

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-570-890]

**Wooden Bedroom Furniture From the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On July 30, 2007, the Department of Commerce ("Department") issued its preliminary results in the changed circumstances review of the antidumping duty order on wooden bedroom furniture ("WBF") from the People's Republic of China ("PRC"). See *Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty Changed Circumstances Review*, 72 FR 41492 (July 30, 2007) ("Preliminary Results"). For these final results, we continue to find that Tradewinds Furniture Ltd. is the successor-in-interest to Nanhai Jiantai Woodwork Co. ("Nanhai Jiantai"), and that Tradewinds International Enterprise Ltd. ("Tradewinds Intl") is not the successor-in-interest to Nanhai Jiantai's affiliated exporter, Fortune Glory Industrial Limited ("Fortune Glory").

**EFFECTIVE DATE:** October 26, 2007.

**FOR FURTHER INFORMATION CONTACT:** Juanita H. Chen or Robert A. Bolling, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14<sup>th</sup> Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202-482-1904 or 202-482-3434, respectively.

**SUPPLEMENTARY INFORMATION:****Background**

On January 18, 2007, in response to a joint request by Tradewinds Furniture Ltd. and Tradewinds Intl (collectively, "Tradewinds"), the Department initiated a changed circumstances review to determine whether Tradewinds Furniture Ltd. and Tradewinds Intl are successors-in-interest to Nanhai Jiantai and Fortune Glory, respectively. See *Wooden Bedroom Furniture from the People's Republic of China: Initiation of Antidumping Duty Changed Circumstances Review*, 72 FR 2262 (January 18, 2007). On July 30, 2007, the Department issued its *Preliminary Results*, finding that Tradewinds Furniture Ltd. is the successor-in-interest to Nanhai Jiantai, and that

Tradewinds Intl is not the successor-in-interest to Fortune Glory. See *Preliminary Results*, 72 FR 41492. As part of the *Preliminary Results*, the Department invited interested parties to submit case and rebuttal briefs, and provided the opportunity for parties to request a hearing. See 72 FR at 41495. On August 6, 2007, Tradewinds submitted a brief agreeing with the Department's finding for Tradewinds Furniture Ltd. but contesting the finding that Tradewinds Intl is not the successor-in-interest to Fortune Glory. No other parties submitted briefs. No interested parties submitted a rebuttal brief or requested a hearing.

**Scope of Order**

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, 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, 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>1</sup>,

<sup>1</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.

highboys<sup>2</sup>, lowboys<sup>3</sup>, chests of drawers<sup>4</sup>, chests<sup>5</sup>, door chests<sup>6</sup>, chiffoniers<sup>7</sup>, hutches<sup>8</sup>, and armoires<sup>9</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 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>10</sup>; (9) jewelry armories<sup>11</sup>; (10) cheval

<sup>2</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>3</sup> A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

<sup>4</sup> A chest of drawers is typically a case containing drawers for storing clothing.

<sup>5</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>6</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>7</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>8</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>9</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.

<sup>10</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>11</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

mirrors<sup>12</sup>; (11) certain metal parts<sup>13</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; and (13) upholstered beds<sup>14</sup>.

Imports of subject merchandise are classified under subheading 9403.50.9040 of the HTSUS as “wooden . . . beds” and under subheading 9403.50.9080 of the HTSUS as “other . . . wooden furniture of a kind used in the bedroom.” In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9040

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: Notice of Final Results of Changed Circumstances Review and Revocation in Part*, 71 FR 38621 (July 7, 2006).

<sup>12</sup> Cheval mirrors are, *i.e.*, any framed, tiltable mirror with a height in excess of 50” that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.*, a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet lined 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 Results of Changed Circumstances Review and Determination To Revoke Order in Part*, 72 FR 38621 (January 9, 2007).

<sup>13</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 the Harmonized Tariff Schedule of the United States (“HTSUS”) subheading 9403.90.7000.

<sup>14</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).

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.

