

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	No. 08 - _____
)	
Plaintiff,	)	COUNTS ONE thru THIRTEEN
	)	Distribution of Adulterated Food
v.	)	21 U.S.C. §§ 331(a) and 333(a)(2)
)	
(1) XUZHOU ANYING BIOLOGIC	)	NMT 3 Years Imprisonment
TECHNOLOGY DEVELOPMENT	)	NMT \$250,000 Fine (\$500,000 for corporation)
CO., LTD.,	)	NMT 1 Year Supervised Release
	)	\$100 Special Assessment (\$400 for corporation)
(2) MAO LINZHUN,	)	Order of Restitution
	)	Class E felony
(3) SUZHOU TEXTILES, SILK, LIGHT)	
INDUSTRIAL PRODUCTS, ARTS	)	COUNTS FOURTEEN thru TWENTY-SIX
AND CRAFTS I/E CO., LTD., and	)	Distribution of Misbranded Food
	)	21 U.S.C. §§ 331(a) and 333(a)(2)
(4) ZHEN HAO CHEN, a/k/a)	
CHEN ZHEN HAO,	)	NMT 3 Years Imprisonment
[DOB 06/30/1949],	)	NMT \$250,000 Fine (\$500,000 for corporation)
	)	NMT 1 Year Supervised Release
Defendants.	)	\$100 Special Assessment (\$400 for corporation)
	)	Order of Restitution
	)	Class E felony

INDICTMENT

THE GRAND JURY CHARGES THAT:

At times material and relevant to this Indictment:

INTRODUCTION and BACKGROUND

The Defendants

1. Defendant Xuzhou Anying Biologic Technology Development Co., Ltd (XAC), was located in Pei County, Xuzhou City, Jiangsu Province, China. Selling products to companies in the United States was XAC's business and it did not sell products in the domestic Chinese market

or sell its products to firms in countries other than the United States. Defendant Mao Linzhun (Linzhun) was the owner and manager of XAC. Linzhun was a Chinese national who is believed to currently reside in China.

2. Defendant Suzhou Textiles, Silk, Light Industrial Products, Arts and Crafts I/E Co., Ltd. (SSC), was located in Suzhou, China. SSC was registered as an export broker by the Chinese Ministry of Foreign Trade Bureau and the Chinese Department of Commerce and Industry. As such, SSC could export products for itself and on behalf of others. XAC used SSC to export products to the United States. Defendant Zhen Hao Chen, a/k/a Chen Zhen Hao (Hao) was the President of SSC. Hao was a Chinese national who is believed to currently reside in China.

Individuals and Entities Doing Business with the Defendants

3. ChemNutra, Inc. (ChemNutra), was located in Las Vegas, Nevada. ChemNutra was engaged in the business of buying food and food components in China, importing those Chinese items into the United States, and then selling those items to companies in the United States. ChemNutra represented itself as “the China source experts” with respect to importing Chinese products into the United States. Sally Qing Miller was the corporate President of ChemNutra and owned 51% of its stock. Stephen S. Miller was the Chief Executive Officer of ChemNutra and owned 49% of its stock. Sally Qing Miller and Stephen S. Miller were married to each other and were the sole owners of ChemNutra.

4. Sally Qing Miller was a Chinese national, had an engineering degree in food chemistry from Hangzhou University in China, and had more than 10 years’ work experience in China, most of which was in the role of a purchasing manager in China for United States companies. Sally Qing Miller represented herself to be certified in China as an ISO-9000 chief auditor. ISO

stands for International Organization for Standardization. ISO-9000 is an international consensus on good quality management practices that provided a set of internationally recognized standardized requirements for a quality management system in any organization.

Chinese Government Agency Responsible for Safety of Exported Food

5. The General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ) was a government agency under the State Council of the People's Republic of China. AQSIQ was in charge of entry-exit commodity inspection, import-export safety, certification and accreditation, as well as administrative law enforcement. According to the Food Hygiene Law of the People's Republic of China and the law of the People's Republic of China on Import and Export Commodity Inspection, AQSIQ was responsible for inspecting, supervising and administering the safety, hygiene and quality of imported and exported foods. To perform the function of entry-exit inspection, AQSIQ established a total of 35 Entry-Exit Inspection and Quarantine Bureaus (CIQ) in China's 31 provinces, with 300 branches and more than 200 local offices across the country.

