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International Trade Administration
Washington, D.C. 20230

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Anticircumvention Inquiry
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January 13, 2014

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

FROM: James C. Doyle
Director, Office V
Antidumping and Countervailing Duty Operations

SUBJECT: Anticircumvention Inquiry Regarding the Antidumping Duty Order on Uncovered Innerspring Units from the People's Republic of China: Issues and Decision Memorandum for the Final Determination

Summary

We analyzed the case and rebuttal briefs submitted by the interested parties in the above-referenced inquiry and recommend that you approve the positions described in the "Discussion of the Issues" section of this memorandum.

Background

On July 11, 2013, the Department of Commerce ("the Department") published the preliminary affirmative determination[1] of circumvention of the antidumping duty order on uncovered innerspring units ("innerspring units") from the PRC.[2] We invited parties to comment on the *Preliminary Determination.* On August 6, 2013, we extended the deadlines for parties to submit case briefs, requests for a hearing, and rebuttal briefs.[3] On August 19, 2013, Reztec Industries

[1] *See Uncovered Innerspring Units from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 78 FR 41784 (July 11, 2013) ("*Preliminary Determination*").
[2] *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order* 74 FR 7661(February 19, 2009) ("*PRC Innerspring Units Order*").
[3] *See* Memorandum to the File through Scot T. Fullerton Program Manager AD/CVD Operations, Office 9 Import Administration from Steven Hampton, International Trade Analyst AD/CVD Operations, Office 9 Import Administration: Anticircumvention Inquiry Regarding the Antidumping Duty Order on Uncovered Innerspring Units from the People's Republic of China: Extension of Briefing Schedule for Final Determination, dated August 6, 2013.

Sdn Bhd ("Reztec") filed a case brief.[4] On August 26, 2013, Leggett & Platt, Incorporated ("Petitioner") submitted a rebuttal brief.[5]

On September 27, 2013, we extended the deadline for the final determination to November 6, 2013. As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[6] Therefore, all deadlines in this segment of the proceeding have been extended by 16 days. Thus, the revised deadline for the final determination of this anticircumvention inquiry was extended to November 22, 2013. On November 20, 2013, we extended the deadline for the final determination to December 16, 2013. On December 6, 2013, we extended the deadline for the final determination to January 15, 2014.

Based on our analysis of the comments received in response to the *Preliminary Determination* and the facts of record, we continue to find that innèrspring units exported to the United States, which were produced in Malaysia by Reztec using PRC-origin innerspring unit components, circumvented the *PRC Innerspring Units Order*. Moreover, as described in the *Preliminary Determination*, Reztec cannot distinguish between those innerspring units it is exporting to the United States which contain PRC-origin components and those that do not.[7] Therefore, we continue to find that all innerspring units produced in Malaysia by Reztec are subject to the *PRC Innerspring Units Order*.

<u>Scope of the Antidumping Duty Order</u>

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

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[4] *See* Letter from Reztec to the Department regarding Uncovered Innerspring Units from the People's Republic of China: Case Brief of Reztec Industries Sdn Bhd dated August 19, 2013 ("Reztec's Case Brief").
[5] *See* Letter from Petitioner to the Department regarding Uncovered Innerspring Units from the People's Republic of China dated August 26, 2013.
[6] *See* Memorandum for the Record from Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013).
[7] *See Preliminary Determination* at 41785, and accompanying Memorandum to Paul Piquado, Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled "Anticircumvention Inquiry Regarding the Antidumping Duty Order on Uncovered Innerspring Units from the People's Republic of China: Preliminary Determination Decision Memorandum for Reztec Industries Sdn Bhd" and dated July 8, 2013 ("Preliminary Decision Memo"), at 14-15.

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, 9404.29.9005, 9404.29.9011, 7326.20.0070, 7320.20.5010, 7320.90.5010, or 7326.20.0071 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.[8]

Scope of the Anticircumvention Inquiry

The products covered by this inquiry are innerspring units, as described above, that are manufactured in Malaysia by Reztec with PRC-origin components and other direct materials, such as helical wires, and that are subsequently exported from Malaysia to the United States.

Statutory Provisions Regarding Circumvention

Section 781(b) of the Tariff Act of 1930, as amended ("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) whether 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, whether such imported merchandise is completed or assembled in a third country from merchandise which is subject to an order or produced in the foreign country that is subject to an order; (C) whether the process of assembly or completion in the third country referred to in (B) is minor or insignificant; (D) whether the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) whether action is appropriate to prevent evasion of an order.

