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Complaint Against Certain Foreign Organic Certifiers

This is a complaint against the following five (5) foreign certifying agencies (“certifiers”):

BIO.INSPECTA AG (“Bio.Inspecta”)
Ackerstrasse, Frick, CH-5070,
SWITZERLAND
(Accreditation No. USDA-43-21)

ECOCERT SAS (“Ecocert”)
Lieu dit Lamothe Ouest BP47, L'Isle Jourdain,
32600, FRANCE
(Accreditation No. USDA-67-22)

BIOAGRICERT (“Bioagricert”)
Via dei Macabracchia 8, Città Metropolitana
di Bologna, 40033, ITALY
(Accreditation No. USDA-49-19)

LETIS (“Letis”)
San Lorenzo 2261 1 "A", Rosario,
ARGENTINA
(Accreditation No. USDA-13-18)

CCPB SRL (“CCPB”)
Viale Angelo Masini 36, Bologna, 40126,
ITALY
(Accreditation No. USDA-20-21)

I. Introduction

“[I]mproving farm to market traceability” is one of the stated goals of the U.S. Department of Agriculture’s (“USDA”) recent “Strengthening Organic Enforcement Rule” (“SOE”).¹ This goal recognizes that traceability to organic farms is fundamental to use of the USDA organic seal.

With the help of staff from the U.S. International Trade Commission (“USITC”), we tried to trace organic hazelnuts to farms in Turkey. We learned two things: (1) the organic certification of hazelnut farms in Turkey is unreliable because of “grower group” certification practices; and (2) no one can trace to Turkish farms.

¹ See USDA Summary of SOE (<https://www.ams.usda.gov/rules-regulations/strengthening-organic-enforcement>).



II. Background

A. Certified Turkish “organic” hazelnuts are being sold in the U.S. at negligible organic premiums compared to Turkish “conventional” hazelnuts

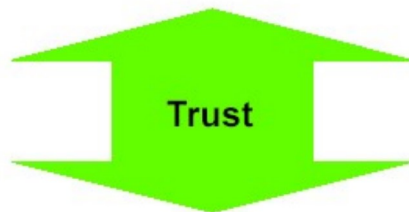
We are a certified organic hazelnut farm located in Oregon. Last year, a local hazelnut processor informed us that Turkish “organic” hazelnut kernels were being sold, wholesale, in the United States (“U.S.”) at negligible premiums above Turkish “conventional” prices. *See page 5, infra.* Compared to current organic/conventional price differentials for hazelnuts grown in the U.S., negligible Turkish organic premiums indicate that something is wrong:

Why is organic certification needed?

The consumer requests healthy and environmentally sound products



and is willing to pay a higher price for them.



The farmer produces according to defined organic standards



and can sell his products at a higher price.

Ex. 31, p.1 of 9 (IFOAM Training Manual on Setting Up and Harmonising [*sic*] Internal Control Systems [for grower groups]).

We later complained to the USITC that small Turkish organic premiums were caused by unfair practices that involved certain Turkish hazelnut processors not following the same organic compliance rules that we are required to follow. The USITC saw sufficient problems to order an investigation. *See “In the Matter of Certain Hazelnuts and Products Containing the Same,”* USITC Investigation No. 337-USITC-1337.

Among other things, the investigation revealed that foreign grower group certifications set up barriers that make farm traceability opaque.

B. Grower groups

The USDA’s National Organic Program (“NOP”) allows for the organic certification of “grower groups.” In original concept, a grower group consists of organic farmers who collectively seek

certification via a type of farmer’s cooperative (“co-op”) – through which the farmers agree to market their organic crops.

Traditional farm co-ops are owned and controlled by farmers. However, USDA organic policies have allowed grower groups to evolve into confusing, mongrel variations of the traditional co-op model. These policies mutate the “farmers only” version of a co-op by allowing non-farmer entities (*i.e.*, processors, certifiers, and other private parties) to purportedly administrate and control organic compliance of the farmers in the group. The USDA allows the certifier to issue organic “crops” certificates directly to the processor (or another non-farmer) instead of directly to the group farmers. The processor then makes first use of the seal in the organic food-to-table chain – rendering the farmers invisible.²

The farmers in the group are supposed to operate under an organic “internal control system” (“ICS”) that the certifier oversees. In concept, the ICS enables the certifier to “delegate,” to an internal group manager or “controller,” the heavy lifting of organic compliance (*i.e.*, required annual on-site inspection of each farm in the group, record keeping and contracts for each farm, training for each farmer, obtaining farmer acknowledgements that the farmer has read NOP rules, etc.).

With respect to annual, on-site farm inspections, the certifier inspects only a small percentage of the farms in the group while ICS controller personnel, who may not be accredited or certified by the USDA for organic inspections, “carry out at least one annual direct observation and review of each individual operator, including visits to fields and facilities.” *See, e.g.*, Secs. III.(D.)(1.) and III.(D.)(2.)(i.), “*Formal Recommendation by the National Organic Standards Board (NOSB) to the National Organic Program (NOP)*” (“2008 NOSB Recommendation”). Ex. 29.³ *See also* Ex.

² It also appears to be common practice for certifiers to issue the organic “crops” certificate directly to food processors without any clear public identification that a grower group is involved – which makes it difficult to track the extent that grower groups factor into present-day U.S. agricultural imports. *See* fn. 6.

³ Grower group certifications are an agency creation that arose from an earlier practice that was certifier-created in the unregulated era that preceded the Organic Foods Production Act of 1990 (“OFPA”), codified at 7 U.S.C. § 6501 *et seq.* The OFPA does not mention grower groups or include statutes that allow the current NOP policies for creating and certifying grower groups. Likewise, prior to the recent SOE, the Code of Federal Regulations (“CFRs”) contained no clear rules that applied to the regulation of grower groups. Grower group certification policies apparently originate from National Organic Standards Board (“NOSB”) “recommendations” to the NOP that were made in 2002 and 2008. *See* Exs. 28-29. At the time, it appears the NOSB referenced ICS training manuals created by the International Federation of Organic Agriculture Movements (“IFOAM”) as guidelines for the NOSB’s grower group recommendations. *See, e.g.*, Exs. 31-34. In 2011, Miles McEvoy, the then Deputy Administrator of the NOP, wrote a policy memo calling for certifiers to use the NOSB recommendations as the current grower group certification policy. *See* Ex. 35. The NOSB policy recommendations were, in general terms, eventually written into the CFRs as part of recent SOE rule-making. *See also* fn. 9.

32, pp. 16-17 & 32 of 32; and Ex. 33, pp. 6-10 of 15 (IFOAM training manuals on evaluation and setting up a grower group ICS).

The USITC investigation resulted in the production of grower group certification documents that indicate there are two versions of grower groups operating in Turkey.

In one version, which appears to be the most common one, a non-farmer hazelnut processor is identified as the “crops producer.” In conjunction with this, the certifier may wear two hats at the same time: one hat in the role of outside certifier of the group; the other in a confusing and complicated role as the apparent group controller that administrates the group’s ICS for the hazelnut processor – for a fee. See pp. 12-19 (the Ecocert/Arslanturk example); and pp. 27-30 (discussing the practical consequences of 2002 and 2008 NOSB policy recommendations). The processor pays the certifier for this service in return for receiving the organic “crops” certificate that designates the processor, not the farmers, as the “crops producer.”

In the other version, a middleman serves as both the group designee and group controller. The middleman then receives and holds the organic certificate as the “crops producer” in connection with arranging farm crop sales to downstream processors.

The certifying agencies complained about here are all “for profit.” Our farm sells organic hazelnuts from Oregon that are certified organic by the Oregon Department of Agriculture (“ODA”). We intentionally use the ODA because, as a state agency, it is nonprofit and also not sales-driven.⁴

C. Damage caused by grower group certifications

The U.S. hazelnut industry (conventional and organic) is small, consisting of approximately 1000 family farms that are mostly found in Oregon. Turkey dominates world hazelnut production and, likewise, dominates the U.S. domestic hazelnut market. U.S. hazelnut farmers produce less than 10% of Turkish production. Consequently, the prices buyers pay for conventional Turkish kernels directly influence U.S. farmer prices. See, e.g., Ex. 2.

When selling their crop each year against Turkish competition, U.S. hazelnut processors (who buy farmers’ hazelnuts locally and resell them as kernel products) are often faced with selling to large international corporate buyers that leverage Turkish import prices against the prices they are

⁴ For example, in August 2022, a “Sales Officer” in Ecocert’s U.S. office (one of the certifiers identified in this complaint) sent us the following unsolicited email that states, in part:

“Interested in a fast, free, no hassle quote for organic certification?”

