

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re:)
Arriba Chocolate Company S.A. -) **Administrator's Decision**
Chocompany)
Duran, Guayas, Ecuador) **APL-012-21**

This Decision responds to an Appeal (APL-012-21) of a Notice of Noncompliance and Proposed Suspension of National Organic Program (NOP) certification issued to Arriba Chocolate Company S.A. - Chocompany (Arriba) of Duran, Guayas, Ecuador, by Certification of Environmental Standards GmbH (CERES), an USDA-accredited certifying agent. The operation has been deemed not in compliance with the Organic Foods Production Act of 1990 (Act)¹ and the U.S. Department of Agriculture (USDA) organic regulations.²

BACKGROUND

The Act authorizes the Secretary to accredit agents to certify crop, livestock, wild crop, and/or handling operations to the USDA organic regulations (7 C.F.R. Part 205). Certifying agents also initiate compliance actions to enforce program requirements, as described in section 205.662, Noncompliance procedure for certified operations. Persons subject to the Act who believe they are adversely affected by a noncompliance decision of a certifying agent may appeal

¹ 7 U.S.C. 6501-6522

² 7 C.F.R. Part 205

such decision to the USDA Agricultural Marketing Service (AMS) pursuant to §205.680 Adverse Action Appeals Process – General, and § 205.681, Appeals of the USDA organic regulations.

FINDINGS OF FACT

1. Arriba was certified organic for handling by CERES on February 10, 2016.
2. On September 25, 2020, CERES issued a Notice of Noncompliance.
3. On December 18, 2020, CERES issued a Notice of Noncompliance and Proposed Suspension.
4. On January 4, 2021, CERES denied Arriba’s December 22, 2020 request for mediation.
5. On January 19, 2021, CERES erroneously issued a Notice of Suspension, which was subsequently rescinded.
6. On February 2, 2021, Arriba filed an Appeal.
7. On February 2, 2021, NOP acknowledged Arriba’s timely Appeal and confirmed the rescission of the prior Notice of Suspension issued to Arriba.

DISCUSSION

The USDA organic regulations at 7 C.F.R. §205.100, What has to certified, state that, “(a) ... each production or handling operation or specified portion of a production or handling operation that produces or handles crops ... or other agricultural products that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must be certified according to the provisions of subpart E of this part and must meet all other applicable requirements of this part...” The regulations at §205.102, Use of the term, “organic,” state that, “Any agricultural product that is sold, labeled,

or represented as “100 percent organic,” “organic,” ... must be: ... (b) Handled in accordance with the requirements specified in §205.101 or §§205.270 through 205.272 ... ” The regulations at §205.105, Allowed and prohibited substances, methods, and ingredients in organic production and handling, state that, “To be sold or labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” the product must be produced and handled without the use of: (a) Synthetic substances and ingredients, except as provided in §205.601 or §205.603 ...”

The organic regulations at §205.103, Recordkeeping by certified operations, state that, “(a) A certified operation must maintain records concerning the production, harvesting, and handling of agricultural products ... (b) Such records must: ... (2) Fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited ... (4) Be sufficient to demonstrate compliance with the Act and the regulations in this part.” The regulations at §205.201, Organic production and handling system plan, state that, “(a) The producer or handler of a production or handling operation ... must develop an organic production or handling system plan that is agreed to by the producer or handler and an accredited certifying agent... plan must include: ... (1) A description of practices and procedures to be performed and maintained, including the frequency with which they will be performed; (2) A list of each substance to be used as a production or handling input, indicating its composition, source, location(s) where it will be used ... (3) A description of the monitoring practices and procedures to be performed and maintained ... (4) A description of the recordkeeping system implemented to comply with the requirements established in §205.103; (5) A description of the management practices and physical barriers established to prevent ... contact of organic production and handling operations and products with prohibited substances; and (6) Additional

information deemed necessary by the certifying agent to evaluate compliance with the regulations.”

The organic regulations at §205.400, General requirements for certification, state that, “A person seeking to receive or maintain organic certification under the regulations in this part must: (a) Comply with the Act and applicable organic production and handling regulations of this part; (b) Establish, implement, and update annually an organic production or handling system plan that is submitted to an accredited certifying agent as provided for in §205.200; (c) Permit on-site inspections with complete access to the production or handling operation ... (d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation and allow ... certifying agent access to such records ...; (e) Submit the applicable fees charged by the certifying agent; and (f) Immediately notify the certifying agent concerning any: (1) Application, including drift, of a prohibited substance to any field, production unit, site, facility, livestock, or product that is part of an operation ...” The organic regulations at §205.406, Continuation of certification, state that a certified operation is to annually pay the certification fees and submit to its certifier an updated organic production or handling system plan which includes any deviations from, deletions from, or additions to its organic production or handling system plan as well as “Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.”

