

Exporter/manufacturer	Net subsidy rate
Zhejiang Huayue Wooden Products Co., Ltd.	27.01
Zhejiang Yongji Wooden Co., Ltd.	27.01
Zhejiang Yongyu Bamboo Development.	27.01
Zhongshan New Oasis Wood Industry Co., Ltd.	27.01
Zhongyi Bamboo Industrial Co., Ltd. Fujian.	27.01
All Others .....	2.25

\* Non-cooperative company receiving the AFA rate. See "Non-Cooperative Companies" section, above.

In accordance with sections 703(d)(1)(B) and (2) of the Act, we are directing CBP to suspend liquidation of all entries of wood flooring from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register**, and to require a cash deposit or bond for such entries of merchandise in the amounts indicated above. However, because the estimated CVD rate for Layo and Yuhua is *de minimis*, liquidation will not be suspended and no cash deposits or bonds are required for merchandise produced and exported by Layo or Yuhua.

In accordance with sections 703(d) and 705(c)(5)(A) of the Act, for companies not investigated, we apply an "all-others" rate, which is normally calculated by weighting the subsidy rates of the individual companies selected as respondents by those companies' exports of the subject merchandise to the United States. The "all-others" rate does not include zero and *de minimis* rates or any rates based solely on the facts available. In this investigation, because we have only one rate that can be used to calculate the "all-others" rate, Fine Furniture's rate, we have assigned that rate to "all-others."

#### ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary for Import Administration.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

#### Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), we will disclose to the parties the calculations for this preliminary determination within five days of its announcement. Due to the anticipated timing of verification and issuance of verification reports, case briefs for this investigation must be submitted no later than one week after the issuance of the last verification report. See 19 CFR 351.309(c)(i) (for a further discussion of case briefs). Rebuttal briefs must be filed within five days after the deadline for submission of case briefs, pursuant to 19 CFR 351.309(d)(1). A list of authorities relied upon, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. See 19 CFR 351.309(c)(2) and (d)(2).

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will be held two days after the deadline for submission of the rebuttal briefs, pursuant to 19 CFR 351.310(d), at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230, within 30 days of the publication of this notice, pursuant to 19 CFR 351.310(c). Requests should contain: (1) The party's name, address, and telephone; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. *Id.*

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: March 21, 2011.

**Ronald K. Lorentzen,**  
Deputy Assistant Secretary for Import Administration.

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-894]

#### Certain Tissue Paper Products From the People's Republic of China: Preliminary Affirmative Determination of Circumvention of the Antidumping Duty Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

#### Preliminary Determination

We preliminarily determine that certain tissue paper products (tissue paper) produced and/or exported by Max Fortune (Vietnam) Paper Products Company, Limited (MFVN)<sup>1</sup> to the United States from Vietnam are made from jumbo rolls and/or cut sheets of tissue paper produced in the People's Republic of China (PRC), and are circumventing the antidumping duty order on tissue paper from the PRC, as provided in section 781(b) of the Tariff Act of 1930, as amended (the Act). See *Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 16223 (March 30, 2005) (*PRC Tissue Paper Order*).

**DATES:** *Effective Date:* April 6, 2011.

**FOR FURTHER INFORMATION CONTACT:** Brian Smith or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-1766 or (202) 482-3773, respectively.

#### SUPPLEMENTARY INFORMATION:

#### Background

On February 19, 2010, the Seaman Paper Company of Massachusetts, Inc. (the petitioner) requested that the Department of Commerce (the Department) initiate an anti-circumvention inquiry pursuant to section 781(b) of the Act, and 19 CFR 351.225(h), to determine whether U.S.

<sup>1</sup> MFVN is a company located in Vietnam and is a wholly owned subsidiary of Max Fortune Industrial Co., Ltd. (Max Fortune HK) located in Hong Kong.

imports of tissue paper exported from Vietnam by MFVN were made from jumbo rolls and/or cut sheets of tissue paper produced in the PRC, and thus circumventing *PRC Tissue Paper Order*. See the petitioner's February 19, 2010, anti-circumvention inquiry request (February 19 Submission) at pages 13–14; and *PRC Tissue Paper Order*. Specifically, the petitioner alleged that Chinese-produced jumbo rolls and/or cut sheets of tissue paper sent to Vietnam for completion or assembly into merchandise of the same class or kind as that covered by the *PRC Tissue Paper Order* constituted circumvention pursuant to section 781(b) of the Act. The petitioner also alleged in its February 19 Submission that MFVN had been obtaining Chinese-produced tissue paper jumbo rolls and/or cut sheets and using that merchandise in its U.S. tissue paper sales since it commenced its operations in 2005.

