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

A-570-890

Scope Inquiry

IA / Office 4: MC

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FOR PUBLIC FILE

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: Abdelali Elouaradia
Director, Office 4
AD/CVD Operations

Howard Smith
Program Manager, Office 4
AD/CVD Operations

FROM: Maisha Cryor
International Trade Compliance Analyst
AD/CVD Operations, Office 4

RE: Wooden Bedroom Furniture from the People's Republic of China:
Final Scope Ruling on Emerald Home Furnishings' Bathroom
Vanity

Summary

Based on the analysis below, we recommend finding that the product subject to this scope request is excluded from 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) ("WBF Order").

Background

On July 19, 2010, Emerald Home Furnishings ("Emerald") requested a ruling by the Department of Commerce ("the Department") to determine whether the item it imports and describes as a bathroom vanity is outside the scope of the WBF Order.¹ On August 27, 2010, the Department initiated a formal scope inquiry pursuant to 19 CFR 351.225(e). On November 30, 2010, the

¹ See Emerald's July 19, 2010, submission at 1-2 ("Scope Request"); see also WBF Order.



Department issued a supplemental questionnaire to Emerald. Emerald submitted a response to the Department's supplemental questionnaire on December 3, 2010.

Description of the Merchandise

Emerald describes the product subject to this scope inquiry as a bathroom vanity, which consists of drawers, doors, and shelves for storage.² Emerald states that the bathroom vanity is footed, which raises the cabinet base up off of the floor, and is constructed from wood, wood veneers, metal drawer glides and door pulls, and a granite countertop and backsplash.³ Emerald notes that the bathroom vanity has a precut hole to receive a sink and faucet and that it is shipped without a sink, a faucet, or mirror.⁴ Emerald states that the vanity is always imported with the precut countertop attached to the vanity.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

² See Scope Request at 2 (emphasis in original).

³ See *id.*

⁴ See *id.*

⁵ See Emerald's December 3, 2010, supplemental response at 2.

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.

door chests,¹¹ chiffoniers,¹² hutches,¹³ and armoires;¹⁴ (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 predominate;¹⁵ (9) jewelry armories;¹⁶ (10) cheval mirrors;¹⁷

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, 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).

(11) certain metal parts;¹⁸ (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; (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

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.

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).

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 of the evidence before the Department.

Interested Party Comments and Analysis

Emerald requests that the Department determine whether its bathroom vanity is outside of the scope of the WBF Order.²² Emerald contends that the essential character of its bathroom vanity is the wood base of the cabinet.²³ Emerald states that it plans to market the product subject to this scope inquiry as a bathroom vanity with an opening pre-cut in the granite counter top for a sink and faucet.²⁴

Emerald states that there are two distinct types of vanities: makeup/dressing vanities and bathroom vanities.²⁵ Emerald contends that makeup/dressing vanities sold in coordinated bedroom furniture groups are typically furniture pieces with flat counter tops, a variety of drawers, and are commonly sold with a mirror and used in the bedroom.²⁶ Alternatively, Emerald claims that bathroom vanities are cabinets that enclose a basin, water lines and drain and are usually furnished with shelves and drawers underneath for storage of toiletries.²⁷ Emerald notes that bathroom vanities house plumbing and hold a sink.²⁸ Emerald claims that a bathroom vanity is not bought, sold or advertised as bedroom furniture and is not sold in coordinated groups with bedroom furniture collections.²⁹ Emerald notes that while the wooden cabinet base of a bathroom vanity may resemble furniture that could be used anywhere in the home, it is defined as bathroom cabinetry when a granite counter top with a hole pre-cut for a sink is installed on the cabinet.³⁰ Emerald claims that the granite countertop is a significant percentage of the overall cost of the bathroom vanity.³¹ Emerald notes that the cabinet is permanently affixed to the wall and plumbing is connected for water and drainage.³² Emerald further notes that its bathroom vanity has a lower cabinet and drawers, is not shipped with a mirror and has a granite countertop pre-cut to receive a sink.³³ Based on these facts, Emerald

²² See Scope Request at 1.

²³ See id. at 2.

²⁴ See id.

²⁵ See id. at 4.

²⁶ See id.