Arriba is an organic operation certified for handling by CERES, which stated that an unannounced inspection of Arriba found numerous noncompliances, including insufficient records for tracing products, the failure to obtain valid organic certificates from suppliers, deficient flow charts for products, failure to pay invoices from CERES, and a finding of pesticide

residues on sampled product. Arriba stated in its Appeal that it has taken corrective actions to resolve all the noncompliances cited by CERES.

The evidence substantiates that CERES conducted the annual inspection of Arriba on August 11, 2020, and found that Arriba failed to maintain sufficient documentation and valid organic certificates for the suppliers from whom Arriba purchased ingredients; failed to update its organic system plan and maintain complete records for all transactions and activities; and failed to maintain adequate hygiene standards. Further, CERES stated to NOP that it received a report from authorities in the European Union that product sent by Arriba to an entity in Italy, specifically organic cacao beans, were sampled and tested, and found to contain residues of pesticides. The AgriParadigma lab report of July 16, 2020, for Lot 181116CP, showed a finding of Carbendazim at 0.025 mg/kg and DEET at 0.09 mg/kg.

Therefore, CERES conducted an investigation and issued a “Report of Investigation – Residues of Pesticides” to Arriba on July 21, 2020, requesting Arriba address this finding. CERES stated that Arriba responded to this report, but the response was submitted over a month later and didn’t provide any clarification or explanation for the finding of pesticide residues. Arriba submitted a Registration of Products for Export form covering February 18 – 25, 2019, which included Lot 190218CC but didn’t provide any additional information, and further, Lot 190218CC isn’t the lot discussed in CERES’ report. Arriba also submitted a Reception and Dispatch form regarding the transport of the product which identifies the customer and trucking company.

The prohibited substance finding noted in CERES’ July 21, 2020 Report of Investigation wasn’t addressed in CERES’ August 11, 2020 inspection, which formed the basis for a September 25, 2020 Notice of Noncompliance. The Notice of Noncompliance included CERES’

Excel spreadsheet of noncompliances found at the August 11, 2020 inspection. The inspection report did note under the noncompliance of “insufficient risk management of suppliers,” that Arriba needed to include the parameters of pesticides and DEET when requesting the analysis of raw materials from its suppliers.

In its appeal, Arriba didn’t address the finding regarding the prohibited substances found in Lot 181116CP sent to Italy. However, Arriba did refer to a finding of a prohibited substance on a different and 3rd lot, Lot 181219NC of cacao nibs, which tested positive for DEET at 0.057 mg/kg. Arriba also addressed QCS’ allegation that it had failed to maintain current organic certificates of its suppliers, and submitted the organic certificates of (b) (4), issued August 24, 2020 by Kiwa, and (b) (4), issued March 26, 2020 by QCS. Both Kiwa and QCS are USDA-accredited certifying agents. Arriba submitted flow charts for the handling of cacao beans, cacao nibs, and numerous other products, as well as a list of products certified in 2020. Arriba also submitted the data sheets for cleaning products it uses at its facilities, along with cleaning manuals.

Due to concerns regarding Arriba’s operation, CERES subsequently conducted an unannounced inspection on October 12, 2020. CERES again found that Arriba failed to maintain sufficient document and valid certificates for suppliers of its ingredients; and failed to exercise sufficient risk management actions regarding its suppliers. Additionally, CERES found Arriba failed to maintain sufficient records to allow successful traceability exercises; failed to pay invoices due to CERES; Arriba’s product flow charts, submitted after the prior inspection, weren’t complete; and information provided by Arriba on product flow, specifically the volume of products received versus the volume sold, didn’t match. CERES also stated in its October 12,

2020 inspection report that Arriba failed to adequately separate ingredients from potential contamination with prohibited substances during reception, processing, transport, and storage.

