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Anti-circumvention Inquiry
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MEMORANDUM TO: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

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

SUBJECT: Preliminary Decision Memorandum for the Anti-circumvention Inquiry of the Antidumping Duty Order on Uncovered Innerspring Units from the People's Republic of China

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I. SUMMARY

The Department of Commerce (Commerce) self-initiated an anti-circumvention inquiry pursuant to section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(h) to determine whether imports into the United States of uncovered innerspring units (innersprings or innerspring units) produced by Macao Commercial and Industrial Spring Mattress Manufacturer (Macao Commercial) in Macau from materials and/or components originating in the People's Republic of China (China) are circumventing the antidumping duty order on innerspring units from China.[1] Based on the analysis below, we recommend that Commerce preliminarily find that imports into the United States of innerspring units assembled or completed by Macao Commercial[2] in Macau from Chinese-origin materials and/or components are circumventing the *China Innerspring Units Order*.

II. BACKGROUND

On February 19, 2009, Commerce published the *China Innerspring Units Order*. On April 3, 2015, after receiving a timely request from the petitioner,[3] Commerce initiated the sixth

[1] *See Uncovered Innerspring Units from the People's Republic China: Initiation of Anticircumvention Inquiry on Antidumping Duty Order*, 81 FR 83801 (November 22, 2016) *(Initiation Notice)*; *see also Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order*, 74 FR 7661 (February 19, 2009) (*China Innerspring Units Order*).
[2] Including its affiliates with which it is being treated as a single entity known as the "Macao Commercial Group." *See* the Affiliation and Collapsing section below.
[3] The petitioner is Leggett and Platt, Incorporated.

administrative review of the *China Innerspring Units Order*.[4] During the course of the sixth administrative review, Commerce selected Macao Commercial as one of the two mandatory respondents subject to individual examination during the review and, in response to Commerce's original and supplemental questionnaires, Macao Commercial acknowledged that it imports innerspring raw materials and partially assembled innerspring components from China for use in the production of innerspring units in Macao.[5] However, Commerce did not determine that the country of origin of all Macao Commercial's innerspring units that entered the United States during the period of review was China. Instead, Commerce explained that scope and circumvention procedures are more suitable for investigating country-of-origin claims involving third-country processing and that it intended to evaluate whether self-initiation of an anti-circumvention inquiry would be warranted based upon the information submitted by Macao Commercial during the review.[6]

On November 22, 2016, based on evidence from Macao Commercial's questionnaire responses in the sixth administrative review, Commerce self-initiated an anti-circumvention inquiry with respect to Macao Commercial.[7] On November 29, 2016, we issued a circumvention questionnaire to Macao Commercial.[8] On January 5, 2017, after being granted a one-week extension for the entire response,[9] Macao Commercial submitted a partial questionnaire response with 39 exhibits.[10] As described below, in order to give Macao Commercial the maximum opportunity to respond fully to our initial questionnaire, we permitted it to submit its response in three tranches. Macao Commercial began its Initial Response Part 1 not by responding directly to Commerce's questionnaire, but instead with a 22 and one half page narrative exposition characterizing its innersprings production and sales operations and objecting to this inquiry.[11] On January 12, 2017, after receiving an extension of an additional week for certain items requested in the circumvention questionnaire,[12] Macao Commercial submitted a second

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[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 18202 (April 3, 2015).
[5] *See, e.g.,* Memorandum to the File, "Factual Information from the Sixth Administrative Review," (November 22, 2016) (AR6 Factual Information Memo), at Attachment 1, Macao Commercial's July 21, 2016, Supplemental Response at Exhibit 5. In the *AR6 Final Results,* we found that "Macao Commercial submitted . . . an invoice for not just raw materials but PRC-origin innerspring components from Company X." *See Uncovered Innerspring Units from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2014–2015,* 81 FR 62729 (September 12, 2016) (*AR6 Final Results*), and accompanying Issues and Decision Memorandum at Comment 1.
[6] *See AR6 Final Results*, and accompanying Issues and Decision Memorandum at Comment 1.
[7] *See Initiation Notice.*
[8] *See* Letter from Commerce to Macao Commercial, regarding "Uncovered Innerspring Units from the People's Republic of China: Circumvention Inquiry Questionnaire," dated November 29, 2016.
[9] *See* Letter from the Department to Macao Commercial, dated December 28, 2016.
[10] *See* Letter from Macao Commercial to Commerce, regarding "Uncovered Innerspring Units from the People's Republic of China: Anti-Circumvention Inquiry of Macao Commercial and Industrial Spring Mattress Manufacturer (Macao Commercial); Response of Macao Commercial to Questionnaire," dated January 4, 2017 (Initial Response Part 1).
[11] *Id*. at 2-24.
[12] *See* Letter from the Department to Macao Commercial, dated January 5, 2017. The additional items consisted of a small number of exhibit pages needing to be fully translated, production cost figure summaries, the product codes, and, for at least one piece of machinery, locating the original acquisition records.

questionnaire response with 10 additional exhibits.[13] Prior to submitting Initial Response Part 2, Macao Commercial informed Commerce that in reviewing the documentation submitted to support Initial Response Part 1, it had identified additional innerspring components that were sourced in China from an affiliate, and exported from Macao to the U.S. market, and requested additional time to provide this information and submit complete responses to the circumvention questionnaire, which we granted.[14] On January 19, 2017, Macao Commercial submitted a third questionnaire response with an additional three exhibits.[15] On January 26, 2017, the petitioner submitted deficiency comments on Macao Commercial's responses to Commerce's circumvention questionnaire.[16] On February 2, 2017, Macao Commercial submitted comments responding to the petitioner's January 26, 2017, comments.[17]

