Slip Op. 08–37

SANGO INTERNATIONAL L.P., Plaintiff, v. UNITED STATES, Defendant, WARD MANUFACTURING, INC., ANVIL INTERNATIONAL, INC., Defendant-Intervenors.

Before: Judith M. Barzilay, Judge
Court No. 05–00145

[Commerce's Final Redetermination is affirmed.]

Dated: April 03, 2008

Baker & McKenzie, LLP, (*William D. Outman, II*), *Stuart P. Seidel*, and *Kevin J. Sullivan* for Plaintiff.

Jeffrey S. Bucholtz, Acting Assistant Attorney General; *Jeanne E. Davidson*, Director, *Patricia M. McCarthy*, Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice; (*Loren M. Preheim*), *David S. Silverbrand*, *Kelly B. Blank*, and *Michael D. Panzera*, Commercial Litigation Branch, Civil Division, U.S. Department of Justice; *Jonathan Zielinski*, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, of counsel, for Defendant United States.

Schagrin Associates, (*Roger B. Schagrin*), *Brian E. McGill*, and *Michael J. Brown* for Defendant-Intervenors.

OPINION

BARZILAY, JUDGE: This case returns to the court following a redetermination by the U.S. Department of Commerce ("Commerce") pursuant to the court's remand order in *Sango Int'l L.P. v. United States*, Slip Op. 07–101, 2007 WL 1888342 (July 2, 2007) (not reported in F. Supp.) ("*Sango III*").[1] Plaintiff Sango International L.P. challenges Commerce's final scope ruling, which determined that gas meter swivels and nuts fell within the scope of the antidumping order on certain malleable iron pipe fittings from China. *See Final Scope Ruling on Whether Meter Swivels and Meter Nuts are Ex-*

[1] Familiarity with the procedural history and reasoning of *Sango Int'l L.P. v. United States*, 30 CIT ____ , 429 F. Supp. 2d 1356 (2006) ("*Sango I*"), *Sango Int'l, L.P. v. United States*, 484 F.3d 1371 (Fed. Cir. 2007) ("*Sango II*"), and *Sango III* is presumed.

cluded from the Scope of the Antidumping Duty Order on Malleable Iron Pipe Fittings from the People's Republic of China (ITA Jan. 11, 2005) ("*Final Scope Ruling*"); *Antidumping Duty Order: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 68 Fed. Reg. 69,376, 69,377 (Dep't Commerce Dec. 12, 2003) (the "*AD Order*"). For the reasons stated herein, the court now holds that substantial evidence supports Commerce's conclusion that gas meter swivels and nuts are within the scope of the *AD Order*. *See Final Redetermination Pursuant to Court Remand: Sango International L.P. v. United States* (ITA Oct. 26, 2007) ("*Final Redetermination*"), *available at* http://ia.ita.doc.gov/remands/07-101.pdf. Therefore, Commerce's *Final Redetermination* is affirmed.

I. Background

In its January 2005 *Final Scope Ruling*, Commerce determined that gas meter swivels and nuts fall within the scope of the *AD Order* based on its conclusions that the scope language was dispositive and that further analysis under the 19 C.F.R. § 351.225(k)(2) criteria was unnecessary.[2] *See Final Scope Ruling* at 14. Plaintiff appealed the ruling to this court, alleging that Commerce's holding was unsupported by substantial evidence on the record. *See Sango I*, 30 CIT at ___ , 429 F. Supp. 2d at 1357.

The court affirmed Commerce's ruling, holding that the facts presented in the administrative record when read together "in the light of the [*AD Order*]'s language, reasonably provide adequate evidence to place gas meter swivels and gas meter nuts within the scope of the [*AD Order*]." *Id.* at ___ , 429 F. Supp. 2d at 1362. Finding that "the language of the antidumping petition, [the] administrative factual findings and legal conclusions, and the preliminary antidumping order dispositively place[d] gas meter swivels and gas meter nuts within the scope of the antidumping order," this court held that Commerce "did not err by not examining the *Diversified Products* factors in 19 C.F.R. § 351.225(k)(2) . . . ." *Id.* at ___ , 429 F. Supp. 2d at 1362 n.10; see *Diversified Prods. Corp. v. United States*, 6 CIT 155,162, 572 F. Supp. 883, 889 (1983) (setting out scope inquiry criteria that were subsequently codified in § 351.225(k)(2)). Plaintiff then appealed.

In May 2007, the Federal Circuit reversed and remanded with instructions that Commerce "consider the criteria in section

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[2] The relevant scope language of the *AD Order* reads:

> For purposes of this order, the products covered are certain malleable iron pipe fittings, cast, other than grooved fittings, from the People's Republic of China. . . . Excluded from the scope of this order are metal compression couplings, which are imported under HTSUS number 7307.19.90.80. A metal compression coupling consists of a coupling body, two gaskets, and two compression nuts.

AD Order, 68 Fed. Reg. at 69,377.

351.225(k)(2) in arriving at a scope determination," making clear that it "express[ed] no views as to what the results of that determination should be." *Sango II*, 484 F.3d at 1382 & n.10. The Federal Circuit explained that "when the criteria set forth in section 351.225(k)(1) – the description of the merchandise contained in the antidumping petition, the initial investigation by Commerce and the Commission, and the determinations of Commerce and the Commission – are not 'dispositive,' then Commerce must, in issuing its scope ruling, 'further consider' the criteria set forth in section 351.225(k)(2)." *Id.* at 1379.

The case was remanded to Commerce on July 2, 2007, for "consider[ation of] the factors set forth in 19 C.F.R. § 351.225(k)(2) . . . ." *Sango III*, Slip Op. 07–101, 2007 WL 1888342, at *1. After releasing a draft remand determination to interested parties in September 2007, Commerce received comments from Plaintiff, as well as Defendant-Intervenors Ward Manufacturing, Inc. and Anvil International, Inc., regarding the new evidence and arguments that Plaintiff placed on the record. In October 2007, Commerce adopted the findings in its draft and filed its final remand redetermination with the Court. *See generally Final Redetermination*. Specifically, Commerce found that

> the physical characteristics of the merchandise at issue, the expectations of the ultimate purchasers, the ultimate use, and the channels of trade in which gas meter swivels and nuts are sold are the same as the type of merchandise covered by the scope of the [*AD Order*] on [malleable iron pipe fittings ("MIPF")] from the PRC.[3] We further found that the manner in which gas meter swivels and nuts are advertised is not the same as MIPF covered by the [*AD Order*]. However, we determined that the manner in which gas meter swivels and nuts are advertised alone is not enough to determine that gas meter swivels and nuts fall outside the scope of the [*AD Order*].

Id. at 18. Based on these findings, Commerce ultimately concluded that "gas meter swivels and nuts are within the scope of the [*AD Order*]." Id. Plaintiff then brought this action to contest Commerce's *Final Redetermination*.

II. Standard of Review

When reviewing a scope determination, this court must "sustain 'any determination, finding or conclusion found' by Commerce unless

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[3] For more information on Commerce's analysis of gas meter swivels and nuts, *see Final Redetermination* at 6–19. *See also Malleable Iron Pipe Fittings from China*, USITC Pub. 3649, No. 731–TA–1021, at 3–16, (Dec. 2003) ("*ITC Report*"), *available at* http://hotdocs.usitc.gov/docs/pubs/701_731/pub3649.pdf.

it is 'unsupported by substantial evidence on the record, or otherwise not in accordance with law.' " *Fujitsu Gen. Ltd. v. United States*, 88 F.3d 1034, 1038 (Fed. Cir. 1996) (quoting 19 U.S.C. § 1516a(b)(1)(B)). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966) (quotations & citation omitted). In determining whether substantial evidence exists, "[the court] review[s] the record in its entirety, including all evidence that 'fairly detracts from the substantiality of the evidence.' " *Consol. Bearings Co. v. United States*, 412 F.3d 1266, 1269 (Fed. Cir. 2005) (quoting *Atl. Sugar, Ltd. v. United States*, 744 F.2d 1556, 1562 (Fed. Cir. 1984)). Even if "the possibility of drawing two inconsistent conclusions from the evidence" may exist, that possibility, in itself "does not prevent an administrative agency's findings from being supported by substantial evidence." *Consolo*, 383 U.S. at 620. Although the court gives "significant deference" to Commerce's interpretation of its own orders, "a scope determination is not in accordance with the law if it changes the scope of an order or interprets an order in a manner contrary to the order's terms." *Allegheny Bradford Corp. v. United States*, 28 CIT 830, 842, 342 F. Supp. 2d 1172, 1183 (2004) (citation omitted). As a result, Commerce may interpret scope orders to include the subject merchandise "only if they contain language that specifically includes the subject merchandise or may be reasonably interpreted to include it." *Id.* at 843 n.6, 342 F. Supp. 2d at 1184 n.6.

