

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington DC**

In the matter of

**IMPORTS OF ORGANIC HAZELNUTS
FROM TURKEY**

Investigation No. 337-_____

COMPLAINT UNDER SECTION 337

Complainant:

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I. Summary of Complaint

This complaint addresses the importation of mislabeled hazelnut products from Turkey. The United States Department of Agriculture (“USDA”) administrates the certification of organic food products. Certain processors in Turkey (“Turkish processors”) engage in the practice of using the processor’s USDA certificate of organic compliance as a “handler,” coupled with the USDA’s organic seal, to piggyback Turkish farmer (“growers”) compliance with organic standards. What this means is that certain hazelnut kernels and other hazelnut products from Turkey, which are sold into the United States (“U.S.”) as “certified organic,” are not certified organic.

The USDA’s standards and procedures for certifying organic farm products provide assurances to the public that organic foods are not produced using synthetic chemicals and sprays:

Question:

Are these certified organic?

Answer:

Yes they are. I've already thrown out the empty bag, but I'm sure of it. I never purchase or consume any non-organic products, so I always make sure to double-check about certified-organic labeling.

Ex. 1, pp. 5-6 out of 10 (Questions & Answers for sales of Anna & Sarah organic hazelnuts).

Compliance with USDA certification standards is a legal prerequisite to use of the USDA organic seal and marketing hazelnuts as organic. Among other things, and regardless of country of origin, certified growers must submit an organic farm plan and have an annual on-farm inspection before receiving USDA certification.

Turkish growers that are upstream of Turkish processors are not certified organic because they lack annual organic farm plans and on-farm inspections. Certain Turkish processors bury the problem by misrepresenting their “handler” USDA certifications. That is, these processors have organic plans and annual on-site inspections of their facilities for handling hazelnuts within their facilities. But for no

reason other than incoming hazelnut kernels from upstream Turkish growers pass through the processors' "certified" facilities, the processors then pass off the kernels as "certified organic" to downstream buyers.

Imported Turkish hazelnut kernels are being sold this way to U.S. businesses and consumers, labeled as certified organic by the USDA, when they are not. Some U.S. based companies that are both related and unrelated to Turkish processors are playing along.

Mislabeled organic hazelnut kernels from Turkey injure, or threaten to injure, complainant and others who maintain farm-to-table organic integrity based on initial-source grower certification by the USDA. The threat of injury also extends to the conventional U.S. hazelnut industry.

The complainant respectfully requests the U.S. International Trade Commission ("USITC") to investigate the mislabeling of "organic" Turkish hazelnut kernel imports as an act of unfair competition under Sec. 337 (19 USC § 337).

II. 19 CFR 210.12 Pleading Requirements

The complaint is brought under 19 USC § 337(a)(1)(A)(i) or (ii) and is based on unfair methods of competition and unfair acts in the importation or sale of articles in the U.S. (*i.e.*, "hazelnuts" *aka*. "filberts") that have the threat or effect of destroying or substantially injuring the domestic organic hazelnut industry in the U.S. or preventing the establishment of such industry in the U.S. The alleged unfair methods of competition and unfair acts that are the subject of this complaint are not believed to be the subject of any known court or agency action.

The complaint is based on misleading representations of fact by Turkish processors, and others, which confuse buyers and consumers into wrongly believing that the USDA has certified organic hazelnut kernels sourced from Turkey. Stated another way, the Turkish processors are breaching their license to use the USDA organic seal; and they and others are engaged in false advertising by making

misleading claims that hazelnut kernels from Turkey are “certified” as organic by the USDA. These actions violate Sec. 337 and other U.S. laws. *See, e.g.*, 15 USC § 1125(a) (§ 43(a) of the Lanham Act).

The proposed respondents to this complaint are identified in Ex. 2, attached. They include Turkish processors who are believed to be offering to sell, selling, and causing the import of Turkish “organic” hazelnuts in U.S. commerce. Ex. 2 also identifies U.S. offices or affiliates of certain Turkish processors and other parties who may be unknowingly or knowingly complicit, or otherwise have an interest in the allegations set forth in this complaint, either as an importer or seller of Turkish hazelnuts in U.S. commerce that are purported to be “organic.”

Sections III – VI below set forth a statement of facts that describe the alleged unfair methods of competition and unfair acts. Specific instances of alleged unlawful importations of mislabeled Turkish organic hazelnuts are identified in Sections IV(G)(1) and V. The complaint is submitted under oath and signed (*see* page 31) by Bruce A. Kaser, managing member of the complainant, Pratum Farm LLC.

Sections III and IV(C-D) set forth facts that outline that a domestic industry (*i.e.*, the organic hazelnut industry) exists. Sections IV(E-G) and V include a detailed description as to how the domestic industry is affected by the alleged unfair methods of competition and unfair acts that are the subject of the complaint. Section IV(C) describes the complainant’s business and interest in the relevant domestic industry.

The complainant’s theory and corroborating data that supports allegations concerning the existence of a threat or effect to destroy or substantially injure the domestic industry is set forth in Sections I and IV-VI. The specific request for relief (an exclusionary order) is set forth in Section VII. A separate Rule 210.8(b) public interest statement accompanies this complaint.

A. The applicable HTS numbers

Although the factual allegations set forth below focus on the importation of hazelnut kernels, the

complaint is meant to apply to all Turkish hazelnut products imported into the U.S. that are designated “organic,” which includes in-shell hazelnuts, kernels (raw, roasted, blanched, sliced, diced, etc.), hazelnut flour or meal (including raw, roasted, or blanched), hazelnut paste, and other products that contain allegedly “organic” hazelnut kernels from Turkey (*e.g.*, hazelnut spreads).

On information and belief, the applicable Harmonized Tariff Schedule (“HTS”) numbers for the alleged unlawful importations that are the subject of the complaint are:

HTS 0802.21.0000 for in shell hazelnuts or filberts

HTS 0802.22.0000 for shelled hazelnuts or filberts

HTS 2008.19.2000 for filberts otherwise prepared or entitled “filberts, otherwise prepared and preserved whether or not they contain added sugar or other sweetening matter or spirit not elsewhere specified”

HTS 1803.10.0000 for hazelnut meal

HTS 1806.90.0000 for hazelnut spread

III. The Hazelnut Industry

A. The U.S. hazelnut industry

The U.S. organic hazelnut industry (the “organic hazelnut industry”) is a subset of a larger U.S. hazelnut industry (the “conventional hazelnut industry”).

The U.S. hazelnut crop is grown on farms located in the Willamette Valley of Oregon and a small number of farms in the state of Washington and elsewhere. According to the most recent estimates, these farms collectively produced approximately 150,000,000 pounds of conventionally grown, in-shell hazelnuts during the last crop year (“CY2021”). Ex. 3.

In the U.S., commercially grown hazelnuts are ground-harvested with machinery. Commercial growers allow hazelnuts to fall naturally from tree to ground during the nut-ripening process, which occurs in the September-October time frame. A self-propelled sweeping machine (“sweeper”) sweeps the hazelnuts into a narrow row on the ground that follows a line down the middle of each orchard tree row. Then, a tractor-towed harvesting

machine picks up the swept hazelnuts. The tractor straddles the swept row while the harvesting machine (which is behind the tractor) picks up the hazelnuts:



The harvesting machine deposits the hazelnuts in a nut cart that is towed behind the harvesting machine (which creates a three-machine train of tractor/harvesting machine/nut cart). When full, the hazelnuts in the nut cart are emptied into open-topped boxes (“totes”) which are hauled to a processor’s “receiving station.”

Depending on the size of the grower’s operation, the harvesting process just described requires two-to-three persons. Most of the U.S. hazelnut industry uses the harvesting machinery described above, although in recent years, some U.S. growers transitioned to self-propelled harvesters that combine the sweeping and harvesting functions. Also, some U.S. farmers now haul harvested hazelnuts to receiving stations “in bulk” in lieu of using totes.

U.S. hazelnut industry receiving stations make up an important link in the farm-to-table chain. Because of the capital expense for high-volume nut washing and drying equipment, receiving stations have become consolidated to a small population of stations that are located in areas where hazelnut orchards tend to be concentrated.

During harvest, hazelnut growers haul or arrange for delivery of totes (filled with harvested hazelnuts) to the receiving stations. The grower’s ownership and control of the

harvested hazelnuts divests upon delivery to the receiving station (which acts as a processor agent). The hazelnuts are washed and dried there – a process that culminates with the hazelnuts being dehydrated to an acceptable moisture level that preserves the hazelnuts for storage. Grading samples are taken during the wash/dry process to determine the percentage of nuts that are merchantable following dockage caused by a variety of factors, such as blanks (*i.e.*, empty nut shells that did not produce a kernel), and insect or mold damage.

