

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA        )  
  )  
  )        No. 09 CR 424  
  )        Judge Wayne R. Andersen  
  )  
  )  
YONG XIANG YAN                    )

**PLEA AGREEMENT**

1.       This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant YONG XIANG YAN, and his attorney, NATHANIEL K. HSIEH, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure, as more fully set forth below. The parties to this Agreement have agreed upon the following:

**Charge in This Case**

2.       The information in this case charges defendant with conspiracy to defraud the United States and to commit offenses against the United States, to wit: Entry of Goods into the United States by Means of False Statements, in violation of Title 18, United States Code, Section 542, and Smuggling Goods into the United States, in violation of Title 18, United States Code, Section 545, all in violation of Title 18, United States Code, Section 371.

3.       Defendant has read the charge against him contained in the information, and that charge has been fully explained to him by his attorney.

4.       Defendant fully understands the nature and elements of the crime with which he has been charged.

**Charge to Which Defendant is Pleading Guilty**

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the information, which charges defendant with 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, that is, fifteen full container loads of Chinese-origin honey having a total declared value upon entry into the United States of at least \$253,219, but an actual, dutiable value of approximately \$305,404, thereby avoiding antidumping duties otherwise applicable to Chinese-origin honey of approximately \$653,515, all in violation of Title 18, United States Code, Section 371.

**Factual Basis**

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt: That beginning in or about 2005 and continuing until in or about February 2008, at Chicago in the Northern District of Illinois, Eastern Division, and elsewhere, YONG XIANG YAN agreed and conspired with others both known and unknown to the Grand Jury to defraud the United States and to commit offenses against the United States, to wit: Entry of Goods into the United States by Means of False Statements, in violation of Title 18, United States Code, Section 542, and Smuggling Goods into the United States, in violation of Title 18, United States Code, Section 545, all in violation of Title 18, United States Code, Section 371. The purpose of the conspiracy was to import Chinese-origin honey, including adulterated honey, into the United States and

avoid the payment of antidumping duties by falsely declaring to United States Department of Homeland Security, Bureau of Customs and Border Protection (“CBP”) that the imported honey originated from a country other than China, when in fact the honey originated from China.

More specifically, YONG XIANG YAN is a citizen and national of China, and was the President, Chairman, and majority owner of Changge Jixiang Bee Products Limited, a honey producing company located in Henan, China that produced Chinese-origin honey (hereinafter “Changge Jixiang honey”). Boa Zhong Zhang also is a citizen and national of China who, among other duties, arranged honey shipments for Changge Jixiang and otherwise worked under the supervision of YONG XIANG YAN.

YONG XIANG YAN knew that from at least 2005 to at least February 2008 the United States imposed antidumping duties on Chinese-origin honey, which included honey produced by Changge Jixiang. YONG XIANG YAN also knew that the United States did not impose antidumping duties on honey originating from the Philippines.

In or about early 2005, YONG XIANG YAN began selling Changge Jixiang honey to Company A (hereinafter “German Trading Company”), an international trading company with subsidiaries, affiliates, and representative offices located throughout the world, that imported, exported, distributed, sold, and processed raw material and food products, including honey. German Trading Company and its subsidiaries and affiliates in the United States (hereinafter “United States Subsidiary”), Beijing, China (hereinafter “Beijing Subsidiary”), and Hong Kong, China (hereinafter “Hong Kong Subsidiary”) are collectively

referred to herein as “Commodities Trading Group.” YONG XIANG YAN agreed with a corporate executive of Beijing Subsidiary (hereinafter “Beijing Executive 1”) that the honey would be transshipped through the Philippines and declared as the product of the Philippines upon importation into the United States, in order to avoid antidumping duties on Chinese-origin honey.

