A-570-894
AR: 2008-2009
Public Document
AD/CVD O2: BCS/GJB

October 12, 2010

MEMORANDUM TO: Ronald K. Lorentzen
Deputy Assistant Secretary
for Import Administration

FROM: Susan H. Kuhbach
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the 2008-2009 Administrative Review of 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 review. As a result of our analysis, we have made changes in the final results margin calculation for one of the respondents in this review. We 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 review for which we received comments from the parties.

Comment 1: Application of Adverse Facts Available to Max Fortune

Comment 2: Appropriate Surrogate Labor Rate

Background

On April 13, 2010, the Department of Commerce (the Department) published the preliminary results of the 2008-2009 administrative review of the antidumping duty order on certain tissue paper products from the PRC. See Certain Tissue Paper Products From the People's Republic of China: Preliminary Results of the 2008-2009 Administrative Review, 75 FR 18812 (April 13, 2010) (Preliminary Results). The products covered by this review are certain tissue paper products. The period of review (POR) is March 1, 2008, through February 28, 2009. For a complete list of the events that occurred since the Preliminary Results, see the "Background" section of the Federal Register notice which this memorandum accompanies. We invited interested parties to comment on the Preliminary Results. Max Fortune Industrial Limited and Max Fortune (Fuzhou) Paper Products Co., Ltd. (Max Fortune) filed a case brief on June 25, 2010, and the petitioner[1] filed a rebuttal brief on July 1, 2010. The other respondent in this

[1] The petitioner is Seaman Paper Company of Massachusetts, Inc.

review, Seaman Paper Asia Co., Ltd. (Seaman Paper Asia), did not submit a case or rebuttal brief.

Based on our analysis of the comments received, we have changed the weighted-average margin calculation applicable to Seaman Paper Asia from the Preliminary Results.

Margin Calculations

We calculated export price and normal value (NV) for Seaman Paper Asia using the same methodology described in the Preliminary Results, except as follows below:

We made changes to the surrogate value calculation for Seaman Paper Asia's labor costs. See Comment 2 for further discussion.

See also Memorandum from Brian Smith and Gemal Brangman, International Trade Compliance Analysts, to The File, entitled "Final Results Margin Calculation for Seaman Paper Asia Co., Ltd.," dated October 12, 2010 (Final Results Margin Calculation Memorandum) for further details.

Discussion of the Issues

Comment 1: Application of Adverse Facts Available to Max Fortune

In this administrative review, the petitioner provided substantial information in its September 15, 2009, submission (September 15 submission) as the basis for alleging, among other things, that Max Fortune did not report (1) multiple affiliates involved in the production and/or sale of tissue paper exported to the United States during the POR; and (2) multiple unaffiliated suppliers of raw materials and converting services involved in the production of tissue paper exported to the United States during the POR. The petitioner received this information[2] via a foreign market researcher from a company which had information relevant to Max Fortune (hereafter referred to as the other company).[3] Max Fortune rebutted these allegations by asserting that its PRC affiliate, Max Fortune Fuzhou, produced all of the tissue paper that it reported it sold to the United States during the POR. Max Fortune also asserted that while it contracted the services of an unaffiliated processing/packaging company during the POR, it did so on behalf of a third party and not on its own behalf.

After conducting verification of the data submitted on the record by Max Fortune and the other company, 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

[2] The petitioner claimed business proprietary treatment of this information.

[3] The petitioner claimed business proprietary treatment of this company's name.

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 (Preliminary Results AFA Memo), for a full discussion of the Department's preliminary findings with respect to Max Fortune.

We applied total adverse facts available (AFA) to Max Fortune in the Preliminary Results, pursuant to sections 776(a)(2)(A), (C) and (D) and 776(b) of the Act, because we concluded based on our verification findings that Max Fortune withheld critical information (i.e., the identities of additional tissue paper suppliers and/or processors associated with the tissue paper it sold to the United States during the POR, and their respective factors of production (FOP) data), and in so doing, significantly impeded this proceeding and precluded the Department from being able to calculate an accurate dumping margin for Max Fortune in this review based on its reported data. Further, we stated that we did not believe that the documentation supplied by Max Fortune was the actual documentation used in the transactions Max Fortune reported in its questionnaire response when compared against the documentation supplied by the other company which we also examined at verification.

In its case brief, Max Fortun claims that the Department cannot rely on the other company's information for purposes of discrediting Max Fortune's data because some information could not be authenticated at verification. Max Fortune argues that the other company did not abide by the verification agenda instructions requiring it to provide "original company records" which the Department has found in prior cases to be a sufficient basis to reject such information. In light of the Department's discovery[4] at verification regarding the other company's accounting records and electronic data, a fact which it says the company failed to disclose prior to verification, Max Fortune contends that the Department must reject the other company's information in the final results because it is unreliable and unverifiable, and rely instead on Max Fortune's verified data.[5] In support of its argument, Max Fortune cites to Polyethylene Retail Carrier Bags from the

[4] The information surrounding this discovery is proprietary in nature because if it is made public, it could potentially identify the company which provided the Department with information contradicting Max Fortune's submitted data.

[5] Max Fortune argued in its case brief at page 3 that it has been denied the ability to adequately represent itself because it was unable to see the business proprietary information (BPI) contained in the petitioner's September 15, 2009, submission (September 15 submission), which the Department examined at the other company and which the Department relied upon in making its preliminary AFA decision with respect to Max Fortune. We note that no interested party, including Max Fortune, may have access to BPI. Such information is only releasable to an interested party's counsel pursuant to an administrative protective order in the applicable proceeding. Max Fortune did not retain U.S. counsel until May 6, 2010, late in the proceeding. Therefore, Max Fortune's counsel, on behalf of its client, could only view many of the BPI documents after that date.

