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September 6, 2016

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

FROM: Gary Taverman *GT*
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Uncovered Innerspring Units from the People's Republic of China:
Issues and Decision Memorandum for the Final Results of the
2014-2015 Administrative Review

SUMMARY

We have 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, 2014, to January 31, 2015. As a result of our analysis, we have made changes from the preliminary results.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this Issues and Decision Memorandum.

BACKGROUND

On March 10, 2016, the Department published the *Preliminary Results* of this administrative review.² The review covers two exporters of subject merchandise, East Grace Corporation (“East Grace”) and Macao Commercial and Industrial Spring Mattress Manufacturer (“Macao Commercial”). Because East Grace did not respond to the Department’s questionnaire,³ we found that it failed to establish its entitlement to a separate rate and that it remained part of the

¹ See *Uncovered Innerspring Units from the People’s Republic of China: Antidumping Duty Administrative Review; 2014-2015*, 81 FR 12688 (March 10, 2016) (“*Preliminary Results*”) and accompanying Decision Memorandum for Preliminary Results of 2014-2015 Antidumping Duty Administrative Review: Uncovered Innerspring Units from the People’s Republic of China dated March 2, 2016 (“*Preliminary Decision Memorandum*”).

² *Id.*

³ On June 1, 2015, the Department placed documentation on the record confirming that East Grace and Macao Commercial received the Department’s original antidumping duty questionnaire. See Memorandum to the File from Kenneth Hawkins, International Trade Compliance Analyst, Office V, Enforcement and Compliance regarding “2014-2015 Administrative Review of Uncovered Innerspring Units from the People’s Republic of China: Delivery Notification of Antidumping Duty Questionnaire to East Grace Corporation and Macao Commercial and Industrial Spring Mattress Manufacturer,” dated June 1, 2015 (“*Delivery Confirmation Memo*”).



PRC-wide entity. We also preliminarily determined that Macao Commercial had no reviewable shipments of subject merchandise during the POR.

On July 28, 2016, Leggett and Platt, Incorporated (“Petitioner”) submitted its case brief.⁴ On August 2, 2016, Macao Commercial submitted a rebuttal brief.⁵ On January 27, 2016, the Department tolled all administrative deadlines by four days.⁶ On April 18, 2016, the Department partially extended the deadline for the completion of the final results by 30 days to August 7, 2016.⁷ On August 2, 2016, the Department fully extended the time limit for these final results to September 6, 2016.⁸

SCOPE OF THE ORDER

The merchandise subject to the order is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (*e.g.*, twin, twin long, full, full long, queen, California king and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in the scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non-pocketed innerspring units are included in this definition. Non-pocketed innersprings are typically joined together with helical wire and border rods. Non-pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a

⁴ See Petitioner’s Case Brief, dated July 28, 2016.

⁵ See Macao Commercial’s Rebuttal Brief, dated August 2, 2016.

⁶ As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 22, 2016 through January 27, 2016. Thus, all deadlines in this segment of the proceeding have been extended by four days. See Memorandum to the Record, from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, regarding “Tolling of Administrative Deadlines as a Result of the Government Closure During Snowstorm Jonas,” dated January 27, 2016.

⁷ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations through James Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, from Kenneth Hawkins, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, Office V, regarding “Uncovered Innerspring Units from the People’s Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,” dated April 18, 2016.

⁸ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations through James Doyle, Director, Office V, Antidumping and Countervailing Duty Operations, from Kenneth Hawkins, International Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, Office V, regarding “Uncovered Innerspring Units from the People’s Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review,” dated August 2, 2016.

“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 ISSUES

Comment 1: Application of AFA to Macao Commercial’s merchandise as PRC-origin

Petitioner:

