

## Trade questions for the Department of International Trade regarding the OPR

December 19, 2007

### Process and protocol

1. What is the process and protocol for recognition of an organic product from outside Canada? Is there a specific legal requirement for CFIA/Canada to seek out a governmental “competent authority” with which to recognize the certification of organic products, or is it still legitimate to deal directly, and from the start, with Accreditation Bodies active internationally?

- Trade perspective: the regulator in Canada should be able to deal directly and exclusively with foreign ABs (or, in the absence of a legitimate AB, a certifying body) to facilitate compliance under the Canadian regulation.

A: There is no specific legal requirement for CFIA to seek out a governmental ‘competent authority’ with which to recognize the certification of organic products. There will be a legal requirement, when the regulations are implemented, that all organic products that are traded interprovincially and internationally to comply with the Organic Products Regulations. Whether CFIA deals with a “competent authority” or with “accreditation bodies” or “certification bodies” is a policy decision that will be made on a case by case basis.

The process and protocol for the certification of imported organic products are set in the Canada Organic Regime (COR) QMS Manual. Equivalency determination with governmental competent authorities will be considered for countries that have regulated regimes. For countries with no regulated organic regime, the COO will recognize foreign accreditation bodies to accredit certification bodies that will be certifying in these countries. In either situation CFIA will require that a list of certification bodies that are accredited to certify to the Canadian requirements be submitted to the COO for maintenance purposes.

The authority for these activities is Section 10 of the OPR.

Can a foreign Accreditation Body accredit certifying bodies in Canada? What is the formal process for a foreign AB to be recognized by the Canadian regulator? Is there a fee? Is an on-site audit required? Is a Canadian office required? Will foreign ABs recognized by other international regulatory regimes be also recognized by Canada’s regulator as competent to ensure products certified to the Canadian standards are compliant?

A: Yes, a foreign Accreditation Body’s (AB) can recommend the accreditation of certification bodies in Canada once it’s system has been adequately assessed by the COO and has signed an agreement for accreditation with the COO. The AB assessment process and criteria are listed in the Organic QMS manual. The assessment activities include an on-site visit.

There are no fee for this assessment. Fees might be considered in the future, however the establishment of fees will have to be consulted on.

A Canadian office is not required for a foreign Accreditation Body to operate in Canada.

At this time the COR will not recognize Abs recognized by other international regulatory regimes. This policy might be modified in the future once the COO has had an opportunity to assess the other international regulatory regimes.

2. For the sake of clarity, what is the process a company would have to follow to have, e.g. Thai (or countries with no national or stable authority yet), organic products approved as meeting the requirements of the Canadian regulation and standards? What is the estimated timeline of this process?
  - Trade perspective: the answers to these questions remain unclear, and time pressures are mounting if we are to ensure there are still organic products available to the Canadian market. In the example of Thailand, above, Thailand does not have a “competent authority”: currently, certification is done by third-parties from Australia that certify products in Thailand to the U.S. NOP.

A: If the country has a regulated organic regime it has to apply to the COO for Equivalency Determination.

If the country does not have a regulated organic regime or does not want to apply for Equivalency determination, then foreign ABs can apply recognition to the COO and submit the list of CBs they have accredited in that country for certification to the Canadian market. It is difficult to estimate the timeline for such a process as each case is unique. As Canada has yet to complete such a process its difficult to estimate how long it would take. The objective would be to have as streamlined a process as possible while ensuring the integrity of organic agricultural products coming into the Canadian market.

3. What will be the definition and approach to international products within the “stream of commerce”, i.e. how will products certified organic under other organic certification regimes before December 14, 2008, be dealt with after December 15, 2008?
  - Trade perspective: a flexible approach must be taken to all products certified organic which are in transit, in storage, being aged, being processed, or in supply-agreements prior to the implementation date of Canada’s new regulation.

A: The industry led ‘stream of commerce’ policy is presently being developed and is under consultation. Once finalized it will answer this question.