On June 5, 2017, we issued a supplemental questionnaire to Macao Commercial.[18] In the cover letter to the supplemental questionnaire, we included instructions to ensure that Macao Commercial responded directly to the questions asked:

> For each of the supplemental questions, please provide a comprehensive, stand-alone response without referring to a separate narrative or responses to other questions. Please also do not preface your response to the questionnaire with a narrative exposition that includes information that would otherwise be responsive to the Department's questions. If you wish to provide additional narrative discussion beyond what the Department specifically asked (because you believe such discussion to be relevant to the question at hand), please do so in response to the appropriate question.[19]

On June 15, 2017, Macao Commercial submitted a supplemental response.[20] Prior to submitting this response, Macao Commercial had requested additional time to respond to five of

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[13] *See* Letter from Macao Commercial to Commerce, regarding "Uncovered Innerspring Units from the People's Republic of China: Anti-Circumvention Inquiry of Macao Commercial and Industrial Spring Mattress Manufacturer (Macao Commercial); Supplemental Response of Macao Commercial to Questionnaire," dated January 12, 2017 (Initial Response Part 2).
[14] *See* Letter from the Department to Macao Commercial, dated January 13, 2017.
[15] *See* Letter from Macao Commercial to Commerce, regarding "Uncovered Innerspring Units from the People's Republic of China: Anti-Circumvention Inquiry of Macao Commercial and Industrial Spring Mattress Manufacturer (Macao Commercial); Second Supplemental Response of Macao Commercial to Questionnaire," dated January 19, 2017 (Initial Response Part 3).
[16] *See* Letter from the petitioner to Commerce, regarding "Uncovered Innerspring Units from the People's Republic of China: Comments on Macao Commercial's responses to the Circumvention Questionnaire," dated January 26, 2017.
[17] *See* Letter from Macao Commercial to Commerce, regarding "Uncovered Innerspring Units from the People's Republic of China: Anti-Circumvention Inquiry of Macao Commercial and Industrial Spring Mattress Manufacturer (Macao Commercial); Rebuttal Brief of Macao Commercial in Response to Petitioner's January 26, 2017 Comments," dated, February 2, 2017.
[18] *See* Letter from Commerce to Macao Commercial, regarding "Uncovered Innerspring Units from the People's Republic of China: Supplemental Questionnaire," dated June 5, 2017.
[19] *Id*. at 1.
[20] *See* Letter from Macao Commercial to Commerce, regarding "Uncovered Innerspring Units from the People's Republic of China: Anti-Circumvention Inquiry of Macao Commercial and Industrial Spring Mattress Manufacturer (Macao Commercial); Supplemental Questionnaire," dated June 15, 2017 (First Supplemental Response).

Commerce's supplemental questions, and Commerce granted an extension of time, in part.[21] On June 22, 2017, Macao Commercial submitted a second supplemental questionnaire response.[22] Similarly, prior to submitting its second supplemental response, Macao Commercial requested additional time for two of the remaining five questions, and Commerce also granted an extension of time, in part.[23] On June 29, 2017, Macao Commercial submitted a third supplemental questionnaire response with one additional exhibit composed of 102 Excel spreadsheets.[24]

On July 17, 2017, the petitioner submitted deficiency comments on Macao Commercial's response to the supplemental questionnaire.[25] On July 24, 2017, Macao Commercial submitted comments on the petitioner's July 17, 2017, comments.[26] On October 17, 2017, at Commerce's request, Macao Commercial refiled its responses to the original and supplemental questionnaire to unbracket the names of its affiliated companies.[27]

Surrogate Country and Surrogate Value Submissions

Commerce is investigating whether Macau Commercial is circumventing the *China Innerspring Units Order* by assembling or completing innerspring units in Macau from Chinese-origin materials and/or components. Commerce considers China to be a non-market economy country.[28] Consistent with our practice in prior anti-circumvention inquiries involving non-

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[21] *See* Memorandum to the File, "Anticircumvention Inquiry of the Antidumping Duty Order on Uncovered Innerspring Units from the People's Republic of China," dated June 14, 2017 (granting Macao Commercial an additional seven days to respond).
[22] *See* Letter from Macao Commercial to Commerce, regarding "Uncovered Innerspring Units from the People's Republic of China: Anti-Circumvention Inquiry of Macao Commercial and Industrial Spring Mattress Manufacturer (Macao Commercial); Second Supplemental Response to Supplemental Questionnaire," dated June 21, 2017.
[23] *See* Memorandum to the File, "Anticircumvention Inquiry of the Antidumping Duty Order on Uncovered Innerspring Units from the People's Republic of China," dated June 22, 2017 (granting Macao Commercial an additional seven days to respond).
[24] *See* Letter from Macao Commercial to Commerce, regarding "Uncovered Innerspring Units from the People's Republic of China: Anti-Circumvention Inquiry of Macao Commercial and Industrial Spring Mattress Manufacturer (Macao Commercial); Third Supplemental Response to Supplemental Questionnaire," dated June 29, 2017.
[25] *See* Letter from the petitioner to Commerce, regarding "Uncovered Innerspring Units from the People's Republic of China: Comments on Macao Commercial's responses to the Supplemental Questionnaire," dated July 17, 2017.
[26] *See* Letter from Macao Commercial to Commerce, regarding "Uncovered Innerspring Units from the People's Republic of China: Anti-Circumvention Inquiry of Macao Commercial and Industrial Spring Mattress Manufacturer (Macao Commercial); Reply of Macao Commercial in Response to Petitioner's July 17, 2017 Comments," dated July 24, 2017.
[27] *See* Letter from Macao Commercial to Commerce, "Uncovered Innerspring Units from the People's Republic of China: Anti-Circumvention Inquiry of Macao Commercial and Industrial Spring Mattress Manufacturer (Macao Commercial); Revised Response of Macao Commercial to Questionnaire," dated October 17, 2017; *see also* Letter from Commerce to Macao Commercial, regarding "Uncovered Innerspring Units from the People's Republic of China: Anticircumvention Inquiry on Macao Commercial," dated October 11, 2017.
[28] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination*, 82 FR 50858, 50861 (November 2, 2017) (citing Memorandum to Gary Taverman, "China's Status as a Non-Market Economy," dated October 26, 2017), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

