

December 19, 2008

MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Uncovered Innerspring Units from the People's Republic of China:
Issues and Decision Memorandum for the Final Determination of
Sales at Less Than Fair Value

SUMMARY:

We have analyzed the comments submitted in the investigation of uncovered innerspring units (“innersprings”) from the People's Republic of China (“PRC”). As a result of our analysis, we have made changes from the *Preliminary Determination*.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this Issues and Decision Memorandum. Below is the complete list of the issues in this investigation for which we received comments on the *Preliminary Determination*:

- Comment 1: Application of Facts Available for**
- A. Unreported Affiliate**
 - B. Unreported Factors of Production**
- Comment 2: Bona Fide Analysis of Foshan Jingxin's Sales**
- Comment 3: Surrogate Financial Ratios**
- Comment 4: Calculation of the Scrap Surrogate Value**

BACKGROUND:

The period of investigation (“POI”) is April 1, 2007, through September 30, 2007. The Department of Commerce (“Department”) conducted a verification of Foshan Jingxin Steel Wire & Spring Co., Ltd. (“Foshan Jingxin”) from September 22-26, 2008.²

¹ See *Uncovered Innerspring Units from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value*, 73 FR 45729 (August 6, 2008) (“*Preliminary Determination*”).

² See Memorandum to the File from Erin Begnal, Senior Case Analyst, and Susan Pulongbarit, Case Analyst, through Scot Fullerton, Program Manager, “Verification of the Sales and Factors of Production Response of Foshan Jingxin Steel Wire & Spring Co., Ltd. in the Antidumping Duty Investigation of Uncovered Innerspring Units from the People's Republic of China,” dated November 4, 2008 (“Foshan Jingxin Verification Report”).

In accordance with 19 CFR 351.309(c)(i), we invited parties to comment on our *Preliminary Determination*. On November 12, 2008, the Department received a case brief from Petitioner.³ No other party submitted case or rebuttal briefs. No party requested a hearing. In addition, on December 2, 2008, we placed new factual information on the record regarding Foshan Jingxin, and allowed all interested parties an opportunity to comment on this information.⁴ We received comments on this new factual information from Foshan Jingxin and Petitioner on December 8, 2008.

DISCUSSION OF THE ISSUES:

Comment 1: Application of Facts Available

A. Unreported Affiliate

Petitioner argues that Foshan Jingxin failed to disclose information that a majority-owned affiliate, Foshan Ruixin Non-Woven Co., Ltd. (“Ruixin”), is a producer of the merchandise under consideration. Petitioner notes that Foshan Jingxin originally reported that Ruixin was not involved in either the sale or production of the merchandise under consideration, however, during verification Foshan Jingxin reported that Ruixin produces its own innersprings.

Petitioner contends that Foshan Jingxin impeded the investigation by failing to disclose the innerspring production activities of its affiliate. Petitioner asserts that Foshan Jingxin and Ruixin have production facilities for producing identical or similar products, thus creating the significant potential for the manipulation of prices and production. According to Petitioner, because Foshan Jingxin failed to report accurately the activities of its affiliate, the Department was consequently unable to follow its practice of collapsing affiliates which produce identical or similar merchandise.

Petitioner argues that Foshan Jingxin failed to comply with the Department’s request to report all factors of production (“FOP”) used to produce the merchandise under consideration when it did not report Ruixin’s FOPs. Petitioner contends that Foshan Jingxin deliberately misled the Department by stating that no affiliate produced subject merchandise, and failed to acknowledge that Ruixin produced the merchandise under consideration, thereby preventing the Department from issuing any supplemental questionnaires to address the issue of Ruixin’s FOPs for the merchandise under consideration. Therefore, Petitioner contends that the Department should apply adverse facts available (“AFA”) to Foshan Jingxin due to the identification of Ruixin as an unreported affiliated producer of the merchandise under consideration and the inaccurate reporting of FOPs.