III. Discussion

Plaintiff contests Commerce's final scope redetermination, claiming that Commerce erred in finding that meter swivels and nuts fall within the scope of the *AD Order*. Pl. Comments 2–3. To determine whether the scope of an order includes a particular product, Commerce will take the "descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the [International Trade] Commission" into account. § 351.225(k)(1). Where the criteria are not dispositive, Commerce will also consider the *Diversified Products* factors, as codified in the regulations: "(i) the physical characteristics of the product; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed." § 351.225(k)(2); *see Diversified Prods. Corp.*, 6 CIT at 162, 572 F. Supp. at 889.

A. Physical Characteristics Under § 351.225(k)(2)(i)

With regard to the physical characteristics analysis, Plaintiff argues the following: (1) Commerce was wrong to collectively evaluate swivels and nuts; (2) swivels and nuts do not connect directly to pipe;

(3) swivels and nuts do not share the same threading standards with MIPF; and (4) swivels require gaskets to connect to gas meters, and thus differ from MIPF. Pl. Comments 3–12.

1. Commerce's Collective Evaluation of Gas Meter Swivels and Nuts

Plaintiff relies on *Sango II* to support its position that gas meter swivels and nuts must be treated separately for purposes of a scope determination, arguing that "the [Federal Circuit], in reversing the [Court of International Trade], evaluated gas meter swivels and gas meter nuts as separate and distinct products, and concluded that the gas meter swivel and gas meter nuts, on their own, differed from the pipe fittings in the [*AD Order*] . . . ." Pl. Comments 3–4. Plaintiff, however, misconstrues the court's conclusion in *Sango II*.

> As the Federal Circuit explained in its decision:
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> In sum, while we are not prepared to hold that Sango is entitled to a ruling by Commerce that gas meter swivels and nuts are outside the scope of the [*AD Order*], . . . we do hold that substantial evidence does not support Commerce's conclusion . . . . *We thus hold that Commerce should have considered the criteria of 19 C.F.R. § 351.225(k)(2)* to determine whether the swivels and nuts are pipe fittings within the scope of the [*AD Order*].

Sango II, 484 F.3d at 1381–82 (emphasis added). The plain meaning of the language makes clear that the Federal Circuit remanded the case simply to give Commerce an opportunity to perform a § 351.225(k)(2) analysis. As the decision contains no language suggesting or mandating that swivels and nuts should be treated separately, the court must employ the traditional standard for its review of Commerce's collective treatment of the products.

Furthermore, contrary to Plaintiff's allegations, the fact that the Federal Circuit addressed the characteristics of gas meter swivels and nuts *in turn* does not merit a conclusion that swivels and nuts are "separate and distinct" products. Pl. Comments 3. Indeed, the language of the opinion lends support to the opposite conclusion, *i.e.*, that gas meter swivels and nuts should be treated collectively. For example, the Federal Circuit noted that the "flanged end [of the swivel] will *only* fit over and mate to a dry, diaphragm-type gas meter *through the use of a gas meter nut*." *Sango II*, 484 F.3d at 1380 (emphasis added). It also noted that "[a gas meter nut] can only be mated to a comparably threaded connection on a gas meter." *Id.* at 1381. Because the Federal Circuit opinion lacks a clear mandate that gas meter swivels and nuts must be evaluated separately, this court must determine whether substantial evidence supports Commerce's decision to evaluate swivels and nuts collectively. *See Fujitsu Gen. Ltd.*, 88 F.3d at 1038.

In this case, Commerce analyzed the evidence in the record and "[found] it reasonable to consider gas meter swivels and nuts collectively when considering whether gas meter swivels and nuts fall within the scope of the [*AD Order*]." *Final Redetermination* at 5–6. In so concluding, Commerce took several factors into consideration: (1) the court "treated gas meter swivels and nuts as a single unit because they must bind with each other to function"[4]; (2) the Federal Circuit did not make an explicit finding or mandate that gas meter swivels and nuts should be treated separately; (3) Plaintiff and A.Y. McDonald Manufacturing Co. ("McDonald") "submitted their scope ruling requests on gas meter swivels and nuts, collectively"; (4) "the record evidence show[ed] that gas meter nuts cannot be used without gas meter swivels, and that gas meter swivels cannot be used without gas meter nuts"; and (5) U.S. Customs and Border Protection's ("Customs") finding that "gas meter swivels and nuts are never used individually and, therefore, should be categorized under a single [heading of the HTSUS] category."[5] *Final Redetermination* at 5, 20. Based on the aforementioned factors, the court holds that substantial evidence supports a collective evaluation of swivels and nuts.

2. Plaintiff's "Directly Connect" Argument

Plaintiff relies on the ITC's statement that MIPF are "used for connecting the bores of two or more pipes or tubes, connecting a pipe to some other apparatus, changing the direction of fluid flow, or closing a pipe," to argue that gas meter swivels and nuts are not pipe fittings because they do not connect "directly" to pipe. *ITC Report* at 5; Pl. Comments 7–12. The court is not persuaded.

a. "Direct" Connection between Swivels and Pipe

The record provides no support for Plaintiff's claim that gas meter swivels must connect directly to pipe.[6] Neither the language of the *AD Order* nor that of the *ITC Report* require MIPF to connect directly to pipe. *See AD Order*, 68 Fed. Reg. at 69,377; *ITC Report* at 5. Moreover, the ITC's definition does not specify whether any of the

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[4] Although the court held that it would "treat [swivels and nuts] as a *one unit*" just as it would "a pipe fitting union comprised of three pieces screwed together," the court recognizes that swivels and nuts are separate components. *Sango I*, 30 CIT at ____ , 429 F. Supp. 2d at 1362 n. 8 (emphasis added). Nevertheless, "since a gas meter swivel and nut must bind with each other to function," these components must therefore be examined *collectively*. *Id.*

[5] The Federal Circuit has held that "it is permissible to refer to Customs rulings on the [HTSUS] to find precision in the reach of the scope order." *Tak Fat Trading Co. v. United States*, 396 F.3d. 1378, 1386 (Fed. Cir. 2005).

[6] The court need not address whether gas meter nuts connect directly to pipe given Commerce's concession that "a gas meter nut can only be used for connecting a gas meter swivel to a gas meter and cannot be used for connecting two pipes together." *Final Redetermination* at 8.

connections listed in the definition are more "typical" than others. *ITC Report* at 5; *see Final Redetermination* at 7. Thus, absent such a specification, there can be no requirement that swivels predominantly perform a particular function, *i.e.*, connect directly to a pipe, in order to qualify as MIPF.

The record also contains evidence that the domestic industry produces swivels with female threaded ends, which can connect directly to pipe with exterior threads. Pl. App. 29, 347; Pl. Comments 5. Although Sango attempts to focus the court's attention exclusively on male threaded swivels by alleging that female threaded swivels are uncommon and infrequently used, the very existence of female threaded swivels enables *some* swivels to connect directly to pipe and therefore undermines Plaintiff's argument.[7] Pl. Comments 5. The record also does not support Plaintiff's claims that "male threaded swivels are outside the scope of the [*AD Order*]" and that "[a]ll of the pipe fittings covered by the [*AD Order*] are female connections." Pl. Comments 5. Plaintiff's own submissions contain illustrations of male threaded MIPF as examples of pipe fittings within the scope of the *AD Order*. Pl. Comments 5; Pl.'s Reply Br. Ex. 1, *Sango I*, 30 CIT ___ , 429 F. Supp. 2d 1356[8]; Pl. App. 542–568.[9] In addition, "neither the *ITC Report*, the petition, nor the scope of the [*AD Order*] specify that only female threaded MIPF are included within the scope." *Final Redetermination* at 20. Therefore, Plaintiff's argument that the *AD Order* is limited to fittings with female threads fails.

