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Scope Inquiry
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MEMORANDUM TO: Susan H. Kuhbach
Acting Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: Abdelali Elouaradia *AB/EL*
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FROM: Maisha Cryor *MC*
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RE: Wooden Bedroom Furniture from the People's Republic of China:
Scope Ruling on Legacy Classic Furniture, Inc.'s Heritage Court
Bench

Summary

Based on the analysis below, we recommend finding that the product subject to this scope inquiry is within the scope of the antidumping duty order on wooden bedroom furniture (WBF) 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).

Background

On June 16, 2010, Legacy Classic Furniture, Inc. (Legacy) requested a ruling by the Department of Commerce (Department) to determine whether the item it imports and describes as a bench (hereinafter, Heritage Court Bench) is outside of the scope of the order on WBF from the PRC.¹ On July 28, 2010, the Department initiated a formal scope inquiry pursuant to 19 CFR 351.225(e).

¹ See Legacy's June 16, 2010, scope ruling request at 1-2 (Scope Request); see also Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part, 75 FR 50992, 50994-50995 (August 18, 2010)(WBF Final).



Description of the Merchandise

Legacy describes the product subject to this scope inquiry, *i.e.*, the Heritage Court Bench, as a backless wooden seating bench measuring 50 inches wide by 19 inches tall by 20 inches deep.² Legacy states that the body of the Heritage Court Bench is made from solid hardwood with Okume Mahogany veneers and a cocoa brown wood finish.³ Legacy states that the Heritage Court Bench has a top that consists entirely of a padded leather surface.⁴ In addition, Legacy states that the leather top has hinges and lifts up to reveal a cedar-lined interior storage area.⁵

Scope of the Order

The product covered by the order is WBF which 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, 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-chests,⁶ highboys,⁷ lowboys,⁸ chests of drawers,⁹ chests,¹⁰ door chests,¹¹ chiffoniers,¹² hutches,¹³ and armoires;¹⁴ (6) desks, computer stands, filing cabinets,

² See Scope Request at 2.

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 2 and Exhibit 7.

⁶ 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.

⁷ 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).

⁸ A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

⁹ A chest of drawers is typically a case containing drawers for storing clothing.

¹⁰ 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.

¹¹ 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.

¹² A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie,

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 predominate;¹⁵ (9) jewelry armories;¹⁶ (10) cheval mirrors;¹⁷ (11) certain metal parts;¹⁸ (12) mirrors that do not attach to, incorporate in, sit on, or hang over a

often with mirror(s) attached.

¹³ A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

¹⁴ 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.

¹⁵ 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.

¹⁶ 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 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: Final Changed Circumstances Review, and Determination To Revoke Order in Part, 71 FR 38621 (July 7, 2006).

¹⁷ Cheval mirrors are 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 line 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 Changed Circumstances Review and Determination To Revoke Order in Part, 72 FR 948 (January 9, 2007).

¹⁸ 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.

dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; (13) upholstered beds¹⁹ and (14) toy boxes.²⁰

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.” The order covers all WBF 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.

Legal Framework

The Department examines scope requests in accordance with 19 CFR 351.225. Under 19 CFR 351.225(k)(1), 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). If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether the merchandise is covered by the order.²¹

Where the descriptions of the merchandise are not dispositive, the Department will consider the following factors, as provided under 19 CFR 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

¹⁹ 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).

²⁰ To be excluded the toy box must: (1) be wider than it is tall; (2) have dimensions within 16 inches to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials (ASTM) standard F963-03. Toy boxes are boxes generally designed for the purpose of storing children's items such as toys, books, and playthings. See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part, 74 FR 8506 (February 25, 2009). Further, as determined in the scope ruling memorandum “Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling on a White Toy Box,” dated July 6, 2009, the dimensional ranges used to identify the toy boxes that are excluded from the wooden bedroom furniture order apply to the box itself rather than the lid.

