

Lord Frost
Minister of State for the Cabinet Office
Cabinet Office
70 Whitehall
London
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Dear Lord Frost,

There is a very important issue that is substantially affecting exporting and re-exporting of organic un-processed foods and feeds as a consequence of the terms of the organic trade agreement within the annexes of the UK/EU Trade and Cooperation Agreement (TCA).

The issue relates to the paragraph in Appendix A of ANNEX TBT-4 (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962125/TCA_SUMMARY_PDF_V1-.pdf) of the TCA which states "The organic products listed in this Appendix shall be unprocessed agricultural or aquaculture products produced in the United Kingdom or processed agricultural products for use as food or feed that have been processed in the United Kingdom with ingredients that have been grown in the United Kingdom or that have been imported into the United Kingdom in accordance with United Kingdom laws and regulations."

As you will see there is no provision for food or feed that is not processed in the UK. **This means that products or ingredients produced outside the UK cannot be imported and then re-exported to the EU or NI where no further processing (as defined in Retained Regulation (EC) 889/2008 Article 2 (u)) within GB has taken place.**

This also represents a huge problem with organic products that have not undergone further processing within EU coming from the EU to the UK, which will become apparent from July when COIs are needed.

The six UK Control Bodies (CB's) have been recognised as equivalent in accordance with Article 33 (3) of Commission Regulation 834/2007 and listed in Annex IV of Commission Regulation 1235/2008. It is understood that within the scope of this recognition we can facilitate this activity outside of the scope of the TCA, however, the GB-BIO codes relating recognition were removed from TRACES NT following the agreement of the TCA in December.

Once the issue with re-exporting food and feed products that have not undergone further processing within GB, came to light in the middle of January all the UK CB's requested the reinstatement of their respective GB-BIO codes. The Soil Association Certification (SA) has had their code reinstated, however the other five CBs (Biodynamic Association, Organic Food Federation, Organic Farmers & Growers, OF&G (Scotland) and Quality Welsh Food Certification) have so far not had their GB-BIO codes reinstated. The reason and/or basis for this inconsistency has yet to be explained by the EU Organic Unit.

UKOCG has spoken to Elena Panichi (Head of the EU Organic unit) a number of times now and she has indicated that our request for the GB-BIO codes for all six UK CBs to be made available on TRACES NT has gone to their legal team. It is important to note that all six CBs have been recognised as equivalent and their respective GB-BIO codes were made available on TRACES NT at the end of December 2020. Elena said she can't provide a definitive timescale for a resolution, which is unacceptable given the inconsistency that currently prevails in the UK.

The current position as we understand it is that the EU Commission intend to move all UK CB's from Annex IV (individual CB recognition) to Annex III (recognised Third Countries) in early May. This will mean that all trade in organic products that have not undergone further processing will no longer be able to be facilitated by UK CB's within GB immediately thereafter. It is also important to note that EU CBs will still be able to extend their scope within Annex IV to include the UK – which will be unfair – so they will be able to continue to certify UK operators who export organic products to the EU from the UK that fall outside the trade deal – this will represent a non-trade barrier to UK CBs putting them at a competitive disadvantage.

The issue is that after 40 years of integrated trade, U.K. businesses (with established trade routes) cannot simply change the way they do business over night. The limitations of the TCA around the import and re-export of organic food and feed (where no further processing takes place) from the UK and to the UK will have a significant impact, and businesses need time to adjust. The impact of this is difficult to assess currently but many businesses that have historically had ties with European processors and importers are being severely affected and are now undoubtedly losing hard won markets.

To help resolve this, ALL GB-BIO codes should be reinstated until 31st December 2021 to allow for a transition. Currently only SA operators can undertake this trade which is creating unfair competition and disadvantaging the operators registered with control bodies that have not had their code reinstated. The fact is that the EU Commission by their actions, are artificially distorting the UK market by inadvertently giving one CB an advantage over other CBs by allowing it to operate whilst inappropriately excluding others from this activity without any legal basis.

It is understood that a precedent has been set by the EU when the EU/Chile equivalency was agreed by allowing those Chilean CB's that were recognised under Annex IV to retain their recognition for six months.

We are, therefore, calling for the following:

1) UK operators need time to adjust, all UK CBs therefore need recognition to be retained in Annex IV until 31/12/21, as originally indicated when the updated in Annex IV was published late last year

2) That ALL the GB-BIO codes are reinstated immediately to allow for this transition and to not unfairly penalise operators that are not certified by a CB that has a GB-BIO reinstated or obliging them to transfer to the CB that has access to their GB-BIO code on TRACES NT. This represents anti-competitive activity by the EU COM

3) That the paragraph in Appendix A of ANNEX TBT-4 of the TCA to be reworded to reflect the current UK/US equivalency which states "The arrangement is limited to organic products of US or UK origin. This includes products that have been either 1) produced with the US or UK or 2) products whose final processing or packaging occurs within the US or UK. This includes products processed in the US or UK that contain organic ingredients from foreign sources that have been certified to the US or UK organic standards" - this is a mirror of the EU/US equivalency agreement

Our problem is that at present the Commission is seemingly unwilling to engage with this issue. Due to the urgency however of this matter, as indicated above, which is causing a grave distortion of trade we would be grateful for your immediate consideration of this and can I ask you to provide a response on this within the next two weeks.

With kind regards,

Roger Kerr

Chair

On behalf of The UK Organic Certifiers Group (UKOCG)

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CC – Defra Organic Unit