

FILED *JD*

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2-26-13

Judge Sharon Johnson Coleman
United States District Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)	
)	No. 13 CR 140
vs.)	
)	Judge Sharon Johnson Coleman
URBAIN TRAN)	

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, GARY S. SHAPIRO, and defendant URBAIN TRAN, and his attorney, CHARLES L. KREINDLER, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(C), as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The information in this case charges defendant with two counts of violating Title 18, United States Code, Sections 545 and 2.
3. Defendant has read the charges against him contained in the information, and those charges have been fully explained to him by his attorney.
4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charges to Which Defendant is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to Count One of the information, which charges defendant with violating Title 18, United States Code, Sections 545 and 2, and Count Two of the information, which charges defendant with violating Title 18, United States Code, Sections 545 and 2.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charges contained in the information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

Count One: On or about January 10, 2012, in the Northern District of Illinois, Eastern Division and elsewhere, URBAIN TRAN facilitated the sale and transportation of imported merchandise, namely, honey with a declared value of approximately \$91,350, knowing¹ that the honey was of Chinese-origin and was imported and brought into the United States contrary to law, namely, as part of a fraudulent practice in violation of Title 18, United States Code, Section 542, in that TRAN arranged for the sale, pick-up, and delivery of two container loads (MEDU1105992 and MEDU1359528) of Chinese-origin honey that Sweet Campo Co., Ltd. falsely and fraudulently imported and brought into the United States as

¹ The defendant agrees that deliberate avoidance of the truth amounts to knowledge under the law and this plea agreement.

a product of Malaysia in avoidance of U.S.-imposed antidumping duties, thereby causing losses to the United States of approximately \$106,778, in violation of Title 18, United States Code, Sections 545 and 2.

Count Two: On or about March 30, 2012, in the Northern District of Illinois, Eastern Division and elsewhere, URBAIN TRAN facilitated the sale of imported merchandise, namely, honey with a declared value of approximately \$79,164, knowing that the honey was of Chinese-origin and was imported and brought into the United States contrary to law, namely, as part of a fraudulent practice in violation of Title 18, United States Code, Section 542, in that TRAN arranged for the sale of two container loads (MSKU3693202 and MRKU6839290) of Chinese-origin honey that Sweet Campo Co., Ltd. falsely and fraudulently imported and brought into the United States as a product of Vietnam in avoidance of U.S.-imposed antidumping duties, thereby causing losses to the United States of approximately \$97,625, in violation of Title 18, United States Code, Sections 545 and 2.

More specifically, Honey Holding I, Ltd., d/b/a Honey Solutions, was an industrial honey supplier and packer in the United States, with its principal place of business in Baytown, Texas. TRAN was an agent of Honey Holding's since about 2006. TRAN's responsibility was to locate, arrange, and source honey for Honey Holding. In doing so, TRAN knowingly arranged for the purchase of fraudulently-entered Chinese-origin honey while acting within the scope of his agency

relationship and in the course of the discharge of his duties, and with the intent to benefit Honey Holding.

TRAN knew that Sweet Campo Co., Ltd. was an import company controlled by Chinese Transshipper 1. TRAN knew that Sweet Campo Co., Ltd. falsely and fraudulently imported and entered Chinese-origin honey into the United States without paying antidumping duties and at times, honey assessment fees, a portion of which honey Sweet Campo Co., Ltd. sold to Honey Holding through transactions brokered by TRAN. Between about October 2011 and about March 2012, TRAN arranged for Honey Holding to purchase the following four container loads:

- two container loads (MEDU1105992 and MEDU1359528) of purported Malaysian honey from Sweet Campo Co., Ltd. for approximately \$105,617 using Honey Holding purchase order 817 and other associated paperwork; and
- two container loads (MSKU3693202 and MRKU6839290) of purported Vietnamese honey from Sweet Campo Co., Ltd. for approximately \$96,565 using Honey Holding purchase order 824 and other associated paperwork;

even though TRAN knew that Sweet Campo Co., Ltd. imported, entered, marketed, and sold the honey as originating from Malaysia and Vietnam, respectively, when the honey was in fact actually of Chinese origin.

As specifically charged in Count One of the information, on January 10, 2012, TRAN facilitated the sale and transportation of imported merchandise, namely, honey with a declared value of \$91,350, knowing that the honey was of Chinese origin and was imported and brought into the United States contrary to law,

namely, as part of a fraudulent practice in violation of Title 18, United States Code, Section 542 by sending an email from California into the Northern District of Illinois arranging for the sale, pick-up and delivery of two container loads (MEDU1105992 and MEDU1359528) of Chinese-origin honey that Sweet Campo Co., Ltd. falsely and fraudulently imported and brought into the United States as a product of Malaysia in avoidance of U.S.-imposed antidumping duties, thereby causing losses to the United States of approximately \$106,778.

As specifically charged in Count Two of the information, on or about March 30, 2012, in the Northern District of Illinois, Eastern Division and elsewhere, TRAN facilitated the sale of imported merchandise, namely, honey with a declared value of approximately \$79,164, in that TRAN sent an email from California into the Northern District of Illinois arranging for the purchase and sale of two container loads (MSKU3693202 and MRKU6839290) of Chinese-origin honey that Sweet Campo Co., Ltd. falsely and fraudulently imported and brought into the United States as a product of Vietnam in avoidance of U.S.-imposed antidumping duties, thereby causing losses to the United States of approximately \$97,625.

