



April 27, 2009

Michel Saumur
Canada Organic Office
Canadian Food Inspection Agency
1400 Merivale Road, T1-4-142
Ottawa, Ontario K1A 0Y9

**Subject: Comments on the proposed Organic Products Regulations (2009)
published in the *Canada Gazette* Part I on February 14, 2009**

Dear Mr. Saumur:

I am writing to you to convey the comments of Filière biologique du Québec on the proposed Organic Products Regulations (2009) published in the *Canada Gazette* Part I on February 14, 2009.

Filière biologique du Québec (Filière) represents the Quebec organic industry, which currently has more than 1,200 companies certified according to Quebec organic standards. One of Filière's mandates is to obtain a federal regulatory tool that is consistent with provincial tools, in order to assure consumers of the credibility of organic foods and improve the commercial environment for Quebec businesses in Canadian and international markets.

The comments on the proposed federal regulations presented in this document are the result of a professional analysis process and thorough consultation with the industry. In fact, the comments are based on both the extensive expertise developed by Filière while drafting the organic designation regulatory framework, which has been in force in Quebec since 2000, and on the findings of a consultative forum with the Quebec organic industry, held on April 7, 2009. Filière therefore hopes that its comments will be given serious consideration.

IMPROVEMENTS MADE

Filière recognizes that certain improvements had been made to the 2009 version of the proposed regulations compared with the 2006 version. Filière would like to stress that it agrees with the following changes:

- Improvements to the level of protection for the organic designation and the distinction between the two product categories (95% and over, and 70-95% organic ingredients);
- References to ISO 17011 and ISO 65 in the regulations;
- Introduction of a new regulatory provision allowing the import of certified products based on an equivalency agreement, provided that this provision is limited to products from the agreement signatory country (section 29 (1) (b));
- The 15-month prescribed time for most plant productions, as stipulated in Schedule 1, which is in line with the principle of pre-certification currently in force in Quebec;

- Development of a scope of application and the list of agricultural products proposed therein. However, Filière believes that additional changes are needed with regards to the development of a regulatory framework for natural health products, cosmetics, pet food, textiles and aquaculture products.

However, regarding the list of agricultural products, Filière does not support the proposal to regulate fertilizers, since there is no international consensus on this issue. Filière is of the opinion that the Canadian Food Inspection Agency (CFIA) is already able to control claims, such as "approved for organic agriculture," if they are fraudulent.

MAJOR PROBLEMS TO BE RESOLVED

Filière notes with regret that several of the major problems that had been identified in its analysis of the 2006 version of the regulations have still not been resolved and that other serious problems have arisen. Filière would like to draw your attention to the five major issues addressed in the following points.

1. Accreditation

1.1. Current situation

The proposed Canadian Organic Products Regulations suggest a system to allow bodies, which carry out accreditation activities, to compete and operate from any country in the world.

1.2. Issues

As Filière has pointed out to the CFIA several times, the added value of organic products is directly linked with the credibility of the organic designation on the markets. This credibility depends on the reliability of a monitoring system, which is based on the quality of certification activities and accreditation. Accreditation bodies are the first link in the certification chain, which guarantees the credibility of the organic designation.

In Canada, certification activities are carried out by private bodies that operate in a competitive environment. To assure Canadian consumers that the organic designation control system is credible, it is thus crucial that the accreditation system be excluded from any type of competition. It is also essential that the regulations establish a close connection between the CFIA and the accreditation body and that the accreditation body be based in Canada. Furthermore, all jurisdictions that regulate organic products have adopted this type of approach.

1.3. Problem

In its November 2006 report,¹ Filière had pointed out to the CFIA that the accreditation system proposed in the regulations opened the door to several types of foreign accreditation bodies. Filière had also emphasized that accreditation bodies appointed by competent authorities in other countries, with which Canada would have to negotiate equivalency agreements, would make requests to expand into Canada.

¹ The expression "November 2006 report" used in this document refers to the document "Analysis and Recommendations on the Proposed Organic Products Regulations" presented to the Canadian Food Inspection Agency, with reference to the public consultation held in the fall of 2006.

The Canada Organic Office (COO) had downplayed the concerns that Filière raised. However, the concerns became a reality, since one U.S. and one European accreditation body are now on the CFIA's list of accreditation service suppliers. There is also a strong likelihood that other accreditation bodies will be interested in the Canadian market if they receive the assurance that the proposed regulations will be maintained.

