

**JINFU TRADING CO., LTD. v. UNITED STATES**

Consol. Court No. 04-00597  
Slip Op. 06-137 (September 7, 2006)

**FINAL RESULTS OF REDETERMINATION  
PURSUANT TO REMAND**

**SUMMARY**

The U.S. Department of Commerce (the Department) has prepared these results of redetermination pursuant to the remand order from the United States Court of International Trade (CIT or the Court) in Jinfu Trading Co., Ltd. v. United States, Slip Op. 06-137 (CIT September 7, 2006) (Jinfu). The Court remanded the Department's final results (see Honey from the People's Republic of China; Notice of Final Results and Final Rescission, In Part, of Antidumping Duty New Shipper Review, 69 FR 64029 (November 3, 2004) (Final Results), and accompanying Issues and Decision Memorandum for the Final Results and Final Rescission, In Part, of the New Shipper Review of the Antidumping Duty Order on Honey from the People's Republic of China (Decision Memo)), with respect to the finding of no affiliation between Jinfu Trading Co., Ltd. (Jinfu PRC) and Yousheng Trading (USA) Co., Ltd. (Yousheng USA) at the time of the relevant U.S. sale, i.e., November 2, 2002, by reason of control.

The Court instructed the Department to either reinstate Jinfu PRC's new shipper review, or to provide other record evidence to support its conclusion that Jinfu PRC and Yousheng

USA/Jinfu USA were not affiliated by reason of control. Additionally, the Court instructed the Department to reopen the record to provide plaintiff with an opportunity to place thereon further evidence with respect to affiliation and to provide an explanation of that evidence in the event that the Department did not concur with its finding.

In accordance with the Court's instructions, the Department reopened the record on October 12, 2006, to provide Jinfu PRC an opportunity to place thereon further evidence with respect to affiliation and to provide an explanation of that evidence. Thus, Jinfu PRC was afforded a further opportunity to place evidence on the record regarding affiliation through control. On October 23, 2006, Jinfu PRC filed a submission in response to the Department's request. See Plaintiff's Comments in Response to the Department's Letter of October 12, 2006 (Affiliation Submission). The new information provided by Jinfu PRC addressed the question of ownership (i.e., whether Jinfu PRC owned Yousheng USA/Jinfu USA on November 2, 2002), rather than the question of operational control (see below for further discussion). However, as noted below, the Court upheld our determination that Jinfu PRC did not own Yousheng USA or Jinfu USA at the time of the new shipper sale. Petitioners filed comments regarding Jinfu PRC's October 23, 2006, filing on November 2, 2006.

On November 13, 2006, the Department issued its draft redetermination on remand (Draft Redetermination). On November 20, 2006, we received comments from Jinfu PRC regarding the Draft Redetermination. On November 22, 2006, we received rebuttal comments from the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners). Based upon our review of all record evidence, including the Affiliation Submission and comments received by the interested parties, and for reasons explained below, we have not

changed our finding of no affiliation between Jinfu PRC and Yousheng USA/Jinfu USA at the time of the relevant U.S. sale, i.e., November 2, 2002. Accordingly, we continue to find that Jinfu PRC did not meet the certification requirements to qualify it for a new shipper review.

## **BACKGROUND**

On December 10, 2001, the Department published an amended final determination of sales at less-than-fair-value and antidumping duty order regarding honey from the People's Republic of China (PRC). Notice of Amended Final Determination and Antidumping Duty Order in the Investigation of Honey from the People's Republic of China, 66 FR 63670 (December 10, 2001).

\_\_\_\_\_ On June 30, 2003, the Department received from Jinfu PRC, an exporter of the subject merchandise, a timely request for a new shipper review under the antidumping duty order on honey from the PRC, in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and section 351.214(c) of the Department's regulations.

On July 31, 2003, the Department determined, based on information on the record at that time, that Jinfu PRC's request met the requirements of 19 CFR 351.214 and, on August 11, 2003, published its initiation of this new shipper review for the period December 1, 2002, through May 31, 2003.<sup>1</sup> See Honey from the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews, 68 FR 47537 (August 11, 2003).

