

DEPARTMENT OF COMMERCE**International Trade Administration**

[A-570-894]

Certain Tissue Paper Products From the People's Republic of China: Preliminary Results of the 2008-2009 Administrative Review

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

SUMMARY: The Department of Commerce (the Department) is currently conducting the 2008-2009 administrative review of the antidumping duty order on certain tissue paper products from the People's Republic of China (PRC). We preliminarily determine that sales have been made below normal value (NV) with respect to Max Fortune Industrial Limited and Max Fortune (FZ) Paper Products Co., Ltd. (Max Fortune Fuzhou)¹ (collectively, Max Fortune) but not with respect to Seaman Paper Asia Company, Ltd. (SPA).

If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of subject merchandise made during the period of review (POR).

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 13, 2010.

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.

Case History

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*).

¹ Max Fortune Fuzhou's former name is Max Fortune (FETDE) Paper Products Co., Ltd. (Max Fortune FETDE). Max Fortune FETDE changed its name to Max Fortune Fuzhou on October 31, 2008. *See* Exhibit 2 of Max Fortune's August 11, 2009, section A supplemental response (August 11 Response).

On March 2, 2008, 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*, 74 FR 9077 (March 2, 2009).

On March 31, 2008, the Department received a timely request from SPA for an administrative review of this antidumping duty order with respect to its exports of subject merchandise to the United States, in accordance with 19 CFR 351.213. On March 31, 2008, the Department also received a timely request from the petitioner² for an administrative review of this order with respect to Max Fortune and Sunlake Décor Co., Ltd. (Sunlake).

On April 27, 2008, the Department published in the **Federal Register** a notice of initiation of the administrative review of the antidumping duty order on certain tissue paper products from the PRC for the three individually named firms above covering the period March 1, 2008, through February 28, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 19042 (April 27, 2009) (*Initiation Notice*).

On April 29, 2009, we issued Max Fortune and SPA the antidumping duty questionnaire.

On June 30, 2009, the petitioner withdrew its request for an administrative review with respect to Sunlake. *See* petitioner's July 30, 2009, letter to the Department. Also, on June 30, 2009, the Department requested entry documentation from CBP. *See* Memorandum from James P. Maeder, Jr., Office Director, to CBP, dated June 30, 2009.

During June 2009, SPA submitted its responses to sections A and C of the antidumping duty questionnaire³ and Max Fortune submitted its response to section A of the antidumping duty questionnaire.⁴

On July 1, 2009, the petitioner requested a 30-day extension until September 17, 2009, to submit new factual information in this review in accordance with 19 CFR 351.302. On

² The petitioner is the Seaman Paper Company of Massachusetts, Inc.

³ Section A of the questionnaire covers general information about the company and section C covers U.S. sales.

⁴ *See* SPA's June 10, 2009, response to section A of the Department's antidumping questionnaire and June 23, 2009, response to section C of the Department's antidumping questionnaire; and Max Fortune's June 8, 2009, response to section A of the Department's antidumping questionnaire.

July 24, 2009, we granted the petitioner's extension request.

On July 6, 2009, Max Fortune submitted its response to sections C and D⁵ of the antidumping duty questionnaire.

On July 16, 2009, we requested that the Import Administration's Office of Policy (the Office of Policy) issue a surrogate-country memorandum for the selection of the appropriate surrogate country in this review,⁶ and the Office of Policy provided us with a list of six countries at a level of economic development comparable to that of the PRC.⁷

On July 17, 2009, the Department invited interested parties participating in this review to submit comments on surrogate-country selection and to submit publicly-available information as surrogate values (SVs) for purposes of calculating NV.⁸

On July 20, 2009, SPA submitted its response to section D of the antidumping duty questionnaire.

The Department issued a sections A and C supplemental questionnaire to SPA on July 10, 2009, and received SPA's supplemental questionnaire response on July 24, 2009.

The Department issued a section D supplemental questionnaire to SPA on July 29, 2009, and received SPA's supplemental questionnaire response on August 14, 2009.

The Department issued a section A supplemental questionnaire to Max Fortune on July 29, 2009, and received Max Fortune's supplemental questionnaire response on August 11, 2009.

The Department issued sections C and D supplemental questionnaires to Max Fortune on August 7 and 17, 2009, and received Max Fortune's supplemental questionnaire responses on August 26 and September 21, 2009, respectively.

On August 24, 2009, the Department placed on the record the CBP data it requested from CBP on June 30, 2009. *See* Memorandum from Gemal

⁵ Section D of the questionnaire covers factors of production (FOP).