²¹ See 19 CFR 351.225(d).

of the evidence before the Department.

Interested Party Comments and Analysis

Legacy argues that the Department should find the Heritage Court Bench to be outside the scope of the WBF order under 19 CFR 351.225(k)(1). Legacy also contends that the Heritage Court Bench would be considered outside the scope of the WBF order under 19 CFR 351.225(k)(2). Legacy's arguments under each of these sections of the Department's regulations, and our analysis, follow below. No other party commented on this matter.

1. Whether the Heritage Court Bench Should be Excluded from the WBF Order Pursuant to 19 CFR 351.225(k)(1)

In its Scope Request, Legacy contends that the descriptions of WBF contained in the petition, the initial investigation, and the determinations of the Department and the ITC support a finding that the Heritage Court Bench is outside the scope of the WBF order. First, Legacy notes that the current scope of the WBF order excludes "seats, chairs, *benches*, couches, sofas, sofa beds, stools, and other seating furniture." (Emphasis added).²² Legacy contends that this exclusion is not limited to non-bedroom seating furniture and that any type of seating furniture, including seating furniture that may be used in a bedroom, is outside the scope of the WBF order based upon the plain language of the scope.²³ Legacy further asserts that if there is any ambiguity with respect to the intended meaning of "benches," then it is appropriate to resolve the ambiguity through the plain meaning of the term.²⁴ Legacy argues that its Heritage Court Bench falls squarely within the plain meaning of the term "bench" as described by multiple sources, e.g., "a seat without a back," "usually a long oval or oblong," or "a long, usually backless seat," etc.²⁵ Moreover, Legacy notes that the 19 inch height and the upholstered leather top of the Heritage Court Bench were specifically designed for comfortable seating.²⁶

Legacy notes that while the Heritage Court Bench contains interior storage space, this fact alone should not disqualify the item from being considered a bench and/or seating furniture.²⁷ Legacy argues that the language excluding benches and/or seating furniture from the scope of the WBF order is unqualified and does not restrict the exclusion to benches and/or seating furniture without interior storage space.²⁸ Further, Legacy states that the Heritage Court Bench is manufactured by a company that only produces seating furniture.²⁹

²² See Scope Request at 8.

²³ See *id.*

²⁴ See *id.* at 9.

²⁵ See *id.*

²⁶ *Id.* at 9.

²⁷ *Id.* at 10.

²⁸ *Id.*

²⁹ *Id.*

Legacy also contends that the petition and the ITC's final determination demonstrate that the exclusion for seating furniture was to be unqualified.³⁰ Legacy states that the language in the scope of the WBF order excluding all seating furniture was adopted from the proposed scope language in the petition.³¹ Legacy states that in the ITC's final report, the ITC also noted that the Department intended to exclude seating furniture even if such furniture could be used in the bedroom.³² Moreover, Legacy contends that the Petitioners³³ distinguished bedroom chests by stating that bedroom chests were used primarily for storage while non-subject chests were more decorative.³⁴ Legacy further states that the Department has previously excluded various items of seating furniture designed with storage capacity from the scope of the WBF order.³⁵

Analysis

We find that the scope of the WBF order, the description of the merchandise contained in the petition, the initial investigation, and the determinations of the Department (including a prior scope determination) and the ITC are not dispositive as to whether the Heritage Court Bench is covered by the scope of the WBF order. For example, based on the definition of a chest under the WBF order, it appears that the Heritage Court Bench would be subject merchandise. Specifically, the scope of the WBF order defines chests as "*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."³⁶ (Emphasis added.) The fact that the Heritage Court Bench is not taller than it is wide does not necessarily mean that it is not a case piece, as that characteristic is "typical," but not required in every instance. Moreover, given that the Heritage Court Bench is basically a large box incorporating a lid, it meets the definition of a case piece. Thus, the Heritage Court Bench has physical characteristics consistent with subject merchandise.

However, that is not the end of the matter. The Heritage Court Bench also has physical characteristics which allow it to be used for seating, characteristics that are shared by benches. Benches and "other seating furniture" are explicitly excluded from the scope of the WBF order. The order does not define benches, nor does it elaborate on the phrase "other seating furniture." Although Legacy has placed several dictionary definitions on the record for the word "bench" and similar terms, these definitions are unhelpful because they do not address the storage component of the Heritage Court Bench, which is a critical consideration in its treatment under the WBF order. Indeed, as discussed above, despite having a seating function, the Heritage Court Bench also has a storage function that is consistent with subject merchandise.

³⁰ Id. at 12.

³¹ Id.

³² Id.

³³ Petitioners in this proceeding are American Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc.

³⁴ Id. at 14.

³⁵ Id. at 15.

³⁶ See WBF Final, 75 FR at 50995.

In support of its argument for the Department to find the scope language dispositive for purposes of excluding the Heritage Court Bench from the scope of the WBF order, Legacy cites to the LumiSource, Inc. Final Scope Ruling (“LumiSource”), where the Department excluded various items of seating furniture with storage capacity from the scope of the WBF order.³⁷ However, we disagree with Legacy that LumiSource sets a precedent for exclusion in this instant matter. Specifically, there is one key difference between the Heritage Court Bench and the items excluded from the WBF order in the LumiSource ruling. In LumiSource, the Department stated that 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.’”³⁸ In addition, the Department stated that “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.”³⁹ However, unlike the record evidence in LumiSource, and as discussed in greater detail below, the physical descriptions, photographs and advertisements in this case neither demonstrate nor confirm that the Heritage Court Bench is seating furniture or that its primary purpose is for seating rather than storage. Rather, a review of the physical descriptions, photographs and advertisements in this case demonstrates that the primary purpose of the Heritage Court Bench is not readily apparent because the Heritage Court Bench may have several important uses.

Moreover, in LumiSource, the respondents described the cell phone stash chair, whale stash chair, dolphin stash chair, and stash cube (collectively, “stash furniture”) as “almost entirely made from non-wood materials (e.g., fabric) and the wooden frame is not significantly greater than the non-wood materials in structure and function.”⁴⁰ Indeed, the photographic record evidence provided of the stash cube supports this physical description.⁴¹ In LumiSource, the Department relied upon the description of the stash furniture as primarily non-wood, fabric covered items, as well as the supporting photographic evidence, to make the determination that the stash furniture was excluded from the scope of the WBF order.

Legacy’s Heritage Court Bench shares none of the characteristics that led the Department to exclude the stash furniture from the WBF order. First, the physical description and photographic evidence of the Heritage Court Bench demonstrate that it is primarily made of wood, *i.e.*, its entire body is not covered in fabric and foam, like the stash furniture. Relative to the wood content of the product, the leather top comprises just a small amount of material. Second, the physical description and photographic evidence of the Heritage Court Bench, *i.e.*, a cedar lined wooden box with a lid, indicate that an important use is for storage. Moreover, the photographic evidence of the Heritage Court Bench shows advertisements displaying its cedar-lined interior storage space,⁴² while the interior storage area of the stash furniture is not featured

³⁷ See Scope Request at 15.

³⁸ *Id.* at Exhibit 6

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 16.

⁴² *Id.* at Exhibit 7.

in the provided photographic.⁴³ Therefore, given the differences between the physical descriptions and photographic evidence, we cannot reasonably conclude that the Heritage Court Bench is similar to the stash furniture such that it should be treated as non-subject merchandise and excluded from the WBF order.

Moreover, given the results of our examination of the records established by the Department and the ITC in the underlying investigation, and a past scope determination, we find that the record of the WBF proceeding does not contain sufficient information to permit the Department to determine whether the Heritage Court Bench is covered by the scope of the WBF order without further analysis. Accordingly, the Department is unable to make a scope determination under 19 CFR 351.225(k)(1), and has instead conducted an analysis pursuant to 19 CFR 351.225(k)(2).

2. Whether the Heritage Court Bench is Excluded from the WBF Order Pursuant to 19 CFR 351.225(k)(2)

The scope of the WBF order defines “chests,” which are explicitly covered by the scope, yet it does not define “benches” or elaborate on “other seating furniture,” which are explicitly excluded from the scope. In the face of such ambiguity, an analysis of the Heritage Court Bench under 19 CFR 351.225(k)(2) is required. Our analysis under 19 CFR 351.225(k)(2) indicates that the physical characteristics of the product, customer expectations, ultimate use, and the manner in which the item is displayed and advertised, supports finding that the Heritage Court Bench is a wooden piece of furniture whose physical characteristics are consistent with a chest, *i.e.*, subject merchandise. Accordingly, the weight of the evidence on the record, when considered as whole, supports a finding that the Heritage Court Bench is covered by the scope of the WBF order. We have considered each criterion under 19 CFR 351.225(k)(2) below.

Physical Characteristics of the Product (19 CFR 351.225(k)(2)(i))

Legacy argues that the Heritage Court Bench has physical characteristics and design features employed to create an attractive, comfortable and safe piece of seating furniture. First, Legacy contends that the height of the item, *i.e.*, 19 inches, was specifically selected as an appropriate height for safe and comfortable seating.⁴⁴ Legacy argues that 19 inches is a typical height for a bench, and that this height is in the same range as the heights of the other benches that it sells, *i.e.*, from 18 to 20 inches.⁴⁵ Moreover, Legacy argues that the width and depth of the item were designed to give it proportions that are typical of benches.⁴⁶ Further, Legacy notes that the item is designed in an oblong shape that is traditionally associated with benches.⁴⁷ In addition, Legacy states that the Heritage Court Bench has a fully padded leather seating area covering the entire top surface of the bench.⁴⁸ Legacy contends that this design feature provides a

⁴³ *Id.* at 16.

⁴⁴ See Scope Request at 18.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 19.

⁴⁸ *Id.*

comfortable seating area and enhances that appearance of the bench.⁴⁹ Legacy argues that these physical characteristics are separate and distinct from those of bedroom chests subject to the scope of the WBF order because bedroom chests are designed for the sole purpose of providing storage for clothing and other bedroom articles in a bedroom setting.⁵⁰

Analysis

The record of this scope inquiry indicates that the Heritage Court Bench shares physical characteristics that are consistent with those of a chest covered by the WBF order. Specifically, the scope of the WBF order defines a chest as “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.”⁵¹ Therefore, according to the scope of the WBF order, a chest can be a large box with a lid. Legacy defined the Heritage Court Bench as an “oblong” item⁵² with a “leather seat top”⁵³ that “lifts up to reveal an interior storage area.”⁵⁴ In other words, Legacy described the Heritage Court Bench as a large box with a lid, *i.e.*, a description that is consistent with the definition of a subject chest.

The Heritage Court Bench fits the definition of a case piece because it has an interior space for storage. Moreover, this interior storage space is enhanced with a cedar lining. Presumably, cedar lining is designed for the storage of clothing and similar goods that would be appropriately stored in a bedroom. Further, as noted by Legacy in its Scope Request, the petition states that “since the activities of sleeping and clothing storage are inseparably linked to bedrooms, all bedroom furniture performs common functions related to these activities.”⁵⁵ Legacy itself surmises that “it is a design and intended use for sleeping or clothing storage that distinguishes bedroom furniture from other furniture.”⁵⁶ In this case, the cedar-lined interior and flip-up lid of the Heritage Court Bench demonstrate that an intended use could be for clothing storage. Again, the physical characteristics of the Heritage Court Bench mentioned above are consistent with the definition of a subject chest. In addition, the width, height and shape of a chest are not restricted by the scope of the WBF order. Therefore, these aspects of the Heritage Court Bench are also consistent with merchandise covered by the scope of the WBF order.

