



A-570-928
Scope Ruling
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July 15, 2011

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

THROUGH: James C. Doyle
Director, Office 9
Antidumping and Countervailing Duty Operations

FROM: Steven Hampton
International Trade Analyst
AD/CVD Enforcement, Office 9

RE: Uncovered Innerspring Units from the People's Republic of China:
No Boundaries LLC Final Scope Ruling

Summary

On June 6, 2011, the Department of Commerce ("Department") received an application from No Boundaries LLC ("No Boundaries") requesting a scope determination¹ on whether the fabric encased upholstery coil units ("upholstery units") that it intends to import from the People's Republic of China ("PRC") are within the scope of the antidumping duty order on uncovered innerspring units ("innersprings") from the PRC. *See Uncovered Innerspring Units from the People's Republic of China: Notice of Antidumping Duty Order*, 74 FR 7661 (February 19, 2009) ("*Order*"). Pursuant to an analysis under 19 CFR 351.225(k)(1), we recommend that the Department determine that the upholstery units described in the No Boundaries Submission are within the scope of the *Order* on innersprings from the PRC.

Background

On June 6, 2011, No Boundaries submitted a scope ruling request for the upholstery units that No Boundaries intends to import from the PRC. No Boundaries states that the upholstery units are intended for use in the top layer of a pillow top mattress and, according to No Boundaries, are designed to enhance the feel of the mattress. No Boundaries stated that the Department should consider the products in question as outside the scope of the *Order* on innersprings from the PRC.² On June 8, 2011, Leggett & Platt, Incorporated ("Petitioner") met with the

¹ See Letter from No Boundaries to the Department regarding Scope Inquiry by No Boundaries: Uncovered Innerspring Units from the People's Republic of China dated June 1, 2011 ("No Boundaries Submission").

² See No Boundaries Submission at 3.



Department to discuss this scope request and other segments related to the *Order* on innersprings.³ On June 10, 2011 Petitioner submitted comments on No Boundaries scope request.⁴ On June 20, 2011, No Boundaries submitted rebuttal comments to Petitioner's June 10th submission.⁵ On June 24, 2011 Petitioner submitted rebuttal comments in response to No Boundaries's June 20th submission.⁶ These comments are summarized below.

Scope of the Order

The merchandise subject to this order is uncovered innerspring units composed of a series of individual metal springs joined together in sizes corresponding to the sizes of adult mattresses (e.g., twin, twin long, full, full long, queen, California king, and king) and units used in smaller constructions, such as crib and youth mattresses. All uncovered innerspring units are included in this scope regardless of width and length. Included within this definition are innersprings typically ranging from 30.5 inches to 76 inches in width and 68 inches to 84 inches in length. Innersprings for crib mattresses typically range from 25 inches to 27 inches in width and 50 inches to 52 inches in length.

Uncovered innerspring units are suitable for use as the innerspring component in the manufacture of innerspring mattresses, including mattresses that incorporate a foam encasement around the innerspring.

Pocketed and non-pocketed innerspring units are included in this definition. Non-pocketed innersprings are typically joined together with helical wire and border rods. Non-pocketed innersprings are included in this definition regardless of whether they have border rods attached to the perimeter of the innerspring. Pocketed innersprings are individual coils covered by a "pocket" or "sock" of a nonwoven synthetic material or woven material and then glued together in a linear fashion.

Uncovered innersprings are classified under subheading 9404.29.9010 and have also been classified under subheadings 9404.10.0000, 7326.20.0070, 7320.20.5010, or 7320.90.5010 of the Harmonized Tariff Schedule of the United States ("HTSUS"). The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the order is dispositive.

³ See Memo to the File, from Steven Hampton, International Trade Compliance Analyst, Uncovered Innerspring Units from the People's Republic of China: Ex Parte Meeting with Petitioner (June 1, 2011).

⁴ See Letter from Leggett and Platt, Incorporated to Secretary of Commerce, regarding Antidumping Duty Order on Uncovered Innerspring Units from the People's Republic of China: No Boundaries LLC's Scope Ruling Request, dated June 9, 2011 ("Petitioner's June 10 Submission").

⁵ See Letter from No Boundaries to the Department regarding Scope Inquiry by No Boundaries: Uncovered Innerspring Units from the People's Republic of China dated June 16, 2011 ("No Boundaries Rebuttal Comments").

