

producer combinations listed in the table above that have been granted separate rates, we have assigned the initiation rate. Therefore, for merchandise under consideration from these exporter producer combinations, entered, or withdrawn from warehouse, for consumption on or after the publication date of this final determination, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to 154.72 percent, as indicated above. The cash deposit rate for Superpower, Princeway, and other exporter-producer combinations is 386.28 percent, as indicated above.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Protection ("CBP") to continue to suspend liquidation of all imports of subject merchandise as described in the "Scope of the Investigation" section, that are entered or withdrawn from warehouse, for consumption on or after January 28, 2009, which is the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin amount by which the NV exceeds U.S. price, as follows: (1) the rate for the exporter/producer combination listed in the chart above will be the rate we have determined in this final determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the PRC-wide entity rate; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash-deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non-PRC exporter. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise within 45 days of this final

determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess upon further instruction by the Department antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 12, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

Parties' Comments

Comment 1: Whether to retain Superpower's Business Proprietary Information ("BPI") data

Comment 2: Whether to assign the PRC-wide rate as total adverse facts available to both mandatory respondents

Comment 3: Whether to assign the PRC-wide rate to the separate rate respondents

Comment 4: Whether to clarify the scope language for hitches

Comment 5: Whether to amend the preliminary determination for Princeway

[FR Doc. E9-14470 Filed 6-18-09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A-570-894

Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order

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

FINAL DETERMINATION We determine that certain tissue paper products exported to the United States from Thailand by Sunlake Décor Co., Ltd. (Sunlake)¹ are made from jumbo rolls and/or cut sheets of tissue paper produced in the People's Republic of China (PRC), and are circumventing the antidumping duty order on certain tissue paper products from the PRC, as provided in section 781(b) of the Tariff Act of 1930, as amended (the Act). 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) (*Order*).

EFFECTIVE DATE: June 19, 2009.

FOR FURTHER INFORMATION CONTACT: Gemal Brangman or Brian Smith, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3773 or (202) 482-1776, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 2009, the Department of Commerce (the Department) issued its affirmative preliminary determination that certain tissue paper products produced in, and exported from, Thailand by Sunlake using PRC-origin jumbo rolls and/or cut sheets of tissue paper are circumventing the antidumping duty order on tissue paper from the PRC, as provided in section 781(b) of the Act. See *Certain Tissue Paper from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 74 FR 20915 (May 6, 2009) (*Preliminary Determination*).

On May 1, 2009, the Department notified the U.S. International Trade Commission (ITC) of its affirmative preliminary determination of

¹ Sunlake is a company located in Thailand.

circumvention of the antidumping duty order on certain tissue paper products from the PRC by Sunlake, in accordance with section 781(e) of the Act. On May 27, 2009, the ITC notified the Department that it would not be requesting consultations concerning the Department's preliminary circumvention finding, pursuant to section 781(e) of the Act and 19 CFR 351.225(f)(7)(i)(B).

After receipt of notification from the ITC and consistent with the *Preliminary Determination*, on May 29, 2009, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation and to require a cash deposit of estimated duties, at the rate of 112.64 percent, on all unliquidated entries of certain tissue paper products produced in and exported from Thailand by Sunlake that were entered or withdrawn from warehouse, for consumption on or after October 21, 2008, the date of initiation of the circumvention inquiry.

We invited interested parties to comment on the *Preliminary Determination*. Comments were due June 5, 2009; however, no interested party submitted comments. We have conducted this inquiry in accordance with section 781(b) of the Act.

Scope of the Antidumping Duty Order

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

The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may be under one or more of several different subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.31.1000; 4804.31.2000; 4804.31.4020; 4804.31.4040; 4804.31.6000; 4804.39; 4805.91.1090; 4805.91.5000;

4805.91.7000; 4806.40; 4808.30; 4808.90; 4811.90; 4823.90; 4820.50.00; 4802.90.00; 4805.91.90; 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.²

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

Scope of the Circumvention Inquiry

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

Statutory Provisions Regarding Circumvention

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

² On January 30, 2007, at the direction of CBP, the Department added the following HTSUS classifications to the AD/CVD module for tissue paper: 4802.54.3100, 4802.54.6100, and 4823.90.6700. However, we note that the six-digit classifications for these numbers were already listed in the scope.

antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order.

The Department's questionnaire issued to Sunlake was designed to elicit information for purposes of conducting both qualitative and quantitative analyses in accordance with the criteria enumerated in section 781(b) of the Act, as outlined above. This approach is consistent with our analyses in prior circumvention inquiries. *See, e.g., Certain Tissue Paper Products From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 73 FR 57591 (October 3, 2008); and *Circumvention and Scope Inquiries on the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order, Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry*, 71 FR 38608 (July 7, 2006). Sunlake failed to provide any of the information requested in the Department's questionnaire.

