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Unit 03 - Food of Animal Origin (3) - Fish and Food of Non-Animal Origin

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REPORT
on a mission carried out in
THE NETHERLANDS
from 8. to 11.12.1998
in the field of

**APPLICATION OF COUNCIL REGULATION 2092/91 ON
ORGANIC FARMING IN THE NETHERLANDS**

Please note that certain comments from the Dutch authorities have been included in the text of the report in bold, italic type, or have been added as footnotes.



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1. MISSION DETAILS

1.1. Participants

Two inspectors from the Food and Veterinary Office (except on 11/12 : one inspector).

1.2. Meetings and visits

Ministry of Agriculture, Nature Management and Fisheries

(Ministerie van Landbouw, Natuurbeheer en Visserij - LNV):

Staff-officer (beleidsmedewerker) of Department of Agriculture (Directie Landbouw)

Official of National Reference Centre Agriculture (Informatie- en Kenniscentrum Landbouw - IKC)

Official of the legal department of the Ministry

Official of Directie Veterinaire, Voedings- en Milieu-aangelegenheden

4 Officials of LASER, the executive department of LNV

Skal, Inspection organisation for organic production methods

(Skal, Controle organisatie voor biologische productiemethoden):

Director

Head of control section

Head inspector food production

Operators organic production method

Farmer

Wholesaler fruit and vegetables with import activities

Director

Staff-member

Importer and processor of nuts, nut butter and dried fruit

Director

Technical manager

Importer of dry and fresh products

Director

Technical manager

Commercial director of warehouse-company

An opening and a closing meeting were held with representatives of the Ministry of Agriculture, Nature Management and Fisheries

2. SCOPE AND OBJECTIVES OF THE MISSION

The scope of the mission was primarily to give a clear picture of the way in which Article 11.6 of Council Regulation (EEC) 2092/91 is applied by the Netherlands. The mission included an exchange of views as to the supervision exercised by the competent authority on the compliance of the inspection bodies in 3rd countries with the requirements of the EN 45011 standard.

The second part of the mission focused on the application of Council Regulation (EEC) No 2092/91 in general in the Netherlands. The objective of this part was to get an overview of how the regulation is applied.

3. BACKGROUND

Council Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs provides for rules for the production and labelling of organically grown products. Article 11 of this Regulation provides for a regime of equivalency for products imported from third countries. This regime is either managed by the Commission (Article 11.1-5) or, as is currently the case for the majority of products imported in the Community, by the Member States (Article 11.6). The Regulation requires that before organic products are imported into the European Community, it has been adequately demonstrated that the products were produced in accordance with production standards and inspection arrangements equivalent to those applied to organic production in the EC.

This mission is the first in a program of planned visits to all Member States. The first part of this program concerns the Member States who have an important import activity under Article 11.6.

4. MAIN FINDINGS AND CONCLUSIONS

4.1. General information on organic farming in the Netherlands

In November 1998 962 farmers were cultivating 19.300 ha of land, representing 0.9 % of the agricultural surface. 575 processors were registered in August 1998, including a small number of importers. In 1998 the sector was growing fast : in 1997 the number of organic farmers was 746. Imports also increased substantially.

The most important categories of organically grown products in the Netherlands are dairy products, arable crops and outdoor vegetables. The food industry produces a wide range of processed products and uses a lot of imported organic products as ingredients.

Organic products are available in some 2.000 outlets. An increasing number of supermarkets offer organic products.

The Dutch government developed a policy plan (Action Plan for Organic Farming, November 1996), that aimed for a substantial growth of organic farming in the years to come by increasing consumer awareness and selling the organic products through the regular supermarkets. Apart from specific measures like conversion subsidies, scientific support and fiscal instruments, the interest in organic farming is also taken into account in the general policy making.

4.2. Inspection system put in place by the Netherlands

4.2.1. Implementation of Regulation 2092/91

The regulation has been implemented by means of the Act for the Quality of Agricultural products (Landbouwkwaliteitswet). The “Landbouwkwaliteitswet” provides a basis for inspection systems of all kinds on agricultural production and products. Legal decisions in the framework of this Act refer to the entire text of EC Regulation 2092/91.

Other legal decisions in this framework give the inspection organisation “Skal” the competence to make implementation rules on the inspection activities, that have to be approved by the Ministry and are legally binding. Skal can also make detailed interpretations of production rules that are not formally agreed by the Ministry and are not legally binding. The Legal Department of the Ministry supervises these activities.

4.2.2. The Competent Authority

The Ministry of Agriculture, Nature Management and Fisheries act as the competent authority for the implementation of Regulation 2092/91. The Department of Agriculture (2 posts) is the main policy making body for organic farming, headed by a sector-manager. It is assisted by the department of IKC for policymaking (2,5 posts) and by the governmental agency LASER for executive tasks (1.5 posts). Other departments involved are Legal Affairs for legal advice and the Veterinary, Food and Environmental Department for the supervision of the inspection authority

The budget of the competent authority is partly defined by the working plans of the Ministry, defining the priorities and the manpower. The executive department LASER sends in a bill for its work to the Agricultural Department.