If you’d like to receive an estimate for NOP certification, you can [click here](#) to build your own custom quote – takes 5 minutes or less.”

Ex. 1.

willing to pay for U.S. hazelnuts. This and other factors have recently driven down U.S. grower prices (for conventional hazelnuts) to levels not seen in decades.

As indicated above, in today's U.S. hazelnut market, there is evidence that Turkish processors are now causing unfair imports of Turkish "organic" kernels that are being priced at insignificantly low organic premiums over Turkish conventional kernels. For example, during the USITC investigation, one Turkish processor (Arslanturk, discussed later) disclosed that organic kernels were being sold out of Turkey (wholesale) at approximately \$7/Kg. In the same time frame, Arslanturk reported conventional kernels selling for as high as \$6.82/Kg. (wholesale). *See* Ex. 3. This information (a 3% organic premium) is consistent with local processor information that we received earlier.⁵

Unlike conventional growers, the "Oregon organic" growers can, so far, maintain a significant organic premium price compared to the small Turkish organic premium described above, because Oregon growers currently sell into small, high integrity markets that demand a reliable standard of record keeping and individual on-farm inspections by accredited certifiers. Buyers know that Oregon organic hazelnuts can be traced directly to farms like us. In Turkey, one cannot trace beyond the processors. Oregon farm traceability, compared to no traceability to Turkish farms, provides a marketing advantage for sellers who are concerned about the organic integrity of the products they sell.

Notwithstanding the above, the public is being deceived by certifier-enabled, Turkish processor misuse of the USDA organic seal. If this misuse continues in the long term, it will damage Oregon organic hazelnut farmer prices and the Oregon organic hazelnut industry – as a byproduct of the damage being done, right now, to the integrity and goodwill of the USDA seal as a certification mark.

The USITC investigated certain Turkish processors because it recognized that small Turkish organic premiums are both suspicious and threaten our domestic organic hazelnut industry. However, the USITC is a small federal agency that has no jurisdiction to investigate the operations of other federal agencies like the USDA.

Therefore, we reached an agreement with USITC staff: if, during the investigation, a Turkish processor disclosed certifier-issued organic certificates that "looked right" on their face, even if the disclosure revealed questionable underlying practices, we agreed to address the problems in other forums outside the USITC. *See, e.g.,* Ex. 4, p. 2 of 2 (*yellow highlighting added*).

⁵ Those who understand the market also understand that prices fluctuate. This means the marginal size of an organic premium will also fluctuate. However, the narrow margin described above (3%) immediately suggests two things: (1) Turkish processors are using certifiers who are willing to reduce certification fees by cutting corners; and (2) Turkish farmers are not receiving a significant organic premium, if any. *See* pp. 26-31, *infra*.

We honored our agreement, with no prejudice, when the investigation revealed problems that centered on little-known, but USDA-sanctioned, grower group certification practices.⁶

What follows is a summary of what was discovered, on a certifier-by-certifier basis:

III. The Certifier Problems

A. Bio.Inspecta – tracing to certified organic farms dead-ends at car shops

USDA “corrective action” reports identify Bio.Inspecta as a “for profit” certifier that issues organic certificates in Afghanistan, Albania, Iran, Kazakhstan, Lebanon, Tanzania, Turkey, and the United Arab Emirates. Bio.Inspecta is headquartered in Switzerland but has an affiliated office on the southwest coast of Turkey (in Izmir). See www.bio-inspecta.com.tr.

Our USITC complaint alleged that a multi-national organization’s Turkish affiliate, Progida, used Progida’s USDA organic certification as a “handler” to piggyback the USDA organic seal onto untraceable upstream hazelnut kernels that were sold to a Colorado company.

In response, Progida claimed that the Colorado transaction was *bona fide* and traceable to a certified grower group, called Yilmaz, which is situated in a hazelnut growing region in Turkey.

According to an explanation given by Progida’s attorneys, the Yilmaz group sold hazelnuts to an independent Turkish processor called Ozyilmaz. Progida bought the hazelnuts from Ozyilmaz –

⁶ As discussed in fn. 3, the concept of certifying grower groups is missing in the OFPA statutes and has been missing in underlying (pre-SOE) regulations. Grower group certifications appear to have stayed out of the public eye because they are exclusively (or nearly so) a foreign practice. Moreover, it is difficult to identify from public records whether organic certificates issued to agribusinesses for “crops” clearly involve underlying grower group certifications. For example, one USDA “corrective action” report on Ecocert (one of the certifiers complained about here), dated May 11, 2022 (“NOP-33-21 CA Ecocert SA 05/11/2022”), states that Ecocert certifies “over 600 grower groups with over 10,000 members.” Yet, if a member of the public does an advanced search in the current version of the USDA “Integrity” database for worldwide grower group certifications (*i.e.*, “Integrity” permits an advanced search that limits output data to only “Grower Group” as a service or business type), approximately 800 records appear, but with no indication that Ecocert is a grower group certifier. The reason “Integrity” does not identify Ecocert as a grower group certifier is unknown. One explanation is that the USDA appears to make it “optional” for certifiers to identify grower groups in “Integrity.” “Integrity” otherwise currently connects Ecocert to approximately 45 certification records in Turkey. Of these, approximately 75% certify Turkish entities for both organic “crops” (all kinds) and “handling” at the same time. Like the Arslanturk example discussed later on pp. 12-19, this data suggests that the majority of Ecocert’s certification business in Turkey involves certifying food processors as “farmers.” See Ex. 36 (condensed Excel output from “Integrity”).

and Progida then exported the hazelnuts from Turkey to Colorado, all with a line of farm-to-Colorado organic certificates generated by Bio.Inspecta.

Progida produced (1) an organic operations certificate for Yilmaz (the “Yilmaz operations certificate”); (2) a spreadsheet for the farmers in the Yilmaz grower group (the “farmer list”);⁷ and (3) a “Certificate of Inspection for Domestic Sales” (the “inspection certificate”) memorializing the sale of 162 metric tons of organic hazelnuts from Yilmaz to Ozyilmaz. Exs. 5 - 7. There were underlying problems with these documents.

First, the Yilmaz farmer list indicates that about one-third of the farms were inspected by the ICS group controller.⁸

Federal law requires that every farm (100%) in the group be inspected, on-site, and on an annual basis, by an accredited certifier:

“A program established under this chapter shall—

* * *

(5) provide for annual on-site inspection by the certifying agent of each farm and handling operation that has been certified under this chapter;”

7 U.S.C. § 6506(a)(5).⁹

⁷ The last footnote on the bottom of the farmer list (Ex. 6, p. 4 of 4) indicates the grower group is controlled by Bio.Inspecta under contract with Yilmaz. The redactions and yellow highlighting were on the document when we received it.

⁸ The list indicates the ICS group controller visited about 35% of the farms (*see* “Fields visited” column on the right-hand side of the “Onsite inspection/Remote inspection” column). Ex. 6.

⁹ The plain language of the statute requires an on-site inspection of *each* farm by the *certifying agent*. “Certifying agent” is defined in the OFPA statutes as a person or entity who is *accredited by the USDA* for the purpose of certifying an organic farm. *See* 7 USC § 6502(3)(A). Contrary to grower group policies and the SOE, the statute does not allow an *accredited* certifying agent to delegate inspection to a *non-accredited* grower group controller, or a *non-accredited* “ICS personnel team” (*see, e.g.,* Ex. 29, p. 9 of 11). This issue is discussed further in pages 27-30, *infra*. It may be a neutral issue with respect to Bio.Inspecta, because Bio.Inspecta (an agency accredited by the USDA) appears to operate as both the certifier and ICS group controller at the same time. However, as the group controller of the Yilmaz farmer list, Bio.Inspecta nevertheless violated both the above statute and NOP policy by not carrying out “at least one annual direct observation and review of each individual operator, including visits to fields and facilities.” *See also* p. 3, *supra*.