- The Department should apply AFA and make the determination that all of Macao Commercial’s merchandise is PRC-origin. AFA is designed to induce respondents with an incentive to cooperate and to ensure an uncooperative respondent does not obtain a more favorable rate by failing to cooperate than had it cooperated fully.
- The Department has the authority to determine country of origin in an administrative review and has exercised this authority when respondents failed to cooperate to the best of their ability. For example, the Department has determined country of origin in circumvention proceedings conducted under this order, in the course of conducting a substantial transformation analysis in an administrative review, and impliedly in every administrative review where the Department assigns a rate to specific merchandise.
- The Department has also determined country of origin in other proceedings involving claims that merchandise was being transshipped through a third country.⁹
- The Court of International Trade has confirmed the Department’s authority to exercise gap-filling discretion to address transshipment allegations in an administrative review.¹⁰
- Macao Commercial has disregarded the Department’s filing requirements and deadlines, unilaterally established its own deadlines, and failed to provide complete responses. For example, Macao Commercial identified one affiliate for the first time in its final questionnaire response. Macao Commercial’s failure to act to the best of its ability in responding to questions has deprived the Department from conducting its analysis.
- Where Macao Commercial has left information gaps on the record, the Department should fill in those gaps by applying an adverse inference to its origin.

Macao Commercial:

- Petitioner is fully aware of the identity of Macao Commercial’s affiliates. Evidence on the record is consistent with and supports a finding of Macao-origin innersprings.
- In the absence of third country processing, the relief Petitioner seeks is more properly brought as a scope/circumvention inquiry, not in an administrative review.

⁹ See Petitioner’s Case Brief at 4-6 (citing, e.g., *Certain Tissue Paper Products from the People’s Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 58642 (October 16, 2007) (“*Tissue*”) and accompanying Issues and Decision Memorandum at Comment 4).

¹⁰ *Id.* at 6, citing *Globe Metallurgical Inc. v. United States*, 722 F. Supp. 2d 1372, 1381 (CIT 2010) (“*Globe Metallurgical*”).

- Further, even if the Department disregards all of Macao Commercial's questionnaire responses on the basis of facts available, U.S. Customs and Border Protection ("CBP") entry records establish that all of Macao Commercial's imports to the United States are Macao origin. Petitioner failed to produce any evidence to rebut the Department's preliminary finding of no shipments.
- The Department has not held any submission to be deficient or cautioned that AFA is warranted.

Department's Position: We agree with the Petitioner, in part. We agree that use of AFA is warranted with respect to Macao Commercial for the reasons stated below. However, we do not agree that is appropriate to reach a determination in this administrative review that Macao Commercial's exports of innersprings from Macau are PRC-origin and, thus, subject to the innersprings order.

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Act, provide that, if necessary information is not available on 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 section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On June 29, 2015, the President of the United States signed into law the *TPEA*, which made numerous amendments to the antidumping and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act, and the addition of section 776(d) of the Act.¹¹ The

¹¹ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015) ("*TPEA*"). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.

amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this review.¹²

Section 776(b) of the Act 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. In doing so, and under the *TPEA*, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. However, pursuant to section 776(c)(2) as amended by the *TPEA*, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Under section 776(d) of the Act, the Department may use any dumping margin from any segment of the proceeding when applying an adverse inference, including the highest of such margins. The *TPEA* also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.

A. *Application of Facts Available*

As described below, the Department finds that the use of the facts otherwise available is warranted with respect to Macao Commercial, pursuant to section 776(a) of the Act.

For these final results, we find that during the course of this review, Macao Commercial withheld key information that was requested by the Department for determining whether its statement that it made no shipments of PRC-origin innersprings is, in fact, true. Macao Commercial’s assertions concerning it and its affiliates’ sales procedures and sourcing of raw materials continually changed throughout the review. In addition, Macao Commercial failed to provide quantity and value (“Q&V”) information for certain of its affiliates. While Macao Commercial disputes that there are significant deficiencies on the record of this review, we disagree.

See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (“*Applicability Notice*”).

¹² *See Applicability Notice*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bills/114/congress/house-bill/1295/text/pl>.

