



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

A-570-890  
Scope Inquiry  
IA / Office 4: BMP  
**Public Document**

December 27, 2011

MEMORANDUM TO: Gary Taverman  
Acting 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: Brandon Petelin  
International Trade Analyst  
AD/CVD Operations, Office 4

RE: Wooden Bedroom Furniture from the People's Republic of China:  
Scope Ruling on Delta Enterprise Corporation's Venetian  
Changing Table

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Summary

Based on the analysis below, we recommend finding that Delta Enterprise Corporation's ("Delta") Venetian changing table ("changing table") is not covered by the scope of the antidumping duty order on wooden bedroom furniture 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 10, 2011, pursuant to 19 CFR 351.225, Delta requested a ruling by the Department of Commerce ("the Department") to determine whether Delta's changing tables are outside the scope of the *WBF Order*.<sup>1</sup> On November 23, 2011, the Department issued a

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<sup>1</sup> See Letter from Delta to the Secretary of Commerce regarding: Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling Requests of Delta," dated November 10, 2011 ("Delta's Scope Request"); see also *WBF Order*.



supplemental questionnaire to Delta to clarify Delta's Scope Request.<sup>2</sup> On November 28, 2011, the American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (collectively, "Petitioners"), submitted comments on Delta's Scope Request.<sup>3</sup> On December 1, 2011, Delta notified the Department that it never received the Department's November 23, 2011, supplemental questionnaire.<sup>4</sup> Therefore, on December 2, 2011, the Department reissued its supplemental questionnaire to Delta.<sup>5</sup> On December 6, 2011, Delta submitted a response to the Department's supplemental questionnaire.<sup>6</sup> On December 9, 2011, the Department issued a second supplemental questionnaire to Delta.<sup>7</sup> On December 12, 2011, Delta submitted a response to the Department's supplemental questionnaire.<sup>8</sup>

## Description of Merchandise

### Venetian Changing Table

Delta states that the item for which it is requesting a scope ruling is its Venetian changing table.<sup>9</sup> Delta describes its changing table as designed to support and to protect an infant as he/she is cleaned and the diaper is changed. Specifically, Delta explains that the changing table is three-leveled, with the changing surface at the top and two exposed shelves below. The changing surface features a one-inch, water-resistant cushion with a safety strap and is surrounded on all sides by a short barrier. In addition, Delta explains that a single, shallow, drawer is located directly beneath the changing surface to store diapers and cleaning products. Further, Delta states that the changing table is imported into the United States packaged and unassembled and, when assembled by the consumer, the changing table measures 36.25 inches by 39.5 inches by 24.25 inches. Moreover, Delta states that the changing tables are made of solid wood and are available in three colors: white, cherry, and "natural."<sup>10</sup> Finally, Delta states that the dimensions of the drawer located below the top surface of its changing table are as follows: the storage space within the drawer is 13.31 inches by 31.22 inches by 2.54 inches deep, with the outside face of the drawer measuring 32.91 inches by 4.96 inches.<sup>11</sup>

### Scope of the Order

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is

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<sup>2</sup> See Letter to Delta regarding: First Supplemental Questionnaire, dated November 23, 2011.

<sup>3</sup> See Letter from Petitioners to Secretary of Commerce regarding: Petitioners' Response to Delta's Scope Ruling Request, dated November 28, 2011.

<sup>4</sup> See Letter from Delta to Secretary of Commerce regarding: Delta's Non-receipt of the Department's Supplemental Questionnaire, dated December 1, 2011.

<sup>5</sup> See Letter to Delta regarding: Re-issuing of First Supplemental Questionnaire, dated December 2, 2011.

<sup>6</sup> See Letter from Delta to Secretary of Commerce regarding: Delta's Reply to Supplemental Questionnaire, dated December 6, 2011.

<sup>7</sup> See Letter to Delta regarding: Second Supplemental Questionnaire, dated December 9, 2011.

<sup>8</sup> See Letter from Delta to Secretary of Commerce regarding: Delta's Second Supplemental Questionnaire Response, dated December 12, 2011 ("Second Supplemental Response").

<sup>9</sup> See Delta's Scope Request at 4.

<sup>10</sup> *Id.*

<sup>11</sup> See Second Supplemental Response at 2.

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,<sup>12</sup> highboys,<sup>13</sup> lowboys,<sup>14</sup> chests of drawers,<sup>15</sup> chests,<sup>16</sup> door chests,<sup>17</sup> chiffoniers,<sup>18</sup> hutches,<sup>19</sup> and armoires;<sup>20</sup> (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

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<sup>12</sup> 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.

<sup>13</sup> 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).

<sup>14</sup> A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

<sup>15</sup> A chest of drawers is typically a case containing drawers for storing clothing.

<sup>16</sup> 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.

<sup>17</sup> 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.

<sup>18</sup> A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

<sup>19</sup> A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

<sup>20</sup> 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.

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;<sup>21</sup> (9) jewelry armories;<sup>22</sup> (10) cheval mirrors;<sup>23</sup> (11) certain metal parts;<sup>24</sup> (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 beds<sup>25</sup> and (14) toy boxes.<sup>26</sup>

Imports of subject merchandise are classified under subheadings 9403.50.9042 and 9403.50.9045 of the U.S. Harmonized Tariff Schedule (“HTSUS”) as “wooden . . . beds” and under subheading

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<sup>21</sup> 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.

<sup>22</sup> 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).

<sup>23</sup> Cheval mirrors are any framed, tiltable mirror with a height in excess of 50 inches 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).

<sup>24</sup> 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.

<sup>25</sup> 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).

<sup>26</sup> 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.

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 subheadings 9403.50.9041, 9403.60.8081, or 9403.20.0018. Further, framed glass mirrors may be entered under subheading 7009.92.1000 or 7009.92.5000 of the HTSUS as “glass mirrors . . . framed.” The order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

### 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.<sup>27</sup>

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 Delta’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 Delta’s Venetian changing table. Therefore, we find it unnecessary to consider the additional factors found in 19 CFR 351.225(k)(2).

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<sup>27</sup> See 19 CFR 351.225(d).

## Interested Party Comments and Analysis

### Delta's Comments

- The Department should analyze Delta's Venetian changing table under 19 CFR 351.225 (k)(1) and find that its changing table is outside the scope of the *WBF Order* because the Department previously determined that an almost identical changing table was outside the scope of the *WBF Order* in *Stork Craft*.<sup>28</sup>
- Alternatively, if the Department analyzes its changing table under 19 CFR 351.225 (k)(2), based on the five *Diversified Products* criteria (*i.e.*, physical characteristics, purchaser expectations, ultimate product use, channels of trade, and manner in which the product is advertised or displayed), its changing table is outside the scope of the *WBF Order*. First, the shallow drawer on its changing table lacks the essential physical characteristics of dressers and similar items of wooden bedroom furniture. Next, purchasers' expectations concerning the changing table include tending to an infant's diaper needs, whereas wooden bedroom furniture is typically for the adult, youth, or hospitality markets. Furthermore, the ultimate use of the changing table is for diaper changing, whereas wooden bedroom furniture is used primarily in residences, lodging, and long-term care facilities, such as assisted living facilities. Moreover, the changing tables are advertised and displayed as an infant product and not as ordinary bedroom furniture. According to Delta, regarding to channels of trade, in addition to major retail stores, the changing tables are available in specialty stores and on specialty websites where wooden bedroom furniture is not typically sold. Lastly, items of wooden bedroom furniture generally are designed and offered for sale in coordinated groups, whereas the changing table is sold either independently or in combination only with other infant items, not pieces of wooden bedroom furniture.

### Petitioners' Comments

- While Petitioners did not express an opinion as to whether the changing table is within the scope of the *WBF Order*, they did request that the Department obtain the dimensions of the drawer located under Delta's changing table to determine whether it provides sufficient space to store clothing.

### Analysis

For this proceeding, the Department agrees with Delta's assertion that the Department should not initiate a full scope review in order to evaluate the *Diversified Products* criteria set forth at 19 CFR 351.225(k)(2). Based on the information on the record, the Department has sufficient information to evaluate Delta's request in accordance with 19 CFR 351.225(k)(1) and finds that

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<sup>28</sup> See Memorandum Regarding: Wooden Bedroom Furniture from the People's Republic of China: Final Scope Ruling on Certain Infant Changing Tables, dated February 24, 2011 ("*Stork Craft*"); see Delta's Scope Request at 5-9 and Exhibit A.

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 Delta's changing table. Therefore, we find it unnecessary to consider the additional factors found in 19 CFR 351.225(k)(2).

#### Venetian Changing Table

- i) The text of the scope is inconclusive

While 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 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") has 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.<sup>29</sup>

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."<sup>30</sup> Thus, "while the petition, factual findings, legal conclusions, and preliminary orders can aid in the analysis, they cannot substitute for the language of the order itself, which remains the 'cornerstone' in any scope determination."<sup>31</sup> Accordingly, the first analysis which the Department must consider in conducting a scope inquiry is to determine whether the product is expressly covered by the language of the scope, or exclusions, of the antidumping duty order. Therefore, the Department first evaluated Delta's changing table using the express language of the order itself, in accordance with 19 CFR 351.225(k)(1).

The scope of the *WBF Order* explicitly excludes "infant cribs," but there is no such express exclusion for infant changing tables. On the other hand, "night tables, night stands, dressers" and other such wooden bedroom furniture are explicitly described in the scope of the *WBF Order*, while wooden infant changing tables, on the other hand, are not specifically mentioned. Further, the scope of the *WBF Order* does not define a "dresser." Accordingly, the issue before the Department in this scope inquiry is whether Delta's wooden infant changing tables are more akin to a dresser, or, like infant cribs, they were not intended to be covered by the scope of the

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<sup>29</sup> See *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1096 (Fed. Cir. 2002).

<sup>30</sup> See *id.*, 296 F.3d at 1097.

<sup>31</sup> *Walgreen Co. of Deerfield, Inc. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

*WBF Order.*

- ii) The petition and administrative record of the underlying Commerce and ITC investigations provide no guidance

Because there is no further language in the scope to guide the Department's analysis, we then reviewed the administrative record of the underlying antidumping duty ("AD") investigation. The Department found no discussion in the petition or the underlying AD investigation addressing wooden infant changing tables.

- iii) The Department's previous scope rulings on infant changing tables are dispositive

The Department then considered its analyses in two past scope determinations, both which addressed wooden infant changing tables. On August 11, 2006, in *Dorel*, the Department issued its first scope ruling concerning infant changing tables.<sup>32</sup> In *Dorel*, the Department reached the same conclusion as determined in this case, that there is nothing dispositive in the underlying petition and investigation administrative record to determine if changing tables are covered by the *WBF Order*. The Department therefore determined that it could not make a determination based upon 19 CFR 351.225(k)(1), and it applied the *Diversified Products* factors of 19 CFR 351.225(k)(2) (*i.e.*, physical characteristics, purchaser expectations, ultimate product use, and channels of trade) to *Dorel*'s changing tables.

Petitioners in the *Dorel* scope proceedings indicated that they did not intend for the scope of the underlying investigation to cover wooden infant changing tables with (1) a permanent guard rail around the perimeter of the top surface, (2) a flat top, and (3) no drawers or doors. After the Department conducted its analysis of the *Diversified Products* factors, the Department agreed that if these three requirements were found to exist, the wooden infant changing tables before the Department would be outside the scope of the *WBF Order*. The Department stated that if a changing table had drawers, it would be included in the scope of the *WBF Order*, because it would be more akin to a "dresser."<sup>33</sup>

On February 24, 2011, in the second scope ruling addressing wooden infant changing tables, *Stork Craft*, the Department analyzed changing tables that had a single, small drawer which was "intended for storing articles necessary for cleaning and diapering an infant."<sup>34</sup> Once again, the Department concluded that an analysis under 19 CFR 351.225(k)(1) was not dispositive of the issue, so the Department applied the *Diversified Products* factors of 19 CFR 351.225(k)(2) to *Stork Craft*'s changing tables. Pursuant to this analysis, the Department concluded that despite its earlier determination in the *Dorel* scope ruling that "no" drawer or door could exist on a changing table for it to be outside the *WBF Order*, in fact a changing table with a single

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<sup>32</sup> See Memorandum Regarding: Wooden Bedroom Furniture from the People's Republic of China: Infant (baby) Changing Tables and Toddler Beds Scope Determination, dated August 11, 2006 ("*Dorel*"); see Attachment 3.

<sup>33</sup> See *id.* at 20.