That male threaded MIPFs fall within the scope of the *AD Order* strengthens the proposition that male threaded swivels are also MIPF despite their need for an additional fitting to connect with pipe. Within the piping system itself, connections containing a male threaded MIPF also require a fitting with female threads on both ends in order to connect said fitting to a male threaded pipe. The resulting connection – male threaded MIPF, a MIPF with female threads on both ends, and a pipe – illustrates that *two or more fittings may connect components within the piping system* and that fittings need not always create a "direct" connection between the bores of two or more pipes within the system. *See ITC Report* at 5. Similarly, to connect a gas meter to a piping system using a male threaded swivel requires a three-part connection consisting of a gas meter nut, a male threaded swivel, *and another MIPF*. Just as the use of two or more MIPF to connect pipe does not render said fittings

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[7] Moreover, because the central issue before this court is whether "gas meter swivels and nuts are MIPF which are covered by the scope of the [*AD Order*]," *not* whether swivels with a particular type of connection are MIPF, the court need not restrict its review solely to male threaded swivels. *Final Redetermination* at 20.

[8] Figs. 100–03, 121, 133–37, 241, 245–46.

[9] Figs. 1003–004, 1022, 1051, 1203–04, 1602, 1604, 1642, 1644, 1648, 1650.

outside the scope of the *AD Order*, the use of a three-part connection consisting of a nut, swivel, and another MIPF does not exclude gas meter nuts from the scope of the *AD Order*. Accordingly, Plaintiff's argument that gas meter swivels and nuts are not MIPF because they do not directly connect to pipe is without merit.

b. Connecting Pipe to "Some Other Apparatus"

Plaintiff's "direct connect" argument also fails because it overemphasizes that MIPFs are used for connecting the bores of two or more pipes while almost entirely ignoring that they can also be used for "connecting a pipe to some other apparatus." *ITC Report* at 5; Pl. Comment 7–12. In this case, swivels and nuts are used to connect pipe to "some other apparatus" – namely, the gas meter.[10] *See ITC Report* at 5. Without the use of a swivel and nut, it would be impossible to form a secure connection between the piping system and the gas meter. *See Sango II*, 484 F.3d at 1381 (noting that swivels and nuts "allow a gas meter to be connected to the system."). Additionally, Commerce itself found that "[g]as meter swivels and nuts are expected to be used to connect a pipe to another apparatus, a gas meter." *Final Redetermination* at 15. Because gas meter swivels and nuts connect piping systems to the gas meters, both fixtures are MIPF within the scope of the *AD Order*.

c. The Use of a Gasket to Make a Swivel-Meter Connection

As a corollary argument, Plaintiff also contends that swivels do not connect directly with gas meters and are more akin to compression fittings than MIPF because the flanged end requires a gasket and insulation in order to form a vibration-free and spark-free connection. Pl. Comments 10. Plaintiff then contrasts swivels and nuts to MIPF which "form a seal by the simple act of being screwed together with a length of pipe to form the seal." Pl. Comments 10. That swivels may require a gasket to make an ideal connection does not support the claim that swivels are akin to compression fittings, nor does it render swivels outside the scope of the *AD Order*. As the *AD Order* specifically states: "[e]xcluded from the scope of this order are metal compression couplings, . . . [which] consist[ ] of a coupling body, two gaskets, and two compression nuts." *AD Order*, 68 Fed. Reg. at 69,377. In contrast, a swivel requires *at most* one nut and one gasket to function optimally, while the specifically excluded product requires two nuts and two gaskets. *See id.*; Pl. Comments

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[10] Because the court found that substantial evidence supports Commerce's collective evaluation of swivels and nuts, gas meter nuts need not directly connect pipe to some other apparatus in order to qualify as MIPF. Rather, the swivel-nut unit need only create a connection between the piping system and the gas meter in order to meet the ITC's definition, and thereby fall within the scope of the *AD Order*.

10. That the *AD Order* does not explicitly exclude products that use only one nut or fitting indicates that the use of a single nut and gasket is not significant enough to place that product outside the scope of the *AD Order*. As Commerce found, based on the *ITC Report*, "[v]arious apparatus may require [the] specific physical characteristics of an MIPF to make the proper connection between the apparatus and the pipe. The fact that the specific physical characteristics required by the apparatus may only be used in certain types of MIPF connections does not preclude MIPF from being covered by the [*AD Order*]." *Final Redetermination* at 7. Similarly, Commerce found that "[t]here is nothing in the record or the scope that indicates that the scope intends to exclude all malleable iron pipe fittings with specialized applications." *Scope Ruling* at 13. Thus, the court finds that the use of a single gasket does not render the swivel-nut unit outside the scope of the *AD Order*.

3. Threading Specifications

Plaintiff also contends that gas meter swivels and nuts are not pipe fittings because they are manufactured with thread specifications that differ from MIPF specifications. Pl. Comments 9–10; *see Final Redetermination* at 10, 22–23; *Sango II*, 484 F.3d at 1378, 1380. Although Plaintiff cites evidence showing that gas meter swivels are manufactured to ANSI B109.1 specifications while pipe fittings comply with ANSI 16.3 or ANSI 16.41, Plaintiff ignores record evidence contradicting its argument. Pl. Comments 10. For example, Commerce found that "the standards included in the investigation were not intended as an exhaustive list of the standards applicable to the MIPF covered by the [*AD Order*]" because they do not cover flanged MIPF and because the original petition only lists the specifications to which malleable pipe fittings will "normally" be produced.[11] *Final Redetermination* at 10, 23. Commerce then cited the *ITC Report*, where the ITC "found one domestic like product to include all MIPF other than grooved fittings, co-extensive with the scope," and "specifically differentiated both threaded and flanged MIPF from the excluded grooved fittings . . . ." *Id.* at 23. The record evidence on ANSI specifications also indicates that gas meter swivels and nuts share some of the same threading standards.[12] As Commerce stated:

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[11] Use of the word "normally" demonstrates that there are other standards than those specified in the petition that are, nevertheless, included within the scope of the order. *See Dorbest Ltd., v. United States*, 30 CIT ____ , ____ , 462 F. Supp. 2d 1262, 1270 (2006) (stating that "use of the word 'normally' means that Commerce may select other data as warranted under the circumstances.").

[12] At oral argument, defense counsel noted that some gas meter swivels and nuts share threading standard ANSI B1.20.1 with MIPF. Pl. App. 472–473.

> Language from the [ITC] investigation states that MIPF are produced to ASTM, ANSI, and ASME specifications.[13] The ANSI B109.1 standard is included within the ANSI specifications. The language from the [ITC] investigation also states that "normally the ungalvanized fittings are produced to ASME 16.3 or ASME B16.39 using material specification ASTM A197 and threaded ANSI/ASME B1.20.1 . . . galvanized fittings are coated to ASTM A 153 or ASTM B633 and threaded to B.1.20.1." Gas meter swivels are manufactured to several standards as follows: "Body: Malleable Iron, per ASTM A197, Threads: per ANSI B.1.20.1, ANSI B 109.1, and Dimensions: per ANSI B109.1."[14] Gas meter swivels meet the material standard specification listed in the investigation, ASTM A197, and are threaded on one end to the threading standard specifically listed in the investigation, ANSI B.1.20.1.

Final Redetermination at 22–23 (footnotes omitted).[15] Given the extensive evidence on record contradicting Sango's claims concerning threading specifications, Plaintiff's argument fails.

B. The Other § 351.225(k)(2) Factors

Pursuant to § 351.22(k)(2)(ii)–(iii), Commerce must consider the expectations of the ultimate purchasers and the ultimate use of the product. *See* § 351.225(k)(2)(ii)–(iii). With regard to these factors, Plaintiff argues that purchasers neither expect swivels and nuts to meet MIPF threading standards, nor expect to find swivels and nuts in plumbing supply stores and retail establishments. Pl. Comment 12. In disagreeing with Plaintiff's distinctions between the customer expectations and ultimate use of MIPF and gas meter swivels and nuts, Commerce cited the *ITC Report* and the petition. *Final Redetermination* at 15. Specifically, Commerce noted that: (1) the *ITC Report* "specifically states that the ultimate purchasers of MIPF include natural gas utility companies; (2) the petition and *ITC Report* detail a broad customer base that includes "HVAC contractors, OEM, and natural gas and water utility companies" as well as plumbing contractors and home-owners; (3) the petition mentions that MIPF are used in gas lines and piping systems of oil refineries; (4) the *ITC Report* includes the "use of a gas meter swivel and nut by including the criterion that MIPF also connect a pipe to some other apparatus." *Id.* Based on Commerce's heavy reliance on the findings of the

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[13] *See ITC Report* at 7–8.