market economies, we use the surrogate value methodology for our analysis.[29] On February 15, 2017, Commerce issued a list of countries that are at the same level of economic development as China for use in this proceeding, and invited parties to submit comments on the list, the selection of a surrogate country, and the selection of surrogate values.[30] On February 21, 2017, Macao Commercial submitted comments on the surrogate country list,[31] and on February 27, 2017, the petitioner submitted rebuttal comments.[32] On March 17, 2017, both parties submitted comments on the selection of a surrogate country.[33] Lastly, on April 10, 2017, Macao Commercial submitted additional comments and surrogate value data.[34] No other interested party submitted comments or rebuttal comments on the selection of the surrogate country or surrogate value data.

III. 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

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[29] *See, e.g.*, *Steel Wire Garment Hangers from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 76 FR 27007, 27008 (May 10, 2011), unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 76 FR 66895 (October 28, 2011); *Certain Tissue Paper Products from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 73 FR 21580, 21584-85 (April 22, 2008), unchanged in *Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 73 FR 57591, 57592 (October 3, 2008).

[30] *See* Letter, "Anticircumvention Inquiry on Uncovered Innerspring Units from the People's Republic of China: Request for Economic Development, Surrogate Country and Surrogate Value Comments and Information," dated February 15, 2017.

[31] *See* Letter from Macao Commercial to Commerce, "Uncovered Innerspring Units from the People's Republic of China: Anti-Circumvention Inquiry of Macao Commercial and Industrial Spring Mattress Manufacturer (Macao Commercial); Macao Commercial's Comments to Proposed Surrogate Country List," dated February 21, 2017.

[32] *See* Letter from the Petitioner "Anti-Circumvention Inquiry on Uncovered Innerspring Units from the People's Republic of China: Response to Macau Commercial's February 21 Comments on Commerce's Proposed Surrogate Country List," dated February 27, 2017.

[33] *See* Letter from the Petitioner to Commerce, "Uncovered Innerspring Units from the People's Republic of China: Leggett & Platt Surrogate Country Comments," dated March 17, 2017; Letter from Macao Commercial to Commerce, "Uncovered Innerspring Units from the People's Republic of China: Anti-Circumvention Inquiry of Macao Commercial and Industrial Spring Mattress Manufacturer (Macao Commercial); Second Comments by Macao Commercial to Proposed Surrogate Country List," dated March 17, 2017.

[34] *See* Letter from Macao Commercial to Commerce, "Uncovered Innerspring Units from the People's Republic of China: Anti-Circumvention Inquiry of Macao Commercial and Industrial Spring Mattress Manufacturer (Macao Commercial); Third Comments by Macao Commercial to Proposed Surrogate Country List," dated April 10, 2017.

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.

IV. SCOPE OF THE ANTI-CIRCUMVENTION INQUIRY

The products covered by this inquiry are innersprings, as described above, that are manufactured in Macau by the Macao Commercial Group (*see* "Affiliation and Collapsing" section below) with Chinese-origin components and/or materials, and that are subsequently exported from Macau to the United States.

V. PERIOD OF ANTI-CIRCUMVENTION INQUIRY

The period of this anti-circumvention inquiry covers 2015, the most recently completed fiscal year prior to the initiation of this inquiry.

VI. AFFILIATION AND COLLAPSING

A. Affiliation

Section 771(33) of the Act states, in part, that the following persons shall be considered to be "affiliated" or "affiliated persons":

> (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.
> (B) Any officer or director of an organization and such organization.
> (C) Partners.
> (D) Employer and employee.
> (E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.
> (F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.
> (G) Any person who controls any other person and such other person.
> For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

The Act defines affiliates as, among other things, those that are in a "control" relationship with each other. In order to find control, a party must be legally or operationally in a position to exercise restraint or direction over another party.[35] "Actual control . . . is not required by the statute . . . . Rather, a person is considered to be in a position of control if he is legally in a position to exercise restraint or direction over the other person."[36] "Person" is defined in Commerce's regulations to include "any interested party as well as any other individual, enterprise, or entity, as appropriate."[37] Additionally, Commerce's interpretation of "any person" as encompassing "family" has been judicially upheld.[38]

The Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316 (1994), indicates that control may exist within the meaning of section 771(33) of the Act in the following types of relationships: (1) corporate or family groupings, (2) franchises or joint ventures, (3) debt financing, or (4) close supplier relationships in which either party becomes reliant upon the other.[39] With respect to close supplier relationships, Commerce has determined that the threshold issue is whether either the buyer or seller has, in fact, become reliant on the other.[40] Only if such reliance exists does Commerce then determine whether one of the parties is in a position to exercise restraint or direction over the other.[41]

Additionally, 19 CFR 351.102(b)(3) states that, to determine whether control exists within the meaning of section 771(33) of the Act, Commerce will consider the same four SAA factors listed above, among other factors. However, Commerce does not find the existence of control based on these factors "unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product."[42] Also, Commerce "will consider the temporal aspect of a relationship in determining whether control exists; normally, temporary circumstances will not suffice as evidence of control."[43]

