

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

UNITED STATES OF AMERICA

v.

CRIMINAL COMPLAINT

HUNG TA FAN

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 July 2004 through in or about June 2006, 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 enter 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 Anne K. Armstrong

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

Signature of Complainant

Sworn to before me and subscribed in my presence,

March 12, 2010

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, Anne K. Armstrong, declare as follows:

1. I am a Special Agent with the United States Department of Homeland Security, Immigration and Customs Enforcement (“ICE”). I have been employed as a Special Agent with ICE and its predecessor agency, the United States Customs Service, since October 2002. I am currently assigned to ICE's 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 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 HUNG TA FAN, (a/k/a “MICHAEL FAN”) for the offense of conspiring with others, known and unknown, to commit offenses against the United States, namely, to knowingly and fraudulently import and enter into the United States merchandise, namely, honey, contrary to law, in violation of Title 18, United States Code, Section 371.

3. FAN is a citizen and national of Taiwan, Republic of China, and was the registered agent of multiple California-based honey import companies, including Blue Action Enterprise, Inc. (“Blue Action”); 7 Tiger Enterprises, Inc. (“7 Tiger”); Honey World Enterprise Inc. (“Honey World”); and Kashaka USA, Inc. (“Kashaka”) (all of which are collectively referred to herein as the “FAN Companies”). FAN utilized the FAN Companies to act as registered importers of record to import and enter Chinese-origin honey into the United States. Honey World and 7 Tiger are now dissolved.

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 agents and governmental agencies; public records, computer databases, and other 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 FAN, this declaration does not set forth everything I know or that has been compiled concerning this investigation.

BACKGROUND

5. Since about February 2008, the government has been investigating Alfred L. Wolff, Inc. and other related corporate entities and affiliates (collectively “ALW”) for violations arising from the importation and entry of honey into the United States. These violations include, but are not limited to, ALW: (a) fraudulently and knowingly importing and entering into the United States merchandise, namely honey, contrary to law, in violation of Title 18, United States Code, Sections 545 and 542; 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 and other offenses, in violation of 18 United States Code, Section 371.

6. ALW was the food ingredients component of the Wolff & Olsen group of companies. Through February 2009, ALW maintained a satellite office in Chicago, Illinois. Wolff & Olsen maintained its headquarters in Hamburg, Germany. Wolff & Olsen, through ALW, was a worldwide distributor of, among other food products, honey and honey-based products and derivatives. ALW’s Chicago Office was ALW’s operational base in the United States. ALW imported millions of

dollars of honey into the United States through its corporate managers, executives, and employees (collectively referred to hereinafter as “ALW Executives”).

7. During the government’s investigation into ALW and its criminal activities, the government learned that ALW, ALW Executives, FAN, and others, created, operated, and utilized shell companies to supply, ship, import, and enter Chinese-origin honey falsely declared as Korean, Taiwanese and Thai honey into the United States.

8. Specifically, between in or about July 2004 and June 2006, FAN and others utilized Blue Action and 7 Tiger to fraudulently import and enter into the United States approximately 96 entries of Chinese-origin honey falsely declared as Korean, Taiwanese, and Thai honey on behalf of and for the benefit of ALW having a total declared value upon entry of approximately \$4,591,740 and consisting of (i) 39 Korean entries with a declared value upon entry of approximately \$1,181,342; (ii) 55 Taiwanese entries with a declared value upon entry of approximately \$3,262,846; and (iii) 2 Thai entries with a declared value upon entry of approximately \$147,552, thereby avoiding antidumping duties otherwise applicable to Chinese-origin honey totaling approximately \$9,891,806.

Anti-Dumping Duties & the Importation of Merchandise Into the United States

9. In December 2001, the United States Department of Commerce (“DOC”) determined that Chinese-origin honey was being sold into the United States at artificially low prices and imposed “antidumping” duties on Chinese-origin honey. Between June 2004 and October 2005, antidumping duties on Chinese-origin honey ranged from approximately 212% to approximately 221% and thereafter Chinese-origin honey was subject to antidumping duties in the amount of \$2.06 per net kilogram through at least June 2006. Honey originating from South Korea, Taiwan, and

Thailand has not been subject to antidumping duties.