<sup>34</sup> *Stork Craft* at 2.



relatively small drawer might also be outside the scope.<sup>35</sup> Discussing the changing tables before it, Department explained that while a small drawer might be “suitable for holding the paraphernalia associated with changing an infant (such as lotion and baby wipes),” the small drawers it considered “did not provide adequate storage space for clothing and, thus, lacked the essential physical characteristics of dressers and similar items of WBF.”<sup>36</sup> Thus, in *Stork Craft*, the Department determined that Stork Craft’s infant changing tables, which contained a single, small drawer, were outside the scope of the *WBF Order*.<sup>37</sup>

In this case, Delta’s changing table has (1) a permanent guard rail around the perimeter of the top surface, (2) a flat top, and (3) a drawer.<sup>38</sup> Thus, while Delta’s changing table satisfies the first two requirements for exclusion from the *WBF Order* pursuant to *Dorel*, Delta’s changing table does contain a drawer. Therefore, the Department considered the measurements of Delta’s infant changing table in light of the *Stork Craft* scope ruling.

In particular, Delta’s changing table is described as, and visually appears to be, almost identical to the changing tables analyzed in *Stork Craft*. The only notable differences between Delta’s changing table and the changing tables in *Stork Craft*, which we previously determined were outside the scope of the *WBF Order*, is that the dimensions of Delta’s changing table differ slightly by a couple of inches, and the size of the drawers differ slightly as well.

With respect to the dimensions of the tables, the two changing tables in *Stork Craft* were 39.25 inches by 19.5 inches by 37.75 inches, and 36.5 inches by 24.5 inches by 38 inches, while the dimensions of Delta’s changing table are 36.25 inches by 24.25 inches by 39.5 inches.<sup>39</sup>

With respect to the dimensions of the drawers, the single drawer on the changing tables under consideration in *Stork Craft* measured 32 inches by 17 inches by 3.25 inches, with the outside face of the drawer measuring 34 inches by 4.25 inches.<sup>40</sup> Delta’s drawer, on the other hand, measures 13.31 inches by 31.22 inches by 2.54 inches, with the outside face of the drawer measuring 32.91 inches by 4.96 inches.<sup>41</sup> Thus, the volume of the changing table drawers in *Stork Craft* were 1768 cubic inches, while the volume of Delta’s changing table drawer is 1055 cubic inches.

Although the tables and drawers before the Department in *Stork Craft* are very similar to Delta’s table and drawer, it is worth noting that Delta’s changing table drawer provides even *less* storage depth than the changing table drawers in *Stork Craft*. The Department was very clear in its scope ruling in *Stork Craft* that for it to consider a changing table with a single drawer to be akin to a “dresser” and “similar items of WBF,” the drawer had to “provide adequate storage space for

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<sup>35</sup> See *Stork Craft* at 5.

<sup>36</sup> *Id.* at 5.

<sup>37</sup> *Id.*

<sup>38</sup> See Delta’s Scope Request at 4 and 11; see also Second Supplemental Response at 2.

<sup>39</sup> See Delta’s Scope Request at 4, 6-7, and 11; see also *Stork Craft* at 2.

<sup>40</sup> See *Stork Craft* at 2.

<sup>41</sup> See Second Supplemental Response at 2.


clothing.”<sup>42</sup> The drawer in Delta’s wooden infant changing table does not fit that qualification. Therefore, based on the facts of this case, and consistent with the Department’s scope rulings in *Dorel* and *Stork Craft*, the Department has determined that Delta’s changing table is sufficiently distinguishable from dressers and other wooden bedroom furniture explicitly listed in the scope of the *WBF Order*.

Accordingly, in accordance with 19 CFR 351.225(k)(1), the Department has concluded that its prior scope determinations concerning wooden infant changing tables are dispositive with regard to this scope inquiry, and that Delta’s changing table is not covered by the scope of the *WBF Order*. Consequently, because the Department finds that Delta’s changing table is not covered by the *WBF Order*, pursuant to 19 CFR 351.225(k)(1), it is not necessary for the Department to address Delta’s arguments concerning the *Diversified Products* criteria presented by 19 CFR 351.225(k)(2).

**Recommendation**

In accordance with 19 CFR 351.225(k)(1), based upon the above analysis, we recommend the Department find that Delta’s Venetian changing table is outside the scope of the *WBF Order*.

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\_\_\_\_\_    \_\_\_\_\_  
Agree    Disagree.

  
\_\_\_\_\_   
Gary Taverman  
Acting Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

12/27/11  
\_\_\_\_\_   
Date

\_\_\_\_\_   
<sup>42</sup> *Stork Craft* at 5.

## Attachment 1



## Attachment 2



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

OFFICIAL FILE

A-570-890  
Investigation  
Public Document  
IA08: EY

2036

November 8, 2004

MEMORANDUM TO: Laurie Parkhill  
Office Director  
AD/CVD Enforcement

THROUGH: Robert Bolling *RB*  
Program Manager

FROM: Erol Yesin *EY*  
Case Analyst

SUBJECT: Final Determination: Wooden Bedroom Furniture from the  
People's Republic of China - Comments on the Scope of the  
Investigation

### Background

This memorandum addresses comments received prior to the preliminary determination published June 24, 2004, and comments received by July 30, 2004, based on our scope memorandum dated June 17, 2004.<sup>1</sup>

On January 13, 2004, Markor International Furniture (Tianjin) Manufacture Co., Ltd. ("Markor"), Lacquer Craft Manufacturing Company, Ltd., ("Lacquer Craft") and the Committee for Free Trade Furniture ("CFTF") provided comments concerning whether home office pieces are included in the scope of the investigation. On July 29, 2004, Birchfield Design Group, Inc. ("Birchfield") provided comments recommending that the Department limit the scope of the investigation to matching furniture sold in suites and as suites. On July 29, 2004, Home Decorators, Inc. ("HDC"), provided comments concerning exclusion of wooden ready-to-assemble furniture from the PRC. On July 30, 2004, The Neiman Marcus Group ("NMG") provided comments concerning the use of the "in suite" language in the scope as a means of

<sup>1</sup> See Memorandum from Laurel LaCivita, Senior Case Analyst, through Robert Bolling, Program Manager, to Laurie Parkhill, Office Director for China/NME Group 8: Preliminary Determination: Wooden Bedroom Furniture from the People's Republic of China in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China, June 17, 2004.

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interpreting the scope. On July 30, 2004, LTD Commodities, LLC ("LTD"), and ABC Distributing, LLC ("ABC"), provided comments concerning the exclusion of RTA wooden bedroom furniture from the scope of this investigation. On July 30, 2004, the Bombay Company, J.C. Penney Corporation Inc., and Crate and Barrel, members of the Furniture Retailers of America ("FRA"), provided comments to limit the scope of investigation to bedroom products that are typically sold as a part of bedroom suites. On July 30, 2004, Guangzhou Marie Yee Furnishings Ltd., Pyla HK Ltd., and Maria Yee, Inc. ("Maria Yee"), provided comments requesting clarification on the standards for determining whether certain furniture products constitute bedroom furniture for purpose of this investigation. On July 30, 2004, Sunrise Medical Inc. ("Sunrise Medical") provided comments concerning patient-room furniture used in the long-term care, nursing home, or similar markets. On July 30, 2004, Dorel Asia ("Dorel") provided comments that RTA/knock-down bedroom furniture should be excluded from the scope of this investigation. On July 30, 2004, Importers' Coalition provided comments recommending that the Department exclude furniture parts not included in the scope of the investigation and day beds. On July 30, 2004, Tumatic Lumber Co., Inc. ("Tumatic"), provided comments recommending that imported parts that are not specifically identified in the scope should be excluded from the investigation. On July 30, 2004, Shing Mark Enterprise Co. Ltd. ("Shing Mark Group") provided comments concerning "made substantially of wood" and day beds.

On August 6, 2004, Petitioners<sup>2</sup> provided rebuttal comments responding to the above-mentioned comments concerning patient-room furniture, the exclusion of pieces not sold in suites, the inclusion of furniture parts, the exclusion of day beds, the standard of "made substantially of wood," home office pieces, and RTA furniture.

On August 6, 2004, LTD and ABC submitted rebuttal comments proposing specific language to exclude RTA wooden bedroom furniture from the scope of the investigation. Also, on August 6, 2004, Sunrise Medical provided rebuttal comments proposing specific language to exclude patient-care furniture products from the scope of the investigation.

On August 31, 2004, the Department issued a decision memorandum to exclude jewelry armoires and cheval mirrors from the scope of the investigation.<sup>3</sup> Petitioners agreed that the existing scope

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<sup>2</sup> The American Furniture Manufacturers Committee for Legal Trade and its individual members and the Cabinet Makers, Millmen, and Industrial Carpenters Local 721, UBC Southern Council of Industrial Worker's Local Union 2305, United Steel Workers of American Local 193U, Carpenters Industrial Union Local 2093, and Teamsters, Chauffeurs, Warehousemen and Helper Local 991.

<sup>3</sup> See Memorandum from Robert Bolling, Program Manager, to Laurie Parkhill, Office Director for China/NME Group 8: Issues and Decision Memorandum Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China ("Certain Jewelry Armoires and Cheval Mirrors

language with respect to what kinds of armoires and mirrors are included within the scope of investigation needed to be clarified. Subsequently, Petitioners submitted scope language to exclude jewelry armoires and cheval mirrors. The amended scope language is as follows:

*"The scope of the Petition excludes:....any armoire, cabinet, or other accent item for the purpose of storing jewelry, not to exceed 24" in width, 18" in depth, and 49" in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door lined with felt or felt-like material, with necklace hangers, and a flip-top lid with inset mirror."*

*"The scope of the Petition excludes:...(10) Cheval mirrors, i.e., any framed, tiltable mirror with a height in excess of 50 inches that is mounted on a floor standing, hinged base."*

Similarly, on September 23, 2004, Petitioners concurred that the scope language with respect to mirrors that are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set in the scope of the investigation should be modified in order to eliminate ambiguity. On September 30, 2004, the Department issued a decision memorandum to amend the scope of the investigation to include only mirrors that are designed or otherwise intended to be sold in combination with a dresser.<sup>4</sup> Accordingly, Petitioners submitted the following modified scope language for mirrors:

*"The scope of the Petition excludes:..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."*

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<sup>4</sup> See Memorandum from Robert Bolling, Program Manager, to Laurie Parkhill, Office Director for China/NME Group 8: Issues and Decision Memorandum Concerning Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China ("Certain Mirrors Decision Memorandum"), September 30, 2004.



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**Comment 1: Limited to Products Sold In Suites**

Birchfield contends that the definition of “bedroom furniture” is overly broad. Birchfield argues that furniture placed in bedrooms vary greatly and certain pieces can be used in numerous ways. Therefore, for clarity, Birchfield contends that the scope of the investigation should define bedroom furniture to include only those pieces typically sold in suites as suites, including beds, dressers, chest of drawers, night stands, and armoires.

Additionally, Maria Yee argues that the scope description is overly broad and must be clarified. In particular, Maria Yee recommends that the Department must specify standards for determining which furniture products are bedroom furniture for purposes of this investigation and must designate a more complete list of specifically excluded furniture items.

Maria Yee asserts that the scope of the investigation should be limited to a set of traditional, or “core”, bedroom products that are commonly associated with use solely within the bedroom. Maria Yee contends that, based on the definition of the essential character of traditional bedroom furniture, the scope of this investigation should be limited to the bed, including headboards, footboards, rails, and slats. Maria Yee also asserts that items such as night stands, but not tables or chests that may on occasion be used as night stands, and wardrobe cabinets, chests, and dressers for clothing storage should also be included as part of a set of traditional bedroom furniture since these items are used in connection with sleeping, dressing, or for the storage of clothes.

Further, Maria Yee contends that multi-functional products, which are not designed or sold exclusively or solely used for the bedroom, should not be included as part of the scope of this investigation. For example, Maria Yee asserts that furniture items such as armoires, chests, and cabinets with drawers too small to hold clothing and intended as accent pieces for the living room and other non-bedroom areas of the home should be treated as outside of the scope of the investigation.

Furthermore, Maria Yee argues that certain tables designed for and intended to be used in other rooms which can be used also as night stands should not qualify as bedroom furniture. Maria Yee asserts that only tables designed and sold exclusively as night stands, in the manner of a night stand included with a bedroom suite, qualify as bedroom furniture.

