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Scope Request

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November 27, 2006

MEMORANDUM TO: Stephen J. Claeyes
Deputy Assistant Secretary
for Import Administration

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

Robert Bolling
Program Manager
AD/CVD Operations, Office 8

FROM: Hilary E. Sadler, Esq.
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AD/CVD Operations, Office 8

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

SUBJECT: Final Scope Ruling: Tuohy Furniture Corporation

Summary

On April 5, 2006, the Department of Commerce ("the Department") received a scope ruling request from the Tuohy Furniture Corporation ("Tuohy"). See Tuohy's April 5, 2006, Request for Scope Ruling ("Scope Request"). Tuohy requested that the Department determine whether certain pieces of wooden furniture that it plans to import are outside the scope of the order on wooden bedroom furniture from the People's Republic of China ("PRC"). See Scope Request. Additionally, Tuohy states that the products it plans to import are to fill a special order by a single hotel customer for use in a single hotel in the United States. Petitioners submitted comments on Tuohy's Scope Request on May 12, 2006 ("Petitioners Rebuttal"). Further, Tuohy submitted rebuttal comments on July 24, 2006 ("Tuohy Rebuttal"). However, the Department extended the time period for issuing its final scope ruling until November 16, 2006. See Letter from Wendy J. Frankel to Tuohy, Re: Wooden Bedroom Furniture from the People's Republic of



China: Scope Ruling Request, (October 16, 2006; September 15, 2006; August 24, 2006; July 10, 2006; and May 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 (December 17, 2003). 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 partial 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, 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

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.

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.

predominate¹⁰; (9) jewelry armories¹¹; (10) cheval mirrors¹²; (11) certain metal 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.

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 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.

Summary of the Scope Request

On April 5, 2006, the Department received a request for a scope ruling from Tuohy on several pieces of certain furniture to be imported from the PRC. Tuohy provided detailed product descriptions, detailed drawing specifications (e.g., size, dimensions, etc.), and item numbers for each piece. Tuohy describes the furniture it plans to import as storage towers (i.e., bathroom, housekeeping, and closet), headboards, wainscoting, wood panels, a TV stand, bedside tables, and coffee tables. See Scope Request at 2-3.

Tuohy argues that the storage towers should be excluded from the scope of the order because they are not furniture dedicated to use in a bedroom and should be classified as HTSUS 9403.60.8080. Tuohy contends that the one storage tower intended to be used in the bedroom area of the hotel room could just as easily be used in a non-bedroom location. Furthermore, Tuohy maintains that the storage tower will be used to hold items such as the mini bar, safe box, and complimentary water bottles. Tuohy argues that the storage tower is most similar to “bookcases” which are specifically excluded from the scope of the order. See Scope Request at 13.

Additionally, Tuohy argues that the wainscoting and wood panels should be excluded from the scope of the order because they are not furniture and are classified as HTSUS 4409.10.9040. Tuohy maintains that they will be installed onto the walls of rooms as fixtures. Also, Tuohy contends that the headboards are also not furniture because they will be a permanent part of the walls into which they will be installed and are similar in nature to wainscoting and wood panels. Furthermore, Tuohy asserts that the TV stand and coffee tables are similarly excluded from the scope of the order because they are not furniture dedicated to use in a bedroom and are classified as HTSUS 4409.10.9040. See Scope Request at 3 and 12.

Moreover, Tuohy contends that the bedside tables, at the time of their importation, are unfinished goods not dedicated to use in a bedroom because they lack the shelves necessary to make them usable as bedroom furniture and are classified as HTSUS 9403.60.8080. Tuohy points out that the bedside tables are specifically excluded by footnote 13 of the order because they lack the essential character of bedroom furniture covered by the scope of the order. See Scope Request at 4 and 13. Tuohy urges the Department to determine that all products that are the subject of this request are excluded from the scope of the order.

