

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL COMPLAINT

YONG XIANG YAN
(a/k/a "Nonstop Smoker," a/k/a "NSS")

CASE NUMBER:

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. From in or about March 2005 to in or about February 2008, in the Northern District of Illinois, and elsewhere,

the defendant conspired and agreed with others known and unknown to commit offenses against the United States, namely, to knowingly and fraudulently import and bring into the United States merchandise, namely, honey, contrary to law, in violation of Title 18, United States Code, Section 371.

I further state that I am a Special Agent with the United States Department of Homeland Security, Immigration and Customs Enforcement (ICE) and that this complaint is based on the following facts:

See attached affidavit of Special Agent Michael A. Schuster

Continued on the attached sheet and made a part hereof: X Yes No

Signature of Complainant

Sworn to before me and subscribed in my presence,

May 5, 2009

at Chicago, Illinois

Date

City and State

Magistrate Judge Maria Valdez

Name & Title of Judicial Officer

Maria Valdez

DECLARATION OF IMMIGRATION AND CUSTOMS ENFORCEMENT

I, Michael Schuster, declare as follows:

1. I am a Special Agent with the United States Department of Homeland Security, Immigration and Customs Enforcement (“ICE”), and have been so employed for approximately three years. Before that, I was an Officer with the United States Customs and Border Protection beginning in 2002. I am currently assigned to the Commercial Fraud Unit and I am responsible for investigating violations of federal law relating to, among other things, the importation of merchandise into the United States that constitutes adulterated food product or that has been presented to a United States customhouse for acceptance through the use of false and fraudulent documentation or practices concerning the origin of the merchandise.

2. The information contained in this Affidavit is provided for the sole purpose of providing probable cause for the arrest of YONG XIANG YAN (a/k/a “Nonstop Smoker,” a/k/a “NSS”) for the offense of conspiring with others known and unknown to commit offenses against the United States, namely, to knowingly and fraudulently import and bring into the United States merchandise, namely, honey, contrary to law, in violation of Title 18, United States Code, Section 371.

3. YAN is the Chairman of the Board of Changge City Jixiang Bee Product Co. Ltd. (hereafter referred to as “Jixiang”), which is a honey manufacturer located in Henan, China, and directed and facilitated the scheme described below.

4. The information set forth in this declaration is based on my personal knowledge as well as information obtained from, among other sources, other law enforcement officers and governmental agencies, public records and computer database searches, witness and informant

interviews, and documents and records seized during the execution of search warrants. Because this declaration is submitted for the limited purpose of establishing probable cause for the arrest of YAN, this declaration does not set forth everything I know or that has been compiled concerning this investigation.

BACKGROUND

5. The government is investigating Alfred L. Wolff, Inc. and other related corporate entities and affiliates (collectively “ALW”) for violations arising from the importation of honey into the United States. These violations include, but are not limited to, ALW: (a) fraudulently and knowingly importing and bringing into the United States merchandise, namely honey, contrary to law, in violation of Title 18, United States Code, Section 545; and (b) introducing and delivering for introduction into interstate commerce, with intent to defraud and mislead, a food that is adulterated, namely honey containing antibiotics including Chloramphenicol, Ciprofloxacin and Norfloxacin, in violation of Title 21, United States Code, Sections 331(a) and 333(a)(2); and conspiring with others known and unknown to commit these offenses, in violation of 18 United States Code, Section 371.

6. ALW is the food ingredients component of the Wolff & Olsen group of companies. Wolff & Olsen maintains its headquarters in Hamburg, Germany. Wolff & Olsen, through ALW, is a worldwide distributor of, among other food products, honey and honey-based products and derivatives. Through February 2009, ALW maintained a satellite office in Chicago, Illinois. ALW’s Chicago Office was ALW’s operational base in the United States. ALW, at least in part through its Chicago Office, imported substantial quantities of honey into the United States. Between 2005 and 2008, it is believed that ALW’s Chicago Office imported

nearly \$30 million of honey into the United States.

Importation of Merchandise Into the United States - General Procedures

7. The section of the Department of Homeland Security known as Customs and Border Protection (“CBP”) is responsible for, among other things, the examination of merchandise brought into the United States to ensure that it is admissible and in compliance with United States laws, and the assessment and collection of duties, taxes and fees on imported merchandise.