The United States Food and Drug Administration

6. The United States Food and Drug Administration (FDA) was the agency of the United States government responsible for enforcing the provisions of the Federal Food, Drug, and Cosmetic Act (FDCA). The FDA's responsibilities included, among other things, regulating the distribution of food shipped, delivered, and received in interstate commerce, including articles offered for import into the United States.

The Federal Food, Drug, and Cosmetic Act

7. Under the FDCA, the term “food” meant articles used for food or drink for man or other animals and articles used for components of any such article. 21 U.S.C. § 321(f).

8. Under the FDCA, the term “interstate commerce” meant commerce between separate States in the United States and commerce between any State of the United States and any place outside thereof. 21 U.S.C. § 321(b).

9. The FDCA prohibited the introduction or delivery for introduction in interstate commerce, or the causing of such delivery or introduction, of any food that was adulterated. The FDCA defined “adulterated food” to include: food that contains any deleterious substance which may render it injurious to health, 21 U.S.C. § 342(a)(1); food that contains any unsafe food additive, 21 U.S.C. § 342(a)(2)(C)(i); food in which any substance has been substituted wholly or in part therefor, 21 U.S.C. § 342(b)(2); and food to which any substance has been added or mixed so as to make it appear the food is better or of greater value than it is, 21 U.S.C. § 342 (b)(4).

10. The FDCA prohibited the introduction or delivery for introduction in interstate commerce, or the causing of such delivery or introduction, of any food that was misbranded. The FDCA defined “misbranded food” to include: food whose labeling was false or misleading in any particular, 21 U.S.C. § 343(a)(1); and food that contains two or more ingredients but all the ingredients are not listed on the label, 21 U.S.C. § 343(i)(2).

The Scheme to Introduce, Deliver, and Sell Adulterated/Misbranded Food

11. Sally Qing Miller and Stephen S. Miller caused ChemNutra to enter into contracts and agreements with various pet food manufacturers in the United States for the purpose of supplying wheat gluten to the pet food manufacturers. Wheat gluten is the natural protein derived

from wheat or wheat flour. In its freshly extracted wet form it is known as gum gluten which when dried yields a cream-to-tan-colored, free-flowing powder of high protein content and bland taste. When re-hydrated, it regains its original characteristics. So unique is the functionality of wheat gluten and so persistent is the structural integrity after cooking, that wheat gluten appears to have no functional competitor. Pet food manufacturers used wheat gluten as a binding agent in the manufacture of certain types of pet food. ChemNutra was required to supply the pet food manufacturers with food grade wheat gluten that contained a minimum protein content of 75%.

12. Sally Qing Miller and Stephen S. Miller caused ChemNutra to enter into an agreement with SSC to purchase the wheat gluten that ChemNutra intended to supply to pet food manufacturers in the United States. The agreement required SSC to supply food grade wheat gluten with a minimum protein content of 75%.

13. SSC contracted with XAC to manufacture and supply the wheat gluten SSC needed to fulfill its contract with ChemNutra.

14. SSC completed, on behalf of XAC, the FDA Food Facility Registration as required under United States law. There was no need to complete this registration unless the product being sold was food. By completing this form, SSC acknowledged and admitted that it intended to export food on behalf of XAC. Food products exported from China were subject to mandatory inspection by AQSIQ prior to leaving China.

15. Under Chinese law, a broker, such as SSC, that intended to export a food product out of China was required first to notify the AQSIQ and register the manufacturer with the AQSIQ. The AQSIQ would then conduct a site visit of the manufacturer and inspect the manufacturing facilities. If the manufacturer passed inspection by AQSIQ, a certificate was issued. When the manufacturer

was ready to have its food product exported, a sample of the food was taken to the local CIQ office for testing. After the product was tested by the local CIQ, and found satisfactory, a certificate was issued that allowed the food product to be exported. SSC did not complete any of these steps for the XAC-manufactured wheat gluten that SSC intended to export.

16. Between November 6, 2006, and February 21, 2007, XAC used SSC to export at least 13 shipments of XAC-manufactured wheat gluten to ChemNutra in the United States, totaling more than 800 metric tons.