People's Republic of China: Final Results of Antidumping Duty Administrative Review, 74 FR 63718 (December 4, 2009), and accompanying Issues and Decision Memorandum (PRCB from the PRC); Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Brazil, 58 FR 37091, 37092 (July 9, 1993) (Carbon Products from Brazil); Nippon Steel Corp. v. United States, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (Nippon Steel v. United States); Zhejiang DunAn Hetian Metal Co. v. United States, Slip Op. 2010-41 (CIT 2010) (Zhejiang DunAn Hetian v. United States), and Heveafil Sdn. Bhd. v. United States, 843, 849-850 (Fed. Cir. 2003) (Heveafil v. United States). (We address these cases in the Department's Position section below.)

Max Fortune also claims that the other company's information is not reliable or credible because there are numerous irregularities and unexplained anomalies contained in it which call into question the source of that information. In support of its claim, Max Fortune (1) provides examples of chronological inconsistencies in the other company's electronic data; (2) alleges inaccuracies in the documentation provided by the other company to the Department; (3) identifies irregularities in the other company's accounting records; (4) notes that the lack of documentation showing how tissue paper is recorded in the other company's inventory system; and (5) attempts to show how tissue paper quantity amounts recorded in the other company's records do not reconcile with Max Fortune's reported data.[6] Therefore, Max Fortune contends that the Department should rely on its data, rather than the other company's data for the final results, as the Department's verification report pertaining to Max Fortune did not note a single significant discrepancy with respect to its submitted data.

In addition to its above-mentioned claims, Max Fortune also requests that the Department consider, when making its final decision on this matter, the motivations of the other company in providing data on this administrative review.

The petitioner maintains that in making its preliminary AFA decision with respect to Max Fortune, the Department did not rely exclusively or primarily on any information that was not maintained by the other company in the ordinary course of business or that was not always in the

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On June 8, 2010, in response to Max Fortune's May 28, 2010, request that the Department require the petitioner to disclose some of this BPI for the public record so that it could properly defend itself before the Department in the final results, we informed Max Fortune that we were denying its request because we found the petitioner's public summary of this information to be adequate. We also find that the Department's verification report and the Department's Preliminary Results AFA Memo adequately summarize the nature and the type of information the Department examined and relied upon for purposes of making its preliminary AFA decision with respect to Max Fortune. In addition, the Department continues to find that the documents which contain such information are not susceptible to public summary because data contained in those documents, if made public, would identify the company that provided the data.

[6] See Max Fortune's case brief at pages 17 through 40 for a detailed description of the irregularities and discrepancies it alleges with respect to the other company's data.

other company's possession and control. Moreover, the petitioner contends that the other company's hard-copy original source files, which it maintains in the ordinary course of business, were authenticated by the Department at verification no matter the Department's discovery at verification, and the information contained in secondary documentation was corroborated by other hard-copy source documents.

The petitioner also maintains that the alleged discrepancies Max Fortune claims are inherent in the data that the other company provided to the Department at verification are neither discrepancies, nor do they undermine the credibility of the source of that data. To the extent that there are issues involving dates appearing on some of the documentation, the petitioner offers possible explanations. The petitioner also claims that despite the minor issues Max Fortune has alleges with respect to the other company's documentation, the information contained in that documents ties directly to the sales information Max Fortune reported in its U.S. sales listing.

The petitioner also maintains that Max Fortune provided no evidence at verification to support its claim that it did not employ another company to process tissue paper on its behalf. Specifically, the petitioner contends that Max Fortune failed to provide documentation showing the final destination of the tissue paper that it claimed had been packaged on behalf of a third party.

In addition, the petitioner maintains that the documentation the Department examined at the other company's verification demonstrated that a significant amount of the tissue paper Max Fortune sold to the U.S. market during the POR was in fact produced by tissue paper suppliers located in the PRC other than Max Fortune's PRC affiliate (Max Fortune Fuzhou), despite Max Fortune's claim to the contrary.

<u>Department's Position:</u>

We have reviewed the entire administrative record in great detail, and have concluded that the application of total AFA continues to be appropriate with respect to Max Fortune for purposes of these final results, pursuant to section 776(a)(2)(A), (C) and (D) and 776(b) of the Act. The evidence on the record supports the conclusion that Max Fortune withheld information from the Department, which significantly impeded the proceeding, and that the company did not act to the best of its ability in providing information to the Department.

Max Fortune has requested that the Department consider the motivations of the other company in providing data on this administrative record. However, because such alleged motivations are irrelevant under our governing statute and regulations, we have not considered the motivations or intentions of any party on this record. Instead, our findings are based purely on an objective examination of the data/documentation provided by both Max Fortune and the other company. The other company's data, as discussed in detail below, are voluminous, detailed, and include documentation that leaves no doubt as to its authenticity. We have considered Max Fortune's criticisms of a limited amount of that documentation, but we have concluded that any issues that pertain to these data are eclipsed by the quality and quantity of the data, and to the extent that issues do exist, there are rational explanations for them.

