

DATE: October 9, 2007

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results in the First Administrative Review of Certain Tissue Paper Products from the People's Republic of China

SUMMARY:

We have analyzed the briefs and rebuttal briefs of interested parties in the first administrative review of certain tissue paper products (tissue paper) from the People's Republic of China (PRC). As a result of our analysis, we have made certain changes from the preliminary results. *See Certain Tissue Paper Products from the People's Republic of China: Preliminary Results and Preliminary Rescission, In Part, of Antidumping Duty Administrative Review, 72 FR 17477, (April 9, 2007) (Preliminary Results)*. We recommend that you approve the positions described in the "Discussion of the Issues" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this administrative review:

General Issues

- Comment 1: Zeroing
- Comment 2: Classification of Expenses in Financial Ratios

Company-Specific Issues

Sansico Group-Related Issues

- Comment 3: Rescission of The Sansico Group

Samsam-Related Issues

- Comment 4a: Application of Adverse Facts Available based on Verification Findings
- Comment 4b: Verification Findings
- Comment 5: Other Verification Findings
- Comment 6: Clerical Errors in Preliminary Results

Max Fortune-Related Issues

Comment 7: Application of Adverse Facts Available based on Verification Findings

Background

We published the preliminary results of the first administrative review in the *Federal Register* on April 9, 2007. *See Preliminary Results*. The period of review (POR) is September 21, 2004 through February 28, 2006. On August 3, 2007, we received case briefs from respondent Foshan Sansico Co., Ltd., PT Grafitecindo Ciptaprima, PT Printec Perkasa, PT Printec Perkasa II, PT Sansico Utama, Sansico Asia Pacific Limited (collectively, the Sansico Group), interested party Target Corporation, and respondent Max Fortune Industrial Limited (MFI) and Max Fortune (FETDE) Paper Products Co., Ltd. (MFPP) (collectively, Max Fortune). On August 6, 2007, we received case briefs from petitioner Seaman Paper Company of Massachusetts, Inc. and respondent Samsam Productions Ltd., Guangzhou Baxi Printing Products Co., Ltd. (Guangzhou Baxi), Guilin Samsam Paper Products Ltd. (Guilin Samsam) and Samsam Premiums, Ltd. (d.b.a St Clair Pakwell) (collectively, Samsam). We received rebuttal briefs from Max Fortune, Samsam, and petitioner on August 20, 2007. On August 21, 2007, we received an additional rebuttal brief from petitioner and a rebuttal brief from the Sansico Group.

DISCUSSION OF THE ISSUES:

Comment 1: Zeroing

Max Fortune argues that the Department should eliminate the practice of zeroing in administrative reviews, and in particular eliminate zeroing the negative margins in Max Fortune's weighted-average margin calculation in the current review. Max Fortune contends that U.S. law or regulation does not explicitly provide for zeroing, yet it has become the Department's practice in administrative reviews. Furthermore, the World Trade Organization (WTO) Appellate Body, Max Fortune claims, has found that the U.S. practice of zeroing is inconsistent with the Anti-Dumping Agreement and General Agreement on Tariffs and Trade (GATT).¹ Therefore, Max Fortune argues, because the U.S. Court of Appeals for the Federal Circuit has held that the Department may occasionally reassess its policies² and because the Department sometimes changes its practices,³ the Department should reconsider its zeroing policy and change the methodology for the final results. Then, Max Fortune contends, the Department would be consistent with the tenet that U.S. law, whenever possible, should be construed in a manner consistent with its international obligations.⁴ *See Certain Tissue Paper Products from the People's Republic of China: Max Fortune Case Brief (August 3, 2007) (Max Fortune Case Brief)*, at 1-3.

Petitioner argues that the Department recently rejected the exact arguments presented by Max

¹ *See United States—Measures Relating to Zeroing and Sunset Reviews*, WT/DS322/AB/R (January 9, 2007), at p.190(c).

² *See SKF USA, Inc. v. United States*, 254 F.3d 1022, 1029-30 (Fed. Cir. 2001).

³ *See, e.g., Basis for Normal Value When Foreign Market Sales Are Below Cost*, Policy Bulletin 98.1 (February 23, 1998) and *Treatment of Inventory Carrying Cost in Constructed Value*, Policy Bulletin 94.1 (March 25, 1994).

⁴ *See, e.g., Alexander Murray v. Schooner Charming Betsy*, 6 U.S. 64, 118 (1804) and *Luigi Bormioli Corp. v. U.S.*, 304 F.3d 1362, 1368 (Fed. Cir. 2002).

Fortune in a recent *Brake Rotors 2005-2006* decision.⁵ Max Fortune, petitioner claims, has presented no basis for the Department to alter its analysis and position on “zeroing” as articulated in *Brake Rotors 2005-2006*. Furthermore, according to petitioner, the Department may not modify its current practice for zeroing in administrative reviews until it completes the notification and comment process required by the Uruguay Round Agreements Act. Petitioner notes that the Department has not yet invited public comment on its zeroing practice; therefore, it must continue its zeroing practice in these reviews. Finally, petitioner argues that while it has long been the Department’s responsibility to interpret U.S. antidumping statutes, it is not the Department’s responsibility to interpret and apply WTO agreements or the decisions of its dispute settlement bodies. Rather, petitioner contends, this is the role of the United States Trade Representative (USTR), and USTR has made no decision with regard to zeroing in this case. Therefore, petitioner concludes, the Department should base its “zeroing” determination on its best interpretation of the antidumping law and the statute’s purposes, and Max Fortune’s request that the Department change its current zeroing practice should be denied. *See Certain Tissue Paper Products from the People’s Republic of China: Petitioner’s Rebuttal Brief Concerning Max Fortune* (August 20, 2007) (Petitioner Max Fortune Rebuttal Brief) at 1-5.

Department’s Position:

Section 771 (35)(A) of the Tariff Act of 1930, as amended (the Act), defines “dumping margin” as the “amount by which the normal value *exceeds* the export price and constructed export price of the subject merchandise.” (emphasis added). The Department interprets this statutory definition to mean that a dumping margin exists only when normal value is greater than export or constructed export price. As no dumping margins exist with respect to sales where normal value is equal to or less than export or constructed export price, the Department will not permit these non-dumped sales to offset the amount of dumping found with respect to other sales. The U.S. Court of Appeals for the Federal Circuit has held that this is a reasonable interpretation of the statute.⁶

With respect to *US – Zeroing (EC)*, the Department recently announced that it was modifying its calculation of the weighted-average dumping margin when using average-to-average comparisons in antidumping investigations.⁷ In doing so, the Department declined to adopt any other modifications concerning any other methodology or type of proceeding, such as administrative reviews.⁸ In addition, the United States has not yet gone through the statutorily mandated process of determining how to implement the report with respect to the specific administrative reviews that were subject to the *US – Zeroing (EC)* dispute.⁹ As such, the

⁵ *See Brake Rotors From the People’s Republic of China: Final Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005-2006 Administrative Review*, 72 FFR 42386 (August 2, 2007), and accompanying Issues and Decision Memorandum at Comment 7, pages 22-24.

⁶ *See Timken v. United States*, 354 F.3d 1334, 1342 (Fed. Cir. 2004) (*Timken*), cert. denied sub nom., and *Koyo Seiko Co. v. United States*, 543 U.S. 976 (2004). *See also Corus Staal BV v. Department of Commerce*, 395 F.3d 1343, 1347 (Fed. Cir. 2005), reh’g denied, 2005 US App Lexis 10462 (Fed. Cir. 2005), cert. denied, 126 S. Ct. 1023 (January 9, 2006) (*Corus Staal BV*).

⁷ *See Antidumping Proceedings: Calculation of the Weighted-Averaged Dumping Margin During an Antidumping Investigation; Final Modification*, 71 FR 77722, 77724 (December 27, 2006).

⁸ *See id.*

⁹ *See* 19 USC 3538.

Appellate Body's reports in *US – Softwood Lumber*, *US – Zeroing (EC)* and *US – Zeroing (Japan)* have no bearing on whether the Department's denial of offsets in this administrative determination is consistent with U.S. law.¹⁰ Accordingly, the Department will continue in this case to deny offsets to dumping based on export transactions that exceed normal value.

Comment 2: Classification of Expenses in Financial Ratios

Max Fortune argues that, in using the 2005–2006 Pudumjee Pulp & Paper Mills Limited (Pudumjee) Annual Report to derive the surrogate financial ratios, the Department should reclassify “Consumption of Stores, Colours, Chemicals etc.” as raw materials rather than overhead, to avoid double-counting based on the factors of production reported by Max Fortune.

Max Fortune argues that the Department failed to capture the cost of inks as material costs and thus should include the line item in the materials, labor, and energy (MLE) calculation in the surrogate financial ratios. Max Fortune argues that it reported the consumption of inks and other chemicals as direct inputs, and therefore, the line item must be included in MLE to avoid double-counting. *See* Max Fortune Case Brief at 3–5 and attachment I & II.

Petitioner rebuts the line item reclassification proposed by Max Fortune, arguing that “spares and components” are properly classified as overhead items. Petitioner argues that the Pudumjee annual report specifies the cost breakdown of the spare parts and components, and only a partial amount may be allocated to the consumption of raw materials. *See* Petitioner Max Fortune Rebuttal Brief at 5-6.

Department's Position:

Pursuant to 19 CFR 351.401(b)(2), the Department will not double-count adjustments in calculating export price, constructed export price, and normal value. Particular to the instant review, because the Department required respondents to report the consumption of chemicals and colors (ostensibly inks and dyes) as raw material inputs, the Department agrees with Max Fortune that including the line item, “Consumption of Stores, Colours, Chemicals etc.,” as an overhead expense would constitute double-counting, as the ratio is applied to the cost of material in the Department's calculation of normal value.

Consistent with the Department's past practice, the Department also agrees with petitioner that “stores” are properly classified as an overhead item. *See, e.g., Brake Rotors From the People's Republic of China: Final Results of Antidumping Duty Administrative and New Shipper Reviews and Partial Rescission of the 2005-2006 Administrative Review*, 72 FR 42386 (August 2, 2007), and accompanying Issues and Decision Memorandum at Comment 3. However, the Department disagrees with petitioner's recommended calculation to distinguish the costs associated with “stores” from the costs associated with “colors and chemicals.” Specifically, the Department disagrees with petitioner's assertion that the “stores” expense is equivalent to “spares and components” expense, as there is no record evidence to support the assertion.

¹⁰ *See Corus Staal BV*, 395 F.3d at 1347-49 and *Timken*, 354 F.3d at 1342.

Therefore, without an appropriate methodology to distinguish the cost of “colors and chemicals” from “stores,” and because the Department required respondents to report the consumption of colors and chemicals as direct material inputs, to avoid double-counting in these final results, the Department has reclassified the line item “Consumption of Stores, Colours, Chemicals etc.” from overhead to MLE.

Company-Specific Issues

Sansico Group-Related Issues

Comment 3: Rescission of The Sansico Group

Petitioner argues that the only issue before the Department with regard to the Sansico Group is the country of origin of its exports to the United States. Substantial record evidence, petitioner contends, including market research, the nature of the papermaking equipment operated by Sansico’s suppliers, the physical characteristics of the tissue paper, expert analysis by members of the domestic tissue paper industry and an independent testing laboratory, and verification by the Department, supports a determination that the Sansico Group shipped tissue paper products to the United States during the POR that were made in China. The Department’s legal obligation, petitioner contends, is to impose antidumping duties on subject merchandise, which is defined without regard to the identity, state of mind, or location of the party exporting the product.¹¹ Because the record evidence shows that the tissue paper shipped by the Sansico Group during the POR was of Chinese origin, petitioner argues, the Department has a legal obligation to impose duties on that merchandise. Petitioner adds that the refusal of the Sansico Group’s Indonesian supplier to allow complete verification denied the Department the opportunity to verify the country of origin of any of the Sansico Group’s exports to the United States. Consequently, petitioner contends, the Department should determine that the Sansico Group’s exports to the United States are Chinese in origin. *See Certain Tissue Paper Products from the People’s Republic of China: Petitioner’s Case Brief Concerning the Sansico Group (August 6, 2007) (Petitioner Sansico Case Brief), at 1-2.*

Papermaking in Indonesia

The record evidence in this review, petitioner contends, shows that the Sansico Group exported tissue paper products to the United States that were not produced in Indonesia, and that were produced on cylinder papermaking machines used in China. On May 26, 2006, petitioner states that it presented information from the Sansico Group’s website demonstrating that the companies present themselves not as producers of tissue paper products, but as printers and producers of packaging with operations in Indonesia and China. In addition, petitioner states it submitted PIERS data, which indicated that entries from the Sansico Group were being shipped in questionable ways through various Asian ports, including Hong Kong, Taiwan, Singapore, and Ho Chi Minh City.¹² Afterward, petitioner claims that it commissioned a foreign market researcher to further investigate the Sansico Group’s claims. *See Petitioner Sansico Case Brief at 3-5.*

¹¹ *See* sections 736 and 771(25) of the Act.

¹² *See* Petitioner’s May 26, 2006, submission at 3-7.

