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A-570-890

Scope Ruling

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MEMORANDUM TO: John M. Andersen
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: Wendy Frankel
Director
AD/CVD Enforcement, Office 8

FROM: Tim Lord
Analyst, AD/CVD Enforcement,
China/NME Unit

RE: Wooden Bedroom Furniture from the People's Republic of
China: Final Scope Ruling on Target's "Shabby Chic
Secretary Desk and Shabby Chic Secretary Mirror"

SUMMARY

Based on the analysis below, we recommend finding that the products subject to the scope ruling are outside the scope of the order on wooden bedroom furniture 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) ("Order").

Background

On November 29, 2007, Target Corporation ("Target") filed a request for a scope determination ("Target's Request") as to whether its Shabby Chic Secretary Desk and Shabby Chic Secretary Mirror are within the scope of the antidumping duty order on wooden bedroom furniture from the People's Republic of China. See Order. On January 9, 2008, Petitioners¹ filed a response to Target's Request ("Petitioners' January 9, 2008 Response"), which opposed the request, and argued that the two items are within the scope of the Order. On January 23, 2008, Target filed a

¹ The American Furniture Manufacturers Committee for Legal Trade (King & Spalding LLP).



rebuttal to Petitioners' response ("Target's January 23, 2008 Rebuttal"). On March 3, 2008, Petitioners filed a response to Target's rebuttal ("Petitioners' March 3, 2008 Response"). On October 31, 2008, the Department of Commerce ("the Department") initiated a formal scope inquiry in which we asked interested parties to address the Diversified Products criteria (*i.e.*, 19 CFR 351.225(k)(2)). On November 25, 2008, Target submitted its formal scope inquiry response in which it addressed the Diversified Products criteria, ("Target's November 25, 2008 Response"), as did Petitioners ("Petitioners' November 25, 2008 Response"). On December 9, 2008, Target submitted its rebuttal to Petitioners' formal scope inquiry response ("Target's December 9, 2008 Rebuttal").

BACKGROUND

Description of Merchandise

Shabby Chic Secretary Desk

Target describes its Shabby Chic Secretary Desk ("Secretary Desk") as "cream-colored and designed in classic writing desk style."² Target also notes that the desk sits on four slender legs and has a drawer for storing pens, pencils, and writing paper. It is 30 inches high, 35 inches long and 17 inches deep.

Shabby Chic Secretary Mirror

Target describes its Shabby Chic Secretary Mirror ("Secretary Mirror") as a "small cream-colored mirror designed in a classic antique style."³ Target also notes that the Secretary Mirror is supported by legs and can be placed on flat surfaces.⁴ It is 20 inches high, 17 inches long and 8 inches wide.

Shabby Chic Secretary Collection

Target argues that the Secretary Desk and Secretary Mirror are discrete items that are sold separately, but can be used together as a coordinated accent piece.⁵ The two pieces, when used together, are called "the Shabby Chic Secretary Collection" ("Secretary Collection"). Target notes that the Secretary Mirror sits atop the Secretary Desk,⁶ as opposed to being attached by means of brackets or screws.

² See Target's Request, at 1.

³ See Target's Request, at 1.

⁴ See Target's Request, at 2.

⁵ See Target's Request, at 6.

⁶ See Target's Request, at 2.

Arguments Raised by the Parties

Target

Secretary Desk

Target argues that the Secretary Desk and Secretary Mirror are discrete items that are sold separately. Target notes that the Secretary Desk is designed and produced as a separate and distinct piece of furniture which can be used without any mirror at all.⁷ Additionally, Target contends that customers purchase the Secretary Desk and Secretary Mirror in separate quantities (the number of secretary desks sold from October 2006 through October 2008 was [] times the number of secretary mirrors sold⁸), and this shows that customers purchase the Secretary Desk and Secretary Mirror as stand-alone items and do not intend to use them together as one piece. Further, Target states that on-line, the Secretary Desk is not listed in the bedroom furniture category, but in the home office category, and more specifically in the subcategory for “desks: white desks” or “desks secretary desks.”⁹