With respect to whether the process of assembly or completion in the third country is minor or insignificant, section 781(b)(2) of the Act directs the Department to consider (A) the level of investment in the third country; (B) the level of research and development in the third country; (C) the nature of the production process in the third country; (D) the extent of production facilities in the third country; and (E) whether the value of the processing performed in the third country represents a small proportion of the value of the merchandise imported into the United

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[8] On January 11, 2013, at the direction of U.S. Customs and Border Protection ("CBP"), the Department added the following HTSUS classification to the AD/CVD module for innerspring units: 7326.20.0071. *See* Memorandum to the File from Steven Hampton International Trade Compliance Analyst, AD/CVD Operations, Office 9 regarding Module Update for Uncovered Innerspring Units from the People's Republic of China, dated January 11, 2013.

States. In reaching this determination, the Department "will not consider any single factor of section 781(b)(2) of the Act to be controlling."[9]

Finally, Section 781(b)(3) of the Act further provides that, in determining whether to include merchandise assembled or completed in a foreign country within the scope an antidumping duty order, the Department shall consider the following additional factors: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise described in accordance with section 781(b)(1)(B) of the Act is affiliated with the person who uses the merchandise described in accordance with section 781(b)(1)(B) to assemble or complete in the foreign country the merchandise that is subsequently imported in to the United States; and (C) whether imports into the foreign country of the merchandise described in accordance with section 781(b)(1)(B) of the Act increased after the initiation of the investigation which resulted in the issuance of an order.

Reztec commented upon certain aspects of the Department's *Preliminary Determination*. We discuss each in turn.

<u>Discussion of the Issues</u>

Comment 1: Whether the Department Should Continue to Find Reztec's Malaysian Production Process to be Minor or Insignificant

<u>Reztec:</u>

- The Department incorrectly characterized Reztec's production process in Malaysia as "minor" because each of the statutory factors support Reztec's position that it manufactures Malaysian innerspring units and not PRC innerspring units.

<u>Petitioner:</u>

- The Department's determination that Reztec's assembly operations in Malaysia are minor is supported by the record, consistent with past precedent, and should be confirmed in the final determination.

Department's Position: In the final determination, the Department continues to find Reztec's Malaysian production process to be minor. Because the interested parties' arguments and the facts underlying the analysis of each of the statutory factors are business proprietary, the Department addressed these arguments in more detail in a separate memorandum entitled "Proprietary Analysis of Comment 1: Whether the Department Should Continue to Find Reztec's Malaysian Production Process to be Minor or Insignificant," dated contemporaneously with this memorandum, and herein incorporated by reference.

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[9] 19 CFR 351.225(h); *accord* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, at 893 (1994) ("SAA"); *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27,328 (May 19, 1997).

Comment 2: Application of Partial AFA with respect to Whether the Value of the Merchandise Produced in the PRC is a Significant Portion of the Total Value of the Merchandise that Reztec Exported from Malaysia to the United States

Reztec:

- The *Preliminary Determination* states that Reztec "failed to cooperate and withheld information";[10] however, Reztec believes it answered all of the Department's questions completely and to the best of its ability in order to demonstrate that Reztec's manufacturing process adds substantial value to the innerspring components imported from the PRC.
- The specific omissions described in the *Preliminary Determination* are Reztec's failure to provide detailed cost breakouts of Reztec's 111 export products, and Reztec's inability to "tie to its books" the detailed cost breakouts that is submitted for over half of its exports.[11] These purported omissions do not justify the application of partial adverse facts available ("AFA").
- The Department seemed to accept Reztec's explanation that it could not provide additional costs breakouts without undue burden and assisted Reztec in providing sample breakouts by requesting a cost breakout on its largest selling model.[12]
- The Department did not indicate any skepticism regarding Reztec's explanation that it could not "tie in" these cost breakouts to its accounting records and that the information Reztec provided was the best information it possessed. Rather than reject Reztec's submissions as inadequate, the Department asked Reztec to submit, within the explained limits of its abilities, additional information to bolster its earlier explanations.[13] Reztec responded to this request and fully supports the cost breakouts it provided.
- The Department did not suggest that Reztec should hire a cost consultant to build a retroactive tracking system, or that it should provide additional tie-in information to the cost breakouts.
- The *Preliminary Determination* states that Reztec "prevented the Department from verifying the information that it submitted";[14] however, Reztec would have welcomed an on-site verification. If the Department chooses not to conduct an on-site verification, the result cannot be that any "unverified" information is then discounted as false or unsupported.
- If Reztec is guilty of failing to support its cost breakouts, such that AFA are justified, the Department cannot declare Reztec's products to be PRC-origin. The courts emphasized that even an AFA determination must be related to the facts of the case, have a rational relationship to reality, and make use of the best available information that is one the record.[15]

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[10] *See Preliminary Determination,* and accompanying Preliminary Decision Memo, at 8.

[11] *Id.*

[12] *See* Letter from Reztec regarding Uncovered Innerspring Units from the People's Republic of China: Response to Second Supplemental Circumvention Inquiry Questionnaire of Reztec Industries Sdn Bhd dated November 13, 2012 ("Second Supplemental Questionnaire Response"), at 6 and Exhibit 43b.