Primary to all other issues in this case is the authentication of the documentation supplied by the other company. In short, if the documents supplied by the other company are authentic, then Max Fortune made untrue statements on the administrative record. This means that Max Fortune did not provide the Department with the actual documents used for certain sales of subject merchandise. Accordingly, the Department has critically reviewed the other company's submissions, as well as those supplied by Max Fortune. After reviewing the entire administrative record, the Department has concluded that the documents supplied by the other company are, in fact, authentic.

The sheer volume and level of detail of the data/documentation provided by the other company are indicative of authentic data/documentation. There is no indication that this information has been, or could have been, fabricated. As Max Fortune notes, however, not all of the documents are perfect, and there are a few inconsistencies in a small number of documents. From these imperfections, Max Fortune makes expansive arguments about the record as a whole. However, we do not believe the allegations and claims made by Max Fortune impugn the extensively detailed information placed on the record by the other company. In fact, the very idea that there are imperfections in a limited number of these documents appears to support the idea that these documents were prepared in the normal course of business and were not fabricated for the sole purpose of manipulating the Department's calculations.

As reflected in the Department's verification report, the Department's focus at the verification of the other company was to examine the source documentation in its possession, much of which was contained in the petitioner's September 15 submission, which allegedly directly linked to Max Fortune's U.S. sales transactions; and where necessary or appropriate, to link that source documentation to the other company's accounting records and to any additional hard-copy records in the other company's possession. At verification, we were able to examine the hard-copy source documentation maintained in the ordinary course of business by the other company, and that documentation revealed that Max Fortune did not produce/process all of the tissue paper it reported it sold to the United States during the POR.[7] This documentation was in the other company's possession at all times and had been placed on the record several months prior to verification. Also, where necessary or appropriate, we were also able to tie that documentation to the other company's hard-copy accounting records at verification, which in turn tied to the other company's audited financial statements.

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[7] To show how the data provided by the other company links directly to tissue paper transactions Max Fortune reported in its U.S. sales listing, 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 (other company's verification report) at pages 11-14; and Prelim Results AFA Memo at pages 6-8.

In its case brief, Max Fortune focuses less on the source documents that relate to Max Fortune's U.S. sales transactions, and focuses primarily on irregularities in the other company's underlying accounting records with respect to that company's record keeping and certain terminology used in its records. However, the Department reviewed the other company's accounting records at verification, and concluded that those books and records were complete and that the company was fully responsive to the Department's requests. At verification, the Department required the other company to provide accounting records, selected by the Department, all of which were presented in hard copy form, for purposes of tracking items such as bank deposit and revenue figures noted on the source documentation. As reflected in the verification report, the other company was able to provide hard copies of any accounting record requested by the Department.[8]

Thus, to be clear, the source documentation in the other company's possession, and not its accounting records, directly relates to Max Fortune's U.S. sales transactions, and therefore was the main focus of the Department's verification of the other company. Nonetheless, the Department verified all accounting records requested from the other company. Thus, we disagree with Max Fortune that the irregularities that it alleges with respect to the other company's accounting system somehow call into question the information verified by the Department that pertains to its U.S. sales transactions.

With respect to a few source documents challenged by Max Fortune, it argues, for example, that the tissue paper quantity amounts recorded in the other company's records did not reconcile with some of Max Fortune's reported data. However, the Department concluded that those quantity amounts did, in fact, reconcile with other information on the administrative record, and to the extent that other irregularities in source documents were highlighted by Max Fortune – those irregularities were of minor significance at best or otherwise explainable. In the end, product references in the other company's accounting system, when linked back to supporting source documentation, clearly relate to tissue paper, and data contained in that supporting source documentation links directly to specific sales Max Fortune reported in its U.S. sales listing. Accordingly, the Department does not agree with Max Fortune that the issues it points out with respect to the other company's source documents or accounting records undermine the authenticity of those documents/records. For a detailed discussion addressing the alleged irregularities/discrepancies present in the other company's data (i.e., those items summarized above as well as other items Max Fortune identifies in its case brief which are proprietary in nature), see the Department's Memorandum from the Team to The File, entitled, "Analysis of Data-Specific Items Raised in the Case Brief Submitted by Max Fortune Industrial Limited (Max Fortune HK) and Max Fortune (FZ) Paper Products Co., Ltd. (Max Fortune Fuzhou) (collectively Max Fortune)," dated October 12, 2010 (Analysis Memorandum).

With respect to the extensive electronic documentation placed on the record by the other company, Max Fortune argues that there are important chronological inconsistencies in this

[8] See other company's verification report at pages 7, 8, 11 and 14.

information and that, in light of a discovery by the Department at verification, that evidence could have been manipulated prior to verification. However, we do not believe that the authenticity of the extensive electronic documents supplied by the other company on the administrative record are called into question by these alleged inconsistencies.

First, the electronic documentation which the other company made available at verification had already been submitted to the Department in hard-copy form four months prior to verification (in the September 15 submission). Thus, the company could not have altered documents that it presented to the Department at verification, as those documents were already in the Department's possession and had been for the previous four months.

Second, although there are, indeed, certain inconsistencies with respect to dates and times on some of this electronic documentation, we find that these inconsistencies do not impugn the authenticity and integrity of the information contained within all, or even some, of the electronic submissions. The data contained in this documentation is very detailed and relates to specific Max Fortune U.S. sales transactions. Moreover, when questioned at verification, Max Fortune denied any knowledge of such documentation, thereby precluding the Department from further probing into the information contained in this documentation from the perspective of Max Fortune as it related to Max Fortune's U.S. sales transactions. Furthermore, the petitioner has provided possible explanations as to matters pertaining to the dates and times on some of this documentation, and the Department believes that those explanations are reasonable. In any case, the detail and volume of many of the electronic documents placed on the record, along with the contents of some of those documents that appear to be developed over the normal course of business, lead us to conclude that the alleged discrepancies that Max Fortune points out that appear in some of those documents are insufficient to discredit the overall integrity of the data provided by the other company.