Secretary Mirror

Target argues that the Secretary Mirror does not and cannot attach to the Secretary Desk. Rather, it may simply sit on the Secretary Desk. Also, Target asserts that the Secretary Mirror is only available on-line, whereas the Secretary Desk is available both in-store and on-line.¹⁰ Target thus argues that customers who purchased the Secretary Desk in-store would not be able to find the Secretary Mirror in-store. Lastly, Target asserts that the number of Secretary Mirrors sold was [] times less than the number of Secretary Desks sold, and this shows that customers use the Secretary Mirror as a stand-alone item and not with the Secretary Desk as a combination product.¹¹

Secretary Collection

Target argues that the component parts of the Secretary Collection, the Secretary Desk and Secretary Mirror, are discrete items that are sold separately, and thus, the Secretary Collection should not be considered a single item.¹² Target argues that the Shabby Chic Collection, the broader collection to which the Secretary Collection belongs, is a marketing designation for a

⁷ See Target’s November 25, 2008, Response, at 5.

⁸ See Target’s November 25, 2008, Response, at 6.

⁹ See Target’s November 25, 2008, Response, at 9.

¹⁰ See Target’s November 25, 2008, Response, at 5 and 6.

¹¹ See Target’s November 25, 2008, Response, at 5.

¹² See Target’s Request, at 6.

variety of furniture items that are designed in a similar style, and includes items that are both within and outside of the scope of the Order. Also, Target contends that the Department has previously ruled that the status of each item in the collection must be determined independently.¹³ In addition, Target maintains that the Secretary Collection is advertised under the category “collections” where the Secretary Desk and Secretary Mirror are described as “sold separately.”¹⁴ Target adds that simply because purchasers have the option of buying a piece of furniture for use with any other piece of furniture in the same style or collection does not make the two pieces a “combination product.” Target asserts that the combined use of the Secretary Desk and Secretary Mirror does not turn the two products into a vanity, because it already sells a vanity with an attached mirror in the Shabby Chic Collection that is larger and less expensive than the Secretary Collection. Target argues that this is evidence that it is not trying to circumvent the Order by disguising component parts as discrete items. Target maintains that even though Petitioners point to its web advertisement of the Secretary Collection as “a vanity for the bedroom” and “a stylish space for getting ready,”¹⁵ this is simply the result of marketing employed to suggest multiple uses for a product, and this marketing does not alter the fundamental character of the two pieces: a writing desk and a mirror. Further, Target notes that in the same advertisement the Secretary Collection is advertised as “a secretary for the living area.”¹⁶ Additionally, Target argues that many pieces of furniture are highly versatile, and simply because a piece can be used for a certain purpose does not mean the piece is designed for that purpose. Target also claims that because the Secretary Mirror takes up so much space on the Secretary Desk when placed atop it, the Secretary Desk and Secretary Mirror combination (i.e., the Secretary Collection) does not serve well as a vanity, insofar as there is not enough space on the top to place items that one associates with vanities. Target argues that instead, the Secretary Collection is more consistent with an accent piece.¹⁷ Finally, Target asserts that their customs entries can include only one of the two products on a single line on the entry form (i.e., each line item on an entry can only include either the Secretary Desk or the Secretary Mirror and not the Secretary Collection as a whole).¹⁸

¹³ See Final Scope Ruling: Target Corporation “Manhattan Collection”, (July 11, 2007), at 7.

¹⁴ See Target’s November 25, 2008, Response, at 9.

¹⁵ See Petitioners’ January 9, 2008, Response, at Exhibit 2.

¹⁶ See Petitioners’ January 9, 2008, Response, at Exhibit 2.

¹⁷ See Target’s November 25, 2008, Response, at 7.

¹⁸ See Target’s November 25, 2008, Response, at 8.