\_\_\_\_\_ On October 25, 2004, pursuant to section 735 of the Act, the Department issued its final results and final rescission, in part, of its new shipper review with respect to Jinfu PRC, which

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<sup>1</sup> We also initiated a new shipper review based on a request filed by Cheng Du Wai Yuan Bee Products Co., Ltd. (Cheng Du).

was published on November 3, 2004. See Final Results and accompanying Decision Memo at Comment 2. The Department determined Jinfu PRC failed to demonstrate its entitlement to a new shipper review. Therefore, the Department rescinded the new shipper review with respect to Jinfu PRC.<sup>2</sup> In issuing the final results, the Department addressed comments raised by interested parties in the Decision Memo, including the relationship between Jinfu PRC and Jinfu Trading (USA), Inc. (Jinfu USA). See Final Results, 69 FR 64029 and Decision Memo at 12 - 27, Comment 2.

On November 29, 2004, Jinfu PRC brought suit before the Court, contesting the Department's conclusion that neither Yousheng USA nor its successor Jinfu USA were affiliated with Jinfu PRC within the meaning of 19 U.S.C. § 1677(33)(F) or (G) on November 2, 2002, the date of the relevant U.S. sale.<sup>3</sup> On September 7, 2006, the Court issued its opinion in Jinfu. In its opinion, the Court affirmed the Department's findings that the record is void of evidence that 1) Jinfu USA was the name of the corporate entity on November 2, 2002, i.e., Jinfu USA did not exist on November 2, 2002; and 2) any ownership interest in Yousheng USA or Jinfu USA was transferred to the CEO of Jinfu PRC on or before November 2, 2002, which pertain to legal ownership. See Jinfu at 25.

The Court, however, disagreed with the Department's conclusion that the CEO of Jinfu PRC (CEO B)<sup>4</sup> was not in a position to exercise control over either Yousheng USA or Jinfu USA within the meaning of 19 U.S.C. § 1677(33)(F) or (G) on November 2, 2002. In remanding this

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<sup>2</sup> The successor company of Yousheng USA.

<sup>3</sup> The date of the first sale to the United States.

<sup>4</sup> In order to keep this document public, we have adopted the references used by the Court in its opinion for parties key to our determination. See Jinfu at 3, f.n. 5.

matter, the Court instructed the Department to either find that Jinfu PRC and Yousheng USA were affiliated as of November 2, 2002, and to reinstate its new shipper review, or to provide other record evidence to support our conclusion that the companies were not affiliated, as well as to provide Jinfu PRC with an opportunity to present additional evidence and argument regarding this issue.

We issued our Draft Redetermination on remand on November 13, 2006, and requested comments on the Draft Redetermination by November 20, 2006 and rebuttal comments by November 24, 2006. On November 20, 2006, we received comments from Jinfu PRC. See Letter from Jinfu PRC to the Secretary of Commerce dated November 20, 2006 (Jinfu PRC's Comments). On November 22, 2006, we received rebuttal comments from the petitioners. See Letter from petitioners to the Secretary of Commerce dated November 22, 2006 (Petitioners' Rebuttal Comments). We have summarized the comments and rebuttal comments from Jinfu PRC and petitioners, respectively, and address them below.

## **ANALYSIS**

The majority of the documents submitted by Jinfu PRC in its Affiliation Submission are relevant to a determination as to whether Jinfu PRC and Jinfu USA were legally affiliated through ownership, which is not at issue in this remand. In making its argument regarding affiliation through control, Jinfu PRC's claims rely heavily on the affidavits of CEO B, the owner of Yousheng USA, the resident officer of Jinfu USA (Mr. A),<sup>5</sup> and the licensed U.S. attorney who assisted with the formation of Yousheng USA and drafted documents for Jinfu USA. As a

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<sup>5</sup> In order to keep this document public, we have adopted the references used by the Court in its opinion for parties key to our determination. See Jinfu at 3, f.n. 5.

preliminary matter, the Department previously questioned the veracity and merits of statements made by parties who have openly admitted to “back-dating” documents that were placed on the record of this proceeding as evidence. See Final Results and accompanying Decision Memo, Comment 2 at 10.

With respect to whether CEO B was in a position to exercise control over Mr. A, Jinfu PRC points to the affidavit of Mr. A, specifically item number 12 in which Mr. A states that he never owned any shares of stock in Yousheng USA<sup>6</sup> or Jinfu USA, as evidence that Mr. A was not the owner of Jinfu USA. Mr. A allegedly claims that “{i}t has always been my understanding that Jinfu USA was owned by {CEO B} at the time that Jinfu USA purchased honey from {CEO B’s} company in China, and resold the honey to our customer in the U.S.” See Exhibit 3 of Jinfu PRC’s Affiliation Submission at 2. Mr. A’s stated “understanding” of the relationship between Yousheng USA/Jinfu USA and CEO B in his affidavit contradicts statements he made at verification in which he expressed concerns over revealing the names of his U.S. customers to CEO B for fear of Jinfu PRC selling directly to Mr. A’s U.S. customers. See Jinfu USA Verification Report at 8.<sup>7</sup> We note that Mr. A signed the affidavit on November 16, 2004, approximately six months after Department officials conducted their verification of the U.S. sale (i.e., March 8-9, 2004).

