



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-890

Scope Ruling

Public Document

China/NME8: ED

29 SEP 2005

PUBLIC FILE

MEMORANDUM TO: Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

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

FROM: Eugene Degnan *ED*
Case Analyst
AD/CVD Enforcement, Office 8

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

SUBJECT: Final Scope Ruling: Sunrise Medical Inc.

Summary

On March 25, 2005, the Department of Commerce ("the Department") received a request from Sunrise Medical Inc. ("Sunrise") for a scope ruling to determine whether certain furniture, specifically long term care ("LTC") patient room bed panels, LTC patient room overbed tables, and LTC patient room casegoods, are covered by the antidumping order on wooden bedroom furniture from the People's Republic of China ("PRC"). See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China, 70 FR 329 (January 4, 2005) ("Order"). On April 25, 2005, Petitioners¹ submitted comments regarding Sunrise's scope ruling request. On April 29, 2005, the Department issued a letter to Sunrise and Petitioners stating that the Department required additional time beyond the regulatory 45-day limit, due to the complexity of the scope ruling, in order to make a determination. On May 19, 2005, Sunrise submitted rebuttal comments to the Petitioners' comments. On May 31, 2005, Petitioners submitted rebuttal comments to Sunrise's rebuttal comments. On June 2, 2005, Sunrise submitted additional rebuttal comments. On June 8, 2005, the Department issued a letter to Sunrise and Petitioners stating that the Department required

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 American Local 193U, Carpenters Industrial Union Local 2093, and Teamsters, Chauffeurs, Warehousemen and Helper Local 991.



additional time, and extending the time period for issuing our scope ruling or initiating a formal scope inquiry by an additional thirty days. In accordance with 19 CFR 351.225(k)(1), we recommend that the Department determine that the overbed tables described in this memo are outside the scope of the Order, and that the wooden bed panels and casegoods described in this memo 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 to exclude jewelry armoires, cheval mirrors,² 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 stated:

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

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.

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

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.

headboard and footboard; (8) bedroom furniture in which bentwood parts predominate¹³; (9) jewelry armories¹⁴; (10) cheval mirrors¹⁵ (11) certain metal 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:

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.

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.

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); and 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).

Sunrise's Scope Request¹⁷

Sunrise's Description of the Merchandise

Sunrise states that LTC patient room bed panels are wooden panels that are attached to the head and foot of a patient room bed, and that patient room beds are metal frame beds similar to hospital beds. Sunrise notes that LTC patient room bed panels are typically 36 inches wide to fit patient room beds, which are typically six inches narrower than a twin bed, and that LTC patient room bed panels are made of durable construction and with rounded corner molding for safety.

Sunrise states that LTC patient room casegoods consist of wardrobes, armoires and bed side chests, and that LTC patient room casegoods can include all or some of the following features: ventilation holes, drawers that are specially designed to be easy to grab, keyless lock system, anti-suicide bar, specialized molding, and limited height.

Sunrise states that LTC patient room overbed tables are flat table tops mounted on a wheeled metal frame in such a way that the table top can be positioned over a patient room bed and the base can fit under the bed. Sunrise notes that the overbed table can be easily raised or lowered for easy accessibility, and LTC patient room overbed tables have no drawers or storage capacity.

Summary of Sunrise's Arguments

Sunrise states that it is a manufacturer and distributor of LTC patient room products and that it intends to import certain LTC patient room furniture, namely LTC patient room bed panels, LTC patient room overbed tables, and LTC patient room casegoods, from the PRC.

Sunrise argues that LTC patient room furniture is not covered by the Order; instead, Sunrise contends that the order covers "wooden bedroom furniture" and expressly excludes "other non-bedroom furniture," and that LTC patient room furniture is not bedroom furniture. Sunrise argues that the Petition defines "bedroom" as a room where people sleep and dress, and that an LTC patient room, on the contrary, is a room where people receive medical care and treatment.

¹⁷ Because the Department finds that the descriptions of the product contained in the petition, the investigation, the Order, and the ITC 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).