4. What is the status of negotiations or discussions with other jurisdictions regarding possible recognition agreements (i.e. mutual administration of each others’ programs) or full equivalency agreements (i.e. harmonized trade between each others’ programs)? With what jurisdictions are these discussions taking place? What is the expected timeline for agreement or resolution of these negotiations or discussions for the various jurisdictions?

A: The industry has identified 65 countries that market (export or import) organic products with Canada.

The COO has initiated Equivalency Determination with 20 of the identified countries: EU (17 countries), US, Japan, New Zealand, Switzerland and Costa Rica. Section 10 of the OPR is the jurisdiction used.

For the other 43 countries that have yet to contact the COO, we intend to contact these countries with an overview of the COR and will be asked to fill out a survey to determine these countries intentions. All countries who are Members of the World Trade Organisation have received a WTO notification indicating the adoption of the Organic Products Regulations. In addition, messages have been sent to Canadian Embassies abroad to ask the to relay to the relevant Government departments of their Post on the adoption of the Organic Products Regulations along with information about the Regulations.

It is expected that all these agreements will be in place on December 14, 2008.

5. In the case of an equivalency agreement being struck, will Canadian labelling and marketing requirements apply to imported products which meet production or processing requirements of another program?

A: The OPR requirements, including the labeling requirements, will apply to organic products for interprovincial and international (imports and exports) trade and product bearing the Canada Organic Legends (logo). The use of the logo is voluntary, importers may continue to use foreign organic logos for products destined to Canada.

6. What is the strategy being employed to ensure foreign jurisdictions, trade partners, and international suppliers are aware of the impending regulations and the requirements they must meet in order to be compliant? How is the fact that Canada's standards and regulations are not yet finalized and still subject to amendment being communicated to these stakeholders? How is this flux expected to impact the ability of foreign jurisdictions, trade partners, and international suppliers to know how to ensure compliance? What timelines are being developed to address this flux in Canada's regulations and standards?

A: Any Canadian regulatory modification impacting trade must be notified to the WTO as per Canada's international trade obligations. Through WTO notifications, countries have the opportunity to provide comments on potential impacts a regulatory modification could have on their market access of their products.

The Canadian Organic Production and Management Standards and the Organic Products Regulations have both been published and are presently available in their present final format. These are living documents that can be revised further to proper consultation.

7. Will the amended regulations include a specific implementation period for the international community to become compliant?

A: For any regulatory amendment if an implementation period is required, it would be identified within the amended regulations.

## **Import policy**

8. Can imported products or ingredients that do not meet the Canadian requirements be brought in for processing for export-only channels?

- Trade perspective: export-only products and all ingredients used in their production and manufacture should not be subject to Canadian standards or regulatory requirements as long as they remain exclusively for export markets. This is standard practice in other jurisdictions (e.g. NOP, among others).

A: No. All organic products will have to comply with the requirements of the OPR.

9. Will products or ingredients which cannot be grown in Canada (i.e. citrus, coffee, cocoa, etc.) be subject to the production guidelines of the Canadian standard and PSL, when these sections are premised on specific Canadian growing conditions and requirements? (i.e. Our standards recognize that different regions require different approaches to organic standards, will our regulation also include wording reflecting this?)

A: Yes. All organic products marketed in Canada must comply with the requirements of the OPR or meet to standards equivalent to that of Canada. Equivalence can be defined as the acceptance that different standards or technical regulations on the subject fulfill common objectives.

In negotiating equivalence with other organic standards, Canada will assess the gaps and determine variations between the organic standards using criteria for variations in standards. These criteria consider that all organic products must comply with organic principles. The criteria accept that organic products can be grown in a different agricultural, biophysical and socio-economic environments and hence country may have standards different than that of Canada. However, these variations must be established without prejudice to fair competition, consumer trust in organic and international cooperation necessary for international trade".