The issues raised by Jinfu PRC are addressed in further detail below. As described

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<sup>6</sup> Although, the name of Yousheng USA was bracketed in this affidavit, we note that this information is public in the instant proceeding.

<sup>7</sup> See Memorandum to the File through Abdelali Elouaradia, Program Manager, Sales Verification of Questionnaire Responses Submitted by Jinfu Trading Co., Ltd. on behalf of its U.S. affiliate, Jinfu Trading (USA), Inc., dated May 5, 2004 (Jinfu USA Verification Report). A public version of this report is on file in the Central Records Unit (CRU) located in room B-099 of the Herbert H. Hoover Building, 1401 Constitution Avenue, NW, Washington, DC.

below, there is significant record evidence demonstrating that Mr. A acted independently of CEO B to sell the honey shipment in the United States.

1. Price Negotiations

Contrary to Jinfu PRC's claim, the record does not support a finding that CEO B had control over Mr. A's business decisions, particularly those dealing with pricing. Mr. A's statements that he believed that his resale price was subject to the approval of CEO B are contradicted by statements made by Mr. A at verification regarding his price negotiations with the U.S. customer. See Jinfu USA Verification Report at 6. Further, Jinfu PRC's argument that CEO B had the potential to influence what was then Yousheng USA's pricing decisions relies heavily on facsimiles exchanged between Mr. A and CEO B.<sup>8</sup> Jinfu PRC also relies on statements in the Department's verification report, also highlighted by the Court in its opinion, as support for its argument that Mr. A would inform CEO B of the material terms of sale for its resales of honey. However, these statements are contradicted by other statements made by Mr. A and record evidence (i.e., documents relating to the timing of the shipment in relation to timing of the alleged "approval" of the U.S. price by CEO B). See Jinfu at 28 and Jinfu USA Verification Report at 6. Based on our review of all record evidence, we find that Mr. A negotiated the U.S. price without regard for the opinion or approval of CEO B. In reaching this conclusion, as noted above, the Department examined the timing of the shipment and the price negotiations of the honey sold by Mr. A to the U.S. customer, and the credibility of the facsimiles exchanged between Mr. A and CEO B. An examination of the documents and statements related

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<sup>8</sup> Jinfu PRC's argument is based on the facsimiles that were allegedly exchanged between Mr. A and CEO B. As discussed in further detail below, the Department, based on its review of additional record evidence, has concerns with the merits of these facsimiles.

to these issues demonstrates that Mr. A controlled the price negotiations with his customer in the United States, not CEO B.<sup>9</sup>

In considering whether affiliation exists between two entities, the Department is required to examine the subject relationship in accordance with section 771(33) of the Act. Section 771(33) of the Act states that affiliated persons include:

- (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
- (B) Any officer or director of an organization and such organization.
- (C) Partners.
- (D) Employer and employee.
- (E) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization.
- (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
- (G) Any person who controls any other person and such other person.

For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. In determining whether control over another person exists within the meaning of section 771(33) of the Act, the Department considers the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; close supplier relationships. See 19 CFR 351.102(b). The Department will not find affiliation on the basis of these factors unless the relationship has the potential to affect decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. Id. See also Final

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<sup>9</sup> Specifically, we examined the following documents: 1) sales confirmation signed by the CEO B and Mr. A, 2) commercial invoice for sale between Jinfu PRC and Mr. A, 3) the bill of lading for the new shipper shipment, 4) the facsimiles exchanged between Mr. A and the CEO B, 5) the sales contract between Mr. A and the U.S. customer; 6) entry documentation, i.e., CBP Form 7501; and 7) payment documentation from the U.S. customer.

Determination of Sales at Less Than Fair Value: Polyethylene Retail Carrier Bags From Malaysia, 69 FR 34128 (June 18, 2004) and accompanying Issues and Decision Memorandum at Comment 11.