Next, the inspection certificate (part of which is shown below) had problems:

CERTIFICATE OF INSPECTION FOR DOMESTIC SALES

1. Issuing body or authority (name and address) bio.inspecta AG Ackerstrasse CH- 5070 Frick TR-BIO-161	2. Serial number of the certificate of inspection YI-011-T21
3. Seller (name and address) Yılmaz Fındık Entegre San. ve Tic. A.Ş. Beylerce Mah. Yeni Samsun Cad. No: 381/A Çarşamba SAMSUN TÜRKİYE	4. Producer or processor of the product (name and address) Yılmaz Fındık Entegre San. ve Tic. A.Ş. Beylerce Mah. Yeni Samsun Cad. No: 381/A Çarşamba SAMSUN TÜRKİYE
5. Control body or control authority (name, address and code) bio.inspecta AG Ackerstrasse CH- 5070 Frick TR-BIO-161	6. Country of origin TURKEY
7. Country of sale TURKEY	8. Buyer (name and address) Özyılmaz Fındık San. Ve Tic. A.Ş. Beylerce Mah. Yeni Samsun Cad. No:283/Z01 Çarşamba SAMSUN TÜRKİYE

Ex. 7 (*highlighting added above*).

As part of confirming the sale and transport of hazelnuts from seller to buyer, as per Progida’s representations, the above “seller’s” address on the inspection certificate is necessarily the same as the one on the Yılmaz operations certificate issued by Bio.Inspecta (Ex. 6).¹⁰

One red flag on the face of the inspection certificate is the close street location of the purported “buyer” (Ozyılmaz) relative to the “seller” (Yılmaz) along with the high volume (162 metric tons) of transported hazelnuts between seller and buyer as shown on the certificate. This might make sense if an independent farm co-op is operating in the same small town as a buyer/processor – but that is not what was happening here.

The inspection certificate address locates the Yılmaz “operation” among the car dealer and car repair shops (collectively “car shops”) shown below:



The Yılmaz location identified by the certifier (*i.e.*, the “seller”)¹¹

¹⁰ Bio.Inspecta’s “Easy-Cert” website (which is referenced on the operations certificate) also locates Yılmaz at the same address shown above. See <https://www.easy-cert.com/htm/suchresultat-detail.htm?id=b510b936-afc2-4b8f-9290-97d48df075e1&db=bio>. (Search for Operation ID TR-185, which corresponds to Yılmaz). Moreover, the USDA’s “Integrity” database locates Yılmaz at that address. See fn. 15.

¹¹See Google Earth Pro, coordinates: 41°12’18.29”N 36°42’24.29”E (certificate street address: Beylerce Mah. Yeni Samsun Cad. No: 381/A Carsamba Samsun Turkey).

Next, it turns out that the up-the-road Ozyilmaz address is a gas station:



The Ozyilmaz location identified by the certifier (*i.e.*, the “buyer”)¹²

In fact, “Yılmaz” and “Ozyilmaz” are next-door to each other, as part of an integrated agribusiness complex in another part of town:¹³



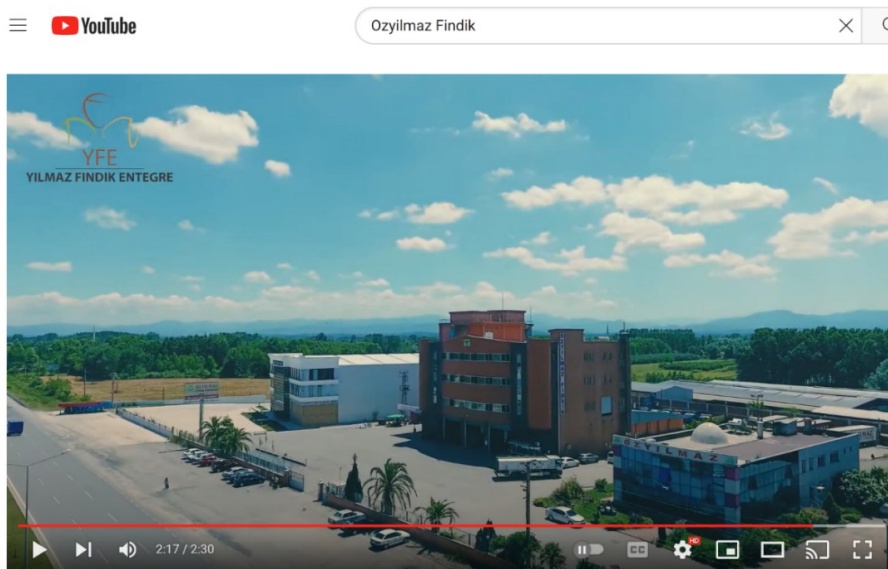
“Oz” is a Turkish prefix to “Yılmaz,” so it should not surprise that “Yılmaz” and “Ozyilmaz” are part of the same family-owned agribusiness, not independent “seller” and “buyer.”¹⁴ The Ozyilmaz website identifies Ozyilmaz as an agribusiness originally founded by two brothers,

¹²See Google Earth Pro, coordinates: 41°12'26.79"N 36°41'28.79"E (certificate street address: Beylerce Mah. Yeni Samsun Cad. No: 283/Z01 Carsamba Samsun Turkey).

¹³ See Google Earth Pro, coordinates: 41°12'52.88"N 36°40'24.41"E (no address for this location is given in Bio.Inspecta records).

¹⁴ See <https://www.ozyilmazfindik.com>. Yılmaz does hazelnut cracking (“shelling”) as part of the integrated business. See also <https://www.yfe.com.tr>.

Azmi and Mustafa Yilmaz. *See* Ex. 37, p. 2 of 4. “Yilmaz” was later created as an Ozyilmaz-owned brand. *Id.* An Ozyilmaz email address has been used as a contact for Yilmaz regarding USDA organic certification records. Ex. 38, p. 1 of 2.¹⁵



Yilmaz Hazelnut Integrated

Aerial view of the Yilmaz/Ozyilmaz integrated facility¹⁶

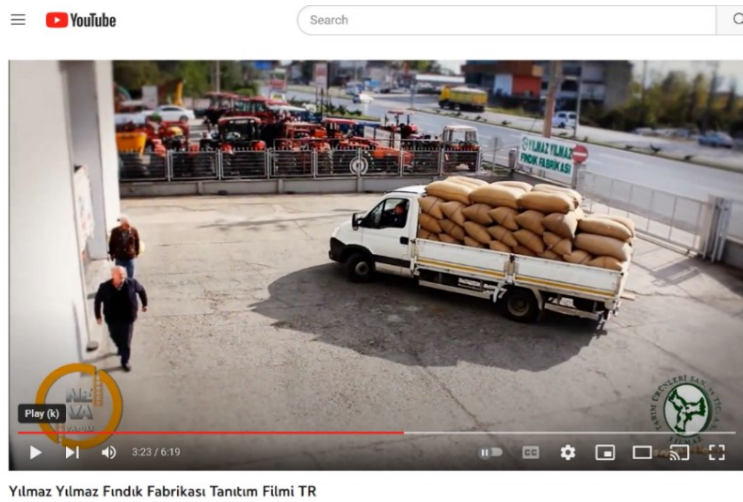
Those with knowledge of how hazelnuts are harvested in Turkey will describe that the crop is hand-picked in a farmer’s field; dried in the sun near the field; co-mingled with hazelnuts from numerous other farmer fields as the hazelnuts are accumulated and sacked; and then loaded onto trucks that deliver the hazelnuts to a buyer/processor like the above Yilmaz/Ozyilmaz agribusiness.¹⁷ And truckloads of processed hazelnuts (generally, nut kernels after shelling) are then shipped from the agribusiness to downstream customers.

Yilmaz posted a YouTube video that helps explain the above:

¹⁵ According to the USDA’s “Integrity” database, Ozyilmaz is independently certified organic as a processor. As an interesting sidenote, the USDA’s “Integrity” database also identifies the car shop and gas station locations as the current Yilmaz and Ozyilmaz business locations. “The Organic INTEGRITY Database is a certified organic operations database that contains up-to-date and accurate information about operations that may and may not sell as organic, deterring fraud, increases supply chain transparency for buyers and sellers, and promotes market visibility for organic operations.” *See* <https://data.nal.usda.gov/dataset/organic-integrity-database>.

¹⁶ *See* <https://www.youtube.com/watch?v=PpKNf5pSnH4> @ 2:17.

¹⁷ Turkish hazelnut farms are small compared to U.S. farms.



Sacked hazelnuts arriving at Yılmaz/Ozyılmaz, accumulated from the farms¹⁸



Shelled hazelnut kernels leaving the agribusiness¹⁹

Bio.Inspecta certified that it *inspected* the buy/sell and transport, by road vehicle, of 2025 sacks of hazelnuts weighing 161,943 Kg. (162 metric tons) moving between Yılmaz and Ozyılmaz in a “sale” between Yılmaz and Ozyılmaz. Ex. 7. To put this amount in perspective, and depending on truck size, for that stated weight Bio.Inspecta certified that it inspected many, many truckloads of hazelnut sacks that were sold and transported to Ozyılmaz from Yılmaz. How does this make

¹⁸ See <https://www.youtube.com/watch?v=aVACZYw-x40> @ 3:20.

