UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE
BEFORE THE ADMINISTRATOR

In re: Rus Agro Export Ltd. Rostov-on-Don, Russia	))))	**Administrator's Decision** **APL-002-18**

This Decision is in response to an appeal (APL-002-18) of a Combined Notice of Noncompliance and Proposed Revocation issued by the U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), National Organic Program (NOP) to Rus Agro Export Ltd. located in Rostov-on-Don, Russia. The operation was deemed not in compliance with the Organic Foods Production Act of 1990 (OFPA)[1] and the 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 §205.662. The Act authorizes the NOP to enforce the USDA organic regulations. Persons subject to the Act who believe they are adversely affected by a noncompliance decision, such as a Combined Notice of Noncompliance and Proposed Revocation, may appeal such decision to the AMS Administrator pursuant to §205.680 of the USDA organic regulations.

[1] 7 U.S.C. 6501-6524
[2] 7 CFR Part 205

FINDINGS OF FACT

1. Rus Agro Export Ltd. (Rus Agro) is an operation located in Rostov-on-Don, Russia. Rus Agro was certified as an organic handler by Kiwa BCS Oko Garantie GmbH (Kiwa BCS) effective September 30, 2015 [Exhibit 1]. Rus Agro surrendered its master organic certification to Kiwa BCS on February 7, 2018 [Exhibit 2]. Rus Agro also surrendered its organic certification in regard to an entity referred to as "the Russian project," involving specified Russian farmers, to Kiwa BCS on January 29, 2018 [Exhibit 3]. Rus Agro was previously certified for organic production and processing by bio.inspecta AG (bio.inspecta) effective July 14, 2014 and August 21, 2014, respectively [Exhibits 4 and 5]. The bio.inspecta certifications were cancelled effective June 8, 2016.

2. On August 22, 2017, the NOP issued a Combined Notice of Noncompliance and Proposed Revocation to Rus Agro due to (i) the submission of false documentation to its certifying agent to misrepresent nonorganic corn and nonorganic soybeans as organic; and (ii) Rus Agro's connection to Beyaz Agro Ith. Ihr. San. Ve Tic. A.S. (Beyaz Agro), a revoked operation[3] [Exhibit 6]. The NOP notice was issued in regard to the Kiwa BCS organic certifications. NOP could not confirm receipt of this notice; NOP resent the Combined Notice of Noncompliance and Proposed Revocation on September 21, 2017 [Exhibit 7].

3. On October 20, 2017, Recep Kaya, Director, Rus Agro submitted an appeal to AMS; AMS accepted and acknowledged the appeal on October 23, 2017 [Exhibit 8].

4. Rus Agro is a responsible party for the purchase and sale of non-organic corn and soybeans which were subsequently sold as organic.

[3] On June 1, 2017, the NOP revoked the organic certification of Beyaz Agro. Goksal Beyaz is the CEO of Beyaz Agro and was also the addressee on the Combined Notice of Noncompliance and Proposed Revocation that the NOP issued to Rug Agro in August 2017.

DISCUSSION

The NOP issued a Combined Notice of Noncompliance and Proposed Revocation to Rus Agro. The Proposed Revocation was issued because Rus Agro provided false organic certification documents to misrepresent nonorganic corn from Romania and nonorganic soybeans from Ukraine as organic corn and organic soybeans from Russia. Further, Rus Agro is responsibly connected to a revoked operation, Beyaz Agro, which managed shipments of nonorganic grains and soybeans that were represented as organic for sale in the United States.[4,5] Beyaz Agro was certified as an organic handler by Kiwa BCS on August 16, 2016. This certification was revoked by NOP on June 1, 2017 [Exhibits 9 and 10].

The connection between Rus Agro and Beyaz Agro is well-documented. First, Rus Agro's Organic Integrity database listing shows Goksal Beyaz, with the email address of goksal.beyaz@hakanfoods.com, as the contact for Rus Agro [Exhibit 11]. Goksal Beyaz is identified as the Chairman of Beyaz Agro on his business card for Beyaz Agro [Exhibit 12]. The Inspection Report by Kiwa BCS on the June 2017 inspection of Beyaz Agro shows the owner of Beyaz Agro as Goksal Beyaz [Exhibit 13].

Second, the Kiwa BCS organic certificate issued to Rus Agro is addressed to Rus Agro, Hakan Organics, and Goksal Beyaz [Exhibit 1].