On November 1, 2002, Mr. A and CEO B signed a sales confirmation which specified Oakland, California as the final destination of the honey shipment.<sup>10</sup> See Exhibit 7 of Jinfu PRC's Section A questionnaire response dated September 16, 2003 (AQR). On November 2, 2002, Jinfu PRC issued a commercial invoice to Jinfu USA for the shipment of honey destined for Oakland. Per the bill of lading, the shipment left the port of Shanghai for Oakland on November 5, 2002. See Exhibit 7 of Jinfu PRC's AQR. When questioned at verification as to why the goods were destined for the port of Oakland, given that Jinfu USA is located near Seattle, Washington, Mr. A stated that the end-user of the goods (i.e., the final customer of Mr. A's U.S. customer) was located near Oakland.<sup>11</sup> See Jinfu USA Verification Report at 4.

On November 13, 2002, Mr. A allegedly sent a letter to CEO B in the PRC via facsimile in which he described his price negotiations of the new shipper sale with the U.S. customer. On the same day, according to Jinfu PRC, CEO B responded to Mr. A's letter and agreed with Mr. A's price. See Exhibit 4 of Jinfu PRC's First Supplemental questionnaire response dated December 30, 2003 (SQR). On November 15, 2002, Mr. A entered into a sales contract with the U.S. customer for the shipment of honey. See Exhibit 7 of Jinfu PRC's AQR. On November 18, 2002, the U.S. customer issued a personal check to Jinfu USA. We note that the "for" section of the check was left blank. See Exhibit 15 of Jinfu PRC's SQR. Shortly thereafter, on November

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<sup>10</sup> The destination of the goods was made public in Jinfu PRC's Affiliation Submission at Exhibit 21.

<sup>11</sup> The location of Jinfu USA was made public in Jinfu PRC's Affiliation Submission at Exhibit 21.

20, 2002, the U.S. customer paid Jinfu USA additional monies from a company check where the “for” section stated “honey down payment.” See Exhibit 15 of Jinfu PRC’s SQR. On November 21, 2002, the shipment reached the port of Oakland. See CBP Form 7501 at Exhibit 3 of Jinfu PRC’s New Shipper Review Request dated June 30, 2003. On November 21, 2002, Mr. A issued a check to the freight forwarding company to cover Jinfu USA’s freight forwarding costs as of November 20, 2006. See Exhibit 16 of Jinfu PRC’s SQR.

According to the facsimiles, CEO B agreed to the price negotiated by Mr. A on November 13, 2002 (the date of the fax from CEO B to Mr. A), subsequent to which Mr. A entered into a sales contract with the U.S. customer. The price, according to statements at verification and as noted above, was reached through negotiations between Mr. A and the U.S. customer at a time that coincided with Jinfu PRC’s sale to Mr. A.

At verification, Department officials questioned the credibility of the exchanged facsimiles given that neither document contained any fax communications commonly found at the top of most faxed transmissions. Mr. A stated that he did not have a facsimile report recording the date and time he transmitted the letter to CEO B. See Jinfu USA Verification Report at 6. The lack of transmission information on the faxes, when viewed in the context of credibility problems regarding corporate ownership documents submitted by Jinfu PRC to the Department, raises questions regarding the veracity and reliability of the facsimiles.

Given that the goods were on the water headed for Oakland (the location of the end-user) at the time the alleged facsimiles were exchanged between Mr. A and CEO B, these documents are irrelevant in establishing that Mr. A’s price negotiations were subject to the approval of CEO B. Further, the facsimiles imply that Jinfu PRC was shipping merchandise in order to build up

inventory in the United States. However, it is clear that this was not the case because merchandise was destined from the outset of the sale to the end user.

Based on statements made by Mr. A at verification, Mr. A, not CEO B, unilaterally negotiated the U.S. selling price of the honey shipped to Oakland with his U.S. customer. In particular, at verification, Mr. A stated that he and the U.S. customer agreed on the per metric ton (MT) price for the honey shipment, contingent upon the honey passing FDA testing for antibiotics. See Jinfu USA Verification Report at 6. Based on Mr. A's statements during verification, his negotiations of the price with the U.S. customer coincided with the date of Jinfu PRC's sale to Mr. A, i.e., November 1, 2002. See Id. As demonstrated by the timeline presented above, the U.S. resale price was established and agreed upon prior to the date of the alleged facsimiles, i.e., November 13, 2002. In other words, the material terms of the new shipper sale were established prior to the date when Mr. A allegedly received CEO B's approval to enter into contract with the U.S. customer using this price.