⁶ *See* the Department's memorandum entitled, "Request for Surrogate Country Selection," dated July 16, 2009.

⁷ *See* the Department's memorandum entitled, "Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Certain Tissue Paper Products From the People's Republic of China," dated July 16, 2009 (Policy Memorandum).

⁸ *See* the Department's letter regarding, "2008-2009 Administrative Review of Certain Tissue Paper Products from the People's Republic of China," requesting parties to provide comments on surrogate-country selection and surrogate FOP values from the potential surrogate countries (*i.e.*, India, Philippines, Indonesia, Colombia, Thailand and Peru).

Brangman, Analyst, to The File, dated August 24, 2009.

On August 25, 2009, the petitioner submitted surrogate-country comments in this administrative review.

On September 10, 2009, the petitioner requested a 35-day extension until October 23, 2009, to submit publicly-available information (PAI) in this review. We granted the petitioner's extension request on September 15, 2009.

On September 15, 2009, the petitioner placed on the record of this review a substantial amount of information supporting its allegations that, among other things, that Max Fortune did not report: (1) Multiple affiliates involved in the production and/or sale of the subject merchandise exported to the United States during the POR; and (2) multiple unaffiliated suppliers of raw materials and converting services involved in the production of the subject merchandise exported to the United States during the POR. The petitioner obtained the information supporting its allegations from a foreign market researcher (FMR).

On October 14, 2009, the Department rescinded this review with respect to Sunlake. *See Certain Tissue Paper Products from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 74 FR 54030 (October 21, 2009).

On October 19, 2009, Max Fortune filed a submission in which it denied the petitioner's September 15, 2009, allegations.

On October 23, 2009, the petitioner submitted PAI in this administrative review.

On October 26, 2009, the Department met with the petitioner's counsel in order to get clarification of the information on which the petitioner based its September 15, 2009, allegations and the petitioner's analysis of that information.⁹

The Department issued additional supplemental questionnaires to SPA on October 29 and November 13, 2009, and received SPA's supplemental questionnaire responses on November 13 and 18, 2009, respectively.

On October 29, 2009, the Department requested additional entry documentation from CBP. *See Memorandum from James P. Maeder, Jr., Office Director, to CBP, dated October 29, 2009.*

On November 9, 2009, the Department issued to the petitioner a questionnaire seeking clarification of the information contained in its September 15, 2009,

submission. The petitioner submitted its response to this questionnaire in November and December 2009.¹⁰

On November 11, 2009, the Department postponed the preliminary results of this review until March 31, 2010. *See Certain Tissue Paper Products From the People's Republic of China: Extension of Time Limit for Preliminary Results of 2008–2009 Administrative Review*, 74 FR 59132 (November 17, 2009).

On November 24, 2009, the Department sent Max Fortune a questionnaire seeking clarification and additional information and documentation with respect to Max Fortune's October 19, 2009, submission. Max Fortune submitted its response to this questionnaire on December 11, 2009.

On December 2, 2009, the Department placed on the record the additional CBP data it requested from CBP on October 29, 2009. *See Memorandum from Brian Smith, Senior Analyst, to The File, dated December 2, 2009.*

On December 16, 2009, the Department conducted an interview by telephone with the FMR in order to confirm the FMR's credentials, and the procedures conducted to obtain the information, on which the petitioner's September 15, 2009, allegations were based.¹¹

On December 31, 2010, the Department issued verification outlines to Max Fortune, SPA, and another company whose information was included in the petitioner's September 15, 2009, submission.

SPA submitted pre-verification corrections related to its questionnaire responses on January 7, 2010.

Pursuant to section 782(i) of the Tariff Act of 1930, as amended (the Act), the Department conducted verification of the questionnaire responses submitted by Max Fortune and SPA in January 2010.¹² Furthermore, the Department conducted a verification of another

company's data included in the petitioner's September 15, 2009, submission.¹³ These verification reports are on file and available in the Central Records Unit (CRU), Room 1117 of the Department's main building.

Period of Review

The POR is March 1, 2008, through February 28, 2009.

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, 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, 4802.50.00, 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.¹⁴

¹⁰ See the petitioner's submissions dated November 23 and December 22, 2009.

¹¹ See Memorandum to The File from Gemal Brangman, Analyst, entitled "Telephone Conversation with Foreign Market Researcher," dated January 5, 2010.