¹⁹ See <https://www.youtube.com/watch?v=aVACZYw-x40> @ 6:19.

sense, given that Yilmaz is part of the Ozyilmaz integrated agribusiness, in side-by-side buildings?

It makes sense if Bio.Inspecta issued a fraudulent inspection certificate to make things “look right” for downstream buyers of “organic” hazelnuts before the hazelnuts were shipped out of Turkey.²⁰

Yilmaz is a shelling factory, not a group of farmers. However, Yilmaz’s organic certificate showing that it is a producer of organic “crops” provided Progida with a safe harbor against USDA-issued penalties under current USDA enforcement policy.

Farm fields that violate federal law because they were not inspected, a seller-buyer transaction between side-by-side buildings in the same agribusiness facility, addresses on a certificate of inspection (and on the certifier’s website – and on the USDA’s database) that locates the seller and producer of “crops” at car shops and the buyer at a gas station, no longer matter.

However, a Colorado company has been selling certified “USDA organic” hazelnuts to the U.S. public sourced from the above transaction.

B. Ecocert – tracing to certified organic farms dead-ends at a factory complex that uses untraceable, randomly generated farmer codes

Ecocert is a privately owned, multinational “for-profit” certifier with headquarters in France, shown below:

²⁰ Leaving aside the logistical problems of tracking small lots of hazelnuts as they are accumulated from many farms, the geographical distance between the ICS controller, Bio.Inspecta, and Yilmaz/Ozyilmaz raises other questions: Bio.Inspecta’s Turkish office is in Izmir, Turkey. Yilmaz/Ozyilmaz is in Carsamba, approximately 700 miles away by road. The inspection certificate is signed by an administrator who works in Bio.Inspecta’s Izmir office. Ex. 8, p. 1 of 3. Bio.Inspecta’s price sheet indicates Yilmaz/Ozyilmaz was probably charged 45 Euros for the inspection certificate. Ex. 8, p. 2 of 3 (*yellow highlighting added*). Who was the Bio.Inspecta ICS control person who visited only 35% of the farmers on the Yilmaz farmers list? For 45 Euros, how long was the Bio.Inspecta inspector in Carsamba looking at trucks moving 2025 sacks of hazelnuts from the car shops to the gas station, or between side-by-side buildings, as the case may be? These factors imply that someone was issuing certificates from a distant office for a fee, but no one was properly following NOP policies.



See <https://www.flipsnack.com/996AC799E8C/csreport2022/full-view.html>

1. Ecocert – the outside “certifier” and ICS group “controller”

During the USITC investigation, a Turkish processor and exporter, Arslanturk, identified Ecocert as both the certifier and ICS controller for two Arslanturk grower groups: one in Turkey’s Artvin province; the other in Trabzon province.²¹ See Ex. 9, pp. 1-2 (*yellow highlighting done by USITC staff*).

In a letter to the USITC, Arslanturk stated, in part:

“This organic project is conducted by Ecocert S.A. as a certification body. They (Ecocert S.A.) audit our farmers and companies every year and they may confirm or not at the end of the audit. Records of all information about our registered farmers and their orchards are kept by Ecocert S.A. in their system.”

Ex. 10 (*yellow highlighting added*).

Arslanturk volunteered certain organic certificates in support of the above. The certificates consisted of, first, a certificate for Arslanturk’s processing factory in Arakli, Turkey; followed by

²¹ Ecocert’s Turkish office is in Izmir, Turkey, about 900 miles from Arslanturk by road. See also fn. 30 regarding a requirement, violated here, that all grower group members be in close geographic proximity.

a set of two certificates that identified organic crops produced at “sites” corresponding to each respective grower group;²² and finally, another set of two “Annex to the certificate” documents that listed individual farmer member “codes” for the two grower groups (the “farmer annexes”). Exs. 11 - 13.

All the addresses on these documents point to the Arslanturk processing facility in Arakli:



Street view entrance to the Arslanturk factory²³

²² The “site” identified for the Artvin group is a single-town, called Borcka (pop. 11,000), on Turkey’s border with Georgia. Ex. 12, p. 4 of 8. The Trabzon group’s farmer “sites” are towns named Arakli, Arsin, Surmene, and Yomra. Ex. 12, p. 8 of 8. Other than town names, no further “site” details are given.

²³ See Google Earth Pro, coordinates: 40°54’57.26”N 40°02’43.61”E (Arslanturk certificate street address: Ozgen Mahallesi Ova Mevkii Bayburt Yolu Uzeri 3. Km Arakli, Trabzon Turkey).



Aerial view of the Arslanturk factory²⁴

USITC staff had the following exchanges with Arslanturk concerning the certificates:

USITC: *“Just to confirm, all of the farms that Arslanturk sells product from are under these certificates?”*

ARSLANTURK: *“Yes, correct.”*

USITC: *“Does Arslanturk use third-party suppliers?”*

ARSLANTURK: *“Sometimes. But only for EOS(EU) and the domestic market.”*
“For NOP, we only use our own grower group.”

See Ex. 14, p. 1 of 4.

With respect to identifying the ICS “controller” of the Artvin and Trabzon grower groups, Arslanturk told USITC staff:

²⁴ See Google Earth Pro, coordinates: 40°54’55.42”N 40°02’41.18”E (Arslanturk certificate street address: Ozgen Mahallesi Ova Mevkii Bayburt Yolu Uzeri 3. Km Arakli, Trabzon Turkey).

“As you know, all farmers available in the certificate annexes are controlled by Ecocert and certified according to the NOP regulation. Therefore, in line with the certification requirements, they have been certified as a result of all the documentation and external controls requested for the farmer groups.”

Ex. 9, p. 2 of 7 (underlining added).

With respect to public availability or distribution of the Arslanturk farmer annexes, Arslanturk stated *“there is no obligation to open it [the annexes] to the general public”* and *“Ecocert sends us them via email.”* See Ex. 9, p. 1 of 7.

2. The farmer annexes with random number “codes”

The Artvin group farmer annex alone lists over 900 farmer codes:²⁵

MEMBERS

Farmer codes of members, see below table

12910634084	16567511484	31567012274	14071594696
31615010276	25210223490	14068594760	16297520428
13585610908	21517346672	28009130092	16570511310
14761571686	25375218126	22321319890	28741105648
31858002502	26146192898	15709540528	21070368524
31867002210	13756605160	15037562650	28351119448
10054729222	63415175800	24139259016	29467081568
29575078610	31798004406	27514146550	20599377024
28786104354	28621109728	17368484922	20809370098
29704073530	29242089062	29467082244	21052361932
25186224774	16270521824	25525213308	25336219438
28207124220	17506480304	16498513748	10243722270
17185490892	22210323588	21811336836	15682541192
20086394114	30373051620	24211263832	13384618228
10981698080	13132626666	26557178832	17704473788
12571644606	28969098258	27454153472	16861501648
21763345382	10690710486	23974264940	23386284444
14224589678	10213723368	15532546124	13447615584
16789504066	18295453838	25942199056	15667541780
20215089860	14749572022	20031062354	20371384806

Ex. 13, p.1 of 9.

As best understood, as the ICS controller of both Arslanturk groups, Ecocert is presumably (1) giving each farmer a code that “confirms” the farmer to be in organic compliance (e.g., Ecocert

²⁵ Based on the number of codes listed on both farmer annexes, there are approximately 1400 organic hazelnut farmer members, collectively, in the Artvin and Trabzon groups. See Ex. 13.

controlled an inspection of each farm as well as other things required by the ICS), so that the farmer can provide the code when the farmer delivers hazelnuts to Arslanturk; and (2) emailing the list of codes to Arslanturk, along with corresponding farmer names and addresses, so that Arslanturk (who is, effectively, the grower group certificate holder), or someone under Arslanturk's control, can check the farmer's delivery of hazelnuts against the list.²⁶

But, for someone holding a clipboard and a checklist of numbers, consider the logistical problems that attach to finding one organic farmer's 10-digit code on an emailed list of over 900 numbers that, if not randomly generated, are certainly randomly organized – no easy task because of the random organization of the numbers.

The farmer annexes look false, on the face of the documents, because no one keeps track of things that way. Numerical lists are usually organized in sequence from low to high number, to make it easy to locate numbers on the list.

Arslanturk made things look worse by later producing “updated” farmer annexes for both groups:

“The grower certificates which I sent you before were not updated. Please find attached the updated ones which belong to the 2022 season.”

See Ex 9, p. 1 of 7.; and Ex. 15.