Furthermore, these facsimiles, even if considered credible or reliable, merely indicate that Mr. A found a customer willing to pay X price per MT for the honey and that CEO B agreed to this price.<sup>12</sup> The contract with the U.S. customer is signed on November 15, 2002, on terms that do not change between then and the shipment to the end-user. The honey, as explained above, had already been sold to Mr. A's company and was en route to the United States, with the sales confirmation dated November 1, 2002, and the invoice dated November 2, 2002. The terms of this sale also did not change between contract and receipt of payment.

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<sup>12</sup> We note that, in its opinion, the Court largely came to its conclusion that CEO B was in a position to exercise control over Mr. A based on the existence of the facsimiles in question. See Jinfu at 29-32.

In light of the above, we conclude that the facsimiles between Mr. A and CEO B, and statements by the parties in the verification report, fail to support Jinfu PRC's contention that CEO B controlled Mr. A's price negotiations.

2. Relationship between CEO B, Mr. A, and the U.S. customer

The record further indicates that the U.S. customer was financing the entire U.S. transaction in question. The total amount paid by the U.S. customer by November 20, 2002, noted above, was received by Mr. A prior to paying the bill from the freight forwarding company. Moreover, in reviewing Jinfu USA's checkbook registers at verification, Department officials discovered that Mr. A had also borrowed money from the U.S. customer in order to pay Jinfu USA's freight forwarding bill for a later sale. See Jinfu USA Verification Report at 8 and Verification Exhibit (VE) 6. There is no evidence on the record to suggest that Mr. A requested approval from CEO B prior to receiving the loan, nor is there evidence on the record to suggest that Jinfu PRC sent money to its alleged affiliate to repay the loan.

Statements made by Mr. A at verification also further undermine Jinfu PRC's contention that CEO B controlled Mr. A's price negotiations. Specifically, at verification, Mr. A stated that he did not want CEO B to be directly accessible to Jinfu USA's U.S. customers because of the possibility that Jinfu PRC would sell directly to the customers. See Jinfu USA Verification Report at 8. The U.S. customer's financing of Jinfu USA's freight costs and Mr. A's reluctance to allow direct contact between Jinfu PRC and the customer further undermine Jinfu PRC's assertion that CEO B controlled Jinfu USA's negotiations with the customer.

**SUMMARY OF INTERESTED PARTY COMMENTS**

The Department received comments from Jinfu PRC on November 20, 2006, and rebuttal

comments from the petitioners on November 22, 2006. Below is a summary of parties' comments and the Department's position.

First, in its comments on the Department's Draft Redetermination, Jinfu PRC reiterates its argument made in its Affiliation Submission that the Department failed to comply with the letter and spirit of the Court's Order. Jinfu PRC argues that, based on the Court's instructions, the Department should have provided "other evidence" in support of its finding before it reopened the record to allow Jinfu PRC the opportunity to supplement the record with additional evidence supporting affiliation (i.e., allowed for new evidence to be placed on the record after issuing its draft redetermination).

Second, Jinfu PRC argues that there is not a scintilla of record evidence contradicting Mr. A's assertion that he could not consummate a sale of honey to a United States customer without the approval of CEO B. Jinfu PRC states that the fact that Mr. A may have actually negotiated the price on his own does not mean that he had the authority to actually sell the honey at that price without prior approval of CEO B.

Third, Jinfu PRC argues that the timing of the U.S. customer's payment for the subject merchandise has no relevance to the question as to whether Jinfu PRC and Jinfu USA were affiliated. Fourth, Jinfu PRC contends that the Department's statement that the facsimiles exchanged by Mr. A and CEO B "imply that Jinfu PRC was shipping merchandise in order to build up inventory in the United States" is contradicted by the plain language of the facsimiles themselves.

Fifth, Jinfu PRC alleges that Mr. A did not say anything at verification to contradict his statement to the Department's Verification Team that "Jinfu had shipped a container of honey

prior to the finalization of the sales contract between Jinfu USA and {the customer},” and that Mr. A. “stated that on November 13, 2002 he faxed a letter to {CEO B} relating the results of his negotiations.” See Jinfu PRC’s Comments at 4. Moreover, Jinfu PRC asserts that the Department’s conclusion is directly contradicted by its PRC Verification Report, in which an employee of Jinfu PRC expressly advised the Department that “he spoke directly with the U.S. customer” and that Mr. A “on behalf of Jinfu USA directly negotiates the sales price with the U.S. customer and then seeks final approval from {CEO B}.” Id.

