



A-570-890
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: LumiSource, Inc.

Summary

On October 21, 2004, the Department of Commerce ("the Department") received a scope ruling request from LumiSource, Inc. ("LumiSource"). See LumiSource's October 21, 2004, Request for Scope Ruling ("Scope Request"). LumiSource requested that the Department determine whether certain occasional seating furniture that it produces is outside the scope of the investigation of wooden bedroom furniture from the People's Republic of China ("PRC"). See Scope Request. Specifically, the request covers LumiSource's cell phone stash chair, whale stash chair, dolphin stash chair and stash cube.

On January 4, 2005, the Department published the antidumping duty order on wooden bedroom furniture from the PRC. 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").



Background

The Department initially defined the scope of the investigation in its notice of initiation. This scope language was modified at different points throughout the investigation until being finalized in the antidumping duty order. The final scope language 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,

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.

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;

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 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.

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.

(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 332-333.

The Department did not consider Lumisource’s October 21, 2004, submission in the final scope memorandum or at any other point in the investigation because it was not filed prior to the July 30, 2004, deadline established in our preliminary determination. See 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); see also Memorandum from Laurel LaCivita, Senior Case Analyst, through Robert Bolling, Program Manager, to Laurie Parkhill, Office Director for China/NME Group 8: Preliminary Determination: Wooden Bedroom Furniture from the People’s Republic of China in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People’s Republic of China, June 17, 2004 (“Prelim Scope Memo”).

On August 6, 2004, Petitioners¹⁴ provided rebuttal comments to issues outlined in the Prelim Scope Memo and submitted by interested parties by July 30, 2004. In their August 6, 2004, submission, Petitioners did not address comments that were not timely filed. See Letter from King and Spalding to Secretary of Commerce: Petitioner’s Rebuttal Comments Concerning the

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.

¹⁴ Petitioners are the American Furniture Manufacturers Committee for Legal Trade 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”).

Scope of the Investigation, August 6, 2004, at page 4. Thus, Petitioners did not submit comments on the scope request.

In our final determination, the Department only addressed comments received by July 30, 2004. See 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); see also Memorandum from Erol Yesin, Case Analyst, to Laurie Parkhill, Office Director, Final Determination: Wooden Bedroom Furniture from the People's Republic of China: Comments of the Scope of the Investigation (November 8, 2004); see also Letter from Laurie Parkhill to All Interested Parties (October 25, 2004). We did not consider nor respond to the scope request because it was not received prior to July 30, 2004.

On July 28, 2005, the Department issued a letter to LumiSource, requesting that it submit an affirmative response if it continued to be interested in the issues raised in its October 21, 2004, submission. See Letter from Wendy J. Frankel to LumiSource, Inc. (July 28, 2005) ("Letter of Interest"). In the letter, the Department stated that we would address the issues raised in LumiSource's October 21, 2004, submission in the context of a scope inquiry pending receipt of an affirmative response from LumiSource indicating a continued interest in receiving a scope ruling. See Letter of Interest. On August 9, 2005, LumiSource submitted an affirmative response, stating that it continued to be interested in the issues raised in its October 21, 2004, submission, and requested the Department address those issues in the context of a scope inquiry. On October 6, 2005, Petitioners submitted comments regarding LumiSource's October 21, 2004, and August 9, 2005, submissions. We are addressing LumiSource's October 21, 2004, submission herein.

Summary of the Scope Request

LumiSource describes its cell phone stash chair, whale stash chair, dolphin stash chair, and stash cube ("stash furniture") as primarily plush, upholstered furniture with a plywood frame. LumiSource argues that the stash furniture is designed as seating furniture for use in living, family, play or game rooms. LumiSource contends that the primary and common usage for the stash furniture is for seating while talking on the phone, watching TV, and/or playing video games.

LumiSource asserts that while the stash furniture features storage units for entertainment items, the storage function of the stash furniture is secondary to its seating function, as evidenced by the limited space of the storage area. LumiSource argues that bedroom storage furniture, in contrast, has more space that is devoted to storing clothing, but no seating capacity; such that its principal function is storage in a bedroom. LumiSource also cites several rulings issued by U.S. Customs and Border Protection ("CBP"), in which CBP classified certain seating furniture with a subsidiary storage function under HTSUS 9401.61.6010, which provides for "other seats, with

wooden frames, upholstered, other household.”¹⁵ LumiSource asserts that, although the stash furniture is labeled “stash” chairs and cube, the storage function is secondary to its seating function.

In addition, LumiSource argues that the stash furniture is not made substantially of wood. LumiSource contends that the stash furniture is almost entirely made of non-wood materials (e.g., fabric) and the wooden frame is not significantly greater than the non-wood materials in structure and function. Further, LumiSource argues that a piece of furniture is substantially made of wood based on the visual impression that the piece conveys to the purchaser, and that the purchaser could easily confirm that the stash furniture is made primarily of fabric and foam.

Further, LumiSource argues that it markets and advertises the stash furniture as occasional or novelty seating furniture; not for use in the bedroom. LumiSource states that it features the stash furniture in the “Chairs” section of its product line, and that chairs, stools and benches are all defined in the dictionary as examples of “seats.”¹⁶ Thus, LumiSource argues that the stash furniture is not bedroom furniture, nor is it consistent with the type of bedroom furniture included in the scope of the investigation.¹⁷

Finally, LumiSource argues that if the Department finds the description in the scope is not dispositive relative to the stash furniture, the stash furniture is still outside the scope by means of application of the “Diversified Products” criteria.¹⁸ LumiSource argues that 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 for the stash furniture are all distinct from that of wooden bedroom furniture.

Petitioners concur with LumiSource, stating that the stash furniture should be excluded from the scope of the order. Petitioners maintain, however, that the Department should specifically identify the cell phone stash chair, whale stash chair, dolphin stash chair, and stash cube as specific products in the event of a scope clarification, and not provide a general description of those products.

¹⁵ In support of its argument, LumiSource cites NY G89992 (May 10, 2001); NY F82732 (February 22, 2000); DD 803785 (November 22, 1994).

¹⁶ In support of its argument, LumiSource cites Gove, Philip Babcock. *Webster's Third New International Dictionary, Unabridged*. Springfield, MA: Merriam-Webster, 2002.

¹⁷ LumiSource cites Petition for the Imposition of Antidumping Duties: Wooden Bedroom Furniture from the People's Republic of China, October 31, 2003 at page 18.

¹⁸ LumiSource cites Diversified Products v. United States, 572 F. Supp. 883 (CIT 1983) (“Diversified Products”).

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 scope language of the order which is relevant to the scope request states:

"Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms...The subject merchandise is made substantially of wood products...The scope of the Petition excludes the following items: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture..."

The physical descriptions and photographs of the cell phone stash chair, whale stash chair, dolphin stash chair, and stash cube clearly demonstrate that they are "seats," "chairs," or "other seating furniture." See Scope Request at pages 3-4 and Exhibit A. In addition, the physical descriptions, photographs, and advertisements provided by LumiSource confirm that the furniture subject to this request is used primarily for seating rather than storage. See Scope Request at pages 3-4 and Exhibits A, D-H. Thus, the furniture subject to this request clearly meets the description of merchandise 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. Consequently, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2). Therefore, in accordance with 19 CFR 351.225(d), the Department determines that the cell phone stash chair, whale stash chair, dolphin