[13] *See* Letter from Reztec regarding Uncovered Innerspring Units from the People's Republic of China: Response to Third Supplemental Circumvention Inquiry Questionnaire of Reztec Industries Sdn Bhd dated March 5, 2012 ("Third Supplemental Questionnaire Response"), at Question 2.

[14] *See Preliminary Determination,* and accompanying Preliminary Decision Memo, at 8.

[15] In support of its claim, Reztec cites the following cases: *see F.lli De Cecco di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. Ed 1027, 1032 (Fed. Cir. 2000); *Gallant Ocean (Thail.) Co. v. United States*, 602 F. 3d 1319, 1323 (Fed. Circ. 2010); see also *Ferro Union Inc. v. United States* 44 F. Supp. 2d 1310, 1335 (CIT 1999); *Shandong Huarong Gen. Group Corp. v. United States*, 28 CIT 1624, 1631-32 (2004) (AFA rate must be reasonably accurate estimate of the company's actual rate); *Am. Silicon Techs. V. United States*, 240 F. Supp. 2d 1306, 1312-13 (CIT 2002); *Krupp Thyssen Nirosta GmbH v. United States*, 24 CIT at 669-670 (AFA results must be non-aberrant, rationally related to sales, and indicative of customary selling practices).

- Even if Reztec's cost breakouts are discounted, Reztec submitted actual purchase invoices for the PRC innerspring unit components,[16] and Reztec's product descriptions show how much of these components are required in each innerspring unit model.[17] Furthermore, the Department also has invoices for all sales of the finished products to its U.S. customer, showing the various prices for Reztec's products. Therefore, the Department could derive a PRC input value by multiplying the quantity required of each input for each model, by the highest input value on the record, to yield the highest assumed PRC input cost.[18]
- For the six innerspring unit models for which input consumption is on the record, the proportion of assumed Malaysian valued-added, as a percentage of the PRC input, ranges from 48 percent to 130 percent. Similarly, the proportion of Malaysian input, as a percentage of the lowest U.S. selling price ranges from 32 percent to 57 percent. Thus, even these adverse assumptions yields a Malaysian input amount that would be substantial.

Department's Position: Under section 781(b)(1)(D) of the Act, the value of the merchandise produced in the foreign country to which the order applies (*i.e.*, the PRC) must be a significant portion of the total value of the merchandise exported to the United States for the Department to find circumvention.

Section 776(a) of the Act provides that if (1) necessary information is not available on the record or (2) an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information by the established deadlines 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 subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Furthermore, 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 . . . , in reaching the applicable determination under this subtitle, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available."[19] Congress provided the Department with this authority "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[20] An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous administrative review, or any other information placed on the record.[21]

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[16] *See* Letter from Reztec regarding Uncovered Innerspring Units from the People's Republic of China: Response to Supplemental Circumvention Inquiry Questionnaire of Reztec Industries Sdn Bhd dated September 13, 2012 ("First Supplemental Questionnaire Response"), at Exhibit 29.
[17] *See* First Supplemental Questionnaire Response, at Exhibit 33 and Second Supplemental Questionnaire Response, at Exhibit 42.
[18] *See* Reztec's Case Brief, at Attachment C.
[19] *See* SAA, H.R. Doc. 103-316 at 870.
[20] *Id.*
[21] *See* section 776(b) of the Act.

A. The Use of Facts Otherwise Available Is Warranted

The record does not support Reztec's arguments that the Department erred in finding partial AFA is warranted as to this prong of the circumvention analysis. As described in the *Preliminary Determination*, Reztec purchased innerspring components (*i.e.*, spring coils, border rods, and clips) from the PRC and assembled them into finished innerspring units at its facility in Malaysia.[22] Reztec claims that the information contained in its cost breakdowns is based on an assumed ratio that the majority of its innerspring components are sourced from the PRC, while the remaining components are sourced from Malaysian suppliers.[23] The fact that Reztec claims that its sources the majority of its innerspring components from the PRC appears to indicate that the value of the merchandise produced in the PRC is significant. However, despite twice requesting that it do so, Reztec never tied the information contained in Reztec's cost breakdowns and this assumed ratio to its accounting records.[24]

