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Anticircumvention Inquiry
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October 19, 2015

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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
Goldon Bedding Manufacturing Sdn. Bhd.

SUMMARY

In response to a request from Leggett & Platt, Incorporated (“Petitioner”), the Department of Commerce (“the Department”) initiated an 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 Goldon Bedding Manufacturing Sdn. Bhd. (“Goldon”) 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 Petitioner and the analysis below, we recommend that the Department preliminarily find that innerspring units assembled by Goldon 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, Goldon submitted responses to the Department’s antidumping questionnaire in which it stated that it sources 70 percent of its components from

¹ See *Uncovered Innerspring Units from the People’s Republic China: Initiation of Anticircumvention Inquiry on Antidumping Duty Order*, 79 FR 78792 (December 31, 2014) (“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”).



Malaysia.³ On November 7, 2014, providing evidence from Goldon's questionnaire responses, Petitioner requested that the Department initiate an anticircumvention inquiry with respect to Goldon.⁴ On December 31, 2014, in response to Petitioner's request, the Department initiated an anticircumvention inquiry.⁵ On January 12, 2015, the Department issued an anticircumvention questionnaire to Goldon.⁶ On January 15, 2015, the questionnaire was signed for and delivered to the address provided by Petitioner in its anticircumvention inquiry request.⁷ On February 11, 2015, Petitioner submitted a request for an affirmative final circumvention determination.⁸

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.

³ See Letter from Petitioner, to the Department, regarding Uncovered Innerspring Units from China: Request for a Circumvention Inquiry ("Inquiry Request") at Exhibit 1.

⁴ *Id.*

⁵ See *Uncovered Innerspring Units from the People's Republic of China: Initiation of Anticircumvention Inquiry on Antidumping Duty Order*, 79 FR 78792 (December 31, 2014) ("*Initiation*").

⁶ See Letter from the Department, to Goldon, regarding "Uncovered Innerspring Units from the People's Republic of China: Circumvention Inquiry Questionnaire," dated January 12, 2015 ("Anticircumvention Questionnaire").

⁷ See Memo to File, through Scot T. Fullerton, from Steven Hampton, regarding "Uncovered Innerspring Units from the People's Republic of China: Anticircumvention Inquiry Questionnaire: Documentation to Confirm Goldon's Receipt of the Questionnaire, dated January 22, 2015.

⁸ See Letter from Petitioner, to the Department, regarding "Request for an Affirmative Final Circumvention Determination," dated February 11, 2015.

SCOPE OF THE ANTICIRCUMVENTION INQUIRY

The products covered by this inquiry are innerspring units, as described above in the “Scope of the Antidumping Duty Order” section, that are manufactured in Malaysia by Goldon with PRC-origin components and other direct materials 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.”⁹

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.

⁹ See 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”).

USE OF FACTS AVAILABLE WITH AN ADVERSE INFERENCE

Section 776(a)(1) and (2) of the Act provides that, if necessary information is missing from the record, or if an interested party (A) withholds information that has been requested by the Department, (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a proceeding under the AD 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. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

Because Goldon failed to respond to the Department's questionnaire, we preliminarily determine that necessary information is missing from the record, that Goldon withheld information requested by the Department, and that Goldon significantly impeded the proceeding. Accordingly, we have preliminarily reached a circumvention determination with respect to Goldon on the basis of facts available pursuant to sections 776(a)(1) and (2)(A) and (C) of the Act. Additionally, in selecting from among the facts available, an adverse inference is warranted, pursuant to section 776(b) of the Tariff Act of 1930, because we find that, by not responding at all, Goldon has failed to cooperate to the best of its ability in providing the requested information.

As set forth in greater detail below, we preliminarily find as adverse facts available ("AFA") that Goldon's merchandise is of the same class or kind as subject uncovered innerspring units; that Goldon completes or assembles the innerspring units in Malaysia from Chinese-produced merchandise; that Goldon's process of completion or assembly in Malaysia is insignificant; that the value of merchandise produced in the PRC is a significant portion of the total value of the merchandise exported by Goldon from Malaysia to the United States; and that action is appropriate to prevent evasion of the Order with respect to Goldon's exports of innerspring units from Malaysia. Furthermore, because we are unable to determine which of the innerspring units produced by Goldon and exported from Malaysia are comprised of PRC-origin raw materials, we preliminarily find as AFA that all innerspring units produced in Malaysia by Goldon are subject to the *PRC Innerspring Units 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 Goldon in Malaysia and exported to the United States from Malaysia are circumventing the *PRC Innerspring Units Order*.