The receiving station's charges for washing and drying services are handled as a "pass through" charge. That is, the processor eventually back-charges the grower for the receiving station's services, as a deduction from the processor's payment(s) to the grower.

In the conventional hazelnut industry, U.S. hazelnut farmers sell directly to and are paid directly by the processor, based on the final merchantable weight of nuts delivered to the processor's receiving station. The grading samples mentioned above are used to generate a "net" merchantable weight on the grower's delivery to the receiving station, which sets the grower's final payment (*i.e.*, "net" merchantable weight multiplied by a negotiated price per pound, less washing/drying charges).

The receiving stations provide an intermediate link in the farmer's delivery of hazelnuts to the processor. With some exceptions, individual receiving stations are exclusive to an individual processor. In other words, the receiving station receives hazelnuts for one processor only, with each processor in the industry having its own set of receiving stations at multiple locations. For example, the largest industry processor (George Packing Co. or "George Pack") claims to have twenty-two receiving stations.¹

¹ George Pack's overall operation within the hazelnut industry includes a commonly owned sister company processor, Northwest Hazelnut Company ("NWH"). NWH is a certified organic processor. See Complaint, Sec. IV(D), *infra*.

In recent decades, the U.S. hazelnut industry has matured and transitioned toward “kernel” sales in lieu of “in-shell” sales. While there still remains a substantial export market for in-shell hazelnuts, industry processors do nut-shelling and kernel packaging at their facilities, in addition to other kinds of processing (*e.g.*, roasted kernels, diced and chopped hazelnut kernels, hazelnut butter, etc.) before sale or export of the hazelnuts in commerce.

1. Harvest and processing of organic hazelnuts in the U.S.

The harvest process described above is similar for the organic hazelnut industry but with variations attributable to the organic industry’s small size and need to maintain organic integrity in the farm-to-table supply chain.

In order to maintain organic integrity, the grower’s certified organic hazelnuts (the grower certification process is described below) need to be hauled by the grower to a receiving station that is also a certified organic washing and drying operation – which means the receiving station has independently gone through a USDA-approved certification procedure. Among other things, the organic certification of the receiving station ensures that organic hazelnuts are not mixed with conventional hazelnuts during the wash/dry process.² Unlike the “pass through” charging system for washing/drying used by the conventional hazelnut industry, the organic grower pays the receiving station directly for washing/drying - at an elevated cost relative to the conventional industry.³

The two largest processors in the industry, George Pack (*aka.* NWH, *see* fn.1, *supra.*) and Hazelnut Growers of Oregon (“HGO”), are both certified by the USDA to process organic hazelnuts.

² According to the USDA’s organic INTEGRITY database (discussed in Sec. IV(B) below), there is one certified organic receiving station, located in Eugene, Oregon.

³ For example, complainant’s wash/dry charges for past deliveries of conventional hazelnuts historically averages less than 5 cents per pound of delivered weight. According to recent information from the certified organic receiving station in Eugene, Oregon (*see* fn.2), complainant’s wash/dry charges for certified organic hazelnuts will rise to 15 cents per pound.

Another processor, Cascade Foods, LLC, is also certified. *See* p. 14, *infra*.

On information and belief, one or more of these processors may shell a portion of the organic industry's commercially grown hazelnuts as a grower service that involves the grower making the sale of the shelled product to wholesale or direct-sale markets (like farmer's markets, for example). These processors may also purchase a portion directly from organic growers, as in-shell hazelnuts, followed by the processor shelling and selling organic kernels into the marketplace. Either way, processors maintain organic integrity by requiring upstream USDA organic certification documentation from the growers for the organic hazelnuts that they process.

2. The organic hazelnut industry in the U.S. is small and in the process of becoming established

The organic hazelnut industry in the U.S. is a fledgling industry when compared to the size of the conventional hazelnut industry. The U.S. hazelnut industry office estimates "[A]bout 1,000 Oregon farm families grow hazelnuts on 87,000 acres."⁴ Out of this number, and according to the USDA "INTEGRITY" database (discussed below), there are approximately 40 organic hazelnut growers in the states of Oregon and Washington, which would make up approximately 4% of all U.S. growers. However, the precise acreage in production by organic growers is unknown at the present time. A George Pack newsletter has set forth estimates that less than 1% of the entire U.S. hazelnut industry is organic. *See* Ex. 6, p. 2 of 9. Based on this estimate, the organic hazelnut industry is likely to have produced less than 1,500,000 pounds of in-shell hazelnuts out of the 150,000,000 pounds produced by the conventional industry for CY2021.

While there are some variations, the industry has used a 44% factor for converting in-shell weight to shelled, kernel weight. *See* Ex. 5.⁵ What this means is that the organic hazelnut industry was

⁴ The hazelnut industry office is Oregon-centric. According to estimates, 99% of all U.S. hazelnut acreage is located in Oregon. *See* Ex. 4, p. 2 of 4.

⁵ Ex 5 comes from a presentation made during a George Pack grower meeting. According to the

likely to have produced less than 660,000 pounds of organic hazelnut kernels for CY2021.

B. The Turkish hazelnut industry

1. Turkish hazelnuts dominate the world market

Hazelnuts are a major nut commodity on the international level. Turkey dominates worldwide hazelnut production, growing approximately 70% of the world's hazelnuts from one year to the next. Italy has been a distant second. Recent expansion of U.S. acreage has moved the conventional U.S. hazelnut industry into an even more distant third place - in close competition with Georgia and Azerbaijan for the third-place ranking. Ex. 5.

Turkish hazelnut imports also have historically dominated the U.S. domestic market. U.S. domestic consumption of hazelnuts, which is small, comparatively speaking, primarily consists of imported "conventional" Turkish hazelnut kernels and other hazelnut products.

2. Turkish hazelnut farms and delivery to Turkish processors

Much of the information about Turkish hazelnut farms come from organizations involved in investigating farm labor abuses in the hazelnut sector of Turkish agriculture. *See, e.g., Ex. 7.*

Turkish hazelnut farms are small acreage farms that number in the hundreds of thousands. The USDA's Foreign Agricultural Service reports that there are approximately 500,000 farmers in Turkey on an approximate orchard area of 725,000 hectares.⁶ Unlike the mechanization that exists in the U.S. hazelnut industry, the Foreign Agricultural Service, and others, report that Turkish hazelnuts are hand-picked from the trees and locally dried in the sun. *See Ex. 8, pp. 11-12 of 15.*

The Turkish farm-to-processor system is described by some as a "complex web." In general terms, dried in-shell hazelnuts from Turkish farms are funneled to local hazelnut buyers or traders

presentation, the kernel basis for the CY2021 crop in the U.S. (from earlier estimates before statistics were finalized) was 24,000 metric tons of kernels against an in-shell crop of 54,500 metric tons, which equates to 44%. Some use 40% when making shell-out calculations.

⁶ 725,000 hectares equates to approximately 1.8 million acres (1 hectare = 2.47 acres).

(collectively “intermediaries” or “*manavs*”) who then sell to shelling factories. The shelling factories then sell to Turkish processors. A portion of Turkish processors (the large ones) have their own shelling operations. Those processors bypass independent shelling factories by having direct buying channels to the intermediaries.

On information and belief, because the farm-to-processor chain is different in Turkey compared to the U.S., Turkish processors do not pay growers directly and it is unlikely they can identify the individual growers from whom their hazelnut purchases are sourced. The processors deal with and pay intermediaries who function as a conduit from grower to processor.

The processors export hazelnut kernels and other products (*e.g.*, hazelnut butter or paste) from Turkey to customers in other countries. With respect to the organic hazelnut products, the processors lack organic certification documentation from both upstream growers and intermediaries. *See* Secs. IV(E-F) and V below.

IV. The Legal Requirements for Organic “Certification”

A. The USDA’s authority for administrating rules for organic certification

The Organic Foods Production Act of 1990 (“the Act”), 7 USC Ch. 94, established the National Organic Program (“NOP”) and the NOP’s authority to create enforceable standards for all agricultural products sold, labeled, or represented as “organic” within the U.S. The purpose of the Act is to (1) establish national standards that govern the marketing of agricultural products as “organic” in the U.S.; (2) assure U.S. consumers that the organic products they purchase meet consistent national standards; and (3) facilitate interstate commerce in organically produced foods. *See* 7 USC §6501. The USDA is the federal government agency given the authority to issue regulations that administrate the Act. *See* 7 USC §§6501(20) & 6521(a).