The general policy is described as to ensure the genuine organic origin of organic products sold on the market.

The Competent Authority is entitled to grant the following exceptions as foreseen in the Regulation :

(1) Prolonging or reducing the conversion period (Annex I.1) : is foreseen by the “Landbouwkwaliteitswet”. Skal makes the decision that has to be approved by the Ministry.

(2) Seed and seedlings (article 6.3) : is managed by LASER. No additional formal criteria are used to make these decisions.

4.2.3. Set-up of the inspection system (article 9)

The Netherlands designated the inspection authority Skal. This designation fits into an existing legal framework that is also used in other areas (e.g. seed-testing : “NAK”). The status of Skal is “zelfstandig bestuursorgaan – zbo”, which is a legally well defined status of a private organisation with designated public tasks, that is under the control of the government for the execution of

these public tasks. The actual supervision relies to a great extent on the official accreditation of Skal by the “Raad voor Accreditatie”, a Dutch accreditation body. In addition governmental experts carry out a financial audit at least twice a year and several co-ordination meetings are held annually.

The supervising Ministry of LNV has different possibilities to exercise control over Skal : it appoints the head of the board of the directors, it has to approve the appointment of the general manager, it has to approve the fees the licensees have to pay to Skal and, finally, it can withdraw the designation.

There are no reports on the supervision of Skal by the Ministry.

Some operators formulated remarks on the work and the performance of Skal. Apparently these remarks had not been communicated to the Ministry, because these operators did not know whom to address.

Apart from the public tasks, Skal executes private tasks : management of the private label EKO on organic products, registered by Skal; inspections on organic animal production in the Netherlands; inspections on organic farming in over 20 other countries; inspections on sustainable forestry and textiles.

Skal is an independent organisation. Representatives of some 20 interest parties have a seat in the “Council of Advice”. This Council nominates candidates for the Board of Directors. Two representatives of interest parties sit on the Board of Directors, which has six members plus a chairman.. An annual report is published.

Skal works with full time inspectors, who follow established procedures and use standardised checklists for their inspections.

4.2.4. General measures to prevent fraud on the market

In addition some general measures are in place to prevent the unapproved use of organic labelling on the market. The inspection service “Waren en Veterinaire zaken”, which is a part of the Ministry of Public Health, inspects the correct labelling of products in shops and on public markets. Several infringements are found every year. The Food Inspection Service also takes samples for pesticide residue analysis, but is not focussing specifically on organic products.

4.2.5. Enforcement measures

Skal sends infringements to the Disciplinary Court for Organic Farming (Tuchtgerecht). This is composed according to the Landbouwkwaliteitswet by lawyers and technicians, all appointed by the Ministry. There is no table available that lists what sanctions are given for which infringements.

In agreement with the public authorities (agricultural police – “Algemene Inspectiedienst A.I.D.”), more serious infringements are sent to the Penal Court, based on common penal law.

The number and character of infringements are published in the Annual Report of Skal. *A number of* cases are reported to have been brought to the Penal Court. A few cases of fraudulent certificates have been passed to the agricultural police recently.

5. THE APPLICATION OF ARTICLE 11.6 IN THE NETHERLANDS

5.1. The decision making process to grant import authorisations

The importer sends a request for import authorisation to the Laser office in Roermond. Laser is the executive organisation of the Ministry. The main criteria checked by Laser are if the importer is licensed by Skal and if the exporter is under the control of a recognised inspection body in the third country.

In the past the assessment of the inspection bodies was done based on experience and information from Skal, who was responsible for it before Laser took over in 1996. Laser built further on the traditional assessment of Skal and developed a decision tree. Laser asks a written declaration that the inspection body in the third country works according EC Regulation 2092/91. Laser also takes into account which inspection bodies are accepted by other Member States.

Each authorisation is granted for a period ending 31 December 2002, the actual expiring date of article 11.6. However, the importer needs to demonstrate each year that the conditions in place at the time the application for the authorisation was done, remain unchanged.

All the import authorisations granted by the Netherlands and all authorisations granted by other Member States and communicated to the Netherlands are stored in a well developed database at LASER.

Each application for import authorisation is treated in the same way. In most cases there is no indication of the amount of products involved or their value. In case an import has already been authorised in another MS, the importer still has to send in all the paperwork to Laser.

In 1998 182 import authorisations were granted involving 21 different inspection bodies in 3rd countries. 122 authorisations (67%) had to do with 7 inspection bodies only. No specific supervision by the Competent Authority is in place¹.

This system of granting import authorisations is in transition now. The importers had to demonstrate before the 1st of October 1998 that the inspection bodies in the third countries were in the process of obtaining formal accreditation according to EN 45011 or ISO 65. Import authorisations

¹ The Dutch authorities suggested the following wording : 'The Competent Authority regularly consults LASER on implementation of the settlement agreement between LASER and the Agricultural Department. Specific attention is also paid here to problem areas in the granting of authorisations.'

that involved inspection bodies that did not demonstrate this are withdrawn already.