On March 29, 2010, the Department initiated an anti-circumvention inquiry on imports of tissue paper from Vietnam produced and/or exported by MFVN. See *Certain Tissue Paper Products from the People's Republic of China: Notice of Initiation of Anti-circumvention Inquiry*, 75 FR 64 (April 5, 2010) (*Initiation Notice*).

On April 23, 2010, the Department issued an anti-circumvention questionnaire to MFVN, asking for sales and production information with respect to the period January 1, 2005, to the present (April 23 Questionnaire). On May 13, 2010, MFVN entered a notice of appearance in this proceeding. Also, on May 13, 2010, MFVN requested additional time to file a response to the anti-circumvention questionnaire. Pursuant to this request, the Department extended the questionnaire response deadline until June 28, 2010, and MFVN submitted its response to the questionnaire on that date (June 28 Response). In its June 28 Response, MFVN admitted that it was possible that it manufactured some tissue paper in Vietnam from PRC-origin jumbo rolls before and during 2007. MFVN also stated that its records before 2008 were incomplete and unreliable. However, MFVN asserted that it could conclusively demonstrate that as of January 1, 2008, it did not convert any PRC-origin jumbo rolls and/or cut sheets of tissue paper in Vietnam into its own tissue paper products. See pages 3 and 12 of MFVN's June 28 Response.

In the April 23 Questionnaire, the Department requested factors of production (FOP) information for purposes of determining whether the value of the processing performed in Vietnam represented a small portion of

the value of the merchandise imported into the United States. MFVN responded that it would not submit FOP data to the Department because it claimed that since January 1, 2008, it no longer included Chinese-origin tissue paper jumbo rolls and/or cut sheets in its U.S. sales. See pages 14–15 of MFVN's June 28 Response.

The Department issued a supplemental questionnaire to MFVN on July 23, 2010, and received MFVN's supplemental questionnaire response on September 1, 2010.

Also on September 1, 2010, MFVN filed a submission in which it rebutted the petitioner's February 19, 2010, allegations and provided information with respect to certain transactions with an affiliated Chinese company, Fuzhou Tian Jun Trading Co., Ltd. (Tian Jun), during the 2008–2009 period, which were alleged by the petitioner in its February 19 Submission to have involved tissue paper.

The Department issued an additional supplemental questionnaire to MFVN on October 12, 2010, and received MFVN's supplemental questionnaire response on November 12, 2010.

On November 16, 2010, the Department placed on the record certain data from the 2008–2009 administrative review of tissue paper from the PRC. See Memorandum from Brian Smith, Senior Analyst, to The File, dated November 16, 2010.

On November 18, 2010, the Department issued a verification outline to MFVN.

On November 22, 2010, the Department met with the petitioner's counsel to discuss agenda items in the verification outline issued to MFVN.<sup>2</sup>

The petitioner submitted pre-verification comments on November 24, 2010.

Pursuant to section 782(i) of the Act, the Department conducted verification of the questionnaire responses submitted by MFVN and its affiliates Max Fortune HK, Tian Jun, and Max Fortune (FZ) Paper Products Co., Ltd., from November 30 to December 16, 2010.<sup>3</sup> This verification report is on file and available in the Central Records

<sup>2</sup> See Memorandum to The File from Brian Smith, Senior Analyst, entitled "Ex-Parte Meeting with Petitioner's Counsel," dated November 22, 2010.

<sup>3</sup> See Memorandum to The File from Case Analysts entitled "Verification of the Questionnaire Response of Max Fortune (Vietnam) Paper Products Co., Ltd. and Its Affiliates in the Anti-circumvention Inquiry and 2009–2010 Antidumping Duty Administrative Review of Certain Tissue Paper Products from the People's Republic of China," dated March 31, 2011 (MFVN verification report).

Unit (CRU) of the Department's main building.

On January 18, 2011, the Department notified the parties by letter that it was postponing the final determination of this inquiry until August 1, 2011.<sup>4</sup>

#### Scope of the Antidumping Duty Order

The tissue paper products subject to this order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may be under one or more of several different subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.31.1000; 4804.31.2000; 4804.31.4020; 4804.31.4040; 4804.31.6000; 4804.39; 4805.91.1090; 4805.91.5000; 4805.91.7000; 4806.40; 4808.30; 4808.90; 4811.90; 4823.90; 4820.50.00; 4802.90.00; 4805.91.90; 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.<sup>5</sup>

Excluded from the scope of this order are the following tissue paper products: (1) Tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products

<sup>4</sup> See Letter to the Interested Parties from James Maeder, Office Director, entitled "Anti-Circumvention Inquiry on Certain Tissue Paper Products from the People's Republic of China: Extension of Final Determination," dated January 18, 2011.