In the United States, the United States Department of Agriculture (USDA) is the only accreditation authority appointed by its Secretary. In general, countries that belong to the European Union (EU) stipulate that an accreditation body must be appointed by a competent authority within the country. Some accreditation bodies operate in several EU countries, but they must do so at the request of the countries in question and within the regulatory framework, which forbids competition among accreditation bodies.²

As was clearly indicated in the report that Filière submitted to the CFIA in 2006, the accreditation system proposed in Canada does not correspond to the generally recognized practices around the world. As such, the claim in the Regulatory Impact Analysis Statement (RIAS)³ that "the proposed Regulations are consistent with regulatory provisions and standards in other jurisdictions such as the United States of America and the European Union" is false and misleading.

As Filière has maintained since the beginning of consultations that led to the drafting of regulations, only Canadian accreditation bodies can effectively carry out verification activities of certification bodies that operate in Canada. The delegation of these activities to bodies based outside the country will have a negative impact on the public's confidence in the organic product control system and on Canada's position with regards to its negotiations on equivalency agreements.

1.4. Quebec industry's requests

On behalf of the Quebec industry, Filière biologique du Québec requests that the proposed Organic Products Regulations (2009) be changed as follows:

- The accreditation system proposed for Canada should be harmonized with the accreditation systems of industrialized countries that regulate organic products;
- The CFIA appoints the accreditation bodies in the regulations, and that such accreditation bodies be constituted under a Canadian government regulation at the federal or provincial level.

2. Export control

2.1. Current situation

In the proposed Organic Products Regulations (2009), the CFIA eliminates the provisions of the 2006 version, which required products exported from Canada to be certified to Canadian standards by a CFIA-accredited certification body.

² Regulation (EC) No 765/2008 of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products.

³ Canada Gazette Part I, February 14, 2009, Organic Products Regulations (2009) - Regulatory Impact Analysis Statement (RIAS), p.345 (Summary).

2.2. Issues

The regulatory framework for exported products must enhance the credibility of the organic designation on the Canadian market and export markets.

With regards to the development of companies, regulations must also provide small and medium producers and processors with a proper, profitable and structured way to differentiate products. Moreover, regulations must not lead to unfair competition.

2.3. Problem

Credibility of the organic designation on the markets

Once Filière became aware of this change to the regulations in September 2008, it pointed out to the CFIA that not regulating exported organic products could have a negative impact on the credibility of the organic designation.

In fact, this change means that:

- Industry will have to explain to consumers why certain requirements in the Canadian standards do not apply to exported Canadian products, whereas the marketing of organic products is based on clearly defined principles (for example, the benefits for the local environment, well-being of animals and animals' access to outdoors).
- Industry will have to reassure consumers that the products certified according to organic standards that would not be considered acceptable for Canada would not be sold on the Canadian market (for example, the banning of hydroponics in the Canadian standard).

In the absence of regulations requiring certification to Canadian organic standards for export markets, Filière has also indicated that the industry would not be able to claim that all Canadian products are of high quality and consistent.

In the RIAS,⁴ the CFIA acknowledges that it received comments from Filière, but it does not present any analysis of the impact on the credibility of the organic designation on Canadian and international markets.

Development of companies

In the RIAS,⁵ the CFIA justifies its decision not to regulate exported products by claiming that requiring exported products to comply with Canadian organic standards "could be viewed as an unnecessary barrier to trade for some exporters" and that "Canada exports organic grains and other organic products to foreign markets..."

Filière is of the opinion that the CFIA's analysis is incomplete, as it makes no mention that Canadian producers and processors will no longer have access to organic products in Canada that are not certified to Canadian standards. In fact, these products will be solely intended for competitors set up outside Canadian

⁴ Canada Gazette Part I, February 14, 2009, Organic Products Regulations (2009) - Regulatory Impact Analysis Statement (RIAS), p.359 (Consultation – Industry – point (4) Certification of exported products).

⁵ Canada Gazette Part I, February 14, 2009, Organic Products Regulations (2009) - Regulatory Impact Analysis Statement (RIAS), p.350 (International trade).

borders, since the regulations require certification to Canadian standards for trade on the inter-provincial market.

Canadian producers' and processors' loss of access to these organic products is a major change in the current situation, and the CFIA does not present any analysis of this loss of access in the RIAS. Based on the results of the consultative forum with the Quebec organic industry held on April 7, 2009, Filière is of the opinion that an impact analysis on the competitiveness and viability of Canadian producers and processors is crucial before deciding whether or not to regulate products exported from Canada.

