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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

PRATUM FARM, LLC,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
AGRICULTURE,

Defendant.

Case No.: 6:23-cv-01525-AA

BRIEF OF *AMICUS CURIAE* ALLIANCE
FOR ORGANIC INTERGITY, EQUAL
EXCHANGE, MANOS CAMPESINAS, DR.
BRONNER'S, IFOAM - ORGANICS
INTERNATIONAL, IFOAM NORTH
AMERICA, NATURAL GROCERS,
ORGANIC TRADE ASSOCIATION,
FRONTIER CO-OP, AND CENTER FOR
FOOD SAFETY IN SUPPORT OF
DEFENDANT

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INTEREST OF *AMICUS CURIAE*¹

Amici are organic companies, nonprofits, and farmer collectives whose members are deeply concerned about the potential adverse effects of Plaintiff's lawsuit on their organic operations, international organic trade, and the organic label. The "grower group" organic farming certification system challenged by the Plaintiff has been in operation for decades and is widely recognized internationally, enabling small farmers around the world to grow organically certified crops, which would otherwise not be financially or logistically viable. Indeed, according to USDA's estimates, there are over two and a half million small organic farmers that have substantial and settled reliance interests on the grower group system. That substantial reliance and vested interest extends to the many leading organic companies that partner with and rely on the small organic farmers certified through grower groups for their product sourcing. As such, these entities have a very real and compelling stake in the matter before the Court, which risks unraveling that bedrock organic system. *Amici* are adamantly opposed to any and all fraud in organic certification, but the answer to that problem is enforcement of existing organic law, not prohibiting group certification.

Amici Alliance for Organic Integrity was founded by the International Organic Accreditation Services, (IOAS) to improve organic integrity. Our mission is to serve as global multi-stakeholder alliance that delivers education, tools and a resources to lift the quality of organic control; maintaining the integrity of organic certification and consumer confidence in the organic

¹ When contacted for their positions, no parties opposed the filing of this brief. Because this Court does not have a rule specific to amicus briefs, this brief follows the standards set forth by the Federal Rules of Appellate Procedure 29 (FRAP) by analogy, filing seven days after the opening brief of the party being supported. Fed. Rule App. Proc. 29(a)(6). No person other than *Amici* or their counsel contributed money to this brief's preparation or submission or authored this brief in whole or part. See FRAP 29(a)(4)(E).

label. Our founders and board members have worked for decades to promote and improve the organic grower group model. We view these organic small farmers as key constituents in our work to protect and improve organic integrity worldwide.

Amici Equal Exchange is a worker-owned cooperative founded in Massachusetts in 1986 with approximately \$70 million in annual sales of organic fair-trade coffee, tea, chocolate, cocoa, bananas, avocados, dried fruit, and nuts. Its mission is to build long-term trade partnerships that are economically just and environmentally sound, to foster mutually beneficial relationships between farmers and consumers and to demonstrate, through its success, the contribution of worker co-operatives and fair trade to a more equitable, democratic, and sustainable world.

Equal exchange sources its coffee, chocolate, and other organic products from over 40 small farmer organizations around the world that are certified using the grower group system. Equal Exchange imports directly from these small farmers who own their own land and are organized into democratically run cooperatives or associations in order to build enough volume and resources together to export to the U.S. These small producer organizations (SPOs) are Equal Exchange's long term trading partners and their business models are built on organic and fairtrade grower group certification. If grower group organic certifications were disallowed, Equal Exchange's entire model of direct purchasing from small producer organizations would cease to function, meaning the end of forty years of such trading and the end of the small producer groups Amici and the global economy depend on for food production.

Amici Manos Campesinas is one of Amici *Equal Exchange's* long time trading partners, a small farmer cooperative in Guatemala found in 1997 that grows small-scale organic coffee for direct marketing. As of 2023, Manos Campesinas was comprised of 1,421 coffee producing

families working together, covering 1248.89 hectares of land free of contamination from any herbicides or insecticides. All of the members are micro-producers, with an average of 1 hectare on which they grow coffee. Guatemala is a country of rugged topography and the areas that the organization produces coffee are very rugged, ranging from 900 meter to 2,100 meters above sea level in elevation. It would be impossible for the members to individually seek organic certification for their coffee plot. The only way the member operations are certified is through a collective organic certificate. Current sales represent between \$4-5 million annually. Through their Internal Control System (ICS), they inspect 100% of their coffee plots to ensure that established standards for production are followed. They spend approximately \$138,000/year on technical support and \$53,000 on internal inspections, as well as an external audit annually, to verify their processes and control mechanisms. Eliminating grower group certification would essentially mean abandoning organic coffee production in Guatemala. Coffee is shade-grown, under, in and amongst trees. When organic coffee production has been abandoned in the past due to low market prices, the result was moving to corn or other field crops that do not require shade and trees being cut down. Because these are lower value products, their farming often lowers production costs by using synthetic fertilizers and pesticides, with negative effects on soil, water, air, and the environment, including climate change causing emissions. Guatemala suffers from a lack of economic opportunity, with organic production one of the few people have and Amici very much hope it continues, but it requires grower group certification.

Amici Dr. Bronner's is an American producer of organic soap, personal care products, and home, body and hair founded in the 1940s that specializes in providing vegan and cruelty free products using the highest quality organic and fair trade, environmentally responsible ingredients.

Grower group certification has allowed for small farmers, some operating on just one acre, to access the marketplace and receive an organic premium, compensating farmers for high organic integrity and investment in key organic principle and practices. The grower group model has allowed Dr. Bronner's, the family owned, San Diego-based soap company that generated nearly \$200M in revenue last year to create their own supply chain from the ground up, starting in 2006.

Founded in 1948, Dr. Bronner's models mission-driven business practices in the interest of helping make the world better for its customers, employees, suppliers, community partners and the environment itself. Marking its 75-year anniversary in 2023, Dr. Bronner's has continued its mission as the top-selling brand of organic and fair-trade body care in the U.S. Today, Dr. Bronner's continues its commitment to building an engine for promoting and advancing positive social change – from pioneering USDA certified organic personal care products, to creating fair trade projects across the world that ensure fair and just treatment of farmers and workers, to sustaining a socially responsible workplace at its manufacturing plant in San Diego County. Moving beyond soap, Dr. Bronner's has also launched food products, including organic and fair trade virgin coconut oil and chocolate, to facilitate economic diversification for farmer partners.

Dr. Bronner's sources directly from almost 10,000 certified organic and fair trade small farmers, organized in international control systems (ICS), accounting for approximately 7,000 MT tons of certified organic raw materials and \$200 million dollars in sales in 2023. Dr. Bronner's has committed to prioritizing commercial partnerships with small farmers to maximize positive ecological, social and economic impacts around the world, including Africa, Asia, Latin America, and the Pacific. Dr. Bronner's primary ingredients include coconut, palm fruit, olive and mint oils, grown predominantly by small farmers. To ensure that small farmers can obtain an organic

premium and access the market, Dr. Bronner's has also invested in primary processing facilities to guarantee value addition in local communities.

