UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Decision Memorandum for Preliminary Results of 2011-2012 Antidumping Duty Administrative Review: Uncovered Innerspring Units from the People's Republic of China

SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on uncovered innerspring units from the People's Republic of China (PRC). The review covers one exporter of the subject merchandise; Tai Wa Hong, a Macau entity that Petitioner alleges has a facility in the PRC which produces subject merchandise. The period of review (POR) is February 1, 2011, through January 31, 2012. We preliminarily recommend applying adverse facts available ("AFA") to Tai Wa Hong. As AFA, we are assigning to Tai Wa Hong the highest rate from any segment of this proceeding, which in this case is 243.51 percent, as established in the investigation. Consistent with our practice, because Tai Wa Hong is not a PRC exporter, we are not treating Tai Wa Hong as part of the PRC-wide entity but rather assigning to it a rate as a market economy reseller.

BACKGROUND

On February 19, 2009, the Department published in the *Federal Register* an antidumping duty order on uncovered innerspring units from the PRC.[1] On February 29, 2012, the Department received a request from Petitioner[2] to conduct an administrative review of Tai Wa Hong, a Macau entity that Petitioner alleges has a facility in the PRC that produces subject merchandise.[3]

[1] *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order*, 74 FR 7661 (February 19, 2009) ("*Order*").
[2] The petitioner is Leggett & Platt, Inc. (hereinafter referred to as "Petitioner").
[3] *See* Request for Antidumping Administrative Review from Petitioner, dated February 29, 2012, at 1-2.

On March 30, 2012, the Department published a notice of initiation of an administrative review of uncovered innerspring units from the PRC covering the period February 1, 2011, through January 31, 2012, for one company, Tai Wa Hong.[4]

On April 2, 2012, the Department issued an antidumping duty questionnaire to Tai Wa Hong, since it was the only company for which a review was requested.[5] However, the questionnaire was undeliverable to the address originally provided by Petitioner, and was returned to the Department.[6] On April 25, 2012, the Department asked Petitioner to submit an alternative address for Tai Wa Hong to which it could send the antidumping duty questionnaire.[7] On April 26, 2012, Petitioner provided an alternative address for Tai Wa Hong.[8] On April 27, 2012, the Department sent the questionnaire to the alternative address for Tai Wa Hong.[9] Tai Wa Hong subsequently acknowledged receipt of the Department's questionnaire.[10]

On May 28, 2012, the Department received an email from Tai Wa Hong indicating that it would like to submit a no-shipment certificate to the Department and inquired as to what format the Department required so that the certificate could be obtained from the Macanese government.[11] On May 31, 2012, the Department responded to Tai Wa Hong and explained that a no-shipment certificate is a statement made by Tai Wa Hong, not the Macanese government, and that the submission should be filed according to the Department's filing requirements as found in the Department's questionnaire instructions.[12]

Tai Wa Hong's Section A response to the questionnaire was due May 18, 2012, and responses to Sections C and D were due on June 4, 2012.[13] To date, the Department has not received from

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[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, and Deferral of Administrative Review*, 77 FR 19179 (March 30, 2012) (*"Initiation Notice"*).
[5] *See* Letter from the Department to Tai Wa Hong regarding Third Administrative Review of Uncovered Innerspring Units from the People's Republic of China: Antidumping Duty Questionnaire, dated April 2, 2012.
[6] *See* Memorandum to the File from Steven Hampton, International Trade Compliance Analyst, Office 9, Import Administration regarding 2011-2012 Antidumping Administrative Review of Uncovered Innerspring Units from the PRC: Delivery of Antidumping Questionnaire, dated April 25, 2012.
[7] *See* Letter from the Department to Petitioner regarding 2011-2012 Antidumping Administrative Review of the Antidumping Duty Order on Uncovered Innerspring Units from the People's Republic of China, dated April 25, 2012.
[8] *See* Letter from Petitioner to the Department regarding Antidumping Administrative Review of the Antidumping Duty Order on Uncovered Innerspring Units from the People's Republic of China: Request for Address, dated April 26, 2012.
[9] *See* Letter from the Department to Tai Wa Hong regarding Third Administrative Review of Uncovered Innerspring Units from the People's Republic of China: Antidumping Duty Questionnaire, dated April 27, 2012.
[10] *See* Memorandum to the File from Susan Pulongbarit regarding 2011-2012 Antidumping Administrative Review on Uncovered Innerspring Units from the People's Republic of China, dated June 27, 2012 at Attachment 1.
[11] *See id.*
[12] *Id.* at Attachment 2.
[13] *See* Letter from the Department to Tai Wa Hong regarding Third Administrative Review of Uncovered Innerspring Units from the People's Republic of China: Antidumping Duty Questionnaire, dated April 27, 2012, at 1-2.

Tai Wa Hong a response to the questionnaire, a request that the questionnaire deadline be extended, nor a properly filed no-shipment certification.