<sup>5</sup> On January 30, 2007, at the direction of U.S. Customs and Border Protection (CBP), the Department added the following HTSUS classifications to the AD/CVD module for tissue paper: 4802.54.3100, 4802.54.6100, and 4823.90.6700. However, we note that the six-digit classifications for these numbers were already listed in the scope.

that have been perforated, embossed, or die-cut to the shape of a toilet seat, *i.e.*, disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

#### Scope of the Circumvention Inquiry

The products covered by this inquiry are tissue paper products, as described above in the "Scope of the Antidumping Duty Order" section, which are produced in Vietnam from Chinese-origin jumbo rolls and/or cut sheets of tissue paper, and exported from Vietnam to the United States by MFVN.

#### Statutory Provisions Regarding Circumvention

Section 781(b) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting anti-circumvention inquiries under section 781(b)(1) of the Act, the Department relies upon the following criteria: (A) Merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is subject to an antidumping duty order; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order.

Section 781(b)(2) of the Act provides the criteria for determining whether the process of assembly or completion is minor or insignificant. These criteria are: (a) The level of investment in the foreign country; (b) the level of research and development (R&D) in the foreign country; (c) the nature of the production process in the foreign country; (d) the extent of the production facilities in the foreign country; and (e) whether the value of the processing performed in the foreign country represents a small

proportion of the value of the merchandise imported into the United States.

The Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316, at 893 (1994), provides some guidance with respect to these criteria. It explains that no single factor listed in section 781(b)(2) of the Act will be controlling. Accordingly, it is the Department's practice to evaluate each of the factors as they exist in the foreign country depending on the particular circumvention scenario. Therefore, the importance of any one of the factors listed under section 781(b)(2) of the Act can vary from case to case depending on the particular circumstances unique to each circumvention inquiry.

Section 781(b)(3) of the Act further provides that, in determining whether to include merchandise assembled or completed in a foreign country in an antidumping duty order, the Department shall consider: (A) The pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise described in accordance with section 781(b)(1)(B) of the Act is affiliated with the person who uses the merchandise described in accordance with section 781(b)(1)(B) to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States; and (C) whether imports into the foreign country of the merchandise described in accordance with section 781(b)(1)(B) have increased after the initiation of the investigation which resulted in the issuance of such order.

In this case, the *PRC Tissue Paper Order* covers cut-to-length sheets of tissue paper equal to or greater than 0.5 inches in width, with a basis weight not exceeding 29 grams per square meter and other specified characteristics of the scope. The merchandise subject to this inquiry is tissue paper products exported to the United States by MFVN produced from Chinese-origin jumbo rolls and/or cut sheets of tissue paper. The list of products MFVN provided in its questionnaire responses indicates that the tissue paper products it exported to the United States meet the written description of the products subject to the *PRC Tissue Paper Order*. See June 28 Response at Exhibit 6. Accordingly, we find that the merchandise subject to this inquiry is the same class or kind of merchandise as that subject to the *PRC Tissue Paper Order*, pursuant to section 781(b)(1)(A) of the Act. With respect to the remaining statutory criteria for

determining whether circumvention exists, the Department finds it necessary to rely on facts available, as the respondent failed to provide necessary, verifiable information upon which the Department could rely. Further, as discussed in detail below, we find it appropriate in this inquiry to apply facts available with an adverse inference, as the respondent failed to cooperate to the best of its ability in providing the necessary information.

#### Adverse Facts Available

Section 776(a) of the Act, provides that, if (1) necessary information is not available on the record or (2) an interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Furthermore, section 776(b) of the Act states that if the Department "finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority \* \* \*, the administering authority \* \* \*, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." See also SAA, H.Rep. No. 103-316 at 870 (1994). It is the Department's practice to make an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *Id.* An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. See section 776(b) of the Act.

In this case, MFVN informed the Department that it could not provide any information with respect to the production of the merchandise exported from Vietnam during the period January 1, 2005, to December 31, 2007. In fact, MFVN admitted that "it is possible that MFVN might have made tissue paper in Vietnam from jumbo rolls from the PRC" during this time period. See MFVN's June 28 Response at page 3. Furthermore, the data provided in the petitioner's February 19 Submission

show that MFVN obtained a significant amount of Chinese-origin jumbo rolls and/or cut sheets of tissue paper during this time period. *See* February 19 Submission at pages 13–14. This is the extent of information on the record with regard to MFVN's production during this time period.