10. CBP was responsible for, among other things, the examination of merchandise entering the United States to ensure that it was admissible and in compliance with United States laws, and the assessment and collection of taxes, fees, and duties on imported merchandise, including antidumping duties. A customhouse broker or agent normally handled the process of entering goods into the United States on behalf of an importer, which included the filing of entry documents with CBP based on information provided by the importer. The proper functioning and process by which merchandise entered the United States was dependent on accurate and truthful reporting by those providing information at a United States customhouse.

11. CBP Forms 3461 (Entry/Immediate Delivery) and 7501 (Entry Summary) required importers to provide specific and truthful information relating to imported merchandise, including a brief description of the merchandise and the merchandise's manufacturer, value, and country of origin. The FAN Companies and their designated customhouse brokers or agents were required to file truthful entry documents with CBP concerning imported merchandise, including Chinese-origin honey. CBP officials relied on the truth and accuracy of this information to determine whether to approve the entry of the merchandise into the United States and to determine applicable duties owed to the United States.

12. There are different tariff classifications assigned to commodities imported into the United States. The tariff classifications for natural honey include 0409.00.0025, 0409.00.0042, 0409.00.0044, 0409.00.0062, and 0409.00.0064. Honey that entered the United States was required to be properly identified in CBP Forms 3461 and 7501 using applicable tariff classifications.

Evidence Supporting Probable Cause for Arrest

13. On or about February 12, 2008, ICE agents received information alleging that ALW was fraudulently importing and entering Chinese-origin honey as Russian-origin honey to avoid applicable antidumping duties imposed on honey originating in China.

14. Based on this information, 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 Avenue, 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.

15. 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 Avenue, 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. 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.

17. 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).

18. Giesselbach was the National Sales Manager for ALW's Chicago Office since approximately November 2006. Giesselbach was responsible for the purchase of bee products, including honey; the importation of honey into the United States, including maintaining relationships with customhouse brokers; and the sale of honey to United States customers. 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 ALW's Chicago Office, including contractual arrangements and importations regarding honey products.

19. As part of the government's investigation, on May 6, 2009, the government arrested a Chinese national and supplier of honey, Yong Xiang Yan, in Los Angeles, California on a criminal complaint out of the Northern District of Illinois. The complaint alleged that Yan conspired in violation of Title 18, United States Code, Section 371, with others, known and unknown, including

employees at ALW, 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 545.

20. On October 21, 2009, Yan pleaded guilty in federal court (09 CR 424; Judge Wayne R. Andersen) to conspiring to enter and cause to be entered by means of false and fraudulent statements and documents, goods into the United States, in violation of Title 18, United States Code, Sections 542 and 545.

21. Since their arrests, Giesselbach, Von Buddenbrock, and Yan have been cooperating with the government's investigation of ALW. Giesselbach, Von Buddenbrock, and Yan each have described a 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-origin honey.

22. ALW, ALW Executives, FAN, the FAN Companies, and others executed this scheme, in relevant part, by transshipping honey originating from China to third countries such as the Philippines, South Korea, Taiwan, and Thailand where the Chinese-origin honey was mislabeled as to its actual country-of-origin before importation into the United States. As part of the scheme ALW, ALW Executives, FAN, the FAN Companies and others submitted and caused to be submitted entry documents to a United States customhouse that falsely declared that Chinese-origin honey originated from a country other than China, thereby avoiding applicable antidumping duties. Giesselbach identified FAN and the FAN Companies specifically as being involved in fraudulently importing honey into the United States. Von Buddenbrock confirmed that Chinese-origin honey was being fraudulently imported into the United States as Taiwanese and Thai-originating honey on

behalf of and/or for the benefit of ALW, and a review of ALW records confirmed that ALW purchased so-called Taiwanese and Thai honey from FAN and the FAN Companies.

23. As part of the government's investigation, ICE agents reviewed purchase order 660, dated March 17, 2005, between ALW and Blue Action, which obligated Blue Action to deliver 200 full container loads of Taiwan White Honey, at a total purchase price of approximately \$4,572,000. This was one of several purchase orders executed between ALW and Blue Action.

