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International Trade Administration  
Washington, D.C. 20230

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Scope Inquiry  
IA/Office 4: RP  
**Public Document**

August 31, 2011

MEMORANDUM TO: Susan H. Kuhbach  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

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

Howard Smith *HS*  
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FROM: Rebecca Pandolph *RP*  
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RE: Wooden Bedroom Furniture from the People's Republic of China:  
Scope Ruling on Ashley Furniture Industries, Inc.'s Urethane Post  
Base

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### Summary

Based on the analysis below, we recommend finding that the product subject to this scope request is not covered by the scope of the antidumping duty 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) ("Wooden Bedroom Furniture Order").

### Background

On July 21, 2011, Ashley Furniture Industries, Inc. ("Ashley"), requested a ruling pursuant to the provisions of section 351.225 of the Department of Commerce's ("Department") regulations (19 CFR 351.225) as to whether its urethane post base ("urethane base") (i.e., item number 02936) is outside the scope of the Wooden Bedroom Furniture Order<sup>1</sup>. On August 29, 2011, the

<sup>1</sup> See letter from Ashley Furniture Industries, Inc. to the Secretary of Commerce regarding, "Scope Clarification Request for Imported Urethane Post Bases Used in Domestic Manufacturing," dated July 21, 2011 at 1-2 ("Ashley's Scope Request"). See also Wooden Bedroom Furniture Order.



Department extended the time limit for issuing its scope ruling or initiating a formal scope inquiry until September 20, 2011.<sup>2</sup>

### Description of Merchandise

#### Urethane Post Base 02936

Product 02936 is a urethane base used as a decorative base for bed posts on footboards. Ashley describes the urethane base as being “made primarily of painted urethane with internal wood components with an ornate style of urethane embellishment as its notable feature.”<sup>3</sup> There is no exposed wood on the urethane base.<sup>4</sup>

### 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,<sup>5</sup> highboys,<sup>6</sup> lowboys,<sup>7</sup> chests of drawers,<sup>8</sup> chests,<sup>9</sup>

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<sup>2</sup> See letter to Ashley from Abdelali Elouaradia, Director, Office4, AD/CVD Operations regarding, “Wooden Bedroom Furniture from the People’s Republic of China: Scope Ruling Request,” dated August 29, 2011.

<sup>3</sup> See Ashley’s Scope Request at 2.

<sup>4</sup> See Attachment for pictures

<sup>5</sup> 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.

<sup>6</sup> 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).

<sup>7</sup> A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

<sup>8</sup> A chest of drawers is typically a case containing drawers for storing clothing.

<sup>9</sup> 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.

door chests,<sup>10</sup> chiffoniers,<sup>11</sup> hutches,<sup>12</sup> and armoires;<sup>13</sup> (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 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;<sup>14</sup> (9) jewelry armories;<sup>15</sup> (10) cheval mirrors;<sup>16</sup> (11) certain metal parts;<sup>17</sup> (12) mirrors that do not attach to, incorporate in, sit on, or hang over a

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<sup>10</sup> 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.

<sup>11</sup> A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

<sup>12</sup> A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

<sup>13</sup> 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.

<sup>14</sup> 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 U.S. Custom Border Protection's ("CBP") Headquarters Ruling Letter 043859, dated May 17, 1976.

<sup>15</sup> 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).

<sup>16</sup> 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).

<sup>17</sup> 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

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<sup>18</sup> and (14) toy boxes.<sup>19</sup>

Imports of subject merchandise are classified under subheadings 9403.50.9042 and 9403.50.9045 of the U.S. Harmonized Tariff Schedule (“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 subheadings 9403.50.9041 or 9403.60.8081. Further, framed glass mirrors may be entered under subheading 7009.92.1000 or 7009.92.5000 of the HTSUS as “glass mirrors . . . framed.” The 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 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.<sup>20</sup>

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

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HTSUS subheadings 9403.90.7005, 9403.90.7010, or 9403.90.7080.

<sup>18</sup> 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).

<sup>19</sup> 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.

<sup>20</sup> See 19 CFR 351.225(d).

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 urethane base. Therefore, we find it unnecessary to consider the additional factors found in 19 CFR 351.225(k)(2).

## Interested Party Comments and Analysis

### Ashley's Comments

Ashley requested that the Department issue a determination that its urethane base, product 02936, is outside of the scope of the Wooden Bedroom Furniture Order. Its urethane base is made primarily of painted urethane with internal wood components and is used as a decorative base on bed posts for footboards. Ashley argues that its urethane base is not within the scope of the Wooden Bedroom Furniture Order based on an analysis of the plain language of the scope and pursuant to 19 CFR 351.225(k)(1). Specifically, Ashley argues that the exclusion for parts<sup>21</sup> in the scope applies to the urethane base. As an initial matter, Ashley argues that the exclusion applies because its urethane base is not made of wood. According to Ashley, the only wood components incorporated into its urethane base are unfinished wood components used for structural purposes. Ashley notes that the wood is not stained, sanded, or otherwise completed and its sole purpose is to provide additional structure and stability.<sup>22</sup> Ashley further argues that its urethane base fits the exclusion for parts in the scope because it: (1) is not otherwise named in the scope as a covered item, (2) is incorporated into domestically produced wooden bedroom furniture, and (3) does not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form.<sup>23</sup> Ashley also notes that its urethane base is not classified under one of the U.S. harmonized tariff schedule headings listed in the scope, which further indicates that the scope did not intend to cover parts such as its urethane base.<sup>24</sup>

With respect to not possessing the essential character of wooden bedroom furniture,<sup>25</sup> Ashley notes that in past cases the Department has looked at criteria such as whether the part gives the finished item its essential quality and whether there is substantial capital investment required to

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<sup>21</sup> The exclusion for certain metal parts reads "metal furniture parts and unfinished furniture parts made of wood products (as defined {in the scope}) 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. ..."

<sup>22</sup> See Ashley's Scope Request at 5.

<sup>23</sup> See Id.

<sup>24</sup> See Id. at 6.

<sup>25</sup> See Id. at 7.

attach the part when defining “essential character.”<sup>26</sup> In applying these criteria to the urethane base, Ashley contends that the urethane base is for aesthetic purposes in contrast to the bed to which it is affixed which is used for sleeping and that affixing the urethane base to the finished bed requires insubstantial capital investment.<sup>27</sup> Ashley states that CBP rulings on essential character have defined it as the attribute which strongly marks or serves to distinguish what an item is and which is indispensable to the core or condition of the item.<sup>28</sup> Ashley argues that the attribute which “strongly marks” and/or “distinguishes” furniture is its ability to be used to sit, store, or sleep but the urethane base in and of itself is only used for decoration. Ashley also argues that the urethane base is not an integral piece of the bed since it only serves as ornamentation and the bed could still be used for sleeping even without the urethane base.

Ashley further argues that its PRC-made urethane base does not possess the essential character of unassembled, incomplete or unfinished PRC wooden bedroom furniture since it is used in domestically manufactured wooden bedroom furniture. Additionally, Ashley states that in terms of bulk, quantity, weight, and value, the urethane base represents a minimal component of the domestically-made wooden bedroom furniture.<sup>29</sup> Ashley contends that the wooden bedroom furniture in the scope means PRC-produced wooden bedroom furniture, not domestically made wooden bedroom furniture.<sup>30</sup> Ashley argues that the Department should find that its urethane base is outside the scope using the same reasoning used in its ruling on Ashley’s imported mirrors where the Department stated that the mirrors imported from the PRC that were used with domestically made dressers were outside the scope of the antidumping order because they “are not part of a Chinese-made mirror-dresser set and are not marketed in conjunction with dressers made in the PRC.”<sup>31</sup>

The Petitioners did not submit any comments on Ashley’s request for a scope ruling.

### 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.<sup>32</sup> While the descriptions of the subject merchandise contained in these documents are useful, in discussing 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:

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<sup>26</sup> See *Id.* at 7-8.

<sup>27</sup> See *Id.* at 8.

<sup>28</sup> See *Id.*

<sup>29</sup> See *Id.* at 7.

<sup>30</sup> See *Id.* at 6.

<sup>31</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations from Zev Primor, Sr. International Trade Compliance Analyst, AD/CVD Operations, Office 4, regarding Wooden Bedroom Furniture from the People’s Republic of China: Scope Ruling on Ashley Furniture Industries, Inc.’s Polyurethane and Upholstered Mirrors,” dated April 26, 2011 at 7.

<sup>32</sup> See 19 CFR 351.225(k)(1).

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.<sup>33</sup>

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.”<sup>34</sup> The CAFC has stated, therefore, that the first analysis which the Department must consider in conducting a scope inquiry is to determine whether the product is expressly covered by the language of the scope, or exclusions, of the antidumping duty order.

In accordance with 19 CFR 351.225(k)(1) and Duferco, the Department therefore first examined the language of the scope of the Wooden Bedroom Furniture Order. Ashley has made two arguments – one that its product is not wooden, and the other that it falls under the scope's exclusion for certain parts. With respect to the first argument, we disagree with Ashley that its urethane base is not made of wood. Ashley's urethane base has a wooden core, and without this wooden core, the urethane base would not have the necessary structural support needed for its stated application. Accordingly, Ashley's urethane base is, indeed, a wooden product.

However, we do agree with Ashley that its urethane base is excluded from the scope of the Wooden Bedroom Furniture Order. The scope of the Wooden Bedroom Furniture Order excludes the following:

metal furniture parts and unfinished furniture parts made of wood products (as defined {in the scope}) 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.<sup>35</sup>

Ashley's urethane base falls under this exclusion. Based on the information provided by Ashley in its Scope Ruling Request, its urethane base is a furniture part made of painted urethane with internal wood components. Additionally, Ashley's urethane base is not otherwise specifically named in the scope as a covered item. Finally, the urethane base does not possess

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<sup>33</sup> See Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1096 (Fed. Cir. 2002) (“Duferco”).

<sup>34</sup> See id. 296 F.3d at 1097.

<sup>35</sup> Ashley states that it classifies its urethane base under HTSUS heading 9403.90.5080. While Ashley claims its urethane base is not covered by any of the HTSUS headings listed in the scope, this fact alone is not instructive, as it is the description of the product, and not the HTSUS heading which is of primary significance to the Department's analysis.



Attachment

02936 URETHANE POST BASE