<u>Analysis</u>

Macao Commercial has affirmatively attested,[44] and the record evidence supports finding, that Macao Commercial is affiliated with Tai Wa Commercial (a Macao trading company), Tai Wa

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[35] *See* section 771(33) of the Act.
[36] *See TIJID, Inc. v. United States*, 366 F. Supp. 2d 1286, 1293 (CIT 2005) (*TIJID*).
[37] *See* 19 CFR 351.102(b)(37). Similarly, 1 U.S.C. 1 defines "person" for purposes of all federal statutes as including "corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals."
[38] *See Ferro Union Inc. v. Wheatland Tube Co.*, 44 F. Supp. 2d 1310, 1326 (CIT 1999) (stating that "a family can reasonably be considered an 'entity' or an 'enterprise' because family members likely share a common interest."); *see also Dongkuk Steel Mill Co. v. United States*, 29 CIT 724, 734 (2005).
[39] *See* SAA at 838.
[40] *See Stainless Steel Wire Rod from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 59739, 59739-40 (October 11, 2006), unchanged in *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 72 FR 6528 (February 12, 2007); *see also TIJID*, 366 F. Supp. 2d at 1298-99.
[41] *See Catfish Farmers of Am. v. United States*, 641 F. Supp. 2d 1362, 1373-74 (CIT 2009); *see also TIJID*, 366 F. Supp. 2d 1286 at 1298-99; *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18404, 18417 (April 15, 1997).
[42] *See* 19 CFR 351.102(b)(3).
[43] *Id.*
[44] *See, e.g.,* First Supplemental Response at 3-4.

Machinery (a Macao trading company), Wa Cheong Hong (a Macao trading company), and Heshan Tai Hua Jian Ye Machinery Co., Ltd. (Heshan Tai Hua) (a Chinese manufacturer), pursuant to sections 771(33)(A) and (E) of the Act. These companies comprise a closely held group owned directly either wholly or jointly by members of the same family, or indirectly via one of these companies.[45] Accordingly, we preliminarily find that these five companies are under common family control and, therefore, affiliated, in accordance with sections 771(33)(A), (E), and (F) of the Act and 19 CFR 351.102(b)(3).

B. Collapsing

Under 19 CFR 351.401(f), Commerce will treat two or more affiliated producers as a single entity for purposes of antidumping proceedings if: (1) the companies have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities; and (2) there is a significant potential for the manipulation of price or production.[46] In determining whether there is a significant potential for manipulation, Commerce considers the following non-exhaustive list of factors: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether the firm's operations are intertwined such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.[47]

Commerce has long recognized that it is appropriate to treat certain groups of companies as a single entity.[48] While section 19 CFR 351.401(f) explicitly applies to producers, Commerce has found it to be instructive in determining whether affiliated non-producers should be collapsed and has used the criteria outlined in the regulation in its analysis. In a number of past cases, Commerce has treated affiliated producers and non-producers, such as exporters, trading companies, invoicing companies, and input suppliers, as a single entity where the criteria under the 19 CFR 351.401(f) are met.[49]

Furthermore, the CIT has upheld Commerce's practice of collapsing two entities that were sufficiently related to prevent the possibility of price manipulation, even when those entities

[45] For the specific details regarding the ownership structure and percentages of ownership for these companies, which is business proprietary information (BPI), *see* First Supplemental Response at Exhibit 61.
[46] *See* 19 CFR 351.401(f)(1).
[47] *See* 19 CFR 351.401(f)(2); *see also Queen's Flowers de Colombia v. United States*, 981 F. Supp. 617 (CIT 1997).
[48] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 5.
[49] *Id.*; *see also Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Preliminary Determination of No Shipments*, 82 FR 50383 (October 31, 2017), and accompanying Preliminary Decision Memo at "Affiliation and Collapsing of Affiliates," unchanged in *Carbon and Alloy Steel Wire Rod from the Republic of South Africa: Affirmative Final Determination of Sales at Less Than Fair Value and Affirmative Finding of Critical Circumstances*, 83 FR 2141 (January 16, 2018).

were not both producers.[50] For example, in *Hontex II*,[51] the Court of International Trade held that, once a finding of affiliation is made, affiliated exporters can be considered a single entity where their relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise.[52]

Analysis

Following on the discussion in the affiliation section above, Macao Commercial has also stated,[53] and the record evidence similarly supports finding, that Macao Commercial, along with its affiliates Tai Wa Commercial, Tai Wa Machinery, Wa Cheong Hong, and Heshan Tai Hua, comprise a single entity. We preliminarily determine that the criteria of 19 CFR 351.401(f) are met with respect to treating these five companies as a single entity.

Macao Commercial explained the formation of the Macao Commercial Group and described the ownership and management of each of the five companies.[54] Macao Commercial also described the various production, selling, and other functions performed by each of the five companies under discussion.[55] Based on the record evidence, we find that the ownership, management, and operations of the companies at issue are intertwined and can switch the role of producer and seller among the companies without substantial retooling of the production facilities.[56] Specifically, we find that the production facilities available to any company are the same, and that it would not require substantial retooling of the manufacturing facility in order to restructure manufacturing priorities.[57] For example, Macao Commercial could transfer its manufacturing facility to one of the other companies, or the corporate structure among the constituent companies could otherwise be reorganized to include the production facility into another company's scope of operations. Therefore, we find that the requirements of 19 CFR 351.401(f)(1) for treating affiliated parties as a single entity are met.

