

## Massive Honey Smuggling Sting Signals Continued Crack-down on International Trade Fraud

By Michael J. Coursey and Benjamin Blase Caryl (Kelley Drye & Warren LLP)

The U.S. Government recently announced another round of record-breaking criminal charges filed in “Honeygate,” the largest food fraud investigation in U.S. history, and the latest example of the increased attention that U.S. Immigration and Customs Enforcement (ICE) has given to domestic producer complaints of customs and international trade fraud. It also marks the most aggressive and sophisticated tactics used to date to uncover such fraud as well as very strict and comprehensive deferred prosecution agreements (DPAs) with defendant companies and individuals.

Dozens of other commodities are imported into the United States under false descriptions or origins, costing the U.S. taxpayer billions of dollars in lost import duties. In announcing the recent results of Honeygate, ICE Deputy Director Daniel Ragsdale sent a stark warning to foreign exporters, U.S. importers, consignees and purchasers of all imported products:

Honey is just the tip of the iceberg... Schemes like this result in legitimate importers and the domestic honey-producing industry enduring years of unprofitable operations, with some even being put out of business. We will continue to enforce criminal violation of anti-dumping laws in all industries so American and foreign businesses all play by the same rules.

These actions demonstrate the need for importers of record, consignees and distributors of imported products to institute adequate customs and trade compliance programs to ensure the safety and legitimacy of their supply chains.

### Honeygate

On February 20, 2013, the U.S. Attorney’s Office for the Northern District of Illinois announced that five people and two domestic honey processing companies had been charged with federal crimes in connection with a nationwide investigation of illegal importations of honey from China that was mislabeled as coming from other countries to avoid \$180 million in antidumping duties or was adulterated with antibiotics not approved for use in honey.<sup>1</sup>

The charges represent the second phase of Honeygate. The first phase began in 2008, when federal authorities began investigating allegations involving the circumvention of the 2001 U.S.

antidumping duty order on honey from China through illegal imports, including transshipment and mislabeling, by 14 individual importers, including executives of German food conglomerate Alfred L. Wolff GmbH and several affiliated companies to avoid paying \$80 million in antidumping duties on Chinese-origin honey. Thus far, the Wolff investigation has resulted in individual sentences ranging from 6 months’ house arrest, 3 years’ probation, community service and \$500,000 in restitution to one year in prison and \$17 million in restitution. Some defendants are still at large, likely in Germany.

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Having addressed the supply side of Honeygate in the first phase, the second phase focuses on the demand side – the purchasers, processors, traders and facilitators of honey that was illegally entering the United States, including the “honey packers” that blend large amounts of “raw” (extracted) domestic and imported honey for resale to industrial and food service users and retail distributors. In this second phase, ICE uncovered a massive customs fraud scheme at Groeb Farms, Inc., which claims to be the largest honey packer in the United States. In 2007, the Groeb family sold Groeb Farms to new investors. The new owners, however, kept two unidentified former executives of Groeb Farms (rumored to be the Groeb brothers, Ernie and Troy) on as managers. These two unidentified former executives allegedly provided false information to the company’s board of directors to avoid millions of dollars in antidumping duties, and continued the fraud from 2008 to 2012 by covering-up red flags raised during first-party onsite supply chain audits and inspections of manufacturers and suppliers that the new owners had instituted. As a result of the Honeygate investigation, the fraud was uncov-

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ered, the unidentified former executives were fired, and Groeb Farms entered into a DPA with the government, subject to court approval, agreeing to a \$2 million fine and implement a supply chain compliance program (see below).

Using information from domestic honey producers and from the first phase of Honeygate, ICE agents suspected that Honey Solutions, one of the nation's largest honey suppliers, purchased honey from Poland from Alfred L. Wolff USA that contained a prohibited antibiotic, in violation of the Food, Drug & Cosmetic Act and avoided more than \$33.4 million in antidumping duties by purchasing honey from shell and front companies controlled by various Chinese honey producers. Once confronted, Honey Solutions agreed to cooperate with ICE in its effort to identify others engaged in illegal importing, which included the

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placement of an undercover ICE agent in Honey Solutions as its head of procurement in June of 2011. Douglas Murphy, former sales director for Honey Solutions,<sup>2</sup> pled guilty and faces a \$26,624 fine and six months in prison. Honey Solutions agreed to pay a \$1 million fine and will also establish a new and more comprehensive supply chain compliance program (see below).

ICE's undercover investigation also led to it to uncover another major player in Honeygate: Jun Yang, a wealthy Chinese businessman and purported pillar of the Houston, Texas community who served on advisory boards to the Mayor of Houston and hobnobbed with the rich and famous. Yang is believed to be involved in efforts to avoid dumping duties through the "new shipper" administrative review process at the Commerce Department. Specifically, Yang made millions as owner of honey and seafood importer National Commodity Corp. by brokering sales to Honey Solutions and others of honey that was adulterated or mislabeled as being from India and Malaysia when it really came from China. Yang

has agreed to the prosecutors' recommendation for a 74-month prison sentence, imposition of a \$250,000 fine and restitution of \$2.64 million. The judge has not yet ruled on the plea agreement.

As a sign that the government is going after as many of the various conspirators as possible to send a message that anyone in the supply chain from the Chinese exporter to the freight forwarder, to the packer and even the customer may be held liable for fraud, ICE's undercover investigation led it to uncover the following additional violations:

— Urbain Tran will plead guilty to brokering Chinese honey that was misrepresented as coming from Malaysia and Vietnam. Tran has agreed to a fine of \$500,000 and restitution of \$204,403 and faces a maximum sentence of 20 years on each fraudulent sales and transportation count.

