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International Trade Administration
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Scope Ruling
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FOR PUBLIC FILE

MEMORANDUM TO:

Stephen Claeys
Deputy Assistant Secretary
for Import Administration

THROUGH:

Wendy J. Frankel *wjf*
Director
AD/CVD Enforcement, Office 8

Robert Bolling *AB*
Program Manager
AD/CVD Enforcement, Office 8

FROM:

Jon Freed *JF*
Case Analyst
AD/CVD Enforcement, Office 8

RE:

Antidumping Investigation: Wooden Bedroom Furniture from the
People's Republic of China

SUBJECT:

Final Scope Ruling on Daybeds in response to request by Leggett &
Platt, Incorporated

Summary

On July 21, 2005, the Department of Commerce ("Department") received a request from Leggett & Platt, Incorporated ("L&P"), an importer of wooden daybeds from the People's Republic of China ("PRC"), for a scope ruling to determine whether certain three-sided wooden daybeds are excluded from the scope of the antidumping duty ("AD") order on wooden bedroom furniture from the 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"). On August 19, 2005, Petitioners¹ submitted comments regarding L&P's scope ruling request. On August 31, 2005, the Department issued a letter to all parties on the scope service list that extended the time period for issuing a scope ruling or initiating a formal scope inquiry by 24 days, until September 30, 2005. On September 9, 2005,

¹ The petitioners in this case are the American Furniture Manufacturers Committee for Legal Trade and its individual members the Cabinet Makers, Millmen, and Industrial Carpenters Local 721, UBC Southern Council of Industrial Worker's Local Union 2305, United Steel Workers of America Local 193U, Carpenters Industrial Union Local 2093, and Teamsters, Chauffeurs, Warehousemen and Helper Local 991.



the Coaster Company of America ("Coaster"), Hillsdale Furniture, LLC ("Hillsdale"), Largo International, Inc. ("Largo"), and L. Powell Company ("Powell"), collectively ("Importer Group"), submitted comments in support of L&P's request. On September 9, 2005, L&P submitted rebuttal comments to Petitioners' August 19, 2005, comments. On September 19, 2005, Petitioners submitted rebuttal comments to the September 9, 2005, comments by the Importer Group and L&P. On September 29, 2005, the Department issued a letter to all parties on the scope service list extending the time period for issuing a scope ruling or initiating a formal scope inquiry by an additional 21 days, until October 24, 2005. On October 4, 2005, the Importer Group submitted rebuttal comments to the Petitioners' September 19, 2005, submission. On October 21, 2005, the Department issued a letter to all parties on the scope service list extending the time period for issuing a scope ruling or initiating a formal scope inquiry by an additional 28 days, until November 21, 2005. In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that the wooden daybeds described by L&P and the Importer Group are within the scope of the Order.

Background

The Department defined the scope of the investigation in its notice of initiation. The scope language was modified during the investigation to exclude jewelry armoires, cheval mirrors², and 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.³ Thus, the scope of the Order is 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 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,

² See Issues and Decision Memorandum Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom furniture from the People's Republic of China, to Laurie Parkhill, Office Director, from Robert Bolling, Program Manager, dated August 31, 2004.

³ See Issues and Decision Memorandum Concerning Mirrors in the Antidumping Duty Investigation of Wooden Bedroom furniture from the People's Republic of China, to Laurie Parkhill, Office Director, from Robert Bolling, Program Manager, dated September 29, 2004.

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-chests⁴, highboys⁵, lowboys⁶, chests of drawers⁷, chests⁸, door chests⁹, chiffoniers¹⁰, hutches¹¹ and armoires¹²; (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 Petition 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 predominate¹³; (9) jewelry armories¹⁴; (10) cheval mirrors¹⁵ (11) certain metal

⁴ 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.

⁵ 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).

⁶ A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

⁷ A chest of drawers is typically a case containing drawers for storing clothing.

⁸ 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.

⁹ 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.

¹⁰ A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

¹¹ A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

¹² 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.

¹³ 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.

¹⁴ 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 lined with felt or felt-like material, with necklace hangers, and a flip-top lid with inset mirror. See Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Issues and Decision Memorandum 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.

parts¹⁶ (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.

Imports of subject merchandise are classified under statistical category 9403.50.9040 of the HTSUS as “wooden...beds” and under statistical category 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 statistical category 9403.50.9040 of the HTSUS as “parts of wood” and framed glass mirrors may also be entered under statistical category 7009.92.5000 of the HTSUS as “glass mirrors...framed.” This investigation covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

See Initiation of Antidumping Duty Investigation: Wooden Bedroom Furniture from the PRC, 68 FR 70228 (December 17, 2003); Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Wooden Bedroom Furniture from the People's Republic of China, 69 FR 35312 (June 24, 2004) (“Preliminary Determination”); Final Determination of Sales at Less Than Fair Value: Wooden Bedroom Furniture from the People's Republic of China, 69 FR 67313 (November 17, 2004) (“Final Determination”); 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); see also Memorandum to the File from Laurel LaCivita, Analyst, to Laurie Parkhill, Office Director, Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China: Summary on Comments to the Scope (June 17, 2004); Memorandum to Laurie Parkhill, Office Director, from Erol Yesin, Case Analyst, Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China: Summary on the Scope of the Investigation (November 8, 2004) (“Final Scope Memorandum”).

L&P's Scope Request

L&P's Description of the Merchandise

L&P submits that certain daybeds are excluded from the scope of the Order. Specifically, L&P requests that the Department clarify that the scope of the Order excludes certain daybeds that have

¹⁵ Cheval mirrors, i.e., any framed, tiltable mirror with a height in excess of 50" that is mounted on a floor-standing, hinged base.

¹⁶ 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 in subheading 9403.90.7000, HTSUS.

three sides – with the back being longer than the two sides – and are designed for use with a metal daybed link spring support (also known as a “top spring”). L&P states that the back of these daybeds is longer and generally higher than the two sides of these daybeds and that the back and sides are pre-drilled to be fitted to the daybed link spring. Further, L&P asserts that the pre-drilled back and sides must be used in combination with a link spring and cannot be used with standard bed frames. L&P contends that the back, sides, and link spring of the daybed make it suitable for seating.

L&P states that the link spring for these daybeds holds the two sides and back together to form the support for the seating area. L&P states that the daybed link spring support for the seating area is situated between 15 to 17 inches from the floor when attached to the back and sides, and is typically higher than standard bed frame supports, which makes daybeds more suitable for seating than a standard bed. Also, L&P comments that the height of the daybed link spring support permits use with a trundle or pop-up¹⁷ that is stored under the daybed frame.

L&P states that daybed mattresses sit directly on the link spring support, as opposed to a mattress for a standard bed, which sits on a box spring, which rests on the standard bed frame. L&P contends that daybed mattresses have limited thickness (generally not greater than nine inches), like the mattresses for sofa beds and futons; in contrast, the thickness for a mattress for a standard bed, which can range up to twenty inches.

Thus, L&P contends that these features of daybeds are not commonly found in standard beds or other bedroom-type furniture and that daybeds are more akin to futons or sofa beds.

L&P asserts that U.S. Customs and Border Protection (“CBP”) has not ruled as to the appropriate Harmonized Tariff Schedule (“HTS”) classification of daybeds, but that CBP has ruled that products similar to these daybeds, such as futons and sofa beds, are classified as seats under HTS heading number 9401.

*L&P’s Arguments*¹⁸

L&P argues that the descriptions provided in the scope of the Order are not dispositive as to whether daybeds are covered by the Order. L&P highlights that a pertinent part of the scope of the Order states:

¹⁷ L&P states that trundles are rollaway type beds that sit low to the ground when pulled out from under the daybed frame and that pop-ups are similar to trundles, but when pulled out from under the daybed it pops up to meet the height of the daybed seat to expand the seating area forming a larger temporary sleeping surface.

¹⁸ Both L&P and the Importer Group argue that the Department should analyze this scope request in accordance with 19 CFR 351.225(k)(2). Petitioners argue that the plain language of the scope makes clear that daybeds are covered by the scope of the Order and that an analysis pursuant to 19 CFR 351.225(k)(2) is not necessary. Nevertheless, Petitioners submitted arguments covering the criteria set forth in 19 CFR 351.225(k)(2). However, because the Department finds that the descriptions of the product contained in the petition, the investigation, and the Order are dispositive and that it is unnecessary to evaluate the merchandise under the additional factors set forth at 19 CFR 351.225(k)(2), we have not summarized the parties’ comments that pertain solely to 19 CFR 351.225(k)(2).

“the merchandise subject to this investigation is described as wooden bedroom furniture, which is generally, but not exclusively, *designed, manufactured, and offered for sale in coordinated groups, or bedrooms*, in which all of the individual pieces are approximately the same style, material, and/or finish. The furniture must be made substantially of wood products, including solid wood as well as engineered wood products, with or without non-wood components or trim, whether or not assembled, complete or finished (emphasis added).”

