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March 7, 2017

MEMORANDUM TO: Ronald Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Uncovered Innerspring Units from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2015-2016 Administrative Review

SUMMARY:

We analyzed the comments submitted in this administrative review of the antidumping duty order on uncovered innerspring units (innersprings) from the People's Republic of China (PRC) covering the period of review (POR) February 1, 2015, to January 31, 2016. As a result of our analysis, we have not made any changes from the *Preliminary Results*.[1] We recommend that you approve the position described in the "Discussion of the Issue" section of this Issues and Decision Memorandum.

BACKGROUND:

On November 7, 2016, the Department of Commerce (the Department) published the *Preliminary Results* of this administrative review.[2] The review covers one exporter of subject merchandise, Enchant Privilege Sdn Bhd (Enchant Privilege). Because Enchant Privilege did not respond to the Department's questionnaire,[3] the Department resorted to adverse facts available (AFA) pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), to assign a margin to Enchant Privilege in the *Preliminary Results*.

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[1] *See Uncovered Innerspring Units from the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*; 2015-2016, 81 FR 78116 (November 7, 2016) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.
[2] *Id.*
[3] On May 6, 2016, the Department placed documentation on the record confirming that Enchant Privilege received the Department's original antidumping duty questionnaire. *See* Memorandum to the File from Kenneth Hawkins, International Trade Compliance Analyst, Office V, Enforcement and Compliance regarding 2015-2016 Administrative Review of Uncovered Innerspring Units from the People's Republic of China: Delivery Notification of Antidumping Duty Questionnaire to Enchant Privilege Sdn Bhd (Enchant Privilege Confirmation Memo).

On December 7, 2016, Leggett and Platt, Inc. (Petitioner) submitted its case brief.[4] No other case or rebuttal briefs were filed by interested parties.

SCOPE OF THE ORDER:

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, 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.

USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES:

Because Enchant Privilege did not respond to the Department's questionnaire, we preliminarily determined that necessary information was missing from the record, and that Enchant Privilege withheld requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded the proceeding. Accordingly, we reached our determination with respect to Enchant Privilege on the basis of facts available pursuant to sections 776(a)(1) & (2)(A), (B), and (C) of the Act, applying an adverse inference pursuant to section 776(b) of the Act because we found that Enchant Privilege failed to cooperate to the best of its ability in providing the requested information.

[4] *See* Letter to the Secretary of Commerce entitled, "Seventh Administrative Review of the Antidumping Duty Order on Uncovered Innerspring Units from the People's Republic of China: Case Brief," dated December 7, 2016 (Petitioner's case brief).

Because Enchant Privilege is not a PRC exporter, the Department preliminarily determined that it was appropriate to apply AFA only to Enchant Privilege's exports of subject merchandise (*i.e.*, PRC-origin innersprings).[5] Using AFA, the Department assigned to Enchant Privilege's exports of PRC-origin innersprings an individual rate of 234.51% based on total AFA, which is the PRC-wide entity rate.[6] Because the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding,[7] we did not corroborate the rate assigned to Enchant Privilege in the review.

Except as noted below in the "Discussion of the Issue" section of this memorandum, no parties submitted comments related to the Department's AFA determination. Accordingly, the Department continues to find that the application of AFA is warranted for purposes of these final results.

DISCUSSION OF THE ISSUE:

Comment: Whether to Apply an Adverse Inference that all of Enchant Privilege's Innersprings Are PRC-Origin

Petitioner:

- Enchant Privilege failed to act to the best of its ability in this administrative review by not responding to the Department's questionnaire.[8] AFA is designed to induce respondents with an incentive to cooperate and to ensure an uncooperative respondent does not obtain a more favorable rate by failing to cooperate than had it cooperated fully.[9]
- The Department has the authority to determine country of origin. For example, the Department has determined country of origin in circumvention proceedings conducted under this order, in the course of conducting a substantial transformation analysis in an administrative review, and impliedly in every administrative review where the Department assigns a rate to specific merchandise.[10]
- The Department has also determined country of origin in other proceedings involving claims that merchandise was being transshipped through a third country.[11]

