



A-570-928
AR5: 2/01/2013 – 1/31/2014
Public Document
E&C/V: KH

August 24, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman *GT*
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
2013-2014 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, 2013, to January 31, 2014. 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 February 23, 2015, the Department of Commerce (“the Department”) published the *Preliminary Results*.² The review covers two exporters of subject merchandise, Comfort Coil Technology Sdn Bhd (“Comfort Coil”), and Creative Furniture & Bedding Manufacturing (“Creative Furniture”). The Department preliminarily determined that Comfort Coil had no shipments to the United States during the POR.³ Because Creative Furniture did not respond to the Department’s questionnaire,⁴ the Department resorted to adverse facts available (“AFA”)

¹ See *Uncovered Innerspring Units from the People’s Republic of China; Preliminary Results of Antidumping Duty Administrative Review*; 2013-2014, 80 FR 9435 (February 23, 2015) (“*Preliminary Results*”), and accompanying Issues and Decision Memorandum.

² *Id.*

³ *Id.*

⁴ On April 14, 2014, the Department placed documentation on the record confirming that Creative Furniture received the Department’s original antidumping duty questionnaire. See Memorandum to the File from Steve Hampton, International Trade Compliance Analyst, Office V, Enforcement and Compliance regarding 2013-2014 Administrative Review of Uncovered Innerspring Units from the People’s Republic of China: Documentation to Confirm Receipt of Questionnaire to Creative Furniture & Bedding Manufacturing, dated April 11, 2014 (“Creative Furniture Confirmation Memo”).



pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (“the Tariff Act of 1930”), to assign a margin to Creative Furniture in the *Preliminary Results*.

On March 25, 2015, Leggett and Platt, Inc. (“Petitioner”) submitted its case brief. No other case or rebuttal briefs were filed by interested parties. On June 10, 2015, the Department extended the deadline for the completion of the final results by 60 days to August 24, 2015.⁵

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 Creative Furniture did not respond to the Department’s questionnaire, we preliminarily determined that necessary information was missing from the record, and that Creative Furniture 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 Creative Furniture on the basis of facts available pursuant to

⁵ See Memorandum to the File from Kenneth Hawkins, International Trade Compliance Analyst, Office V, Antidumping and Countervailing Duty Operations regarding Uncovered Innerspring Units from the People’s Republic of China: Extension of Deadline for the Final Results of Antidumping Duty Administrative Review, dated June 10, 2015.

sections 776(a)(1) & (2)(A), (B), and (C) of the Tariff Act of 1930, applying an adverse inference pursuant to section 776(b) of the Tariff Act of 1930 because we found that Creative Furniture failed to cooperate to the best of its ability in providing the requested information. Because Creative Furniture is not a PRC exporter, the Department preliminarily determined that it is appropriate to apply AFA only to Creative Furniture's exports of PRC-origin innersprings.⁶

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. However, we note that subsequent to the issuance of our *Preliminary Results*, Congress passed the Trade Preferences Extension Act of 2015, Public Law 114-27. Section 502 of that Act amended Section 776 of the Tariff Act of 1930 to revise the provisions addressing the selection and corroboration of certain information that may be used as AFA in antidumping proceedings. As part of that amendment, the Department is no longer required to corroborate "any dumping margin . . . applied in a separate segment of the same proceeding."

Because the Department has relied on a margin from the less-than-fair-value investigation of this proceeding in selecting an AFA rate for Creative Furniture, consistent with our authority under Section 502 of the Trade Preferences Extension Act of 2015, we are no longer corroborating that margin for purposes of these final results.⁷

DISCUSSION OF THE ISSUE:

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

Petitioner:

- Creative Furniture failed to act to the best of their ability in this administrative review by not responding to the Department's questionnaire.⁸ As a result of Creative Furniture's non-cooperation, the Department properly assigned AFA to Creative Furniture in the *Preliminary Results*.⁹
- The Department should draw an adverse inference that all of Creative Furniture's exports of innersprings were PRC-origin because its failure to cooperate deprived the Department of the information necessary to segregate subject and non-subject innersprings. The United States has recently recognized that it has "witnessed a dramatic increase in activities expressly designed to evade the application of antidumping duties" and that this "problem is

⁶ See *Preliminary Results*, and accompanying Issues and Decision Memorandum at 7.

⁷ We note that the amendments made pursuant to Section 502 of the Trade Preferences Extension Act of 2015 are applicable to all determinations made on or after August 6, 2015. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015: Interpretive Rule*, 80 FR 46793 (August 6, 2015).

⁸ See Memorandum regarding 2013-2014 Administrative Review of Uncovered Innerspring Units from the People's Republic of China: Documentation to Confirm Receipt of Questionnaire to Creative Furniture & Bedding Manufacturing (April 11, 2014).

