UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
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Anti-circumvention Inquiry
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February 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: 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.

SUMMARY

In response to a request from Seaman Paper Company of Massachusetts, Inc. (the petitioner), the Department of Commerce (Department) initiated an antidumping circumvention inquiry pursuant to section 781(b) of the Tariff Act of 1930, as amended (Act).[1] The Department initiated an anti-circumvention inquiry pursuant to section 781(b) of the Act and 19 CFR 351.225(h), to determine whether certain tissue paper products (tissue paper) exported to the United States from India by AR Printing & Packaging India Pvt. Ltd. (ARPP) was made from jumbo rolls (and/or cut-to-length sheets) of tissue paper produced in the PRC, and is thus circumventing the antidumping duty order on tissue paper from the People's Republic of China (PRC).[2]

Based on the information submitted by interested parties and the analysis below, we recommend that the Department find that tissue paper processed by ARPP in India from PRC-origin jumbo rolls of tissue paper and exported to the United States is circumventing the PRC Tissue Paper Order.

BACKGROUND

In response to an allegation from the petitioner, on May 3, 2012, the Department initiated an anti-circumvention inquiry pursuant to section 781(b) of the Act and 19 CFR 351.225(h).

[1] See Certain Tissue Paper Products from the People's Republic of China: Notice of Initiation of Anti-circumvention Inquiry, 77 FR 27430 (May 10, 2012) (Initiation Notice).
[2] See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China, 70 FR 16223 (March 30, 2005) (PRC Tissue Paper Order).

On May 9, 2012, ARPP entered a notice of appearance in this proceeding. On May 14, 2012, the Department issued an anti-circumvention questionnaire to ARPP. On July 2, 2012, ARPP submitted its response to that questionnaire (July 2 Response).

In its July 2 Response, ARPP acknowledged that it did import what it characterized as a small quantity of PRC-origin sparkle tissue paper in May 2011, which it may have mistakenly co-mingled with Indian-origin tissue paper in two of its sales to one U.S. customer during June 2011. ARPP also claimed that since these two tissue paper sales, it has used only Indian-origin tissue paper in its sales to the United States.

The Department issued a supplemental questionnaire to ARPP on August 6, 2012 (August 6 Questionnaire). On September 19, 2012, ARPP filed its response to this supplemental questionnaire (September 19 Response). The Department issued a second supplemental questionnaire to ARPP on August 28, 2012, and received ARPP's second supplemental questionnaire response on September 17, 2012 (September 17 Response). On September 21, 2012, the Department requested that ARPP provide certain information missing from its September 17 Response. ARPP responded to this request on September 24, 2012 (September 24 Response).

On October 3, 2012, the petitioner submitted comments on ARPP's July 2 Response and September 24 Response.

On August 30, 2012, the Department solicited comments from interested parties concerning the proper surrogate country and surrogate values to be used in the anti-circumvention inquiry. The petitioner submitted such comments on October 15, 2012. [3]

On October 2, 2012, the Department issued a verification outline to ARPP. On October 4, 2012, the Department met with the petitioner's counsel, at the latter's request, to discuss agenda items in the verification outline.[4]

Pursuant to section 782(i) of the Act, the Department conducted verification of the questionnaire responses submitted by ARPP and its affiliates, Gemstone Printing Limited (Gemstone Printing) and Stone Sapphire Limited (Stone Sapphire), from October 9, 2012 to October 18, 2012.[5] This verification report and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at http://iaaccess.trade.gov and in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building.

On January 9, 2013, the petitioner filed comments urging the Department to make an affirmative preliminary circumvention determination and to include ARPP's U.S. sales of PRC-origin tissue

[3] ARPP did not submit comments on surrogate country and surrogate value selection.
[4] See Memorandum to The File from Gemal Brangman, Senior Analyst, entitled "Meeting with Counsel for the Petitioner," dated October 4, 2012.
[5] 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).

paper products in the PRC Tissue Paper Order. On January 16, 2013, ARPP responded to the petitioner's comments, arguing that the facts in this case do not warrant the Department making an affirmative preliminary circumvention finding or including all of ARPP's tissue paper exports from India in the PRC Tissue Paper Order.

