



A-570-928
Anticircumvention Inquiry
Public Document
IA/NME/9: SDH

July 8, 2013

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Anticircumvention Inquiry Regarding the Antidumping Duty
Order on Uncovered Innerspring Units from the People's Republic
of China: Preliminary Determination Decision Memorandum for
Reztec Industries Sdn Bhd

SUMMARY

In response to a request from Leggett & Platt, Incorporated ("Petitioner"), the Department of Commerce ("the Department") initiated a circumvention inquiry pursuant to section 781(b) of the Tariff Act of 1930, as amended ("the Act").¹ The Department initiated an anticircumvention inquiry pursuant to section 781(b) of the Act and 19 CFR 351.225(h) to determine whether uncovered innerspring units ("innerspring units") produced by Reztec Industries Sdn Bhd ("Reztec") in Malaysia from components originating in the People's Republic of China ("PRC") and exported to the United States from Malaysia are circumventing the antidumping duty order on innerspring units from the PRC.² Based on the information submitted by interested parties and the analysis below, we recommend that the Department preliminarily find that innerspring units assembled by Reztec in Malaysia from PRC-origin components and exported to the United States are circumventing the *PRC Innerspring Units Order*.

BACKGROUND

In a past segment of this proceeding, Reztec filed a "No Shipment" letter in which it stated that it did not export any merchandise during the period of review that was the subject of an

¹ See *Uncovered Innerspring Units from the People's Republic China: Initiation of Anticircumvention Inquiry*, 77 FR 30501 (May 23, 2012) ("Initiation Notice").

² See *Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order*, 74 FR 7661 (February 19, 2009) ("PRC Innerspring Units Order").



administrative review of the *PRC Innerspring Units Order*.³ However, in that same letter, Reztec also acknowledged that it imports innerspring unit components from the PRC to Malaysia, further assembles these components into innerspring units, and exports the assembled innerspring units to the United States in the form of subject merchandise. The Department placed Reztec's No Shipment Letter on the record of this inquiry.⁴

On February 29, 2012, citing Reztec's No Shipment Letter submitted in a prior segment of this proceeding, Petitioner requested that the Department initiate an anticircumvention inquiry with respect to Reztec.⁵ On May 23, 2012, in response to Petitioner's request, the Department initiated an anticircumvention inquiry and issued an anticircumvention questionnaire to Reztec.⁶ On July 5, 2012, Reztec responded to the Department's questionnaire.⁷ On July 9, 2012, Reztec provided an addendum to its July 5, 2012, response.⁸ On July 18, 2012, Petitioner submitted comments on Reztec's July 5, 2012, and July 9, 2012, responses.

On August 6, 2012, the Department issued its first supplemental questionnaire, to which Reztec responded on September 13, 2012.⁹ On September 28, 2012, Petitioner submitted comments on Reztec's First Supplemental Questionnaire Response. On October 11, 2012, the Department issued its second supplemental questionnaire, to which Reztec responded on November 13, 2012.¹⁰ On December 14, 2012, Petitioner submitted comments on Reztec's Second Supplemental Questionnaire Response. On February 5, 2013, the Department issued its third supplemental questionnaire, to which Reztec responded on March 5, 2013.¹¹ On March 29, 2013, Petitioner submitted comments on Reztec's Third Supplemental Questionnaire Response. On May 20, 2013, Petitioner submitted comments for the Department's consideration in these preliminary results.¹²

³ The period of review was February 1, 2010, to January 31, 2011.

⁴ See Memorandum to the File from Steven Hampton, International Trade Compliance Analyst, regarding Placing Supporting Documentation on the Record of the Anticircumvention Inquiry: Reztec's No Shipment Letter from the Second Administrative Review on Uncovered Innerspring Units from the People's Republic of China dated April 13, 2012, at Attachment #1 ("No Shipment Letter").

⁵ See Letter from Petitioner regarding Uncovered Innerspring Units from China: Request for a Circumvention Inquiry, dated February 29, 2012.

⁶ See *Initiation Notice*.

⁷ See Letter from Reztec regarding Uncovered Innerspring Units from the People's Republic of China: Circumvention Inquiry Questionnaire of Reztec Industries Sdn Bhd dated July 5, 2012 ("Questionnaire Response").

⁸ See Letter from Reztec regarding Uncovered Innerspring Units from the People's Republic of China: Addendum to Circumvention Inquiry Questionnaire of Reztec Industries Sdn Bhd dated July 9, 2012 ("Questionnaire Addendum"). Reztec submitted an addendum to its questionnaire because Reztec's July 5, 2012, submission inadvertently omitted a portion of the company's response.

⁹ See Letter from Reztec regarding Uncovered Innerspring Units from the People's Republic of China: Response to Supplemental Circumvention Inquiry Questionnaire of Reztec Industries Sdn Bhd dated September 13, 2012 ("First Supplemental Questionnaire Response").

¹⁰ See Letter from Reztec regarding Uncovered Innerspring Units from the People's Republic of China: Response to Second Supplemental Circumvention Inquiry Questionnaire of Reztec Industries Sdn Bhd dated November 13, 2012 ("Second Supplemental Questionnaire Response").