Citing pictures and specifications attached to its submission, Maria Yee contends that a number of furniture items it offers have been used traditionally in rooms other than the bedroom even though they may be sold for or used in a bedroom. For example, Maria Yee states that the Ming cabinet and Japanese Tansu are designed as general storage pieces and accent tables are used in entry ways and hallways traditionally for storage and accent. While these pieces may be placed in a bedroom, Maria Yee asserts that, traditionally, they are neither included in a bedroom set nor

are they exclusively designed, sold for, or solely used in the bedroom.

Accordingly, Maria Yee requests that the Department specify, as part of the clarification of the scope, that the items mentioned above are not covered by the investigation.

NMG argues that the scope description is ambiguous and that a clarification is necessary. In particular, NMG requests that the Department clarify the "in suite" language of the scope when it comes to differentiating bedroom furniture chests from unique decorative chests and other occasional pieces.

NMG asserts that Petitioners have drawn a distinction between decorative and bedroom chests and stated clearly in the Petition that certain decorative chests that have unusual shapes or dimensions or highly stylized and decorative patterns are excluded from the scope of the investigation. Because Petitioners themselves have highlighted the differences, NMG contends that the Department should include in the scope language the same objective factors to distinguish in-scope wooden bedroom furniture from other residential wooden furniture.

The FRA contends that the scope of the investigation as it is written currently is unnecessarily broad and ambiguous. The FRA asserts that the Department should limit its list of products that are within the scope of the investigation to a group of "core" bedroom products that are typically sold as part of bedroom suites.

The FRA contends that "core" products that are included within the scope should be limited to beds (including headboards, footboards, side rails, and slats), dressers for clothing storage, night stands, wardrobe cabinets, and chests. The FRA argues that the scope should also be clarified to limit the dimensions of dressers, chests, and wardrobe cabinets to those that are large enough to be used for the purpose of clothing storage.

The FRA argues that the scope as written currently could be interpreted to include many products that are never or rarely sold as part of a bedroom suite. The FRA contends that these products are neither designed nor intended for use solely in the bedroom nor produced by Petitioners. For example, the FRA asserts, the scope could be read to include all framed mirrors greater than a certain size and all accessory items that sometimes might be found in the bedroom, living room, or other room. Therefore, the FRA requests that the Department modify the scope of the investigation explicitly to exclude framed mirrors that are not incorporated in, attached to, or sold in combination with dressers, jewelry storage products, such as jewelry armoires, jewelry chest, and jewelry wardrobes, other accessory products that can sometimes be used in the bedroom, such as quilt/towel racks, luggage racks, and vanity tables, products intended for primary use not in the bedroom, and hand-painted furniture from the scope of the investigation.

Petitioners contend that the FRA's request for the Department to limit the scope of the investigation to a group of "core" bedroom products that are typically sold as part of bedroom suites because "the Petition itself, and the testimony of Petitioners' counsel at the ITC

Preliminary Conference, acknowledged that the subject wooden bedroom furniture is commonly or generally included in a suite, is baseless.

Petitioners assert that the Petition states that the wooden bedroom furniture covered by the scope includes furniture that is “generally but not exclusively” designed, made, and sold in coordinated groups, commonly called bedroom suites. Moreover, they contend, the scope language indicates that covered items include a wide variety of individual pieces of wooden bedroom furniture, many of which are not typically sold as part of a bedroom suite.

Furthermore, Petitioners disagree with FRA’s argument that the Department should include within the scope only those dressers, wardrobe cabinets, and chests that are used to store clothes. Petitioners contend that the Petition intentionally included items such as night stands and night tables which contain drawers that can be used to store items other than clothes.

**Department’s Position:**

We have determined that the wooden bedroom furniture covered within the scope of the investigation includes items that are not limited to products typically sold as a part of bedroom suites. Analysis of the scope language in the Petition, the Preliminary Determination, and Petitioners’ August 6, 2004, rebuttal comments demonstrate that the scope of the investigation includes individual pieces of wooden bedroom furniture that are used to store things other than clothes.

Additionally, an analysis of the scope language in the ITC Report also provides insight with respect to items that make up the wooden bedroom furniture suites:

“On a broad level, the individual items of furniture that comprise wooden bedroom furniture can be said to share the same general characteristics and end uses.... However, the individual items of furniture making up the wooden bedroom furniture category also differ with respect to certain physical characteristics and end uses. For example, night stands and dressers do not share the same physical structure as beds, nor do they share the same structure and design with each other, because each article is designed specifically for a different end use.... Thus, at a more item-specific level, the individual items of furniture within the bedroom furniture grouping do not share all of the physical characteristics and end uses with the other items of furniture within the grouping. However, the record of this preliminary investigation does generally support petitioners’ contention that individual items within the wooden bedroom grouping generally are designed, manufactured and sold to retailers as bedroom “suites”.<sup>5</sup>

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<sup>5</sup> See Wooden Bedroom Furniture From China, USITC Pub. 3667, Inv. Nos. 731-TA-1058 (Prelim) (Jan. 2004) at 10.

The scope language in the Petition states clearly that wooden bedroom furniture “is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, commonly called bedroom suites...”<sup>6</sup> The Petition specifically identifies a number of pieces of bedroom furniture that are covered (e.g., wooden beds such as loft beds, bunk beds, and other beds, 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, and night tables, night stands, dressers, vanities, etc.) in the scope of the investigation. Likewise, the Petition also excluded certain products (e.g., seats, chairs, benches, couches, sofas, sofa beds, stools, and seating furniture; mattresses, mattress supports, etc.) from the scope of this investigation.

Accordingly, we determine that there is no basis for the claim that the scope of the investigation covers only “core” bedroom products that are typically sold as part of a bedroom suite because there is no conclusive evidence to support the assertion that “core” bedroom products are the only type of products used in the bedroom.

Therefore, the Department finds that the current scope language provides the appropriate basis for determining whether certain furniture items are, or are not, covered by the scope of the investigation.

#### **Comments 2: Day Beds**

The Importers’ Coalition maintains that the Department should clarify its scope language to exclude day beds explicitly from this investigation on the grounds that day beds are not bedroom furniture but rather used in an office or den and only rarely as a spare for an overnight guest. The Importers’ Coalition proposes specific language to describe the exclusion of day beds from the scope of the investigation.

Shing Mark contends that the Department should exclude day beds from the scope of this investigation. Shing Mark asserts that, since Petitioners provided no guidance and neither agreed nor disagreed that day beds are outside the scope of the investigation, the determination whether a particular daybed model is included in the scope of the investigation can be made from the description of the subject merchandise. Shing Mark contends that in its earlier submission, dated January 13, 2004, it explained its description of its day-bed models and has concluded that none of its day beds should be deemed subject merchandise.

In its January 13, 2004, comments, Shing Mark Group contended that the Department should clarify its scope language to exclude day beds from this investigation on the grounds that day beds are not principally bedroom furniture and that the Department’s existing scope language

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<sup>6</sup> See Petition at 4.

excludes other furniture such as sofa beds and futon frames<sup>7</sup> that have uses and physical attributes either identical to or highly similar to day beds.

The Shing Mark Group argues that the primary function of day beds is for seating, not for sleeping, in rooms other than a bedroom. The Shing Mark Group contends that day beds are essentially couches, sofas, or long chairs.

Petitioners contend that it is not clear that all day beds would fall outside the scope of the investigation. Petitioners argue that, without knowing product-specific details, it would not be appropriate for the Department to create a blanket exclusion for such products. Petitioners maintain that the scope language as currently framed provides the appropriate basis for determining whether particular day beds are, or are not, covered by the scope of the investigation.

#### **Department's Position:**

We have not excluded day beds from the scope of this investigation. We find that there is insufficient information available on the record at this point in the investigation to make an across-the board determination whether to exclude all day beds from the scope of the investigation.

If the ITC makes an affirmative injury determination we will publish an antidumping duty order. Unless other exclusionary language addresses the question of whether specific day beds are within the scope (e.g., they are not made substantially of wood or wood products), we can conduct scope-clarification proceedings to determine whether specific day beds are within the scope of the order.

#### **Comments 3: Inclusion of Parts**

Tumac contends that it may be inappropriate to treat all items covered by the scope language as one like product because they have different physical characteristics and end uses. Tumac recommends that the Department exclude furniture parts not included in the scope of the investigation, except for headboards, footboards, side rails and canopies for beds which are identified specifically in the scope.<sup>8</sup> For example, Tumac imports furniture parts such as drawer sides, drawer fronts, drawer backs, aprons, moldings, tops, shelves, face frame styles, face frame rails, top cleats, and shims. Tumac asserts that most of these imported parts are in an unfinished

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<sup>7</sup> See Notice of Initiation at 70299.

<sup>8</sup> It refers to the language in Notice of Preliminary Determination of Sales at Less than Fair Value and Postponement of the Final Determination: Wooden Bedroom Furniture from the People's Republic of China, 69 FR 35312, 35318 (June 24, 2004).

state and must undergo significant further manufacturing in the United States in order to become a piece of wooden bedroom furniture. Therefore, it contends, the uses of these imported parts are not specifically dedicated to bedroom furniture at the time of entry.

Accordingly, Tumac states that the Department should state explicitly that imported parts that are not specifically named and that do not rise to the level of unassembled, uncompleted or unfinished piece of bedroom furniture are excluded from the scope.

Tumac requests that the Department include in the list of exclusions in the scope language (immediately after "(8) bedroom furniture in which bentwood parts predominate") "(9) furniture parts." In the alternative, Tumac suggests the following language:

"(9) furniture parts that are not otherwise specifically named in this scope, including, for example, parts that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete or unfinished form. Such parts are usually classified in subheading 9403.90.7000, HTSUS."

The Importers' Coalition asserts that the existing scope language with respect to certain furniture parts is ambiguous. The Importers' Coalition argues that the Department should clarify the scope to identify which parts are included within the scope of the investigation and provide guidance for distinguishing between in-scope and out-of-scope parts.

The Importers' Coalition contends that Petitioners never intended for furniture parts (other than those specifically mentioned) to be included in the scope of the investigation. Accordingly, based on the description of the scope, the Importers' Coalition asserts that Petitioners specifically mentioned only headboards, footboards, side rails, and canopies for beds as the parts that were subject merchandise. Therefore, the Importers' Coalition argues that the Department should clarify the scope accordingly and specifically exclude non-scope merchandise from the scope of the investigation.

Petitioners concur that the scope language with respect to furniture parts needs to be modified. Petitioners also believe that the language proposed by Tumac to accomplish this can serve as a constructive starting point. Accordingly, Petitioners expressed a willingness to accept a slightly modified version of the language proposed by Tumac. Thus, they propose the following modification to the list of exclusions from the scope:

Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (i.e., wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified in subheading 9403.90.7000, HTSUS.

**Department's Position:**

Because Petitioners have provided exclusionary language which we find to be administrable, we agree to modify the scope language to exclude certain furniture parts.

Therefore, for the final determination, the Department has amended the scope language with respect to furniture parts and included items that possess the essential character of wooden bedroom furniture in the scope of this investigation. The Department includes the following language as exclusion number (9):

Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.*, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified in subheading 9403.90.7000, HTSUS.

**Comment 4: "Made Substantially of Wood"**

Birchfield argues that the scope language is ambiguous in that no standard has been provided for "substantially made of wood" because "substantially" is not defined. Consequently, it contends that this vagueness invites confusion as to whether certain products fall within the scope.

Thus for clarity Birchfield proposes to modify the scope language to address the standard as "made almost entirely of wood." Birchfield believes that this clarification would help define the term "substantially" made of wood as products that are made almost entirely of wood.

Shing Mark contends that the Department should reinterpret a clear and reasonable definition of "made substantially of wood." Shing Mark asserts that the existing scope language will create an administrative burden for the Department in having to make *ad hoc* decisions interpreting whether merchandise meets the "made substantially of wood" standard. Accordingly, Shing Mark requests that the Department implement a clear, practical, and reasonable standard to define "made of substantially of wood." Shing Mark suggests the following standard to measure products that are "made of substantially of wood":

1. The weight of wood in a given piece of imported merchandise.
2. On the basis of the specific merchandise as entered (*e.g.*, evaluate the bed rail independently of the bed with which it will be assembled).
3. Give meaning and effect to the term "substantially" such that subject merchandise must contain 75 percent wood products by weight.

Petitioners contends that the new definition Birchfield proposes is significantly more narrow than their intended scope language. Moreover, Petitioners argue that the term “almost entirely” is not merely an interpretation of the scope language but rather an entirely new and far more narrow definition of the products that are covered in the investigation. Consequently, Petitioners recommend that the Department should not place a quantitative value on the term “made substantially of wood.”