[14] Pl. App. 473, 524.

[15] In stating that "gas meter swivels are manufactured to ANSI B109.1 specifications, not ANSI 16.3 or ANSI 16.14, *as are pipe fittings*," Pl. Comments 10, Plaintiff ignores that swivels meet the material standard specification ASTM A197 and are threaded on one end to ANSI B.1.20.1. Pl. Comments 10; *see Final Redetermination* at 22–23.

ITC Report, substantial evidence supports the conclusion that "the expectations of the ultimate purchasers and ultimate use of gas meter swivels and nuts support finding that these products fall within the scope of the [*AD Order*]." *Id.*

With regard to channels of distribution, Plaintiff claims that "gas meter swivels and gas meter nuts move in distribution channels separate and apart from MIPF." Pl. Comment 15; *see* § 351.225(k)(2)(iv). Plaintiff's argument, however, ignores that MIPF and gas meter swivels and nuts share a common distribution channel, wholesalers and distributors. *Final Redetermination* at 17. The *ITC Report* noted that MIPF are

> distributed through two channels, wholesale and retail, each of which has experienced consolidation in recent years. The malleable fittings sold for residential uses and for commercial and industrial uses are the same, and the domestic like product and subject imports compete directly in both channels. Purchasers reported an increasing overlap in customers between the two channels, citing the tendency of large hardware chains to offer malleable fittings to contractors, who traditionally purchased from wholesalers rather than retailers. The line between the two channels is blurring.

ITC Report at 3. Commerce ultimately concluded that

> [t]here seems to be little distinction, if any, between the channels of trade for MIPF and gas meter swivels and nuts. The record shows that gas meter swivels and nuts are sold through the wholesale/distributor channel, one of the channels of trade indicated in the *ITC Report* for MIPF. . . . That gas meter swivels and nuts are sold in the wholesale and distributor channel of trade, does not exclude gas meter swivels and nuts from the scope of the [*AD Order*] because the ITC specifically included this channel of trade in its report as one of the channels of trade for MIPF.
>
> The initial investigation included both wholesale and retail channels as possible channels of distribution of covered MIPF. Gas meter swivels and nuts are distributed through the wholesale channel and therefore, fall within the channels of distribution of MIPF covered by the [*AD Order*].

Final Redetermination at 17. As gas meter swivels and nuts are sold through the wholesale channel of trade, a channel through which MIPF are also sold, substantial evidence supports Commerce's conclusion that gas meter swivels and nuts fall within the scope of the *AD Order*.

Although Commerce admits that gas meter swivels and nuts are advertised and offered for sale differently than MIPF, it properly found that this difference was not outweighed by the other factors

contained in § 351.225(k)(2). *See* § 351.225(k)(2)(v); *Final Redetermination* at 18. This distinction does not on its own require a finding that the product falls outside the scope of the *AD Order*. *Id.*

IV. Conclusion

For the foregoing reasons, the court holds that Commerce's conclusions based on the factors set forth in § 351.225(k)(2) are supported by substantial evidence. Therefore, Commerce's scope determination is **AFFIRMED**.

Slip Op. 08–38

JINFU TRADING CO., LTD., Plaintiff, v. UNITED STATES, Defendant, and AMERICAN HONEY PRODUCERS ASSOCIATION and SIOUX HONEY ASSOCIATION, Def.-Ints.

Before: Richard K. Eaton, Judge
Court No. 04–00597

[United States Department of Commerce's final results rescinding plaintiff's new shipper review sustained.]

Dated: April 4, 2008

Grunfeld, *Desiderio*, *Lebowitz*, *Silverman & Klestadt LLP* (*Bruce M. Mitchell*, *Ned H. Marshak*, and *Elaine F. Wang*), for plaintiff.

Jeffrey S. Bucholtz, Acting Assistant Attorney General; *Jeanne E. Davidson*, Director, Commercial Litigation Branch, Civil Division, United States Department of Justice; *Reginald T. Blades Jr.*, Assistant Director, International Trade Section, Commercial Litigation Branch, Civil Division, United States Department of Justice; *Jane C. Dempsey*, Attorney, U.S. Department of Justice, Civil Division, Commercial Litigation Branch; Office of the Chief Counsel, Import Administration, United States Department of Commerce (*Mildred E. Steward*), of counsel, for defendant.

Kelley Drye Collier Shannon (*Michael J. Coursey* and *R. Alan Luberda*), for defendant-intervenors.

OPINION

Eaton, Judge: Before the court are the United States Department of Commerce's ("Commerce" or the "Department") final results of its remand redetermination pursuant to the court's order in *Jinfu Trading Co., Ltd. v. United States*, 31 CIT ___ , Slip Op. 07–95 (June 13, 2007) (not reported in the Federal Supplement) ("*Jinfu II*"), and the comments of plaintiff Jinfu Trading Co., Ltd. ("Jinfu PRC"), and defendant-intervenors American Honey Producers Association and Sioux Honey Association responsive thereto. *See* Final Results of Redetermination Pursuant to Court Remand (Dep't of Commerce Oct.

9, 2007) ("Remand Redetermination"); Pl.'s Comments Remand Redetermination ("Pl.'s Comments"); Def.-Ints.' Resp. to Remand Redetermination ("Def.-Ints.' Resp.").

The central issue in this litigation is whether Jinfu PRC was affiliated with either Yousheng Trading (U.S.A.) Co., Ltd. ("Yousheng USA") or its successor Jinfu Trading (U.S.A.) Co., Ltd. ("Jinfu USA")[1] on or before November 2, 2002.[2] Plaintiff has maintained that CEO B wholly owned Yousheng USA/Jinfu USA by November 2, 2002, or, in the alternative, that CEO B exercised operational control over Yousheng USA/Jinfu USA prior to that date.

In *Jinfu Trading Co., Ltd. v. United States*, 30 CIT ___ , Slip Op. 06–137 (Sept. 7, 2006) (not reported in the Federal Supplement) ("*Jinfu I*"), the court considered whether Commerce's determination that Jinfu PRC was not affiliated—through either ownership or control—with Yousheng USA/Jinfu USA on November 2, 2002 was supported by substantial evidence. The court sustained the Department's finding on the issue of ownership, but remanded on the issue of control. *See Jinfu I*, 30 CIT at ___ , Slip Op. 06–137 at 25, 32–33.

On remand, Commerce again determined that CEO B did not control Yousheng USA/Jinfu USA at the relevant time. *See* Final Results of Redetermination Pursuant to Remand (Dep't of Commerce Dec. 5, 2006) ("First Remand Redetermination"). Plaintiff challenged this determination, and in *Jinfu II*, the court remanded Commerce's decision for the second time. *See generally Jinfu II*, 31 CIT at ___ , Slip Op. 07–95 at 9–23. The court found that Commerce's conclusions were not supported by substantial evidence because of its failure to fully explain the evidence on the record relating to the issue of control. Therefore, on remand, Commerce was directed to: (1) consider the court's opinion and provide an explanation as to why the contents of certain faxes between Mr. A and CEO B, if credible and reliable, did not support a conclusion that CEO B controlled Yousheng USA/Jinfu USA; and (2) reopen the record to allow plaintiff to place evidence on the record concerning the issue of affiliation. *See Jinfu II*, 31 CIT at ___ , Slip Op. 07–95 at 24. Specifically, plaintiff was provided with an opportunity to submit evidence concerning the authenticity of the disputed faxes, CEO B's involvement in Cus-

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[1] For purposes of confidentiality, the court will employ the same shorthand references used in *Jinfu II*. Specifically, Jinfu USA's sole employee is referred to as "Mr. A"; the chief executive officer of Jinfu PRC as "CEO B"; the unaffiliated United States buyer as "Customer C"; and the original owner of what was then Yousheng USA as "Mr. D." The attorney retained in October 2002 to aid in the purported transfer of ownership of Yousheng USA/Jinfu USA to CEO B is referred to as "Attorney E."