Tuohy states that in the U.S. International Trade Commission’s (“ITC”) preliminary and final injury determinations, the ITC adopted the Department’s description of subject merchandise and determined that there was a single domestic like product consisting of all wooden bedroom furniture. Tuohy points out that the ITC stated that the covered merchandise “generally is designed, manufactured, and sold in coordinated groups called bedroom ‘suites,’ that it is sold primarily to retailers in the United States, that it is produced using the same production processes on the same production lines, and that it generally is perceived by market participants to be a

single product category.” See USITC Investigation No. 731-TA-1058, USITC Publication 3667 and Publication 3743.

Tuohy cites the petition in stating “Wooden bedroom furniture consists of beds and other furniture of a kind used in a bedroom. Wooden bedroom furniture is typically designed, manufactured, promoted, advertised, displayed, offered for sale, and shipped by manufacturers and importers in coordinated groups called bedroom suites, bedroom collections, bedroom groups, or bedrooms. A bedroom suite generally consists of at least a bed, one or two night stands, and a dresser with mirror. Competition among domestic producers and importers of wooden bedroom furniture is typically for bedroom suites, not for individual pieces of bedroom furniture.” See Scope Request at 11-12 (citing Petition at 5-8). According to Tuohy, a review of the descriptions of merchandise covered by the order discloses that Tuohy’s products are not included within the scope of the order. Further, Tuohy alleges that imposing an antidumping duty on goods made to order for a one-time sale to a single customer would not serve the purpose of the antidumping duty law. Tuohy claims that to include its products within the scope of the order would expand the scope well beyond the intent of antidumping duty laws.

Lastly, Tuohy states that even if the Department finds the products subject to this request are not excluded under 19 CFR 351.225(k)(1), an analysis under 19 CFR 351.225(k)(2) confirms that they are not within the scope of the order.

On May 12, 2006, Petitioners¹⁴ submitted comments on Tuohy’s scope ruling request. Petitioners argue that Tuohy’s wooden headboards, bedside tables, and storage towers are subject merchandise. Petitioners assert that wooden headboards are specifically included in the scope of the order. In addition, Petitioners argue that even though the scope did not specifically mention headboards that are attached to walls does not mean that such products are excluded from the order. Petitioners maintain that the wooden headboards attached to a wall remain wooden bedroom furniture included in the scope of the order.

Further, Petitioners argue that the bedside tables are night stands/night tables under the scope of the order. Petitioners contend that even though the bedside tables lack shelves, they still possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Also, Petitioners contend that Tuohy failed to make even a prima facie case that such merchandise lacks the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form.

Furthermore, Petitioners argue that the storage towers appear to be open pieces of case furniture with shelves that are used to store various items. Petitioners allege that the storage towers appear

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”).

to be similar to a hutch, which is an open case of furniture with shelves and included as subject merchandise under the scope of the order. Also, Petitioners note that Tuohy acknowledges that one of the storage towers will be located "in the bedroom area." Moreover, Petitioners note that the storage towers not destined for use in the bedroom appear similar, if not identical, to the one that will be located in the bedroom.

Finally, Petitioners state that Tuohy's wood panels, wainscoting, coffee tables, and TV stand are not subject merchandise in the scope of the order. Additionally, Petitioners state that they would consent to a clarification of the order with respect to the above products, provided the clarification is narrowly drawn and limited to the specific products above.

Petitioners disagree with Tuohy's assertion that to impose antidumping duties on its merchandise would not serve the purpose of antidumping duty law because the merchandise is a one-time sale and will not compete in the marketplace with Petitioners' goods. Petitioners argue that they compete in the hospitality segment of the market and for sales made on a contract basis, and therefore, Tuohy's goods directly compete with Petitioners' goods. Petitioners contend that Tuohy has not provided any evidence that the scope of the order is restricted to wooden bedroom furniture imported for retail sale in the United States. Further, Petitioners point out that any scope clarification would not apply only to Tuohy's merchandise but also to future imports by other parties.

Tuohy submitted comments on Petitioners May 12, 2006 submission on July 24, 2006. Tuohy argues that the order only covers "furniture" and that Tuohy's headboards are not "furniture," but are more like paneling and wainscoting, which Petitioners admit are outside the scope of the order. Tuohy contends that its headboards are physically different from headboards covered by the order because they are built into the walls of rooms and are not movable furniture or stand alone, nor are they attached to side rails. Tuohy points out that the headboards are not furniture because they will be a permanent part of the walls onto which they will be installed and have the exact same construction and finish as wainscoting. Tuohy argues that the width of Tuohy's "headboards" are the same as, or even greater than, the widths of the wainscoting and far exceed the "bed-size" width of traditional headboards covered by the order. Tuohy points out that its "headboards" will have widths of 144 inches and 192 inches, the widths of the hotel room walls. Tuohy claims that its attachments are called "headboards" in its submission because they will be placed in the headboard location of the hotel rooms in which they will be installed. Tuohy maintains they are not the furniture known as "headboards," which is covered by the order, but rather wall-width wainscoting.

Further, Tuohy argues that its bedside tables, without shelves, are merely wooden cubes which lack the essential character of goods covered by the order. Tuohy alleges that at the time of importation, they are unfinished goods not dedicated to use in a bedroom because they lack the shelves necessary to make them usable as bedroom furniture.

Additionally, Tuohy argues that its storage towers are not hutches, not designed to sit on another piece of furniture, and not designed to hold clothes. Tuohy argues that the storage towers are non-bedroom furniture and are more like book cases, wall systems, or entertainment systems which are all excluded from the scope of the order.

Finally, Tuohy points out that Petitioners' website discloses that it does not offer products similar to those that are the subject of Tuohy's scope request. Tuohy contends that to the extent that the Department excludes products from the scope of the order, the application of the Department's determination to future imports would be an appropriate result.

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 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. In the instant case, we find the criteria under 19 CFR 351.225(k)(1) to be dispositive; therefore, we are analyzing Tuohy's scope request under 19 CFR 351.225(k)(1).

Analysis

This ruling addresses the Tuohy products described as storage towers (*i.e.*, bathroom, housekeeping, and closet), headboards, wainscoting, wood panels, a TV stand, bedside tables, and coffee tables. We recommend finding, for the reasons outlined below, that the storage towers, wood panels, TV stand, and coffee tables described in this memorandum meet the description of merchandise excluded from the scope of the order. Furthermore, we recommend finding that the headboards and bedside tables meet the description of subject merchandise within the scope of the order.

Storage towers, TV stand, and coffee tables

The scope language of the order which is relevant to storage towers, the TV stand, and coffee tables states:

“The scope of the Petition excludes the following items: ...(3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases...(5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems...”

We determine from record evidence Tuohy provided (i.e., product descriptions, design specifications) that the storage towers subject to this request are non-bedroom furniture because they fit closely to the description of bookcases in section (3) of the exclusion of the order. Also, Petitioners have not provided any record evidence to indicate that these storage towers are similar to a hutch or that it is reasonable to broadly construe these storage towers in this manner. Therefore, because the scope of the order specifically excludes non-bedroom furniture, such as bookcases, we find that the storage towers are excluded from the scope of the order.

We determine from record evidence Tuohy provided (i.e., product descriptions, design specifications) that the TV stand (Item O23A/B) and the coffee tables (Items F018 and F019) subject to this request are non-bedroom furniture because the items fit the description of “television cabinets” and “cocktail tables” in section (5) of the exclusion of the order. Additionally, Petitioners stated that the TV stand and coffee tables are excluded from the scope of the order. See Petitioners’ Rebuttal at 5. For these reasons, we find that the TV stand and coffee tables are excluded from the scope of the order.

Wood Panels

The scope refers to “wooden bedroom furniture.” We determine from record evidence Tuohy provided (i.e., product descriptions, design specifications) that the wood panels subject to this request are not “furniture” because they are wood panels, and therefore, excluded from the scope of the order. Also, Petitioners specifically state that the wood panels are excluded. See Petitioners Rebuttal at 5. Therefore, because the scope of the order specifically refers to wooden bedroom “furniture,” we find that the wood panels are excluded from the scope of the order.

Bedside Tables

The scope language of the order which is relevant to bedside tables states:

“The product covered by the order is wooden bedroom furniture...whether or not assembled, completed, or finished. The subject merchandise includes the following items: ...(3) night tables, night stands...”

Tuohy describes items F-003A, F-003B, and F-003C as bedside tables and provides detailed product descriptions, design specifications, and dimensions. See Scope Request and Exhibits 14 and 15.

The petition, the investigation, the order and prior determinations of the Secretary and ITC all describe the merchandise as “night tables, night stands,” without further elaboration. In

particular, the petition provided no exception for any kind or type of night tables, night stands. Also, no party has submitted record evidence for a more narrow interpretation of night tables, night stands. Thus, it is reasonable to construe the definition of night tables, night stands to include all bedside tables. Furthermore, we have determined that the physical descriptions and drawings of the bedside tables in the scope request do not demonstrate that the bedside tables meet any exclusions listed in the scope of the order.

We determine from record evidence Tuohy provided (i.e., product descriptions, design specifications) that the bedside tables subject to this request are night tables or night stands. Further, the scope of the order covers night tables, night stands (i.e., bedside tables) whether or not assembled, completed, or finished. The scope of the order does not distinguish a bedside table from a night stand because the night stand does not have shelving. The order simply states that night stands and night tables are covered. And, because no party has put forth any further clarification of a night stand or night table, we find the wording dispositive. Additionally, we have found no reason to do an analysis under 19 CFR 351.225(k)(2) because evidence on the record has revealed that bedside tables are in the scope of the order.

Therefore, because the scope of the order specifically refers to “night tables, night stands whether or not assembled, completed, or finished,” and we find that bedside tables are night tables or night stands, we find that the bedside tables are included within the scope of the order.

Headboards

The scope language of the order which is relevant to headboards states:

“The subject merchandise includes the following items: ...(2) wooden headboards for beds (whether stand-alone or attached to side rails)...”

Tuohy asserts that the headboards are not furniture, but rather are more similar to the panels and wainscoting than to traditional headboards for beds because they will be a permanent part of the walls into which they will be installed. See Scope Request. Tuohy states that its headboards will be placed in the headboard location of the hotel rooms in which they will be installed. Further, Tuohy argues that its headboards are wall-width wainscoting. See Tuohy Rebuttal at 4.


Tuohy states in its Index of Attachments at the end of its scope request that Exhibits 4, 12, and 13 are wainscoting. However, Tuohy labels the item numbers associated with these exhibits as headboards. See Scope Request at Exhibits 4, 12, and 13. In fact, the item numbers in Exhibit 3 that Tuohy describes as headboards are AE 002, AE 003, and AE 004, which are the exact same item numbers (AE 003 and AE 004) in Exhibits 4 and 12.

We determine from record evidence Tuohy provided (i.e., product descriptions, design specifications) that the headboards subject to this request are included by the scope of the Order. Tuohy has described wainscoting as a headboard in its product descriptions and design specifications. Additionally, we have found no reason to do an analysis under 19 CFR 351.225(k)(2) because evidence on the record has revealed that headboards are in the scope of

the order. There is no evidence on the record in the petition to exclude headboards because they were installed into walls. Further, Tuohy specifically states that its headboards will be placed in the headboard location of the hotel rooms. Therefore, because the scope of the order refers to headboards and Tuohy specifically states its headboards will be placed in the headboard location on the hotel room walls, we find that the headboards are included within the scope of the order.

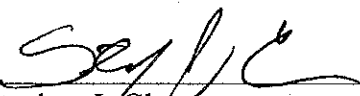
Recommendation

Based on the above analysis, we recommend that the Department determine that the storage towers, TV stands, coffee tables, and wood panels described above in this memorandum do not meet the description of merchandise included in the scope the order on wooden bedroom furniture from the PRC and, therefore, are not subject to the order. However, we recommend that the Department determine that bedside tables and headboards meet the description of merchandise included in the scope of the order and, therefore, are subject to the order on wooden bedroom furniture from the PRC.



Agree

Disagree



Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

11/27/08

Date