On February 4, 2013, the Department notified the parties by letter that it was postponing the final determination of this inquiry until June 27, 2013.[6]

SCOPE OF THE ANTIDUMPING DUTY ORDER

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

The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (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 this order is dispositive.[7]

Excluded from the scope of this order are the following tissue paper products: (1) tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, i.e., disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTS 4803.00.20.00 and 4803.00.40.00).

[6] See Memorandum to Christian Marsh, Deputy Assistant Secretary, AD/CVD Operations, from The Team, through James P. Maeder, Jr., Director, AD/CVD Operations, Office 2, entitled "Anti-Circumvention Inquiry on Certain Tissue Paper Products from the People's Republic of China: Extension of Final Determination," dated February 4, 2013.

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

SCOPE OF THE ANTI-CIRCUMVENTION INQUIRY

The products covered by this inquiry are tissue paper products, as described above in the "Scope of the Antidumping Duty Order" section, which are produced in India from PRC-origin jumbo rolls and/or cut sheets of tissue paper, and exported from India to the United States. This inquiry only covers such PRC-origin products that are processed in India and exported to the United States by ARPP.

STATUTORY PROVISIONS REGARDING CIRCUMVENTION

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

STATUTORY ANALYSIS

(A) Whether Merchandise Imported into the United States Is of the Same Class or Kind as Any Merchandise that is Subject to the Order

In this case, the PRC Tissue Paper Order covers cut-to-length sheets of tissue paper equal to or greater than 0.5 inches in width, with a basis weight not exceeding 29 grams per square meter and other specified characteristics of the scope. The merchandise subject to this inquiry is tissue paper products exported to the United States from India, which are produced by ARPP from PRC-origin jumbo rolls (and/or cut sheets) of tissue paper. The list of products ARPP provided in its questionnaire responses meets the written description of the products subject to the PRC Tissue Paper Order. See July 2 Responses at Exhibit 9 and 10a. Accordingly, we preliminarily find that the merchandise subject to this inquiry is of the same class or kind of merchandise as that subject to the PRC Tissue Paper Order, pursuant to section 781(b)(1)(A) of the Act.

(B) Whether, Before Importation into the United States, Such Imported Merchandise Is Completed or Assembled in Another Foreign Country from Merchandise Which Is Subject to the Order or Produced in the Foreign Country that Is Subject to the Order

In this case, the merchandise exported to the United States is tissue paper products processed in India by ARPP from PRC-origin jumbo rolls of tissue paper. ARPP has reported that the tissue paper it processed in India using PRC-origin jumbo rolls of tissue paper as the input may have been exported to the United States. See July 2 Response at page 7. Specifically, ARPP stated that during the 2011-2012 fiscal period it purchased and imported a small quantity of sparkle tissue paper jumbo rolls from the PRC, which were then converted into cut-to-length tissue paper. See July 2 Response at page 7 and Exhibit 11. Additionally, ARPP reported that it was possible that some quantity of the PRC-origin sparkle tissue paper purchased in the 2011-2012 fiscal period may have been mistakenly co-mingled with Indian-origin sourced sparkle tissue paper product sold to the United States. See July 2 Response at page 7 and Exhibits 6 and 11. Based on the results of our verification, we preliminarily find that ARPP sold merchandise to the United States which was completed in India from jumbo rolls that were produced in the PRC, the country to which the PRC Tissue Paper Order applies. See ARPP verification report at pages 25 – 28.

(C) Whether the Process of Assembly or Completion in the Foreign Country is Minor or Insignificant

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

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

In this anti-circumvention inquiry, we based our analysis on both qualitative and quantitative factors in determining whether the process of converting the jumbo rolls in India was minor or insignificant, in accordance with the criteria of section 781(b)(2) of the Act. This approach is consistent with our analysis in prior anti-circumvention inquiries.[8]

(a) The Level of Investment in India

For purposes of this anti-circumvention inquiry, we analyzed the level of investment in ARPP that is associated with converting the PRC-origin jumbo rolls into finished cut-to-length tissue

[8] See e.g., Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta From Italy: Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders, 68 FR 46571 (August 6, 2003) (unchanged in Anti-Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders, 68 FR 54888 (September 19, 2003)).

