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Scope Inquiry
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MEMORANDUM TO: Stephen Claeys
Deputy Assistant Secretary
for Import Administration

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

Robert Bolling
Program Manager
AD/CVD Enforcement, Office 8

FROM: Will Dickerson
Case Analyst
AD/CVD Enforcement, Office 8

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

SUBJECT: Final Scope Ruling: Drexel Heritage

Summary

On April 19, 2006, the Department of Commerce ("the Department") received a scope ruling request from Drexel Heritage ("Drexel"). See Drexel's Scope ruling request of wooden bedroom furniture from the People's Republic of China ("PRC"), dated April 19, 2006 ("Scope Request"). Drexel requested that the Department determine whether a certain vanity and vanity mirror that it imports are outside the scope of the Order. See Scope Request. On May 30, 2006, the Department extended the time period for issuing its final scope ruling until July 18, 2006. See Letter from Wendy J. Frankel to Drexel Heritage, Re: Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling Request, dated May 30, 2006. On July 10, 2006, the Department further extended the time period for issuing its final scope ruling until August 24, 2006. See Letter from Wendy J. Frankel to Drexel Heritage Re: Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling Request, dated July 10, 2006.



Background

The Department initially defined the scope of the investigation in its notice of initiation. See Initiation of Antidumping Duty Investigation: Wooden Bedroom Furniture from the People's Republic of China, 68 FR 70228. This scope language was modified at different points throughout the investigation until being finalized in the antidumping duty order, published on January 4, 2005. See 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 July 7, 2006, the Department partially revoked the Order with regard to certain jewelry armoires. See 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) ("Revocation"). The final scope language, stated in the Order and modified in the Revocation, 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, 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-chests¹, highboys², lowboys³,

¹ 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.

² 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).

³ A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

chests of drawers⁴, chests⁵, door chests⁶, chiffoniers⁷, hutches⁸, and armoires⁹; (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 predominate¹⁰; (9) jewelry armories¹¹; (10) cheval mirrors¹²; (11) certain metal

⁴ A chest of drawers is typically a case containing drawers for storing clothing.

⁵ 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.

⁶ 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.

⁷ A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

⁸ A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

⁹ 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.

¹⁰ 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.

¹¹ 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 Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Issues and

parts¹³; (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, our written description of the scope of this proceeding is dispositive.

See Order, 70 FR at 332-33; see also Revocation, 71 FR at 38621-22.

Summary of the Scope Request

Drexel states that wooden bedroom furniture is commonly designed, produced, imported, marketed and sold as bedroom suites because bedrooms require furniture to be used for sleeping, dressing and storing clothing, and the unique pieces of a furniture suite (such as a bed, a night stand, a dresser with mirror, and occasionally a chest or armoire) fulfill each of those functions. Drexel states that domestic retailers do not source individual pieces from varying suppliers, but source entire suites from one supplier; thus, competition among domestic producers and Chinese producers is on a suite-to-suite basis, not a piece-to-piece basis.

Drexel describes a typical bedroom suite of wooden bedroom furniture as a bed, night stand and a dresser with mirror, as well as a chest or armoire in larger suites. Drexel states that each piece

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; 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).

¹² Cheval mirrors, *i.e.*, any framed, tiltable mirror with a height in excess of 50" that is mounted on a floor-standing, hinged base.

¹³ 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.

in a suite is designed to function together in such a way that each piece serves the needs of someone in a bedroom. Drexel argues that in a similar way, the sink, vanity, tables, chair and mirrors in the bathroom suite of its Postobello Home Collection are integrated in order to serve the needs of someone in a bathroom. Drexel notes that the bathroom suite of its Postobello Home Collection, of which the vanity is an element, also contains a cocktail table and other tables fabricated from bamboo, which are specifically excluded from the scope of the order. Drexel concludes that the vanity is designed to be a component piece of furniture in the bathroom suite of its Postobello Home Collection, and thus, does not constitute a piece of bedroom furniture.

Additionally, Drexel asserts that the language in the scope of the Order is ambiguous as it pertains to the term “vanities,” because a vanity may be used in a bedroom or a bathroom. Citing 19 CFR 351.225(k)(1), Drexel argues that the descriptions of the merchandise are not dispositive of the scope issue when applied to the vanity. Because 19 CFR 351.225(k)(1) does not apply, in Drexel’s view, Drexel concludes that a scope ruling determination must be made under 19 CFR 351.225(k)(2).

With regard to the criteria listed in 19 CFR 351.225(k)(2), Drexel first argues that the physical characteristics of the vanity are such that it is designed to be used in the bathroom. Second, Drexel contends that the ultimate purchaser is expecting to furnish an entire bathroom, and is thus shopping for a bathroom suite, including the vanity. Third, Drexel argues that, though it is possible that the vanity could be used in rooms other than the bathroom, the ultimate use of the vanity must be determined from the ultimate intended use of the subject bathroom suite, which is the adornment of the bathroom. Fourth, with regard to the channels of trade in which the product is sold, Drexel states that it issues a purchase order for a vanity to its supplier and the supplier then ships the vanity to Drexel, finalizing the transaction. Fifth, Drexel states that bathroom vanity table sets are advertised in magazines such as Architectural Digest, Country Living, Southern Accents, and others. Drexel also notes that when one searches for vanities on Drexel’s website, the website outputs a bathroom sink.