Further, we find that there is significant potential for manipulation of price or production, in accordance with 19 CFR 351.401(f)(2). As described above, the five companies comprising the

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[50] *See United States Steel Corporation v. United States*, 179 F. Supp. 3d 1114, 1135-42 (CIT 2016).
[51] *See Hontex Enterprises v. United States*, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004) (*Hontex II*).
[52] *Id*.
[53] *See*, *e.g.,* Initial Response Part 1 at 27 and 29; First Supplemental Response at 38-39.
[54] *See* First Supplemental Response at 3-5, 22-23, 33-35, and Exhibit 61.
[55] *Id.* at 5-7, 23-28, 33-35.
[56] *See Stainless Steel Butt-Weld Pipe Fittings from Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination*, 76 FR 79651, 79652 (December 22, 2011) (finding that "the ownership, management, and operations of a producer and an affiliated exporter were so intertwined that management could switch the role of producer and seller between the two companies without substantial retooling of either company"), unchanged in *Stainless Steel Butt-Weld Pipe Fittings from Italy: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 24459 (April 24, 2012).
[57] *See* First Supplemental Response at 22-29 and 33-37; *see also Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Preliminary Results of Antidumping Duty Administrative Review*, 77 FR 46704, 46706 (August 6, 2012) (finding that "because SMTC has a fully functioning facility for producing the subject merchandise, which is located on the same premises and is controlled by SSFC, the role of producer and seller could easily switch from SMTC to SSFC without substantial retooling at either company"), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Final Results of Antidumping Duty Administrative Review; 2010-2011*, 78 FR 9668 (February 11, 2013).

Macao Commercial Group are a closely held group of companies owned by members of the same family (either directly or through one of the companies themselves).[58] Moreover, record evidence demonstrates significant potential for manipulation of prices and production between these companies because of: 1) level of common ownership; 2) overlapping management; and 3) intertwined operations.[59]

Therefore, based on the foregoing, we preliminarily find that Macao Commercial, Tai Wa Commercial, Tai Wa Machinery, Wa Cheong Hong, and Heshan Tai Hua should be treated as a single entity (*i.e.*, the Macao Commercial Group) pursuant to 19 CFR 351.401(f).

VII. STATUTORY FRAMEWORK

Section 781 of the Act addresses circumvention of antidumping duty orders. Section 781(b)(1) of the Act provides that Commerce, after taking into account any advice provided by the U.S. International Trade Commission (ITC) under section 781(e) of the Act, may include imports of merchandise assembled or completed in a third country within the scope of an order at any time an order is in effect if: (A) the merchandise imported in the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an antidumping duty order, (B) before importation into the United States, such imported merchandise is completed or assembled in a third country from merchandise which is subject to such an order or is produced in the foreign country with respect to which such order applies, (C) the process of assembly or completion in a third country is minor or insignificant, (D) 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) Commerce determines that action is appropriate to prevent evasion of an order.

In determining whether or not the process of assembly or completion in a third country is minor or insignificant under section 781(b)(1)(C) of the Act, section 781(b)(2) of the Act directs Commerce 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 or not the value of processing performed in the third country represents a small proportion of the value of the merchandise imported into the United States. However, no single factor, by itself, controls Commerce's determination of whether the process of assembly or completion in a third country is minor or insignificant.[60] Accordingly, it is Commerce's practice to evaluate each of these five factors as they exist in the third country, depending on the totality of the circumstances of the particular anti-circumvention inquiry.[61]

Furthermore, section 781(b)(3) of the Act sets forth additional factors to consider in determining whether to include merchandise assembled or completed in a third country within the scope of an

[58] *See* First Supplemental Response at 3-5, 22-23, 33-35, and Exhibit 61.
[59] *Id.* at 4-7, 22-29, 33-37, and Exhibit 61.
[60] *See* SAA at 893.
[61] *See Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 73 FR 57591, 57592 (October 3, 2008) (*Tissue Paper Final Circumvention Determination*).

antidumping duty order. Specifically, Commerce shall take into account (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise is affiliated with the person who, in the third country, uses the merchandise to complete or assemble the merchandise which is subsequently imported into the United States; and (C) whether imports of the merchandise into the third country have increased after the initiation of the antidumping duty investigation that resulted in the issuance of an order.

Finally, we note that Commerce's practice for determining substantial transformation in country-of-origin determinations is distinct from Commerce's practice under section 781 of the Act in determining whether merchandise is being completed/assembled into a product in a third country and thereby avoiding the discipline of an order. Country-of-origin issues are not explicitly referenced in the anti-circumvention statute or its implementing regulations. Nevertheless, as Commerce has stated in the past, country-of-origin determinations made by U.S. Customs and Border Protection (CBP) pursuant to customs law, regulations, or practice may be different than what Commerce determines the country of origin to be for antidumping and/or countervailing duty purposes. Moreover, we do not believe the past substantial transformation analyses replace the analyses required under section 781 of the Act. The purposes of the two analyses are different. The substantial transformation analysis typically utilized by Commerce addresses a question distinct from that of an anti-circumvention inquiry. Therefore, the language of section 781(b) of the Act does not preclude an analysis of whether the activity is minor or insignificant even where Commerce has previously examined substantial transformation.

VIII. APPLICATION OF FACTS AVAILABLE WITH AN ADVERSE INFERENCE

A. Legal Standard

Sections 776(a)(1) and 776(a)(2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply facts otherwise available in reaching the applicable determination if necessary information is not on the record, or if an interested party: (A) withholds information requested by Commerce; (B) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act.

Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Section 776(b) of the Act provides that, if Commerce 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, Commerce may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.[62] In doing so, Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[63] In addition, the SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[64] The Court of Appeals for the Federal Circuit, in *Nippon Steel*, explained that the ordinary meaning of "best" means "one's maximum effort," and that the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do.[65] Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.[66] It is Commerce's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.[67]

B. Application of Facts Available to Macao Commercial with an Adverse Inference

Although Macao Commercial submitted responses to Commerce's initial and supplemental questionnaires, its submissions withheld information requested by Commerce, failed to provide information in the form requested, provided information that cannot be verified, and significantly impeded this inquiry.

Despite receiving numerous extensions and opportunities, Macao Commercial has not provided the requested cost reconciliations and stated that no such reconciliations exist in its normal books and records.[68] These standard reconciliations are vital to our ability to conduct this anti-circumvention inquiry, particularly verification, because reconciliations and their supporting documents show and explain the link between the information the respondent provides in its questionnaire responses and the books and records it maintains in the ordinary course of business. Moreover, there are discrepancies and unexplained differences in its financial statements that raise serious concerns about their reliability. As a result, Commerce does not have sufficient information on the record to rely on certain of Macau Commercial's reporting for purposes of conducting an anti-circumvention inquiry under section 781(b) of the Act. Due to

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[62] *See* 19 CFR 351.308(a).
[63] *See* section 776(b)(1)(B) of the Act.
[64] *See*, SAA at 870.
[65] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).
[66] *See, e.g., Nippon Steel*, 337 F.3d at 1382-83; *see also Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).
[67] *See, e.g., Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).
[68] *See* Third Supplemental Response at 13-16.

the business proprietary nature of much of the information underlying our application of adverse facts available (AFA), *see* the Preliminary Analysis Memorandum for further details.[69]

Therefore, we find that pursuant to section 776(a)(2)(A), (B), (C), and (D) of the Act, Macao Commercial has withheld requested information, failed to provide information in the form requested, significantly impeded the proceeding, and further provided information which could not be verified. Furthermore, we find that Macao Commercial's actions demonstrate a failure to cooperate to the best of its ability and, therefore, find that the use of an adverse inference pursuant to section 776(b) of the Act is appropriate.

For this preliminary determination, the application of AFA affects two of the criteria for the statutory anti-circumvention analysis: 1) whether the value of the processing performed in Macau represents a small proportion of the value of the merchandise imported into the United States; and 2) whether the value of the merchandise produced in China is a significant portion of the total value of the merchandise exported to the United States. As discussed below, Commerce determines based on AFA that: (a) the value of the processing performed by Macau Commercial in Macau represents a small proportion of the value of the merchandise imported into the United States; and (b) the value of the Chinese-origin merchandise used by Macao Commercial to produce innersprings exported to the United States from Macau represents a significant portion of the total value of the merchandise exported to the United States

IX. STATUTORY ANALYSIS

Section 781(b) of the Act directs Commerce to consider the criteria described above to determine whether merchandise completed or assembled in a third country circumvents an order. As explained below, Commerce preliminarily finds that innersprings exported from Macau to the United States, which were assembled in Macau by Macao Commercial using materials and/or components sourced from China, are circumventing the *China Innerspring Units Order*.

Is the Merchandise Imported into the United States of the Same Class or Kind as Merchandise that is Subject to the Order

The innersprings sold by the Macao Commercial Group to the United States are identical to the merchandise covered by the *China Innerspring Units Order*. Macao Commercial stated this in its responses to our questionnaires, both in the sixth administrative review and in this anti-circumvention inquiry.[70] No interested party to this proceeding has contended otherwise. Therefore, in accordance with section 781(b)(1)(A) of the Act, we preliminarily find that the innersprings exported to the United States by the Macao Commercial Group are of the same class or kind as other merchandise that is subject to the *China Innerspring Units Order*.

[69] *See* Anticircumvention Inquiry on Uncovered Innerspring Units from the People's Republic of China: Macao Commercial Preliminary Analysis Memorandum (Preliminary Analysis Memorandum) at 3-5.
[70] *See* AR6 Factual Information Memo at Attachment 2, pages 6-7; *see also* First Supplemental Response at 14.

Whether Before Importation into the United States, Such Merchandise is Completed or Assembled in a Third Country from Merchandise that is Subject to the Order, or Produced in the Foreign Country that is Subject to the Order

Macao Commercial acknowledged throughout this proceeding that it sources materials and/or components from China, which it uses to assemble innerspring units in Macau.[71] As such, the distinction Macao Commercial seems to make between components and raw materials is not relevant. Therefore, in accordance with section 781(b)(1)(B) of the Act, we preliminarily find that innerspring units are assembled in Macau by Macao Commercial from Chinese-origin materials and/or components prior to importation into the United States.

Whether the Process of Assembly or Completion in the Third Country is Minor or Insignificant

As explained above, section 781(b)(2) of the Act provides the criteria for determining whether the process of assembly or completion in the third country is minor or insignificant. The SAA explains that no single factor listed in section 781(b)(2) of the Act will be controlling.[72] Accordingly, it is Commerce's practice to evaluate each of the factors as they exist in the third country depending on the particular circumvention scenario.[73] Therefore, the importance of any one of the factors listed under section 781(b)(2) of the Act can vary from case to case depending on the particular circumstances unique to each anti-circumvention inquiry. In accordance with section 781(b)(2) of the Act, Commerce has considered all of the listed factors to determine whether the process of assembling or completing innersprings in Macau is minor or insignificant.

(1) Level of Investment in Macau

Macao Commercial provided information regarding the level of investment, including the initial investment in each company of the Macao Commercial Group, as well as the value of their fixed assets.[74] Due to the business proprietary nature of the investment information, our full analysis is contained in the Preliminary Analysis Memorandum.[75] The available record evidence indicates a reasonably significant level of investment in Macau for assembling innersprings. Accordingly, pursuant to section 781(b)(2)(A) of the Act, we preliminarily find that the level of investment in Macau by Macao Commercial in the facilities and equipment used to assemble the Chinese-origin inputs is significant compared to the level of investment, both in terms of initial capital and equipment, referenced in the *Initiation Notice*.

