
DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-928]

**Uncovered Innerspring Units from the
People's Republic of China:
Preliminary Determination of Sales at
Less Than Fair Value**

AGENCY: Import Administration,
International Trade Administration,
Department of Commerce.

EFFECTIVE DATE: August 6, 2008.

SUMMARY: We preliminarily determine that uncovered innerspring units ("innersprings") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Preliminary

Determination” section of this notice. Interested parties are invited to comment on this preliminary determination.

FOR FURTHER INFORMATION CONTACT: Erin Begnal or Susan Pulongbarit, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-1442 or 482-4031, respectively.

SUPPLEMENTARY INFORMATION:

Initiation

On December 31, 2007, the Department of Commerce (“Department”) received petitions on imports of innersprings from the PRC, South Africa, and the Socialist Republic of Vietnam (“Vietnam”) filed in proper form by Leggett & Platt Incorporated (“Petitioner”). See *Antidumping Duty Petition: Uncovered Innerspring Units from China, South Africa, and Vietnam* (December 31, 2007) (“petition”). These investigations were initiated on January 22, 2008. 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) (“Initiation Notice”).

On February 14, 2008, the United States International Trade Commission (“ITC”) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from the PRC, South Africa, and Vietnam of innersprings. The ITC’s determination was published in the **Federal Register** on November 30, 2007. See *Uncovered Innerspring Units From China, South Africa, and Vietnam*, 73 FR 13567 (March 13, 2008); see also *Uncovered Innerspring Units from China, South Africa, and Vietnam: Investigation Nos. 731-TA-1140-1142 (Preliminary)*, USITC Publication 3983 (February 2008).

Scope Comments

In accordance with the preamble to our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). See also *Initiation Notice*, 73 FR at 4818. We received no comments from

interested parties on issues related to the scope.

Respondent Selection

In the *Initiation Notice*, the Department stated that it intended to select respondents based on U.S. Customs and Border Protection (“CBP”) data of U.S. imports of innersprings. See *Initiation Notice*, 73 FR at 4822. On January 28, 2008, the Department placed the CBP information on the record of the investigation, and set aside a period for interested parties to submit comments on the CBP information. On February 4, 2008, the Department received comments on respondent selection from Petitioner. After receiving comments from interested parties, the Department determined to seek quantity and value (“Q&V”) data from all known producers/exporters of the subject merchandise from the PRC. On February 22, 2008, the Department requested Q&V information from 17 companies that petitioner identified with sufficient address information as potential exporters or producers of innersprings from the PRC. See *Petition at Exhibit I-8*. Additionally, on February 25, 2008, the Department posted the questionnaire requesting Q&V information from potential producers/exporters of innersprings on its website at www.trade.gov/ia. For a complete list of all parties from which the Department requested Q&V information, see Memorandum to the File, from Blaine Wiltse, International Trade Compliance Analyst, regarding “Antidumping Duty Investigation of Uncovered Innerspring Units from the People’s Republic of China (“PRC”): Delivery of Quantity and Value Questionnaires,” dated March 10, 2008 (“Q&V Delivery Memo”). The Department received timely Q&V responses from twelve interested parties. One of the Q&V responses that the Department received on March 14, 2008, was from High Hope Int’l Group Jiangsu Native Produce Imp. & Exp. Corp. Ltd. (“High Hope”). On March 27, 2008, High Hope submitted a letter to the Department withdrawing its Q&V submission, stating that it would no longer be participating in the investigation.

On April 3, 2008, the Department selected Jiangsu Soho International Group Holding Co., Ltd. (“Jiangsu Soho”) and Nanhai Animal By-Products I&E Co. Ltd. Guangdong (“Nanhai Animal”) as mandatory respondents in this investigation. See Memorandum to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, through James C. Doyle, Director, Office 9, AD/CVD Operations, and Scot T.

Fullerton, Program Manager, Office 9, AD/CVD Operations, from Erin Begnal, Senior International Trade Analyst, “Selection of Respondents for the Antidumping Investigation of Uncovered Innerspring Units from the People’s Republic of China,” dated April 3, 2008.

Separate Rates Applications

Between March 24, 2008, and March 31, 2008, we received timely separate-rate applications from eight non-mandatory respondent companies: Zibo Senbao Furniture Co., Ltd. (“Senbao”), Hebei Yililan Furniture Co., Ltd. (“Yililan”), Anshan Yuhua Industrial Trade Co., Ltd. (“Yuhua”), Xilinmen Group Co., Ltd. (“Xilinmen”), East Grace Corporation (“East Grace”), Jiangsu Soho Technology Trading Co., Ltd. (“Soho Tech”), Nanjing Meihua I&E Trade Co., Ltd. (“Meihua”), and Zhejiang Sanmen Herod Mattress Co., Ltd. (“Sanmen”).

Product Characteristics & Questionnaires

In the *Initiation Notice*, the Department asked all parties in this investigation and in the concurrent antidumping duty investigations of innersprings from South Africa and Vietnam, for comments on the appropriate product characteristics for defining individual products. We received comments from Petitioner on February 15, 2008, with recommended appropriate product characteristics and proposed model matching criteria and hierarchy.

On April 7, 2008, the Department issued to Jiangsu Soho and Nanhai Animal its sections A, C, D, and E questionnaire,¹ which included product characteristics used in the designation of CONNUMS and assigned to the merchandise under consideration. Between April 29, 2008, and May 29, 2008, the Department received section A, C, and D questionnaire responses from Jiangsu Soho and Nanhai Animal. Jiangsu Soho and Nanhai Animal were not required by the Department to submit a Section E response, because the Department determined that neither company had further manufacturing in the United States. Petitioner submitted deficiency comments on the Section A questionnaire responses of both respondents on May 22, 2008,

¹ Section A of the questionnaire requests general information concerning a company’s corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section C requests a complete listing of U.S. sales. Section D requests information on factors of production, and Section E requests information on further manufacturing.

deficiency comments on the questionnaire responses to Sections C & D of both respondents on June 27, 2008, and deficiency comments on Nanhai Animal's response to the supplemental Section A questionnaire on July 10, 2008. The Department issued supplemental questionnaires to Jiangsu Soho and Nanhai Animal and received responses between June 13, 2008, and July 15, 2008.

Surrogate Country

On April 11, 2008, the Department determined that India, Indonesia, the Philippines, Colombia, and Thailand are countries comparable to the PRC in terms of economic development. See Letter to All Interested Parties, from Scot T. Fullerton, Program Manager, Office 9, AD/CVD Operations, regarding "Antidumping Duty Investigation of Uncovered Innerspring Units from the People's Republic of China," dated April 14, 2008 ("Surrogate Country Letter"), attaching Memorandum to Scot T. Fullerton, Program Manager, Office 9, AD/CVD Operations, from Carole Showers, Acting Director, Office of Policy, regarding "Antidumping Duty Investigation of Uncovered Innerspring Units from the People's Republic of China (PRC): Request for List of Surrogate Countries," dated March 25, 2008.

On April 11, 2008, the Department requested comments on surrogate country selection from the interested parties in this investigation. On June 2, 2008, the Department extended the deadline for interested parties to submit comments on surrogate country selection. Petitioner submitted surrogate country comments on June 16, 2008. No other interested parties commented on the selection of a surrogate country. For a detailed discussion of the selection of the surrogate country, see "Surrogate Country" section below.

Surrogate Value Comments

On June 27, 2008, the Department extended the deadline for interested parties to submit surrogate information with which to value the factors of production in this proceeding. On July 7, 2008, Petitioner submitted surrogate value comments.

Postponement of Preliminary Determination

On May 20, 2008, Petitioner made a request, pursuant to 19 CFR 351.205(b)(2) and (e), for a 50-day postponement of the preliminary determinations with respect to China, South Africa, and Vietnam. The Department published a postponement of the preliminary determination on

May 28, 2008. See *Postponement of Preliminary Determinations of Antidumping Duty Investigations; Uncovered Innerspring Units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam*, 73 FR 30604 (May 28, 2008).

Period of Investigation

The period of investigation ("POI") is April 1, 2007, through September 30, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, December, 2007. See 19 CFR 351.204(b)(1).

Scope of Investigation

The merchandise covered by this investigation 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 this 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, 7326.20.00.70, 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 these investigations is dispositive.

Non-Market-Economy Country

For purposes of initiation, Petitioner submitted LTFV analyses for the PRC as a non-market economy ("NME"). See *Initiation Notice*, 73 FR at 4819. The Department considers the PRC to be a NME country. See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China*, 72 FR 60632 (October 25, 2007). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

Surrogate Country

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs it to base normal value, in most circumstances, on the NME producer's factors of production ("FOP") valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the "Normal Value" section below.

The Department's practice with respect to determining economic comparability is explained in *Policy Bulletin 04.1*,² which states that "OP {Office of Policy} determines per capita economic comparability on the basis of per capita gross national income, as reported in the most current annual issue of the *World Development Report* (The World Bank)." The Department considers the five countries identified in

² See *Policy Bulletin 04.1: Non-Market Economy Surrogate Country Selection Process*, (March 1, 2004), ("*Policy Bulletin 04.1*") at Attachment II of the Department's *Surrogate Country Letter*, also available at <http://ia.ita.doc.gov/policy/bull04-1.html>.

its Surrogate Country List as “equally comparable in terms of economic development.” See *Policy Bulletin 04.1* at 2. Thus, we find that India, Indonesia, the Philippines, Colombia, and Thailand are all at an economic level of development equally comparable to that of the PRC.

Second, *Policy Bulletin 04.1* provides some guidance on identifying comparable merchandise and selecting a producer of comparable merchandise. Based on the data provided by Petitioner, we find that India is a producer of identical merchandise. See Petition at 5–6 and Exhibit PRC–6. Additionally, Petitioner submitted information for Indian companies that produce comparable merchandise, such as comparable spring products, and noted that the Department has found India to be a significant producer of related steel wire products. *Id.* See also *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008). Because the Department was unable to find production data, we are relying on export data as a substitute for overall production data in this case. The Department first attempted to obtain export data for innersprings from the World Trade Atlas (“WTA”) and was unable to find data for any of the countries on the Surrogate Country List. Thus, the Department obtained worldwide export data for steel wire products, which Petitioner also stated were comparable to innersprings. Specifically, we reviewed export data from the WTA for the HTS heading 7326.20, “Other Articles of Iron/Steel Wire,” for 2007. The Department found that, of the countries provided in the Surrogate Country List, all five countries were exporters of comparable merchandise: steel wire products. Thus, all countries on the Surrogate Country List are considered as appropriate surrogates because each exported comparable merchandise.

The *Policy Bulletin 04.1* also provides some guidance on identifying significant producers of comparable merchandise and selecting a producer of comparable merchandise. Further analysis was required to determine whether any of the countries which produce comparable merchandise are significant producers of that comparable merchandise. The data we obtained show that, in 2007, worldwide exports for HTS 7326.20 from: India were approximately 7,375,861 kg; Indonesia were approximately 431,376 kg; Colombia were approximately 9,309,295 units; the Philippines were

approximately 271,308 kg; and Thailand were approximately 8,193,889 kg. Although India, Colombia, and Thailand appear to be significant producers of comparable merchandise, no party in this proceeding requested that Colombia or Thailand be selected as the surrogate country.

With respect to data considerations in selecting a surrogate country, it is the Department's practice that, “. . . if more than one country has survived the selection process to this point, the country with the best factors data is selected as the primary surrogate country.” See *Policy Bulletin 04.1* at 4. Currently, the record contains surrogate value information, including possible surrogate financial statements, only from India.

Thus, the Department is preliminarily selecting India as the surrogate country on the basis that: (1) it is at a similar level of economic development to the PRC, pursuant to 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the factors of production. Thus, we have calculated normal value using Indian prices when available and appropriate to value Foshan Jingxin Steel Wire & Spring Co., Ltd.'s (“Foshan Jingxin”)³ factors of production. See Memorandum to the File through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Susan Pulongbarit, International Trade Analyst, AD/CVD Operations, Office 9, regarding “Antidumping Duty Investigation of Uncovered Innerspring Units from the People's Republic of China: Selection of Factor Values,” dated July 30, 2008 (“Surrogate Value Memorandum”).

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the factors of production within 40 days after the date of publication of the preliminary determination.⁴

³ See section “Determination of Seller” regarding the Department's determination to treat Foshan Jingxin, Nanhai Animal's unaffiliated producer, as the mandatory respondent.

⁴ In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). See *Glycine from*

Determination of Seller

For purposes of the preliminary determination, we find that Nanhai Animal should not be considered the mandatory respondent for purposes of calculating a dumping margin because we determine that Nanhai Animal did not make any sales of innersprings to the United States during the POI. In its questionnaire responses, Nanhai Animal stated that all of the sales negotiations for exports of innersprings to the United States take place directly between its producer, Foshan Jingxin, and the U.S. customer. In addition, Nanhai Animal stated that it is solely responsible for PRC customs declaration and receipt of payment from the U.S. customer, which is sent directly to Foshan Jingxin minus a commission. Nanhai Animal also stated in its questionnaire responses that it does not take title to the merchandise, and the merchandise is shipped directly from the producer's location to the U.S. customer. Therefore, we find that Nanhai Animal acts as an export agent for Foshan Jingxin and that all essential terms of sale are negotiated and executed between Foshan Jingxin and its U.S. customer. Thus, we find that Foshan Jingxin should be considered the seller for purposes of calculating a dumping margin. See, e.g., *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China*, 71 FR 29303 (May 22, 2006) and accompanying Issues and Decision Memorandum at Comment 17.

Separate Rates

Additionally, in the *Initiation Notice*, the Department notified parties of the application process by which exporters and producers may obtain separate-rate status in NME investigations. See *Initiation Notice*, 73 FR at 4822. The process requires exporters and producers to submit a separate-rate status application. The Department's practice is discussed further in *Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries*, (April 5, 2005), (“*Policy Bulletin 05.1*”) available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.⁵ However, the standard

the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part, 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

⁵ The *Policy Bulletin 05.1*, states: “{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME

for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* governmental control over its export activities) has not changed.

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Senbao, Yililan, Yuhua, Xilinmen, East Grace, Meihua, and Sanmen, (hereinafter referred to as "Separate Rate Companies") have provided company-specific information to demonstrate that they operate independently of *de jure* and *de facto* government control, and therefore satisfy the standards for the assignment of a separate rate.

We have considered whether each PRC company that submitted a complete application is eligible for a separate rate. The Department's separate-rate test is not concerned, in general, with macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from the People's Republic of China*, 63 FR 72255, 72256 (December 31, 1998). The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61758 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty*

investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation." See *Policy Bulletin 05.1* at 6.

Administrative Review, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

The evidence provided by the Separate Rate Companies supports a preliminary finding of *de jure* absence of governmental control based on the following: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the applicable legislative enactments decentralizing control of the companies; and (3) any other formal measures by the government decentralizing control of companies. See, e.g., Yililan's March 28, 2008, Separate Rate Application ("*SRA*") at 6-9; East Grace's March 28, 2008, *SRA* at 5-9; and Yuhua's March 28, 2008, *SRA* at 6-9.

2. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the

selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

We determine that, for the Separate Rate Companies, the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following: (1) each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements; and (4) each exporter has autonomy from the government regarding the selection of management. See, e.g., Meihua's March 28, 2008, *SRA* at Exhibit 7; Xilinmen's March 28, 2008, *SRA* at Exhibit 8; Sanmen's March 31, 2008, *SRA* at Exhibit 7; and Senbao's March 24, 2008, *SRA* at Exhibit 5.