⁶ See Letter from Leggett and Platt, Incorporated to Secretary of Commerce, regarding No Boundaries LLC Scope Ruling Request to No Boundaries June 16 Letter, dated June 24, 2011 ("Petitioner's rebuttal comments").

Parties' Arguments

No Boundaries' Arguments

No Boundaries argues that the upholstery units are not within the scope of the *Order* because they do not meet the physical specifications for units intended for use in mattresses. Specifically, No Boundaries states that upholstery units are 2.4 inches (6cm) high and made from 1.3mm or 1.4mm diameter high carbon wire. No Boundaries claims that subject innerspring units are 3.5 inches (9cm) to 9 inches (23cm) high and are made from 1.7mm to 2.4mm diameter high carbon wire. Therefore, the upholstery units are too short and too soft to be used as innersprings. In addition, No Boundaries asserts that upholstery units are used in addition to and on top of innersprings (*i.e.*, they are not incorporated into the innerspring unit itself, but are a separate component).

No Boundaries claims that upholstery units lack the height and firmness to be suitable for use as mattress innersprings. No Boundaries asserts that the innersprings used to make sofa sleeper mattresses are 3.5 to 4.5 inches in height. The upholstery units are only 2.4 inches high. In addition, innersprings that are used in sofa sleeper units are made of wire that is 2.0mm to 2.4mm in diameter. The upholstery units are 1.3 to 1.4mm in diameter. Furthermore, No Boundaries states that they have never purchased the subject upholstery units or used them as innersprings.

Finally, No Boundaries also includes a category classification from U.S. Customs & Border Protection ("CBP") in its submission which states that upholstery units are classified as HTS: 7326.20.0070 Articles of Iron or Steel Wire. No Boundaries contends that CBP did not classify the upholstery units under the HTS number for innersprings, HTS: 9404.29.9011.

Petitioner's Arguments

Petitioner argues that the upholstery units meet the physical description set forth in the scope and that the subject product is an innerspring as defined by the terms of the *Order*. Petitioner explains that "low height" innersprings, such as the subject product, are routinely used as the *sole* innersprings in many types of mattresses, including sofa sleepers, European mattresses, and coil-on-coil mattresses. Petitioner states that within the bedding industry, innerspring units that are less than 5 inches tall are commonly referred to as "low height units." Petitioner explains that it produces and sells innerspring units that are of a similar height and diameters as the product subject to this scope request and that these units are suitable for use as innersprings. Petitioner provided evidence on the record that it produces and sells the products similar to those subject to this scope request. Furthermore, Petitioner claims that No Boundaries's CBP category classification confirms that the subject product is classified under one of the subheadings in the scope.

Legal Framework

The Department examines scope requests in accordance with the Department's scope regulations. *See* 19 CFR 351.225. On matters concerning the scope of an antidumping duty

order, the Department first examines the descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the United States International Trade Commission ("ITC"). See 19 CFR 351.225(k)(1). This determination may take place with or without a formal inquiry.

Where the descriptions of the merchandise above are not dispositive, the Department will consider the five additional factors set forth at 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. See 19 CFR 351.225(k)(2). 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.

Analysis

For this inquiry, the Department evaluated No Boundaries's request in accordance with 19 CFR 351.225(k)(1) and consulted the description of the product contained in the petition, the initial investigation, and any determinations by the Secretary (including prior scope determinations) and the ITC. The Department finds that the description of merchandise in the *Order*, which did not change during the course of the investigation, is, in fact, dispositive with respect to No Boundaries's upholstery units.⁷ Therefore, the Department finds it unnecessary to consider the additional factors in 19 CFR 351.225(k)(2).

As described in No Boundaries's submissions, its upholstery units are 2.4 inches (6cm) high and made from 1.3mm or 1.4mm diameter high carbon wire. No Boundaries claims that the subject innerspring units are higher and made from 1.7mm to 2.4mm diameter high carbon wire. While the scope of the *Order* provides typical ranges of the widths and lengths of innersprings, the scope states that, "[a]ll uncovered innerspring units are included in this scope regardless of width and length." Further, the scope of the *Order* does not contain any limitation with respect to the diameter of wire. Accordingly, the size of the units or the size of the wire does not determine whether the merchandise is within the scope of the *Order*.