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[4] The USDA organic regulations define "responsibly connected" as, "Any person who is a partner, officer, director, holder, manager, or owner of 10 percent or more of the voting stock of an applicant or a recipient of certification of accreditation." (§ 205.2)

[5] The NOP also issued a Combined Notice of Noncompliance and Proposed Revocation on April 28, 2017, to Hakan Organics DMCC for knowingly misrepresenting non-organic, fumigated, soybeans as organic. Hakan Behceci, CEO of Hakan Agro DMCC, the parent company of Hakan Organics DMCC, is also a responsibly connected party to Rus Agro. AMS denied an appeal from Hakan Organics of the Proposed Revocation; Hakan Organics awaits a hearing. Hakan Organics has subsequently filed another appeal for another Notice of Proposed Revocation for additional violations of USDA organic regulations.

Third, the bio.inspecta July 6, 2015 Data Sheet for Processing and/or Trade/Export of Rus Agro lists the contact persons as Goksal Beyaz, Ibrahim Koyuncu, and Erdal Binay. The document also lists those individuals, along with Mustafa Cakiroglu, as the persons responsible for the organic operation of Rus Agro [Exhibit 14]

Fourth, the bio.inspecta July 7, 2015 Group Control System Data Sheet for Rus Agro shows a project name of Rus Agro Export Russia Production, with Ibrahim Koyuncu as the Project Manager. However, the document also shows a group name of Rus Agro Export-Hakan Organic DMCC, with the group operator of Hakan Organics DMCC (Hakan Organics), and contact persons as Goksal Beyaz, Ibrahim Koyuncu, and Erdal Binay [Exhibit 15]. Rus Agro stated in its appeal that it sells its organic product exclusively to Hakan Agro DMCC (Hakan Agro), which is the parent company of Hakan Organics [Exhibit 8]. Hakan Organics stated that Rus Agro sells its organic product exclusively to them, Hakan Organics, whose parent is Hakan Agro.

Fifth, when bio.inspecta sent a Notice of Noncompliance on December 21, 2015 to Rus Agro [Exhibit 16], it was addressed to "Rus Agro Export – Hakan Organic DMCC." Goksal Beyaz is listed as General Coordinator on his business card for Hakan Organics [Exhibit 12].

Sixth, Erdal Binay, the Rus Agro Project Manager, listed his occupation on his Linked In account as General Director of Hakan Agro DMCC-Russia [Exhibit 17].

Seventh, a contract between certifier Control Union and Rus Agro for inspection/audit and certification services was signed on September 23, 2016 by Goksal Beyaz as legal representative and manager of Rus Agro [Exhibit 18].

Eighth, Rus Agro's 2015 Organic Handling System Plan for bio.inspecta lists Erdal Binay as a contact with an email address of erdal.binay@hakanfoods.com, as well as listing Ibrahim Koyuncu as a contact [Exhibit 19].

Ninth, Rus Agro's 2015 Organic Production System Plan lists Erdal Binay and Ibrahim Koyuncu as contacts, but also lists Goksal Beyaz as the Director of Rus Agro [Exhibit 20].

Tenth, both certifier bio.inspecta's July 2015 Processing Inspection Report and July 2015 Production Inspection Report for Rus Agro show Ibrahim Koyuncu as Rus Agro's Project Manager [Exhibits 21 and 22], but Ibrahim Koyuncu lists his occupation since June 2015 as Project Manager for Beyaz Agro on his Linked In account [Exhibit 23].

The corn and soybean shipments represented by Rus Agro were also represented by other entities closely associated with Rus Agro: Hakan Agro and Hakan Organics, Aram Foods Tarim Gida Ins Pet Nak San Ve Tic Ltd (Aram Foods), and Agropex International, Inc. (Agropex). The links between these entities and Rus Agro, as well as between each other and including Beyaz Agro, are also demonstrated in several documents.

First, Hakan Organics and its parent company Hakan Agro, which through its subsidiaries handles the distribution of both conventional and organic agricultural products, have the same physical address in Dubai, United Arab Emirates on Mazaya Business Avenue, where Hakan Agro occupies Towers AA1, BB1 and BB2 [Exhibit 24].