paper. Specifically, we reviewed ARPP's level of investment in equipment used in the conversion process. ARPP reported that it sourced all of the equipment it used in its operations in India for converting jumbo rolls into cut-to-length tissue paper. Moreover, ARPP provided information on the record that identified the types of equipment purchased, where that equipment was used in the production of cut-to-length tissue paper products (i.e., ARPP identified whether the equipment is used for processing tissue paper products, non-tissue paper products, or both), and the date that the equipment was purchased. See July 2 Response at page 26, and September 19 Response at Exhibit 13a. We verified the reported information, and as a result, preliminarily find that ARPP's level of investment in India is minimal. For further discussion, see February 27, 2013 memorandum entitled "Anti-circumvention Inquiry on Certain Tissue Paper Products from the People's Republic of China Involving AR Printing & Packaging India Pvt. Ltd.: Proprietary Analysis of Certain Statutory Factors for the Preliminary Determination" (Analysis Memo).

(b) The Level of Research and Development (R&D) in India

In this case, we find that there is no record evidence demonstrating that ARPP has undertaken a significant level of R&D in order to process tissue paper products. In describing the level of R&D in the tissue paper industry in India, ARPP reported that there is not much R&D involved; rather, tissue paper-related R&D activities are more or less established processes with "some improvisation from time to time during the processing stage itself." See July 2 Response at page 29. Moreover, ARPP reported in its questionnaire response that "it is not a manufacturer of jumbo rolls of tissue paper and only undertakes the slitting of jumbo rolls of tissue paper into sheet form, folding and packing of cut-to-length tissue paper products, as well as printing and dying of tissue paper." See July 2 Response at page 28. Therefore, any R&D activity carried out by ARPP directly is limited only to "some improvisation" during the process of cutting, folding, packing, printing and/or dying of jumbo rolls of tissue paper or cut sheets of tissue paper. Additionally, the limited role of R&D in the tissue paper industry in India generally is further supported by the fact that ARPP did not undertake any significant R&D initiatives and expenditures with respect to tissue paper processing during the inquiry period, but rather ARPP's U.S. affiliate handled all of the substantive R&D work with respect to tissue paper. See ARPP verification report at pages 4 and 22, and exhibits VE-2A and VE-12H. Therefore, we preliminarily find that the level of R&D performed by ARPP in India is minimal.

(c) The Nature of the Production Process in India

As discussed above, the element of the tissue paper production process performed by ARPP in India is the conversion of jumbo rolls to cut-to-length tissue paper. In previous anti-anti-circumvention proceedings involving the conversion of cut-to-length tissue paper from PRC-origin jumbo rolls, the Department specifically found that the conversion process of jumbo rolls into finished cut-to-length tissue paper represented a minor and/or insignificant operation.[9]

[9] See 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) (Third Circumvention Final); 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) (First Circumvention Prelim) (unchanged in Certain Tissue Paper Products From the People's Republic of

According to ARPP, its entire process to produce cut-to-length tissue paper from jumbo rolls is limited to cutting, dyeing, printing, and packaging/packing the cut-to-length tissue paper. See July 2 Response at page 29 and Exhibit 2. Moreover, it is largely a manual operation involving mostly unskilled labor for folding and packaging the tissue paper. See id. Based on our review of the labor involved in the conversion of PRC-origin jumbo rolls to cut-to-length tissue paper at verification, we found that most of ARPP's labor force consists of unskilled workers that are employed on a temporary basis. See ARPP verification report at pages 31 and 32. Moreover, based on our tour of ARPP's facility, we verified that there is limited equipment and labor involved in ARPP's production process, and that this equipment and labor is not always dedicated to the conversion of jumbo rolls to cut-to-length tissue paper. See ARPP verification report at page 17. Accordingly, we preliminarily find that the production process conducted by ARPP in converting the PRC-origin jumbo rolls to cut-to-length tissue paper is limited and minor.

