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RE: Organic Products Regulations – *Canada Gazette*, Part I (February 14, 2009)

Dear Mr. Saumur,

On behalf of our 1700 members throughout North America, the Organic Trade Association (OTA) in Canada is pleased to provide comment on the latest version of the Organic Products Regulations (OPR), as gazetted on February 14, 2009. These comments are based on broad ongoing consultations and discussions with our members and other stakeholders in the organic business community in Canada.

OTA in Canada has long called for the regulation of the organic sector in Canada and our members are very pleased to see such progress has been made toward this goal. We feel this will greatly benefit Canadian producers, manufacturers and other businesses involved in the organic sector, Canadian consumers, and our trading partners.

We feel the current OPR are a marked improvement over the earlier version of the Regulations, and benefit specifically from clarification on scope; accreditation and certification, including processes of review, suspension, cancellation and appeals; imports and the possibility of equivalency agreements or other forms of import recognition. We feel the Canada Organic Office has been highly engaged with the organic sector and very open and consultative. We commend you for taking such a transparent approach to regulation.

Below, you will find specific comments or questions regarding sections of the OPR, referenced by paragraph number. Following this, you will find a brief list of "Other comments" that relate generally to the Canada Organic Regime, the OPR, and compliance and enforcement.

Paragraph 2.

OTA in Canada supports the clarification on scope limitations. We assume that seed are also covered by Par. 2 but note that they are not necessarily "food" or "agricultural crops" in and of themselves, and this may lead to confusion. Par. 2 could be clarified to include seed under the scope, as per the Canadian Food Inspection Agency's authority and the standards for organic production in CAN/CGSB 32.310.

In the case of personal care products for health purposes (“Natural Health Products”) which are edible and consumed (e.g. essential oil tinctures, or herbal tea-like infusions) we recommend that CFIA strike a memorandum of understanding with Health Canada allowing these products to have access to the agricultural product legend (Schedule 2), if they comply with all other requirements of the OPR and CAN/CGSB 32.310. If such an agreement is not struck, we risk having in place in the marketplace the exact same organic products which have been registered either as food and drink or as Natural Health Products, but which cannot make comparable organic claims.

In the case of pet foods, we recommend that CFIA strike a memorandum of understanding with Industry Canada to allow pet food manufacturers using food-grade ingredients in full compliance with all other aspects of the OPR and CAN/CGSB 32.310 access to the agricultural legend (Schedule 2).

We also observe that Canada continues to have a strong and growing organic sector in non-food or emerging sectors and we understand that those products not covered by the scope of the current OPR (such as textiles or personal care products) will continue to be able to make truthful, third-party organic claims on their products until such a time as national standards have been ratified in Canada, competent authorities have been identified, and enforcement under the OPR or another comparable regulation is possible.

Paragraph 3

At the end of this paragraph, OPR notes that certifying bodies are responsible for “organic product packaging and labelling certification.” Is the “certification” here referring to a separate certification than that of certification to CAN/CGSB 32.310 (which does not provide specific standards on packaging)? Perhaps it would be clearer to replace the word “certification” with “review” as this is an accurate description of the certifying body’s role in this respect.

Paragraphs 4 to 11

OTA in Canada supports the improvements made in clarifying the roles and responsibilities of Conformity Verification Bodies. We note that regarding **Par. 9**, the Agency may elect to have another designated Conformity Verification Body review an appealed refusal, rather than taking on that review itself. Par. 9 could be clarified to reflect this.

Paragraph 12(2)

A number of members have been confused by this paragraph. OTA in Canada supports the intent but suggests it might be worded with more clarity.

Paragraph 13

OTA in Canada has heard from numerous processors concerned that this paragraph, in regards to the wording “within 12 months” could be misinterpreted and applied to processors as a requirement to be under certifier oversight for at least a year prior to products going to market. One possibly way to allay these concerns would be to identify in Par. 12(3) or in Schedule 1, that processors are not subject to specific timelines in this regard. Please also see further comments regarding Schedule 1, below.

Paragraphs 14-21

OTA in Canada generally supports the improvements made in clarifying the roles and responsibilities of Certification Bodies, though we still have comments on the following:

Paragraph 15(1)

This section suggests Certifying Bodies will review that “packaging and labelling are done in accordance with the requirements set out in CAN/CGSB 32.310.” We note that the current version of CAN/CGSB

32.310 no longer contains specific requirements for packaging and labelling, apart from the percentage calculation of organic ingredients, which is already referenced adequately in OPR 12(1).