Without the availability of the grower group methodology, small farmers in Dr. Bronner's would be unable to afford organic certification and Dr. Bronner's would be unable to produce organic soap, body care, and food products with a social mission, and consumers would have no where to turn for the dedicated fair trade and organic certified products that Dr. Bronner's produces.

Amici IFOAM - Organics International, founded in 1972, is a worldwide organization advocating for organic agriculture. It is a membership-based organization with over 700 affiliates in more than 100 countries and territories. The organization is headquartered in Bonn, Germany, and has regional bodies worldwide, including North America. **Amici IFOAM North America** works to educate the general public, provide a forum to exchange ideas, and engage in North American-specific activities to advance organic agriculture and its principles. Together we are working for the widespread adoption of truly regenerative organic food and farming systems, grounded in the principles of organic agriculture: Health, Ecology, Fairness, and Care.

Since its establishment, IFOAM has consistently recognized the indispensable role of smallholders in food production and the sustainability of rural communities. We advocate on a global scale, urging stakeholders worldwide to recognize the invaluable contribution of group certification in supporting and empowering smallholder farmers, benefiting the environment and ensuring communities, companies and consumers can thrive as part of the organic movement.

Amici Natural Grocers is a Colorado-based specialty retailer of natural, organic groceries, body care products, and dietary supplements in business since 1955, currently operating 170 stores

in 21 states. Natural Grocers is committed to educating communities on nutrition and providing natural and organic products that meet high standards for ecological sustainability. This means providing products intended to support our customers' health, as well as the health of our air, waterways, soils, farmers and farm workers, ecosystems, and future generations. Natural Grocers depends on a global supply chain of certified organic producers, many of whom depend on partnerships with successful grower groups in other countries. Removing these producers from the certified organic supply chain would drastically affect our ability to source the certified organic products our customers depend on. While addressing deficiencies in the U.S. organic regulatory system, Natural Grocers believes that we need to be mindful of the unique needs of the other 194 countries on the planet.

Amici Organic Trade Association (OTA) is the membership-based business association for organic agriculture and products in North America. OTA is the leading voice for the organic trade in the United States, representing organic businesses across 50 states. Its members include growers, shippers, processors, brands, certifiers, farmers' associations, distributors, importers, exporters, retailers and others. OTA's mission is to grow and protect organic with a unifying voice that serves and engages its diverse members from farm to marketplace. OTA has tirelessly advocated for Strengthening Organic Enforcement (SOE) rule to bring clarity to Producer Group (also called Grower Groups) certification and to ensure both organic integrity and equitable access to the organic marketplace for producers of all sizes. Many of our members rely on Producers Groups for commodities not produced within the U.S. and by individual growers organized into groups and have utilized these producer group models since the original National Organic Program regulation were promulgated.

Amici Frontier Co-op was founded in 1976 and includes three leading national brands in the natural and organic products space: Frontier Co-op® and Simply Organic® in the herbs, spices and ingredients categories, and Aura Cacia® in personal care. On an annual basis, 80% of Frontier Co-op's purchases by volume are USDA certified organic, and with sourcing partners in more than 50 countries around the world, our cooperative has been active in supporting organic farming and improved working conditions and income at origin for nearly five decades. Providing education, resources and support to smallholder farmers at origin to achieve organic certification not only helps support the continued supply of premium organic products for our brands, the organic premiums these farmers receive makes a world of difference for their families' household income. At Frontier Co-op, we firmly believe that the cooperative model can be used to achieve socioeconomic stability and resilience among smallholder farmers at source. Because of this, cooperatives have long been a critical component of Frontier Co-op's approach to responsible sourcing, and we are committed to supporting our cooperative partners at origin to ensure smallholder farmers have access to, and benefit from the lasting positive impacts the cooperative model can bring to business and community health and resilience, including regional economic growth and rural employment, along with social support mechanisms focused on education, health services and basic needs assistance. Working with cooperatives at source allows Frontier Co-op to scale our sourcing impact: between suppliers from our top four countries of origin, Madagascar, India, Guatemala and Sri Lanka, Frontier Co-op is able to support the livelihoods and well-being of more than 40,000 farmers with annual purchases of more than \$10MM across these origins in FY23, growing to \$15MM in FY24. Because cooperatives are democratically controlled, independent, and autonomous by nature, this revenue goes directly back to farmers and their

communities. Frontier Co-op fully supports the need for a robust and trusted organic certification program, so brands and consumers alike can feel confident in the validity and transparency of the certification. Based on our nearly fifty years of business sourcing organic products in developed and developing countries around the world, we can attest that our cooperative partners have been diligent in managing their organization's social, economic, and agricultural impact, and ensuring that their members benefit from the collective income from their programs. A decision to require smallholder farmers to manage the organization and cost of individual certifications will lead to hundreds of thousands of farmers being left out of the organic industry globally.

Amici Center for Food Safety is a 501(c)(3) public interest organization with a mission of empowering consumers, supporting farmers, and protecting the earth from the harmful impacts of industrial agriculture. It has over one million members, spanning every state. Since the organization's inception twenty-five years ago, CFS has had a flagship program of "Organic and Beyond," including science, policy, campaign, and legal staff. In furtherance of that mission, CFS works to maintain and enhance strong organic standards that live up to the quality and integrity that consumers expect from organic products through legal actions, policy comments, and public education. We strive to not just protect the standard but also to evolve the organic ethic by promoting agriculture that is local, small, medium and family-scale, biologically diverse, humane and socially just. The ultimate goal of our campaign is to move beyond the industrial agriculture model to a new vision and practice of organic farming that supports and sustains the natural world for future generations. Finally, when necessary throughout its history CFS has engaged in public interest litigation to protect and further organic standards and integrity.

INTRODUCTION AND SUMMARY OF ARGUMENT

This lawsuit threatens a vital aspect of organic farming: grower group certification. In the classic amici role, this brief will provide the Court with important surrounding context for this dispute and aid in its review. The first sections provide a historical and globe lens for grower groups, their longstanding and widespread acceptance in organic certifications, the scale and specifics of their role in organic food production, and their importance to small farmers, organic companies, consumers, and the environment. The brief then moves from macro to micro, providing some specific grower group reliance examples to bring this issue to life, including from the Amici themselves. The last section then connects these points and their implications back to the specific questions before this Court. For the reasons explained below, Amici respectfully request this Court grant Defendant USDA's motion for summary judgment and deny Plaintiff's such motion.

ARGUMENT

I. The Longstanding Practice of Organic Grower Group Certification

“Grower group” is a term of art, meaning a group of farmers or producers in a certain location organized under one management system.² First introduced in the 1980s, the basic concept of group organic certification stretches back over forty years.³ Then, as now, the basic concept is the same: it was utilized by some organic farming associations and certification bodies to be able to certify products grown by smallholders in low-income countries. Under the group

² National Organic Program, Strengthening Organic Enforcement, 88 Fed. Reg. 3,548, 3,593 (Jan. 19, 2023) (codified at 7 C.F.R. pt. 205).