(d) The Extent of Production Facilities in India

With regard to the extent of its production facilities in India, ARPP provided a detailed description of its facility and the processes performed to convert PRC-origin jumbo rolls to cut-to-length tissue paper for shipment to the United States. See July 2 Response at pages 6 and 15, and Exhibit 5. ARPP explained that its production facility includes only one manufacturing plant involved with cut-to-length tissue paper. This manufacturing plant is responsible for the production, packing and shipment of manufactured products (including non-subject merchandise), as well as for the maintenance of all company accounts and records. See July 2 Response at page 7 and Exhibit 5. Details regarding the specific type of production equipment owned by ARPP, as well as the number of workers employed in its production facility, were provided in several proprietary exhibits in ARPP's questionnaire responses. See July 2 Response at page 15, Exhibits 13a and 13b, and September 19 Response at Exhibit S1-18b and S1-18d. The Department's review, at verification, of ARPP's facility, equipment, and processes used to produce cut-to-length tissue paper found no discrepancies with the production process information ARPP previously submitted on the record. See ARPP verification report at page 17 and July 2 Response at pages 25 - 27. Based on the fact that ARPP's capital equipment was not substantial, ARPP's labor force consisted primarily of unskilled temporary workers, and its tissue paper conversion operation was largely a manual operation, we preliminarily find that ARPP's production facilities to convert PRC-origin jumbo rolls to cut-to-length tissue paper are not extensive.

(e) Whether the Value of the Processing Performed in India Represents a Small Proportion of the Value of the Merchandise Imported into the United States

The statute directs the Department to consider the "value of processing" performed in the third country which is, by definition, a valuation of all processes performed in the third country in relation to the value of merchandise imported into the United States. To consider the value of ARPP's processing of the merchandise imported into the United States, we calculated ARPP's processing costs (numerator), as a percentage of ARPP's reported value of U.S. sales of sparkle tissue paper (denominator) during the inquiry period. Specifically, to derive the numerator of the

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China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 73 FR 57591 (October 3, 2008) (First Circumvention Final)).

calculation, ARPP provided allocations of processing and total costs to produce the tissue paper sold to the United States during the fiscal period April 2011 through March 2012. To derive the denominator, we used the weighted-average U.S. sales values for the PRC-origin sparkle tissue paper sold by ARPP during August 2011, which were reported in ARPP's questionnaire responses and verified by the Department. From our calculations, we determined that the value added by ARPP's processing is on average approximately 14 percent of the value of the finished merchandise.[10] Consequently, we preliminarily find that the value of the processing performed by ARPP in India to convert the PRC-origin jumbo rolls to cut-to-length tissue paper represents a small proportion of the value of the finished merchandise imported into the United States. See Analysis Memo for further discussion.

Summary of Analysis of Whether the Process of Assembly or Completion in the Foreign Country is Minor or Insignificant

In sum, we preliminarily conclude that the record evidence in this anti-circumvention inquiry supports a finding that the process of completion of the PRC-origin jumbo rolls into cut-to-length tissue paper in India is minor or insignificant. Pursuant to section 781(b)(2)(A) of the Act, we find that the level of investment by ARPP in the equipment used to convert the PRC-origin jumbo rolls is minimal. Pursuant to section 781(b)(2)(B) of the Act, we find that the absence of record evidence for R&D initiatives undertaken directly by ARPP in the production of tissue paper products shows that R&D is not a significant factor in the Indian tissue paper industry. Pursuant to section 781(b)(2)(C) of the Act, we find that the nature of the overall production process of cut-to-length tissue paper conducted by ARPP in converting the PRC-origin jumbo rolls to cut-to-length tissue paper is limited and minor. Pursuant to section 781(b)(2)(D) of the Act, we find that the extent of ARPP's production facility is limited and minor with respect to converting PRC-origin jumbo rolls to cut-to-length tissue paper because the capital equipment used by ARPP in converting the PRC-origin jumbo rolls is not substantial, the labor force used by ARPP is comprised primarily of temporary unskilled workers, and ARPP's conversion operation is largely manual. Finally, pursuant to section 781(b)(2)(E) of the Act, we find that value of the processing performed by ARPP to convert the PRC-origin jumbo rolls to cut-to-length tissue paper represents a small proportion of the value of the finished merchandise imported into the United States. Therefore, we preliminarily find that ARPP's processing operation to convert PRC-origin jumbo rolls to cut-to-length tissue paper in India is minor or insignificant, pursuant to section 781(b)(1)(C) of the Act.

