



INTERNATIONAL
SLEEP
PRODUCTS
ASSOCIATION

August 8, 2003

The Honorable Grant Aldonas
Under Secretary for International Trade
Central Records Unit, Room 1870
U.S. Department of Commerce
Pennsylvania Ave. & 14th Street, NW
Washington, D.C. 20230

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IMPORT ADMINISTRATION

Re: Comments on Softwood Lumber Policy Bulletin

Dear Mr. Aldonas:

The International Sleep Products Association (ISPA) hereby provides comments on behalf of the U.S. mattress industry concerning the proposed Softwood Lumber Policy Bulletin published on June 24, 2003 at 68 Fed. Reg. 37456. ISPA is a U.S. trade association whose members consist of mattress manufacturers and entities that supply components and services to the mattress industry.

ISPA and our members have a direct interest in the softwood lumber proceedings because the Department has erroneously concluded that one category of a manufactured wood component that the mattress industry requires to make the internal structure of box-springs (also called mattress foundations) is the same "class or kind" of merchandise as softwood lumber used for building construction. The wooden components required by the mattress industry are commonly referred to as "bed-frame components."

It is our industry's experience that these types of components cannot be obtained in satisfactory quality from U.S. sources. As a result, virtually all of the bed-frame components consumed by the U.S. mattress industry today are imported from Canada.

ISPA takes no position on the substance of the Department's Policy Bulletin.

Nevertheless, to the extent that the Bulletin provides a basis upon which the pending antidumping and countervailing duty proceedings on softwood lumber might be "settled," ISPA requests that such a settlement reflect the "class or kind" findings for bed-frame components that an Article 1904 NAFTA binational panel recently announced in its decision overturning aspects of the Department's lumber antidumping determination. See *In The Matter of Certain Softwood Lumber Products from Canada: Final Affirmative Antidumping Determination*, USA-CDA-2002-1904-02 (July 17, 2003) at 170.

Specifically, any such settlement should provide that bed-frame components are not the same class or kind of merchandise as softwood lumber. As such, these components should not be subject to any so-called "interim measures" (such as quotas, border taxes, etc.) that might be imposed as part of a settlement, and all deposits of antidumping and

countervailing duties posted to date on entries of these components should be refunded in full (with interest) to the importers of these products.

As you may be aware, the bed-frame component "class or kind" issue was litigated extensively both before the Department and during the NAFTA review proceedings. Given the substantial differences between bed-frame components and conventional lumber products, and the lack of suitable U.S. sources for these critical components, ISPA, our members, and our suppliers have long argued that these components should be excluded from any antidumping or countervailing duties imposed by the United States in the softwood lumber cases.

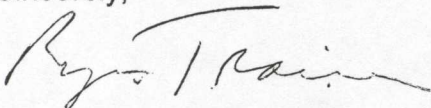
During the initial proceedings before your agency, the Department agreed with the mattress industry in part by finding that those bed-frame components that have a rounded corner (the so-called "radius-cut" components) and bed-frame "kits" are excluded from these duties. Nevertheless, the Department found that square-end components that are not imported as kits are within the same class or kind of merchandise as conventional lumber. As a result, these components have been subjected to duty deposit requirements.

In a highly critical section of its decision, however, the NAFTA panel rejected the Department's "class or kind" findings, concluding that the Department had "abdicated" its responsibility to apply the correct legal criteria in deciding this issue. Although it remanded the matter to the Department, the panel emphasized that much of the record evidence supporting a separate "class or kind" determination for square-end bed-frame components was "apparently uncontradicted." *Id.* at 176.

Given the NAFTA panel's unequivocal ruling, there is no lawful finding that square-corner bed-frame components are the same class or kind of merchandise as softwood lumber. As such, these components should not be subject to any interim measures that might be imposed as part of an agreement to settle these pending cases. Furthermore, importers of these products should receive full refunds of all estimated duties deposited on bed-frame components imported from Canada.

Please contact the undersigned should you have any questions regarding these comments.

Sincerely,



Ryan Trainer
Executive Vice President
International Sleep Products Association