¹² See Memorandum to The File from Case Analysts entitled "Verification of the Sales and Factors Questionnaire Responses of Max Fortune (FZ) Paper Products Co., Ltd. and Max Fortune Industrial Limited in the Antidumping Duty Administrative Review of Certain Tissue Paper Products from the People's Republic of China," dated April 7, 2010 (Max Fortune Verification Report); and Memorandum to The File from Case Analysts entitled "Verification of the Sales and Factors Questionnaire Responses of Seaman Paper Asia Company Ltd. in the Antidumping Duty Administrative Review of Certain Tissue Paper Products from the People's Republic of China," dated April 7, 2010 (SPA Verification Report).

⁹ See Memorandum to The File from Brian Smith, Senior Analyst, entitled "Meeting with Counsel for the Petitioner," dated October 28, 2009.

¹³ See Memorandum to The File from Case Analysts entitled "Verification of the Data Submitted by {Anonymous Company} in the Antidumping Duty Administrative Review of Certain Tissue Paper Products from the People's Republic of China," dated April 7, 2010. This company's legal counsel has requested business proprietary treatment of the company's name pursuant to 19 CFR 351.105(c)(9), and under the circumstances presented in this case, we have agreed to this request. *See letter dated January 7, 2010.*

¹⁴ On January 30, 2007, at the direction of CBP, the Department added the following HTSUS classifications to the AD/CVD module for tissue paper: 4802.54.3100, 4802.54.6100, and

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).

Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control, and thus, should be assigned a single antidumping duty deposit rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588, 20589 (May 6, 1991). In this review, in support of its claim for a separate rate, Max Fortune and SPA each reported that it is a wholly foreign-owned company registered and located in Hong Kong.¹⁵ Our verification findings corroborated Max Fortune's and SPA's separate-rate claims. *See* Max Fortune Verification Report at page 7, and SPA Verification Report at page 4. Consequently, no additional separate-rate analysis is necessary for Max Fortune or SPA. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026 (April 30, 1996).

Application of Adverse Facts Available

For the reasons outlined below, we have preliminarily applied adverse facts available (AFA) to Max Fortune. Section 776(a)(2) of the Act, provides that, if 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* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Rep. No. 103-316 at 870 (1994) (SAA). 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 cases involving NME countries, such as the instant one, the respondent must supply the Department with complete and accurate U.S. sales and factors of production (FOP) data in order for the Department to accurately calculate the respondent's dumping margin. Where one, or both, of these data sets is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, the Department may decline to consider a respondent's information in its entirety, and apply adverse facts available under section 776(b) of the Act. *See, e.g., Steel Authority of India, Ltd. v. United States*, 149 F. Supp. 2d 921, 928 (CIT 2001). Based on our verification findings and analysis of the record information, as summarized below, we find that we cannot rely upon the data submitted by Max Fortune to calculate an accurate dumping margin. Consequently, we find it appropriate to base Max Fortune's preliminary dumping margin on AFA.

In this administrative review, the petitioner provided substantial information in its September 15, 2009, submission as the basis for alleging, among other things, that Max Fortune did not report multiple unaffiliated suppliers of raw materials and converting services involved in the production of the subject merchandise exported to the United States during the

POR. In its submissions to the Department, including its October 19, 2009, submission rebutting the allegations made by the petitioner, Max Fortune asserted that its PRC affiliate, Max Fortune Fuzhou, produced all of the tissue paper it reported it sold to the United States during the POR. After conducting verification of the data submitted on the record, we found that for certain U.S. sales reported by Max Fortune in its U.S. sales listing which we selected for examination at verification, Max Fortune Fuzhou was not the only producer of the tissue paper sold in those transactions, contrary to Max Fortune's representations throughout this review. *See* Memorandum from John M. Andersen, Acting Deputy Assistant Secretary for AD/CVD Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, entitled "Whether To Assign Max Fortune Industrial Limited (Max Fortune HK) and Max Fortune (FZ) Paper Products Co., Ltd. (Max Fortune Fuzhou) (collectively Max Fortune) a Margin Based on Adverse Facts Available in the Preliminary Results," dated April 7, 2010, for a full discussion of the Department's findings with respect to Max Fortune.

