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

THROUGH: Abdelali Elouaradia
Director, Office 4
AD/CVD Operations

Howard Smith *H/S*
Program Manager, Office 4
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FROM: Magd Zalok *MAZ*
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RE: Wooden Bedroom Furniture from the People's Republic of China:
Scope Ruling on Acme Furniture Industry, Inc.'s Upholstered
Daybeds

Summary

Based on the analysis below, we recommend finding that Acme Furniture Industry, Inc.'s ("Acme") upholstered daybed with trundle ("daybed w/ trundle"), one of two products subject to this scope inquiry, is covered by the scope of the antidumping duty order on wooden bedroom furniture ("WBF") from the People's Republic of China ("PRC"). See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China, 70 FR 329 (January 4, 2005). ("WBF order"). Moreover, we recommend finding that Acme's upholstered daybed without trundle ("daybed w/o trundle"), the other product subject to this scope inquiry, is not covered by the WBF order.

Background

On January 20, 2011, Acme requested a ruling by the Department of Commerce ("the Department") to determine whether the products it imports and describes as a daybed w/ trundle, item # 02420, and a daybed w/o trundle, item # 04415, are outside the scope of the WBF order.¹

¹ See Acme's January 20, 2011, submission at 1 (Acme filed two separate product-specific requests under a single cover letter. To distinguish between the discrete portions of the submission, we have referred to the cover letter as



On February 7, 2011, the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (collectively, "Petitioners") submitted comments on Acme's Upholstered Daybed w/ Trundle Request and the Upholstered Daybed w/o Trundle Request.² On February 18, 2011, the Department issued a supplemental questionnaire to Acme. In its February 18, 2011, supplemental questionnaire, the Department informed Acme that because its January 20, 2011, scope request was not sufficiently detailed, the Department would consider the due date for Acme's supplemental questionnaire response to be the filing date for its scope ruling request. On March 4, 2011, Acme submitted its response to the Department's supplemental questionnaire.³ Therefore, the deadline for issuing the Department's scope ruling or initiating a formal scope inquiry is April 18, 2011.

Description of the Merchandise

Upholstered Day Bed with Trundle (Item number 02420)

Acme states that the first item for which it is requesting a scope ruling is a daybed w/ trundle, item number 02420.⁴ The photograph of the product submitted by Acme shows that the daybed w/ trundle consists of a headboard, a footboard, side rails and a trundle unit. See Attachment 1 of Acme's Upholstered Daybed w/ Trundle Request. The product does not have a third side or back. Acme states that the headboard and footboard are constructed of solid wood, plywood, medium-density fiberboard ("MDF") and cardboard. Acme notes that elastic straps are mounted on the headboard and footboard frame, foam padding is inserted, and then upholstery is mounted on the front and back of the headboard and footboard.⁵ Acme also states that the side rails are constructed of solid wood, which is exposed, with metal brackets, and the trundle frame is constructed of solid wood, PVC, foam and hardware.⁶ Acme reports that the daybed w/ trundle is composed of approximately 34% solid wood or wood components and 66% upholstered materials. According to Acme, the daybed w/ trundle functions as a sofa bed,⁷ is sold separately and not as part of a set, and is intended to provide seating for any room in the home that would require a sofa.⁸ Acme states that upholstered daybeds are currently classified under Harmonized Tariff Schedule of the United States ("HTSUS") number 9403.50.9040.⁹

the "General Scope Request." We have also referred to the request for the daybed w/ trundle as the "Upholstered Daybed w/ Trundle Request" and the request for the daybed w/o trundle as the "Upholstered Daybed w/o Trundle Request." See also WBF order.

² See Letter from Petitioners to Secretary of Commerce, "Petitioners' Response To Acme's Scope Ruling Request Regarding Upholstered Day Beds," dated February 7, 2011 ("Petitioners' Comments").

³ See Acme's Supplemental Questionnaire Response ("Supplemental Response") dated March 4, 2011.

⁴ See Upholstered Daybed w/ Trundle Request at 1-2.

⁵ See Supplemental Response at 1.