Petitioners

Secretary Desk

Petitioners argue that the Secretary Desk and Secretary Mirror are designed and marketed to be used together as a single product, a vanity.¹⁹ This argument is discussed below in the section on the Secretary Collection. However, Petitioners argue that if the Department decides to consider the Secretary Desk as a separate product, it still is within the scope of the Order, as it is a piece of wooden furniture “of a kind used in a bedroom.”²⁰ Petitioners contend that Target’s website states that the desk is “suitable as an accent piece in many rooms, including the living, family room, den, or *bedroom*”²¹ as well as a “stylish space for getting ready.”²² Furthermore, Petitioners argue that since Target’s Shabby Chic furniture collection (to which the Secretary Desk and Secretary Mirror belong) includes bedroom furniture in the same style and finish as the Secretary Desk and Secretary Mirror, the Secretary Desk and Secretary Mirror are thus within the scope of the Order. Additionally, Petitioners state that just because a product can be used outside the bedroom, this does not remove the product from the scope of the Order. Petitioners also point to the design of the Secretary Desk, noting that the front two legs are closer together than the back two and are too narrow for a standard chair. Petitioners note that the Shabby Chic Vanity Stool, however, does fit between the front legs.²³ In addition, Petitioners state that Target does not even offer a desk chair to match the Secretary Desk. Petitioners also contend that Target’s website does not suggest that the product could be used as a desk, but states that the item “creates a stylish space to get ready or acts as an elegant accent piece (...).”²⁴ Petitioners also point to user reviews of the Secretary Desk on Target’s website, and argue that users state: (1) the top is not very big, so potential purchasers should buy the desk in Target’s Office Collection instead; (2) they use the desk as a vanity or nightstand; and (3) they advise potential buyers that it may be used with other bedroom items.²⁵

Secretary Mirror

Petitioners argue that the Secretary Mirror and Secretary Desk are designed and marketed to be used together as a single product, a vanity.²⁶ This argument is discussed below in the section on

¹⁹ See Petitioners’ November 25, 2008, Response, at 1.

²⁰ See Petitioners’ November 25, 2008, Response, at 2.

²¹ See Petitioners’ November 25, 2008, Response, at 4 (emphasis added).

²² See Petitioners’ January 9, 2008, Response, at Exhibit 1.

²³ See Petitioners’ November 25, 2008, Response, at 7.

²⁴ See Petitioners’ November 25, 2008, Response, at 9.

²⁵ See Target’s November 25, 2008, Response, at Attachment 3.

²⁶ See Petitioners’ November 25, 2008, Response, at 1.

the Secretary Collection. However, Petitioners argue that if the Department decides to consider the Secretary Mirror as a separate product, it still is within the scope of the Order, as it is a piece of wooden furniture “of a kind used in a bedroom.”²⁷ Petitioners argue that the Secretary Mirror is not designed as a “stand-alone” item, as Target states, but rather is designed to be used with another item of furniture. Petitioners contend that Target’s web advertisements for the mirror state that it “coordinates with the Simply Shabby Chic Secretary Desk.” Petitioners also argue that customer reviews of the Secretary Mirror on Target’s website indicate that the mirror is used with bedroom furniture, such as the Simply Shabby Chic Drawer Chest, or with the Secretary Desk.²⁸

Secretary Collection

Petitioners argue that the Secretary Desk and Secretary Mirror are clearly designed and advertised to be used together as a single product (i.e., the Secretary Collection) and are marketed in that manner by Target²⁹ and that this single product is intended to be used as a vanity. For instance, Petitioners point to Target’s website, which describes the Secretary Collection as “a vanity for the bedroom.”³⁰ Petitioners contend that although the Secretary Desk and Secretary Mirror are purchased separately, the two are marketed together and can be purchased together with the click of a single button (for instance, Petitioners note that on the web pages for both the Secretary Desk and Secretary Mirror, it states that the two items are “better together” and an action button is provided to “buy together today”³¹). Petitioners also argue that customer reviews from Target’s website indicate that the Secretary Collection is used as a vanity.³²

Scope of the Order

On January 4, 2005, the Department published the antidumping duty order on wooden bedroom furniture from the PRC.³³ Subsequently, the Department issued several scope rulings and changed circumstances revocation determinations with respect to this order. Accordingly, the scope language of the Order currently reads as follows:

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

²⁷ See Petitioners’ November 25, 2008, Response, at 2.

²⁸ See Petitioners’ November 25, 2008, Response, at Attachment 5.

²⁹ See Petitioners’ November 25, 2008, Response, at 4.

³⁰ See Petitioners’ January 9, 2008, Response, at Exhibit 2.