The Organic Foods Production Act prohibits selling or labeling products as organic unless the

products are produced and handled according to USDA/NOP organic regulations. In order to become a certified organic farm, and have the right to use the USDA organic seal, a grower must undertake the following:

STEP 1: Develop an organic system plan.

STEP 2: Implement the organic system plan. Have it reviewed by a certifying agent.

STEP 3: Receive an on-farm inspection.

STEP 4: Have the certifying agent review the inspection report.

STEP 5: Receive a decision concerning grant of organic certification from the certifying agent.

Ex. 9 (USDA Publication, *Organic 101: Five Steps to Organic Certification*).

The USDA states that the organic system plan (Step 1 above) is the foundation of the organic certification process. It is created by the grower and defines how the grower's operation will comply with organic regulations.⁷ Organic operations are certified only by entities ("the certifying agency" or "certifying agent") that have been accredited by the USDA (Step 2). Every organic grower operation must be inspected on site by the certifying agency's inspector— and it must be done annually (Step 3). The inspector presents a report back to the certifying agency that compares the inspector's observation of grower practices with the grower's organic system plan – and also presents assessments that relate to the risk of noncompliance with organic regulations – which may or may not include the inspector taking soil, tissue, or product samples (Step 4). If the inspector determines that the grower's practices follow the grower's organic system plan, then the certifying agency issues a certificate of organic compliance that lists the products that the grower can sell as organic. At that point, the grower may use the USDA organic seal as a certification mark:

⁷ Handlers independently go through a separate certification process that relates specifically to handler operations.



The USDA places strong emphasis on the strength of the organic seal:

“The USDA organic label *is backed* by a certification system that verifies farmers or handling facilities *located anywhere in the world* comply with the USDA Organic Regulations.”

Ex. 9, p. 1 of 19 (USDA Publication, *Organic 101: Five Steps to Organic Certification*) (emphasis added).

B. The USDA’s organic INTEGRITY database was created to deter fraud

The 2014 Farm Bill provided funding for the USDA to create a web-based organic database now called “INTEGRITY.” The database identifies all certified organic farms and handling operations, on a worldwide basis, and allows anyone to search for them, regardless of country location. The database was created to deter organic fraud by providing accurate information about who may or may not sell organic food products in the U.S. and it provides supply chain transparency. With respect to foreign sources of organic foods, the database captures *all* overseas operations (*i.e.*, farmer or handler) who are certified by overseas agencies that are accredited by the USDA. In other words, all USDA-accredited certifying agencies (whether they be domestic or foreign) will enter data into INTEGRITY that identify the organic operations that have actually undertaken the annual organic certification process.

C. The process undertaken by complainant to obtain organic certification

The complainant (Pratum Farm, LLC) is a mid-sized grower in the U.S. hazelnut industry with a farm that includes three (3) orchards that total approximately fifty-five (55) acres in size. Each orchard consists of a different hazelnut variety, two of which are newer, blight-resistant varieties developed by

the plant breeding program at Oregon State University.⁸ One of those is a seventeen-acre “Jefferson” variety orchard (“Jefferson orchard”) that was planted in 2011.⁹

In 2019, complainant commenced a three-year process to transition the Jefferson orchard to organic – which involved farming the orchard according to USDA/NOP standards.¹⁰ In January 2022, complainant submitted an application to the Oregon Department of Agriculture (“ODA”) to certify the Jefferson orchard as organic, commencing with the Fall 2022 crop (“CY2022”). The ODA is an accredited USDA-organic certifier. Complainant’s application for certification consisted of 31 pages of information describing complainant’s organic farming operation, and set forth complainant’s organic system plan, as required by the USDA. The application was accompanied by a \$1000 initial application fee. Ex. 10.

After the ODA’s review of complainant’s application and organic system plan, an ODA certification inspector contacted complainant in April 2022. The inspector (an ODA employee) personally visited and inspected complainant’s farm operation on April 26, 2022. On that day, the inspector spent two hours on complainant’s farm, which included a review of record-keeping, and a walk-around tour of complainant’s Jefferson orchard. Part of the record-keeping review included a discussion of the importance of maintaining supply chain records that can confirm that complainant’s CY2022 hazelnut harvest will pass through certified farm-to-table organic channels. The inspector issued an on-farm report that complainant had fully passed the inspection. Ex. 11. On May 12, 2022,

⁸ Eastern Filbert Blight (“EFB”) has infected older hazelnut varieties in the Pacific Northwest and, so far, can be treated only with chemical sprays that do not comply with organic standards. Newer hazelnut varieties are resistant to EFB and can be grown organically without needing EFB sprays.

⁹ The orchard is slightly larger when taking into account surrounding buffer zones.

¹⁰ Complainant’s other two orchards are in various stages of organic transition. One is a new orchard raised according to NOP standards that will go through the certification process when the trees mature sufficiently to produce a commercial crop. The other is a mature orchard that is going through an approximately ten-year transition to organic that involves a gradual replant of EFB-susceptible trees with EFB-resistant trees.

the ODA issued to complainant a final organic inspection report, along with an organic crops certificate that verifies that complainant is complying with USDA organic standards. Exs. 12-13. Complainant’s operation is now identifiable on the USDA’s INTEGRITY database (NOP ID: 7270001707).

All organic hazelnut growers in the U.S. go through a similar certification process. All Turkish organic growers and intermediaries are supposed to go through the same process.

D. The certified organic hazelnut processors and receiving station(s) in the U.S.

The following table identifies all known certified organic hazelnut processors in the U.S. and the sole organic receiving station known to complainant:

USDA/NOP Operation ID	Operation Name	Contact First Name	Contact Last Name	Certified Products Under HANDLING Scope	Mailing Address:	Phone	Email
7270001615	Cascade Foods LLC	Ryan	Lewis	Nuts/Seeds: Hazelnut	38471 Groshong Rd Albany Oregon	97321 (541) 924-1477	rlewis@cascadefoodsllc.com
8150002528	Commercial Dehydrator Systems, Inc	Mark	Paden	Other: Hazelnuts (Hazelnuts)	256 Bethel Drive Eugene Oregon	97402 (541) 688-5281	
7270001381	Northwest Hazelnut Company (George Packing Co.)	Anna	Plaisted	Nuts/Seeds: Hazelnuts (Meal, Small Diced, Whole & Broken, Whole Kernel)	19748 Hwy 99E Hubbard Oregon	97032 503-982-8030	anna@nwhazelnut.com
7270001667	Wilco-Hazelnut, LLC dba Hazelnut Growers of OR	Mark	Clute	Nuts/Seeds: Hazelnut	21260 Butteville Rd. NE Aurora Oregon	97002 971-718-1366	mark.clute@hazelnut.com

Ex. 14.

Each one of the above is identifiable in the USDA’s INTEGRITY database.

E. Turkish processor claims that organic farm products are sourced from large numbers of certified farms in Turkey are not supported by the USDA INTEGRITY database

One large Turkish processor, ArslanTurk (further discussed in Sec. V(A) below), claims on its website that it has 1500 certified organic farmers:

ARSLANTURK has been carrying out the organic project since 1994. Arslanturk had attended the program of Rainforest Alliance project in 2014 and its range of certificated products was widened. Now Arslanturk has more than 1500 Organic & Rainforest Alliance certificated farmers. Arslanturk is trying to widen its range and making project investments every year. Nowadays, Arslanturk who is the biggest organic supplier in Turkey is carrying out its Organic & Rainforest Alliance program in Artvin and Trabzon provinces as 10.000 tons kernels.

Ex. 15, p. 1 of 10 (see also ArslanTurk website, www.arslanturk.com.tr/organic-utz/).

Another Turkish processor, Isik Tarim, claims that it has “over 3,000 registered organic farmers

in more than 150 different villages, covering 11,000 hectares of land all over the country.” Ex. 16, p. 3 of 10 (*see also* www.isiktarim.com)

Yet another processor, Nimeks, makes the following claims:

“Within the scope of organic products, reliability and visibility is a must for us that’s why we provide up-to-date and accurate information for our all operations [*sic*]. We control and certify every process. Nimeks produces raw materials not only on its own land, but in also on more than 1500 contracted organic project areas with more than 750 contracted farmers.”

* * *

“To ensure organic integrity, our agricultural engineers monitor and provide consultancy to contracted farmers. We, as Nimeks, are firmly committed to ensure that our consumers can trace all products to their source with transparency.”

Ex. 17, p. 1 of 2 (*see also* www.nimeks.com.tr).