On December 22, 2006, petitioner contends that it submitted substantial factual evidence, based on its research findings, establishing that while Indonesian paper producers may be able to produce a limited amount of decorative tissue of the type exported to the United States during the POR, namely 18 grams per square meter (gsm) tissue, China is the only source of supply for lighter weight decorative tissue paper (*i.e.*, less than 18 gsm).¹³ Petitioner argues that while its research established one company supplied jumbo rolls of 18 gsm tissue paper to the Sansico Group,¹⁴ Indonesian tissue paper manufacturers told its researcher that “nobody in Indonesia makes or produces MG {machine-glaze} paper with a basis weight of 14 grams per square meter.” Petitioner claims that its researcher also learned that the Sansico Group only converts tissue paper with a minimum basis weight of 18 gsm because tissue paper lighter than 18 gsm basis weight is not produced in Indonesia.¹⁵

In fact, petitioner maintains, members of the Indonesian tissue paper industry told petitioner’s researcher that China is the only regional source for tissue paper less than 18 gsm, including jumbo rolls, cut-to-length sheets, and finished gift tissue paper. Petitioner claims it also learned that the Sansico Group exports the majority of its finished gift-wrapping tissue paper principally to the U.S. market, with Target Stores as a customer. Finally, petitioner contends its researcher found that no paper mill, producer, or converter in Indonesia, including the Sansico Group, has the capability to produce or convert decorative or gift wrapping tissue in Indonesia with a basis weight less than 17 gsm.¹⁶ Given the context, according to petitioner, this evidence and the statements by the members of the Indonesian paper industry are highly probative and should be given substantial if not determinative weight by the Department. *See* Petitioner Sansico Case Brief at 5-10.

Paper Characteristics

Petitioner argues that the PIERS data it placed on the record show that all of the tissue shipped to Target during the POR from Indonesia came from the Sansico Group.¹⁷ Petitioner contends that the ties between the Sansico Group’s shipments to the United States and the tissue paper tested for basis weight and production method, as discussed below, are undisputed and show that the paper was not made on the equipment Sansico claims its suppliers use. *See* Petitioner Sansico Case Brief at 16.

Petitioner claims that an industry expert, as discussed in its December 22 submission, tested tissue paper bought from Target and labeled “Made in Indonesia.” This research,¹⁸ petitioner contends, made six conclusions. 1) Five out of six samples of “Indonesian” tissue purchased from a Target Store had basis weights less than 18 gsm, with some less than 14 gsm. 2) White tissue paper that was tested had a “hard” or shiny MG finish on one side of the sheet, while the other side is dull, meaning it was produced on a paper machine that uses a Yankee Dryer that

¹³ *See* Petitioner’s December 22, 2006, Submission (Petitioner’s December 22 submission) at 3-4 and 7.

¹⁴ *See id.* at 3-4.

¹⁵ *See id.* at 6.

¹⁶ *See id.* at 8.

¹⁷ *See id.* at 9.

¹⁸ *See id.* at 11-13.

imparts such a finish. 3) The difference in the “hard” and dull sides of the colored sheets tested is not as pronounced, indicating the sheets were dried using a different Yankee Dryer on a different paper machine. 4) White paper was produced on a Fourdrinier papermaking machine. 5) Colored sheets tear relatively easily and in a straight line in one direction, but not in the other. The unidirectional machine strength indicates that the paper was produced on a cylinder papermaking machine. 6) White tissue paper was produced on a different papermaking machine than the colored tissue paper. *See* Petitioner Sansico Case Brief at 8-9.

On May 3, 2007, petitioner states that it presented on the record the results of additional testing of samples of Sansico Group tissue paper being sold by Target Stores. First, a U.S. tissue paper industry executive explained, on the record, the differences in how Fourdrinier and cylinder machines form the initial wet sheet of paper and give finished paper fundamentally different physical characteristics.¹⁹ This U.S. industry executive (different from the executive mentioned above) next detailed his analysis of seven packages of white, colored, and printed cut-to-length sheets of decorative flat tissue paper sold in Target Stores and marked “Made in Indonesia.”²⁰ Overall, petitioner contends, this expert found that the white tissue paper had a basis weight of 11 pounds, or approximately 18 gsm, and the tear characteristics of the sheet, the lack of imperfections in sheet surface, and the absence of wire marks indicate that the white tissue paper was produced on a Fourdrinier machine or some type of papermaking machine based on Fourdrinier technology, such as a crescent former or twin wire machine. The executive also concluded, petitioner asserts, that the blue, light green, and cerise tissue was produced on a cylinder papermaking machine. This conclusion was based on several important physical characteristics of the paper, according to petitioner, including tear characteristics imparted by the cylinder papermaking process, the fact that the sheets were much stronger in the machine direction than across the machine direction and, when torn, the paper tended to tear along the machine direction. Furthermore, petitioner claims, the executive noted the blue, light green, and cerise tissue paper contained holes and “fish eyes” resulting from materials picked up during the papermaking process, and he saw an observable impression on the sheets, imparted by the seam of the wire on the drum used to deposit the furnish from the vat to the wire. *See* Petitioner Sansico Case Brief at 19-24.

Petitioner added that they also sent the Target tissue paper to an independent laboratory that provides testing services for the pulp and paper industry using the industry’s standards and procedures. As discussed in Exhibit 3 to Petitioner’s May 3 submission, according to petitioner, this laboratory analyzed and compared two different samples of tissue paper for tensile and tear strengths—one sample of light green tissue produced by petitioner on a Fourdrinier machine and one sample of green tissue paper marked “Made in Indonesia” and sold in Target Stores. The laboratory, petitioner contends, found that the green tissue identified as “Made in Indonesia”

¹⁹ *See* Petitioner’s May 3, 2007, submission (Petitioner’s May 3 submission) at Exhibit 1. *See also* Christopher J. Biermann, *Handbook of Pulp and Papermaking* at 209-214 (Academic Press 2d Ed. 1996) (excerpted at Exhibit 4 to Petitioner’s May 3 submission) (discussion of Fourdrinier papermaking) and Biermann, *supra* n. 11 at 234-235 (excerpted at Exhibit 4 to Petitioner’s May 3 submission) (discussion of cylinder papermaking).

²⁰ *See* Petitioner’s May 3 submission at Exhibit 1, paragraph 10. Petitioner notes that the executive analyzed the following types of cut-to-length tissue paper sheets: white (one package, 50 sheets, UPC 490530222148), blue (one package, 20 sheets, UPC 490530201259), cerise (one package, 20 sheets, UPC 490530222148), light green (one package, 20 sheets, UPC 490530210947), and combination printed tissue and colored tissue (three different packages, 20 sheets each package, having UPCs 490530217984, 490530225095, and 490530202140).

exhibited a very high ratio of machine directional versus cross-directional tensile strength and it stated that “the tear results are also dramatic with the CD measurement not being able to be done. This data is characteristic of cylinder machine made tissue paper.”²¹ Petitioner argues that three different types of analyses have found that the tissue paper the Sansico Group has repeatedly claimed is made in Indonesia on Fourdrinier machines is in fact produced on cylinder machines, not used by any of the Sansico Group’s Indonesian suppliers (*see below* for further discussion). Petitioner also notes that on the record the Sansico Group has responded to these analyses by arguing that the differences observed by the separate parties—experienced experts—were attributable to other aspects of the papermaking process, and that the paper all was made on Fourdrinier machines.²² These arguments, petitioner contends, were based not on sworn testimony from industry experts, but on lawyer’s arguments relying on excerpts printed from advertising materials published on the Internet.²³ *See* Petitioner Sansico Case Brief at 25-26.

Supplier Inconsistencies

Petitioner contends that, in submissions dated January 3 and January 29, 2007, the Sansico Group attempted to paint a different picture regarding its Indonesian supplier’s papermaking capabilities than that established by the evidence discussed above. On January 3, according to petitioner, the Sansico Group presented uncertified letters from two Indonesian paper producers, which it claimed to be suppliers of the decorative/gift wrapping tissue paper exported to the United States.²⁴ These letters stated the producers:

1. “{Could} produce tissue paper, including MG paper with basis weights range {sic} from 13 GSM to 40 GSM,” and “we have been supplying PT Grafitecindo Ciptaprima during the POR with MG paper for both 14 GSM and 18 GSM basis weights from our own production output.”²⁵
2. “{Could} produce tissue paper, with basis weight range from 14 GSM to 40 GSM,” and “we have been supplying PT Printec Perkasa and PT Grafitecindo Ciptaprima during the POR with tissue paper for both 14 GSM and 18 GSM basis weights from our own production output.”²⁶

Petitioner contends that omissions in these statements—mainly that the producers do not state that all of the flat tissue they supplied to the Sansico Group was produced by them—are as important as what is said. Petitioner maintains that while these producers may have supplied some paper from their own production, independent third-party evidence demonstrates that they supplied other amounts from Chinese sources. In its January 29, 2007, supplemental questionnaire response (Sansico 1st SQR), petitioner contends, the Sansico Group changed its story, now identifying three Indonesian companies as suppliers,²⁷ different from its January 3 submission. *See* Petitioner Sansico Case Brief at 10-12.

²¹ *Id.* at Exhibit 3, page 1.

²² *See* the Sansico Group’s May 18, 2007, submission (Sansico’s May 18 submission).

²³ *See id.* at Attachment 1.

²⁴ *See* the Sansico Group’s January 3, 2007, submission (Sansico’s January 3 submission) at 5-6 and Attachment 3.

²⁵ *See id.* at Attachment 3, pages 1 and 2.

²⁶ *See id.* at Attachment 3, page 3.

²⁷ *See* Sansico 1st SQR at 2 and Exhibit 3.

Also in the Sansico 1st SQR, petitioner continues, the Sansico Group claimed to identify the papermaking equipment used by its “suppliers” and claimed that these suppliers “self-produced 100 percent of the tissue paper they supplied to The Sansico Group during the POR.”²⁸ The Internet site of one supplier, petitioner contends, provides no indication that the company produces lightweight tissue paper suitable for use as decorative or gift wrapping tissue.²⁹ The product types and basis weights mentioned on the website, according to petitioner, reflect a fundamentally different type of papermaking operation. *See* Petitioner Sansico Case Brief at 12-14.

Petitioner further contends that the machines that the Sansico Group stated its suppliers used in the Sansico 1st SQR are Fourdrinier machines, which, as petitioner explained in its February 7 submission, have a distinct manufacturing process.³⁰ Research that petitioner conducted, as reported in its December 22 submission, petitioner argues, shows that the colored sheets of tissue paper with basis weights below 18 gsm could not have been sourced from Indonesian producers because the Target tissue paper was manufactured on cylinder papermaking machines, not on Fourdrinier machines.³¹ If the Sansico Group’s claims concerning the papermaking machinery installed at the companies’ three suppliers are accurate,³² petitioner contends, it is impossible that these companies could have supplied the tissue that was being sold in Target Stores marked “Made in Indonesia.” *See* Petitioner Sansico Case Brief at 14-18.

After the *Preliminary Results*, petitioner states, the Department issued a second questionnaire to the Sansico Group requesting information directly from the respondents’ Indonesian suppliers. In the Sansico 2nd SQR, petitioner claims, the Sansico Group changed its story concerning its paper suppliers, providing information that supports petitioner’s analysis that the cylinder-machine tissue paper being sold in Target Stores was produced in China. Petitioner contends that in the Sansico 2nd SQR, the Sansico Group changed the number of machines used by its Indonesian suppliers and the manufacturers of those machines.³³ Furthermore, petitioner claims, the Sansico Group changed its responses on the types of machines that were used by the companies’ suppliers and what they produced during the POR. The information contained in the supplemental response, petitioner argues, shows that the tissue paper tested by different experts could not have been made by any of the companies identified by the Sansico Group as suppliers.³⁴ *See* Petitioner Sansico Case Brief at 26-27.

Verification

Petitioner notes that in June 2007, the Department decided to verify the Sansico Group, as well as one of its suppliers. However, petitioner argues, the Indonesian supplier balked and refused to

²⁸ *See id.* at 9 and Exhibits 10 and 3. Petitioner notes that the Sansico Group’s May 22, 2007, 2nd supplemental questionnaire response (Sansico 2nd SQR) reports different information about the paper machines operated by the Sansico Group’s suppliers during the POR than the Sansico 1st SQR.

²⁹ *See* Petitioner’s February 7, 2007, submission (Petitioner’s February 7 submission) at 2.

³⁰ *See id.* at 6, n.2.

³¹ *See* Petitioner’s December 22 submission at 12-13.

³² Sansico 1st SQR at 2 and 3.

³³ *See* Sansico 2nd SQR at 1-2.

³⁴ *See id.* at 1-2.

allow the Department to conduct a complete verification.³⁵ Petitioner contends that the Department properly rejected the Sansico Group's attempt to force a partial verification and declined to conduct verification of the producer.³⁶ Petitioner argues that such behavior is grounds for rejection of an interested party's data and application of total adverse facts available (AFA).³⁷ While the Department was unable to verify the core issue, country of origin, at the verification of the Sansico Group exporter, according to petitioner, the Sansico Group admitted at verification that it had no way to verify the country of origin of the tissue paper that it shipped to the United States during the POR.³⁸ See Petitioner Sansico Case Brief at 28-29.

The Sansico Group also denied at verification, petitioner claims, that members of the Indonesian paper industry made representations to any party that "no paper mill or paper-producing company in Indonesia produces any paper with a basis weight that is less than 18 gsm."³⁹ To support this claim, petitioner contends, events were described that were inconsistent with the market research presented in Petitioner's December 22 submission. Statements made by a company executive at verification,⁴⁰ petitioner claims, concerning the dates and times of events, contradict the police report submitted by the Sansico Group as part of its January 3 submission⁴¹ and Petitioner's December 22 submission.⁴² Petitioner argues that the Sansico Group's efforts to counter the record evidence are themselves undermined by other record evidence and lack credibility; therefore, these representations should not outweigh the substantial evidence showing that the tissue paper at issue is not Indonesian in origin. See Petitioner Sansico Case Brief at 29-31.

Petitioner notes that section 776 of the Act specifically requires facts available where "an interested party or any other person" withholds or fails to provide information, significantly impedes a proceeding, or provides unverifiable information. Therefore, it argues, the fact that the Sansico Group's supplier refused to allow verification is no impediment to the application of facts available under section 776 of the Act. See Petitioner Sansico Case Brief at 31-32.