With respect to Reztec's argument that the Department seemed to accept Reztec's explanation that it could not provide additional costs breakouts without undue burden and assisted Reztec in providing sample breakouts by requesting a cost breakout on its largest selling model, we disagree. The Department requested this information specifically because Reztec did not provide any supporting documentation to tie its cost breakouts to its accounting records despite the Department's previous requests.[25] In the second supplemental questionnaire, the Department asked Reztec to, "{p}rovide a breakdown of Reztec's total exports to the United States by model on the basis of piece and include complete source documentation and worksheets quantifying the reported costs. Additionally, please tie these reported costs to your books and records as well as the cost breakdown for your largest selling innerspring unit model exported to the United States."[26] Reztec responded to this question in the second supplemental questionnaire by stating that it had, "{p}rovided the additional U.S. export product model listing and cost breakdown for the largest selling innerspring product at Exhibit 43."[27] However, Exhibit 43 included charts without any source documentation tying this information to Reztec's accounting records. Moreover, as discussed in further detail in a separate proprietary memorandum, the charts that Reztec provided in Exhibit 43 contain costs that were not specified as costs in Reztec's production process (*e.g.*, packing tape), or alleged costs that aren't actually costs (*i.e.*, gross profit).[28]

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[22] *See* Memorandum to the File from Steven Hampton, International Trade Compliance Analyst, regarding Placing Supporting Documentation on the Record of the Anticircumvention Inquiry: Reztec's No Shipment Letter from the Second Administrative Review on Uncovered Innerspring Units from the People's Republic of China dated April 13, 2012, at Attachment 1.
[23] *See* Letter from Reztec regarding Uncovered Innerspring Units from the People's Republic of China: Addendum to Circumvention Inquiry Questionnaire of Reztec Industries Sdn Bhd dated July 9, 2012 ("Questionnaire Addendum"), at Exhibit 17 and First Supplemental Questionnaire Response, at Exhibit 33.
[24] *See* First Supplemental Questionnaire Response, at 13; Second Supplemental Questionnaire Response, at 6.
[25] *See* Questionnaire Addendum, at Exhibit 17 and First Supplemental Questionnaire Response at 12.
[26] *See* Second Supplemental Questionnaire Response, at 6.
[27] *Id.*
[28] *See* Memorandum to James Doyle, Office Director, from Steven Hampton, International Trade Compliance Analyst, entitled "Proprietary Analysis of Comment 1: Whether the Department Should Continue to Find Reztec's Malaysian Production Process to be Minor or Insignificant," dated concurrently with this Issues and Decision Memorandum and adopted herein, at E. Section 781(b)(2)(E): Whether the Value-Added by Malaysian Production Represents a Small Proportion of the Value of the Merchandise Exported to the United States.

As to the veracity of Reztec's assumed ratio, the Department asked Reztec to provide complete source documentation and worksheets demonstrating how it calculated the ratio of the PRC and Malaysian sourced material.[29] Reztec responded that, "{t}he ratio calculation is based on the imports purchased from PRC over local sourced purchases. This figure may vary somewhat from time to time, but the overall {*sic*} matches the figure adopted."[30] The Department asked Reztec to provide further clarification as to how it arrived at this assumed ratio by providing source documentation.[31] Reztec responded that, "{i}t is impossible to provide more complete calculation on the product costing as the production costs will be {*sic*} vary from time to time. Reztec's costing is normally based on the assumption and it endeavors to match that plan. There is no single item for which the company can calculate and provide the exact breakdown for 100 percent of its output. However, Reztec is confident that the breakout provided ... accurately describes the reality of Reztec's overall production patterns."[32]

As stated in the *Preliminary Determination*, the Department cannot confirm the veracity of this assumed ratio without examining source documentation that has been tied to Reztec's accounting records.[33] Therefore, because the information that Reztec provided cannot be verified, it is unreliable and the Department will not base its determination on this information. Other record information that may have assisted in the Department's analysis of this statutory prong similarly cannot be verified and is thus unreliable. For example, the Department gave Reztec three opportunities to provide cost breakdowns for all of the innerspring unit models it produces and to tie this information to its accounting records.[34] However, Reztec only provided cost breakdowns for six innerspring unit models.[35] The cost breakdowns suffer from multiple other defects, which the Department discusses in greater detail in a separate proprietary memorandum.[36]