24. As part of the government's investigation, ICE agents have reviewed emails between FAN and ALW Executives, in addition to internal emails among ALW Executives, which described and memorialized discussions held between ALW Executives and FAN. These emails corroborated Giesselbach's identification of FAN and the FAN Companies as being involved in fraudulently importing and entering Chinese-origin honey into the United States. These emails also support a probable cause finding that FAN conspired with others, known and unknown, to fraudulently import and enter Chinese-origin honey into the United States to avoid applicable antidumping duties.

25. As part of the government's investigation, Giesselbach was recently shown emails concerning FAN. As a member of the honey smuggling conspiracy, Giesselbach interpreted the content of the emails based on her inside knowledge of – and training and involvement in – the conspiracy and the manner and means in which the conspiracy was executed.

26. Specifically, in one internal ALW email containing the subject line "visit preparation," dated August 4, 2005, ALW Executives located in the United States, Hong Kong, Beijing, and Mexico corresponded with one another, with ALW United States Executive 1 stating in relevant part:

[ALW Hong Kong Executives 1 and 2 and ALW Beijing Executive 1],

Attached, please find spreadsheets showing PO [*i.e.*, purchase order]-history with Blue Action including pending POs and how they would need to be shipped to arrive in time.

PO 660 is our “problem-PO” (marked in red). The shipping schedule for replacement and pending FCLs is on a separate sheet. . . .

3. - CAP [*i.e.*, Chloramphenicol] in first FCL [*i.e.*, full container load] (PO 544) was heavily contaminated (8.0!!) [*i.e.*, parts per billion] - customer rejected, no replacement was required; CAP is now tested by BA [*i.e.*, Blue Action], we get COA [*i.e.*, certificate of analysis] with results from Chinese lab (example to be faxed to you). No further CAP problems after that.

- late shipments: all shipments since April 2005 ex Taiwan were delayed. BA [*i.e.*, Blue Action] caught up, but unfortunately with adulterated material only.

Please find out about:

- capabilities of new mainland-supplier. . . .

- taste should be better than regular mainland material (as per original Taiwan material). If this cannot be achieved, we could live with it. Taiwan origin is more important.

BUT: please try to find out what exactly they mixed in Taiwan [sic] to obtain “special flavor” (similar to chaste honey) and if they intend to do the same at new factory!. . . .

- Please ask BA [*i.e.*, Blue Action] about possibilities of other origins (Korea, Malaysia, India) to fulfill balance of contract. We can use every origin EXCEPT CHINA to ship against PO [*i.e.*, purchase order] 660. . . .

GOOD LUCK YOU GUYS, and THANK YOU AGAIN for helping us out!! While you’re on the plane, please think about alternatives to BA [*i.e.*, Blue Action] to fulfill contract (India???)

27. On August 8, 2005, ALW Hong Kong Executive 1 replied to the above email, including the same distribution list of ALW Executives as well as other others, stating in relevant part:

Dear [ALW United States Executive 1],

First of all many thanks for all the work which you have put in your summery [sic] with Michael [*i.e.*, FAN]. It really helped us during our discussions with him.

Please be so kind as to note my summery [sic] of our discussions:

1.) First we have visited a warehouse where the factory has stored 2000mt [*i.e.*, metric tons] already produced honey. The different grades and qualities remained unknown to us. Good thing about this is that they have a certain buffer. . . .

3). The general crop situation is difficult for substantial quantities of white colored honey. Your product from the island [*i.e.*, Taiwan] consists of Rape and Vitex honey and the rape honey (the cheap stuff) is over and Vitex crop is going to be finished soon.

4). Than [sic] we have arrived in the hotel and could finally discuss the important matters:

a. I have started the conversation by explaining to Michael [*i.e.*, FAN] everything about honey, critical USA parameters (Color, CAP, NF and C13) [*i.e.*, respectively, Chloramphenicol, Norfloxacin, and a natural, stable isotope of carbon], that he has to control the factory by taking his own samples and get them tested I have furthermore informed him that if he has any difficulties that he can contact either you or me and that we can help if we know about his difficulties in time. I have even offered him that he can buy honey from me, as we know the business very well. Basically I have tried to increase his awareness and knowledge about quality matters, as well as some matters of how to bring financial security into his business. I had the impression that he appreciated that very much and now we have to see what he will do.

b. Than [sic] we have discussed order [*i.e.*, purchase order number] 660 and 668. He [*i.e.*, FAN] is going to use standard drums which are originally painted black. My opinion not perfect, but it should do it. . . . The lead time is about 37 days to Los Angeles.

c. Assuming that Michael's [*i.e.*, FAN's] system on the island [*i.e.*, Taiwan] is ok, I believe he has no major difficulties in transporting the goods. How this is done I can explain to you on the phone. Honestly spoken I have been impressed by the logistical possibility, which he has found. . . .