³ Florentine Meinshausen et. al., *Group Certification* 14 RSCH. INST. OF ORGANIC AGRIC. (2019) <https://orgprints.org/id/eprint/35159/7/fibl-2019-ics.pdf>.

system, the group itself is certified, not the individual members as with individual organic farmers. The initial focus was on coffee and cocoa cooperatives with very small-scale, and often illiterate, producers, each farming only several acres of land. Individual organic certification of each such tiny farm, often in very remote areas, was prohibitive not only in terms of costs, but also due to a lack of administrative and management skills.

Over the years certifiers and some standard setters, such as *Naturland*,⁴ developed their own approaches and procedures for dealing with the diverse nature and size of these certified groups, such as what the Internal Control System (ICS) should include and procedures like inspection protocols.⁵ The use of differing private standards and the need to harmonize the grower group requirements set by certifiers was first recognized by Amici International Federation of Organic Agriculture Movements (IFOAM) – Organics International⁶ in 1994 when it first set criteria for group certification within its organic accreditation criteria and published guidelines for ICS requirements for groups.⁷ These criteria were elaborated on further in workshops, leading to the publication of the smallholder group certification, which included the specific elements of ICS like

⁴ NATURLAND, <https://www.naturland.de/en/> (last visited Feb. 27, 2024).

⁵ Adina Roxana Munteanu, *The Potential Impact of Group Certification for Organic Agriculture in Romania*, 4 PRACTICAL APPLICATION OF SCIENCE 631 (2014), <https://ideas.repec.org/a/cmj/seapas/y2014i4p631-638.html>.

⁶ *About IFOAM - Organics International*, IFOAM Organics Int'l, <https://www.ifoam.bio/about-us> (last visited Feb. 27, 2024).

⁷ Francesco Solfanelli et. al., *Potential Outcomes and Impacts of Organic Group Certification in Italy: An Evaluative Case Study*, 187 ECOLOGICAL ECON. (2021), <https://doi.org/10.1016/j.ecolecon.2021.107107>.

documentation requirements, evaluation protocols, appropriate re-inspection rates, and risk assessment tools.⁸

As industry group certification gained acceptance and became more widespread, organic regulations in different countries and regions have integrated the concept of group certification into their statutory and regulatory frameworks. The basic elements of the IFOAM grower group approach were adopted in 2003 by the European Commission (EC) in its *Guidance Document for the Evaluation of the Equivalence of Organic Producer Group Certification Schemes applied in Developing Countries*.⁹ Then in 2008, the European Union Commission included group certification requirements as Chapter 8 of its *Guidelines on Imports of Organic Products into the European Union*.¹⁰

In the United States, from 1970-1990, organic standards were regulated by individual states; federal organic law is still relatively youthful, beginning with OFPA's passage in 1990.¹¹ Defendant USDA's first version of OFPA's implementing regulations took another eleven years to be finalized, first proposed in 1997 and finalized and issued in 2001.¹² The original OFPA regulations do not discuss grower group certification, but there was much they had yet to discuss

⁸ IFOAM Organics Int'l, *Position: Smallholder Group Certification for Organic Production & Processing* (2019), https://www.ifoam.bio/sites/default/files/2020-03/position_group_certification.pdf.

⁹ European Commission, *Guidance Document for the Evaluation of the Equivalence of Organic Producer Group Certification Schemes Applied in Developing Countries*, AGRI/03-64290-00-00-EN (Nov. 6, 2003), http://etko.com.tr/dosyalar/Belgeler/guidance-document-for-the-evaluation-of-the-equivalence-of-organic-producer-group-certification-schemes-applied-in-developing-countries_2776.pdf.

¹⁰ European Commission, *Guidelines on Imports of Organic Products into the European Union*, 15.12.2008 Rev. 1 (2008), https://agriculture.ec.europa.eu/system/files/2018-12/guidelines-imports-organic-products_en_0.pdf.

¹¹ 7 U.S.C. § 6501 (1990).

¹² 62 Fed. Reg. 6,5850 (1997); 65 Fed. Reg. 13,512 (2000); 65 Fed. Reg. 80,548 (2000) (codified at 7 C.F.R. § 205).

in detail; for example, all organic livestock standards were yet to come. And just one year later in 2002 the National Organic Standards Board (NOSB)—which is the expert body charged by Congress specifically with assisting USDA in formulating organic farming standards through consultation and formal recommendations, *see* 7 U.S.C. § 6518—addressed the issue and concluded that grower groups were permissible under the original 2000 OFPA rules as written and set forth the criteria and detailed the group eligibility requirements for their organic certification.¹³ This NOSB 2002 recommendation was further updated by the NOSB in 2008, which underscored that even then grower groups had already been used for “the past 30 years” and it was simply “codify[ing]” those long established practices.¹⁴

Finally, the rule challenged by the Plaintiff in this case first proposed¹⁵ and then finalized USDA regulations generally aimed at strengthening organic enforcement generally and covered

¹³ Agric. Marketing Serv., USDA, *NOSB Recommendation: Criteria for Certification of Grower Groups*, (Oct. 20, 2002) <https://www.ams.usda.gov/sites/default/files/media/Rec%20Criteria%20for%20Certification%20of%20Grower%20Groups.pdf> (“[G]rower groups, organized as cooperatives or associations, can seek certification as one operation under the NOP without a change to the rule. ... Historically, not all grower group members’ farms are individually inspected by the certifying agent annually. This means that the grower group must have a quality system, or internal control system, in place to assure that all members of the group operate according to the system plan in compliance with the organic standard. The quality system of the grower group is inspected at least annually, but only a set percentage of the member operations are visited by the certifying agent.”).

¹⁴ Agric. Marketing Serv. USDA, *Formal Recommendation by the National Organic Standards Board (NOSB) to the National Organic Program (NOP)*, 5 (2008) <https://www.ams.usda.gov/sites/default/files/media/NOP%20Final%20Rec%20Certifying%20Operations%20with%20Multiple%20Sites.pdf> (covering, among other things, Internal Control System (ICS) requirements in detail).

¹⁵ As Defendant USDA points out, Plaintiff failed to exhaust their challenge by commenting on the proposed rule. That is alone sufficient for this Court to dismiss this case. *Nat’l Parks & Conservation Ass’n v. BLM*, 606 F.3d 1058, 1065 (9th Cir. 2010). Notably, based on Amici’s review

aspects of organic production and handling, implementing Congressional amendments to OFPA in the Agricultural Improvement Act of 2018.¹⁶ One of the myriad areas covered was grower group certifications.¹⁷ The revisions to the OFPA regulations added provisions to the general certification requirements specific to grower group operations. These codified the 2002 and 2008 NOSB standards as well as added new measures to strengthen enforcement and protect organic integrity and protect against fraud.¹⁸

of the public comments, no other stakeholder even raised Plaintiff's objection to grower group certification, which again underscores the wide acceptance of the industry standard. *See* National Organic Program, 88 Fed. Reg. at 3598 (responding to public comments).