Final Determination

Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Furthermore, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H. Rep. No. 103-316, Vol. 1, at 870 (1994). Furthermore, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may

make an adverse inference." See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997). See also *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

As discussed in detail in the *Preliminary Determination*, 74 FR at 20916–20918, Sunlake refused to respond to the Department's questionnaire despite being given ample opportunity to do so by the Department. Thus, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, the Department found that the use of facts available was appropriate for Sunlake in this circumvention proceeding. Furthermore, the Department found that Sunlake had not acted to the best of its ability in this circumvention proceeding within the meaning of section 776(b) of the Act. Accordingly, we preliminarily applied adverse facts available (AFA) to Sunlake. Specifically, we preliminarily considered all of Sunlake's exports of tissue paper products from Thailand to be of PRC origin and concluded that Sunlake is circumventing the *Order*. We also assigned Sunlake a margin of 112.64 percent, which is the highest corroborated rate on the record in any completed segment of the tissue paper proceeding.

No party filed comments objecting to the Department's *Preliminary Determination* and no further information has come to the Department's attention warranting reconsideration of that determination. Therefore, we continue to find that the application of facts available is necessary pursuant to section 776(a) of the Act, and that Sunlake has failed to act to the best of its ability in this circumvention proceeding, warranting the use of an adverse inference under section 776(b) of the Act. Thus, as AFA, we continue to determine that all of Sunlake's exports of tissue paper products from Thailand to the United States are, in fact, of PRC origin, and that Sunlake is circumventing the *Order*.

Accordingly, for this final determination, we are applying to Sunlake a margin of 112.64 percent, as AFA. This margin is the highest rate on the record in any completed segment of this proceeding (*i.e.*, the LTFV investigation, and the first and second administrative reviews) and it has been corroborated in accordance with section 776(c) of the Act, as discussed in detail in the *Preliminary Determination*, 74 FR at 20918.

Suspension of Liquidation and Cash Deposit Requirement

In accordance with section 19 CFR 351.225(l), the Department will direct CBP to continue to suspend liquidation and to require a cash deposit of estimated duties, at the rate of 112.64 percent, on all unliquidated entries of certain tissue paper products produced in and exported from Thailand by Sunlake that were entered, or withdrawn from warehouse, for consumption on or after October 21, 2008, the date of initiation of the circumvention inquiry.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and terms of an APO is a violation which is subject to sanction.

This affirmative final circumvention determination is published in accordance with section 781(b) of the Act and 19 CFR 351.225.

Dated: June 12, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–14359 Filed 6–18–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative Review and New Shipper Reviews

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

SUMMARY: The Department of Commerce (Department) is conducting the administrative review (AR) and new shipper reviews (NSRs) of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) covering the period of review (POR) of November 1, 2006 through October 31, 2007. As discussed below, we determine that sales have been made

in the United States at prices below normal value (NV) with respect to certain exporters who participated fully and are entitled to a separate rate in the AR or NSRs. In addition, we are rescinding the NSRs for two companies. Finally, the Department is rescinding the antidumping duty AR of companies that timely certified that they had no shipments of subject merchandise to the United States during the POR. We intend to instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of subject merchandise during the POR for which importer-specific assessment rates are above *de minimis*.

DATES: *Effective Date:* June 19, 2009.

FOR FURTHER INFORMATION CONTACT:

Scott Lindsay, Nicholas Czajkowski, or Summer Avery, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0780, (202) 482–1395, and (202) 482–4052, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2008, the Department published in the **Federal Register** the preliminary results of the AR and NSRs of the antidumping duty order on fresh garlic from the PRC. See *Fresh Garlic from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative and New Shipper Reviews and Intent to Rescind, in Part, the Antidumping Duty Administrative and New Shipper Reviews*, 73 FR 74462 (December 8, 2008) (*Preliminary Results*). Since the *Preliminary Results*, the following events have occurred.

Shandong Chenhe International Trading Co., Ltd. (Chenhe) filed letters on December 12 and December 31, requesting that the Department rescind this AR with respect to Chenhe and remove it from the list of companies subject to the PRC-wide rate, as determined in the *Preliminary Results*. On December 15, Shenzhen Greening Trading Co., Ltd. (Greening) also filed a letter seeking removal from the list of companies subject to the PRC-wide rate and revised publication of the *Preliminary Results*. On December 18, the Department notified parties that case briefs would be due seven days after the last verification report was issued. On December 19 and 23, the Fresh Garlic Producers Association (FGPA) and its individual members (Christopher Ranch LLC, the Garlic Company, Valley Garlic, and Vessey and Company, Inc.) (collectively, Petitioners), filed letters in