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[5] *See Preliminary Results*, and accompanying Preliminary Decision Memorandum at 4.
[6] *See Uncovered Innerspring Units from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 56338 (September 19, 2014).
[7] *See* section 776(c)(2) of the Act.
[8] *See* Enchant Privilege Confirmation Memo.
[9] *See* Petitioner's case brief at 3 (citing *Ad Hoc Shrimp Trade Action Cmte. v. United States*, 802 F. 3d 1339, 1361 (CIT 2015)).
[10] *See* Petitioner's case brief at 3-4 (citing *e.g.*, *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007-2008 Administrative Review of the Antidumping Order*, 75 FR 844 (January 6, 2010) (*Tapered Roller Bearings from the PRC*) and accompanying Issues and Decision Memorandum at Comment 1).
[11] *See* Petitioner's case brief at 4-6 (citing *e.g.*, *Oil Country Tubular Goods from Mexico: Rescission of Antidumping Duty Administrative Review*, 66 FR 26830 (May 15, 2001) (*Mexican OCTG*); *Notice of Final Determination of Sales at Not Less Than Fair Value: Expandable Polystyrene Resins from the Republic of Korea*, 65 FR 69284, 69285 (November 16, 2000) (*EPS from Korea*) and accompanying Issues and Decision Memorandum at Comment 1; *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 58642 (October 16, 2007) (*Tissue from the PRC*), and accompanying Issues and Decision Memorandum at Comment 4).

- The Court of International Trade has confirmed the Department's authority to exercise gap-filling discretion to address transshipment allegations in an administrative review.[12]
- The AFA determination is not tied to any specific type of segment of a proceeding and if an adverse inference can be made in a circumvention proceeding, it can also be made in an administrative review.
- Because Enchant Privilege deprived the Department of information needed to conduct this review, the Department should determine that all of Enchant Privilege's merchandise is of PRC origin in order to ensure future compliance. Otherwise Enchant Privilege will be rewarded by having failed to cooperate.

Department's Position:

We disagree with Petitioner's argument that the Department should draw an adverse inference that all of Enchant Privilege's exports of innersprings were of PRC-origin, irrespective of the declared country of origin. The Department's practice, in cases where there is evidence of possible transshipment, is to refer the matter to U.S. Customs and Border Protection (CBP).[13] As the Court noted in *Globe Metallurgical*, when sustaining the Department's decision not to consider transshipment allegations in an administrative review, the Department's "recognition of CBP's authority to investigate fraud, gross negligence, or negligence involving entries of merchandise, and that CBP is better positioned to address a standalone country-of-origin issue, is also consistent with 19 USC 1592."[14]

Petitioner cites certain instances where the Department, in the course of an administrative review, has purportedly examined transshipment issues. We disagree that those cases establish that the Department has a practice of addressing transshipment in administrative review. In a limited number of proceedings, the Department has undertaken some steps to ensure that a respondent's sales database is complete or that its no shipments certification is accurate. However, the extent of these investigations is typically very limited and the facts surrounding these cases differ.

For example, in *Mexican OCTG*,[15] cited by Petitioner, the Department sought additional information from a respondent reporting no shipments, after the petitioner claimed that merchandise produced by the respondent was shipped from a third country into the United States during the period of review. The Department concluded that there was no evidence that the respondent had knowledge of the U.S. destination of the merchandise, and rescinded the administrative review with respect to the respondent. The Department conducted no circumvention or transshipment analysis in that review, nor did it conclude that the merchandise

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[12] *Id.* at 6 (citing *Globe Metallurgical Inc. v. United States*, 722 F. Supp. 2d 1372, 1381 (CIT 2010) (*Globe Metallurgical*)).

[13] *See*, *e.g.*, *Certain Activated Carbon from the People's Republic of China: Preliminary Results of the Third Antidumping Duty Administrative Review, and Preliminary Rescission in Part*, 76 FR 23978 (April 29, 2011) unchanged in final 76 FR 67134 (October 31, 2011); *Certain Magnesia Carbon Bricks from the People's Republic of China: Final Results and Final Partial Rescission of the Antidumping Duty Administrative Review; 2012-2013*, 80 FR 19961 (April 14, 2015) and accompanying Issues and Decision Memorandum at Comment 3.

[14] *See Globe Metallurgical*, 722 F. Supp. 2d at 1381; *Kinetic Industries Inc. v. United States*, 800 F. Supp. 2d 1339, 1344 (CIT 2011).