Accordingly, our verification findings demonstrate that Max Fortune withheld critical information (*i.e.*, the identities of additional tissue paper suppliers associated with the tissue paper it sold to the United States during the POR, and their respective FOP data), and in so doing, significantly impeded this proceeding and precluded the Department from being able to calculate an accurate antidumping margin for Max Fortune in this review based on its reported data. Further, based upon our verification of the companies, our experience in conducting such verifications, and our careful analysis of the record, we do not believe that the documentation supplied by Max Fortune can be the actual documents used in the transactions at issue. Therefore, the Department cannot state with confidence that it was able to verify *any* of Max Fortune's FOP data. Given the nature and extent of the information in Max Fortune's possession which Max Fortune withheld from disclosure (*i.e.*, the actual documentation associated with its U.S. sales transactions), we preliminarily find that it failed to cooperate by not acting to the best of its ability to comply with the Department's request for information in this review. Consequently, pursuant to sections 776(a)(2) and (b) of the Act, we find it

4823.90.6700. However, we note that the six-digit classifications for these numbers were already listed in the scope.

¹⁵ *See* SPA's June 10, 2009, response to section A of the Department's antidumping questionnaire at page A-2; and Max Fortune's June 8, 2009, response to section A of the Department's antidumping questionnaire at page 2.

appropriate to apply total AFA to Max Fortune for the preliminary results of this review. See *Shanghai Taoen, International Trading Company v. United States*, 360 F.Supp. 2d 1339, 1344 (CIT 2005) (finding that the application of total AFA was warranted in light of evidence on the record that the respondent “purposely withheld” and provided misleading information to avoid a higher dumping margin).

Selection of Adverse Facts Available Rate

As discussed above, section 776(b) of the Act authorizes the Department to use as AFA, information derived from the petition, the final determination in the less-than-fair-value (LTFV) investigation, any previous administrative review, or any information placed on the record. In selecting an AFA rate in reviews, the Department’s practice has been to assign the highest margin on the record of any segment of the proceeding. See, e.g., *Freshwater Crawfish Tail Meat from the People’s Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504 (April 21, 2003). The Court of International Trade (CIT) and the Federal Circuit have consistently upheld the Department’s practice in this regard. See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a LTFV investigation); see also *Kompass Food Trading Int’l v. United States*, 24 CIT 678, 689 (July 31, 2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department’s practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse “as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.” See *Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department’s practice also ensures “that the party

does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See SAA at 870; see also *Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 22. In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent’s prior commercial activity, selecting the highest prior margin “reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.” *Rhone Poulenc*, 899 F.2d at 1190. Consistent with the statute, court precedent, and numerous other cases,¹⁶ as AFA, we are assigning Max Fortune the highest rate on the record of any segment of this proceeding, i.e., 112.64 percent. As discussed further below, this rate has been corroborated.

Corroboration of Secondary Information Used as AFA

Section 776(c) of the Act provides that when the Department selects from among the facts otherwise available and relies on “secondary information,” the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department’s disposal. To corroborate the information, the Department seeks to determine that the information used has probative value. See SAA at 870. The Department has determined that to have probative value, information must be reliable and relevant. See *Certain Tissue Paper Products from the People’s Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 58642 (October 16, 2007), and accompanying Issues and Decision Memorandum at Comment 6.

To be considered corroborated, information must be found to be both reliable and relevant. The AFA rate of 112.64 percent that we are applying in the current review represents the

highest rate from the petition in the LTFV investigation segment of this proceeding. See *Tissue Paper Order*. The Department corroborated the information used to calculate the 112.64 percent rate in the LTFV investigation. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People’s Republic of China*, 70 FR 7475 (February 14, 2005). Furthermore, the AFA rate we are applying for the current review was applied in reviews subsequent to the LTFV investigation, and no information has been presented in the current review that calls into question the reliability of this information. See *Certain Tissue Paper from the People’s Republic of China: Preliminary Results and Preliminary Rescission of the 2007–2008 Administrative Review and Intent Not to Revoke Order in Part*, 74 FR 15449 (April 6, 2009) (unchanged in *Certain Tissue Paper Products from the People’s Republic of China: Final Results and Partial Rescission of the 2007–2008 Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 74 FR 52176, 52177 (October 9, 2009) (*PRC Tissue Paper—3rd AR*). Thus, the Department finds that the information is reliable.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. See *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company’s uncharacteristic business expense, resulting in an unusually high margin). Similarly, the Department does not apply a margin that has been discredited. See *D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (finding that the Department cannot use a margin that has been judicially invalidated in its calculations). The AFA rate we are applying for the instant review was calculated based on export price information and production data from the petition, as well as the most appropriate surrogate value information available to the Department during the LTFV investigation. As there is no

¹⁶ See e.g., *Fresh Garlic from the People’s Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review and Preliminary Results of New Shipper Reviews*, 70 FR 69942, 69946 (November 18, 2005); and *Fresh Garlic from the People’s Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review and Final Results of New Shipper Reviews*, 71 FR 26329, 26330 (May 4, 2006).

information on the record of this review that demonstrates this rate is not appropriate for use as AFA, we determine this rate has relevance.