28. Although Giesselbach was not included on this email, Giesselbach read the email and understood it to mean that FAN's honey-smuggling "system" involved FAN shipping or causing the shipment of Chinese-origin honey from a factory in China, to Taiwan, for ultimate destination to the United States, where it would be entered as a product of Taiwan. Specifically, Giesselbach explained that the email's reference to "mainland" referred to China and that "mainland-supplier" and "mainland material" referred to Chinese-originating honey.

29. Giesselbach further explained that "Vitex," was a pollen source which Giesselbach described as "uniquely" – although not necessarily exclusively – Chinese in origin. Giesselbach stated that Vitex emits a "sauerkraut-like" odor and taste in honey if the honey is harvested too early. Giesselbach also explained that the statement, "taste should be better than regular mainland material," referred to early-harvested Vitex pollen source used in Chinese-origin honey, and that when the co-conspirator referred to mixtures producing a "special flavor similar to chaste honey" the conspirators were referring to FAN adding sugars, syrups, or other similar products to the Chinese-origin honey while the honey passed through Taiwan, so as to blend off any pungent Vitex flavor and taste in the Chinese-originating honey. Giesselbach found significance in the fact that 37 days were allocated for the honey to arrive in the United States, causing Giesselbach to conclude that the mixing of sugars, syrups, or other products occurred in Taiwan.

30. Giesselbach was categorical that the statement "we can use every origin EXCEPT CHINA" was code language commonly used by ALW Executives and meant that the honey being discussed was in fact to be Chinese in origin, but not declared as such upon its importation into the United States. Giesselbach explained that the capitalization of the words "EXCEPT CHINA" was a technique sometimes used by ALW Executives in their communications with one another to ensure

that China would not be listed on shipping, import, and customs documentation or contracts or other paperwork with customers. Giesselbach further explained that by inserting capitalized words in their communications, ALW Executives sought to emphasize falsely that they were not in the business of purchasing Chinese-origin honey declared as non-Chinese in origin – when in fact they were – and sought to create paperwork that they could present to United States government officials if honey was seized or questioned during its importation in to the United States.

31. Furthermore, Giesselbach explained that green-colored drums are often – although not necessarily always – associated with Chinese-origin honey, and, therefore, that ALW Hong Kong Executive 1’s comment that “He [*i.e.*, FAN] is going to use standard drums which are originally painted black. My opinion not perfect, but it [*sic*] should do it . . .” meant that use of black-colored drums was another technique to be used by FAN to conceal the honey’s true Chinese origin.

32. As part of the government’s investigation, ICE agents reviewed an email sent by FAN via a Blue Action email address to ALW United States Executive 2, containing the subject line “PO660 (82-93),PO688(1-6) 18 FCL .PAC,” and dated September 21, 2005. The email attached eight certificates of origin that purported to be issued by the Chamber of Commerce of Taichung City, Taiwan and that certified that the honey identified in the certificates originated in Taiwan. But the certificates had blank fields for the exporter’s name and address, thereby suggesting that the certificates were non-authentic and would be fraudulently completed.

33. On or about January 3, 2006, FAN was interviewed by CBP due to irregularities that appeared to be associated with Blue Action’s and Honey World’s importation of honey into the United States. During that interview, FAN stated that Blue Action and Honey World only imported

honey and that in 2005, Blue Action and Honey World imported approximately 40-50 containers of honey into the United States and that most of the honey imported by these companies was sold to ALW of Chicago, which he identified as a Blue Action/Honey World customer. FAN described ALW as a “wholesaler” of honey and stated further that Blue Action and Honey World do not take physical possession of imported merchandise, but rather delivered the merchandise as directed by ALW. FAN stated further that most of the honey was delivered to Chicago, with lesser amounts delivered to other United States cities. During this interview, FAN claimed that ALW does not like Chinese honey due to quality issues. FAN further stated that he was aware that higher duties were owed on Chinese-origin honey.