Second, Hakan Organics acknowledged in its appeal that it partnered with Goksal Beyaz to open satellite operations in Turkey and granted Mr. Beyaz authority to take certain actions on its behalf. The appeal also noted that Mr. Beyaz was authorized to establish e-mail accounts under the hakanfoods domain name for use by the Turkish operation. The delegation of these

permissions is evidence that Hakan Organics understood that people with hakanfoods email addresses would be representing Hakan Organics beyond Mr. Beyaz [Exhibit 25].

Third, the Inspection Report of certifier Kiwa BCS on the June 2017 inspection of Beyaz Agro shows the owner of Beyaz Agro as Goksal Beyaz, as stated above, and also states that Beyaz Agro and Hakan Organics use the same warehouses and share one office utilizing the same staff. That staff manages both companies. The Special Audit Report of June 30, 2017 states that, "Until May 2017 the Team of Beyaz Agro was mandated to manage and execute the business for Hakan Organic." [Exhibits 13 and 26]

Fourth, as additional evidence of the connection between Hakan Organics and Beyaz Agro, these businesses, in early 2017, shared an exhibition booth at the Biofach World Organic Trade Fair in Nuremberg, Germany [Exhibit 27]. Booth staff provided two business cards for Goksal Beyaz; one card was labeled Goksal Beyaz, Chairman, Beyaz Agro but the other was labeled Goksal Beyaz, General Coordinator, Hakan Organics [Exhibit 12].

Fifth, the NOP also obtained a copy of the Hakan Organics Customer Complaint Evaluation Procedure dated July 12, 2014. Goksal Beyaz signed this document under the headings "Controlled by" and "Approved by" [Exhibit 28].

Sixth, as to Aram Foods, the 2016 Organic System Plan of Aram Foods lists Hakan Organics and Beyaz Agro as their suppliers of soybeans [Exhibit 29].

Seventh, during a site visit to Agropex in March 2017, NOP personnel obtained copies of invoices from Agropex to Global Natural which provided the address for Agropex as, "34th Floor, BB2 Tower, Mazaya Business Avenue, Jumeirah Lake Towers, Dubai with the e-mail as dubai@hakanfoods.com [Exhibit 30]. This is the street address of Hakan Organics.

Finally, during NOP's investigation, staff interviewed a representative of Global Natural, a party receiving products from these transactions. This representative provided a contract titled "Trade Agency Agreement" between Hakan Organics and Global Natural, which stated that the parties agreed to enter into business on a sales agency basis [Exhibit 31]. The agreement, which states the grain to be sold is owned by Hakan Agro, the parent company, was signed by Goksal Beyaz as the General Coordinator for Hakan Organics. The Global Natural representative stated that Global Natural's contract is with Hakan Organics; that all sales were reported to Beyaz Agro in Gaziantep, Turkey; and that Goksal Beyaz, Hakan Organic's General Coordinator, signed his contract with Hakan Organics. The representative stated that, "To my knowledge, Hakan Agro DMCC (the parent company) and Beyaz Agro are effectively the same organization, specifically Goksal Beyaz works for Hakan, and Beyaz Agro is a functional part of the Hakan organization." [Exhibit 32]. It is apparent that the Global Natural representative also refers to Hakan Organics and its parent company Hakan Agro interchangeably. In addition, Article 14 of the Trade Agency Agreement states that all notices must be sent to Hakan Organics at the Beyaz Agro address. As further evidence of this connection, Global Natural provided a banking record from February, 2017, documenting the wire transfer of $(b) (4) directly from Hakan Agro to Global Natural LLC [Exhibit 33].

The investigation that led to the Notice of Noncompliance and Proposed Revocation for Rus Agro relates to a shipment of 21,000 metric tons (MT) of corn which arrived in the United States on the vessel M/V Crinis in February 2017, and 218.40 MT of soybeans, which arrived in the United States aboard the vessel E.R. Long Beach in January 2017 [Exhibit 34]. The corn and soybean shipments were first exported to Turkey and were then re-exported to the United States, where they were represented and sold as organic.

The Proposed Revocation cited two specific violations. The first was a violation of the OFPA which states that, "no person may affix or label to, or provide other market information concerning an agricultural product if such label or information implies, directly or indirectly, that such product is produced or handled using organic methods, except in accordance with [the OFPA]." (7 U.S.C. § 6505(a)(1))B). The NOP investigation showed that Rus Agro submitted false documentation to the certifying agent, bio.inspecta, to obtain transaction certificates to misrepresent nonorganic corn and nonorganic soybeans that were loaded onto shipping vessels as organic.[6]

Specifically, Mustafa Cakiroglu, Import Export Operations Manager at Hakan Organics, who also served as a responsible party for Rus Agro's application for organic transaction certificates, submitted falsified commercial invoices and Rus Agro purchase slips to bio.inspecta on three separate dates in 2016: April 4; April 23; and May 10 [Exhibits 35, 36 and 37]. The falsified documentation submitted by Mr. Cakiroglu on behalf of Rus Agro shows that the corn and soybeans originated from and were purchased from a certified organic producer in Yershovskaya, Russia, and that the corn and soybeans were sold to Hakan Organics. The transaction certificates issued by bio.inspecta were then used by other entities, Hakan Organics and Aram Foods, to obtain additional, fraudulent transaction certificates.

The NOP investigation found that phytosanitary certificates issued by the Republic of Turkey Ministry of Food and Agriculture and Livestock (MinFAL) which correspond to shipments on the M/V Crinis and E.R. Long Beach, contradict information that Rus Agro provided to bio.inspecta to obtain the organic transaction certificates. The MinFAL phytosanitary certificates for corn shipped on the M/V Crinis [Exhibit 38] traced back to phytosanitary

[6] Rus Agro was previously certified by bio.inspecta in 2016. In September 2016, the certifier, Control Union, issued an organic handling certificate to Rus Agro. In November 2016, Rus Agro surrendered that certificate. In December 2016, Rus Agro was certified by Kiwa BCS.

certificates issued by the Romanian Ministry of Agriculture for corn that originated from and was handled by a noncertified entity, Belor Romania S.A., in Romania [Exhibit 39]. The Romanian Ministry of Agriculture wrote in a February 9, 2017 letter that Belor Romania S.A. is not an organic operation [Exhibit 40]. Also, a phytosanitary certificate issued by MinFAL for soybeans shipped on the E.R. Long Beach [Exhibit 41], traced back to phytosanitary certificates issued by the State Service of Ukraine of Food Safety and Consumer Protection for soybeans which were sourced from Ukrainian entities and then fumigated with the substance aluminum phosphide, which is prohibited under USDA organic regulations [Exhibits 42, 43 and 44]. MinFAL confirmed in an April 10, 2017 email that the soybeans were not organic [Exhibit 45].

Evidence gathered by the NOP shows that the January 2017 shipment of 218.4 MT of soybeans and the February 2017 shipment of 21,000 MT of corn were both marketed and sold as organic in the United States. Upon arrival in the United States, the nonorganic corn was sold as organic by Aram Foods to Agropex as seen on the Purchase Contract and Invoices [Exhibit 46], and the nonorganic soybeans were sold as organic by Beyaz Agro to Agropex as seen on the Bill of Lading [Exhibit 47]. Agropex then sold the nonorganic corn and nonorganic soybeans to Global Natural as seen on the Sales Contract for the corn and Invoice for the soybeans [Exhibits 48 and 49]. The corn and soybeans were then sold as organic to various U.S. entities [Exhibit 50]. All the above transactions and relationships can be seen on a Flow Chart [Exhibit 51]. Rus Agro's purchase of the corn and soybeans, and submission of false documentation to the certifying agent, bio.inspecta, to obtain transaction certificates to misrepresent nonorganic corn and nonorganic soybeans as organic, were the precursors to the subsequent transactions where the misrepresentation of nonorganic product as organic was perpetuated.

A second violation cited USDA organic regulation §205.400(a), which states, "A person seeking to receive or maintain organic certification under the regulations in this part must comply with the Act and applicable organic production and handling regulations of this part." The repeated submission of false documents and representation of noncertified corn and soybeans as organic demonstrates a systemic failure by Rus Agro to comply with the production and handling requirements for organic certification.

The Notice of Proposed Revocation also cited 205.662(f)(2), which states that "a certified operation or a person responsibly connected with an operation whose certification has been revoked will be ineligible to receive certification for a period of 5 years following the date of such revocation." The NOP investigation documented that Rus Agro, a certified organic operation, is responsibly connected to an operation, Beyaz Agro, whose certification has been revoked [Exhibit 10]. On June 1, 2017, the NOP revoked the certification of Beyaz Agro for the submission of fraudulent information and documentation to a USDA organic certifying agent. As a result, Rus Agro is ineligible to obtain organic certification. Additionally, on April 28, 2017 and October 5, 2017, the NOP issued a Combined Notice of Noncompliance and Proposed Revocation, and a Notice of Proposed Revocation, respectively, to Hakan Organic DMCC for separate violations for exports of nonorganic corn and nonorganic fumigated soybeans for sale as organic in the United States.

In its appeal, Rus Agro characterizes itself as independently owned and operated, though acknowledged a commercial relationship with Hakan Agro DMCC wherein Rus Agro sold organic and nonorganic products to Hakan Organics and to Hakan Agro DMCC. Rus Agro also acknowledged a contractual arrangement with Goksal Beyaz whereby Mr. Beyaz assisted Rus Agro with certification because of his expertise. The appeal explains that Rus Agro sold organic

product exclusively to Hakan Organics, and that Goksal Beyaz represented Hakan Organics for these purchases. Rus Agro also stated that it is independent of Aram Foods and Agropex, other entities involved in the transactions which resulted in the nonorganic corn and soybeans being sold in the U.S. as organic. Furthermore, Rus Agro asserted that it purchased corn and soybeans only from Russia, not from Romania or Ukraine, and it sold only Free on Board, so their responsibility ended when the product was loaded onto the shipping vessel. Rus Agro also claimed that it provided traceability documentation, sale contracts, and commercial invoices directly to Hakan Organics and did not submit documents to bio.inspecta [Exhibit 8].

In response to the appeal, AMS notes the eighteen key points discussed above, which collectively substantiate the close relationships between Rus Agro and Hakan Organics, Beyaz Agro, and Goksal Beyaz, and also links Rus Agro to Aram Foods and Agropex.These points substantiate Rus Agro's involvement in the numerous transactions that represented the soybeans treated with prohibited substances, and corn as organic. This evidence contradicts Rus Agro's assertions that it operated independently of Hakan Organics, Beyaz Agro, and Goksal Beyaz, as well as Aram Foods and Agropex.

Regarding Rus Agro's claim that it sold the corn and soybeans Free on Board, thus ending their responsibility for the products once they were loaded onto the ships, Rus Agro's claim can't be substantiated. Free on Board (FOB) is a term used in international commercial law, specifically sea freight, regarding at what point the obligations, costs, and risk for the delivery of goods shifts from the seller to the buyer under the Incoterms of the International Chamber of Commerce. The Rus Agro Commercial Invoices presented by Mustafa Cakiroglu to bio.inspecta on behalf of Rus Agro state that the shipments were FOB, being loaded on board in Russia. However, the NOP investigation determined that those commercial invoices and

purchase slips along with other documentation submitted by Cakiroglu on April 4, April 23, and May 10, 2016 to bio.inspecta were falsified [Exhibits 35, 36 and 37]. As discussed in detail above, it was determined that the corn and soybeans actually originated in Romania and the Ukraine, respectively, as seen on the Romanian and Ukrainian-issued phytosanitary certificates, and were nonorganic as confirmed by the Romanian Ministry of Agriculture and the Republic of Turkey Ministry of Food and Agriculture and Livestock [Exhibits 40 and 45]. Therefore, the FOB notation on the commercial invoices is non-determinative.

CONCLUSION

The evidence indicates that the NOP's August 22, 2017, Combined Notice of Noncompliance and Proposed Revocation to Rus Agro Export Ltd. was appropriate due to the nature of the violations.

DECISION

The appeal is denied. Rus Agro Export Ltd.'s organic certification is to be revoked. Attached to this formal Administrator's Decision is a Request for Hearing form. Rus Agro Export Ltd. has thirty (30) days to request an administrative hearing before an Administrative Law Judge. If Rus Agro Export Ltd. does not request a hearing in that period, this Decision will be implemented and the NOP will revoke Rus Agro Export Ltd.'s organic certification. In accordance with §205.662(f)(2) of the USDA organic regulations, "A certified operation or a

person responsibly connected with an operation whose certification has been revoked will be ineligible to receive certification for a period of 5 years following the date of such revocation."

Done at Washington, D.C., on this 3rd day of July, 2018.

Bruce Summers
Administrator
Agricultural Marketing Service