Absent any further information on the record, pursuant to section 776(a) of the Act, the Department has concluded that the application of facts available is warranted with respect to exports of tissue paper from MFVN to the United States from January 1, 2005, to December 31, 2007 (2005–2007 period). Production information for the 2005–2007 period is necessary for purposes of this anti-circumvention inquiry and without it on the administrative record, the Department cannot conduct its anti-circumvention analysis for the 2005–2007 period. MFVN claims that it was unable to maintain such records during the above-referenced time period. However, we find this claim to be unreasonable. A company is expected to maintain its production records in the normal course of business. For companies doing business in Vietnam, the Vietnamese Government has even issued regulations which require companies like MFVN to retain such records for up to 10 years.<sup>6</sup> This is especially true in this case where MFVN demonstrated at verification that it maintained such records in both 2009 and 2010. Therefore, because MFVN did not provide the Department with necessary information with respect to MFVN's exports of tissue paper during the 2005–2007 period, the application of facts available pursuant to sections 776(a)(1) and (2) of the Act is warranted.

Furthermore, MFVN's admission that it "possibly" made tissue paper in Vietnam from Chinese-origin jumbo rolls, coupled with the fact that the petitioner's data show that MFVN obtained PRC-origin jumbo rolls and/or cut sheets from January 1, 2005, to December 31, 2007, leads us to conclude that MFVN failed to cooperate by not acting to the best of its ability to comply with the Department's request for information with respect to its commercial activities during this period. Therefore, pursuant to section 776(b) of the Act, an adverse inference is warranted. Accordingly, as adverse facts available (AFA), the Department

preliminarily finds that all tissue paper produced and/or exported by MFVN to the United States from January 1, 2005, to December 31, 2007, was made with Chinese-origin jumbo rolls and/or cut sheets of tissue paper.

With respect to MFVN's exports of tissue paper to the United States during the calendar year 2008, the Department also concludes that the application of AFA is warranted. Although MFVN stated in its June 28 Response that it could conclusively demonstrate through its accounting and production records that it did not use Chinese-origin tissue paper jumbo rolls and/or cut sheets in its U.S. sales during 2008, the Department was unable to verify this claim. In fact, at verification, MFVN provided inadequate and incomplete accounting records for calendar year 2008. Specifically, MFVN did not support its claim that it had ceased using Chinese-origin jumbo rolls and/or cut sheets of tissue paper in its U.S. sales during 2008, nor did it provide the necessary accounting records at verification to show the type and origin of the materials it used in its tissue paper exports to the United States from January 1, 2008, to December 31, 2008. *See* MFVN verification report at pages 2, 35–36, and 39–40.

For example, at verification, MFVN provided a worksheet which reconciled the cost-of-sales figure in its 2008 audited financial statements to its purchases, beginning and ending inventory values and conversion costs, as reflected in its annual summary trial balance for 2008. We subsequently requested that MFVN reconcile its monthly trial balances or other monthly general ledger-type reports to the annual summary trial balance for 2008. MFVN, however, claimed at verification that it could not locate its monthly trial balances or any other detailed accounting records for 2008 to support its annual summary trial balance amounts. *See* MFVN verification report at pages 35–36.

In addition, we requested that MFVN provide the company's 2008 monthly inventory movement ledgers for raw materials, work in process (WIP), and finished goods. While MFVN provided its detailed inventory ledger as of December 31, 2008, the company informed Department officials at verification that it could not provide any of the other requested 2008 monthly detailed inventory movement ledgers. Without the detailed trial balances or inventory movement ledgers, Department officials were unable to rely on the company's monthly production cost and inventory movement activity (for raw materials, WIP and finished

goods) noted in its warehouse records for purposes of testing at verification the production quantity data contained in MFVN's submissions for calendar year 2008. *See* MFVN verification report at pages 35–36.

Also, MFVN did not provide at verification, upon request, details of its raw material and WIP inventory as of January 1, 2008. Thus, Department officials were unable to obtain details of the amounts reflected in MFVN's beginning inventory value noted in its 2008 audited financial statements (*e.g.*, quantity of pulp versus Chinese-sourced jumbo rolls in the beginning raw material inventory amount reflected in the 2008 audited financial statements). *See* MFVN verification report at pages 35–37.

