



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

A-570-890
Scope Inquiry
IA / Office 8: JHC
Public Document

March 9, 2007

FOR PUBLIC FILE

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

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

Robert A. Bolling *RB*
Program Manager
AD/CVD Operations, Office 8

FROM: Juanita H. Chen *JHC*
Acting Special Assistant to the Senior Enforcement Director
China/NME Group, SEC Office

RE: Wooden Bedroom Furniture from the People's Republic of China:
Scope Ruling on Toy Boxes

SUMMARY:

On September 26, 2006, Toys "Я" Us, Inc. ("ToysRUs") filed a submission with the Department of Commerce ("Department") requesting a scope clarification on whether certain toy boxes imported by ToysRUs are included within the scope of the order on wooden bedroom furniture from the People's Republic of China ("PRC") ("Scope Request").

In accordance with 19 C.F.R. 351.225(k)(1), we recommend that the Department determine that four of the five toy boxes from ToysRUs' Scope Request are included within the scope of the antidumping duty order on wooden bedroom furniture from the PRC. We also recommend that the Department determine that one of the five toy boxes from ToysRUs' Scope Request is outside the scope of the antidumping duty order on wooden bedroom furniture from the PRC.



SCOPE:

On January 4, 2005, the Department published the order in the wooden bedroom furniture from the PRC investigation. 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) ("WBF Order"). Since that date, certain clarifications to the WBF Order have been made, so that the 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,

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).

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 order excludes the following items: (1) seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate¹⁰; (9) jewelry armories¹¹; (10) cheval mirrors¹²; (11)

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.

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 Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office

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; and (13) upholstered beds¹⁴.

Imports of subject merchandise are classified under subheading 9403.50.9040 of the HTSUS as "wooden . . . beds" and under subheading 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 subheading 9403.50.9040 of the HTSUS as "parts of wood" and framed glass mirrors may also be entered under subheading 7009.92.5000 of the HTSUS as "glass mirrors . . . framed." This order 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.

Director, 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: Notice of Final Results of Changed Circumstances Review and Revocation in Part*, 71 FR 38621 (July 7, 2006).

¹² Cheval mirrors are, *i.e.*, any framed, tiltable mirror with a height in excess of 50" that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.*, a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet lined with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture From the People's Republic of China: Final Results of Changed Circumstances Review and Determination To Revoke Order in Part*, 72 FR 38621 (January 9, 2007).

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 under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 9403.90.7000.

¹⁴ Upholstered beds that are completely upholstered, *i.e.*, containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part*, 72 FR 7013 (February 14, 2007).

BACKGROUND:

On November 14, 2005, the Department issued a final scope ruling with regard to a request by Dorel Asia Srl ("Dorel") on whether toy boxes or chests, and infant (baby) armoires are covered by the scope of the WBF Order. See "Final Scope Ruling and Formal Scope Inquiry Initiation: Dorel Asia" memorandum from Michael Holton, Senior Case Analyst, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, dated November 14, 2005 ("2005 Scope Ruling").¹⁵ As part of the 2005 Scope Ruling, the Department noted that the scope language identifies a typical chest as a piece that can either include drawers or be designed as a large box incorporating a lid. See 2005 Scope Ruling, at 11. The Department found that the language of the WBF Order was dispositive, clearly stating that wooden bedroom chests or boxes incorporating a lid are included within the scope, regardless of the proposed contents, design or defined purpose of the chests or boxes. *Id.* at 12. As a result, the Department found that wooden toy boxes or chests fall under the scope of the WBF Order.

On September 26, 2006, ToysRUs filed its Scope Request with the Department, asking that five models of toy boxes¹⁶ that it imports be found outside the scope of the WBF Order. ToysRUs notes it disagrees with the 2005 Scope Ruling on toy boxes and, furthermore, argues that its toy boxes differ from Dorel's toy boxes in the 2005 Scope Ruling. As part of its Scope Request, ToysRUs provides physical dimensions, weights, product numbers, written descriptions and pictures of the merchandise. See Scope Request at 3-7 (copies of these pages are attached hereto).