Leaving aside the other Turkish processors identified in Ex. 2, the above three processors alone advertise that they collectively have about 5,250 certified organic farmers (for hazelnuts and other farm products) – which means there should be a large population of Turkish growers who went through the same process as complainant (described above in Sec. IV(C)). If these growers were, in fact, certified organic according to USDA standards *and* legal requirements, a certifying agency accredited by the USDA would have made a record of the certification process for each individual Turkish farm (including a record of on-farm inspections of each farm, on an annual basis, as required by NOP standards). As required by the USDA, the certifying agency would also make a record of each Turkish grower’s certification in the USDA’s INTEGRITY database. However, on information and belief, there are not identifiable numbers of Turkish growers in the USDA’s INTEGRITY database to justify claims that these three processors have 5,250 individually “certified” farmers.

Moreover, with respect to hazelnuts alone, on information and belief, if the USDA’s INTEGRITY database is searched for certified farmers in Turkey under the crop product name “hazelnuts,” the database produces only nine (9) records. *See* Ex. 18. These 9 records are believed to

identify known Turkish processors, only, not growers (*e.g.*, ArslanTurk and Isik Tarim, mentioned above, appear in Ex. 18).

F. There are also no identifiable certified organic hazelnut traders (intermediaries) in Turkey

As discussed in Sec. III(B) above, because the structure of the Turkish hazelnut industry begins with a large number of growers having small acreages, there is a layer of intermediaries that acquire and channel hazelnuts from the growers to the processors. Istanbul University has characterized the system as an oligopsony where there are many sellers of hazelnuts but a small number of buyers. In this market, Turkish growers sell their hazelnuts to local merchants (*manavs*) who in turn sell it to cracking facilities and supplier firms. In some cases, *manavs* act as money lenders to the growers. What this means is that the *manavs* are a link in the supply chain between upstream Turkish growers and downstream processors. And, as a link in the chain, the *manavs*, and/or other intermediaries, are also required to comply with USDA certification standards and go through the same process as a U.S. intermediary (like the certified Eugene, Oregon, wash/dry operation described above).

No *manav* entities appear to be identified in the USDA's INTEGRITY database. Given how the Turkish system is structured, there should be many.

G. Proposed respondents - Turkish processors and others

There is no evidence that the Turkish processors who are selling so-called certified organic hazelnuts into the U.S. are paying attention to the requirement that upstream growers and *manavs* also need to be certified according to USDA regulations.

The table below lists known Turkish processors who are certified organic by the USDA:

USDA/NOP Operation ID	Operation Name	Address	Physical Address: City	Physical Address: Country
4087185239	Agrosol Diş Tic. Organik Gıda Ve Makina San. Ltd. Şti	830/1 SOKAK NO 11 ATATURK MAH., BORNOVA	Izmir	Turkey
7880125521	ALAPLI ZIRAAT ORGANİK FİNDİK TARIM VE HAYVANCILIK GIDA ÜRÜNLERİ A.Ş.	Hükümet Cad. No:27 /B/1 Alaplı	ZONGULDAK	Turkey
7880008307	ALPER FİNDİK VE GIDA SAN. TIC. LTD. ŞTİ.	Merkez Mah. Mehmet Akif Ersoy Cad., No:24 Alaplı	ZONGULDAK	Turkey
4490002589	ALTAS YAG SU VE TARIM URUNLERI GIDA INS.OTO.NAK.SAN	Durugöl Mah. Soya Caddesi №: 150 Altınordu	Ordu	Turkey
4083900043	Antalya Yenilün Gıda Sanayi Ve Ticaret A.S.	Altınova Sinan Mah. Honamlı Sok. No. 4, Kepez/Antalya	Kepez	Turkey
7880128516	ARSLANTÜRK TARIM ÜRÜNLERİ SAN. İHR. VE İTH. A.Ş.	Özgen Mahallesi Bayburt Cad. No:194, Araklı	TRABZON	Turkey
7880124888	ASO GIDA SAN.TİC.VE PAZ.İTH.İHR.LTD.ŞTİ.	İTOB OSB Ekrem Demirtaş Cad.No:11 Tekeli/Menderes	İZMİR	Turkey
5380000044	BALSU GIDA SAN. VE TIC. A.Ş.	Paşabağçe Mah., Cemal Bey Sok. No: 11/1, 34800 Beykoz	İstanbul	Turkey
7888437800	Balku USA, Inc.	3250 NE 1st Avenue, Suite 17e, Miami, FL 33137, USA	Miami	USA
5380000518	BAŞARAKI TARIM GIDA İÇ VE DIŞ TIC. LTD. ŞTİ.	Barbaros Mah. Mustafa Pehlivan Sok. 23/2 Üsküdar	İSTANBUL	Turkey
5380000010	BAŞARAN KURU MEYVE ORGANİK TARIM ÜRÜNLERİ SAN. VE TIC. A.Ş.	Ege Serbest Bölge Ayfer Sok. No.13 Gazimir	İZMİR	Turkey
7880009010	BEREKET KARDEŞLER TARIM URUNLERI TIC. VE SAN. LTD. ŞTİ.	Çay Mah. Durucu Sok. Güllent Sitesi B Blok No: 65 /1 İç Kapı No: 2 Terme	SAMSUN	Turkey