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[29] *See* First Supplemental Questionnaire Response, at 12.
[30] *Id.*, at 13.
[31] *See* Second Supplemental Questionnaire Response, at 6.
[32] *Id.*
[33] For a more detailed discussion of Reztec's assumed ratio, *see* Memorandum to the File through Scot T. Fullerton, Program Manager, Office 9, Antidumping and Countervailing Duty Operations, from Steven Hampton, Office 9, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations regarding Anticircumvention Inquiry Regarding the Antidumping Duty Order on Uncovered Innerspring Units from the People's Republic of China: Proprietary Analysis of Certain Statutory Factors for the Preliminary Determination, dated July 8, 2013 ("Analysis Memo"), at 8-9.
[34] *See Preliminary Determination*, and accompanying Preliminary Decision Memo, at 8-10; *see also* Letter from Reztec regarding Uncovered Innerspring Units from the People's Republic of China: Circumvention Inquiry Questionnaire of Reztec Industries Sdn Bhd dated July 5, 2012 ("Questionnaire Response"), at 5 and Exhibit 6; Letter from Reztec regarding Uncovered Innerspring Units from the People's Republic of China: Addendum to Circumvention Inquiry Questionnaire of Reztec Industries Sdn Bhd dated July 9, 2012 ("Questionnaire Addendum"), at 1 and Exhibit 17; First Supplemental Questionnaire Response at 12 and Exhibit 33; Second Supplemental Questionnaire Response, at 6 and Exhibit and 43. Notably, in the *Preliminary Determination*, the Department analyzed this information pursuant to a different statutory factor – section 781(b)(2)(E) of the Act. *See* Preliminary Decision Memo, at 8-10. Nevertheless, we find it relevant here because Reztec attempted to demonstrate this assumed ratio again in its cost breakdowns without tying any information to its accounting records. *See* First Supplemental Questionnaire Response at Exhibit 33.
[35] *See* First Supplemental Questionnaire Response, at Exhibit 33.
[36] *See* Memorandum to James Doyle, Office Director, from Steven Hampton, International Trade Compliance Analyst, entitled "Proprietary Analysis of Comment 1: Whether the Department Should Continue to Find Reztec's Malaysian Production Process to be Minor or Insignificant," dated concurrently with this Issues and Decision Memorandum and adopted herein, at E. Section 781(b)(2)(E): Whether the Value-Added by Malaysian Production Represents a Small Proportion of the Value of the Merchandise Exported to the United States.

In sum, despite providing it numerous opportunities to do so, Reztec did not provide the Department with verifiable and reliable information that it could use to analyze this statutory factor. As a result of lacking the necessary, verifiable information, the Department must employ facts available pursuant to section 776(a) of the Act in order to determine the value of the merchandise produced in the foreign country to which the order applies.

B. The Use of Facts Otherwise Available With An Adverse Inference Is Warranted

The Department continues to find that Reztec failed to cooperate with the Department's request for information such that adverse inferences are warranted when selecting among the facts available pursuant to section 776(b) of the Act. As explained above, the Department made several requests for Reztec to provide a detailed explanation of how the information it provided tied to its normal books and records and Reztec refused to do so.

Specifically, in the first supplemental questionnaire, the Department asked Reztec to provide complete source documentation and worksheets quantifying its reported costs and tying these costs to its books and records, as well as complete source documentation and worksheets demonstrating how it calculated its assumed ratio of the cost of PRC and Malaysian sourced materials.[37] Reztec responded that, "{t}he assumed ratio calculation is based on the imports purchased from PRC over local sourced purchases. This figure may vary somewhat from time to time, but the overall {*sic*} matches the figure adopted. This is confirmed in Exhibit 31, which shows that the quantity of Reztec's total innerspring production processed from PRC sourced innerspring components is the majority of Reztec's total production of innersprings. The various components of the costs are shown at Exhibit 33, and are derived from the company's accounting records."[38]

Despite Reztec's claim that the information in these exhibits "are derived from the company's accounting records", Reztec did not tie any of this information to its accounting records. Reztec merely provided charts without any source documentation.[39] Moreover, as discussed in further detail in a separate proprietary memorandum, the charts that Reztec provided in Exhibit 33 contain costs that were not specified as costs in Reztec's production process (*e.g.*, packing tape), or alleged costs that aren't actually costs (*i.e.*, gross profit).[40]

Next, in the second supplemental questionnaire, the Department asked Reztec to provide further clarification as to how it arrived at this assumed ratio of PRC and Malaysian sourced materials by providing source documentation. Reztec stated that it, "{p}rovided its explanation for the source breakdown in Exhibit 31 to its supplemental response of September 13, 2012. It is impossible to provide more complete calculation on the product costing as the production costs will be vary from time to time. Reztec's costing is normally based on the assumed ratio and it endeavors to match that plan. There is no single item for which the company can calculate and

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[37] *See* First Supplemental Questionnaire Response, at 12 (*i.e.*, Question 20, sections (d) and (e).
[38] *Id.*, at 13.
[39] *Id.*, at Exhibit 31 and Exhibit 33.
[40] *See* Memorandum to James Doyle, Office Director, from Steven Hampton, International Trade Compliance Analyst, entitled "Proprietary Analysis of Comment 1: Whether the Department Should Continue to Find Reztec's Malaysian Production Process to be Minor or Insignificant," dated concurrently with this Issues and Decision Memorandum and adopted herein, at E. Section 781(b)(2)(E): Whether the Value-Added by Malaysian Production Represents a Small Proportion of the Value of the Merchandise Exported to the United States.

provide the exact breakdown for 100 percent of its output. However, Reztec is confident that the breakout provided at its Exhibit 31 accurately describes the reality of Reztec's overall production patterns."[41] We note that Reztec did not provide any further supporting documentation or worksheets in its second supplemental questionnaire response to tie any of this information accounting records.