17. Wheat gluten was on the AQSIQ list of food products that were subject to mandatory inspection prior to being exported from China.

18. The World Customs Organization (WCO) developed the Harmonized Commodity Description and Coding Systems, generally referred to as “Harmonized System” (HS), as a multipurpose internationally recognized product nomenclature system. The United States and China both were members of the WCO and both used the HS, which was used by more than 200 countries and economies as a basis for their Customs tariffs and for the collection of international trade statistics. Over 98% of the merchandise in international trade was classified in terms of the HS.

19. The HS was extensively used by governments, international organizations, and the private sector for many other purposes such as internal taxes, trade policies, monitoring of controlled goods, rules of origin, freight tariffs, transport statistics, price monitoring, quota controls, compilation of national accounts, and economic research and analysis. The HS was universally recognized and accepted as an economic language and code for goods, and as an indispensable tool for international trade.

20. The HS provided a logical structure within which over 1,200 headings were grouped into 96 chapters, and the chapters themselves were arranged in 21 sections. Each heading was identified by a four-digit code, the first two digits of which indicated the chapter wherein the heading appeared, while the latter two digits indicated the position of the heading in the chapter. Thus, for example, HS code 1109 meant the ninth heading of Chapter 11.

21. Many of the headings in the HS were further subdivided into two or more subheadings by the addition of a fifth and six digit. The absence of a subheading was indicated by a zero. Thus, for example, HS code 1109.0000 meant the ninth heading of Chapter 11 which has not been further subdivided.

22. Section II of the HS was entitled “Vegetable Products” and contained Chapters 6 through 14. Chapter 11 covered “Products of the milling industry; malt; starches; inulin; wheat gluten.” Wheat gluten was found in Chapter 11, heading 09. There were no further subdivisions. Thus, the internationally recognized HS code for wheat gluten was 1109.0000.

23. SSC prepared the documents used to export the above-described shipments of XAC-manufactured wheat gluten to the United States buyer, ChemNutra. SSC used HS code 3504.0090 when shipping the product.

24. Section VI of the HS was entitled “Products of the Chemical or Allied Industries” and contained Chapters 28 through 38. Chapter 35 covered “Albuminoidal substances; modified starches; glues; enzymes.” Heading 04 of Chapter 35 covered “Peptones and their derivatives; other protein substances and their derivatives, not elsewhere specified or included; hide powder, whether or not chromed.” Heading 04 contained a separate subheading for “peptones” and another separate subheading for “other protein substances and their derivatives, not elsewhere specified.”

Thus, the internationally recognized HS code for “peptones” was 3504.0010 and the internationally recognized HS code for “other protein substances and their derivatives, not elsewhere specified” was 3504.0090.

25. By using the 3504.0090 HS code for the XAC-manufactured wheat gluten, SSC falsely declared to the Chinese government that the product being exported was not subject to mandatory inspection by AQSIQ prior to leaving China. By using the 3504.0090 HS code for the XAC-manufactured wheat gluten, SSC, among other things, avoided triggering an AQSIQ inspection of the facilities XAC used for manufacturing wheat gluten.

26. SSC provided ChemNutra, Sally Qing Miller, and Stephen S. Miller with the documents that used HS code 3504.0090 for the wheat gluten manufactured by XAC. Based on Sally Qing Miller’s training and experience, she knew that products exported from China and imported into the United States with HS code 3504.0090 would not be subjected to mandatory inspection by AQSIQ prior to leaving China whereas products exported from China and imported into the United States with HS code 1109.0000 would be subjected to mandatory inspection by AQSIQ prior to leaving China.

27. ChemNutra, Sally Qing Miller, and Stephen S. Miller sold the XAC wheat gluten to customers in the United States. ChemNutra, Sally Qing Miller, and Stephen S. Miller knew that their customers would use the XAC wheat gluten to manufacture pet food.

28. ChemNutra, Sally Qing Miller, and Stephen S. Miller did not disclose to said customers the material fact that the XAC wheat gluten had been exported out of China and imported into the United States with the use of a code that avoided subjecting the product to mandatory inspection by AQSIQ prior to leaving China.

29. Throughout the United States, countless pets suffered serious illness and death after eating pet food manufactured with the above-described wheat gluten that XAC, SSC, Linzhun, and Hao introduced and delivered, and caused to be introduced and delivered, into interstate commerce.