ToysRUs argues the scope of the WBF Order covers only furniture specifically designed to be used only in the bedroom. ToysRUs argues petitioners indicated this intent, to limit the scope to furniture specifically designed to be used only in the bedroom, by excluding "other non-bedroom furniture" from the proposed scope in the original petition. ToysRUs notes the International Trade Commission ("ITC") does not include toy boxes in its definition of wooden bedroom furniture. ToysRUs points to the ITC report, which states that wooden bedroom furniture has "physical characteristics applicable to the intended use in a bedroom," to support its argument that the scope is limited to furniture specifically designed to be used only in the bedroom. Under this interpretation, ToysRUs contends that the scope of the WBF Order does not include furniture that could, but is not specifically intended to, be used in a bedroom, such as those items listed as exclusions to the WBF Order. ToysRUs claims that the express purpose of toy boxes is to store

¹⁵ The Department also concurrently initiated a formal scope inquiry on certain infant (baby) changing tables and toddler beds, which were later found to be outside the scope of the WBF Order. See "Infant (baby) Changing Tables and Toddler Beds Scope Determination" memorandum from Michael Holton, Senior Case Analyst, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, dated August 11, 2006.

¹⁶ These toy boxes are identified as: 1) Cabbage Patch Kids Wooden Toy Box, manufactured by Toy Vault; 2) Americana Wood Toy Box with Bins, manufactured by Little Tikes; 3) Americana Wood Toy Box, manufactured by Little Tikes; 4) Toy Box with Wheels, manufactured by Fun Times; and 5) Transportation Toy Box, manufactured by KidKraft. See Scope Request at 3-7.

children's toys, as well as to entertain and educate children, and concludes that, as toy boxes are not specifically intended for the bedroom, they are not bedroom furniture within the scope of the WBF Order.¹⁷

ToysRUs further argues that, under various other definitions, toy boxes are not bedroom furniture. For instance, ToysRUs asserts that the furniture industry defines bedroom (a.k.a. blanket or cedar) chests as used for storing and protecting blankets or sheets. ToysRUs goes on to distinguish bedroom chests from toy boxes by stating they are larger, do not have safety features (e.g., slow-closing safety hinge, air vents, and no locking mechanism), are often made of or lined with cedar, and have traditional designs rather than "designs and shapes intended to attract, amuse and educate children." See Scope Request at 13. ToysRUs also notes that dictionary and encyclopedia definitions of "bedroom furniture" focus on the intended use of furniture in the bedroom, and argues that because toy boxes are used to store toys, they do not fall under the definition of bedroom furniture. ToysRUs also argues that U.S. Customs and Border Protection ("CBP") does not classify toy boxes under the HTSUS numbers of the WBF Order, but rather under 9403.60.8080, for "other wooden furniture."

Finally, in applying a "Diversified Products" analysis under 19 C.F.R. 351.225(k)(2), ToysRUs argues that based on the: 1) physical characteristics; 2) expectations of ultimate purchasers; 3) ultimate use; 4) channels of trade; and 5) marketing and advertising, toy boxes fall outside the scope of the WBF Order.

On November 7, 2006, the Department extended the time in which to initiate a scope inquiry or make a scope ruling to January 8, 2007.

On December 4, 2006, the American Furniture Manufacturers Committee for Legal Trade ("Petitioners") submitted comments on the Scope Request ("Petitioners' Comments"), noting that the Department previously determined, as ToysRUs acknowledges, that toy boxes or chests are subject to the WBF Order. See 2005 Scope Ruling. Petitioners state that ToysRUs previously participated and submitted comments in the inquiry leading to the 2005 Scope Ruling, and that ToysRUs presents no new arguments in the current inquiry at hand. See Petitioners' Comments at 1-2. Petitioners point out that the Department already determined that the description of the merchandise in the WBF Order is dispositive as to toy boxes or chests, pursuant to 19 C.F.R. 351.225(k)(1), and that a Diversified Products analysis under 19 C.F.R. 351.225(k)(2) is unnecessary.