**Department’s Position:**

We agree with Petitioners that the term “made substantially of wood” in the existing scope language of the Petition, the Initiation Notice, and the preliminary determination sufficiently defines the products that are covered in the scope of this investigation.

*The subject merchandise are made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard; with or without wood veneers, wood overlays, or laminates; with or without non-wood components of trim such as metal, marble, leather, glass, plastic, or other resins; and whether or not assembled, completed of finished.*

See Initiation Notice, 68 FR at 70228.

Additionally, the language that respondents proposed (i.e., “made almost entirely of wood”) does not provide further clarification for the term “made substantially of wood.” Instead it defines the term with different meaning than what Petitioners intended in the scope language and carries a different and more narrow meaning than the word “substantially”. Accordingly, the Department has not reinterpreted the term “made substantially of wood” in the existing scope.

**Comment 5: Long-Term Care Market**

Sunrise Medical contends that patient-room furniture made with wood or wood products, such as that used in the long-term care industry, nursing home, and/or similar markets (collectively known as “the LTC market”), should not be covered by the current antidumping investigation.

Sunrise Medical asserts that a review of the criteria from the Diversified Products case demonstrates that the physical characteristics of Sunrise Medical’s LTC patient-room furniture, the expectations of purchasers, the ultimate use of the products, the channels of trade through which the products reach the ultimate customer, and the manner in which the products are advertised and displayed are different and distinct from wooden bedroom furniture for the retail, residential, hospitality, dormitory, and similar markets.

Moreover, citing pictures and specifications attached to its submissions, Sunrise Medical indicated that the assisted-living market and the LTC patient-care market are regulated at the



state and Federal levels. Sunrise Medical explains that, because of these differences, Sunrise Medical's LTC patient-room furniture is classifiable under HTSUS 9402 as "Medical, surgical, dental, or veterinary furniture" rather than HTSUS 9403, the designated HTSUS classification set forth in the Petition. Therefore, for this reason, Sunrise Medical believes that Petitioners did not include LTC products in their identification of "all" U.S. producers of bedroom furniture covered by the scope of the investigation.

Petitioners contend that Sunrise Medical has not provided any basis for excluding patient-room furniture from the scope of the investigation. Further, Petitioners argue that Sunrise Medical's LTC patient-room furniture made of wood or wood products is clearly covered by the scope of the investigation. In fact, Petitioners comment that, in its initial submission, Sunrise Medical conceded that its imported products fall within the scope of the investigation.

Sunrise Medical's rebuttal comments reiterate previously submitted evidence to argue that its LTC patient-room furniture is designed for patient-care applications in patient-care facilities and not for general bedroom uses. Therefore, it is the company's position that furniture designed for non-bedroom uses, including Sunrise Medical's LTC patient-room furniture, should be excluded expressly from the scope of the investigation.

**Department's Position:**

Sunrise Medical has not presented conclusive evidence to support its assertion that there are meaningful and administrable distinctions between LTC patient-room furniture and other types of wooden bedroom furniture. Therefore, we cannot conclude that, as a category of furniture, products which Sunrise Medical associates with the LTC market are outside the scope of the investigation.

The petition is clear that furniture destined for the assisted-living market is within the scope of the investigation. The Petitioners stated in the petition that hospital beds are outside the scope of the investigation. The LTC category of merchandise which Sunrise Medical asserts the Department should exclude from the scope of the investigation is broad and, within that category, some items may be similar to subject merchandise under the Diversified Products criteria while other products in the LTC category may share characteristics of hospital beds and other products clearly outside the scope. Therefore, making a determination that all LTC-designated products are outside the scope without considering the specific products would not be appropriate at this stage of the investigation.

In its request and comments, Sunrise Medical presents information on different types of products it considers to be part of the LTC market. While it is possible that some of the items it discusses may be outside the scope of the investigation, the Department cannot make a general determination about an entire category of merchandise absent a detailed, evidence-based presentation of argument.

For these reasons, we have not completed the analysis of the category of LTC products under the Diversified Products criteria for purposes of this scope memorandum. Upon the issuance of any antidumping duty order which may result from an affirmative determination by the ITC, parties may request that the Department conduct scope-clarification proceedings to address specific products.

#### **Comment 6: Ready-to-Assemble Bedroom Furniture**

HDC asserts the Department should apply the five-part diversified products test for determining whether RTA belongs in the same class or kind of merchandise as wooden bedroom furniture covered in the scope of the investigation. HDC believes that RTA furniture should be excluded from the scope of the investigation.

HDC argues that an analysis of the Diversified Products criteria illustrates the differences that exist between RTA furniture and traditional assembled wooden bedroom furniture in the following five factors: (1) the physical characteristics of the product; (2) the expectations of the ultimate purchasers; (3) the ultimate use of the product; (4) the channels of the trade in which the product is sold; and (5) the manner in which the product is advertised and displayed.

HDC asserts that the physical characteristics of RTA bedroom furniture at the point of purchase would not enable most consumers to determine whether those unassembled physical components were ultimately intended for use in a bedroom, living room, or office.<sup>9</sup> Alternatively, HDC contends that the physical characteristics of finished bedroom furniture readily identify the merchandise's intended use. Furthermore, HDC argues that RTA furniture generally involves a design without ornate features that can be assembled by the household consumer with basic household tools whereas traditional finished bedroom furniture with intricate features that require specialized tools to assemble would not be suitable for the average household consumer.

HDC contends that ultimate purchasers of finished wooden bedroom furniture expect to receive a single piece of furniture ready to place in a bedroom and capable of use for its intended purpose. Also, it asserts, purchasers of finished goods understand that the product may have to be produced individually and shipped in its finished form, a process that can take several months to complete. Ultimate purchasers of RTA furniture expect to receive a box filled with any number of components, instructions, and tools that can be used to produce a finished product. Likewise, RTA products are sold in a pre-packaged kit and provided to consumers at the point of purchase or within days of transmitting an order at a distribution center. In this regard, HDC asserts that, not only are the expectations of RTA purchasers versus finished goods purchasers different as to what they are receiving, the expectations are different as to when they will receive the product as well.

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<sup>9</sup> Id. at 5.

When examining the ultimate use of the product, HDC argues that RTA furniture does not have use as bedroom furniture. It contends that RTA furniture only has use as individual components to be joined, assembled, and transformed into a finished product that may be used as bedroom furniture.

When considering the channels of trade in which the product is sold, HDC asserts that RTA furniture is provided to consumers through different supply chains, logistics, and distribution channels than those for finished furniture. It explains that RTA furniture is shipped to an intermediate distribution center in re-packaged kit boxes and provided to consumers immediately at the point of sale or within days of transmitting an order to a distribution center. Whereas, HDC asserts, bedroom furniture is produced against a single order and shipped in its finished form directly to the consumer, a process that can take weeks for delivery directly to the ultimate consumer's home in a ready-to-use condition.

Finally, HDC contends that RTA furniture is advertised and displayed in its finished stage in a showroom or catalog. Accordingly, it states, the similarities between the advertisement of display of RTA furniture and finished furniture stop at that point. HDC asserts that RTA furniture must be advertised affirmatively as unassembled goods requiring assembly before use as furniture. In addition, HDC argues that RTA furniture can be advertised as ready for immediate or short-term delivery which may not be the case for finished bedroom furniture.

Dorel contends that RTA bedroom furniture should be excluded from the scope of this investigation. Dorel claims that an analysis of the Diversified Product criteria would clarify that the RTA bedroom furniture is a distinct product from bedroom furniture.

Dorel asserts that the physical characteristics and uses of RTA furniture differ from wooden bedroom furniture. Unlike the mainstream bedroom furniture which is sold and displayed in an assembled form before being sold to an end-user, Dorel argues, RTA goods are not intended to be assembled by the retailers but are intended to be maintained in their imported form and sold as unassembled to an end-user.

Dorel argues that purchasers do not consider RTA furniture to be wooden bedroom furniture. It asserts that consumers buying RTA furniture are not in the market for large, heirloom pieces but are generally looking for more flexibility in furnishing their homes and are not adverse to spending the time and effort to assemble the furniture themselves. Thus, Dorel argues, the consumer's expectations are very different for products that require further assembly rather than for products that are already fully assembled.

In addition, Dorel claims the channels of trade through which RTA products reach the ultimate customer and the manner in which RTA products are advertised and displayed are different and distinct from wooden bedroom furniture. For example, it contends, the primary distribution channels for RTA products are mass merchandisers, discounts stores, and specialty stores. In contrast, Dorel presents, factory-assembled furniture is distributed through independent dealers

and other furniture retail stores. Likewise, Dorel asserts that the advertising and display of RTA products reflect a type of advertising undertaken by mass merchandisers and, accordingly, such advertising cannot devote substantial floor room and displays to the sale of these furniture products. It contrasts such advertising with that of retailers which sell factory-assembled products and have full display areas available.

In their scope comments, LTD and ABC maintain that wooden RTA bedroom furniture is a separate and distinct product group from traditionally assembled or factory-assembled bedroom furniture (collectively, "factory-assembled bedroom furniture"). Accordingly, LTD and ABC propose to modify the existing scope language to define RTA bedroom furniture and exclude it from the scope of the investigation as follows:

"The scope of the petition excludes...(9) RTA bedroom furniture. RTA for purposes of this exclusion means the product is imported complete, but with its major component parts unassembled, in packaging of such sizes and labeling as to be readily identifiable as being intended for retail sale to the ultimate consumer without any alteration in the form of the product or its packaging. Each package will be labeled "RTA-Ready to assembled by ultimate purchaser only" or words to that effect."

In addition, LTD and ABC assert that the above proposed exclusionary language contains safeguards and addresses Petitioners' concerns regarding circumvention due to the following elements:

- The packaging would have to identify the RTA bedroom furniture clearly as such.
- The packaging would be of a size and shape as to be readily identifiable for sale to the ultimate purchaser, such that a party other than the ultimate purchaser (e.g., an intermediate party such as the importer, distributor, or retailer) could not alter the contents nor alter its packaging. The RTA product would be packed for import in its retail packaging, together with the necessary diagrams, instructions and hardware required for assembly, in a "point-of-purchase" display box.
- Major components of the article would be imported unassembled, thereby preventing circumvention of the order by importing substantially completed furniture in need of only minor assembly.

LTD and ABC also illustrate differences in the consumer's expectation and the primary distribution channels between RTA bedroom furniture and factory-assembled bedroom furniture. For instance, LTD and ABC argue that, with RTA furniture, the consumer has more options because the choice (assemble-it-yourself or pay for the assembly) rests with the consumer, not the manufacturer. Thus, they contend, consumers are offered the choice on RTA products, a "take-with" price and an "assembled-item price." LTD and ABC conclude that such a distinction is a factor in the consumer's expectations relative to the purchase of RTA versus traditionally assembled furniture.

Likewise, LTD and ABC argue that the primary distribution channels for RTA bedroom furniture are mass merchandisers and discount stores rather than carefully selected independent dealers or manufacturers' blended retail chains. In such settings, according to LTD and ABC, customers can purchase RTA furniture and load them onto the cart themselves without the need of a sales person to assist them with the purchase of the furniture. Consequently, LTD and ABC state that quicker furniture delivery affects consumers' expectations in furniture purchases.

LTD and ABC claim that Petitioners have not submitted any comments in opposition to the exclusion of wooden RTA furniture from the scope of the investigation nor chosen to challenge LTD and ABC's specific proposed scope language excluding wooden RTA furniture. Therefore, LTD and ABC conclude that, given Petitioners' silence on the scope language, the Department should proceed with excluding wooden RTA furniture from the scope of the investigation.

Petitioners contend that the requests made by LTD/ABC and HDC to exclude RTA furniture from the scope of the investigation have no merit. Petitioners argue that the scope language states clearly that the investigation covers wooden bedroom furniture "whether or not assembled, completed or finished." Therefore, Petitioners assert that the scope language is not ambiguous in defining RTA furniture as bedroom furniture, since the definition of the term "RTA furniture" makes clear that it is furniture that is "not assembled."

Petitioners contend that LTD and ABC's assertion that RTA furniture is distinguishable from traditionally assembled furniture in term of physical characteristics is unsupported. Petitioners argue that the distinction LTD and ABC make regarding RTA furniture as "generally built to provide flexibility in home furnishing" is vague and difficult to comprehend. Moreover, Petitioners question whether such physical distinctions actually exist. Likewise, Petitioners contend that the distinction they made on traditionally assembled furniture as being generally built to last for generations relied upon the fact that a single domestic producer on its website has expressed pride about the fact that its products are durable. Petitioners contend that such a single statement about the characteristics of the furniture of one domestic producer does not convey anything meaningful about the physical characteristics of traditionally assembled furniture.

