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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
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FROM: Zev Primor
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RE: Wooden Bedroom Furniture from the People's Republic of China:
Scope Ruling on Ashley Furniture Industries, Inc.'s Polyurethane
and Upholstered Mirrors

Summary

Based on the analysis below, we recommend finding that the products subject to this scope request are not 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").

Background

On March 3, 2011, Ashley Furniture Industries, Inc. ("Ashley"), requested rulings pursuant to the provisions of section 351.225 of the Department of Commerce's (the "Department") regulations (19 CFR 351.225) as to whether Ashley's polyurethane mirrors (i.e., Product No. B188-35; B291-35; and B406-36) and upholstered mirror (i.e., Product No. B402-35) are outside the scope of the WBF Order.¹ On March 15, 2011, the Department issued a supplemental

¹ See Ashley's "Polyurethane Framed and Upholstered Mirrors Scope Clarification Request, dated March 3, 2011, at 1-2 ("Ashley's Scope Request"). See also WBF Order.



questionnaire to Ashley seeking further information on the makeup of the products in question. On March 18, 2011, the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (collectively, "Petitioners") submitted comments on Ashley's Scope Request on polyurethane and upholstered mirrors.² On March 21, 2011, Ashley filed a request asking the Department to suspend or withdraw the supplemental questionnaire claiming that the supplemental questionnaire was irrelevant to the scope proceeding.³ On March 28, 2011, the Department issued a letter to Ashley reiterating its request for supplemental information. On March 29, 2011, the Department issued a letter to Petitioners asking for clarification of the comments they filed on March 18, 2011. On April 1, 2011, Petitioners provided clarifying comments on the exclusionary language for mirrors in the scope of the WBF Order.⁴ On April 4, 2011, Ashley provided a partial response to the Department's supplemental questionnaire.⁵ On April 8, 2011, Ashley revised its original scope request, modifying its argued basis for exclusion from the scope of the WBF Order.⁶ Based on the revised scope request, the deadline for issuing a scope ruling or initiating a formal scope inquiry in the instant proceeding is May 23, 2011.

Description of Merchandise

Mirrors B188-35; B291-35; and B406-36

Products B188-35; B291-35; and B406-36 are mirrors framed in polyurethane (a synthetic material made by copolymerizing an isocyanate and a polyhydric alcohol). In addition to the polyurethane frame, each of the framed mirrors has a back panel made of medium density fiberboard ("MDF"), a soft wood lumber product.⁷ The reflective portion of the framed mirror is made of glass. Screws and nails are used to secure the back panel to the frame.⁸

Mirror B402-35

Product B402-35 is a framed mirror where the frame is made from MDF. Additionally, the frame is covered with a padding made of foam and PVC in order to give the framed mirror the upholstered look and feel. The back panel of the framed mirror is also made of MDF. Metal lines and screws and nails provide decoration as well as secure the back panel to the frame.⁹

² See Letter from Petitioners to the Secretary of Commerce, "AFMC's response to Ashley's Scope Ruling Request Regarding Polyurethane Framed and Upholstered Mirrors," dated March 18, 2011 ("Petitioners' Comments").

³ See Letter from Ashley, "Request for Withdrawal of Supplemental Questionnaire Response or Suspension of Deadline," dated March 21, 2011.

⁴ See Letter from Petitioners to the Secretary of Commerce, "Response to Department's March 29, 2011 Letter Regarding AFMC's Comments on Ashley's Scope Ruling Request," dated April 1, 2011 ("Petitioners' Comments II").

⁵ See Letter from Ashley "Supplemental Questionnaire Response-Polyurethane and Upholstered Mirrors Scope Clarification Request," dated April 4, 2011.

⁶ See Letter from Ashley "Clarification of March 3, 2011 Polyurethane Framed and Upholstered Mirrors Scope Clarification Request," dated April 8, 2011 ("Ashley's Clarification Comments").

⁷ See Ashley's Clarification Comments, Attachment at 1.

⁸ See Ashley's Scope Request at 2 and Ashley's Clarification Comments, Attachment at 1.

⁹ Id.

Scope of the Order

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture 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,¹⁰ highboys,¹¹ lowboys,¹² chests of drawers,¹³ chests,¹⁴ door chests,¹⁵ chiffoniers,¹⁶ hutches,¹⁷ and armoires;¹⁸ (6) desks, computer stands, 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

¹⁰ 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.

¹¹ 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).

¹² A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

¹³ A chest of drawers is typically a case containing drawers for storing clothing.

¹⁴ 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.

¹⁵ 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.