²⁷ See id.

²⁸ See id.

²⁹ See id.

³⁰ See id.

³¹ See id.

³² See id.

³³ See id.

argues that its product is not classified as “bedroom furniture” but as “other wooden furniture” and that as a bathroom vanity, it should be excluded the scope of the WBF Order.³⁴

Petitioners did not submit comments on Emerald’s request.³⁵

1. Whether Bathroom Vanities are Excluded from the WBF Order Pursuant to 19 CFR 225(k)(1)

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 and the ITC are not dispositive as to whether bathroom vanities are covered by the scope of the WBF order. Specifically, the scope of the WBF order, the description of the merchandise contained in the petition, the initial investigation, and the determinations of the Department and the ITC all describe the subject merchandise as including “vanities” without further elaboration.

We note that the Department issued a prior scope ruling regarding vanities where it found the vanities subject to the WBF Order. See “Final Scope Ruling: Drexel Heritage (“Drexel”),” dated September 5, 2006. However, we find that Drexel is not controlling in this instance because the Drexel vanity did not feature a countertop with holes precut for a sink and faucet. Therefore, given that the physical characteristics of the Drexel vanity and the Emerald vanity are so dissimilar, further analysis of Emerald’s vanity is required under 19 CFR 351.225(k)(2).

Thus, the factors under 19 CFR 351.225(k)(1) are not dispositive of whether bathroom vanities are in the scope of the WBF Order. Accordingly, the Department has looked to the factors provided for in 19 CFR 351.225(k)(2) to determine whether bathroom vanities are within the scope of the WBF Order.

2. Whether Bathroom Vanities are Excluded from the WBF Order Pursuant to 19 CFR 225(k)(2)

The scope of the WBF Order states that vanities are subject merchandise. See WBF Order, 70 FR at 332. However, as noted above, the scope of the WBF Order does not define the term. Further, as noted by Emerald, there are several types of vanities available, e.g., make-up vanity, bathroom vanity, etc. Therefore, in the face of such ambiguity, an analysis of bathroom vanities 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 Emerald’s vanity is excluded from the WBF Order. We have considered each criterion under 19 CFR 351.225(k)(2) below.

³⁴ See id.

³⁵ Petitioners are American Manufacturers Committee for Legal Trade and Vaughan Bassett Furniture Company.

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

Emerald describes the product subject to this scope inquiry as a bathroom vanity, which consists of drawers, doors, and shelves for storage.³⁶ Emerald states that the bathroom vanity is footed and is constructed from wood, wood veneers, metal drawer glides and door pulls, and a granite countertop and backsplash.³⁷ Emerald states that the granite countertop of the vanity “has a precut hole to receive a sink and faucet.”³⁸ Emerald contends that the “granite countertop is a significant percentage of the overall cost of the bathroom vanity and would not wisely be disposed of for other cabinet uses.”³⁹ Emerald states that the “cabinet is permanently affixed to the wall and plumbing is connected for water and drainage.”⁴⁰ Moreover, Emerald maintains that the vanity is installed in a bathroom.⁴¹

Analysis

The physical characteristics of Emerald’s vanity strongly indicate that it is not subject merchandise. Emerald submitted a photograph which supports its claim that its vanity has a hole cut in its countertop.⁴² Moreover, the photograph submitted by Emerald shows a sink with faucets placed in the countertop.⁴³ While the scope of the WBF Order does not define the term “vanity,” the fact that the vanity imported by Emerald has a hole precut in its top for a sink and a faucet indicates that the vanities are bathroom furniture, not WBF.

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

Emerald, in discussing bathroom vanities states that “the wooden cabinet base may resemble furniture that could be utilized anywhere in the home, but when a granite counter top with precut hole to receive a sink is installed on the cabinet, its end use is unmistakably defined as bathroom cabinetry.”⁴⁴

Analysis

There is no direct evidence on the record regarding the expectations of the ultimate purchasers. Therefore, in determining the expectations of the ultimate purchasers of Emerald’s vanity, we examined the record for evidence that would inform the purchaser’s expectations. As noted above, Emerald’s vanity is a wooden cabinet base with a granite countertop that has holes precut to receive a sink and faucet. The photograph submitted by Emerald shows the vanity placed against a wall with a sink and a faucet inset in the countertop. Given the physical state of the

³⁶ See *id.* at 2.