8. An importer such as ALW or its designated agent must file entry documents with CBP concerning the merchandise. See 19 U.S.C. § 1484. The entry documents, such as Customs Forms 3461 and 7501, must provide specific information relating to the imported merchandise. The merchandise is not considered to have legally entered into the United States until the shipment has arrived at the port of entry, CBP has authorized its delivery, and the importer or its agent has taken custody of the merchandise. An importer’s agent, or customhouse broker, normally has power of attorney for the importer and completes the entry documents based on information provided by the importer.

9. A Customs broker enters information about all shipments entering the United States, including those entering through Chicago, into a computer system known as the Automated Commercial System (“ACS”). ACS targets a certain percentage of merchandise for physical inspection and examination. If no physical examination takes place, however, a CBP official reviews the entry documents and any ACS-based data to determine whether the documentation is complete and in order. The CBP official relies on the truth and accuracy of this information to determine whether to approve the entry of the merchandise into the United

States. The CBP official, upon approval of the merchandise, signs Customs Form 3461 in order to release of the shipment into commerce. The execution of Customs Form 3461 is called a “general entry.” When physical examination does not occur, the CBP official’s determination regarding the release of a shipment into commerce is based on the truth and accuracy of the information contained in the entry documents and the data entered into ACS concerning importation.

10. There are different tariff codes assigned in order to identify the type of product being imported into the United States. One such tariff code number an importer can use is 0409.00.0044 on Customs Form 3461 or other entry documents for shipments containing honey into the United States.

Anti-Dumping Duties

11. Anti-dumping duties are assessed on imported merchandise that is sold, or is likely to be sold, in the United States at less than fair market value in order to offset the advantage acquired by certain imported merchandise over competing United States goods. The duties are designed to stop or deter importers from “dumping” merchandise at below cost in the United States for the purpose of grabbing market share by driving domestic manufacturers out of the market.

12. The United States Department of Commerce (“Commerce Department”), the International Trade Administration (“ITA”), and CBP each enforce various aspects of anti-dumping laws. The Commerce Department, for example, determines whether merchandise is sold at less than a fair market value and the amount of duties that must be assessed. The ITA determines if imports are injuring a United States industry. CBP, in turn, assesses and collects

the duties once the Commerce Department and the ITA have made the necessary determinations.

13. The Commerce Department and ITA have determined that anti-dumping duties should be imposed on the importation of honey from the People's Republic of China. The default duty rate has varied over the last several years, but has ranged, with some limited exceptions, from 183.80% to 221.02% to \$2.06/KG for Chinese-manufactured honey imported into the United States.

Evidence Supporting Probable Cause for Arrest

14. On or about February 12, 2008, ICE agents received information alleging that ALW of Chicago, Illinois, was declaring on the entry documents submitted to Customs and Border Protection ("CBP") that honey imported by the company was produced in Russia when in actuality the merchandise was produced in China. ALW, according to these sources, was falsely declaring the country of origin of the honey to be Russian in order to avoid high antidumping duties imposed on honey of Chinese origin.

15. Based on the foregoing, on March 21, 2008, the Honorable Arlander Keys of this Court authorized a federal search warrant for the ALW Chicago Office located at 180 N. Wabash, Suite 401, Chicago, Illinois. The warrant authorized the search for evidence of the entry of goods into the commerce of the United States by false statements, in violation of Title 18, United States Code, Section 542, and the smuggling of goods into the United States, in violation of Title 18, United States Code, Section 545. As a result, ICE agents seized documents, electronic media, and other records from ALW's Chicago Office.

16. On June 2, 2008, the Honorable Sidney I. Schenkier of this Court authorized another federal search warrant for the ALW Chicago Office located at 180 N. Wabash, Suite

401, Chicago, Illinois. The warrant authorized the search for evidence of the entry of goods into the commerce of the United States by false statements, in violation of Title 18, United States Code, Section 542, and the smuggling of goods into the United States, in violation of Title 18, United States Code, Section 545. As a result, ICE agents seized documents, electronic media, and other records from ALW's Chicago Office.

17. As part of the government's investigation, on May 23, 2008, the government arrested Stefanie Giesselbach and Magnus Von Buddenbrock, both of whom at the time were employees in ALW's Chicago Office since the mid-to-late 2006.