If one looks past the first column of farmer codes and compares the updated Artvin annex to the earlier one, Ecocert re-randomizes the codes from one year to the next. *Compare* Ex. 13, p. 1 of 9 to Ex. 15, p. 1 of 8. Consider being the person with the clipboard trying to determine what

²⁶ According to grower group training manuals, the ICS “buying officer” should be able to carry out the following tasks:

- Check farmer's identification.
- Weigh or count product.
- Assess that the product has reached the agreed quality standards.
- Check that the quantity of product presented for sale falls within the farmer's yield estimate as it is recorded in the farmers list/buying record and deal with problems if they arise.
- Keep the related documentation well.
- Issue receipts, etc.
- Handle the payments.

See Ex. 34, p. 14 of 15 (IFOAM training manual on setting up ICS personnel [for grower groups]). See also Ex. 29, p. 10 (2008 NOSB Recommendation referencing IFOAM training manuals).

farmers were added or removed from the prior year’s list of 900 randomly organized code numbers.²⁷

The farmer annexes are useless – with one exception: one could draw an inference that Ecocert generated an opaque list of “confirmed” organic farmer “codes,” for the purpose of creating a certification document that Arslanturk can show to downstream customers, if necessary, while explaining that the “codes” were generated by a USDA-accredited certifier, Ecocert. Arslanturk’s comment below is informative:

“We are a certified company in direction of the rules of NOP organic therefore there is nothing to share except for the organic certificates.”

Ex. 14, p.4 of 4.

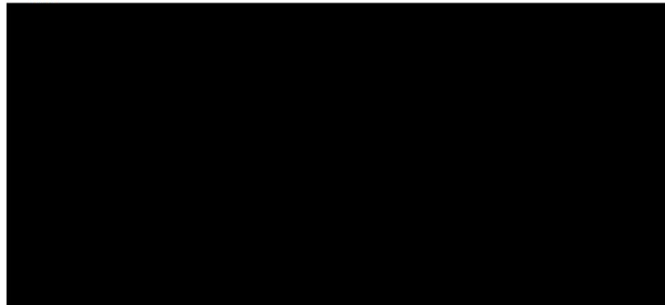
Arslanturk has the certificates to show. But concerning the hazelnuts that pass through Arslanturk’s factory gate, it is unlikely Arslanturk can identify what comes from where vis-à-vis the farmer codes.

3. The USDA refuses to question the random number farmer “codes”

USITC staff saw the problems with the random number codes. Ex. 16. We asked USITC staff to take the above directly to the USDA, with a good faith belief that the USDA would ask questions and do what it is supposed to do. The gist of the USDA’s official, written response to us was made unreadable by USDA-directed redactions:

May I pass this correspondence to the Complainant? I can redact your email addresses if that is preferred.

Thanks,
Mo



Ex. 17.

²⁷ There were other discrepancies on the face of the farmer annexes: Referring to the first farmer annexes produced by Arslanturk (Ex. 13), these documents lacked pagination and footers like other Ecocert documents. These problems were corrected when Arslanturk provided “updates.” See Ex. 15. We provided the worst looking annex to Ecocert’s U.S. Sales Officer (*see* fn. 4) and asked if Ecocert would confirm that it was legitimate. There was no response.

This is what happened behind the redactions, as we understood it from conversations with the USITC: USITC staff that was liaising with USDA staff called the USDA’s attention to the above problems. Rather than investigate, the USDA merely asked Ecocert if the farmer annexes were legitimate – and Ecocert responded that they were. Ex. 17, p. 1 of 2. No other questions asked.²⁸

Meanwhile, Arslanturk is likely to be the largest exporter of “USDA organic” hazelnut kernels from Turkey – at the 3% organic premium described above.

C. BioAgriCert – tracing to certified organic farms dead-ends in an urban street in Izmir

BioAgriCert is a privately owned organization headquartered in Bologna, Italy.

The USITC investigated a Turkish processor, Farmeks, who claimed that it exported organic hazelnuts from Turkey into the U.S. that was sourced from an organic grower group certified by BioAgriCert. Exs. 18-20. The grower group was represented and controlled by a private entity named “Ekotar.”

In addition to organic certificates, Farmeks produced an ICS group controller spreadsheet (Ex. 20) that showed that either BioAgriCert or Ekotar, or both, violated federal law by not inspecting any of the approximately 600 farmers in the group:

Ekotar Company Farmer List

Köy/ Mahalle / Village	Ada no / Plot No	Parsel no / Title deed no	Toplam Tapu Alanı (ha) / Title deed acreage total	Kullanım Alanı (ha) / product/ÇKS area (ha)	Ürünün Adı / Crop	Kontrol Tarihi / Inspection Date	Kontrolör / Inspector	Geçiş başlangıç tarihi / Date of starting Transition period	Tahmini Taze Hasat ton / Estimated Fresh Yield ton	Tahmini Kuru Hasat ton / Estimated Dry Yield ton	Arazi Statüsü(2022) /Field Status (2022)
YOKUŞLU	1471	47	0.0582	0.0287	HAZELNUT						Organic
YOKUŞLU	1471	14	0.2178	0.0720	HAZELNUT						Organic
YOKUŞLU	1471	12	0.2008	0.0290	HAZELNUT						Organic
YOKUŞLU	1471	13	0.2017	0.0667	HAZELNUT						Organic
YOKUŞLU	1471	5	0.0422	0.0207	HAZELNUT						Organic
YOKUŞLU	1470	2	0.3845	0.1915	HAZELNUT						Organic

Ex. 20, p. 1 of 16 (yellow highlighting added above).²⁹

²⁸ USITC staff told us that lower-level USDA staff also recognized the problem. However, upper-level agency personnel impeded looking into it.

²⁹ There are no farmer names and addresses on the Ekotar list because, according to Farmeks’s oral representations, providing this information violates Turkish law.

EkoTar’s grower group certificate shows one street address for its headquarters in Izmir, Turkey. Ex. 19, p. 1 of 2. The certificate also shows that Ekotar has another “operative office” somewhere in Trabzon province, but states only that it is “in Arsin” with no other particulars provided.³⁰

Ekotar’s Izmir headquarters location is shown below:



Ekotar’s headquarters³¹

Farmeks’s use of BioAgriCert organic certificates, derived from farmers that were not inspected for organic compliance, has caused the sale of USDA-certified organic hazelnut kernels in U.S. retail outlets, at prices that meet or are even below the prices of conventional hazelnut kernels.

D. Letis – tracing to certified organic farms dead-ends at an apartment complex in an Izmir neighborhood

Letis is a privately owned, for-profit certifier headquartered in Argentina.

Letis does organic certification in Argentina, Bosnia and Herzegovina, China, Hong Kong, The Republic of Moldova, Pakistan, Russian Federation, Turkey, Ukraine, and Uzbekistan. Letis has a satellite office in Turkey. Ex. 21, p. 3 of 6.

The USDA recently found, in part:

“LETIS-Turkey personnel did not demonstrate an adequate understanding of the USDA organic regulations and NOP Policies.”

³⁰ NOP grower group policy indicates that growers in a group should be in close geographic proximity. See Ex. 28, p. 1 of 7. Ekotar lists approximately 600 farmers that are spread across different provinces in Turkey – in some cases, hundreds of miles apart. See Ex. 20.

³¹ See Google Earth Pro, coordinates: 38°19’53.41”N 27°07’37.94”E (Ekotar certificate street address: Irmak Mah. 38/7 Sk. 14 A - Gaziemir - 35410 Turkey).

* * *

“A NOP review of supply chain documents for a vessel of organic corn from Turkey showed that LETIS issued multiple transaction certificates to a Turkish handler who purchased crops from uncertified subcontractors.”

Ex. 21, pp. 4-5 of 6.

The USITC investigation included a Turkish processor, Balsu, who explained that it obtained organic hazelnuts from a Turkish grower group called Udex. Letis certified Udex.

Balsu produced a Letis “annex” document where Letis confirms that Udex ships “100% organic” hazelnuts from Udex’s production facility:

Unit Production/Facilities:

UNIT PRODUCTION/FACILITIES NAME	ADDRESS	SCOPE
Udex Organik Gıda Tar. Ürün. Rek. San. Tic. Ve Ltd. Şti.	35310 Siteler mah. 241 Sk. No:47/B Güzelbahçe/İzmir	Crops

Products:

PRODUCT	LABELING CATEGORY	PRESENTATION
Hazelnut Shelled	100% Organic	80 KG JUT BAG/25 KG CRAFT BAG/5-10-20 KG VACUUM BAG HAZELNUT KERNEL

Ex. 22, p. 2 of 2.