7881127150	BİYO-SAM ORGANİK TAR. NAK. GIDA İTH. İHR. SAN. VE TIC. LTD. ŞTİ.	Brandium Residence R2 Blok Ofis: 217 Atasohir	İSTANBUL	Turkey
4087185594	CEMRE TARIM ÜRÜNLERİ SAN. VE DIŞ TIC. A.Ş.	Hallit Ziya Bul. No:25 Gencer Han K6 D:601 35210 Konak	İZMİR	Turkey
5380000288	CIRAV GIDA SANAYİ İNŞAAT DIŞ TİCARET LTDŞİRKETİ	Arsin Organize Sanayi Bölgesi Arsin 61900	TRABZON	Turkey
7880158536	DANEX İÇ VE DIŞ TIC. SAN. LTD.ŞTİ.	Zafer 5B Mah. Ayhan Sok Üretim A2 500 No:12 A/4 Aegean Free Zone	İZMİR	Turkey
4791744997	Dervişoğlu Organik Tarım Ürünleri Tic. ve San. Ltd. Şti.	Kazanlı Mh. 32001 Sokak Dervişoğlu Sitesi No: 6/A	Mersin	Turkey
7880005899	DURAK FİNDİK SANAYİ VE TİCARET A.Ş.	Levent Caddesi Krizantem Sok. No:96 34330-Besiktas	İSTANBUL	Turkey
7880129458	DURUCU FİNDİK STANDART GIDA İM. İTH. İHR. TIC. VE SAN. LTD. ŞTİ.	Çay Mah. Çamlık Cd. No:30 Terme	SAMSUN	Turkey
1200811900	ENTEĞRE GIDA SAN. A.Ş.	Alacakapı Mah. Kırkgözü Cad. No:33, 44210 Battalgazi	MALATYA	Turkey
4799996188	FADE GIDA YATIRIM SANAYİ TİCARET ANONİM SİRKETİ	Cumhuriyet Mah. 136/2 Sokak No:10/A 35660, Menemen	İZMİR	Turkey
8699693410	FARMEKS TARIM ÜRÜNLERİ SAN. VE TIC. LTD. ŞTİ.	Aegean Free Zone, MÜMTAZ SOKAK NO:16 PK 35410 Gazimir	İZMİR	Turkey
4490001886	Fergana Organik	Zafer Serbest Bölge Mah. EGE Serbest Bölgesi Nilüfer Sokak No 15	İZMİR	Turkey
5380000198	FOODIMPEX GIDA SAN VE TIC.A.Ş.	Mansuroğlu Mah.286/1. Sok. Verapol Plaza No: 15/23 Bayraklı-Izmir	İZMİR	Turkey
7880152598	GRAMAS GIDA SANAYİ A.Ş.	Bebek Mah. Selçuk Sok. No:10 D:2 Beşiktaş	İSTANBUL	Turkey
7880009047	GÜRİSOY TARIMSAL ÜRÜNLER GIDA SAN. VE TIC. A.Ş.	16850 Collins Ave., Suite 112-219, Sunny Isles Beach, FL 33160	Sunny Isles, FL	USA
5201452320	İSİK TARIM ÜRÜNLERİ SAN. VE TIC. A.Ş.(İSİK-AGR-02)	Sarıkeçe, KAZIM KARABEKİR CAD NO:35/A, 52100	ORDU	Turkey
7880228213	ISIK Organic Co	Ören 75.Yil Cumhuriyet Mah. Ova Sok. No:9 35722 Kemalpaşa	İZMİR	Turkey
7880168265	KARACUHA TARIM ÜRÜNLERİ İTH. İHR. SAN. VE TIC. LTD. ŞTİ.	1524 S Interstate 35 Ste 232, Austin, TX 78704	AUSTIN, TX	USA
7887164600	KARİMEK GIDA SAN. VE DIŞ TIC. LTD. ŞTİ	Cumhuriyet Mah. Samsun Cad. No:269/2, Terme	SAMSUN	Turkey
7887164600	KIRICI KURU MEYVA VE GIDA TEKS. TUR. SAN. VE TIC. A.Ş.	Karacaömer Mah. Efendioğlu Sok. No:41 Altınordu-Ordu	ORDU	Turkey
7888424900	KIRLIOĞLU TARIMSAL ÜRÜNLER GIDA İNŞAAT SANAYİ TİCARET A.Ş.	Halfettin Mah. Altınkayısı Sok. Kale İhmanı no: 28/A	MALATYA	Turkey
7880210401	KÖLLA TURKEY TARIM VE GIDA TIC. A.Ş.	OSB Mah. 3. Cad. No:6 Nazilli	AYDIN	Turkey
7880235358	LARASKA TARIM ÜRÜNLERİ SAN. VE TIC. A.Ş.	Atırbey Mah. 67. Sok. No:33 D.59 Gazimir	İZMİR	Turkey
7880205548	MİLHANS GIDA VE TARIM ÜRN. SAN. VE TIC. A.Ş.	Gürpınar Mah. Ulusal Cad. A Blok No: 3/1 İç Kapı No:2, Beylikdüzü	İSTANBUL	Turkey
3532021779	NEPER ORGANİK TARIM GIDA SAN VE TIC. LTD.ŞTİ.	Bağcık Köyü Hamidiye Sok. No:14 Gebze	KOCAELİ	Turkey
5380000477	NİMEKS ORGANİK TARIM ÜRÜN SAN VE TIC LTD ŞTİ.	Adalet Mah. Anadolu Cad. Megapol Tower No:41 İç Kapı No:101 Bayraklı Izmir	İZMİR	Turkey
7880139238	Natural Food Source Inc. (Nimeks USA Office)	1139 Lehigh Ave, Suite 300, Whitehall, PA 18052	WHITEHALL, PA	USA
7887229900	O2 ORGANİK TARIM DANIŞMANLIĞI SAN. VE TIC. LTD. ŞTİ.	ALD.S.B 10001 sok no.25 Gijli	SAMSUN	Turkey
7880163462	ÖZYLMAZ FİNDİK SAN VE TIC. A.Ş.	ULUCAK CUMHURİYET MAH. 9085 SK. NO: 4 İÇ KAPI NO: 1	İZMİR	Turkey
7880184071	POYRAZ POYRAZ FİNDİK ÜRETİM SAN. TIC. A.Ş.	Maras Caddesi, Kuyu Sk. No:1	TRABZON	Turkey
7880248343	PROGIDA TARIM ÜRÜNLERİ SAN. VE TIC. A.Ş.	Beylerce Mah. Yeni Samsun Caddesi No:383 Çarşamba	SAMSUN	Turkey
7881264990	SABIRLAR FİNDİK İHRACAT LTD.ŞTİ.	Ordu-Ulubey Karayolu 5. Km Karacaömer Mevkii Altınordu	ORDU	Turkey
4795414839	Samexs Organik Tarım Ürünleri San. ve Tic. A.Ş.	İz Giz Plaza Eski Büyükdere Cad. No:9 Kat:1 Maslak-Şişli	İSTANBUL	Turkey
4797731053	SAMSUN ORGANİK TARIM ÜRÜNLERİ SANAYİ VE TİCARET LTD. ŞTİ.	Pazarkapı Mh. Kalkanoğlu Cd. No:34 61040 Trabzon	TRABZON	Turkey
7880160345	SDA GIDA TARIM ÜRT. İTH.İHR. SAN. VE TIC.A.Ş.	AOSB 10001 SK. No.25 Gijli	İZMİR	Turkey
7880186169	ŞENOCAK GIDA FİNDİK ENTEĞRE TUR. NAK. İNŞ.SAN. TIC. LTD. ŞTİ.	ORTA MAH. KUYUMCULAR CAD. NO:8 ÇARŞAMBA	Samsun	Turkey
4490002392	SEYRANI AGRO GIDA SANAYİ DIŞ TİCARET LIMITED SİRKETİ	Ticaret ve Sanayi Odası Bulvarı, No: 9 Turgutlu Organize Sanayi Bölgesi Cumhuriyet Mah. M. Kemal Bulv. No:72 Altınordu	ORDU	Turkey
7886727458	SEYREK TARIM ÜRÜNLERİ SAN. VE TIC. LTD. ŞTİ.	Kazanlı-Mh. 32001 SK No: 8/A kdeniz	Mersin	Turkey
4791060281	Uyar Tarım Ürünleri Gıda San. ve Tic. A.Ş.	Mesudiye Mah. Çağlayan Sok. No:8 Germencik	AYDIN	Turkey
4797359789	Yılmaz Fındık Entegre San. ve Tic. A.Ş.	85. Yil Cumhuriyet Mah. No: 92-A/1 Hayvan Kıran Küme Evler Armutlu	İZMİR	Turkey
		Beylerce Mah. Yeni Samsun Cad. No: 381/A Çarşamba	Samsun	Turkey