Because the AFA rate, 112.64 percent, is both reliable and relevant, we determine that it has probative value. As a result, we determine that the 112.64 percent rate is corroborated to the extent practicable for the purposes of this administrative review, in accordance with section 776(c) of the Act, and may reasonably be applied as AFA to the exports of the subject merchandise by Max Fortune.

Non-Market Economy Country

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 58672 (October 7, 2005) (unchanged in *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 7013 (February 10, 2006)). None of the parties in this administrative review has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV on the NME producer's FOPs, valued in a surrogate market-economy (ME) country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall use, to the extent possible, the prices or costs of the FOPs in one or more ME countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Normal Value" section below. *See also* the Department's memorandum entitled, "Preliminary Results of the 2008–2009 Administrative Review of the Antidumping Duty Order on Certain Tissue Paper Products from the People's Republic of China: Factor Valuation for the Preliminary Results," dated April 7, 2010 (Surrogate Value Memorandum).

The Department determined that India, the Philippines, Indonesia, Colombia, Thailand, and Peru are countries comparable to the PRC in terms of economic development. *See* Policy Memorandum. Customarily, we select an appropriate surrogate country from the Policy Memorandum based on the availability and reliability of data from the countries that are significant producers of comparable merchandise. In this case, we found that India is at a comparable level of economic development to the PRC; is a significant producer of the subject merchandise (*i.e.*, tissue paper); and has publicly-available and reliable data. *See* April 7, 2010, Memorandum to The File entitled "2008–2009 Antidumping Duty Administrative Review on Certain Tissue Paper Products from the People's Republic of China: Selection of a Surrogate Country" (Surrogate Country Memorandum).

Accordingly, we selected India as the primary surrogate country for purposes of valuing the FOPs in the calculation of NV because it meets the Department's criteria for surrogate-country selection. *See* Surrogate Country Memorandum. We obtained and relied upon publicly-available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results in antidumping administrative reviews, interested parties may submit publicly available information to value FOPs within 20 days after the date of publication of these preliminary results.

Fair Value Comparisons

To determine whether sales of the subject merchandise by SPA to the United States were made at prices below NV, we compared SPA's export prices (EPs) to NV, as described in the "Export Price" and "Normal Value" sections of this notice below, pursuant to section 773 of the Act.

Export Price

Because SPA sold subject merchandise to an unaffiliated purchaser in the United States prior to importation into the United States and use of a constructed-export-price methodology was not otherwise indicated, we used EP in accordance with section 772(a) of the Act.

We calculated EP based on the reported terms of delivery to the first unaffiliated purchaser in the United States. We made deductions from the starting price (gross unit price) for foreign inland freight in the PRC and U.S. customs duties, pursuant to section

772(c)(2)(A) of the Act.¹⁷ Because foreign inland freight was provided by a PRC service provider or paid for in renminbi, we based that charge on a surrogate rate from India. *See* "Factor Valuations" section below for further discussion of surrogate rates.

In determining the most appropriate surrogate values (SVs) to use in a given case, the Department's practice is to use review period-wide price averages, prices specific to the input in question, prices that are net of taxes and import duties, prices that are contemporaneous with the POR, and publicly-available data. *See, e.g., Certain Cased Pencils from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366 (July 6, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

The Department valued inland truck freight expenses using a per-unit average rate calculated from August 2008 data on the following Web site: <http://www.infobanc.com/logistics/logtruck.htm>. The logistics section of this Web site contains inland freight truck rates between many large Indian cities. Because this average rate is contemporaneous with the POR, we did not adjust the rate for inflation. *See* Surrogate Value Memorandum.

Normal Value

Section 773(c)(1) of the Act provides that, in the case of an NME, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. The Department will base NV on FOPs because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under our normal methodologies. Therefore, we calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

For purposes of calculating NV, we valued the FOPs in accordance with section 773(c)(1) of the Act. The FOPs include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital

¹⁷ *See* the Department's memorandum entitled, "2008–2009 Administrative Review of the Antidumping Duty Order on Certain Tissue Paper Products from the People's Republic of China: Preliminary Results Margin Calculation for Seaman Paper Asia Company Ltd.," dated April 7, 2010 (*SPA Calculation Memo*).

costs, including depreciation. We used the FOP data reported by SPA for materials, energy, labor, and packing. See section 773(c)(3) of the Act.