In the future the assessment will be based on the accreditation according to EN 45011 or ISO 65-criteria of the inspection bodies active in the third countries inspecting the goods to import. LASER will assess the accreditation, but no criteria are available yet for this assessment. The plan is to have the system fully developed and in place by June 1999. It will probably be based on the condition that the accreditation body works along the lines of ISO 61, the international standard for accreditation bodies. A clear need for training on these ISO-standards for the Laser-staff was identified.

5.2. Control procedures in place for imports

The importer reports each arrival of goods to Skal. The original import certificate has to accompany the incoming goods and remains at the importer's office. Skal inspectors visit the importers' premises several times a year. They check the nature of the goods, the labels, the certificates and the invoices. They also check the bill of lading and the internal trace-back system of the company if this is available. A standard 1 page-report with remarks is produced on the spot and countersigned by the operator.

Skal treats all imports as "high-risk". The difficulty reported is that most information comes from other parties and that it is difficult to check if the information obtained is correct. Moreover the storage is often done in other countries and therefore physical inspection is not possible.

Skal also indicated problems with the definition of "importer". Some companies only import on paper, they don't pay for the goods and are never the owner. They only receive a small fee for the paper work.

One importer suggests that the name of the first importer should always be on the package to improve the traceability of the goods.

In general import is seen as a complex process involving many different operators (farmers, packers, brokers, importers) and therefore difficult to control.

5.3. Exchange of views as to the supervision exercised by the competent authority on the compliance of the inspection bodies in 3rd countries with the requirements of the EN 45011 standard

LASER brought up the following elements regarding the evaluation of the actual system for granting authorisations :

- the importers have been given some serious tasks in providing evidence;
- the accreditation of the inspection body is considered as an essential element in the authorisation;
- concern was expressed on the different interpretation by the different Member States and on the lack of harmonisation; therefore a central judgement on the inspection bodies by the Commission was suggested;

- a few importers told LASER that they were not interested in the authorisation anymore, because the accreditation of the inspection body involved was not possible, often due to a lack of finance.
- the market of imported organic products has grown from a small, pioneer niche-market to an important international “big business”-market. The rules for import should be adapted accordingly;
- more communication between the services in the Member States who are actually responsible for granting the authorisations would be very useful.

Skal brought up the following elements regarding the evaluation of the actual system for control on imports :

- there is not enough communication between inspection bodies in different Member States. Some inspection bodies argue that this is forbidden by the Regulation. This problem should be solved and co-operation and cross-checking between inspection bodies should be made obligatory by law;
- due to the different interpretation of article 11.6 by Member States importers face different time restraints and different conditions depending on the Member State the imported goods are intended to enter first in the Community.

The operators dealing with imports call for more harmonisation on import procedures, to avoid unfair competition. The operators visited asked the Commission to take up these additional harmonising tasks. The further development of the list of equivalent countries as foreseen in article 11.1 is suggested.

On accreditation of the inspection bodies, the importers expressed their support for a formal accreditation, which they see as a guarantee for independent and professional inspection organisations.

The importers expressed serious concerns about possible gaps in the European and worldwide inspection systems that would give room to fraudulent practices. The possibility that a major fraud case would occur and be known to the public was considered as a major potential threat to the credibility of organic products in general. Taking into account the rapidly growing importance of imports, they indicated the need to adapt the regulations and inspection methods accordingly.

6. LIST OF SUGGESTIONS

6.1. Suggestions to the Netherlands

- (1) The Ministry of Agriculture Food and Fisheries designated an inspection authority with a specific status (private body with public tasks under public control and private tasks). It would be desirable to develop a better defined and more transparent relationship between the Ministry and Skal, in order to make the chain of command

concerning the public tasks more visible and to ensure the separation between public and private tasks, which needs further investigation².

- (2) It seems necessary to establish clearer criteria for the decision-making on the import authorisations done by LASER. More specifically it should be defined what “sufficient evidence” for equivalency is. Since the accreditation of the inspection body in the third country will be defined as the decisive criterion, criteria should be developed to assess this accreditation.
- (3) Training should be organised for the officials of LASER on EN 45011, ISO 65 and ISO 61-criteria on accreditation.
- (4) It would be desirable to communicate to all operators a contact point in the Ministry.

6.2. Suggestions to the Commission Services

- (1) To clarify in the definitions of Council Regulation 2092/91 which operators can be defined as importers.
- (2) To reconsider the paragraph C.1 and C.3 of Annex III of this Regulation, concerning the international co-operation between inspection authorities/bodies, in order to make this co-operation a legal obligation.
- (3) To consider further harmonisation in the field of imports of organic products in the Community.

² The Dutch authorities gave the following comment : ‘This view does not mirror the actual situation in the Netherlands. This is probably due to Skal being an autonomous administrative authority, an organisational structure that is not often used in other European Community Member States. The Ministry of Agriculture, Nature Management and Fisheries designated an inspection authority with a specific legal status by means of an Act. The inspection authority's public and private tasks are both organisationally and financially separate. This is assured by means of an auditor's report. It would be desirable to make the Ministry's hierarchical relationship with the inspection authority even more clear and, despite there being financial and organisational separation, to investigate ways of preventing the impression from arising that tasks under public and private law are intermingled within the inspection authority.’