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March 18, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh 
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
2011-2012 Administrative Review

SUMMARY

We have 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, 2011, to January 31, 2012. As a result of our analysis, we have made changes from the preliminary results.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this Issues and Decision Memorandum.

BACKGROUND

On September 17, 2012, the Department published the *Preliminary Results*.² On October 17, 2012, Leggett and Platt, Incorporated (“Petitioner”) submitted its case brief.³ No other case or rebuttal briefs were filed by interested parties. On October 31, 2012, the Department tolled all administrative deadlines by two days.⁴ On December 7, 2012, the Department partially extended

¹ See *Uncovered Innerspring Units from the People's Republic of China; Antidumping Duty Administrative Review; 2011-2012*, 77 FR 57072 (September 17, 2012) (“*Preliminary Results*”) and accompanying Decision Memorandum for Preliminary Results of 2011-2012 Antidumping Duty Administrative Review: Uncovered Innerspring Units from the People's Republic of China dated September 10, 2012 (“*Preliminary Decision Memorandum*”).

² See *id.*

³ See Petitioner's Case Brief, dated October 17, 2012.

⁴ As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, 2012 through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. See Memorandum to the Record, from Paul Piquado, Assistant Secretary for Import Administration, regarding Tolling of Administrative Deadlines as a Result of the Government Closure During Hurricane Sandy, dated October 31, 2012.



the deadline for the completion of the final results by 30 days to February 18, 2013.⁵ On January 11, 2013, in response to a request from U.S. Customs and Border Protection (“CBP”), the Department updated the Customs Module for this Order by adding one Harmonized Tariff Schedule of the United States (“HTSUS”) number 7326.20.0071.⁶ On February 6, 2013, the Department fully extended the time limit for these final results by an additional 30 days to March 18, 2013.⁷

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, 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.

⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations through James Doyle, Director, Office 9, Antidumping and Countervailing Duty Operations, from Steven Hampton, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, Office 9, regarding Uncovered Innerspring Units from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review, dated December 7, 2012.

⁶ 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.

⁷ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations through James Doyle, Director, Office 9, Antidumping and Countervailing Duty Operations, from Steven Hampton, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, Office 9, regarding Uncovered Innerspring Units from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review, dated February 6, 2012.

DISCUSSION OF THE ISSUES

Comment 1: Treatment of the Tai Wa Hong Group's Sales

Petitioner:

- Petitioner has provided information that demonstrates that Tai Wa Hong maintains production facilities in the PRC and has acknowledged in a Canadian antidumping investigation that it exports PRC-origin innersprings.⁸
- The Department should collapse Tai Wa Hong with its affiliates Tai Wa Commercial & Industrial (Macau) Co. Ltd. (“Tai Wa Commercial”) and Macau Commercial & Industrial Spring Mattress Manufacturer (“Macau Commercial”). Petitioner has submitted evidence demonstrating that “Tai Wa Hong is a sole proprietorship owned by Wu Wai Hoi. This individual owns 80 percent of the shares of another company, {Tai Wa Commercial}. Tai Wa Commercial claims to be located at the same address as Tai Wa Hong. While Tai Wa Hong acknowledges that it purchases subject merchandise from its PRC factory, Tai Wa Commercial appears to claim that it sources innersprings from yet another Tai Wa Hong affiliate – {Macau Commercial}. Tai Wa Hong, Tai Wa Commercial, and Macau Commercial all share the same address in Macau”⁹
- The *Preliminary Results* are incomplete because the application of adverse facts available (“AFA”) is limited to Tai Wa Hong’s PRC-origin merchandise. The AFA determination should extend to all exports of innersprings made by Tai Wa Hong and its affiliates. Tai Wa Hong’s failure to cooperate deprived the Department of the information necessary to segregate subject and non-subject innersprings. In addition, bills of lading on the record identify Macau Commercial as the shipper of innersprings to the United States, which suggests that the importer is claiming Macau-origin for these innersprings.
- Given the record evidence that Tai Wa Hong has production facilities in the PRC, there are three potential scenarios with regard to the products exported by Tai Wa Hong, or its affiliates: (1) Tai Wa Hong produces and/or purchases both PRC-origin and Macau-origin innersprings, (2) Tai Wa Hong only exported Macau-origin innersprings to the United States, or (3) Tai Wa Hong exported PRC-origin innersprings that were not identified as such by the importer at the time of entry. Even if the Department assumes that some or all of those innersprings were Macau-origin, by failing to cooperate, Tai Wa Hong deprived the Department of the information need to identify specific shipments or to rescind the review because there were “no shipments” of subject merchandise. In order to preclude Tai Wa Hong from benefitting from its failure to cooperate, the Department should draw an adverse inference that the innersprings exported by Tai Wa Hong and its affiliates are subject to the order.