In or about February 2005, YONG XIANG YAN instructed Boa Zhong Zhang to carry out the transshipment scheme whereby Changge Jixiang honey would be imported into the United States through the Philippines, mislabeled as product of the Philippines, for the benefit of Commodities Trading Group. In or about March 2005, YONG XIANG YAN authorized and approved Boa Zhong Zhang to travel to Subic Bay in the Philippines, hire a company in the Freeport Zone to serve as a transshipment agent on behalf of Changge Jixiang, cause Changge Jixiang honey to be shipped through the Philippines and mislabeled as a product of the Philippines, and cause the honey to be shipped to the United States, where United States Subsidiary imported the honey into the United States.

In total, YONG XIANG YAN oversaw and approved the China-to-Philippines-to-United States transshipment route for fifteen full container loads of Chinese-origin honey imported by United States Subsidiary that had a total declared value upon entry into the United States of at least \$253,219, but an actual dutiable value of approximately \$305,404, which resulted in the United States being deprived of approximately \$653,515 in antidumping duties.

Specifically, in or about April 2005, YONG XIANG YAN caused the shipment of four full container loads of Changge Jixiang honey from China to Subic Bay in the Philippines, where it was mislabeled as being of Philippine origin, and imported to the United States by United States Subsidiary as product of the Philippines.

In or about September 2005, YONG XIANG YAN caused the shipment of eight full container loads of Changge Jixiang honey from China to Subic Bay in the Philippines, where it was mislabeled as being of Philippine origin, and imported to the United States by United States Subsidiary as product of the Philippines.

In or about October 2005, YONG XIANG YAN caused the shipment of fifteen full container loads of Changge Jixiang honey from China to Subic Bay in the Philippines, three of which were imported to the United States by United States Subsidiary as product of the Philippines, with the other twelve containers destined for an import/export company in the state of Washington.

YONG XIANG YAN also acknowledges that for the purpose of computing his sentence under the Sentencing Guidelines, the following conduct, to which YONG XIANG YAN stipulates, constitutes relevant conduct under Guideline §1B1.3: YONG XIANG YAN authorized the transshipment of 21 additional shipments of Changge Jixiang honey through the Philippines and Thailand, mislabeled as a product of the Philippines or Thailand, and declared as the product of the Philippines or Thailand upon importation into the United States. These 21 shipments were imported and entered into the United States by Chung Po

Liu, a United States citizen living in King County, Washington, who imported honey into the United States through his companies Rainier Cascade, Inc. and Evergreen Produce, Inc.

More specifically, Chung Po Liu purchased these 21 shipments of Chinese honey from Changge Jixiang Bee Products Limited. Chung Po Liu contracted with Changge Jixiang Bee Products Limited to carry out the scheme under which the 21 shipments of Chinese honey were re-labeled and transshipped to the United States through the Philippines and Thailand in order to avoid paying anti-dumping duties to the United States. The value of these 21 shipments was at least \$1.6 million and the antidumping duties that were avoided totaled at least \$3.3 million.

When one of the 21 shipments of honey was seized by United States authorities upon arrival in the United States, Chung Po Liu spoke to YONG XIANG YAN by telephone to express his concern that the United States authorities would test the honey and determine that it was of Chinese-origin. Chung Po Liu wanted to know if the testing would reveal that China was the true source of the honey. In response, YONG XIANG YAN told Chung Po Liu that the honey had been filtered by YONG XIANG YAN's factory using a process that removed metals and pollen. YONG XIANG YAN told Chung Po Liu that the tests by the United States authorities would not show that the honey was of Chinese origin. Chung Po Liu then told YONG XIANG YAN that he was relieved that the tests would not show the true origins of the honey. Chung Po Liu then told YONG XIANG YAN that he intended to tell the United States authorities that the honey originated in the Philippines and not China.

Chung Po Liu paid for the 21 shipments of honey from Changge Jixiang Bee Products

Limited by wiring money from the United States to a bank account in China held by a company managed by YONG XIANG YAN's daughter, who is also the Foreign Trade Manager of Changge Jixiang Bee Products Limited.