While the affidavits it submitted to the Department focus on ownership issues, Jinfu PRC contends that they also establish that Mr. A believed that Jinfu USA was owned by CEO B. Therefore, Jinfu PRC argues that even if both Mr. A and CEO B believed that CEO B was not the “legal” owner of Jinfu USA, such a belief does not mean that the parties were not affiliated. Rather, according to Jinfu PRC, the fact that the parties attempted to transfer legal ownership constitutes substantial evidence that operational control actually had been transferred.

In rebuttal, with respect to Jinfu PRC’s claim that the Department “relied on new reasons to reach what we respectfully submit was a predetermined conclusion,” petitioners argue that Jinfu PRC’s claim is unfounded. According to petitioners, the Department set forth detailed reasons, supported by substantial evidence that Jinfu PRC placed on the record, for its finding that Jinfu PRC and Yousheng USA/Jinfu USA were not affiliated at the time of the sale from Jinfu PRC to Yousheng USA/Jinfu USA. Petitioners also challenge Jinfu PRC’s claims to have been prejudiced by the Department’s requirement that Jinfu PRC submit new information before the Department issued its Draft Redetermination.

Petitioners contend that, contrary to Jinfu PRC’s claim that Mr. A could not consummate

a sale of honey to a U.S. customer without the approval of CEO B, Mr. A. had already identified his U.S. customer before he received approval from CEO B. Moreover, petitioners state that Mr. A was careful never to tell CEO B the identity of his customer, because “he does not want {CEO B} to be directly accessible by Jinfu USA’s U.S. customers because of the possibility that Jinfu would sell directly to the customers.” See Petitioners’ Rebuttal Comments at 2-3, citing Jinfu USA Verification Report at 8. Petitioners further note that Mr. A completed the sale from Jinfu PRC to Yousheng USA/Jinfu USA on November 1, 2002, nearly two weeks before CEO B allegedly approved the sale on November 13, 2002. Id. citing Petitioners’ Letter dated November 2, 2006. As admitted by Jinfu PRC, petitioners assert that the honey was, in fact, already shipped to Yousheng USA/Jinfu USA prior to CEO B’s alleged approval of the sale. See Petitioners’ Rebuttal Comments at 3. Thus, petitioners contend that Mr. A had already purchased the honey and was free to sell that honey to the U.S. customer at any price he chose at the time he allegedly received CEO B’s approval, i.e., November 13, 2002. Petitioners further contend that, as noted by Jinfu PRC, Mr. A characterized his letter to CEO B as “relaying the results of his negotiations.” Id. (original emphasis). According to petitioners, this suggests that the sale was not contingent on the approval of CEO B because the negotiations were concluded and had resulted in a sale. Therefore, petitioners claim that there is substantial evidence demonstrating that Mr. A could make a deal without CEO B’s approval, “and no evidence that CEO B had any contact with the customer or was in a position to control the sale in question.” See Petitioners’ Rebuttal Comments at 3.

With regard to Jinfu PRC’s challenge of the Department’s conclusion that the U.S. customer financed the sale in question, petitioners state that Jinfu PRC fails to address the fact

that Mr. A had taken a loan from the U.S. customer to pay other expenses of Jinfu USA, and that Mr. A had sought and obtained this loan without CEO B's consent. According to petitioners, this is evidence of independent business dealings that undermines Jinfu PRC's claims of CEO B's control of Jinfu USA's operations. Petitioners explain that the Department was entitled to interpret the timing of the payments in the manner it did and to draw the conclusion it did because the Department is the primary fact-finder in antidumping duty proceedings. As such, petitioners state that the Department must assess the weight to be assigned to individual pieces of record evidence. See Petitioners' Rebuttal Comments at 4, citing Nippon Steel Corp. v. United States, 458 F.3d 1345, 1350 (Fed. Cir. 2006) (Nippon Steel). Petitioners contend that the fundamental principle of the substantial evidence standard is that a single proceeding's record may, and often does, support different outcomes, depending on the weight accorded to the evidence by the agency. Id. citing American Silicon Techs. v. United States, 261 F.3d 1371, 1376 (Fed. Cir. 2001).