Ex. 2, pp. 1-2 of 3.

The above processors are identifiable as “handlers” in the USDA’s INTEGRITY database. Some processors have websites that identify U.S. office locations, which are highlighted in yellow. Page 3 of Ex. 2 identifies those local (U.S.) Turkish processor offices and other entities who are importing or selling Turkish organic hazelnuts. It is respectfully submitted the collection of entities in Ex. 2 should be identified as respondents to this complaint.

1. The volume of mislabeled Turkish organic kernels and related products imported into the U.S.

The full extent of Turkish organic hazelnut imports is unknown. However, bill of lading data identify many examples of Turkish “organic” hazelnut kernel imports:

Arrival Date	Weight in KG	Shipper Name	Shipper Address	Product Desc
27-Mar-2022	26344	N/A	N/A	CIRAV 610019585/1-03-1007, 13/15MM NATURAL HAZELNUT KERNELS(FILBERT), ORGANIC, 1350 CARTON, CIRAV 610019 585-03-1504, 13/15MM BLANC HEDHAZELNUT KERNELS(FILBE RT), ORGANIC, 400 CAR TON, HTS CODE: 080222,200819
17-Mar-2022	26135	N/A	N/A	CIRAV 610019585/1-03-16, 1 3/15MM NATURAL HAZELNUT KE RNELS(FILBERT), 530 CARTON , CIRAV 610019585-03-1505, 13/15MM BLANCHED HAZELNUT KERNELS(FILBERT), ORGANIC 200 CARTON, CIRAV 6100195 85-03-2014, NATURAL HAZELN UT MEAL(FILBERT), 353 CART ON, CIRAV 61001
3-Mar-2022	18230	ARSLANTURK TARIM URUNLERI SAN IHR	VE ITH A S OZGEN MAH OVA MEVKII ARAKLI TRABZONTURKEY	12-14 MM BLANCHED HAZELNUT KERNELS(ORGANIC) 4-8 MM ROASTED-DICED HAZELNUT (ORGANIC) 2-4 MM ROASTED-DICED HAZELNUT HTS NUMBER: 200799-200819
21-Feb-2022	41764	N/A	N/A	ORGANIC RAW HAZELNUT KERNELS 1 3-15 MM TOTAL: 1600 BOXES/ 18 144 KGS NET WEIGHT /1894400 KG S GROSS WEIGHT HS CODE: 0802 2200 0000
27-Jan-2022	15370	N/A	N/A	TURKISH HAZELNUT KERNELS, SABIR 610019690/1-03-4903 909 CARTONS-2021 CROP TURKISH HAZELNUT KERNELS, ORGANIC 13-15MM. STD.NO.1. 9.630 KGS HTS CODE 080222. SABIR 610019690/1-03-4904 162 CARTONS-2021 CROP TURKISH HAZELNUT KERNELS, ORGANIC13-15MM. STD.NO.1
4-Jan-2022	26054	N/A	N/A	CIRAV 610019585/1-03-124, 13/15MM NATURAL HAZELNUT K ERNELS(FILBERT), ORGANIC, 1763 CARTON, CIRAV 610019 585-03-404, 13/15MM BLANCH ED HAZELNUT KERNELS(FILBER T), 200 CARTON HTS C ODE: 0 80222,200819
26-Dec-2021	23920	N/A	N/A	4-8 MM ROASTED-DICED HAZELNUT (ORGANIC) HS CODE 200819190011 NET WEIGHT 23.000,00 KGS FDA REGISTRATION NUMBER 10161393966 PO NUM PO116506
23-Dec-2021	22007	FARMEKS TARIM URUNLERI LIMITED	STI EGE SERBEST BOLGESI NILUFER SOKAK BGAZIEMIR 35 35410 TURKEY	PART LOAD WITH WAYBILL NO MEDIUM960353 NO SEPARATE D ELIVERY OHN4341/01 ORGANIC HAZELNUTS ROASTED 300 BO XES HS CODE : 2008.19.19.0 0. 13 NET WEIGHT : 3.000,0 0 KGS GROSS WEIGHT : 3.150 ,00 KGS OHN4342/01 ORGANI C HAZELNUTS RAW 300 BOXES HS CODE : 0802.22
11-Aug-2021	18723	NIMEKS ORGANIK TARIM URUNLERI SAN V TIC LTD	STI A O S B 10001 SOK NO 2 CIGLI IZMIR TURKEY	RAW HAZELNUT KERNELS 13-15 MM 790 BOXES ORGANIC RAW HAZELNU T KERNELS 13-15 MM 790 BOXES NET WEIGHT: 17.917,20
10-Apr-2021	19415	BALSU GIDA SANAYI VE TICARET ANONIM SIRKETI PASABAHCE MAH CEMAL BEY SOK	NO 11/1 34800 BEYKOZ ISTANBUL TURKIYE T +90 216 425 32 00 F +90 216 425 32 03 REGISTRATION NUMBER	VACUJUM POLY 1) ORDER NO 024- 2020 ORGANIC TURKISH HAZELNUT KERNELS 11- 13 MM CONT. PARTY NO 54- 210030 HTS CODE 0802.22.00.00.00 IN 25 KG 200 PIECES VACUJUM POLY BAGS IN CARTON BOXES NET 5.000 KG GROSS 5.160 KG 2) ORDER NO 020- 1105-21 TURKISH HAZELNUT ROA
19-Sep-2021	15167	N/A	N/A	RAW HAZELNUT KERNELS ORGANIC - 580 X 25 KGS NET VACUJUM CA RTONS 11-13 MM RAW HAZELNU T KERNELS ORGANIC PO NUM: LUS223992 / PUS210523-011 NVOICE NO AND DATE : IHR20 21000000267.0 6.2021 PART Y NO : 610019811-3- 083 HS CODE:080222000000
22-Jul-2021	22396	ARSLANTRK TARIM URUNLERI SAN IHR VE	ITH A S TRABZON TRABZON O TR	11 13 MM RAW HAZELNUT KERNELS ORGANICARS FDA
16-Jun-2021	26103	N/A	N/A	CIRAV 610019585/1-03-29, 1 3/15MM NATURAL HAZELNUT KE RNELS(FILBERT), ORGANIC, H TS CODE: 080222
17-Apr-2021	26102	NIMEKS ORGANIK TARIM URUNLERI SAN VE TIC LTD	STI A O S B 10001 SOK NO 25 CIGLI IZMIR TURKIYE TEL 2323768111 FAX 2323768919	RAW HAZELNUT KERNELS 13X15 MM HTS:080222 ORGANIC RAW HAZELNUT KERNELS 13X15 MM HTS:080222 ORGANIC DRIED APRICOTS SIZE:2 HTS:081310

Total in Kg = 327790

Total in Lb = 721006

See Ex. 19.

The above imports sum to approximately 721,000 pounds of Turkish “organic” hazelnut kernels that were imported during a one-year time span from April 2021 through March 2022. That amount is likely to exceed the total production of the U.S. organic hazelnut industry (*see* Sec. III(A)(2) above).

V. Turkish Processor “Piggybacking” Deceives U.S. Consumers

A. Example 1 – ArslanTurk

As indicated above, ArslanTurk is identifiable on the USDA INTEGRITY database as a certified handler of organic hazelnuts. On or about March 3, 2022, ArslanTurk shipped to Bedemco Import and Export, Inc. (“Bedemco”) approximately 18230 kilograms of hazelnut kernel products, described in

shipping records as:

“12-14 MM BLANCHED HAZELNUT KERNELS(ORGANIC) 4-8 MM ROASTED-DICED HAZELNUT (ORGANIC) 2-4 MM ROASTED-DICED HAZELNUT HTS NUMBER: 200799-200819.”

See Ex. 19, pp. 8-9 of 47.

According to USDA organic regulations, ArslanTurk must have documentation showing that the above “organic” hazelnuts are traceable to “certified” organic hazelnut farms in Turkey – with each one of those farms having records of individual organic plans and annual inspections by a certifying agent that meets USDA/NOP standards. There are several reasons why ArslanTurk does not have that documentation.

First, because of above-described structure of the Turkish hazelnut industry (*i.e.*, an oligopsony) it takes many Turkish farms to accumulate a shipment of 18230 kilograms of hazelnut kernels. It is not practical or feasible for a Turkish processor to track farm source identity (and individual USDA-required farm certification records) for a large population of small farms who anonymously sell their hazelnuts to the processor through intermediaries.

Second, inspection requirements and certification costs are likely to be a barrier to a Turkish grower having a few acres, compared to larger acreages that are more typical with U.S. growers, unless individual Turkish growers are receiving substantially higher prices as an offset. There is no evidence that Turkish growers are being paid substantial premiums for purportedly organic hazelnut kernels that justify going through the same kind of process that complainant undertook to obtain organic certification (*see* Sec. IV(C) above).

Third, if, in fact, any significant numbers of Turkish growers were certified by USDA-accredited certifying agencies, they would be identifiable as growers on the USDA INTEGRITY database. As discussed above, that information is missing.

Regardless of the above problems, ArslanTurk's USDA certificate of organic compliance states:

“The following products and activities are certified to the USDA organic regulations, 7 CFR Part 205.”

Ex. 20.

ArslanTurk's certificate then lists the “100% organic” products that ArslanTurk sells, as follows:

Category of certification: NOP "100% organic" product (205.301a)

HANDLED PRODUCTS

Fruit-based preparations

Blanched Diced Hazelnut
Blanched Hazelnut Kernels
Blanched Hazelnut Powder (Blanched Hazelnut meal)
Blanched Sliced Hazelnut
Hazelnut in Shell
Hazelnut Powder (Hazelnut meal)
Hazelnut Puree (Hazelnut Paste)
Natural Chopped Hazelnut
Natural Sliced Hazelnut
Raw (Natural) Hazelnut Kernels
Roasted Diced Hazelnut (Minced Hazelnut)
Roasted Hazelnut Kernels
Roasted Hazelnut Powder (Roasted Hazelnut meal)
Roasted Salted Hazelnut Kernels
Roasted Salted Inshell Hazelnut
Roasted Sliced Hazelnut

Ex. 20.

ArslanTurk's organic certificate, which is for “handling” only, causes confusion because anyone who reads it would believe that ArslanTurk's outgoing product is all “100% organic.” However, what ArslanTurk's organic certificate really means is this: for a total annual certification cost that is likely to be comparable to that paid by the complainant for complainant's USDA certification, ArslanTurk submitted an organic plan to a certifying agency for handling organic hazelnut kernels inside its factory and received an inspection of its factory. The certificate simply means that ArslanTurk has an acceptable plan for cleaning its processing lines and keeping organic kernels physically separate from conventional products. But this has nothing to do with certifying that the incoming kernels ArslanTurk

receives from upstream Turkish farmers are organic.

When ArslanTurk’s buyer, Bedemco, sells the hazelnuts to downstream U.S. customers, Bedemco can point to ArslanTurk’s “handler” certification that improperly states that everything coming from ArslanTurk is “100% organic.” On information and belief, at least one of Bedemco’s customers, Sincerely Nuts, has used the USDA organic seal in conjunction with advertising “organic hazelnuts” from Turkey for \$2 a pound less than conventional hazelnuts from Oregon:¹¹



Organic Hazelnuts (Filberts) (Raw,
No Shell)
from **\$10.99**



Roasted & Salted Blanched
Hazelnuts
from **\$12.99**



Oregon Hazelnuts
from **\$12.99**

Ex. 21, p. 4 of 5 (*see* www.sincerelynuts.com/collections/hazelnuts/).

Sincerely Nuts represents to U.S. consumers that:

“We ensure that only organic hazelnuts make the cut, giving you the confidence to buy raw shelled hazelnuts online with us and enjoy a crunch completely free of any chemicals or pesticides.”

Ex. 21, p. 2 of 5.

What begins as a misuse of a Turkish processor’s organic certification as a “handler” in

¹¹ On information and belief, court records involving third party claims against Sincerely Nuts on matters that are unrelated to the issues raised in this complaint have identified Bedemco as an upstream vendor for Sincerely Nuts. Sincerely Nuts is not proposed as a respondent to this complaint; Bedemco is proposed as a respondent.

connection with hazelnut kernel imports, ends with fraud on U.S. consumers.