Sunrise also argues that the U.S. Government already recognizes the differences between LTC patient room furniture and bedroom furniture because LTC patient room furniture is classified under HTSUS classification 9402 as "medical, surgical, dental, or veterinary furniture," whereas wooden bedroom furniture is classified under HTSUS classification 9403 for U.S. Customs and Border Protection ("CBP") purposes. Sunrise notes that, similarly, the Department Census Bureau's North American Industry Classification System ("NAICS") classifies medical furniture, including hospital beds, tables, cabinets and cases under a different code than that for wooden bedroom furniture. In addition, Sunrise states that the General Services Administration ("GSA") purchases LTC patient room furniture and wooden bedroom furniture under separate federal supply contract categories.

Moreover, Sunrise asserts that there are no facts or evidence to support the proposition that the Petitioners intended for the Order to cover LTC patient room furniture, and no indication that the Department collected data to assess duties on LTC patient room furniture. Sunrise contends that the Petitioners never indicated that LTC patient room furniture was included in the imports that they believe were being dumped. Sunrise argues that the LTC market was ignored in the self-described "comprehensive" survey of the domestic wooden bedroom furniture industry done by the Petitioners, and that Sunrise and a number of its competitors were not listed among the U.S. producers of wooden bedroom furniture in the petition.

Furthermore, Sunrise argues that patient room furniture for the LTC market is not included in the Order. Sunrise asserts that the petition refers only to "bedrooms in residences, lodging, assisted living facilities, etc." Sunrise notes that the petition expressly included furniture used in assisted living facilities, which is substantially the same as residential or hospitality furniture. Sunrise contends that LTC patient room furniture serves a distinct market which was not included in the scope of the petition.

Finally, Sunrise states that assisted living facilities offer assistance, mostly to senior citizens, with the activities of daily living, such as eating, bathing, dressing, and moving about. In contrast, Sunrise asserts that LTC facilities are certified medical facilities that offer patients with chronic disease or disability a heightened level of care provided by skilled nursing staff. Sunrise argues that this distinction is further evidenced by the fact that LTC facilities are more stringently regulated at the state and federal levels.

Petitioners' Comments

Petitioners argue that the Department should maintain its finding from the investigation that the general exclusion of LTC patient room furniture is inappropriate. Petitioners contend that Sunrise is basically requesting that the Department reconsider its refusal to exclude LTC patient room furniture from the scope of the Order, that Sunrise provides no basis for this request and that the request is overly broad.

Petitioners argue that the language of the Order makes clear that the LTC patient room furniture in question is covered by the scope of the Order. Petitioners contend that Sunrise's argument that LTC facilities were expressly excluded is false because the Order expressly states that "the subject merchandise includes . . . wooden headboards for beds . . . {and} wooden footboards for beds . . ." Petitioners assert also that the Order expressly includes "night tables, night stands, dressers . . ."

{and} chests,” which Petitioners contend are “casegoods” within the meaning of Sunrise’s definition of that term.

Moreover, Petitioners contend that Sunrise conceded that LTC patient room furniture is within the scope in its January 4, 2004, letter to the Department, in which it specifically identified LTC products covered, including casegoods and overbed tables, and stated that it appears that these items are within the scope of the investigation. See January 4, 2004, letter from Sunrise to the Department.

Also, Petitioners argue that Sunrise’s argument that LTC patient room furniture is not bedroom furniture is baseless. Petitioners contend that this argument rests on the notion that the Petition defines the term “bedroom” to include only rooms primarily used for sleeping, dressing and undressing. Petitioners state that this definition was taken out of context. Petitioners assert that the Petition clearly states that the wooden bedroom furniture covered is furniture used in “lodging and assisted living facilities, etc.” Furthermore, Petitioners assert that Sunrise’s contention that LTC patient room furniture is used only in rooms in which “an individual receives medical care and treatment” is not accurate.

Additionally, Petitioners argue that Sunrise presented a misleading description of LTC facilities. Petitioners contend that the term “LTC facilities” describes a range of facilities that offer different levels of care that range from independent and assisted living to skilled nursing care, and that there is no clear distinction between assisted care facilities and LTC facilities. Petitioners argue that many LTC patient room beds, and most LTC patient room casegoods, are sold to LTC facilities that provide for “assisted living,” rather than to nursing homes providing skilled medical care. Petitioners note, for example, that many persons suffering from Alzheimer’s disease or dementia, for whom Sunrise argues its casegoods are made, do not require skilled nursing, and therefore reside in assisted living facilities. Petitioners note that they themselves sell LTC patient room furniture to assisted living facilities that accommodate persons suffering from Alzheimer’s disease or dementia, and to homes for the aged, which also do not require skilled medical care.