⁶ See *id.*

⁷ See *id.*

⁸ See *id.*

⁹ See *id.*

Upholstered Daybed with No Trundle (Item Number 04415)

Acme states that the second item for which it is requesting a scope ruling is a daybed w/o trundle, item number 04415.¹⁰ The photograph of the product submitted by Acme shows that the daybed w/o trundle consists of a headboard and bed frame with side rails. See Attachment 2 of Acme's Upholstered Daybed w/o Trundle Request. Acme states that the daybed w/o trundle is completely upholstered except for the daybed feet, which are made of wood not higher than nine inches from the floor.¹¹ Acme notes that the daybed w/o trundle is currently classified under HTSUS number 9403.50.9040.

Scope of the Order

The product covered by the order is WBF. WBF is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,¹² highboys,¹³ lowboys,¹⁴ chests of drawers,¹⁵ chests,¹⁶ door chests,¹⁷ chiffoniers,¹⁸ hutches,¹⁹ and armoires;²⁰ (6) desks, computer stands,

¹⁰ See Upholstered Daybed w/o Trundle Request at 2.

¹¹ See *id.*

¹² A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

¹³ A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

¹⁴ A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

¹⁵ A chest of drawers is typically a case containing drawers for storing clothing.

¹⁶ A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

¹⁷ A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

¹⁸ A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

¹⁹ A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and

filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate;²¹ (9) jewelry armories;²² (10) cheval mirrors;²³ (11) certain metal parts;²⁴ (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; (13) upholstered beds²⁵ and (14) toy boxes.²⁶

provides storage for clothes.

²⁰ An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

²¹ As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. See CBP's Headquarters Ruling Letter 043859, dated May 17, 1976.

²² Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24 inches in width, 18 inches in depth, and 49 inches in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. See Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China, dated August 31, 2004. See also Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review, and Determination To Revoke Order in Part, 71 FR 38621 (July 7, 2006).

²³ Cheval mirrors are any framed, tiltable mirror with a height in excess of 50 inches that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, i.e., a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet line with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. See Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review and Determination To Revoke Order in Part, 72 FR 948 (January 9, 2007).

²⁴ Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (i.e., wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under HTSUS subheadings 9403.90.7005, 9403.90.7010, or 9403.90.7080.

²⁵ Upholstered beds that are completely upholstered, i.e., containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or

Imports of subject merchandise are classified under subheadings 9403.50.9042 and 9403.50.9045²⁷ of the HTSUS as “wooden . . . beds” and under subheading 9403.50.9080 of the HTSUS as “other . . . wooden furniture of a kind used in the bedroom.” In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9042 or 9403.50.9045 of the HTSUS as “parts of wood.” Subject merchandise may also be entered under subheading 9403.60.8081.²⁸ Further, framed glass mirrors may be entered under subheading 7009.92.1000²⁹ or 7009.92.5000 of the HTSUS as “glass mirrors . . . framed.” This order covers all WBF meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.³⁰

Legal Framework

The Department examines scope requests in accordance with its regulations at 19 CFR 351.225. Under 19 CFR 351.225(k)(1), the Department first examines the description of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations) and the International Trade Commission (“ITC”). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether the merchandise is covered by the order.³¹

Where the descriptions of the merchandise are not dispositive, the Department will consider the following factors, as provided under 19 CFR 351.225(k)(2): i) the physical characteristics of the merchandise; ii) the expectations of the ultimate purchasers; iii) the ultimate use of the product; iv) the channels of trade in which the product is sold; and v) the manner in which the product is

any other material and which are no more than nine inches in height from the floor. See Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part, 72 FR 7013 (February 14, 2007).

²⁶ To be excluded the toy box must: (1) be wider than it is tall; (2) have dimensions within 16 inches to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials (“ASTM”) standard F963-03. Toy boxes are boxes generally designed for the purpose of storing children’s items such as toys, books, and playthings. See Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part, 74 FR 8506 (February 25, 2009). Further, as determined in the scope ruling memorandum “Wooden Bedroom Furniture from the People’s Republic of China: Scope Ruling on a White Toy Box,” dated July 6, 2009, the dimensional ranges used to identify the toy boxes that are excluded from the wooden bedroom furniture order apply to the box itself rather than the lid.