[2] Yousheng USA was incorporated on October 4, 2002, in Washington State, and renamed Jinfu USA on November 12, 2002. Therefore, to avoid any confusion, the court will refer to the entity incorporated as Yousheng USA and subsequently renamed Jinfu USA as "Yousheng USA/Jinfu USA," except where it is necessary to distinguish these entities' sequential existence. *See Jinfu Trading Co., Ltd. v. United States*, 30 CIT ____ , ____ , Slip Op. 06–137 at 2 n.2 (Sept. 7, 2006) (not reported in the Federal Supplement).

tomer C's pre-payment of the sales price for the claimed new shipper sale, and the facts behind Mr. A's obtaining a loan from Customer C to finance Yousheng USA/Jinfu USA transactions. *Id*. at ____ , Slip Op. 07–95 at 24.

On remand, Commerce reopened the record; plaintiff, however, declined to present any new evidence. *See* Remand Redetermination at 2. Commerce now offers two independent reasons for its determination that CEO B did not control Yousheng USA/Jinfu USA: (1) plaintiff is unable to establish that the faxes areauthentic; and (2) the record evidence clearly demonstrates Mr. A's independence in managing Yousheng USA/Jinfu USA. *See* Def.'s Resp. Jinfu's Comments Regarding Remand Redetermination ("Def.'s Resp.") 7–12. Jurisdiction lies pursuant to 28 U.S.C. § 1581(c) (2000) and 19 U.S.C. § 1516a(a)(2)(B)(iii). For the following reasons, the Department's Remand Redetermination is sustained.

BACKGROUND

The facts of this matter are contained in *Jinfu I* and *Jinfu II*. The court now sets forth only those facts relevant to this opinion.

Plaintiff seeks judicial review of the Department's rescission of its new shipper review for entries of honey from the People's Republic of China ("PRC").[3] *See* Honey from the PRC, 69 Fed. Reg. 64,029 (Dep't of Commerce Nov. 3, 2004) (notice of final results and final rescission, in part). Plaintiff sought the new shipper review based on a transaction that took place on November 2, 2002. On that date, Yousheng USA/Jinfu USA consummated a sale of honey, acquired from Jinfu PRC, to Customer C. Plaintiff contends that, because Yousheng USA/Jinfu USA and Jinfu PRC were affiliated when the sale took place, the transaction constituted a new shipper sale.[4]

In its analysis, Commerce is guided by 19 C.F.R. § 351. 214(b)(2)(iv)(C), which provides that a party seeking a new shipper review must produce "[d]ocumentation establishing . . . [t]he date of the first sale to an unaffiliated customer in the United States. . . ." Before Commerce, plaintiff submitted documentation to support its claim that the new shipper sale was made by Jinfu PRC (via Yousheng USA/Jinfu USA) to Customer C on November 2, 2002. Based on that documentation, Commerce initiated the new shipper

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[3] A "new shipper review" involves a shipper that has not previously exported particular subject merchandise, and thus has been described as a proceeding where "Commerce is essentially conducting a new antidumping review that is specific to a particular producer [or exporter]." *Tianjin Tiancheng Pharm. Co., Ltd. v. United States*, 29 CIT ____ , ____ , 366 F. Supp. 2d 1246, 1249 (2005).

[4] The question of affiliation is governed by 19 U.S.C. § 1677(33). The statute provides, in relevant part, that the following persons are deemed "affiliated": (E) "Any person directly or indirectly owning [at least 5% of the voting shares of a company]"; (F) "Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person"; and, (G) "Any person who controls any person and such other person." 19 U.S.C. § 1677(33).

review. Upon concluding that the documentation was insufficient to establish that Jinfu PRC was affiliated with Yousheng USA/Jinfu USA as of that date, however, Commerce rescinded the review. The Department took this action because, absent affiliation, the sale to Customer C could not be considered a sale by Jinfu PRC to Customer C. *Jinfu I*, 30 CIT at ___ , Slip Op. 06–137 at 9–11.

In *Jinfu I*, plaintiff insisted that Commerce erred when it concluded that CEO B did not own or control Yousheng USA/Jinfu USA on November 2, 2002. After reviewing the evidence, the court agreed with Commerce that plaintiff had not established ownership of Yousheng USA/Jinfu USA on the sale date. *See Jinfu I*, 30 CIT at ___ , Slip Op. 06–137 at 25. The court, however, was unconvinced by Commerce's analysis on the issue of control in light of Commerce's failure to address record evidence that appeared to demonstrate "that CEO B not only had the potential to influence what was then Yousheng USA's pricing decisions, but, in fact, exercised that control . . . ." *See id*. at ___ , Slip Op. 06–137 at 28. The court was particularly concerned that Commerce had not explained why it did not find affiliation based on an exchange of faxes by which CEO B apparently authorized Mr. A to consummate the relevant sale with Customer C. *See id*. at ___ , Slip Op. 06–137 at 28–31. In remanding the matter to Commerce, however, the *Jinfu I* Court did not direct Commerce to find that Jinfu PRC and Yousheng USA were affiliated (by virtue of control). Instead, *Jinfu I* instructed Commerce, if it did not concur with the court's findings, to "reopen the record to provide plaintiff with an opportunity to . . . [submit] further evidence with respect to affiliation and provide an explanation of that evidence." *See id.* at ___ , Slip Op. 06–137 at 32–33.[5]

After this court's initial remand, plaintiff submitted additional evidence to Commerce concerning both the purported purchase and affiliation. *See generally Jinfu II*, 31 CIT at ___ , Slip Op. 07–95 at 15. Following consideration of plaintiff's new submissions, Commerce again found that "the record [did] not support a finding that CEO B had control over Mr. A's business decisions, particularly those dealing with pricing." *Id*. at ___ , Slip Op. 07–95 at 9 (citations omitted).

Plaintiff then sought a further remand arguing that the record evidence established CEO B's control of Yousheng USA/Jinfu USA at the relevant time. Plaintiff also claimed that Commerce made a procedural error in issuing its redetermination without giving plaintiff the opportunity to address the authenticity of the faxes, and Mr. A's apparent independence in dealing with Customer C. *See id*. at ___ , Slip Op. 07–95 at 19.

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[5] In determining affiliation, Commerce is guided by its regulations, promulgated under 19 U.S.C. § 1677(33), which provide, in relevant part, that "[Commerce] will not find that control exists . . . unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise." 19 C.F.R. § 351.102(b).

Because the authenticity (distinct from the probative value) of the faxes, and the circumstances surrounding Mr. A's business decisions, were first raised in Commerce's draft remand redetermination, the court remanded the matter again. *See id*. at ____ , Slip Op. 07–95 at 22–23. The court issued this remand, in part, because plaintiff had no notice of the prominent role that the authenticity of the faxes would play in Commerce's decision until after the record was closed. *See id*. at ____ , Slip Op. 07–95 at 21–23. The court instructed Commerce to: (1) reopen the record to allow plaintiff to submit new evidence demonstrating the authenticity of the faxes and the circumstances surrounding Mr. A's business decisions regarding Customer C; and (2) explain why, if the faxes were shown to be genuine, they would not demonstrate that CEO B had control over Yousheng USA/Jinfu USA's pricing decisions. *Id*. at ____ , Slip Op. 07–95 at 24.

In its second Remand Redetermination, Commerce reaffirmed its earlier determination and further explained its conclusion that CEO B did not control Yousheng USA/Jinfu USA at the relevant time. Remand Redetermination at 13. Specifically, Commerce found that Mr. A routinely made unilateral decisions affecting Yousheng USA/Jinfu USA, that there is no undisputed evidence of CEO B ever exerting authority over Mr. A, that the faxes' authenticity had not been demonstrated, and that, even if shown to be genuine, they would not evidence CEO B's control. *See* Def.'s Resp. 7–11 (citations omitted). Although Commerce gave plaintiff the opportunity to dispute its conclusions with additional evidence, plaintiff declined to do so. Remand Redetermination at 2. Rather, before this court, plaintiff reargues the issues of ownership and control, by highlighting the same evidence it previously addressed and by bringing to the attention of the court a recent decision of the Court of Appeals for the Federal Circuit (the "Federal Circuit"). Pl.'s Comments 10–19.

STANDARD OF REVIEW

The court reviews Commerce's Remand Redetermination under the substantial evidence test. *See* 19 U.S.C. § 1516a(b)(1)(B)(i) ("The court shall hold unlawful any determination, finding, or conclusion found . . . to be unsupported by substantial evidence on the record, or otherwise not in accordance with law."). "Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' " *Huaiyin Foreign Trade Corp. (30) v. United States*, 322 F.3d 1369, 1374 (Fed. Cir. 2003) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229 (1938)). The possibility of drawing two inconsistent conclusions from the record will not prevent the agency determination from being supported by substantial evidence. *See Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966).

