



A-570-894  
Anticircumvention Inquiry  
Public Document  
AD/CVD O2: BCS/GJB

June 27, 2013

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Import Administration

FROM: Christian Marsh *CM*  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative  
Determination of Circumvention of the Antidumping Duty Order  
on Certain Tissue Paper Products from the People's Republic of  
China (PRC)

### Summary

We have analyzed the case and rebuttal briefs submitted by the interested parties in the above-referenced inquiry and recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum. Below is the complete list of the issues in this inquiry for which we received comments from the parties.

- Comment 1: Whether the Department's Preliminary Affirmative Finding Is Appropriate
- Comment 2: Whether the Remedy Articulated in the Department's Preliminary Affirmative Finding is Appropriate

### Background

On March 6, 2013, the Department of Commerce (the Department) published the preliminary affirmative determination<sup>1</sup> of circumvention of the antidumping duty (AD) order on certain tissue paper products (tissue paper) from the PRC.<sup>2</sup> We invited interested parties to comment on the

<sup>1</sup> See Certain Tissue Paper Products From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order, 78 FR 14514 (March 6, 2013) (Preliminary Determination).

<sup>2</sup> 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).



the Preliminary Determination. AR Printing & Packaging (India) Pvt. Ltd. (ARPP)<sup>3</sup> and the petitioner<sup>4</sup> each filed a case brief on April 19, 2013. Both parties submitted a rebuttal brief on April 24, 2013. Only ARPP submitted a request for a hearing,<sup>5</sup> which it subsequently withdrew.<sup>6</sup> The Department held separate meetings with both parties on May 29, 2013.<sup>7</sup>

Based on our analysis of the comments received in response to the Preliminary Determination and the facts of record, as verified, we continue to find that tissue paper products exported to the United States, which were produced by ARPP using PRC-origin jumbo rolls and/or cut sheets of tissue paper, circumvented the PRC Tissue Paper Order.

### **Scope of the Antidumping Duty Order**

The tissue paper products subject to the 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 the 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 the 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 the 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 the order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTS). 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 the order is dispositive.<sup>8</sup>

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<sup>3</sup> ARPP is a company located in India.

<sup>4</sup> The petitioner is Seaman Paper Company of Massachusetts, Inc.

<sup>5</sup> See Letter from ARPP to the Department, dated April 5, 2013.

<sup>6</sup> See Letter from ARPP to the Department, dated April 29, 2013.

<sup>7</sup> See memoranda to the file entitled "Meeting with Counsel for Respondent" and "Meeting with Counsel for the Petitioner," dated June 3, 2013.

<sup>8</sup> On January 30, 2007, at the direction of U.S. Customs and Border Protection (CBP), the Department added the following HTS 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.

Excluded from the scope of the 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 (HTS 4803.00.20.00 and 4803.00.40.00).

## **Discussion of the Issues**

### **Comment 1: Whether the Department's Affirmative Determination of Circumvention Is Appropriate**

In the Preliminary Determination, we determined that certain exports of sparkle tissue paper produced by ARPP in India from PRC-origin jumbo rolls were circumventing the PRC Tissue Paper Order.<sup>9</sup> We made our Preliminary Determination based on verified evidence that ARPP had used PRC-origin jumbo rolls in two shipments of tissue paper products exported to the United States during June 2011. ARPP acknowledged that it imported a small quantity of PRC-origin sparkle tissue paper in May 2011, which ARPP alleges it mistakenly co-mingled with Indian-origin tissue paper in two of its U.S. sales during June 2011. We also verified that while ARPP made no other importations into India or exports to the United States of PRC-origin tissue paper during the period of this inquiry<sup>10</sup> (hereafter referred to as the inquiry period), it had PRC-origin tissue paper remaining in inventory at the time of verification (*i.e.*, October 2012).<sup>11</sup>

ARPP argues that the Department's preliminary affirmative finding is inappropriate and no action with respect to ARPP is necessary to prevent evasion of the PRC Tissue Paper Order. Specifically, ARPP claims that the Department has treated it unfairly by imposing a harsh remedy in response to its allegedly minor infraction and isolated mishap (*i.e.*, a one-time co-mingling of its Indian- and PRC-origin tissue paper in inventory and the resultant sale to the U.S. market in June 2011) as verified by the Department. Given that the record is clear that, since June 2011, ARPP has sourced domestically the raw materials it needs to make its tissue paper products, ARPP claims that labeling it as a company circumventing the PRC Tissue Paper Order and making it subject to administrative reviews and verification upon request is a harsh remedy.

Moreover, ARPP claims that the totality of the facts in this case do not support the Department's preliminary affirmative finding that it is circumventing the PRC Tissue Paper Order. Specifically, ARPP contends that the Department's verification findings show that it shipped

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<sup>9</sup> See Preliminary Determination, 78 FR at 14514.

<sup>10</sup> The inquiry period in this case is from ARPP's date of establishment, May 16, 2005, to the date of the Department's verification, October 9, 2013.