Petitioners argue that it is irrelevant that the GSA purchases wooden bedroom furniture and LTC patient room furniture through separate contracting vehicles, because the GSA’s purchasing practices are very different from those of the private sector. Finally, Petitioners assert that Sunrise’s LTC Division is a member of two assisted living associations and a number of associations relating to homes for the aged.

Sunrise’s Rebuttal Comments

Sunrise reiterates that the U.S. Government already treats bedroom furniture and LTC patient room furniture as separate product lines. Sunrise asserts that wooden bedroom furniture and LTC patient room furniture do not share the same HTSUS code, NAICS code, or GSA purchasing vehicle. Sunrise refutes Petitioners’ argument that the GSA purchasing practices are different from the private sector, and argues that GSA was set up to allow the government to purchase as would a private-sector purchaser. Sunrise argues that these demarcations set forth by the U.S. Government in the HTSUS, NAICS, and GSA schedules are clear dividing lines between product groups that Petitioners have not addressed.

Also, Sunrise argues that including LTC patient room furniture would impermissibly expand the scope of the Order beyond Petitioner's definition of "bedroom." Sunrise contends that the Order is limited to wooden bedroom furniture, and that Petitioners defined bedroom furniture based on the location and function of a bedroom, *i.e.*, a room used for sleeping and dressing. Sunrise argues that the Order is further limited to bedroom furniture utilized in residences, lodging facilities and assisted living facilities. Sunrise contends that Petitioners attempt to expand the scope of the Order to encompass all wooden furniture used in assisted living facilities, rather than that used only in bedrooms. Moreover, Sunrise argues that the term "bedroom" must be clearly and statically defined in order for the Order to be administrable.

Additionally, Sunrise asserts that Petitioners admit the distinction between assisted living facilities and LTC facilities in Petitioners' own record which, Sunrise argues, suggests that there is a "spectrum of services" ranging from assisted living facilities to LTC facilities. Sunrise argues that, contrary to Petitioners' argument that tries to blur the distinctions along this spectrum, assisted living facilities and LTC facilities are, both legally and factually, separate markets distinguished by social care and medical care. Sunrise cites legal differences showing that in Virginia, assisted living facilities are regulated by the Virginia Department of Social Services, while LTC facilities are regulated by the Virginia Department of Health.

Lastly, Sunrise argues that the Petition only includes "typical" bedroom furniture, and expressly excludes non-bedroom furniture. Sunrise contends that a patient room is not a bedroom and that because LTC patient room furniture is used in patient rooms in LTC facilities, it is not "typical" bedroom furniture, and thus is not subject to the Order.

Petitioners Second Rebuttal Comments

Petitioners argue that LTC patient room headboards, footboards, and casegoods clearly fall within the language of the Petition and the Order. Petitioners contend that Sunrise's arguments rely on Sunrise's erroneous claim that Petitioners stated that only "typical" bedroom furniture is within the scope. Instead, Petitioners argue that they never made this claim. Furthermore, Petitioners deny Sunrise's claim that they suggested that all furniture found in an assisted living facility is within the scope of the Order. Petitioners contend that there are no clear dividing lines between furniture used in assisted living facilities and that used in LTC facilities, and that Sunrise has essentially conceded this point.

Petitioners argue that Sunrise's contention that Petitioners have not adequately addressed Sunrise's discussion of HTSUS, NAICS, and GSA codes and purchasing procedures is misplaced. Petitioners assert that they have not previously commented on certain codes and purchasing procedures of the above organizations because the codes and purchasing procedures are not relevant to the classification of the products or to this scope analysis.

Petitioners contend that the fact that a petitioning firm (*i.e.*, American of Martinsville) makes LTC patient room furniture is relevant to this scope request analysis to rebut Sunrise's claim that Petitioners have no interest in LTC patient room furniture. Finally, Petitioners argue that the language proposed by Sunrise for the exclusion of LTC patient room overbed tables is too open-ended and would allow for the exclusion of other furniture within the scope. Also, Petitioners argue

that the Department should decline to initiate a scope inquiry on the basis of Sunrise's current request, and suggest that Sunrise file a more narrowly-tailored request.

