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International Trade Administration
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September 12, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh *CM*
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
2012-2013 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, 2012, to January 31, 2013. 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 March 17, 2014, the Department of Commerce (“the Department”) published the *Preliminary Results*.² The review covers two exporters of subject merchandise, Goldon Bedding Manufacturing (M) Sdn Bhd (“Goldon”) and Ta Cheng Coconut Knitting Company Ltd. (“Ta Cheng”).³ The Department preliminarily determined that Goldon and Ta Cheng, two market economy exporters located in Malaysia and Taiwan, respectively, failed to cooperate to the best of their abilities in providing requested information because they withheld requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded this proceeding.⁴ Accordingly, pursuant to sections 776(a)(2)(A), (B), and (C) and section 776(b) of the Tariff Act of 1930, as amended (“the Act”), the Department preliminary

¹ See *Uncovered Innerspring Units from the People's Republic of China; Antidumping Duty Administrative Review; 2012-2013*, 79 FR 14666 (March 17, 2014) (“*Preliminary Results*”).

² *Id.*

³ *Id.*

⁴ *Id.*, and accompanying Preliminary Decision Memo at 5-6.



determined that it is appropriate to apply adverse facts available (“AFA”) to Goldon’s and Ta Cheng’s PRC-origin merchandise.⁵

On April 16, 2014, Leggett and Platt, Inc. (“Petitioner”) submitted its case brief.⁶ No other case or rebuttal briefs were filed by interested parties. On May 8, 2014, the Department placed documentation on the record to confirm that Goldon⁷ and Ta Cheng⁸ received the Department’s second supplemental questionnaire, which asked Goldon and Ta Cheng to clarify whether they exported subject merchandise to the United States during the POR that was produced in the PRC.⁹ On June 20, 2014, the Department partially extended the deadline for the completion of the final results by 30 days to August 14, 2014.¹⁰ On July 28, 2014, the Department fully extended the deadline for the completion of the final results by an additional 30 days to September 15, 2014.¹¹

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.

⁵ *Id.*

⁶ See Fourth Administrative Review of the Antidumping Duty Order on Uncovered Innerspring Units from the People’s Republic of China: Case Brief, dated April 16, 2014 (“Petitioner’s Case Brief”).

⁷ See Memorandum to the File from Steven Hampton, International Trade Compliance Analyst, Office V, Enforcement and Compliance regarding Uncovered Innerspring Units from the People’s Republic of China: Documentation to Confirm Goldon Bedding Manufacturing (M) Sdn Bhd’s receipt of the Second Supplemental Questionnaire (“Goldon Confirmation Memo”).

⁸ See Memorandum to the File from Steven Hampton, International Trade Compliance Analyst, Office V, Enforcement and Compliance regarding Uncovered Innerspring Units from the People’s Republic of China: Documentation to Confirm Ta Cheng Coconut Knitting’s receipt of the Second Supplemental Questionnaire (“Ta Cheng Confirmation Memo”).

⁹ See Letter to Goldon regarding 2012-2013 Antidumping Administrative Review of Uncovered Innerspring Units from the People’s Republic of China: Second Supplemental Questionnaire (“Goldon Second Supplemental Questionnaire”); Letter to Ta Cheng regarding 2012-2013 Antidumping Administrative Review of Uncovered Innerspring Units from the People’s Republic of China: Second Supplemental Questionnaire (“Ta Cheng Second Supplemental Questionnaire”).

¹⁰ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, from Steven Hampton, 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 Final Results of Antidumping Duty Administrative Review, dated June 20, 2014.

¹¹ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, from Steven Hampton, 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 Final Results of Antidumping Duty Administrative Review, dated July 28, 2014.

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.

DISCUSSION OF THE ISSUE

Comment: Whether to apply an adverse inference that all of Goldon’s and Ta Cheng’s Innersprings are PRC-Origin

Petitioner:

- Goldon and Ta Cheng failed to act to the best of their abilities during this administrative review. Specifically, Goldon and Ta Cheng failed to respond to the Department’s second supplemental questionnaire. The Department properly assigned AFA to Goldon and Ta Cheng in the *Preliminary Results*.
- The Department stated that the “second supplemental questionnaire asked Goldon and Ta Cheng to provide information that is critical to the Department’s determinations in this review – namely, whether Goldon and Ta Cheng sold PRC-origin merchandise during the POR.”¹² Therefore, the Department should also draw an adverse inference that all of Goldon’s and Ta Cheng’s exports of innersprings were PRC-origin because their failure to cooperate deprived the Department of the information necessary to segregate subject and non-subject innersprings. Otherwise, Goldon and Ta Cheng would benefit from their failure to cooperate.
- The Department has applied adverse inferences in analogous circumstances. In *Stainless Steel Strip and Sheet in Coils from Germany* (“*Steel Coils*”), the U.S. reseller’s reported sales contained a “large quantity” of sales that did not identify the manufacturer.¹³ The Department explained that “{t}he absence of the supplying mill for this body of sales affects not only this investigation, but also those {investigations} involving stainless steel sheet in coils from Mexico and Italy. Furthermore, the 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

¹² See *Preliminary Results*, and accompanying Preliminary Decision Memo at 6.

¹³ 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*”).

properly considered non-subject merchandise because it was obtained from either a domestic or other foreign mill.”¹⁴

- 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).¹⁵ Thus, 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.”
- Moreover, the U.S. Court of International Trade (“CIT”) upheld the Department’s adverse inference.¹⁶ Therefore, the Department should apply a similar adverse inference that all of Goldon’s and Ta Cheng’s exports to the United States are of PRC-origin and instruct U.S. Customs and Border Protection (“CBP”) to apply the final results to all such exports.

Department’s Position:

We disagree with Petitioner’s argument that the Department should draw an adverse inference that all of Goldon’s and Ta Cheng’s exports of innersprings were of PRC-origin, irrespective of the declared country of origin. Although Petitioner raised concerns that Goldon’s and Ta Cheng’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 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* pertains only to innersprings from the PRC.¹⁷ Thus, 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 could not identify the manufacturers of certain sales of subject merchandise 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 whose manufacturer was unknown to the respondents in those

¹⁴ *Id.*, 64 FR at 30742.

¹⁵ *Id.*, 64 FR 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.”)

¹⁶ See *Krupp Thyssen Nirosta GmbH v. United States*, 25 C.I.T. 793, 2001 WL 812167 (CIT July 9, 2001) (“*Krupp Thyssen*”).

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.

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, Goldon and Ta Cheng simply chose not to respond to the Department's supplemental questionnaires.²¹ Thus, there is no basis for the Department to instruct CBP to classify all of Goldon's and Ta Cheng's exports as PRC-origin.

We agree that the CIT upheld the Department's adverse inference in *Steel Coils*; however, we note this is in reference to a request by the CIT for the Department to explain, *inter alia*, "why the allocation methodology for the U.S. reseller's sales of unknown origin was not unduly harsh or punitive," and not (as Petitioner suggests) for the Department to explain a determination with respect to country-of-origin.²²

Finally, we note that the CIT 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 Goldon's and Ta Cheng's exports of PRC-origin subject merchandise and refer the matter of potential country-of-origin misclassification of Goldon's and Ta Cheng's other exports of innersprings to CBP.

²⁰ *Id.*, 64 FR 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* Goldon Confirmation Memo and Ta Cheng Confirmation Memo.

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

²³ *See Uginé*, 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
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

12 SEPTEMBER 2014
Date