(2) Level of Research and Development (R&D) in Macau

Macao Commercial provided a description of the R&D activities undertaken by the Macao Commercial Group.[76] Due to the business proprietary nature of the Macao Commercial Group's

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[71] *See, e.g.*, Initial Response Part 1 at 4 ("In terms of its innerspring-making process . . . , Macao Commercial manufactures the innersprings it makes in Macao from raw materials and consumables it receives from China.").
[72] SAA at 893.
[73] *Tissue Paper Final Circumvention Determination*, 73 FR at 57592.
[74] *See* First Supplemental Response at 28-32.
[75] *See* Preliminary Analysis Memorandum at 5.
[76] *See* Initial Response Part 1 at 19-23; *see also* First Supplemental Response at 48-51.

R&D initiatives, a full discussion of the information used in our analysis is contained in the Preliminary Analysis Memorandum.[77] Pursuant to section 781(b)(2)(B) of the Act, we preliminarily find that the Macao Commercial Group has not provided evidence of a significant level of R&D expenditures to assemble and complete innersprings.

(3) Nature of the Production Process in Macau and
(4) Extent of the Production Facilities in Macau

Macao Commercial provided a detailed description of the process it performs to assemble innersprings for shipment to the United States.[78] It also provided a detailed description of its production facility.[79] Specific details regarding the company's production process descriptions, the types of production equipment used, and the number of production workers are proprietary information, and, therefore, a discussion of the information used in our analysis is contained in the Preliminary Analysis Memorandum.[80]

Pursuant to section 781(b)(2)(C) of the Act, Commerce preliminarily finds that the innersprings manufacturing process occurring in Macau is minor in terms of the production activities and processes. In addition, pursuant to section 781(b)(2)(D) of the Act, we find that Macao Commercial's production facility is not extensive given its small size.[81]

(5) Whether the Value of the Processing Performed in Macau Represents a Small Proportion of the Value of the Merchandise Imported into the United States

In prior anti-circumvention inquiries, Commerce has explained that, under this factor Congress, has directed the agency to "focus more on the nature of the production process and less on the difference between the value of the subject merchandise and the value of the parts and components imported into the processing country."[82] Additionally, Commerce has explained that, following the Uruguay Round Agreements Act, Congress redirected Commerce's focus away from a rigid numerical calculation of value-added toward a more qualitative focus on the nature of the production process.[83] Because, as discussed above in the "Application of Facts Available with an Adverse Inference" and in the Preliminary Analysis Memorandum,[84] Macao Commercial did not submit reliable cost data, the record does not contain reliable information regarding whether the costs associated with assembly operations represent a significant percentage of the total value of the innersprings assembled in Macau. Thus, we are preliminarily

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[77] *See* Preliminary Analysis Memorandum at 6.
[78] *See* Initial Response Part 1 at 10-17, Exhibits 1-2, and First Supplemental Response at 44-45.
[79] *Id*.
[80] *See* Preliminary Analysis Memorandum at 6-7.
[81] *Id.* at 6-7.
[82] *See*, *e.g.*, *Steel Wire Garment Hangers from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 76 FR 27007, 27012 (May 10, 2011), unchanged in *Steel Wire Garment Hangers from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 76 FR 66895 (October 28, 2011).
[83] *Id.*
[84] *See* Preliminary Analysis Memorandum at 3-5.

making our determination on the basis of AFA, pursuant to sections 776(a) and (b) of the Act. Information from the record of a prior anti-circumvention inquiry of the *China Innerspring Units Order* indicates that the value of assembly performed in Malaysia likely represents a small portion of the total value of the innerspring units imported into the United States.[85] Similar assembly operations in Macau also likely represent a small portion of the total value of the imported merchandise. Based on the foregoing, as AFA, we preliminarily determine that, pursuant to section 781(b)(2)(E) of the Act, the value added by Macanese production represents a small proportion of the value of the merchandise exported to the United States.

Whether the Value of the Merchandise Produced in China is a Significant Portion of the Total Value of the Merchandise Exported to the United States

We collected surrogate value data from interested parties to analyze Macao Commercial's costs and production process. Because, as discussed above in the "Application of Facts Available with an Adverse Inference" and in the Preliminary Analysis Memorandum,[86] Macao Commercial was unable to submit reliable cost data, the precise value of the Chinese-origin merchandise relative to the total value of the merchandise could not be determined. We are preliminarily making our determination on the basis of AFA, pursuant to sections 776(a) and (b) of the Act. Information from the record of a prior anti-circumvention inquiry of the *China Innerspring Units Order* indicates that the value of the materials and/or components imported from China for further assembly in Malaysia was a significant portion of the total value of the innerspring units exported to the United States.[87] This information was based on an evaluation of the petitioner's own production costs in China, as the largest producer of innersprings in China.[88] Additionally, information from the sixth administrative review indicates that the value of production in China appears to constitute a significant portion of the value of Macao Commercial's innerspring units.[89] Based on the foregoing, as AFA, we preliminarily determine that the value of the Chinese-origin merchandise used to produce innersprings exported to the United States from Macau represents a significant portion of the total value of the merchandise exported to the United States.

Other Factors to Consider

In determining whether to include merchandise assembled or completed in a foreign country within the scope of an order, section 781(b)(3) of the Act instructs Commerce to consider several additional factors: pattern of trade, affiliation, and increase in imports. Each of these factors is examined below.