¹⁶ National Organic Program, Strengthening Organic Enforcement, 85 Fed. Reg. 47,536 (proposed Aug. 5, 2020) (to be codified at 7 C.F.R. pt. 205); National Organic Program, Strengthening Organic Enforcement, 88 Fed. Reg. 3,593 (codified at 7 C.F.R. pt. 205).

¹⁷ National Organic Program, Strengthening Organic Enforcement, 85 Fed. Reg. 47,536.

¹⁸ National Organic Program, Strengthening Organic Enforcement 88 Fed. Reg. at 3,593. Central to the success of group certification is the Internal Control System (ICS), a well-documented set of procedures and checks established by the group to ensure each member complies with organic standards. Through regular internal audits and transparent documentation, ICS provides an effective regulatory mechanism, contributing to the reliability and integrity of the certification process. Internal ICS inspectors have a unique advantage due to their deep familiarity with the natural conditions, farming systems and local mentality. This intimate knowledge positions them as exceptionally effective in identifying and mitigating risks of fraud, offering a nuanced understanding beyond mere compliance. Unlike third-party inspectors, ICS inspectors foster a comprehensive and tailored approach to ensuring the integrity of organic certifications. A third-party inspector from an external control body audits the integrity of the entire system, which includes checking documentation, assessing the competencies of the ICS Staff, conducting joint or witness audits of a selected defined percentage of members, and taking samples to test for residues of unauthorized substances in produced commodities, soil, green material, or equipment. Discrepancies between internal documentation and the findings of the audit raise red flags sufficient for the decertification of the entire group. Consequently, the entire group is motivated to mitigate these risks and to ensure the integrity of its internal controls.

Thus, as the NOSB's 2002 and 2008 implementation guidance of the original 2000 OFPA regulations illustrates, grower groups have been a part of the system since its inception. Grower group certifications were issued as early as 2002 under the original rules.¹⁹ This matters for at least two reasons. First, it underscores the longstanding practice of certifying grower groups, its acceptance and approval, and the logical reliance of organic stakeholders such as Amici on the legality of that practice. Second, it reveals that Plaintiff's real quarrel is not with the 2023 rule—which ironically *strengthened* measures protective against the fraud which his allegations are based, making it *less not more* likely to occur—but rather with the organic practices and regulations since their original codification, for which they have long missed the six-year statute of limitations to challenge. See 28 U.S.C. § 2401(a).

II. The Importance of Group Certification

About 80% of the world's organic producers are smallholders in low and middle income countries, for whom individual organic certification would be unaffordable and administratively too complex to manage.²⁰ These producers are only classified and recognized as organic due to group certification, a system in which, as discussed *supra*, groups of farmers implement an ICS and are certified by a third-party certification body, which assesses the performance of the ICS and performs a representative number of spot-check inspections of group members. The approach of using ICS-based group certification was pioneered by Amici IFOAM – Organics International and

¹⁹ *Advanced Operation Search*, Organic Integrity Database (last visited Feb. 27, 2024) <https://organic.ams.usda.gov/integrity/Search>.

²⁰ *Study: Smallholder Farmers in Groups with Various Advantages – Significance, Opportunities and Challenges of Group Certification*, FiBL (Mar. 28, 2019) [hereinafter *Study: Smallholder Farmers in Groups*], <https://www.fibl.org/en/info-centre/news/study-smallholder-farmers-in-groups-with-various-advantages-significance-opportunities-and-challenges-of-group-certification>.

Fair Trade over the past three decades has been adopted by the entire organic sector, including the EU and the U.S.'s National Organic Program of Defendant USDA. Very similar approaches are used, and have been further developed, by other voluntary sustainability certification programs. Group certification is the only way that smallholder farmers in many countries can access certified organic international markets by reducing certification costs and complexity. This also provides other important benefits of revitalizing rural areas and improving the lives of millions of small farmers.

This certification model is built on the principles of collaboration and mutual support among small-scale producers. By pooling resources, these producers collectively meet organic standards, ensuring access to markets that might otherwise be challenging due to the small scale of their operations and the high costs of individual organic certification.²¹ Generally, this approach fosters community engagement, knowledge sharing, mutual trust, and control.²²

Grower group organic farming, like all organic farming, is also directly and intentionally environmentally beneficial: grower groups play a central role in supporting and greatly expanding the overall reach of organic farming, which is a form of agriculture which, by definition, must foster ecological balance and restores soil, as well as prohibiting the use of synthetic pesticides and genetically engineered organisms. 7 C.F.R. § 205.105. Indeed, the very definition of “Organic Production” is “a production system that is managed in accordance with the Act and regulations in this part to respond to site-specific conditions by *integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity.*” 7 C.F.R. §

²¹ *Id.*

²² *Id.*

205.2 (emphasis added). Thus, organic grower group farming, by extension, acts as a strong force for good in rapidly scaling climate and nature-friendly farming that mitigates and addresses the biggest ecological crises of our times.

III. The Global Scale of Group Certification

Plaintiff's challenge implicates a broad and vital sector of organic agriculture, as illustrated below. According to USDA, globally there are 2.6 million organic producers making up nearly 6,000 group operations, covering 58 countries, primarily in Africa, Asia, and Latin America, covering a total area of 11 million acres of certified organic land.²³ Numerically 80% of all organic farmers globally are small farmers in low and middle-income countries.²⁴ These farms are tiny by comparison to U.S. farms, only a few acres instead of hundreds.²⁵ Yet the breadth of products these organic farms cover is impressive: Organic grower group operations export many organic agricultural products to the United States, such as coffee, cocoa/chocolate, bananas, tea, and spices.²⁶ Grower group certification gives small growers access to organic markets while expanding consumer choices.²⁷ Absent grower group certification, individual certification would be too expensive and administratively difficult to secure.²⁸ Grower group certification supports U.S.

²³ 88 Fed. Reg. at 3593.

²⁴ *Study: Smallholder Farmers in Groups*, *supra* note 20.

