

Two Importers Released from Jail After 18 Month Stay on Faulty CBP Honey Testing

Two importers were released after a year and a half in jail, following the government's voluntary dismissal of a criminal case in Florida Middle District Court. The two men, Chin Shih Chou, of Taiwan, and Qiao Chu, of China, had along with a U.S. citizen been charged over an alleged scheme to import honey and misidentify it as rice syrup to avoid paying antidumping duties. But after the CBP Port of Savannah test that identified the product as honey was thrown out, and a German test showed the product was in fact rice syrup as the defendants claimed, the U.S. attorney on May 8 dropped the charges.

"This is the worst thing that I've seen happen in my ten years as a judge, that these two men have spent 18 months in custody in a foreign country, not speaking the language, separated from the only other person that spoke their language," said Judge Marcia Howard at a hearing the day after the government moved for dismissal.

According to court transcripts, Assistant U.S. Attorney Russell Stoddard's insisted that the defendants may still be guilty of consumer fraud by misbranding honey, despite their exoneration from the duty evasion charges. But the U.S. Attorney's Office for the Middle District of Florida will not pursue any further charges against the individuals in the case, said an official at Immigration and Customs Enforcement. Despite the commercial fraud charges that could have been pursued, the Middle District of Florida U.S. Attorney's Office decided against it, the ICE official said. A spokesman for that U.S. Attorney's Office said he couldn't confirm such a decision. CBP declined to comment.

"We hope it's over," said Mitchell Stone, a lawyer with Stone Lockett who represents codefendant Wei Tang Lo, a U.S. citizen. "In my view the government went forward with a case they were absolutely convinced was right" but "ultimately turned out to be wrong," he said. The government deserves some credit for coming to that conclusion, but "it took too long," he said. The lesson here is that government officials need to be careful in what they rely on for evidence, he said. "A new scientific theory is only as good as to what other scientists agree are appropriate," he said of CBP's honey testing.

Judge Says CBP Honey Testing Unscientific

Chu, Chou and Lo were arrested in November 2011. Lo was later released on bail, but bond was denied for the other defendants. According to the government, the three men imported barrels of honey declared and labeled as rice fructose to avoid antidumping duties on honey. The products were declared to CBP as rice syrup, and labeled as such on the barrels. Once at warehouse, the barrels were relabeled as honey, before introduction into U.S. commerce, the government said.

The scheme allegedly involved 309 shipping containers with 19,776 55-gallon barrels of the product, worth an estimated \$15.8 million. The government purportedly missed out on \$15.1 million in duties. The U.S. Attorney charged the defendants with wire fraud, importing merchandise by means of false statements, knowingly importing and selling merchandise contrary to law, and misbranding. ICE's press release on the arrest is [here](#).

Only later did the government's reason for declaring the product as honey emerge. Despite taking samples of defendants' product at various ports of entry, CBP sent the samples to the Port of Savannah. There, a CBP employee with a bachelor of science degree, a microscope, and books on melissopalynology and food microscopy, examined samples of the product and found that it had a relatively high amount of pollen. Given the "overabundance" of pollen, the employee deemed the product to be honey.

The judge didn't find the CBP test convincing. Looking at the amount of pollen in the product, measuring it against no standard, and concluding a "relative abundance" or "overabundance" of pollen means that the sample contains over 50 percent honey "derives from no scientific method, is not supported by appropriate validation, and relies on no independent data or otherwise existing data," said Judge Howard in a November 2012 response to a "daubert" motion to exclude the evidence. The judge granted the defendants motion, leaving CBP scrambling to prove the product was honey.

Robin Scroggle, who represented defendant Qiao Chu, said the method the CBP lab used to decide the product was honey was difficult to ascertain. "We had to really fight to get all the information that we needed to pursue that motion," he said. "And then we found out a lot of information only at the hearing on the motion," said Scroggle. "We were persistent and we asked the right questions, and we found out what the test was."

Advanced Testing Proves Product Rice Syrup, Not Honey

After becoming aware of a company called Intertek able to test for rice syrup and honey composition, Assistant U.S. Attorney Stoddard requested and was granted funding to send the samples for further testing. CBP sent the samples to a lab in Germany. When they came back, the results were in "stark contrast" to the earlier CBP testing – "their tests concluded that the substance in question was predominantly syrups, either corn syrup or rice fructose syrup, with little if any honey contained in the samples that were presented to them," explained Stoddard to the judge.

The revelation came during Chou's sentencing hearing, and the judge was caught completely unaware. "This is just terrible," said Judge Marcia Howard, minutes after having been informed of the government motion. "This man has been in federal custody for 18 months." At that hearing, Stoddard said he intended to dismiss the charges against all defendants. The judge granted that motion without prejudice on May 8, after the lawyers and the government sorted out Chu and Chou's immigration status.

"This has been a frustrating 18 month-long fight, and then all the sudden it's over," Scroggle said. "Knowing what we found out in our case, I have to wonder about the testing in all their honey prosecutions," he said. "We had to pry it out of them that they had developed a test."