Third, this electronic documentation was only one of several other types of documentation/company records we examined and relied upon in arriving at our preliminary AFA decision. Accordingly, to the extent that Max Fortune argues that the discrepancies it alleges with respect to the electronic documentation somehow undermine either our verification of the other company's records and documentation, or our preliminary AFA analysis, this simply is not the case. While the Department verified the other company's source documents and accounting records, it was unable to fully verify the electronic documentation given Max Fortune's claimed lack of knowledge of this documentation. However, the detail and quantity of the data in the electronic documentation supplied by the other company is very informative and certainly adds to the Department's confidence in its factual and legal conclusions in this case for purposes of these final results. As we have concluded that all of these documents are authentic, this leads us to the determination that Max Fortune was not truthful in its responses to the Department's questionnaires and that it did not provide the Department with necessary data upon request.

In its defense, Max Fortune claims that its verification was "flawless." This is not, however, consistent with the Department's findings in its verification reports. Max Fortune's documentation did tie to its books and records; however, for various information, Max Fortune claimed that it did not maintain specific detailed records. At the verification of the other company, however, such detailed documentation was placed before the Department, and we examined extensive documentation which demonstrated that other companies were involved in supplying and/or processing the tissue paper Max Fortune sold to the U.S. market during the POR. The nature of this documentation[9] was so detailed and specific to Max Fortune's sales transactions that it is not reasonable to assume that Max Fortune did not also have that documentation in its possession. Therefore, we disagree with Max Fortune that its accounting records and sales data were flawless because it did not account for the data in the possession of the other company which showed that it did not produce and/or process all of the tissue paper it sold to the U.S. market during the POR.

Finally, we find that the administrative and court cases relied upon by Max Fortune for its arguments simply do not apply in this instance. As Max Fortune has stated, and we agree, this is technically a case of first impression. The Department does not recall another case in which another company was able to provide to the agency well over a thousand pages of detailed documents that provide explicit evidence that a respondent has withheld documentation and provided untruthful statements in response to questions during an administrative review proceeding. However, this is not the first time that the Department has been faced with record evidence that a respondent, or respondents, were not truthful in their responses to the agency. For example, the Department applied total AFA when it concluded that two respondents entered into a scheme to avoid the payment of cash deposits and the Department discovered the existence of the scheme during an administrative review. See, e.g., Shandong Huarong Machinery Co. v. United States, 435 F. Supp. 2d 1261, 1269-78 (CIT 2006)(affirming the Department's application of AFA in Heavily Forged Hand Tools, With or Without Handles, From the People's Republic of China, 69 FR 55581 (Sept. 15, 2004), as amended, 69 FR 69892 (Dec. 1, 2004)). In another case, the Court of International Trade (CIT) found the application of total AFA was warranted because a respondent provided certain information to the Department in its questionnaire responses that proved to be inconsistent with information appearing in entry documents filed with U.S. Customs and Border Protection. See Shanghai Taoen Int'l Trading Co. v. United States, 360 F. Supp. 2d 1339, 1345 (CIT 2005)(affirming the Department's application of AFA in an administrative review of the antidumping duty order covering Crawfish from the People's Republic of China). As the Court in the Shanghai Taoen case explained, when information that has been withheld goes to the "core" of the Department's analysis, and no credible explanation has been provided to explain inconsistencies in the record, "there is little room for substitution of partial facts (and) {t}otal facts available is therefore appropriate …" See Shanghai Taoen, 360 F. Supp. 2d at 1349, n. 13. The data supplied by the other company

[9] This documentation showed that Max Fortune did not produce and/or process a significant portion of the total quantity of the tissue paper transactions reported in its U.S. sales listing. See Prelim Results AFA Memo at pages 9-10. For a more detailed explanation of the type of data provided by the other company and the reasons that we find that data to be more reliable than the data provided by Max Fortune in this review, see Analysis Memorandum.

that was not provided by Max Fortune in this review were "core" to the Department's analysis, and therefore the application of total facts available is warranted in this case.

Max Fortune cites to Zhejiang Dunan Hetjian Metal v. United States, Slip Op. 2010-41 (CIT April 19, 2010) for the concept that the other company was "careless" with respect to some of its electronic data in light of the Department's discovery at verification, and therefore the Department should find that those records were unverifiable. However, the facts of that case simply do not apply here. As we have explained, the quality and quantity of the electronic information leads us to conclude that it is authentic, and that the other company was not "careless" in the care it gave to that data. Further, as we have explained above, the Department was able to verify non-electronic data. Thus, the facts of this case just do not apply here.

Likewise, Max Fortune's reliance on Heveafil v. United States, 25 CIT 147, 152 (2001) is misplaced because, as we've noted, the other company in this case provided the Department with extensive hard-copy source documentation and accounting records it maintained in the ordinary course of business. In Heveafil, no such documentation was supplied, and the Court noted that "Heveafil offers no evidence demonstrating that it could not have maintained the (documents) in its original state pending verification." Heveafil, 25 CIT at 150. As the Court further noted, the decision to "select a particular method of verification rests solely within the agency's sound discretion." Id. at *9 (citing to Floral Trade Council v. United States, 822 F. Supp. 766, 772 (1993)). Thus, the Department's verification of the other company's source documentation and accounting system was definitely within the Department's discretion, and its further reliance on the electronic documentation does not conflict with the Court's ruling in Heveafil.