34. As part of the government’s investigation, ICE agents reviewed an internal ALW email containing the subject line “a few items,” and dated April 16, 2006, in which Hong Kong Executive 2 wrote to ALW United States Executives 1 and 2, in addition to ALW’s worldwide Chief Executive Officer, stating in relevant part:

50 FCL [*i.e.*, full container loads] from Michael [*i.e.*, FAN], India White drums [*i.e.*, honey declared as Indian origin upon importation into the United States] . . . from the FACTORY, but need to be confirmed during our meeting with Michael [*i.e.*, FAN] on Wednesday, payment for you [*i.e.*, Gerkmann and Marten] 50% - 100% against docs from [a honey company representative in India]....

35. Giesselbach was not included on this email, but Giesselbach read the email and explained that the word “FACTORY” in capital letters was often used by ALW Executives in their communications with one another to refer to a Chinese factory producing Chinese-origin honey. Giesselbach explained that when ALW Executives, including those in the preceding email, were discussing legitimate honey factories, for example, factories in Brazil or Argentina, no efforts would be made to conceal the factory’s name or geographical origin.

36. In another ALW internal email, containing the subject line “Meeting with Michael [*i.e.*, FAN] and the factory,” and dated April 19, 2006, ALW Hong Kong Executive 2 wrote to ALW United States Executives 1 and 2, with a courtesy copy to ALW’s worldwide Chief Executive Officer and ALW Beijing Executive 1, stating in relevant part:

Today we had a meeting with Michael [*i.e.*, FAN] and the factory in Shanghai.

Main subject of this meeting has been the 50 FCL [*i.e.*, full container loads] which Michael [*i.e.*, FAN] / the factory offered for 850 USD/mt FOB [*i.e.*, \$850.00 per metric ton of honey at a ‘Free on Board’ price].

The factory informed that the crop in Jiangsu province has been nearly 0 and stopped already due to bad weather conditions. For them [*i.e.*, the factory in China] it is difficult to get material [*i.e.*, raw honey] now and the traders they [*i.e.*, the factory] could buy from keep the honey in their hand to see how the prices develop and to get a higher price. . . .

To show their [*i.e.*, the factory in Shanghai] good will they offered 6 FCL [*i.e.*, full container loads] old crop for USD 900/mt FOB [*i.e.*, \$900.00 per metric ton of honey at a Free on Board price]. This would lead to a price of USD 1355/mt CFR from [a honey company representative in India] [*i.e.*, \$1,355.00 per metric ton of honey at a ‘Cost and Freight’ to a named destination port price].

37. On April 20, 2006, ALW Beijing Executive 1 replied to the foregoing email stating in relevant part:

Pls [*i.e.*, please] urgently buy this 6 FCL [*i.e.*, full container loads] from MF’s [*i.e.*, FAN’s] fcty [*i.e.*, factory]. And I know it is cheap and good will price.

38. Giesselbach was not included on this email, but Giesselbach read the email and explained that the phrase “factory in Shanghai” was a reference to a honey-producing factory in Shanghai, China. Giesselbach further stated that “the crop in Jiangsu province” is a reference to Chinese-origin honey from the Jiangsu province – or region – in China. Giesselbach stated further that quoting the price of approximately \$1,355 per metric ton of honey was indicia that FAN discussed with ALW Executives shipping Chinese-origin to India, where it would then be made

export-ready for shipment to the United States as Indian-origin honey. ICE agents searched the internet using the terms “Shanghai” and “Jiangsu province,” and found no results of cities and/or provinces named Shanghai and Jiangsu, respectively, other than in China.

39. In yet another internal ALW email, containing the subject line “status & various scenarios PO 660,” dated April 24, 2006, ALW Mexico Executive 1 wrote to ALW United States Executives 1 and 2, ALW’s worldwide Chief Executive Officer, and ALW Hong Kong Executive 2, ALW Beijing Executive 1, including the text of an email from ALW United States Executive 1, where the email stated:

Good morning [ALW worldwide Chief Executive Officer],

As announced, here’s an analysis of our PO 660 showing the current status of the PO and three scenarios (worse case, medium case, best case).