In the Sansico Group's July 27, 2007, submission (Sansico's July 27 submission) and August 1, 2007, submission (Sansico's August 1 submission), according to petitioner, the Sansico Group claimed that its supplier refused to allow verification because Section VIIA of the Indonesian

³⁵ See Memorandum To The File, Telephone Call Regarding Verification of Sansico Group's Indonesian Supplier, dated June 25, 2007 (Sansico Verification Memo); see also Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, regarding Verification of Sales Response of The Sansico Group in the Antidumping Duty Administrative Review of Certain Tissue Paper From the People's Republic of China, dated July 13, 2007 (Sansico Verification Report), at 3.

³⁶ Petitioner also argues, based on evidence gathered at verification, that it appears the verification failure may also be the result of the Sansico Group's failure to make the maximum efforts possible to garner the supplier's cooperation. See Sansico Verification Report at 9 and Exhibits 10 and 17.

³⁷ Citing section 776 of the Act and *National Candle Association v. United States*, 366 F. Supp. 2d 1318, 1320-23 (CIT 2005), affirming the Department in, e.g., *Petroleum Wax Candles From the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 68 FR 13264 (March 19, 2003) and accompanying Issues and Decision Memorandum at Comments 1 and 2.

³⁸ See Sansico Verification Report at 7 and 10.

³⁹ See *id.* at 9-10.

⁴⁰ See *id.* at 9 for the exact statement, which contains proprietary elements.

⁴¹ See Sansico's January 3 submission at Attachment 8.

⁴² See Petitioner's December 22 submission at 5 and Exhibit 1, page 7, paragraph 18.

Constitution “directs that only the Audit Board of the Republic of Indonesia . . . is authorized to audit and verify state finances, including the books and records of state-owned companies.”⁴³ Petitioner contends that Section VIIA shows that the Sansico Group’s claims lack credibility.⁴⁴ It argues that the section makes no reference to and provides no limitations on verification of information presented in the course of an antidumping duty case; rather, the section refers to macro-level auditing objectives, related to good governance issues. Furthermore, petitioner claims, the position taken by the Sansico Group is at odds with Indonesia’s obligations and undertakings as a WTO member,⁴⁵ where Indonesia agreed to allow verification as part of its WTO obligations and made no reservation regarding verification of state-owned enterprises when joining the WTO.⁴⁶ Finally, petitioner notes that state ownership of an Indonesian company has not been an impediment to verification in the other cases involving Indonesia.⁴⁷ See Petitioner Sansico Case Brief at 33-36.

In sum, the record, petitioner argues, contains multiple examples of conflicting or changing representations that have rendered the record incomplete in critical ways and have impeded the Department’s work in this review. Taken together, petitioner claims, the circumstances described above suggest a pattern of efforts to conceal the truth and mislead the Department. The circumstances also, petitioner argues, require the Department to “use the facts otherwise available in reaching the applicable determination...”⁴⁸ On balance, petitioner argues, the weight of the evidence points to a determination that the Sansico Group is shipping tissue paper products produced from Chinese tissue. The Department should render a determination in accordance with the record evidence, according to petitioner, determine that the Sansico Group’s shipments were from Chinese sources, and apply the only dumping margin currently in use in this proceeding—112.64 percent *ad valorem*—to the companies’ shipments during the POR and on a going forward basis, unless and until the Sansico Group can establish the country of origin of its exports to the United States.⁴⁹ See Petitioner Sansico Case Brief at 36-41.

Rebuttal

Target claims that the Sansico Group is an Indonesian producer of tissue paper from Indonesian tissue stock and that the Department verified the group’s claims on the record that it had no shipments of subject merchandise during the POR. Therefore, Target argues, the Department should rescind this administrative review with respect to the Sansico Group. Target also contends that the Department should remove incorrect language in its Sansico Group draft liquidation instructions for U.S. Customs and Border Protection (CBP) that states that CBP

⁴³ See Sansico’s July 27 submission at 2 and Sansico’s August 1 submission at 2.

⁴⁴ Petitioner notes that the Sansico Group has made no complaint about the procedures followed by the Department when arranging for verification in this review. See Sansico’s August 1 submission.

⁴⁵ Since January 1, 1995, see http://www.wto.org/english/thewto_e/countries_e/indonesia_e.htm.

⁴⁶ See Paragraph 7 of Article 6 of the Uruguay Round Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

⁴⁷ See, e.g., *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia*, 66 FR 49637 (September 28, 2001); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia*, 66 FR 49628 (September 28, 2001).

⁴⁸ See section 776 of the Act.

⁴⁹ Petitioner reiterates its arguments in its rebuttal brief. See *Certain Tissue Paper Products from the People’s Republic of China: Petitioner’s Rebuttal Brief Concerning the Sansico Group and Target Corporation* (August 20, 2007) at 1-2.

should “assess antidumping duties” on merchandise entered by the Sansico Group during the POR. *See Certain Tissue Paper Products from the People’s Republic of China: Case Brief of Target Corporation (August 3, 2007) (Target Case Brief) at 2-3.*

In its rebuttal brief, the Sansico Group agrees with petitioner that the salient issue in this review with regard to the Sansico Group is the country of origin of Sansico’s exports from Indonesia. However, the Sansico Group claims that record evidence substantiates that it has exported tissue paper of Indonesian origin to U.S. customers during the POR. The Sansico Group argues that the Department confirmed, at its on-site verification, that Sansico sourced the 14-18 gsm MG tissue paper stock it used to produce the tissue paper sold to U.S. customers during the POR exclusively from self-producing Indonesian suppliers, and not from Chinese manufacturers. The Sansico Group contends that, as it stated in its case brief,⁵⁰ in the absence of any credible record evidence to the contrary, the Department, for these final results, should affirm its preliminary finding that the Sansico Group had no shipments of subject merchandise during this review and rescind the review with respect to the Sansico Group.⁵¹ *See Certain Tissue Paper Products from the People’s Republic of China: Rebuttal Brief of the Sansico Group (August 21, 2007) (Sansico Group Rebuttal Brief), at 1-2.*

Supplier Records

The Sansico Group claims that petitioner has mischaracterized certain record evidence and painted a misleading portrait that Sansico’s prior submissions and statements have contained factual inconsistencies. The Sansico Group argues that its prior submissions and statements to the Department have been consistent and support the fact that the Sansico Group exported only Indonesian-origin tissue paper to the U.S. during the POR. For instance, the Sansico Group argues that information between its January 3 submission and the Sansico 1st SQR were different because the January 3 submission detailed only the Indonesian companies that supplied tissue paper weighing 14 gsm to Sansico during the POR, while the Sansico 1st SQR detailed all the Indonesian companies that supplied tissue paper weighing either 14 or 18 gsm, or both, to Sansico during the POR.⁵² *See Sansico Group Rebuttal Brief at 3-5.*

The Sansico Group also claims that it has accurately and completely reported information relating to the machinery used by each of its Indonesian suppliers to produce the tissue paper stock purchased by the Sansico Group. Petitioner, the Sansico Group argues, falsely alleges that the Sansico 2nd SQR “completely changed the Sansico Group’s story concerning what kinds of machines were used by the companies’ alleged suppliers, and what they produced during the POR.”⁵³ The Sansico Group contends that there is no inconsistency because the Sansico 1st SQR provided information regarding the machines used by its supplier to make tissue paper, while its May 22 submission lists all papermaking machinery used by its suppliers during the POR, regardless of the type of paper made.⁵⁴ The Sansico Group further notes that the types of

⁵⁰ *See Certain Tissue Paper Products from the People’s Republic of China: Case Brief of the Sansico Group (August 3, 2007) at 3-4.*

⁵¹ *See Preliminary Results, 72 FR at 17477.*

⁵² *See Sansico’s January 3 submission at 5-6 and Sansico 1st SQR at Exhibits 3 and 10.*

⁵³ *See Petitioner’s Sansico Case Brief at 27.*

⁵⁴ *See Sansico 1st SQR at Exhibit 10 and Sansico 2nd SQR at 2.*

machinery used by its suppliers were consistent between these submissions.⁵⁵ *See* Sansico Group Rebuttal Brief at 5-6.

The Sansico Group further argues that the inconsistencies that petitioner refers to between the Sansico Group at verification and a police report submitted in its January 3 submission are also mischaracterized and off point.⁵⁶ According to the Sansico Group, the statements made at verification were a summary of events occurring between September 9 and 11, 2006. Thus, the Sansico Group contends, the statements were consistent with the letter sent to petitioner's paid consultant by the Sansico Group's counsel⁵⁷ and with the police report in Sansico's January 3 submission, which only details the events of Saturday, September 9, 2006. *See* Sansico Group Rebuttal Brief at 7.

Indonesian Papermaking

The Sansico Group argues that petitioner's allegations regarding the use by the Sansico Group of Chinese-origin MG paper principally are derived largely from research conducted by petitioner's paid consultant, who concluded, allegedly based upon conversations with members of the Indonesian paper making industry (including a Sansico executive), that there is no production of tissue paper in Indonesia weighing less than 18 gsm. The paid consultant's research, the Sansico Group alleges, is so flawed that the credibility of his statements is called into question. The Sansico Group argues that the consultant's survey of the Indonesian tissue paper industry overlooked at least two major Indonesian suppliers of tissue paper weighing less than 18 gsm. Furthermore, the Sansico Group claims the information on these producers was readily discernible from public data sources and adds that both producers, on the record of this review, documented their specific capabilities of producing, in Indonesia, jumbo rolls of white and colored 14 gsm tissue paper and formally affirmed their supply relationships for such paper with Sansico during the POR.⁵⁸ Furthermore, according to the Sansico Group, the record evidence demonstrates that petitioner's paid consultant misattributed certain statements regarding the tissue paper making capabilities of a certain Indonesian producer, stating wrongly that it was "near bankruptcy," and wrongly described another Indonesian producer as a paper mill, not a paper trading company.⁵⁹ *See* Sansico Group Rebuttal Brief at 8-9.

Most troubling, the Sansico Group maintains, is petitioner's paid consultant's statements regarding conversations held with an executive of an Indonesian paper producer regarding the supposed unavailability of tissue paper weighing less than 18 gsm in Indonesia. As the verification report notes, according to the Sansico Group, this producer flatly and unequivocally denied the statements allegedly attributed to him.⁶⁰ Moreover, the Sansico Group alleges, during the verification, this producer provided e-mail evidence of false statements made by petitioner's

⁵⁵ *See* Sansico 1st SQR at Exhibit 10 and Sansico 2nd SQR at 1-2.

⁵⁶ *See* Petitioner's Sansico Case Brief at 30 and Sansico Verification Report at 9. *See also* Sansico's January 3 submission at Attachment 8.

⁵⁷ *See* Sansico's January 3 submission at Attachment 6.

⁵⁸ *See id.* at 5-6 and Attachment 3. *See also* Sansico 1st SQR at Exhibit 3 and Sansico 2nd SQR at 1-4.

⁵⁹ *See id.* at 6 and 10-11. *See also* Sansico Verification Report at 9-10 and Exhibit 9.

⁶⁰ *See* Sansico Verification Report at 9-10. (He would have never stated that Indonesian paper mills can't produce tissue paper with a basis weight of less than 18 GSM, as it is not true.).

paid consultant.⁶¹ The statements to the Department at verification, the Sansico Group claims, along with Sansico's multiple certified submissions, offers consistent evidence that the Sansico Group obtained all of its base tissue paper, including tissue paper weighing less than 18 gsm, from Indonesian suppliers who manufacture their tissue paper in Indonesia.⁶² See Sansico Group Rebuttal Brief at 9-10.

Physical Characteristics

Petitioner's arguments, the Sansico Group alleges, also rely heavily on flawed assumptions regarding the production and physical characteristics of tissue paper weighing less than 18 gsm made using Fourdrinier machines. The Sansico Groups asserts that it has repeatedly demonstrated that each of its Indonesian tissue paper suppliers produces or is capable of producing tissue paper weighing 18 gsm or less. Moreover, the Sansico Group contends, these suppliers have specifically documented their capabilities of manufacturing 14 gsm tissue paper on Fourdrinier machines and formally affirmed their supply of such paper to Sansico.⁶³ The Department itself, according to the Sansico Group, corroborated with the manufacturers of the machines used by Sansico's Indonesian suppliers that these particular machines can produce tissue paper weighing less than 18 gsm.⁶⁴ See Sansico Group Rebuttal Brief at 10-12.

The Sansico Group argues that petitioner reiterates its allegation that the tissue paper sold by Sansico to a U.S. customer is made on cylinder machines in China, not Indonesia.⁶⁵ Petitioner, the Sansico Group claims, wrongly attributes differences in the relative strength of a sheet of tissue paper to the type of papermaking process (*i.e.*, Fourdrinier versus cylinder) used to produce the paper.⁶⁶ The Sansico Group contends that, for example, differences in machine-directional (MD) versus cross-directional (CD) tensile strength ratios are not always or solely attributable to the forming process, meaning that tissue paper produced using a Fourdrinier machine may or may not possess MD to CD tensile strength differences⁶⁷ from paper produced on a cylinder machine. As such, the Sansico Group claims, petitioner cannot presumptively conclude that the colored tissue paper purchased from a U.S. customer was produced using a cylinder machine, merely because that paper exhibited a different ratio of MD to CD tensile strength or had different tear properties than tissue paper produced by petitioner using its own Fourdrinier machine. See Sansico Group Rebuttal Brief at 12-16.

⁶¹ See *id.* at 10 and Exhibit 9.

⁶² See *id.* at 8 ({"W}e noted no instances in which the company appeared to make purchases of tissue paper from a party other than an Indonesian tissue supplier"; "We noted instances of other products, such as tissue paper, as having been imported by Sansico.).

⁶³ See Sansico's January 3 submission at 5-6 and Sansico 1st SQR at Exhibits 3 and 10. See also Sansico 2nd SQR at 1-4.

⁶⁴ See Memorandum to the File, regarding Certain Tissue Paper Products from the People's Republic of China: Telephone Conversation with Company A and Company B (April 2, 2007) (Machinery Memo).