<sup>11</sup> See Memorandum to The File from Case Analysts entitled "Verification of the Questionnaire Response of A.R. Printing & Packaging India Pvt. Ltd. (ARPP) and its Affiliates in the Anti-circumvention Inquiry of Certain Tissue Paper Products from the People's Republic of China (PRC)," dated December 5, 2012 (ARPP Verification Report) at 2 and 9-10.

many tissue paper styles and colors to the U.S. market during the inquiry period, and that although ARPP imported two shipments of PRC-origin sparkle tissue paper in June 2011, it was not its intention to use that product to fill its U.S. sales order once it realized there was an AD order in effect. ARPP states that the PRC-origin sparkle tissue paper was inadvertently mixed with Indian-origin tissue paper. In addition, ARPP claims that the amount of PRC-origin tissue paper included in the product mix-up was at best minimal and that since this incident, it has only shipped Indian-origin tissue paper to the U.S. market, sourced all of its tissue paper needs domestically, and made no more purchases of PRC-origin tissue paper. Given the above-mentioned circumstances and the corrective actions it has taken after the product mix-up occurred, ARPP claims that the facts in this case do not support an affirmative finding of circumvention.

To further support its argument, ARPP claims that the Department's negative circumvention finding with respect to Paras Intermediates, Ltd. (Paras), a company cooperating in a recent circumvention inquiry conducted with respect to the AD order on glycine from the PRC,<sup>12</sup> was based on the same and/or analogous fact pattern as the instant case and, therefore, the Department should find that ARPP is not circumventing the PRC Tissue Paper AD Order on that basis. Specifically, ARPP argues that both ARPP and Paras: (1) inadvertently and unintentionally shipped to the U.S. market PRC-origin material subject to AD orders; (2) moved expeditiously to cease shipping that material once they realized that it was not permissible; (3) shipped very small quantities of the PRC-origin material to the U.S. market; (4) fully cooperated with the Department; (5) did not contest that they were not substantially transforming the PRC inputs into Indian-origin product; (6) produced their finished goods from Indian inputs since the infraction; and (7) were able to determine whether their finished products were made from PRC-origin or non-PRC-origin materials.

Notwithstanding the above-mentioned similarities between ARPP and Paras in PRC Glycine ACI, ARPP claims that one of the distinguishing features upon which the Department based its affirmative preliminary finding in the instant case (i.e., the amount of time that had passed since the respondent's last shipment of merchandise covered by the AD order) was not even a factor with respect to the Department's decision in PRC Glycine ACI. Specifically, ARPP contends that the reason why there was a longer period of time between when the PRC-origin merchandise was shipped by Paras to the U.S. market and the completion of PRC Glycine ACI was because the Department took longer to make its final determination in that case. Furthermore, ARPP claims that this time factor was not the real basis for the Department making its negative finding in PRC Glycine ACI anyway. Rather, ARPP claims the Department stated in PRC Glycine ACI that its negative finding was based on the fact that Paras was producing glycine from Indian-origin product and that it would continue to do so in the future.

ARPP contends that the Department should consider the following factors as the basis for making a negative final finding with respect to ARPP: (1) ARPP itself realized it could not ship PRC-origin material to the U.S. market before any material was actually shipped; (2) the PRC-origin merchandise (i.e., sparkle tissue paper) makes up a very small portion of the U.S. tissue

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<sup>12</sup> See Glycine from the People's Republic of China: Final Affirmative Determination of Circumvention of Antidumping Duty Order, 77 FR 73426 (December 10, 2012) (PRC Glycine ACI).

paper market; and (3) ARPP tried to take corrective action before the co-mingling mishap occurred by purchasing Indian-origin merchandise to replace the PRC-origin merchandise for purposes of filling the U.S. customer's purchase order. ARPP claims further that these factors are compelling reasons for why the Department should make a negative finding of circumvention with respect to ARPP.

Given the similarities between ARPP and Paras and the reasons mentioned above, ARPP claims that the Department should also find that ARPP, like Paras in PRC Glycine ACI, is not currently circumventing the PRC Tissue Paper Order.

The petitioner contends that although ARPP argues that its circumvention was unintentional, minimal, and two years have passed since it occurred, ARPP has not addressed the criteria that the Department is required to consider under the statute for purposes of making a circumvention determination. With respect to ARPP's claim that its circumvention was unintentional, the petitioner argues that, regardless of whether ARPP intended not to send PRC-origin tissue paper to the United States or tried to stop it from occurring, ARPP did, in fact, send the PRC-origin tissue paper to the United States. The petitioner also notes that if ARPP had taken better corrective steps (like keeping the PRC-origin tissue paper wrapped in inventory) once the shipment arrived from the PRC, it would have prevented its PRC-origin tissue paper from being used in the tissue paper products shipped to the United States, as it claimed it tried to do. In addition, the petitioner maintains that, regardless of the intent behind ARPP's actions, "intent" is not listed in the statute as a factor to consider when making a circumvention finding. In support of its argument, the petitioner also cites to PRC Glycine ACI, in which it asserts that the Department did not base its decision with respect to Paras on its intent not to circumvent the PRC Tissue Paper Order, but rather upon the facts and evidence concerning its activities.