Filière is also of the opinion that the absence of regulations for exported products will mainly favour the export of organic products, which might be subsequently sent back to Canada in the form of processed products, and which will then be competing with Canadian products. This situation will impede the development of the Canadian organic sector, since supply difficulties will inevitably lead to the transfer of some processing and production activities to outside Canada. This situation will exacerbate what the CFIA has identified as Canada's inability to meet the domestic demand for organic products.⁶

2.4. Quebec industry's request

Filière requests that the proposed Organic Products Regulations (2009) be changed so that organic products exported from Canada will have to be certified to Canadian standards by a CFIA-accredited certification body. In this scenario, the Canadian standard would become the basic standard, and requirements could be added from the country to which the organic products are exported.

3. Import control

3.1. Current situation

The proposed Organic Products Regulations (2009) suggest a control system for imported organic products that has two options:

- The product must be certified to Canadian standards by a CFIA-accredited certification body (section 29 (1) (a) of the regulations);
- The product must be certified in accordance with the terms of an equivalency agreement, regardless whether or not the product originates from the country with which this agreement has been signed (sections 29 (1) (b) and 29 (2)).

3.2. Issues

The regulatory framework must assure Canadian consumers that imported products provide the same guarantees as Canadian products. With regards to the development of companies, regulations must not lead to unfair competition.

3.3. Problem

Filière is of the opinion that delegating the control of imported products originating from countries with which Canada has not signed an equivalency agreement is a serious threat to consumers' confidence in organic products sold in Canada. This lack of control also presents unfair competition of imported products for Quebec and Canadian producers.

⁶ Canada Gazette Part I, February 14, 2009, Organic Products Regulations (2009) - Regulatory Impact Analysis Statement (RIAS), p.350 (International trade).

In September 2008, the CFIA presented, behind closed doors, the content of the new regulatory provision set out in section 29 (2), and Filière has since sent the CFIA repeated comments on the negative impact of this measure on Canada's ability to control imported products.

Delegating the control of imported products to jurisdictions with which Canada has signed an equivalency agreement, even if the product originates from a country other than the agreement signatory country, places Canada in a very vulnerable position regarding the control of imported products.

According to section 29 (2), Canada loses all powers to directly intervene with a certification body that may have certified a product imported into Canada that is considered non-compliant.

Take, for example, an Argentinean product certified according to the agreement that Canada may have signed with the United States. If the USDA does not satisfactorily process a complaint concerning this product, would Canada have any choice other than to cancel its equivalency agreement with the United States? In such case, this measure would have disproportionate consequences compared with the problem to be resolved.

Filière recommends replacing section 29 (2) with a regulatory provision that would allow Canada to unilaterally recognize certification bodies and certain organic standards that are considered equivalent, like the United States and the EU are currently able to do.

Canada would greatly benefit from such a regulatory provision, which would allow it to import organic products certified according to standards that are considered equivalent, such as EU standards, even if Canada has not signed an equivalency agreement with the EU. It becomes increasingly clear that Canada will need this flexibility to guarantee Canadian consumers access to quality organic products when it has not signed agreements with countries that export to Canada.

Although Filière has sent emails and lengthy analysis documents on this issue since September 2008, the RIAS does not mention any of them in the "International trade – Importations" section or in the "Consultation – Industry – Access to imported products" section. Filière therefore doubts that the rules governing the regulatory consultation process have been respected.

3.4. Quebec industry's request

Filière requests that the proposed Organic Products Regulations (2009) be changed. Section 29 (2) of the proposed regulations should be replaced with a section that will allow the import of an organic product only when this product is certified to the equivalent of the Canadian standard by a certification body directly recognized by the CFIA.

4. Canadian organic standards

4.1. Current situation

When this report was drafted, the minutes from the meeting of the CGSB Committee on Organic Agriculture, held on April 15 and 16, 2009, were not yet available. It is therefore difficult for Filière to determine what changes will be put to a vote, and if these changes will be adequate to appropriately implement regulations pertaining to compliance with Canadian standards.

Moreover, unlike our main commercial partners' situation, the Canadian organic standards are not available free of charge.

4.2. Issue

Canadian industry must have a standard that will allow it to grow while maintaining its competitiveness.

4.3. Problem

The CGSB Committee on Organic Agriculture does not have the resources needed to properly carry out the standards work in both official languages. The general lack of organization of the standards work, which has largely been dependent on volunteer efforts, does not do justice to the diversity of the viewpoints expressed. Organizations that have the financial means to convey their opinions to the CFIA have a great advantage over others. The lack of clearly identified coordinators also adversely affects the logistics of the work. The effect of these shortcomings is that the Canadian standard is still incomplete, with only a few weeks left before the implementation of the regulations. This is unacceptable for the industry.