In 2007, YONG XIANG YAN was invited by Chung Po Liu to visit Seattle, Washington. While YONG XIANG was in the United States, he met with Chung Po Liu at his home. Chung Po Liu also took YONG XIANG YAN to visit one of Chung Po Liu's business associates. Chung Po Liu also took YONG XIANG YANG on a trip to visit a facility where honey and honey products were processed.

7. The foregoing facts are set forth solely to assist the Court in determining whether a factual basis exists for defendant's plea of guilty, and are not intended to be a complete or comprehensive statement of all the facts within defendant's personal knowledge regarding the charged crime and related conduct.

#### **Antidumping Duties**

8. YONG XIANG YAN acknowledges and agrees that, if this matter proceeded to a jury trial, the United States would be able to prove that the total customs taxes and duties associated with the conduct underlying Count 1 is approximately \$653,515, which represents the amount of United States antidumping duties avoided by YONG XIANG YAN, Changge Jixiang Bee Products Limited, and other co-conspirators identified in the information, as a result of the conduct described in paragraph 6.

#### **Maximum Statutory Penalties**

9. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 5 years' imprisonment. This offense also carries a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court.

c. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on the charge to which he has pled guilty, in addition to any other penalty or restitution imposed.

#### **Sentencing Guidelines Calculations**

10. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

11. For purposes of calculating the Sentencing Guidelines, the parties agree and agree to disagree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding

the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2008 Guidelines Manual.

**b. Offense Level Calculations.**

i. The base offense level for the charge in Count 1 of the information, and the relevant conduct reflected in paragraph 7 above, is 24 pursuant to Guidelines §§ 2T3.1(a)(1) and 2T4.1(J) because the amount of antidumping duties avoided, that is, approximately \$3,953,515, exceeded \$2.5 million but was less than \$7 million.

ii. It is the government's position that pursuant to Guideline §2T1.1(b)(2), defendant's offense level is increased by 2 levels because defendant's offense involved sophisticated means. Defendant disagrees with the applicability of this Guideline.

iii. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline §3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

iv. In accord with Guideline §3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline §3E1.1(b), if the Court determines the

offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, it is the government's position that the anticipated offense level is 23, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range of 46 to 57 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose. It is defendant's position that the anticipated offense level is 21, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range of 37 to 46 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose

e. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature and based on facts known to the parties as of the time of this Plea Agreement. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final

Guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Errors in applying or interpreting any of the Sentencing Guidelines (other than those identified above as binding) may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Plea Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Plea Agreement, on the basis of such corrections.

### **Cooperation**

12. Defendant agrees he will fully and truthfully cooperate in any matter in which he is called upon to cooperate by a representative of the United States Department of Justice. This cooperation shall include providing complete and truthful information in any investigation and pre-trial preparation and complete and truthful testimony in any criminal, civil or administrative proceeding, including any proceedings in the Northern District of Illinois and the Western District of Washington. Defendant agrees to the postponement of his sentencing until after the conclusion of his cooperation.

### Agreements Relating to Sentencing

13. At the time of sentencing, the government shall make known to the sentencing judge the extent of defendant's cooperation. If the government determines that defendant has continued to provide full and truthful cooperation as required by this plea agreement, then the government shall move the Court, pursuant to Guideline §5K1.1, to depart downward from the low end of the applicable guidelines range, and shall recommend a sentence that includes a term of imprisonment in the custody of the Bureau of Prisons of 66 percent of the low end of the applicable guidelines range determined by the Court. Defendant shall be free to recommend any sentence. Defendant understands that the decision to depart from the applicable guidelines range rests solely with the Court.

14. If the government does not move the Court, pursuant to Sentencing Guideline §5K1.1, to depart from the applicable Guideline range, as set forth above, the preceding paragraph of this plea agreement will be inoperative, both parties shall be free to recommend any sentence, and the Court shall impose a sentence taking into consideration the factors set forth in 18 U.S.C. § 3553(a) as well as the Sentencing Guidelines without any downward departure for cooperation pursuant to §5K1.1. Defendant may not withdraw his plea of guilty because the government has failed to make a motion pursuant to Sentencing Guideline §5K1.1.

15. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Plea Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the

sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

16. Regarding restitution, the parties acknowledge that pursuant to Title 18, United States Code, § 3663A, the Court must order defendant to make full restitution to the United States in an amount to be determined by the Court at sentencing, which based on the facts known to the parties at this time, amounts to approximately \$3,953,515, and which amount shall reflect credit for any funds repaid prior to sentencing. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing.

17. Defendant agrees to pay the special assessment of \$100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

### **Acknowledgments and Waivers Regarding Plea of Guilty**

#### **Nature of Plea Agreement**

18. This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 09 CR 424.

19. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver or release by the United States or any of its agencies of any administrative or judicial civil claim, demand or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District

of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities, except as expressly set forth in this Agreement.

### **Waiver of Rights**

20. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Right to be charged by indictment.** Defendant understands that he has a right to have the charge prosecuted by an indictment returned by a concurrence of twelve or more members of a grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, defendant knowingly waives his right to be prosecuted by indictment and to assert at trial or on appeal any defects or errors arising from the information, the information process, or the fact that he has been prosecuted by way of information.

b. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charge against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. Defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where

actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt. The jury would have to agree unanimously before it could return a verdict of guilty or not guilty.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

c. **Waiver of appellate and collateral rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal his conviction and the sentence imposed. Defendant knowingly waives the right to appeal his conviction, any pre-trial rulings by the Court, and any part of the sentence (or the manner in which that sentence was determined), including any term of imprisonment and fine within the maximums provided by law, and including any order of restitution or forfeiture, in exchange for the concessions made by the United States in this Plea Agreement. Defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, and (in any case in which the term of imprisonment and fine are within the maximums provided by statute) his attorney's alleged failure or refusal to file a notice of appeal, in any collateral attack or future challenge, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation, nor does it prohibit defendant from seeking a reduction of sentence based directly on a change in the law that is applicable to defendant and that, prior to the filing of defendant's request for relief, has been expressly made retroactive by an Act of Congress, the Supreme Court, or the United States Sentencing Commission.

d. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

**Presentence Investigation Report/Post-Sentence Supervision**

21. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope and extent of defendant's conduct regarding the charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing, including the nature and extent of defendant's cooperation.

22. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline §3E1.1 and enhancement of his sentence for obstruction of justice under Guideline §3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

**Other Terms**

23. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

24. Defendant will not object to a motion brought by the United States Attorney's Office for the entry of an order authorizing disclosure of documents, testimony and related investigative materials which may constitute grand jury material, preliminary to or in connection with any judicial proceeding, pursuant to Fed.R.Cr.P. 6(e)(3)(E)(i). In addition, defendant will not object to the government's solicitation of consent from third parties who provided records or other materials to the grand jury pursuant to grand jury subpoenas, to turn those materials over to the Civil Division of the United States Attorney's Office, or an appropriate federal or state agency, for use in civil or administrative proceedings or investigations, rather than returning them to the third parties for later summons or subpoena in connection with a civil or administrative proceeding involving, or investigation of, defendant.

25. Should defendant engage in additional criminal activity after he has pled guilty but prior to sentencing, defendant shall be considered to have breached this plea agreement, and the government at its option may void this Plea Agreement.

### **Conclusion**

26. Defendant understands that this Plea Agreement will be filed with the Court, will become a matter of public record and may be disclosed to any person.

27. Defendant understands that his compliance with each part of this Plea Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

28. Should the judge refuse to accept defendant's plea of guilty, this Plea Agreement shall become null and void and neither party will be bound thereto.

29. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement to cause defendant to plead guilty.

30. Defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: \_\_\_\_\_

\_\_\_\_\_  
PATRICK J. FITZGERALD  
United States Attorney

\_\_\_\_\_  
YONG XIANG YAN  
Defendant

\_\_\_\_\_  
ANDREW S. BOUTROS  
Assistant U.S. Attorney

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NATHANIEL K. HSIEH  
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