Accordingly, the question before the court is not whether the court agrees with the determination made by Commerce. *Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1352 (Fed. Cir. 2006). Rather,

the court "must affirm [the Department's] determination if it is reasonable and supported by the record as a whole, even if some evidence detracts from the [Department's] conclusion." *Id.* (citations omitted).

DISCUSSION

There are two main issues presently before the court. First, the court must determine whether Commerce has adequately explained and supported with substantial evidence its finding that the faxes do not demonstrate CEO B's control over Yousheng USA/Jinfu USA as of November 2, 2002. Second, at plaintiff's request, the court will reconsider its previous holding on the issue of ownership in light of the Federal Circuit's recent decision in *Crawfish Processors Alliance v. United States*, 477 F.3d 1375 (Fed. Cir. 2007).

I. Commerce's Determination That CEO B Did Not Exercise Control Over Yousheng USA/Jinfu USA Is Sustained

In *Jinfu II*, the court remanded this matter to Commerce with instructions to "provide an explanation as to why the contents of the faxes exchanged between Mr. A and CEO B, if credible and reliable, do not support a conclusion that CEO B controlled Jinfu USA." *Jinfu II*, 31 CIT at ___ , Slip Op. 07–5 at 24. In addressing this instruction, Commerce relies heavily on the credibility and reliability of the faxes. Thus, Commerce questions the faxes' authenticity and further concludes that the remaining evidence on the record, viewed in light of the plaintiff's overall credibility, does not support the conclusion that CEO B influenced Yousheng USA/Jinfu USA's pricing decisions. Remand Redetermination at 7–8.

Commerce offers several reasons for doubting the faxes' authenticity. First, the faxes lack the type of data that, according to Commerce, would normally indicate the date and time of transmission. *See* Def.'s Resp. 9 (citing Remand Redetermination at 8). In addition, although given the opportunity to do so, plaintiff has not supplied a log entry or date stamp for these faxes. For Commerce, the absence of any of this evidence makes it impossible to conclude that they were sent at all, or that they were sent at the time plaintiff claims. *See* Remand Redetermination at 8. Notably, despite having sought the opportunity to submit additional evidence of the faxes' authenticity, plaintiff now asserts that "additional evidence is not necessary at this time." Pl.'s Comments 15.

For their part, defendant-intervenors note that other faxes sent by Mr. A contain the information line "showing his name and the date and time the facsimile was sent." *See* Def.-Ints.' Resp. 4 (citing Letter from Jinfu PRC to Commerce, Oct. 23, 2006, at Ex. 22). Defendant-intervenors also note that the faxes at issue were not provided to Commerce until late in the review process and suggest that this untimeliness raises "the possibility that the document was created af-

ter the fact for purposes of the second review." *See* Def.-Ints.' Resp. 4–5. They further suggest that this explains plaintiff's failure to capitalize on the opportunity to supply additional evidence authenticating the faxes. *See* Def.-Ints.' Resp. 4–5.

Further, Commerce insists that plaintiff's submission of backdated documentation earlier in the investigation undermines its credibility. *See* First Remand Redetermination at 10. Commerce notes that, as part of its efforts to document that CEO B owned Yousheng USA/Jinfu USA on November 2, 2002, plaintiff submitted a backdated Certificate of Transfer of Shares, along with supporting documentation, including amended articles of incorporation and by-laws, and a receipt for legal services preparing these documents, all of which were described by Commerce as having "credibility problems." *See Jinfu II*, 31 CIT at ___ , Slip Op. 07–95 at 10 n. 6 (citations omitted); *see also* 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 PRC (Dep't of Commerce Oct. 25, 2004) Comments 1 and 2. For Commerce, this behavior is reflective of plaintiff's overall credibility and sufficient to call into question the authenticity of the faxes, particularly when there is no other evidence indicating that they were sent on the date plaintiff claims or indeed that they were sent at all. *See Jinfu II*, 31 CIT at ___ , Slip Op. 07–95 at 10 n. 6.

Commerce also argues that the nature of the relationship between Mr. A and CEO B suggests that CEO B did not exercise operational control over Yousheng USA/Jinfu USA prior to November 2, 2002. *See* Def.'s Resp. 9–10. In fact, apart from Mr. A's statements in his affidavit, the only documented authorization of any action taken by Mr. A is the disputed exchange of faxes. *See Jinfu II*, 31 CIT at ___ , Slip Op. 07–95 at 15. On the other hand, it is undisputed that Mr. A negotiated the price and terms of the relevant sale with Customer C without the involvement of CEO B, and that the merchandise was already in transit to Customer C's end-user at the time that the faxes were supposedly exchanged. *See* Def.'s Resp. 8–9. In addition, Mr. A appears to have accepted partial pre-payment of the relevant shipment and arranged a loan from Customer C to Yousheng USA/Jinfu USA without CEO B's approval. *See Jinfu II*, 31 CIT at ___ , Slip Op. 07–95 at 12–13. Commerce interprets these facts to mean that the transaction was already finalized when the faxes were purportedly sent. From this conclusion, according to Commerce, it follows that Mr. A acted unilaterally and without authorization when making business decisions in consummating the sale. Def.'s Resp. 8–9.

As noted, despite being given the opportunity to do so, plaintiff has failed to offer any evidence demonstrating when the faxes were sent or whether they were sent at all. Commerce, then, was not unreasonable in questioning the authenticity given the timing of the

submission and plaintiff's previous submission of fraudulent documentation in this matter. *See U.S. Steel Group v. United States*, 96 F.3d 1352, 1357 (Fed. Cir. 1996) ("It is the [Department's] task to evaluate the evidence it collects during its investigation. Certain decisions, such as the weight to be assigned a particular piece of evidence, lie at the core of that evaluative process."). It is clear that, absent the disputed faxes, the weight of the evidence tends to indicate that Mr. A acted alone in managing Yousheng USA/Jinfu USA. Accordingly, Commerce's determination that CEO B did not exercise control over Mr. A at the time of the relevant sale is supported by substantial evidence and is sustained.

II. Commerce's Determination that CEO B Did Not Own Yousheng USA/Jinfu USA on November 2, 2002 Is Sustained

The court now reconsiders plaintiff's contention, that CEO B owned Yousheng USA/Jinfu USA on the date of the purported new shipper sale. This court has previously held "that Commerce was not unreasonable in concluding that a company named Jinfu USA did not exist on November 2, 2002, and that CEO B did not own Jinfu USA or its predecessor Yousheng USA" until some later date. *Jinfu I*, 30 CIT at ___ , Slip Op. 06–137 at 22. Plaintiff has asked the court to revisit that holding in light of the Federal Circuit's recent decision in *Crawfish Processors Alliance v. United States*, 477 F.3d 1375 (Fed. Cir. 2007) ("*Crawfish Processors*"). *See* Pl.'s Comments 15–19.

The issue before the Court in *Crawfish Processors* concerned the type of evidence that could be relied upon to provide substantial evidence that a transfer of ownership had taken place sufficient to demonstrate affiliation. *See Crawfish Processors*, 477 F.3d at 1380–81. In that case, the party claiming affiliation purchased stock in the other entity with a promissory note committing the purchaser to pay the stock purchase price, in merchandise, over a period of time. *See id*. at 1378. Commerce rejected the purchaser's affiliation claim, asserting that 19 U.S.C. § 1677(33) requires that a "transfer of cash ormerchandise" be fully effectuated within the period of review in order to demonstrate ownership, and that this did not occur here. *See id*. at 1380–81. The Federal Circuit rejected Commerce's requirement that payment be made within the period of review, stating that "[t]he statute imposes no time requirement on financial transactions showing affiliation." *Id*. at 1381.

Plaintiff now argues that because the court's previous ruling on the question of ownership was based, in part, on the fact that CEO B did not pay for his interest in Yousheng USA/Jinfu USA until more than one year after the new shipper sale, *Crawfish Processors* requires a finding that CEO B owned the company on November 2, 2002. *See* Pl.'s Comments 17. The court finds that plaintiff misconstrues the holding of *Crawfish Processors* and overstates its application to the present matter.

