

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re: )  
)  
Capitol Trading Company Ltd. ) **Administrator's Decision**  
) **APL-016-22**  
Kenema, Sierra Leone )  
)

This Decision responds to an Appeal (APL-016-22) of a Notice of Proposed Suspension under the National Organic Program (NOP) issued to Capitol Trading Company Ltd. (Capitol) of Kenema, Sierra Leone by Ecocert S.A. (Ecocert), a USDA accredited certifying agent. The operation has been deemed not in compliance with the Organic Foods Production Act of 1990 (Act)<sup>1</sup> and the U.S. Department of Agriculture (USDA) organic regulations.<sup>2</sup>

**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 such decision to the USDA Agricultural Marketing Service (AMS) pursuant to § 205.680

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<sup>1</sup> 7 U.S.C. 6501-6522

<sup>2</sup> 7 C.F.R. Part 205

Adverse Action Appeals Process – General, and § 205.681, Appeals of the USDA organic regulations.

### **FINDINGS OF FACT**

1. On August 1, 2019, Capitol was certified organic for crops and handling by Ecocert. Capitol is a grower group comprised of several villages with numerous separate farms/farmers in each village. The villages include Kodima Village, Gbessebu Village, Gborebu Village, and Gbawema Village.
2. On October 25, 2021, Ecocert issued a Notice of Noncompliance to Capitol regarding the entire operation, to include all villages with the numerous farms and the handling facilities.
3. On October 25, 2021, Ecocert issued a Combined Notice of Noncompliance and Proposed Suspension regarding the Kodima Village farms only.
4. On December 7, 2021, after Capitol didn't request mediation or file an appeal to the combined notice regarding Kodima Village, Ecocert issued a Notice of Suspension, which suspended Kodima Village and its farms/farmers from Capitol's grower group operation.
5. On December 17, 2021, Ecocert issued a Notice of Proposed Suspension regarding the entire operation, including all villages with the numerous farms and the handling facilities.
6. On January 17, 2022, Capitol filed an Appeal to the proposed suspension of its entire operation.
7. On March 22, 2022, USDA/AMS entered into a Settlement Agreement with Capitol.
8. On April 21, 2022, Ecocert reported to NOP that Capitol breached the Settlement Agreement.
9. On April 27, 2022, NOP issued a Notice of Noncompliance and Request for Corrective Action to Capitol.

10. On August 9, 2022, Ecocert reported to NOP that Capitol continues to be in breach of the Settlement Agreement.

## **DISCUSSION**

The USDA organic regulations at 7 C.F.R. §205.103, Recordkeeping by certified operations, state that, “(a) A certified operation must maintain records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)). (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 organic 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; (b) Nonsynthetic substances prohibited in §205.602 or §205.604...”

The organic regulations at §205.202, Land requirements, state that, “Any field or farm parcel from which harvested crops are intended to be sold, labeled, or represented as “organic,” must: ... (b) Have had no prohibited substances, as listed in §205.105, applied to it for a period of 3 years immediately preceding harvest of the crop; and (c) Have distinct, defined boundaries and buffer zones such as runoff diversions to prevent the unintended application of a prohibited

substance to the crop or contact with a prohibited substance applied to adjoining land that is not under organic management.”

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 in this part;
- (b) Establish, implement, and update annually an organic production or handling system plan ...
- (c) Permit on-site inspections with complete access to the production or handling operation, including noncertified production and handling areas, structures, and offices by the certifying agent as provided for in §205.403; (d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation ...”

The organic regulations at §205.406, Continuation of certification, state that, “(a) To continue certification, a certified operation must annually pay the certification fees and submit the following information, as applicable, to the certifying agent: (1) An updated organic production or handling system plan ... (4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part. (b) Following the receipt of the information specified in paragraph (a) of this section, the certifying agent shall within a reasonable time arrange and conduct an on-site inspection of the certified operation ...”

Certifier Ecocert certified Capitol for crops and handling on August 1, 2019. Ecocert issued a Notice of Noncompliance on October 25, 2021 regarding Capitol’s entire operation, after the September 7 – 18, 2021 inspection of Capitol revealed several noncompliances in the handling facilities and the 4 villages inspected – Kodima, Gbessebu, Gborebu, and Gbawema – for which 20 separate farms were visited. The noncompliances included a lack of buffer zones in

50% of farms visited; the acreage of several farms being inaccurate; missing records and only 2 of the 20 visited farms having sales receipts; and discrepancies between estimated yields and quantities harvested. Ecocert cited to the specific farms for each noncompliance.