B. Example 2 - Farmeks

Farmeks is a Turkish processor having a website that claims that *every one* of a wide variety of agricultural products that Farmeks sells is “certified” organic. Farmeks does not appear to offer “conventional” products. The USDA INTEGRITY database identifies Farmeks as a handler:

Scope	Status	Effective Date	Certified Products
HANDLING	Certified	10/9/2019	Other: ALMOND *, ALMOND OIL *, APRICOT KERNEL *, APRICOT KERNEL OIL *, BLACK CUMIN OIL *, BLACK CUMIN SEED *, BLACK RAISIN *, BLACK RAISIN WITH SUNFLOWER OIL *, BROWN LENTIL *, CHERRY SEED *, CHERRY SEED OIL *, CHESTNUT *, CHICKPEA *, COCOA BEAN *, DICED DRIED APPLE *, DICED DRIED APRICOT *, DICED DRIED FIG *, DICED DRIED TOMATO *, DICED PRUNES *, DRIED APPLE *, DRIED APRICOT *, DRIED APRICOT PASTE *, DRIED BEAN *, DRIED FIG *, DRIED FIG PASTE *, DRIED MULBERRY/ DRIED WHITE MULBERRY / DRIED BLACK MULBERRY *, DRIED PRUNE *, DRIED SOURCHERRY *, DRIED SOURCHERRY PASTE *, DRIED TOMATO *, HAZELNUT *, HAZELNUT OIL *, LICORICE *, OLIVE OIL *, PEACH SEED *, PEACH SEED OIL *, POMEGRANATE SEED *, POMEGRANATE SEED OIL *, PRUNE SEED *, PRUNE SEED OIL *, ROSEHIP SEED OIL *, SOURCHERRY SEED *, SOURCHERRY SEED OIL *, SULTANAS RAISINS *, SULTANAS RAISINS WITH SUNFLOWER OIL *, SUNFLOWER OIL *, THOMPSON RAISIN *, THOMPSON RAISIN WITH SUNFLOWER OIL *, WALNUT *, WALNUT OIL *

Ex. 22.

Given the lengthy list of purported “organic” products handled by Farmeks, then Farmeks should be able to point to a large number of upstream, certified growers in Turkey that raise organic almonds, apricots, grapes, sunflowers, cherries, chestnuts, apples, peaches, etc., all appearing on the USDA INTEGRITY database. Information of that kind does not appear to be present on the database, at least with respect to hazelnuts.

On or about December 23, 2021, Farmeks shipped to HNF Foods, Inc. (“HNF”) approximately 22007 kilograms of roasted and raw organic hazelnuts. Ex. 18, pp. 23-24 of 47. HNF presumably relied on Farmeks’ handler certificate, in the same way as the ArslanTurk example above, and is apparently packaging the Turkish “organic” hazelnuts and selling them under the “Silo” brand to Walmart, and others, with the USDA organic seal on the packaging:



SILO NUTS
SILO Nuts, Organic Hazelnuts, Raw, 16oz, Filberts, Whole Hazelnut, with Skin, Shelled, GMO-Free Nuts, Vegan, Kosher, Great Snack for Parties and an Ingredient for Cooking, Bulk, Great Gift for a Health

\$14.99 ~~\$19.99~~ ⓘ

[Add to cart](#)

📦 Free shipping, **arrives by Tue, Apr 5** to [Sacramento, 95829](#)
Want it faster? [Add an address](#) to see options
[More options](#)

🏪 Sold and shipped by [HNF FOODS, INC | HNF FOODS INC](#)
★★★★★ 1 seller reviews

🔄 Free 30-Day returns [Details](#)

♡ [Add to list](#) 📺 [Add to registry](#)

Ex. 23, pp. 1-2 of 6; *see also* Ex. 24, p. 1 of 8 (HNF/Silo organic hazelnuts advertised on amazon.com).¹²

HNF makes the following claims in its product details for the above:

“- CERTIFIED ORGANIC These Hazelnuts comes [*sic*] from controlled farming locations in Turkish Mountains which is performed [*sic*] according to organic standards of USDA. After the harvest they are processed in an Organic certified production facility making sure there is no pesticides or herbicides all along its journey till they get to your kitchen.”

Ex. 23, p. 3 of 6.

In both of the above examples (ArslanTurk and Farmeks), the USDA seal found its way onto hazelnuts imported from Turkey, suggesting to U.S. consumers that the hazelnuts were “certified organic” for no reason other than the hazelnuts passed through the hands of a certified “handler” in Turkey. And there are other companies doing the same thing in the U.S.:

¹² While retail pricing for web-based sales appear to be highly variable, these Exhibits collectively suggest there is evidence that retail pricing for Turkish “organic” kernels from certain suppliers are being priced below retail pricing for Oregon conventional kernels. *See* p. 24, *infra*. HNF is identified on Ex. 2 as a proposed respondent to this complaint; Walmart is not proposed as a respondent.

Lot: 16130 G1 ZYS102

Nutrition Facts	
33 Servings per container	
Serving Size 1/4 cup (30g)	
Amount per serving	
Calories	190
	% Daily value
Total Fat 19 g	24 %
Saturated Fat 1.5 g	8%
Trans Fat 0 g	
Cholesterol 0 mg	0 %
Sodium 0 mg	0 %
Total Carbohydrates 5 g	2 %
Dietary Fiber 3 g	11 %
Total Sugars 1 g	
Includes 0 g	Added Sugars 0 %
Protein 5 g	
Vitamin D 0 mcg	0 %
Calcium 37 mg	2 %
Iron 1 mg	6 %
Potassium 230 mg	5 %

*The % Daily Value tells you how much a nutrient in a serving of food contributes to a daily diet 2000 calories a day is used for general nutrition advice

* Trademark of the National Foundation for Celiac Awareness. Used under license

ORGANIC HAZELNUT (FILBERT)

NET WT. 35.3 OZ(2.2 LB) 1 KG

Ingredients:
Organic filberts. MAY CONTAIN: PEANUTS, OTHER TREE NUTS, COCONUT, SOY

Distributed by: Tootsi Impex USA Inc
28 Valley Road, Suite 1, Montclair,
NJ 07042, USA

Product of Turkey
Certified organic by Ecocert Canada CA-91344

YUS300551000

8 05509 00277 3

Ex. 25.¹³

The introduction to this complaint (Sec. I) includes an example of a question and answer from the Anna and Sarah website (Ex. 1). That question/answer example illustrates how the USDA organic seal influences consumer purchasing decisions. The Anna and Sarah website advertises a 3-pound package of USDA certified Turkish organic hazelnuts for \$0.67 per ounce. Ex. 1, p. 1 of 10. At the same time, Anna and Sarah advertises a 2-pound package of roasted, unsalted, and blanched Turkish hazelnuts (no organic designation) for \$0.75 per ounce. Ex. 2, p. 2 of 10. Also, at the same time, Anna and Sarah advertises a 1-pound package of “Oregon hazelnuts” (no organic designation) for \$0.81 per ounce. *Id.* These are free market prices that will have price variations based on the volume of the individual purchase. However, collectively, these prices suggest that Anna and Sarah did not pay a significant premium to upstream suppliers for use of the USDA organic seal on purportedly “organic” hazelnuts from Turkey (*see* comparison of wholesale prices discussed in Sec. VI(B)(7) below).¹⁴

¹³ Tootsi Impex is identified as a proposed respondent in Ex. 2.

¹⁴ Anna and Sarah LLC entities are identified as proposed respondent(s) in Ex. 2.

VI. Damage

A. The public relies on the integrity of the USDA organic seal

When asked questions about overseas organic certification, this is the USDA's official response:

Roxanne

Aug 06, 2019

So if Walmart brand says it's USDA certified organic - specifically their frozen produce products it means the produce can from anywhere in the world? So if it's coming from China who actually goes to these other countries to "Certify" " they actually follow the certified rules/regs?? After they are approved is there any follow up (even in the USA) that they are continuing to meet the specs?

Ben Weaver

Sep 05, 2019

@Roxanne - thank you for your comment. USDA authorizes organizations around the world to certify farms and businesses to the [USDA organic regulations](#). Products certified to the USDA standards anywhere in the world may be shipped to the U.S. and sold as organic. All imported organic agricultural products must comply with the organic regulations, meet [U.S. labeling requirements](#), [maintain organic integrity](#) during the import process, and meet all general or commodity-specific import requirements.

USDA-accredited certifiers are responsible for protecting organic integrity by overseeing these complex supply chains that move organic products globally. We have invested significant effort with these third-party organic certifiers to build their capabilities through increased training on mass balance calculations and supply chain traceability, detecting violations and deterring fraud.