All of the above examples demonstrate that MFVN did not provide to the Department verifiable production data for calendar year 2008, was unable to tie its export sales data to its production data for calendar year 2008, and did not respond fully to the Department's questionnaires with regard to its production during that period. The absence of verifiable production data on the record for 2008 impeded the conduct of this anti-circumvention inquiry. Therefore, pursuant to section 776(a)(2) of the Act, the Department concludes that the use of facts available is warranted with regard to MFVN's U.S. tissue paper sales transactions from January 1 to December 31, 2008.

Furthermore, because MFVN did not provide verifiable data showing that it used only non-Chinese-origin jumbo rolls and/or sheets in its production of all of the tissue paper it exported to the United States from its facility during 2008, the Department concludes that MFVN did not act to the best of its ability in this inquiry. As noted above, a company is expected to maintain its production records in the normal course of business. MFVN was aware that these records were necessary for the Department's anti-circumvention analysis, but did not provide them at verification, as requested. Therefore, pursuant to section 776(b) of the Act, an adverse inference is warranted because MFVN did not provide all of the necessary information on the record and failed to provide at verification the accounting records the Department needed to analyze the relevant production data for the calendar year 2008. Accordingly, as AFA, the Department preliminarily concludes that all of MFVN's exports of tissue paper to the United States during 2008 were produced with Chinese-origin jumbo rolls and/or cut sheets of tissue paper.

<sup>6</sup> *See* Memorandum to the File dated March 31, 2011 which contains the following document, "Decree No. 129/2004/ND-CP of May 31, 2004 Detailing and Guiding the Implementation of a Number of Articles of the Accounting Law, Applicable to Business Activities," issued by the Government of the Socialist Republic of Vietnam on May 31, 2004.

In addition, MFVN's books and records, as verified, reflect that on January 1, 2009, the company had significant amounts of tissue paper in finished goods and WIP inventory. This entire inventory was produced and/or purchased during 2008 or earlier. At verification, MFVN stated that it did not have records to show the source of the material it used in the production of that inventory. Furthermore, Department officials discovered in the records MFVN provided at verification that there were jumbo rolls of Chinese-origin in inventory at the end of December 2008, which remained in inventory throughout 2009, and were later withdrawn from inventory in March 2010. See MFVN verification report at pages 40–41. Therefore, the Department finds that adverse facts available is also warranted with respect to the beginning inventory amount in 2009. Accordingly, as AFA, the Department determines that any tissue paper exported by MFVN to the United States on or after January 1, 2009, which was withdrawn from, or produced from merchandise in, finished goods or WIP inventory as of January 1, 2009, was produced from Chinese jumbo rolls and/or cut sheets.

Based on the foregoing analysis, as AFA, the Department preliminarily finds that MFVN used Chinese-origin jumbo rolls and/or cut-sheets of tissue paper in its production of tissue paper that it exported to the United States from January 1, 2005, to December 31, 2008, and that MFVN continued to use such merchandise from inventory during that period to produce and/or sell tissue paper on or after January 1, 2009. Accordingly, the Department preliminarily concludes that MFVN's tissue paper exports to the United States during 2009 and 2010 included tissue paper produced from Chinese jumbo rolls and/or cut sheets.

However, the Department was able to verify based on its examination of Vietnamese Customs data from January 1, 2008, to December 10, 2010, MFVN had not imported any additional Chinese-origin jumbo rolls and/or cut sheets of tissue paper. See MFVN verification report at page 3. In light of these verified data and the Department's observation of MFVN's tissue-paper production operations at verification, we find that MFVN now has the capacity and ability to produce tissue paper for export.

In determining whether circumvention of an order is occurring, section 781(b)(1) of the Act directs the Department to address, among other things, whether before importation into the United States, the imported

merchandise is completed or assembled in another country from merchandise which is subject to the order or produced in the foreign country that is subject to the order. See section 781(b)(1)(B) of the Act. Based on the preceding analysis, there is little dispute that during the period of analysis of this inquiry, MFVN completed some tissue paper in Vietnam using jumbo rolls and/or cut sheets produced in the PRC.