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[85] *See Uncovered Innerspring Units from the People's Republic of China: Initiation of Anticircumvention Inquiry on Antidumping Duty Order*, 79 FR 78792, 78794 (December 31, 2014) (*Goldon Initiation*); Memorandum to the File, "Factual Information from the Goldon Circumvention Inquiry," (November 22, 2016) (Goldon Factual Information), at Attachment, pages 12-13.
[86] *See* Preliminary Analysis Memorandum at 3-5.
[87] *See Goldon Initiation*, 79 FR at 78794; Goldon Factual Information at Attachment, pages 14-15.
[88] *See Goldon Initiation*, 79 FR at 78794.
[89] *See* AR6 Factual Information Memo at Attachment 1, Exhibit 3.

A. Pattern of Trade and Sourcing

The first factor to consider under section 781(b)(3) of the Act is changes in the pattern of trade, including changes in sourcing patterns. Macao Commercial expressly stated, both in the sixth administrative review and in this anti-circumvention inquiry, that it set up the flow of trade of innerspring materials from China to Macao in order to designate Macau as the country of origin for shipment to countries with antidumping duty orders on innerspring units from China.[90] Additionally, data from the ITC DataWeb show a significant increase of U.S. imports of innerspring units from Macau since the imposition of the *China Innerspring Units Order*.[91] No party contests these facts. Therefore, based on the information on the record, we find that the pattern of trade since the imposition of the *China Innerspring Units Order* has shifted to support a preliminary finding that circumvention has occurred.

B. Affiliation

The second factor to consider under section 781(b)(3) of the Act is whether the manufacturer or exporter of the materials in China is affiliated with the Macanese entity that assembles or completes the merchandise exported to the United States. Generally, we consider circumvention to be more likely to occur when the manufacturer of the subject merchandise is affiliated with the third-country entity.[92]

In this inquiry, the record evidence does not indicate that any company within the Macao Commercial Group is affiliated with manufacturers or exporters of the materials from China that are used to produce innersprings in Macao. Therefore, we preliminarily determine that the Macao Commercial Group is not affiliated with any Chinese producers or exporters of the material inputs.

C. Increased Imports

The third factor to consider under section 781(b)(3) of the Act is whether imports into the third country (*i.e.*, Macao) of the merchandise described in section 781(b)(1)(B) of the Act have increased since the initiation of the underlying antidumping duty investigation. We did not examine any evidence regarding an increase in subject imports (*i.e.*, completed uncovered innerspring units) from China to Macau after the initiation of the investigation. Rather, we examined whether there was an increase in imports into Macao of innerspring materials or components, within the meaning of section 781(b)(1)(B)(ii) of the Act. We found that Macanese import data of steel wire (by far the predominant material input) from China under the Harmonized Tariff System category that Macao Commercial reported using indicate a substantial increase in volume since the imposition of the *China Innerspring Units Order*.[93]

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[90] *See* AR6 Factual Information Memo at Attachment 1, page 3; *see also* Initial Response Part 1 at 4-5, 8.
[91] *See* Memorandum to the File, "Innerspring Units Import Data," dated November 16, 2016.
[92] *See*, *e.g.*, *See Certain Tissue Paper Products from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order and Extension of Final Determination*, 73 FR 21580 (April 22, 2008), unchanged in *Tissue Paper Final Circumvention Determination*.
[93] *See* Memorandum to the File "Macanese Steel Wire Import Data," dated concurrently with this PDM.

X. RECOMMENDATION

We recommend preliminarily finding that, in accordance with sections 781(b)(1) and (2) of the Act, Macanese innersprings assembled or completed from Chinese-sourced innerspring components and/or materials are circumventing the *China Innerspring Units Order*. Pursuant to sections 781(b)(1)(A) and (B) of the Act, we preliminarily find that innersprings completed in Macau by Macao Commercial with Chinese-sourced innerspring components and/or materials and sold in the United States meet the physical description of merchandise that would be subject to the *China Innerspring Units Order*. Additionally, while Macao Commercial did provide evidence of a significant level of investment, based on our evaluation of the other criteria, pursuant to sections 781(b)(1)(C) and 781(b)(2) of the Act, we preliminarily find that the totality of the factors indicates the process of assembly or completion in Macau is minor and insignificant. Furthermore, in accordance with section 781(b)(1)(D) of the Act, we preliminarily find that the value of the merchandise produced in China is a significant portion of the total value of the merchandise exported to the United States. Finally, upon consideration of the above analysis as well as the factors specified under section 781(b)(3) of the Act (*e.g.*, the changes in the pattern of trade, including sourcing, and affirmative finding of increased imports of Chinese-sourced material inputs and/or components for innersprings into Macau) we preliminarily find that action is appropriate to prevent evasion of the *China Innerspring Units Order,* pursuant to section 781(b)(1)(E) of the Act. Consequently, our statutory analysis leads us to preliminarily find that, in accordance with sections 781(b)(1)-(3) of the Act, Macao Commercial is circumventing the *China Innerspring Units Order* by assembling or completing innerspring units in Macau from Chinese-origin components and/or materials. As a result, we will instruct CBP that imports of innersprings from Macau produced or exported by the Macao Commercial Group, irrespective of the declared country of origin, will be subject to the antidumping duty order at the China-wide rate via a third-country case number, unless Macao Commercial can demonstrate to CBP that the innersprings assembled or completed by Macao Commercial were supplied by a Chinese manufacturer with its own rate. In that instance, the cash deposit rate will be the rate of the Chinese innersprings manufacturer that has its own rate.

☒ ☐

Agree Disagree

8/9/2018

X James Maeder

Signed by: JAMES MAEDER

James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations