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October 31, 2017

MEMORANDUM TO: Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder  
Senior Director  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of 2016-2017  
Antidumping Duty Administrative Review: Uncovered  
Innerspring Units from the People's Republic of China

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## SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on uncovered innerspring units (innerspring units) from the People's Republic of China (PRC). Pursuant to a request for administrative review by the petitioner, this review covers two non-PRC exporters of subject merchandise, Jietai Machinery Ltd. (HK), (Jietai Machinery), and PT Sunhere Buana International (PT Sunhere). The period of review (POR) is February 1, 2016, through January 31, 2017. Because PT Sunhere did not respond to the Department's questionnaire, we preliminarily determine that the use of facts available with an adverse inference is warranted with respect to PT Sunhere's PRC-origin merchandise, 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 PT Sunhere 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 PT Sunhere is not a PRC exporter, we are not treating PT Sunhere as a part of the PRC-wide entity, but rather are assigning PT Sunhere a rate as a market economy reseller. The Department is rescinding this review with respect to Jietai Machinery because the Department's AD Questionnaire was returned as undeliverable and, after being asked for an alternative address to which to send the AD Questionnaire, the petitioner did not provide an alternative address.

## BACKGROUND

On February 19, 2009, the Department published in the *Federal Register* an antidumping duty order on innerspring units from the PRC.<sup>1</sup> On February 28, 2017, the Department received a request from the petitioner<sup>2</sup> to conduct an administrative review of two exporters of the subject merchandise: Jietai Machinery and PT Sunhere.<sup>3</sup> According to the petitioner's request, Jietai Machinery is located in Hong Kong, and PT Sunhere is located in Indonesia.<sup>4</sup> The petitioner stated that it believed that Jietai Machinery and PT Sunhere 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.<sup>5</sup> On April 10, 2017, the Department published in the *Federal Register* a notice of initiation of this review.<sup>6</sup>

On May 1, 2017, the Department issued its AD questionnaire to Jietai Machinery and PT Sunhere.<sup>7</sup> On May 10, 2017, PT Sunhere received the questionnaire at the address provided by the petitioner. On August 15, 2017, the Department placed the notification of delivery for PT Sunhere on the record.<sup>8</sup> The deadlines for the Section A responses and Section C & D responses were May 22, 2017 and June 7, 2017, respectively.<sup>9</sup> PT Sunhere never responded to the questionnaire, nor did it contact the Department to state that it was unable to respond or to request an extension of time to do so.

With respect to Jietai Machinery, the Department attempted to deliver its AD questionnaire to the address provided by the petitioner, but FedEx reported that it was unable to deliver the questionnaire due to an incorrect address.<sup>10</sup> On May 10, 2017, the Department notified the petitioner's counsel that it was unable to deliver the AD questionnaire to Jietai Machinery because Jietai Machinery was not located at the address provided by the petitioner.<sup>11</sup> On May 12, 2017, the petitioner's counsel notified the Department that it would search for an alternative address,<sup>12</sup> but never provided the Department with an alternative address. On August 2, 2017, the Department placed a memo on the record detailing its notification to the petitioner's counsel that the Department's AD questionnaire to Jietai Machinery was undeliverable.<sup>13</sup>

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

<sup>2</sup> The petitioner is Leggett & Platt, Inc. (hereinafter referred to as the petitioner).

<sup>3</sup> See the petitioner's February 28, 2017 submission.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 17188 (April 10, 2017) (*Initiation Notice*).

<sup>7</sup> See the Department's letters to Jietai Machinery and PT Sunhere, dated May 1, 2017.

<sup>8</sup> See Memorandum to the File, "2016-2017 Administrative Review of Uncovered Innerspring Units from the People's Republic of China: Delivery Notification of Antidumping Duty Questionnaire to PT Sunhere Buana International," dated August 15, 2017.

<sup>9</sup> See the Department's letter to PT Sunhere, dated May 1, 2017.

<sup>10</sup> See Memorandum to the File, re: "Antidumping Duty Administrative Questionnaire Not Delivered," dated August 2, 2017.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

## 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 “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, 7326.20.0090, 7320.20.5010, 7320.90.5010, or 7326.20.0071 of the Harmonized Tariff Schedule of the United States (HTSUS).<sup>14</sup> The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the order is dispositive.