Petitioners also assert that the argument made by LTD and ABC that there is a clear dividing line between RTA furniture and traditionally assembled furniture with respect to consumer expectations lacks a factual basis on which to determine whether the distinction in fact exists. Petitioners contend that LTD and ABC assert that consumers have different expectations of RTA furniture because it is less stylish than traditionally assembled furniture such that consumers of RTA furniture do not expect it to stay relevant even as their taste and lifestyles change. Petitioners argue that this distinction, to the extent that it once existed, has diminished greatly.

Petitioners contend that LTD and ABC submitted nothing about the ultimate uses of RTA and traditionally assembled furniture because no differences exists in the ultimate uses of the products.

Petitioners contend that the primary distribution channels for RTA furniture are the same as traditionally assembled furniture, asserting that these common channels include retailers such as Wal-Mart, Kmart, JC Penney, and conventional furniture stores. Petitioners also claim that LTD and ABC acknowledge that "the line of demarcation is blurred in the channels of trade for RTA and traditionally assembled furniture..."

Additionally, Petitioners argue there is nothing different or special about the manner in which RTA furniture is advertised. Moreover, Petitioners assert that LTD and ABC acknowledge that RTA furniture and traditionally assembled furniture are both sold by similar retailers, especially mass-market retailers.

Finally, for all of the above-mentioned reasons, Petitioners argue that the Department should not exclude RTA wooden bedroom furniture from the scope of the investigation. Petitioners contend that there is no conceivable legal or factual basis for an exclusion of RTA furniture and the scope language proposed by LTD and ABC would afford no meaningful protection against circumvention.

#### **Department's Position:**

The Department finds the scope language of the Petition, the Initiation Notice, and the preliminary determination states clearly that wooden bedroom furniture "whether or not assembled, completed, or finished" is within the scope of this investigation. Further, given the clear language of the petition, there is no support for the arguments that it covers only "traditional" bedroom furniture and not also furniture imported in component or unassembled form.

Where there is no ambiguity in the scope language of the petition, it is not necessary to examine the Diversified Products criteria further. Furthermore, the suggested exclusionary language by some requestors regarding specific types of packaging criteria under which RTA furniture may be found outside the scope is vulnerable to circumvention. Therefore, because the Petitioners were clear in the petition that they meant to include unassembled wooden bedroom furniture in the investigation, the Department has determined that RTA wooden bedroom furniture is within the scope of this investigation.

#### **Comments 7: Home Office Pieces**

Markor, Lacquer Craft, and the CFTF request that the Department confirm their interpretation of the scope of the investigation with regard to home office furniture items. Markor, Lacquer Craft, and the CFTF argue that the existing scope language clearly includes "(6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise" (emphasis added), yet excludes from the subject merchandise "(3) office furniture, such as desks, stand-up desks, computer cabinets, credenzas, and bookcases."

Thus, Markor, Lacquer Craft, and the CFTF assert that the above-referenced exclusions cover their home office pieces. Given the clear exclusion of desks, computer stands, filing cabinets, book cases, or writing tables from description of the subject merchandise, Markor, Lacquer Craft and the CFTF argue that they do not intend to include such products in their sales listing, regardless of style or whether such pieces share the same "collection" name as a bedroom collection.

Petitioners did not make an affirmative statement regarding home office pieces as discussed by Markor, Lacquer Craft, and the CFTF.


**Department's Position:**

The Department finds the scope language of the Petition, the Initiation Notice, and the preliminary determination states clearly that wooden bedroom furniture includes "(6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise." See Petition at 7. Therefore, we find the scope language as currently written provides the appropriate basis for determining whether certain home office pieces are within the scope of the investigation. In other words, the scope of the investigation covers such products which are attached to or incorporated into the subject merchandise.

**Recommendation**

We recommend that the Department adopt the positions as outlined above concerning the scope of the antidumping investigation on wooden bedroom furniture from the People's Republic of China.

Agree  Disagree



Laurie Parkhill  
Office Director  
AD/CVD Enforcement

11/8/04  
Date

## Attachment 3





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

1-570-890  
Scope Inquiry  
Public Document  
IA/NME/VIII: MSH

DATE:

August 11, 2006

MEMORANDUM TO:

Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

**FOR PUBLIC FILE**

THROUGH:

Wendy J. Frankel  
Director  
AD/CVD Operations, Office 8

Robert Bolling  
Program Manager  
AD/CVD Operations, Office 8

FROM:

Michael Holton  
Senior Case Analyst

RE:

Wooden Bedroom Furniture from the People's Republic of China

SUBJECT:

Infant (baby) Changing Tables and Toddler Beds Scope  
Determination

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**Background**

On February 15, 2005, the Department of Commerce ("the Department") received a request on behalf of Dorel Asia SrL ("Dorel") for a determination on whether certain infant furniture (i.e., infant (baby) changing tables, toy boxes or chests, infant (baby) armoires, and toddler beds) is covered by the antidumping duty order on wooden bedroom furniture from the People's Republic of China. 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) ("Order"); see also Notice of Final Determination of Sales at Less Than Fair Value in the Investigation of Wooden Bedroom Furniture from the People's Republic of China, 69 FR 67313 (November 17, 2004) ("Final Determination"). On March 9, 2005,



Petitioners<sup>1</sup> submitted comments regarding the scope ruling request. On March 11, 2005, the Department also received a request on behalf of Style Craft Furniture Co., Ltd. ("Style Craft") for a determination on whether toddler beds are covered by the Order. On March 22, 2005, Style Craft submitted comments in support of Petitioners' recommended exclusion language for toddler beds. On March 23, 2005, Birchfield Design Group, Birchfield Design (Asia) Ltd., Dongguan Birchfield Gifts Co. Ltd., and Dongguan Longreen Birchfield Arts & Craft Co., Ltd. (collectively "Birchfield") submitted comments in response to Dorel's scope ruling request and Petitioners' comments regarding infant (baby) changing tables. On March 24, 2005, Dorel submitted a response to Petitioners' March 9, 2005, comments. On March 28, 2005, the Department received comments on behalf of Toys "R" Us and Babies "R" Us (collectively "Toys "R" Us") in response to Dorel's scope ruling request and Petitioners' comments on whether certain infant furniture (i.e., infant (baby) changing tables, toy boxes or chests, infant (baby) armories, and toddler beds) is covered by the Order. On April 4, 2005, the Petitioners submitted a response to Birchfield's March 23, 2005, comments and Dorel's March 24, 2005, comments. On April 4, 2005, Birchfield submitted additional comments on the requested clarification of scope with respect to infant (baby) changing tables.

On November 14, 2005, the Department issued a scope ruling memorandum on infant (baby) armoires and toy boxes or chests, in accordance with 19 CFR 351.225(k)(1). The Department determined that the descriptions of the product contained in the petition, the initial investigation, the determinations by the Secretary (including prior scope determinations) and the ITC were, in fact, dispositive with respect to infant (baby) armoires and toy boxes or chests. However, in the same memorandum, the Department initiated a formal scope inquiry with respect to toddler beds and infant (baby) changing tables ("scope inquiry"), pursuant to 19 CFR 351.225(e), because the scope descriptions of the merchandise contained within the petition, the initial investigation and Order, and the determinations by the Department and the ITC, as provided by 19 CFR 351.225(k)(1), are not dispositive with regard to infant (baby) changing tables and toddler beds. Therefore, the Department found it necessary to consider the five additional factors set forth in 19 CFR 351.225(k)(2).

On January 23, 2006, the Department issued a questionnaire with a due date of February 6, 2006, to all the interested parties on the comprehensive scope inquiry service list concerning the antidumping duty scope inquiry. On January 31, 2006, the Department received a letter from Dorel Asia in which it requested a two-week extension for the purpose of responding to the scope inquiry questionnaire. On February 1, 2006, the Department also received a letter from Toys "R" Us requesting a three-week extension for the purposes of responding to the scope inquiry questionnaire. On February 3, 2006, the Department extended the due date for the responses to the scope inquiry questionnaire by two weeks, or until February 20, 2006. On February 21, 2006,

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<sup>1</sup> Petitioners in this case are the American Furniture Manufacturers Committee for Legal Trade and its individual members, and the Cabinet Makers, Millmen, and Industrial Carpenters Local 721, UBC Southern Council of Industrial Worker's Local Union 2305, United Steel Workers of American Local 193U, Carpenters Industrial Union Local 2093, and Teamsters, Chauffeurs, Warehousemen and Helper Local 991.

Dorel, Toys "R" Us and Petitioners submitted responses to the toddler beds and infant (baby) changing tables scope inquiry questionnaires. On February 21, 2006, Style Craft submitted a response to the toddler beds scope inquiry questionnaire. On February 21, 2006, Birchfield submitted its response to the infant (baby) changing tables scope inquiry questionnaire. Additionally, Dorel and Toys "R" Us submitted comments to Petitioners' questionnaire response.

On March 14, May 13, June 13, July 13, 2006, and August 1, 2006, in accordance with 19 CFR 351.302(b), the Department extended the time period for issuing a determination because of the extensive comments received by the Department and the significant difficulty of the attendant issues.

### Scope of the Order

The Department defined the scope of the investigation in its notice of initiation.<sup>2</sup> During the investigation the scope language was modified to exclude jewelry armoires,<sup>3</sup> cheval mirrors,<sup>4</sup> and 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<sup>5</sup> in the Final Determination and the Order.<sup>6</sup>

The product covered is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or

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<sup>2</sup> See Notice of Initiation of Antidumping Duty Investigation: Wooden Bedroom Furniture from the People's Republic of China, 68 FR 70228 (December 17, 2003) ("Initiation Notice").

<sup>3</sup> On July 7, 2006, the Department published 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), modifying the jewelry armoires' exclusion to exclude jewelry armoires that have at least one side door (whether or not the door is lined with felt or felt-like material) from the scope of the Order.

<sup>4</sup> See Issues and Decision Memorandum Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom furniture from the People's Republic of China, to Laurie Parkhill, Office Director, from Robert Bolling, Program Manager, dated August 31, 2004 ("Jewelry Armoires and Cheval Mirrors Memorandum").

<sup>5</sup> See Memorandum Concerning Mirrors in the Antidumping Duty Investigation of Wooden Bedroom furniture from the People's Republic of China, to Laurie Parkhill, Office Director, from Robert Bolling, Program Manager, dated September 29, 2004 ("Mirrors Memorandum").

<sup>6</sup> See also Memorandum to the File from Laurel LaCivita, Analyst, to Laurie Parkhill, Office Director, Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China: Summary on Comments to the Scope (June 17, 2004); Memorandum to Laurie Parkhill, Office Director, from Erol Yesin, Case Analyst, Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China: Summary on the Scope of the Investigation (November 8, 2004).

bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, oriented strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifferobes, 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,<sup>7</sup> highboys,<sup>8</sup> lowboys,<sup>9</sup> chests of drawers,<sup>10</sup> chests,<sup>11</sup> door chests,<sup>12</sup> chiffoniers,<sup>13</sup> hutches,<sup>14</sup> and armoires,<sup>15</sup> (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.

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<sup>7</sup> 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.

<sup>8</sup> 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).

<sup>9</sup> A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

<sup>10</sup> A chest of drawers is typically a case containing drawers for storing clothing.

<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

<sup>14</sup> A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

<sup>15</sup> 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.

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;<sup>16</sup> (9) jewelry armories;<sup>17</sup> (10) cheval mirrors;<sup>18</sup> (11) certain metal parts;<sup>19</sup> and (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set.

Imports of subject merchandise are currently classifiable under subheading 9403.50.9040 of the Harmonized Tariff Schedule of the United States ("HTSUS") as "wooden...beds" and under subheading 9403.50.9080 of the HTSUS as "other...wooden furniture of a kind used in the bedroom." In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9040 of the HTSUS as "parts of wood" and framed glass mirrors may also be entered under subheading 7009.92.5000 of the HTSUS as "glass mirrors...framed." This order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

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<sup>16</sup> 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.

<sup>17</sup> 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 Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Issues and Decision Memorandum Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China dated August 31, 2004. See Wooden Bedroom Furniture from the People's Republic of China: Notice of Final Results of Changed Circumstances Review and Revocation in Part, (FR citation and date to be added).

<sup>18</sup> Cheval mirrors, *i.e.*, any framed, tiltable mirror with a height in excess of 50" that is mounted on a floor-standing, hinged base.

<sup>19</sup> 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 subheading 9403.90.7000.

