

EXHIBIT “K”

From: Michael Corbett <mcorbett@sunrisefoods.ca>
Sent: Tuesday, March 13, 2018 6:53 AM
To: CHUN, DICKINS; SULTAN, OMAR
Cc: Jake Neufeld; Robert Krieger
Subject: RE: Mountpark

Good Morning Mr. Chun and Mr. Sultan,

We've had a chance to review the EANs, and are concerned they have been issued in error.

The EANs cite "The commodity does not meet the requirements for cracked corn" as the primary reason for the shipment being rejected. You mentioned in our discussion that this determination was made based on a photograph of the sample. USDA inspection guidelines provide a detailed description of how to determine if a sample is cracked corn. Based on our experience (from handling cracked corn samples in our in-house lab), photographs can misrepresent the proportion of whole kernels in a sample of cracked corn. Whole kernels in cracked corn have a tendency to stay at the top of a sample while the cracked and broken kernels are at the bottom. Since a photograph only provides a two-dimensional representation of the top layer of a sample, it would be difficult, if not impossible to accurately determine if a sample is in fact cracked corn.

We are confident that our shipments meets the USDA definition of cracked corn as defined in USDA FGIS Directive 9180.70. Specifically, cracked corn is defined by the USDA as – SEE SCREENSHOT:

FGIS Directive 9180.70

May 1, 2013

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4. DEFINITION OF CRACKED CORN

- a. Cracked corn, as described in this directive, is Not Standardized Grain that consists of broken kernels of shelled dent corn and/or shelled flint corn. Cracked corn kernels are kernels that are chipped or broken and not 100 percent intact from their original shape and size.
- b. **The sample must not meet the definition of corn (i.e., grain consisting of 50 percent or more of whole kernels of shelled dent corn and/or shelled flint corn and not more than 10 percent of other standardized grains) to be considered as cracked corn.**
- c. Visually examine the sample to determine if it meets the definition of corn or cracked corn. If an analysis is necessary, make the determination on a 250-gram representative portion on the basis of the sample as a whole. From the 250-gram portion remove all whole kernels (i.e., kernels with less than one fourth broken off) of corn and, if necessary, other standardized grains and calculate the percentage of whole kernels of corn and other standardized grains.

The EAN also makes note of the country of origin of the raw corn prior to cracking in Turkey. While, we have yet to confirm if this is correct, more importantly, it's generally irrelevant in the context of a processed product like cracked corn. From a customs entry standpoint, using the Federal Code of Regulations country of origin guidelines, the cracked corn (regardless of where the inputs are from) is of Turkish Origin. That said, we understand that APHIS regulations are not usually concerned with "Country of Origin", but rather "Country of Harvest"; however, in the case of cracked corn, as per APHIS manuals, country of harvest is not a factor to admissibility.

Compliance is very important to us. Prior to importation we went through the following process to determine the admissibility of cracked corn:

STEP 1 – DETERMINING THE CORRECT APHIS MANUAL

Most of the non-processed articles we import are regulated by the seeds not for planting manual (SNFPM). As such, we reviewed the SNFPM against the cracked corn we intended to import. In the introduction of the SNFPM, it states that seeds processed beyond harvesting are not covered and that one should use the USDA Miscellaneous and Processed Products Manual (MPPM). SEE SCREENSHOT

Introduction
Scope

What the Manual Does Not Cover

The *Seeds Not for Planting Manual* **does not** cover the following items:

- Articles manufactured from plants or plant products (see the [Miscellaneous and Processed Products Manual](#))
- Fresh, cut portion of the plant including cut flowers and greenery intended for decoration (see the [Cut Flowers and Greenery Manual](#))
- Fresh and perishable seeds² (see the [Fruits and Vegetables Manual](#) and the [Fruits and Vegetables Import Requirements \(FAVIR\) On-line Database](#))
- Fresh fruit, herbs, or vegetables (see the [Fruits and Vegetables Manual](#) and the [Fruits and Vegetables Import Requirements \(FAVIR\) On-line Database](#))
- Nuts still in their husks **other than** coconuts (*Cocos nucifera*) and macadamia nuts (*Macadamia* spp.) (see [Fruits and Vegetables Manual](#) and the [Fruits and Vegetables Import Requirements \(FAVIR\) On-line Database](#))
- Nuts that are free from their husks or are shelled (see the [Miscellaneous and Processed Products Manual](#))
- Seeds for growing, increase, or planting (see the [Plants for Planting Manual](#))
- Seeds for sprouting (sprouting seeds)³ (see the [Plants for Planting Manual](#))
- Seeds processed beyond harvesting (see the [Miscellaneous and Processed Products Manual](#))

STEP 2 – DEFINING PROCESSED SEED

While the above states that the SNFPM does not cover processed seed, we wanted to ensure that cracked corn is in fact processed seed. The Glossary of the SNFPM defined processed seed as seed "which has been subjected to any degree of alteration beyond harvesting". The manual goes one step further and actually uses cracked corn "e.g. cracked corn" as the example of processed seed SEE SCREENSHOT

Glossary

Definitions, Terms, and Abbreviations

Northern Mariana Islands. Short form for the Commonwealth of the Northern Mariana Islands that is a group of islands in the North Pacific Ocean about three-quarters of the way from Hawaii to the Philippines. Includes Farallon de Pajaros, Maug Islands, Asuncion Islands, Agrihan, Pagan, Guguan, Sarigan, Anatahan, Farallon De Medinilla, Saipan, Tinian, Rota.

noxious weeds. Undesirable plant as specified by the Federal Noxious Weed Regulations. As defined by the Federal Noxious Weed Regulations, noxious weeds are, "Any living stage (including, but **not** limited to seeds and reproductive parts) of any parasitic or other plant or a kind, which is of foreign origin, is new to or **not** widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock or poultry or other interests of agriculture, including irrigation or navigation or the fish or wildlife resources of the United States or the public health."

nut. Hard shelled, woody-textured, one-sided fruit that **does not** split open as an acorn, coconut, or macadamia nut.

packing material. Covering, stuffing, or holding apparatus used to protect, cushion, or brace goods during shipment (e.g., straw, plant litter, paper, vermiculite).

pallet. Portable, wooden platform used for storing or moving cargo or freight.

pathogen. Organism that is capable of causing disease in a particular host or range of hosts. Obtains its nutrients wholly or in part from another living organism (e.g., microorganism such as a bacterium or fungus).


polished rice. Rice that has had the hulls removed, and most of the bran and starch cells rubbed off and screened out.

processed seed. That which has been subjected to any degree of alteration beyond harvesting, e.g., cracked corn.

STEP 4 – FOLLOWING THE PROPER PROCEDURES FOR CRACKED CORN

Once we concluded that cracked corn is processed seed, we reviewed the MPPM to determine admissibility. Table 3-36 of the MPPM lists the course of action, without regard to origin or country of harvest of the raw inputs, for cracked corn as "INSPECT and RELEASE".

Table 3-36 Grains locator¹

If:	And is:	Then:
Beans, peas, and lentils		SEE Table 3-127
Corn ²	Fodder, silage, or stover (stems and leaves) harvested in Canada	SEE Table 3-37
	Fodder, silage, or stover harvested in a country other than Canada	SEE Table 3-38
	Ears of corn, shucked or unshucked	SEE Table 3-39
	Corn products and by-products of grain milling (e.g., cornmeal, cracked corn, grits, oil, samp, and starch)	INSPECT and RELEASE ³

We are confident that an analyses of our sample in accordance with USDA cracked corn determination guidelines will confirm that our shipment is in fact cracked corn and therefore admissible.

What is the process to have our sample re-evaluated?

Since last fall you both have been very helpful in assisting us with this import program. Our goal has been compliance and transparency with your office and hope you'll agree we have lived up to that. As always, your assistance and insights are greatly appreciated.

Regards,
Mike

Michael Corbett

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From: SULTAN, OMAR [mailto:OMAR.SULTAN@cbp.dhs.gov]
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Subject: Mountpark

Good day,

As discussed, please see attached EANs.

Thank you,

Omar Sultan
 Supervisory CBP Agriculture Specialist
 U.S. Customs and Border Protection

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