

76 FR 47551, August 5, 2011

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-894]

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

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

Final Determination

We determine that certain tissue paper products (tissue paper) produced by Max Fortune (Vietnam) Paper Products Company, Limited (MFVN) \1\ and exported to the United States 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).

\1\ MFVN is a company located in Vietnam and is a wholly-owned subsidiary of Max Fortune Industrial Co., Ltd. (MFHK) located in Hong Kong. MFHK was the exporter of the tissue paper produced and shipped by MFVN to the United States during the analysis period of this inquiry. 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), at exhibits 6A through 6F.

DATES: Effective Date: August 5, 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 April 6, 2011, the Department of Commerce (the Department) published in the Federal Register its affirmative preliminary determination that tissue paper produced by MFVN in Vietnam using Chinese-origin jumbo rolls and/or

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cut sheets and exported to the United States is circumventing the antidumping duty order on certain tissue paper products from the PRC (PRC Tissue Paper Order),\2\ as provided in section 781(b) of the Act. See Certain Tissue Paper Products From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order, 76 FR 19043 (April 6, 2011) (Preliminary Determination).

\2\ 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).

On May 2, 2011, the International Trade Commission (ITC) notified the Department that consultations pursuant to section 781(e)(2) of the Act were not necessary.\3\

\3\ See Letter from James R. Holbein, Acting Secretary to the Commission, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated May 2, 2011.

On May 20, 2011, MFVN submitted its case brief. The petitioner \4\ did not submit a case brief. On May 27, 2011, the petitioner submitted its rebuttal brief.

\4\ The petitioner is Seaman Paper Company of Massachusetts, Inc.

On May 31, 2011, MFVN withdrew its May 6, 2011, request for a hearing. No other party in this review requested a hearing.

On July 8 and 13, 2011, the Department held meetings with counsels for MFVN and the petitioner to discuss the issues raised in MFVN's case brief.\5\

\5\ See the Department's memoranda to the file entitled, ``Ex Parte Meeting with Counsel for Max Fortune (Vietnam) Paper Products Company, Limited,'' dated July 11, 2011, and ``Ex Parte Meeting with the Petitioner's Counsel,'' dated July 14, 2011.

On July 14, 2011, Michaels Stores, Inc. (Michaels) filed an entry of appearance and subsequently requested, on July 15, 2011, a postponement of the final determination in order to submit information regarding its imports of tissue paper from Vietnam. On July 20, 2011, the Department informed Michaels that it was unable to grant its request because the deadlines for submitting new factual information and case/rebuttal briefs in this inquiry had passed.

On July 22, 2011, Michaels submitted another letter which the Department rejected on July 26, 2011, pursuant to 19 CFR 351.302(d), because it contained unsolicited, untimely new argument.

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.\6\

\6\ 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. Also on July 14, 2011, at the direction of CBP, the Department added the following HTSUS classification to the AD/CVD module for tissue paper: 4811.90.9080. However, we note that the six-digit classifications for these numbers were already listed in the scope.

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 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 by MFVN from Chinese-origin jumbo rolls and/or cut sheets of tissue paper, and exported to the United States.

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 analyzes 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 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 facts present in the

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circumvention inquiry. 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.

Summary of Analysis of Statutory Provisions

We considered all of the comments submitted by the interested parties and find, pursuant to section 781(b) of the Act, that exports to the United States of tissue paper produced by MFVN using Chinese-origin jumbo rolls and/or cut sheets are circumventing the PRC Tissue Paper Order.

As we explained in the Preliminary Determination, based on the list of products MFVN provided in its questionnaire response, we find that the merchandise subject to this inquiry meets the written description of the products subject to the PRC Tissue Paper Order and is,

therefore, of 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. In addressing the other statutory criteria under sections 781(b)(1), (2), and (3) of the Act, we relied on facts available where the respondent failed to provide necessary, verifiable information.

In its questionnaire 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.\7\ 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.\8\ At verification, MFVN failed to provide the requested production and accounting records to show when it ceased using Chinese-origin jumbo rolls and/or cut sheets in its production of tissue paper products for export to the United States.\9\ Accordingly, we conclude that MFVN impeded the conduct of this anti-circumvention inquiry by withholding the necessary verifiable information requested by the Department under section 776(a)(2) of the Act.

 \7\ See June 28, 2010, response to the Department's April 23, 2010, anti-circumvention questionnaire (June 28 Response) at pages 3 and 12.

\8\ See id.

\9\ See MFVN verification report at pages 2 and 40.