Ecocert also stated that at the inspection, it wasn't given access to the investigative report regarding the source of contamination of two sample batches, which had been previously found by Ecocert. Ecocert requested that Capitol trace the origin and extent of the contamination that resulted in positive prohibited substance findings in the two prior batches, and present what measures would be taken to prevent future contamination. Additionally, samples had been taken of 2 other batches at the September 2021 inspection, and testing revealed the presence of a prohibited substance on both. Specifically, a sample and testing of cocoa beans from a mixture of beans previously harvested from the Galahun, Ngiehun, Yumbuma, Kpelema, Sembehum, and Tomasu Villages had revealed the presence of Diethyltouamide at 0.26 mg/kg. A sample and testing of cocoa beans previously harvested from Lahai Swarray had revealed the presence of that same substance at 0.037 mg/kg. Ecocert submitted the Eurofins laboratory reports of October 13 and 19, 2021, showing these findings.

On October 25, 2021, Ecocert also issued a Combined Notice of Noncompliance and Proposed Suspension regarding Kodima Village and its farms/farmers only, citing to the inspection at which the inspector, while visiting the Kodima Village farms, saw 1 kg of cocoa beans drying on a mosquito net treated with a prohibited substance, and old bags of cement and rice. The inspector said the Kodima village farmers wouldn't identify the owner of the farm where these were found. Ecocert identified this noncompliance as intentionally providing false information and/or incorrect data. Capitol didn't request mediation nor file an appeal in regard to the combined Notice of Noncompliance and Proposed Suspension regarding Kodima Village.

Ecocert issued a Notice of Suspension on December 7, 2021 suspending Kodima Village and its farms/farmers from Capitol's grower group operation. When asked by NOP as to what led the inspector to note the cocoa beans drying on a mosquito net, Ecocert stated that in Africa, mosquito nets are regularly distributed by governments and other associations to people in villages to prevent disease spread by mosquitos; and the nets are often treated with insecticides/anti-mosquito products. Ecocert stated there has been a recurrent problem with farms misusing the nets by using them for drying or cleaning organic products, thereby subjecting the organic products to possible exposure to prohibited substances. Ecocert stated it has advised operations of this situation, and therefore, the inspectors look for this.

On December 17, 2021, Ecocert issued a Notice of Proposed Suspension in regard to the entire operation, to include all villages with the numerous farms/farmers and the handling facilities, after finding that Capitol's response to the October 25, 2021 Notice of Noncompliance regarding the entire operation wasn't sufficient. As Kodima Village was already suspended, the proposed suspension was in regard to Capitol and its handling facilities, as well as its numerous other villages, including Gbessebu, Gborebu, and Gbawema, which had been inspected in September 2021, and for which numerous noncompliances were cited, as well as other villages including Torkporbu, Tikokor, Saama, Saana, Toobu II, Galahun, Ngiehun, Yumbuma, Kpelema, Sembehum, Tomasu, and Lahai Swarray.

Ecocert found several deficiencies in the recordkeeping of Capitol and its grower group villages and farms/farmers, including missing records, records not being available at the inspection, and not giving the inspector access to records. The missing records include all purchase receipts and the daily purchase list of product/crops from all villages part of the grower group; warehouse ledgers; stock inventory records; maps of all farms with estimated crop yields;

and export records showing the source/farmer/village of the product and the amount exported, as the inspector found that Capitol exported more product than the crop estimates. There were also insufficient records of all transactions and activities so as to allow for successful mass balance and traceability exercises. Ecocert also noted that Capitol didn't allow complete access during the on-site inspection, failing to provide access to investigative reports on previously noted contaminated batches. Further, samples taken at the September 2021 and tested by Eurofins laboratory revealed the presence of a prohibited substance. DEET, a personal insect repellent, was found at 0.026 mg/kg and 0.037 mg/kg in two samples collected from harvested batches during the inspection. Ecocert also noted a lack of adequate buffers on half of the farms visited.

Capitol appealed the December 17, 2021 Notice of Proposed Suspension regarding the entire operation, stating that isolated cocoa bean and coffee farmers used mosquito nets treated with DEET to dry crops, and mosquito repellent coils; however, Ecocert already issued a suspension as to the Kodima Village farmers where the treated mosquito net was found. Capitol stated that it would train its farmers, instructing them not to use DEET-treated mosquito nets and coils, and would sanction/suspend farmers found to have violated the regulations. Capitol also acknowledged the lack of buffer zones but stated that there is no risk of contamination. Capitol's appeal didn't address the 2 batches for which Ecocert had stated that Capitol failed to allow access to investigative reports. Capitol's appeal also didn't address the 2 batches from which samples taken at the inspection were tested and revealed the presence of DEET, a prohibited substance. However, Capitol submitted a Corrective Action Plan with the appeal, in which it stated that it would provide the requested information to Ecocert on the prohibited substance findings.