**I. Whether Toddler Beds are Outside the Scope of Antidumping Duty Order on Wooden Bedroom Furniture from the PRC**

On November 14, 2005, pursuant to a scope request on behalf of Dorel, the Department initiated a formal scope inquiry to determine whether toddler beds are excluded from the scope of antidumping duty order on wooden bedroom furniture from the PRC. For the scope request the Department evaluated Dorel's request along with comments submitted by Petitioners, Toys "R" Us, and Style Craft. The Department determined that the descriptions contained in the petition, the initial investigation, the determinations by the Secretary (including prior scope determinations) and the ITC were not dispositive with respect to toddler beds. See 19 CFR 351.225(k)(2). Additionally, the Department reviewed the scope request and comments with respect to toddler beds from the numerous interested parties and determined that there was also insufficient information on the record to make a determination using the five additional factors set forth in 19 CFR 351.225(k)(2). On January 23, 2006, the Department issued a questionnaire requesting additional information concerning the five additional factors set forth in 19 CFR 351.225(k)(2) for the antidumping duty scope inquiry to determine whether toddler beds are excluded from the scope of the Order.

**A. Legal Framework**

The Department examines scope requests in accordance with 19 CFR 351.225. On matters concerning the scope of an antidumping duty order, the Department first examines the description of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations) and the ITC. See 19 CFR 351.225(k)(1). This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by an order, pursuant to 19 CFR 351.225(d).

Conversely, where the descriptions of the merchandise are *not* dispositive, the Department will consider the five additional factors set forth in 19 CFR 351.225(k)(2). These criteria are: i) the physical characteristics of the merchandise; ii) the expectations of the ultimate purchasers; iii) the ultimate use of the product; iv) the channels of trade in which the product is sold; and v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

**B. Parties' Argument and Response**

Because infant cribs were specifically excluded from the scope of the Order, Dorel, Style Craft, and Toys "R" Us contend that toddler beds should also be excluded given that they share similar physical, production, and design characteristics with an infant crib.

Petitioners agree that toddler beds designed to use a standard infant crib mattress should be excluded from the Order. Petitioners, however, argue that standard twin beds are clearly covered by the scope of the Order.

*1. Physical Characteristics of Toddlers Beds*

Dorel and Toys “R” Us describe a toddler bed as a transitional bed from infant crib to a standard bed for a child. Toys “R” Us adds that toddler beds are specifically designed with the safety and needs of children that are too small for a standard bed. To qualify as an exclusion from the scope of the Order, Dorel and Toys “R” Us also contend that a toddler bed would be required to conform with the American Society for Testing and Materials (“ASTM”) standards described in designation F 1821–97 (ASTM Vol. 15.07, 2004, Consumer Safety Specification for Toddler Beds). Citing the Department’s scope inquiry determination in Prestressed Concrete Steel Wire Stand from Mexico, Dorel argues that the Department has relied on the existence of ASTM standards as a starting point in determining whether certain products should be found to be within or outside the scope of an antidumping order. See Prestressed Concrete Steel Wire Stand from Mexico: Scope Inquiry Final Determination Memorandum, dated June 16, 2004. Dorel argues that in this case the ASTM specification provides an industry-recognized standard for toddler beds, which not only describes the product characteristics but also describes the stringent testing that toddler beds must undergo. Style Craft also explains that toddler beds are also subject to the voluntary Juvenile Product Manufacturers Association (“JPMA”) Certification.

Dorel explains that toddler beds have three physical characteristics that distinguish them from other in-scope merchandise, specifically standard twin beds or other adult-size beds. The primary distinguishing physical characteristic that Dorel and Toys “R” Us provide, which is described by ASTM F1821, is that a toddler bed is a bed that is sized to accept a full-size crib mattress having the dimensions of 51 5/8 inches in length and 27 1/4 inches in width. Second, as described by ASTM F1821, Dorel, Style Craft, and Toys “R” Us contend that a toddler bed is intended for use by a child not less than 15 months of age and who weighs no more than 50 pounds (22.7 kilograms (“kgs”)). Dorel and Style Craft also argue that toddler beds are physically distinguishable from a standard and youth beds because a toddler bed is lower to the floor to allow easier access for young children. Style Craft and Toys “R” Us describe a toddler bed as allowing for free access and egress to a child with fixed guardrail(s) (or other retention devices) to prevent the child from falling out of the bed. Style Craft describes a typical infant crib as 70 centimeters (“cm”) in width by 130 cm in length by 90-120 cm in height, while the typical toddler bed is 70 cm in width by 130 cm in length by 20 cm in height. Style Craft continues to explain that toddler beds may also be subject to the voluntary Juvenile Product Manufacturers Association Certification.

Style Craft argues that infant cribs are designed with high rails and slats no wider than 2 and 3/8 inches apart. Style Craft explains that the height of the infant crib is adjustable to allow the easy removal of the child from the crib. Further, Style Craft states that as the child becomes more active the infant crib is adjustable and when a child reaches a height of more than 35 inches the

child should be moved to a toddler bed. In contrast with the infant crib, Style Craft explains that the toddler bed is designed to allow a child to climb in and out of the bed without assistance. However, Style Craft explains that the infant crib and toddler bed share the same sized mattress and both share the similar safety feature rails to prevent a child from falling out of the bed or crib. Style Craft also explains that junior (youth) beds are significantly different from toddler beds or infant cribs. Style craft explains that junior beds require a mattress with the dimensions of 29 inches in width by 66 inches in length. In contrast, a full-size crib mattress used for toddler beds has the dimensions of 27 inches in width and 51 5/8 inches in length.

Dorel, Style Craft, and Toys "R" Us contend that toddler beds are most similar to infant cribs in technical specifications regarding ASTM standards, the physical characteristics (e.g., mattress, guard rails, etc.), and the production process because, like infant cribs, toddler beds are specifically designed with the safety and needs of children that are too small for a standard bed in mind. Similar to infant cribs, Toys "R" Us argues that a main design feature is to prevent the child from falling out of the toddler bed. Dorel and Toys "R" Us explain that toddler beds' physical characteristics are not designed to accommodate adults, teenagers or older children in either terms of weight or body size, which separate its physical characteristics from a standard twin bed or other adult-size beds. Dorel and Toys "R" Us add that most models of infant cribs are currently marketed and advertised as converting to a toddler bed. Toys "R" Us also alleges that toddler beds are similar to infant cribs because they are subject to the same regulatory compliance tests. Toddler beds and infant cribs undergo entrapment hazard testing, impact and loading testing, and have similar warning and caution statements, whereas youth beds do not.

Petitioners explain that, to the best of their knowledge, toddler beds are beds that are designed to use a standard crib mattress having the dimensions of 51 5/8 inches in length and 27 1/4 inches in width. Further, Petitioners state that they do not know of a single example of a product identified as a toddler bed that was not designed specifically for use with a standard crib mattress. Petitioners describe toddler beds as typically having side rails, which prevent the child from falling out of the bed. Petitioners also note that retailers sell infant cribs that are convertible to a toddler bed with the attachment of side rails.

## 2. *Expectations of the Ultimate End Purchasers*

Dorel, Style Craft, and Toys "R" Us state that expectations of the ultimate end purchasers are for the toddler bed to serve as a transition bed from an infant crib to a full-size bed for a child, which takes into consideration age-appropriate sizing and safety considerations. Toys "R" Us argues that purchasers will generally use a youth bed once the child has exceeded the 50-pound weight criterion.

Petitioners explain that their understanding is that the end purchaser's expectation is for the toddler bed to serve as a transition bed from a crib to a standard twin bed. Petitioners describe a toddler bed as a product for children old enough to climb out of a crib and injure themselves.



However, because the toddler bed uses the same size mattress as a crib, it is not as intimidating for a child.

### 3. *Ultimate Use of the Product*

Dorel, Style Craft, and Toys "R" Us state that ultimate use of the toddler bed is as a safe transition bed from an infant crib to a standard-size bed for a child that is not less than 15 months old and that weighs no more than 50 pounds. Dorel contends that toddler beds are not a substitute for a standard-size bed because toddler beds are too small and are designed for a child that weighs under 50 pounds. Dorel explains, however, that there is some degree of substitutability between cribs and toddler beds because most infant cribs today are also convertible to a toddler bed. Furthermore, Dorel argues that any infant crib that converts to a toddler bed would also meet ASTM F 1821-97.

Toys "R" Us argues that toddler beds are not substitutable with other youth beds or infant cribs. Toys "R" Us alleges that toddler beds use a crib mattress to provide consumers with the convenience of making a single mattress purchase for the crib and toddler bed. Toys "R" Us continues by stating that, to the best of its knowledge, the U.S. retail industry follows the guidelines provided by the Consumer Products Safety Commission and does not sell youth beds as toddler beds. Further, Toys "R" Us argues that infant cribs that are convertible to toddler beds must meet the same ASTM specifications and safety specifications, but expand the functionality and usability of the infant crib for consumers.

Petitioners explain that, to the best of their knowledge, the ultimate use and demand for a toddler bed is as a bed for children who may be too big for a crib but not yet big enough for a standard bed or youth bed. While Petitioners acknowledge that infant cribs and toddler beds are somewhat substitutable because they share the same size mattress, Petitioners argue that toddler beds are not substitutable with standard youth twin beds, which it states are referred to in the trade as "3/3a" bed (i.e., a mattress with a width of 3 feet and 3 inches or 39 inches). Petitioners contend that the mattress size provides a bright line distinction between toddler beds and youth twin beds.

### 4. *Channels of Trade*

Dorel, Style Craft, and Toys "R" Us contend that toddler beds are marketed separately from wooden bedroom furniture, explaining that toddler beds are generally sold through children's specialty stores or mass merchants rather than traditional furniture retailers. If, however, traditional furniture retailers sell toddler beds, Dorel alleges that these retailers market and display the toddler beds in separate sections from its other bedroom furniture. Toys "R" Us alleges that large furniture retailers do not market to the infant/toddler market nor do they sell toddler beds because of the specialized nature of toddler beds. Conversely, Toys "R" Us states that children's specialty stores do not sell standard bedroom furniture. Finally, Dorel and Style Craft explain that toddler beds are not generally shipped with other merchandise covered in the

scope. Style Craft adds that some retailers may purchase both wooden bedroom furniture and toddler beds, but that these retailers would purchase these items from different wholesale distributors.

Petitioners argue that there are no differences in channels of trade between imported and domestically produced youth/infant furniture.

#### 5. *Manner of Advertising or Display*

As already discussed, Dorel states that traditional furniture retailers generally market and display the toddler beds in separate sections from other bedroom furniture. Regarding advertising, Dorel and Toys "R" Us explain that product information concerning toddler beds is marketed and disseminated in the same manner as the sale of infant cribs because, as with an infant crib, a toddler bed meet ASTM requirements and is generally a companion item to the infant crib. Style Craft and Toys "R" Us also explain that toddler beds are advertised with other age-appropriate items such as car seats, high chairs or strollers, rather than other bedroom furniture. Finally, Toys "R" Us argues that toddler beds are marketed at the JPMA trade show, which is for juvenile products such as toddler beds.

Petitioners argue that there is no significant difference between the dissemination of product information for youth and adult furniture.

### C. **Analysis**

The Department does not find that an "infant" or "youth" classification or description alone is grounds for finding that toddler beds are outside the scope of the Order. Further, the exclusion of infant cribs is not in itself indicative that all infant wooden bedroom furniture was intended to be excluded from the scope. Rather, the exclusion of infant cribs from the scope is only dispositive of the intent to exclude infant cribs and does not on its own provide any indication regarding the inclusion or exclusion of other types of infant bedroom furniture. However, the specificity of the language excluding infant cribs from the Order, along with the inclusion of scope language that "other bedroom furniture consistent with the above list" is within the scope of the Order, indicates that other types of infant wooden bedroom furniture that are consistent with the descriptions in the scope language are included within the Order, as long as they are not specifically excluded. Thus, because the scope of the Order was not dispositive with respect to toddler beds, the Department has evaluated Dorel's, Style Craft's, Toys "R" Us' and Petitioners' comments in accordance with 19 CFR 351.225(k)(2).

#### 1. *Physical Characteristics of Toddlers Beds*

As described by parties, ASTM F 1821-97 defines and describes the characteristics of a toddler bed. All parties are in agreement that a toddler bed is a bed that is designed to use a standard crib mattress having the dimensions of 51 5/8 inches in length and 27 1/4 inches in width.

Petitioners, along with Dorel, also recognize that infant cribs often convert into toddler beds. Toddler beds also have safety and design features such as side rails, which prevent the child from falling out of the bed, and they are lower to the floor.

