

October 3, 2018

Michelle Arsenault
National Organic Standards Board
USDA-AMS-NOP
1400 Independent Ave., SW
Room 2648-S, Mail Stop 0268
Washington, D.C. 20250-0268

Re: Meeting of the National Organic Standards Board

Docket # Docket # AMS-NOP-19-0038
ID: AMS-NOP-19-0038-0001

Dear National Organic Standards Board Members:

The following comments are submitted to you on behalf of The Cornucopia Institute, whose mission is, in part, to support economic justice for family-scale farming. John Bobbe, former executive director of OFARM, joins in these comments.

As the Board is well-aware, fraudulent grain imports have tainted the organic market by shaking consumer confidence and depressing markets for North American organic grain farmers. At prior meetings, the Board has considered discussion documents addressing ways to curtail import fraud, entertained panelist presentations, and listened to numerous comments by concerned stakeholders.

The fall 2019 meeting agenda includes an update on import fraud. This update will undoubtedly include the National Organic Program's impressions of progress it has made through enforcement actions against foreign traders and through collaboration with other governmental agencies.

To be fair, certain NOP enforcement efforts are commendable and nothing here is said to denigrate the work of those who have and continue to fight fraud. The fact remains there has not been an acceptable resolution of the issue.

For this reason, we attach with this comment a paper co-authored by Anne Ross, JD and John Bobbe. The paper was published to give voice to all of the ethical farmers and conscientious consumers who remain frustrated by those who continue to game the system, elude prosecution, and benefit from delayed enforcement.

As of this writing, we still await the publication of the proposed rule which was promised to tighten supply chain traceability. These delays only embolden bad actors and afford them time to adjust tactics and avoid detection.

In fact, finding alternative, deceptive tactics is exactly what the bad actors are doing. The Board and the NOP must carefully consider measurable progress while considering the diversionary tactics undertaken by fraudulent actors.

Consider the following:

- In 2018, GATS data indicates that 53,432 MT of organic corn was imported from Serbia. At the time of this writing, there are no Serbian arable crop producers listed in the NOP database. At least 23,000 MT of this corn was loaded on to vessels in Romania and was imported by entities known to have been associated with dubious grain imports certified by a suspended certifier.

In 2016 and 2017 there were 768 and 549.4 fully converted hectares of organic corn in Serbia respectively—though these are areas that could not support these yields.

The questions must be asked: *Are fraudulent actors changing shipping routes to avoid detection? Is accurate acreage and yield data being recorded for high-risk regions?*

- Creative use of HTS codes by traders can skew data making it appear that grain imports are down from a certain country when in fact they are static or have increased. For example, certain traders have been known to use HTS codes for “coarse grain products” using a description as “de-germinated corn” to avoid scrutiny at ports of entry.

Instead of using HTS codes that accurately identify the product, alternative codes can be used to avoid scrutiny at the border and distort import numbers.

The question must be asked: *Are imports of organic corn really down from certain high-risk countries, or are fraudulent actors avoiding detection by using different HTS codes on shipping documents?*

- Fraudulent actors are known to “certifier shop,” i.e. move from one certifier to the next when enforcement actions loom or their certifier faces impending de-accreditation. Since The Cornucopia Institute’s June 2018 publication of *The Turkish Infiltration of the Organic Grain Market*, at least one entity associated with the infamous Mountpark shipment has changed certifiers no fewer than three times, most recently losing its organic status with its last certifier.

The question must be asked: *Are enforcement actions successful when de-certified entities have simply changed corporate forms or moved on to a different certifier and remain active in the grain trade?*

As the NOSB and NOP take inventory of the status of organic grain fraud, we cannot accept that this issue has been adequately addressed or resolved. Elements indicative of organized crime are pervasive and continue to be silently, if not explicitly, endorsed by certain corporate interests. Some of the most egregious violators of the organic regulations remain in business without consequence.

Although it is important to take stock of where we’ve been and to recognize enforcement successes where they exist, there can be no laurels on which to rest when fighting fraud. Bad actors adjust

their tactics, circumvent detection, and reap massive financial awards at the expense of real organic farmers and consumers.

For that reason, this case is not closed; there is no “final” recap and no satisfactory update. And for those still intent on defrauding: we’re still watching.

Sincerely,

Anne Ross and John Bobbe