¹¹ See Letter from Reztec regarding Uncovered Innerspring Units from the People's Republic of China: Response to Third Supplemental Circumvention Inquiry Questionnaire of Reztec Industries Sdn Bhd dated March 5, 2012 ("Third Supplemental Questionnaire Response").

¹² See Letter from Petitioner regarding Uncovered Innerspring Units from the People's Republic of China: Circumvention Inquiry- Pre-Preliminary Results Comments dated May 20, 2013 ("Petitioner's Comments").

SCOPE OF THE ANTIDUMPING DUTY 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.

SCOPE OF THE ANTICIRCUMVENTION INQUIRY

The products covered by this inquiry are innerspring units, as described above, that are manufactured in Malaysia by Rezttec with PRC-origin components and other direct materials, such as helical wires, and that are subsequently exported from Malaysia to the United States.

STATUTORY PROVISIONS REGARDING CIRCUMVENTION

Section 781(b) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting circumvention inquiries under section 781(b) of the Act, the Department relies upon the following criteria: (A) whether merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is subject to an antidumping duty order; (B) before importation into the United States, whether such imported merchandise is completed or assembled in a third country from merchandise which is subject to an order or produced in the foreign country that is subject to an order; (C) whether the process of assembly or completion in the third country referred to in (B) is minor or insignificant; (D) whether 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) whether action is appropriate to prevent evasion of an order.

With respect to whether the process of assembly or completion in the third country is minor or insignificant, section 781(b)(2) of the Act directs the Department 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 the value of the processing performed in the third country represents a small proportion of the value of the merchandise imported into the United States. In reaching this determination, the Department "will not consider any single factor of section 781(b)(2) of the Act to be controlling."¹³

Finally, Section 781(b)(3) of the Act further provides that, in determining whether to include merchandise assembled or completed in a foreign country within the scope an antidumping duty order, the Department shall consider the following additional factors: (A) the pattern of trade, including sourcing patterns; (B) whether the manufacturer or exporter of the merchandise described in accordance with section 781(b)(1)(B) of the Act is affiliated with the person who uses the merchandise described in accordance with section 781(b)(1)(B) to assemble or complete in the foreign country the merchandise that is subsequently imported in to the United States; and (C) whether imports into the foreign country of the merchandise described in accordance with section 781(b)(1)(B) of the Act have increased after the initiation of the investigation which resulted in the issuance of an order.

STATUTORY ANALYSIS

Section 781(b) of the Act directs the Department to consider the criteria below to determine whether merchandise completed or assembled in a third-country circumvents an order. As explained below, the Department finds that innerspring units produced by Reztec in Malaysia and exported to the United States from Malaysia are circumventing the *PRC Innerspring Units Order*.

(A) Whether Reztec's Merchandise Exported from Malaysia and Imported into the United States Is of the Same Class or Kind as Subject Merchandise

The merchandise subject to this inquiry are innerspring units exported to the United States from Malaysia, which are produced by Reztec from PRC-origin components (*i.e.*, spring coils, border rods, and clips). Reztec acknowledged explicitly on the record that "it has reported the quantity and value of its 2011 and 2012 U.S. sales or merchandise that would fall within the scope of the orders *{sic}* on innersprings from the PRC at Exh.2. Please note that all of the listed merchandise was manufactured in Malayisa *{sic}*."¹⁴ Moreover, the sample U.S. sales documents that Reztec provided describe merchandise that matches the written description of

¹³ 19 CFR 351.225(h); *accord* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, at 893 (1994) ("SAA"); *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27328 (May 19, 1997).

¹⁴ See Questionnaire Response, at 2 and Exhibit 2.

merchandise subject to the *PRC Innerspring Units Order*.¹⁵ Accordingly, the Department preliminarily finds that the merchandise subject to this inquiry is of the same class or kind of merchandise as that subject to the *PRC Innerspring Units Order*, pursuant to section 781(b)(1)(A) of the Act.

(B) Whether, Before Importation into the United States, Merchandise Is Completed or Assembled by Reztec in Malaysia from PRC Components

The *PRC Innerspring Units Order* indicates that innerspring units are assembled from four basic inputs: steel wire coils, helical wires, border rods, and clips.¹⁶ Reztec acknowledged throughout this proceeding that it sources innerspring unit components (*i.e.*, spring coils, border rods, and clips) from the PRC, which it uses to assemble innerspring units in Malaysia.¹⁷ Reztec has clarified that it also sources helical wires from Malaysia for the production of innerspring units.¹⁸

Specifically, in its No Shipment Letter, Reztec indicated that “{i}t produces mattresses and other bedding products, including uncovered innerspring units, solely in Malaysia. It makes sales both domestically and throughout the world, including in the {United States}.”¹⁹ Furthermore, Reztec also acknowledged in its No Shipment Letter that “Reztec does purchase some raw materials from China, some of which is {sic} uses to produce its innerspring units in Malaysia. These imported raw materials include spring coils, border wire, and spring clips. These Chinese raw materials are further processed in Malaysia and combined with other materials into finished innerspring units and mattresses, for sale within Malaysia and for export.”²⁰

Reztec also confirmed that it sources innerspring components from the PRC in its response to the Department’s questionnaire by providing a list of the innerspring components that it sources from each of its PRC-suppliers.²¹ Moreover, Reztec also stated that, “{t}he {United States} is the only country to which Reztec exported innersprings since January 2011.”²² Finally, Reztec provided a list of all of the models of innerspring units that it exports to the United States.²³ Therefore, based on Reztec’s own statements, the Department preliminarily finds that innerspring units are assembled in Malaysia by Reztec from PRC-origin components prior to importation into the United States.

¹⁵ See Questionnaire Addendum, at Exhibit 21.

¹⁶ See *PRC Innerspring Units Order*, 74 FR at 7661. The International Trade Commission (“the Commission”) noted that innerspring coils, helical wire, and border rods are the three major components of an innerspring unit. See *Uncovered Innerspring Units from South Africa and Vietnam*, Inv. Nos. 731-TA-1141-1142, USITC Pub. 4051, at I-6 to I-8 (December 2008) (Final) (“*USITC Uncovered Innersprings Report*”). In its final determination regarding imports of uncovered innerspring units from the PRC, the Commission adopted the findings and analyses in its determinations and views regarding subject imports from South Africa and Vietnam with respect to the domestic like product, the domestic industry, cumulation, and material injury. See *Uncovered Innerspring Units from China*, Inv. No. 731-TA-1140, USITC Pub. 4061, at 3, I-1 (February 2009) (Final).

¹⁷ See Questionnaire Response, at Exhibit 5.

¹⁸ See Third Supplemental Questionnaire Response, at 4.

¹⁹ See No Shipment Letter, at 2.

²⁰ *Id.*

²¹ See Questionnaire Response, at Exhibit 10.

²² *Id.*, at 15.

²³ *Id.*, at Exhibit 6.

(C) Whether the Process of Assembly or Completion by Reztec in Malaysia 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. These criteria are: (a) the level of investment in the third country; (b) the level of research and development (“R&D”) in the third country; (c) the nature of the production process in the third country; (d) the extent of the production facilities in the third country; and (e) whether the value of the processing performed in the third country represents a small proportion of the value of the merchandise imported into the United States. The SAA explains that no single factor listed in section 781(b)(2) of the Act will be controlling.²⁴ Accordingly, it is the Department’s practice to evaluate each of the factors as they exist in the third country depending on the particular circumvention scenario.²⁵ 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 circumvention inquiry.

In this anticircumvention inquiry, the Department based its analysis on both qualitative and quantitative factors in determining whether the process of assembling innerspring units in Malaysia is minor or insignificant, in accordance with the criteria of section 781(b)(2) of the Act. This approach is consistent with our analysis in prior anticircumvention inquiries.²⁶

(a) The Level of Investment in Malaysia

For purposes of this anticircumvention inquiry, the Department analyzed the level of investment in Reztec that is associated with converting innerspring unit components into finished innerspring units. Specifically, the Department reviewed Reztec’s level of investment in equipment and the manufacturing facility in Malaysia used in the process of assembling innerspring components into innerspring units. Reztec provided information on the record that identified the types of equipment purchased, where that equipment was used in the production of innerspring units, and the date that the equipment was purchased.²⁷ Furthermore, Reztec rents the facility where it assembles innerspring units.²⁸ Given the lack of investment that Reztec has made in Malaysia with respect to the production of subject merchandise at its rented facility, the Department preliminarily finds that Reztec’s level of investment in Malaysia is minor.²⁹

²⁴ H.R. Doc. No. 103-316 at 893; accord 19 CFR 351.225(h).

²⁵ 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).

²⁶ See, e.g., *Anticircumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta From Italy: Affirmative Preliminary Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 46571, 46573 (August 6, 2003), unchanged in *Anticircumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003).

²⁷ See First Supplemental Questionnaire Response, at Exhibit 32.

²⁸ See *id.*, at Exhibit 30.

²⁹ For further discussion, see June 21, 2013 memorandum entitled “Anticircumvention Inquiry Regarding the Antidumping Duty Order on Uncovered Innerspring Units from the People’s Republic of China: Proprietary Analysis of Certain Statutory Factors for the Preliminary Determination” (“Analysis Memo”).

(b) The Level of Research & Development in Malaysia

There is no record evidence demonstrating that Reztec has undertaken a significant level of R&D in Malaysia to assemble innerspring units. Reztec stated that “Reztec’s merchandise consists of mature products, and its R&D activities involve mainly its on-going trial and error improvement in its manufacturing processes. Its R&D activities are carried out by its own in-house facility. Any related expenditures are absorbed by the company as manufacturing expenses.”³⁰ Given that Reztec’s R&D is limited to “on-going trial and error”, the Department preliminarily finds that the level of R&D performed by Reztec in Malaysia is minor.³¹

(c) The Nature of the Production Process in Malaysia

The production process described by Reztec to assemble PRC-origin innerspring components into innerspring units in Malaysia is not significant. The production process is limited to workers placing spring coils and helical wire into another machine which produces innerspring units from spring coils.³² Reztec uses both imported and domestically produced spring coils in its production of innerspring units and the imported spring coils are used interchangeably with the domestic coils.³³ Finally, workers add the border wire and clips onto the innerspring units and compress the spring units, a process that renders the innersprings units ready for export.³⁴ Reztec’s production process in Malaysia thus only requires the use of a limited number of machines, in addition to the electricity and the unskilled labor used to operate those machines.³⁵ Therefore, based on the limited production process described by Reztec, the Department preliminarily finds that the nature of Reztec’s production process to assemble PRC-origin innerspring components into innerspring units in Malaysia is minor.³⁶

(d) The Extent of the Production Facilities in Malaysia

Record evidence indicates that the extent of Reztec’s rented production facility that is devoted to the production of subject merchandise is insignificant. Reztec has stated that, “{i}n addition to innerspring units and mattresses, Reztec is engaged in the trading of headboards, divans, pillows, bolsters, bedsheets, and mattress protectors.”³⁷ To engage in these activities, Reztec must also allocate space in its facility accordingly. In addition, Reztec reported that it has a subsidiary which shares the same address as Reztec.³⁸ Reztec claims that only a “miniscule” portion of its facility is devoted to its subsidiary’s operations.³⁹ However, Reztec has not provided any evidence to substantiate this claim.

³⁰ See First Supplemental Questionnaire Response, at 10.

³¹ See Analysis Memo for further discussion.

³² *Id.*

³³ See First Supplemental Questionnaire Response, at 11.

³⁴ See Questionnaire Response, at 13 and Third Supplemental Questionnaire Response, at Exhibit 52.

³⁵ See Questionnaire Response, at 12.

³⁶ See Analysis Memo for further discussion.

³⁷ See First Supplemental Questionnaire Response, at 2.

³⁸ See *id.*, at 3.

³⁹ See Third Supplemental Questionnaire Response, at 4.

Furthermore, Reztec reported that only a small portion of its overall workforce is devoted to the assembly of innerspring units.⁴⁰ Moreover, all of Reztec's employees that engaged in the assembly of innerspring units are trained in-house.⁴¹

Finally, as previously described, Reztec rents its facility. In *Tissue Paper*, the Department found that the fact that facilities are rented instead of owned by the respondent supports a finding that the extent of production facilities are minor.⁴² Given that Reztec rents a facility used for various operations in addition to the production of subject merchandise, maintains a small, unskilled labor force, and shares the facility with its subsidiary, the Department preliminarily finds that Reztec's production facility in Malaysia to assemble PRC-origin innerspring components into innerspring units is insignificant.⁴³

(e) Whether the Value-Added by Malaysian Production Represents a Small Proportion of the Value of the Merchandise Exported to the United States

In past circumvention inquiries, the Department has recognized that under this factor Congress has directed it "to focus more on the nature of the production process and less on the difference in value between the subject merchandise and the parts and components imported into the processing country."⁴⁴ Furthermore, Congress has also redirected the Department's focus "from a rigid numerical calculation of value-added toward a more qualitative focus on the nature of the production process."⁴⁵ As discussed in detail below, the Department finds it necessary to rely on facts available with an adverse inference because Reztec failed to cooperate and withheld information requested by the Department, significantly impeded the proceeding when it failed to submit such information and tie it to its records and books, and prevented the Department from verifying the information that it submitted when it failed to tie such information to its books and records.

Section 776(a) of the Act provides that if (1) necessary information is not available on the record or (2) an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information by the established deadlines or in the form or manner requested subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding

⁴⁰ See Second Supplemental Questionnaire Response, at Exhibit 38.

⁴¹ See Questionnaire Response, at 12.

⁴² 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, 21584 (April 22, 2008) ("*Tissue Paper*") (finding extent of production facilities minor, given that the three facilities where Quijiang converted the PRC-origin jumbo rolls to cut-to-length tissue paper were leased rather than owned; that Quijiang's production facilities were temporary, rather than permanent; and that Quijiang's capital equipment was not substantial and Quijiang's labor force primarily consisted of unskilled temporary workers), 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 (October 3, 2008).

⁴³ See Analysis Memo for further discussion.

⁴⁴ See, e.g., *Steel Wire Garment Hangers from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping 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).