⁸ See Letter from Petitioner regarding the Third Administrative Review of the Antidumping Duty Order on Uncovered Innerspring Units from the People’s Republic of China, dated June 20, 2012 at Exhibits 2 and 3.

⁹ See Letter from Petitioner regarding the Third Administrative Review of the Antidumping Duty Order on Uncovered Innerspring Units from the People’s Republic of China, dated June 20, 2012 at 3 (internal footnotes omitted) and Exhibit 4 (“Macau Company Credit Report”). Petitioner withdrew its previous request for confidential treatment of the names in this paragraph so that the Department can craft appropriate cash deposit and liquidation instructions to CBP.

Department's Position: We agree with Petitioner's argument that the AFA determination should also apply to Tai Wa Hong's affiliates, Tai Wa Commercial and Macau Commercial, for the reasons provided below.

A. Use of Facts Available

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

As described in the *Preliminary Results*, Tai Wa Hong did not respond to the antidumping duty questionnaire issued by the Department.¹⁰ Since the *Preliminary Results*, Tai Wa Hong has declined to submit any information. Accordingly, we continue to find that the necessary information is not available on the record of this proceeding. Further, based upon Tai Wa Hong's failure to submit responses to the Department's questionnaire, we continue to find that Tai Wa Hong withheld the requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded this proceeding, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act. Therefore, we will continue to rely on the facts otherwise available in order to determine a margin for the Tai Wa Hong.¹¹

B. Application of Total AFA to Tai Wa Hong and Facts Available to the Tai Wa Hong Group

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. In selecting an adverse inference, the Department may rely upon (1) secondary information, such as information derived from the petition, the final determination in the investigation, any previous administrative review, or (2) any other information placed on the record.¹²

As stated in the *Preliminary Results*, Tai Wa Hong failed to cooperate to the best of its ability in providing the requested information because it withheld requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded this proceeding.¹³ Since the *Preliminary Results*, Tai Wa Hong has not provided additional information. Accordingly, pursuant to sections 776(a)(2)(A), (B), and (C) and section 776(b) of the Act, we find it appropriate to assign total AFA to Tai Wa Hong.¹⁴ By doing so, we ensure

¹⁰ See Preliminary Decision Memorandum at 3-5.

¹¹ See *Non-Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 69546 (December 1, 2006) ("*Cast Iron Pipe Fittings*"), and accompanying Issues and Decision Memorandum at Comment 1.

¹² See Section 776(b) of the Act.

¹³ See Preliminary Decision Memorandum at 3-5.

¹⁴ See *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review*, 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA

that Tai Wa Hong will not obtain a more favorable result by failing to cooperate than had it cooperated fully in this review.

Moreover, as facts available, we find it appropriate to regard Tai Wa Hong as affiliated with Tai Wa Commercial and Macau Commercial and to treat these companies as a single entity. Pursuant to 19 CFR 351.401(f)(1), the Department will collapse producers and treat them as a single entity where (1) those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. In determining whether a significant potential for manipulation exists, the regulations provide that the Department may consider various factors, including (1) the level of common ownership, (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and (3) whether the operations of the affiliated firms 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.¹⁵

To the extent that this provision does not conflict with the Department's calculation of separate rates or enforcement of the NME provision under section 773(c) of the Act, the Department will collapse two or more affiliated entities in a case involving an NME country if the facts of the case warrant such treatment.¹⁶ The factors listed in 19 CFR 351.401(f)(2) are not exhaustive and, in the context of an NME investigation or administrative review, other factors unique to the relationship of business entities within the NME may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case.¹⁷

In this case, we find that the record facts, when coupled with our determination to use facts available, indicate that we should collapse Tai Wa Hong, Tai Wa Commercial, and Macau Commercial and treat these companies as a single entity.