In sum, Drexel argues that the criteria listed under 19 CFR 351.225(k)(2), namely the physical characteristics of the product, the expectations of the ultimate purchasers, the ultimate use of the product, the channels of trade in which the product is sold, and the manner in which the product is advertised and displayed, indicate that its vanity is a distinctly different product from wooden bedroom furniture included in the scope of the Order.

On August 9, 2006, Petitioners¹⁴ submitted comments on Drexel’s scope ruling request. Citing 19 CFR 351.225(k)(1), Petitioners assert that vanities are specifically included in the plain

¹⁴ Petitioners are the American Furniture Manufacturers Committee for Legal Trade (the “AFMC”) and its individual members and the Cabinet Makers, Millmen, and Industrial Carpenters Local 721, UBC Southern Council of Industrial Worker’s Local Union 2305, United Steel Workers of American Local 193U, Carpenters Industrial Union Local 2093, and Teamsters, Chauffeurs, Warehousemen and Helper Local 991 (collectively “Petitioners”).

language of the scope of the petition and the Order. Petitioners note that the vanity mirrors included in the request are designed and sold with a vanity as part of a set, and thus are also covered by the scope of the Order. Further, citing the request at page 2, Petitioners rebut Drexel's assertion that the definition of the term "vanities" is "unclear," and that the products at issue are "bathroom furniture," not bedroom furniture. Petitioners assert that Drexel provides no evidence that vanities and vanity mirrors are not bedroom furniture, and point out that Drexel categorizes vanities as bedroom furniture on its own website. Finally, Petitioners argue that nearly all furniture producers and retailers categorize vanities as bedroom furniture, hence the reason they expressly included vanities in the suggested scope language of the petition and the final scope language of the Order.

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 International Trade Commission ("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 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.

Analysis

The language of the scope of the Order clearly states:

"The subject merchandise includes the following items: (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..."

Throughout most of the scope request, Drexel collectively refers to the lower cabinet component and mirror combined as a "vanity."¹⁵ However, in its scope request, Drexel also alternatively

¹⁵ See Scope Request at pages 2-5.

refers to the lower cabinet component and mirror as a “vanity and vanity mirror.”¹⁶ Additionally, Drexel does not specify whether the lower cabinet component and mirror are sold as a set. However, the drawings included in the scope request demonstrate that the lower cabinet component is manufactured with an oval-shaped frame that is designed to accommodate a specific mirror. Because record evidence does not indicate the lower cabinet component and the mirror are sold separately, it is reasonable to conclude that both the lower cabinet component and mirror are designed to be sold as a set. Thus, the overall scope request indicates that Drexel is seeking one collective scope ruling for the lower cabinet component and mirror. Therefore, the Department will determine whether the lower cabinet component and mirror (collectively, “vanity”) is subject to the scope of the Order.

Applying 19 CFR 351.225, the Department examines scope requests for particular products, which may or may not be designed or sold as part of a larger product grouping. Drexel submitted a request for a scope ruling for a vanity, not for an entire suite of bathroom furniture made of several different pieces. Thus, we are evaluating whether the vanity, not the entire bathroom suite, is included in the scope of the Order.

The petition, the investigation, the Order and prior determinations of the Secretary and ITC all describe the merchandise as “vanities,” without further elaboration. Specifically, neither the petition nor the Order provided an exception for any kind or type of vanity, including those that may or may not be designed and/or sold for exclusive use in the bathroom. Since the implementation of the Order, there have been no scope rulings or changed circumstances reviews on vanities that might inform this analysis.

In the instant review, we agree with Petitioners that Drexel did not provide any evidence that the vanity subject to this request is not bedroom furniture. In particular, we have determined that the physical descriptions and drawings of the vanity in the scope request meet the description of subject merchandise as discussed in inclusion (3) of the scope of the Order. Moreover, no party has submitted record evidence that the vanities in question meet the description of merchandise specifically excluded from the scope of the Order.

We have evaluated the scope request in accordance with 19 CFR 351.225(k)(1) because the descriptions 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 the subject furniture. Therefore, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2) and we have not addressed Drexel’s arguments with respect to these criteria. Specifically, in accordance with 19 CFR 351.225(d), the Department determines that the vanity imported by Drexel meets the description of vanities included in the scope of the Order, under inclusion (3).

¹⁶ See Scope Request at pages 1, 4, and 5.

Recommendation

Based upon the above analysis, we recommend the Department find that the vanity subject to this request meets the description of merchandise included in the scope of the Order and, therefore, is subject to the antidumping duty Order on wooden bedroom furniture from the PRC.

✓

Agree

Disagree



Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

9/5/06

Date