[15] *See Mexican OCTG*, 66 FR at 26831.

had a different country of origin than what had originally been reported to CBP (as Petitioner suggests that we do here). We also find Petitioner's cite to *Mexican CWP*[16] and *EPS from Korea*[17] to be inapposite. The Department's analysis in *Mexican CWP* concerns the comingling of sales produced by different companies, which is not an issue in this case. Also, in *EPS from Korea*, the Department declined to undertake an extensive investigation of petitioner's allegations that subject merchandise was being transshipped through Mexico. After receipt of petitioners' allegation of transshipment, the Department reviewed CBP data and conducted normal verification procedures, such as completeness tests, to determine whether respondents' U.S. sales database were complete. Finding no evidence of transshipment through these normal procedures, the Department declined to undertake further investigation and, consistent with our practice, referred the matter to CBP for further investigation. Lastly, Petitioner notes that in *Tissue from the PRC*, the Department examined whether PRC-origin tissue paper was transshipped through Indonesia.[18] While the Department examined those allegations in that case, we made no finding of transshipment and, in fact, found the opposite and rescinded the review with respect to that company.[19]

To the extent Petitioner asks the Department to find as AFA that Enchant Privilege's innersprings incur only minor processing in Malaysia, such that they are properly PRC in origin, Petitioner cites no evidence indicating that there is third-country processing. Moreover, the Department has found that scope and circumvention procedures provide the best venue for the Department to investigate country-of-origin claims involving third-country processing.[20] Retrospective administrative reviews are a less appropriate venue for examining claims of minor processing in a third country where there are unlikely to be any suspended entries upon which the Department can order the assessment of antidumping duties. We note additionally that the Department's regulations provide an express framework for examining instances where there is a question as to the country of origin of the merchandise based upon processing activities that take place in a third country. The introduction to 19 CFR 351.225 indicates that "a domestic interested party may allege that changes to an imported product or the place where the imported product is assembled constitutes circumvention under section 781 of the Act." In addition, 19 CFR 351.225(h) allows for "imported merchandise completed or assembled in a foreign country other than the country to which the order applies" to be included in the scope of an antidumping

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[16] *See Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review*, 76 FR 36086 (June 21, 2011) (*Mexican CWP*) and accompanying Issues and Decisions at Comment 3.
[17] *EPS from Korea*, and accompanying Issues and Decision Memorandum at Comment I.
[18] *Tissue from the PRC*, and accompanying Issues and Decision Memorandum at Comment 4.
[19] *Id.*
[20] *See* Final Results of Redetermination Pursuant to Court Remand in Globe Metallurgical Inc. v. United States, Court No. 08-00290 (CIT December 2009). As Petitioner cited, in *Tapered Roller Bearings from the PRC*, the Department conducted a substantial transformation analysis in the context of an administrative review. However, Petitioner has not suggested that the Department should have conducted a substantial transformation analysis in this review. Further, the Department's decision in *Tapered Roller Bearings from the PRC* was ultimately amended as a result of litigation, and in the amended final results, the Department redetermined the country of origin for certain merchandise under review and revised the dumping margin calculations to exclude U.S. sales of tapered roller bearings further processed in Thailand. *See Tapered Roller Bearings and Parts Thereof Finished and Unfinished, From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Antidumping Duty Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review; 2007-2008*, 81 FR 4253 (January 26, 2016).

duty order. By linking the Department's authority to investigate country-of-origin claims to whether a third-country party conducted some type of work on the merchandise before it is exported to the United States, the Department's regulations set forth a manageable framework for the Department to investigate country-of-origin claims involving such activity.

Therefore, we have not made a determination that Enchant Privilege's entries of innersprings are of PRC in origin. Although Petitioner raised concerns that Enchant Privilege's failure to cooperate deprived the Department of the information necessary to segregate subject and non-subject innersprings, we note that the Department intends to refer the matter of potential misclassification to CBP for further consideration. However, with respect to this review, the Department notes that the *Order* pertains only to innersprings from the PRC.[21] Thus, under these facts, the Department's authority to apply antidumping duties extends only to merchandise produced in the PRC.[22]

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the position described above. If accepted, we will publish the final results of review and the final dumping margin in the *Federal Register*.

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Agree Disagree

3/7/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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[21] *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order*, 74 FR 7661 (February 19, 2009) (*Order*).

[22] *See, e.g., Ugine & ALZ Belg., N.V v. United States*, 517 F. Supp. 2d 1333, 1345 (CIT 2007) (For merchandise to be subject to an order, it must meet both parameters, *i.e.*, product type and country of origin.) (citations omitted).