Section 781(b)(1) of the Act also directs the Department to examine whether (1) the process of assembly or completion in the foreign country (*i.e.*, Vietnam) is minor or insignificant and (2) the value of the merchandise produced in the country subject to the order (*i.e.*, the PRC) is a significant portion of the total value of the merchandise exported to the United States. See sections 781(b)(1)(C) and (D) of the Act. Because the PRC and Vietnam are non-market economies, in any review of merchandise produced in those countries, section 773(c)(4) of the Act provides that the Department shall value the FOP utilizing prices or costs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. Pursuant to this provision, in its questionnaire to MFVN, the Department requested the FOP data for both the Chinese-origin jumbo rolls and/or sheets imported by MFVN, and the processing and packaging operations performed by MFVN in Vietnam. See the Department's April 23 Questionnaire at pages 9–10. See also *Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 73 FR 57591 (October 3, 2008); and *Circumvention and Scope Inquiries on the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order, Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry*, 71 FR 38608 (July 7, 2006).

In determining whether the process of assembly or completion of tissue paper from jumbo rolls and/or cut sheets is "minor or insignificant" as required by section 781(b)(1), section 781(b)(2) of the Act directs the Department to consider various factors including (a) MFVN's level of investment in Vietnam; (b) MFVN's level of R&D in Vietnam; (c) the nature of MFVN's production process in Vietnam; (d) the extent of MFVN's production facilities in Vietnam; and (e) whether the value of

the processing performed in Vietnam represents a small proportion of the value of the merchandise MFVN exported to the United States. With respect to the first criterion, the Department verified that the level of investment by MFVN for equipment used in converting the PRC-origin jumbo rolls and/or cut sheets into finished tissue paper is minor or insignificant. See MFVN verification report at page 6. Moreover, the record evidence for this circumvention inquiry demonstrates that MFVN has not undertaken a significant level of R&D in order to process tissue paper products. See June 28 Response at pages 12–13. Furthermore, the production process conducted by MFVN in converting the PRC-origin jumbo rolls or sheets to cut-to-length tissue paper is limited and minor when compared to the production process of the jumbo rolls or sheets. See June 28 Response at pages 13–14. In addition, the Department did verify that MFVN has production facilities in Vietnam in terms of the capital equipment and the types of employees used in the production process. See MFVN verification report at pages 6 and 19–20. However, as noted above, MFVN was unable to provide evidence that, before January 1, 2009, it used its full capacity of production to manufacture tissue paper.

With respect to the criterion of section 781(b)(2)(e) of the Act, however, MFVN did not provide the Department with sufficient information to determine whether the value of the processing MFVN performed in Vietnam represents a small proportion of the value of the merchandise MFVN exported to the United States. In response to our questionnaire, MFVN refused to submit FOP information, because it stated that it could definitively demonstrate through its books and records that as of January 1, 2008, it did not use Chinese-origin jumbo rolls and/or cut sheets of tissue paper in its U.S. tissue paper sales. See June 28 Response at pages 3 and 12. However, as explained above, MFVN was unable to substantiate this claim at verification. Accordingly, for this factor, the application of facts available is also warranted pursuant to section 776(a) of the Act.

In its February 19 Submission, the petitioner provided evidence based on foreign market research that the conversion by MFVN of jumbo rolls and/or sheets of tissue paper produced in the PRC into finished tissue paper products in Vietnam is a minor or insignificant process as defined under sections 781(b)(1)(C) and (b)(2) of the Act, and that the value of the processing performed by MFVN is a minor portion

of the value of the completed merchandise. Accordingly, the petitioner reasoned that the value of the PRC-origin jumbo rolls and/or sheets used by MFVN is a significant portion of the total value of the merchandise exported to the United States, pursuant to section 781(b)(1)(D) of the Act. See *Initiation Notice*, 75 FR 17128–17131. Further, in a prior anti-circumvention segment of this proceeding, the Department determined that the process of converting Chinese-origin jumbo rolls in Vietnam was minor or insignificant, and that the value of the Chinese-origin jumbo rolls was a significant portion of the total value of the finished tissue paper products the respondent exported to the United States.<sup>7</sup>

Therefore, based on data contained in the petitioner's February 19 Submission, as well as our findings in a prior anti-circumvention segment of the PRC tissue paper proceeding, the Department determines in this case, as facts available, that the value of the processing MFVN performed in Vietnam represents a small proportion of the value of the merchandise MFVN exported to the United States.

Taking into consideration all of the factors under section 781(b)(2) of the Act, the Department concludes that the process of converting the jumbo rolls and/or cut sheets of tissue paper into the finished tissue paper products in Vietnam is minor or insignificant, pursuant to sections 781(b)(1)(C) of the Act. Accordingly, the Department concludes, based on the facts available, that the value of the jumbo rolls and/or cut sheets produced in the PRC is a significant portion of the total value of the finished tissue paper products MFVN exported to the United States, pursuant to section 781(b)(1)(D) of the Act.