²⁷ These HTSUS numbers, as well as the numbers in footnote 23, reflect the HTSUS numbers currently in effect. These numbers differ from those used in the last completed antidumping duty administrative review of WBF from the PRC because the HTSUS has been revised.

²⁸ This HTSUS number has been added to the scope since the last completed antidumping duty administrative review of WBF from the PRC.

²⁹ See id.

³⁰ See WBF order.

³¹ See 19 CFR 351.225(d).

advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

For this proceeding, the Department evaluated Acme's request in accordance with 19 CFR 351.225(k)(1) and finds that the description of the product contained in the petition, the initial investigation, the determinations by the Secretary (including prior scope determinations) and the ITC are, in fact, dispositive with respect to Acme's upholstered daybeds. Therefore, we find it unnecessary to consider the additional factors found in 19 CFR 351.225(k)(2).

Interested Party Comments and Analysis

Acme's Comments

Upholstered Daybeds with a Trundle Unit

Acme requests that the Department issue a determination that its daybed w/ trundle is outside the scope of the WBF order because the daybed is not substantially made of wood, is not "bedroom furniture," and qualifies to be excluded from the order under the exclusion for sofa beds and upholstered beds.³² First, Acme notes that all subject merchandise must be substantially made out of wood, and that the wooden portion of the daybed w/ trundle is minimal in relation to the upholstered portion.³³ According to Acme, based on the bill of materials, the daybed w/ trundle is composed of approximately 34% solid wood or wood products and 66% upholstered materials.³⁴ Therefore, Acme argues that the daybed w/ trundle is not substantially made of wood.³⁵

Second, Acme claims that the daybed w/ trundle is not "bedroom furniture." Acme notes that the WBF order states that wooden bedroom furniture is "generally...designed, manufactured and offered for sale in coordinated groups, or bedrooms."³⁶ Acme maintains that the daybed in question, however, is sold separately and not as part of a set. Moreover, Acme argues that daybeds are more like sofa beds as they are designed and intended to provide seating in any room of the home that would require a sofa (e.g., family room, living room, etc.).³⁷ Therefore, Acme contends that the daybed w/ trundle should not be treated as bedroom furniture.³⁸

Third, Acme contends that daybeds are defined as "couches that can be converted into beds"³⁹ and thus they are like sofa beds which are specifically excluded from the scope of the WBF order.⁴⁰

³² See Upholstered Daybed w/Trundle Request at 8.

³³ See *id.*

³⁴ See Supplemental Response at 1, and Upholstered Daybed w/Trundle Request at 8-9.

³⁵ See *id.*

³⁶ See *id.* at 9; see also WBF order.

³⁷ See the Upholstered Daybed w/Trundle Request at 9.

³⁸ See *id.*

³⁹ See *id.*

Fourth, Acme notes that the WBF order excludes upholstered beds.⁴¹ While Acme recognizes that the WBF order requires beds to be “completely upholstered,” and notes the daybed w/ trundle is not completely upholstered because a small portion of the side rail is exposed wood,⁴² it argues that the daybed in question falls within the exclusion for upholstered beds because the wood portion of the daybed w/ trundle is minimal in relationship to the upholstered portion of the daybed (i.e., approximately 34% solid wood or wood products and 66% upholstered materials).⁴³

While Acme asserts that a plain reading of the scope warrants a determination that its daybed w/ trundle is excluded from the scope of the WBF order, it argues that its position is further supported by other information on the administrative record and the factual findings and determinations from the original investigation in accordance with 19 CFR 351.225(k)(1).⁴⁴ Specifically, Acme notes that the scope language in the original investigation and order indicates that the scope would include WBF that is made substantially of wood products,⁴⁵ and that the ITC mirrored the Department’s scope language in its determinations.⁴⁶ Accordingly, Acme argues that the language in the investigation and final determinations support a finding that its daybed w/ trundle is excluded from the WBF order because it is not substantially made of wood.⁴⁷

Finally, Acme argues that while the evidence establishes that its daybed w/ trundle does not conform to the essential requirements of subject merchandise in that it is not substantially made of wood, if any ambiguity remains, the courts have determined that the issue must be resolved by considering (i) the physical characteristics of the product; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; (iv) the channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed.⁴⁸ Acme argues that an analysis of the factors set forth by 19 CFR 351.225(k)(2) supports a finding that its daybed w/ trundle is not covered by the scope of the WBF order.