(D) Whether the Value of the Merchandise Produced in the Foreign Country to Which the Order Applies Is a Significant Portion of the Total Value of the Merchandise Exported to the United States

Under section 781(b)(1)(D) of the Act, the value of the merchandise produced in the foreign country to which the order applies must be a significant portion of the total value of the merchandise sold in the United States in order to find circumvention. In this case, ARPP purchased the tissue paper jumbo rolls from the PRC, and processed them into finished tissue paper products at its facility in India. Because the production of the jumbo rolls took place in the

[10] Because this information is business proprietary, we have ranged the average value within plus or minus 10 percent.

PRC and the PRC is considered a non-market economy (NME) country, we used a jumbo roll surrogate value to determine whether the value of the merchandise produced in the PRC represents a significant portion of the value of the merchandise exported to the United States.

To determine whether the value of PRC-origin jumbo rolls purchased by ARPP was a significant portion of the total value of the finished merchandise ARPP sold to the United States, we calculated the jumbo roll value as a percentage of ARPP's reported value of U.S. sales of sparkle tissue paper during the inquiry period. In accordance with section 773(c)(4) of the Act, in valuing the factors of production (FOP), the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The Department selected Thailand as the surrogate country for the PRC because: (1) it is at a similar level of economic development pursuant to section 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from Thailand.[11] Therefore, we calculated the value of the PRC-origin jumbo rolls using a surrogate price from Thailand.

Our analysis shows that the value of the PRC-origin jumbo rolls is on average approximately 80 percent of the total value of the finished merchandise.[12] See Analysis Memo. Therefore, we preliminarily find that the value of the PRC-origin jumbo roll 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.

Other Factors to Consider

In making a determination whether to include merchandise assembled or completed in a foreign country within an order, section 781(b)(3) of the Act instructs us to take into account such factors as: (A) the pattern of trade, including sourcing patterns; (B) whether affiliation exists between the manufacturer or exporter of the merchandise described in section 781(b)(1)(B) and the person who uses the merchandise to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States; and (C) whether imports into the foreign country of the merchandise described in section 781(b)(1)(B) have increased since the initiation of the original investigation which resulted in the issuance of the order. Each of these factors is examined below.

(A) Pattern of Trade and Sourcing

The first factor to consider under section 781(b)(3) is changes in the pattern of trade, including changes in the sourcing patterns. To evaluate the pattern of trade in this case, we examined ARPP's source channel for jumbo rolls. According to ARPP, in none of the years since its

[11] See Memorandum to James P. Maeder, Jr., Director, AD/CVD Operations, Office 2, from Brian Smith, Case Analyst, through Irene Darzenta Tzafolias, Program Manager, AD/CVD Operations, Office 2, entitled "Certain Tissue Paper Products from the People's Republic of China: Selection of a Surrogate Country," dated February 27, 2013.

[12] Because this information is business proprietary, we have ranged the average value within plus or minus 10 percent.

establishment, except in fiscal year 2011-2012, did it import PRC-origin tissue paper jumbo rolls, cut-to-length tissue paper, or finished tissue paper. ARPP stated in its questionnaire response that it sourced PRC-origin jumbo rolls only in 2011, after it received for the first time an order for sparkle tissue paper products from a U.S. customer, and that all of its other tissue paper jumbo roll sourcing was domestic. See July 2 Response at page 10. Additionally, the record of this anti-circumvention inquiry shows that ARPP purchased PRC-origin tissue paper jumbo rolls in 2011from only one supplier. See July 2 Response at Exhibit 16.1 and Exhibit 23; and ARPP verification report at pages 25-28. Based on the facts on the record, we preliminarily find that ARPP's sourcing of jumbo rolls from a PRC supplier to produce tissue paper products, which were exported to the United States, supports a finding that circumvention occurred during the inquiry period.

In addition, we examined the timing and quantities of exports of tissue paper from the PRC between 2010 and 2011,[13] and exports of tissue paper from India to the United States between 2010 and 2011.[14] A review of the data shows that PRC exports of tissue paper to the United States decreased between 2010 and 2011, whereas India exports of tissue paper to the United States increased between 2010 and 2011. See Analysis Memo. Therefore, based on the facts on the record, we preliminarily find that the change in the pattern of trade generally supports a finding that circumvention occurred.