The critical distinction between these cases is that the petitioners in *Crawfish Processors* demonstrated that the transfer of ownership itself took place notwithstanding the method of payment; here, plaintiff cannot demonstrate that CEO B acquired Yousheng USA/Jinfu USA by November 2, 2002. To the contrary, the record in this case demonstrates that CEO B failed to acquire Yousheng USA/Jinfu USA prior to the November 2, 2002 sale. The court has previously detailed six independent reasons in support of this conclusion. *See Jinfu I*, 30 CIT at ___ , Slip Op. 06–137 at 22–25. They are that: (1) Yousheng USA was not renamed Jinfu USA until at least November 8, 2002; (2) either Mr. A or Mr. D owned Yousheng USA from its date of incorporation at least until its name was changed to Jinfu USA; (3) the Certificate of Transfer of Shares explicitly stated that it is to be "EFFECTIVE UPON EXECUTION BY THE UNDERSIGNED" and that the execution took place on December 30, 2003; (4) CEO B did not pay Mr. D the consideration for the shares until more than a year after November 2, 2002; (5) the portion of the November 18, 2002 Master Application for Jinfu USA's business license that asked if Yousheng USA was owned, controlled or affiliated with another entity was left blank; and (6) the tax return stating that Jinfu USA was wholly owned by CEO B was dated June 13, 2003, unsigned, and may never have been filed. *See id*. at ___ , Slip Op. 06–137 at 22–24. Even if the court were to "discount[ ] the importance of the time when final payment was made," as urged by plaintiff, it still could not conclude that CEO B acquired Yousheng USA/Jinfu USA prior to November 2, 2002 because there is no documentary evidence that the acquisition took place.

Plaintiff, however, continues to argue that a contract of sale need not be in writing to be effective. *See* Pl.'s Comments 17–19. While this may be true, plaintiff has offered no reliable evidence demonstrating when the contract to transfer ownership of Yousheng USA/Jinfu USA was formed. Nor, for that matter, is there any evidence that any claimed oral contract provided for payment at a future date, an important element in the holding of *Crawfish Processors*.

As previously noted in *Jinfu I*, all of the evidence plaintiff has presented regarding CEO B's ownership of Yousheng USA/Jinfu USA is both equivocal and dated after November 2, 2002. *See Jinfu I*, 30 CIT at ___ , Slip Op. 06–137 at 22. Neither the holding of *Crawfish Processors nor* "basic principles of contract law" can save plaintiff from its failure to produce convincing evidence of when the transfer of ownership took place. Therefore, the court continues to find that Commerce's determination that CEO B did not own Jinfu USA or its predecessor Yousheng USA on November 2, 2002 was supported by substantial evidence, and as such, must be sustained.

CONCLUSION

Accordingly, the court finds that Commerce's determination that Jinfu PRC was not affiliated with Yousheng USA/Jinfu USA on November 2, 2002 was supported by substantial evidence. Therefore, the court sustains Commerce's Remand Redetermination. Judgment shall be entered accordingly.

Slip Op. 08–39

HOME PRODUCTS INTERNATIONAL, INC., Plaintiff, v. UNITED STATES, Defendant.

Before: Leo M. Gordon, Judge
Consol. Court No. 07–00123

[Defendant's request for a voluntary remand granted; Home Products' motion for judgment on the agency record denied in part.]

Dated: April 7, 2008

Blank Rome LLP (*Frederick L. Ikenson*, *Larry Hampel*, *Roberta Kienast Daghir*), for Plaintiff Home Products International, Inc.

Jeffrey S. Bucholtz, Acting Assistant Attorney General; *Jeanne E. Davidson*, Director; *Patricia M. McCarthy*, Assistant Director, Commercial Litigation Branch, Civil Division, U.S. Department of Justice (*Sean M. Dunn*); and Office of Chief Counsel for Import Administration, U.S. Department of Commerce (*William G. Isasi*), of counsel, for Defendant.

Trade Pacific, PLLC (*Robert G. Gosselink*), for Defendant-Intervenor Since Hardware (Guangzhou) Co., Ltd.

OPINION AND ORDER

Gordon, Judge: This consolidated action arises from the first administrative review of the antidumping duty order covering floor-standing, metal-top ironing tables from the People's Republic of China. *See Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China*, 72 Fed. Reg. 13,239 (Dep't Commerce Mar. 21, 2007) (final results and partial rescission) ("*Final Results*"), 72 Fed. Reg. 19,689 (Dep't Commerce Apr. 19, 2007) (amended final results) ("*Amended Final Results*"). Home Products International, Inc. ("Home Products") and Since Hardware (Guangzhou) Co., Ltd. ("Respondent") each move for judgment on the agency record pursuant to USCIT R. 56.2, challenging the *Final Results* and *Amended Final Results*. The court has jurisdiction pursuant to Section 516A(a)(2)(B)(iii) of the Tariff Act of 1930, as

amended, 19 U.S.C. § 1516a(a)(2)(B)(iii) (2000),[1] and 28 U.S.C. § 1581(c) (2000).

I. Standard of Review

For administrative reviews of antidumping duty orders, the court sustains determinations, findings, or conclusions of the U.S. Department of Commerce ("Commerce") unless they are "unsupported by substantial evidence on the record, or otherwise not in accordance with law." 19 U.S.C. § 1516a(b)(1)(B)(i). More specifically, when reviewing whether Commerce's actions are unsupported by substantial evidence, the court assesses whether the agency action is "unreasonable" given the record as a whole. *Nippon Steel Corp. v. United States*, 458 F.3d 1345, 1350–51 (Fed. Cir. 2006); *see also Dorbest Ltd. v. United States*, 30 CIT ___, ___, 462 F. Supp. 2d 1262, 1269 (2006) (explaining the standard of review in the nonmarket economy context).

II. Discussion

1. Respondent's Carriage Inward Expenses

In the *Final Results* Commerce excluded Respondent's carriage inward expenses from its general expenses in the surrogate financial ratio component of normal value. Respondent explains that Commerce's practice is to treat transportation expenses related to raw materials as a general expense, and that the administrative record makes clear that its carriage inward expenses are, in fact, related to raw materials and not finished goods. Commerce agrees and requests a voluntary remand to reconsider its treatment of Respondent's carriage inward expenses, which the court will grant.

2. Respondent's Input Purchases from Market Economy Supplier Owned by Nonmarket Economy Entities

During the administrative review Commerce developed a new methodology to evaluate the reliability of Respondent's input purchases paid to a supplier located in a market economy but substantially owned by nonmarket economy entities. Commerce established a benchmark of international market prices derived from annualized export statistics and then compared Respondent's input purchases against the benchmark. The average price of Respondent's hot-rolled steel inputs was above the benchmark, and Commerce concluded that the prices paid for these inputs reflected market economy principles and were therefore reliable. The average purchase price of Re-

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[1] Further citations to the Tariff Act of 1930 are to the relevant provisions of Title 19 of the U.S. Code, 2000 edition.

spondent's cold-rolled steel inputs was below the benchmark, leading Commerce to conclude that the prices paid for these inputs did not reflect market economy principles. As a result, Commerce derived a surrogate value for the cold-rolled steel inputs rather than use Respondent's actual purchase price.

Respondent and Home Products challenge Commerce's methodology. Since Hardware's Mem. of P. & A. in Supp. of Mot. for J. on Agency R. at 10–21; Home Products' Br. in Supp. of Mot. for J. on Agency R. at 31–36. Commerce acknowledges that interested parties did not have an opportunity to comment upon the benchmark information prior to the *Final Results* as required by 19 U.S.C. § 1677m(g). Commerce also notes that it would like to consider interested parties' comments on the new methodology. Commerce therefore requests a voluntary remand, which the court will grant.

3. Inclusion of Foshan Shunde Yongjian in the Administrative Review

During the administrative proceeding Commerce reviewed Foshan Shunde Yongjian Housewares & Hardware Co., Ltd. ("Foshan Shunde Yongjian"). Home Products argues that Commerce's review of Foshan Shunde Yongjian violated the plain text of 19 U.S.C. § 1675(a), which according to Home Products prohibits Commerce from reviewing a company for which no review is requested. Home Products' Br. in Supp. of Mot. for J. on Agency R. at 18. This argument assumes a factual predicate that Foshan Shunde Yongjian never requested a review, an assumption that is not supported by the administrative record.