4.4. Quebec industry's request

It is extremely urgent that the CFIA make the necessary resources available to the CGSB Committee on Organic Agriculture, including a competent full-time resource person for a period of at least 12 months, in order to support the work of the working groups, which should begin immediately.

The working groups must be able to count on specialized resources so that the next committee meeting runs smoothly. They require documents that are well structured, detailed and distributed in advance in both official languages.

In the medium and long term, the CGSB Committee on Organic Agriculture should also have access to the resources needed to monitor the development of standards worldwide.

The organic industry must also have access to any new versions of the Canadian organic standards free of charge.

5. Logo

5.1. Current situation

The "Canada Organic Regime" logo proposed in the regulations is unacceptable for the industry.

5.2. Issues

As in all other jurisdictions that have adopted a well-designed logo, the Canadian organic industry should have a logo that enhances the visibility of organic products sold in Canada. This logo must not cause confusion regarding the product's origin.

5.3. Problem

Filière had made the following comments in a letter that it had sent to Karen McIntyre on December 17, 2008, during the logo consultation:

- As Filière had mentioned during the consultations that preceded the publication of the regulations in December 2006, the proposed logo must be a logo that indicates compliance with the control regime for Canadian organic products and not a logo that indicates the products' Canadian origin. The maple leaf looks too much like a "Made in Canada" logo and therefore should not be used in the logo's visual.
- With reference to the choice of the expression "Régime Bio-Canada" ("Canada Organic Regime"), the CFIA should also note that in French, the word "regime" can also mean "diet," a term that should be avoided on a logo intended for food products. It is also important to reduce the length of the text to ensure legibility.
- Filière recommends that the term "organic" be used across the entire logo.
- Filière believes that the graphic design is extremely poor and unacceptable. It recommends that it be replaced with a well-spaced, modern, simple design.
- The logo cannot be used for printing in a very small format (normally used on labels), since the design is too complex.
- To cut printing costs, Filière requests that more attention be given to the number of colours used.
- Monochromatic versions of the logo should also be submitted at the next consultation.

In the section "Consultation – Industry – (5) Design of the legend" of the RIAS, the CFIA claims that "the Agency carried out focus group testing through an online survey to solicit industry response to proposals regarding a new legend for certified organic products."

Filière still wonders why the CFIA didn't indicate that it was responsible for this survey when it was carried out by the Organic Trade Association. Once again, Filière doubts that the rules governing the regulatory consultation process have been respected.

In the same section of the RIAS, the CFIA claims that "support for a single revised legend has been widespread throughout industry and the OVCR⁷ has indicated that they are very supportive of changes to the design." Filière wonders whether the OCVR is in favour of revising the 2006 version of the logo or whether it is in favour of the logo suggested in the new proposed regulations.

5.4. Quebec industry's request

Filière requests that the logo's graphic design be completely revised and that it be well-spaced, modern and easy to use.

⁷ OVCR: Organic Value Chain Roundtable

CONCLUSION

Filière has not carried out a detailed review of the regulations and will provide other comments on certain points only after the CFIA has resolved the five major problems identified in this letter.

As mentioned various times in several letters sent to different CFIA authorities, Filière requests that the five problems outlined in this letter be resolved, even if the requested changes require a new publication of the regulations in the *Canada Gazette*, Part I.

Since the "Draft Stream of Commerce and Enforcement Policy" currently published on the CFIA's website will have relatively the same impact as a report on the implementation of the regulations, Filière is also of the opinion that it would be highly preferable that this report be done within a legal framework. To this end, Filière proposes that a two-year transition period be included in the regulations to give legal status to this transition policy.

Filière still recognizes the need for federal regulations that could be consistently applied across Canada, that would improve the commercial environment of companies, and that would facilitate the recognition of products and the equivalency agreements with other countries. However, the proposed Organic Products Regulations (2009) have too many important shortcomings for Filière to be able to support the regulations in their current form, since these shortcomings will inevitably have major negative effects on the development of the Quebec and Canadian organic sector.

Despite Filière's constant efforts to collaborate with the CFIA and participate in the work on the federal regulations, its requests have not been given the consideration needed to make the desired changes, even the changes that had been agreed upon by the Canadian Organic Federation. Filière fervently hopes that its requests will be given due consideration this time.

At the request of the Quebec industry, Filière will continue to work on the implementation of the federal regulations of organic product. To this end, our regulatory affairs consultant, Julie Belzile, will answer any questions concerning Filière's comments.

Yours truly,



France Gravel, Presidente
Filière biologique du Québec

C.c.: Jaspinder Komal, Director, Agrifood Division, CFIA