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October 31, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Preliminary Results of 2015-2016
Antidumping Duty Administrative Review: Uncovered
Innerspring Units from the People's Republic of China

SUMMARY

The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on uncovered innerspring units ("innerspring units") from the People's Republic of China ("PRC"). The review covers one exporter of subject merchandise, Enchant Privilege Sdn Bhd ("Enchant Privilege"). The period of review ("POR") is February 1, 2015, through January 31, 2016. Because Enchant Privilege did not respond to the Department's questionnaire, we preliminarily determine that use of facts available with an adverse inference is warranted, pursuant to sections 776(a) and 776(b) of the Tariff Act of 1930, as amended ("the Act"). As adverse facts available ("AFA"), we are assigning to Enchant Privilege the highest rate from any segment of this proceeding, which in this case is 234.51 percent, as established in the investigation. Consistent with our practice, because Enchant Privilege is not a PRC exporter, we are not treating Enchant Privilege as a part of the PRC-wide entity, but rather are assigning Enchant Privilege a rate as a market economy reseller.



BACKGROUND

On February 19, 2009, the Department published in the *Federal Register* an antidumping duty order on innerspring units from the PRC.¹ On February 29, 2016, the Department received a request from Petitioner² to conduct an administrative review of Enchant Privilege.³ Petitioner stated that it believes that Enchant Privilege either directly, or through affiliated companies, made sales, shipments, and/or exports of subject merchandise to the United States during the POR, and that these sales, shipments, and/or exports of subject merchandise were made either directly from the PRC or through third countries.⁴

On April 7, 2016, the Department published in the *Federal Register* a notice of initiation of this review.⁵ On April 28, 2016, the Department issued its antidumping duty questionnaire to Enchant Privilege.⁶ On May 3, 2016, the questionnaire was delivered to Enchant Privilege at the address provided by Petitioner. On May 6, 2016, the Department placed the notification of delivery on the record.⁷

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

¹ See *Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order*, 74 FR 7661 (February 19, 2009) (“Order”).

² The petitioner is Leggett & Platt, Inc. (hereinafter referred to as “Petitioner”).

³ See Request for Antidumping Administrative Review of the Antidumping Duty Order on Uncovered Innerspring Units from the People's Republic of China, dated February 29, 2016.

⁴ *Id.*

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 20324 (April 7, 2016) (“Initiation Notice”).

⁶ See Letter to Enchant Privilege regarding Uncovered Innerspring Units from the People's Republic of China, dated April 28, 2016.

⁷ See Memorandum to the File, through Paul Walker, Program Manager, Office V, AD/CVD Operations, Enforcement and Compliance, from Kenneth Hawkins, International Trade Compliance Analyst, Office V, AD/CVD Operations, Enforcement and Compliance, regarding 2015-2016 Administrative Review of Uncovered Innerspring Units from the People's Republic of China: Delivery Notification of Antidumping Duty Questionnaire to Enchant Privilege Sdn Bhd, dated May 6, 2016.

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 METHODOLOGY

Facts Otherwise Available

Section 776(a)(1) and 776(a)(2)(A)-(D) of the Tariff Act of 1930, as amended (“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 Trade Preferences Extension Act of 2015 (“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. The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this review.

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 less-than-fair-value (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. Use of Facts Available

As previously noted, Enchant Privilege did not respond to the Department’s antidumping duty questionnaire. Accordingly, we find pursuant to section 776(a)(1) of the Act, that necessary information is not available on the record of this proceeding. Further, based upon Enchant Privilege’s failure to submit responses to the Department’s questionnaire, the Department finds that Enchant Privilege withheld requested information, failed to provide the information in a timely manner and in the form requested, and significantly impeded this proceeding, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act. Therefore, the Department must rely on the facts otherwise available in order to determine the margin for Enchant Privilege.

B. Use of Adverse Facts Available

Section 776(b) of the Act states that if the Department “finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority . . . , the administering authority . . . may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.”⁸ Adverse

⁸ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316 at 870 (1994) (“SAA”).

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.”⁹

As previously stated, Enchant Privilege did not respond to the Department’s questionnaire, nor did Enchant Privilege request an extension of time to respond. We find that Enchant Privilege’s failure to respond demonstrates a failure to act to the best of its ability in complying with the Department’s requests. Accordingly, pursuant to section 776(b) of the Act, we find it appropriate to use an adverse inference in selecting from among the facts available. However, because Enchant Privilege is not a PRC exporter, the Department preliminarily finds that it is appropriate to apply AFA only to Enchant Privilege’s exports of subject merchandise (*i.e.*, PRC-origin innerspring units).

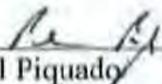
In selecting an AFA rate, the Department’s practice has been to assign non-cooperative respondents the highest margin determined for any party in the LTFV investigation or in any administrative review.¹⁰ Therefore, we are assigning to Enchant Privilege’s exports an individual rate of 234.51 percent based on total AFA, which is the PRC-wide entity rate.¹¹ As explained above, pursuant to section 776(c)(2) of the Act 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 Enchant Privilege in this review.

Recommendation

We recommend applying the above methodology for these preliminary results.

Agree

Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

31 OCTOBER 2016
Date

⁹ *Id.*

¹⁰ See *Non-Malleable Cast Iron Pipe Fittings from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 69546 (December 1, 2016), and accompanying Issues and Decision Memorandum at Comment 1.

¹¹ 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).