⁴⁵ *Id.*

under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Furthermore, section 776(b) of the Act permits the Department to use an inference that is adverse to the interests of an interested party if that party fails to cooperate by not acting to the best of its ability to comply with a request for information. Specifically, section 776(b) of the Act states that if the Department “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 from the administering authority. . . , the administering authority. . . , in reaching the applicable determination under this subtitle, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.”⁴⁶ Congress provided the Department with this authority “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴⁷ An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous administrative review, or any other information placed on the record.⁴⁸

In this case, Reztec has failed to provide information that allows the Department to meaningfully analyze critical information with respect to the value-added by Reztec’s production in Malaysia, despite the Department’s three attempts to elicit this information. In the original questionnaire, the Department asked Reztec to provide a list of each unique innerspring unit product produced by Reztec that has entered the U.S., which Reztec provided.⁴⁹ The Department also asked Reztec to provide the costs for each unique model and for each stage of processing innersprings components into innersprings units, as recorded in Reztec’s books and records.⁵⁰ In response, Reztec only provided a cost breakdown for one “typical export innerspring product,” which it did not tie to its books and records as directed.⁵¹

In the first supplemental questionnaire, the Department asked Reztec to provide a cost breakdown for each unique product model as well as complete source documentation and worksheets quantifying the reported costs, and to tie this information to Reztec’s books and records.⁵² In response, Reztec only provided cost breakdowns for four other models in addition to the model it described previously.⁵³ Reztec stated that these models only account for less than half of Reztec’s total exports.⁵⁴ Reztec did not tie any of this information to its supporting accounting records as requested.

In the second supplemental questionnaire, the Department asked Reztec to provide a cost breakdown for its largest selling innerspring unit model and to tie these reported costs to its

⁴⁶ See SAA, H.R. Doc. 103-316 at 870.

⁴⁷ *Id.*

⁴⁸ See section 776(b) of the Act.

⁴⁹ See Questionnaire Response, at 5 and Exhibit 6.

⁵⁰ See Questionnaire Addendum, at 1.

⁵¹ See *id.*, at Exhibit 17.

⁵² See First Supplemental Questionnaire Response, at 12.

⁵³ See *id.*, at Exhibit 33.

⁵⁴ See *id.*, at 12.

books and records.⁵⁵ Although Reztec provided a cost breakdown for its largest selling innerspring unit model,⁵⁶ it did not tie these reported costs to its books and records.⁵⁷

As previously described, Reztec's production process only consists of a small number of unskilled workers performing the assembly of innerspring components on basic machinery to produce innerspring units.⁵⁸ The Department provided Reztec with two opportunities to provide information related to its processing in Malaysia for every innerspring unit model that it produces and exports to the United States and to tie such information to its books and records.⁵⁹ It failed to comply with these requests. Reztec also failed to tie its reported costs for its largest selling innerspring unit model to its books and records.⁶⁰

Given these deficiencies, pursuant to sections 776(a)(2)(A), (C), and (D) of the Act, the Department finds that the use of facts otherwise available is warranted because Reztec withheld information requested by the Department, significantly impeded the proceeding when it failed to submit such information and tie it to its records and books, and prevented the Department from verifying the information that it submitted when it failed to tie such information to its books and records. Moreover, pursuant to section 776(b) of the Act, the Department preliminarily determines that, because Reztec failed to comply with the Department's three requests for information on the processing that it performs in Malaysia, the company did not cooperate to the best of its ability in providing such information. As a result, the Department preliminarily determines, based on the facts otherwise available with an adverse inference, that the value-added by Reztec's production in Malaysia represents a small proportion of the value of the merchandise exported to the United States.⁶¹

Summary of Analysis of Whether the Process of Assembly or Completion in the Third Country Is Minor or Insignificant

In summary, the Department preliminarily concludes that the record supports a finding that the process of assembly or completion of the PRC-origin innerspring components into innerspring units by Reztec in Malaysia is minor and insignificant. Specifically, the record demonstrates that Reztec has minor levels of investment and R&D in Malaysia; that the nature of Reztec's production process to assemble PRC-origin innerspring components into innerspring units in Malaysia is minor; that Reztec's production facility in Malaysia to assemble PRC-origin innerspring components into innerspring units is insignificant; and that the value-added by Reztec's production in Malaysia represents a small proportion of the value of the merchandise exported to the United States.

⁵⁵ See Second Supplemental Questionnaire Response, at 6.

⁵⁶ See *id.*, at Exhibit 43.

⁵⁷ *Id.*

⁵⁸ See *id.*, at Exhibit 38.

⁵⁹ See Questionnaire Addendum, at Exhibit 17 and First Supplemental Questionnaire Response, at Exhibit 33.

⁶⁰ See Second Supplemental Questionnaire Response, at Exhibit 43.

⁶¹ See Analysis Memo for further discussion.

(D) Whether the Value of the Merchandise Produced in the PRC is a Significant Portion of the Total Value of the Merchandise Exported from Malaysia to the United States

Under section 781(b)(1)(D) of the Act, the value of the merchandise produced in the foreign country to which the order applies must be a significant portion of the total value of the merchandise exported to the United States for the Department to find circumvention. In this case, Reztec purchased innerspring components (*i.e.*, spring coils, border rods, and clips) from the PRC and assembled them into finished innerspring units at its facility in Malaysia.⁶² In all of the limited cost breakdowns that have been provided, Reztec claims that the information contained in these cost breakdowns is based on an assumed ratio of most innerspring components being sourced from the PRC and the remaining innerspring components being sourced from Malaysia.⁶³ However, the information contained in Reztec's cost breakdowns and this assumed ratio has not been directly tied to Reztec's books and records, despite the Department twice requesting Reztec to do so.⁶⁴

Therefore, pursuant to section 776(a)(2)(D) of the Act, the Department finds that the use of facts otherwise available is warranted because Reztec prevented the Department from verifying the information that it submitted when it failed to tie such information to its books and records. Moreover, pursuant to section 776(b) of the Act, the Department preliminarily determines that Reztec did not cooperate to the best of its ability with respect to its reporting the value of merchandise it sources from the PRC when it failed to tie such information to its books and records, despite the Department twice requesting Reztec to do so. As a result, the Department preliminarily determines, based on the facts otherwise available with an adverse inference, that the value of the PRC-origin innerspring components used to produce innerspring units exported to the United States from Malaysia represents a significant portion of the total value of the merchandise exported to the United States.⁶⁵

Other Factors to Consider

In making a determination whether to include merchandise assembled or completed in a foreign country within an order, section 781(b)(3) of the Act instructs the Department to take into account the following factors: (A) the pattern of trade, including sourcing patterns; (B) whether affiliation exists between the manufacturer or exporter of the merchandise described in section 781(b)(1)(B) and the person who uses the merchandise to assemble or complete in the foreign country the merchandise that is subsequently imported into the United States; and (C) whether imports into the foreign country of the merchandise described in section 781(b)(1)(B) have increased since the initiation of the original investigation which resulted in the issuance of the order. As explained below, a majority of these factors supports finding that circumvention has occurred.

⁶² See No Shipment Letter, at 2.

⁶³ See Questionnaire Addendum, at Exhibit 17, First Supplemental Questionnaire Response, at Exhibit 33, and Second Supplemental Questionnaire Response, at Exhibit 43.

⁶⁴ See First Supplemental Questionnaire Response, at 12 and Second Supplemental Questionnaire, at 6.

⁶⁵ See Analysis Memo for further discussion.

(A) Pattern of Trade and Sourcing

The first factor to consider under 781(b)(3) of the Act is changes in the pattern of trade, including changes in the sourcing patterns. In the context of this inquiry, the Department must determine whether Malaysia's imports of innerspring unit components from the PRC have increased since the initiation of the antidumping investigation on innerspring units in 2008.⁶⁶ Rezttec has indicated that it imports spring coils and border rods from the PRC under harmonized tariff system ("HTS") classification 7320.90.0000 ("Helical Springs of Iron or Steel, Other Springs & Leaves for Springs, of Iron and Steel") and clips under HTS 7326.90.900 ("Other Articles of Iron or Steel").⁶⁷ According to imported data cited by Petitioner, Malaysia's official import statistics indicate that imports from the PRC of innerspring unit components (*i.e.*, spring coils, border rods, and clips) have increased substantially since the initiation of the investigation.⁶⁸ For HTS 7320.90.0000, imports of spring coils and border rods from the PRC into Malaysia have almost doubled from 5,601,047 kilograms ("kgs") in 2008 to 10,908,356 kgs in 2011.⁶⁹ Imports declined somewhat to 7,236,939 kgs in 2012, the year the Department initiated the anticircumvention inquiry.⁷⁰ With respect to HTS 7326.90.900, imports of clips from the PRC into Malaysia have increased from 16,814,620 kgs in 2008 to 26,508,782 kgs in 2012.⁷¹

In addition, the record demonstrates that imports of innerspring units into the United States from Malaysia have increased since the Department initiated the investigation of subject merchandise in 2008.⁷² According to Petitioner, official U.S. import data obtained from the ITC indicates that imports of innerspring units into the United States from Malaysia have increased substantially since the initiation of the investigation.⁷³ Prior to 2008, there were no imports of innerspring units from Malaysia into the United States.⁷⁴ However, in 2011, imports of innerspring units from Malaysia increased to 344,524 units.⁷⁵ In 2012, imports of innerspring units declined to 132,017 units following the initiation of this anticircumvention inquiry.⁷⁶ In contrast, Petitioner notes that imports of innerspring units from the PRC into the United States declined from 722,967 units in 2008 to 6,418 units in 2012.⁷⁷ Petitioner contends that the increase in innerspring unit imports from Malaysia over this period mirrors the decline in innerspring unit imports from the PRC.⁷⁸

⁶⁶ See *Uncovered Innerspring Units From the People's Republic of China, South Africa, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 73 FR 4817 (January 28, 2008).

⁶⁷ See Third Supplemental Questionnaire, at Exhibit 46.

⁶⁸ See Petitioner's Comments, at 12 and Exhibit 3. Petitioner cited to data provided by Global Trade Information Services Inc.

⁶⁹ See *id.*, at 24 and Exhibit 3.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See *Uncovered Innerspring Units From the People's Republic of China, South Africa, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 73 FR 4817 (January 28, 2008).

⁷³ See Petitioner's Comments, at 26 and Exhibit 4. Petitioner cited to data provided by the U.S. International Trade Commission ("ITC").

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ See *id.*, at 12.

Petitioner argues that, in similar circumstances, the Department has found that changes in trade flows since the initiation of an investigation support a finding that circumvention has occurred.⁷⁹ Reztec has not disputed any of the import data cited by Petitioner. Therefore, based on the facts on the record, the Department preliminarily finds that this change in the pattern of trade supports a finding that circumvention has occurred.

(B) Affiliation

The second factor to consider under section 781(b)(3) of the Act is whether the manufacturers or exporters of the PRC-origin innerspring unit components are affiliated with Reztec. Generally, the Department considers circumvention to be more likely to occur when the manufacturer of the PRC-origin merchandise is related to the third country assembler and is a critical element in our evaluation of circumvention.⁸⁰ In its No Shipment Letter, Reztec stated that “Reztec is not affiliated in any way with its Chinese suppliers of raw materials.”⁸¹ In its questionnaire response, Reztec reiterated that it does not have any affiliates.⁸² Moreover, Petitioner does not allege that Reztec is affiliated with its PRC suppliers.⁸³ There is no information on the record that otherwise indicates that Reztec is affiliated with its PRC-suppliers of innerspring unit components. Therefore, the Department preliminarily finds that no affiliation exists between Reztec and its suppliers of PRC-origin components.

(C) Whether Imports Have Increased

The third factor to consider under section 781(b)(3) is whether imports of innerspring units into Malaysia have increased since the initiation of the antidumping investigation on innerspring units in 2008.⁸⁴ The record does not contain any evidence regarding an increase in imports of innerspring units (*i.e.*, finished innersprings units) into Malaysia from the PRC since the initiation of the investigation of subject merchandise. However, as stated above, the import data cited by Petitioner indicates that imports of the components essential to the manufacture of finished innerspring units (*i.e.*, spring coils, border rods, and clips) into Malaysia from the PRC have increased substantially since the initiation of the antidumping investigation on innerspring units in 2008.⁸⁵ Therefore, the Department preliminarily finds that the substantial increase in imports of innerspring unit components from the PRC into Malaysia supports a finding that circumvention has occurred.

⁷⁹ See Petitioner’s Comments, at 13; *see also Tissue Paper*, 73 FR at 21586 (“Accordingly, the data show that PRC exports have decreased significantly whereas Vietnamese exports have increased significantly since the initiation of the LTFV investigation. Therefore, based on the facts of the record, we find that the pattern of trade has changed since the initiation of the LTFV investigation and the imposition of the Order and thus, supports a finding that circumvention has occurred.”)

⁸⁰ See, e.g., *Certain Tissue Paper Products from the People’s Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 78 FR 14514 (March 6, 2013), and accompanying Preliminary Decision Memorandum, at 10.

⁸¹ See No Shipment Letter, at 3.

⁸² See Questionnaire Response, at 7.

⁸³ See Petitioner’s Comments, at 24.

⁸⁴ See *Uncovered Innerspring Units From the People’s Republic of China, South Africa, and the Socialist Republic of Vietnam: Initiation of Antidumping Duty Investigations*, 73 FR 4817 (January 28, 2008).

⁸⁵ See Petitioner’s Comments, at 12 and Exhibit 3. Petitioner cited to data provided by Global Trade Information Services Inc.

SUMMARY OF STATUTORY ANALYSIS

As discussed above, in order to make an affirmative determination of circumvention, all the elements under sections 781(b)(1) of the Act must be satisfied, taking into account the minor or insignificant criteria listed in section 781(b)(2). In addition, section 781(b)(3) of the Act instructs the Department to consider, in determining whether to include merchandise assembled or completed in a foreign country within the scope of an order, factors such as the pattern of trade, affiliation, and whether imports into the foreign country of the merchandise described in section 781(b)(1)(B) have increased after the initiation of the investigation.

Pursuant to sections 781(b)(1)(A) and (B) of the Act, the Department preliminarily finds that the merchandise produced by Reztec in Malaysia and imported into the United States is within the same class or kind of merchandise that is subject to the *PRC Innerspring Units Order* and was completed or assembled in Malaysia. Additionally, pursuant to sections 781(b)(1)(C) and 781(b)(2) of the Act, the Department preliminarily finds that the process of assembly or completion of the PRC-origin innerspring unit components into innerspring units by Reztec in Malaysia is minor and insignificant. Furthermore, in accordance with sections 781(b)(1)(D) and (b)(1)(E) of the Act, the Department preliminarily finds that the value of the innerspring unit components produced in the PRC is a significant portion of the total value of the merchandise exported from Malaysia to the United States.

In light of the above, the Department preliminarily finds that a majority of the factors under section 781(b)(3) of the Act support finding that circumvention of the *PRC Innerspring Units Order* occurred, *i.e.*, the Department's statutory analysis indicates that during the inquiry period there was circumvention of the *PRC Innerspring Units Order* as a result of Reztec's assembly of the PRC-origin innerspring unit components into innerspring units in Malaysia and that merchandise's subsequent exportation from Malaysia to the United States. Thus, the Department preliminarily finds that innerspring units produced in Malaysia by Reztec using PRC-origin components, are included within the scope of the *PRC Innerspring Units Order*.

Reztec has reported that it produces some of its own spring coils.⁸⁶ Furthermore, Reztec also reported that it uses PRC-origin innerspring components and Malaysian innerspring unit components interchangeably⁸⁷ and that it actually "endeavors" to mix PRC-origin and Malaysian innerspring components in the production of subject merchandise.⁸⁸ The Department asked Reztec if it could distinguish between innerspring units which it exported to the United States which contained PRC-origin components and those which did not.⁸⁹ Reztec responded that it

⁸⁶ See First Supplemental Questionnaire, at 14.

⁸⁷ See *id.*, at 11.

⁸⁸ See Second Supplemental Questionnaire, at 6.

⁸⁹ *Id.*

could not.⁹⁰ Accordingly, the Department preliminarily determines that Reztec has no verifiable means by which to distinguish, prior to exportation to the United States, between innerspring units produced from PRC-origin components and innerspring units produced from components sourced from Malaysia.

The Department has an obligation to administer the law in a manner that prevents evasion of the Order.⁹¹ Section 781(b)(1)(E) of the Act directs the Department to take necessary action to “prevent evasion” of antidumping and countervailing duty orders when it concludes that “merchandise has been completed or assembled in other foreign countries” and is circumventing an order. Therefore, the Department finds that action is appropriate to prevent evasion of the *PRC Innerspring Units Order*.

Specifically, the Department’s concern in an anticircumvention inquiry is the merchandise at issue, irrespective of the exporter of that merchandise. In light of our preliminary findings, including the absence of a verifiable means through which Reztec can identify innerspring units sourced from PRC-origin components, the Department will instruct U.S. Customs and Border Protection (“CBP”) to suspend liquidation and require cash deposits of estimated duties, at the rate applicable to the exporter at the time of entry, on all unliquidated entries of innerspring units produce by Reztec that were entered, or withdrawn from warehouse, for consumption on or after May 23, 2012, the date of initiation of this anticircumvention inquiry. Thus, for example, all Reztec-produced innerspring units exported to the United States by Reztec will be subject to Reztec’s current cash deposit rate under the *PRC Innerspring Units Order*. Any other exports to the United States of innerspring units produced by Reztec will be subject to the rate applicable to that exporter. Reztec has not been reviewed and it currently does not have its own antidumping margin. Therefore, if Reztec exports innerspring units to the United States, the merchandise will be subject to the PRC-wide rate consistent with the Department’s standard practice to assign the PRC-wide rate to non-reviewed exporters.⁹²

If Reztec would like to be reviewed under the *PRC Innerspring Units Order*, it must request a review of its exports. In such a review, the Department would determine, for the first time,

⁹⁰ *Id.* Reztec has offered alternative data for the Department to use to segregate innerspring units produced in Malaysia using PRC-origin components from innerspring units produced in Malaysia using Malaysian-sourced components. As explained more thoroughly above and in the Analysis Memo, Reztec failed to tie the alternative data to its books and records, despite the Department’s repeated requests that it do so. See the section below titled “Whether the Value-Added by Malaysian Production Represents a Small Proportion of the Value of the Merchandise Exported to the United States”. For certain business proprietary aspects of the alternative data, see the Analysis Memo at Section VIII, “Analysis of Section 781(b)(1)(D): The Value Of The Merchandise Produced In The PRC Is A Significant Portion Of The Total Value Of The Merchandise Exported From Malaysia To The United States” for more information. Consequently, the Department preliminarily finds Reztec’s alternative data unreliable and that these alternative data do not provide a basis on which to suspend on a portion of Reztec’s exports and the Department has not otherwise used the alternative data in this preliminary determination.

⁹¹ See, e.g., *Tung Mung Development v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002), affirmed 354 F 3d 1371 (January 15, 2004) (finding that the Department has a responsibility to prevent the evasion of payment of antidumping duties).

⁹² See, e.g., *Certain Tissue Paper Products From the People’s Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 75 FR 63809 (October 18, 2010).

Reztec's antidumping margin.⁹³ Should the Department conduct an administrative review, Reztec will have the opportunity to provide information demonstrating which of its innerspring units contains only PRC-origin components. In the event that Reztec is able to demonstrate that certain entries contain no PRC-origin components, those entries would be liquidated without regard to duties. Entries that contain only PRC-origin components or entries which contain components for which the origin is unknown would be subject to the administrative review.

RECOMMENDATION

The Department recommends a preliminary determination that, pursuant to section 781(b) of the Act and 19 CFR 351.225, Reztec is circumventing the *PRC Innerspring Units Order*.



Paul Piquado
Assistant Secretary
for Import Administration

2 July 2013

Date

⁹³ See *Uncovered Innerspring Units From the People's Republic of China: Final Results and Final Rescission, in Part, of Antidumping Duty Administrative Review*, 77 FR 21961 (April 12, 2012). The Department rescinded the administrative review, in part, with respect to Reztec because it had no shipments of subject merchandise to the United States during the period of review.