In addition to the conduct charged in the information, TRAN brokered transactions in which Honey Holding purchased Chinese-origin honey from companies that TRAN knew were controlled by Chinese honey producers and manufacturers. More broadly, beginning no later than in or about May 2008 and 2012, TRAN, while acting within the scope of his agency relationship and in the

course of the discharge of his duties, and with the intent to benefit Honey Holding, arranged for Honey Holding to purchase shipping containers of honey from companies, including Sweet Campo Co., Ltd., even though TRAN knew the honey was of Chinese origin and falsely and fraudulently imported, entered, marketed and sold as non-Chinese honey and at other times, as sugars and syrups.

In the four-year period between 2009 and 2012, TRAN also accepted approximately \$330,941 in undisclosed payments from Chinese honey producers and manufacturers in exchange for TRAN brokering transactions with their companies while knowing these producers and manufacturers were illegally transshipping and illegally misdeclaring Chinese-origin honey that was being purchased by Honey Holding.

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 crimes and related conduct.

Maximum Statutory Penalties

8. Defendant understands that the charges to which he is pleading guilty carry the following statutory penalties:

a. Counts One and Two each carry a maximum sentence of 20 years' imprisonment; a maximum fine of \$250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater; and a term of supervised

release of not more than five years.

b. Defendant further understands that the Court must order restitution to the victim 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 each count to which he has pled guilty, in addition to any other penalty or restitution imposed.

d. Therefore, under the counts to which defendant is pleading guilty, the total maximum sentence is 40 years' imprisonment. In addition, defendant is subject to a total maximum fine of \$500,000, a period of supervised release of not more than ten years, and special assessments totaling \$200.

Sentencing Guidelines Calculations

9. 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.

10. 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 2012 Guidelines

Manual.

b. Offense Level Calculations.

i. It is the government's position that the base offense level for the charges in the information and relevant conduct, is 28 pursuant to Guidelines §§ 2T3.1(a)(1) and 2T4.1(L) because the loss in antidumping duties, that is, approximately \$33,509,903, exceeded \$20 million but was less than \$50 million. Defendant disagrees and reserves the right to advocate for a lesser amount of loss.

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 provision.

iii. If the Court determines at the time of sentencing that defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct within the meaning of Guideline § 3E1.1(a), a two-level reduction in the offense level will be appropriate. The government reserves the right to take whatever position it deems appropriate at the time of sentencing with respect to whether defendant has accepted responsibility within the meaning of Guideline §3E1.1(a).

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 27, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range of 70 to 87 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose. Defendant disagrees with these calculations and resulting sentencing range and reserves the right to advocate for a different calculation and sentencing range.

e. 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. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional Guideline provisions apply

in this case. 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. Both parties expressly acknowledge that this Agreement is not governed by Fed.R.Crim.P. 11(c)(1)(B), and that errors in applying or interpreting any of the Sentencing Guidelines 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 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 Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

11. Each party is free to recommend whatever term of imprisonment, if any, each party deems appropriate.

12. This Agreement will be governed, in part, by Federal Rule of Criminal Procedure 11(c)(1)(C). That is, the parties have agreed that the sentence imposed

by the Court shall include a fine of \$500,000. The parties agree that the fine shall be deposited with the Clerk of the Court for the Northern District of Illinois. Other than the agreed fine, the parties have agreed that the Court remains free to impose the sentence it deems appropriate. If the Court accepts and imposes the agreed fine set forth herein, defendant may not withdraw this plea as a matter of right under Federal Rule of Criminal Procedure 11(d) and (e). If, however, the Court refuses to impose the agreed fine set forth herein, thereby rejecting this Agreement, or otherwise refuses to accept defendant's plea of guilty, either party has the right to withdraw from this Agreement.

13. Regarding restitution, the parties acknowledge that pursuant to Title 18, United States Code, Section 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 is agreed to be approximately \$106,778 on Count One and approximately \$97,625 on Count Two, for a total of approximately \$204,403, and which amount shall reflect credit for any funds repaid prior to sentencing.

14. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k) he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

15. Defendant agrees to pay the special assessment of \$200 at the time of

sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

16. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code, Sections 3572, 3613, and 3664(m), notwithstanding any payment schedule set by the Court.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

17. 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 13 CR 140.

18. 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.

19. Defendant understands that nothing in this Plea Agreement shall limit the Internal Revenue Service (IRS) in its collection of any taxes, interest or

penalties from defendant or defendant's partnership or corporations.

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 charges 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 charges 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. 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 and that it was to consider each count of the information separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

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, and considering each count separately, 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. Acknowledging this, 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, 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.

e. Defendant understands that he has the right to be prosecuted for any criminal offense in the district or districts where the offense was committed. By signing this Plea Agreement, defendant knowingly consents to prosecution of the charges against him in the Northern District of Illinois and waives any objection to the venue of this prosecution.

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 charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

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, including his recent income tax returns 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.

23. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Plea Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

24. 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.

Conclusion

25. 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.

26. 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.

27. 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.

28. 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.

29. 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:

02/26/2013

Gary S. Shapiro/uss

GARY S. SHAPIRO
United States Attorney

[Signature]

URBAIN TRAN
Defendant

[Signature]

ANDREW S. BOUTROS
Assistant U.S. Attorney

[Signature]

CHARLES L. KREINDLER
Attorney for Defendant