Sunrise's Second Rebuttal Comments

Sunrise reiterates its argument that patient room bed panels and casegoods are not covered by the Order because they are not "bedroom" furniture. Additionally, Sunrise states that its use of the word "typical" was to characterize the bedroom furniture that it believes is subject to the Order, and was not meant to imply that this term was used in the Order itself. Further, Sunrise argues that the medical aspects of its patient bed panels and casegoods discussed in its prior submissions are legitimate, and that Petitioners have submitted no evidence to the contrary.

Sunrise contends that it has placed substantial evidence on the record that demonstrates the legal and factual differences between LTC facilities and assisted living facilities. Sunrise argues that Petitioners themselves make this same distinction, and submits as evidence an annual corporate report and a press release by Petitioners in which, it contends, Petitioners distinguish the assisted living and healthcare industries.

Sunrise contends that, while HTSUS numbers are not dispositive for purposes of identifying the scope, they are recognized by the Department as "material factors." See Star-Kist Foods Inc. v. United States, 45 C.C.P.A. 16 (1957). Sunrise argues that if Petitioners intended to include medical furniture classified under HTSUS 9402 they would have done so.

Sunrise states that Petitioners are incorrect when they state that GSA purchases wooden bedroom furniture and LTC patient room furniture using different procedures. Sunrise argues that GSA uses the same procedures for both, but classifies them as distinct items of commerce. Furthermore, Sunrise states that the Department has previously relied on distinctions made by other government agencies in connection with its antidumping investigations. See Final Negative Countervailing Duty Determination: Live Swine from Canada, 70 Fed. Reg. 12186 (March 11, 2005).

Finally, Sunrise argues that the scope of the Order must be limited by the intent of the Petitioners as set forth in the Petition. Sunrise argues that Petitioners' *post hoc* assertions that they produce LTC patient room furniture are not evidence that they intended to cover LTC patient room furniture at the time the Petition was made.

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.

In the instant case, the Department has evaluated Sunrise'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, the Order, and the ITC determinations are, in fact, dispositive. Therefore, the Department finds it unnecessary to consider the additional factors set forth at 19 CFR 351.225(k)(2).

Analysis

With respect to the instant request, we recommend finding, for the reasons outlined below, that the wooden bed panels and casegoods described in this memo meet the description of merchandise within the scope of the Order, and that the overbed tables do not meet the description of merchandise within the scope of the Order.

LTC Patient Room Furniture

The Department disagrees with Sunrise's argument that LTC patient room furniture is not wooden bedroom furniture as defined by the Petition. Sunrise argues that wooden bedroom furniture is defined in the Petition based on the location and function of a bedroom as a room used for sleeping and dressing. Sunrise contends that because LTC furniture is used in LTC patient rooms (*i.e.*, rooms used primarily for medical care, not sleeping and dressing), LTC furniture is not covered by the Order. The Department finds that this definition of a bedroom cited by Sunrise was taken out of context from the "like product" section of the Petition, from an explanation of why wooden bedroom furniture is sold in integrated units. See Petition at 18. Therefore, we do not find that the language was intended to limit the scope of the investigation.

The appropriate description of the merchandise subject to the order is found in the "Description of the Subject Merchandise" section of the Petition. Specifically, the Petition clearly states that "{w}ooden bedroom furniture includes beds and other furniture (*e.g.*, night stands, dressers with mirrors, chests, and armoires) of a kind used in the bedroom (including bedrooms in residences, lodging, assisted living facilities, *etc.*) . . ." See Petition at 4 (emphasis added). Thus, the fact that wooden bedroom furniture specifically made for sale to assisted living facilities is included in the scope was raised in the Petition, and this was not changed in the investigation.