While the scope of the WBF order does not define “benches,” Legacy provided definitions for a bench in its Scope Request.⁵⁷ For example, Legacy provided the following definitions for a bench: 1) a seat without a back, usually a long oval or oblong; 2) a long seat for more than one person; 3) a long, usually backless seat; and 4) a long seat, with or without a back, usually of

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See WBF Final, 75 FR at 50995.

⁵² See Scope Request at 19.

⁵³ *Id.* at 2.

⁵⁴ *Id.*

⁵⁵ *Id.* at 13.

⁵⁶ *Id.*

⁵⁷ *Id.* at 8-10.

wood.⁵⁸ As noted above, these definitions are unhelpful here because they do not address the storage components of the Heritage Court Bench, which is a critical consideration in its treatment under the WBF order.

Given that the interior storage area of the Heritage Court Bench is cedar-lined and appears to encompass the entire width, depth, and length of the product, and that the Heritage Court Bench also has a flip-up top that resembles characteristics of a chest, we find that the Heritage Court Bench has physical characteristics that fall within the definition of a chest as defined by the scope of the WBF order.⁵⁹

Expectations of the Ultimate Purchasers (19 CFR 251.225(k)(2)(ii))

Legacy argues that, based on the physical characteristics of the Heritage Court Bench, the ultimate purchasers expect it to be an attractive and versatile piece of seating furniture that provides comfortable and safe seating for one or more people.⁶⁰ Legacy argues that ultimate purchasers expect that the bench may be used in a variety of rooms based upon its decorative features that compliment the living room, dining room and bedroom furniture also sold by Legacy.⁶¹ Legacy states that, while ultimate purchasers may also expect to use the storage feature of the Heritage Court Bench, use of the feature is optional and secondary to the bench's primary use as seating furniture.⁶²

Analysis

There is no direct evidence on the record regarding the expectations of the ultimate purchasers. Therefore, in determining the expectations of ultimate purchasers of the Heritage Court Bench, we have examined the record for evidence that would inform the purchaser's expectations. As noted above, the Heritage Court Bench is an oblong wooden box with a padded leather top that lifts to reveal a cedar-lined interior storage space. The focus of the product appears to be geared towards that of a chest, *i.e.*, a cedar-lined storage box with a lid. As noted above, the definition of a chest in the scope of the WBF order indicates that a chest can be used to store clothing.⁶³ Indeed, the fact that the interior storage area of the Heritage Court Bench is cedar-lined⁶⁴ indicates that purchasers would expect to use the Heritage Court Bench as a chest to store clothing or other similar items. This expectation is entirely consistent with the expectations of purchasers of chests covered by the WBF order (*i.e.*, storage chests used in bedrooms). Further, the storage area appears to encompass the entire width, depth and length of the Heritage Court Bench, which is also entirely consistent with the expectations of purchasers of chests covered by the WBF order. Also, the Department notes that Legacy acknowledged that the Heritage Court

⁵⁸ Id.

⁵⁹ Id. at Exhibit 7.

⁶⁰ Id. at 19.

⁶¹ Id.

⁶² Id.

⁶³ See WBF Final, 75 FR at 50995.

⁶⁴ See Scope Request at Exhibit 7.

Bench can be used for storage, as well as seating.⁶⁵

Although the padded leather top of the Heritage Court Bench indicates that purchasers may also expect to use the item for seating, the box design and cedar lining of the piece indicate that its storage capability is a distinguishing feature of the product that is sought by purchasers. Otherwise, it is reasonable to assume customers would simply buy a bench with no storage capacity. Accordingly, we find that the expectations of the ultimate purchasers of the Heritage Court Bench are consistent with those of purchasers of subject chests.