Upholstered Daybed with No Trundle Unit

Acme asserts that the daybed w/o trundle is completely upholstered in leather except for the wooden bed feet which are no higher than nine inches from the floor.⁴⁹ Acme points out that the scope of the WBF order excludes beds that are entirely upholstered except for the feet which may be no more than nine inches in height from the floor. Therefore, Acme argues that its

⁴⁰ See *id.*

⁴¹ See Upholstered Daybed w/ Trundle Request at 7.

⁴² See *id.*

⁴³ See *id.*

⁴⁴ See Upholstered Day Bed w/ Trundle Request at 10, citing *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1096 (Fed. Cir. 2002) (“*Duferco*”)(quoting *Smith Corona Corp. v. United States*, 915 F.2d 683, 685 (Fed. Cir. 1990)).

⁴⁵ See Upholstered Day Bed w/ Trundle Request at 10 and 11.

⁴⁶ See Upholstered Day Bed w/ Trundle Request at 10 - 11; see *Wooden Bedroom Furniture*, USITC Pub. 3667, Inv. No. 731-TA-1058 (Jan. 2004) and USITC Pub. 3743, Inv. No. 731-TA-1058 (Dec. 2004).

⁴⁷ See Upholstered Day Bed w/ Trundle Request at 12.

⁴⁸ See 19 CFR 351.225(k)(2) and *Diversified Products Corp. v. United States*, 572 F. Supp. 883 (CIT 1983).

⁴⁹ See Upholstered Daybed w/o Trundle Request at 7.

daybed w/o trundle meets the requirements of the upholstered bed scope exclusion and thus it is excluded from the scope of the WBF order.⁵⁰

While Acme asserts that a plain reading of the scope is sufficient to conclude that its daybed w/o trundle is excluded from the scope of the WBF order, it argues that its position is further supported by other information on the administrative record and the factual findings and determinations from the original investigation in accordance with 19 CFR 351.225(k)(1).⁵¹ Specifically, Acme notes that while the original investigation did not contain an exception for upholstered beds, in the Petitioners' Request for A Changed Circumstances Review And Revocation of the Order, In Part, As to Certain Upholstered Beds ("Changed Circumstances"), filed October 26, 2006, Petitioners stated that the original scope of the order included upholstered bedroom furniture that is "made substantially of wood products" because "many bedroom furniture products – particularly beds – contain upholstered panels or sections."⁵² Acme further notes that Petitioners, however, in further consideration of their position, clarified that they have ". . . no interest in having the order cover completely upholstered beds that have exposed wooden feet of no more than nine inches in height from the floor." Acme notes that the Department, subsequently, amended the scope of the WBF order to exclude certain upholstered beds that are completely upholstered.⁵³ Accordingly, Acme requests that the Department determine that its daybed w/o trundle is outside the scope of the WBF order.

Finally, Acme argues that while the evidence establishes that its daybed w/o trundle does not conform to the essential requirements of subject merchandise, if any ambiguity remains, the Department must consider the factors set forth by 19 CFR 351.225(k)(2). Acme argues that an analysis of the factors set forth by 19 CFR 351.225(k)(2) supports a finding that its daybed w/o trundle is not covered by the scope of the WBF order.

Petitioners' Comments

Upholstered Daybed with Trundle

Petitioners argue that Acme's daybed w/ trundle clearly falls within the scope of the WBF order because it is a twin bed that is made substantially of wood and it does not fall within the scope exclusion for upholstered beds.⁵⁴ First, Petitioners maintain that the daybed w/ trundle is bedroom furniture; namely, it is a twin bed with a headboard, footboard and mattress, but no back. Petitioners assert that the daybed w/ trundle is not similar to a sofa or sofa bed. Further, Petitioners contend that Acme markets the product for bedroom use. Petitioners argue that characterizing the product as a "daybed" does not change the fact that it is a twin bed.⁵⁵ Petitioners further note that the Department has rejected past arguments that daybeds do not fall

⁵⁰ See *id.*

⁵¹ See Upholstered Day Bed w/o Trundle Request at 7, citing, *Duferco*, 296 F.3d at 1096 (quoting *Smith Corona Corp. v. United States*, 915 F.2d at 685).

⁵² See Petitioners' Comments at 2.

⁵³ See WBF order, 72 FR at 7013.

⁵⁴ See Petitioners' Comments at 3.

⁵⁵ See *id.*

within the scope of the WBF order.⁵⁶ Additionally, Petitioners assert that Acme's argument that the daybed w/ trundle is not "bedroom furniture" because it is not sold as part of a set is irrelevant because the scope of the WBF order states that bedroom furniture is "generally, but not exclusively" designed, manufactured and sold in sets.⁵⁷

Second, Petitioners argue that the daybed w/ trundle falls within the scope of the WBF order because it is substantially made of wood.⁵⁸ According to Petitioners, subject merchandise can be made of wood and non-wood products, and the term "substantial" does not mean a specific percentage of wood, but that wood is a substantial component of the product. According to Petitioners, the daybed w/ trundle is substantially made of solid wood and wood products because the bed would have no frame or form without solid wood and wood products.⁵⁹

Third, Petitioners argue that the daybed w/ trundle does not fall within the scope exclusion for upholstered beds.⁶⁰ Petitioners note that there is a dispositive test for determining when an upholstered bed is excluded from the scope which requires the bed to be entirely upholstered except for the bed feet which may be no more than nine inches in height from the floor.⁶¹ Petitioners maintain that the daybed w/ trundle does not fall within the exclusion for upholstered beds because, as Acme admitted, it is not completely upholstered.⁶²

Finally, Petitioners argue that even if the antidumping order and prior scope determinations were not dispositive, the Department would have to conclude that Acme daybed w/ trundle is subject merchandise pursuant to the factors set out at 19 CFR 351.225 (k)(2).

Upholstered Daybed with No Trundle

Petitioners agree with Acme that the daybed w/o trundle falls within the description of products covered by the scope exclusion for completely upholstered beds.⁶³ Accordingly, Petitioners agree that Acme's daybed w/o trundle, as described, is not subject merchandise.

Analysis

As explained above, when determining whether a specific product is within the scope of an antidumping and/or countervailing duty order under 19 CFR 351.225(k)(1), the Department reviews the descriptions of the subject merchandise contained in the petition, the investigation, and the determinations of the Secretary (such as prior scope rulings) and the ITC.⁶⁴ While the descriptions of the subject merchandise contained in these documents are useful, in discussing

⁵⁶ See id.

⁵⁷ See Petitioners' Comments at 4.

⁵⁸ See Petitioners' Comments at 4.

⁵⁹ See Petitioners' Comments at 5.

⁶⁰ See Petitioners' Comments at 5.

⁶¹ See Petitioners' Comments at 5.

⁶² See Petitioners' Comments at 6.

⁶³ See Petitioners' Comments at 7.

⁶⁴ See 19 CFR 351.225(k)(1).

the interpretive process that the Department should follow in making scope rulings pursuant to 19 CFR 351.225(k)(1), the Court of Appeals for the Federal Circuit (“CAFC”) stated:

The critical question is not whether the petition covered the merchandise or whether it was at some point within the scope of the investigation. The purpose of the petition is to propose an investigation.... A purpose of the investigation is to determine what merchandise should be included in the final order. Commerce’s final determination reflects the decision that has been made as to which merchandise is within the final scope of the investigation and is subject to the order.... Thus, the question is whether the {final scope of the order} included the subject merchandise.⁶⁵

The CAFC also stated that “a predicate for the interpretative process {in a scope inquiry} is language in the order that is subject to interpretation.”⁶⁶ Through these statements, the CAFC found that the appropriate place to begin the analysis as to whether a product is within the scope of an antidumping duty order is to review the scope language of the antidumping duty order itself.