Furthermore, in accordance with section 781(b)(1)(E) of the Act, we find that action is appropriate to prevent evasion of the *PRC Tissue Paper Order*.

In conclusion, the Department preliminarily determines under section 781(b) of the Act, that exports to the United States of tissue paper products produced from PRC-origin jumbo rolls and/or cut sheets and further processed in Vietnam by MFVN constitute circumvention of the *PRC Tissue Paper Order*.

The Department notes that this represents the third instance in which

the Department has found an exporting company to have circumvented the *PRC Tissue Paper Order*. See also *Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 74 FR 29172 (June 19, 2009); and *Certain Tissue Paper Products From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 73 FR 57591 (October 3, 2008). The Department has an obligation to administer the law in a manner that prevents evasion of the order. See *Tung Mung Development v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002), affirmed 354 F.3d 1371 (January 15, 2004) (finding that the Department has a responsibility to prevent the evasion of payment of antidumping duties). Further, section 781(b)(1)(E) of the Act directs the Department to take necessary action to "prevent evasion" of antidumping or countervailing duty orders when it concludes that "merchandise has been completed or assembled in other foreign countries" and is circumventing an order. Accordingly, to prevent future evasion of the *PRC Tissue Paper Order*, in light of our preliminary determination, the Department will instruct CBP to suspend liquidation of all entries of tissue paper produced and/or exported by MFVN that were entered, or withdrawn from warehouse, for consumption on or after the date of initiation of the circumvention inquiry.

As noted above, the Department did determine that MFVN now has the capacity and ability to produce tissue paper for export from domestically-sourced input materials. Should the Department conduct an administrative review in the future, and determine in the context of that review that MFVN has not produced for export tissue paper using Chinese-origin jumbo rolls and/or cut sheets, the Department will consider initiating a changed circumstances review pursuant to section 751(b) of the Act to determine if the continued suspension of merchandise produced and/or exported by MFVN from Vietnam is warranted.

#### Suspension of Liquidation

In accordance with section 733(d) of the Act, the Department will direct CBP to suspend liquidation and to require a cash deposit of estimated duties, at the PRC-wide rate of 112.64 percent, on all unliquidated entries of tissue paper produced and/or exported by MFVN that were entered, or withdrawn from warehouse, for consumption on or after March 29, 2010, the date of initiation of the circumvention inquiry.

#### Notification to the International Trade Commission

The Department, consistent with section 781(e) of the Act and 19 CFR 351.225(f)(7)(i)(B), has notified the International Trade Commission (ITC) of this preliminary determination to include the merchandise subject to this inquiry within the *PRC Tissue Paper Order*. Pursuant to section 781(e) of the Act, the ITC may request consultations concerning the Department's proposed inclusion of the subject merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed exclusion, it will have 15 days to provide written advice to the Department.

#### Public Comment

Case briefs from interested parties may be submitted no later than 30 days from the date of publication of this notice. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. See 19 CFR 351.309(c). This summary should be limited to five pages total, including footnotes. Rebuttal briefs limited to issues raised in the case briefs may be filed no later than 35 days after the date of publication of this notice. See 19 CFR 351.309(d).

Interested parties, who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days after the date of publication of this notice. See 19 CFR 351.310. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief. We intend to hold a hearing, if requested, no later than 40 days after the date of publication of this notice.

#### Final Determination

The final determination with respect to this circumvention inquiry, including the results of the Department's analysis of any written comments, will be issued no later than August 1, 2011.

This preliminary affirmative circumvention determination is published in accordance with section 781(b) of the Act and 19 CFR 351.225.

<sup>7</sup> The Department came to this conclusion based on its analysis of both the qualitative and quantitative data submitted by the respondent. See *Certain Tissue Paper Products From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 73 FR 57591 (October 3, 2008).

March 31, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011-8213 Filed 4-5-11; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-894]

#### **Certain Tissue Paper Products From the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department is conducting an administrative review of the antidumping duty (AD) order on certain tissue paper products (tissue paper) from the People's Republic of China (PRC) for the period of review (POR) of March 1, 2009, to February 28, 2010, with respect to Max Fortune (Vietnam) Paper Products Company Limited (MFVN). MFVN claimed in this administrative review that it made no sales/shipments during the POR of tissue paper products produced from Chinese-origin jumbo rolls/sheets. Contrary to MFVN's claim and based on our verification findings, we preliminarily determine, as adverse facts available (AFA), that during the POR MFVN made sales/shipments to the United States of tissue paper products produced using Chinese-origin jumbo rolls/sheets. Further, based on AFA, we find that no substantial transformation is occurring as a result of further processing in Vietnam, and thus the country of origin for AD purposes of the tissue paper products produced by MFVN from Chinese-origin jumbo rolls/sheets is China.