Ultimate Use of the Product (19 CFR 251.225(k)(2)(iii))

As noted above, Legacy claims that the ultimate use of the Heritage Court Bench is as a piece of seating furniture.⁶⁶ Legacy contends that the storage feature of the item is secondary to its primary purpose as a bench.⁶⁷ Legacy contends that ultimate purchasers may decide not to use the storage feature of the item at all and that the primary purpose of the bench would still be fulfilled, *i.e.*, seating.⁶⁸ Furthermore, Legacy claims that the item can be used in a variety of settings other than the bedroom.⁶⁹

Analysis

There is no direct evidence on the record regarding how purchasers are actually using the Heritage Court Bench. Thus, in determining the ultimate use of the Heritage Court Bench, we have examined the record for evidence of the use for which it was designed. We note that on Legacy's website, the Heritage Court Bench is described as a "cedar lined leather storage bench."⁷⁰ Although Legacy argues that the primary use of the Heritage Court Bench is for seating, the record does not establish that the ultimate use of the product is for seating. Rather, given the Heritage Court Bench's box design, cedar lining, and significant storage area (that encompasses the length, width and depth of the piece), the Department's impression is that the piece was designed with a focus on storing items, and that the leather top was incorporated for additional functionality and character.

Further, as noted above, Legacy argues that the Department previously excluded seating furniture with storage space from the WBF order, *i.e.*, LumiSource.⁷¹ However, as discussed above, the instant facts differ from those considered by the Department in LumiSource. In that scope ruling, the Department found that the items at issue were primarily used for seating rather than storage purposes and, thus, were excluded from the scope. The Department reached this conclusion after reviewing the physical descriptions and photographic evidence of the stash

⁶⁵ See, e.g., *id.* at 20.

⁶⁶ *Id.* at 20.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 15-16.

furniture which depicted the furniture as primarily covered in fabric and foam, i.e., no visible wood features. Moreover, unlike in LumiSource, the cedar lining and interior storage space of the Heritage Court Bench is prominently featured on the record of this instant matter through physical description and photographic evidence. Therefore, the record does not demonstrate that the Heritage Court Bench is primarily used for seating rather than storage. Rather, the shape, lid, significant storage area and cedar lining, demonstrate that the primary purpose of the Heritage Court Bench is for storage. Therefore, we find the LumiSource is not controlling in this matter.

Legacy also argues that if the storage feature of the Heritage Court Bench is not used, then its primary purpose as seating furniture could still be fulfilled. This reasoning is not persuasive because the same claim can be made with respect to the item's seating feature (i.e., if the seating function is not used, then it can still be used for storage). However, whether the seating function is used, the cedar-lined storage area strongly indicates that the intended ultimate use of the product is storage. Thus, based on design, it is reasonable to conclude that the Heritage Court Bench was designed to be used as a storage chest, consistent with chests covered by the scope of the WBF order. Accordingly, we find that the Heritage Court Bench was designed for ultimate use as a chest, which indicates that it is subject merchandise.

Channels of Trade in Which the Product is Sold (19 CFR 251.225(k)(2)(iv))

Legacy states that the Heritage Court Bench is sold by furniture retailers that offer a wide variety of furniture that exceeds the WBF subject to this order.⁷² Legacy states that it sells the Heritage Court Bench as part of its line of benches rather than as a storage chest.⁷³ In addition, Legacy states that the item is manufactured by a furniture company which only produces seating furniture⁷⁴ and is offered for sale by retailers that sell no WBF subject to this order, i.e., seating furniture.⁷⁵

Analysis

There is no evidence that the Heritage Court Bench is sold through different channels of trade than WBF. Specifically, Legacy sells the Heritage Court Bench, merchandise that appears to be subject merchandise (e.g., bedroom sets), and other merchandise that appears to be non-subject merchandise through its website.⁷⁶ Therefore, subject WBF cannot be distinguished from non-subject merchandise based upon the channels of trade through which they are sold by Legacy. Accordingly, we do not find channels of trade to be dispositive in this ruling.

⁷² See Scope Request at 20.