## PARTIAL RESCISSION OF ADMINISTRATIVE REVIEW

As noted above, we are rescinding this administrative review with respect to Jietai Machinery because the AD Questionnaire was returned as undeliverable.<sup>15</sup> We requested that the petitioner provide an alternate address for this company, however they did not do so. Under these circumstances, consistent with the Department’s practice,<sup>16</sup> we are rescinding the administrative review with respect to Jietai Machinery.

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<sup>14</sup> Based on a recommendation by CBP, on September 6, 2017, the Department added HTS 7326.20.0090 to the scope. See Memo to the File, from Kenneth Hawkins, Case Analyst, “Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File, Uncovered Innersprings from the People’s Republic of China (A-570-928) and South Africa (A-791-821),” dated September 6, 2017.

<sup>15</sup> See Memorandum to the File, from Kenneth Hawkins, “Antidumping Duty Administrative Questionnaire Not Delivered, dated August 2, 2017.

<sup>16</sup> See, e.g., *Certain Frozen Warmwater Shrimp from Thailand; Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 50931 (September 5, 2007); *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082 (November 7, 2006).

## DISCUSSION OF THE METHODOLOGY

### A. Application of Facts Otherwise Available

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 by the deadlines for submission of the information or in the form and manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding; 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 party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party 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.

Section 782(c)(1) of the Act further states that the Department shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information.

As previously noted, PT Sunhere did not respond to the AD questionnaire issued by the Department on May 1, 2017, or request an extension of time to respond. PT Sunhere also did not notify the Department that it was unable to answer the questionnaire in the form and manner requested, did not provide an explanation of any difficulties, and did not suggest an alternative form in which to provide the Department information that was requested in the questionnaires.

Accordingly, the Department finds, pursuant to section 776(a)(1) of the Act, that necessary information is not available on the record of this proceeding. Further, based upon PT Sunhere's failure to submit responses to the Department's questionnaire, the Department finds that PT Sunhere withheld requested information, failed to provide the information by the deadline for submission, 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 preliminary margin for PT Sunhere.

### B. Use of Adverse Inferences

On June 29, 2015, the Trade Preferences Extension Act of 2015 (TPEA), made numerous amendments to the antidumping and countervailing duty law, including amendments to sections 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.<sup>17</sup>

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 so doing, 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.<sup>18</sup> 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.”<sup>19</sup>

As previously stated, PT Sunhere did not respond to the AD questionnaire, nor did PT Sunhere request an extension of time to respond. We preliminarily find that PT Sunhere’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 and 19 CFR 351.308(a), and in accordance with the Department’s practice,<sup>20</sup> we find it appropriate to use an adverse inference in selecting from among the facts available. However, because PT Sunhere is not a PRC exporter, the Department preliminarily finds that it is appropriate to apply AFA only to PT Sunhere’s exports of subject merchandise (*i.e.*, PRC-origin innerspring units).

### C. Selection of the Adverse Facts Available Rate

Further, section 776(b)(2) of the Act states that the Department, when employing an adverse inference, may rely 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.<sup>21</sup>

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<sup>17</sup> 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).

<sup>18</sup> See Section 776(b)(1)(B) of the Act.

<sup>19</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, Vol. I (1994), at 870 (SAA).

<sup>20</sup> In the last administrative review of this order, the Department applied AFA to a respondent that received the Department’s AD questionnaire but failed to respond. See *Uncovered Innerspring Units from the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 13975 (March 16, 2017), and accompanying Issues and Decision Memorandum.

<sup>21</sup> See 19 CFR 351.308(c).

Section 776(c) of the Act provides that, in general, 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.<sup>22</sup> 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 under the antidumping order 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.<sup>23</sup>

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.<sup>24</sup> Therefore, we are assigning to PT Sunhere’s exports an individual rate of 234.51 percent based on total AFA, which is the highest rate on the record in this proceeding.<sup>25</sup> 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 PT Sunhere in this review.

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<sup>22</sup> See SAA at 870.

<sup>23</sup> See sections 776(d)(3)(A) and (B) of the Act.

<sup>24</sup> 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, 2006), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>25</sup> 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).

**RECOMMENDATION**

We recommend applying the above methodology for these preliminary results.

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Agree

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Disagree

10/31/2017

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*Gary Taverman*  
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Signed by: GARY TAVERMAN

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Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance