



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
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Scope Inquiry
IA / Office 4: MC
Public Document

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:
Scope Ruling on Shermag Inc.'s Crib N' Changer Combos

Summary

Based on the analysis below, we recommend finding that the products subject to this scope request are 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 November 18, 2010, Shermag Inc. ("Shermag") requested a ruling by the Department of Commerce ("the Department") to determine whether the products it imports and describes as the Florence Crib' N Changer Combo ("Florence") and the Hampton Crib' N Changer Combo ("Hampton") (collectively, "Crib N' Changer Combos") are outside the scope of the WBF Order.¹ On December 15, 2010, the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (collectively, "Petitioners") submitted

¹ See Shermag's November 18, 2010, submission at 1-2 ("Scope Request"); see also WBF Order.



comments on the Scope Request.² On December 21, 2010, the Department issued a supplemental questionnaire to Shermag. On December 27, 2010, Shermag submitted its response to the Department's supplemental questionnaire.³ Additionally, on December 27, 2010, the Department extended the time period for issuing a ruling in this matter by 45 days.⁴

Description of Merchandise

Shermag describes the products subject to its Scope Request as Crib N' Changer Combos.⁵ Specifically, Shermag is requesting a scope ruling on the Florence, model number 219450, and the Hampton, model number 232750.⁶ Shermag states that these products are convertible pieces of furniture that are assembled into cribs for infants.⁷ Shermag states that a changing table is attached to each crib and, depending on the model, either drawers or a hamper are under the changing table.⁸

Florence Crib' N Changer (Model Number 219450)

Shermag states that the first item for which it is requesting a scope ruling is the Florence, model number 219450.⁹ Shermag describes this item as a crib with a changing table and dresser attached.¹⁰ Shermag states that the measurements for the crib are 55" x 31" x 43", while the measurements for the attached changer/dresser are 17" x 17.5" x 39".¹¹ Shermag notes that there is also an uncovered drawer on wheels which is placed beneath the crib.¹² Shermag states that the crib portion of the Florence can accommodate a child of up to 50 pounds, while the changing table can accommodate a child of up to 25 pounds.¹³ Shermag states that the Florence is able to transition from a crib to a toddler bed and/or a day bed by removing the front portion of the crib.¹⁴ Shermag explains that two guardrails are provided to attach to the bed if the consumer wishes to use the product as a toddler bed.¹⁵ Shermag states that the same size mattress is used whether this product is employed as a crib, a toddler bed or a day bed.¹⁶ However, Shermag explains that the mattress is not sold with the crib and must be purchased separately.¹⁷ Shermag further explains that this product can also be converted to a full size bed;

² See Letter from Petitioners to Secretary of Commerce, "Petitioners' Response To Shermag's Scope Request Regarding Certain Crib 'N Changer Combination Units" (December 15, 2010) ("Petitioners' Comments").

³ See Shermag's Supplemental Questionnaire Response ("Supplemental Response"), dated December 27, 2010.

⁴ See Letter from Abdelali Elouaradia, Director, Office 4, to Shermag, Regarding "Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling Request," dated December 27, 2010.

⁵ See Scope Request at 2.

⁶ See Scope Request at 2.

⁷ See Scope Request at 2.

⁸ See Scope Request at 2.

⁹ See Scope Request at 2.

¹⁰ See Scope Request at 2.

¹¹ See Scope Request at 5.

¹² See Scope Request at 2.

¹³ See Scope Request at 5.

¹⁴ See Scope Request at 2.

¹⁵ See Scope Request at 2.

¹⁶ See Scope Request at 2.

¹⁷ See Scope Request at 2.

to make this conversion, Shermag states that the customer will need to purchase a bed frame, side rails, and a full size mattress from another supplier.¹⁸ When converted to a full size bed, Shermag notes that the changing table with drawers can be used as a small nightstand.¹⁹

Hampton Crib' N Changer (Model Number 232750)

Shermag states that the second item for which it is requesting a scope ruling is the Hampton, model number 232750.²⁰ Shermag states that, like the Florence, the Hampton is also a crib for an infant.²¹ Shermag explains that attached to the crib is a changing table with a hamper underneath the changing table.²² Shermag states that the measurements for the crib are 55" x 30.5" x 44.25", while the measurements for the attached changer/hamper are 17" x 17.5" x 39".²³ Shermag states that the crib portion of the Hampton can accommodate a child of up to 50 pounds, while the changing table can accommodate a child of up to 25 pounds.²⁴ Additionally, like the Florence, Shermag states that the Hampton converts into a daybed or toddler bed.²⁵ Shermag notes that there is also an uncovered drawer on wheels which may be placed beneath the crib.²⁶ Further, Shermag explains that the Hampton can also be converted to a full size bed.²⁷ However, as with the Florence, Shermag notes that the customer will need to purchase additional items to complete the conversion.²⁸

Scope of the Order

The product covered by the order is WBF. WBF 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,

¹⁸ See Scope Request at 2.