In addressing the Scope Request, Petitioners counter ToysRUs' conclusion that the petition intended for toy chests to be excluded from the scope of the WBF Order, by pointing out that at least one of the original petitioners manufactures toy chests as part of a youth bedroom suite; Petitioners note these toy boxes have the same characteristics (e.g., slow-closing safety hinge, air

¹⁷ Nevertheless, ToysRUs argues that toy boxes do not fall under the scope's definition of "chests," as toy boxes are generally wider than they are tall, and are not used for storing clothes but rather toys and other play things.

vents, and no locking mechanism) that ToysRUs uses to distinguish toy chests from bedroom furniture. In addition, while ToysRUs claims that its toy boxes are specifically meant to store toys, Petitioners assert that ToysRUs' website contradicts this claim, as many toy boxes on the website are described as having storage space for clothes and blankets, and that suggested "related items" for purchase are bedroom furniture. Regardless, Petitioners argue that the Department does not look to the purported end use in defining the scope of an order, but rather looks at the physical characteristics, and point out that the 2005 Scope Ruling states that "the scope of the Order makes no references requiring that boxes or chests be used for any particular or defined purpose." See Petitioners' Comments at 4. Petitioners argue that, as the Department previously determined in its 2005 Scope Ruling that toy boxes are within the scope of the WBF Order, the Department should uphold that ruling and reject ToysRUs' request that its toy boxes be found outside the scope of the WBF Order.

On December 21, 2006, ToysRUs submitted a responsive filing to Petitioners' Comments. ToysRUs asserts that the toy boxes for which it requests a scope ruling are "completely different merchandise" from that covered by the 2005 Scope Ruling and, thus, argues that the 2005 Scope Ruling is not binding to the specific merchandise in the current scope inquiry. Furthermore, ToysRUs argues that the mere fact that a petitioner manufactures toy chests does not dictate inclusion of the item within the scope of the WBF Order. ToysRUs points out that the same petitioner manufactures other items, such as chairs and tables, that are not within the scope of the WBF Order. ToysRUs also argues that the language in the original petition, describing wooden bedroom furniture as having "physical characteristics that are dictated by their intended use in a bedroom, and are typically used in a bedroom" contradicts Petitioners' claim that the Department looks to the physical characteristics in defining the scope of an order. ToysRUs argues that toy boxes do not have the physical characteristics that are dictated by their intended use in a bedroom, but rather by their intended use in many rooms. Finally, ToysRUs notes that the toy boxes Petitioners reference from ToysRUs' website are not those for which ToysRUs requests a scope ruling, and that the "related items" for purchase are merely suggestions and include many items that fall outside the scope of the WBF Order, and thus these references fail to support Petitioners' arguments.

On December 29, 2006, Petitioners submitted a responsive filing, asserting that the merchandise in ToysRUs' scope request, *i.e.*, toy boxes or chests, is the same as that covered by the 2005 Scope Ruling. Petitioners point out that the Department based its decision in the 2005 Scope Ruling on the general characteristics of toy boxes or chests, and not on the specific characteristics of Dorel's toy boxes or chests. Petitioners argue that as ToysRUs' toy boxes do not differ significantly from Dorel's toy boxes or chests, they too are covered by the WBF Order. In addition, Petitioners assert that while ToysRUs disagrees with the Department's 2005 Scope Ruling, it is nevertheless bound by the ruling. Petitioners argue that ToysRUs cannot rely on the CBP tariff classification, as the WBF Order states that it covers all wooden bedroom furniture as described in the scope of the order "regardless of tariff classification." Finally, Petitioners argue that ToysRUs incorrectly relies on ultimate use in its arguments. Petitioners note that the Department determined in the 2005 Scope Ruling that the language of the WBF Order is

dispositive under 19 C.F.R. 351.225(k)(1) and that it was unnecessary to consider the additional factors under 19 C.F.R. 351.225(k)(2), which includes ultimate use.

On January 5, 2007, the Department extended the time in which to initiate a scope inquiry or make a scope ruling to March 9, 2007.

LEGAL FRAMEWORK AND ANALYSIS:

The Department examines scope requests in accordance with our regulations at 19 C.F.R. 351.225. Under 19 C.F.R. 351.225, 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 C.F.R. 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 C.F.R. 351.225(d).

Where the descriptions of the merchandise are not dispositive, the Department will consider the following factors, as provided under 19 C.F.R. 351.225(k)(2): 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 2005 Scope Ruling, the Department found that pursuant to 19 C.F.R. 351.225(k)(1), the descriptions of wooden bedroom furniture are dispositive with respect to toy boxes or chests, which were found to be within the scope of the WBF Order. As part of our analysis in the 2005 Scope Ruling, the Department noted that the scope of the WBF Order “identifies a typical ‘chest’ as a piece that ‘can either include drawers or be designed as a large box incorporating a lid.’ . . . regardless of the proposed contents and design of the chests or boxes.” *See* 2005 Scope Ruling at 11-12. The Department also noted that the WBF Order “makes no reference requiring that boxes or chests be used for any particular or defined purpose. Nor does {it} provide exclusionary language for toy boxes or chests or any other wooden bedroom furniture that may be fitted with slow-closing safety hinges, special locking mechanisms, or air vents.” *Id.* at 12.

In the current scope inquiry, ToysRUs submits five toy boxes that it argues are completely different merchandise from Dorel’s toy boxes or chests, and are outside the scope of the WBF Order: 1) Cabbage Patch Kids Wooden Toy Box; 2) Americana Wood Toy Box with Bins; 3) Americana Wood Toy Box; 4) Toy Box with Wheels; and 5) Transportation Toy Box. Based on the criteria of 19 C.F.R. 351.225(k)(1), in analyzing the general characteristics of each item and comparing each item to the scope of the WBF Order, reviewing the pictures and descriptions as submitted by ToysRUs, the Department finds that the: 1) Cabbage Patch Kids Wooden Toy Box; 2) Americana Wood Toy Box with Bins; 3) Americana Wood Toy Box; and 4) Transportation

Toy Box are large boxes, incorporating a lid, and are made substantially of wood. Thus, these toy boxes clearly meet the description of the merchandise covered by the WBF Order.

Although ToysRUs argues that the scope describes a chest as “typically . . . taller than they are wide” and counters that its toy boxes are generally wider than they are tall, we note that the language of the scope uses the word “typically” and not “always.” Furthermore, ToysRUs misses the point by trying to distinguish its toy boxes from the toy boxes or chests produced by Dorel, as the proper inquiry is not whether ToysRUs’ merchandise is distinguishable from Dorel’s in-scope merchandise, but whether ToysRUs’ merchandise, given the detailed specifications and descriptions provided, falls within the scope of the order. In conducting a scope inquiry, the Department looks only to whether the descriptions and characteristics of the merchandise contained in the scope inquiry fall within the scope of the order. It is of no consequence that ToysRUs’ merchandise has different product numbers, UPC codes, designs, color schemes, and manufacturers than Dorel’s in-scope merchandise. In addition, while ToysRUs argues that CBP classifies toy boxes under an HTSUS number not listed in the scope of the WBF Order, the WBF Order specifies that “{a}lthough the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.” Furthermore, while CBP classifications may be informative, they are not determinative in a Department scope inquiry. Rather, scope inquiries are governed by 19 C.F.R. 351.225. Finally, while ToysRUs argues that the Department should consider the furniture industry, dictionary, and encyclopedia definitions of toy boxes, which look to the ultimate use of toy boxes, “ultimate use” is a factor under 19 C.F.R. 351.225(k)(2). In the instant case, the Department has evaluated ToysRUs’ Scope Request in accordance with 19 C.F.R. 351.225(k)(1), and the Department finds that the descriptions of the merchandise, showing the four ToysRUs toy boxes to be boxes incorporating a lid, clearly fall under merchandise covered by the WBF Order. Therefore, we find it unnecessary to consider that additional factors set forth in 19 C.F.R. 351.225(k)(2).

While four of ToysRUs’ toy boxes clearly meet the description of the merchandise covered by the WBF Order, as discussed above, the fifth toy box does not. In analyzing the item identified by ToysRUs as a “Toy Box with Wheels” the Department finds that, although made substantially of wood products, the item does not appear to be a chest, box or other bedroom furniture as described in the WBF Order. Rather, the item, a square, five-sided box, with no lid or drawers, and with wheels located at the bottom four corners, appears to function more as a rolling carton or bin. Thus, this item does not meet the description of the merchandise covered by the WBF Order.