When comparing a standard bed and infant crib with the toddler bed, a toddler bed in both technical specifications regarding safety standards and the physical characteristics (e.g., mattress, guard rails, etc.) resembles an infant crib more than a standard bed. As already stated, all parties are in agreement that toddler beds are designed to be used with a standard infant crib mattress. Toddler beds are physically distinguishable from standard and youth beds because a toddler bed is lower to the floor and has fixed guardrail(s) (or other retention devices) to prevent the child from falling out of the bed. Similarly, the dimensions of toddler beds differ and are distinguishable from junior (youth) beds or other standard beds. For example, the dimensions of junior (youth) bed are described as 29 inches in width by 66 inches in length. Those of a twin mattress are 3 feet and 3 inches or 39 inches in width by 75 inches in length, contrasted with those of a full-size crib mattress used for the toddler bed of 27 inches in width by 51 5/8 inches in length. Further, ASTM F 1821-97 provides that toddler beds are designed for children not less than 15 months of age and who weigh no more than 50 pounds (22.7 kgs). The physical characteristics of toddler beds are not designed to accommodate adults, teenagers or older children in terms of either weight or body size, which distinguish it from a standard twin bed or other adult-size beds. Lastly, toddler beds are also more similar to infant cribs than to youth beds or other beds because they are subject to the same regulatory compliance tests, such as entrapment hazard testing, impact and loading testing, and include similar warning and caution statements, unlike youth and other beds.

## 2. *Expectations of the Ultimate End Purchasers/Ultimate Use of the Product*

All parties are in agreement that the expectations of purchasers and the ultimate use of the toddler bed as a transition bed for a child who is too big for an infant crib but too small for a full-size bed. Parties also agree that toddler beds take into consideration age-appropriate sizing and safety considerations. Further, ASTM F 1821-97 also distinguishes the use of toddler bed from other beds by describing that toddler beds are to be used by a child not less than 15 months of age who weighs no more than 50 pounds (22.7 kgs). Similarly, substitutability between infant cribs and toddler beds provides similar expectations and uses because they share the same size mattress and because many infant cribs are convertible to a toddler bed, whereas a toddler bed is not substitutable with a twin bed or other bed.

## 3. *Channels of Trade*

Toddler beds are primarily marketed and sold through children's specialty stores or mass merchants rather than traditional furniture retailers. Parties, however, do recognize that some furniture retailers also market and sell toddler beds and there is no indication that mass merchants do not also sell other in-scope merchandise. Thus, we disagree with Toys "R" Us that children's specialty stores do not sell other in-scope wooden bedroom furniture. Again, because

the Department does not find that an “infant” or “youth” classification or description alone is dispositive, the Department does not find that toddler beds are outside the scope of the Order solely because the item is sold at a children’s specialty store. We agree with Petitioners that there are no differences in channels of trade between imported and domestically produced youth/infant furniture.


4. *Manner of Advertising or Display*

Retailers do market and display the toddler beds in separate sections from other bedroom furniture. Whether toddlers beds are advertised in the same manner as infant cribs or other age-appropriate items is irrelevant for the purpose of this scope inquiry. Other than stating that a retailer may market or display toddler beds in a separate section from other bedroom furniture, parties have not provided any record evidence that distinguishes or describes how toddler beds are advertised differently from other in-scope merchandise. Therefore, we agree with Petitioners that there is no significant difference between the dissemination of product information or advertising for youth and adult furniture.

**Recommendation**

In analyzing factors set forth at 19 CFR 351.225(k)(2), the determination as to which analytical criteria are most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department. In this case, we find that the physical characteristics, the expectations of the ultimate purchaser and ultimate use provide the most guidance in determining whether toddler beds are outside the scope of the Order. With regard to the physical characteristics, toddler beds are distinguishable from other in-scope beds and are more similar to excluded infant cribs with respect to size and safety considerations. 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. Similarly, it is undisputed that expectations of the end user and ultimate use are distinguishable from other in-scope merchandise.

In sum, because the criteria under 19 CFR 351.225(k)(1) are not dispositive with regard to toddler beds, the Department determined that it was necessary to consider the five additional factors set forth at 19 CFR 351.225(k)(2). Based upon the above analysis, we recommend that the Department find toddler beds designed to use a standard crib mattress having the dimensions of 51 5/8 inches in length by 27 1/4 inches in width and conforming to ASTM F 1821-97 do not meet the description of merchandise within the scope of the Order.

  
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Agree

\_\_\_\_\_

Disagree

## **II. Whether Infant (baby) Changing Tables are Outside the Scope of Antidumping Duty Order on Wooden Bedroom Furniture from the PRC**

On November 14, 2005, pursuant to a scope request on behalf of Dorel, the Department initiated a formal scope inquiry to determine whether infant (baby) changing tables are excluded from the scope of antidumping duty order on wooden bedroom furniture from the PRC. For the scope request the Department evaluated Dorel's request along with comments submitted by Petitioners, Toys "R" Us, and Birchfield. The Department determined that the descriptions contained in the petition, the initial investigation, the determinations by the Secretary (including prior scope determinations) and the ITC were not dispositive with respect to infant (baby) changing tables. See 19 CFR 351.225(k)(2). Additionally, the Department reviewed the scope request and comments with respect to changing tables from the numerous interested parties and determined that there was also insufficient information on the record to make a determination using the five additional factors set forth in 19 CFR 351.225(k)(2). On January 23, 2006, the Department issued a questionnaire requesting additional information concerning the five additional factors set forth in 19 CFR 351.225(k)(2) for the antidumping duty scope inquiry to determine whether toddler beds are excluded from the scope of the Order.

### **A. Legal Framework**

The Department examines scope requests in accordance with 19 CFR 351.225. On matters concerning the scope of an antidumping duty order, the Department first examines the description of the merchandise contained in the petition, the initial investigation, the determinations of the Secretary (including prior scope determinations) and the ITC. See 19 CFR 351.225(k)(1). This determination may take place with or without a formal inquiry. If the Department determines that these descriptions are dispositive of the matter, the Department will issue a final scope ruling as to whether or not the subject merchandise is covered by an order, pursuant to 19 CFR 351.225(d).

Conversely, where the descriptions of the merchandise are *not* dispositive, the Department will consider the five additional factors set forth in 19 CFR 351.225(k)(2). These criteria are: i) the physical characteristics of the merchandise; ii) the expectations of the ultimate purchasers; iii) the ultimate use of the product; iv) the channels of trade in which the product is sold; and v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department.

### **B. Parties' Argument and Response**

Dorel, Birchfield, and Toys "R" Us argue that infant (baby) changing tables that have a barrier on all sides of the changing surface, or a contoured 16 inch by 32 inch changing pad that serves as a safety barrier around the entire perimeter of the top of the table, and may or may not have any number of shelves, doors, or drawers, which meet the safety standards established by the ASTM

specification F-2388-4 should be excluded from the scope of the Order. Citing the Department's scope inquiry determination in Prestressed Concrete Steel Wire Stand from Mexico, Dorel argues that the Department has relied on the existence of ASTM standards as a starting point in determining whether certain products should be found to be within or outside the scope of an antidumping order. See Prestressed Concrete Steel Wire Stand from Mexico: Scope Inquiry Final Determination, dated June 16, 2004. Dorel argues that in this case the ASTM specification provides an industry-recognized standard for the changing tables, which not only describes the product characteristics but also describes the stringent testing that changing tables must undergo. As such, Dorel adds that to assist in the enforcement of the exclusion of the changing tables, certifications indicating that the changing tables meet the ASTM specifications could accompany customs entry documents. Dorel and Toys "R" Us explain that the changing tables are further differentiated from other wooden bedroom furniture because of the specific design and safety features associated with changing tables.

Birchfield argues that the Department should reconsider its decision to use the *Diversified Products* criteria (i.e., 19 CFR 351.225(k)(2)). Birchfield contends that the scope of the Order is not ambiguous and clearly does not cover changing tables because changing tables are a separate class or kind of merchandise than the scope of the Order describes. Additionally, Birchfield argues that the Order's silence regarding changing tables as either being included or excluded demonstrates Petitioners' original intent not to include changing tables within the scope of the Order.

Petitioners explain that they agree that changing tables with no drawers or doors and that include a permanent guard rail around the entire perimeter of the top of the table should be outside the scope of the Order. However, Petitioners argue that changing tables with either drawers or doors or that do not have a permanent guard rail around the entire perimeter of the top of the table cannot be outside the scope of the Order because they are dressers or chests that are otherwise expressly identified in the scope of the Order. Petitioners concede that products designed to be exclusively used as a changing table are not covered by the Order. Petitioners, however, argue that the best means of determining whether an item is exclusively a changing table, dresser hybrid or chest hybrid is to find that all changing tables with doors and drawers are within the scope of the Order. Therefore, Petitioners believe that any exclusion or finding that changing tables are outside the scope of the Order would require that the changing table contain no drawers or doors and include a permanent guard rail around the entire perimeter of the top of the table. To not make this distinction, as explained by Petitioners, would create the potential for massive evasion of antidumping duties.

#### 1. *Physical Characteristics of Changing Tables*

Dorel and Toys "R" Us describe a changing table as an elevated freestanding structure that is designed to support and retain an infant child (not weighing greater than 30 pounds or 13.6 kilograms) in a horizontal position for the purpose of changing the infant child's diaper. Birchfield adds that a changing table has a long, flat surface large enough to hold an infant child,

with barriers around the surface and a strap to prevent the infant child from rolling off the table. Dorel, Birchfield, and Toys “R” Us argue that to qualify as a changing table the table must meet the voluntary ASTM specifications provided in F-2388-4. Dorel, Birchfield, and Toys “R” Us argue that there are several features that differentiate a changing table from other wooden bedroom furniture. Specifically, Dorel, Birchfield, and Toys “R” Us state that changing tables must have at least one of the following safety barriers that comply with ASTM F-2388-4 and prevents an infant child from rolling off the table: (1) a safety barrier that surrounds the entire perimeter of the top of the table, (2) a safety barrier that requires the top surface to be contoured with two opposing barriers, or (3) a contoured changing pad that serves as a safety barrier around the entire perimeter of the table and is sold with the changing table. Dorel, Birchfield, and Toys “R” Us also explain that the height and surface area of changing tables are designed specifically for the purpose of changing the infant child’s diaper by an adult caregiver. Birchfield also explains that a changing table may contain a strap for the infant.

Although changing tables have features similar to dressers or other wooden bedroom furniture (e.g., drawers, shelves, etc.), Dorel, Birchfield, and Toys “R” Us argue that changing tables differ from dressers and other wooden bedroom furniture because of the above-described physical characteristics and consumer safety ASTM specification (none of which pertain to dressers or other wooden furniture) applicable to changing tables. Similarly, Dorel, Birchfield, and Toys “R” Us contend that, unlike other wooden bedroom furniture, the specific purpose and design of a changing table is to ensure the safety of the infant child and provide the necessary conveniences expected by the caregiver when changing the infant child’s diaper. Dorel also alleges that changing tables are more similar to infant cribs, which are excluded from the scope, than any other merchandise described within the scope of the Order. Dorel’s support for its allegations is that, like infant cribs, changing tables also must meet certain consumer safety requirements and ASTM safety specifications.

Dorel and Toys “R” Us argue that the differing physical characteristics described above also result in differing production requirements. These requirements are the result of the railings or safety barrier installed to protect the infant child, the height and size of the changing table, special inspection procedures and other safety requirements (e.g., entrapment hazard tests, stability tests, structural integrity tests, etc.). Dorel, Birchfield, and Toys “R” Us also argue that changing tables require warning labels affixed to them, which other wooden bedroom furniture within the scope of the Order does not.

Finally, Dorel, Birchfield, and Toys “R” Us argue that although ASTM F-2388-4 does not require that the railings around the perimeter of the changing table be permanent, barriers/railings are an integral part of their changing tables. Dorel explains that for certain designs, rails could be removed with tools, but such removal would result in exposed holes used to attach the rails and would damage the structure. Similarly, Birchfield argues that its railings are not removable unless they are sawed off and that all of its products are sold with such railings. Lastly, Toys “R” Us explains that ASTM F-2388-4 requires that all changing tables have a permanent warning label affixed to the table such that removing it would damage the wood.