Although No Boundaries argues that upholstery units lack the height and firmness to be suitable for use as innersprings⁸, the scope does not contain any exclusions based upon height or firmness. Furthermore, the record contains numerous examples, provided by Petitioner, of similar units that it sells with the same height and firmness specifications described by No Boundaries which are used as innerspring components in the manufacture of innerspring mattresses. First, Petitioner advertises its Softech innerspring (which is the same height as the No Boundaries' product at issue) on its webpage as an innerspring unit, along with other

⁷ The Department has not relied upon prior determinations, either by the Department or ITC, because these do not address the questions presented in this argument, nor has any party argued otherwise. See, e.g., Memorandum to Christian Marsh, from Toni Dach, International Trade Analyst, Uncovered Innerspring Units from the People's Republic of China: Wickline Bedding Enterprises Final Scope Ruling (May 31, 2011).

⁸ Regarding firmness, No Boundaries equates the diameter of the wire with the firmness or softness of an innerspring unit. No Boundaries asserts that upholstery units are too soft because the diameter of the wire used in the subject product is relatively thin, (i.e. 1.3mm to 1.4mm).

pocketed coil units and non-pocket coil units.⁹ Second, Petitioner provided a formal product description of their "low height pocket range units" which are available in coil heights ranging from 4cm (1.5 inches) to 6 cm (2.4 inches).¹⁰ Third, Petitioner also provided e-mail correspondence of discussions with customers regarding the use of 2.4 inch tall innerspring units in a mattress.¹¹ With respect to diameter, Petitioner provided evidence demonstrating that their Softech innerspring unit has 2.4 inch high coils and wires that are 1.3mm to 1.4mm in diameter.¹² Accordingly, the record demonstrates that No Boundaries' upholstery units are suitable for use as the innerspring component in the manufacture of innerspring mattresses and therefore properly considered within the scope of the *Order*.

With respect to No Boundaries' argument that upholstery units should be excluded because they are a separate component within a mattress, we disagree. While some bed configurations may have more than one innerspring unit as a component, that does not mean that the individual innerspring components by themselves are not covered by the scope. In this case, the upholstery unit, by itself, meets the physical description of subject merchandise in the scope. Further, the scope of the *Order* does not place any limitation on the location or positioning of innersprings in a mattress. Accordingly, No Boundaries' argument that its units are outside the scope of the *Order* because the units are a separate component placed on top of, innerspring units is not persuasive. Moreover, the scope expressly includes "units used in smaller constructions."

Lastly, No Boundaries argues that CBP classifies upholstery units under HTS: 7326.20.0070 Articles of Iron and Steel Wire, and not HTS: 9404.20.9011 Uncovered Innerspring Units. As noted in the *Order*, HTS categories are not dispositive as to whether a product is covered by the scope of an antidumping duty order. Moreover, the HTS category that No Boundaries provides for its upholstery units, HTS 7326.20.0070, is identified in the scope of the *Order* as a possible subheading for uncovered innerspring units. Therefore, the fact that No Boundaries' units are classified under this HTS number does not support No Boundaries' claim that these units are outside the scope of the *Order*.

⁹ See Petitioner's June 10 Submission at Exhibit 1.

¹⁰ See Petitioner's June 10 Submission at Exhibit 4.

¹¹ See Petitioner's June 10 Submission at Exhibit 7.

¹² See Petitioner's rebuttal comments at Exhibit 2. This Exhibit is based on the American Society for Testing and Materials ("ASTM") industry standard to test the measurements of innerspring units. According to Petitioner, ASTM is a well-established international standards organization that develops and publishes voluntary consensus technical standards for a wide range of materials, products, systems, and services. Its technical standards for innerspring units and mattresses are widely-accepted and used within the industry.

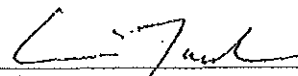
Recommendation

Based upon the foregoing analysis under 19 CFR 351.225(k)(1), we recommend finding that No Boundaries's upholstery units are within the scope of the *Order* on innersprings from the PRC.

✓

Agree

Disagree



Christian Marsh

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations

7/15/11

Date