(B) Affiliation

The second factor to consider under section 781(b)(3) of the Act is whether the manufacturer or exporter of the PRC-origin tissue paper jumbo rolls is affiliated with the entity that assembles or completes the merchandise in India that is subsequently imported into the United States. Generally, we consider circumvention to be more likely to occur when the manufacturer of the PRC-origin merchandise is related to the third-country assembler and is a critical element in our evaluation of circumvention. See First Circumvention Prelim (unchanged in First Circumvention Final). In this inquiry, ARPP reported that it is not affiliated with any suppliers of PRC-origin jumbo rolls. See July 2 Response at pages 5-7 and Exhibits 3 and 5. In its January 9, 2013 comments, the petitioner points out that the Department should consider ARPP uncooperative in responding to the Department's questions concerning affiliation at verification, because it did not provide the written details of a business agreement between ARPP's affiliates, Stone Sapphire and Gemstone Printing, and a third-country exporter of the subject merchandise. See the petitioner's January 9, 2013 submission. However, the Department verified that the relationship between ARPP's affiliates and the third-country exporter has no bearing on ARPP's affiliation with PRC-origin jumbo roll suppliers, and that ARPP is not affiliated with any PRC producers or exporters of tissue paper jumbo rolls. See ARPP verification report at pages 9 – 12.

[13] We note that 2010 and 2011, respectfully, are the years before and during ARPP's importation of PRC-origin jumbo rolls and sale to the United States of tissue paper products produced from these jumbo rolls.
[14] Our analysis extends only to the year 2011 because although PRC export tissue paper data for 2012 is available from the service we use to collect such data (i.e., Global Trade Atlas), there is no Indian export tissue paper data available for 2012 from this service.

(C) Whether Imports Have Increased

The third factor to consider under section 781(b)(3) is whether imports into the foreign country of the merchandise described in section 781(b)(1)(B) have increased since the initiation of the original investigation. Generally, we consider circumvention to be more likely when imports of tissue paper jumbo rolls, the merchandise imported from the PRC, have increased into India. Where possible, we reviewed India's imports of PRC-origin jumbo rolls from 2004, the year the PRC tissue paper investigation was initiated, through 2012. We obtained PRC export data for HTS 4802.55 and 4802.61 (which include the HTS subheadings which we used to value the tissue paper jumbo rolls in our analysis pursuant to section 781(b)(1)(D) of the Act). In reviewing PRC exports of HTS 4802.55 and 4802.61 between 2004 through 2012, we found that PRC exports of tissue paper jumbo rolls to India have increased substantially since the initiation of the LTFV investigation.[15] See Analysis Memo. Accordingly, we find that the substantial increase in PRC tissue paper jumbo roll exports to India since the initiation of the LTFV investigation supports a finding that circumvention has occurred.

Summary of Statutory Analysis

As discussed above, in order to make an affirmative determination of circumvention, all the elements under sections 781(b)(1) of the Act must be satisfied, taking into account the minor or insignificant criteria listed in section 781(b)(2). In addition, section 781(b)(3) of the Act instructs the Department to consider, in determining whether to include merchandise assembled or completed in a foreign country within the scope of an order, such factors as: pattern of trade, affiliation, and whether imports into the foreign country of the merchandise described in section 781(b)(1)(B) have increased after the initiation of the investigation. Pursuant to section 781(b)(1) of the Act, we preliminarily find that the merchandise imported into the United States is within the same class or kind of merchandise that is subject to the PRC Tissue Paper Order and was completed or assembled in a third country. Additionally, pursuant to section 781(b)(1)(C) and 781(b)(2) of the Act, we preliminarily find that the process of assembly or completion of the PRC-origin jumbo rolls to cut-to-length tissue paper by ARPP is minor and insignificant. Furthermore, in accordance with section 781(b)(1)(D) and 781(b)(1)(E) of the Act, we find that the value of the merchandise produced in the PRC is a significant portion of the total value of the merchandise exported to the United States and that action is appropriate to prevent evasion of the PRC Tissue Paper Order. Thus, we preliminarily find affirmative evidence of circumvention in accordance with sections 781(b)(1) and (2) of the Act. Moreover, we find the factors required by section 781(b)(3) of the Act generally support a finding that circumvention of the PRC Tissue Paper Order occurred. Consequently, our statutory analysis leads us to determine that during the inquiry period there was circumvention of the PRC Tissue Paper Order as a result of ARPP's conversion of the PRC-origin jumbo rolls to cut-to-length tissue paper in India, as discussed above.