Sales Process

Macao Commercial is part of a group of companies that produces and sells innersprings and innerspring parts. In order to determine whether the innersprings sold by Macao Commercial to the United States during the POR were of Macao-origin, the Department attempted to ascertain the sales processes of Macao Commercial and its affiliates. For example, the Department requested that Macao Commercial “provide a detailed explanation of the sales process of innersprings” for it and all affiliates.¹³ Macao Commercial provided a series of complicated and shifting responses, initially not identifying two companies, hereinafter referred to as “Company X” or “Company Y,” in response to this question. Macao Commercial later stated that it had an affiliate, a PRC producer of innersprings, which sells innerspring units through what Macao Commercial then purported was an unaffiliated company, Company X.¹⁴ In its final questionnaire response, Macao Commercial noted that, in fact, the innersprings manufactured by its affiliated PRC producer are sold exclusively to another previously undisclosed company (Company Y), which then sells PRC-origin innersprings to Company X, as noted above, an affiliate of Macao Commercial.¹⁵ Similarly, Company Y sells parts and machinery manufactured by the PRC producer affiliate to yet another company, Tai Wa Machinery.¹⁶

Additionally, throughout this review Macao Commercial has maintained that it does not itself sell PRC-origin innersprings.¹⁷ Moreover, in response to a question regarding whether Macao Commercial or any of its affiliates sourced any innerspring components¹⁸, finished or unfinished, from the PRC, Macao Commercial denied sourcing any innerspring components from the PRC.¹⁹ But in its final questionnaire response, Macao Commercial reported that it pays Company Y for the PRC-origin innersprings on Company X’s behalf.²⁰ Thus, Macao Commercial purchases PRC-origin innersprings, despite its assertions throughout this review that it does not.²¹ In lieu

¹³ See the Department’s June 16, 2015 letter at 4-5.

¹⁴ See Macao Commercial’s November 4, 2015 submission at 5. Macao Commercial later revealed that Company X is, in fact, affiliated with Macao Commercial. In particular, after the *Preliminary Results*, the Department sought to clarify the relationship of Company X to Macao Commercial. Macao Commercial reported that there are no shareholders or directors common to Company X, or any of the affiliates of Macao Commercial, and that the companies are not affiliated. See Macao Commercial’s May 9, 2016 submission at 6. However, in its final questionnaire response, Macao Commercial admitted that Company X is owned by an immediate family member of Mr. Wu (and Mr. Wu, in turn, owns Macao Commercial). See Macao Commercial’s July 21, 2016 submission at 4. Therefore, Mr. Wu and his immediate family member are affiliated within the meaning of section 771(33)(A) of the Act, and their respective companies are affiliated within the meaning of section 771(33)(F) of the Act as they are under the common control of the Wu family.

¹⁵ See Macao Commercial’s November 4, 2015 submission at 5.

¹⁶ *Id.*

¹⁷ See, e.g., Macao Commercial’s June 1, 2015 submission at 2.

¹⁸ Innersprings are made of four components: coils, border rods, clips and a quilted cloth covering.

¹⁹ See Macao Commercial’s July 10, 2015 submission at 10. In that same questionnaire, we also asked Macao Commercial whether any members of the Tai Wa Hong Group sold or shipped merchandise under consideration that was produced in the PRC. *Id.* at 8.

²⁰ See Macao Commercial’s July 21, 2016 submission at 5.

²¹ See Macao Commercial’s November 4, 2015 submission at 16 (PRC-origin innersprings are sold by Company X). In the Department’s June 16, 2015 letter, we asked whether the Tai Wa Hong Group, which Macao Commercial is a part of, or any company affiliated with Tai Wa Hong Group, sourced any innerspring components, finished or unfinished, from the PRC. In its response, Macao Commercial stated that “No innerspring components, finished or unfinished, were sourced from the PRC by any affiliate in the Macao Group of Companies.” See Macao Commercial’s July 10, 2015 submission at 10.

of reimbursement to Macao Commercial for the advances made on its behalf to purchase innersprings from Company Y, Company X pays a multitude of Macao Commercial's operating expenses.²²

From the outset of this proceeding, the Department has attempted to ascertain the selling functions of Macao Commercial and its affiliates. However, it was not until its last submission that Macao Commercial disclosed there is another company involved in its sales process (Company Y), and that Macao Commercial itself is involved in the sale and trade of PRC-origin innersprings, albeit to countries other than the United States. Macao Commercial's decision to wait until late in the review to reveal the involvement of Company Y in the sale of its affiliate's PRC-origin innersprings, and the fact that Macao Commercial paid for those innersprings, deprived the Department of an opportunity to ask supplemental questions and conduct a thorough review of its and its affiliates' sales processes.