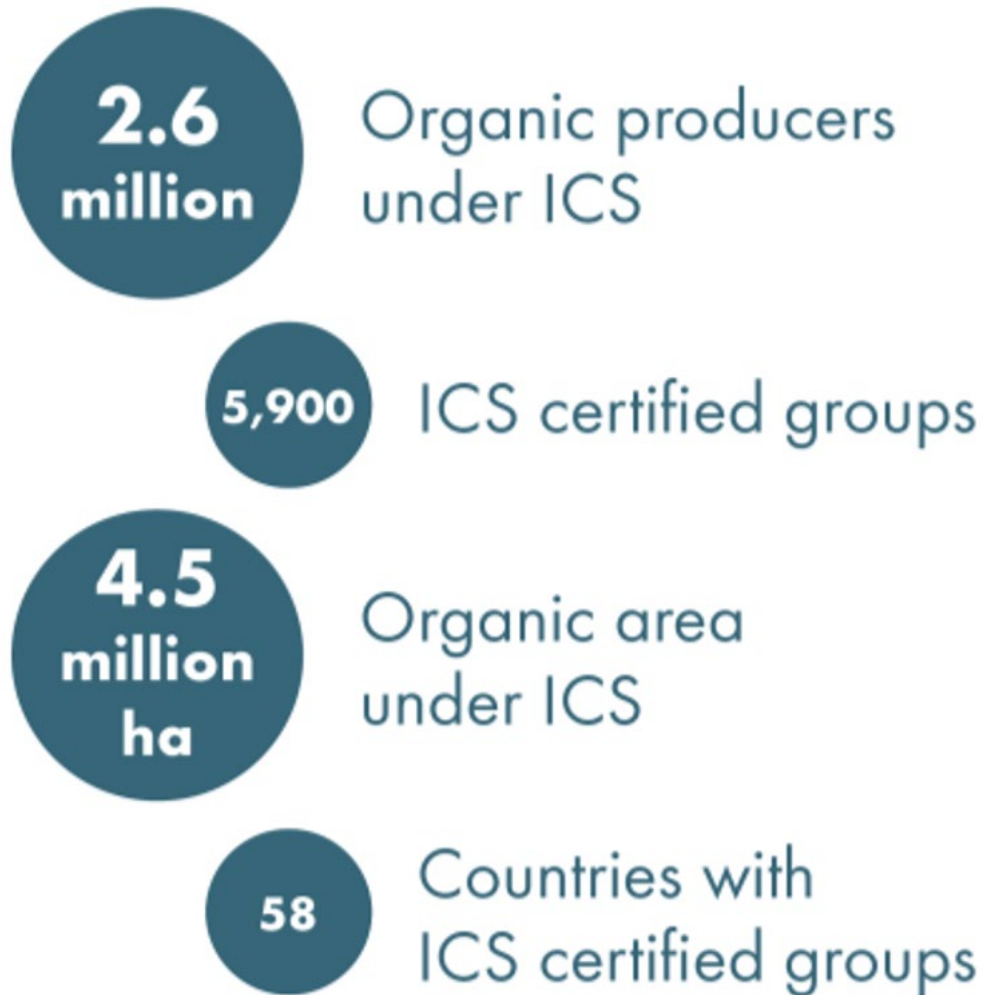
²⁵ See e.g., Florentine Meinshausen et. al., *supra* note 3, AT 62.

²⁶ 85 Fed. Reg. at 47536.

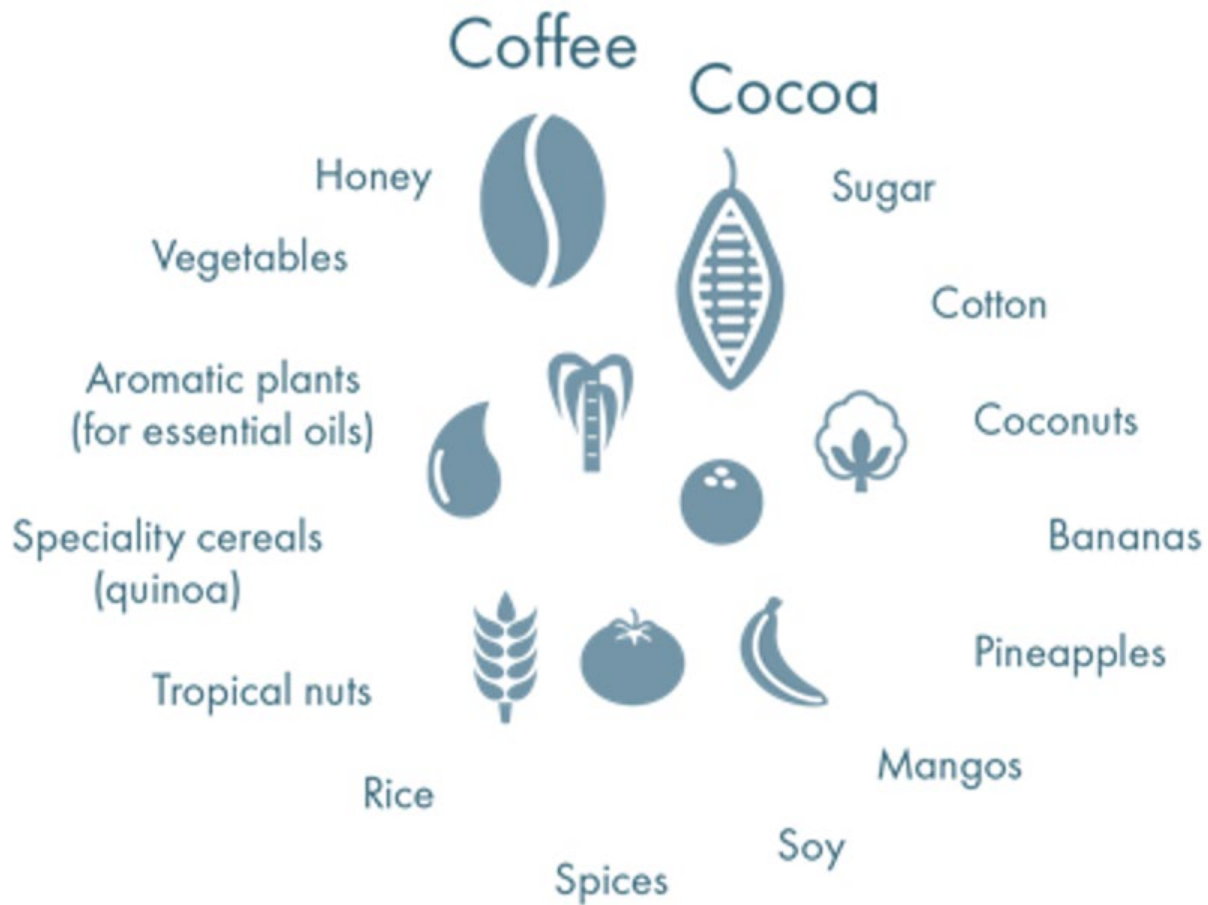
²⁷ *Id.*

²⁸ *Study: Smallholder Farmers in Groups*, *supra* note 20.

consumer demand for organic products that are not produced in the United States, such as coffee, cacao, and bananas.²⁹



²⁹ 85 Fed. Reg. at 47,536.



IV. Examples Illustrating the Importance of Grower Group Certification

*Amici Equal Exchange*³⁰ is a cooperative founded in 1986 with \$70M³¹ annual sales of organic fair-trade coffee, tea, chocolate, cocoa, bananas, avocados, dried fruit and nuts. Their mission is to build long-term trade partnerships that are economically just and environmentally sound, to foster mutually beneficial relationships between farmers and consumers and to

³⁰ *Our Mission*, Equal Exchange, <https://shop.equalexchange.coop/pages/about-us> (last visited Feb. 27, 2024).