The description in the Petition does not rely on the "location and function of a bedroom." It covers wooden furniture "of a kind used in a bedroom." Furthermore, the Department disagrees that the scope is limited by this description, as Sunrise argues, to bedrooms in residences, lodging and assisted living facilities. The Petition clearly states that it "includ{es} bedrooms in residences, lodging, assisted living facilities, *etc.*" See Petition at 4. This is an inclusive statement, employing

the term “etc.,” meaning “and others especially of the same kind.” See Merriam-Webster Online Dictionary, (<http://www.m-w.com>). Therefore, we have not interpreted this statement as limiting the scope by excluding all venues not specifically listed, but rather as defining the scope to include bedrooms in residences, lodging, assisted living facilities and other similar venues.

The Department does not find that LTC facilities are distinct from other assisted living facilities in any manner that would warrant excluding LTC facilities from this Order. Both Sunrise and Petitioners have stated that assisted living facilities and LTC facilities lay along a spectrum of facilities that provide different levels of care. However, record evidence from Petitioners and Sunrise demonstrates that the furniture in question is used along that spectrum.

Sunrise argues that the fact that the U.S. Government recognizes the difference between LTC patient room furniture and bedroom furniture for CBP purposes and in its buying practices demonstrates that LTC patient room furniture is outside the scope of the Order. We disagree. The fact that other U.S. Government agencies may classify these items separately for other purposes is not relevant to this determination. The scope of the investigation is determined by the descriptions of the merchandise contained in the petition, the investigation, and determinations of the Secretary and the ITC. See 19 CFR 351.225(k)(1). Furthermore, as stated in our Order, the scope covers all wooden bedroom furniture meeting the written description of the merchandise, and this written description is dispositive, regardless of tariff classifications. See Order at 333.

Wooden Bed Panels

The scope language in the Order states that “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 . . .” See Order. Based on Sunrise’s description of its own merchandise, patient bed panels “are essentially the wooden panels that are attached to the metal frame of the head and foot of a patient room bed.” See Request at 5. We consider that these wooden panels that attach to the head and foot of a bed are in fact wooden headboards and footboards that meet the description of merchandise within the scope of the Order.

Sunrise argues that LTC patient room beds are similar to hospital beds, which are not covered by the Order, and that, therefore, the wooden bed panels are distinct from headboards and footboards covered by the Order. While metal hospital beds are not included in the Order, the merchandise at issue here is the wooden headboards and footboards, which are expressly covered by the Order. See Order at 332. Examination of the record evidence reveals that the wooden bed panels at issue are designed to function as headboards and footboards, and their purpose is primarily decorative. Accordingly, we do not find that the patient room bed panels at issue fail to meet the description of the merchandise within the scope of the Order due to the fact that they attach to patient room beds.

Sunrise further argues that its wooden bed panels are excluded because they attach to the bed frame, rather than support it. We find that the fact that the wooden bed panels attach to the bed frame rather than support it is not distinctive because many residential and hospitality industry headboards also do not support the bedframe. Additionally, the Order specifically states that “wooden headboards

for beds (whether stand-alone or attached to side rails), {and} wooden footboards for beds” are included within the scope of the Order. See Order at 332.

Additionally, Sunrise argues that its wooden bed panels are excluded from the scope of the Order because they are often designed to fit a 36-inch width bed and are made with extra durable construction and have rounded molding for safety reasons. The Department has determined in the past that additional features that do not change the primary nature of an “in-scope” product do not serve to move that product outside of the scope of the Order. See Memorandum from Edward C. Yang to Joseph A. Spetrini, Final Scope Ruling - Agreement Suspending the Antidumping Investigation on Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation (A-821-811) (June 25, 2004) (“Ammonium Nitrate Scope Ruling Memo”) at 15; see also Color Television Receivers from Taiwan: Notice of Final Scope Ruling, 63 FR 805, 806 (January 7, 1998) (“CTV Scope Ruling Memo”). Therefore, the Department finds that since these features do not change the primary nature of the patient room bed panels as wooden headboards and footboards (*i.e.*, wooden bedroom furniture), they do not move them outside of the scope of the Order.

Therefore, for the reasons described above, we consider that the wooden bed panels described in this memo meet the description of merchandise within the scope of the Order.

Casegoods

The scope language in the Order states that “{t}he 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; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests, highboys, lowboys, chests of drawers, chests, door chests, chiffoniers, hutches, and *armoires*; (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.” See Order (emphasis added). Sunrise’s casegoods are described as patient room wardrobes, *armoires*, and bed side chests made primarily of wood. See Sunrise’s March 25, 2005, Scope Request at 1 and 8. Based on Sunrise’s own description of its merchandise, its casegoods meet the description of merchandise within the scope of the Order.