Raw Materials and Innerspring Components

In order to determine whether the innersprings sold by Macao Commercial to the United States during the POR were of Macao-origin, the Department asked whether Macao Commercial sourced "any innerspring components, finished or unfinished, from the PRC."²³ Macao Commercial reported that "no innerspring components, finished or unfinished, were sourced from the PRC by any affiliate in the Macao Group of Companies."²⁴

The Department subsequently queried Macao Commercial as to the origin of its raw materials, including the main input, steel wire, and it reported that raw materials are sourced from a third country, and that these raw materials are warehoused in the third country prior to export and innerspring production in Macao.²⁵ The Department sought to clarify the origin of all of the raw materials sourced from the PRC by Macao Commercial, in response to which Macao Commercial confirmed (in direct contradiction of its prior statements²⁶) that all raw materials used in the production of innersprings in Macao are sourced from a third country.²⁷

In its final questionnaire response, Macao Commercial revealed that it maintains monthly overhead costs and submitted a monthly inventory report to support this statement.²⁸ Specifically, Macao Commercial submitted this inventory report in two different exhibits within its July 21, 2016 QR response²⁹ and that within Exhibit 5 is an invoice for not just raw materials but PRC-origin innerspring components from Company X. Also, as noted above, Macao Commercial purchases finished PRC-origin innersprings, despite its assertions throughout this

²² See Macao Commercial's July 21, 2016 submission at 4-5.

²³ See the Department's June 16, 2015 letter at 4.

²⁴ See Macao Commercial's July 10, 2015 submission at 10.

²⁵ See Macao Commercial's November 4, 2015 submission at 6, 8 and 9. Macao Commercial bracketed the name of the third country, and the name of the entity in the third country that warehouses its raw materials.

²⁶ In its response, Macao Commercial stated that "No innerspring components, finished or unfinished, were sourced from the PRC by any affiliate in the Macao Group of Companies." See Macao Commercial's July 10, 2015 submission at 10.

²⁷ See Macao Commercial's December 30, 2015 submission at 3.

²⁸ See Macao Commercial's July 21, 2016 submission at Exhibit 5.

²⁹ *Id.* at Exhibits 5 & 8.

review that it does not. These pieces of information directly contradict Macao Commercial's previous statement on this topic that "no innerspring components, finished or unfinished, were sourced from the PRC by any affiliate in the Macao Group of Companies."³⁰

Q&V Information

In order to determine whether the innersprings sold by Macao Commercial to the United States during the POR were of Macao-origin, we also requested Q&V information from Macao Commercial and its affiliates. The analysis of Q&V information is one of the first steps in conducting a sales reconciliation, which in turn helps us ascertain whether Macao Commercial produced innersprings, or purchased PRC-origin innersprings for its sales to the United States.

The Department repeatedly requested Macao Commercial to submit Q&V data for all sales of innersprings sold by each affiliate during the POR.³¹ In Macao Commercial's first response to this request, it claimed that it provided a summary of its Q&V.³² The Department again requested this information for all affiliates.³³ In Macao Commercial's November 4, 2015 response, it only provided a sales summary for the previously undisclosed affiliate, Company X.³⁴ The Department asked again for a Q&V for all affiliates, but instead Macao Commercial reported information for its affiliated PRC producer "was pending."³⁵ In Macao Commercial's final response, Macao submitted a sales summary including quantity for its affiliated PRC producer, but omitted value.³⁶ In sum, Macao Commercial submitted complete Q&V information for only two of five affiliated companies. Because Macao Commercial did not report Q&Vs for these companies, and because these companies are a group of companies that produce and sell innersprings and innerspring components amongst themselves, it is impossible to know the Q&V of innersprings sold by the Macao Commercial and its affiliates.

Summary

Macao Commercial's responses to many key questions posed by the Department were often incomplete, or became contradictory over the course of the review. This precluded the Department from fully evaluating Macao Commercial's claim that it had no shipments of PRC-origin innersprings to the United States during the POR.³⁷

First, Macao Commercial waited until late in the review to reveal the involvement of Company Y in the sale of its affiliate's PRC-origin innersprings, albeit to countries other than the United States, and the fact that Macao Commercial paid for those innersprings. This information was

³⁰ See Macao Commercial's July 10, 2015 submission at 10.