The Department notes that this represents the fourth instance in which the Department has found a company to have circumvented the PRC Tissue Paper Order.[16] However, unlike the situation in

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[15] We also found that PRC exports of tissue paper jumbo rolls to India increased between 2010 and 2012, the years before and after ARPP's importation of PRC-origin jumbo rolls.

[16] See also Third Circumvention Final; Certain Tissue Paper Products from the People's Republic of China:

the Third Circumvention Final of the PRC Tissue Paper Order involving the company Max Fortune Vietnam (MFVN), wherein we determined it appropriate to suspend liquidation on all entries of tissue paper products produced by this company, in part because of the company's failure to distinguish between PRC-origin and non-PRC-origin tissue paper in its books and records, we note that ARPP has demonstrated to the Department's satisfaction that it is able to distinguish PRC-origin and non-PRC-origin inventory. See ARPP verification report at pages 16-18 and 27-28. In addition, unlike MFVN, ARPP has cooperated fully with the Department's requests for information in this inquiry. Therefore, we find no basis on which to depart from our normal practice of suspending liquidation only on entries of merchandise declared to be PRC-origin by the importer pursuant to an affirmative determination of circumvention.

ARPP argues in its January 16, 2013, submission that the facts in this case do not warrant an affirmative preliminary finding. In support of its position, ARPP cites to the recently completed anti-circumvention inquiry of the antidumping duty (AD) order on glycine from the PRC,[17] wherein the Department made a negative anti-circumvention finding with respect to the company Paras Intermediates Ltd. (Paras). According to ARPP, Paras, like ARPP, inadvertently shipped a small amount of glycine made from raw materials of PRC-origin to the United States, which was determined to be merchandise subject to the AD order on glycine from the PRC, but once the company recognized its mistake, immediately ceased sale of the PRC-origin product. However, unlike the situation in Glycine from PRC, we were able to determine through verification that ARPP still has PRC-origin tissue paper in its inventory sufficient to fill a U.S. customer order and, therefore, the possibility of future entries into the United States of PRC-origin tissue paper processed in India remains. See ARPP verification report at page 1 and Attachment 3. In addition, unlike the company in Glycine from PRC which demonstrated to the Department's satisfaction that a lengthy period (i.e., four years) had passed since it last used PRC-origin product in its U.S. sales, ARPP has demonstrated that it has not used PRC-origin tissue paper in its U.S. sales only since June 2011. See ARPP verification report at pages 17-22 and pages 26-28.

We therefore determine that it is appropriate to instruct U.S. Customs and Border Protection (CBP) to suspend any entries of tissue paper products produced by ARPP from PRC-origin tissue paper. Because the potential for PRC-origin tissue paper processed in India to enter the United States still exists through ARPP's remaining (unused) inventory, as discussed above, the Department will consider the possibility of 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 that it made no shipments of subject merchandise (i.e., PRC-origin tissue paper further processed in India) during the review period.

Affirmative Final Determination of Circumvention of the Antidumping Duty Order, 74 FR 29172 (June 19, 2009); and First Circumvention Final.

[17] See Glycine From the People's Republic of China: Final Partial Affirmative Determination of Circumvention of the Antidumping Duty Order, 77 FR 73426 (December 10, 2012) (Glycine from PRC).

RECOMMENDATION

We recommend that pursuant to section 781(b) of the Act and 19 CFR 351.225, the Department preliminarily determine that ARPP is circumventing the PRC Tissue Paper Order.

___✓___Agree ________Disagree

Paul Piquado
Assistant Secretary
for Import Administration

27 February 2013
Date