18. Giesselbach and Von Buddenbrock were arrested pursuant to a criminal complaint that alleged that Giesselbach and Von Buddenbrock conspired and agreed with each other and with others known and unknown to commit the following offenses against the United States in violation of Title 18, United States Code, Section 371: (1) to knowingly and willfully, with intent to defraud the United States, make out and pass, and attempt to pass, through the customhouse false and fraudulent invoices and other documents relating to the importation of honey into the United States, in violation of Title 18, United States Code, Section 545; and (2) to introduce and deliver for introduction into interstate commerce, with intent to defraud and mislead, a food that was adulterated, namely, honey containing the antibiotic chloramphenicol, in violation of Title 21, United States Code, Sections 331(a) and 333(a)(2).

19. Giesselbach was the National Sales Manager for ALW's Chicago Office since approximately November 2006. Giesselbach was responsible for ALW's purchase, importation, and sale of honey in the United States. Von Buddenbrock was relocated to ALW's Chicago Office in approximately September 2006 and became the General Manager of that Office in

approximately August 2007. As the General Manager, Von Buddenbrock was responsible for the operations of the entire ALW Chicago Office.

20. Since their arrests, Giesselbach and Von Buddenbrock have been cooperating with the government's investigation of ALW. Giesselbach and Von Buddenbrock have each described an elaborate scheme to defraud the United States by importing honey in violation of various United States statutes and regulations, including those set forth above, for the purpose of avoiding significant antidumping duties on the importation of Chinese honey. ALW executed this scheme, in relevant part, by transshipping honey originating from China to third countries such as the Philippines, Indonesia, and South Korea, where the honey was relabeled as originating from countries other than China (and for which U.S. antidumping duties are not imposed), with eventual destination to the United States. As part of the scheme, ALW and others used - and submitted to the U.S. customhouse - fraudulent invoices and shipping documents. ALW executed this scheme to conceal that the honey's actual country of origin was China, thereby avoiding U.S. antidumping duties.

21. Von Buddenbrock has specifically identified the Philippines as one country where the transshipment scheme was utilized by ALW. As part of the scheme's execution, Chinese-originating honey would be purchased by ALW (or on behalf of ALW) and shipped to the Philippines, where the honey containers would be relabeled as originating in the Philippines, before being shipped to their final destination in the United States.

22. In particular, Von Buddenbrock described a private meeting in or about April 2007, between Von Buddenbrock and a top ALW executive ("Individual A"), which occurred in Chicago, Illinois. The meeting was intended, at least in part, to introduce Von Buddenbrock to

the transshipment scheme, and to pass down the institutional knowledge about that scheme to Von Buddenbrock, who took over ALW's U.S. operations several months later. At this meeting, Individual A revealed to Von Buddenbrock that ALW was transshipping Chinese-originating honey with false documentation and that one such transshipping country was the Philippines. Von Buddenbrock began to take notes at this meeting, but was instructed to stop. Von Buddenbrock was also instructed not to discuss the substance of the conversation with others.

23. As part of the government's investigation, I have reviewed emails between ALW personnel in Chicago, and ALW's affiliated supplier/representative in China, *i.e.*, Individual B, that corroborate the information provided by Von Buddenbrock in the preceding paragraph. Those emails also demonstrate that YAN a/k/a "Mr. Nonstop Smoker" was transshipping honey from China through the Philippines, to the United States.

24. For example, in one email dated March 6, 2005, three ALW executives, Individual A, Individual C, and Individual D, were sent information from ALW's affiliated supplier/representative in China, Individual B. At the time, both Individuals A and C were employed by ALW in Chicago. The email contains the subject line "the Philippines" and states:

Dear [Individual A and Individual B],
Mr. non-stop smoker is planning to use a trading house to export h. [*i.e.*, honey] to the USA. He asked that he wants to have a his own private account (in the Philippines) to receive the money if he could sell the material.
Do you have interesting and can accept the payment to a private account?

25. On March 14, 2005, Individual C responded to Individual B, with a carbon copy to Individual A and Individual D. The subject line still read "the Philippines" and in the email Individual C stated that he/she would "try to sell the goods" and inquired into the delivery date for the shipment. In the text of the same email, Individual C stated that "we do not want the

same troubles as we had with Indonesian Honey.”