30. By March 29, 2007, the FDA's Forensic Chemistry Center had determined that melamine was present in the above-described wheat gluten that XAC, SSC, Linzhun, and Hao introduced and delivered, and caused to be introduced and delivered, into interstate commerce.

31. Melamine had and has a number of commercial and industrial uses, and can be used, for example, to create products such as plastics, cleaning products, counter tops, glues, inks, and fertilizers. Melamine had and has no approved use as a food additive in the United States. Mixing melamine with wheat gluten made the wheat gluten appear to have a higher protein level than was actually present. Adding melamine to wheat gluten was a way to fraudulently create the appearance that the wheat gluten had a higher protein level than was actually present. Adding melamine to wheat gluten in this fashion was cheaper for the manufacturer than increasing the actual protein content. The presence of melamine in the XAC-manufactured wheat gluten contributed to serious illness in, and the deaths of, countless pets after they ate pet food manufactured with the above-described wheat gluten that XAC, SSC, Linzhun, and Hao introduced and delivered, and caused to be introduced and delivered, into interstate commerce.

32. On or about April 28, 2007, Linzhun admitted to Chinese law enforcement authorities that XAC added melamine to the wheat gluten production process in order to make it appear to meet the minimum 75% protein content requirement specified in the contract with ChemNutra. By exporting the XAC-manufactured wheat gluten under HS code 3504.0090, the XAC manufacturing

facilities were not subjected to mandatory inspection by AQSIQ and, consequently, XAC's use of melamine in the production/manufacturing process was not detected.

33. When the XAC-manufactured wheat gluten was exported to the United States it was deliberately labeled and coded so that the product would not be subject to compulsory inspection by AQSIQ and so that AQSIQ would have no reason to inspect it.

34. XAC, SSC, Linzhun, and Hao used and caused the use of a port of entry located in Kansas City, Jackson County, Missouri, within the Western District of Missouri, for the purpose of introducing and delivering the XAC-manufactured wheat gluten into interstate commerce.

35. After the XAC-manufactured wheat gluten entered the United States through a port of entry located in Kansas City, Jackson County, Missouri, within the Western District of Missouri, ChemNutra, Sally Qing Miller, and Stephen S. Miller caused the XAC-manufactured wheat gluten to be shipped from the State of Missouri to locations in states other than Missouri.

COUNTS ONE thru THIRTEEN

(Introduction of Adulterated Food Into Interstate Commerce)

The factual allegations in Paragraphs One through Thirty-five of the Introduction and Background section of this indictment are incorporated herein by reference as if fully set forth herein.

The Charge

On or about the dates set forth below, in Kansas City, Jackson County, within the Western District of Missouri and elsewhere, the defendants, Xuzhou Anying Biologic Technology Development Co., Ltd., Suzhou Textiles, Silk, Light Industrial Products, Arts and Crafts I/E Co., Ltd., Mao Linzhun, and Zhen Hao Chen, a/k/a/ Chen Zhen Hao, with the intent to defraud and

mislead, introduced, delivered for introduction, and caused the introduction and delivery for introduction, into interstate commerce from China to Kansas City, Missouri, of a quantity of adulterated food, as the term food is defined in 21 U.S.C. § 321(f): specifically, said defendants caused wheat gluten to be adulterated pursuant to 21 U.S.C. § 342(a)(1), in that the wheat gluten contained melamine, a deleterious substance that rendered the wheat gluten injurious to health; pursuant to 21 U.S.C. § 342(a)(2)(C)(i), in that the wheat gluten contained melamine, an unsafe food additive; pursuant to 21 U.S.C. § 342(b)(2) in that melamine was substituted wholly or in part for the protein requirement of the wheat gluten; and pursuant to 21 U.S.C. § 342 (b)(4) in that melamine had been added to the wheat gluten and mixed therewith so as to make it appear the wheat gluten was better or of greater value than it was.