B. Unreported Factors of Production

Petitioner notes that Foshan Jingxin did not report water as an FOP although water was included as part of the production process. Petitioner argues that it is the Department’s practice, upheld by the U.S. Court of International Trade (“CIT”), to assign a surrogate value to well water usage

³ Leggett & Platt, Incorporated, hereafter known as “Petitioner”.

⁴ See the Department’s letter dated December 2, 2008.

whether or not the respondent incurred any costs in acquiring the water.⁵ Petitioner argues that water should be treated as an unreported FOP and that the Department should apply AFA to the consumption of this input.

Petitioner notes that Foshan Jingxin did not report recycled plastic, drawing powder and glue as inputs in its FOP database although they were noted as inputs during the verification plant tour.⁶ Petitioner asserts that although drawing powder and glue are considered manufacturing overhead by Foshan Jingxin, the Department should treat these inputs as FOPs. Petitioner argues that recycled plastic, drawing powder and glue should be treated as unreported FOPs and that the Department should apply AFA to the consumption of these inputs.

Petitioner notes that Foshan Jingxin consumed non-woven fabric in the production of the merchandise under consideration in July 2007, which it did not report in its FOP database. Petitioner argues that non-woven fabric should be treated as an unreported FOP and that the Department should apply AFA to the consumption of this input.

Department's Position:

A. Facts Available

The Department finds that the use of facts otherwise available is warranted with respect to Foshan Jingxin pursuant to section 776(a) of the Tariff Act of 1930, as amended ("Act"). In general, sections 776(a)(1) and (2) of the Act state that the Department may use facts otherwise available in reaching the applicable determination if: (1) The necessary information is not available on the record, or (2) an interested party or any other person (A) withholds information that has been requested by the administering authority or the Commission under this subtitle, (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, (C) significantly impedes a proceeding under this subtitle, or (D) provides such information but the information cannot be verified.

As discussed below, pursuant to sections 776(a)(2) (A), (C) and (D) of the Act, the Department determines that the use of facts otherwise available is warranted for this final determination. Foshan Jingxin withheld certain information that had been requested by the Department which significantly impeded the Department's investigation. Foshan Jingxin withheld certain information that was specifically requested by the Department and significantly impeded the proceeding by not providing accurate or complete responses to the Department's questions regarding the activities of its majority-owned affiliate, Ruixin, in the production of the merchandise under consideration and sale of subject merchandise to the United States. Additionally, because information discovered at verification directly contradicted information contained in Foshan Jingxin's questionnaire responses, the Department was unable to verify certain statements in Foshan Jingxin's questionnaire responses. *See Foshan Jingxin Verification Report.*

⁵ *See Pacific Giant, Inc., et al. v. United States*, 223 F. Supp. 2d 1336, 1346 (CIT 2002); and *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and New Shipper Reviews*, 69 FR 33626 (June 16, 2004), and accompanying Issues and Decisions Memorandum at Comment 2.

⁶ *See Foshan Jingxin Verification Report* at 2.

Specifically, the Department stressed the importance of identifying the structure of its production and sales process when instructing Foshan Jingxin on how to respond to the original questionnaire, including, but not limited to, stating in the Corporate Structure and Affiliations section of the original questionnaire that: it is particularly important that the description of those units involved in the development, manufacture, sale and distribution of the merchandise under consideration be sufficiently detailed to provide the Department with a good working understanding of how these units function within the company; provide a list of all the manufacturing facilities, sales office locations, research and development facilities and administrative offices involved in the manufacture and sale of the merchandise under consideration operated by your company and briefly describe the purpose of each; describe also the activities of each affiliated company, with particular attention to those involved with the merchandise under consideration.⁷

In its response to the Original Questionnaire, Foshan Jingxin stated that the activities of Ruixin “are mainly the manufacturing and sales of non-woven products.”⁸ In the same response, when asked to list whether Foshan Jingxin had “any affiliates involved in the production or sale of merchandise in the home market, third-country markets, or the United States which would fall under the description of merchandise covered by the scope of the proceeding” (emphasis in the original); Foshan Jingxin answered “no.”⁹ In addition, in a supplemental questionnaire, we requested that Foshan Jingxin provide a detailed description of activities performed by Ruixin, including what products it manufactures and/or sells and whether Ruixin produces the merchandise under consideration. In response, Foshan Jingxin stated that “Ruixin is not involved in the sale or production of the merchandise under consideration” and that it “is engaged in production and sales of non-woven fabrics.”¹⁰ Thus, during the course of this investigation the Department repeatedly stressed to Foshan Jingxin the importance of identifying all units which produced and sold the merchandise under consideration, and Foshan Jingxin repeatedly denied that Ruixin was involved in any such practice.

Further, we note that in its questionnaire responses, Foshan Jingxin stated that its general manager, Mr. Huang, was neither a director, nor officer, of any other company.¹¹ However, at verification the Department discovered that Mr. Huang is the general manager of Ruixin and is in charge of the operations at Ruixin, as well as the legal representative of Ruixin.¹² Due to Mr. Huang’s leadership within both Foshan Jingxin and Ruixin, Foshan Jingxin was in a position to know whether its affiliate produced and sold the merchandise under consideration and was able to provide this type of information to the Department before verification.

However, at verification Foshan Jingxin officials contradicted their numerous questionnaire responses to inquiries regarding Ruixin’s production activities, and for the first time on the record of this investigation, by twice stating that Ruixin manufactures innersprings.¹³ In a post-

⁷ See the Department’s original questionnaire, dated April 7, 2008 (“Original Questionnaire”), at Section A, part 3 “Corporate Structure and Affiliations.”

⁸ See Foshan Jingxin’s June 6, 2008 submission at 18.

⁹ *Id.* at 16.

¹⁰ See Foshan Jingxin’s July 15, 2008 submission at 8.

¹¹ *Id.* at 5.

¹² See Foshan Jingxin Verification Report at 5.

¹³ *Id.*

verification supplemental, in order to clarify this new information, we placed additional new information on the record from Ruixin's website, which clearly identified Ruixin as a producer of the merchandise under consideration.¹⁴ We gave Foshan Jingxin an opportunity, given this new factual information, to clarify whether the innersprings produced by Ruixin fell under the description of the merchandise under consideration. In response, Foshan Jingxin stated that Ruixin was "not involved in the sale or production of subject merchandise."¹⁵ However, in the same response, Foshan Jingxin indicated for the first time in this investigation that Ruixin was involved in the sales process, as Ruixin receives orders for subject merchandise sales to the United States and forwards these orders to Foshan Jingxin.¹⁶

We note that the Department requests information regarding the affiliates of a respondent in order to determine whether the affiliates are involved in the sale or production of similar or identical merchandise and whether the significant potential for manipulation of price, production, or export decisions exists. This information is essential to the Department's determination of whether to treat the respondent and its affiliates as a single entity for purposes of the antidumping duty proceeding.¹⁷ It was not until verification that Foshan Jingxin twice stated that Ruixin manufactures the merchandise under consideration, statements which we note are corroborated by the information found on Ruixin's website.¹⁸ Also, it was not until the Department placed documents on the record (*i.e.*, the website information) that Foshan Jingxin admitted that Ruixin was involved in the sale of subject merchandise to the United States. Because Foshan Jingxin did not disclose that Ruixin produced the merchandise under consideration, the Department was originally left with no knowledge of Ruixin's production and sales activities. Moreover, because Foshan Jingxin failed to provide the Department with this information, and participated in the sale of subject merchandise the Department was precluded from making more in-depth inquiries as to Ruixin's production and sales practices, analyzing the appropriateness of collapsing Foshan Jingxin and Ruixin, and verifying Ruixin. Consequently, without this information about Ruixin the Department cannot determine whether it has sufficient sales and factor databases from which to calculate an accurate dumping margin for the entity under investigation.

Foshan Jingxin also failed to report in its questionnaire responses the use of five additional FOPs, in addition to the sixteen already reported, which the Department discovered during its plant tour of Foshan Jingxin's production facility and during our examination of its books and records.¹⁹

¹⁴ Ruixin's website states that our "company produces bonnell springs and bonnell spring units," and further identifies specific innerspring unit products which each have their own unique Ruixin product code. See the Department's letter dated December 2, 2008.

¹⁵ We note that although Foshan Jingxin stated that it was not involved the sale or production of "subject merchandise," which would cover in-scope merchandise sold in the United States, it did not state whether it was involved in the sale or production of "merchandise under consideration," which would include any production of innerspring units described by the scope, regardless of where it was sold. See Foshan Jingxin's December 8, 2008 submission at 2.

¹⁶ *Id.*

¹⁷ See *Hontex Enterprises, Inc v. United States*, 342 F. Supp. 2d 1225, 1230-34 (CIT 2004); see also 19 CFR 351.401(f).

¹⁸ See Foshan Jingxin Verification Report at 5.

¹⁹ *Id.*

We find that Foshan Jingxin’s failure to disclose information relating to Ruixin’s production activities of the merchandise under consideration is damaging to the overall completeness and credibility of its questionnaire responses, making its submissions both materially incomplete and unreliable. Moreover, given Foshan Jingxin’s failure to disclose information relating to Ruixin production, the Department cannot be certain that it has been presented with complete FOP data and sales data with which to calculate a margin. These discrepancies evidence a pattern of misreporting information to the Department. Taken in totality with the other unresolved issues in this proceeding, namely Foshan Jingxin’s unreported FOPs, they call into question the accuracy and completeness of Foshan Jingxin’s responses. Thus, we find that the Department must resort to the use of facts available pursuant to sections 776(a)(2)(A), (C), and (D) of the Act.

B. Adverse Facts Available

In selecting from among the facts otherwise available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has “failed to cooperate by not acting to the best of its ability to comply with a request for information.”²⁰ In such a case, the Act permits the Department to use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.”²¹

Adverse inferences are appropriate “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²² The Court of Appeals for the Federal Circuit (“Federal Circuit”), in *Nippon*, provided an explanation of the “failure to act to the best of its ability” standard, stating 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.²³ The Federal Circuit acknowledged, however, that while there is no willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate responses to agency inquiries “would suffice” as well.²⁴ Compliance with the “best of the ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.²⁵ The Federal Circuit further noted that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.²⁶

We find that, within the meaning of section 776(b) of the Act, Foshan Jingxin failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information, and that the application of AFA is warranted. Specifically, the Department explained the nature of information on affiliates that it required in the investigation, gave Foshan Jinxing numerous opportunities to provide such information, received only denials from Foshan Jingxin that Ruixin

²⁰ See section 776(b) of the Act.

²¹ *Id.*; see also Statement of Administrative Action (“SAA”) accompanying the URAA, H.R. Rep. No. 103-316 at 870 (1994).

²² See SAA at 870.

²³ See *Nippon Steel Corporation v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003) (“*Nippon*”).

²⁴ *Id.* at 1380.

²⁵ *Id.* at 1382.

²⁶ *Id.* at 1382.

was involved in the sale or production of the merchandise under consideration, discovered only at verification that Ruixin was in fact involved in the production of the merchandise under consideration, discovered after verification that Ruixin was involved in the sale of subject merchandise, and found that Foshan Jingxin, through its general manager, possessed this information throughout the investigation, yet failed to report it.

The Department's Original Questionnaire and subsequent supplemental questionnaires required Foshan Jingxin to report all units which produced the merchandise under consideration during the POI. Foshan Jingxin, however, failed to report that its affiliate, Ruixin, produced the merchandise under consideration. As noted above, Foshan Jingxin did not disclose this information until verification. We note that it was not until after verification, when the Department placed new information on the record from Ruixin's website, that Foshan Jingxin admitted that Ruixin was involved in the sales of subject merchandise to the United States by taking orders and forwarding them to Foshan Jingxin. Moreover, as noted above, Foshan Jingxin reported that its general manager was not a manager or officer in any other company; however, at verification we discovered that this individual is the general manager in charge of day-to-day operations, as well as the legal representative, of Ruixin. Therefore, Foshan Jingxin had knowledge of the products produced and sold by its affiliate but failed to disclose this information in either Foshan Jingxin's questionnaire responses or as a pre-verification correction. The facts on the record demonstrate that Foshan Jingxin had knowledge of the merchandise produced and sold by Ruixin, and its failure to provide this information evidences a failure to cooperate to the best of its ability. Also, Foshan Jingxin failed to act to the best of its ability when it failed to report several FOPs in its questionnaire responses or as a pre-verification correction. These FOPs were discovered at verification.

In sum, despite the Department's detailed and very specific questionnaires and questions asked at verification, Foshan Jingxin gave insufficient attention to its statutory duty to reply accurately and completely to requests for factual information regarding its affiliate. For all of the aforementioned reasons, the Department finds that Foshan Jingxin failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act. Therefore, we recommend applying total AFA to Foshan Jingxin for this final determination.

Comment 2: *Bona Fide* Analysis of Foshan Jingxin's Sales

Petitioner asserts that *bona fide* sales are commercially reasonable.²⁷ According to Petitioner, the Department's *bona fide* analysis evaluates the commercial reasonableness of a sale's price and quantity, and whether the importer's behavior was inconsistent with good business practices.²⁸ Also, Petitioner notes that U.S. Customs and Border Protection ("CBP") requires importers to present an invoice to CBP for every sale of merchandise imported into the United States.²⁹ Petitioner argues that Foshan Jingxin has not provided any commercial invoices to establish the material terms of its sales, including, quantity, price, payment terms and delivery terms; but relies instead upon a patchwork of documents to establish the sale terms. Petitioner contends that Foshan Jingxin has not explained how, in light of U.S. Customs law, it is able to export to the United States without the use of a commercial sales invoice. Petitioner argues that Foshan

²⁷ See *Hebei New Donghua Amino Acid Co. v. United States*, 374 F. Supp. 2d 1333, 1335 (CIT 2005).

²⁸ *Id.* at 1340 and 1343-44.

²⁹ See 19 CFR 141.91, see also *CBP Commercial Importers Guide* at 12.

Jingxin's failure to produce any commercial invoices for its U.S. sales is inconsistent with good business practices because this documentation is required by U.S. Customs law. Moreover, Petitioner claims that it is inconsistent with good business practices that there is no single sales document that memorializes all key sales terms, which, in turn, inhibits the Department's ability to trace the respondent's U.S. sales from the beginning to the end of the sales process to ensure that the Department is relying on accurate U.S. sales data for its calculation of Foshan Jingxin's dumping margin. While Petitioner acknowledges that the Department's *bona fide* sales analysis is case- and fact-specific, and takes into account the totality of the circumstances,³⁰ Petitioner argues that the totality of circumstances of this investigation indicate that Foshan Jingxin's U.S. sales, because are accompanied by no commercial sales invoices, are not *bona fide* sales.

Petitioner notes that Foshan Jingxin reported that it sent price lists to its U.S. customers which established the sales price in the subsequent purchase orders. Petitioner further notes that at verification Foshan Jingxin was unable to provide any of the original price lists, except those already provided in its questionnaire responses. Petitioner argues that, had Foshan Jingxin provided commercial sales invoices for its U.S. sales, the price lists in question would not be so crucial. Thus, Petitioner asserts that, in this investigation, the absence of commercial invoices coupled with the absence of price lists undermines the premise that these sales are *bona fide* commercial transactions.

Consequently, Petitioner argues that the Department should apply AFA to Foshan Jingxin's non-*bona fide* U.S. sales. Petitioner asserts that Foshan Jingxin significantly impeded a proceeding under the antidumping statute by failing to provide commercial sales invoices for its U.S. sales which rendered those sales non-*bona fide*. Moreover, Petitioner contends that by failing to provide sales invoices and original copies of price lists, and failing to adequately explain why it was not possible to do so, Foshan Jingxin has failed to cooperate to the best of its ability to provide basic sales information to the Department. Therefore, Petitioner argues that because the only other respondent in this investigation has received AFA, and because there is no other U.S. sales information on the record, the Department should rely on the facts available in the petition or make Foshan Jingxin subject to the PRC-wide rate for its imports, as it did for the other mandatory respondent.

Department's Position:

As noted in Comment 1, Foshan Jingxin is receiving total AFA. Because the Department is not calculating a margin for Foshan Jingxin for the final determination, issues concerning the *bona fide* nature of Foshan Jingxin's sales are moot.

Comment 3: Surrogate Financial Ratios

Petitioner argues that, for the final determination, the Department should base its calculation of Foshan Jingxin's overhead, selling, general and administrative expenses, and profit on the 2007-2008 financial statements of Lakshmi Precision Screws Ltd. ("Lakshmi"), Sterling Tools Ltd., Forbes & Co., Ltd., and SKS Fasteners because these financial statements are contemporaneous

³⁰ See, e.g., *Brake Rotors From the People's Republic of China: Preliminary Results of the 2005-2006 Administrative and New Shipper Reviews and Partial Rescission of the 2005-2006 Administrative Review*, 72 FR 7405 (February 15, 2007).

with the POI and because these companies produce comparable merchandise, fasteners, using an integrated production process which produces wire products from wire rod rather than wire.³¹ Petitioner notes that in *Hangers* the Department stated that a company which produces fasteners would better reflect the production experience of steel wire hanger producers because fasteners, like hangers, undergo further processing.³²

Petitioner argues against the use by the Department of the 2006-2007 financial statements of Lakshmi, Nasco Steel Private Ltd. (“Nasco”) and Deepack Fasteners Ltd. (“Deepack”) because they are not contemporaneous with the POI. Moreover, Petitioner contends that Nasco uses wire, and Deepak uses plating, as the main input to the products they produce. According to Petitioner, this indicates that Nasco and Deepack have production processes which are different than Foshan Jingxin and, thus, are not representative of Foshan Jingxin’s financial experience. Moreover, Petitioner asserts that Deepak has a line item in its financial statement, “export guarantee charge,” which represents an export subsidy. Petitioner argues that it is the Department’s practice to not use financial statements which reflect export subsidies in the calculation of surrogate financial ratios.

Department’s Position:

As noted in Comment 1, Foshan Jingxin is receiving total AFA. Because the Department is not calculating a margin for Foshan Jingxin for the final determination, issues concerning the surrogate financial ratios applied to Foshan Jingxin are moot.

Comment 4: Calculation of the Scrap Surrogate Value

In the *Preliminary Determination*, the Department added Foshan Jingxin’s reported per-unit amount of scrap to the surrogate value for scrap. Petitioner contends that the Department should have multiplied the reported per-unit amount of scrap by the surrogate value of scrap and should change the FOP database program accordingly.

Department’s Position:

As noted in Comment 1, Foshan Jingxin is receiving total AFA. Because the Department is not calculating a margin for Foshan Jingxin for the final determination, issues concerning Foshan Jingxin’s by-product offset are moot.

³¹ See *Steel Wire Garment Hangers from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value*, 73 FR 47587 (August 14, 2008) (“*Hangers*”) and accompanying Issues and Decision Memorandum at Comment 3.

³² *Id.*

RECOMMENDATION:

Based on our analysis of the comments received, we recommend adopting all of the above changes and positions, and adjusting the margin calculation program accordingly. If accepted, we will publish the final determination of this investigation and the final weighted-average dumping margins in the *Federal Register*.

AGREE_____ DISAGREE_____

David M. Spooner
Assistant Secretary
for Import Administration

Date