26. On March 28, 2005, Individual B responded to the foregoing email to Individual A, Individual C, and Individual D, in which he/she stated:

Now it is urgent.

The goods left here to the Philippines. We can get ETD [i.e., estimated date of delivery] from the Phi. in 15-20 days. It takes abt 20 days from there to Los Angles, and abt 27 days to New York.

That means, this 4 FCL [i.e., full container load] ETD is in April, ETD before the end of May to Chicago and New York.

Could you please buy it and try to help us out for one more new way?

We have asked for the samples as well and will inform the refered info asap.

27. As part of the government’s investigation, I have reviewed purchase orders, shipping records, and payment records issued by the ALW Chicago Office for three shipments of Chinese honey that were transshipped and relabeled through the Philippines, bearing the purchase order dates of March 29, 2005 (one day after the immediately foregoing email, in which Individual B said this shipment was urgent), July 1, 2005, and July 18, 2005. These three shipments totaled approximately 15 full container loads and had a combined purchase order value of \$320,000 US. Had this been imported lawfully and antidumping imposed, those additional duties would have totaled in excess of 221% of the declared value.

28. I have also reviewed a visa application for YAN that was issued by the United States State Department, September 7, 2007 for travel to the United States, which expired September 6, 2008.

29. I have also reviewed an email dated November 18, 2007, from Individual B to Giesselbach, with a carbon copy to Individual E, Individual F, and Von Buddenbrock. The subject line of the email was entitled “visit of Mr. Yan Yong Xiang to Chicago, famous Mr. Non stop smoker” and the email states:

Mr. NSS [i.e., Nonstop Smoker] is taking the provincial delegation to visit the US. Their group will be Chicago. Time duration is 16:00 on Nov. 22nd - 12:00 on Nov. 23rd. They have only one interpreter for the group, think that it is difficult to have this person for translation.

Suggest, hope it is fine for you:

You meet him on Nov. 23rd in the morning.

He can take taxi to go your office at abt. 09:00 am and but, maybe you can find somebody who can make translation?

Topic: we do not say that he is shipping the fake stuff. But we can tell him that he should be careful on this topic + antibiotics.

Check his capacity of supplying still, but we do not hell him our biz too much to him, e.g., via G.S. or Sweet Works and or Mr. Anand. .

Mostly, he would talk that he could do the Philippines again. But, there, you can tell that he should talk with M.B. and myself. (Emphasis added).

30. As part of my continuing investigation, I have conferred with ICE agents in the Western District of Washington and have learned that Jixiang was importing full container loads of Chinese honey into the port of Seattle fraudulently labeled as having originated in Thailand as recently as February 15, 2008. On April 28, 2008, ICE agents seized these containers pursuant to a warrant issued by the Honorable James P. Donohue of the United States District Court for the Western District of Washington.

YAN'S Recent Arrival into the United States

31. According to United States Department of State, Bureau of Consular Affairs records, on March 31, 2009, YAN was issued a Non-Immigrant visa to enter the United States. YAN indicated on his application that he is one of four from a bee company traveling to the United States for "tourism." YAN listed his occupation as President of Jixiang. A redacted portion of his application, including his photograph, is attached to this Affidavit as Exhibit 1.

32. On May 3, 2009, YAN arrived at LAX International Airport in Los Angeles, California, aboard flight Korean Air flight 17.

33. As part of the government's ongoing investigation, I have learned that YAN is

scheduled to depart LAX airport in Los Angeles for Denver, Colorado at 7:19 a.m. on May 6, 2009.

34. Based on the foregoing, I respectfully submit that there is probable cause to believe that YONG XIANG YAN conspired in violation of Title 18, United States Code, Sections 371, with others known and unknown to commit offenses against the United States, namely, to knowingly and fraudulently import and bring into the United States merchandise, namely, honey, contrary to law, in violation of Title 18, United States Code, Sections 545.

FURTHER AFFIANT SAYETH NOT.

Executed this 5th day of May, 2009.

Michael Schuster
Special Agent
Immigration and Customs Enforcement

Subscribed and Sworn to before
me this 5th day of May 2009

Maria Valdez
United States Magistrate Judge