Count	Date	Number of Bags	Weight (metric tons)	Batch Number	Invoice Number	Invoice Amount
1	11/06/2006	880	22	20061006	SUG06G702-2	\$ 18,920.00
2	11/06/2006	2640	66	20061006	SUG06G702-3	\$ 56,760.00
3	11/06/2006	880	22	20061006	SUG06G702-1	\$ 18,920.00
4	11/19/2006	2640	66	20061027	SUG06G710	\$ 57,420.00
5	11/26/2006	2640	66	20061101	SUG06G770	\$ 57,420.00
6	12/01/2006	3176	79.4	20061108	SUG06G792	\$ 69,078.00
7	12/22/2006	4000	100	20061122 20061126	SUG06G711	\$ 101,250.00
8	12/30/2006	6400	160	20061201 20061202 20061203	SUG06G875	\$ 162,000.00
9	01/05/2007	4000	100	20061206	SUG06G891	\$ 101,250.00
10	02/02/2007	800	17	20070111	SUG07G056	\$ 20,250.00
11	02/09/2007	1600	40	20070116	SUG07G064	\$ 41,300.00
12	02/17/2007	2400	60	20070116	SUG07G079	\$ 61,950.00

Count	Date	Number of Bags	Weight (metric tons)	Batch Number	Invoice Number	Invoice Amount
13	02/21/2007	3200	80	20070126	SUG07G119	\$ 82,600.00

All in violation of 21 U.S.C. §§ 331(a) and 333(a)(2) and 18 U.S.C. § 2.

COUNTS FOURTEEN thru TWENTY-SIX

(Introduction of Misbranded Food Into Interstate Commerce)

The factual allegations in paragraphs One through Thirty-five of the Introduction and Background section of this indictment are incorporated herein by reference as if fully set forth herein.

The Charge

On or about the dates set forth below, in Kansas City, Jackson County, within the Western District of Missouri and elsewhere, the defendants, Xuzhou Anying Biologic Technology Development Co., Ltd., Suzhou Textiles, Silk, Light Industrial Products, Arts and Crafts I/E Co. Ltd., Mao Linzhun, and Zhen Hao Chen, a/k/a Chen Zhen Hao, with the intent to defraud and mislead, introduced, delivered for introduction, and caused the introduction and delivery for introduction, into interstate commerce from China to Kansas City, Missouri, of a quantity of misbranded food, as the term food is defined in 21 U.S.C. § 321(f): specifically, said defendants caused wheat gluten to be misbranded pursuant to 21 U.S.C. § 343(a)(1), in that the labeling of the wheat gluten was false and misleading because the wheat gluten was represented to have a minimum protein level of 75% when in fact it did not; and pursuant to 21 U.S.C. § 343(i)(2), in that the food labeled as wheat gluten contained two or more ingredients, including melamine, but melamine was not listed on the label.

Count	Date	Number of Bags	Weight (metric tons)	Batch Number	Invoice Number	Invoice Amount
14	11/06/2006	880	22	20061006	SUG06G702-2	\$ 18,920.00
15	11/06/2006	2640	66	20061006	SUG06G702-3	\$ 56,760.00
16	11/06/2006	880	22	20061006	SUG06G702-1	\$ 18,920.00
17	11/19/2006	2640	66	20061027	SUG06G710	\$ 57,420.00
18	11/26/2006	2640	66	20061101	SUG06G770	\$ 57,420.00
19	12/01/2006	3176	79.4	20061108	SUG06G792	\$ 69,078.00
20	12/22/2006	4000	100	20061122 20061126	SUG06G711	\$ 101,250.00
21	12/30/2006	6400	160	20061201 20061202 20061203	SUG06G875	\$ 162,000.00
22	01/05/2007	4000	100	20061206	SUG06G891	\$ 101,250.00
23	02/02/2007	800	17	20070111	SUG07G056	\$ 20,250.00
24	02/09/2007	1600	40	20070116	SUG07G064	\$ 41,300.00
25	02/17/2007	2400	60	20070116	SUG07G079	\$ 61,950.00
26	02/21/2007	3200	80	20070126	SUG07G119	\$ 82,600.00

All in violation of 21 U.S.C. §§ 331(a) and 333(a)(2) and 18 U.S.C. § 2.

Dated this _____ day of _____, 2008.

A TRUE BILL:

FOREPERSON OF THE GRAND JURY

Joseph Marquez
Assistant United States Attorney

Phillip Eugene Porter
Chief, Fraud and Corruption Unit