— Broker and logistics company employee Hung Yi Lin still faces arraignment; she was charged with one count of transporting 10 container loads of Chinese-origin honey through the Chicago area after it entered the U.S. illegally – she allegedly worked as the U.S. agent for at least 12 importers controlled by Chinese honey producers. The charge could result in a penalty of 20 years in prison and a \$250,000 fine.

— Canadian resident Donald Couture, president of Premium Food Sales, Inc., a broker and distributor of raw and processed honey in Bradford, Ontario, has been indicted on four counts of violating the Food, Drug, and Cosmetic Act for delivering honey containing a prohibited antibiotic – after the honey was allegedly rejected by one customer because it was contaminated, Couture delivered it to a second customer. Each count carries a \$250,000 fine and a maximum prison sentence of three years.

### **New Era of Aggressive and Sophisticated Tactics?**

The second phase of Honeygate was so successful in part because an undercover ICE agent was placed in Honey Solutions - a real operating company that had its own customs fraud violations, which placed it well to uncover other bad actors. This style of approach takes a page from narcotics and organized crime investigations, but given the success of Honeygate, it could be used more frequently in food and customs fraud cases.

### **Fines Based on Ability to Pay**

The amounts of the fines imposed on Groeb Farms and Honey Solutions were based on the

government's assessment of each company's ability to pay, the complete and continuing cooperation of each company that allowed the government to uncover others involved in Honeygate, and the implementation of supply chain compliance programs (see below). The government has ensured that each company's ability to pay the fines is backed by each company's assets, and contain agreements that each company will continue to fully cooperate with the government's ongoing investigation for at least two years.

### **Plea Deals Require Serious Supply Chain Compliance Programs**

An important part of the DPAs reached by the investigated honey packers, both Honey Holdings and Groeb Farms agreed to implement extensive corporate compliance programs to safeguard against future illegal activity including: (a) conducting reasonable country-of-origin and supply chain inquiries, risk assessments, and audits of their suppliers; and (b) educating their customers regarding their policies on traceability and food laws. Such disclosures are similar to other recent supply chain compliance laws based on social issues, including the U.S. Securities and Exchange Commission's recently released final conflict minerals rules, the President's Executive Order on Trafficking in Federal Contracting (Sept. 25, 2012), California's Transparency and Supply Chains Act, and the pending Business Transparency on Trafficking and Slavery Act (H.R. 2759), the Food Safety and Modernization Act, and the Lacey Act's restrictions on importing certain plant and wood products. Agreement to implement such compliance programs have permitted the companies to so far remain in business, and illustrate the need for companies to have compliance and supply chain security programs in place to avoid violations and to mitigate criminal and civil penalties should problems arise.

### **Honeygate as Part of Larger Trend of Enhanced Enforcement**

In addition to Honeygate, there is an increasing trend of the U.S. Department of Justice (DOJ) and private citizens fighting customs fraud under the False Claims Act, which allows private citizens to sue on behalf of the United States and share in any recovery if they provide the government with the necessary information and evidence. The first phase of Honeygate marked the DOJ's first use of Sarbanes-Oxley's criminal obstruction of justice statute, which includes a 20-year incarceration

penalty per offense, in the Alfred L. Wolff prosecutions. This trend has continued in other customs fraud prosecutions of importers that falsify entry documents and cover-up such fraud in order to avoid paying millions in customs duties.<sup>3</sup> Much of this area is still evolving, with at least four U.S. federal circuit courts currently split as to whether certain customs fraud and smuggling laws are just civil or also criminal in nature.<sup>4</sup>

For more information on these issues, please contact Michael J. Coursey or Benjamin Blase Caryl, attorneys in the International Trade & Customs Law Group at Kelley Drye & Warren, LLP, which has long represented the two national associations of domestic honey producers – American Honey Producers Association and Sioux Honey Association – that successfully petitioned for the imposition of antidumping duties on honey imports from China in 2000-01. □

1 The names of the six new cases are as follows: United States v. Groeb Farms, Inc., 1:13-cr-00 137; United States v. Douglas A. Murphy and Honey Holding I, d/b/a Honey Solutions, 1:13-cr-00138; United States v. Jun Yang, 1:13-cr-00139; United States v. Urbain Tran, 1:13-cr-00140; United States v. Hung Yi Lin, 1:13-cr-00125; and United States v. Donald Couture, 1:11-cr-00781.

2 In June 2005, Douglas Murphy received the then-largest sentence for violating the Foreign Corrupt Practices Act (FCPA) for bribing Haitian customs officials and obstructing justice while he was president and CEO of American Rice Inc. The alleged criminal activity involving honey transactions occurred while the FCPA matter was on appeal.

3 See United States v. Chavez, et al., No. 12MJ2756 (S.D. CA, June 23, 2012).

4 See, e.g., United States v. Yuri Izurieta and Anneri Izurieta, No. 11-13585 (11<sup>th</sup> Cir. 2013); United States v. Place, 693 F.3d 219 (1<sup>st</sup> Cir. 2012); United States v. Alghazouli, 517 F.3d 1179 (9<sup>th</sup> Cir. 2008); United States v. Mitchell, 39 F.3d 465 (4<sup>th</sup> Cir. 1994).

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