⁷³ Id. at Exhibit 7.

⁷⁴ Id. at 20 and Exhibit 10.

⁷⁵ Id. at 20 and Exhibit 9.

⁷⁶ Id. at Exhibit 7.

The Manner in Which the Product is Displayed and Advertised (19 CFR 251.225(k)(2)(v))

Legacy states that it specifically advertises and markets the Heritage Court Bench as part of its line of benches.⁷⁷ Legacy states that it has a separate line of bedroom chests, but the Heritage Court Bench is not considered, marketed, or advertised as part of that line.⁷⁸ In addition, Legacy notes that the Heritage Court Bench is advertised on the web site JustStorageBenches.com, a retailer that sells only seating furniture.⁷⁹ Legacy states that the Heritage Court bench has never been marketed or advertised as a bedroom chest.⁸⁰ In addition, Legacy contends that storage benches with design features similar to the Heritage Court Bench are advertised by retailers as seating furniture that can be used in a variety of rooms.⁸¹

Analysis

As noted above, Legacy sells the Heritage Court Bench through its website in the same section as benches. However, we note that the Heritage Court Bench is also advertised and displayed on Legacy's website as part of its bedroom furniture line.⁸² In addition, Legacy also displays and advertises the Heritage Court Bench as a storage bench and highlights the cedar-lined storage area of the item on its website.⁸³ Further, on other websites, the Heritage Court Bench is also advertised as a storage bench with images displaying the interior storage area.⁸⁴ Therefore, although the Heritage Court Bench is advertised under the term "bench," the Department finds that the storage function of the item is prominently advertised and displayed. Moreover, given that the Heritage Court Bench is advertised by Legacy as part of its bedroom furniture line, it is reasonable to conclude that its cedar lined storage area was intended for clothing and other bedroom articles, which Legacy itself notes is characteristic of a subject chest.⁸⁵ Indeed, Heritage Court Bench is advertised and displayed in a manner that is consistent with a subject chest that would be covered by the WBF order, i.e., an advertisement featuring an open storage box to display the interior storage area.⁸⁶ Thus, we find that Legacy displays and advertises the Heritage Court Bench as piece of furniture that is consistent with the definition of subject chests.

Conclusion

Based on a consideration of the totality of the factors set forth in 19 CFR 351.225(k)(2), we consider the Heritage Court Bench to be a type of furniture included in the scope of the WBF order. Specifically, with respect to 19 CFR 251.225(k)(2)(i), the record indicates that the

⁷⁷ Id. at 20.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id.

⁸¹ Id.

⁸² Id.

⁸³ Id. at Exhibit 7.

⁸⁴ Id. at Exhibit 9.

⁸⁵ Id. at 19.

⁸⁶ Id. at Exhibit 7.

Heritage Court Bench is subject merchandise on the basis of physical characteristics alone. With respect to 19 CFR 251.225(k)(2)(ii) and (iii), the record indicates that the ultimate purchasers of the Heritage Court Bench would expect to use the Heritage Court Bench in a manner that is consistent with the expectations and uses of purchasers of chests that are covered by the WBF order. Moreover, with respect to 19 CFR 251.225(k)(2)(v), the Heritage Court Bench is displayed and advertised as a chest. Accordingly, pursuant to 19 CFR 351.225(k)(2), the weight of the evidence on the record supports finding that the Heritage Court Bench is included in the scope of the WBF order.

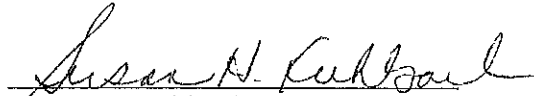
Recommendation

Based upon the above analysis, we recommend that the Department find that the furniture subject to this request meets the description of merchandise covered by the scope of the WBF order and, therefore, is subject to the antidumping duty order on WBF from the PRC.



Agree

Disagree



Susan H. Kuhbach

Acting Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations

November 22, 2010
Date