As the Federal Circuit has stated, "{a} party is uncooperative if it has not acted to the best of its ability to comply with requests for necessary information."[42] In interpreting the phrase "the best of its ability," the Federal Circuit has found that it requires respondents "to do the maximum it is able to do."[43] To comply with the "best of its ability" standard, the Federal Circuit has stated that respondents must,

> "{p}ut forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. It assumes that importers are familiar with the rules and regulations that apply to the import activities undertaken and requires that importers, to avoid a risk of an adverse inference determination in responding to Commerce's inquiries: (a) take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to produce; (b) have familiarity with all of the records it maintains in its possession, custody, or control; and (c) conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of the importers' ability to do so."[44]

To conclude that an importer has not cooperated to the best of its ability and to draw an adverse inference under section 776(b) of the Act, the Federal Circuit has stated that,

> "Commerce need only make two showings. First, it must make an objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations. Second, Commerce must then make a subjective showing that the respondent under investigation not only has failed to promptly produce the requested information, but further that the failure to fully respond is the result of the respondent's lack of cooperation in either: (a) failing to keep and maintain all required records, or (b) failing to put forth its maximum efforts to investigate and obtain the requested information from its records. An adverse inference may not be drawn merely from a failure to respond, but only under circumstances in which it is reasonable for Commerce to expect that more

[41] *See* Second Supplemental Questionnaire Response, at 6.
[42] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1381 (Fed. Cir. 2003).
[43] *Id.*, 337 F.3d at 1382; *accord Yantai Timken Co., Ltd. v. United States*, 521 F. Supp. 2d 1356, 1372-73 (Ct. Int'l Trade 2007).
[44] *See Nippon Steel Corp.*, 337 F.3d at 1382.

forthcoming responses should have been made; *i.e.*, under circumstances in which it is reasonable to conclude that less than full cooperation has been shown."[45]

As a producer and exporter of several products, including uncovered innerspring units, it is reasonable for the Department to find that Reztec should have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations. Indeed, information on the PRC-origin inputs likely would need to be available to Malaysian customs officials, among other entities in that country. Furthermore, such information would be relevant to officials at U.S. Customs and Border Protection ("CBP"). In directing its products to the United States market, a reasonable exporter would have known that such information could be requested. Moreover, by failing to keep and maintain adequate records, Reztec prevented itself from fully responding to the Department's requests for information. Therefore, the Department continues to find that Reztec did not act to the best of its ability to comply with requests for necessary information, and these omissions continue to justify the application partial AFA.

The record does not support Reztec's remaining arguments. We disagree that the Department asked Reztec to submit, within the explained limits of its abilities, additional information to bolster Reztec's earlier explanations. Reztec cites to the second question of the third supplemental questionnaire where the Department asked Reztec to revise a chart it had submitted earlier in this proceeding.[46] This was not an attempt by the Department to bolster Reztec's earlier explanations; rather, it was a second attempt by the Department to clarify information that Reztec had already submitted and to substantiate this information with supporting documentation. Specifically, in the third supplemental questionnaire, the Department asked Reztec to revise a chart regarding the quantity and value of innerspring units produced by Reztec from PRC-origin components along with supporting documentation (*i.e.*, invoices, packing lists, and bills of lading)[47] because when the Department asked Reztec to provide this information in the first supplemental questionnaire, Reztec merely provide two charts without any supporting documentation.[48]

We also disagree with Reztec's argument that the Department should have suggested that Reztec "hire a cost consultant to build a retroactive tracking system." It is Reztec's responsibility to determine what resources it needed to respond to the Department's requests for information. "The general rule with regard to a respondent's submissions of data to Commerce during the course of an antidumping investigation or review is that the respondent bears the burden and

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45 *Id.*, 337 F.3d at 1382-83 (citation omitted).

46 *See* Third Supplemental Questionnaire Response, at Question 2. ("Please revise the chart provided in Exhibit 31 of your first supplemental questionnaire response, dated September 13, 2012 (SQR1") to include a column calculating the quantity and value of uncovered innerspring units (*i.e.*, not finished mattresses) produced by Reztec that were exported to the United States. For those uncovered innerspring units exported to the United States, please explain what percentage was manufactured from PRC-sourced components and provide supporting documentation for April 2011 and October 2011 including: a. Invoices, b. Packing Lists, c. Bills of Lading, and d. Separate Charts for April 2011 and October 2012, organized by supplier and invoice number, which contain the quantity and value for each sale of uncovered innerspring units exported to the United States.")

47 *Id.*

48 *See* First Supplemental Questionnaire, at 10 and Exhibit 31.

responsibility of creating an accurate record within the statutory timeline."[49] Furthermore, it would be inappropriate for the Department to provide guidance on Reztec's internal business decisions.