Max Fortune also cites to Nippon Steel Corporation v. United States, 458 F. 3d 1345, 1350-51 (Fed. Cir. 2006) for the concept that the Department "cannot make a determination that is 'unreasonable' given the record as a whole." We do not disagree. However, in that case the United States Court of Appeals for the Federal Circuit (CAFC) also pointed out that the International Trade Commission has the "task to evaluate the evidence it collects during its investigation (and) certain decisions, such as the weight to be assigned a particular piece of evidence, lie at the core of that evaluative process." Id. at 1350 (citing U.S. Steel Group v. U.S., 96 F. 3d 1352, 1357 (Fed. Cir. 1996). For our own administrative reviews, the same standard applies – and in this case, consistent with its statutory task to evaluate the record evidence as a whole, the Department has concluded that the data supplied by the other company are authentic, and that the record evidence supports the Department's conclusion that Max Fortune withheld significant information from the Department and was untruthful in its responses on the administrative record.

Finally, Max Fortune cites to two cases, PRCB from the PRC and Carbon Products from Brazil, for the concept that the Department does not rely on information when a party has not supplied that information in the form required by the Department or when that information provided is no longer in existence. Max Fortune is correct that these are the Department's policies and practice. In this instant proceeding, however, these practices do not conflict with the Department's verification of the other company. Unlike the facts in PRCB from the PRC, the other company in the instant review provided all relevant accounting records and source documentation for our examination at verification, and those records/documents were sufficiently translated for purposes of our examination of the data related to Max Fortune's sales transactions. Further, unlike the facts in Carbon Products from Brazil, the source documents provided by the other company that the Department examined in this case were "traceable" to its accounting records and audited financial statements, and therefore the Department concluded that those documents were verifiable.

Max Fortune argues that a BPI occurrence "discovered" at verification undermines the reliability of all of the other company's reported data. We disagree that the unfortunate occurrence the Department "discovered," which impacted the other company, automatically benefitted Max Fortune under the Department's practice. Put another way, implicit in Max Fortune's arguments are that the Department should be incapable of considering all of the facts on the administrative record and considering the other company's explanations with respect to the electronic data. We strongly disagree with Max Fortune that the Department cannot, and should not, consider a respondent's explanations in reviewing the evidence on the record. In this case, the Department was able to verify hard copy, original documents, so one could argue that the point is moot. However, the Department has determined that the additional electronic data on the record is also authentic and reliable and no court case or administrative practice cited by Max Fortune undermines the reasonableness of that determination.

Based on the foregoing analysis, we have continued to apply total AFA to Max Fortune of this final results, pursuant to section 776(a)(2) and (b) of the Act.

In cases involving non-market economy (NME) countries, such as the instant one, the respondent must supply the Department with complete and accurate U.S. sales and FOP data in order for the Department to calculate accurately the respondent's dumping margin. Where one, or both, are so incomplete that they 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 we have explained above, we find that we cannot rely upon the data submitted by Max Fortune to calculate an accurate dumping margin.

Max Fortune's misrepresentations call into question the veracity of the FOP data Max Fortune submitted in this review. Section 776(a)(2) of the Act states that the Department may use "facts available" if, *inter alia*, an interested party (A) withholds information that has been requested by the Department or (C) significantly impedes a proceeding under the antidumping statute. Both of these provisions apply in this case. Because the Department relies on the actual FOPs associated with the merchandise under review to determine NV for margin calculation purposes in NME cases, the information Max Fortune mischaracterized and withheld was fundamental and material to the Department's dumping margin analysis. For multiple U.S. sales transactions in its U.S. sales listing, Max Fortune should have reported FOP data from its unaffiliated PRC tissue paper suppliers and/or processors. Instead, Max Fortune misled the Department by claiming it produced and processed all of the tissue paper included in its U.S. sales listing. Max Fortune's actions now lead us to question the reliability of the information and records provided by its affiliated PRC producer, Max Fortune Fuzhou, at verification. Max Fortune's consistent mischaracterization of the facts on the record impeded a proper review of Max Fortune Fuzhou's actual FOP for Max Fortune's reported U.S. sales transactions. Indeed, there are extensive omissions, as opposed to partial gaps, in the FOP data submitted by Max Fortune. Without the necessary FOP information pertaining to numerous Max Fortune U.S. sales transactions, the Department cannot realistically conduct an accurate review of Max Fortune. Given Max Fortune's deliberate omissions of the proper FOP data for its U.S. sales, the Department is unable to calculate a reasonably accurate, reliable dumping margin using the limited FOP data Max Fortune reported.

In addition, section 776(a)(2)(D) of the Act provides that if information is supplied by a company that cannot be "verified as provided in section 782(i)," then the application of facts available is also warranted on that basis. In this case, the Department conducted a verification of Max Fortune, but after conducting the verification of the other company, concluded that certain documentation supplied by Max Fortune cannot be the actual documents used in the transactions at issue. Specifically, as noted above, the quality and quantity of the data/documentation supplied by the other company were superior to the data/documentation supplied by Max Fortune. As such, with respect to the transactions at issue, Max Fortune's data were not verifiable. Therefore, the Department now questions all of the FOP data supplied by Max Fortune on the administrative record. Thus, the information on the record supports a conclusion by the Department that Max Fortune's entire reported FOP database is unverifiable, pursuant to section 776(a)(2)(D).