The OPR requirements cover all products that are defined under the 'agricultural products' definition in the CAPA. The Canadian Organic Standards which are referred in the regulations are based on the Codex Alimentarius Organic Standards which in turn cover all agricultural products, wherever the product is grown. If a product requires an exemption from the regulated requirements, for any reason, it should be highlighted within the Organic Production Standards.

- Trade perspective: commodity products not grown commercially in Canada should not be subject to the Canadian production standards if they meet other accepted organic certification standards.

10. Will processed products using ingredients which cannot be grown in Canada and do not meet the production guidelines (see question 9. above) be subject to Canadian processing guidelines under the Canadian standards if those end-products are to be sold or marketed as organic in Canada?

- Trade perspective: all processing of organic products for sale or marketed as organic in Canada should meet the Canadian organic processing guidelines of the Canadian organic standards, and be eligible to use the seal.

A: Yes. All organic products will have to comply with the requirements of the OPR. If a product requires an exemption, for any reason, it should be highlighted within the Organic Production Standards.

11. Will products or ingredients which cannot be grown in Canada in season (i.e. most fresh produce during the winter) be subject to the production guidelines of the Canadian standard and PSL (premised as they are on Canadian growing conditions)?

- Trade perspective: Canadian consumers have become accustomed to have access to such products throughout the entire year. Given the current regulation's wording, such products may no longer be available outside of the domestic growing season. The Canadian market is not a sufficient incentive to guarantee supply compliant with our regulation in the context of a competitive international "seller's" market.

A: Yes. All organic products will have to comply with the requirements of the OPR. If a product requires an exemption, for any reason, it should be highlighted within the Organic Production Standards.

12. Will organic products brokered by Canadian companies, or brokered via Canadian ports, be required to meet the Canadian standards?

- Trade perspective: Canadian companies, and those using our transportation and storage network, should not be made to source exclusively products which meet the Canadian standard. These companies should be able to meet the needs of any international buyer who is looking for products under any international regulatory requirement or standard. Many international companies use Canada's ports because they are competitively priced, well-managed, and secure, even though Canada is not necessarily the destination market for their cargo.

A: If this question refers to In-Transit products, meaning products produced outside of Canada and routed through Canada destined for another country, the answer is no, those products do not require to comply to the OPR requirements.

The answer is yes if the product is destined for the Canadian markets. In this case all organic products will have to comply with the requirements of the OPR. If a product requires an exemption, for any reason, it should be highlighted within the Organic Production Standards.

## Export policy

13. Can Canadian export-only products meet export-market requirements without having to meet domestic requirements, as long as products are clearly and exclusively destined for export?

- Trade perspective: export-only products and all ingredients used in their production and manufacture should not be subject to Canadian standards or regulatory requirements as long as they remain exclusively for export markets only with specific regulatory or standards requirements which differ from Canada's. This is standard practice in other jurisdictions.

A: No. All organic products for interprovincial and international trade produced in Canada will have to comply with the requirements of the OPR. If a product requires an exemption, for any reason, it should be highlighted within the Organic Production Standards. Our basis for international negotiation is that organic products produce in Canada comply with the OPR.

Please note that in addition to complying with the OPR, it will be the responsibility of the exporter to ascertain that its product also complies with the requirements of the country of destination.

14. How will products which fall outside Canada's regulatory scope in the OPR, but within another jurisdiction's regulatory scope, approach organic status? Can they use the "Biologique Canada Organic" label in their exports? Can they meet the foreign jurisdiction's requirements without being subject to Canada's? (e.g. organic health supplements in EU, where they fall under food regulations)

A: No. All organic products will have to comply with the requirements of the OPR. If a product requires an exemption, for any reason, it should be highlighted within the Organic Production Standards.

Only products certified to the OPR and products that have 95% organic ingredients will be able to bear the Canada Organic Legends.

- Trade perspective: there needs to be a way that Canadian exporters can meet requirements of the markets they deal in without having trade barriers constructed by their own government.