³¹ See Petitioners’ January 9, 2008, Response, at Exhibit 1.

³² See Petitioners’ November 25, 2008, Response, at Attachment 1.

³³ See Order.

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, oriented 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,³⁴ highboys,³⁵ lowboys,³⁶ chests of drawers,³⁷ chests,³⁸ door chests,³⁹ chiffoniers,⁴⁰ hutches,⁴¹ and armoires;⁴² (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.

³⁴ 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.

³⁵ 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).

³⁶ A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

³⁷ A chest of drawers is typically a case containing drawers for storing clothing.

³⁸ 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.

³⁹ 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.

⁴⁰ A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

⁴¹ A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

⁴² 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.

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;⁴³ (9) jewelry armoires;⁴⁴ (10) cheval mirrors;⁴⁵ (11) certain metal parts;⁴⁶ (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 beds;⁴⁷ and (14) toy boxes.⁴⁸ Imports of

⁴³ 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 Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

⁴⁴ Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24" in width, 18" in depth, and 49" 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: Notice of Final Results of Changed Circumstances Review and Revocation in Part, 71 FR 38621 (July 7, 2006).

⁴⁵ Cheval mirrors are any framed, tiltable mirror with a height in excess of 50" 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 lined 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 Results of Changed Circumstances Review and Determination To Revoke Order in Part, 72 FR 948 (January 9, 2007).

⁴⁶ 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 the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 9403.90.7000.

⁴⁷ 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

subject merchandise are classified under subheading 9403.50.9040 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 9403.50.9040 of the HTSUS as “parts of wood” and framed glass mirrors may also be entered under subheading 7009.92.5000 of the HTSUS as “glass mirrors . . . framed.” This order covers all wooden bedroom furniture 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.

Legal Framework

The Department examines scope requests in accordance with the Department’s scope regulations, which are found at 19 CFR 351.225. This determination may take place with or without a formal inquiry. See 19 CFR 351.225(d) and (e). On matters concerning the scope of an antidumping duty order, the Department first examines the description of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary and the International Trade Commission (“ITC”). See 19 CFR 351.225(k)(1). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by the order. See 19 CFR 351.225(d).

Conversely, where the descriptions of the merchandise are not dispositive, the Department will consider the five additional factors set forth at 19 CFR 351.225(k)(2). These criteria are: 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.

Pursuant to 19 CFR 351.225(k)(1) and as stated above, the Department first examines the descriptions of the merchandise contained in the petition, the determinations of the Secretary and

(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).

⁴⁸ To be excluded the toy box must: 1) be wider than it is tall; (2) have dimensions within 16 - 27 inches in height, 15 - 18 inches in depth, and 21 - 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.

the ITC, and the initial investigation. On October 31, 2008, we initiated a formal scope inquiry of the Shabby Chic Secretary Desk, Shabby Chic Secretary Mirror, and Shabby Chic Secretary Collection because the Department found that the descriptions of the merchandise contained in the petition, the determinations of the Secretary and the ITC, and the initial investigation were not dispositive. Therefore, pursuant to 19 CFR 351.225(k)(2), we have examined these products under the Diversified Products criteria to determine if they are covered by the scope of the Order.

Diversified Products Criteria Analysis: Secretary Desk

(1) Physical Characteristics

According to the scope of the Order, desks are only included within the scope if they are “attached to or incorporated in” subject merchandise. From record evidence, including photos of and advertisements for the Secretary Desk,⁴⁹ we have determined that the Secretary Desk is a desk, because it possesses the characteristics the ultimate purchaser would associate with a desk, such as a drawer and a supported top that provides enough room for a chair to fit underneath. From record evidence, including photos of and advertisements for the Secretary Desk,⁵⁰ the Department has determined that the Secretary Desk is not attached to or otherwise incorporated in subject merchandise. Furthermore, we do not agree with Petitioners argument that because the Shabby Chic Collection contains pieces of bedroom furniture, and the Secretary Desk is in the Shabby Chic Collection, the Secretary Desk is therefore a piece of bedroom furniture. Our examination of the record indicates that numerous items in the Shabby Chic Collection are not pieces of bedroom furniture.⁵¹ For just this reason, the Department examines each piece of furniture on its own because a collection may include both subject and non-subject pieces of furniture.⁵² Consistent with this practice, we cannot determine that all pieces of furniture in the Shabby Chic Collection are pieces of bedroom furniture simply because the collection contains some items that clearly are bedroom pieces.