⁹ See *Preliminary Results*, 80 FR at 9436, and accompanying Issues and Decision Memorandum at 5-7.

pervasive.”¹⁰

- The Department previously applied an adverse inference in analogous circumstances in *Steel Coils*, in which a U.S. reseller’s reported sales contained a large quantity of sales that did not identify the manufacturer.¹¹ The Department explained that “{t}he absence of this elementary and critical information forecloses any attempt by the Department to apportion these sales accurately between merchandise which is subject to one of the three ongoing investigations and that which is properly considered non-subject merchandise because it was obtained from either a domestic or other foreign mill.”¹² This lack of specific country-of-origin information deprived the Department of the information needed to segregate non-subject merchandise from merchandise that was subject to three concurrent investigations of steel coils (*i.e.*, steel coils from Germany, Italy, and Mexico).¹³
- In *Steel Coils*, the Department applied an adverse inference that all of the sales that did not have manufacturer information were subject to one of the three investigations (and then apportioned the sales between these investigations).¹⁴
- The Department applied an adverse inference to determine the origin of these sales, and in so doing, acknowledged that at least some of these sales may have actually originated from “a domestic or other foreign mill.” The U.S. Court of International Trade (“CIT”) upheld the Department’s adverse inference.¹⁵
- The Department should apply a similar adverse inference to Creative Furniture and apply an adverse inference that all of Creative Furniture’s exports of innersprings to the United States are of PRC-origin.¹⁶

Department’s Position:

We disagree with Petitioner’s argument that the Department should draw an adverse inference that all of Creative Furniture’s exports of innersprings were of PRC-origin, irrespective of the declared country of origin. Although Petitioner raised concerns that Creative Furniture’s failure to cooperate deprived the Department of the information necessary to segregate subject and non-subject innersprings, we note that these concerns relate to the proper classification of country-of-origin by United States Customs and Border Protection (“CBP”). Given these concerns, 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*

¹⁰ See *Antidumping Duty “Evasion Services,”* Paper from the United States Committee on Anti-Dumping Practices, Informal Group on Anti-Circumvention, G/ADP/IG/W/54 (March 17, 2015).

¹¹ See *Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip Coils from Germany*, 64 FR 30710, 30742 (June 8, 1999) (“*Steel Coils*”).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*, at 30743 (“As an adverse inference we are treating all of the unidentified merchandise as having originated with one of the three respondent firms in the concurrent investigations.”)

¹⁵ See *Krupp Thyssen Nirosta GmbH v. United States*, 25 CIT 793, 2001 WL 812167 (CIT July 9, 2001) (“*Krupp Thyssen*”).

¹⁶ See Petitioner’s Case Brief at 4.

pertains only to innersprings from the PRC.¹⁷ Thus, under these facts, the Department's authority to apply antidumping duties extends only to merchandise produced in the PRC.¹⁸

Furthermore, we also disagree that *Steel Coils* is analogous to this case. In *Steel Coils*, a U.S. reseller did not identify the manufacturers of certain sales of subject merchandise reported to the Department and, thus, a question arose as to whether those sales were under examination in three concurrent investigations of steel coils from Germany, Italy, and Mexico.¹⁹ The Department, for purposes of calculating an antidumping duty margin, relied on existing record evidence as AFA to apportion all of the sales where the manufacturer was unknown to the three respondents in the concurrent investigations.²⁰ Thus, the application of AFA in *Steel Coils* was for the purpose of calculating a margin, not to determine a different country-of-origin from that declared to CBP. In this case, Creative Furniture simply chose not to respond to the Department's questionnaire.²¹ Thus, under these facts, there is no basis for the Department to instruct CBP to classify all of Creative Furniture's exports as PRC-origin.

While we note that the CIT ultimately upheld the Department's AFA determination in *Steel Coils*, we also note that the issues in that case and the current review are not identical.²² In that litigation, the CIT did not address the issue of whether the Department may, as AFA, assign a country of origin other than what was already reported to CBP (to include within the scope of an order merchandise reported as non-subject) without any identifiable basis for doing so.

Finally, we note that the CIT has previously underscored the Department's authority to only apply antidumping duties to merchandise produced in the country applicable to the antidumping duty order (e.g., innersprings from the PRC).²³ Therefore, consistent with the Department's practice,²⁴ the Department will apply AFA to all of Creative Furniture's exports of PRC-origin subject merchandise. We will continue to work closely with CBP to ensure that all entries of subject merchandise are identified and subject to cash deposit requirements, and refer the matter of potential country-of-origin misclassification of Creative Furniture's other exports of innersprings to CBP.

¹⁷ See *Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order* 74 FR 7661 (February 19, 2009) ("Order").

¹⁸ See, e.g., *Ugine & ALZ Belg., N.V. v. United States*, 517 F. Supp. 2d 1333, 1345 (CIT 2007) ("*Ugine*") ("For merchandise to be subject to an order, it must meet both parameters, i.e., product type and country of origin.") (citations omitted).

¹⁹ See *Steel Coils*, 64 FR at 30741.

²⁰ *Id.*, at 30743 ("To apportion the unidentified sales among the three investigations we have adjusted the quantity for each of the unidentified sales on a *pro rata* basis, using the verified percentages of U.S. Reseller's merchandise supplied by each respondent mill."); see also *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Italy*, 64 FR 30750 (June 8, 1999) (discussing same at Comment 2); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Mexico*, 64 FR 30790 (June 8, 1999) (discussing same at Comment 7).

²¹ See Creative Furniture Confirmation Memo.

²² See *Krupp Thyssen*, 2001 WL 812167, at *11-12.

²³ See *Ugine*, 517 F. Supp. 2d at 1345.

²⁴ See, e.g., *Uncovered Innerspring Units from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 17635 (March 22, 2013) and accompanying Issues and Decision Memorandum at 7-8.

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 margins in the *Federal Register*.

AGREE ✓ DISAGREE _____



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

24 AUGUST 2015
Date