Based on the Letis-identified address of the Udex production facility, Letis certified that Udex was shipping hazelnut crops from an apartment complex in a seaside neighborhood of Izmir:



Street view of the Udex hazelnut production facility³²

Meanwhile, it is believed that Balsu continues to ship “certified” organic hazelnut kernels into the U.S.

E. CCPB SRL – tracing to certified organic farms dead-ends at a factory complex in Izmir

CCPB SRL (“CCPB”) is another “for-profit” certifying agency with headquarters in Bologna, Italy. It certifies operations in Italy, Morocco, Philippines, Tunisia, Egypt, China, Lebanon, and Turkey. Ex. 23, pp.2-3 of 5.

In the USDA’s most recent assessment of CCPB, USDA auditors found, in part:

“CCPB personnel did not consistently demonstrate during the audit an adequate understanding of the USDA regulations and NOP policies (i.e. NOP Handbook). The following are examples:

- a. Inspectors did not consistently discuss and reference USDA organic regulations, including NOP Instruction, Guidance, and Policies (i.e. NOP Handbook) during inspections and exit interviews with operators.*
- b. Inspectors, certification reviewers, and decision makers (identified by assessing certification records) were unaware of processes required in the USDA organic regulations, such as: the*

³² See Google Earth Pro, coordinates: 38°22’21.54”N 26°51’29.78”E (Udex certificate street address: Siteler Mah. 241 Sk. No. 47/B Guzelbahce, 35310, Izmir, Turkey).

OSP requirement for operations to monitor their compliance (205.201(a)(3)); the Crop rotation practice standard and its application to perennial crops (205.205); NOP 5022, Wild Crops Harvesting, requirements; and, identification of material inputs and corresponding restrictions stated in the National List (205.600), e.g. copper sulfate.

c. Inspectors are not adequately verifying the completeness of Organic System Plan (OSP) and did not demonstrate an understanding of the central role of the OSP in USDA organic certification.

d. During the wild crops witness audit, the inspector did not plan sufficient time to conduct an adequate inspection. The inspection was rushed and did not adequately verify the operation's compliance.

e. During the wild crops witness audit, the inspector did not identify harvesting in the village area where there were significant signs of trash, animal manure, and potential contaminants until the auditor pointed this out.

f. Verification of flow charts and site maps did not consistently occur during inspections. Maps lacked sufficient detail such as potential contamination risks, and inspectors did not identify incomplete maps as an issue of concern.

g. The lack of a crop rotation plan was not identified as an issue of concern during the inspection of a crops operation.

h. The inspector did not identify labels as an issue of concern when approved labels did not identify the organic ingredients as "organic" in the ingredients statement as required by 205.303(b)(1)."

Ex. 23, pp. 4-5 of 5.

Part of the USITC investigation involved a request that U.S. Customs block imports of organic hazelnut kernels made by a Turkish company called NFSI.

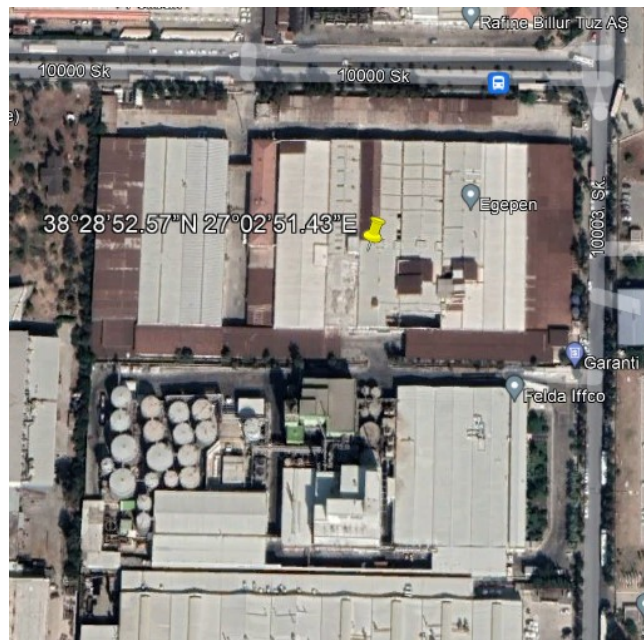
NFSI imported organic hazelnut kernels and other products from a related Turkish processor called Nimeks.

NFSI claimed that Nimeks "*maintains a Group Grower Certificate that covers all upstream entities in its supply chain*" and "*NFSI is entitled to rely on the Group Grower Certificate maintained by Nimeks Organik.*" Ex. 24, p. 1 of 18. The grower group certificate was issued to Nimeks by CCPB. Ex. 24, p. 15 of 18.

The Nimeks certificate places the grower group's place of "crops production" in an industrial neighborhood in Izmir, Turkey:



Street view of Nimeks “place of crops production”³³




Aerial view of Nimeks “place of crops production”³⁴

³³ See Google Earth Pro, coordinates: 38°28'55.36"N 27°02'51.34"E (Nimeks certificate “place of production” street address: A.O.S.B. 10000 Sok. No:3 Cigli Izmir, Turkey (See Ex. 24, p.15 of 18)).

³⁴ See Google Earth Pro, coordinates: 38°28'52.57"N 27°02'51.43"E (Nimeks certificate “place of production” street address: A.O.S.B. 10000 Sok. No:3 Cigli Izmir, Turkey).

It is possible the above factory complex operates in good faith and obtains organic hazelnuts directly from *nearby* upstream farmers (a grower group certification policy requirement), someplace, as per the representations made to the USITC. But, if CCPB had checked the Nimeks website, CCPB would have learned that the above factory complex is not receiving hazelnuts from a nearby group of farmers. Instead, the Nimeks factory complex acquires hazelnuts from another upstream factory, called Balsan, which is located about three hundred miles away:

 BALSAN, city Sakarya Factory: Integrated HAZELNUT processing facility. Located in Black Sea. (Hazelnut growing region of Turkey)

See <https://nimeks.com.tr/factories/>.

Moreover, the Nimeks grower group organic certificate is compelling evidence of an operation that skirts the criteria for “clustering” farmers into a group that meets organic compliance standards.

In this regard, the Nimeks grower group is certified for the following listed products:

anise, apple juice, apricot compote, apricot juice, apricot kernel, apricot, black cumin, black mulberry juice, blanched broken hazelnut kernel, blanched hazelnut, blueberry juice, brown (shelled) lentil, bulghur, cherry compote, chickpea, chickpea flour, chopped hazelnut, coriander, cumin, diced dried apricot, diced dried fig, diced dried plum, diced dried tomato, diced plum, dried apricot paste, dried apricot, dried bean, dried fig, dried fig paste, dried mulberry, dried plum, dried plum paste, dried sour cherry, dried tomato, fennel, fig, flax seed, grape, green lentil, hazelnut, hazelnut flour, hazelnut kernel, hazelnut meal, hazelnut paste, hazelnut puree, hazelnut roasted, hazelnut shelled, infused dried sour cherry, mulberry juice, mulberry, olive, orange juice, peach juice, pine nuts, pistachios, plum, plum compote, pomegranate juice, poppy (blue), poppy (capsule-grain), poppy seeds, prune paste, prunes, raisin, red football lentil, red lentil, red mix juice, red split lentil, rice flour, roasted broken hazelnut kernel, sesame, sour cherry juice, sultana raisin, sunflower oil, Thompson raisin, thyme, and yellow lentil.

See Ex. 24, pp. 16-18 of 18.

NOSB policy “recommendations,” which were later adopted as policy by the USDA, create visions that grower group certification “refers to the certification of a group of producers whose farms are uniform in most ways...” Ex. 28, p. 1 of 7. Among other things, the farms “are located within geographic proximity, as defined by access to the same collection or post-harvest handling facility, and/or common soils, water source, slope, topography or other physical features.” Ex. 29, p. 7 of 11.

Who is going to believe from the above list that the farms are uniform in most ways; or that the Nimeks industrial complex shown above, which is in a major metropolitan city in Turkey, is receiving all the above products from small farms that are a short distance from the Nimeks complex? No one.

The USDA already found that CCPB certifying personnel did not demonstrate an understanding of USDA regulations. But the USDA nevertheless allows CCPB, and others like CCPB, to continue to operate and generate organic certificates, like the one above, for entities like Nimeks.

IV. USDA Actions Requested

Images of factory and apartment/street building complexes that are certified as “crops producers” are in stark contrast to the USDA’s rosier, website images of farm tractors hauling baskets of greens to market and cows in the pasture.