Furthermore, we conclude that MFVN failed to act to the best of its ability in providing this necessary information pursuant to section 776(b) of the Act. MFVN was expected to maintain the requested production and accounting records in the normal course of business and was required to maintain them under Vietnamese accounting law,\10\ but did not do so.\11\ Despite its claims, MFVN could not conclusively demonstrate that as of January 1, 2008, it did not convert any Chinese-origin jumbo rolls into tissue paper sold in the United States.\12\ Moreover, although it claimed that it could accurately account for its inventory as of January 1, 2008,\13\ the Department discovered at verification that MFVN withdrew Chinese-origin jumbo rolls from inventory in March 2010, but could not account for the ultimate destination or usage of those jumbo rolls in its books and records.\14\ Therefore, the Department determined, as adverse facts available (AFA), that MFVN used Chinese-origin jumbo rolls and/or cut-sheets of tissue paper in its production of tissue paper for export to the United States from January 1, 2005, to December 31, 2007, and that MFVN continued to use such merchandise from inventory during that period to produce tissue paper for export on or after January 1, 2008. See Comments 1 and 3 of the Issues and Decision Memorandum (Decision Memo) accompanying this notice for further discussion of the application of AFA for purposes of the final determination in this inquiry.

\10\ For companies doing business in Vietnam, Vietnamese regulations require companies such as MFVN to retain such records for up to 10 years. 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.

- \11\ See MFVN verification report at page 2.
\12\ See id. at pages 2 and 35-36.
\13\ See June 28 Response at pages 4 and 12.
\14\ See MFVN verification report at pages 2 and 40.
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In determining that MFVN used Chinese-origin jumbo rolls and/or cut-sheets of tissue paper in its production of tissue paper for export to the United States from January 1, 2005, to December 31, 2007, as AFA, we relied on information provided by the petitioner in its February 19, 2010, request for initiation of this anti-circumvention inquiry (February 19 submission), which showed that during the 2005-2007 period, MFVN imported a significant quantity of jumbo rolls from the PRC. MFVN did not provide any information on the record that contradicted the petitioner's information and, in fact, MFVN admitted in its questionnaire responses that ``it is possible that MFVN might have made {tissue paper{time} in Vietnam from jumbo rolls from the PRC during this time period.''\15\ Further, Vietnamese Customs data provided to Department officials at verification covered entries during 2008 and afterward, and does not contradict the petitioner's pre-2008 data or MFVN's admission.\16\ Moreover, MFVN did not provide pre-2008 Vietnamese Customs data at verification and there is no information on the record that contradicts the petitioner's pre-2008 data. Therefore, we consider this information to be corroborated to the extent practicable pursuant to section 776(c) of the Act.

- \15\ See MFVN's June 28 Response at pages 4 and 12.
\16\ See MFVN verification report at pages 3, 23-24, and 32-33.
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Based on the above analysis, relying on AFA, we determine, pursuant to section 781(b)(1)(B) of the Act that MFVN completed tissue paper in Vietnam using jumbo rolls and/or cut sheets produced in the PRC. With respect to section 781(b)(1)(C) of the Act, we determine that the process of converting the jumbo rolls and/or cut sheets of tissue paper into finished tissue paper products in Vietnam is minor or insignificant, after taking into consideration all of the factors listed in section 781(b)(2) of the Act. See Comment 2 of the Decision Memo for further discussion. With respect to section 781(1)(D) of the Act, we determine that the value of the jumbo rolls and/or cut sheets of tissue paper MFVN used in its production is a significant portion of the value of the merchandise exported to the United States. See Comment 2 of the Decision Memo for further discussion.

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We note that we relied on secondary information in addressing section 781(b)(1)(C) of the Act. Specifically, because MFVN did not provide the Department with sufficient information to reach a conclusion based solely on its own data under this provision, we relied, in part, on information contained in the petitioner's February 19 submission to conclude that the tissue paper completion process in Vietnam is minor or insignificant.\17\ MFVN did not provide any information on the record of this inquiry to contradict this information, and there is no other information on the record that contradicts this information. Moreover, the results of a prior circumvention inquiry of the PRC Tissue Paper Order corroborates the Department's conclusion as AFA that the processing in Vietnam is minor or insignificant, as the same conclusion was reached by the Department

in that prior inquiry which also involved allegations of Chinese-origin jumbo rolls being converted to cut-to-length tissue paper in Vietnam. See Certain Tissue Paper Products from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination, 73 FR 21580, 21582-21587 (April 22, 2008) (Quijiang Prelim) (unchanged in 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) (Quijiang Final)). Furthermore, the Department is unaware of any available independent sources it could use to corroborate this information. Accordingly, we consider the petitioner's information relied upon by the Department as AFA to reach a finding under section 781(b)(1)(C) of the Act corroborated to the extent practicable under section 776(c) of the Act. See Comment 3 of the Decision Memo for further discussion of the Department's corroboration of secondary information used as AFA as part of its analysis under section 781(b)(1)(C) of the Act.