Please accept for today that this is only preliminary based on the facts that I was able to gather from paperwork and data available without [ALW United States Executive 2] being here to contribute additional info. This filw will be updated as we learn more and develop additional thoughts and ideas. . . .

Here’s some additional info/explanation:

1. Michael Fan (MF) has three companies (Blue Action Enterprise, Honey World Enterprises, 7 Tigers Enterprises) to import his material from various origins. We assume that BA [*i.e.*, Blue Action] is on the watchlist, HW [*i.e.*, Honey World] was the company he used for the 27 KORw34 [*i.e.*, Korean White honey] that were rejected, 7T [*i.e.*, 7 Tiger] has imported 1 FCL [*i.e.*, full container load] of THAIw34 [*i.e.*, Thai White honey] without any problems so far.

2. MF [*i.e.*, FAN] claims to be in possession of 54 FCLs [*i.e.*, full container loads] total of w34 honey sitting in various origins (Thailand, Korea, Indonesia). We have no evidence if this is true or not, but we believe him at this time. We have asked for Bs/l [*i.e.*, bills of lading] as soon as he ships those loads into the US.

3. Currently, MF [*i.e.*, FAN] has 6 FLCs [*i.e.*, full container loads] KORw34 pending clearance in Chicago (authorities are checking samples for origin determination). A recent similar case was successful, 3 FCLs [*i.e.*, full container loads] were released after testing. . . .

7. Alternative origins:

- Malaysia: According to ALW Hong Kong Executive 2 and Beijing Executive 1], this country is difficult to deal with at this time. We have to assume that we will get no material from there. Also too expensive.

- India: Too expensive.

- Mongolia/Russia: Due to late and currently low crop and the following price increases, this option is also out at this time. This also applies to all other origins, of course! We can only hope for an increase in volume only if the weather in Asia gets better very soon. . . .

- Indonesia: pending contract of 40 FCLs [*i.e.*, full container loads] still valid and likely to be shipped from Indo-vendor. However, at higher prices and later than expected. If we use this product against PO 660, we will incurr [sic] a loss depending on the actual purchasing price. . . .

[ALW worldwide Chief Executive Officer], please do not think that we do not treat this major issue seriously because we do. The odds are against us, and especially the bad crop in Asia creates additional headache.

40. On or about May 10 and 11, 2006, CBP seized 384 drums of Chinese-origin honey associated with purchase order 660 that had been falsely declared as Korean-origin honey by 7 Tiger – an entity operated by FAN – upon importation into the United States and which had been detained by CBP prior to seizure. The seizures were assigned unique CBP identifying numbers 2006390100045201, 2006390100045401, and 2006390100045601. An attorney acting on behalf of FAN and 7 Tiger petitioned CBP for the mitigation of any fines and penalties to be levied against FAN and/or 7 Tiger and sought permission for FAN to export the goods from the United States. Before the final disposition of the seizures, the attorney withdrew her representation of FAN and/or 7 Tiger and the goods were forfeited without contest.

41. In an internal ALW email, containing the subject line “Loesungmoeglichkeiten,” which is German for “solution possibilities,” and dated May 3, 2006, ALW United States Executive 2 wrote to United States Executive 1, Giesselbach, and ALW Executives in Germany and Hong

Kong, including ALW's worldwide Chief Executive Officer and stated in relevant part in German:

Unofficial Translation¹

To start the morning with some bad news – Yesterday the American Customs [*i.e.*, CBP] seized 6 FCL [*i.e.*, full container loads] of kor.w34 [*i.e.*, Korean White honey] in Chicago. We [*i.e.*, ALW] do not exactly know what this means. Surely this honey will not be available and I doubt more and more that our supplier MF [*i.e.*, FAN] can or will ever be able to get a single FCL [*i.e.*, full container load] into the United States. This [*i.e.*, the seizure] does not make the matter any easier. I request that all recipients not to write email about this topic. Please [discuss everything] OVER THE TELEPHONE and in German! Thank you!

42. Giesselbach explained that she was working for ALW in Germany when she received the foregoing email. She also relayed that the email concerned the seizure of Chinese-origin honey referenced in Paragraph 40. Giesselbach further explained that as a result of the seizure, ALW and ALW Executives became less confident in FAN's ability to successfully import and enter Chinese-origin honey using fraudulent means and began to view FAN as a potential liability.