Section 776(b) of the Act states that if the Department concludes that a party has failed to cooperate by not acting to the best of its ability to comply with a request for information, it may "use an inference that is adverse to the interests of that party." 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." See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. No. 103-316 at 870 (1994) at 870. In this case, Max Fortune provided documents on the record that were not the actual documents used with respect to its reported U.S. sales transactions. Accordingly, Max Fortune did not act to the best of its ability when it provided the Department with incorrect and misleading responses to some of the Department's questions.

Further, because the only external information on the record directly contradicts Max Fortune's reported data, with the exception of Max Fortune's "separate rates" data, and this external information has been verified, the Department doubts the veracity of all the data reported by Max Fortune. Consequently, pursuant to sections 776(a)(2) and (b) of the Act, we find it appropriate to apply total AFA to Max Fortune in this review. To calculate an antidumping duty margin for Max Fortune, even based on partial adverse facts available, would effectively reward Max Fortune's efforts to create an administrative record that cannot be verified and otherwise does not reflect the actual chain of production and processing of the U.S. sales transactions at issue. As a result, the Department has no confidence in any information supplied by Max Fortune for dumping margin calculation purposes. Thus, the application of total AFA is appropriate in this case.

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,[10] as AFA, we are

[10] 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).

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.

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 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). The Department corroborated the information used to calculate the 112.64 percent rate in the LTFV investigation. See Id. 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 information on the record of this review that demonstrates this rate is not appropriate for use as AFA, we determine this rate has relevance.[11]

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.

Comment 2: Appropriate Surrogate Labor Rate

In the Preliminary Results, the Department used the regression-based wage rate for the PRC of $1.39 per hour to value Seaman Paper Asia's reported labor usage for NV calculation purposes, in accordance with 19 CFR 351.408(c)(3). As the Department resorted to total AFA with respect to Max Fortune's margin in the Preliminary Results, the Department did not use the PRC regression-based wage rate to value Max Fortune's reported labor costs.

Subsequent to the Preliminary Results and prior to the submission of case briefs in this review, the CAFC determined that the Department's regression-based methodology does not comport with the statute because the calculation includes countries that were neither economically comparable to the PRC nor significant producers of comparable merchandise.[12] As a result of that decision, on July 14, 2010 (subsequent to the submission of case briefs in this review), the Department notified the parties that as a result of the CAFC's ruling in Dorbest, the Department would be reconsidering its valuation of the labor wage rate in this review. The Department also placed additional factual information on the record for consideration in the final results and invited the parties' comments. Specifically, we invited comment on the export values from 37 countries, as well as wage rates and gross national income (GNI) per capita from 51 countries. In subsequent memoranda to the file on July 14, and August 9, 2010, respectively, the Department corrected the wage-rate data placed on the record with respect to the country of El Salvador, and indicated that the wage-rate data placed on the record with respect to the country of Honduras was inaccurate and therefore unreliable.

In its case brief filed on June 25, 2010, Max Fortune argues that in light of the CAFC's decision in Dorbest, the Department should value labor using the Indian-specific wage on the record[13] instead of using the regression analysis described in 19 CFR 351.408(c)(3), consistent with the Department's selection of India as the primary surrogate country in this proceeding under section

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[11] The Department's AFA analysis in the Preliminary Results AFA Memo contains further analysis with BPI data. Upon review of the entire administrative record and the arguments submitted following the issuance of the Preliminary Results, we continue to find that analysis valid for the final results.

[12] See Dorbest Limited et. al. v. United States, 604 F.3d 1363 (Fed. Cir. 2010) (Dorbest).

[13] See "Expected Wages of Selected NME Countries" (revised December 2009), available at http://www.trade.gov/ia/.

773(c)(4) of the Act. In response to the Department's request for comments on the export and wage-rate data placed on the record by the Department after the submission of case briefs, Max Fortune asserts that the Department should not rely on these data and the methodology in Woven Electric Blankets[14] which employed it,[15] because they include countries with insignificant exports and are, therefore, contrary to section 773(c)(4) of the Act. Max Fortune also argues that the International Labour Organization (ILO) wage-rate data reported for Honduras are not inaccurate, and therefore should not be excluded from the wage-rate calculation if ILO data is used.[16] Max Fortune bases its argument upon a comparison of the 2006 ILO wage-rate data for Honduras to the 2008 wage-rate data for Honduras contained in a U.S. Department of State human rights report.

Department's Position:

As a consequence of the CAFC's ruling in Dorbest, the Department is no longer relying on the regression-based wage rate described in 19 CFR 351.408(c)(3). While the Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision, for the final results in this review, we have calculated an hourly wage rate to use in valuing reported labor input by averaging earnings and/or wages in countries that are economically comparable to the PRC and that are significant producers of comparable merchandise.