CERES also cited a finding of residues of prohibited substances Carbendazim and DEET on cacao beans in Lot 181116CP, as seen on the AgriParadigma lab report of July 16, 2020. Additionally, the inspection report contains an August 11, 2020 Groen Agro lab report for Lot 190218CC, showing a finding of prohibited substances Cipermetrina at 0.015 mg/kg and DEET at 0.013 mg/kg on a sample of cacao beans. Therefore, evidence of residues of prohibited substances were found on 3 separate lots.

The inspection report further discussed the product flow noncompliance, stating that records show 2 purchases of organic whole cane sugar from supplier (b) (4), totaling (b) (4) kg, on June 30, 2020 and July 14, 2020, but sales records show (b) (4) kg being sold. The product is not included on Arriba's organic certification. CERES also noted that Arriba doesn't have a quality manager and didn't have a person present at the inspection who is responsible for product traceability and product flow.

Lastly, the Notice of Noncompliance and Proposed Suspension stated that Arriba had failed to pay 2 CERES invoices for 2020 certification fees, and costs associated with conducting the investigation of the pesticide residues finding, totaling US \$3,567.72.

In its appeal, Arriba responded to the findings of the October 12, 2020 inspection, submitting an inventory balance sheet, additional product flow charts, and a list of cleaning products. Arriba also submitted Order Forms sent to suppliers for organic products and Invoices from those suppliers, as well as Sales Invoices from Arriba to customers for the products. However, Arriba didn't address the potential contamination of organic products during the

various handling stages; the additional finding of prohibited substance residues on organic product; or the unpaid monies due to CERES.

Therefore, as Arriba failed to adequately address all the cited noncompliances, CERES issued a Notice of Noncompliance and Proposed Suspension on December 18, 2020. Arriba stated in its Appeal that it has taken corrective actions regarding all the noncompliances cited as to the August 11, 2020 annual inspection and the unannounced October 12, 2020 inspection. Arriba's responses and submitted documentation are discussed above. However, Arriba submitted the documentation with its Appeal; and hadn't presented the documentation to CERES prior to CERES' issuance of the adverse action notices.

CONCLUSION

The USDA organic regulations assure consumers that products with the USDA organic seal meet consistent, uniform standards. Key to these standards is that products with the USDA organic seal are produced and handled in accordance with the organic regulations. However, the evidence substantiates that Arriba violated the organic regulations at 7 C.F.R. §205.100, What has to be certified; 7 C.F.R. §205.102, Use of the term, "organic"; 7 C.F.R. §205.103, Recordkeeping by certified operations; 7 C.F.R. §205.105, Allowed and prohibited substances, methods, and ingredients in organic production and handling; 7 C.F.R. §205.201, Organic production and handling system plan; 7 C.F.R. §205.400, General requirements for certification; and 7 C.F.R. §205.406, Continuation of certification. Specifically, Arriba sold product as organic which isn't on their organic certificate; sold, labeled, and represented products as organic which were found to have residues of prohibited synthetic substances and therefore, weren't handled in accordance with the organic regulations; failed to maintain sufficient records to conduct

successful traceability exercises, records on its suppliers, product flow information, and sanitation information; failed to state all practices and procedures in its organic handling plan, including product flow information and sanitation measures; and failed to comply with organic handling regulations, update its handling system plan, maintain all required records, and pay all applicable fees due to its certifier. Although Arriba submitted corrective actions it has taken or will take, along with documentation purporting to substantiate those corrective actions, the noncompliances found by CERES are systemic throughout Arriba's operation, and the finding of residues of prohibited synthetic substances on 3 different lots of products sold by Arriba as organic wasn't explained and isn't correctable. Therefore, Arriba may not remain certified.

DECISION

Arriba's February 2, 2021 Appeal is denied, and the December 18, 2020 Notice of Noncompliance and Proposed Suspension is affirmed. Arriba's certification is to be suspended. However, pursuant to 7 C.F.R. §205.662(f)(1), Arriba may apply for reinstatement of its certification at any time. The request for reinstatement must be accompanied by evidence demonstrating correction of the noncompliances and corrective actions taken to comply with and remain in compliance with the Act and the organic regulations.

Attached to this formal Administrator's Decision denying Arriba's Appeal is a Request for Hearing form. Arriba has thirty (30) days to request an administrative hearing before an Administrative Law Judge. If Arriba waives the hearing, this Administrator's Decision suspending Arriba's certification will become final.

Done at Washington, D.C., on this 24th
day of May, 2021.

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SUMMERS
Bruce Summers
Administrator
Agricultural Marketing Service

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