With respect to ARPP's claim that its shipped quantity of PRC-origin merchandise to the United States was minimal in terms of its total U.S. shipments of tissue paper during the inquiry period, the petitioner contends that the Tariff Act of 1930, as amended (the Act) does not impose a numerical threshold or a de minimis exception when it comes to circumvention. Rather, the petitioner states that the Act directs the Department to determine whether a company is either circumventing the AD order or not. The petitioner further argues that the question before the Department on this matter is not the quantity of material that circumvented the AD order, but whether the PRC Tissue Paper Order has been circumvented by ARPP. To support its argument, the petitioner cites to H.R. Rep. No. 100-576, at 599-600 (1988) (Conf. Rep.), reprinted in 1988 U.S.C.C.A.N. 1547, 1632-1633. Finally, the petitioner notes that even if the Department considered the amount of the PRC-origin merchandise ARPP shipped to the United States as a factor in its analysis, ARPP has provided no support for claiming the quantity at issue is minimal, particularly because ARPP even admits that it is uncertain how much of the PRC-origin merchandise that left its inventory was included in the tissue paper it shipped to the United States during the inquiry period.

With respect to ARPP's argument that two years have passed since it shipped PRC-origin tissue paper to the United States and therefore the Department should find that ARPP is not currently circumventing the PRC Tissue Paper Order, the petitioner contends that the Department's investigations always focus on a defined period (also referred to as the inquiry period) for

analyzing a company's activities and for reaching determinations. Moreover, with respect to circumvention inquiries, the petitioner argues that the statute contains no temporal limitation or application of the statutory remedy when the Department finds a company has circumvented an AD order. More importantly, the petitioner notes that the Act and the Department's regulations contemplate that the products of an exporter determined to be circumventing an AD order can be included within the scope of the AD order at any time such order is in effect.

With respect to ARPP's claim that the Department cannot assume for purposes of its finding that ARPP still has PRC-origin tissue paper in inventory, as verification took place over eight months ago, the petitioner argues that there is nothing on the record of this case to indicate otherwise and, more importantly, the fact that the Department verified that ARPP still had PRC-origin inventory in October 2012, does not mean that the Department cannot base its determination, in part, upon that fact. If ARPP wants to contest the extent to which it is continuing to circumvent the PRC Tissue Paper Order now and/or into the future, the petitioner argues that that ARPP may do so by requesting an administrative review or even possibly a changed circumstances review.

For the reasons mentioned above, the petitioner maintains that ARPP has circumvented the PRC Tissue Paper Order in accordance with the criteria listed in the Act.

#### **Department's Position:**

We agree with the petitioner that ARPP, as a matter of fact and law, circumvented the PRC Tissue Paper Order. Section 781(b) of the Act and 19 CFR 351.225(h) provide the analysis which the Department must conduct to determine if an exporter or producer has circumvented an existing AD or CVD order via assembly or completion of merchandise in a third country. As described in the Preliminary Determination, the statutory factors addressing assembly or completion in a third country have been met in this case.<sup>13</sup> First, we found that the tissue paper products processed in India by ARPP from PRC-origin jumbo rolls of tissue paper are of the same class or kind of merchandise as that subject to the PRC Tissue Paper Order, in accordance with section 781(b)(1)(A) of the Act. Second, we found that ARPP sold merchandise to the United States which was completed in India from jumbo rolls that were produced in the PRC, pursuant to section 781(b)(1)(B) of the Act. Third, we found that ARPP's process of converting PRC-origin jumbo rolls to cut-to-length tissue paper in India is minor or insignificant, pursuant to sections 781(b)(1)(C) and (b)(2) of the Act. Finally, we found that the value of the PRC-origin jumbo rolls used to produce the finished cut-to-length tissue paper exported to the United States represents a significant portion of the value of the finished merchandise, pursuant to section 781(b)(1)(D) of the Act.<sup>14</sup> No party has argued that the Department's assembly or

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<sup>13</sup> See Preliminary Determination, 78 FR at 14514, and accompanying "Preliminary Determination Decision Memorandum for the Anti-Circumvention Inquiry on Certain Tissue Paper Products from the People's Republic of China Involving AR Printing & Packaging India Pvt. Ltd.," dated February 27, 2013 (Preliminary Decision Memorandum) at 4-9.

<sup>14</sup> We also took into account the factors to consider in section 781(b)(3) of the Act, and determined that those factors generally supported a finding that ARPP circumvented the PRC Tissue Paper Order. See Preliminary Decision Memorandum at 9-11.

completion analysis was incorrect. Nevertheless, ARPP argues that we should not make an affirmative finding of circumvention and that no further action under section 781(b)(1)(E) of the Act is necessary.

With respect to ARPP's argument that it did not intend to use the PRC-origin sparkle tissue paper to fill its U.S. sales order once it realized there was an AD order in effect, as we have noted in past anticircumvention inquiries, the "Department is not required to determine intent during a circumvention inquiry."<sup>15</sup> Neither section 781(b) of the Act, nor 19 CFR 351.225(h), requires the Department to evaluate the intentions of the exporter in determining whether or not merchandise is circumventing the AD order.