³¹ *See generally Annual Report Collection*, Equal Exchange, <https://www.info.equalexchange.coop/articles/annual-report-archive> (last visited Feb 27, 2024).

demonstrate, through their success, the contribution of worker co-operatives and Fair Trade to a more equitable, democratic and sustainable world.³²

Amici Equal Exchange imports directly from small farmers who own their own land and are organized into democratically run cooperatives or associations in order to build enough volume and resources together to export to the U.S. The small producer organizations (SPOs) that they work are long term trading partners and their business models are built on organic and fairtrade grower group certification. If Grower Group Certification were to be revoked, Equal Exchange's entire model of direct purchasing from small producer organizations would cease to function meaning the end of forty years of trading and the end of the small producer groups we and the global economy depend on for food production. Since Equal Exchange's founding it has sold \$1,131,058,387.00 of organic, fair trade small farmer products into the U.S. marketplace.³³

The majority of Equal Exchange sales are to food co-ops and independent stores. This is an important value chain for all parties. Farmers need organic and fair-trade prices, Equal Exchange needs to buy and sell in volume to make our bulk purchasing work economically, Co-ops and independent food stores need products that reflect the values of their members and shoppers and distinguish them from chain and mass market retailers and U.S consumers need choices and transparency rather than food industry consolidation and profiteering.³⁴

³² *Our Mission*, *supra* note 30.

³³ *Annual Report Collection*, *supra* note 31.

³⁴ Errol Schweizer, *Why Your Groceries Are Still So Expensive*, *Forbes* (Feb. 7, 2024), <https://www.forbes.com/sites/errolschweizer/2024/02/07/why-your-groceries-are-still-so-expensive/?sh=519f27e56ba8>.

According to the National Cooperative Grocers Association 2022 Food Co-op Impact Report,³⁵ 159 member co-ops operate nearly 230 storefronts in 39 states with combined annual sales of \$2.5 billion. Further:

- NCG food co-ops collectively have more than 1.3 million members nationwide
- 38% of food co-ops' combined annual \$2.5 billion in sales come from Certified Organic products
- Fair Trade Certified products made up 5% of total sales³⁶

Overall, organic food sales in the U.S. reached \$61.7 billion in 2022, surpassing \$60 billion for the first time, according to a report from the Amici Organic Trade Association (OTA).³⁷ bDespite headwinds including global inflation, supply chain disruptions and labor shortages, the sector's growth rate doubled compared to the previous year.³⁸ According to the report, organic produce sales in the U.S. totaled \$22 billion. Organic beverages were the second strongest category behind produce, returning \$9 billion in sales in 2022. Organic coffee was the biggest-selling organic beverage, rising by nearly 7% on 2021's figures as it neared \$2.3 billion in sales in 2022. Total organic sales broke through the \$50 billion mark for the first time in 2018, and organic food sales hit \$50 billion for the first time in 2019.³⁹

³⁵ Co+op, *2022 Food Co-op Impact Report*, Co-Ops Aprl. 18, 2022 <https://www.grocery.coop/article/2022-food-co-op-impact-report>.

³⁶ *Id.*

³⁷ Henry Mathieu, *US Organic Food Sales Value Hits "Record" in 2022*, JustFood (May 17, 2023), <https://www.just-food.com/news/us-organic-food-sales-value-hits-record-in-2022/>

³⁸ *Id.*

³⁹ *Id.*

The U.S. food system (including organic) relies heavily on small farmer supply chains particularly for valued everyday food imports like coffee, cocoa, bananas. The food industry experienced the realities of this dependence during COVID, when global supply chain disruptions led to food shortages, out of stocks and high prices. And grower group certification is essential to these supply chains functioning.

These are macroeconomic effects, but it is helpful to also illustrate the micro effects as well, through the example of a grower group certified small farmer collective. *Amici Manos Campesinas* is one of *Amici Equal Exchange's* long time trading partners, a small farmer cooperative in Guatemala found in 1997 that grows small-scale organic coffee for direct marketing.⁴⁰ As of the end of 2023, *Manos Campesinas* was comprised of 1421 coffee producing families working together, covering 1248.89 hectares of land free of contamination from any herbicides or insecticides. All of the members are micro-producers, with an average of 1 hectare on which they grow coffee. The areas that the organization produces coffee are very rugged, ranging from 900 meter to 2100 meters above sea level in elevation. It would be impossible for the members to individually seek organic certification for their coffee plot. The only way the member operations are certified is through a collective organic certificate. Current sales represent between \$4-\$5 million dollars annually.⁴¹ Through their Internal Control System (ICS), they inspect 100% of their coffee plots to ensure that established standards for production are followed. They spend approximately \$138,000/year

⁴⁰ *Amici* provided counsel with a 3-page letter dated February 16, 2024, from which these details are drawn. The letter itself is included as Attachment A.

⁴¹ *Id.*

on technical support and \$53,000 on internal inspections, as well as an external audit annually, to verify their processes and control mechanisms.⁴²

Eliminating grower group certification would essentially mean abandoning organic coffee production in Guatemala. Coffee is shade-grown, under, in and amongst trees.⁴³ When organic coffee production has been abandoned in the past due to low market prices, the result was moving to corn or other field crops that do not require shade and trees being cut down. Because these are lower value products, their farming often lowers production costs by using synthetic fertilizers and pesticides, with negative effects on soil, water, air, and the environment, including climate change causing emissions.⁴⁴

Another example comes from organic banana farming. Bananas are the most exported fresh fruit in the world by volume and are #6 in U.S. organic produce sales and the top mover by volume.⁴⁵ Thousands of small farmer producers are certified with grower group certification, in hundreds of different organizations.⁴⁶ One such entity is *Asoguabo Banana Association*, from Ecuador.⁴⁷ Currently Asoguabo includes 50 small producers on a group certification covering 218.56 hectares, averaging 4.37 each. In their experience, the only way to give very small producers access to international organic markets is through group certification. For example, total income

⁴² *Id.*

⁴³ See e.g., *Shade Grown Coffee*, EarthEasy, <https://learn.eartheasy.com/guides/shade-grown-coffee/> (last visited Feb. 28, 2024).

⁴⁴ *Supra* note 40.

⁴⁵ Organic Produce Network, *Bananas*, State of Organic Produce, 27 (2022), <https://online.flippingbook.com/view/1054590021/26-27/>.

⁴⁶ *Fairtrade Banana Dashboard*, FairTrade, <https://www.fairtrade.net/banana-dashboard> (last visited Feb. 27, 2024).

⁴⁷ Interview with Lianne Zoetewij, Administratora/CEO of Asoguabo (Feb. 13, 2024); see also, Asoguabo, <https://asoguabo.com.ec/> (last visited Feb 27, 2024).

per week on average is \$90-100 US dollars before costs of producing.⁴⁸ Cost of an organic certificate is \$2,000/year.⁴⁹ Thus \$38 of total income per week needs to go to the organic certificate, with an additional \$254 residue analysis per year. Such costs for individual certification push small mountain and agroforestry producers out of the market, as they can only be paid by monoculture banana producers.⁵⁰

One further example from cocoa farming and organic chocolate. Cocoa, the main ingredient in chocolate, is grown by 5-6 million farmers globally; 90% of these farmers are small 90% of these farmers are smallholders with between 2-5 hectares (4.9-12.4 acres).⁵¹ Around 70% of all cocoa is produced in West Africa, mainly in the Ivory Coast and Ghana, where farmers are making \$1/day or less, well below the World Bank established \$1.90/day level for extreme poverty.⁵² This context makes crystal clear that the only viable way for organic cocoa farmers to access the organic chocolate market is through group certification. The vast majority of individual cocoa farmers struggle to make a living and therefore, do not have the income nor resources to access organic certification for their individual farm. Access to the organic market can be a critical alternative for smallholder cocoa farmers, allowing them access to a higher paying market while also benefiting their local environment and maintaining a healthier community.⁵³ Given the

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Cocoa Economy Informations*, International Cocoa Organization, <https://www.icco.org/economy/> (last visited Feb. 27, 2024).

⁵² *Id.*

⁵³ Steffany Bermudez et. al., *Global Market Report: Cocoa Prices and Sustainability*, Int'l Institute for Sustainable Development (Nov. 2022) <https://www.iisd.org/system/files/2022-11/2022-global-market-report-cocoa.pdf>.

structure of the chocolate industry, the loss of grower group organic certification would mean the loss of the U.S. organic market for tens of thousands of smallholder cocoa farmers internationally, the almost complete loss of access of organic chocolate for U.S. consumers, and the significant loss of a market for U.S. chocolate companies that sell organic chocolate.

V. The Legal Implications of Grower Groups' Importance, Benefits, and Longstanding Nature

The above data and history regarding the importance and longstanding nature of grower group organic certification informs the Court's review of this case in numerous ways. First, it has jurisdictional implications. Plaintiff's real quarrel seems to be not with the 2023 final rule but grower group certification that has existed for 20-plus years before that rule under the existing NOP regulations and 2002 and 2008 NOSB guidance.⁵⁴ See 28 U.S.C. § 2401(a). That said, if the Court declared the 2023 rule unlawful and vacated it, restoring the pre-2023 *status quo ante*, depending on what and how the Court held, at a minimum it would throw a legal cloud over existing pre-2023 grower group certifications.

Second, it goes to the merits: USDA's interpretation of OFPA as allowing grower group certification is supported by the fact that such a view is the agency's longstanding, consistent interpretation of the statute, for decades now and since the inception of the organic label. *Voss v. Comm'r of Internal Revenue*, 796 F.3d 1051, 1071 (9th Cir. 2015) (regarding whether an agency's interpretation is consistent and longstanding is a factor; holding that "particular deference" should be given to agency views of "longstanding duration"). For all that time, no stakeholder has thought

⁵⁴ There are also questions of exhaustion of administrative remedies, *Nat'l Parks & Conservation Ass'n*, 606 F.3d at 1065, since the Plaintiff did not comment on the proposed rule.

otherwise or challenged the legality of grower groups. The USDA's system is in accord with the grower group model of organic certification of our major trading partners around the world, that have substantially similar organic grower group models. There is an international consensus around grower group organic certification and strong, deeply rooted reliance interests on it continuing. Indeed, given the size and scope of small organic farmers across the globe, doing individual certifications rather than group certifications would be impossible, an absurd result Congress could not have intended. *Ma v. Ashcroft*, 361 F.3d 553, 558 (9th Cir. 2004); *U.S. v. Wilson*, 503 U.S. 329, 334 (1992) (explaining that statutory interpretations which would produce absurd results are to be avoided).

And third, it goes to any possible remedy. The Court should not grant summary judgment in Plaintiff's favor, but in the instance that it did, the Court should decline to vacate, or set aside, the challenged rule in whole or part. *Nat'l Family Farm Coal. v. U.S. Env't Prot. Agency*, 960 F.3d 1120, 1144-45 (9th Cir. 2020) (explaining the factors of courts' equitable discretion to depart from the APA remedy of vacating a rule held unlawful, including the disruptive consequences of vacating). While vacatur is the presumptive remedy for a rule held unlawful, there are "limited" circumstances where courts can decline to vacate. *Pollinator Stewardship Council v. U.S. Env't Prot. Agency*, 806 F.3d 520, 532 (9th Cir. 2015). This is one of those rare cases where "equity demands" that outcome. *Id.* There are widespread and substantial vested interests in the grower group model. Those reliance interests are well-settled. There would be substantial disruptive consequences, to the organic marketplace, harming small farmers across the globe, as well as U.S. organic stakeholders and companies. U.S. consumers would be harmed from the loss of organic products

sourced from grower group certification.⁵⁵ Here, upsetting grower group certification would risk lost livelihoods for millions of small farmers in low- and middle-income countries, as well as loss of consumers' right to choose organic forms of some foods. *California Communities Against Toxics v. U.S. Env't Prot. Agency*, 688 F.3d 989, 993-94 (9th Cir. 2012) (declining to vacate when vacatur would cause substantial economic harm coupled with environmental harm that is, "the very danger the [environmental statute] aims to prevent").

Finally, and perhaps most importantly, such a remedy would be environmentally harmful: organic farming, farming without the use of pesticides and in holistic, soil-regenerative forms, is by definition an environmentally beneficial activity. The grower group model facilitates this environmental benefit over 11 million acres of farmland. Curtailing that environmentally protective system by making it financially or administratively impossible for small farmers would cause substantial adverse environmental effects. *E.g., All. for the Wild Rockies v. U.S. Forest Serv.*, 907 F.3d 1105, 112 (9th Cir. 2018) (vacating agency action because vacatur is "appropriate when leaving in place an agency action risks more environmental harm than vacating it"); *Nat. Res. Def. Council v. U.S. Env't Prot. Agency*, 38 F.4th 34, 51-52 (9th Cir. 2022) (explaining that the court should consider "the extent to which either vacating or leaving the decision in place would risk environmental harm."); *Nat. Res. Def. Council v. U.S. Dep't of Interior*, 275 F. Supp. 2d 1136, 1143-44 (C.D. Cal. 2002) (discussing caselaw and explaining that the Ninth Circuit has "expressed

⁵⁵ While financial ramifications *alone* would not be sufficient rationale to decline vacatur, they can and should be considered when, as here, they are part and parcel with other harms that cannot be remedied by money damages, aka, are equitable and/or irreparable. *Ctr. for Food Safety v. Regan*, 56 F.4th 648, 668 (9th Cir. 2022) (considering industry disruption, but only after finding remand without vacatur the more environmentally protective remedy).

special concern for the potentially one-sided and irreversible consequences of environmental damage prompted by vacating defective rules during remand”).

CONCLUSION

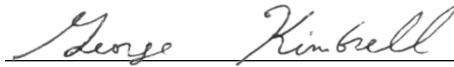
There is no place for fraud in the organic sector. And there are robust processes built into organic guarantee systems, as well as the oversight and legislative frameworks that sit behind them, which are designed to detect and tackle fraud where it occurs. But cases of individual fraud should not be confused as a failure of the overall system of grower group certification. The worldwide organic movement is actively committed to continuously improving the integrity and oversight of organic systems and doing so in collaboration with all stakeholders affected, from farmers to consumers. The 2023 final rule strengthening organic enforcement is an important step in that outcome.

In conclusion, many valuable U.S. imported organic commodities are primarily produced by smallholders and wouldn't be available in organic quality without group certification. Millions of low-income farmers worldwide depend on these crops and the grower group organic certification method for their livelihood. Undermining this vital portion of the U.S. organic program would cause a global economic crisis for the organic sector.

For the foregoing reasons, Amici respectfully request this Court grant Defendant USDA's cross-motion for summary judgment, deny Plaintiff's motion for summary judgment, and uphold the grower group rule.

Date: February 29, 2024

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this brief complies with the applicable word-count limitation under LR 7-2(b) because it contains less than 35 pages and includes 7,224 words, including headings, footnotes, and quotations, but excluding the caption, table of contents, table of cases and authorities, signature block, exhibits, and any certificates of counsel.

Date: February 29, 2024

/s/George Kimbrell
GEORGE KIMBRELL

Appendix 1



**MANOS
CAMPESINAS**

Calle "A" y 20 Avenida 19-72
Zona 3, Edif. Andrus 2do. Nivel
Quetzaltenango, Guatemala, C.A.
www.manoscampesinas.org

Quetzaltenango, February 16th 2024

To Equal Exchange

Dear Friends.

Greetings from Guatemala.

Thank you much for the cooperation you have had this years to strengthening development opportunities for small-scale coffee-growing families in southwestern Guatemala.

This communication is because we are very concerned that there is still interest to question what we achieved in favor of nature and families with collective organic certifications and it is for that reason that we share with you what organic production means for families of small-scale producers in Guatemala, with the specific case of Manos Campesinas.

You know that our organization was found by smallholder farmers, which are the actual owners; Manos Campesinas was founded in 1997 due to the lack of a direct market for the coffee produced by families living in the region where we are established as an organization.; after the Peace agreements were signed in Guatemala, where we had more than 36 years of internal war; Manos Campesinas emerges, the organization looks for coffee markets and also decides to produce coffee in harmony with nature and it is not until the year 2000 when we obtain the organic certificate. At the end of 2023 we were 1421 coffee producing families that work together at Manos Campesinas. Currently, we export the highest percentage of our coffee to the USA and sales represent between 4 and 5 million dollars annually to this market.

Organic production requires to follow standards already established by existing regulations for organic agriculture. The way it is made functional is through a mechanism:

1. We invest in technical support every year. We have an internal control system, we also hire an external audit annually, to verify our processes, control mechanisms and finally have the certificate; these processes are annual. In technical assistance we invested last year US\$138,000.00, the team is made up of 8 agricultural technicians and 10 promoters; Separately is the collaboration of the leaders, men and women of the villages. For our internal inspections we have a budget of US\$53,000.00; We inspect 100% of the coffee plots to ensure that the established standards for production are followed. Separately, we



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hire an external audit, which has a separate cost. The external audit is essential since the external agent is the one who issues the organic certification, after the audit carried out by them.

2. With the technical team, we transfer technology for organic production to coffee producers. Because the members of our organization are micro-producers, with an average of 1 hectare aprox. where they grow coffee; it is practically impossible for them to independently and individually seek organic certification for their coffee plot; In fact, sometimes each producer has 3 plots that together make up one hectare. The cost would be very high for each individual producer. For the above reason, it is very convenient to be able to access a collective organic certificate.

3. Last year we produced coffee in an area of 1248.89 hectares; this area of land is free of contamination since no synthetic inputs are used in production such as herbicides, chemical insecticides that damage nature and this factor is very important for environmental preservation, but also for the quality of the soil, water and for health. Each coffee plot has coordinates and can be located by GPS, it is part of a coffee traceability system.

4. Guatemala is a country with rugged topography and the areas where our organization produces coffee are very rugged, ranging from elevations of 900 meters to 2100 meters above sea level. The land is suitable for producing coffee since coffee is a tree, there are also many shade trees since coffee in our country is usually planted under shade; Likewise, families have been taught to plant other crops for self-consumption such as bananas, citrus fruits, etc. among the coffee plantations. One reason why producers continue to plant coffee despite the very low prices in the international market in the last decade is because the price of organic coffee is better and the market we currently have has covered the cost of production and allows for better standard of living for the producer.

5. The organization of coffee producers Manos Campesinas has been functional for organic coffee, since it is the main crop that provides employment for families, there is a market for this product and it is also of very good quality.

With the previous information you may know the importance of collective organic certification for environment, for the economy of a community, for a country like Guatemala and for the life of the producer families who have not had the opportunity to have large areas of land where they can produce food with their family. With out the collective organic certification it is impossible for small-scale producers to continue with this task of caring for nature through their economic activity for the following reasons:



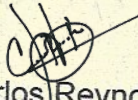
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1. The cost for a small-scale producer to obtain an organic certificate for a small coffee plot is very expensive and the current price for organic coffee in the international market would not be enough to cover it. So eliminating the collective organic certificate is practically abandoning the idea of organic production in the villages where coffee is produced in Guatemala. It is important to mention that the highest percentage of coffee production is by small-scale producers.
2. It has been seen that when the price of coffee is very low, producers who do not produce organic coffee tend to abandon coffee and plant foods such as corn, beans, etc. And these crops do not require shade and the trees must be cut down for this purpose, however, because they are lower value products, they also try to lower production costs and one way to lower costs is to use synthetic chemicals that include fertilizers and also herbicides, etc Which is unfortunate due to its negative effect on soil, water, air and the environment. In a global reality of climate change, it is not the best option to abandon organic agriculture, rather it should be encouraged.
3. Manos Campesinas also as an organization that has promoted organic production would be in serious difficulties in functioning as such since it is an organization that was founded by producers to promote the production of organic coffee as its main objective; Our organization also not only promotes organic production, we also promote the organization of producers, men, women, youth and child protection in the production processes.
4. In recent decades, due to the lack of opportunities in our country, we have seen a lot of migration of Guatemalans and also Central Americans to the United States of America; Currently, organic production is one of those opportunities that producers have and we hope that they continue to have it as an opportunity.

Thank you very much for your attention and we hope that you will be able to put this perspective on the topic, the logical reasoning, the benefits and the negative impacts that can generate such an important decision about organic certification.

Kind regards,


Carlos Reynoso
General Manager
Manos Campesinas
Guatemala

