

Comments of the European Community regarding G/TBT/NOTIFICATION 98.11.

National Organic Program - USA

441.2(103)
Special

I. - General comments

The European Community appreciates the opportunity to comment on the above referenced National Organic Program. The program has been reviewed taking into account the experience on the application of the current (EC) Regulation N° 2092/91 and the scientific and technological progress.

The provisions laid down in the National Organic Program (N.O.P.) are mainly based on a system of priorities, while the EC Regulation foresees minimum requirements including also positive lists of products which are authorised during production and processing.

The EC is concerned that the US approach which on various aspects diverges from the EC legislation might result in difficulties or obstacles to international trade.

In general, the European Community would like to express particular concerns for the following provisions/orientations in the draft N.O.P.:

1. The acceptance of GMO and irradiation
2. the acceptance of certain fertilisers and plant protection products that were not accepted in the EC Regulation, as they were not in line with consumer expectations concerning the organic production method;
3. the absence of positive lists of permitted products, which can lead to different interpretations;
4. the system for the calculation of the agricultural ingredients in a processed product;
5. the acceptance of certain additives and also the very limited restrictions in the use of technological aids (except synthetic solvents all the incidental additives seem to be permitted);
6. the acceptance of incorporation of certain nutrient supplements, even when such incorporation is not required by law;
7. the lack of criteria to modify the lists of authorised products (fertilisers, additives etc.)
8. the prohibition of private standards which are more restrictive.

II. - Particular comments

Hereunder follow more detailed comments on the above mentioned concerns as well as on other differences which may result in difficulties in international trade.

1) The acceptance of GMO and irradiation

Particular concern has to be expressed with regard to the authorisation of irradiation and the use of genetically modified organisms (GMO). There is no technical necessity to authorise these two practices which are not accepted in general by the organic operators and the consumers. The prohibition of irradiation and GMO is also included in the proposed Codex draft guidelines for the production, processing labelling and marketing of organically produced foods. This fact demonstrates that there is a general orientation to prohibit these practices.

2) Natural and synthetic substances - Applicability (§ 205.3)

Paragraph b(2) lays down that a commercially available non-synthetic (natural) substance is selected in preference to an allowed synthetic substance. This principle has also been applied to a certain extent for the development of the positive lists in the EU legislation.

The determination of the availability of a natural substance on the market when the market is not defined, may be a difficulty for each individual operator and may lead to problems in trade and inspection, e.g. if the importer country considers that the substance is available on the market. We propose to take into account the availability of natural substances when positive lists of authorised substances are developed and to apply this requirement when particular substances are authorised, but not as a general principle for individual operators.

3) Land requirements/Conversion period (§ 205.5)

The field or parcels cannot be treated with substances prohibited in organic farming for a conversion period of three years immediately preceding the harvest of the crop.

With regard to this conversion period, the EC is of the opinion:

- that during the entirety of this period, the holding should be submitted to the inspection system, (in order to avoid fictive dates about the start of the conversion and in order to ensure that during the conversion period all practices inherent to organic farming are applied (not only the non-implementation of treatments forbidden in organic farming);
- that some flexibility should be accepted in the conversion period permitting to take account of particular situations with regard to previous parcel use;
- that for non perennial crops a conversion period of two years before sowing is sufficient.

4) Soil fertility and crop nutrient management (§ 205.7)

The authorisation of certain products under paragraphs 205.7(b) (4) and (5) is very broad and permits the use of certain substances such as sewage sludge, municipal solid waste streams or composted household waste, provided that the product is composted prior to application and the persistent residues did not accumulate in the

soils or waters. This provision can be interpreted in many different ways and could lead to barriers to trade.

The EC is of the opinion that municipal solid waste should not be permitted and that, in the case of composted household waste, clear restrictions should be provided for maximum levels of heavy metals.

5) Prevention and control of crop pests, weeds and diseases (§ 205.9)

According to paragraph (e) (1) any non-synthetic, biological or botanical substance is authorised, provided that it is not included in the list of non-synthetic substances prohibited for use in organic crop production (at this time no substance is included in the list of prohibited substances)(point 205.23). It would be useful to define positively which are the natural substances authorised and the conditions of use of those which present certain risks (which is the orientation proposed by the National Organic Standard Board).