In examining SVs, we selected, where possible, the publicly-available value, which was an average non-export value, representative of a range of prices within the POR or most contemporaneous with the POR, product-specific, and tax-exclusive. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Chlorinated Isocyanurates from the People's Republic of China*, 69 FR 75294, 75300 (December 16, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China*, 70 FR 24502 (May 10, 2005)). For a detailed explanation of the methodology used to calculate SVs, see Surrogate Value Memorandum.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on the FOP data reported by SPA for the POR. We relied on the factor-specific data submitted by SPA for the production inputs in its questionnaire responses, where applicable, for purposes of selecting SVs. To calculate NV, we multiplied the reported per-unit factor consumption rates by publicly-available Indian SVs.

In selecting the SVs, consistent with our past practice, we considered the quality, specificity, and contemporaneity of the data. See, e.g., *Folding Metal Tables and Chairs from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 71 FR 71509 (December 11, 2006), and accompanying Issues and Decision Memorandum at Comment 9. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). See *Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997). Where necessary, we adjusted the SVs for inflation/deflation using the Wholesale Price Index (WPI) as published in the International Monetary Fund's *International Financial Statistics*, available at <http://ifs.apdi.net/imf>.

We valued the raw material and packing material inputs using weighted-average unit import values derived from the *Monthly Statistics of the Foreign Trade of India (MSFTI)*, as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India, and compiled by the World Trade Atlas (WTA), available at <http://www.gtis.com/wta.htm>. The Indian WTA import data are reported in rupees and are contemporaneous with the POR.¹⁸ Indian SVs denominated in Indian rupees were converted to U.S. dollars using the applicable daily exchange rate for India for the POR. See <http://www.ia.ita.doc.gov/exchange/index.html>. Where appropriate, we converted the units of measure to kilograms. See Surrogate Value Memorandum.

Furthermore, with regard to the WTA Indian import-based SVs, we disregarded prices from NME countries¹⁹ and those we have reason to believe or suspect may be subsidized, because we have found in other proceedings that these exporting countries maintain broadly available, non-industry-specific export subsidies and, therefore, there is reason to believe or suspect that all exports to all markets from such countries may be subsidized.²⁰ We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized. See H.R. Rep. No. 576 100th Cong., 2. Sess. 590–91 (1988). Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. Therefore, we excluded export prices from Indonesia, South Korea, Thailand, and India when calculating the Indian import-based SVs. See Surrogate Value Memorandum.

¹⁸ See Surrogate Value Memorandum at Attachment 1.

¹⁹ The NME countries are Armenia, Azerbaijan, Belarus, Georgia, Kyrgyz Republic, Moldova, PRC, Tajikistan, Turkmenistan, Uzbekistan, and Vietnam.

²⁰ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of the 1998–1999 Administrative Review, Partial Rescission of Review, and Determination Not to Revoke Order in Part*, 66 FR 1953 (January 10, 2001), and accompanying Issues and Decision Memorandum at Comment 1; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Final Results of 1999–2000 Administrative Review, Partial Rescission of Review, and Determination Not To Revoke Order in Part*, 66 FR 57420 (November 15, 2001), and accompanying Issues and Decision Memorandum at Comment 1; and *China National Machinery Imp. & Exp. Corp. v. United States*, 293 F. Supp. 2d 1334, 1339 (CIT 2003), as affirmed by the Federal Circuit, 104 Fed. Appx. 183 (Fed. Cir. 2004).

Finally, we excluded imports that were labeled as originating from an “unspecified” country from the average Indian import values, because we could not be certain that they were not from either an NME or a country with general export subsidies.

As discussed above, the Department valued surrogate truck freight cost by using a per-unit average rate calculated from August 2008 data on the following Web site: <http://www.infobanc.com/logistics/logtruck.htm>. See *Polyethylene Retail Carrier Bags from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 73 FR 52282, 52286 (September 9, 2008) (and unchanged in *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 6857 (February 11, 2009)); and Surrogate Value Memorandum at Attachment 9.

We valued water using data from the Maharashtra Industrial Development Corporation (MIDC) because it includes a wide range of industrial water tariffs. This source provides 378 industrial water rates within the Maharashtra province from June 2009; 189 for the “inside industrial areas” usage category; and 189 for the “outside industrial areas” usage category.²¹ Because these data were not contemporaneous with the POR, we deflated the average value to the POR using the WPI. See Surrogate Value Memorandum at Attachment 6.

The Department calculated a simple average price for domestic coal using data obtained from the Indian Mineral Yearbook and Coal India Limited. Because these data were not contemporaneous with the POR, we adjusted the average value for inflation using WPI. See Surrogate Value Memorandum at Attachment 5.