Paragraph 15(2)(b)

Along similar lines as our comment on 15(1), above, 15(2)(b) makes reference to “the substances used in the packaging and labelling of the organic products...”. Neither CAN/CGSB 32.310 nor CAN/CGSB 32.311 list or prescribe uses for such substances (ink, lubricant, glue, paper, plastic, etc.) and the current language could be gravely misinterpreted, creating an onus on manufacturers to secure the component “ingredients” of their packaging, most of which would be supplied by external suppliers and difficult to specify. The intent of the OPR is to ensure compliance to the method and process by which organic products are packaged and labelled, in order to ensure consistent and uninterrupted organic integrity, as per the language in 16(1)(b). Therefore, we suggest that language referring to the certification of packaging, or to the substances used in packaging be struck from the OPR.

Paragraph 16(1), 16(1)(a)

Please see comment above re: “certify the packaging and labelling”

Paragraph 16(1)(b)

OTA in Canada supports this language regarding packaging and labelling as it is clear and consistent with the intent of the OPR and CAN/CGSB 32.310.

Paragraph 16(2)

Please see comments above re: “certify the packaging and labelling” and also note that a specific 12 month time limit is very inflexible, as it does not consider the many extenuating circumstances which may delay this renewal and review by a few days, weeks or months. Other jurisdictions include an additional 6-month grace-period for renewal if necessary, and subject to organic integrity being maintained during that period, with the expectation that renewal is still supposed to occur within a 12-month period. The OPR could consider requiring renewals had been filed/requested or scheduled within 12 months, rather than the renewal itself has taken place.

Paragraph 19

OTA in Canada supports the intent and language of paragraph 19, specifically that operators must notify certifying bodies without delay of anything which may compromise the organic integrity of their products.

OTA in Canada also recommends that the OPR give the Agency recourse to make emergency declarations or designations of organic status of products during certain extreme circumstances (such as emergency pest treatment or a temporary loss of outdoor access for organic livestock).

However, OTA in Canada is concerned that the requirement to forward all complaints to the certifying body is unrealistic, as many complaints are highly subjective and questions of compromised organic integrity (the real concern) are already covered adequately by this paragraph. Operators should be required to maintain a complaints log, including actions taken, and this should be available to their certifying body and verification officers throughout the year and during annual inspection.

Paragraph 20

This paragraph has brought about much confusion in the sector. OTA in Canada would support further refinement and clarification of the language in this paragraph, as the intent remains unclear. Further, OTA in Canada would support and encourage a stronger statement protecting and making mandatory the maintenance of organic integrity up to the end consumer, as per the language in the RIAS on “preserving organic integrity.”

Paragraph 21(7)

OTA in Canada notes that, in the case of certification being cancelled, the certifying body must send notice of this to the operator. Does the certifying body also have an obligation to notify the Conformity Verification Body or the Agency?

Paragraph 25(2)

OTA in Canada notes that the label claim “% organic ingredients” immediately following the percentage number, does not harmonize well with the label requirements in Quebec or the United States, where many products for sale in the Canadian market come from. Consideration could also be given to another eligible statement being included with reads “Made with organic ingredients” or “Contains organic ingredients” – and which would only be available to certified products containing between 70-95% organic ingredients.

Paragraph 26(a)

OTA in Canada suggests that any one of the name or acronym of a certifying body can appear on the label of an organic product.

Paragraph 27

OTA in Canada suggests that this paragraph should be expanded to the labelling and advertising for any organic products (not just multi-ingredient products). The sentence would now read (underlined text is proposed wording):

“The label of or any advertisement for any product that is not an organic product under these Regulations shall not contain the words or statement set out in section 25, even if, in the case of a multi-ingredient product, the product contains one or more organic products. Any organic product contained in it may, however, be identified as organic in its list of ingredients.

This language would strengthen the OPR and allow for more consistent enforcement in the marketplace of misleading or fraudulent products, whether they are multi-ingredient or not.

Paragraph 29

OTA in Canada supports this paragraph, and welcomes the greater clarity and commitment this shows to our major trading partners, who supply the clear majority of organic products in Canada. OTA supports efforts towards striking equivalency agreements with major trading partners to facilitate market access for Canadian exporters and increased availability of organic products imported into the Canadian marketplace and deemed to be equivalent to our standards.

In light of the fact that the Canadian organic standards were developed for production of crops in Canada, we know of examples of products which we cannot commercially grow in Canada which cannot comply with our standards in other world regions (specifically tropical growing conditions). We support efforts to:

- a) recognize as organic those products which cannot be grown in Canada but which have been certified to a recognized regulated organic standard by a certifying body which the Agency recognizes
- b) allow for the importation of ingredients considered organic under other standards, for the purpose of export-only further processing or brokering by Canadian operators, so long as these ingredients will not be used in products sold in Canada which make organic claims.

Paragraph 32

OTA in Canada supports the proposed coming into force date of June 30, 2009.