¹⁹ See Scope Request at 2.

²⁰ See Scope Request at 3.

²¹ See Scope Request at 2.

²² See Scope Request at 2.

²³ See Scope Request at 5.

²⁴ See Scope Request at 5.

²⁵ See Scope Request at 2.

²⁶ See Scope Request at 2.

²⁷ See Scope Request at 2.

²⁸ See Scope Request at 2.

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,²⁹ highboys,³⁰ lowboys,³¹ chests of drawers,³² chests,³³ door chests,³⁴ chiffoniers,³⁵ hutches,³⁶ and armoires;³⁷ (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;³⁸ (9) jewelry armories;³⁹ (10) cheval mirrors;⁴⁰

²⁹ 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.

³⁰ 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).

³¹ A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

³² A chest of drawers is typically a case containing drawers for storing clothing.

³³ 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.

³⁴ 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.

³⁵ A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

³⁶ A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

³⁷ 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.

³⁸ 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 CBP's Headquarters Ruling Letter 043859, dated May 17, 1976.

³⁹ Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24 inches in width, 18 inches in depth, and 49 inches 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).

⁴⁰ Cheval mirrors are any framed, tiltable mirror with a height in excess of 50 inches that is mounted on a

(11) certain metal parts;⁴¹ (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 beds⁴² and (14) toy boxes.⁴³

Imports of subject merchandise are classified under subheadings 9403.50.9042 and 9403.50.9045⁴⁴ 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 9403.50.9042 or 9403.50.9045 of the HTSUS as “parts of wood.” Subject merchandise may also be entered under subheading 9403.60.8081.⁴⁵ Further, framed glass mirrors may be entered under subheading 7009.92.100046 or 7009.92.5000 of the HTSUS as “glass mirrors . . . framed.” This order covers all WBF meeting the above description, regardless of tariff classification. Although the

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).

⁴¹ 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 HTSUS subheadings 9403.90.7005, 9403.90.7010, or 9403.90.7080.

⁴² 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).

⁴³ 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.

⁴⁴ These HTSUS numbers, as well as the numbers in footnote 19, reflect the HTSUS numbers currently in effect. These numbers differ from those used in the last completed antidumping duty administrative review of WBF from the PRC because the HTSUS has been revised.

⁴⁵ This HTSUS number has been added to the scope in this segment of the proceeding.

⁴⁶ *Id.*

HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.⁴⁷

Legal Framework

The Department examines scope requests in accordance with its regulations at 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.⁴⁸

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 evidence before the Department.

For this proceeding, the Department evaluated Shermag’s request in accordance with 19 CFR 351.225(k)(1) and finds that the description of the product contained in the petition, the initial investigation, the determinations by the Secretary (including prior scope determinations) and the ITC are, in fact, dispositive with respect to Shermag’s Crib N’ Changer Combos. Therefore, we find it unnecessary to consider the additional factors found in 19 CFR 351.225(k)(2).

Interested Party Comment and Analysis

Shermag

Shermag requests that the Department issue a determination that its Crib N’ Changer Combos are outside of the scope of the WBF Order.⁴⁹ Shermag notes that the mattresses for these products, which are sold separately, are standard crib size mattresses with dimensions of 51 5/8 inches in length by 27 ¼ inches in width.⁵⁰ Shermag contends that, according to U.S. Customs and Border Protection (“CBP”) Administrative Message No. 6276212, dated October 2, 2006, the Department issued a prior scope ruling that toddler beds, using standard crib-size mattresses, are not within the scope of the WBF Order.⁵¹ Therefore, Shermag argues that the ability of its Crib N’ Changer Combos to convert into either toddler beds or daybeds should not change the fact that the cribs/toddler beds/day beds are outside the scope of the WBF Order.⁵²

⁴⁷ See WBF Order.

⁴⁸ See 19 CFR 351.225(d).