¹⁶ A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

¹⁷ A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

¹⁸ 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.

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;¹⁹ (9) jewelry armories;²⁰ (10) cheval mirrors;²¹ (11) certain metal parts;²² (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 beds²³ and (14) toy boxes.²⁴

¹⁹ 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.

²⁰ 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).

²¹ 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).

²² 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.

²³ 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 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).

²⁴ 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

Imports of subject merchandise are classified under subheadings 9403.50.9042 and 9403.50.9045²⁵ 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 9403.60.8081.²⁶ Further, framed glass mirrors may be entered under subheading 7009.92.1000²⁷ 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.²⁸

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.²⁹

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 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 Ashley’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 Ashley’s mirrors. Therefore, we find it unnecessary to consider the additional factors found in 19 CFR 351.225(k)(2).

the lid.

²⁵ These HTSUS numbers, as well as the numbers in footnote 22, 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 (for the 2008 review period) because the HTSUS has been revised.

²⁶ This HTSUS number has been added to the scope since the last completed antidumping duty administrative review of WBF from the PRC (for the 2008 review period).

²⁷ Id.

²⁸ See WBF Order.

²⁹ See 19 CFR 351.225(d).

Interested Party Comments and Analysis

Ashley's Comments

Ashley requested that the Department issue a determination that its polyurethane and upholstered mirrors are outside of the scope of the WBF Order. Ashley argues that the mirrors are not within the scope of the WBF Order based on an analysis of the plain language of the scope and pursuant to 19 CFR 351.225(k)(1). Noting that the scope language states that “subject merchandise is substantially made of wood products,” Ashley claimed that its mirrors are outside of the scope because they are not substantially made of wood.³⁰ Subsequently, on April 8, 2011, Ashley submitted a modified scope request, arguing that the mirrors in question are outside the scope of the WBF Order because they are designed and marketed to be sold with dressers manufactured in the United States, a piece of non-subject merchandise.³¹ Additionally, Ashley requested that the Department disregard that portion of its scope request that was based on the amount of wood content in the forgoing products. Instead, Ashley requested that the Department issue its scope determination without regard to whether Ashley’s products are, or are not, substantially made of wood.³²

Petitioners' Comments

Petitioners support Ashley’s position that the mirrors in question should not be covered by the WBF Order. Petitioners refer to the scope language in the WBF Order which states that covered merchandise are “dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over dressers.”³³ According to Petitioners, Ashley’s mirrors were not imported as part of any dressers-mirror sets from the PRC. Instead, Ashley’s mirrors were imported separately to be marketed and sold in conjunction with dressers made in the United States. Thus, according to Petitioners, Ashley’s mirrors are excluded from the WBF Order and, therefore, not subject merchandise.³⁴ Petitioners reiterated the same position when responding to the Department’s clarification request, dated March 29, 2011.³⁵

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.³⁶ While the descriptions of the subject merchandise contained in these documents are useful, in discussing

³⁰ See Ashley’s Scope Request at 1.

³¹ See Ashley’s Clarification Comments at 1-2.

³² Id.

³³ See Petitioners’ Comments at 1.

³⁴ Id.

³⁵ See Petitioners’ Comments II.

³⁶ 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.³⁷

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.”³⁸ 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. All of Ashley’s mirrors contain MDF backing, which is a soft wood lumber product, and the frame for Product B402-35 is also composed of MDF. Accordingly, it appears that these mirrors are substantially made of wood products and, absent an exclusion, are covered by the scope of the WBF Order.

With regard to exclusions from the WBF Order, the scope excludes the following:

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.

We agree with Ashley and Petitioners, that the “dresser” sold “in conjunction” with a mirror under this text is a dresser covered by the WBF Order, namely Chinese-origin dressers. Based on the submissions provided by Ashley, the polyurethane and upholstered mirrors, although made in the PRC, are not part of a Chinese-origin mirror-dresser set. Instead, the mirrors are sold to Ashley, who then markets them in conjunction with dressers made in the United States. The exclusionary language above, therefore, excludes mirrors that are not part of Chinese-made mirror-dresser sets and mirrors that are not designed and marketed to be sold in conjunction with dressers made in the PRC. Since Ashley’s mirrors are not part of a Chinese-made mirror-dresser set and are not marketed in conjunction with dressers made in the PRC, the exclusionary scope language applies to Ashley’s mirrors. Consequently, we find the mirrors subject to this scope request to be outside the scope of the WBF Order.

³⁷ See Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1096 (Fed. Cir. 2002) (“Duferco”).

³⁸ See id. 296 F.3d at 1097.