To value electricity, the Department used March 2008 electricity price rates from *Electricity Tariff & Duty and Average Rates of Electricity Supply in India*, published by the Central Electricity Authority of the Government of India. Because these data were contemporaneous with the POR, we did not adjust the average value. See Surrogate Value Memorandum at Attachment 5.

For direct labor, indirect labor and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rates reflective of the observed relationship between wages and national income in ME countries as reported on Import Administration's Web site. See

²¹ MIDC Web site is available at <http://www.midcindia.org>.

"Expected Wages of Selected NME Countries" (revised December 2009) (available at <http://www.trade.gov/ia/>). For further details on the labor calculation, see Surrogate Value Memorandum at Attachment 8. Because the regression-based wage rates do not separate the labor rates into different skill levels or types of labor, we applied the same wage rate to all skill levels and types of labor reported by SPA.

For factory overhead, selling, general, and administrative expenses (SG&A), and profit values, consistent with 19 CFR 351.408(c)(4), we used the public information from the 2008–2009 annual report of Pudumjee Pulp & Paper Mills Ltd. (Pudumjee).²² From this information, we were able to determine factory overhead as a percentage of the total raw materials, labor, and energy (ML&E) costs; SG&A as a percentage of ML&E plus overhead (*i.e.*, COM); and the profit rate as a percentage of the COM plus SG&A. Where appropriate, we did not include in the surrogate overhead and SG&A calculations the excise duty amount listed in the financial report. For a full discussion of the calculation of these ratios, see Surrogate Value Memorandum and its accompanying calculation worksheets at Attachment 7.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by SPA for use in our preliminary results. We used standard verification procedures including an examination of relevant accounting and production records, and original source documents provided by SPA. See SPA Verification Report.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rate in effect on the date of the U.S. sale, as certified by the Federal Reserve Bank. See <http://www.ia.ita.doc.gov/exchange/index.html>.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period

March 1, 2008, through February 28, 2009:

CERTAIN TISSUE PAPER PRODUCTS FROM THE PRC

Individually reviewed exporter 2007–2008 administrative review	Margin (percent)
Seaman Paper Asia Company Ltd.	0.00
Max Fortune Industrial Ltd.	112.64

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the date of publication of this notice. See 19 CFR 351.224(b).

Interested parties are invited to comment on the preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice. See 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Additionally, parties are requested to provide their case brief and rebuttal briefs in electronic format (*e.g.*, Microsoft Word, pdf, *etc.*). 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 of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. The Department will issue the final results of this review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review.

In accordance with 19 CFR 351.212(b)(1), for SPA, we calculated an importer-specific assessment rate for the merchandise subject to this review because SPA submitted entered value information with its U.S. sales reporting. Where an importer-specific *ad valorem* rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. See 19 CFR 351.106(c)(2).

With respect to Max Fortune, we will instruct CBP to liquidate appropriate entries at the PRC-wide rate of 112.64 percent.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of the administrative review for all shipments of certain tissue paper products from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) A cash deposit rate of 0.00 percent will be required for certain tissue paper products from the PRC exported by SPA; (2) a cash deposit rate of 112.64 percent will be required for certain tissue paper products from the PRC exported by Max Fortune; (3) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (4) for all other PRC exporters of subject merchandise, which have not been found to be entitled to a separate rate, the cash deposit rate will be PRC-wide rate of 112.64 percent; and (5) for all non-PRC exporters of subject merchandise, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections

²² See *Certain Tissue Paper Products from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 18497, 18502 (April 4, 2008) (unchanged in *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission*, in *Part, of Antidumping Duty Administrative Review*, 73 FR 58113 (October 6, 2008) (*Tissue Paper (AR2)*). See also *PRC Tissue Paper—3rd AR*, and accompanying Issues and Decision Memorandum at Comment 5.

751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: April 7, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-8424 Filed 4-12-10; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 100202060-0143-01]

Second DRAFT NIST Interagency Report (NISTIR) 7628, Smart Grid Cyber Security Strategy and Requirements; Request for Comments

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) seeks comments on the second draft of NISTIR 7628, *Smart Grid Cyber Security Strategy and Requirements*. This second draft has been updated to address the comments submitted. In addition, the privacy, vulnerability categories, bottom-up analysis, individual logical interface diagrams, and the cyber security strategy sections have all been updated and expanded and the requirements section has been revised to include requirements for the entire Smart Grid. Finally, there are new sections on research and development, standards assessment, and an overall logical functional architecture. This is the second draft of NISTIR 7628; the final version is scheduled to be posted in the spring of 2010.

DATES: Comments must be received on or before June 2, 2010.

ADDRESSES: Written comments may be sent to: Annabelle Lee, National Institute of Standards and Technology, 100 Bureau Dr., Stop 8930, Gaithersburg, MD 20899-8930. Electronic comments may be sent to: cswgdraft2comments@nist.gov.

The report is available at: <http://csrc.nist.gov/publications/PubsDrafts.html#NIST-IR-7628>.

FOR FURTHER INFORMATION CONTACT: Annabelle Lee, National Institute of Standards and Technology, 100 Bureau Dr., Stop 8930, Gaithersburg, MD 20899-8930, telephone (301) 975-8897.

SUPPLEMENTARY INFORMATION: Section 1305 of the Energy Independence and Security Act (EISA) of 2007 (Pub. L. 110-140) requires the Director of the

National Institute of Standards and Technology (NIST) "to coordinate the development of a framework that includes protocols and model standards for information management to achieve interoperability of smart grid devices and systems." EISA also specifies that, "It is the policy of the United States to support the modernization of the Nation's electricity transmission and distribution system to maintain a reliable and secure electricity infrastructure that can meet future demand growth and to achieve each of the following, which together characterize a Smart Grid: * * *

(1) Increased use of digital information and controls technology to improve reliability, security, and efficiency of the electric grid.

(2) Dynamic optimization of grid operations and resources, with full cyber-security * * *

With the Smart Grid's transformation of the electric system to a two-way flow of electricity and information, the information technology (IT) and telecommunications infrastructures have become critical to the energy sector infrastructure.

NIST has established a Smart Grid Interoperability Panel. The Panel's Cyber Security Working Group (SGIP-CSWG) now has more than 375 volunteer members from the public and private sectors, academia, regulatory organizations, and Federal agencies. Cyber security is being addressed in a process that will result in a comprehensive set of cyber security requirements. These requirements are being developed using a high-level risk assessment process that is defined in the cyber security strategy for the Smart Grid.

NIST published a request for public comments in the **Federal Register** on October 9, 2009 (74 FR 152183) to seek public comment on the first draft of NIST Interagency Report (NISTIR) 7628, *Smart Grid Cyber Security Strategy and Requirements*.

The comment period closed on December 1, 2009. The second draft of NISTIR 7628 incorporates changes based on the comments received, which are summarized below. The complete set of comments and NIST's analysis are posted at: <http://csrc.nist.gov/publications/PubsDrafts.html#NIST-IR-7628>.

Summary of Public Comments Received by NIST in Response to the Draft NISTIR 7628, Cyber Security Strategy and Requirements, and NIST's Response to Those Comments

NIST received comments from sixty-three (63) organizations and individuals.

The commenters consisted of twenty-three (23) private companies, five (5) Federal agencies, nine (9) individuals, twelve (12) non-profit organizations, twelve (12) industry associations and two (2) universities. A detailed analysis of the comments follows.

General Comments

Comment: Fifteen (15) commenters identified inconsistencies between the text and logical interface diagrams and suggested additions or deletions to the logical interface diagrams and associated text.

Response: In the second draft of NISTIR 7628, the logical interface diagrams and text have been updated and an overall functional logical architecture has been added.

Comment: Fifty-one (51) commenters suggested grammatical, editorial, and language changes and correcting cited information and sources.

Response: The relevant sections were updated to reflect suggested changes. Some suggested changes were not accepted because they are not consistent with Government Printing Office (GPO) style.

Comment: One (1) commenter suggested integration of cryptographically strong identity management mechanisms.

Response: Strong authentication is an important aspect of the Smart Grid. This will be addressed in the next version of the NISTIR. There were several topics that were not addressed in the second draft of the NISTIR. The schedule for completing the second draft was extremely tight. Therefore, we will address this comment in the June draft, which is the next version.

Comment: One (1) commenter suggested that security requirements be amended to address potential insider threats.

Response: The security requirements are intended to address threats from insiders and external entities. For the next version of the NISTIR, additional analysis will be completed to ensure that the insider threat is addressed. There were several topics that were not addressed in the second draft of the NISTIR. The schedule for completing the second draft was extremely tight. Therefore, we will address this comment in the June draft, which is the next version.

Comment: Seven (7) commenters suggested amendments to the definition of the term "cyber security" to be more inclusive of the electric sector.

Response: The definition of "cyber security" was modified to focus on the electric sector.