Petitioners describe a changing table as a piece of furniture that has a flat top surface and permanent guard rail around the perimeter of the top surface. Petitioners continue to describe changing tables as usually having safety straps to hold a child in place and shelves for storage. Petitioners contend that “changing tables” that have drawers or doors are really dressers, chests of drawers, or other in-scope merchandise used by caregivers to change infant children’s diapers. Petitioners argue that the only clear way to distinguish a dresser, a chest of drawers, or a commode from a changing table is to eliminate the drawers and doors and require that the flat top surface have a permanent guard rail around the entire perimeter. Petitioners contend that changing tables are not covered by the Order if they are described as having a flat top surface and permanent guard rail around the perimeter of the top surface, with no drawers or doors.

Specifically, Petitioners allege that changing pads are marketed as turning any dresser top or flat surface into an instant, convenient baby changing table. Similarly, Petitioners further explain that Stanley Furniture offers a “changing station” accessory to be used with its various types of “nursery” dressers that function as a changing table when combined. Therefore, Petitioners argue that the ability of a dresser to function as a changing table by attaching an accessory, such as a pad, should not make it a changing table. Petitioners also cite ASTM F-2388-4, at paragraph 3.1.1, stating “{c}hanging tables may convert from or to other items of furniture, such as, but not limited to a dresser, desk, hutch, bookshelf, or play yard.” Petitioners continue to cite ASTM F-2388-4, at paragraph 3.1.1, which explains, “{f}or changing tables with a flat changing surface, barriers shall be provided on all sides of the changing surface,” which Petitioners contend means that unless the piece of furniture has barriers on all sides of the changing surface, the addition of a changing pad or changing station does not make a dresser into changing table.

## 2. *Expectations of the Ultimate End Purchasers*

Dorel, Birchfield, and Toys “R” Us describe the expectations of the ultimate end purchaser for the changing table as providing the adult caregiver with a safe, convenient and practical piece of furniture to change an infant child’s diaper. Further, Dorel, Birchfield, and Toys “R” Us describe that end purchasers also expect the changing table to serve as a convenient and easily accessible place to store diapers, cloths, and other infant care items needed when changing the infant child’s diaper. Birchfield argues that end purchasers’ expectations of a changing table and dresser or chest are very different. Birchfield and Toys “R” Us explain that end purchasers are willing to pay more money for the additional functionality and safety associated with a changing table. Therefore, they allege, end purchasers’ expectations when buying a changing table are more than merely purchasing a piece of furniture in which to store cloths or other items.

Petitioners argue that there are a substantial number of products on the market that are sold as youth dressers or chests that are also marketed as changing tables with the addition of an accessory. Additionally, Petitioners cite several end purchasers’ reviews of purchased changing tables. Petitioners contend that these reviews show that purchasers’ expectations are for the product to function as a dresser long after its use as a changing table.



### 3. *Ultimate Use of the Product*

Dorel, Birchfield, and Toys "R" Us explain that, as stated above, the primary purpose of a changing table is to provide the adult caregiver and infant child a safe, convenient and practical piece of furniture to change the infant child's diaper. Birchfield contends that any other use of the changing table is secondary to primary design. Dorel, Birchfield, and Toys "R" Us argue that established ASTM safety requirements provide a bright line means from which to differentiate the ultimate use of a changing table versus other wooden bedroom furniture. Dorel, Birchfield, and Toys "R" Us also contend that dressers or chests of drawers are not suitable substitutes for changing tables because they are not the correct width, height, or length to safely and comfortably change a baby, nor does any other piece of furniture meet the ASTM specifications.

Petitioners acknowledge that a changing table has a narrow and limited end use and is essentially obsolete when the child is no longer wearing diapers. Petitioners add, however, that a dresser that is designed to be converted into a changing table during the child's infancy has an ultimate end use as both a changing table and a dresser.

### 4. *Channels of Trade*

Dorel, Birchfield, and Toys "R" Us contend that changing tables are marketed separately from wooden bedroom furniture, explaining that changing tables are generally sold through children's specialty stores or mass merchants rather than traditional furniture retailers. If, however, traditional furniture retailers sell changing tables, Dorel and Birchfield allege that these retailers market and display the changing tables in separate sections from its other bedroom furniture. To the best of its knowledge, Dorel argues that changing tables are always marketed to match an infant crib and are never marketed to match with adult or youth furniture. Toys "R" Us alleges that large furniture retailers do not market to the infant/toddler market nor do they sell changing tables because of the specialized nature of the changing table. Conversely, Toys "R" Us states that baby children's specialty stores do not sell standard bedroom furniture. Finally, Dorel explains that toddler beds are not generally shipped with other merchandise covered in the scope.

Petitioners argue that there are no differences in channels of trade between imported and domestically produced youth/infant furniture.

### 5. *Manner of Advertising or Display*

Dorel and Toys "R" Us explain that product information concerning changing tables is marketed and disseminated in the same manner as the sale of infant cribs because, as with infant cribs, changing tables meet ASTM requirements and are generally companion items to infant cribs. Toys "R" Us also explains that toddler beds are advertised and displayed in close proximity with other nursery products rather than other bedroom furniture. Dorel states that, to the best of its knowledge, changing tables are never displayed or marketed with other adult bedroom furniture but are typically displayed with matching infant cribs.

Petitioners argue that there is no significant difference between the dissemination of product information for youth and adult furniture.

### C. Analysis

The Department does not find that an “infant” or “youth” classification or description alone is grounds for finding that infant (baby) changing tables are outside the scope of the Order. Further, the exclusion of infant cribs is not in itself indicative that all infant wooden bedroom furniture was intended to be outside the scope of the Order. Rather, the exclusion of infant cribs from the scope is only dispositive of the intent to exclude infant cribs and does not on its own provide any indication regarding the inclusion or exclusion of other types of infant bedroom furniture. However, the specificity of the language excluding infant cribs from the Order, along with the inclusion of scope language that “other bedroom furniture consistent with the above list” is within the scope of the Order, indicates that other types of infant wooden bedroom furniture that are consistent with the descriptions in the scope language are included within the Order, as long as they are not specifically excluded. Thus, because the scope of Order was not dispositive with respect to changing tables, the Department has evaluated Dorel’s, Birchfield’s, Toys “R” Us’ and Petitioners’ comments in accordance with 19 CFR 351.225(k)(2).

#### 1. *Physical Characteristics of Infant (baby) Changing Tables*

ASTM F-2388-4 defines and describes the broad characteristics of infant (baby) changing tables. Although changing tables have added safety barriers that surround the entire perimeter of the top of the table or a contoured changing pad that serves as a safety barrier around the entire perimeter of the table, many changing tables have features similar to dressers or other wooden bedroom furniture (e.g., drawers, doors, etc.). The Department also recognizes that a changing table’s height and surface area are designed for the purpose of changing the infant child’s diaper by an adult caregiver. The Department also recognizes that changing tables are often designed to meet consumer safety specifications. However, the Department agrees with Petitioners that these features alone do not distinguish changing tables from other in-scope merchandise.

We disagree with Birchfield that its changing tables with drawers or doors, regardless of whether the guard railing is removable, fall outside the scope because Birchfield’s changing tables contain characteristics of in-scope merchandise (i.e., dresser). The Department evaluates whether the piece of furniture is within the scope, based on the entirety of the physical characteristics. Whether a piece of furniture is used as a changing table does not provide a sole basis for the exclusion. In this case, additional characteristics, such as a permanent guard rail, do not form a basis for an exclusion when the changing table also includes other physical characteristics (e.g., drawers or doors) similar to other in-scope merchandise. Thus, the fact that an item can be used as a changing table, in addition to a dresser, does not necessitate a finding that it is outside the scope.

Further, as ASTM F-2388-4, at paragraph 3.1.1 states, “{c}hanging tables may convert from or to other items of furniture, such as, but not limited to a dresser, desk, hutch, bookshelf, or play yard.” Similarly, ASTM F-2388-4 also allows the use of a changing pad to convert any dresser top or flat surface into a infant (baby) changing table. Therefore, as ASTM F-2388-4 describes, it is possible for changing tables to serve many functions other than acting merely as a changing table, some of which are included within the scope of the Order.

Based on the above physical characteristics, we determine that the best way to distinguish a changing table from a dresser or other wooden bedroom furniture is to describe a changing table as having no drawers or doors, with the flat top surface surrounded by a permanent guard rail.

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## 2. *Expectations of the Ultimate End Purchasers/Ultimate Use of the Product*

It is not disputed that the expectations of the ultimate end purchaser and an ultimate use of changing table is to provide an adult caregiver with a safe, convenient and practical piece of furniture to change an infant child’s diaper. We agree with parties that end purchasers also expect the changing table to provide a convenient and easily accessible place to store diapers, cloths, and other infant care items needed when changing the infant child’s diaper. We agree with Birchfield that expectations of a changing table and dresser or chest are different for the sole purpose of changing an infant child’s diaper. We disagree with Birchfield, however, that purchasers’ expectations regarding a changing table and dresser or chest do not share other similar expectations such as a place to store clothes. Furthermore, there is substantial evidence that products on the market which are sold as youth dressers or chests are also marketed as changing tables with the addition of a changing pad or other accessory. We agree with Petitioners’ analysis and find that, with respect to changing tables that include drawers or doors, the purchaser expects not only a place for an adult caregiver to change an infant child’s diaper, but also the additional function of a dresser after its use as a changing table is no longer necessary.

## 3. *Channels of Trade*

Changing tables are primarily marketed and sold through specialty stores or mass merchants rather than traditional furniture retailers. Parties, however, do recognize that some furniture retailers also market and sell changing tables and there is no indication that mass merchants do not also sell other in-scope merchandise. We disagree with Toys “R” Us that specialty stores do not sell other in-scope wooden bedroom furniture because these stores also sell infant/youth dressers, armoires or other similar in-scope furniture items. Because the Department does not find that an “infant” or “youth” classification or description alone is dispositive, the Department does not find that changing tables are outside the scope of the Order solely because the item is sold at a children’s specialty store.

#### 4. *Manner of Advertising or Display*

Retailers market and display changing tables in a separate section from other bedroom furniture. Whether changing tables are advertised in the same manner as infant cribs or other age-appropriate items is irrelevant for the purpose of this scope inquiry. Other than stating that a retailer may market or display changing tables in a separate section from other bedroom furniture, parties have not provided any record evidence that distinguishes or describes how changing tables are advertised differently from other in-scope merchandise. Furthermore, record evidence also indicates that other infant/youth dressers, armoires or other similar in-scope furniture items are displayed with changing tables.

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#### **Recommendation**

In analyzing factors set forth at 19 CFR 351.225(k)(2), the determination as to which analytical criteria are most appropriate in any given scope inquiry is made on a case-by-case basis after consideration of all evidence before the Department. In this case, we find that the physical characteristics, the expectations of the ultimate purchaser and ultimate use provide the most guidance in determining whether changing tables are within the scope of the Order. With regard to the physical characteristics, a changing table that meets ASTM F-2388-4 and has a safety barrier that surrounds the entire perimeter of the top of the table or a contoured changing pad that serves as safety barrier around the entire perimeter of the table does not alone provide distinguishing characteristics that separate it from other in-scope merchandise, such as a dresser, chest or other merchandise.

As discussed above, simply because the item can be used as a changing table does not necessitate a finding that it is outside the scope when the physical characteristics do not distinguish the item from in-scope merchandise. Similarly, expectations of the end user and ultimate use of changing tables with drawers and doors is also not distinguishable from a dresser and other in-scope merchandise because consumers have expectations of using the "changing table" as a dresser after it is no longer needed as a changing table. However, changing tables with no drawers or doors, and with the flat top surface surrounded by a permanent guard rail, are sufficiently distinguishable from dressers, chests and other wooden bedroom furniture by the physical characteristic and ultimate expectations and use of the changing table.

Because the criteria under 19 CFR 351.225(k)(1) are not dispositive with regard to infant (baby) changing tables, the Department determined that it was necessary to consider the five additional factors set forth at 19 CFR 351.225(k)(2). Based upon the above analysis, we recommend that the Department find infant (baby) changing tables with drawers or doors meet the description of merchandise within the scope of the Order. We also recommend the Department find infant

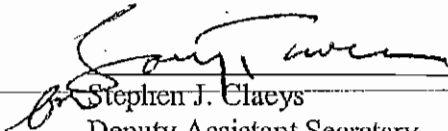
(baby) changing tables with no drawers or doors, and with the flat top surface surrounded by a permanent guard rail, do not meet the description of merchandise within the scope of the Order.

  
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Agree

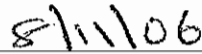
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Disagree

  
\_\_\_\_\_

Stephen J. Claeys

Deputy Assistant Secretary  
for Import Administration

  
\_\_\_\_\_

Date