As the Department has preliminarily determined that Foshan Jingxin is properly considered the seller of the subject merchandise for purposes of calculating a dumping margin, and because we have changed the designation of the appropriate party to serve as the mandatory respondent, we are preliminarily granting Foshan Jingxin a separate rate. Although the information on the record demonstrating Foshan Jingxin's eligibility for a separate rate is not complete, as information regarding separate rate status was submitted by its exporting agent, Nanhai Animal, the Department finds that it cannot preliminarily deny Foshan Jingxin a separate rate because the Department did not specifically ask for additional information to determine Foshan Jingxin's separate rate eligibility. Thus, we intend to request additional information from Foshan Jingxin subsequent to the preliminary determination in order to determine Foshan Jingxin's separate rate status for

the final determination. Moreover, as mentioned above, because we have determined that Nanhai Animal had no sales of subject merchandise during the POI, we preliminarily determine that Nanhai Animal is not eligible to receive a separate rate.

With respect to Soho Tech, we determine that it failed to provide evidence regarding its affiliations, specifically whether any of its affiliates were involved in the export or production of the subject merchandise. The separate rate application requires that the applicant provide specific documentation regarding its affiliation with any entities that exported merchandise to the United States that would fall under the description of the merchandise covered by the scope of the proceeding. Although Soho Tech stated that it was not affiliated with any entities involved in the production or export of the subject merchandise, information submitted on the record by Jiangsu Soho proves otherwise. Specifically, Jiangsu Soho stated that Soho Tech is a subsidiary of Jiangsu Soho, and that Soho Tech is responsible for exporting Jiangsu Soho's sales of innersprings to the United States as well as its own exports of innersprings. See Jiangsu Soho's July 2, 2008, Supplemental Section A response at 13. Therefore, we determine that Soho Tech has failed to provide accurate information with respect to its affiliates and therefore has failed to establish its eligibility for a separate rate. As a result, Soho Tech will be considered a part of the PRC-wide Entity.

The evidence placed on the record of this investigation by the Separate Rate Companies demonstrates an absence of *de jure* and *de facto* government control with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. As a result, we have granted the Separate Rate Companies a weighted-average margin based on the experience of mandatory respondents and excluding any *de minimis* or zero rates or rates based on total AFA for the purposes of this preliminary determination. In addition, for the reasons outlined above, we have preliminarily granted Foshan Jingxin separate rate status and assigned Foshan Jingxin a rate based on the data submitted by Nanhai Animal.

Use of Total Adverse Facts Available

The PRC-Wide Entity PRC-Wide Rate

The Department has data that indicate there were more exporters of innersprings from the PRC than those

indicated in the response to our request for Q&V information during the POI. See *Respondent Selection Memorandum*. We issued our request for Q&V information to 17 potential Chinese exporters of the subject merchandise, in addition to posting the Q&V questionnaire on the Department's website. See *Q&V Delivery Memo*. While information on the record of this investigation indicates that there are numerous producers/exporters of innersprings in the PRC, we received only twelve timely filed Q&V responses. Although all exporters were given an opportunity to provide Q&V information, not all exporters provided a response to the Department's Q&V letter. Further, we received a Q&V response from High Hope, who subsequently withdrew it and informed the Department that it was not going to participate further in the investigation. Additionally, Jiangsu Soho, the mandatory respondent, did not cooperate to the best of its ability in responding to the Department's requests for information. Therefore, the Department has preliminarily determined that there were exporters/producers of the subject merchandise during the POI from the PRC that did not respond to the Department's request for information. We have treated these PRC producers/exporters as part of the PRC-wide entity because they did not qualify for a separate rate.

Jiangsu Soho

Jiangsu Soho withheld or failed to provide information specifically requested by the Department during the course of this investigation. First, in its response to Sections C and D of the Department's questionnaire, Jiangsu Soho did not submit a sales or cost reconciliation, as required in the Department's questionnaire. The company offered no explanation as to why, but simply stated that it did not complete them. We gave Jiangsu Soho additional time to submit the reconciliations, but the information that Jiangsu Soho submitted was incomplete, and unusable for purposes of reconciling Jiangsu Soho's reported sales and FOP information to its financial statements.

Next, Jiangsu Soho withheld information requested by the Department and provided information that cannot be verified. In its questionnaire responses, Jiangsu Soho reported that its POI sales were sourced from four producers. Of the four producers, only one producer has provided factors of production data. The remaining three producers have been uncooperative and have not responded

to the Department's requests for information. Therefore, the Department has incomplete information with respect to the factors of production for all of Jiangsu Soho's sales during the POI. Additionally, Jiangsu Soho has provided very limited information with regard to its accounting system and that of the one cooperative producer. Moreover, there are a number of data issues that have prevented the Department from being able to calculate a dumping margin.⁶ Due to the proprietary nature of these issues, see the Memorandum to James C. Doyle, Director, AD/CVD Operations, Office 9, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Erin Begnal, Senior International Trade Analyst, "Uncovered Innerspring Units from the People's Republic of China: Preliminary Application of Adverse Facts Available to Jiangsu Soho International Group Holding Co., Ltd.," dated July 30, 2008.

Finally, as mentioned above, Jiangsu Soho did not cooperate to the best of its ability to provide the Department with timely information regarding its affiliations with other exporters/producers of the subject merchandise. Jiangsu Soho initially stated that it was not affiliated with any other exporters/producers of the subject merchandise during the POI, but the Department, through deficiency questionnaires, learned that Jiangsu Soho is affiliated with Soho Tech, another exporter of innersprings to the United States during the POI. Because the Department was given this information only a few weeks prior to the preliminary determination, we were unable to sufficiently investigate this matter over the course of the investigation, as the information was initially withheld by Jiangsu Soho. Therefore, because of the number of deficiencies with respect to Jiangsu Soho's questionnaire responses and the amount of misleading and inadequate information, we find that the information provided by Jiangsu Soho to be so deficient that there is insufficient information to analyze and verify. Thus, we find that Jiangsu Soho does not merit a separate rate, and will be subject to the PRC-wide rate. See *Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture From the People's Republic of China*, 69 FR 67313 (November 17, 2004) and accompanying

⁶ We note that Jiangsu Soho made an additional submission on July 25, 2008. Because this submission was received so close to the due date for this preliminary determination, the Department did not have sufficient time to analyze its contents and incorporate any findings into this preliminary determination. Thus, we will consider the submission in its entirety for purposes of the final determination.

Issues and Decision Memorandum at Comment 4.

Section 776(a)(2) of the Act provides that, 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 antidumping 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.

Information on the record of this investigation indicates that the PRC-wide entity was non-responsive. Certain companies did not respond to our request for Q&V information and did not respond to the Department's questionnaire. In addition, Jiangsu Soho withheld information requested by the Department and provided insufficient information to analyze and verify. As a result, pursuant to section 776(a)(2)(A) of the Act, we find that the use of facts available is appropriate to determine the PRC-wide rate. See *Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003), unchanged in *Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 37116 (June 23, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See *Statement of Administrative Action*, accompanying the Uruguay Round Agreements Act ("URAA"), H.R. Rep. No. 103-316, 870 (1994) ("SAA"); see also *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). We find that, because the PRC-wide entity did not respond to our requests for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

When employing an adverse inference, the statute indicates that the

Department may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record. In selecting a rate for adverse facts available ("AFA"), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. See SAA at 870. It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. See *Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the People's Republic of China*, 65 FR 34660 (May 21, 2000) and accompanying Issues and Decision Memorandum, at "Facts Available." As AFA, we have preliminarily assigned to the PRC-wide entity a rate of 234.51 percent, the highest calculated rate from the petition. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department's reliance on the petition rate to determine an AFA rate is subject to the requirement to corroborate secondary information.⁷

Corroboration

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 as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise."⁸ The SAA explains that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. *Id.* The SAA also explains that independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.* To corroborate secondary information, the

Department will, to the extent practicable, examine the reliability and relevance of the information used.⁹

We corroborated the U.S. price used to calculate the highest calculated rate from the petition listed in the *Initiation Notice* by comparing it to the U.S. prices calculated for Foshan Jingxin. We found that the U.S. price used to calculate the highest petition margin was within the range of net U.S. prices in our margin calculations for Foshan Jingxin in this investigation. See Memorandum to the File, through Scot T. Fullerton, Program Manager, AD/CVD Operations, Office 9, from Susan Pulongbarit, International Trade Analyst, AD/CVD Operations, Office 9, regarding "Program Analysis for the Preliminary Determination of Antidumping Duty Investigation of Uncovered Innerspring Units from the People's Republic of China," dated July 30, 2008 ("Foshan Jingxin Analysis Memorandum").