In accordance with 19 CFR 351.225(k)(1) and Duferco, the Department first examined the language of the scope of the WBF order, including any exclusions, to determine whether Acme’s products are within the scope of the WBF order. As noted above, the scope of the WBF order specifically covers products which are “made substantially of wood products,” including (1) wooden beds such as loft beds, bunk beds, and other beds and (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds.

The scope of the WBF order includes products “substantially” made of the following:

solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

As an initial matter, we considered whether Acme’s daybeds are not made substantially of wood products. To determine whether Acme’s daybed w/ trundle is “made substantially of wood products,” within the plain meaning of the language of the scope of the WBF order, we examined whether the wood in the bed was significant enough in amount or extent to be considered “substantial.” As noted in the section entitled “Description of the Merchandise,” above, Acme stated that the headboard and footboard are constructed of solid wood, plywood, MDF, PVC, foam, and cardboard.⁶⁷ Acme also stated that the side rails are constructed of solid wood and

⁶⁵ See Duferco, 296 F.3d at 1096.

⁶⁶ See id. 296 F.3d at 1097.

⁶⁷ See Supplemental Response at 1.

metal brackets, and the trundle frame is constructed of solid wood, PVC, foam and hardware.⁶⁸ Therefore, contrary to Acme's argument that the daybed w/ trundle was not substantially made of wood, we find that the extensive use of wood products in all of the essential structural components of the bed; namely, the headboard, the footboard, the side rails; and the trundle unit; demonstrates that this bed is extensively made of wood products. Indeed, the wood in this product is integral to its composition. If the wood were removed, there would be no bed. Accordingly, we have determined that the daybed w/ trundle that is subject to this scope request is substantially made of wood within the plain meaning of the language of the scope of the WBF order.

With respect to the daybed w/o trundle, there is not sufficient information on the record to support a claim that it is not made substantially of wood. Accordingly, we have considered the daybed w/o trundle to be made substantially of wood products. Having determined that both of Acme's daybeds are substantially made of wood, we then considered whether either daybed is nonetheless covered by one of the exclusions expressly described in the WBF order.

Acme argued that both daybeds are covered by the scope exclusion for completely upholstered beds. The scope of the WBF order excludes the following:

{u}pholstered beds that are completely upholstered, i.e., containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor.⁶⁹

As indicated in its response, Acme acknowledges that its daybed w/ trundle is not completely upholstered because the exposed side rails of the bed are made of wood. The language of this scope exclusion is clear. Accordingly, we find that the daybed w/ trundle that is subject to this scope inquiry does not meet the exclusion for completely upholstered beds.

On the other hand, with respect to Acme's daybed w/o trundle, we agree with both Acme and Petitioners that this daybed is excluded from the scope of the WBF order because the daybed is completely upholstered except for its feet, which are made of exposed wood not higher than nine inches from the floor.⁷⁰ Accordingly, we have determined that Acme's daybed w/o trundle is excluded from the scope of the WBF order, and is therefore not subject merchandise.

Acme also argues that the daybed w/ trundle is also excluded from the scope of the order because it is not bedroom furniture. We disagree with this assessment of Acme's merchandise. Acme argues that its daybed w/ trundle is sold separately, and is not part of a set, and therefore is more akin to a sofa bed. In a prior scope determination on certain daybeds imported by Leggett &

⁶⁸ See id.

⁶⁹ See WBF order (emphasis added).

⁷⁰ See id.

Platt, Incorporated (“L&P”), the Department considered whether daybeds should be excluded from the scope of the WBF order because they are stand-alone pieces that are generally sold as individual items, and are not coordinated with other bedroom furniture items.⁷¹ The Department determined in the L&P scope inquiry that whether or not an item is sold as a part of a set is irrelevant for purposes of the WBF order.⁷² Moreover, during the underlying investigation of the instant proceeding, the Department determined that the scope of the investigation was not limited to items typically sold as a part of bedroom suites.⁷³ Accordingly, consistent with the Department’s prior scope determinations, we do not find Acme’s argument that its daybed w/ trundle is sold as a stand-alone piece to be sufficient for finding it outside the scope of the WBF order.