L&P contends that three-sided wooden daybeds designed for use with a link spring are not generally designed, manufactured, and offered for sale in coordinated groups, or bedrooms. Further, L&P asserts that daybeds are stand-alone pieces that are generally sold as individual items, and are not coordinated with other bedroom furniture items and that bedrooms generally do not have a bed and a daybed. L&P argues that daybeds are designed for use in a study, recreation room, entertainment room, den, or a room other than a bedroom.

L&P also highlights language in the scope that specifically includes furniture items and specifically excludes certain furniture pieces to argue that the plain language of the scope is not clear as to whether daybeds are covered by the Order. In particular, L&P notes that the description in the Order specifically includes:

- 1) wooden beds such as loft beds, bunk beds, and other beds; ... and 7) other bedroom furniture consistent with the above list.

In addition, L&P notes that the scope of the Order specifically excludes:

- 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; ...

L&P contends that daybeds are not specifically identified in the list of products included in the scope, and are not consistent with the general category of “bedroom furniture” covered by the list. Further, L&P argues that its daybeds are unique pieces that are typically found in rooms other than the bedroom and are primarily used for seating. In addition, L&P argues that three-sided daybeds are more akin to the items that are specifically *excluded* from the scope than those which are specifically included in the scope, because the primary use of these daybeds is for seating.

L&P argues that daybeds should be classified in the HTS under heading 9401 because daybeds are seating furniture. L&P argues that the scope of the order is not clear as to whether daybeds are covered because the scope of the Order only references HTS numbers 9403.50.9040, 9403.50.9080, and 7009.92.5000.

Citing the Final Scope Memorandum at page 8, L&P states that during the investigation the Department stated that the record of the investigation did not contain sufficient information to warrant a blanket exclusion for all daybeds, but that the Department would entertain scope clarification requests to determine whether specific day beds are within the scope of the Order.

Petitioners' Argument

Petitioners argue that the scope of the Order explicitly covers “wooden beds such as loft beds, bunk beds, and other beds.” Petitioners argue that wooden daybeds are wooden beds as evidenced by L&P’s own website, which lists daybeds as one of the several types of “beds” that it produces.

Petitioners contend that L&P’s assertion, that daybeds are not generally designed, manufactured, and offered for sale in coordinated groups, is irrelevant because this argument has been definitively rejected by the Department. Petitioners argue that the scope of the Order clearly states that the covered products are “generally, *but not exclusively*” designed, made, and sold in suites. Petitioners argue that the Department determined “that the wooden bedroom furniture covered within the scope of the investigation includes items that are not limited to products typically sold as a part of a bedroom suite,” citing the Final Scope Memorandum at page 6.

Petitioners disagree with L&P’s assertion that daybeds are more akin to sofa beds and futons, which are specifically excluded from the scope of the Order. Petitioners argue that L&P’s request does not contain any evidence that the primary use of daybeds is for seating. Nevertheless, Petitioners contend that the Department does not need to determine the primary use of daybeds because the scope of the Order plainly covers beds and the evidence shows that daybeds are beds and not primarily seating furniture.

Finally, Petitioners disagree with L&P’s assertion that daybeds should be classified under the HTS heading 9401, but state, in any case, that the HTS classification of daybeds is irrelevant because the Petition and the Order both make clear that “the HTS subheadings are provided for convenience and customs purposes, {and} the written description of the scope of this proceeding is dispositive.”

L&P’s Rebuttal

L&P disagrees with Petitioners’ assertion that because the Order covers wooden beds, daybeds necessarily are included in the scope of the Order. L&P contends that a daybed is defined as “a couch or sofa that is convertible into a bed,” citing *The American Heritage® Dictionary of the English Language*, Fourth Edition, Copyright © 2000 by Houghton Mifflin Company, Published by Houghton Mifflin Company, at <http://dictionary.reference.com/>. Accordingly, L&P argues that the plain meaning of the term “daybed,” therefore, indicates that it is used for seating and is akin to a couch or sofa, which is not included in the scope of the Order. L&P contends that a bed is defined as “a piece of furniture on or in which to lie and sleep,” citing *The Merriam-Webster Dictionary*, at <http://www.m-w.com/>. L&P contends that the term daybed is used to indicate a place of rest in the daytime that has the capability to be used as a bed if necessary and that, in contrast, beds are used for sleeping and are not for seating purposes. L&P argues that daybeds, like sofa beds and futons, are designed for seating and that beds do not incorporate any seating function.