(2) Expectations of Ultimate Purchasers

We have determined from record evidence (including photos of and advertisements for the Secretary Desk) that ultimate purchasers of the Secretary Desk primarily expect to use it as a desk. We based our determination on the fact that the product’s name under which it is advertised and sold, the “Shabby Chic Secretary Desk,” contains the word “desk,” and thus gives the ultimate purchaser sufficient information that the product is a desk. Further, based on record evidence, including the photos mentioned above, we have concluded that a customer examining

⁴⁹ See Target’s Request, at Exhibit A.

⁵⁰ See Target’s Request, at Exhibit A.

⁵¹ See Target’s Request, at 6.

⁵² See Final Scope Ruling: Target Corporation “Manhattan Collection,” (July 11, 2007), at 7, where the Department ruled that the status of each item in a collection must be determined independently.

the desk would see that it has all the characteristics the ultimate purchaser would associate with a desk, such as a drawer and a supported top that provides enough room underneath for a chair.⁵³ Furthermore, while Petitioners argue that the user reviews of the Secretary Desk on Target's website indicate that the desk is used as a vanity or nightstand,⁵⁴ we agree with Target, that these reviews are unpersuasive, as we have no evidence that illustrates how the customer reviews are formulated, selected, and to what extent the customers writing the reviews have used the product.

(3) Ultimate Use of the Product

We further determine from record evidence that an indication of ultimate use comes from the physical characteristics of the product in question. In this case, based on the photographs on the record, the Secretary Desk in question clearly displays physical attributes associated with desks such as a drawer and a supported top that provides enough room underneath for a chair.⁵⁵

(4) Channels of Trade in Which the Product is Sold

According to record evidence, the Secretary Desk can be sold through Target's website and in Target stores.⁵⁶ It thus shares the same channels of trade as other furniture items, both bedroom items and non-bedroom items, carried and sold by Target. Therefore, the Department finds that the channels of trade in this matter are not dispositive, as the Secretary Desk shares the same channels of trade as bedroom items, non-bedroom items, and any product carried and sold by Target that can be purchased on-line and in-store.

(5) The Manner in Which the Product is Advertised and Displayed

Record evidence indicates that Target's website states that the Secretary Desk is "suitable as an accent piece in many rooms, including (...) the bedroom" and is a "stylish space for getting ready."⁵⁷ However, evidence on record also indicates that the Secretary Desk is "suitable as an accent piece for the living, family room, (or) den."⁵⁸ Thus, Target's advertising suggests multiple uses in both bedroom and non-bedroom settings. Additionally, record evidence indicates that the Secretary Desk is listed under the home office category, specifically in the sub-category for desks, not under bedroom furniture on Target's website.⁵⁹ Also, Petitioners use record evidence in the form of content from Target's website to show that when examining the

⁵³ See Target's Request.

⁵⁴ See Target's November 25, 2008, Response, at Attachment 3.

⁵⁵ See Target's Request.

⁵⁶ See Target's November 25, 2008, Response, at 9.

⁵⁷ See Petitioners' January 9, 2008, Response, at Exhibit 2.

⁵⁸ See Petitioners' November 25, 2008, Response, at Exhibit 1.

⁵⁹ See Target's November 25, 2008, Response, at 8.

Secretary Desk and Secretary Mirror separately on-line, displayed is a note that the two items are “better together” and an action button is provided to “buy together today.”⁶⁰ However, as Target notes, this evidence indicates that the proposal that the two pieces be purchased together is merely one of several suggestions made in Target’s advertising. Thus, based on our review of the record, we find that Target’s advertising of the Secretary Desk is non-dispositive because the desk is being advertised as a multi-purpose item.