Petitioners note that even if Jinfu PRC's claim that the language of the facsimiles between CEO B and Mr. A do not imply Jinfu PRC was seeking to build inventory in the United States, it would not be material to the Department's determination because it found the facsimiles to be irrelevant in establishing CEO B's approval of the U.S. sale. See Petitioners' Rebuttal Comments at 4. Specifically, petitioners argue that because the shipment of honey left the PRC before the sale to the U.S. customer was finalized, a completed sale had already been made to Jinfu USA and Jinfu PRC did not have control over this merchandise at the time of the sale. Thus, petitioners argue, the alleged facsimiles evidencing sales negotiations after the sale was already completed are not reliable and do not support Jinfu PRC's claim.

Finally, petitioners state that Jinfu PRC's argument that the totality of the evidence in the affidavits provided by Jinfu PRC establishes that CEO B and Jinfu PRC controlled Jinfu USA ignores several important facts. See Petitioners' Rebuttal Comments at 5. First, although Jinfu PRC may have intended to control Jinfu USA, petitioners assert that it was not apparent from the parties' actions and documentation from the time of the relevant sale. Petitioners claim that the Department was entitled to consider the parties' actions and the relevant sales documentation as more probative than affidavits made after the sale.

Second, petitioners note that the affidavits were signed by persons who had a self-interest in the affiliation determination. According to petitioners, the Department is entitled to weigh the statements of parties with a self-interest when evaluating them against the evidence of the parties' actions contemporaneous with the sale. Third, petitioners argue that Jinfu PRC ignores that it has already admitted that Mr. A and CEO B were involved in backdating the stock transfer agreement without initially informing the Department. This act, petitioners claim, constituted the falsification of a document in order to achieve a specific result in this review. Under these circumstances, petitioners contend the Department is entitled to "question the veracity and merits of statements" made by such parties, and to accord such documents little or no evidentiary weight. See Petitioners' Rebuttal Comments at 6.

## **DEPARTMENT'S POSITION**

We continue to find, based on record evidence and the comments of the parties, that Jinfu PRC and Yousheng USA/Jinfu USA were not affiliated at the time of the sale from Jinfu PRC to Yousheng USA/Jinfu USA. As such, we continue to determine that Jinfu PRC failed to demonstrate its entitlement to a new shipper review because it failed to file proper certifications.

With respect to Jinfu PRC's claim that the Department failed to comply with the Court's Order when it opened the record prior to issuing its Draft Redetermination for comment, we find Jinfu PRC's claim unfounded. As noted by Jinfu PRC, the Court specifically granted the Department the authority to reopen the record to allow Jinfu PRC the opportunity to place on the record any information to support its claims of affiliation through control. As noted above, on October 12, 2006, the Department permitted Jinfu PRC to place information on the record regarding the issue of affiliation through control. It is not the Department's practice to issue a redetermination on remand and then allow parties to place new information on the record subsequent to issuance of a redetermination. If this were the case, the Department would not be able to adequately consider all record evidence in reaching a preliminary redetermination.

There is substantial evidence on the record that demonstrates, contrary to Jinfu PRC's claim, that Mr. A made the sale of honey to the U.S. customer without the approval of CEO B, as shown by the timing of events and discussed in detail above. Mr. A completed the sale from Jinfu PRC to Yousheng/Jinfu USA on November 1, 2002. On November 2, 2002, Jinfu PRC issued a commercial invoice to Jinfu USA for the shipment of honey destined for Oakland, the location of Mr. A's customer. The shipment left the port of Shanghai for Oakland on November 5, 2002. On November 13, 2002, Mr. A allegedly sent a letter to CEO B in the PRC via facsimile in which he described his price negotiations of the new shipper sale with the U.S. customer. On the same day, according to Jinfu PRC, CEO B allegedly responded to Mr. A's letter and approved Mr. A's price to the U.S. customer. On November 15, 2002, Mr. A entered into a sales contract with the U.S. customer for the shipment of honey. On November 21, 2002, the shipment reached the port of Oakland.

Mr. A's price negotiations with the U.S. customer coincided with the date of Jinfu PRC's sale to Mr. A, i.e., November 1, 2002. See Jinfu USA Verification Report at 6. The material terms of the new shipper sale were, therefore, established prior to the date when Mr. A allegedly received CEO B's approval to enter into contract with the U.S. customer using this price. The shipment of subject merchandise was en route to the U.S. customer for eight days by the time that Jinfu PRC alleges that CEO B approved Mr. A's sales negotiations with the U.S. customer for the very same shipment. The shipment, however, could not have been sent to the U.S. customer unless Mr. A had already completed the sales negotiations with the U.S. customer.<sup>13</sup> Given that the shipment was on the water at the time the alleged facsimiles were exchanged between Mr. A and CEO B, these documents are irrelevant to establishing that Mr. A's price negotiations were subject to the approval of CEO B.