L&P argues that the plain language of the scope of the Order does not cover daybeds because the Order specifically excludes merchandise such as sofa beds and futon frames, which include a bed function similar to daybeds. L&P argues that a futon is defined as “a type of mattress that makes up a bed,” and as an item “for dual use as a bed and a couch” citing <http://en.wikipedia.org/wiki/Futon>. L&P contends that because the scope of the Order excludes products such as sofa beds, futon frames, water beds, mattresses, mattress supports, all of which incorporate a bedding component, it would not be reasonable to conclude that daybeds are included within the scope just because the scope covers beds. Finally, L&P argues that daybeds are not “generally” nor “exclusively” made and sold in suites.

Importer Group’s Argument

The Importer Group argues that the scope section of the Petition does not state whether daybeds are within the scope. The Importer Group argues there will always be ambiguity as to whether an item not expressly listed in the scope of the Order is subject because the Petitioners have acknowledged that “[g]iven the hundreds of furniture products on the market, and the hundreds more that may be introduced in the future, it would be impossible to expressly name all of the individual products, or even categories of products, that are included within the scope of the order.”¹⁹ In addition, the Importer Group asserts that there were several requests to have the status of daybeds clarified during the initial investigation and that the issue was never resolved by the Department or the International Trade Commission (“ITC”), citing Letter filed on behalf of Shing Mark to Secretary Donald L. Evans re: Scope Comments (January 13, 2004) at 2-4, and Letter filed on behalf of Importers’ Coalition to Secretary Donald L. Evans re: Scope Comments (July 30, 2004) at 14.

Petitioners’ Rebuttal

Petitioners argue that its submission dated August 19, 2005 (“Petitioners’ Submission”) explained why daybeds are covered by the language of the Order and that daybeds are beds. Further, Petitioners argue that it showed that daybeds are widely regarded as bedroom furniture by very large furniture retailers who market them as such.²⁰ In addition, Petitioners argue that the scope of the Order states explicitly that the scope covers “bedroom furniture consistent with the... list” of other items specifically identified in the scope definition. Petitioners contend that neither L&P nor the Importer Group have shown that daybeds are not “bedroom furniture,” or that they are in any way inconsistent with the list of items specifically identified in the scope definition (including “beds”).

Petitioners disagree with the Importer Group’s assertion that daybeds are not covered because they are not “typical” beds or “regular” beds. Petitioners argue that the language of the Order

¹⁹ Citing Letter filed on behalf of Petitioners to Secretary Carlos M. Gutierrez re: Petitioners’ Response to Birchfield’s March 23 Comments and Dorel’s March 24 Comments (April 4, 2005) at 3.

²⁰ Petitioners cite pages 6-8 of its August 19, 2005, submission, wherein it referenced exhibits showing how certain U.S. retailers regarded daybeds. Petitioners discussed and provided exhibits showing that daybeds were marketed as bedroom furniture by Rooms to Go (Exhibit 1), JC Penney’s (Exhibit 2), Ethan Allen (Exhibit 3), Crate & Barrel (Exhibit 4), Pottery Barn (Exhibit 5), and L&P (Exhibit 6).

does not cover only “typical” beds or “regular” beds.

In addition, Petitioners disagree with the Importer Group’s assertion that the scope of the Order is ambiguous due to the fact that it does not list every furniture item that it covers. To the contrary, Petitioners argue that the Order specifically includes beds and “other bedroom furniture consistent with the list.” Petitioners contend that daybeds are covered by either of these provisions in the scope.

Petitioners contend that L&P did not even attempt to explain how daybeds are not beds when its own website describes its daybeds as one of the many beds that it makes. Petitioners argue that L&P’s comparison of daybeds to sofa beds and futons ignores the fundamental distinction that daybeds are widely viewed, and used, primarily as beds as evidenced by the websites of very large retailers, including L&P. In addition, Petitioners argue that neither L&P, nor the Importer Group have offered any evidence to support the claim that daybeds are primarily used as seating furniture.