With respect to whether these companies are affiliated, the record contains the following information: the founder and sole proprietor of Tai Wa Hong, Wu Wa Hoi, is also a director and the majority shareholder in Tai Wa Commercial.¹⁸ Moreover, Tai Wa Commercial subcontracts its production to Macau Commercial, "its affiliated factory".¹⁹

to the non-market economy ("NME")-wide entity), unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007).

¹⁵ 19 CFR 351.401(f)(2)(i)-(iii); accord *Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12774-75 (March 16, 1998); *Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From Taiwan*, 62 FR 51427, 51436 (October 1, 1997).

¹⁶ See *Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review*, 65 FR 40948 (April 19, 2000), and accompanying Issues and Decision Memorandum at Comment 16.

¹⁷ See *Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1340-42 (CIT 2003) (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation).

¹⁸ See Macau Company Credit Report at 3.

¹⁹ See *id.* at 9.

As to whether these companies have facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, the record contains the following information: Tai Wa Hong's "business category" is listed as "(1) Mattress spring manufacturing & sales and (2) Spring producing machines trading."²⁰ With respect to Tai Wa Commercial, its "business category" is listed as "same as subject (*i.e.*, Tai Wa Hong) but mainly handles clients in USA and Canada."²¹ Although Macau Commercial's business category is not stated explicitly in the record evidence, we note that Macau Commercial's full business name is "Macau Commercial & Industrial Spring Mattress Manufacturer."²²

Finally, regarding the significant potential for manipulation of price or product, the record indicates that, as described above, a level of common ownership exists between Tai Wa Hong and Tai Wa Commercial;²³ Tai Wa Commercial "subcontracts its production" to Macau Commercial, "its affiliated factory";²⁴ and Tai Wa Hong, Tai Wa Commercial, and Macau Commercial all share the same address in Macau, suggesting that the operations of these companies are intertwined.²⁵ We find that these facts, along with our determination to use facts available, are sufficient to collapse Tai Wa Hong, Tai Wa Commercial, and Macau Commercial. Therefore, for purposes of these final results, we have determined to collapse Tai Wa Hong, Tai Wa Commercial, and Macau Commercial and to treat them as a single entity (*i.e.* "the Tai Wa Hong Group").

C. Selection of AFA Rate

In selecting an AFA rate, the Department's practice has been to assign non-cooperative respondents the highest margin determined for any party in the less than fair value ("LTFV") investigation or in any administrative review.²⁶ Therefore, because Tai Wa Hong Group is not a PRC exporter, we are not assigning the Tai Wa Hong Group the PRC-wide entity's rate, but rather its own rate, based on AFA, which in this case is 234.51 percent.²⁷

D. Corroboration of Secondary Information

Section 776(c) of the Act requires that, where the Department relies on secondary information in selecting AFA, the Department corroborate such information to the extent practicable. To be considered corroborated, the Department must find the information has probative value, meaning that the information must be both reliable and relevant.²⁸

²⁰ See *id.* at 1.

²¹ See *id.* at 9.

²² See *id.*

²³ See *id.* 3.

²⁴ See *id.* at 9.

²⁵ See *id.* at 2 and 9.

²⁶ See, e.g., *Cast Iron Pipe Fittings*, 71 FR at 69548.

²⁷ See *Uncovered Innerspring Units From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 79445 (December 29, 2008) ("*Innersprings Final Determination*").

²⁸ See Uruguay Round Agreements Act, Statement of Administrative Action, H.R. 5110, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess., at 870 (1994); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative*

The Department considers the AFA rate calculated for the current review as both reliable and relevant. On the issue of reliability, the Department corroborated the AFA rate in the LTFV investigation.²⁹ No information has been presented in the current review that calls into question the reliability of this information. With respect to the relevance, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico* the Department disregarded the highest margin in that case as best information available (the predecessor to AFA) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin.³⁰ The information used in calculating the AFA margin in this review was based on sales and production data submitted by Petitioner in the LTFV investigation, together with the most appropriate surrogate value information available to the Department chosen from submissions by the parties in the LTFV investigation.³¹ Finally, there is no information on the record of this review that demonstrates that this rate is not appropriate for use as AFA. In this regard, the Tai Wa Hong Group has not provided the Department with any questionnaire responses and, as a result, it has limited the Department's ability to corroborate the AFA rate. For all these reasons, we determine that this rate continues to have relevance with respect to the Tai Wa Hong Group. As the 234.51 percent AFA rate is both reliable and relevant, we determine that it has probative value and is corroborated to the extent practicable, in accordance with section 776(c) of the Act.