(A) Whether Goldon’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 assembled by Goldon from PRC-origin components (*i.e.*, “spring coils,” “steel frame,” “wire,” and “clips”).¹⁰ The record shows that Goldon explicitly acknowledged in the fourth administrative review that “completed {Goldon} merchandise contain{s} 70% component{s} from {the} PRC and 30% from Malaysia.”¹¹ Moreover, during the fourth administrative review, in response to the Department’s inquiry as to whether Goldon shipped subject merchandise to the United States that was comprised of components from another country, Goldon stated that it shipped subject merchandise “comprised of components from China and Malaysia.”¹²

Because Goldon did not respond to the Department’s questionnaire, we are preliminarily making our determination on the basis of the facts otherwise available, applying an adverse inference, pursuant to section 776(a) and (b) of the Act. Based on the foregoing, as AFA, 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 Goldon in Malaysia from PRC Components

The *PRC Innerspring Units Order* and *USITC Uncovered Innerspring Report* indicate that innerspring units are assembled from four basic inputs: steel wire coils, helical wires, border rods, and clips.¹³ The record indicates that Goldon acknowledged throughout the fourth administrative review that it sources innerspring unit components from the PRC, which it uses to assemble innerspring units in Malaysia.¹⁴ Additionally, the record shows that Goldon also sourced spring coils, helical wire, clips, and border frames from Malaysia for the production of innerspring units.¹⁵ Specifically, Goldon previously reported to the Department that “Goldon imports and source{s} locally for the component of the innerspring to be assembled in Malaysia and then shipped the completed merchandise into U.S.”¹⁶

¹⁰ See Inquiry Request at Exhibit 1 and Exhibit 2.

¹¹ See Inquiry Request at Exhibit 1.

¹² *Id.*

¹³ See *PRC Innerspring Units Order*, 74 FR at 7661. The International Trade Commission (“ITC”) noted that innerspring coils, helical wire, and border rods are the three major components of an innerspring unit. See also Memo to the File, dated October 19, 2015 at Attachment 1 citing *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 ITC 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).

¹⁴ See Inquiry Request at Exhibit 1 and Exhibit 2.

¹⁵ *Id.* at Exhibit 2.

¹⁶ *Id.* at Exhibit 1.

Because Goldon did not respond to the Department's questionnaire, we are preliminarily making our determination on the basis of the facts otherwise available, applying an adverse inference, pursuant to section 776(a) and (b) of the Act. Based on the foregoing, as AFA, the Department preliminarily finds that before importation into the United States, merchandise is completed or assembled by Goldon in Malaysia from PRC components, pursuant to section 781(b)(1)(B) of the Act.

(C) Whether the Process of Assembly or Completion by Goldon 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.¹⁷ 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.¹⁸ 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 has considered all of the factors listed above 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.¹⁹

(a) The Level of Investment in Malaysia

For purposes of this anticircumvention inquiry, the Department analyzed the level of investment in Malaysia associated with converting innerspring unit components into finished innerspring units. The process of assembling innerspring components into innerspring units is relatively simple and requires limited investment and labor.²⁰ Specifically, as illustrated in Goldon's questionnaire response in the fourth administrative review, the two steps involved in its manufacturing process entail lacing pre-formed "circle springs" (*i.e.*, coils) and clipping borders to the laced coils.²¹ The process of lacing the coils together can be automatic, semi-automatic, and/or manual.²² Fully manual operations use a wooden or steel jig that Petitioner asserts costs approximately \$200-\$400.²³ With respect to automatic bonnell spring assembling machines used

¹⁷ See H.R. Doc. No. 103-316 at 893; accord 19 CFR 351.225(h).

¹⁸ 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).

¹⁹ See Memo to the File, dated October 19, 2015 at Attachment 2

²⁰ See Inquiry Request at Exhibit 2 at Attachment 1.

²¹ *Id.*

²² See *USITC Uncovered Innersprings Report* at I-12.

²³ See Inquiry Request at 10.

in semi-automated assembly operations, the machines associated with this type of process are relatively small and inexpensive.²⁴ While the costs of an automatic bonnell spring assembling machine can be greater than that of a wooden or steel jig, the record reflects that it is likely still minor.²⁵

Because Goldon did not respond to the Department's questionnaire, we are preliminarily making our determination on the basis of the facts otherwise available, applying an adverse inference, pursuant to section 776(a) and (b) of the Act. Based on the foregoing, as AFA, the Department preliminarily finds Goldon's level of investment in Malaysia is minor.

(b) The Level of Research and Development in Malaysia

The Department is not aware of any research and development related to the assembly and/or production of innerspring units. Moreover, we find that Goldon's production process²⁶ is similar to that of another company in the industry.²⁷ When reviewing that company in another anticircumvention inquiry, we found that the level of research and development expended by that company in assembling innerspring units was minor.²⁸

Because Goldon did not respond to the Department's questionnaire, we are preliminarily making our determination on the basis of the facts otherwise available, applying an adverse inference, pursuant to section 776(a) and (b) of the Act. Based on the foregoing, as AFA, the Department preliminarily determines that the level of research and development in Malaysia for subject merchandise assembled in Malaysia and exported to the United States is minor.