Petitioners also disagree with L&P’s argument that the exclusions of sofa beds and futon frames indicate that Petitioners, in fact, wanted daybeds to be excluded from the Order. Petitioners assert that the explicit exclusions for sofa beds and futons show clearly that Petitioners carefully considered which products were suitable for use as seating that Petitioners wished to exclude from the investigation, and identified those products clearly. Petitioners argue that the fact that daybeds were not among the excluded products would suggest to a reasonable person that Petitioners did *not* wish to exclude daybeds.

Finally, Petitioners argue that, as a matter of law, because a daybed is a “bed” or “other bedroom furniture” consistent with the list of products specifically identified in the scope definition, daybeds are included within the scope definition, unless they have been explicitly excluded, which they have not been.

Importer Group’s Rebuttal

The Importer Group disagrees with the Petitioners’ assertion that daybeds are covered by the plain language of the scope of the Order. The Importer Group counters Petitioners’ assertion, that it carefully considered which products it wished to exclude and that it did not exclude daybeds, by highlighting that the Petitioners only listed headboards, footboards, rails, and canopies among the exceptions to the listing of parts excluded from the order. The Importer Group asserts that daybeds are comprised of arms, a back, and a link spring. The Importer Group argues that had Petitioners intended daybeds to be subject to the Order, they would have listed the parts as subject merchandise just as they did with respect to typical beds.

The Importer Group argues daybeds are not “other bedroom furniture” consistent with the list of items expressly enumerated as subject to the Order because daybeds do not have the same functions of the furniture items specifically listed in the scope of the Order. The Importer Group contends that the wooden bedroom furniture items expressly enumerated in the scope are used for sleeping and storage of clothes. The Importer Group argues that daybeds are used to expand the

functionality of a room other than a bedroom and are purchased to be used as seating furniture.

The Importer Group argues that the Petitioners have not presented evidence to contradict the assertion that daybeds are used for seating and expanding the functionality of a room in the home. The Importer Group cites exhibits in its September 9, 2005, submission to argue that it has demonstrated that daybeds are used for sitting, relaxation, and sleeping in areas of the home other than the bedroom, such as living rooms, dens, and home offices.²¹ In addition, the Importer Group disagrees with the Petitioners' assertion that major retailers regard daybeds as bedroom furniture. The Importer Group cites several exhibits in its September 9, 2005, submission to show that numerous retailers advertise daybeds in non-bedroom settings where the daybeds are displayed alongside such items as accent tables, bookshelves, trunks, decorative items, and seating furniture.²²

Legal Framework

The Department examines scope requests in accordance with the Department's scope regulations. See 19 CFR 351.225 (2002). 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 (including prior scope determinations) and the ITC. See 19 CFR 351.225(k)(1). This determination may take place with or without a formal inquiry. 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).

Where the descriptions of the merchandise are *not* dispositive, the Department will consider the five additional factors set forth in 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.

In the instant case, the Department has evaluated L&P's request in accordance with 19 CFR 351.225(k)(1), and the Department finds that the descriptions of the product contained in the petition, the initial investigation, and the Order are, in fact, dispositive. Therefore, the Department finds it unnecessary to consider the additional factors set forth at 19 CFR 351.225(k)(2).

²¹ The Importer Group cites articles and statements in its September 9, 2005, submission, such as, Architectural Digest (Exhibit 6), interior designer - Chris Madden (Exhibit 7), *House Beautiful* (Exhibit 10), interior designer - Randall Koll (Exhibit 11), and writer - Randall Koll in *USA Today* (Exhibit 14).

²² The Importer Group cites advertisements exhibited in its September 9, 2005, Submission such as, Largo (Exhibit 22), Hillsdale (Exhibit 22), Ballard Designs (Exhibit 23), Haverty's (Exhibit 24), Southern Daybeds (Exhibit 25), and Pottery Barn (Exhibit 21).

Analysis

With respect to the instant request, we recommend finding, for the reasons outlined below, that wooden daybeds described by L&P and the Importer Group meet the description of merchandise within the scope of the Order. The language in the scope of the Order that is relevant to this scope request provides:

“The subject merchandise includes the following items: (1) wooden beds such as loft beds, bunk beds, and other beds; ... and (7) other bedroom furniture consistent with the above list.”

Order, 70 FR 329, 332 (January 4, 2005).

L&P asserts that a daybed is defined as “a couch or sofa that is convertible into a bed.” However, the dictionary definitions of daybeds appear to be antiquated and more descriptive of daybeds of centuries past and not descriptive of the daybeds presented by L&P and the Importer Group. One definition offered by the Webster’s College Dictionary (1992) describes daybeds as “a couch, esp. of the 17th or 18th century, in the form of a chair with a greatly elongated seat, used for reclining or sleeping during the day.” As illustrated by the daybeds pictured in Attachment 1 to this memorandum, daybeds of the 17th and 18th century appear to be more easily described as couches or sofas than the daybeds exhibited by L&P and the Importer Group, which have the characteristics of beds.