⁶⁵ See Petitioner's Sansico Case Brief at 19-26.

⁶⁶ The Sansico Group notes that it previously rebutted petitioner's arguments on this matter in its May 18 submission.

⁶⁷ See William E. Scott, James C. Abbott, Stanley Trosset, *Properties of Paper, Second Edition, revised*, TAPPI Press, 1995, at 142; see also Herbert Holik, ed., *Handbook of Paper and Board*, Wiley-VCH Verlag GmbH & Co. KGaA, 2006, at 263.

Verification

The Department's verification of Sansico, according to the Sansico Group, confirmed that Sansico sourced and sold only Indonesian-origin MG tissue paper weighing between 14 and 18 gsm in the U.S. during the POR. The Sansico Group points out that at verification the Department "toured PT Printec's warehouse facilities, and observed that all jumbo rolls were labeled as having been produced in Indonesia."⁶⁸ The Department, according to the Sansico Group, also reviewed the full sales, purchase, and production records maintained by PT Printec Perkasa and "noted no instances in which the company appeared to make purchases of tissue paper from a party other than an Indonesian tissue paper supplier."⁶⁹ The Sansico Group claims the Department also "noted no instances of other products, such as tissue paper, as having been imported by Sansico."⁷⁰ Furthermore, the Sansico Group argues, the Department reviewed the records of sales identified on sub-ledger accounts for Foshan Sansico Co. Ltd., located in China, and Sansico Asia Pacific Limited, located in Hong Kong. Again, according to the Sansico Group, the Department "found no instances of sales of tissue paper or jumbo rolls being made to any member of Sansico in Indonesia."⁷¹ *See Sansico Group Rebuttal Brief at 16-17.*

The Sansico Group claims that despite its modest size and limited resources, it has complied, to the best of its ability, with all of the Department's requests during this proceeding. With respect to the verification of its Indonesian supplier, according to the Sansico Group, Sansico diligently undertook to ensure the supplier's full participation in the Department's verification—repeatedly seeking the unrelated supplier's permission for the Department to review its books and records beginning in April 2007 through June 22, 2007.⁷² Rather than balking at the verification, as petitioner claimed in its case brief, the Sansico Group argues that, promptly on receiving the 10-page verification agenda and learning of its supplier's inability to provide cost reconciliation data and access to its books and records, Sansico telephonically notified the Department. Though the supplier, the Sansico Group argues, was willing to permit the Department to visit and tour its facilities to verify the record evidence regarding its production in Indonesia and sales to Sansico of Indonesian-origin MG tissue paper weighing 14 and 18 gsm during the POR and was prepared to discuss and review its procedures for purchasing raw materials used to produce tissue paper from its suppliers,⁷³ the unaffiliated supplier was unable to accommodate the Department's request for cost reconciliation data or to permit the Department to audit and verify its accounting.⁷⁴ The Sansico Group contends that it informed the Department that Section VIII A of the Constitution of the Republic of Indonesia, as amended, directs that only the Financial Audit Board of the Republic of Indonesia is authorized to audit and verify state finances, including the books and records of state-owned companies.⁷⁵ *See Sansico Group Rebuttal Brief at 17-20.*

⁶⁸ *See Sansico Verification Report at 6.*

⁶⁹ *See id.* at 8.

⁷⁰ *See id.* at 6 and Exhibit 13.

⁷¹ *See id.*

⁷² *See id.* at 9 and Exhibits 10 and 17.

⁷³ *See the Sansico Group's June 22, 2007, submission. See also Sansico Verification Report at 9 and Exhibit 11.*

⁷⁴ *See Sansico's August 1 submission.*

⁷⁵ The Sansico Group notes that petitioner's cite to the Uruguay Round Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 governs only the verification of respondent interested parties in the countries that are the target of antidumping proceedings, which is not the case in this review as the supplier is

The Sansico Group alleges that the application of AFA in the context of a failure to provide information within the control of a supplier is warranted only where the supplier is a producer of subject merchandise. Where, as here, the Sansico Group contends, the unrelated supplier just sells an input material to an interested party and is not itself a producer of the finished product, the Department does not have statutory authority to conduct a verification unless it has the consent of that supplier. Accordingly, the Sansico Group argues, petitioner's request to apply adverse facts is unprecedented and should be rejected outright. *See Sansico Group Rebuttal Brief at 21.*

In sum, the Sansico Group contends, the record is clear, as verified by the Department, that Sansico purchased Indonesian-origin cut-to-length sheets of white MG tissue paper weighing 18 gsm and jumbo rolls of white and colored MG tissue paper weighing 14 and 18 gsm from Indonesian suppliers, which were converted by Sansico and sold for export to customers in the United States during the POR. As such, it claims, there is no basis on which the Chinese antidumping duty order on Certain Tissue Paper Products from the People's Republic of China should apply to Sansico's tissue paper exports. Therefore, the Sansico Group argues, the Department should affirm its *Preliminary Results* and continue to find that none of the Sansico companies exported Chinese-origin tissue paper to the United States during the POR and rescind this review as to Sansico. *See Sansico Group Rebuttal Brief at 2.*

Department's Position:

The Department has considered all evidence on the record in the instant review and continues to find for these final results that the evidence indicates the Sansico Group had no shipments of subject merchandise during the POR. Therefore, the Department is rescinding this review with respect to the Sansico Group.

As a preliminary matter, as noted above, the Department asked the Sansico Group if it could verify supplier A,⁷⁶ the unaffiliated supplier discussed above.⁷⁷ After receiving the Verification Outline, the Sansico Group informed the Department that supplier A would not permit a total verification of its books and records in June 2007.⁷⁸ As a result, the Department declined to visit supplier A's facility, as such a visit would not provide relevant information as to supplier A's commercial transactions during the POR.⁷⁹ In other words, if supplier A were truly importing into Indonesia tissue paper manufactured in China, and then re-exporting that merchandise to the Sansico Group, as alleged by petitioner, a directed "walk-through" would not have provided any relevant benefit to verifying officials.

unrelated to the Sansico Group, the party participating in the review.

⁷⁶ *See Sansico Verification Memo.* When referring to this supplier, whose name is proprietary in nature, in the Department's position of this memorandum, the Department will use the term "supplier A."

⁷⁷ *See Letter to the Sansico Group from Christopher D. Riker, AD/CVD Operations, Office 9, regarding 1st Administrative Review of Certain Tissue Paper Products From the People's Republic of China: Verification Outline (June 15, 2007) (Verification Outline).*

⁷⁸ *See the Sansico Group's June 22, 2007, submission.*

⁷⁹ *See Sansico Verification Memo.*

It goes without question that if Sansico Group's supplier were affiliated with the exporter, the Department would have the statutory authority to require the Sansico Group to provide the requested information, and, in the face of being denied such access to the supplier's books and records, would have applied adverse facts available, pursuant to sections 776(a) and (b) of the Act, as advocated by the petitioner now in this case. However, no party alleges that the Sansico Group and its supplier are affiliated, and there is no evidence on the record that the Sansico Group controls its supplier, or that its supplier controls the Sansico Group. *See* sections 771(33)(g) and (f) of the Act (defining the term Affiliated Persons).

Thus, the Department must determine if, absent a finding of affiliation between the Sansico Group and supplier A, it has the legal authority, during the conduct of an administrative review, to nonetheless impose the supplier's decision not to open its books and records up to the Department as a failure on the Sansico Group's part to act to the best of its ability in providing necessary information. As petitioner argues in its case brief, the Department often does hold an exporter accountable for the actions of an unaffiliated party in non-market economy cases.⁸⁰

We note, however, that the Department specifically requires exporters in non-market economy cases to provide information from unaffiliated parties when it needs information, usually factors of production, with which to calculate an antidumping duty margin. In other words, if the Department does not have an exporter's factors of production in a non-market economy investigation or administrative review, it simply cannot calculate an antidumping duty margin without applying facts available.

This is not the case in this review. While the Sansico Group is a respondent, its response on the record of this review has consistently been that it had no shipments of subject merchandise to the United States during the POR.⁸¹ Therefore, the Department did not require that the Sansico Group, or supplier A, supply factors of production information or specific sales data.

In addition, we also note that this inquiry was conducted pursuant to an administrative review, under Section 751(a)(2)(A) of the Act and not pursuant to a claim of circumvention, under Section 781 of the Act. Had petitioner requested a circumvention inquiry, and had the Department been denied access to supplier A's review-period books and records during the conduct of the circumvention inquiry, the Department would have had the authority to apply adverse facts available to the Sansico Group's supplier A sales, pursuant to sections 776(a) and (b) of the Act.

However, the facts in this case do not apply to either of those legal or factual situations. Thus, the Department has concluded that it cannot apply AFA to the Sansico Group's calculations because its unaffiliated Indonesian supplier did not provide the Department with access to its POR books and records.

⁸⁰ *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508 (March 2, 2007), and accompanying Issues and Decision Memorandum at Comment 20.

⁸¹ *See, e.g.,* the Sansico Group's November 15, 2006, submission.

Thus, the Department must make its determination based solely upon the information on the record of this administrative review, as reported by Sansico and as verified by the Department.

With regard to petitioner's argument and evidence that Indonesian tissue paper producers cannot make tissue paper less than 18 gsm in basis weight, the Department points to supplier A website, which states it can produce such merchandise,⁸² and the fact that that supplier A stated on the record that it could make tissue paper of 18 gsm or less and supplied such paper to the Sansico Group during the POR from its own production output.⁸³ Furthermore, the Department's verification team saw tissue paper rolls of less than 18 gsm that were labeled made in Indonesia when it toured the Sansico Group's production facilities.⁸⁴ In addition, the Department called the manufacturers of the machines that the Sansico Group said its suppliers used during the POR and the manufacturers of those machines confirmed that the machines could produce tissue paper less than 18 gsm in weight.⁸⁵ Although the research report relied on by petitioner contains statements that Indonesia does not have such a capacity, we have determined that the substantial evidence on the record supports a conclusion that such a capacity does, in fact, exist in Indonesia.

We note that petitioner has claimed that the colored tissue paper purchased from a Target store labeled "Made in Indonesia" and tested by industry experts was manufactured by cylinder papermaking machines. In response, neither supplier A nor the Sansico Group's other suppliers claimed on the record that they used cylinder machines to make the tissue paper at issue during the POR.⁸⁶ Although petitioner has placed a fairly significant amount of information on the record to support its claim that the tested paper's "tear characteristics," "base weight," "fish eyes," "impressions," "Machine Glaze finish" and other physical characteristics all demonstrate that the colored paper was manufactured by cylinder papermaking machines, we find that none of those observations nor the presence of cylinder machine-made tissue paper outweigh the Department's verification findings that there was no evidence that Sansico shipped subject Chinese tissue paper to the United States during the POR.

Even if the Department were to presume that the colored Indonesian tissue paper tested from Target was exported by the Sansico Group, which we cannot definitively confirm from the record evidence,⁸⁷ all the Department could conclude from this would be that at least one of the Sansico Group's unaffiliated suppliers may not have provided accurate information with respect to its production methodology for certain tissue paper sold to Sansico. However, whether or not one or more of the Sansico Group's suppliers uses a cylinder machine to produce colored tissue paper, the Department still could not reach the conclusion, based on this alone, that the Sansico Group *must* have exported tissue paper of PRC-origin.

Thus, in conclusion, the Department has determined that the substantial evidence on the record, including the fact that the Department's verification team found no evidence at verification that

⁸² See Sansico's January 3 submission at Exhibit 5.

⁸³ See *id.* at Exhibit 3.

⁸⁴ See Sansico Verification Report at 6 and Exhibit 13.

⁸⁵ See Machinery Memo.

⁸⁶ See Sansico 1st SQR at Exhibit 10 and Sansico 2nd SQR at 1-2.

⁸⁷ We note that while petitioner's PIERS data on this subject was not disputed on the record, the Department cannot be sure that the PIERS data encompasses the full universe of Indonesian sales of tissue paper during the POR.

the Sansico Group was exporting tissue paper of 18 gsm or less that was non-Indonesian in origin,⁸⁸ supports a decision that the Sansico Group was not shipping subject merchandise to the United States during the POR. Therefore, the Department continues to find for these final results that the Sansico Group had no shipments of subject merchandise during the POR and will rescind this review with respect to the Sansico Group.⁸⁹

Samsam-Related Issues

Comment 4a: Application of Adverse Facts Available based on Verification Findings

Petitioner argues that because of Samsam's failures to act to the best of its ability during the administrative review, as discussed below, pursuant to section 776 of the Act, the Department should apply total AFA to Samsam's calculations. Specifically, petitioner argues AFA is warranted because of Samsam's verification failures, inability or unwillingness to produce documentation, and for impeding the verification of critical sale and production information. Citing *NSK Ltd. v. United States*, Slip Op 05-1296 at 8-9 (Fed. Cir. Mar. 7, 2007), petitioner argues that Guilin Samsam did not act to the best of its ability, and, therefore, failed to cooperate pursuant to section 776 of the Act. Furthermore, pursuant to section 773(f)(1)(A) of the Act and 19 CFR 351.401(g), petitioner argues that Guilin Samsam's failure to verify the completeness and accuracy of its U.S. sales and factors of production (FOPs) significantly distorts the Department's analysis and is inconsistent with the general requirements for accurate and complete record-keeping. See *Certain Tissue Paper Products from the People's Republic of China: Petitioner's Case Brief Concerning Samsam* (August 6, 2007) (Petitioner Samsam Case Brief), at 10-13. Furthermore, petitioner argues that the application of AFA is warranted because "[as] discussed extensively in Seaman Paper's March 3, 2007 Letter, the transaction at issue was of such a minute quantity for such unique distribution that it did not provide a *bona fide* representation of normal commercial sales of subject merchandise."⁹⁰

Samsam rebuts petitioner's claims by asserting that Samsam fully clarified, rebutted, or contested the Department's verification findings,⁹¹ and thus all data was verified and tied to the company's records. Samsam argues that any remaining discrepancies either have no impact on the margin calculation, or the Department can rectify them using record evidence. Samsam argues that despite the fact that Samsam is a first time respondent with five different entities operating in different locations with limited prior coordination, Samsam fully cooperated with the Department's requests. Samsam asserts that at no point did the Department find deficiencies

⁸⁸ See Sansico Verification Report.