\17\ See the petitioner's February 19 submission at pages 34-35 and Exhibit 16.

Similarly, we relied on secondary information in addressing section 781(b)(1)(D) of the Act. Because MFVN did not provide the Department with sufficient information to determine whether the value of the jumbo rolls and/or cut sheets is a significant portion of the value of MFVN's finished tissue paper products exported to the United States, we relied on the data in the petitioner's February 19 submission\18\ as AFA, to make this determination. MFVN did not provide any information on the record of this inquiry to contradict this information, and there is no other information on the record to contradict it. Additionally, as in the case of our determination with respect to the Vietnamese processing, pursuant to section 776(c) of the Act, we corroborated to the extent practicable the petitioner's data based on our findings in the above-referenced prior anti-circumvention inquiry of the PRC Tissue Paper Order. See Quijiang Prelim, 73 FR at 21582-21587 (unchanged in Quijiang Final). Furthermore, the Department is unaware of any available independent sources it could use to corroborate this information. Accordingly, we consider the petitioner's information relied upon by the Department as AFA to reach a finding under section 781(b)(1)(D) of the Act corroborated to the extent practicable under section 776(c) of the Act. See Comment 3 of the Decision Memo for further discussion.

\18\ See the petitioner's February 19 submission at pages 34-36.

As a result of the above analysis, we affirm our preliminary determination that action by the Department is warranted in this case to prevent evasion of the PRC Tissue Paper Order, pursuant to section 781(b)(1)(E) of the Act.

Furthermore, based on the additional factors we must consider under section 781(b)(3) of the Act, we find that MFVN's pattern of trade, affiliations, and level of importation of Chinese-origin tissue paper jumbo rolls/sheets support an affirmative finding of circumvention. See Comment 2 of the Decision Memo for the Department's complete final analysis of the criteria under section 781(b) of the Act.

Based on our overall analysis of the statutory provisions regarding

circumvention via completion or assembly in a foreign country, we conclude, pursuant to section 781(b) of the Act, that exports to the United States of tissue paper products produced from Chinese-origin jumbo rolls and/or cut sheets which are further processed in Vietnam by MFVN are circumventing the PRC Tissue Paper Order.

All issues raised by the interested parties to which we have responded are listed in the Appendix to this notice and addressed in the Decision Memo, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this inquiry and the corresponding recommendation in this public memorandum, which is on file in the Central Records Unit (CRU) of the main Department of Commerce building. In addition, a complete version of the Decision Memo can be accessed directly on the Internet at <http://enforcement.trade.gov/>. The paper copy and electronic copy of the Decision Memo are identical in content.

Continuation of Suspension of Liquidation

In accordance with sections 735(c) and 781(b) of the Act and 19 CFR 225(i)(3), we will direct CBP to suspend liquidation and require cash deposits of estimated duties, at the rate applicable to the exporter, on all unliquidated entries of tissue paper produced 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.\19\

\19\ In the Preliminary Determination, at 76 FR 19048, we stated that we would 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 by MFVN and/or exported by MFVN that was entered, or withdrawn from warehouse, for consumption on or after March 29, 2010, the date of initiation of the circumvention inquiry. However, in this inquiry, the Department is concerned only with merchandise produced by MFVN, irrespective of the exporter. Therefore, we have clarified our instructions for purposes of this final determination. See Comment 5 of the Decision Memo for further discussion.

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 all tissue paper produced by MFVN is warranted.

Notice to Parties

This notice serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

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

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Dated: August 1, 2011.
Ronald K. Lorentzen,
Deputy Assistant Secretary for Import Administration.

Appendix I

Discussion of the Issues

Comment 1: Whether the Application of Fact Available (FA)/Adverse Facts Available (AFA) Is Lawful.
Comment 2: Whether the Department's Circumvention Analysis Properly Addressed the Statutory Criteria.
Comment 3: Whether the Department's Use of FA/AFA Is Uncorroborated, Unreasonable and Punitive.
Comment 4: Whether the Remedy Imposed Is Lawful.
Comment 5: Whether the Assignment of the PRC-Wide Rate as AFA Is Appropriate.

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