If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to collect cash deposits on all future entries of tissue paper produced and/or exported by MFVN.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the date of publication of this notice.

**DATES:** *Effective Date:* April 6, 2011.

**FOR FURTHER INFORMATION CONTACT:** Brian Smith or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of

Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-1766 or (202) 482-3773, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On March 30, 2005, the Department published in the **Federal Register** the antidumping duty order on certain tissue paper products from the PRC. *See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products From the People's Republic of China*, 70 FR 16223 (March 30, 2005) (*Tissue Paper Order*). On March 1, 2010, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain tissue paper products from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 75 FR 9162 (March 1, 2010).

In response, the petitioner<sup>1</sup> timely requested an administrative review of the antidumping duty order on certain tissue paper products from the PRC with respect to entries of the subject merchandise during the POR from MFVN. Therefore, on April 21, 2010, the Department initiated an administrative review of MFVN.<sup>2</sup> *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 75 FR 22107 (April 27, 2010). MFVN is a company located in Vietnam which exports tissue paper to the U.S. market through its parent company based in Hong Kong—Max Fortune Industrial Limited (Max Fortune HK). MFVN is also a respondent in an on-going anti-circumvention inquiry involving the subject merchandise from the PRC.<sup>3</sup>

<sup>1</sup> The petitioner is Seaman Paper Company of Massachusetts, Inc.

<sup>2</sup> Also on this date, the Department initiated a review of Max Fortune Industrial Limited, Max Fortune (FZ) Paper Products Co., Ltd. (formerly known as Max Fortune (FETDE) Paper Products Co., Ltd.), Max Fortune HK, and Fujian Provincial Shaowu City Huaguang Special Craft Co., Ltd. based on the petitioner's timely request for review of these companies, but subsequently rescinded the review with respect to these companies pursuant to the petitioner's timely withdrawal of its request for review. *See Certain Tissue Paper Products From the People's Republic of China: Notice of Partial Rescission and Extension of Time Limit for Preliminary Results of 2009-2010 Administrative Review*, 75 FR 73040 (November 29, 2010) (*PRC Tissue Paper from China Partial Rescission Notice*).

<sup>3</sup> On March 29, 2010, the Department initiated an anti-circumvention inquiry on certain imports of tissue paper from Vietnam produced and/or exported by MFVN. *See Certain Tissue Paper Products From the People's Republic of China: Initiation of Anti-circumvention Inquiry*, 75 FR 17127 (April 5, 2010).

In its June 28, 2010, response to the Department's April 23, 2010, questionnaire in the anti-circumvention inquiry (June 28 Response), MFVN claimed that it had not exported tissue paper to the United States produced from jumbo rolls or cut sheets imported from the PRC since January 2008. MFVN also filed this questionnaire response on the record of this administrative review. Similarly, in its August 17, 2010, response to the Department's May 7, 2010, questionnaire in this review, MFVN claimed that it did not export subject merchandise from the PRC or Vietnam during the POR.

The Department postponed the preliminary results in this review until March 31, 2011, in order to have sufficient time to conduct verification of MFVN's "no-shipment" claim. *See PRC.*

##### **Tissue Paper Partial Rescission Notice.**

Pursuant to 19 CFR 351.221(b)(3) and 351.225(f)(iii)(2), the Department conducted a verification of the "no-shipment" claim MFVN made in this administrative review and in the anti-circumvention inquiry, and met with Vietnamese Customs on this matter in December 2010. Both the verification report and meeting memorandum are on the record of this segment,<sup>4</sup> and are available in the Central Records Unit (CRU) of the Department's main building.

##### **Period of Review**

The period of review (POR) is March 1, 2009, through February 28, 2010.

##### **Scope of the Order**

The tissue paper products covered by this order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dyed, colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate

<sup>4</sup> *See Memorandum to The File* entitled "Verification of the Questionnaire Response of Max Fortune (VN) Paper Products Co., Ltd. (MFVN) and Its Affiliates in the Anti-circumvention Inquiry and 2009-2010 Administrative Review of Certain Tissue Paper Products from the People's Republic of China (PRC)," dated March 31, 2011 (MFVN Verification Report); and *Memorandum to The File* entitled "Meeting with Vietnamese Customs," dated March 31, 2011.