⁸⁹ The Department notes it will also correct the CBP instructions for the Sansico Group for the final results, as noted in the Target Case Brief.

⁹⁰ See Petitioner Samsam Case Brief at 3.

⁹¹ See Memorandum to the File, regarding Verification of the Sales & Factors Responses of Samsam Productions Limited in the Antidumping Duty Review of Certain Tissue Paper Products from the People's Republic of China, dated July 12, 2007. See also Memorandum to the File, regarding Verification of the Factors Responses of Guangzhou Baxi Productions Limited and Guilin Samsam Paper Products Ltd. in the Antidumping Duty Review of Certain Tissue Paper Products from the People's Republic of China, dated July 12, 2007. See also Memorandum to the File, regarding Verification of the Sales Responses of Samsam Premiums Ltd. (d.b.a. St. Clair Pakwell) in the Antidumping Duty Review of Certain Tissue Paper Products from the People's Republic of China, dated July 12, 2007 (Samsam CEP Verification Report).

with Samsam's data. *See* Certain Tissue Paper Products from the People's Republic of China: Samsam Rebuttal Brief (August 20, 2007) (Samsam Rebuttal Brief), at 1-4.

Samsam argues that the Department has consistently rejected requests to penalize respondents by applying facts available simply because certain records were not maintained or kept, so long as the respondent reports data in accordance with its normal accounting practices. Samsam cites *Corrosion-Resistant Carbon Steel Flat Products from the ROK*,⁹² *Brass Sheets and Strip from the Netherlands*,⁹³ and *Diamond Sawblades from the ROK*,⁹⁴ where the Department consistently rejected applying AFA to a respondent that did not fully conform to the Department's reporting instructions and did not maintain certain accounting books and records to support its data. Samsam argues that the Department must determine whether the data provided was the best available given Samsam and St. Clair Pakwell's standard record keeping practices. Samsam argues that, pursuant to section 773(f)(1)(A) of the Act, Samsam's accounting records were kept in accordance with Chinese generally accepted accounting principles (GAAP) and accurately reflect costs associated with its production, and therefore, the Department should rely on Samsam's records. *See* Samsam Rebuttal Brief at 22–25.

Furthermore, Samsam argues that none of the facts-available justifications listed in section 776 of the Act applies to Samsam, and that the Department should not apply AFA. Samsam argues that Samsam fully complied with the Department's requests, and was fully verified. Citing *Fujian Machinery and Equipment Import & Export Corp. v. United States*, 178 F. Supp. 2d at 1305 (CIT 2001), and *Krupp Thyssen Nirosta v. United States*, 25 CIT 793, 2001 WL 812167 (CIT) (CIT 2001), Samsam argues that because of the number of entities involved, the details of the instant case were extraordinarily complicated, and therefore total AFA is inappropriate. Samsam asserts that it provided accurate and verifiable data, and pursuant to section 776 of the Act, the Department may not apply AFA when the respondent does the "maximum it is able to do," citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373 (Fed. Cir. 2003). Citing *Fabrique de Fer de Charleroi S.A. v. United States*, 25 CIT 741, 155 F. Supp. 2d at 801 (CIT 2001), Samsam argues that it did not willfully submit inaccurate or incomplete information. Samsam argues that the CIT has upheld that the Department may only use AFA when a respondent is uncooperative or refuses to respond, citing *Tung Fong Indust. Co., Inc. v. United States*, 318 F. Supp. 2d at 1321 (CIT 2004), and *Kompass Food Trading Intern. v. United States*, 24 CIT 678, 2000 WL 1117979 (CIT 2000).

⁹² *Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 71 FR 7513 (February 13, 2006) (*Corrosion-Resistant Carbon Steel Flat Productions from the ROK*), and accompanying Issues and Decision Memorandum at Comment 3.

⁹³ *Brass Sheet and Strip from the Netherlands: Final Results of Antidumping Duty Administrative Review*, 62 FR 51449 (October 1, 1997) (*Brass Sheets and Strip from the Netherlands*), and accompanying Issues and Decision Memorandum at Comment 6.

⁹⁴ *Notice of Final Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the Republic of Korea*, 71 FR 29310, 29314 (May 22, 2006) (*Diamond Sawblades from the ROK*), and accompanying Issues and Decision Memorandum at Comment 51.

Samsam cites various rulings by the Court of International Trade (CIT)⁹⁵ affirming the Department's AFA findings and argues that its response is wholly dissimilar from the facts in these cases. Samsam argues that the Department consistently rejects AFA available where the respondent cooperated to the best of its ability, citing *Certain Steel Concrete Reinforcing Bars From Turkey: Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65086 (November 7, 2006), and accompanying Issues and Decision Memorandum at Comment 2; *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China*, 71 FR 53079, 53086 (September 8, 2006), and accompanying Issues and Decision Memorandum at Comment 13; *Stainless Steel Bar From India: Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 69 FR 55409, 55412 (September 14, 2004), and accompanying Issues and Decision Memorandum at Comment 2; and *Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Color Television Receivers From Malaysia*, 69 FR 20592, 20594 (April 16, 2004), and accompanying Issues and Decision Memorandum at Comment 1. Samsam argues that the Department does not apply AFA unless the respondent refuses to participate, fails to respond to the Department's questionnaires, or fails verification, none of which pertains to Samsam. See Samsam Rebuttal Brief at 22–34.

Department's Position:

The Department has analyzed all of the information provided by Samsam on the record as well as information collected during the verification of Samsam and its affiliates. In light of information discovered at verification, the Department has analyzed the circumstances surrounding Samsam's sale with respect to the question of whether the single sale under review was a *bona fide* transaction. See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d at 1337 (2005) (*Hebei New Donghua*) citing *Windmill International Pte., Ltd. v. United States*, 26 CIT 221, 224–25, 193 F. Supp. 2d at 1303, 1307 (2002) (*Windmill*), and *American Silicon Technologies v. United States*, 110 F. Supp. 2d at 992, 995 (2000) (*American Silicon*).

In the conduct of an administrative review, if a producer's or exporter's transactions involve price, quantities, and overall circumstances that do not call into question the commercial viability of those sales, generally, the Department will not analyze in great detail the *bona fides* of those sales. However, if in the conduct of the review, the Department discovers information that calls into question reported facts on the record that pertain to the commercial nature of those transactions, the Department may conclude that a detailed *bona fides* analysis is warranted.

As detailed below, Samsam made a single sale during the POR. This fact alone did not cause the Department to conclude anything was commercially suspect about their transaction. However,

⁹⁵ *Heveafil Sdn. Bhd. v. United States*, 58 Fed.Appx. 843, 2003 WL 1466193 (C.A.Fed) (Fed. Cir. 2003); *Nippon Steel Corp. v. United States*, 337 F.3d 1373 (Fed. Cir. 2003); *Branco Peres Citrus, S.A. v. United States*, 173 F. Supp. 2d at 1363 (CIT 2001); *China Far Indus. Factory Co., Ltd. v. United States*, 343 F. Supp. 2d at 1344 (CIT 2004); *Crawfish Processors Alliance v. United States*, 343 F. Supp. 2d at 1242 (CIT 2004); *NTN Bearing Corp. of America v. United States*, 6 F. Supp. 2d at 1257, 24 ITRD 1139 (CIT 2002); and *NSK Ltd. v. United States*, 346 F. Supp. 2d at 1312 (CIT 2004).

subsequent information discovered at verification called into question the commercial nature of the sale. Thus, the Department has analyzed, in detail, the *bona fides* of Samsam's sale.

During the course of the instant administrative review, Samsam reported that it made one sale of subject merchandise during the 18-month POR. Consistent with the Department's practice, the Department requested subsequent sales information in its supplemental questionnaires, in order to evaluate the *bona fide* nature of Samsam's single reported sale. See Department's second, third, and fourth supplemental questionnaires.

In the Department's October 24, 2006, second supplemental questionnaire, the Department requested that Samsam "provide a complete list of subsequent sales and include date of sale, quantity, value, and customer name." In response, Samsam provided the requested list of subsequent sales. See Samsam's second supplemental response, at exhibit 1. In the Department's December 19, 2006, third supplemental questionnaire, the Department requested that Samsam "provide an updated list of subsequent sales." In response, Samsam provided a list of sales by customer from November 24, 2006, through December 26, 2006. See Samsam's third supplemental response at exhibit 2. In the Department's February 2, 2007, fourth supplemental questionnaire, the Department again requested that Samsam "provide an updated and revised worksheet of POR and subsequent sales to report the per ream price of each listed sale." In response, Samsam reported the per unit price and attached an updated worksheet of subsequent sales. See Samsam's fourth supplemental response at exhibit 5.

Thus, on three separate occasions, in three separate supplemental questionnaires, the Department requested that Samsam revise and update its subsequent sales worksheet. In each instance, Samsam reported the identical information regarding its subsequent sales, and certified that the information was accurate and complete.

On May 21, 2007, the Department conducted verification at St. Clair Pakwell, Samsam's U.S. affiliate. During verification, the Department discovered that St. Clair Pakwell misreported the quantity and price of many of its subsequent sales, by identifying reams as cases. Thus, we found that Samsam, in its supplemental responses had essentially mis-reported the reported price of each subsequent sale, such that its reported prices for subsequent sales appeared to be similar to that of its single POR sale. The Department also found that certain reams sold subsequent to the POR contained a different quantity of sheets per reams than the ream sold during the POR, also essentially mis-reporting price of the sales. When questioned by the Department, company officials acknowledged that they had misreported the price for its subsequent sales. See Samsam CEP Verification Report at 9.

Thus, due to Samsam's misreporting of its subsequent sales information, the Department was not provided the opportunity or sufficient information at the time the preliminary results were issued to accurately evaluate the circumstances surrounding the single POR sale in comparison to St. Clair Pakwell's subsequent sales of comparable merchandise. It is not insignificant that, unlike in most cases in which the Department has actual sales figures from which it can determine if a transaction was commercial in nature earlier in a review, in this case, the Department did not realize the difference in price and other factors for Samsam's POR transaction and future transactions until verification. Therefore, taking into account the information collected during

verification, for the first time and for these final results, the Department has examined the *bona fide* nature of Samsam's POR sale.

Since this administrative review covers a single sale, it is essential that the record clearly indicate that the transaction was reflective of normal commercial realities. Pursuant to section 751(a)(2)(A) of the Act, this single sale would serve as the basis for Samsam's antidumping margin until the next review of the company is completed. In the instant review, the Department found that Samsam's single POR sale price differed significantly, when compared to its subsequent sales practices, and thus is atypical of Samsam's usual pricing practices. Additionally, the Department found that, when considered together, the timing of the sale, the unusual quantity of total merchandise purchased, and the fact that the POR purchase by its customer was the only purchase of subject merchandise ever made by this customer, suggest that the POR sale was atypical. Furthermore, Samsam provided misleading information to the Department regarding its subsequent sales, prices, and quantities, which hindered the Department's ability to conduct a viable *bona fides* analysis earlier in the review process. Indeed, it was only through the Department's own efforts that the Department discovered the true facts regarding Samsam's sales practices, at verification.

As discussed below, the Department finds that A) the price of Samsam's single POR sale; B) the timing, atypical quantity, and unique circumstances of the sale; and C) other indicia of a non-*bona fide* transaction, all indicate that the single sale under review is atypical of the company's normal business practices, and therefore is not a *bona fide* sale for the purposes of determining Samsam's antidumping duty margin. Based on the Department's analysis of the totality of circumstances, taking into consideration the information provided by Samsam on the record in response to multiple questionnaires, and the information collected during verification, the Department finds that Samsam's sale of subject merchandise to the United States during the POR is not *bona fide*, and therefore not a reliable transaction on which to calculate a dumping margin for Samsam.

Thus, when considered together in the totality of circumstances, the Department has determined that the circumstances surround the single sale made by Samsam during the POR was atypical, and therefore not a *bona fide* transaction. Where a review is based on a single sale, exclusion of that sale necessarily must end the review.⁹⁶ Thus, because of Samsam's own inaccurate responses to multiple questionnaires on the record, the Department did not believe that a detailed *bona fides* analysis was warranted, and calculated an antidumping duty margin in the preliminary results. However, in light of the new information discovered at verification, and for the reasons as discussed in the Department's *bona fides* analysis memorandum,⁹⁷ the Department has now conducted such an analysis, and as a result of that analysis is rescinding the administrative review of Samsam Productions Ltd.