⁴⁹ See Scope Request at 6.

⁵⁰ See Scope Request at 3.

⁵¹ See Scope Request at 3.

⁵² See Scope Request at 3.

Shermag notes that it has been importing and classifying its Crib N' Changer Combos under HTSUS No. 9403.50.90.80.⁵³ Shermag contends that CBP Ruling NY N044080 ("NY N044080") supports this classification because it concerns a similar product and CBP indicated that the applicable subheading would be HTSUS No. 9403.50.90.80.⁵⁴

Shermag notes that the WBF Order excludes infant cribs.⁵⁵ Shermag asserts that, as demonstrated by NY N044080, the essential character of its Crib' N Changer Combos is the infant crib.⁵⁶ Shermag contends that the attached changing table with either drawers or a hamper is merely an accessory to the infant crib.⁵⁷ Shermag states that a principle of CBP law is that the rate of duty assessed upon imported merchandise is based upon the condition of the merchandise in its imported condition.⁵⁸ Shermag argues that, as demonstrated by NY N044080, CBP has ruled that its Crib' N Changer Combos are classified under the tariff provision for cribs.⁵⁹

Shermag notes that it has already received a scope ruling pertaining to the WBF Order.⁶⁰ Shermag states that the scope ruling involved a 3-in-1 Convertible Crib, which is an infant crib that can convert to either a toddler bed or a full size bed.⁶¹ Shermag contends that the Department ruled that Shermag's 3-in-1 Convertible Crib was not subject to antidumping duties.⁶² Shermag argues that, while not identical, the 3-in-1 Convertible Crib and the Crib N' Changer Combos are extremely similar.⁶³ Shermag contends that the Crib N' Changer Combos are primarily infant cribs and that the crib component, as demonstrated by NY N044080, is the essential character of the Crib N' Changer Combos.⁶⁴ Shermag argues that the addition of a changing table and dresser/hamper is supplementary to the intended use of the Crib N' Changer Combos.⁶⁵ Shermag asserts that the consumer will purchase this product mainly for its use as an infant crib.⁶⁶ Therefore, Shermag argues that the Crib N' Changer Combos should be excluded from the scope of the WBF Order.⁶⁷

Petitioners' Comments

Petitioners argue that Shermag's Crib N' Changer Combos are not outside of the scope of the WBF Order because they are intended to be used as subject headboards, footboards, and

⁵³ See Scope Request at 3.

⁵⁴ See Scope Request at 3.

⁵⁵ See Scope Request at 4.

⁵⁶ See Scope Request at 4.

⁵⁷ See Scope Request at 4.

⁵⁸ See Scope Request at 4.

⁵⁹ See Scope Request at 4.

⁶⁰ See Scope Request at 4.

⁶¹ See Scope Request at 4.

⁶² See Scope Request at 4.

⁶³ See Scope Request at 5.

⁶⁴ See Scope Request at 5.

⁶⁵ See Scope Request at 5.

⁶⁶ See Scope Request at 5.

⁶⁷ See Scope Request at 5.

daybeds.⁶⁸ In addition, Petitioners note that the Florence and Hampton each include a detachable nightstand and/or dresser which are subject merchandise.⁶⁹ First, Petitioners note that the Crib N' Changer Combos are designed, sold and advertised for ultimate use as full size headboards and footboards.⁷⁰ Petitioners contend that advertising for the Crib N' Changer Combos states that the "the Crib Headboard is used as the Full Size Bed Headboard, and the Crib Front Side, is used as the Full Size Bed's Foot Board."⁷¹ Petitioners maintain that Shermag is advertising these units as more than cribs.

Second, Petitioners also state that the Florence includes a changing table with drawers and the Hampton includes a changing table with a hamper, *i.e.*, according to Petitioners, a large storage drawer.⁷² Petitioners contend that each changing table is detachable and advertised as nightstands.⁷³ Citing the Dorel Asia Scope Ruling, a prior scope determination by the Department, Petitioners argue that the Department has previously determined that changing tables are only excluded from the scope of the WBF Order when they have no drawers or doors.⁷⁴ Petitioners argue that Shermag has acknowledged that the Florence changing table has drawers and that it can be used as a dresser and a nightstand.⁷⁵ Similarly, Petitioners note that advertisements for the Hampton state that the changing table detaches to become a nightstand.⁷⁶ Petitioners maintain that Shermag submitted photographs in its Scope Request that show the Hampton's changing table/hamper being used as a nightstand.⁷⁷ Petitioners contend that the Department's prior scope rulings and the explicit language of the WBF Order demonstrate that both nightstands and dressers are subject merchandise regardless of whether they are considered combination units or detachable stand-alone units.⁷⁸ Petitioners maintain that if the Department were to determine otherwise, then importers would be able to circumvent the WBF Order by shipping detachable dressers and nightstands as part of combination units.⁷⁹

Third, Petitioners note that Shermag stated that its Crib N' Changer Combos are useable as daybeds without any additional required parts.⁸⁰ Petitioners contend that in Leggett & Platt Scope Ruling ("L&P Scope Ruling"), a prior scope ruling by the Department, the Department determined that wooden daybeds are within the scope of the WBF Order.⁸¹ Specifically, Petitioners argue that the daybeds at issue in the L&P Scope Ruling contained dressing components similar to a bed, *e.g.*, comforters, pillows, *etc.*⁸² Petitioners state that Shermag's

⁶⁸ See Petitioners' Comments at 1.

⁶⁹ See Petitioners' Comments at 2.

⁷⁰ See Petitioners' Comments at 3.

⁷¹ See Petitioners' Comments at 3 and Exhibit 2.

⁷² See Petitioners' Comments at 3-4.

⁷³ See Petitioners' Comments at 4.

⁷⁴ See Petitioners' Comments at 4.

⁷⁵ See Petitioners' Comments at 4-5.

⁷⁶ See Petitioners' Comments at 5.

⁷⁷ See Petitioners' Comments at 5.

⁷⁸ See Petitioners' Comments at 5.

⁷⁹ See Petitioners' Comments at 5.

⁸⁰ See Petitioners' Comments at 5.

⁸¹ See Petitioners' Comments at 6.

⁸² See Petitioners' Comments at 6.

Scope Request contains photographs of its Crib N' Changer Combos as daybeds with dressing components identical to those used on beds, including sheets, comforters and pillows.⁸³ Accordingly, pursuant to the Department's prior scope ruling on daybeds, Petitioners argue that Shermag's Crib N' Changer Combos/daybeds also meet the description of subject merchandise.

Further, Petitioners argue that the Department's prior determination that toddler beds are not subject merchandise is not applicable in this case.⁸⁴ Petitioners maintain that the Department previously excluded toddler beds from the scope of the WBF Order based upon their physical characteristics, e.g., lower to the floor, fixed guardrails, etc.⁸⁵ However, Petitioners argue that in this case, by Shermag's own admission, its Crib N' Changer Combos differ from toddler beds because they can be used as daybeds, in addition to toddler beds.⁸⁶ Petitioners also note that in a prior scope ruling by the Department involving another Shermag product, a 3-in-1 convertible crib, the Department determined that Shermag's product qualified as a crib and was excluded from the WBF Order.⁸⁷ However, Petitioners argue that the products at issue in that scope ruling were cribs that converted to full size beds only with the purchase of additional parts.⁸⁸ Petitioners argue that the Crib N' Changer Combos at issue here are already daybeds that do not require additional parts.⁸⁹

Analysis

As explained above, when determining whether a specific product is within the scope of an antidumping and/or countervailing duty order under 19 CFR 351.225(k)(1), the Department reviews the descriptions of the subject merchandise contained in the petition, the investigation, and the determinations of the Secretary (such as prior scope rulings) and the ITC.⁹⁰ While the descriptions of the subject merchandise contained in these documents are useful, in discussing the interpretive process that the Department should follow in making scope rulings pursuant to 19 CFR 351.225(k)(1), the Court of Appeals for the Federal Circuit ("CAFC") stated:

The critical question is not whether the petition covered the merchandise or whether it was at some point within the scope of the investigation. The purpose of the petition is to propose an investigation.... A purpose of the investigation is to determine what merchandise should be included in the final order. Commerce's final determination reflects the decision that has been made as to which merchandise is within the final scope of the investigation and is subject to the order.... Thus, the question is whether the {final scope of the order} included the subject merchandise.⁹¹

⁸³ See Petitioners' Comments at 5.

⁸⁴ See Petitioners' Comments at 6.

⁸⁵ See Petitioners' Comments at 7.

⁸⁶ See Petitioners' Comments at 7.

⁸⁷ See Petitioners' Comments at 7.

⁸⁸ See Petitioners' Comments at 7.

⁸⁹ See Petitioners' Comments at 7.

⁹⁰ See 19 CFR 351.225(k)(1).

⁹¹ See Duferco Steel, Inc. v. United States, 296 F.3d 1087, 1096 (Fed. Cir. 2002) ("Duferco").

The CAFC also stated that “a predicate for the interpretative process {in a scope inquiry} is language in the order that is subject to interpretation.”⁹² Through these statements, the CAFC found that the appropriate place to begin the analysis as to whether a product is within the scope of an antidumping duty order is to review the scope language of the antidumping duty order itself.

In accordance with 19 CFR 351.225(k)(1) and Duferco, the Department first examined the language of the scope of the WBF Order, including any exclusions, to determine whether Shermag’s products are within the scope of the WBF Order. As noted above, the scope of the WBF Order specifically excludes infant cribs.⁹³ The Department has examined the record in this case and determined that Shermag’s Crib N’ Changer Combos do, in fact, qualify as infant cribs. First, the Department has a demonstrated history of ruling that infant cribs, which can convert into toddler beds, daybeds and full sized beds (with or without the requirement of additional parts), are, in fact, cribs and excluded from the scope of the WBF Order.⁹⁴ In the prior scope determinations, where the Department ruled that convertible cribs are not subject to the WBF Order, the Department based its determination on record evidence showing that the convertible infant cribs utilized standard crib mattresses measuring 51 5/8 inches in length by 27 ¼ inches in width.⁹⁵ Specifically, in the Stanley Scope Ruling, where the convertible crib utilized a mattress of the aforementioned size, the Department stated “we determine that, based on mattress size, Stanley’s convertible cribs...are not within the scope of the {WBF Order}.”⁹⁶ In addition, in the Dotalier Scope Ruling, where the convertible crib also utilized a mattress of the aforementioned size, the Department stated “we find that determining Dotalier’s infant crib is not within the scope of the order based on mattress size is consistent with {prior} decisions.”⁹⁷ We note that Shermag’s Crib N’ Changer Combos also utilize a standard crib mattress measuring 51 5/8 inches in length by 27 ¼ inches in width.⁹⁸ Further, we disagree with Petitioners’ argument that a prior scope ruling, finding certain toddler beds to be outside of the scope, is not applicable to the toddler beds into which the Crib N’ Changer Combos convert. Petitioners argue that in the previous scope ruling, the Department only excluded toddler beds from the scope of the WBF Order because they were lower to the floor than other beds and used a guardrail.⁹⁹ However, while the Department noted these physical characteristics as a way to distinguish toddler beds from other beds, the primary reason for excluding the toddler bed from the scope of

⁹² See id. 296 F.3d at 1097.

⁹³ See WBF Order.

⁹⁴ See Stanley Furniture Company Final Scope Ruling Determination (“Stanley Scope Ruling”), dated December 23, 2008; Shermag Inc. Final Scope Ruling on Convertible Cribs (“Shermag Scope Ruling I”), dated July 11, 2008; Dotalier Group Inc., Preliminary Scope Ruling on Convertible Cribs (“Dotalier Scope Ruling”) (no change in the final scope ruling), dated May 27, 2008, AP Industries Preliminary Scope Ruling on Convertible Cribs, dated March 20, 2008 (“AP Scope Ruling”) (no change in the final scope ruling). The Department placed copies of these previous scope memoranda on the record of this proceeding concurrently with the release of this memorandum. See Memorandum to the File, from Maisha Cryor, Analyst, Regarding “Wooden Bedroom Furniture from the People’s Republic of China: Scope Memoranda,” dated February XX, 2011.

⁹⁵ See e.g., Stanley Scope Ruling at 6; Shermag Scope Ruling I at 6; Dotalier Scope Ruling at 5;

⁹⁶ See Stanley Scope Ruling at 6.

⁹⁷ See Dotalier Scope Ruling at 5.

⁹⁸ See Scope Request at 3.

⁹⁹ See Petitioners’ Comments at 7.

the WBF Order was mattress size. Specifically, the Department stated it “is undisputed that toddler beds are distinguishable from all other beds on the basis of the size of the mattress which is a standard crib mattress having the dimensions of 51 5/8 inches in length by 27 1/4 inches in width.”¹⁰⁰ As noted above, Shermag’s Crib N’ Changer Combos also utilize the standard crib size mattress.

Second, we note that Petitioners argued that the Crib N’ Changer Combos should be considered subject merchandise because they can convert into headboards/footboards, dressers/nightstands and daybeds without utilizing additional parts. However, the Department has previously ruled that a convertible crib was excluded from the scope of the WBF Order even though it was capable of converting into a daybed without utilizing additional parts.¹⁰¹ In addition, we find that the ability of the Crib N’ Changer Combos to eventually convert into different forms does not demonstrate that these products are something other than excluded infant cribs. The Department has previously determined that additional features that do not change the primary nature of an “in-scope” product do not serve to move that product outside of the scope of the order.¹⁰² It follows, therefore, that the additional features that do not change the primary nature of an “out-of-scope” product do not serve to move that product within the scope of WBF Order. We find that the primary nature of the Crib N’ Changer Combos is that of a crib. Petitioners also argue that, in the L&P Scope Ruling, the Department previously found daybeds to be covered by the scope of the WBF Order. However, the L&P Scope Ruling dealt with an item that was solely a daybed, unlike in this instant matter, where the product is a convertible crib whose primary nature is that of a crib.

Petitioners argue that the Crib N’ Changer Combos should be considered subject merchandise because the different forms they can convert into are individually considered subject merchandise, e.g., headboard/footboard, daybed, nightstand, and dresser. However, we disagree with Petitioners. In this instance, Shermag’s changing tables, as well as the headboard and footboards, serve as integral parts of the Crib N’ Changer Combos, i.e., they form the walls of the crib.¹⁰³ In other words, the headboard, footboard and changing table are not merely accessories that can be used independent of the crib. Therefore, even though Petitioners note that the Department previously found changing tables with drawers/doors to be subject merchandise, we find such prior determinations to not be controlling in this instant matter because, as explained above, we are not analyzing changing tables as stand-alone items. The Department recently determined that another crib and changing table combination unit was excluded from the scope of the WBF Order because it met the definition of an infant crib.¹⁰⁴ Specifically, in the Delta Scope Ruling, the Department found the product to be excluded from the scope of the WBF Order because “there is no indication that the integrated changing table with drawers can be detached from the Crib Combo to serve as a stand-alone piece which could

¹⁰⁰ See Dorel Asia Final Scope Ruling Determination, dated August 11, 2006.

¹⁰¹ See AP Scope Ruling at 4.

¹⁰² See Color Television Receivers from Taiwan; Notice of Final Scope Ruling Coach Master International Corporation, 63 FR 805, 806 (January 7, 1998).

¹⁰³ See Supplemental Response at 2, see also Petitioners’ Comments at 3 and Exhibit 2.

¹⁰⁴ See Final Scope Ruling on Delta Children’s Products Inc. “Crib and Changing Table Combo Collection (“Delta Scope Ruling”),” April 3, 2010.





U.S. DEPARTMENT OF COMMERCE
INTERNATIONAL TRADE ADMINISTRATION

Date
02/07/2011

CONCURRENCE RECORD
(Prescribed by ITA A.I. 8-1)

ROUTING PURPOSE SYMBOLS
(PRS)
C-CONURRENCES
S-SIGNATURE

SUBJECT OF DOCUMENT:
Wooden Bedroom Furniture (A-570-890) AD Scope Request (Crib 'N Changer Combo)

NAME AND OFFICE OF ORIGINATOR Maisha Cryor; Jennifer Moats; Julia Hancock; Yi-Hsuan Lee; Howard Smith; Tracy Duncan AD/CVD Office 4	TELEPHONE NUMBER 202-482-5831; 202-482-5047; ; (202) 482-4189; ;	DEADLINE DATE 02/16/2011
	INITIALS DATE 02/07/2011	

SUBMITTED TO	RPS	INITIALS	DATE	SUBMITTED TO	RPS	INITIALS	DATE
NAME: Aaron Kleiner	C		01/20/11	NAME: <i>Chris Kearsch</i>	C	<i>JK</i>	
OFFICE: Staff Legal				OFFICE: <i>DAS AD/CVD ops</i>			
NAME: Howard Smith	C		01/20/11	NAME:	C		
OFFICE: OpPM				OFFICE:			
NAME: Donna Kinsella	C		01/26/11	NAME:	C		
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NAME: David Mason	C		01/27/11	NAME:	C		
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ADDITIONAL INFORMATION OR SPECIAL INSTRUCTIONS: (Continue on reverse if necessary)

Control Number: **IA-2011-00014**