Moreover, we note that Acme’s argument that its daybed w/ trundle is more akin to excluded sofa beds than to beds is contradicted by the manner in which Acme itself markets its daybed w/ trundle as well as the appearance of the daybed w/ trundle. Specifically, Acme markets its daybed w/ trundle as a “Twin Size Day Bed,” not as a sofa bed, and as a product for the bedroom.⁷⁴ In the investigation, the Department refused to exclude daybeds from the scope of the investigation.⁷⁵ Indeed, in prior scope determinations, the Department has rejected similar arguments that daybeds are not subject merchandise. Specifically, in its final scope ruling on daybeds in the L&P scope inquiry, the Department determined that the daybeds under consideration meet the description of “other beds” within the scope of the order, stating that:

“{t}he Department does not find that the daybeds in question are more akin to certain excluded items, such as sofa beds and futons, than they are to beds. The surface of these daybeds appear{s} to be more similar to standard beds than to the surfaces of seating furniture such as, sofas, futons, or couches.”⁷⁶

The Department also stated that:

“{t}he dressing components to daybeds (i.e., pillows, comforters, and mattresses) are similar, if not identical, to the dressing components of beds with a headboard, footboard, and rails. In virtually every photograph of daybeds exhibited by L&P, the Importer Group, and Petitioners, daybeds are dressed with comforters and pillows, just as standard beds. The daybeds in question appear to accommodate a twin-size mattress that is also used on standard beds.”⁷⁷

⁷¹ See Memorandum from Jon Freed to Stephen Claeys: Final Scope Ruling on Daybeds in Response to Request by Leggett & Platt, Incorporated, at 12, November 21, 2005 (“Leggett & Platt Daybeds Memorandum”).

⁷² See *id.*

⁷³ See Memorandum from Erol Yesin through Robert Bolling to Laurie Parkhill regarding “Final Determination: Wooden Bedroom Furniture from the People’s Republic of China – Comments on the Scope of the Investigation, at Comment 1, November 8, 2004 (“Final Scope Memorandum”).

⁷⁴ See Petitioners’ Comments at Attachment 1.

⁷⁵ See Final Scope Memorandum at Comment 2.

⁷⁶ See Leggett & Platt Daybeds Memorandum at 11.

⁷⁷ See *id.*

Similar to the daybeds examined by the Department in the L&P scope ruling, Acme's daybed w/ trundle is marketed as a daybed with similar, if not identical, dressing components and surface area as those of twin beds. The photographs provided by Acme and Petitioners demonstrate clearly that the daybed w/ trundle is dressed with a blanket and pillow, just as standard beds, and has a surface that appears to be more similar to standard beds than to the surfaces of seating furniture such as, sofas, futons, or couches. Accordingly, consistent with the Department's prior scope determination, we find that Acme's daybed w/ trundle is a bed, and not covered by the scope exclusion for sofa beds.

Based on the foregoing, we determine that Acme's daybed w/ trundle is covered by the scope of the WBF order because it is made substantially of wood products and is not covered by the scope exclusions for sofa beds and completely upholstered beds.

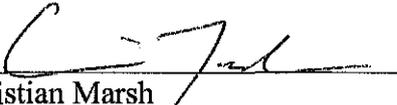
Recommendation

In accordance with 19 CFR 351.225(k)(1), based upon the above analysis, we recommend finding that Acme's partially upholstered daybed with a trundle unit, item # 02420, is subject to the WBF order. The partially upholstered daybed with a trundle unit is substantially made of wood and has exposed wood on its side rails and trundle unit. Thus, the daybed with a trundle unit meets the description of subject merchandise and is not covered by the exclusion for beds completely upholstered except for bed feet nine inches or less in height from the floor. Moreover, we recommend finding that Acme's fully upholstered daybed without a trundle unit, item # 04415, meets the scope exclusion for completely upholstered beds because it is completely upholstered except for the bed feet which are no more than nine inches in height from floor.

✓

Agree

Disagree



Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

4/15/11

Date