We disagree with Max Fortune's argument that the Department should use the hourly wage rate for India from the ILO as an alternative to our previous regression-based wage rate. While information from a single surrogate country can reliably be used to value other FOPs, wage data from a single surrogate country do not constitute the best available information for purposes of valuing the labor input due to the variability that exists between wages and GNI. While there is a strong worldwide relationship between wage rates and GNI, too much variation exists among the wage rates of comparable market economies. As a result, we find reliance on wage data from a single country to be unreliable and arbitrary. For example, when examining the most recent wage data, even for countries that are relatively comparable in terms of GNI for purposes of factor valuation (e.g., countries with GNIs between USD 950 and USD 4,100), the wage rate spans from USD 0.41 to USD 2.08.[17] Additionally, although both India and Guatemala have GNIs below USD 2500, and both could be considered economically comparable to the PRC, India's observed wage rate is USD 0.47, as compared to Guatemala's observed wage rate of

[14] Certain oven Electric Blankets From the People's Republic of China, 75 FR 38,459 (July 2, 2010) (Woven Electric Blankets).

[15] See Max Fortune's July 22, 2010, submission.

[16] See Max Fortune's August 16, 2010, submission.

[17] See "Expected Wages of Selected NME Countries," revised in December 2009, available at http://ia.ita.doc.gov/wages/index.html.

USD 1.14 – over double that of India.[18] There are many socio-economic, political and institutional factors, such as labor laws and policies unrelated to the size or strength of an economy, that cause significant variances in wage levels between countries. For these reasons, and because labor is not traded internationally, the cross-country variability in labor rates is not necessarily characteristic of other production inputs. Accordingly, the large variance in these wage rates illustrates the weakness of relying on a wage rate from a single country. For these reasons, the Department maintains its longstanding position that, even when not employing a regression methodology, more data are still better than less data for purposes of valuing labor. Accordingly, the Department's has employed a methodology that relies on a larger number of countries in order to minimize the effects of the variability that exists between wage data of comparable countries.

To achieve a labor value that is based on the best available information with which to value labor for these final results, we have relied on labor data from several countries determined to be both economically comparable to the PRC, and significant producers of comparable merchandise.

First, in order to determine the economically comparable surrogate countries from which to calculate a surrogate wage rate, the Department looked to the Surrogate Country Memo.[19] Early in this review, the Department selected six countries for consideration as the surrogate country for this review. To determine which countries were at comparable levels of economic development to the PRC, the Department placed primary emphasis on GNI.[20] The Department relies on GNI to generate its initial list of countries considered to be economically comparable to the PRC. In this review, consistent with the Department's normal practice, the list of potential surrogate countries found to be economically comparable to the PRC included India, the Philippines, Indonesia, Colombia, Thailand, and Peru. The Department used the high- and low-income countries identified in the Surrogate Country Memo list as "bookends" and then identified all countries in the World Bank's World Development Report for 2007 with per capita incomes (using the 2007 GNIs from the 2009 Expected Wages of Selected NME Countries) that placed them between these "bookends." This resulted in 51 countries, ranging from India with USD 950 GNI to Colombia with USD 4,100 GNI.[21]

Second, regarding the second criterion of "significant producer," the Department identified all countries which have exports of comparable merchandise (defined as HTS 4802.30, 4802.54,

[18] See "Expected Wages of Selected NME Countries," revised in December 2009, available at http://ia.ita.doc.gov/wages/index.html.

[19] See 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," dated April 7, 2010 (Surrogate Country Memo}.

[20] See 19 CFR 351.408(b).

[21] See July 14, 2010, Memorandum to The File Re: Data on Labor Wage.

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) between 2007 and 2009.[22] After screening for countries that had exports of comparable merchandise, we found that 37 of the 51 countries designated as economically comparable to the PRC are also significant producers. In this case, we have defined a "significant producer" as a country that has exported comparable merchandise from 2007 through 2009.

We disagree with Max Fortune's suggestion that *only* net exporters or major exporters to the United States can be considered significant producers.[23] The antidumping statute and regulations are silent in defining a "significant producer," and the antidumping statute grants the Department discretion to look at various data sources for determining the best available information. See section 773(c) of the Act. Moreover, while the legislative history provides that the "term 'significant producer' *includes* any country that is a significant net exporter,"[24] it does not preclude reliance on additional or alternative metrics. In practice, the Department has relied on other indices for determining whether a country is a significant producer. For example, in Wooden Bedroom Furniture from the PRC,[25] the Department relied on production data for selecting the primary surrogate country. In this case, we have relied on countries with exports of comparable merchandise as significant producers.

For purposes of valuing wages in this review, the Department determines the following 37 countries to be both economically comparable to the PRC, and significant producers of comparable merchandise: Albania, Algeria, Belize, Bhutan, Bolivia, Bosnia & Herzegovina, Cape Verde, Colombia, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Guatemala, Guyana, Honduras, India, Indonesia, Jordan, Macedonia, Mongolia, Morocco, Namibia, Nicaragua, Nigeria, Paraguay, Peru, the Philippines, Samoa, Sri Lanka, Swaziland, Syria, Thailand, Tunisia, Ukraine, Vanuatu, and Yemen.

Third, from the 37 countries that the Department determined were both economically comparable to the PRC and significant producers of comparable merchandise, the Department identified those with the necessary wage data. In doing so, the Department has continued to rely

[22] The export data is obtained from the Global Trade Atlas. See July 14, 2010, Memorandum to The File Re: Data on Labor Wage.

[23] See Max Fortune's July 22, 2010, submission.

[24] See Conference Report to the 1988 Omnibus Trade & Competitiveness Act, H.R. Conf. Rep. No. 576, 590, 100th Cong. 2nd Sess. (1988), reprinted in 134 Cong. Rec. H2031 (daily ed. April 20, 1988).