SCOPE OF THE MERCHANDISE

The merchandise subject to the order is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.*, twin, twin long, full, full long, queen, California king and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in the scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non-pocketed innerspring units are included in this definition. Non-pocketed innersprings are typically joined together with helical wire and border rods. Non-pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a "pocket" or "sock" of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 9404.10.0000, 7326.20.0070, 7320.20.5010, or 7320.90.5010 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the order is dispositive.

DISCUSSION OF THE METHODOLOGY

Facts Otherwise Available

Section 776(a)(1) of the Tariff Act of 1930, as amended ("the Act"), mandates that the Department use facts otherwise available if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act mandates that the Department use facts otherwise available where an interested party or any other person: (A) withholds information requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides information that cannot be verified.

As previously noted, Tai Wa Hong did not respond to the antidumping duty questionnaire issued by the Department on April 27, 2012. Accordingly, the Department finds that the necessary information is not available on the record of this proceeding. Further, based upon Tai Wa Hong's failure to submit responses to the Department's questionnaire, the Department finds that Tai Wa Hong withheld the requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded this proceeding, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act. Therefore, the Department must rely on the facts otherwise available in order to determine a margin for Tai Wa Hong.[14]

Adverse Facts Available

Section 776(b) of the Act states 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 from the administering authority . . . , the administering authority . . . may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available."[15] 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."[16] In selecting an adverse inference, the Department may rely on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record.[17]

As previously stated, Tai Wa Hong failed to cooperate to the best of its ability in providing the requested information because it withheld requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded this proceeding. Accordingly, pursuant to sections 776(a)(2)(A), (B), and (C) and section 776(b) of the Act, we find it appropriate to assign total AFA to Tai Wa Hong.[18] By doing so, we ensure that Tai Wa Hong will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review.

In selecting an AFA rate, the Department's practice has been to assign non-cooperative respondents the highest margin determined for any party in the less than fair value ("LTFV") investigation or in any administrative review.[19] Therefore, because Tai Wa Hong is not a PRC

[14] *See Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 69546 (December 1, 2006) (*"Cast Iron Pipe Fittings"*), and accompanying Issues and Decision Memorandum at Comment 1.

[15] *See also* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316 at 870 (1994) ("SAA").

[16] *Id.*

[17] *See* section 776(b) of the Act.

[18] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review*, 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the NME-wide entity), unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007).

[19] *See, e.g., Cast Iron Pipe Fittings*, 71 FR at 69548.

exporter, we are not assigning Tai Wa Hong the PRC-wide entity's rate, but rather its own rate, based on AFA, which in this case is 234.51 percent, as established in the investigation.[20]

Corroboration

Section 776(c) of the Act requires that, where the Department relies on secondary information in selecting AFA, the Department corroborate such information to the extent practicable. To be considered corroborated, the Department must find the information has probative value, meaning that the information must be both reliable and relevant.[21]

The Department considers the AFA rate calculated for the current review as both reliable and relevant. On the issue of reliability, the Department corroborated the AFA rate in the LTFV investigation.[22] No information has been presented in the current review that calls into question the reliability of this information. With respect to the relevance, 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* the Department disregarded the highest margin in that case as best information available (the predecessor to AFA) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin.[23] The information used in calculating the AFA margin in the instant review was based on sales and production data submitted by Petitioner in the LTFV investigation, together with the most appropriate surrogate value information available to the Department chosen from submissions by the parties in the LTFV investigation.[24] Finally, there is no information on the record of this review that demonstrates that this rate is not appropriate for use as AFA. In this regard, Tai Wa Hong has not provided the Department with any questionnaire responses and, as a result, it has limited the Department's ability to corroborate the AFA rate. For all these reasons, we determine that this rate continues to have relevance with respect to Tai Wa Hong.

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[20] *See Uncovered Innerspring Units From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 79443, 79446 (December 29, 2008) ("*Innersprings Final Determination*").

[21] *See* SAA at 870; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

[22] *See Innersprings Final Determination*, 73 FR at 79446.

[23] *See Fresh Cut Flowers from Mexico; Final Results of Antidumping Administrative Review*, 61 FR 68 12, 6814 (February 22, 1996) ("*Fresh Cut Flowers from Mexico*").

[24] *See Uncovered Innerspring Units from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 45729, 45735 (August 6, 2008), unchanged in *Innerspring Final Determination*, 73 FR at 79446.

As the 234.51 percent AFA rate is both reliable and relevant, we determine that it has probative value and is corroborated to the extent practicable, in accordance with section 776(c) of the Act. Therefore, we have assigned this AFA rate to exports of the subject merchandise by Tai Wa Hong. Because Tai Wa Hong is located in Macau, it is a third country reseller. Accordingly, this rate only applies to Tai Wa Hong's PRC-origin merchandise.

Conclusion

We recommend applying the above methodology for these preliminary results.

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Agree Disagree

Paul Piquado
Assistant Secretary
for Import Administration

10 SEPTEMBER 2012
Date