With respect to Reztec's argument that if the Department chooses not to conduct an on-site verification, the result cannot be that any "unverified" information is then discounted as false or unsupported, we disagree. In the *Preliminary Determination*, the Department stated that the use of partial AFA for this factor was warranted because "Reztec prevented the Department from verifying the information that it submitted when it failed to tie such information to its books and records."[50] While one manner in which the Department tests the reliability of information submitted during an antidumping proceeding is through on site verification, the Department also tests submitted information by confirming that the submitted information is supported by a company's normal books and records. Thus, when Reztec was not able to explain how the information it submitted to the Department regarding the value of the merchandise produced in the foreign country to which the order applies (*i.e.*, the PRC) was supported by its normal books and records; the Department was not able to verify this information. That is, the Department was not able to confirm Reztec's alleged ratio of PRC-sourced innerspring components versus Malaysian-sourced innerspring components.

We also disagree with Reztec's argument that, if Reztec is guilty of failing to support its cost information such that AFA are justified, the Department should not declare Reztec's products to be PRC-origin. As described in the *Preliminary Determination*, Reztec reported that it uses PRC-origin innerspring components and Malaysian innerspring unit components interchangeably[51] and that it actually "endeavors" to mix PRC-origin and Malaysian innerspring components in the production of subject merchandise.[52] The Department asked Reztec if it could distinguish between innerspring units which it exported to the United States which contained PRC-origin components and those which did not.[53] Reztec responded that it could not.[54]

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[49] *See Alloy Piping Products, Inc. v. United States*, 201 F. Supp.2d 1267, 1284 (CIT 2002) (citing *RHP Bearings v. United States*, 875 F. Supp. 854, 857 (CIT 1995)); *Yamaha Moto Co., Ltd. V. United States*, 910 F.Supp. 679, 687 (CIT 1995) ("It is the respondent's obligation to supply Commerce with accurate information."); *Societe Nouvelle De Roulements v. United States*, 910 F. Supp. 689, 694 (CIT 1995) ("Respondents 'must submit accurate data' and 'cannot expect Commerce, with its limited resources to serve as a surrogate to guarantee the correctness of submissions.")).

[50] *See Preliminary Determination* and accompanying Preliminary Decision Memo, at 11.

[51] *See* Analysis Memo, at 9.

[52] *See* Second Supplemental Questionnaire, at 6.

[53] *Id.*

[54] *Id.* Reztec offered alternative data for the Department to use to segregate innerspring units produced in Malaysia using PRC-origin components from innerspring units produced in Malaysia using Malaysian-sourced components (*i.e.*, In Reztec's case brief, Reztec attempted to utilize information already on the record to calculate the percentage of innerspring units produced in Malaysia using PRC-origin components from innerspring units produced in Malaysia using Malaysian-sourced components.) However, as explained more thoroughly above and in the Analysis Memo, Reztec failed to tie the alternative data to its books and records, despite the Department's repeated requests that it do so. Consequently, the Department continues to find Reztec's alternative data unreliable and that these alternative data do not provide a basis on which to suspend on a portion of Reztec's exports and the Department has not otherwise used the alternative data in this final determination. *See* Reztec's Case Brief at Attachment A.

Thus, the Department will continue to declare Reztec's innerspring units to be PRC-origin because, based on the record evidence, there is no way to segregate innerspring units comprised solely of Malaysian origin components from those comprised of PRC-origin components.[55]

Finally, we disagree with Reztec's proposition that the Department could derive a PRC input value by multiplying the quantity required of each input for each model by the highest input value on the record, to yield the highest assumed PRC input cost. Reztec attempted to perform this calculation with the cost information it submitted on the record for six innerspring unit models.[56] Again, the Department notes that this information is limited to six innerspring unit models and it was never tied to Reztec's accounting records. Thus, this information cannot be used to quantify the value of PRC-origin innerspring components in relation to the total value of merchandise that Reztec exported to the United States. Therefore, the Department will continue to apply partial AFA in determining that the value of the merchandise produced in the PRC is a significant portion of the total value of the merchandise that Reztec exported from Malaysia to the United States.

