Filière considers that the proposed regulations have not taken into consideration the numerous comments made to CFIA representatives in regard to its harmonization with the regulations in Québec and with the international standards. The Filière has some difficulties to understand that the proposed Regulations do not take into consideration these two fundamental aspects that are crucial for the development of the sector.

A good example of this lack of harmonization is the chosen approach in the proposed Regulations to protect the organic designation. In section 2, we understand that only the designations “Canada Organic” and “Biologique Canada” will be protected by the Regulations, and not the generic terms “organic” and “biologique”. This level of protection is insufficient and contrary to the *Codex Alimentarius* in regard to the production, processing, labelling and trade of food from organic agriculture. It is also contrary to the Quebec regulatory framework. The Filière considers that the chosen approach to protect the organic designation is inadequate.

In addition to the fact that Section 2 of the proposed Regulations merely protects the use of a trade or certification mark, and does not protect consumers from false organic claims, we also note that the use of the designation “Canada Organic” and the associated logo will be allowed for products containing between 70 and 95% organic ingredients which is once again contrary to international standards.

It is important to understand that this lack of harmonization with international requirements will harm the recognition of the organic designation by consumers. It will also hurt Canada’s recognition that is vital for the access to international trade.

4.2 Development of the industry

The analysis of the proposed regulations indicates that the regulatory environment that is put forward do not encourage the development of the organic industry in Canada.

Firstly, the Filière believes that the ambiguity regarding the products covered by the proposed Regulations, the updating of the Standards and the real administrative costs of the system, will limit the access to the organic sector by the companies that need clear information to orientate their strategic planning.

Also, the Filière believes that the lack of delegation by CFIA at the accreditation and certification levels may lead to duplication and administrative burdens and create confusion.

In section 10 that refers to imports, there is no mention that a product must be compliant to the Canadian or equivalent Standards. This section of the Regulations is unfair to the Canadian organic industry.

As far as exports are concerned, the proposed Regulations will not make international trade easier considering the lack of harmonization between the Canadian Regulations and the international standards.

The development of the industry is also threatened by the proposed Regulations that do not ensure an even regulatory environment in all provinces. This lack of harmonization will create an unfair competitive environment.

Finally, the Filière was surprised to see that there is no transition period in the proposed Regulations although such a plan is essential for an orderly implementation and the protection of the reputation of the organic designation.

Therefore, the Filière asks for a more streamlined regulatory environment that will support and foster the competitiveness and growth of the organic industry. Considering that, in a near future, the organic designation will have to compete with several other designations; the organic industry needs a regulatory environment that will be competitive at the administration and financial levels.

4.3 Reputation of the organic designation

The added value of the organic products depends on the credibility and reputation of the organic designation in the marketplace. The reputation of the organic designation relies on an efficient certification process. Therefore, the monitoring of the use of the organic designation is critical and requires competence and expertise in that field.

On the international scene, the Codex Alimentarius Commission has adopted the *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods.* These guidelines set the minimum standards that must be met in most countries of the world, when a food product is sold as organically produced.

Usually, a certification process includes an accreditor, a certification body and a company that seeks certification for its products, and each actor plays a definite role in the certification process. The fact that CFIA reserves the right to intervene at the certification level may disrupt the widely recognized functioning of the system. This will inevitably cause the process to be dysfunctional and bring about additional costs, and may weaken the certification process and harm the reputation of the organic designation.

In light of the criteria set forth by CFIA in the proposed Regulations related to accreditation and certification, the Filière fears that more foreign accreditation bodies will operate in Canada. The multiplication of foreign accreditation and certification bodies may create an unstable certification environment and harm the reputation of the organic designation. Indeed, companies will witness uneven application of different criteria and standards from different accreditation bodies.

5. CONCLUSION

Considering that, over the past years, the Filière has invested time and efforts in this major issue for the Quebec organic sector and has lent its expertise to CFIA, we must express our deception in regard to the content of the proposed Regulations.

Indeed, the analysis of the proposed Regulations clearly demonstrates that, in the current version, the Regulations constitute more of a threat than a real support to the development of the industry.

We believe that the proposed Regulations were drafted more in response to the regulatory requirements from the CFIA than to the international standards on which the organic sector has based its development for the last decades.

We think that this situation is unacceptable for all the companies that have worked hard for so many years to develop and maintain their position on the organic market where competition is increasing. We ask for CFIA's intervention to make sure that the next proposed regulations reflect the importance of the development of the sector over its legal and administrative requirements. Considering that the Filière asks for major modifications to the Regulations, we believe that the next version will have to be submitted to a comment period in order to make sure that it contains the necessary changes for an adequate harmonization with the regulatory framework in Québec and the international standards.

The Filière did this in depth analysis of the proposed Regulations in order to thoroughly understand and measure the impact these Regulations will have on the development of the organic sector. We sincerely hope that this document will help understand the Quebec industry's point of view that is based on its experience of mandatory regulatory environment that started six years ago and that is recognized by many countries.

Considering that CFIA's initial goal with these Regulations is to open up the export markets to the Canadian organic industry, the Filière believes that CFIA must consider its analysis and recommendations to make sure that this objective will be met. If no significant changes are made to these proposed Regulations, the Filière would have no other choice but to express its rejection of the proposed regulations to the Quebec and Canadian governments.

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