Bruce Shulman of Stein Shostak agreed. "I can tell you that Customs seized a lot of stuff out there, without having a test," he said. "If anyone had the guys and the money and the time, and wanted to go through the aggravation of taking it to court, chances are the courts looking at it would say, 'Customs doesn't have a test. Let it go.'" In many cases, however, it's simply too expensive to go to court, Shulman said.

Rice Syrup Controversy Part of Decades-Long Honey Fight

The government's ultimately flawed prosecution came amidst a decades-long struggle between the U.S. honey industry and Customs on one hand, and on the other dishonest Chinese exporters and their U.S. accomplices, said Michael Coursey of Kelley Drye. During the 1980s, the industry faced an influx of Chinese honey adulterated with high fructose corn syrup, said Coursey, who has represented domestic honey producers in antidumping cases for 20 years. Under the test procedures then available, the corn syrup was virtually indistinguishable from honey, so scientists scrambled to devise tests to distinguish the two, he said. The resulting method focused on identifying the two different types of sugar present in a honey-corn syrup blend to tell if corn syrup is present.

So when an influx of blends of rice syrup and honey began around the end of 2006, the U.S. honey industry had nightmares of the 1980s corn syrup crisis, Coursey said. But this time, the problem was rice syrup and honey were the same type of sugar. So the tests devised in the 1980s couldn't tell the difference, he said. The distinction was important – until December 2011, the scope of the antidumping duty order on honey said blends of 50 percent or less of honey with other sweeteners weren't subject to duties. Without a test, importers could even bring in 100 percent honey and declare it as rice syrup, to cut costs and evade antidumping duties, Coursey said.

"That created a huge problem," said Coursey. While a test became available in Germany to tell the difference between rice syrup and sugar, that test used advanced equipment and was expensive, he said. CBP tried to combat the problem on its own at its lab at the Port of Savannah. "Customs, to its

credit, has been really putting a lot [of effort into] trying to crack this,” Coursey said. “But Customs simply lacked the equipment and expertise to develop an accurate test.”

Around the end of 2010 and early 2011, the influx of what claimed to be honey/rice syrup blends slowed dramatically, Coursey said. “My sense is that Customs started taking a hard line,” he said. “When importers would come and would say ‘I’ve got a 90/10 rice syrup-honey blend,’ Customs would take a sample to the Savannah lab, and they’d come back and say, ‘we disagree.’” But now that CBP test method has been exposed as faulty, Coursey said. “What now is public is something the honey industry has feared was true for the last seven years,” he said. “The government couldn’t do this. We don’t have the technical ability to tell the difference.”

Government Investigators Still Suspect Wrongdoing

In this case, “the government got it really wrong,” Coursey said. But he also suspects that in a larger context the government was right. Based on faulty testing that found the product was honey, the government prosecuted based on lost antidumping duties. But if the allegations in the indictment are taken as true, the defendants – after getting past Customs -- took the rice syrup to warehouses, stripped off the correct labels, and pasted on incorrect labels that said the product was honey. “That constitutes the criminally illegal act of food adulteration,” Coursey said. “Had the government aggressively pursued this angle, the prosecution of the three defendants would still be alive.”

Assistant U.S. Attorney Stoddard said as much at the hearing where he informed the judge of his intent to dismiss the case at Chou’s sentencing hearing. “I’m not suggesting that there hasn’t been a crime committed here,” he told the judge. “I think there’s massive consumer fraud that has occurred here, or potential for massive consumer fraud,” said Stoddard. Noting the government’s insistence that some charges could still stand regardless of the faulty testing, the judge denied a motion to prevent any other charges against Chu, Chou and Lo by dismissing the case with prejudice.

ICE’s Homeland Security Investigations said that, despite being exonerated from the antidumping duty evasion charges, the defendants were still guilty of defrauding consumers. “Time and time again, we warn the public about the health and safety risks associated with counterfeit goods – you never know what you’re getting,” HSI said. In this case, the defendants entered into a criminal conspiracy to remove labels from more than 4,600 barrels (73 shipping containers) of an imported substance from China. More than 1,800 of these barrels were relabeled and sold as Mongolian amber light honey in an attempt to defraud U.S. distributors, food producers, and eventually, consumers,” it said.

But even if the allegations in the indictment were taken as true, the fact remains that Chu and Chou spent a year and a half in jail on charges based in large part on a faulty test. After unsuccessfully requesting an apology from Assistant U.S. Attorney Stoddard, Judge Howard apologized to the defendants on behalf of the Florida Middle District Court before their release. “I think the only apology that you are going to receive is going to be from the Court, even though I think you deserve an apology from the United States,” she said. “But it is my sincere regret that you have spent the last 18 months in custody, and I truly hate that you will go back to your home country with that impression of the United States justice, because it works, and the truth is that in your case it worked ultimately,” said Judge Howard. “It just worked slowly.” – *Brian Feito, Tim Warren*

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