⁹⁶ *TTPC*, 366 F. Supp. 2d at 1249 (2005)

⁹⁷ See Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, regarding The *Bona Fides* Analysis of Samsam Productions, Ltd.; Guangzhou Baxi Printing Products, Ltd.; Guilin Samsam Paper Products, Ltd.; and St. Clair Pakwell (collectively "Samsam") in the First Administrative of Certain Tissue Paper Products from the People's Republic of China, dated October 9, 2007. (Samsam *Bona Fides* Analysis Memo)

Comment 4b: Verification Findings

In its case briefs and rebuttal briefs, Samsam made detailed, voluminous, and serious claims alleging that the Department committed procedural obstruction, factual inaccuracies, and inaccurate conclusions on several key points discussed in the Department's verification report. For example, Samsam disputes the Department's verification report, which states that Samsam failed to reconcile its costs at Guangzhou Baxi and Guilin Samsam. Samsam argues that it fully reconciled its costs of production (COP) based on the Department's standard practice, and that due to duplicative and excessive requests for documentation, the Department hindered Samsam from completing its cost reconciliations of Guangzhou Baxi and Guilin Samsam. *See Certain Tissue Paper Products from the People's Republic of China: Samsam Direct ITA Case Brief (August 6, 2007) (Samsam Case Brief). See also Samsam Rebuttal Brief.*

Respondent also argues: 1) the total wages paid and the total hours worked were fully verified; 2) auditor's notes are not required under Chinese accounting procedures or law and are an additional expense to the company; 3) inventory sub-ledgers are routinely zeroed as a standard accounting practice, but do record quantities entered and withdrawn from inventory; 4) the Department saw evidence of a printing machine at Guilin Samsam; 5) the Department verified the purchase and consumption of inks, and record evidence indicates that ink was consumed in the subject tissue paper; 6) if the company had not included the stock gain in its total production quantity, it would have over-reported its FOP, by reducing the production quantity denominator; and 7) that the Department should not include intermediary packing materials in its antidumping margin calculation because it is considered factory overhead. *See Samsam Case Brief at 27–32.*

Department's Position:

For these final results, the Department has determined that Samsam's single POR sale was not a *bona fide* transaction and will rescind this review with respect to Samsam; therefore, the discussion of the application of AFA is no longer at issue. For a detailed discussion of the Department's *bona fides* analysis, *see* the Department's position in Comment 4a, above, and the Samsam *Bona Fides* Analysis Memo.

Furthermore, the Department disagrees with Samsam's reinterpretation of the Department's verification results and stands by its findings as described in the verification reports. However, as the Department has found that the single POR sale was not a *bona fide* transaction, the Department needs not further address each of Samsam's comments on the verification findings point-by-point, as its arguments with respect to these issues raised in its case briefs are no longer relevant.

In response to allegations made by Samsam on the record of the review regarding the Department's verification methodology, the Department disagrees that it allegedly hindered Samsam from completing its cost reconciliations. Consistent with the facts detailed in the Department's verification report, the Department did not require duplicative or overly detailed information, but rather requested standard information and documentation necessary to corroborate the accuracy and completeness of Samsam's responses as noted in the Department's

verification outline to Samsam.⁹⁸ Furthermore, given that the Department completed all other sections of the verification agenda and allotted nearly two full days to the completion of the cost reconciliations, the Department disputes respondent's assertion that the verifiers hindered Guangzhou Baxi and Guilin Samsam from completing their cost reconciliations.

Comment 5: Clerical Errors in Preliminary Results

Respondent explains that St. Clair Pakwell made a clerical error in reporting the weight of the subject sale, which affected other fields that were reported by weight in its U.S. sales database and in the Department's calculations. Samsam notes that Department verifiers identified the errors at the St. Clair Pakwell facilities. *See* Samsam Case Brief at 36–37 and Samsam Rebuttal Brief at 12.

Petitioner argues that in addition to incorrectly reporting various fields in its U.S. sales database, St. Clair Pakwell completely omitted its U.S. brokerage expense. Petitioner argues that the Department cannot rely on the U.S. prices at verification given the failure to verify the completeness and accuracy of St. Clair Pakwell's accounting records. Petitioner argues that the Department cannot rely on the previously reported values or the values found at verification given the substantial verification failures, and thus the Department should apply AFA. *See* Petitioner Samsam Rebuttal Brief at 19–20.

Samsam argues that the Department should include packing labor in the packing category. Furthermore, Samsam also argue that the Department should include inputs used to produce cartons in the packing category. Samsam also points out that cardboard was not converted from pieces to kilograms in the Department's calculations. *See* Samsam Case Brief at 37–38.

Petitioner argues that because labor and energy costs are included in overhead and selling, general, and administrative (SG&A) costs in the surrogate financial statements, Samsam's labor and energy costs should also be included. Petitioner also notes that the Department should convert the weight of cardboard using the weight discovered at verification. *See* Petitioner Samsam Rebuttal Brief at 20–21.

Samsam argues that the Department should not include the cost of the intermediate freight distance on CLIP, PBAND, and PSHEET, as these packing materials were consumed at the Guangzhou facility. *See* Samsam Case Brief at 39.

Petitioner argues that Samsam does not substantiate its *post hoc* claims that CLIP, PBAND, and PSHEETS did not incur transit freight costs from Guilin to Guangzhou. *See* Petitioner Samsam Rebuttal Brief at 21–22.

Department's Position:

For these final results, the Department has determined that Samsam's single POR sale was not a *bona fide* transaction and will rescind the review with respect to Samsam; therefore, the alleged

⁹⁸ *See* May 8, 2007, Guilin Samsam Paper Products Ltd. and Guangzhou Baxi Printing Products Ltd. Verification Outline at 4–5.

clerical errors are no longer at issue. For detailed information pertaining to the Department's *bona fides* analysis, see the Department's position in Comment 4, above, and the Samsam *Bona Fides* Analysis Memo.

Max Fortune-Related Issues

Comment 6: Application of Adverse Facts Available based on Verification Findings

Petitioner argues that the Department's verification of Max Fortune revealed that the respondent failed to provide a complete and accurate response to the Department. Petitioner contends that Max Fortune failed to report all U.S. sales and price adjustments, was unable to tie combination gift wrap set sales to source records, introduced new information at verification regarding extensive discounts used for certain U.S. sales, and failed to report actual dye and ink consumption by withholding detailed records. Petitioner also claims that Max Fortune provided financial statements that are incorrect and of questionable authenticity, undermining the completeness and accuracy of the response as a whole.

The totality of circumstances, petitioner argues, from these combined errors and omissions, warrants the application of total AFA to Max Fortune's complete response. However, petitioner contends, if the Department does not apply total AFA, it should apply partial AFA to all sales of tissue paper from the Foshan Factory, all sales of combination gift wrap sets, all sales to customer A,⁹⁹ and to Max Fortune's factors of production by assigning the highest surrogate value to ink and dye consumption for paper production and printing. Furthermore, petitioner argues, the Department should find that sales to customer A were affected by duty reimbursement. See *Certain Tissue Paper Products from the People's Republic of China: Petitioner's Case Brief Concerning Max Fortune* (August 6, 2007) (Petitioner Max Fortune Case Brief), at 1-2.

Incomplete U.S. Sales Reporting

Petitioner claims that at verification the Department discovered several discrepancies with regard to Max Fortune's reporting of its U.S. sales. First, petitioner contends that Max Fortune failed to report an invoice that included subject merchandise shipped from Max Fortune's Foshan factory in its U.S. sales database.¹⁰⁰ Petitioner claims this discovery calls into question the completeness of Max Fortune's U.S. sales reporting, especially for sales packed and shipped from the Foshan factory.

Next, petitioner argues that at verification, the Department discovered that Max Fortune was "unable to tie the cost of the tissue paper purchases to specific sales invoices because the tissue

⁹⁹ Customer A's name is proprietary. Further information on customer A can be found in the Memorandum to the File, regarding *Certain Tissue Paper from the People's Republic of China (PRC): Max Fortune Industrial Limited and Max Fortune (FETDE) Paper Products Co., Ltd. (collectively, Max Fortune) Analysis Memorandum for the Final Results of Review*, dated October 9, 2007 (Max Fortune Analysis Memo).

¹⁰⁰ See Memorandum to the File, regarding *Verification of the Sales Responses of Max Fortune Industrial Limited in the Antidumping Duty Review of Certain Tissue Paper from the People's Republic of China*, dated July 12, 2007 (Max Fortune Sales Verification Report) at 14.

paper was packaged in gift sets.”¹⁰¹ Petitioner argues that a failure to link the tissue paper sold by MFI in gift sets to the proper production source undermines the validity of the reported gift set sales. *See* Petitioner Max Fortune Case Brief at 3-4.

Third, petitioner notes that Max Fortune failed to report several discounts discovered by the Department at verification:¹⁰²

- 1) Discount A¹⁰³ is “directly deducted from the sales price”¹⁰⁴ for customer A sales, a practice not reported by Max Fortune in its responses. Petitioner argues that there is no means of testing which other POR customer A sales had such discounts applied, or which did not. If the Department does not apply AFA to Max Fortune for discount A, petitioner argues, the Department should define DISCOUNT1 as the observed omitted discount allocated over the total invoiced value of the customer A invoice to which the omission pertained. Then, DISCOUNT1 should be deducted from gross price on all customer A sales. *See* Petitioner Max Fortune Case Brief at 5-6.
- 2) Discount B was not reported in its Section C database. Petitioner argues that the price reported under GRSUPRU should have been net of this amount. At verification, petitioner claims, the Department discovered that Max Fortune’s invoices documented discount B, which is subtracted from the invoice price and represents a “commission” paid to a third-party on sales to customer A.¹⁰⁵ Petitioner claims that there is no indication on the record that Max Fortune accounted for discount B in reporting its GRSUPRU field.¹⁰⁶ If the Department does not apply AFA to Max Fortune for discount B, petitioner contends, the Department should create a new field, DISCOUNT2, defined as the stated commission and deduct DISCOUNT2 from the gross price on all customer A sales. *See* Petitioner Max Fortune Case Brief at 7.
- 3) Discounts C, penalty discounts and late fee discounts were not subtracted by Max Fortune from the reported sales price on customer A invoices.¹⁰⁷ Though Max Fortune officials at verification stated that discounts C represented a certain fixed percentage of invoice value,¹⁰⁸ petitioner claims that information in MFI verification Exhibit 4 shows only certain—but not all—discounts C are capped at a fixed percentage of sales.¹⁰⁹ Petitioner argues that because Max Fortune failed to discuss these discounts in its Section A and C responses and confused the terms of discounts C’s subcomponents at verification, if the Department does not apply total AFA, it should apply partial facts available by creating and deducting the value of a new field, DISCOUNT3, defined as the certain fixed percentage Max Fortune officials stated at

¹⁰¹ *See* Max Fortune Sales Verification Report at 16.

¹⁰² *See id.* at 2.

¹⁰³ The exact nature of each discount is proprietary. Please see Petitioner’s Max Fortune Case Brief or Max Fortune Analysis Memo for more information.

¹⁰⁴ *See* Max Fortune Sales Verification Report at 16-17.

¹⁰⁵ *See id.* at 16.

¹⁰⁶ *See id.* at 16.

¹⁰⁷ *See id.* at 17.

¹⁰⁸ *See id.* at 17.

¹⁰⁹ *See id.* at 17.

verification from the gross price on all customer A sales. *See* Petitioner Max Fortune Case Brief at 7-8.

- 4) Discount D, import charge-back discounts also were not reported for sales to customer A, though Max Fortune submitted a minor correction at verification stating that they should be.¹¹⁰ Max Fortune officials, according to petitioner, claimed that the Department should attribute a certain dollar amount in charge-backs to POR subject merchandise sales to customer A and deduct the resulting percentage discount in calculating the net U.S. price.¹¹¹ However, the accuracy and completeness of the “minor correction” is questionable, petitioner claims, because the Department discovered at verification that the minor correction amount did not account for charge-backs related to tissue paper sold in gift packs or other combinations with non-subject merchandise.¹¹²
- 5) Furthermore, while reviewing the nature of the account that recorded charge-backs at verification, the Department discovered, among other discrepancies, a completely new set of unreported discounts, “New Store/New DC” discounts.¹¹³ Company officials stated that this fee was paid “about three times a year” and the “amounts vary.”¹¹⁴ No indication, petitioner argues, was provided that all such discounts were accounted for in Max Fortune’s responses or in the minor correction given to the Department at verification. *See* Petitioner Max Fortune Case Brief at 8-11.

Petitioner also argues that the duty assessed on entries of products imported by customer A and its agents should be deducted from the reported gross price in calculating the net U.S. price. According to petitioner, 19 CFR 351.402(f) states that in calculating the U.S. price, “the Secretary will deduct the amount of any antidumping duty which the producer or reseller: (i) paid directly on behalf of the importer; or (ii) reimbursed to the importer.” While reviewing the list of items charged back by customer A (*i.e.*, discount D), petitioner claims, the verification team noted that in certain cases the amount charged appeared to be greater than the per-unit cost of the merchandise. Max Fortune’s sales and marketing director stated that “the price {customer A} charges back also could include the antidumping duty, in addition to the freight and invoice price.”¹¹⁵ Petitioner argues that this statement suggests there was duty reimbursement on sales made to customer A. Given the statement, petitioner contends, as partial facts available, the Department should make an affirmative finding of duty reimbursement on all imports of subject merchandise sold to customer A. *See* Petitioner Max Fortune Case Brief at 13-14.

Factors of Production

Petitioner further claims that verification clarified that Max Fortune has several discrepancies with regard to its reporting of its factors of production. Petitioner argues that over the course of the review Max Fortune has repeatedly claimed that it could not report actual consumption of

¹¹⁰ *See id.* at 17-18.

¹¹¹ *See id.* at 3.

¹¹² *See id.* at 17-18.

¹¹³ *See id.* at 17-18

¹¹⁴ *See id.* at 19.

¹¹⁵ *See id.* at 18.

inks and dyes by the color and type for each physically distinct product because it has no records with which to do so.¹¹⁶ Petitioner contends that the Department's review of the production records during verification revealed that Max Fortune recorded several colors of dye in both the Putian and Mawei factory warehouse ledgers, along with several types of semi-finished tissue paper classified by color and weight.¹¹⁷ As such, petitioner argues, Max Fortune ignored a readily available source for allocating several specific dye colors used in making paper on a product-specific basis.¹¹⁸ See Petitioner Max Fortune Case Brief at 14-16.