#### Final Results Of Review

As noted in the *Preliminary Results*, in a changed circumstances review involving a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. See *Certain Cut-to-Length Carbon Steel Plate from Romania: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 70 FR 22847 (May 3, 2005). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor if the resulting operations are essentially the same as those of the predecessor company. See, *e.g.*, *Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Forged Stainless Steel Flanges from India*, 71 FR 327 (January 4, 2006).

#### Analysis of Comments Received

Due to their proprietary nature, all issues raised in the post-preliminary comments by parties in this review (*i.e.*, whether Tradewinds Intl is the successor-in-interest to Fortune Glory) are addressed in the memorandum to the file, “Decision Memorandum for the Changed Circumstances Review of Tradewinds Furniture Ltd. and Tradewinds International Enterprise Ltd. on the Antidumping Duty Order on Wooden Bedroom Furniture From the People's Republic of China,” dated October 19, 2007 (“Decision Memorandum”). The Decision Memorandum is a proprietary document, for which a public version is available on file in the Central Records Unit in room B-099 of the main Department building.

#### Tradewinds Furniture Ltd.

Tradewinds concurs with the Department's preliminary findings with respect to the successorship of Tradewinds Furniture Ltd. Moreover, there has been no information submitted to the record that indicates the

Department should change its finding with regards to Tradewinds Furniture Ltd. As a result, for the reasons stated in the *Preliminary Results*, we continue to find that Tradewinds Furniture Ltd. is the successor-in-interest to Nanhai Jiantai.

Therefore, we will instruct U.S. Customs and Border Protection to apply the cash deposit rate established for Nanhai Jiantai to all entries of merchandise exported by Tradewinds Furniture Ltd. The cash deposit determination from this changed circumstances review will apply to all entries of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this changed circumstances review. See *Notice of Final Results of Antidumping Duty Changed Circumstances Review; Certain Forged Stainless Steel Flanges From India*, 71 FR 31156, 31157 (June 1, 2006). This cash deposit rate shall remain in effect until further notice.

#### Tradewinds International Enterprise Ltd.

While Tradewinds asserts that its submitted documentation supports a finding that Tradewinds Intl is the successor-in-interest to Fortune Glory, and should be legally entitled to the Fortune Glory rate, we find that Tradewinds failed to provide sufficient evidence indicating that Tradewinds Intl is “essentially the same” as Fortune Glory for a successor-in-interest finding. Contrary to Tradewinds' argument, while we noted in our *Preliminary Results* that Fortune Glory has not transferred its export functions to Tradewinds Intl, it is not the sole reason we determined Tradewinds Intl is not essentially the same as Fortune Glory. Rather, the Department looks to a totality of the factors. While Tradewinds submitted some documentation to demonstrate the creation of Tradewinds Intl (including the business certification and naming of Tradewinds Intl), upon an examination of all the documentation submitted, against the factors required to support a finding of successor-in-interest, including proprietary factors that cannot be discussed in this public **Federal Register** notice, Tradewinds has failed to establish that such creation is essentially unchanged from Fortune Glory. See Decision Memorandum, at 3-6. Significantly, it is not possible to compare the factors the Department typically examines between the predecessor company Fortune Glory (*i.e.*, management, production facilities, supplier relationships, sales facilities, and customer base) to those of the

requesting company Tradewinds Intl because, as Tradewinds itself acknowledges, the successor-in-interest has yet to occur. Specifically, Tradewinds states that “{n}o structural, management, employee, supplier, customer, or other changes are **anticipated** as a result of the transfer” (emphasis added). Despite Tradewinds’ assurances that operations will eventually be essentially the same, the Department cannot base a ruling on speculation, as it provides the Department with no record evidence to analyze. For a more detailed discussion, including relevant factors of a proprietary nature, see the Decision Memorandum.

As a result, we continue to find that Tradewinds Intl is not the successor-in-interest to Fortune Glory at this time and, therefore, should not be given the same antidumping duty treatment as Fortune Glory.

This notice is issued and published in accordance with sections 751(b)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 C.F.R. 351.216.

Dated: October 19, 2007.

**David M. Spooner,**

*Assistant Secretary for Import Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 062006A]

RIN 0648-XD10

#### Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Issuance of Permit

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Marine Mammal Protection Act, NMFS hereby issues a permit for a period of 3 years to authorize the incidental, but not intentional, taking of three stocks of endangered marine mammals by the California/Oregon (CA/OR) drift gillnet fishery. The three stocks are: fin whale, California/Oregon/Washington (CA/OR/WA) stock; humpback whale, Eastern North Pacific (ENP) stock; and sperm whale, CA/OR/WA stock. This authorization is based in part on a determination that this incidental take

will have a negligible impact on the affected marine mammal stocks.

**DATES:** This permit is effective for a 3-year period beginning October 26, 2007.

**ADDRESSES:** Copies of the reference materials may be obtained from Protected Resources Division, NMFS, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Attention: Christina Fahy.

**FOR FURTHER INFORMATION CONTACT:** Monica DeAngelis, NMFS, Southwest Region, Protected Resources Division, (562) 980-3232 or Christina Fahy, (562) 980-4023.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361, *et seq.*), NMFS is issuing a permit to authorize the taking of three stocks of endangered marine mammals (fin whale, California/Oregon/Washington (CA/OR/WA) stock; humpback whale, Eastern North Pacific (ENP) stock; and sperm whale, CA/OR/WA stock) incidental to the CA/OR drift gillnet fishery. This fishery is the only Category I or II fishery with a recent history of taking these three stocks of marine mammals, and in recent history this fishery has taken no other stocks of threatened or endangered marine mammals. Therefore, only this fishery and these three stocks of marine mammals are affected by this permit.

MMPA section 101(a)(5)(E) requires NMFS to allow the taking of marine mammals from species or stocks listed as threatened or endangered under the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) incidental to commercial fishing operations if NMFS determines that: (1) incidental mortality and serious injury will have a negligible impact on the affected species or stock; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with section 118 of the MMPA, and a take reduction plan has been developed or is being developed for such species or stock.

MMPA section 101(a)(5)(E)(ii) requires NMFS to publish a list of the fisheries for which the necessary determinations have been made for the taking of threatened or endangered marine mammals incidental to the fisheries’ operations. This list of fisheries currently contains the three fisheries that are the subject of this notice and identified in Table 1. The MMPA also requires NMFS, upon such determinations, to issue a permit to those fisheries in which vessels are

required to be registered (Category I and II fisheries).

The 2007 List of Fisheries indicates that two Category III fisheries (CA lobster, prawn, shrimp, rock crab, fish pot and CA/OR/WA crab pot) have a history of taking humpback whales. NMFS is currently in the process of characterizing the trap and pot fisheries off the west coast of the United States and assessing the impact, based on the available information, to determine if reclassifying these fisheries is warranted. As provided by the MMPA, the taking of this stock of humpback whales would be authorized, if it were to occur and the owner or master of the vessel reported the take, as required by MMPA section 118(e). MMPA section 101(a)(5)(E)(ii) states that (1) permits are not required for Category III fisheries because participants are not required to register their vessels and (2) that after an appropriate negligible impact determination is completed, taking threatened or endangered marine mammals would not be a violation, so long as any injury or mortality is reported in accordance with MMPA section 118.

#### History of Applying Negligible Impact in Fisheries

Among the requirements of MMPA section 101(a)(5)(E) to issue a permit to take ESA-listed marine mammals incidental to commercial fishing, NMFS must determine whether the incidental taking from commercial fisheries would have a negligible impact on the affected stock or stocks of threatened or endangered marine mammals. Negligible impact determinations are required only in MMPA section 101(a)(5), and they are used in the procedures to authorize the take of small numbers of any stock of marine mammals incidental to activities other than commercial fishing (termed the “Small Take Program”) and to permit the take of threatened or endangered marine mammals incidental to commercial fishing operations. That is, within the MMPA’s provisions for the Small Take Program, NMFS must determine if the taking (by harassment, injury, and mortality) incidental to specified activities will have a negligible impact on the affected stocks of marine mammals (MMPA sections 101(a)(5)(A)(I) and 101(A)(5)(D)(i)(I)). For permitting the take of threatened or endangered marine mammals incidental to fishing operations, NMFS must determine if mortality and serious injury incidental to commercial fisheries will have a negligible impact on the affected species or stocks of