- Access the [Organic Integrity Database](#) to view a list of certified farms and businesses located in China.
- To view a list of USDA-accredited certifiers operating in China, access the [Certifier Locator](#).

Ex. 26, pp. 11-12 of 20 ("Understanding the USDA Organic Label").

B. The import injury caused by Turkish processors

1. Turkish processors have only a limited license to use the USDA organic seal

The USDA organic seal is a classic “certification mark” that has been in use for about 20 years.¹⁵ What this means is that use of the USDA organic seal, pursuant to receipt of organic certification from the USDA, is a licensed right. And the scope of the license is dictated by the scope of what the USDA actually certified (*e.g.*, “handler” as opposed to “grower,” etc.); and the license does not extend beyond that scope.

2. Turkish processors are acting outside the scope of their USDA license

Because certified Turkish processors are licensed by the USDA as “handlers” not “growers,” the limited license these processors have to hold themselves out as “organic,” and use the USDA organic seal, is limited to the handling of hazelnuts within their processing facility. This license right does not give Turkish processors the right to convert uncertified Turkish hazelnut kernels received from upstream grower and intermediary sources into “certified” hazelnut kernels merely because the kernels pass through the processor’s facility. Turkish processor “piggybacking” exceeds the scope of the license granted by the USDA.

3. Turkish processors are diluting the integrity of the USDA organic seal

The USDA reports that consumer demand for organically produced goods has been showing double-digit growth in the U.S., which provides market incentives for U.S. farmers across a broad range of products. Ex. 28, p. 1 of 5. At the same time, there is also evidence that a segment of the U.S. public does not trust the integrity of the USDA organic seal, particularly as it relates to the importation of food

¹⁵ In August 2021, the USDA’s organic seal was registered as a certification mark on the Principal Register of the U.S. Patent and Trademark Office (Reg. No. 6,452,285). Ex. 27.

products from foreign sources. Ex. 29. Because Turkish processors are licensed as “handlers” only, Turkish processor “piggybacking” dilutes the integrity of the USDA organic seal.

4. Turkish processor dilution of the integrity of the USDA organic seal damages the U.S. organic hazelnut industry

While complainant and others do not control use of the USDA seal, they nevertheless have a right to use it, which means they benefit from the public’s trust in the USDA seal; and they are harmed by those who undertake actions that undermine public trust in the USDA seal. Turkish processors who do not play by the rules of the USDA/NOP system injure complainant and other members of the organic hazelnut industry who are playing by the rules.

5. Turkish processor “piggybacking” damages the U.S. organic hazelnut industry by causing consumer confusion and loss of sales

It should be plain that Turkish processor misuse of the USDA organic seal confuses and misleads consumers into believing they are purchasing and consuming certified organic hazelnuts:

Question:

how do I know these are actually organic?

* * *

Answer:

As a consumer the only way to find out is the US certification seal or stamp in the bag of the product. Taste is different, size is the nut is smaller other than that we are their own mercy.

By LM... on July 22, 2021

Ex. 30, p. 5 of 9 (From Yupik Nuts advertising on Amazon Prime).

The presence of the USDA organic seal leads to sales to U.S. customers who want organic products; and misuse of the seal takes sales away from those who legitimately use the seal.

6. Turkish processor “piggybacking” is an act of unfair competition under both § 337 and other U.S. unfair competition laws

§ 337 of the Tariff Act broadly addresses unfair competition or unfair acts in connection with the importation and sale of products in the United States. While § 337 is an independent unfair competition statute that stands alone, in this case, the unfair competition or unfair acts complained of here are also related to violations of both the trademark and false advertising prongs of § 43(a) of the Lanham Act. *See* 15 USC § 1125(a)(1)(A) (the “trademark prong”) and 15 USC § 1125(a)(1)(B) (the “false advertising prong”). The applicable Lanham Act statute states, in pertinent part:

- (1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—
 - (A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or
 - (B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person’s goods, services, or commercial activities, shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

15 USC § 1125(a)

With respect to violating the trademark prong of the Lanham Act, Turkish processor misuse of the USDA organic seal is a false or misleading description or representation of fact in that these processors are using the seal to mislead downstream buyers and consumers into believing that they have purchased organic hazelnut kernels from upstream “certified” farms in Turkey. This is likely to cause confusion, or mistake, or deception as to those buyers and consumers.

With respect to violating the false advertising prong, the Turkish processors are engaged in commercial advertising or promotion of “certified organic” hazelnuts on their websites (*see, e.g.*, Exs. 15-17) – which misrepresents the nature, characteristics, or qualities of the goods they are selling. This is a second and independent violation of the Lanham Act.

7. Turkish processor “piggybacking” also harms the conventional hazelnut industry in the U.S.

When there are facts that indicate Turkish processor piggybacking is leading to the sales of Turkish “organic” kernels at retail prices that are less than Oregon conventional kernels (*see* Sec. V above), it is plain that the lower retail pricing of Turkish organics causes the Oregon conventional industry to lose sales.

U.S. consumers have been educated that USDA-certified organic food products cost more than conventional products. *See* Exs. 28-29. For example, for the CY2021 crop year, and on information and belief, Hummingbird Wholesale in Eugene, Oregon was selling USDA-certified Oregon organic hazelnut kernels for a wholesale price of \$10.99 per pound for 5 lb. units. At the same time Oregon processors like George Pack and HGO were wholesaling conventional Oregon kernels at approximately \$3 to 3.25 per pound. When organic wholesale prices are higher than conventional wholesale prices, it would be expected that retail organic prices should also be higher.

Something is clearly wrong when there are instances that involve Turkish organic kernels being sold at retail for less than U.S. conventional kernels. One of two kinds of damage will happen in this situation: either the lower price of Turkish organics will cause the U.S. public to not believe in the integrity of the USDA organic seal; or U.S. consumers will buy Turkish organics because they are purportedly “certified” by the USDA to be pesticide and chemical free *and* they are cheaper than Oregon conventional kernels that are grown with pesticides and chemicals. Either result is not good. But the second one harms the conventional hazelnut industry as well as the organic industry.

VII. Relief Requested

Complainant requests that the USITC undertake the following actions (subject to USITC jurisdictional limitations):

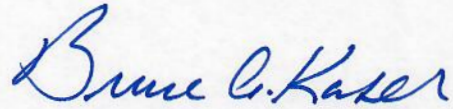
- Amend the HTS codes to include a designation for organic hazelnuts and organic hazelnut products. This amendment would assist Customs and the public in tracking future imports of organic hazelnuts from any foreign source.
- Enter a general exclusionary order barring entry of all organic hazelnuts and organic hazelnut products that are sourced from Turkey.
- As a provisional request, and subject to the results of the USITC's investigation, enter a specific exclusionary order that bars entry of all conventional hazelnut kernels, inshell hazelnuts, and all other conventional hazelnut products that are sourced from those Turkish processor respondents who have clearly engaged in unscrupulous behavior – for a period of three (3) years following the date of the USITC's exclusionary order. Because an exclusionary order is equitable in nature, it is respectfully submitted that the USITC has the authority to craft a specific exclusionary order that has corrective marketing terms for a temporary and limited period of time. If the USITC's investigation reveals that Turkish processor "piggybacking" of organic hazelnuts has been unscrupulous and caused or will cause an unfair competitive impact on the kernel pricing offered by the U.S. conventional hazelnut industry, then this type of exclusionary order is appropriate because it will give the U.S. conventional hazelnut industry time to allow for a market recovery from the damage done by these specific companies.

VIII. Conclusion

The complainant respectfully requests that the USITC conduct an investigation of Turkish processors and their affiliates for injury caused by the acts complained of above.

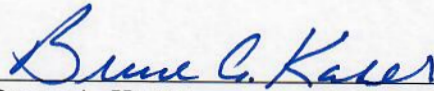
Dated: MAY 25, 2022

Respectfully submitted,



Bruce A. Kaser, Man.Member
Pratum Farm, LLC
120 95th Ave NE
Salem, OR 97317
Email: bruce@pratumfarm.com
Phone: (206) 909-7928

I declare under penalty of perjury that (1) I am a managing member of the complainant, Pratum Farm, LLC, and have authority to sign this complaint on behalf of the complainant; (2) this complaint is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of any investigation or related proceeding; (3) the claims, defenses, and other legal contentions set forth in the complaint are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (4) the allegations and other factual contentions set forth in the complaint have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (5) the foregoing allegations in the complaint are true based on my own knowledge and/or based on information and belief.



Bruce A. Kaser

Date: MAY 25, 2022