Diversified Products Criteria Analysis: Secretary Mirror

(1) Physical Characteristics

According to the scope of the Order, mirrors are only subject if they are “attached to, incorporated in, sit on, or hang over a dresser.” Record evidence shows that the Secretary Mirror has two legs so that it can sit on flat surfaces.⁶¹ However, while the Secretary Mirror has the ability to sit atop any flat surface, including a dresser, there is no record evidence that indicates that the Secretary Mirror is primarily designed to sit atop any particular dresser (or dressers in general). Accordingly, we do not find that the physical characteristics of the mirror are dispositive with respect to whether the Secretary Mirror meets the description of subject merchandise.

(2) Expectations of Ultimate Purchasers

Our examination of the record indicates that the Secretary Mirror is sold separately from other products and is neither advertised with nor listed in conjunction with a specific dresser.⁶² Also, while record evidence shows a proposal that the Secretary Mirror may be bought together with the Secretary Desk, this proposal is merely one of several usage suggestions made on Target’s website. Further, our examination of the record found that the Secretary Mirror is not listed under the category “bedroom furniture” on Target’s website.⁶³ Thus, we have determined that there is no record evidence indicating that the ultimate purchaser would primarily expect to use the Secretary Mirror with a dresser, because Target advertises it as a separate item.

(3) Ultimate use of the Product

While the Secretary Mirror has the ability to sit atop any flat surface, including a dresser, there is no record evidence that the Secretary Mirror is primarily designed to sit atop any particular dresser (or dressers in general). Further, there is no record evidence indicating that the Secretary Mirror is to be used primarily in combination with a specific dresser-mirror set, or with dressers.

⁶⁰ See Petitioners’ January 9, 2008 Response, at Exhibit 1.

⁶¹ See Target’s Request, at 1.

⁶² See Target’s Request, at Exhibit 1.

⁶³ See Target’s November 25, 2008, Response, at 9.

Accordingly, we do not find that the record supports a conclusion that the primary ultimate use of the Secretary Mirror is as a vanity mirror in connection with the Secretary Desk.

(4) Channels of Trade in Which the Product is Sold

The record demonstrates that the Secretary Mirror can only be purchased on-line, through Target's website and not in Target stores.⁶⁴ This differs from the Secretary Desk which can be purchased both through the website and at Target retail stores. Thus, the channels of trade are not dispositive, as the Secretary Mirror shares one of the same channels of trade as other furniture carried and sold by Target, both bedroom items and non-bedroom items.

(5) The Manner in Which the Product is Advertised and Displayed

Our examination of the record shows that the Secretary Mirror is not listed under the category "bedroom furniture" on Target's website.⁶⁵ Record evidence also illustrates that the proposition from Target's website that the Secretary Mirror be placed atop a dresser is just one suggested use, as the website also proposes that the Secretary Mirror be placed atop a desk. The scope of the Order specifically excludes mirrors that "are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set." In this case, record evidence indicates that while Target advertises that the Secretary Mirror may be used in conjunction with various pieces of furniture, it is actually sold separately from any other product and is neither advertised nor listed in conjunction with a specific dresser.⁶⁶ Thus, we have determined, based on record evidence, that the Secretary Mirror is not advertised primarily as a piece of bedroom furniture.

Analysis: Secretary Collection

We have determined, based on record evidence, that the Secretary Collection is not a single item, but a collection of two separate items that are predominantly marketed and sold separately. Because these are distinct items, sold independently of each other, they do not lend themselves to consideration as a set. Therefore, we have not examined the Secretary Collection as a single unit, consistent with Department practice in scope rulings to examine pieces in a collection on an individual basis.⁶⁷

Specifically, we found that record evidence established that the Secretary Collection is not a single piece of furniture, contrary to Petitioners' arguments. First, record evidence indicates the component items of the Secretary Collection, the Secretary Desk and Secretary Mirror, are sold separately,⁶⁸ and according to our examination of the record, Target's customs entries

⁶⁴ See Target's November 25, 2008 Response, at 8.

⁶⁵ See Target's November 25, 2008 Response, at 9.

⁶⁶ See Target's Request, at Exhibit 1.

⁶⁷ See Final Scope Ruling: Target Corporation "Manhattan Collection," (July 11, 2007), at 7.