The EC is of the opinion that only a positive list of authorised plant protection products can give clarity on the products which may be used. Such clarity is essential with regard to plant protection products use which is a very sensitive aspect for the consumer and of most importance for the farmer who may need these products.

6) Product composition (§ 205.16)

The composition of the products is calculated, in the different categories, with regard to the percentage of organic agricultural products in the total weight of the finished product, excluding water and salt.

The method of calculation provided for in the proposed regulations seems different from the method used in the European Community since several years. The EC is of the opinion that different calculation methods can lead to mis-interpretations and consequently to barriers to international trade.

We are prepared to bring forward, for information, our guidelines for calculation of the ingredients percentages in composed foodstuffs. In particular the way on how these calculation methods take into consideration the water present in the ingredients and/or added during the manufacturing process, may significantly influence the result of the calculations.

The EC is of the opinion that, in the current situation, there is no need for permitting the marketing of compound foodstuffs with less than 70% organic ingredients of agricultural origin. The organic market is growing and many ingredients are now available from organic production; the industry should therefore be encouraged to produce products with the lowest possible content of non organic ingredients. The existence on the market of products with low content of organic ingredients makes the inspection more difficult and does not contribute to give a clear message to the consumer.

7) Prevention and control of facility pests (§ 205.18)

Provisions concerning prevention and control of facility pests must ensure that substances used for this purpose cannot contact any ingredient or finished product. The EC is of the opinion that it is not essential to have very specific provisions on this issue if this principle applies.

8) Processing practices (§ 205.17)

The products authorised under this paragraph cover two types of substances: additives and processing aids (so called "incidental additives"). The EC is of the opinion that it is appropriate to have a positive list of authorised incidental additives: some of them are chemically synthesised products which should be replaced by natural substances.

The EC is also of the opinion that certain substances could be added to the list of additives. Malic acid is a natural substance widely used preservative in many foodstuffs, Sodium and Potassium tartrate are substances that increase the antioxidant effect of other substances and are also widely used. Both substances can be used according good manufacturing practices without any specific limitation.

We think that inert gases such as Argon, Nitrogen and Oxygen are included in the NAP, if not we propose their inclusion due to the effective use for certain packages products

Our opinion is that it is possible to remove other unnecessary additives (certain magnesium, sodium and potassium salts), there are enough additives in the list with similar effects of those mentioned.

9) Equivalency regime

The EC notes that the proposed US regime provides, with regard to products imported from other countries, for a regime, assessing the equivalency of the requirements in the exporting Country to those which will become in force in the US. Such regime is also provided for in the above mentioned Regulation (EEC) n° 2092/91. Given however the divergences between the proposed US regulations on the one hand and the provisions under Regulation (EEC) n° 2092/91 on the other, it seems at this stage that bilateral discussions between US and EU will be required for establishing to which extent equivalency between the two regimes can be achieved.

10) Fees for import programs (§ 205.423)

In this section it is provided that each foreign certification program (other than those operated by a foreign country itself) shall submit a non-refundable payment. We expect that the words "foreign country" covers also the organic program developed under the European Legislation and therefore the European Union can be considered as a whole with the status of a single foreign country.

11) Compliance review (§ 205.430)

The EC is of the opinion that it is not necessary to establish a specific requirement for periodic sampling and residue testing. This can be decided by the certifying agents according to the characteristics of the farm and the credibility of the operator.

12) Maintenance of the eligibility for the importation (§ 205.483)

The notification to the US of proposals of technical rules before their adoption seems to be a duplication of the notifications to be made to WTO under the TBT Agreement.

13) Prohibition of private standards which are more restrictive.

The proposed National Organic Programme will prohibit private bodies to use seals based on higher or additional standards than the national requirement. Reference to this is made in paragraphs 205.301 (b) and 205.401 (c). In the European Union, private inspection bodies can use logos or seals making reference to higher or additional standards than those provided for in Regulation (EC) N°2092/91. Similarly, the EC is of the opinion that the entrance of products using seals or logos based on higher or additional standards should not be prohibited in the USA.

We would be grateful if the US Authorities could take the above comments into account and provide us with the clarifications requested before the adoption of the proposal.

Could you please acknowledge receipt of this note?

* * *