[25] See Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review, 75 FR 9581, 9584 (March 3, 2010), unchanged in Wooden Bedroom Furniture from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review, 75 FR 44764 (July 29, 2010).

upon ILO Chapter 5B data "earnings," if available, and "wages" if not.[26] We used the most recent data within five years of the base year (2007) and adjusted to the POR using the relevant Consumer Price Index (CPI).[27] Of the 37 countries that the Department has determined are both economically comparable and significant producers of comparable merchandise, fifteen countries, i.e., Algeria, Belize, Bhutan, Bolivia, Cape Verde, Honduras, Morocco, Namibia, Nigeria, Samoa, Swaziland, Syria, Tunisia, Vanuatu and Yemen, were not used in the wage rate valuation because there were no earnings or wage data available, or the wage data available were inaccurate.[28] The remaining countries reported either earnings or wage rate data to the ILO within the last five years.[29]

With respect to the Honduras wage-rate data which we have excluded from our surrogate wage-rate analysis, we disagree with Max Fortune's argument that it should not be excluded.

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[26] The Department maintains its current preference for "earnings" over "wages" data under Chapter 5B. However, under the previous practice, the Department was typically able to obtain data from somewhere between 50-60+ countries. Given that the current basket now includes 37 countries, the Department found that our long-standing preference for a robust basket outweighs our exclusive preference for "earnings" data. We note that several countries that met the statutory criteria for economic comparability and significant production, such as Indonesia and Thailand, reported only a "wage" rate. Thus, if earnings data is unavailable from the base year (2007) of the previous five years (2002-2006) for certain countries that are economically comparable and significant producers of comparable merchandise, the Department will use "wage" data, if available, from the base year or previous five years. The hierarchy for data suitability described in the 2006 Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, (October 19, 2006) ("Antidumping Methodologies") still applies for selecting among multiple data points within the "earnings" or "wage" data. This allows the Department to maintain consistency as much as possible across the basket.

[27] Under the Department's regression analysis, the Department limited the years of data it would analyze to a two- year period. See Antidumping Methodologies, 71 FR at 61720. However, because the overall number of countries being considered in the regression methodology was much larger than the list of countries now being considered in the Department's calculations, the pool of wage rates from which we could draw from two years-worth of data was still significantly larger than the pool from which we may now draw using five years-worth of data (in addition to the base year). The Department believes it is acceptable to review ILO data up to five years prior to the base year as necessary (as we have previously), albeit adjusted using the Consumer Price Index. See Expected Non-Market Economy Wages: Request for Comment on Calculation Methodology, 70 FR 37761, 37762 (June 30, 2005). In this manner, the Department will be able to capture the maximum amount of countries that are significant producers of comparable merchandise, including those countries that choose not to report their data on an annual basis. See also CPI data placed on the record, obtained from the International Monetary Fund's International Financial Statistics.

[28] See August 9, 2010, Memorandum to The File Re: Honduras Data on Labor Wage Rate, wherein the Department noted that the wage rate reported by the ILO for Honduras was inaccurate.

[29] See ILO's Yearbook of Labor Statistics.

Specifically, Max Fortune's argument is based on comparison of an *unskilled labor* wage rate as reported in the 2008 U.S. Department of State Human Rights Report: Honduras to the ILO *manufacturing* wage rate for Honduras, and provides no evidence that unskilled labor rates are indicative or representative of an average manufacturing wage in Honduras. Moreover, even assuming *arguendo* that unskilled and manufacturing wage rates are comparable, Max Fortune asserts that the discrepancy in the rates[30] is merely due to inflation without providing any factual support. Furthermore, the data provided by Max Fortune is at best indicative of minimum wage rates in effect two years after the date of the wage rate reported by the ILO, and do not directly address the issue of whether or not the 2006 ILO wage rate data for Honduras is erroneous.[31]

The Department therefore relied on data from the following countries to arrive at its wage rate in these final results: Albania, Bosnia & Herzegovina, Colombia, Dominican Republic, Ecuador, Egypt, El Salvador, Fiji, Guatemala, Guyana, India, Indonesia, Jordan, Macedonia, Mongolia, Nicaragua, Paraguay, Peru, the Philippines, Sri Lanka, Thailand, and Ukraine. The Department calculated a simple average of the wage rates from these 22 countries (see Final Results Calculation Memorandum). This resulted in a wage rate derived from comparable economies that are also significant producers of the comparable merchandise, consistent with the CAFC's ruling in Dorbest and the statutory requirements of section 773(c) of the Act. See also e.g., Fresh Garlic from the People's Republic of China: Final Results of the New Shipper Review, 75 FR 61130 (October 4, 2010), and accompanying Issues and Decision Memorandum at Comment 5.

Finally, we note that because we are assigning to Max Fortune a final margin based on AFA, as discussed in Comment 1 above, the surrogate labor rate issue is applicable only to the Department's antidumping duty calculation for Seaman Paper Asia.

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 results of review and the final weighted-average dumping margins for the reviewed firms in the Federal Register.

Agree ____ Disagree ____

[30] The 2008 unskilled labor wage rate reported by the U.S. State Department is 55 lempiras per day, and the 2006 manufacturing wage rate reported by the ILO is 21.74 lempiras per day.

[31] See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Administrative Review, 75 FR 47771 (August 9, 2010), and accompanying Issues and Decision Memorandum at Comment 9.

Ronald K. Lorentzen
Deputy Assistant Secretary
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(Date)