43. Giesselbach stated further that ALW United States Executive 2 created a binder consisting of FAN-related material dubbed the "FAN File," which was created after CBP seized Chinese-origin honey from FAN and 7 Tiger as discussed in Paragraph 40. Giesselbach explained that the FAN File contained documents that would appear to show United States government officials that ALW and ALW Executives were not involved in a conspiracy with FAN and the FAN Companies to fraudulently import and enter Chinese-origin honey into the United States, when in fact ALW and ALW Executives were in involved in such a scheme with FAN and the FAN Companies. As part of the cover up, Giesselbach learned from others that ALW United States Executive 2 destroyed and otherwise deleted both internal ALW documents and emails and emails

¹ The translation provided herein is preliminary and not final.

between ALW Executives and FAN that reflected and discussed the honey smuggling conspiracy.

44. Giesselbach reported that ALW's worldwide Chief Executive Officer referred to FAN as a "beginner" and that because of FAN's inability to successfully carry out the fraudulent importation scheme without detection (as reflected in multiple CBP seizures of FAN's honey) – and because of other problems with FAN's honey that complicated ALW's ability to fulfill sales contracts with United States customers, including the fact that some of FAN's honey tested positive for prohibited antibiotics and was otherwise economically adulterated with sugars or other similar substances – ALW's worldwide Chief Executive Officer implemented a new policy in which his review and approval was required for purchase orders in excess of approximately \$1 million involving ALW's Chicago Office.

45. Giesselbach also told ICE agents about a meeting in late 2006 involving FAN, Giesselbach, Von Buddenbrock, and ALW United States Executive 1 and which occurred at ALW's Chicago Office. Giesselbach stated that the meeting was organized by ALW United States Executive 2 (who had already returned back to Germany) and was held before ALW United States Executive 1 returned back to Germany. The subject of the meeting was how FAN would be able to restore ALW's confidence in his ability to supply ALW with what was understood to be Chinese-origin honey, adding that much of FAN's previous shipments were either seized or economically adulterated to the point where they were not considered true honey, or were contaminated with banned antibiotics in foodstuffs. Giesselbach explained that FAN offered ALW honey that he stated would be declared as non-Chinese in origin when imported into the United States.

46. Von Buddenbrock has specifically identified Taiwan and Thailand as two countries 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 from China to another country, where the honey would be mislabeled as originating in Taiwan or Thailand, before being shipped to its final destination in the United States.

47. In particular, Von Buddenbrock described a private meeting in or about April 2007, between Von Buddenbrock and ALW United States Executive 1, 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 United States operations several months later. At this meeting, ALW United States Executive 1 revealed to Von Buddenbrock that ALW was transshipping Chinese-originating honey with false documentation and that two such transshipping countries were Taiwan and Thailand. 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.

48. As part of the government's investigation, ICE agents interviewed FAN on February 19, 2009 and April 1, 2009. During his interviews, FAN claimed that he had sourced the honey that was the subject of the CBP seizures discussed in Paragraph 40 from a Korean honey supplier he identified as Twins Trading. FAN stated that his point of contact at Twins Trading was a Mr. Kim. FAN stated that after CBP seized the honey, he confronted Twins Trading by telephone about the origin of the subject honey and was told that the honey originated from China. FAN disclaimed knowledge of the Chinese-origin of the honey prior to importation and entry into the United States. FAN admitted, however, that he sent payments for the honey prior to it being seized to a company located in China.

49. FAN also told ICE agents that he created Honey World on the advice of ALW United States Executive 2, who told FAN that a high volume of imports by a single company would be noticed by CBP. FAN also stated that he acted upon additional advice provided to him by an employee of the FAN Companies, who advised FAN that he should import into the United States using multiple companies to avoid added scrutiny and attention by CBP and that this advice was seconded by ALW Executives in at least one in-person meeting with FAN.

50. Based on the foregoing, I respectfully submit that there is probable cause to believe that HUNG TA FAN 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 enter 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 12th day of March, 2010.

Anne K. Armstrong
Special Agent
Immigration and Customs Enforcement