The record reveals that counsel for Shunde Yongjian Housewares Co., Ltd. ("Shunde Yongjian") requested an administrative review of Shunde Yongjian. *See* Letter dated Aug. 26, 2005 from counsel for Shunde Yongjian to Secretary of Commerce Carlos M. Gutierrez (Pub. R. at 4.)[2] A few days later the same counsel clarified that it was also requesting an administrative review for Foshan Shunde Yongjian. Counsel stated:

> We clarify that our review request for Shunde Yongjian Housewares Co. Ltd. ("Yongjian") should also include a variation of the company name that may have been used to export subject merchandise during the [period of review]. The variation is as follows: Foshan Shunde Yongjian Houseware & Hardware Co., Ltd.

Letter dated Aug. 31, 2005 from counsel for Foshan Shunde Yongjian to the Secretary of Commerce Carlos M. Gutierrez (Pub. R. at 6). In response to these requests, Commerce initiated an administrative

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[2] The public version of the administrative record is cited as "Pub. R."

review for, among others, "Shunde Yongjian Housewares Co., Ltd. (aka Foshan Shunde Yongjian Houseware & Hardware Co., Ltd.)." *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 Fed. Reg. 56,631, 56,633 (Dep't Commerce Sept. 28, 2005). Counsel's review request may have been somewhat imprecise, but thereafter, and at Home Products' insistence, Commerce resolved whatever confusion surrounded the request. Commerce asked counsel to confirm that it intended Foshan Shunde Yongian to be reviewed. Supplemental Questionnaire for Shunde Yongjian Housewares Co., Ltd. (aka Foshan Shunde Yongjian Houseware & Hardware Co., Ltd.) at 1 (Feb. 14, 2006) (Pub. R. at 66). Counsel responded that it did. Supplemental Questionnaire Resp. at 2–4 (Feb. 28, 2006) (Pub. R. at 70). Commerce credited this response by reviewing Foshan Shunde Yongjian, and calculating a company-specific dumping margin. *Final Results*, 72 Fed. Reg. at 13,241; *Issues and Decision Memorandum for the Final Results in the First Administrative Review of Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China*, at Comment 8, A–570–888 (Mar. 12, 2007), *available at* http://ia.ita.doc.gov/frn/summary/prc/E7–5170–1.pdf ("*Issues & Decision Memo*").

Home Products contends that Commerce never explained its reasons for reviewing Foshan Shunde Yongjian and that a remand is therefore necessary. Home Products' Br. in Supp. of Mot. for J. on Agency R. at 18. The court does not agree that a remand is necessary or appropriate because the agency's decisional path is reasonably discernable from the administrative record. *See Bowman Transp., Inc. v. Arkansas-Best Freight Sys. Inc.*, 419 U.S. 281, 285–86 (1974) (a court may "uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned."); *Wheatland Tube Co. v. United States*, 161 F.3d 1365, 1369–70 (Fed. Cir. 1998). As explained above, Commerce asked counsel for Foshan Shunde Yongjian to clarify whether it intended to request a review for Foshan Shunde Yongjian. After reviewing counsel's response, Commerce had two choices: (1) rescind the review or (2) continue to review Foshan Shunde Yongjian and calculate a company-specific rate. Commerce opted for the latter, thereby crediting counsel's explanation. No further rationale or explanation from Commerce was necessary.

For whatever reason, Home Products has not challenged the reasonableness (whether it was unsupported by substantial evidence) of Commerce's acceptance of Foshan Shunde Yongjian's review request. Instead, Home Products assumes, albeit incorrectly, that there was no administrative review request. Relying on the incorrect factual predicate, Home Products then makes a straight legal argument that the plain text of 19 U.S.C. § 1675(a) mandates only one result: rescission of Foshan Shunde Yongjian's review. Home Products' argu-

ment fails because Foshan Shunde Yongjian did in fact request a review.

As for Home Products' interpretation of section 1675(a), the court simply notes that the statute does not prescribe any particular method for requesting an administrative review. Congress left such procedural matters to be defined by Commerce. By regulation Commerce has defined time limits for administrative review requests by exporters or producers (which must be within the anniversary month of the order), but has not defined any particular form of request other that it be in writing from the particular exporter or producer making the request. *See* 19 C.F.R. § 351.213(b)(2) (2005). Therefore, the question of what constitutes a sufficient administrative review request remains within Commerce's discretion to be sorted out on a case by case basis. It suffices to say that in this case Commerce did not abuse its discretion in accepting Foshan Shunde Yongjian's administrative review request.

4. Commerce's Selection of Financial Statements

During the administrative review Commerce had a choice among several Indian financial statements to calculate surrogate financial ratios. Commerce's choice is guided by a general regulatory preference for publicly available information. 19 C.F.R. § 351.408(c)(4) (2005). Beyond that, "Commerce generally considers the quality, specificity, and contemporaneity of the available financial statements." *Dorbest Ltd.*, 30 CIT at ___ , 462 F. Supp. 2d at 1301 (citing *Fresh Garlic from the People's Republic of China*, 67 Fed. Reg. 72,139 (Dep't Commerce Dec. 4, 2002) (final results new shipper review)); *see also Issues & Decision Memo* at 6.

Commerce ultimately settled on the financial statement of Infiniti Modules Pvt. Ltd. ("Infiniti Modules") because it was "wholly publicly available" as well as "contemporaneous and complete, and most closely reflect[ed] merchandise comparable to ironing tables." *Issues & Decision Memo* at 6. Commerce explained that it did not utilize the financial statement of another company, Agew Steel Manufacturers Private Limited ("Agew Steel"), because a portion of its financial statement—the profit and loss statement—was not publicly available and therefore was not on the record of the review. *Id.*

Home Products argues that Commerce should have used Agew Steel's financial statement and that Commerce's selection of the Infiniti Modules statement was unreasonable. Properly framed, the question for the court is whether a reasonable mind could conclude that Commerce chose the best available information after conducting a fair comparison of the financial statements by measuring their relative quality, specificity, and contemporaneity against a regulatory preference for publicly available information. *See Dorbest Ltd.*, 30 CIT at ___ , 462 F. Supp. 2d at 1269 (explaining court evaluation

of substantial evidence challenges to Commerce's choice of data sets as best available information).

As noted above, Commerce found that the Infiniti Modules financial statement was "wholly publicly available," whereas the Agew Steel financial statement was not. *Issues & Decision Memo* at 6. Commerce also found that the Infiniti Modules financial statement was "contemporaneous and complete, and most closely reflect[ed] merchandise comparable to ironing tables." *Id.* Home Products argues that there is "no substantive quantitative difference" or "qualitative difference" between the Agew Steel and Infiniti Modules financial statements, and that Commerce therefore erred in selecting the Agew Steel Financial Statement. Home Products' Br. in Supp. of Mot. for J. on Agency R. at 27–28 (emphasis removed). If there is no quantitative or qualitative difference between the two statements, and one is completely publicly available and the other is not (missing a profit and loss statement), then Commerce's choice of a complete, publicly available financial statement consistent with its regulatory preference is, in the court's view, not only reasonable, but correct.

III. Conclusion

Commerce's request for a voluntary remand regarding the treatment of Respondent's carriage inward expenses is granted. Commerce's request for a voluntary remand to reconsider its methodology for evaluating certain of Respondent's market economy input purchases from a nonmarket economy-owned supplier and to allow parties an opportunity to comment upon information related to this methodology is also granted. Home Products' motion for judgment on the agency record regarding (1) Commerce's inclusion of Foshan Shunde Yongjian in the administrative review; and (2) Commerce's choice of the Infiniti Modules financial statement rather than the Agew Steel financial statement is denied.

Accordingly, it is hereby

ORDERED that this action is remanded to the U.S. Department of Commerce to:

(1) Reconsider its treatment of Respondent's carriage inward expenses; and

(2) Reconsider its methodology for evaluating certain of Respondent's market economy input purchases from a nonmarket economy-owned supplier and to allow parties an opportunity to comment upon information related to this methodology; and it is further

ORDERED that the U.S. Department of Commerce is to file its remand results on or before June 5, 2008; and it is further

ORDERED that the parties are to file a proposed scheduling order on or before June 12, 2008, for the submission of comments with page limits on the remand results.

ERRATA

***Home Products Int'l, Inc. v. United States*,**
Consol. Court No. 07–00123,

Slip Op. 08–39 (Apr. 7, 2008)

On page eight, lines 20–21, please replace "erred in selecting the Agew Steel Financial Statement" with "erred by not selecting the Agew Steel financial statement."

April 8, 2008