The above problems raise numerous legal issues, beginning with violation of the federal statutory requirement for annual on-site inspections of farms; and ending with liability exposure for those who use the USDA organic seal in advertising and thereby imply that Turkish organic hazelnuts are traceable to organic farms.

We request that the USDA do the following:

A. Penalize the certifiers

We ask the USDA to sanction each of the above 5 certifiers and revoke each certifier’s accreditation for certifying grower groups.

There is a pattern to past USDA “corrective action” reports on foreign certifiers. These reports consistently show serious problems arising with foreign certifiers compared to few problems with domestic certifiers like the ODA or a nonprofit like Oregon Tilth. However, the USDA seems heedless to the overseas problems and consistently addresses them with lenience: the foreign certifier agrees to “amend or revise forms” or undertake “more training” for certifier personnel. Then the USDA indicates problems are “cleared.” This approach is insufficient.

B. Revise grower group certification policy

In the USITC investigation, we were 5 for 5 in discovering certifier problems attached to grower groups, some worse than others. This indicates a need to recognize that it is time for a policy change. More importantly, it is time to recognize that existing grower group certification policies are unlawful under the OFPA.

1. NOP grower group certification policies benefit big agribusiness, not small farmers

In addition to learning that no one can trace to organic farms in Turkey, the USITC investigation revealed that, when it comes to foreign grower groups, no one follows the same rules as us; USDA policy helps overseas food processors, first; and there is little or no evidence that grower group certifications benefit organic farmers.

Organic certification costs come in two steps: an initial application fee paid to the certifier; and a second fee paid to the certifier for an on-site inspection. Concerning the inspection, our farm was visited by an ODA inspector who walked our orchard and reviewed organic procedures with us. One can see from his itemized bill that inspecting/certifying one farm (ours) required 8 hours of the inspector's time – or one complete workday. Ex. 25, p. 2 of 2.

As best understood, grower group certifications arose from good intentions – that is, a desire to reduce the overall application and inspection fees for small-acreage farmers in developing countries who are closely located in the same village, so that they can share resources, reduce certification fees among them, and then improve their profits by selling crops at an organic premium. Something else is happening with Turkish hazelnuts.

With respect to raw product sales, hazelnut processors are paid by their customers based on kernel weight while farmers are paid based on in-shell weight. In Turkish hazelnut varieties, the nut kernel makes up approximately 50% of the inshell weight (called “shellout”).

The shellout means this: returning to the narrow, processor-received, organic margin between \$7/Kg. (organic) and \$6.82/Kg. (conventional) discussed in the introductory part of this complaint (p. 5), if a Turkish processor paid back the entire organic premium received by the processor to the farmer ($\$7/\text{Kg.} - \$6.82/\text{Kg.} = \$.18/\text{Kg.}$), the shellout factor means the farmer would receive \$.09/Kg. of the farmer's in-shell weight delivered to the processor. While beneficial, it is insignificant, given that Turkish farm producers have consistently received more than \$2/Kg. inshell and closer to \$2.50/Kg. (conventional prices) over the last several years.³⁵ Moreover, the organic certification costs presumably cut into the organic premium – which creates pressure for the farmer to receive less or nothing.

Regarding the last point above, to create a rough-estimate value for certification costs, we clicked on Ecocert's “fast, free, no hassle quote” for organic certification (*see* fn. 4). We asked for a quote on 1400 farms (the number in the Arslanturk grower groups), averaging one acre in size, and all within fifty miles of each other – which approximates how Turkish hazelnut agriculture is structured – although the Arslanturk grower groups are spread farther apart. Ecocert estimated \$50,000 for the application fee and another \$274,890 in inspection fees, totaling \$324,890 (annually). Ex. 26, p.2 of 2.³⁶

³⁵ *See, e.g.,* <https://www.findiktv.com>.

³⁶ One might argue this is not an apples-to-apples comparison for grower group certifications because the certifying agency is responsible for inspecting only a small percentage of farms in a grower group. Nevertheless, according to NOP policy, someone must pay an ICS inspector to visit each farm. *See* p. 29, *infra.*; and *see also* fn. 41. Moreover, given the NOP policy expectation that grower groups “hire” their own staff for carrying out field inspection and other administrative responsibilities (*see* p. 29), it raises questions concerning whether NOP ideals, assuming they are followed, manage to reduce certification costs for grower groups anywhere.

Arslanturk claims that it exports about 3,000 metric tons of organic hazelnut kernels from Turkey every year. Ex. 27, p. 2 of 2. For that amount, Ecocert's estimate equates to \$.11/Kg. in certification cost (\$325,890 divided by 3,000 metric tons) – a significant amount relative to the \$.18/Kg. organic premium described above.³⁷

When a customer sees the USDA organic seal on a food item that is priced close to a counterpart, conventional food item, it is reasonable to presume the customer will be inclined to buy the one with the USDA organic seal. One conclusion that can be reached from the above numbers is that Turkish processors and their customers use the USDA organic seal to improve sales volume and they make their money that way; the “for profit” certifier makes money in return for issuing the organic certificate directly to the processor as the “crops producer;” and the farmer gets little.³⁸

2. Grower group certification rules and policies both violate the OFPA and invite certification practices that are likely to violate the OFPA

As discussed in fn. 3, the recent SOE adds regulations that state, for the first time, earlier NOSB policy recommendations concerning grower groups. The addition of 37 CFR § 205.403(a)(2)(iii) to the CFRs is the most significant addition:

³⁷ Ecocert estimated that only 2 hours of total inspection time are needed for each farm for “**Travel (to and from), Onsite Inspection, and Preparation and Report Writing**” (*i.e.*, Ecocert estimated 2805 total hours of time would be needed, spread across 1400 farms). *See* Ex. 26, p. 2 of 2. For those who understand what is involved in on-site farm inspections by a certifier, Ecocert’s “2 hours” means the inspector spends little time on the farm. If Ecocert inspectors spent the same amount of time inspecting farms and writing reports as the ODA inspector when he inspected our farm, the Ecocert time/cost estimate climbs by a factor of 3 or more. *See* Ex. 25.

³⁸ In the USITC investigation, Arslanturk claimed that organic farmers receive a “maximum” price increase of 12% but did not give minimums – which means farmers might be receiving “zero.” Ex. 27, p. 1 of 2. In an oral discussion with Farmeks, a Farmeks representative said, “Honestly, I do not know” when asked about prices paid to organic versus conventional farmers. Farmeks bought directly from a middleman, Ekotar. *See* pp. 19-20, *supra*.

§ 205.403 On-site inspections.

(a) *On-site inspections.*

(1) A certifying agent must conduct an initial on-site inspection of each production unit, facility, and site that produces or handles organic products and that is included in an operation for which certification is requested. An on-site inspection shall be conducted annually thereafter for each certified operation that produces or handles organic products for the purpose of determining whether to approve the request for certification or whether the certification of the operation should continue.

(2) Inspections of a producer group operation must:

(i) Assess the internal control system's compliance, or ability to comply, with the requirements of § 205.400(g)(8). This must include review of the internal inspections conducted by the internal control system.

(ii) Conduct witness audits of internal control system inspectors performing inspections of the producer group operation.

(iii) Individually inspect at least 1.4 times the square root or 2% of the total number of producer group members, whichever is higher. All producer group members determined to be high risk by the certifying agent must be inspected. At least one producer group member in each producer group production unit must be inspected.

37 CFR § 205.403.

As explained in fn. 3, the new rule stated in 37 CFR § 205.403(a)(2)(iii) (the “2% rule”) appears to originate from an early NOSB recommendation, adopted October 20, 2002, that is entitled “*Criteria for Certification of Grower Groups*” (“2002 NOSB Recommendation”). Ex. 28.³⁹

Ignoring the statutory requirements of the OFPA, the 2002 NOSB Recommendation explains:

“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. Individual site inspections are conducted primarily to validate the functioning of the quality system.”

³⁹ The 2008 NOSB Recommendation (Ex. 29) is a follow-on recommendation that adds details to the 2002 NOSB Recommendation (Ex. 28).

Ex. 28, p. 1 of 7 (underlining added).

We were unable to obtain background information concerning the historical or statistical context for arbitrarily inspecting the “higher” of “2%” or “1.4 times the square root” of the total number of “producer group members” (*i.e.*, the factory plus all the farms) in a grower group, as written in 37 CFR § 205.403(a)(2)(iii) . However, as discussed previously (*see fn. 9*), it is the statute that matters – not what has been done according to custom (or “historically”).