With respect to Jinfu PRC's contention that the U.S. customer's payments to Mr. A are not relevant to the issue of affiliation, the Department disagrees. As discussed above, Mr. A obtained a loan from the U.S. customer to pay its freight forwarding bills. See Jinfu USA Verification Report at 8 and Verification Exhibit (VE) 6. The fact that the U.S. customer loaned Mr. A the funds to pay freight costs for the shipment, without Mr. A seeking approval from CEO B, is additional evidence that Mr. A unilaterally made the U.S. sale. Further, although Jinfu PRC claims that the U.S. customer was simply "paying his bill after receiving his merchandise," See Jinfu PRC's Comments at 4, payment by the U.S. customer for the subject merchandise was made on November 20, 2002, prior to the final U.S. customer's receipt of the merchandise. See

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<sup>13</sup> As Jinfu PRC states, Mr. A characterizes his facsimile to CEO B as simply "relaying the results of his negotiations," not seeking approval for his negotiations. See Jinfu PRC's Comments at 4.

Jinfu PRC's AQR at Exhibit 8.

Jinfu PRC asserts that the Department incorrectly concluded that the facsimiles exchanged by Mr. A and CEO B indicate that Jinfu PRC was shipping merchandise in order to build up inventory in the United States. See Jinfu PRC's Comments at 4. The facsimile from CEO B to Mr. A, however, states that Jinfu PRC "finished a container" for shipping, with no indication that the container was intended for a particular customer. Id. at Exhibits 19 and 20. The Department reasonably concluded that the shipment was intended for inventory. As stated above, however, the fact that merchandise was actually shipped directly to the end user contradicts the content of the facsimiles.

Jinfu PRC also asserts that its employee spoke with the U.S. customer to support its claim that Mr. A's decisions were subject to the approval of CEO B. See Jinfu PRC's Comments at 4. Statements made by Mr. A and employees of Jinfu PRC during the verifications, however, contradict this conclusion. The employee cited by Jinfu PRC did not actually speak with the U.S. customer until after the sale. See Jinfu PRC Verification Report at 6. Further, statements made by Mr. A at the U.S. verification indicate that neither Jinfu PRC nor CEO B knew the identity of the U.S. customer. See Jinfu USA Verification Report at 8.

With regard to Jinfu PRC's arguments that the affidavits submitted in its Affiliation Submission establish that Mr. A believed that Jinfu USA was owned by CEO B, the Department finds that this conclusion is contradicted by record evidence. Specifically, Mr. A stated that he did not want CEO B to have direct access to Jinfu USA's U.S. customers because of the possibility that Jinfu PRC would sell directly to the customers. See Jinfu USA Verification Report at 8. Moreover, as discussed above, record evidence also indicates that Mr. A conducted

his business operations independently of CEO B's approval. For example, Mr. A obtained a loan from the U.S. customer to pay for his freight forwarding bill without first seeking CEO B's approval. See Jinfu USA Verification Report at 8 and VE 6.

## FINAL RESULTS OF REDETERMINATION

Based on our review of the record evidence and the comments of the parties, we find that the weight of the evidence supports the conclusion that Mr. A negotiated the U.S. price without regard for the approval of CEO B. In reaching this conclusion, the Department examined the timing of the shipment, the price negotiations for the honey sold by Mr. A to the U.S. customer, and the credibility of the facsimiles exchanged between Mr. A and CEO B. Thus, we find that Jinfu PRC and Yousheng USA/Jinfu USA were not “affiliated” within the meaning of section 771(33) of the Act at the time of the relevant sale for purposes of the new shipper review. Accordingly, the Department has continued to determine that Jinfu PRC’s sale of honey to Jinfu USA was the first sale to an unaffiliated customer in the United States and, consistent with the Final Results, we continue to find that the new shipper review for Jinfu PRC should be rescinded because Jinfu PRC failed to submit the required new shipper certifications for the relevant U.S. sale.

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David M. Spooner  
Assistant Secretary  
for Import Administration

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Date