(c) The Nature of the Production Process in Malaysia

The production process described by Goldon to assemble its innerspring components into innerspring units in Malaysia is not significant. As noted above, the production process described by Goldon in the fourth administrative review is limited to two stages. The first stage entails workers lacing circle springs (*i.e.*, spring coils) together, while the second stage entails workers adhering clips to the borders of the innerspring units.²⁹ These stages require between five and seven workers, cumulatively.³⁰ Goldon's production in Malaysia only requires the use of a limited number of workers.³¹

²⁴ *Id.* at 10 and Exhibit 3.

²⁵ For further discussion, 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," dated concurrently with this memorandum ("Analysis Memo").

²⁶ *See* Inquiry Request at Exhibit 2.

²⁷ *See* Memo to the File, dated October 19, 2015 at Attachment 2.

²⁸ *See* Uncovered Innerspring Units From the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order, 78 FR 41784 (July 11, 2013), and Accompany Issues and Decision Memorandum at "The Level of Research & Development in Malaysia."

²⁹ *See* Inquiry Request at Exhibit 2.

³⁰ *Id.*

³¹ *Id.*

Because Goldon did not respond to the Department's questionnaire, we are preliminarily making our determination on the basis of the facts otherwise available, applying an adverse inference, pursuant to section 776(a) and (b) of the Act. Based on the limited production process described by Goldon in an earlier review, as AFA, the Department preliminarily finds that the nature of Goldon's production process to assemble PRC-origin innerspring components into innerspring units in Malaysia is minor.

(d) The Extent of the Production Facilities in Malaysia

For purposes of this anticircumvention inquiry, the Department analyzed the extent of the production facilities in Malaysia. As illustrated in Goldon's production flow chart and discussed above, Goldon's assembly process only requires between five and seven workers, with a maximum of three additional workers for packing. Further, Goldon only maintains one facility for the manufacturing of its innerspring units.³²

Because Goldon did not respond to the Department's questionnaire, we are preliminarily making our determination on the basis of the facts otherwise available, applying an adverse inference, pursuant to section 776(a) and (b) of the Act. Given the information on the record, as AFA, the Department preliminarily finds that Goldon's production facility in Malaysia used to assemble PRC-origin innerspring components into innerspring units is insignificant.

(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 in the processing country."³³ The only information on the record suggests that the assembly operations costs associated with production processes similar to Goldon's represent an insignificant percentage of the total value of the innerspring units assembled in Malaysia.³⁴

Because Goldon did not respond to the Department's questionnaire, we are preliminarily making our determination on the basis of the facts otherwise available, applying an adverse inference, pursuant to section 776(a) and (b) of the Act. Based on the foregoing, as AFA, we find that the value-added by Malaysian production represents a small proportion of the value of the merchandise exported to the United States.

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

³² See Inquiry Request at Exhibit 4 at A-6.

³³ 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).

³⁴ For additional information, including certain business proprietary details, see Analysis Memo.

Based on the analysis set forth above the Department preliminarily concludes as AFA that the process of assembly or completion of the PRC-origin innerspring components into innerspring units by Goldon in Malaysia is minor and insignificant. Specifically, as AFA, we find that Goldon has minor levels of investment and R&D in Malaysia; that the nature of Goldon's production process to assemble PRC-origin innerspring components into innerspring units in Malaysia is minor; that Goldon's production facility in Malaysia to assemble PRC-origin innerspring components into innerspring units is insignificant; and that the value-added by Goldon's production in Malaysia represents a small proportion of the value of the merchandise exported to the United States.

(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 another segment of this proceeding, Goldon reported purchasing 70 percent of its 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.³⁵ Because Goldon did not respond to the Department's questionnaire, the precise value of the PRC-origin merchandise relative to the total value of the merchandise could not be determined.

Given these deficiencies, we are preliminarily making our determination on the basis of the facts otherwise available, applying an adverse inference, pursuant to section 776(a) and (b) of the Act. Based on the foregoing, as AFA, 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 product 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.

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.

(A) Pattern of Trade and Sourcing

³⁵ See Inquiry Request at Exhibit 1.

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 2008.³⁶ According to import 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.³⁷ For HTS 7320.90.0000, imports of spring coils and border rods from the PRC into Malaysia have significantly increased from 2,995,519 kilograms ("kgs") in 2007 before the Order was imposed and increased to 11,972,478 kg in 2011. Following 2011, possibly due to a previous anticircumvention inquiry, imports of spring coils and border rods from the PRC have declined. However, the 2014 import quantity of 5,218,781 kg is still greater than the import quantities prior to when the *PRC Innerspring Units Order* was in place.³⁸

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 2008.³⁹ 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.⁴⁰ Prior to 2008, there were no imports of innerspring units from Malaysia into the United States.⁴¹ However, in 2011, imports of innerspring units from Malaysia increased to 344,524 units.⁴² In 2012, imports of innerspring units declined to 132,017 units following the initiation of this anticircumvention inquiry.⁴³ 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 2012.⁴⁴ Petitioner contends that the increase in innerspring unit imports from Malaysia over this period mirrors the decline in innerspring unit imports from the PRC.⁴⁵

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.⁴⁶

³⁶ 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).