We then corroborated the normal value used to calculate the highest calculated rate from the petition listed in the *Initiation Notice* with the normal values calculated for Foshan Jingxin based on its reported factors of production. We found that the normal value used to calculate the highest petition margin was within the range of normal values in our margin calculations for Foshan Jingxin in this investigation. See Foshan Jingxin Analysis Memorandum.

Consequently, we are applying the 234.51 percent rate from the petition as the AFA antidumping rate to the PRC-wide entity, which includes Jiangsu Soho. The PRC-wide rate applies to all entries of the merchandise under investigation except for entries from Foshan Jingxin, and the Separate Rate Companies.

Margin for the Separate Rate Companies

The Department received timely and complete separate rate applications from the Separate Rate Companies, who are all exporters of innersprings from the PRC, which were not selected as mandatory respondents in this investigation. Through the evidence in their applications, these companies

⁹ See *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Termination in Part.*, 62 FR 11825 (March 13, 1997).

⁷ See the "Corroboration" section below.

⁸ See SAA at 870.

have demonstrated their eligibility for a separate rate, as discussed above. Consistent with the Department's practice, as the separate rate, we have established a margin for the Separate Rate Companies based on the rate we calculated for the cooperating mandatory respondent, Foshan Jingxin.¹⁰ Companies receiving this rate are identified by name in the "Suspension of Liquidation" section of this notice.

Date of Sale

Section 351.401(i) of the Department's regulations states that, "{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business." However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. See 19 CFR 351.401(i); see also *Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090–1093 (CIT 2001) ("*Allied Tube*"). The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms. In *Allied Tube*, the Court of International Trade ("CIT") noted that a "party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to satisfi{y} the Department that a different date better reflects the date on which the exporter or producer establishes the material terms of sale." *Allied Tube* 132 F. Supp. 2d at 1090 (quoting 19 CFR 351.401(i)). In order to simplify the determination of date of sale for both the respondent and the Department and in accordance with 19 CFR 351.401(i), the date of sale will normally be the date of the invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, unless satisfactory evidence is presented that the exporter or producer establishes the material terms of sale on some other date. In other words, the date of the invoice is the presumptive date of sale, although this presumption may be

overcome. For instance, in *Notice of Preliminary Results of Antidumping Duty Administrative Review, Intent to Rescind and Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 72 FR 10151 (March 7, 2007), unchanged in *Notice of Final Results and Final Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 72 FR 51595 (September 10, 2007), the Department used the date of the purchase order as the date of sale because the terms of sale were established at that point.

We note that Nanhai Animal reported that Foshan Jingxin did not issue any commercial invoices because the U.S. customer did not require Foshan Jingxin to do so. However, after examining the questionnaire responses and the sales documentation that Foshan Jingxin placed on the record, we preliminarily determine that the factory delivery note date, otherwise known as the date of loading and date of exit of factory, is the most appropriate date of sale for all EP sales made by Foshan Jingxin, as it is the date on which the seller's obligation of delivery has been fulfilled and the exact sales quantity and unit price are confirmed and finalized. See Nanhai Animal May 29, 2008, Section C questionnaire response at C–13 and July 8, 2008, supplemental response at A–13.

Fair Value Comparisons

To determine whether sales of innersprings to the United States by Foshan Jingxin were made at less than fair value, we compared EP to NV, as described in the "U.S. Price" and "Normal Value" sections of this notice.

U.S. Price

For Foshan Jingxin, we based U.S. price on EP in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and CEP was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from Foshan Jingxin to the first unaffiliated customer in the United States. Where applicable, we deducted a commission from the starting price (gross unit price), in accordance with section 772(c) of the Act.

For a complete discussion of the calculation of the U.S. price for Foshan Jingxin, see *Foshan Jingxin Analysis Memorandum*.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a FOP methodology if the merchandise is exported from an NME

and the information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOP because the presence of government controls on various aspects of non–market economies renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies.

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Foshan Jingxin. To calculate NV, we multiplied the reported per–unit factor–consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. A detailed description of all surrogate values used for Foshan Jingxin can be found in the Surrogate Value Memorandum and Foshan Jingxin Analysis Memorandum.

For this preliminary determination, in accordance with the Department's practice, we used data from the Indian Import Statistics and other publicly available Indian sources in order to calculate surrogate values for Foshan Jingxin FOPs (direct materials, energy, and packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non–export average values, most contemporaneous with the POI, product–specific, and tax–exclusive. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004). The record shows that data in the Indian Import Statistics, as well as those from the other Indian sources, are contemporaneous with the POI, product–specific, and tax–exclusive. In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price

¹⁰ See, e.g., *Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China*, 72 FR 19690 (April 19, 2007).

Index (“WPI”) as published in the International Financial Statistics of the International Monetary Fund.

Furthermore, with regard to the Indian import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People’s Republic of China*, 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7 (“CTVs from the PRC”). Further, guided by the legislative history, it is the Department’s practice not to conduct a formal investigation to ensure that such prices are not subsidized. See H.R. Rep. 100–576 at 590 (1988). Rather, the Department bases its decision on information that is available to it at the time it makes its determination. Therefore, we have not used prices from these countries in calculating the Indian import-based surrogate values. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an “unspecified” country were excluded from the average value, because the

Department could not be certain that they were not from either an NME country or a country with general export subsidies.

The Department used the Indian Import Statistics to value the raw material and packing material inputs that Foshan Jingxin used to produce the subject merchandise during the POI, except where listed below.

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration’s home page, Import Library, Expected Wages of Selected NME Countries, revised in May 2008, see *Corrected 2007 Calculation of Expected Non-Market Economy Wages*, 73 FR 27795 (May 14, 2008), and <http://ia.ita.doc.gov/wages/index.html>. The source of these wage-rate data on the Import Administration’s web site is the Yearbook of Labour Statistics 2005, ILO (Geneva: 2007), Chapter 5B: Wages in Manufacturing. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent. See Surrogate Value Memorandum.

We used Indian transport information in order to value the freight-in cost of the raw materials. Due to the proprietary nature of this information, see Surrogate Value Memorandum.

To value electricity, the Department used rates from *Key World Energy Statistics 2003*, published by the International Energy Agency (“IEA”). Because the data were not

contemporaneous to the POI, we adjusted for inflation using WPI. See Surrogate Value Memorandum.

To value factory overhead, selling, general, and administrative expenses, and profit, we used the audited 2006–2007 financial statements from Lakshmi Precision Screws Limited, a producer of merchandise comparable to innersprings in India.

For a detailed discussion of all surrogate values used for this preliminary determination, see Surrogate Values Memorandum.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice*, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. See *Initiation Notice*, 72 FR at 60806. This practice is described in *Policy Bulletin 05.1*, available at <http://ia.ita.doc.gov/>.

Preliminary Determination

The weighted-average dumping margins are as follows:

UNCOVERED INNERSPRING UNITS FROM THE PRC

Exporter	Producer	Weighted-Average Margin
Foshan Jingxin Steel Wire & Spring Co., Ltd.	Foshan Jingxin Steel Wire & Spring Co., Ltd.	118.17%
Anshan Yuhua Industrial Trade Co., Ltd.	Anshan Yuhua Industrial Trade Co., Ltd.	118.17%
East Grace Corporation	Wuxi Xihuisheng Commercial Co., Ltd.	118.17%
Hebei Yililan Furniture Co., Ltd.	Hebei Yililan Furniture Co., Ltd.	118.17%
Nanjing Meihua Import & Export Trade Co., Ltd.	Nanjing Dongdai Furniture Co., Ltd.	118.17%
Xilinmen Group Co., Ltd.	Xilinmen Furniture Co., Ltd.	118.17%
Zhejiang Sanmen Herod Mattress Co., Ltd.	Zhejiang Sanmen Herod Mattress Co., Ltd.	118.17%
Zibo Senbao Furniture Co., Ltd.	Zibo Senbao Furniture Co., Ltd.	118.17%
PRC-wide (including Jiangsu Soho International Group Holding Co., Ltd.)	234.51%

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in

this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of innersprings

from the PRC as described in the "Scope of Investigation" section, entered, or withdrawn from warehouse, for consumption from Foshan Jingxin, Senbao, Yililan, Yuhua, Xilinmen, East Grace, Meihua, and Sanmen, and the PRC-wide entity on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as indicated above.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at less than fair value. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of innersprings, or sales (or the likelihood of sales) for importation, of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date of the final verification report is issued in this proceeding and rebuttal briefs limited to issues raised in case briefs no later than five days after the deadline date for case briefs (*see* 19 CFR 351.309(c)(i) and (d)). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, and if requested, we will hold a public hearing, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing shortly after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this

notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

Unless the deadline is extended pursuant to section 735(a)(2) of the Act, the Department will make its final determination within 75 days after the date of this preliminary determination, pursuant to section 735(a)(1) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: July 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8-18031 Filed 8-5-08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-522-803]

Uncovered Innerspring Units from the Socialist Republic of Vietnam: Notice of Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 6, 2008.

SUMMARY: We preliminarily determine that uncovered innerspring units ("innersprings") from the Socialist Republic of Vietnam ("Vietnam") are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on this preliminary determination. We intend to make our final determination within 75 days after the date of this preliminary determination pursuant to section 735 of the Act.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan or Robert Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230;

telephone: (202) 482-0414 or 482-3434, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On December 31, 2007, Leggett and Platt, Incorporated ("Petitioner"), filed petitions in proper form on behalf of the domestic industry, concerning imports of innersprings from the People's Republic of China ("the PRC"), South Africa, and Vietnam (collectively, the Petitions). On January 28, 2008, the Department of Commerce ("the Department") published in the **Federal Register** the initiation of an antidumping investigation on innersprings from the PRC, South Africa, and Vietnam. *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) ("Initiation Notice"). The Department set aside a period for all interested parties to raise issues regarding product coverage. *See Initiation Notice*, 73 FR at 4818. We did not receive comments regarding product coverage from any interested party. Additionally, in the *Initiation Notice*, the Department applied a process by which exporters and producers may obtain separate-rate status in non-market economy ("NME") investigations. The process requires exporters and producers to submit a separate-rate status application ("SRA"),¹ rather than a full response to Section A of the Department's Questionnaire. The standard for eligibility for a separate rate (which is whether a firm can demonstrate an absence of both *de jure* and *de facto* government control over its export activities), however, has not changed. The SRA for this investigation was posted on the Department's website at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on January 28, 2008. The due date for filing an SRA was March 28, 2008. No party filed an SRA in this investigation.

In our *Initiation Notice*, we requested parties to provide comments regarding the physical characteristics of subject merchandise by February 11, 2008, and rebuttal comments by February 21, 2008. On February 8, 2008, we extended the deadline for submission of comments regarding physical characteristics to February 15, 2008, and the deadline for rebuttal comments to

¹ *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non-Market Economy Countries (April 5, 2005), available at <http://ia.ita.doc.gov/policy/bull05-1.pdf>.

February 25, 2008. On February 15, 2008, Petitioner submitted comments. No other party submitted comments, and no party submitted rebuttal comments.

On February 14, 2008, the International Trade Commission (“ITC”) notified the Department of its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of innersprings from the PRC, South Africa, and Vietnam. See *Uncovered Innerspring Units From China, South Africa, and Vietnam*, USITC Pub. 3983, Inv. Nos. 731-TA-1140-1142 (Preliminary) (February 2008).

On February 21, 2008, the Department issued its Quantity and Value (“Q&V”) questionnaire to eleven potential exporters of innersprings from Vietnam identified in the petition. We received a response to our Q&V questionnaire from only three of the potential respondents (*i.e.*, Yang Ching Enterprise Co., Ltd. (“Yang Ching”), Uu Viet Co., Ltd. (“Uu Viet”), and Dong Bang Stainless Steel Co. Ltd (“Dong Bang”). Each potential respondent stated that they did not export innersprings to the United States during the period of investigation (“POI”). See Memorandum to the File, Response to the Department of Commerce’s Quantity and Value Questionnaire from Yang Ching, March 13, 2008; Memorandum to the File, Response to the Department of Commerce’s Quantity and Value Questionnaire from Uu Viet, March 20, 2008; and Memorandum to the File, Response to the Department of Commerce’s Quantity and Value Questionnaire from Dong Bang, March 25, 2008.

Period of Investigation

The POI is April 1, 2007, through September 30, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, which was December 2007. See 19 CFR 351.204(b)(1).

Scope of Investigation

The merchandise covered by this investigation 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 this 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, 7326.20.00.70, 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 this proceeding is dispositive.

Non-Market-Economy (“NME”) Treatment

The Department considers Vietnam to be an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. See, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam*, 69 FR 71005, 71007 (December 8, 2004). The Department has not revoked Vietnam’s status as an NME country. Therefore, in this preliminary determination, we have treated Vietnam as an NME country and applied our NME methodology.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and should be assessed a single antidumping duty rate. It is the Department’s policy to assign all exporters of merchandise subject to an investigation involving an NME country this single rate unless an

exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters must demonstrate the absence of both *de jure* and *de facto* government control over export activities, under a test developed by the Department and described in the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People’s Republic of China*, 56 FR 20588 (May 6, 1991); and *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People’s Republic of China*, 59 FR 22585, 22587 (May 2, 1994).

No party filed separate rate information in this investigation. Absent separate rate information, the Department has presumed that all companies within Vietnam exporting the subject merchandise are subject to government control and are part of the Vietnam-wide entity and should be assessed a single, Vietnam-wide, antidumping duty rate.

Application of Facts Available

Sections 776(a)(1) and (2) of the Act provides that the Department shall apply “facts otherwise available” if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits and subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides 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 applicable requirements established by the administering authority” if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the

information. Where all of these conditions are met, the statute requires the Department to use the information supplied if it can do so without undue difficulties.

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 has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, 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 or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “[i]nformation 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 concerning the subject merchandise.” Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, at 870 (1994) (“SAA”). Corroborate means that the Department will satisfy itself that the secondary information to be used has probative value. See *id.* To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

Application of Total Adverse Facts Available

The Vietnam-Wide Entity

The Department issued a Q&V questionnaire to all exporters identified in the petition. Out of the eleven exporters to whom the Department issued its Q&V questionnaire, only three responded. Each of the responding exporters stated that they did not export innersprings to the United States during the POI. See Memorandum to the File, Response to the Department of Commerce’s Quantity and Value Questionnaire from Yang Ching, March 13, 2008; Memorandum to the File, Response to the Department of Commerce’s Quantity and Value Questionnaire from Uu Viet, March 20, 2008, and Memorandum to the File, Response to the Department of Commerce’s Quantity and Value Questionnaire from Dong Bang, March 25, 2008. However, the remaining eight

companies did not respond to the Department’s Q&V questionnaire. The Department issued and tracked its Q&V questionnaire via DHL. According to DHL’s tracking system the remaining eight exporters received the Department’s Q&V questionnaire. Record evidence indicates there were imports into the United States of innersprings from Vietnam. Based on the above facts, the Department preliminarily determines that there were exports of the subject merchandise under investigation from Vietnam producers/exporters that did not respond to the Department’s questionnaire, and we are treating these Vietnam producers/exporters as part of the countrywide entity. Additionally, because we have determined that the companies named above are part of the Vietnam-wide entity, the Vietnam-wide entity is now under investigation. Further, pursuant to section 776(a)(2)(A) of the Act, we find that because the Vietnam-wide entity (including the eight companies discussed above) failed to respond to the Department’s Q&V questionnaire, withheld or failed to provide information in a timely manner or in the form or manner requested by the Department, and otherwise impeded the proceeding, it is appropriate to apply a dumping margin to the Vietnam-wide entity using the facts otherwise available on the record pursuant to section 776(a)(2)(A) of the Act. Additionally, because these parties failed to respond to our requests for information, we find an adverse inference is appropriate.

Selection of the Adverse Facts Available Rate

In sum, because the Vietnam-wide entity failed to respond to our request for information, it has failed to cooperate to the best of its ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate pursuant to section 776(b) of the Act for the Vietnam-wide entity.

In deciding which facts to use as adverse facts available (“AFA”), section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse “as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.” See *Notice of Final*

Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998). The Department’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.” See SAA at 870. See also *Brake Rotors From the People’s Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review*, 70 FR 69937, 69939 (November 18, 2005).

Generally, it is the Department’s practice to select, as AFA, the highest rate in any segment of the proceeding. See, e.g., *Certain Cased Pencils from the People’s Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind in Part*, 70 FR 76755, 76761 (December 28, 2005) (unchanged in the final results, 71 FR 38366 (July 6, 2006)).

The Court of International Trade (“CIT”) and the Court of Appeals for the Federal Circuit (“Fed. Cir.”) have consistently upheld the Department’s practice. See *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (upholding the Department’s presumption that the highest margin was the best information of current margins) (“*Rhone Poulenc*”); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in an LTFV investigation); *Kompass Food Trading International v. United States*, 24 CIT 678, 683–84 (CIT 2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondents’ prior commercial activity, selecting the highest prior margin “reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.” See *Rhone Poulenc*, 899 F.2d at 1190 (emphasis removed). In this case,

as AFA, the Department has selected 116.31 percent, the highest margin alleged in the petition, as revised in the Petitioner's supplemental responses, and the margin the Department used in the *Initiation Notice*.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted "corroborate" to mean that we will, examine the reliability and relevance of the information submitted. *See, e.g. Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 5554, 5568 (February 4, 2000). Because there are no mandatory respondents, to corroborate the 116.31 percent margin used as AFA for the Vietnam-wide entity, to the extent appropriate information was available, we revisited our pre-initiation analysis of the adequacy and accuracy of the information in the petition. *See Antidumping Investigation Initiation Checklist: Uncovered Innersprings from the Socialist Republic of Vietnam ("Initiation Checklist")* (January 22, 2008). We examined evidence supporting the calculations in the petition and the supplemental information provided by Petitioner prior to initiation to determine the probative value of the margins alleged in the petition. During our pre-initiation analysis, we examined the information used as the basis of export price and normal value ("NV") in the petition, and the calculations used to derive the alleged margins. Also during our pre-initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, which corroborated key elements of the export price and NV calculations. *See id.* We received no comments as to the relevance or probative value of this information. Therefore, the Department finds that the rates derived from the petition and used for purposes of initiation have probative value for the purpose of being selected as the AFA rate assigned to the Vietnam-wide entity.

Preliminary Determination

The weighted-average dumping margin is as follows:

Manufacturer/exporter	Margin (percent)
Vietnam-Wide Rate	116.31

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection ("CBP") to suspend liquidation of all entries of innersprings from Vietnam, as described in the "Scope of the Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average dumping margin indicated in the chart above. The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination. Under section 735(b)(2) of the Act, if the Department's final determination is affirmative, the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of the subject merchandise, or sales (or the likelihood of sales) for importation of the subject merchandise within 45 days of our final determination.

Public Comment

Case briefs or other written comments on the preliminary determination may be submitted to the Assistant Secretary for Import Administration no later than 50 days after the date of publication of this preliminary determination. *See* 19 CFR 351.309(c)(1)(i). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days after the deadline for the submission of case briefs. *See* 19 CFR 351.309(d). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. *See* 19 CFR 351.309. Executive summaries should be limited to five pages total, including footnotes. *See id.* Further, we request that parties submitting briefs and rebuttal briefs provide the Department with an electronic copy of the public version of such briefs.

In accordance with section 774 of the Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case and rebuttal briefs. If a request for a hearing is made

in this investigation, the hearing will tentatively be held two days after the deadline for submitting rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a time and in a room to be determined. *See* 19 CFR 351.310(d)(1). Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date. Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. *See* 19 CFR 351.310(c). Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See id.*

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: July 30, 2008.

David M. Spooner,
Assistant Secretary for Import
Administration.

[FR Doc. E8-18032 Filed 8-5-08; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-791-821]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Uncovered Innerspring Units from South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 6, 2008.

SUMMARY: We preliminarily determine that imports of uncovered innerspring units from South Africa are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). Interested parties are invited to comment on this preliminary determination. We intend to make our final determination within 75 days of the date of publication of this preliminary determination pursuant to section 735 of the Act.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Minoo Hatten, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and

Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0665 and (202) 482-1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 2008, the Department of Commerce (the Department) published in the **Federal Register** the initiation of an antidumping investigation on uncovered innerspring units from South Africa. 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) (*Initiation Notice*). The Department set aside a period for all interested parties to raise issues regarding product coverage. See *Initiation Notice*, 73 FR at 4818. We did not receive comments regarding product coverage from any interested party.

On February 14, 2008, the International Trade Commission (ITC) notified the Department of its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of uncovered innerspring units from South Africa. See *Uncovered Innerspring Units From China, South Africa, and Vietnam Investigation Nos. 731 TA 1140 1142 (Preliminary)*, 73 FR 13567 (March 13, 2008).

On May 28, 2008, the Department extended the deadline for the preliminary results of this investigation from June 9, 2008, to July 30, 2008. See *Postponement of Preliminary Determinations of Antidumping Duty Investigations; Uncovered Innerspring Units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam*, 73 FR 30604 (May 28, 2008).

Period of Investigation

The period of investigation (POI) is October 1, 2006, through September 30, 2007.

Scope of Investigation

The merchandise covered by this investigation 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 this 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, 7326.20.00.70, 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 this investigation is dispositive.

Issuance of Questionnaire

On February 26, 2008, we identified Bedding Component Manufacturers (Pty) Ltd. (BCM) as the sole exporter of subject merchandise during the POI. See the Memorandum to Stephen J. Claeys entitled "Antidumping Duty Investigation of Uncovered Innerspring Units from South Africa - Respondent Identification," dated February 26, 2008.

On March 4, 2008, we issued sections A, B, C, D, and E¹ of the antidumping questionnaire to BCM. In the cover letter to the antidumping questionnaire, we informed BCM that, if we did not receive its questionnaire response by 5

¹ Section A of the antidumping duty questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all of the company's home-market sales of the foreign like product or, if the home market is not viable, of sales of the foreign like product in the most appropriate third-country market. Section C requests a complete listing of the company's U.S. sales of subject merchandise. Section D requests information of the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further-manufacturing activities.

p.m. on the due date or a written request for an extension of the due date and if we have information demonstrating that BCM either received the questionnaire or refused delivery of the questionnaire, we would conclude that BCM had decided not to cooperate in this investigation. We also informed BCM that its refusal to cooperate in an investigation requires application of facts available, which may include an adverse inference, in accordance with sections 776(a) and 776(b) of the Act, when determining the company's antidumping duty margin.

On March 25, 2008, we received a facsimile communication from BCM requesting an extension of time to submit a response to Section A of the antidumping questionnaire.² On March 25, 2008, we granted BCM's request for an extension in full with the new due date of April 2, 2008, for its response to Section A of our questionnaire. On April 4, 2008, we received an electronic-mail communication, containing an attachment in the form of a dated letter in PDF format, from BCM notifying us that BCM would not "be able to" file its response (see letter on file in Import Administration's Central Records Unit (CRU), Room 1117, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230). In addition, we did not receive a response from BCM to sections B and C by the close of business on April 10, 2008, the established deadline.

Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of facts available with an adverse inference (AFA) is appropriate for the preliminary determination with respect to BCM.

A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds requested information or fails to provide such information by the deadlines for submission of the information or in the form or manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall use,

² In our letter, we reiterated that BCM's refusal to cooperate in this investigation would require the use of facts available, which may include an adverse inference, in accordance with sections 776(a) and 776(b) of the Act, when determining the company's antidumping duty margin. BCM's responses to sections B and C of the antidumping questionnaire remained due on April 10, 2008.

subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (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.

In this case, BCM did not provide pertinent information we requested that is necessary to calculate an antidumping margin for the preliminary determination. Specifically, BCM failed to respond to our questionnaire, thereby withholding, among other things, home-market and U.S. sales data that are necessary for preliminarily determining whether BCM is selling subject merchandise into the United States at less than fair value, pursuant to section 733 of the Act. BCM's failure to provide this necessary information has significantly impeded this proceeding pursuant to section 776(a)(2)(C) of the Act. Furthermore, because BCM did not submit any response to our requests for information and did not suggest alternative forms in which it could submit such responses, sections 782(c)(1), (d), and (e) of the Act do not apply. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we have based the dumping margin on facts otherwise available for BCM.

B. Application of Adverse Inferences for Facts Available

In applying the facts otherwise available, section 776(b) of the Act provides that, if the administering authority 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, in reaching the applicable determination under this title, the administering authority may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. See, e.g., *Notice of Final Determination of Sales*

at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan, 65 FR 42985, 42986 (July 12, 2000) (*Steel Hollow Products from Japan*).

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." See *Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine from Japan*, 72 FR 52349, 52352 (September 13, 2007) (*Glycine from Japan*) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances: Glycine from Japan*, 72 FR 67271 (November 28, 2007)); see also Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol.1 (1994) at 870 (SAA). Further, "affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference." See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

Although the Department provided BCM with notice informing it of the consequences of its failure to respond adequately to the questionnaire in this case, BCM did not respond to the questionnaire. This constitutes a failure on the part of BCM to cooperate to the best of its ability to comply with a request for information by the Department within the meaning of section 776(b) of the Act. Based on the above, the Department has preliminarily determined that BCM failed to cooperate to the best of its ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. See, e.g., *Steel Hollow Products from Japan* (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

C. Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. See also 19 CFR 351.308(c) and the SAA at 829-831. It is the Department's practice to use the highest rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information and

there are no other respondents. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005)). Therefore, because an adverse inference is warranted, we have assigned to BCM the single margin alleged in the petition, as recalculated in the Initiation Notice, of 121.39 percent (see *Petitions on Uncovered Innerspring Units from China, South Africa, and Vietnam*, dated December 31, 2007 (*Petition*), and January 11, 2008, supplement to the *Petition* filed on behalf of Leggett and Platt, Incorporated, Inc. (the petitioner)), as recalculated in the January 22, 2008, *Antidumping Investigation Initiation Checklist: Uncovered Innerspring Units from South Africa (Initiation Checklist)* on file in Import Administration's CRU. See also *Initiation Notice*, 73 FR at 4822.

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably available at its disposal.

"Corroborate" means the Department will satisfy itself that the secondary information to be used has probative value. See, e.g., *Glycine from Japan*; see also SAA at 870. As stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11843 (March 13, 1997)), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. The Department's regulations state that independent sources used to corroborate such evidence may include, for example,

published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See 19 CFR 351.308(d) and SAA at 870.

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the *Petition* during our pre-initiation analysis and for purposes of this preliminary determination. See *Initiation Checklist*. We examined evidence supporting the calculations in the *Petition* to determine the probative value of the margins alleged in the *Petition* for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we examined the key elements of the export-price and normal-value calculations used in the *Petition* to derive an estimated margin. During our pre-initiation analysis, we also examined information from various independent sources provided either in the *Petition* or, on our request, in the supplement to the *Petition*, that corroborates key elements of the export-price and normal-value calculations used in the *Petition* to derive an estimated margin.

Specifically, the petitioner calculated an export price using pricing information during the POI obtained from its U.S. customer of South African-produced uncovered innerspring units sold, or offered for sale, by U.S. importers of the subject merchandise. The pricing information identified specific terms of sale and payment terms. We obtained affidavits from persons who obtained the U.S. price quote. See *Initiation Checklist* at 6–8. The petitioner made adjustments to the starting price, where applicable, for foreign inland freight, ocean freight, marine insurance, and U.S. customs and port fees to arrive at net export price. To examine further the reliability of the U.S. price information in the *Petition* for purposes of this preliminary determination we obtained the average monthly Average Unit Values (AUVs) (Landed, Duty Paid) of imports of uncovered innerspring units from South Africa for consumption in the United States, classified under HTSUS number 9404299010 for the POI gathered from the Bureau of the Census IM145 import statistics.³ We confirmed, by examining the Harmonized Tariff Schedule of the

United States Annotated, that this HTSUS number is not a “basket category” such that it only includes entries of subject merchandise. U.S. official import statistics are sources that we consider reliable. See, e.g., *Notice of Preliminary Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 48538 (August 18, 2005), and applicable Memorandum to the File from Dmitry Vladimirov entitled “Preliminary Determination in the Antidumping Duty Investigation of Superalloy Degassed Chromium from Japan: Corroboration of Total Adverse Facts Available Rate,” dated August 11, 2005 (*Chromium from Japan*) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 65886 (November 1, 2005)). We then compared the U.S. price quote in the *Petition* to the AUVs for the POI and confirmed that the value of the U.S. price quote was consistent with average U.S. import values. Further, we obtained no other information that would make us question the reliability of the pricing information provided in the *Petition*.

The petitioner made adjustments to the starting U.S. price for foreign inland freight, ocean freight, marine insurance, and U.S. customs and port fees to arrive at the net export price. The petitioner calculated foreign inland-freight costs based on the petitioner’s South African subsidiary’s transportation experience and the related shipping costs it incurs. See *Initiation Checklist* at 7–8. The petitioner provided an affidavit from an individual attesting to the source and validity of the inland-freight costs it used in the calculation of net U.S. price. *Id.* The petitioner calculated international-freight costs and marine-insurance charges based on price quotes it obtained from respective service providers. *Id.* The petitioner provided an affidavit from an individual attesting to the source and validity of the international-freight and marine-insurance charges it used in the calculation of net U.S. price. *Id.* The petitioner estimated harbor-maintenance and merchandise-processing fees using standard U.S. government percentage rates. *Id.* Such publically available data are sources of information we consider reliable. See, e.g., *Glycine from Japan*, 72 FR at 52353. The petitioner calculated U.S. credit expense using the Federal Reserve’s reported average prime rate charged by banks on commercial and industrial loans with duration of less than a year and an estimated credit period consisting of ocean transit time and

customary payment terms of 30 days commencing with the arrival of product at the U.S. port of entry. See *Initiation Checklist* at 7–8. The petitioner calculated the U.S. short-term interest rate and the time period in ocean transit using publically available information. *Id.* Such publically available data are sources of information we consider reliable. See, e.g., *Glycine from Japan*, 72 FR at 52353. The petitioner provided an affidavit from an individual attesting to the validity of customary payment terms associated with sales of subject merchandise to the United States. See *Initiation Checklist* at 7–8. Because we obtained no other information that would make us question the reliability of the adjustments to the U.S. price provided in the *Petition*, based on our examination of the aforementioned information, we preliminarily consider the petitioner’s calculation of net U.S. price to be reliable. See, e.g., *Glycine from Japan*, 72 FR at 52353.

To calculate normal value, the petitioner relied on its South African subsidiary’s actual price to an unaffiliated customer in South Africa for uncovered innerspring units it sold during the POI. The pricing information identified specific terms of sale and payment terms. See *Initiation Checklist* at 7–8. The petitioner provided an affidavit from an individual attesting to the validity of the South African price and associated sale and payment terms that the petitioner used in the calculation of net foreign price. *Id.* The petitioner converted the starting price from Rand to U.S. dollars using the POI-average exchange rate of 0.1388 dollars per Rand. The petitioner calculated the POI-average exchange rate using the daily exchange rates listed on Import Administration’s website. *Id.* The petitioner made adjustments to the starting home-market price by deducting home-market credit expense and adding U.S. credit expenses and packing costs. To calculate home-market credit expenses, the petitioner used the payment terms its South African subsidiary extends to its customer, which the petitioner claims are typical payment terms in South Africa. *Id.* The petitioner calculated home-market credit expenses using a payment period typical in South Africa and the average three-month trade-financing interest rate as reported by the South African Reserve Bank for the period of investigation. *Id.* The petitioner provided information indicating that its South African subsidiary ships the foreign like product unpacked and ships subject merchandise roll-packed. The

³ See The Memorandum to File from Case Analyst entitled “Less-Than-Fair-Value Investigation on Uncovered Innerspring Units from South Africa - Placement of Certain Import Statistics Data from the USITC Interactive Tariff and Trade DataWeb on the Record of This Investigation,” dated July 30, 2008.

petitioner calculated U.S. packing costs based on the experience of its South African subsidiary. *Id.*

The petitioner demonstrated the validity of the various assumptions it employed in its calculation of normal value and it used public sources of information such as official home-market and U.S. short-term interest rates and currency exchange rates that we confirmed were accurate. See, e.g., *Chromium from Japan* (where we stated that publicly available information or import statistics do not require further corroboration). Therefore, absent other information on the record disputing the validity of the sources of information or the validity of information supporting the underlying price (and applicable price adjustments) used in the *Petition*, we consider the petitioner's calculation of normal value to be reliable. Accordingly, because we confirmed the accuracy and validity of the information underlying the derivation of the margin in the *Petition* by examining source documents and affidavits, as well as publically available information, we preliminarily determine that the margins in the *Petition* are reliable for the purposes of this investigation. See, e.g., *Glycine from Japan*, 72 FR at 52353.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin as "best information available" (the predecessor to "facts available") because the margin was based on another company's uncharacteristic business expense that resulted in an unusually high dumping margin.

In *Am. Silicon Techs. v. United States*, 273 F. Supp. 2d 1342, 1346 (CIT 2003), the court found that the AFA rate bore a "rational relationship" to the respondent's "commercial practices" and was, therefore, relevant. In the pre-initiation stage of this investigation, we confirmed that the calculation of the margin in the *Petition* reflects commercial practices of the particular industry during the POI. Further, no information has been presented in the investigation that calls into question the relevance of this information. As such, we preliminarily determine that the margin in the *Petition*, which we

determined during our pre-initiation analysis was based on adequate and accurate information and which we have corroborated for purposes of this preliminary determination, is relevant as the AFA rate for BCM. See, e.g., *Glycine from Japan*.

As described above, the Department attempted to corroborate all of the secondary information from which the margin in the *Petition* was calculated by reviewing all of the data presented and by requesting clarification, attestation, and confirmation from the petitioner and its sources, as needed. Moreover, during the investigation, the Department was provided no other information from any other interested party. The Department also is aware of no other independent sources of information that would enable it to corroborate further the U.S. and home-market prices (and their respective adjustments), as furnished by the petitioner, for this preliminary determination. Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405, 53407 (September 11, 2006) (unchanged in *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982 (January 17, 2007)), because this is the first proceeding involving BCM, there are no probative alternatives. Accordingly, by using information that was corroborated in the pre-initiation stage of this investigation and preliminarily determined to be reliable and relevant to BCM in this investigation, we have corroborated the AFA rate "to the extent practicable." See section 776(c) of the Act, 19 CFR 351.308(d), and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating, "pursuant to the to the extent practicable' language...the corroboration requirement itself is not mandatory when not feasible"). See also *Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Canada*, 63 FR 59527, 59529 (November 4, 1998) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Canada*, 64 FR 15457 (March 31, 1999)).

Therefore, based on our efforts described above to corroborate the margin in the *Petition*, we find that the estimated margin of 121.39 percent in the *Initiation Notice* has probative value within the meaning of section 776(c) of the Act. Consequently, in selecting AFA with respect to BCM, we have applied the margin rate of 121.39 percent, the estimated dumping margin set forth in

the notice of initiation. See *Initiation Notice*.

All-Others Rate

Section 735(c)(5)(A) of the Act provides that "the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776." Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* margins or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. This provision contemplates that, if the data do not permit weight-averaging margins other than the zero, *de minimis*, or total facts-available margins, the Department may use any other reasonable methods. See also *SAA* at 873. Because the petition contained only one estimated dumping margin and because there are no other respondents in this investigation, there are no additional estimated margins available with which to establish the all-others rate. See *Notice of Final Determination of Sales at Less Than Fair Value: Ferrovanadium from the Republic of South Africa*, 67 FR 71136 (November 29, 2002). Therefore, we are using the preliminary determination margin of 121.39 percent as the all-others rate.

Preliminary Determination

We preliminarily determine that the following dumping margins exist for the period October 1, 2006, through September 30, 2007:

Manufacturer or Exporter	Margin (percent)
Bedding Component Manufacturers (Pty) Ltd.	121.39
All Others	121.39

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of uncovered innerspring units from South Africa that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct

CBP to require a cash deposit or the posting of a bond equal to the margins, as indicated above, as follows: (1) the rate for BCM will be 121.39 percent; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 121.39 percent. These suspension-of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination of sales at less than fair value. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threatening material injury to, the U.S. industry. The deadline for the ITC's determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination, pursuant to section 735(b)(2) of the Act.

Public Comment

Case briefs for this investigation must be submitted no later than 50 days after the publication of this notice, pursuant to 19 CFR 351.309(c)(1)(i). Rebuttal briefs must be filed within five days after the deadline for submission of case briefs consistent with 19 CFR 351.309(d)(1). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in an investigation, the hearing normally will be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. See 19 CFR 351.310(d)(1). Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. See 19 CFR 351.310(c). Requests should specify the

number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will not be conducting a verification of BCM because it failed to respond to our questionnaire, as discussed above in the "Use of Facts Otherwise Available" section in this notice. Therefore, the deadline for submission of factual information pursuant to 19 CFR 351.301(b)(1) is not applicable. Thus, the deadline for submission of factual information in this investigation will be seven days after the date of publication of this notice. We intend to make our final determination within 75 days after the date of publication of this preliminary determination, pursuant to section 735(a)(1) of the Act.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: July 30, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

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