³⁷ See *id.*

³⁸ See *id.*

³⁹ See *id.* at 4.

⁴⁰ See *id.*

⁴¹ See *id.*

⁴² See *id.* at 8.

⁴³ See *id.*

⁴⁴ See *id.* at 4.

vanity's precut countertop, it is reasonable to conclude that an ultimate purchaser would not expect to use this item in a bedroom. Specifically, the countertop of the vanity would not allow an ultimate purchaser to fully use the top of the vanity to place items upon it, e.g., cosmetics, books, cups, etc., because of the large center-cut hole. Moreover, given the large center-cut hole, it is reasonable to conclude that an ultimate purchaser would expect to place a sink in the countertop and use the item in a bathroom setting. Accordingly, we find that the expectations of the ultimate purchasers of Emerald's vanity are not consistent with those of subject vanities.

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

In describing its vanity, Emerald states that it has a lower cabinet and drawers, is not shipped with a mirror and has a granite countertop precut to receive a sink.⁴⁵ Emerald contends that these characteristics make its product "irrevocably a bathroom vanity."⁴⁶ Moreover, Emerald states that the cabinet is installed in a bathroom.⁴⁷ Further, Emerald notes that the cabinet is permanently affixed to the wall and plumbing is connected for water and drainage.⁴⁸

Analysis

There is no direct evidence on the record regarding how purchasers will actually use Emerald's vanity. Thus, in determining the ultimate use of Emerald's vanity, we have examined the record for evidence of the use for which it was designed. We note that Emerald included a photograph of a vanity installed against a wall with a sink and faucet inset in the countertop.⁴⁹ Given the fact that Emerald's vanity is imported with a precut countertop, we find that the ultimate use of the product is not consistent with WBF. Specifically, Emerald's vanity countertop contains a large center-cut hole which effectively limits its use to bathroom applications. Therefore, the physical state of the precut countertop of Emerald's vanity indicates that its ultimate use is in the bathroom, not the bedroom.

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

Emerald provided neither direct nor indirect evidence regarding the channels of trade through which its vanity is sold. Therefore, we are unable to use this criterion in our analysis.

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

Emerald states that it intends to market the vanity as a bathroom vanity "with an opening precut in the granite counter top, prepared to receive the sink and faucet."⁵⁰

⁴⁵ See *id.*

⁴⁶ See *id.*

⁴⁷ See *id.*

⁴⁸ See *id.*

⁴⁹ See *id.* at 8.

⁵⁰ See *id.* at 2.

Analysis

As noted above, Emerald submitted a photograph that shows a sink and faucet inset in the countertop of its vanity. We find this indicates that the vanity is presented as a bathroom vanity, not WBF.

Conclusion

Based on a consideration of the totality of the factors set forth in 19 CFR 351.225(k)(2), we consider Emerald's vanity to be a type of furniture excluded from the scope of the WBF Order. Specifically, with respect to 19 CFR 251.225(k)(2)(i), the record strongly indicates that Emerald's vanity should be excluded from the scope of the WBF Order on the basis of physical characteristics. With respect to 19 CFR 251.225(k)(2)(ii) and (iii), the record indicates that the ultimate purchasers of Emerald's vanity would expect to ultimately use the vanity as bathroom furniture. Moreover, with respect to 19 CFR 251.225(k)(2)(v), the vanity is displayed as a bathroom vanity. Accordingly, pursuant to 19 CFR 351.225(k)(2), the weight of the evidence on the record supports finding that Emerald's vanity is excluded from the scope of the WBF Order.

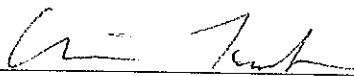
Recommendation

Based upon the above analysis, we recommend that the Department find that the furniture subject to this request does not meet the description of merchandise covered by the scope of the WBF Order and, therefore, is not subject to the antidumping duty order on WBF from the PRC.

✓

 Agree

 Disagree



 Christian Marsh

Deputy Assistant Secretary
 for Antidumping and Countervailing Duty Operations

12/20/10

 Date