⁶⁸ See Target's Request, at Exhibit 2.

demonstrate that it reports the desk and the mirror as separate and distinct items in its entry.⁶⁹ Second, record evidence shows the Secretary Mirror is only available on-line, whereas the Secretary Desk is available both in-store and on-line,⁷⁰ underscoring Target's argument that the Secretary Desk and Secretary Mirror are discrete, separate items with dissimilar channels of trade, and that ultimate purchasers expect that the Secretary Collection is not an item itself, but rather a collection of items. Third, the component pieces of the Secretary Collection are sold in separate quantities, as record evidence shows that the number of Secretary Desks sold from October 2006 through October 2008 was [] times the number of secretary mirrors sold.⁷¹ Fourth, our review of the record shows that when examining the Secretary Collection on Target's website, it is noted there that the "secretary and mirror are sold separately,"⁷² which further illustrates that the two pieces are advertised to ultimate purchasers as separate items. Fifth, record evidence indicates the Secretary Collection is advertised on Target's website under the category "collections" as part of the entire "Simply Shabby Chic" Collection⁷³ and the name under which the Secretary Collection is advertised includes the word "Collection," which gives the ultimate purchaser an indication that the Secretary Collection is not a single piece, but a collection of items.

Recommendation

Secretary Desk

Based on the totality of the Diversified Products criteria, we recommend finding that the Secretary Desk is outside the scope of the Order based on: (1) Physical Characteristics: Record evidence shows that the Secretary Desk exhibits all of the characteristics of a desk, and the scope of the Order states that desks are only covered if they are "attached to or incorporated in" subject merchandise, which is not the case here; (2) Expectations of Ultimate Purchasers: The name under which the product in question is advertised and sold contains the word "desk," and the Secretary Desk exhibits all of the characteristics associated with a desk; (3) Ultimate Use of the Product: Evidence on record shows the Secretary Desk exhibits all of the characteristics associated with a desk; (4) Channels of Trade in Which the Product is Sold: Record evidence indicates the Secretary Desk shares the same channels of trade as bedroom furniture and non-bedroom furniture carried by Target; (5) The Manner in Which the Product is Advertised and Displayed: record evidence indicates that advertisement is non-dispositive because the Secretary Desk is being advertised as a multi-purpose item.

⁶⁹ See Target's November 25, 2008, Response, at 8.

⁷⁰ See Target's November 25, 2008, Response, at 5 and 6.

⁷¹ See Target's November 25, 2008, Response, at 6.

⁷² See Target's Request, at Exhibit 2.

⁷³ See Target's November 25, 2008, Response, at 9.

Secretary Mirror

Based on the totality of the Diversified Products criteria, we recommend that the Secretary Mirror is outside the scope of the Order based on: (1) Physical Characteristics: Record evidence shows that the Secretary Mirror does not attach to, incorporate in, sit on, or hang over a dresser; (2) Expectations of Ultimate Purchasers: Record evidence indicates that the Secretary Mirror is advertised as a product that can have a multitude of uses, and there is no record evidence to support the claim that ultimate purchasers expect to primarily use the Secretary Mirror with a dresser; (3) Ultimate Use of the Product: Record evidence indicates that the Secretary Mirror can have a multitude of uses, thus there is insufficient evidence that purchasers ultimately use the Secretary Mirror primarily with a dresser; (4) Channels of Trade in Which the Product is Sold: Record evidence indicates the Secretary Mirror shares the same channels of trade as bedroom furniture and non-bedroom furniture carried and sold by Target; (5) The Manner in Which the Product is Advertised and Displayed: There is no evidence on record indicating that the Secretary Mirror is primarily advertised for use with a dresser.


Secretary Collection

It is the Department's practice to determine the status of each item in a collection independently based on its own characteristics,⁷⁴ and if appropriate the Diversified Products criteria. Based on our foregoing analysis, we recommend that the Secretary Collection is not an individual item but a collection of discrete, separate items, the Secretary Desk and the Secretary Mirror, which does not lend itself as a whole to a scope analysis. Accordingly, we have independently analyzed the two components of the Secretary Collection using the Diversified Products criteria.

✓

Agree

Disagree


John M. Andersen

Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

4/15/09
Date

⁷⁴ See Final Scope Ruling: Target Corporation "Manhattan Collection," (July 11, 2007), at 7.