³⁷ See Inquiry Request at 17 and Exhibit 7.

³⁸ *Id.* at 17.

³⁹ 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).

⁴⁰ See Inquiry Request at 16-17. Petitioner cites to data provided by the Department and U.S. International Trade Commission ("ITC").

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 12.

⁴⁶ 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.")

Because Goldon did not respond to the Department's questionnaire, we are preliminarily making our determination on the basis of the facts otherwise available, applying an adverse inference, pursuant to section 776(a) and (b) of the Act. Based on the foregoing, as AFA, 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 Goldon. 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.⁴⁷ In its questionnaire response on the record, Goldon stated that it does not have any affiliates.⁴⁸ Moreover, Petitioner does not allege that Goldon is affiliated with its PRC suppliers. There is no information on the record that otherwise indicates that Goldon is affiliated with its PRC-suppliers of innerspring unit components. Therefore, the Department preliminarily finds that no affiliation exists between Goldon and its suppliers of PRC-origin components.

(C) Whether Imports Have Increased

The third factor to consider under section 781(b)(3) of the Act is whether imports of innerspring units into Malaysia have increased since the initiation of the antidumping investigation on innerspring units in 2008.⁴⁹ 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 2008.⁵⁰

Because Goldon did not respond to the Department's questionnaire, we are preliminarily making our determination on the basis of the facts otherwise available, applying an adverse inference, pursuant to section 776(a) and (b) of the Act. Based on the foregoing, as AFA, 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.

SUMMARY OF STATUTORY ANALYSIS

⁴⁷ 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.

⁴⁸ See Inquiry Request at Exhibit 2.

⁴⁹ 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).

⁵⁰ See Inquiry Request at 17.

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 as AFA that the merchandise produced by Goldon 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 as AFA that the process of assembly or completion of the PRC-origin innerspring unit components into innerspring units by Goldon in Malaysia is minor and insignificant. Furthermore, in accordance with section 781(b)(1)(D) of the Act, the Department preliminarily finds as AFA 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. Finally, we have considered the factors under section 781(b)(3) of the Act, and find as AFA that a majority of the factors support finding that circumvention of the *PRC Innerspring Units Order* is occurring.

The Department has an obligation to administer the law in a manner that prevents evasion of the *PRC Innerspring Units Order*.⁵¹ Section 781(b)(1)(E) of the Act permits 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. In light of the foregoing analysis, the Department preliminarily finds that action is appropriate to prevent evasion of the *PRC Innerspring Units Order*.

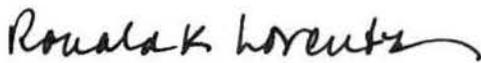
The Department’s concern in an anticircumvention inquiry is the merchandise at issue, irrespective of the exporter of that merchandise. Because Goldon failed to respond to our questionnaire, we are unable to determine which of the innerspring units produced by Goldon and exported from Malaysia are comprised of PRC-origin raw materials. Therefore, as noted above, we preliminarily find as AFA that all innerspring units produced in Malaysia by Goldon are subject to the *PRC Innerspring Units Order*. In light of our preliminary findings, 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 produced by Goldon that were entered, or withdrawn from warehouse, for consumption on or after December 22, 2014, the date of initiation of this anticircumvention inquiry. Thus, for example, all Goldon-produced innerspring units exported to the United States will be subject to Goldon’s cash deposit rate under the *PRC Innerspring Units Order*.

⁵¹ See, e.g., *Tung Mung Development v. United States*, 219 F. Supp. 2d 1333, 1343 (CIT 2002), affirmed 354 F. 3d 1371 (Fed. Cir. 2004) (finding that the Department has a responsibility to prevent the evasion of payment of antidumping duties).

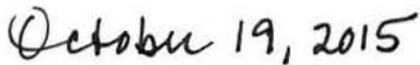
If Goldon would like to be reviewed under the *PRC Innerspring Units Order*, it must request a review of its exports. In such a review, the Department would determine Goldon's antidumping margin. Should the Department conduct an administrative review, and determine in the context of that review that Goldon did not produce for export innerspring units using PRC-origin innerspring components, the Department will consider initiating a changed circumstances review pursuant to section 751(b) of the Act to determine if the continued suspension of all innerspring units produced by Goldon is warranted.

RECOMMENDATION

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



Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance



Date