Sunrise argues that the additional features of the casegoods described by Sunrise (*e.g.*, ventilation holes, drawers that are specially designed to be easy to grab, keyless lock system, anti-suicide bar, specialized molding, and limited height) distinguish them from bedroom furniture used in assisted living facilities. However, we do not find that the primary nature of these casegoods, *i.e.*, as wardrobes, *armoires* and bedside chests, is changed by these additional features. Therefore, we find that these additional features do not serve to remove the casegoods from within the scope of the Order. See Ammonium Nitrate Scope Ruling Memo at 15; CTV Scope Ruling Memo, 63 FR 806.

Additionally, we note that, by Sunrise’s own admission, these additional features cater to treatment of persons with dementia and Alzheimer’s disease, *i.e.*, persons who often reside in assisted living facilities. See Sunrise’s March 25, 2005 Scope Request at 21. Accordingly, since wooden bedroom furniture designed for and used in assisted living facilities is explicitly identified in the petition as being included within the scope of the Order (see Petition at 4), we find that these characteristics do not serve to differentiate these casegoods from other casegoods within the scope of the Order.

Therefore, for the reasons described above, we consider that the casegoods described in this memo meet the description of the merchandise within the scope of the Order.

Overbed Tables

The scope of the Order provides an illustrative list which describes merchandise considered to be within the scope of the order, and further provides that "other bedroom furniture consistent with" the merchandise described are considered within scope. While this list of merchandise is illustrative, rather than comprehensive, the Department has determined that the description of overbed tables is neither explicitly included within the merchandise enumerated or consistent with any of the descriptions of the bedroom furniture included in the Order's illustrative list.

Pursuant to section 351.225(k)(1), the Department has examined the scope language, descriptions in the petition, the initial investigation, and determinations from the Commission, and finds no indication that the scope was intended to cover overbed tables. See 19 C.F.R. § 351.225(k)(1). The Department has considered whether overbed tables would be "consistent with" other merchandise described as being within the scope of the Order by examining whether an overbed table might be akin to either night tables and night stands from part three¹⁸ of the list of included merchandise or desks and writing tables that are attached to or incorporated in the subject merchandise from part six¹⁹ of the list.

The overbed tables in question consist of an adjustable cantilevered metal frame and wheeled metal base which are designed specifically to work in conjunction with a hospital bed to allow the table top of the overbed table to be positioned over the bed while the base slides easily below the bedframe. The Department considers that these overbed tables are not similar to or consistent with night tables or night stands described in part three because night tables and night stands are conventionally designed to sit next to a bed, not over it. See Petition at 21. The Department further considers that these overbed tables are not consistent with desks or writing tables described in part six because, unlike the desks or writing tables described, overbed tables are not attached to, or incorporated in, subject merchandise. See Order at 332-33.

Furthermore, we find that these overbed tables do not meet any of the other physical characteristics of the merchandise covered by the Order. Therefore, we consider that overbed tables are not included in the scope of the Order.

Recommendation

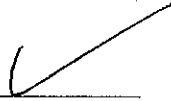
Based on the preceding analysis, we recommend that the Department determine that the wooden bed panels and casegoods described in this memo meet the description of merchandise within the scope

¹⁸ ". . . (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chiffonrobes, and wardrobe type cabinets. . ." Order at 332.

¹⁹ ". . . (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise . . ." Order at 332.

of the Order and therefore are subject to the Order on wooden bedroom furniture from the PRC. We further recommend that the Department determine that the overbed tables described in this memo, i.e., adjustable, drawerless, overbed tables consisting of a cantilevered metal frame, wheeled casters and a laminate wooden table top, designed to be used in conjunction with a patient room or hospital bed, do not meet the description of merchandise within the scope of the Order and therefore are not covered by the Order on wooden bedroom furniture from the PRC.

AGREE



DISAGREE

Barbara E. Tillman

Barbara E. Tillman
Acting Deputy Assistant Secretary
for Import Administration

September 29, 2005

Date