Comment 3: Whether the Department Should Provide Additional Guidance to Reztec Regarding Future Compliance with Any Affirmative Finding

Reztec:

- Although Reztec does not believe it should be subject to the *PRC Innerspring Units Order*, it nevertheless wishes to be certain that it can comply with the Department's procedures should it be made subject the *PRC Innerspring Units Order*. Reztec requests that the Department provide additional guidance with respect to the following statement in the *Preliminary Determination*. Specifically, the Department stated that any imports by Reztec of innerspring units after May 23, 2012 would be subject to the PRC-wide rate, and that to contest that PRC-wide rate, Reztec would have to request an administrative review of its exports under the *PRC Innerspring Units Order*, in which the "Department would determine for the first time Reztec's antidumping margin."[57]
- The Department posited two scenarios in a potential administrative review. First, if Reztec can show that the merchandise is made entirely of Malaysian (or other non-PRC) components, then those entries will be liquidated without any duty, and all deposits will be refunded.[58] Second, to the extent any entries contain PRC (or unknown) components, they will be subject to the review.[59] Reztec requests that the Department clarify the nature of the proof it would accept as to the source of Reztec's non-PRC inputs, *i.e.*, "to demonstrate that certain entries contain no PRC-origin components," in order that "those entries would be liquidated without regard to duties."[60] Furthermore, if Reztec is a respondent in a future administrative review, it requests the Department's guidance as to what procedures the Department would follow regarding Reztec's participation.
- Because Reztec is a market economy ("ME") producer, it requests the Department's guidance as to how it would participate in a non-market economy ("NME") administrative review. For

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[55] *See* Comment 3 <u>*infra* for a discussion of approaches the Department may take if Reztec is able to demonstrate in the future that its innerspring units do not contain PRC-origin components.</u>

[56] *See* Reztec's Case Brief, at Attachment C.

[57] *See Preliminary Determination* and accompanying Preliminary Decision Memo, at 15-16.

[58] *Id.*

[59] *Id.*, at 16.

[60] *Id.*

example, would the laws governing a ME dumping case apply, such that the Department would compare Reztec's domestic sales prices (or constructed value) to its U.S. sales? Or, if Reztec were to be treated as a NME supplier, would Reztec need to apply and qualify for a separate rate under the *PRC Innerspring Units Order*?

- Finally, if Reztec is one of many potential respondents in a future administrative review, it requests the Department's assurance that Reztec will have the option of priority selection as a mandatory (or voluntary) respondent.

Department's Position: In the *Preliminary Determination*, we stated that the following:

> If Reztec would like to be reviewed under the *PRC Innerspring Units Order*, it must request a review of its exports. In such a review, the Department would determine, for the first time, Reztec's antidumping margin. Should the Department conduct an administrative review, Reztec will have the opportunity to provide information demonstrating which of its innerspring units contains only PRC-origin components. Consistent with the Department's previous affirmative final anticircumvention determinations, in the event that Reztec is able to demonstrate that certain entries contain no PRC-origin components, those entries would be liquidated without regard to duties. Entries that contain only PRC-origin components or entries which contain components for which the origin is unknown would be subject to the administrative review.[61]

The Department's position remains the same as that articulated in the *Preliminary Determination*. Given that the Department made an affirmative finding of circumvention, Reztec can request an administrative review or a changed circumstances review under the *PRC Innerspring Units Order* pursuant to 19 CFR 351.213(b) and 19 CFR 351.216, respectively. As the Department articulated in previous anticircumvention inquires,[62] Reztec may take appropriate steps to ensure that its exporters from Malaysia are not subject to the *PRC Innerspring Units Order*. For example, if Reztec is able to distinguish and track subject versus non-subject merchandise in its inventory in the future, Reztec can request an administrative review and the non-PRC origin merchandise would be liquidated without regard to duties.

The Department is limited in how it may respond to Reztec's remaining questions. In particular, the Department cannot speculate on the nature of the proof we would accept regarding the source of Reztec's non-PRC inputs, Reztec's status as a ME producer or as a NME producer, and the procedures we would follow in a potential future administrative review. Furthermore, we cannot speculate or ensure whether we would select Reztec as a respondent in a potential future administrative review. However, consistent with the Department's position in *Tissue Paper from*

[61] *See Preliminary Determination*, and accompanying *Preliminary Decision Memo*, at 15-16 (footnotes omitted).

[62] *See, e.g., Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 78 FR 40101 (July 3, 2013), and the accompanying Issues and Decision Memorandum at 14-15; *Glycine from the People's Republic of China: Final Partial Affirmative Determination of Circumvention of the Antidumping Duty Order*, 77 FR 73426 (December 10, 2012), and the accompanying Issues and Decision Memorandum at 17; and *Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 76 FR 47551 (August 5, 2011), and accompanying Issues and Decision Memorandum at 19, 27.

the PRC 2011,[63] if we conduct a subsequent administrative review and determine that Reztec has not produced for export innerspring units using PRC-origin components, we would consider conducting a changed circumstance review to determine if the continued suspension of all innerspring units produced by Reztec is warranted.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If accepted, we will publish the final determination of this final affirmative determination of circumvention in the *Federal Register.*

AGREE ✓ DISAGREE_________

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

1/13/14
Date

[63] *See Tissue Paper 2011*, 76 FR at 47551 and accompanying Issues and Decision Memorandum at 19.