Schedule 1

OTA in Canada notes that CAN/CGSB 32.310 Section 7.2.8 (re: transition to organic maple production) and Section 5.1.1 (re: transition to organic production) only refer to 12 months under certifier review. The 15 months proposed in this schedule are inconsistent with the Canadian standards and with other standards, and marks a significant change from the way in which business is currently conducted in Canada. OTA in Canada suggests that a blanket 12 month period apply, apart from the comment made earlier regarding processors not being subject to any time limits.

Schedule 2

OTA in Canada supports the proposed logo, and observes that it was the logo of choice of the organic sector during an open consultation on logo options. However, OTA in Canada notes that during that process, many respondents took issue with the word “Regime.” We do not have a strong position on this matter, however we will note that the visual elements of the logo should not change, and that both the words “Canada” and “organic” must feature prominently in any final logo.

Regarding colours, we would recommend that operators also have the option of using the logo with a transparent background (rather than a white background) if they so desire, for greater flexibility of printing. Further, the use of black lettering introduces an additional ink colour to the colour version, which could have added consequences for label costs. The OPR could include an option for red lettering, to match the maple leaf. Lastly, an option could be considered which allows a monochrome label to feature the logo in one colour only – if that colour is the only one used on a package (e.g. a transparent package printed only in green). These considerations would benefit small enterprises which find labelling costs particularly prohibitive.

Other Comments**1. Exports**

OTA in Canada notes that the new version of the OPR no longer applies to products intended for export and not for sale as organic in Canada. We support this and agree with the description in the RIAS that such a policy will promote market access and contribute to the international competitiveness of the Canadian organic sector.

OTA in Canada supports the adoption of the Canadian organic standards by the entire organic sector, and encourage the Agency to engage in equivalency agreements with our trading partners that will make the Canadian organic standards the most beneficial, efficient and attractive in terms of consistency and market access. This approach achieves both the overall goal of the unanimous adoption of the Canadian standards, as well as sensitivity to the fact that Canadian operators supply a variety of the world’s markets in order to remain viable businesses in Canada. We wish to clarify further that our primary area of concern in this regard is for Canadian processors who supply global markets with organic products tailored to the specific requirements of the destination market, and who would find it very difficult to certify to multiple standards, including the Canadian standards, in certain situations. We note that the majority of these will also certify to the Canadian standards, as they also supply the Canadian market, though they may have some product lines that are not organic in Canada. We note that some producer groups have raised concerns over possible optics or perceived disparities between neighbouring farms, but we continue to argue that something that is not organic in Canada according to the OPR cannot be forced to become organic before leaving the Canadian market (in which it will never be marketed as organic). We are also concerned that the Agency would be unable to monitor or enforce any such provision, and the related costs were not considered in the Cost Benefit Analysis conducted prior to gazetting the OPR.

2. Public access to organic standards

OTA in Canada is very concerned that the public will not have access to Canada's organic standards in light of the CGSB's requirement that the standards be purchased. This not only creates unnecessary costs for organic operators in Canada and around the world, it also raises significant concerns regarding the public's right to know and access what organic products in Canada are and what they are measured against. OTA in Canada strongly recommends that the Agency or the Minister rectify this situation so that organic standards in Canada continue to be available and accessible for operators and the public.

3. Stream of commerce and enforcement policies, and products which were produced before the coming into force of the OPR

OTA is pleased to see that the Agency has made available elsewhere a draft proposal on enforcement policies and the treatment of organic products produced before the coming into force date. We wish to reaffirm what we see as the critical requirements in the transition to a mandatory regulated regime:

- a) all certified organic products from before the coming into force date are grandfathered in under the new Canada Organic Regime, and allowed full use in and access to the Canadian market, until such time as supply is exhausted; this also applies to non-compliant packaging and labelling.
- b) products produced during the first 24 months following the coming into force date shall have access to the Canadian market and will be able to make verifiable organic claims, although they will be informed of non-compliance and the deadline for full compliance (June 30, 2011).

4. Labelling of wine

OTA in Canada notes, with concern, that there continue to be no provisions allowing for wines labelled as "made with organically grown grapes" access to the Canadian market. The majority (if not all) of the global regulated organic market allows such claims in which only certified organic grapes have been used in a wine, but the processing of the wine itself has not been certified. In fact, a majority of the locations from which we currently import wines made from organically grown grapes do not yet have in place standards or guidelines on the certification of organic wines (at the processing stage) – as this is still an emerging standard stream. As Canada is not a net wine producer, it seems very odd that we would introduce labelling requirements that would essentially force out the majority of the organic wine sector from our market. This could be perceived by some as a barrier to trade.

With many thanks for your attention to these comments and suggestions, and for your ongoing support of the organic sector in Canada, I send my

best regards,



Matthew Holmes
managing director
Organic Trade Association in Canada