The applicable OFPA statute, 7 U.S.C. § 6506(a)(5), does not allow the 2% inspection rule – the statute instead requires an annual inspection by the certifying agent of *each farm* (or 100% of the farms). Likewise, the statute does not call for a lesser, annual inspection of a mere written plan that describes the “quality system of the grower group” to avoid inspection of the remaining 98% of the farms in the group by an *accredited* certifier.”⁴⁰

The 2002 NOSB Recommendation’s earlier shift from annual certifier inspection of “farm” to annual inspection of a written “plan” serves to defeat the intent and purpose of 7 U.S.C. § 6506(a)(5).

a. NOP grower group certification policy was unrealistic from the beginning

Even if one assumes the current NOP grower group policy complies with the statute, which it does not, the current policy nevertheless requires a “system plan” (ICS) on the part of every grower group. Therefore, in the Ecocert/Arslanturk situation described above, there must be a written ICS, somewhere, for both of Arslanturk’s Artvin and Trabzon groups.

According to NOSB/NOP policy, the group ICS is supposed to function like “the Quality Assurance department of a large operation.” *See* 2008 NOSB Recommendation, Ex. 29, p. 8 of 11. As the quality assurance department of the grower group, the “ICS personnel” for each Arslanturk group should include the following: (1) “field staff;” (2) an “internal evaluation committee;” (3) a “director of ICS;” (4) a “director of training and capacity building” (5) representatives of a “technical committee;” (6) representatives of a “marketing committee;” and (7) a “board of trustees.” Ex. 29, p. 9 of 11. In addition, qualified “staff” are to be hired to fulfill these roles. *Id.*⁴¹

The above NOSB recommendation explains why lines are now blurred and foreign certifiers are apparently taking on multiple roles for hazelnut processors in Turkey that invites corruption.

⁴⁰ The policies and/or rule-making of a federal agency cannot override the terms of a clear statute. *See Harvey v. Veneman*, 396 F.3d 28 (1st Cir. 2005).

⁴¹ The earlier 2002 NOSB Recommendation likewise states, “Field officers are employed by the grower group” and “There should be a minimum of one field officer per maximum 500 farmers.” *See* Ex. 28, p. 6 of 7. Under these guidelines, Arslanturk’s Artvin group ICS should have at least two, identifiable field officer employees; Arslanturk’s Trabzon group should have another one.

A hazelnut processor's business focus is on buying hazelnuts from farms, shelling/processing them into kernel and related products, and selling those products to their customers.⁴² It is one thing to clean out processing lines and keep "organic" kernels in labeled sacks or containers that are separate from "conventional" in a factory. However, no factory business will welcome setting up a new "Quality Assurance" department along the above lines for a group of farmers miles outside of the factory – when one considers that it requires adding full-time employees and related overhead – and then managing a complicated organic compliance system that is outside what the business normally does. The business will, however, pay a fee to a certifier to purportedly do it for the business – and issue an organic "crops" certificate to the business – so long as the certifier's fee is not too high.

If one accepts Arslanturk's representations in the USITC investigation (*see* pages 13-16, *supra.*), then the above "Quality Assurance department" resides with Ecocert – which then presumably handles all the above complications invisibly for Arslanturk and emails the results (an incomprehensible list of "confirmed" farmer codes) to Arslanturk.

If true, then all of the above ICS personnel are Ecocert people – which puts Ecocert in a convoluted, conflict-filled, multi-role position vis-à-vis Arslanturk: according to the SOE, Ecocert is first required to inspect either 2% or 1.4 times the square root of the farms in Arslanturk's grower groups (*see* 37 CFR § 205.403(a)(2)(iii)), as an outside, accredited certifying agency; then, Ecocert inspects the written "system plan" which, in essence, may be an inspection of itself.⁴³

Certifier administration of an ICS may not be strictly forbidden by the text of the OFPA statutes (*see, e.g.,* the Bio.Inspecta situation described in fn. 9), or related rules stated in the current version of the CFRs. But, even in the best light, it raises serious questions concerning best practices, conflicts of interest, and whether the policy objectives of the OFPA are being implemented in actual practice.

On the other hand, should Ecocert deny or contradict Arslanturk's representations, and claim that Arslanturk's Artvin and Trabzon group ICSs are administrated by Arslanturk, then Arslanturk would need to supply evidence that it has a quality assurance department along the above lines – for both groups. However, Arslanturk stated, in unqualified terms, "*Records of all information about our registered farmers and their orchards are kept by Ecocert S.A. in their system*" and "*there is nothing to share except for the organic certificates.*" *See* pp. 13-18, *supra.*

Either way, like lawyers and accountants, "for profit" certifiers use time-based billing. It is pollyannaish to believe that anyone (Ecocert or Arslanturk) is properly running an ICS according to the above NOSB guidelines for each Arslanturk grower group – because of the cost it would

⁴² *See, e.g.,* fns. 18 and 19 (describing Yilmaz/Ozyilmaz operations).

⁴³ Bear in mind that all of this is managed from an Ecocert office that is approximately 900 miles away from the location of the Arslanturk grower groups.

entail. And this is probably why Turkish “organic” hazelnut kernels are being sold in the U.S. at a 3% premium above Turkish “conventional” wholesale prices. Because no one is doing it.

3. Arslanturk: “Records of all information about our registered farmers and their orchards are kept by Ecocert S.A. in their system”

As part of sorting out the above, Ex. 30 is a copy of an “Organic Inspection Exit Interview” document that was provided to us by the ODA inspector after he finished inspecting our farm. In addition to his time spent on other matters relating to the inspection, the document shows that he was physically present on our farm from 11:00 a.m. to 1:00 p.m. on April 26, 2022.

As is plain from NOSB-generated grower group policy recommendations (Exs. 28-29), there should be one or more similar ICS documents for each farmer code on the Arslanturk farmer annexes discussed above – that is, an approximate total of 1400 written records, similar in substance to the above ODA exit interview document, that shows “at least one annual direct observation and review of each individual operator [farmer code], including visits to fields and facilities.” *See pp. 3-4, supra.*⁴⁴

We respectfully request that the USDA require Ecocert to produce, to the USDA, what Arslanturk stated Ecocert possesses (*see p. 13, supra.*) – that is, an adequate written record, correlated specifically to each farmer code on Arslanturk’s farmer annexes, that shows that each farmer was visited by ICS personnel and that ICS personnel did the things they are required to do. Similar follow-up requests should be made of each of the other 4 certifiers complained about here.

4. Grower groups should be structured like traditional farm co-ops

While the above involves problems with hazelnuts in Turkey, there is no reason to believe things are different involving other crops, whether it be in Turkey or other countries.

It is respectfully submitted that, to fix the damage that is being done to the overall integrity of the system, USDA grower group policy should be amended, immediately, to limit grower group certifications to a traditional farm co-op model. That is, an organic co-op that farmers own and operate. Let the organic certificate be issued directly to them – because they are the actual producers of the “crops.” Require an accredited certifying agency to inspect *all* the farms in the co-op as required by U.S. statute, not just a few, and let the farmers make a reasonable organic premium by selling their certified crops to downstream entities.

In our case, this change will help correct unbalances in the marketplace caused by Turkish processors (*i.e.*, the 3% organic premium price difference). It will both reduce violations of federal law (*i.e.*, the 2% rule) and improve traceability to identifiable groups of farmers – the latter being one of the stated purposes of the USDA organic system. And it may improve declining

⁴⁴ “The Internal Control System keeps appropriate documentation....” Ex. 29, p. 9 of 11 (Sec. III.(D).(2).(i)).

public trust in the organic system by shifting the system away from one where certifiers focus on operating as certificate mills for agribusinesses – to certifiers that focus on the farms. *See, e.g.,* Chenglin Liu, “*Is USDA Organic a Seal of Deceit: The Pitfalls of USDA Certified Organics Produced in the United States, China and Beyond,*” 47 *Stan. J. Int’l L.* 333 (2011).

Last, we are submitting this as a complaint to the USDA that is directed at 5 certifiers, as permitted by USDA procedures. These 5 certifiers were the only ones involved in the USITC investigation discussed above. However, we are also submitting this complaint for the purpose of putting the USDA on notice of the statutory violations discussed above. Finally, we are submitting this complaint to the Inspector General’s Office because the complaint raises issues concerning agency wrongdoing.

Respectfully Submitted,

A handwritten signature in blue ink that reads "Bruce A. Kaser" with a small "ds" at the end.

Bruce Kaser

Dated: July 20, 2023

(Delivered to USDA and OIG via Federal Express Tracking Nos. 772788354758 & 772788405215, respectively)