For the *Preliminary Results*, petitioner contends, the Department gave Max Fortune the benefit of the doubt regarding dyes and inks, using a neutral partial facts available plug. However, petitioner claims, the use of neutral values should only be considered where it is unreasonable to expect that a respondent could or should keep input-specific records. Petitioner claims that the Department found in the investigation of Certain Activated Carbon from the People's Republic of China, under similar circumstances, that a respondent's failure to use production records to calculate actual consumption of factors of production warranted the use of total AFA.¹¹⁹ In addition, in the original investigation of this proceeding,¹²⁰ petitioner contends, the Department required an accurate and complete reporting of the consumption of all dyes and inks, by exact color and type.¹²¹ Max Fortune participated as an interested party in the original investigation to qualify for a separate rate, petitioner claims, even submitting arguments for the final results.¹²² An investigation serves, petitioner claims, to place interested parties on notice that no future reviewed parties can plead ignorance of reporting requirements or defend incomplete record keeping during a review, as the Department's determinations will have made reporting methodologies a public benchmark for accuracy. Max Fortune, petitioner claims, could and should have noted the dye and ink accuracy and completeness requirements for tissue paper producers, as established in the original investigation. Instead, petitioner argues, Max Fortune used guesswork in presenting inaccurate and unverifiable data for critical factors of production, and ignored more detailed production records it previously claimed did not exist. If the Department determines total AFA is not warranted, according to petitioner, the Department should, at a minimum, apply the highest surrogate values¹²³ to the dye and ink values reported.

¹¹⁶ See Max Fortune's March 2, 2007, supplemental questionnaire response at 2.

¹¹⁷ See Max Fortune FOP Verification Report at 16.

¹¹⁸ See *id.* at 16.

¹¹⁹ See *Final Determination of Sales at Less than Fair Value: Certain Activated Carbon from the People's Republic of China*, 72 FR 9508, 9513 (March 2, 2007) (*Activated Carbon*), and accompanying Issues and Decision Memorandum at Comment 27.

¹²⁰ See *Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 16223 (March 30, 2005) (*Tissue Paper Amended Final*).

¹²¹ See *Certain Tissue Paper Products and Certain Crepe Paper Products from the People's Republic of China: Notice of Preliminary Determinations of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination for Certain Tissue Paper Products*, 69 FR 56407, 56411-56412 (September 21, 2004). In the final determination, the Department applied total AFA to China National. 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) (*Tissue Paper Final Determination*), and accompanying Issues and Decision Memorandum at Comment 4.

¹²² See *Tissue Paper Final Determination*, and accompanying Issues and Decision Memorandum at Comment 4.

¹²³ See Memorandum for the File, regarding Antidumping Duty Administrative Review of Certain Tissue Paper from the People's Republic of China: Factors of Valuation for the Preliminary Results, dated April 2, 2007 at Attachments 1 and 5.

See Petitioner Max Fortune Case Brief at 17-23.

In addition, petitioner claims, the 2005 Annual Joint Inspection Report for Enterprises with Foreign Investment filed by Max Fortune (MFPP Report), petitioner contends, is not the authentic 2005 Annual Joint Inspection Report. Because this report was submitted to confirm an earlier filed MFPP balance sheet and income statement and because accurate and reliable financial statements are among the most critical documents required by the Department in any antidumping proceeding, according to petitioner, the Department should conclude that Max Fortune has presented the Department with incorrect and unreliable MFPP financial statements. In addition, because information on the record contradicts the MFPP Report's reliability, petitioner argues, the Department should find that MFPP filed the incorrect and unreliable MFPP Report to mislead the Department in this review. See Petitioner Max Fortune Case Brief at 23-26.

Petitioner cites several discrepancies¹²⁴ in the MFPP Report, concerning issues such as the nature of the stamps in the report, company statements at verification on the nature of its stamps,¹²⁵ and differences between the MFPP report and other documents on the record, that lead it to conclude that the MFPP Report filed by Max Fortune and the copy obtained at verification¹²⁶ are not the original copy of the document. Petitioner contends that the Department should find that Max Fortune's financial statements have been manipulated to such an extent that the Department cannot rely on any of the sales or factors of production information provided by Max Fortune. As a result, petitioner argues, any documentation or information tied to those financial statements should be deemed unreliable and total AFA should be applied to Max Fortune. Citing *Sulfanilic Acid from the Republic of Hungary*,¹²⁷ petitioner claims that the Department has found all information submitted by a respondent to be suspect when it learns that relevant information may have been fabricated. See Petitioner Max Fortune Case Brief at 26-33.

Rebuttal: Factors of Production

Max Fortune questions how the 2005 Annual Joint Inspection Report for Enterprises with Foreign Investment filed by petitioner (Petitioner's MFPP Report) on March 30, 2007, was obtained by petitioner and points out numerous flaws in the Petitioner's MFPP Report versus the MFPP Report filed by Max Fortune. Petitioner, Max Fortune contends, has neither addressed the inconsistencies in its version of the report nor has it revealed how it obtained the report. See *Certain Tissue Paper Products from the People's Republic of China: Max Fortune Rebuttal Brief (August 20, 2007) (Max Fortune Rebuttal Brief) at 1-4.*

¹²⁴ Due to the proprietary nature of these discrepancies, they are only outlined here in the broadest manner. See Petitioner's Max Fortune Case Brief for more specific information.

¹²⁵ Max Fortune FOP Verification Report at 6 and Exhibit 15. The stamps, petitioner notes, appear on page 17 of Exhibit 15.

¹²⁶ See *id.* at 6 and Exhibit 4.

¹²⁷ See *Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid From the Republic of Hungary*, 58 FR 8256-7 (February 12, 1993) (*Sulfanilic Acid from the Republic of Hungary*), cited in *Chang Tieh Industry Co., Ltd. et al v. United States*, 840 F. Supp 141, 146 (CIT 1993) ("Apparently ITA recognizes it has authority to prevent fraud upon its proceedings. In at least one case ITA discarded a respondent's entire U.S. sales base and applied BIA where documents discovered at verification indicated that information might have been fabricated for the purpose of the investigation.")

Furthermore, Max Fortune contends, the Department obtained a copy of the MFPP Report from the Fuzhou City Industrial and Business Administration Management Bureau while on verification and the financial information in that copy of the report also matches Max Fortune's previous submissions.¹²⁸ Max Fortune also points out that the Department, at MFI's verification and MFPP's verification, thoroughly checked MFPP's and MFI's balance sheets and income statements and tied these documents to its general ledger, raw material, finished goods, and sales sub-ledgers, and source documents.¹²⁹ This, Max Fortune claims, confirms the reliability and accuracy of its reported factors of production and sales data. *See* Max Fortune Rebuttal Brief at 4-7.

Regarding its reporting on dye and ink consumption, Max Fortune argues that petitioner's assertion that it ignored its internal records in reporting these FOPs is baseless. Max Fortune contends that it has previously explained in its responses that the only verifiable records on which its dye and ink consumption can be based are its inventory withdrawal records,¹³⁰ which do not link to the production of particular products or models, and that it used these records as a starting point for reporting its dye and ink FOPs.¹³¹ Therefore, it claims, petitioner's assertions that Max Fortune ignored this ledger in its responses and the Department discovered this ledger at verification are false.¹³² The Department, Max Fortune alleges, did not request that Max Fortune adjust its reporting methodology for each individual dye and ink; rather, the Department only requested that Max Fortune provide formula for dyes and inks "on a product specific basis," not on the basis of the individual colors of ink or dye withdrawn from inventory.¹³³ *See* Max Fortune Rebuttal Brief at 16-20.

Max Fortune argues that petitioner's assertion that AFA should be applied to Max Fortune due to its factors of production reporting is not based on any appropriate legal precedent. For the final results, Max Fortune contends, with regard to ink and dye reporting, the Department should continue applying the average dye and ink surrogate values to Max Fortune's reported dye and ink consumption. *See* Max Fortune Rebuttal Brief at 24-25.

Rebuttal: U.S. Sales

Max Fortune also disputes petitioner's arguments with respect to its U.S. sales reporting. Regarding the selling expenses to customer A, Max Fortune argues that the discounts—warranty claims, defective merchandise, late shipment penalties, and charge-back expenses—that petitioner refers to represent selling expenses. The Department, according to Max Fortune, does not normally deduct these expenses from export price sales in non-market economy cases because the Department does not make corresponding offsets to normal value.¹³⁴ Regardless of

¹²⁸ *See* Max Fortune FOP Verification Report at 6.

¹²⁹ *See id.* at 7, 13, and Exhibit 6. *See also* Max Fortune Sales Verification Report at 3, 8-9, and Exhibit 8.

¹³⁰ *See* Max Fortune's November 27, 2006, supplemental questionnaire response at 18 and Exhibit 30.

¹³¹ *See* Max Fortune's March 2, 2007, supplemental questionnaire response at 6.

¹³² *See* Petitioner's Max Fortune Case Brief at 15, citing Max Fortune FOP Verification Report at 16, referencing Exhibits 10 and 11.

¹³³ *See* Max Fortune's February 28, 2007, supplemental questionnaire response at 12.

¹³⁴ Citing, e.g., *Bicycles From the People's Republic of China*, 61 FR 19026, 19031 (April 30, 1996). *See also* 19 CFR 351.410, which clarifies certain terms used in the statute regarding circumstances-of-sale adjustments.

what Max Fortune calls them, Max Fortune contends, and in which account they are booked, charge-backs for defective goods are not discounts under Department practice. All of these selling expenses, Max Fortune claims, are captured in the SG&A expenses component of normal value. The key distinction of discounts, Max Fortune claims, according to Department practice, is that they are made prior to delivery and both buyer and seller know at the time of sale what the price adjustment will be, while rebates are discounts granted after the delivery of the merchandise to the customer when the terms of the rebate are set forth at the time of sale.¹³⁵ Although customer A, Max Fortune asserts, may request to be compensated for late shipment fees, charge-backs, and defective merchandise fees, any expenses not known to both buyer and seller at the time of sale do not constitute a specific part of the agreed-on purchase price. *See* Max Fortune Rebuttal Brief at 8-11.

Max Fortune argues that the Department also should not deduct from U.S. price the “commission” that Max Fortune pays on sales to customer A. According to Max Fortune, the Department has held that “sales commissions are standard selling costs (not a reduction to sales revenue), which should be included in the SG&A calculation.”¹³⁶ The Department presumes, Max Fortune claims, that commissions are also captured in the SG&A component of normal value and that deducting these costs from export price would result in double counting. *See* Max Fortune Rebuttal Brief at 11-12.

Furthermore, Max Fortune contends, the Department should reject petitioner’s claims that Max Fortune has reimbursed antidumping duties to customer A and should not reduce the gross unit price of max Fortune’s sales to customer A by the duty assessed on such entries. Max Fortune argues that it explained at verification that when customer A demands a charge-back for items it asserts were never received, damaged, *etc.*, it essentially cancels the sales by charging back to Max Fortune the invoice price of the item plus expenses incurred by customer A on the item, such as freight and import duties.¹³⁷ The Department’s reimbursement regulation, Max Fortune claims, is not meant to cover scenarios regarding claims for defective merchandise or canceled sales, and petitioner has not cited precedent for the Department to do so. *See* Max Fortune Rebuttal Brief at 12-16.

The Department, according to Max Fortune, should also reject petitioner’s suggestion to apply AFA to tissue paper sold in gift sets from the Foshan factory. Applying AFA, Max Fortune contends, is only legally appropriate when necessary information is not on the record, which is not the case in this review. Max Fortune argues that at verification the Department only found one invoice that was omitted from Max Fortune’s U.S. sales file,¹³⁸ and it is clear this oversight was inadvertent, and due, in part, to the fact the sale was shipped to the United States via a third

¹³⁵ *See* Antidumping Manual, Chapter 8, at 10.

¹³⁶ *See Certain Preserved Mushrooms From the People’s Republic of China: Final Results of Sixth Antidumping Duty New Shipper Review and Partial Rescission of the Fourth Antidumping Duty Administrative Review*, 69 FR 54635 (September 9, 2004), and accompanying Issues and Decision Memorandum at Comment 9, citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People’s Republic of China; Final Results of 1996-1997 Antidumping Duty Administrative Review and New Shipper Review and Determination Not To Revoke Order in Part*, 63 FR 63842 (November 17, 1998), and accompanying Issues and Decision Memorandum at Comment 18.

¹³⁷ *See* Max Fortune Sales Verification Report at 17-18.

¹³⁸ *See id.* at 14, and Exhibit 9, pages 119-129.

country.¹³⁹ Because there is a sale similar to the one left out of the database already on the record, Max Fortune claims, the Department could use that information to incorporate the missing invoice into the U.S. sales database for the final results. Because the Department thoroughly examined Max Fortune's sales at verification and only found one misreported sale, Max Fortune argues, all sales of gift-wrap from the Foshan factory during the POR should not be called into question. *See* Max Fortune Rebuttal Brief at 25-27.

Finally, Max Fortune contends that the Department should also reject petitioner's suggestion to apply AFA to tissue paper sold in gift sets because Max Fortune "was unable to tie the cost of the tissue paper purchases to specific sales invoices because the tissue paper was sold in gift sets."¹⁴⁰ Max Fortune argues that this has no bearing on the accuracy of the FOPs reported (which were verified) because all record evidence shows that the PRC-origin tissue paper sold by Max Fortune during the POR was produced by MFPP. Therefore, Max Fortune concludes, the application of AFA to gift set sales lack relevance and any basis in fact and should be rejected by the Department. *See* Max Fortune Rebuttal Brief at 28.

For all of these reasons, Max Fortune argues, petitioner's advocacy of AFA is not based on any appropriate legal precedent. Petitioner fails to realize, according to Max Fortune, that the nature of its production process and the absence of any records that link inventory withdrawals to specific products is what inhibits Max Fortune's ability to track withdrawals on a product specific basis. Max Fortune argues that it has stated on the record why its reporting methodology for dyes and inks is the best method available for reporting these FOPs and has exhausted considerable resources to devising an alternate methodology in the event the Department found its first reporting methodology unsatisfactory.¹⁴¹ For the final results, Max Fortune contends, the Department should either continue applying the average dye and ink surrogate vales to Max Fortune's reported dye and ink consumption or, alternatively, exclude all raw material FOPs except paper pulp since the remaining raw material FOPs are captured in the surrogate financial ratios calculated by the Department in the *Preliminary Results*. *See* Max Fortune Rebuttal Brief at 24-25.