NOP and Capitol entered into a Settlement Agreement on March 22, 2022, pursuant to which Capitol agreed to comply with several specific terms, including keeping specified records; overseeing its grower group villages and the farms/farmers to ensure they keep adequate and required records; and providing the requested records on two contaminated lots for which Capitol failed to provide investigative reports to Ecocert during the September 2021 inspection. Additionally, Capitol agreed to ensure its village farm/farmers don't use DEET-treated mosquito nets and coils; investigate the origin and extent of the contamination of the crops which resulted in the finding of DEET on cocoa beans sampled on September 12, 2021; suspend farmers found to violate to regulations; and ensure its farms/farmers take appropriate action to prevent the contamination of crops, including maintaining adequate buffer zones. Capitol also agreed to submit maps and calculations on the estimated yields for all farms; use a unique identification system to clearly separate cocoa farmers from coffee farmers; and provide training to all farmers on the organic regulations. Lastly, per the Settlement Agreement, Capitol agreed that its certifier would conduct 2 unannounced inspections within 2 years of execution of the agreement, in addition to the annual inspections, and that Capitol would permit its certifier to have full access to its operation, facilities, and farms, including the individual farmers that are part of the grower group in the various villages, as well as access to all records of the operation and individual farmers.

On April 21, 2022, Ecocert reported to NOP that Capitol has failed to comply with the terms of the Settlement Agreement. Specifically, Ecocert stated that after execution of the Settlement Agreement, it contacted Capitol regarding the annual renewal inspection for 2021, which had been postponed and not yet performed. Ecocert stated that Capitol replied that it is changing certifiers and will not allow Ecocert to conduct the annual inspection. Ecocert



provided the email of April 12, 2022, from Capitol in which Capitol stated that as it is changing certifiers, “we don’t see the need for Ecocert to conduct any audit [at] our cost.” Capitol also stated that it had “won” the appeal decision, referring to its appeal of the December 17, 2021 Ecocert Notice of Proposed Suspension. NOP had sent the proposed Settlement Agreement to Capitol on March 21, 2022 and told Capitol to read the agreement carefully. Capitol replied that it would “abide by the agreed settlement.” On March 24, 2022, replying to Capitol’s inquiry on a new certifier, NOP told Capitol that it could change certifiers, and that the new certifier would oversee compliance with the Settlement Agreement if it were successfully certified.

However, Capitol is still certified by Ecocert, and therefore, is subject to the annual inspection by Ecocert. As such, NOP issued a Notice of Noncompliance and Request for Corrective Action to Capitol on April 27, 2022. NOP wrote that it was informed by Ecocert that Capitol has refused to allow Ecocert to conduct the annual renewal inspection for 2021 which had been postponed, and the annual renewal inspection for 2022, as well as unannounced inspections. NOP stated that it was not correct to say that Capitol “won” the appeal. Rather, the Notice of Proposed Suspension was addressed by the signing of the Settlement Agreement with NOP. However, failure to comply with the terms of the agreement will result it being void. NOP cited to the term requiring Capitol to cooperate with Ecocert on conducting inspections. Further, although Capitol had applied to a new certifier, Capitol is still certified by Ecocert and must cooperate with Ecocert on the conducting of all inspections. NOP gave Capitol 20 days to comply with the Settlement Agreement and work with Ecocert to schedule the inspection(s).

On May 5, 2022, Capitol replied to NOP, stating that Ecocert needs to “forget about the settlement agreement as we don’t have any business to do with them, we will deal with it with our NEW certifier ...” On May 6, 2022, NOP emailed Capitol that it is required per the

Settlement Agreement to cooperate with Ecocert on inspections, and that the Settlement Agreement can't be dismissed. Capitol replied that if it wasn't certified by the new certifier within a week, it would contact Ecocert to schedule its inspection. NOP also reiterated to Capitol in other emails that it must comply with the terms of the Settlement Agreement and allow Ecocert to schedule and conduct the inspection(s).

NOP also contacted USDA-accredited certifier Control Union, which confirmed it received an application for certification from Capitol on May 6, 2022. The application was still under consideration. On August 9, 2022, Ecocert informed NOP that despite numerous emails to Capitol, the most recent being July 27, 2022, and attempts to schedule the 2021 renewal inspection, Capitol isn't responding to any of their requests, and also hasn't provided any of the documentation cited in the agreement, which includes the tracing and origin of the previously-found contaminated batches, and addressing the findings of DEET on cocoa beans sampled at the September 2021 inspection. Capitol had also specifically stated in its corrective action plan submitted with its Appeal that it would provide this documentation to Ecocert.