Therefore, we have assigned this AFA rate to the Tai Wa Hong Group. Because Tai Wa Hong Group is located in Macau, it is a third country reseller. Accordingly, this rate only applies to Tai Wa Hong Group's PRC-origin merchandise, as discussed below.

E. *Tai Wa Hong Group's Exports of Non-Subject Innersprings*

With respect to Petitioner's argument that the AFA determination should extend to all of Tai Wa Hong and its affiliates' exports of innersprings, irrespective of the declared country of origin, we disagree. Although Petitioner has raised concerns that Tai Wa Hong produces/exports Macau-origin innersprings and that Tai Wa Hong exported PRC-origin innersprings that were not identified as such by the importer at the time of entry, we note that these concerns relate to the proper classification of country-of-origin by CBP. Given these concerns, we intend to refer the matter of potential misclassification to CBP for further consideration. However, with respect to this review, we note that the order pertains only to uncovered innerspring units from the PRC

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

²⁹ See *Innersprings Final Determination*, 73 FR at 79446.

³⁰ See *Fresh Cut Flowers from Mexico; Final Results of Antidumping Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) ("*Fresh Cut Flowers from Mexico*").

³¹ See *Uncovered Innerspring Units from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 45729, 45735 (August 6, 2008), unchanged in *Innerspring Final Determination*, 73 FR at 79446.

and, thus, the Department's authority to apply antidumping duties extends only to merchandise produced in the PRC.³²

Comment 2: Cash Deposit and Liquidation Instructions

Petitioner:

- The Department's cash deposit and liquidation instructions should apply to Tai Wa Hong and its affiliates. The draft instructions provide for assessment at 234.51 percent for "all shipments of innersprings from the PRC-wide entity."³³ However, in the *Preliminary Results*, the Department states that it is "not assigning Tai Wa Hong the PRC-wide entity's rate, but rather its own rate, based on AFA, which in this case 234.51 percent as established in the investigation."³⁴
- The Department's instructions should be revised so that they apply to Tai Wa Hong and its affiliates as such (*i.e.*, not as part of the PRC-wide entity) given that the Department has determined not to treat them as part of the PRC-wide entity.
- Moreover, for the reasons stated above, the final instructions should apply to all innersprings exported by Tai Wa Hong or its affiliates. The Department can apply that adverse inference by including the following language in the cash deposit and liquidation instructions: "For all shipments of innersprings exported by Tai Wa Hong, Tai Wa Commercial & Industrial (Macau) Co. Ltd., Macau Commercial & Industrial Spring Mattress, or Macao Commercial and Industrial Mattress..." Based on those clear instructions, CBP would be able to apply the final results to any unliquidated entries from the period of review and all future entries of innersprings exported by Tai Wa Hong or its affiliates. This would ensure that Tai Wa Hong does not benefit from its failure to cooperate.

Department's Position: We agree with Petitioner's argument that the cash deposit and liquidation instructions should be revised so that they apply to Tai Wa Hong and its affiliates (*i.e.*, the Tai Wa Hong Group). The Department will therefore amend the cash deposit and liquidation instructions to apply to the Tai Wa Hong Group's exports of subject merchandise (*i.e.*, PRC-origin merchandise). However, for the reasons noted in Comment 1.E, we are not revising the cash deposit instructions to apply to all exports, irrespective of country of origin.

³² See, e.g., *Ugine & ALZ Belg., N.V. v. United States*, 517 F. Supp. 2d 1333, 1345 (Ct. Int'l Trade 2007) ("For merchandise to be subject to an order, it must meet both parameters, i.e., product type and country of origin.") (citations omitted).

³³ See Memorandum to The File from Steven Hampton, "Draft U.S. Customs and Border Protection ("CBP") Instructions," dated September 12, 2012 at Attachment 1.

³⁴ See Preliminary Decision Memorandum at 5.

RECOMMENDATION

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

AGREE ✓ DISAGREE _____

Paul Piquado
Paul Piquado
Assistant Secretary
for Import Administration

18 MARCH 2013
Date