The PRC-origin tissue paper which ARPP shipped to the United States was sparkle tissue paper, which was packaged with Indian-origin non-sparkle tissue paper in individually wrapped packs. ARPP argues that because the quantity of non-sparkle tissue paper was more than the quantity of sparkle tissue paper in those packs, this fact should be important to the Department's circumvention analysis. We disagree with this claim. There is no language in the Act or in the Department's regulations that would require a comparison of the quantity of subject versus non-subject merchandise contained in a respondent's shipment to the United States for purposes of circumvention analysis. Therefore, there was no reason for the Department to consider the quantity of non-subject merchandise as part of its circumvention analysis in reviewing ARPP's shipments. In this case, the Department verified that ARPP's sparkle tissue paper shipments to the United States complied with the requirements of ARPP's customer's purchase order.<sup>16</sup> Moreover, the Department verified that the shipment quantities were not insignificant but rather reflected ARPP's normal commercial transactions. This is the information with respect to the commercial nature of ARPP's exports that was relevant for purposes of the Department's circumvention analysis, not the comparison of quantities of non-subject and subject merchandise, as argued by ARPP. As the United States Court of International Trade (CIT) held in Max Fortune v. United States, "the statute does not impose a numerical threshold or a de minimis exception – a company is either circumventing the order or it is not."<sup>17</sup>

With respect to ARPP's argument that the similarities between ARPP in this case and Paras in PRC Glycine ACI warrant the Department to reach a negative circumvention finding with respect to ARPP, we continue to find that the facts in this case are distinguishable from those in PRC Glycine ACI. First, despite ARPP's claim to the contrary, the Department did not find in PRC Glycine ACI that just because Paras was no longer producing glycine from PRC-origin products, it was not circumventing the AD order. Rather, the Department stated in the PRC Glycine Prelim that "for approximately the past four years," Paras had "only sold and/or

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<sup>15</sup> See Preliminary Determination of Circumvention of Antidumping Order: Cut-to-Length Carbon Steel Plate From Canada, 65 FR 64926, 64930 (October 31, 2000).

<sup>16</sup> See ARPP Verification Report at 9, 10 and 23.

<sup>17</sup> See Max Fortune Industrial Co., Ltd. and Max Fortune (Vietnam) Paper Products Co. v. United States, Slip Op 13-52, April 15, 2013 (Max Fortune v. U.S.), at \*16 (citing to section 781(b)(1)(E) of the Act).

exported to the United States glycine that it produced from Indian raw materials.”<sup>18</sup> This is distinguishable from the facts in this case. While there is no explicit mention in PRC Glycine ACI as to whether Paras still had PRC-origin glycine in its inventory, the Department has determined that it is reasonable to infer that Paras no longer had PRC-origin glycine in its inventory given that extensive length of time. On the other hand, the record evidence indicates that ARPP still has PRC-origin tissue paper remaining in its inventory, which we physically observed in ARPP’s inventory and we were able to reconcile the amount in inventory with the purchased amount reflected in supplier invoices.<sup>19</sup> As we noted in another PRC tissue paper circumvention case also involving a third-country exporter (i.e., Max Fortune (Vietnam) Tissue Paper Products Company Limited (MFVN)), the fact that a company has existing inventory of PRC-origin tissue paper which could be later sold to the U.S. market is relevant to our circumvention analysis and for purposes of determining whether a company has the potential to continue to circumvent the PRC Tissue Paper Order.<sup>20</sup>

In addition, unlike Paras, ARPP was well aware (even by its own admission)<sup>21</sup> at the time it exported to the United States tissue paper products produced using PRC-origin tissue paper that such products were subject to the PRC Tissue Paper Order.<sup>22</sup> In fact, prior to initiating this circumvention inquiry, the Department had made two final affirmative circumvention determinations in two inquiries and had reached a preliminary finding in another inquiry on this same issue -- that tissue paper products sold to the United States which were produced using PRC-origin tissue paper jumbo rolls or cut sheets are within the scope of the PRC Tissue Paper Order.<sup>23</sup> ARPP had therefore ample notice that merchandise produced from PRC-origin jumbo

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<sup>18</sup> See Glycine From the People’s Republic of China: Preliminary Partial Affirmative Determination of Circumvention of the Antidumping Duty Order and Initiation of Scope Inquiry, 77 FR 21532, 21535 (April 10, 2012) (PRC Glycine Prelim).

<sup>19</sup> See ARPP Verification Report at 2.

<sup>20</sup> Certain Tissue Paper Products From the People’s Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 76 FR 47551 (August 5, 2011) (Max Fortune Vietnam Final), and accompanying Issues and Decision Memorandum at Comments 3 and 4.

<sup>21</sup> See ARPP Verification Report at 9-10.

<sup>22</sup> In PRC Glycine ACI, Paras ceased processing PRC-origin glycine in India immediately following the Department’s determination in the less-than-fair-value investigation on glycine from India that such processing did not change the country of origin for AD purposes, whereas ARPP exported tissue paper products made from PRC-origin tissue paper to the United States several years after the issuance of the PRC Tissue Paper Order (i.e., 1995) and the completion of two affirmative circumvention determinations with respect to the order (i.e., 2008 and 2009). See PRC Glycine Prelim, 77 FR at 21535; and PRC Glycine ACI, 77 FR at 73426, and accompanying Issues and Decision Memorandum at Comment 2.

<sup>23</sup> 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) (Quijiang Final); 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: Preliminary Affirmative

rolls is considered subject merchandise for purposes of the PRC Tissue Paper Order when it shipped sparkle tissue paper to the United States.

Finally, with respect to ARPP's argument that the Department should not find that it circumvented the PRC Tissue Paper Order because, after June 2011, it took "corrective actions" by sourcing only domestic materials for use in its tissue paper shipments to the United States, which the Department verified, we note that this point is not determinative of a circumvention finding under section 781(b)(1)(A)-(D) of the Act. Rather, it is a factor for consideration under section 781(b)(1)(E) of the Act, which addresses whether action is appropriate to prevent evasion of an AD order and, if action is warranted, what action is necessary to prevent such evasion. See Comment 2 below for further discussion. As discussed above, the record evidence shows that the statutory factors under section 781(b)(1)(A)-(D) of the Act and 19 CFR 351.225(h) have been met and ARPP's subsequent actions do not undermine this finding.

Based on the foregoing analysis, the Department has concluded that ARPP circumvented the PRC Tissue Paper Order during the circumvention inquiry period.

**Comment 2: Whether the Remedy Articulated in the Department's Preliminary Affirmative Finding is Appropriate**

In the Preliminary Determination, we stated that it was appropriate, given the facts in this case, to suspend liquidation, at the exporter's cash deposit rate, of any unliquidated entries of tissue paper products produced by ARPP from PRC-origin tissue paper on or after the date upon which we initiated this inquiry.<sup>24</sup> We also stated that because the potential for PRC-origin tissue paper further processed in India to enter the United States still exists through ARPP's remaining inventory, we will consider verifying ARPP's compliance with the PRC Tissue Paper Order in any subsequent administrative review of ARPP, if such review is requested and the company claims it made no shipments of subject merchandise during the review period.<sup>25</sup>

The petitioner argues that the Department should uphold its affirmative circumvention finding in the final determination, and to prevent evasion of the PRC Tissue Paper Order, the Department should instruct U.S. Customs and Border Protection (CBP) to collect cash deposits of estimated antidumping duties on all imports of tissue paper products from ARPP, subject to future retrospective analysis in the context of an administrative review. The petitioner maintains that the circumstances of this inquiry, the nature of the law, and case precedence fully justify requiring cash deposits on all entries from ARPP, as opposed to allowing ARPP or its importers to merely self-certify that imports are not subject to duty deposits. The petitioner maintains that because ARPP was found to be engaging in circumvention of the PRC Tissue Paper Order, the

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Determination of Circumvention of the Antidumping Duty Order, 76 FR 19043 (April 6, 2011) (upheld in Max Fortune Vietnam Final).

<sup>24</sup> See Preliminary Determination, 78 FR at 14514.

<sup>25</sup> See Preliminary Decision Memorandum at 12.

Department should apply the same remedy (*i.e.*, collect duty deposits on all tissue paper imports) that it applied in the Max Fortune Vietnam Final.<sup>26</sup>

The petitioner argues that the AD laws permit the collection of duties and cash deposits on imports of merchandise exhibiting the characteristics of the scope of the proceeding, and exported to the United States by a party covered by an order.<sup>27</sup> The petitioner points out that the CIT recently upheld the Department's decision to require cash deposits on all tissue paper products produced by MFVN and imported into the United States *in lieu* of a certification requirement allowing an importer to self-certify the origin of its imports.<sup>28</sup> The petitioner states that the CIT's holding was due in part to MFVN's inability to clearly track its inventory.<sup>29</sup> Because MFVN could not clearly track its inventory, it could not clearly distinguish subject merchandise from non-subject merchandise. In this case, the petitioner argues that ARPP has also clearly shown it cannot distinguish PRC-origin jumbo rolls of tissue paper from non-subject merchandise (*i.e.*, Indian-origin jumbo rolls), as ARPP claimed the PRC-origin sparkle tissue paper was co-mingled with the Indian-origin tissue paper when it made its sales and shipped tissue paper to the United States.<sup>30</sup>

In addition, as shown by the Department's verification report,<sup>31</sup> the petitioner points out that ARPP continues to maintain the PRC-origin tissue paper in its inventory, just like MFVN did (or could not prove otherwise) in Max Fortune v. U.S. Therefore, the petitioner argues that ARPP exhibits similar conditions and concerns that existed in the Max Fortune Vietnam Final, and thus, as confirmed by the CIT, a remedy is required which calls for the requirement of cash deposits on all U.S. imports of ARPP's tissue paper. Furthermore, the petitioner distinguishes ARPP's case from the earlier anticircumvention inquiry regarding Vietnam Quijang Paper Co., Ltd. (Quijang), stating that the Quijang Final did not establish a practice of using certifications in all circumvention cases for purposes of preventing suspension of a company's entries of merchandise that was not covered by the PRC Tissue Paper Order.<sup>32</sup> Instead, the petitioner notes that the Department explained in the Max Fortune Vietnam Final that it had the authority to determine on a case-by-case basis if a certification program could adequately address the threat

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<sup>26</sup> See Max Fortune Vietnam Final, 76 FR at 47554.

<sup>27</sup> See sections 731, 751 and 781(b) of the Act.

<sup>28</sup> Max Fortune v. U.S., at \*19-\*20.

<sup>29</sup> See id., at \*17-\*24.

<sup>30</sup> See ARPP Verification Report at 2.

<sup>31</sup> See id., at 2 and 10.

<sup>32</sup> 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 (April 22, 2008) (unchanged in Quijiang Final).

of future circumvention or if the suspension of liquidation of all of a company's merchandise was necessary to prevent future evasion of the AD order.<sup>33</sup>

With respect to certifications, the petitioner argues that in this case, the use of certifications would allow ARPP and its importers to avoid duty deposits on imports of subject merchandise by improperly certifying the origin of the products. Therefore, the petitioner argues that a certification program would not adequately address the threat of circumvention. The petitioner also maintains that other case precedence indicates that cash deposits on all of ARPP's tissue paper products are necessary to prevent further evasion of the PRC Tissue Paper Order.<sup>34</sup>

Furthermore, the petitioner asserts that ARPP would have an opportunity in the future to prove that it has ceased circumventing the PRC Tissue Paper Order. The petitioner points to the Preliminary Decision Memorandum, in which the Department stated it will consider the possibility of verifying ARPP's compliance with the PRC Tissue Paper Order in any subsequent administrative review of ARPP should ARPP claim that it made no shipments of subject merchandise.<sup>35</sup>

Because the potential still exists for ARPP to circumvent the PRC Tissue Paper Order through its (unused) inventory, the petitioner concludes that the Department should suspend liquidation of all entries of tissue paper produced by ARPP until the Department can determine, in a subsequent review, that ARPP's tissue paper imports are no longer subject to the PRC Tissue Paper Order.

ARPP contends that the petitioner's call for cash deposits on all U.S. imports of ARPP's tissue paper is overreaching and unnecessary to prevent evasion of the PRC Tissue Paper Order. ARPP contends that it committed only a minor infraction and shipped a miniscule quantity of one type of PRC-origin tissue paper mistakenly to the United States in 2011, and since that time it has been sourcing all of its tissue paper exclusively from India.

In addition, ARPP argues that the Department has verified that ARPP imported into India just two shipments of tissue paper from the PRC in 2011 and, since 2012, has purchased sparkle tissue paper from an Indian supplier. Moreover, all of ARPP's other exports of tissue paper (non-sparkle) are sourced solely from Indian-origin suppliers. ARPP points out that the salient point of the AD law regarding circumvention states that exports of "subject merchandise" are subject to cash deposits, and in the instant case the subject merchandise includes tissue paper of PRC-origin.<sup>36</sup> Therefore, tissue paper of Indian origin which ARPP produces is not subject merchandise. Given this record, ARPP asserts that to implement the remedy suggested by the

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<sup>33</sup> See Max Fortune Vietnam Final and accompanying Issues and Decision Memorandum at Comment 4.

<sup>34</sup> See Steel Wire Garment Hangers from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 76 FR 66895 (October 28, 2011); and Uncovered Innerspring Units From the People's Republic of China: Initiation of Anticircumvention Inquiry, 77 FR 30501 (May 23, 2012).

<sup>35</sup> See Preliminary Decision Memorandum at 12.

<sup>36</sup> See section 781(b)(1)(E) of the Act.

petitioner to suspend liquidation of all entries of tissue paper produced by ARPP, without regard to origin, would be inappropriate. Furthermore, ARPP differentiates itself from MFVN in the context of the Max Fortune Vietnam Final<sup>37</sup> in that unlike ARPP, MFVN did not act to the best of its ability in the anticircumvention inquiry, and consequently the Department determined that the application of adverse facts available pursuant to sections 776(a) and (b) of the Act was warranted. Thus, ARPP argues that the application of cash deposits to all imports of MFVN's tissue paper was warranted, which is not the case in the ARPP inquiry.

ARPP also contests the Department's decision in the Preliminary Determination that would find ARPP prospectively subject to the PRC Tissue Paper Order with respect to shipments of PRC-origin merchandise. ARPP argues that such a remedy would also be a burden because the petitioner could request annual administrative reviews of ARPP, forcing ARPP to participate even though it is no longer shipping PRC-origin merchandise.

With respect to the fact that ARPP continued to have PRC-origin merchandise in its inventory at the time of verification, to which the Department cited as part of its analysis in the Preliminary Determination, ARPP argues that the Department is unfairly and unreasonably punishing it for past actions by assuming that it may ship this merchandise to the United States in the future, or that it even has this merchandise still in inventory, as verification took place more than eight months ago. ARPP points out that contrary to the petitioner's claims, it is presently able to distinguish its inventory between PRC-origin and Indian-origin tissue paper jumbo rolls. Furthermore, ARPP has not bought PRC-origin tissue paper jumbo rolls since 2011. Therefore, regardless of the fact that ARPP at one time did ship offending material to the United States, ARPP claims that the potential for future circumvention does not exist because ARPP is aware of the past offense and can track its inventory to prevent future offenses. Therefore, ARPP argues that the suspension of liquidation of all imports of ARPP's tissue paper is not necessary to prevent evasion of the PRC Tissue Paper Order.

Furthermore, ARPP argues that the fact pattern in this case is more similar to the fact pattern of Paras in PRC Glycine ACI<sup>38</sup> and, therefore, the Department should treat its merchandise as it treated Paras' merchandise. ARPP points out that PRC Glycine ACI involved three companies in which two of those companies were found to be circumventing the AD order and the Department required the collection of duty deposits across the board for those two companies when the circumstances warranted. However, the Department determined that Paras' imports were not subject to the AD deposits applicable to PRC glycine based on facts specific to Paras.<sup>39</sup> ARPP contends that the Paras determination reflects the fact that each case stands on its own, that the assertion that requiring cash deposits on all entries is required as a matter of law is wrong, and that there is no absolute requirement that cash deposits be imposed on companies having been found to have circumvented in the past. Furthermore, ARPP points out that both ARPP and Paras: (1) inadvertently and unintentionally shipped to the U.S. market PRC-origin material subject to AD orders; (2) moved expeditiously to cease shipping that material once they

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<sup>37</sup> See Max Fortune Vietnam Final and accompanying Issues and Decision Memorandum at Comment 1.

<sup>38</sup> See PRC Glycine ACI, 77 FR at 73426.

<sup>39</sup> See id.

realized that it was not permissible; (3) shipped very small quantities of the PRC-origin material to the U.S. market; (4) fully cooperated with the Department; (5) did not contest that they were not substantially transforming the PRC inputs into Indian-origin product; (6) produced their finished goods from Indian inputs since the infraction; and (7) were able to distinguish between their finished products made from PRC-origin and non-PRC-origin materials. Therefore, ARPP claims that the Department erred in not taking a more measured approach than the AD remedy suggested by the petitioner, and not making a negative finding of circumvention with respect to ARPP as it did with respect to Paras in PRC Glycine ACI.

### **Department's Position:**

We disagree with the petitioner that collecting cash deposits on all entries of tissue paper products produced by ARPP is the sole remedy applicable to an affirmative circumvention finding in this inquiry. We also disagree with ARPP that the remedy which the Department applied in the Preliminary Determination is inconsistent with the Department's determination of circumvention under the Act or otherwise unreasonably burdensome. For the reasons described below, we continue to determine that any PRC-origin tissue paper processed by ARPP in India and exported to the United States is covered by the PRC Tissue Paper Order.

The Department's concern in an anticircumvention inquiry is whether or not the merchandise at issue is circumventing an AD and/or countervailing duty (CVD) order within the meaning of section 781 of the Act such that it should be included within the AD/CVD order. With respect to AD orders in particular, sections 736(a)(3) and 751(a)(1) of the Act direct the Department to suspend liquidation and collect cash deposits on merchandise subject to an AD order. If a company is unable to distinguish exports of non-subject merchandise from subject merchandise, or has been determined by the Department to have circumvented an AD order and then failed to act to the best of its ability in providing the necessary information on the record that would indicate that the potential for circumvention of an order has ceased, then the CIT has also held that the Department may collect cash deposits on all exports of merchandise from a respondent's country that meet the physical descriptions of the subject merchandise, as long as the respondent can "avoid the assessment of duties upon the entries of non-subject merchandise through the conduct of a future administrative review."<sup>40</sup>

In this case, the record supports a determination that during the inquiry period, some of ARPP's tissue paper products exported to the United States were of PRC origin, while other ARPP tissue paper exports were of Indian origin.<sup>41</sup> Importantly, ARPP showed at verification that it is able to distinguish and track subject versus non-subject merchandise in its inventory which the Department verified.<sup>42</sup> Further, ARPP fully cooperated with the Department throughout the anticircumvention inquiry. These facts support a finding that only suspending entries of merchandise of PRC origin is appropriate in this case.

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<sup>40</sup> See Max Fortune v. U.S., at \*18 - \*19.

<sup>41</sup> See ARPP Verification Report at 26-28.

<sup>42</sup> See id., at 16-18 and 27-28.

The petitioner is incorrect that the facts in this case are similar to those applicable to MFVN in the Max Fortune Vietnam Final. MFVN failed to act to the best of its ability in that anticircumvention inquiry, failed to distinguish between PRC-origin and non-PRC-origin tissue paper in its inventory, and was unable to segregate its exports of PRC-origin tissue paper to the United States.<sup>43</sup> In contrast, ARPP was fully cooperative throughout the inquiry and responded to all of the Department's information requests. Moreover, we verified that ARPP was able to distinguish between its PRC-origin and non-PRC-origin tissue paper in its inventory.<sup>44</sup> Furthermore, at verification, we were able to identify the amount of PRC-origin tissue paper ARPP used in its exports to the United States during the inquiry period.<sup>45</sup> Accordingly, these factual differences demonstrate why the remedy applied in the Max Fortune Vietnam Final should not be applied in this case.

With respect to ARPP's arguments, we disagree that if we direct CBP to suspend liquidation and to require a cash deposit of estimated duties at the rate applicable to the exporter on all unliquidated entries of tissue paper products produced by ARPP from "PRC-origin" tissue paper, such a remedy is "too burdensome" or "unfair." Unlike the situation in PRC Glycine ACI, we have determined based on record evidence that, as of the time of verification, ARPP still had PRC-origin tissue paper in its inventory sufficient to fill a U.S. customer order,<sup>46</sup> and therefore the possibility that subject merchandise could be exported to the United States remained.<sup>47</sup> Section 781(b)(1)(E) of the Act directs the Department to take necessary action to "prevent evasion" of AD or CVD orders when it concludes that "merchandise has been completed or assembled in other foreign countries" and has circumvented an order. The fact that ARPP still had PRC-origin tissue paper in its inventory at the time of verification means that the possibility of evasion of the PRC Tissue Paper Order continues in this case, and that subjecting this merchandise to a possible administrative review is not overly burdensome.

Furthermore, there is nothing overly burdensome or unfair about the remedy applied in the Preliminary Determination. First, if ARPP does not export PRC-origin tissue paper to the United States, then it will pay no cash deposits. Second, irrespective of an affirmative circumvention finding, as a third-country reseller of the subject merchandise, ARPP could be subject to an administrative review if an interested party requests such review. In fact, the petitioner recently requested an administrative review of ARPP as a third-country reseller, and the Department initiated such a review.<sup>48</sup> Accordingly, even if the Department did not order the collection of

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<sup>43</sup> See Max Fortune Vietnam Final and accompanying Issues and Decision Memorandum at Comment 2.

<sup>44</sup> See ARPP Verification Report at 27-28.

<sup>45</sup> See id., at 27-28.

<sup>46</sup> See id., at 1 and Attachment 3

<sup>47</sup> See Preliminary Decision Memorandum at 12.

<sup>48</sup> See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation In Part, 78 FR 25418, 25421 (May 1, 2013).

cash deposits on ARPP's tissue paper exports to the United States as a result of this anticircumvention determination, this would not necessarily prevent ARPP from being reviewed by the Department as ARPP appears to claim.

If a review is requested of ARPP's tissue paper exports and the Department finds that no PRC-origin jumbo rolls and/or cut sheets were used to produce the merchandise sold and entered into the United States, the Department will instruct CBP to liquidate ARPP's merchandise without regard to AD duties. On the other hand, if the Department finds that the goods entered were produced using PRC-origin jumbo rolls and/or cut sheets, the Department will instruct CBP to liquidate those entries in accordance with the rate established in the course of the review. Such a remedy is fully compliant with the Department's authority under section 781(b)(1)(E) of the Act and appropriately addresses ARPP's circumvention of the PRC Tissue Paper Order.

With respect to certifications, we agree with the petitioner that the Department should not require certifications from ARPP in this case, as it did in the Quijiang Final. In the Quijiang Final the Department implemented a certification procedure whereby the U.S. importer could submit a certification to CBP (from Quijiang) that the merchandise contained in a given entry was not produced using PRC-origin tissue paper. We do not believe that the implementation of a certification program is necessary to prevent evasion of the AD order in this case, in accordance with section 781(b)(1)(E) of the Act. Moreover, we do not believe that an importer certification requirement is an appropriate or effective remedy in this case given that this is the fourth anticircumvention inquiry of the PRC Tissue Paper Order in the last six years in which the Department has found circumvention occurring, and such a mechanism has not worked with respect to this AD order in the past.<sup>49</sup>

Accordingly, consistent with the remedy described in the Preliminary Determination, we will continue to direct CBP to suspend liquidation and to require a cash deposit of estimated duties, at the rate applicable to the exporter,<sup>50</sup> on all unliquidated entries of tissue paper produced by ARPP from PRC-origin tissue paper that were entered, or withdrawn from warehouse, for consumption on or after May 3, 2012, the date of initiation of the anticircumvention inquiry.

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<sup>49</sup> In the Max Fortune Vietnam Final, which was issued in the context of the third anticircumvention inquiry of the PRC tissue paper order involving MFVN, we stated that the use of a certification program is neither an appropriate nor effective mechanism for purposes of preventing future evasion under the order. See Max Fortune Vietnam Final and accompanying Issues and Decision Memorandum at Comment 4.

<sup>50</sup> ARPP does not currently have its own AD rate because it has not been reviewed. Therefore, if ARPP exports tissue paper produced from PRC-origin jumbo rolls and/or cut sheets to the United States, that merchandise will be subject to the PRC-wide rate consistent with the Department's standard practice to assign the PRC-wide rate to non-reviewed exporters. As discussed above, if ARPP wants to be reviewed, it must request a review of its exports. In such a review, the Department would determine, for the first time, ARPP's AD rate. On the other hand, if another previously-reviewed exporter with its own assigned AD rate under the PRC Tissue Paper Order exports to the United States PRC-origin tissue paper produced by ARPP, those entries will be subject to that exporter's rate.

**Recommendation**

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final affirmative determination of circumvention in the Federal Register.

Agree

Disagree

  
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Paul Piquado  
Assistant Secretary  
for Import Administration

27 JUNE 2013  
(Date)