³¹ See the Department's June 16, 2015 supplemental questionnaire at 4; *see also*, the Department's October 8, 2015 supplemental questionnaire at 5; *see also*, the Department's April 15, 2016 supplemental questionnaire at 5.

³² See Macao Commercial's July 10, 2015 submission at 20.

³³ See the Department's October 8, 2015 questionnaire at 5.

³⁴ See Macao Commercial's November 4, 2015 submission at Exhibit 4.

³⁵ See Macao Commercial's May 8, 2016 submission at 4.

³⁶ See Macao Commercial's July 21, 2016 submission at Exhibit 4.

³⁷ We note additionally that these deficiencies are exacerbated by the fact that the record also does not contain complete financial statements, cost reconciliations, and sales reconciliations from Macao Commercial and its affiliates.

necessary to fully evaluate Macao Commercial's categorical claim that it had no shipments of PRC-origin innersprings during the POR. Yet, Macao Commercial withheld this information until late in review, and in so doing, significantly impeded the review.

Second, Macao Commercial's contradictory responses regarding its consumption of raw material inputs, components, and purchases of finished innerspring units significantly impeded the Department's ability to conduct the review, and to ascertain whether the merchandise exported by Macao Commercial during the POR was actually PRC-origin. This information, too, was necessary to fully evaluate Macao Commercial's no shipments claim.

Third, Macao Commercial's failure to provide complete Q&V information, as requested, precluded the Department from ascertaining whether Macao Commercial shipped PRC-origin innersprings. By delaying the provision of this requested information, and altogether failing to provide the remaining information, Macao Commercial significantly impeded the proceeding and withheld information requested of it.

Accordingly, based on the foregoing, we find that reliance upon the facts otherwise available is warranted, pursuant to sections 776(a)(1), (2)(A), and (2)(B), (2)(C) of the Act. In so finding, we disagree with Macao Commercial's suggestion that the Department must rely upon the CBP entry records and continue to find that Macao Commercial had no PRC shipments during the POR. While the Department uses CBP data to confirm no shipment claims, it requires exporters to make official filings with Department to demonstrate that they had no shipments during a POR, and where appropriate, the Department may require supporting documentation and these filings are subject to verification.³⁸ The Department issued supplemental questionnaires in this review to determine whether Macao Commercial indeed had reviewable shipments during the POR. But Macao Commercial in certain instances provided incomplete, or contradictory, responses to those questionnaires. Macao Commercial's failure to provide this information resulted in an absence of necessary information on the record for the Department to evaluate whether Macao Commercial had shipments.

B. *Use of Adverse Inferences*

In selecting from among the facts otherwise available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has "failed to cooperate by not acting to the best of its ability to comply with a request for information."³⁹ In such a case, the Act permits the Department to use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.⁴⁰ Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁴¹ The Court of Appeals for the Federal Circuit ("Federal Circuit"), in *Nippon Steel*, provided an explanation of the "failure to act

³⁸ See, e.g., *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 18202, 18202 (April 3, 2015) at "Notice of No Sales".

³⁹ See section 776(b) of the Act.

⁴⁰ *Id.*; see also Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, Pub. L. No. 103-465, 108 Stat. 4809 (1994), at 870.

⁴¹ See SAA at 870.

to the best of its ability,” stating that the ordinary meaning of “best” means “one’s maximum effort,” and that the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do.⁴² The Federal Circuit acknowledged, however, that while there is no willfulness requirement, “deliberate concealment or inaccurate reporting” would certainly be sufficient to find that a respondent did not act to the best of its ability, although it indicated that inadequate responses to agency inquiries “would suffice” as well.⁴³ Compliance with the “best of its ability” standard is determined by assessing whether a respondent has put forth its maximum effort to provide the Department with full and complete answers to all inquiries in an investigation.⁴⁴ The Federal Circuit further noted that, while the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping.⁴⁵

Pursuant to section 776(b) of the Act, the Department finds that Macao Commercial failed to cooperate by not acting to the best of its ability to comply with the Department’s requests for information and that the application of AFA is warranted. As discussed in detail above, despite the Department’s specific requests for information, Macao Commercial failed to follow specific instructions and provided ultimately incomplete information to the Department, as described above. Because we find that Macao Commercial has failed to cooperate to the best of its ability, pursuant to section 776(b) of the Act, we are applying AFA to Macao Commercial for these final results. We find, using AFA that Macao Commercial has failed to demonstrate that it had no shipments of PRC-origin innersprings during the POR and we are, therefore, not rescinding the review with respect to Macao Commercial.