It is noted that at the September 2021 inspection, Capitol didn't allow complete access to the operation, including non-certified production and handling areas, structures, and offices. This was cited in both the Notice of Noncompliance of October 25, 2021, and the Notice of Proposed Suspension of December 17, 2021 regarding the entire operation, which led to it being a term within the Settlement Agreement. Additionally, an additional check with Control Union revealed that as of August 12, 2022, Capitol has still not completed the application process with Control Union.

The NOP-Capitol Settlement Agreement in Term 4M states that, "Capitol agrees that the failure to abide by the terms of paragraphs immediately above, and enforce compliance by its

farmers, shall result in USDA, AMS possibly pursuing an administrative hearing process against Capitol.” Clause 3D of the Settlement Agreement states that, “Capitol withdraws its appeal and waives further appeal rights in this matter. Failure to comply with the Settlement Agreement shall automatically void paragraph 2 above.” Paragraph 2 states, “USDA, AMS agrees not to issue a formal Administrator’s Decision charging Capitol with alleged violations of the OFPA and the USDA organic regulations for any actions disclosed by the investigation which gave rise to this agreement.” A closure letter sent to Capitol on March 22, 2022 with the executed agreement also stated that, “... failure to abide by the terms of the agreement shall automatically void the Settlement Agreement and USDA, AMS may pursue an administrative hearing process.”

## **CONCLUSION**

Capitol has violated the organic regulations at 7 C.F.R. §205.103, 7 C.F.R. §205.105, 7 C.F.R. §205.202, 7 C.F.R. §205.400, and 7 C.F.R. §205.406, by failing to maintain and provide specifically-requested records to Ecocert; by failing to provide adequate oversight of its numerous villages and farms/farmers within the grower group and their recordkeeping; and by the use of DEET-treated mosquito nets and coils in organic production areas. Further, Capitol has violated the organic regulations and breached its Settlement Agreement with NOP, by refusing to schedule and allow its certifier Ecocert to conduct the 2021 annual renewal inspection, and other inspections Capitol agreed to cooperate with, per the Settlement Agreement with NOP.

Capitol has also failed to submit all documentation and information per the organic regulations and delineated in the Settlement Agreement with NOP, including specifically-

requested documentation addressing identified contaminated batches of cocoa beans. Records are a key component of an operation's organic control system. Having a compliant recordkeeping system, maintaining records that comply with that system, and effectively communicating with the certifier are essential for demonstrating compliance with the USDA organic regulations. Additionally, the organic regulations and the Settlement Agreement require Capitol to allow and cooperate in annual renewal and unannounced inspections; however, Capitol has failed to do so, despite numerous contacts by Ecocert and NOP.

Capitol's rebuttal that it has applied to certifier Control Union for certification is not relevant, as that application is pending, and Capitol is still certified by Ecocert. The Settlement Agreement has been breached, thereby reviving the initial December 17, 2021 Notice of Proposed Suspension regarding the entire operation. Capitol can't remain certified at this time.

## **DECISION**

Capitol's January 17, 2022 Appeal of the December 17, 2021 Notice of Proposed Suspension regarding Capitol's entire operation is denied, and Capitol's crop and handling certification is suspended in regard to the entire operation to include all villages and farms/farmers and the handling operation. Capitol's Kodima Village is already suspended pursuant to a prior Combined Notice of Noncompliance and Proposed Suspension, which wasn't appealed. Pursuant to the organic regulations at 7 CFR §205.662(f), Capitol may apply for reinstatement of its entire operation, including Kodima Village, after the suspension period has concluded, though a request for reinstatement must be accompanied by evidence demonstrating full compliance with the organic regulations. Additionally, Capitol must fully address the cited contaminated batches and the finding of DEET on samples taken at the September 2021, all

addressed above. While under suspension, Capitol may not sell, label, or represent any products as organic, and may not handle organic products. It is also noted that if Capitol's certification is reinstated, villages found to be the source of the contaminated batches may be excluded from certification for 3 years from the date of the contamination, if determined, or finding of contamination via laboratory analyses, whichever is later.

Additionally, attached to this formal Administrator's Decision denying Capitol's Appeal is a Request for Hearing form. Capitol has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this \_\_\_\_\_  
day of October \_\_\_\_\_, 2022.

**BRUCE  
SUMMERS**

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Bruce Summers  
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Agricultural Marketing Service