The 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.²³

During the investigation, the Department considered whether daybeds were excluded from the scope of the investigation. The Department determined that daybeds were not excluded from the scope of the investigation. Final Scope Memorandum at page 8.

The 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 to be more similar to standard beds than to the surfaces of seating furniture such as, sofas, futons, or couches. As stated above, unlike daybeds, sofas and futons are not typically dressed with comforters or sheets when used as seating furniture. In addition, the distance between the floor and the surface of the mattress on a daybed appears to be greater than the distance between the floor and the surface of most seating furniture. Items such as sofas and futons are typically

²³ L&P’s July 21, 2005, Submission at Exhibits B, F, and G; Petitioners’ August 19, 2005, Submission at Exhibits 7, 8, 9, 12, 14, and 15; and the Importer Group’s September 9, 2005, Submission at Exhibit 28. In addition, the Importer Group asserts that mattress manufacturers make special mattresses specifically for daybeds. However, the same source cited by the Importer Group, namebrandbeds.com, states that “all daybeds are made to accommodate a standard twin size mattress. See Attachment 2 to this memorandum.

designed so that a person's feet rest comfortably on the floor when seated. The height of daybed mattresses appear similar to standard beds in that the surface of the bed mattress is higher than the surface of most seating furniture, making it less suited for sitting comfortably with one's feet on the ground. Similarly, the daybed mattress surface is deeper than the seating surface of most seating furniture. Whereas couches, sofas, and other seating furniture provide back support for a seated person, the surface of a daybed is too deep for the back of the daybed to offer any support while sitting. Although a person can sit on a daybed, the height and depth characteristics of the potential seating surface of daybeds make it difficult to characterize daybeds as seating furniture. In fact, the characteristics of daybeds are similar to beds and appear to offer little more seating function than standard beds.

L&P argues that daybeds should be excluded from the scope of the Order because they are stand-alone pieces that are generally sold as individual items, and are not coordinated with other bedroom furniture items. However, the Department has already determined that it is irrelevant whether an item is sold as a part of a set for it to be covered by the scope of the investigation. During the investigation, the Department determined that the scope of the investigation was not limited to items typically sold as a part of bedroom suites. Final Scope Memorandum at pages 6-7.

Both L&P and the Importer Group argue that daybeds are predominately used in rooms other than the bedroom, and as such should not be considered bedroom furniture. However, the evidence on the record shows that daybeds are used in bedrooms and guest rooms.²⁴ For example, L&P markets daybeds as bedroom furniture.²⁵ As well, members of the Importer Group, Coaster Company of America and Largo Furniture, describe and market daybeds for use in guest rooms and bedrooms.²⁶ These examples demonstrate that daybeds are used in bedrooms and guest rooms. The fact that daybeds can also be used in studies or home offices does not remove them from the scope of the Order because the scope covers wooden furniture "of a kind used in a bedroom."

Therefore, for the reasons described above, we find that the daybeds described in this memorandum meet the description of "other beds" within the scope of the Order.

²⁴ Petitioners' August 19, 2005, Submission at Exhibits 7-12.

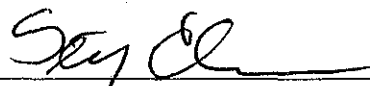
²⁵ Petitioners' August 19, 2005, Submission at Exhibit 6 shows that L&P's website includes daybeds in its "Fashion Bed Group" along with standard beds.

²⁶ Petitioners' September 19, 2005, Submission at Exhibit 1 contains an excerpt from the website of the Coaster Company of America, which describes daybeds as "an attractive addition to a guest room." Petitioners' September 19, 2005, Submission at Exhibit 2 contains an excerpt from the website of Largo Furniture wherein it displays a daybed along with a chest and dresser.

Recommendation

Based on the preceding analysis, we recommend that the Department determine that daybeds described in this memorandum meet the description of merchandise within the scope of the Order and therefore are subject to the antidumping duty Order on wooden bedroom furniture from the PRC.

AGREE ☒ DISAGREE ☐



Stephen Claeys
Deputy Assistant Secretary
for Import Administration

11/21/05
Date