Department's Position:

The Department has determined that the application of partial AFA, pursuant to sections 776(a) and (b) of the Act, is appropriate with respect to the missing sale found at verification and one discount on U.S. sales found at verification. The Department also intends to apply facts available, pursuant to section 776(a) of the Act, to a second discount on U.S. sales and adjust for certain verification findings, such as discount A discussed in petitioner's arguments above, in these final results. Overall, however, we find that the application of total AFA for Max Fortune is not warranted.

¹³⁹ *See id.* at Exhibit 9, page 119.

¹⁴⁰ *See* Petitioner's Max Fortune Case Brief at 3, citing Max Fortune Sales Verification Report at 16.

¹⁴¹ *See* Max Fortune's March 2, 2007, supplemental questionnaire response at 1-12 and all exhibits.

Sales Discounts

As discussed in the Max Fortune Sales Verification Report¹⁴² and in arguments above, the Department found five sales expenses at verification: “discount A,” “discount B,” “discounts C,” “discount D,” and “New Store” discounts. The Department has determined not to deduct discounts C or discount D from Max Fortune’s reported U.S. sales. At verification, the Department performed completeness checks and did not find that Max Fortune was incurring discounts C on its POR sales.¹⁴³ Therefore, the Department has determined that it would be inappropriate to deduct this charge from Max Fortune’s U.S. sales. With regard to discount D, or charge-backs, although Max Fortune itself reported these charges as a minor correction at verification,¹⁴⁴ the Department finds that charge-backs are akin to warranty expenses, which the Department classifies as a circumstance-of-sale adjustment. In export price situations, as is the case for Max Fortune, the Department does not make circumstance-of-sale adjustments in non-market economy cases, as the off-setting adjustments to normal value are not normally possible. *See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People’s Republic of China: Final Results of Antidumping Duty Administrative Reviews, Final Partial Rescission of Antidumping Duty Administrative Reviews, and Determination Not To Revoke in Part*, 69 FR 55581 (September 15, 2004), and accompanying Issues and Decision Memorandum at Comment 15.

Furthermore, because discount D is a warranty expense and related to returning defective merchandise, we do not find that Max Fortune and customer A were engaging in reimbursement with respect to this expense. Although company officials stated at verification that “charges back also could include the antidumping duty, in addition to the freight and invoice price,”¹⁴⁵ we find it reasonable that customer A requested a refund of all expenses associated with the merchandise that it claimed was defective.

However, the Department has determined, for these final results, to apply three of the sales charges discovered at verification to Max Fortune’s reported export sales prices. The Department will subtract “discount A” from the sale(s) to which it was applied at verification. The Department does not consider “discount A” a discount, rather the Department finds that it is a billing adjustment. Due to the proprietary nature of this billing adjustment, further information can be found in the Max Fortune Analysis Memo. For the two remaining sales charges, “discount B” and “New Store” discounts, and the one unreported sale found at verification, the Department will apply partial AFA for these final results.

Adverse Facts Available

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the

¹⁴² See Max Fortune Sales Verification Report at 2 and 16-19.

¹⁴³ See *id.* at 14-15.

¹⁴⁴ See *id.* at 2.

¹⁴⁵ See *id.* at 18.

applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department “shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all applicable requirements established by the administering authority” if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information if it can do so without undue difficulties.

In this instance, the Department was unaware of the existence of the one unreported U.S. sale and several sales discounts until it discovered them at verification. Verification is a time to confirm that the information reported by a respondent is accurate and complete. It is not an opportunity for the respondent to submit new factual information. *See Shandong Huarong General Group Corp. v. United States*, 2003 Ct. Int’l Trade LEXIS 153; 2003 WL 22757937 at 12 (CIT Oct. 22, 2003) (verification is not an opportunity to submit new answers to previously posed questions, but is more like an audit of information previously submitted.). Therefore, it was not practicable or appropriate to provide Max Fortune the opportunity to remedy or explain the newly discovered information at the verification.

Section 776(a)(2) of the Act provides that, if, in the course of an antidumping review, an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides such information but the information cannot be verified, then the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination. In this case, information pertaining to the unreported U.S. sale and sales discounts were not provided to the Department in a timely manner, or in the manner requested. Thus, under section 776(a)(2)(B) and (C) of the Act, the Department could not examine these issues closely, and possibly send Max Fortune follow up questions if necessary. Thus, the missing information impeded the proceeding with regard to these issues, and the application of facts available under this provision is warranted. Therefore, as facts available, pursuant to section 776(a)(2)(B) and (C), the Department will apply facts available to one of the sales discount examined at verification.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Section 776(b) of the Act also authorizes the Department to use as AFA information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. In this instance, we find that the application of an adverse inference to the one missing U.S. sale found at verification and one discount discovered at verification is appropriate, pursuant to section 776(b) of the Act. This U.S. sales information was clearly in the control of the respondent at the time that it submitted its questionnaire responses to the Department. The U.S. Court of Appeals for the Federal Circuit has held that the “best of its ability” standard “requires the respondent to do the maximum it is able to do.” *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed Cir. 2003).

Despite claims to the contrary, by failing to submit a complete U.S. sales database, with all appropriate sales expenses,¹⁴⁶ Max Fortune has not acted to the best of its ability. Max Fortune's arguments that all necessary information is on the record to accurately calculate an antidumping duty despite the discovery of one unreported sale at verification and that the sales expenses are more appropriately considered circumstance-of-sale adjustments, do not mitigate the fact that it failed to report these transactions in the first place. Therefore, an adverse inference is warranted under section 776(b) of the Act. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Brazil*, 67 FR 62134 (October 3, 2002), and accompanying Issues and Decision Memorandum at Comment 1.

Corroboration of Secondary Information

Section 776(c) of the Act provides that, when the Department relies on the facts otherwise available and on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. To "corroborate" means to determine that the information used has probative value. *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H.R. Rep. No. 103-316 at 870 (1994). The Department has determined that to have probative value, information must be reliable and relevant. *See* SAA at 870; *see also Tapered Roller Bearings and Parts Thereof, Finished and Unfinished from Japan*, 61 FR 57391, 57392 (November 6, 1996). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See Preliminary Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627 (June 16, 2003), unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra-High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 62560 (November 5, 2003); and *Final Determination of Sales at Less Than Fair Value: Live Swine from Canada*, 70 FR 12181 (March 11, 2005).

As AFA for the one unreported U.S. sale, we have assigned the PRC-wide rate of 112.64 percent and incorporated the sale into Max Fortune's margin calculation. The reliability of the AFA rate was determined by the calculation of the margin based on the petition rate and on the most appropriate surrogate value information available to the Department, chosen from submissions by the parties in that review, as well as information gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding *Tissue Paper Final Determination and Tissue Paper Amended Final*. The Department has received no information to date that warrants revisiting the issue of the reliability of the rate calculation itself. The Department has received no comments challenging the

¹⁴⁶ We note that non-market economy questionnaire sent to respondents in the this administrative review asks respondents to report billing adjustments, early payment discounts, quantity discounts, other discounts, and rebates. *See* Letter from Carrie Blozy, Program Manager, AD/CVD Operation, Office 9, to Max Fortune Industrial Limited & Max Fortune Paper Products Co., Ltd, regarding Certain Tissue Paper Products from the People's Republic of China for the period September 21, 2004–February 28, 2006, dated July 3, 2006.

reliability of the margin. No information has been presented in the current review. Thus, the Department finds that the margin calculated in the investigation 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. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), 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) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here. As there is no information on the record of this review that indicates that this rate is not relevant as AFA, we determine that this rate is relevant. Because the rate is both reliable and relevant, it has probative value. Accordingly, we determine that the highest rate determined in any segment of this administrative proceeding (*i.e.*, 112.64 percent) is corroborated (*i.e.*, it has probative value).

For the two sales expenses, referred to as discount B and "new store" discounts in the arguments above, the Department has determined that these two expenses are properly considered discounts to U.S. price. Though Max Fortune refers to discount B as a "commission," evidence on the record suggests that this expense should properly be considered a discount.¹⁴⁷ Therefore, as facts available, we have calculated discount B using information on the record and will deduct this discount from all sales of subject merchandise to customer A during the POR. Though Max Fortune argues in its briefs that "new store" discounts are fees not discounts, we note that in all of Max Fortune's books and records, the company itself refers to this expense as a discount.¹⁴⁸ Therefore, the Department will apply AFA to this discount, calculating the "new store" discount using information on the record, and will deduct this discount from all sales of subject merchandise to customer A during the POR, regardless of whether or not the sale incurred this discount. Because we are using information found during the course of the instant review, the statute does not require corroboration of this information. The calculation of these two discounts is proprietary in nature. Therefore, for more detailed information of the calculation of discount B and the "new store" discount, see the Max Fortune Analysis Memo.

Other discrepancies

Although Max Fortune failed to establish a link between the tissue paper sold by MFI in gift sets to the proper production source at the MFI verification,¹⁴⁹ the Department found no evidence at the MFPP verification or the MFI verification that Max Fortune sourced tissue paper from unaffiliated producers in the PRC.¹⁵⁰ Therefore, we cannot find that the failure to establish a

¹⁴⁷ See Max Fortune Analysis Memo for further discussion due to the proprietary nature of the evidence leading to this determination.

¹⁴⁸ See Max Fortune Sales Verification Report at 18-19 and Exhibit 7.

¹⁴⁹ See *id.* at 16.

¹⁵⁰ See Max Fortune Sales Verification Report or Max Fortune FOP Verification Report.

link during sales traces undermines the validity of all reported gift set sales or that it calls into question the reliability of the factors of production.

In addition, while petitioner claims that its version of the MFPP Report is the “real” version, we note that all evidence on the record points to Max Fortune supplying the Department with consistent information about MFPP’s financial statements, including its version of the MFPP Report. The Department, at verification, received a copy of Max Fortune’s version of the report directly from the PRC government.¹⁵¹ While we agree there are differences between the Petitioner’s MFPP Report and Max Fortune’s MFPP Report,¹⁵² we note that we have verified the source of Max Fortune’s version of the report, while petitioner offered no explanation on the record of how it obtained its copy of the report.¹⁵³ Because the Department cannot verify the authenticity of the Petitioner’s MFPP Report, we cannot find that this one document has greater evidential weight than all of the financial statements and copies of the MFPP Report that Max Fortune has placed on the record.¹⁵⁴ Because we verified the source of Max Fortune’s MFPP Report and because at verification we tied all factors of production to MFPP’s financial statements,¹⁵⁵ which are the same as those included in Max Fortune’s MFPP report, we do not find that any document or information tied to MFPP’s financial statements should be deemed unreliable, such that the overall integrity of Max Fortune’s FOPs should be called into question or that total AFA should be applied to Max Fortune based on the information contained within Petitioner’s MFPP Report.

Finally, though we noted in our Max Fortune FOP Verification Report that, using its inventory records, Max Fortune could have reported ink and dye consumption on a more control number specific basis, as requested by the Department in its July 3, 2006, Section D questionnaire and again in its February 7, 2007, supplemental questionnaire,¹⁵⁶ we note that Max Fortune does not maintain its accounting records in the same specific manner.¹⁵⁷ We also note, regarding the interviews with Max Fortune’s color-making experts at verification,¹⁵⁸ that there are qualitative, visual elements to creating the appropriate dye or ink color for a production order which do not readily lend themselves to quantitative reporting methods. For those reasons, we will not apply AFA in this review to Max Fortune’s ink and dye reporting; rather, we will continue calculating these two factors and their surrogate values as we did in the *Preliminary Results*.

However, these final results also serve as a notice to Max Fortune, that, should it participate in subsequent administrative reviews of certain tissue paper products from the PRC, the Department expects Max Fortune and all other respondents to maintain their inventory and books

¹⁵¹ See Max Fortune FOP Verification Report at 6.

¹⁵² See Petitioner’s March 30, 2007, submission and Max Fortune’s April 16, 2007, submission.

¹⁵³ See Petitioner’s March 30, 2007, submission.

¹⁵⁴ See, e.g., Max Fortune’s July 31, 2006, Section A questionnaire response, its March 14, 2007, supplemental questionnaire response, and its April 16, 2007 submission.

¹⁵⁵ See Max Fortune FOP Verification Report at 13-21.

¹⁵⁶ We note that color and pattern are two of the criteria named in the CONNUM. Despite Max Fortune’s arguments that the Department never asked for color-specific reporting of inks and dyes in the instant review, when the Department asked for inks and dyes to be reported in its original Section D questionnaire and on a product-code basis in its February 7, 2007, supplemental questionnaire, it was asking for color-specific reporting of these two inputs as required by the Department’s CONNUM.

¹⁵⁷ See Max Fortune FOP Verification Report at 2, 8-12, and 16-17.

¹⁵⁸ See *id.* at 8-12.

and records in such a manner that the reporting of inks and dyes on a product-code specific basis, as required by the Department, is facilitated. We clarify that, by asking for the reporting of inks and dyes on a product-code specific basis, due to the nature of the CONNUM established in the investigation, this naturally means that inks and dyes should be reported on a color-specific basis.

In sum, based on our above findings, we cannot conclude that the discrepancies cited by petitioner lead to a totality of circumstances that warrant total AFA for Max Fortune's responses. Therefore, while we will apply partial AFA and facts available to certain verification findings of Max Fortune and make other non-adverse changes to Max Fortune's antidumping calculation based on verification findings, we will continue to calculate a margin for Max Fortune for these final results.

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation programs accordingly. If accepted, we will publish the final results of the review and the final weighted-average dumping margins in the *Federal Register*.

AGREE_____ DISAGREE_____

David M. Spooner
Assistant Secretary
for Import Administration

Date