Because we were unable to confirm Macao Commercial’s no shipments claim, we are assigning an AFA rate to Macao Commercial for this POR. In selecting an AFA rate, the Department’s practice has been to assign non-cooperative respondents the highest margin on the record of proceeding, including margins contained in the petition.⁴⁶ We are assigning Macao Commercial an individual rate of 234.51 percent based on total AFA, which is the highest rate applied in this antidumping proceeding.⁴⁷ As explained above, pursuant to section 776(c)(2) as amended by the *TPEA*, the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding. Therefore, we have not corroborated the rate assigned to Macao Commercial in this review.

C. *Country of Origin*

With respect to Petitioner’s argument that the Department’s AFA determination should include a finding that the country of origin of all of Macao Commercial’s exports of innersprings, irrespective of the declared country of origin, is the PRC, we disagree. The Department’s practice, in cases where there is evidence of possible transshipment, is to refer the matter to

⁴² See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

⁴³ *Id.*, at 1380.

⁴⁴ *Id.*, at 1382.

⁴⁵ *Id.*

⁴⁶ See, e.g., *Non-Malleable Cast Iron Pipe Fittings from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 69546, 69548 (December 1, 2006).

⁴⁷ See *Uncovered Innerspring Units from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 56338 (September 19, 2014).

CBP.⁴⁸ As the Court noted in *Globe Metallurgical*, when sustaining the Department's decision not to consider transshipment allegations in an administrative review, the Department's "recognition of CBP's authority to investigate fraud, gross negligence, or negligence involving entries of merchandise, and that CBP is better positioned to address a standalone country-of-origin issue, is also consistent with 19 U.S.C. § 1592."⁴⁹

Petitioner cites several instances where the Department, in the course of an administrative review, has purportedly examined transshipment issues. We disagree that those cases establish that the Department has a practice of addressing transshipment in administrative review. In a limited number of proceedings, the Department has undertaken some steps to ensure that a respondent's sales database is complete or that its no shipments certification is accurate. However, the extent of these investigations is typically very limited and the facts surrounding these cases differ.

For example, in *Mexican OCTG*,⁵⁰ cited by Petitioner, the Department sought additional information from a respondent reporting no shipments, after the petitioner claimed that merchandise produced by the respondent was shipped from a third country into the United States during the period of review. The Department concluded that there was no evidence that the respondent had knowledge of the U.S. destination of the merchandise, and rescinded the administrative review with respect to the respondent. The Department conducted no circumvention or transshipment analysis in that review, nor did it conclude that the merchandise had a different country of origin than what had originally been reported to CBP (as Petitioner suggests that we do here). We also find Petitioner's cite to *Mexican CWP*⁵¹ and *EPS from Korea*⁵² to be inapposite. The Department's analysis in *Mexican CWP* concerns the comingling of sales produced by different companies, which is not an issue in this case. Also in *EPS from Korea*, the Department declined to undertake an extensive investigation of petitioner's allegations that subject merchandise was being transshipped through Mexico. After receipt of petitioners' allegation of transshipment, the Department reviewed CBP data and conducted normal verification procedures, such as completeness tests, to determine whether respondents' U.S. sales database were complete. Finding no evidence of transshipment through these normal procedures, the Department declined to undertake further investigation and, consistent with our practice, referred the matter to CBP for further investigation. Lastly, Petitioner notes that in *Tissue* the Department examined whether PRC-origin tissue paper was transshipped through

⁴⁸ See, e.g., *Certain Activated Carbon from the People's Republic of China: Preliminary Results of the Third Antidumping Duty Administrative Review, and Preliminary Rescission in Part*, 76 FR 23978 (April 29, 2011) unchanged in final 76 FR 67134 (October 31, 2011); *Certain Magnesia Carbon Bricks from the People's Republic of China: Final Results and Final Partial Rescission of the Antidumping Duty Administrative Review; 2012-2013*, 80 FR 19961 (April 14, 2015) and accompanying Issues and Decision Memorandum at Comment 3.

⁴⁹ See *Globe Metallurgical*, 722 F.Supp.2d at 1381; *Kinetic Industries Inc. v. United States*, 800 F. Supp. 2d 1339, 1344 (CIT 2011).

⁵⁰ See *Oil Country Tubular Goods from Mexico: Rescission of Antidumping Duty Administrative Review*, 66 FR 26830, 26831 (May 15, 2001) ("*Mexican OCTG*").

⁵¹ See *Certain Circular Welded Non-Alloy Steel Pipe from Mexico: Final Results of Antidumping Duty Administrative Review*, 76 FR 36086 (June 21, 2011) ("*Mexican CWP*") and accompanying Issues and Decisions at Comment 3.

⁵² See *Notice of Final Determination of Sales at Not Less Than Fair Value: Expandable Polystyrene Resins from the Republic of Korea*, 65 FR 69284 (November 16, 2000) ("*EPS from Korea*"), and accompanying Issues and Decision Memorandum at Comment 1.

Indonesia.⁵³ While the Department examined those allegations in that case, we made no finding of transshipment, and in fact, found the opposite and rescinded the review with respect to that company.⁵⁴

To the extent Petitioner asks the Department to find as AFA that Macao Commercial's innersprings incur only minor processing in Macau, such that they are properly PRC in origin, in similar situations, the Department has found that scope and circumvention procedures provide the best venue for the Department to investigate country-of-origin claims involving third-country processing.⁵⁵ Administrative reviews are a less appropriate venue for examining claims of minor processing in a third country where, as in this review, Macao Commercial has no suspended entries upon which the Department can order the assessment of antidumping duties.

We note additionally that the Department's regulations regarding scope and circumvention inquiries cover instances where there is a question as to the country-of-origin of the merchandise based upon processing activities that take place in a third country. The introduction to 19 CFR 351.225 indicates that "a domestic interested party may allege that changes to an imported product or the place where the imported product is assembled constitutes circumvention under section 781 of the Act."⁵⁶ In addition, 19 CFR 351.225(h) allows for "imported merchandise completed or assembled in a foreign country other than the country to which the order applies" to be included in the scope of an antidumping duty order.⁵⁷ By linking the Department's authority to investigate country-of-origin claims to whether a third-country party conducted some type of work on the merchandise before it is exported to the United States, the Department's regulations set forth a manageable framework for the Department to investigate country-of-origin claims involving such activity.

Therefore, we have not made a determination that Macao Commercial entries of Macau-origin innersprings are of PRC-origin. However, the information placed on the record during this administrative review as well as prior circumvention findings in this proceeding⁵⁸ raise a concern that there are entries which should be subject to the Order but currently are not. The Department intends to consider these facts to determine if it would be appropriate for the Department to self-initiate a circumvention inquiry.

⁵³ See *Tissue* at Comment 4.

⁵⁴ *Id.*

⁵⁵ See Final Results of Redetermination Pursuant to Court Remand in *Globe Metallurgical Inc. v. United States*, Court No. 08-00290 (CIT December 2009). As Petitioner cited, in *TRBs from the PRC*, the Department conducted a substantial transformation analysis in the context of an administrative review. However, Petitioner has not suggested that the Department should have conducted a substantial transformation analysis in this review. Further, the Department's decision in *TRBs from the PRC* was ultimately amended as a result of litigation, and in the amended final results, the Department redetermined the country of origin for certain merchandise under review and revised the dumping margin calculations to exclude U.S. sales of TRBs further processed in Thailand. See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of Antidumping Duty Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review*; 2007-2008, 81 FR 4253 (January 26, 2016).

⁵⁶ See 19 CFR 351.225(a).

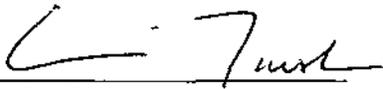
⁵⁷ See 19 CFR 351.225(h).

⁵⁸ See, e.g., *Uncovered Innerspring Units from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 79 FR 3345 (January 21, 2014).

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the positions described above. If accepted, we will publish the final results of review and the final dumping margin in the *Federal Register*.

AGREE DISAGREE



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

9/6/16
Date