

August 31, 2004

MEMORANDUM TO: Laurie Parkhill
Office Director
China/NME Group

FROM: Robert Bolling
Program Manager

SUBJECT: 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

SUMMARY

On June 24, 2004, the Department of Commerce ("Department") published its preliminary determination of sales at less than fair value in the investigation of wooden bedroom furniture from the People's Republic of China ("PRC").¹ As a result of that determination, we have received extraordinary public interest concerning the implementation of the suspension of liquidation in this investigation with respect to wooden framed mirrors and jewelry armoires. From July 28, 2004, through July 30, 2004, twelve interested parties provided timely comments concerning the scope of the investigation.² An additional four companies provided timely rebuttals to these scope comments.³ This

¹See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Wooden Bedroom Furniture From the People's Republic of China ("Preliminary Determination"), 69 FR 35312 (June 24, 2004).

²On July 28, 2004, LTD Commodities, LLC and ABC Distributing, LLC, provided comments concerning the exclusion of ready-to-assemble ("RTA") wooden bedroom furniture from the scope of the investigation. On July 30, 2004, the Furniture Retailers of America provided comments to limit the scope of investigation to bedroom products that are typically sold as part of suites. On July 30, 2004, Marie Yee provided comments to clarify standards for determining whether certain furniture products constitute bedroom furniture for purpose of this investigation. On July 30, 2004, Sunrise Medical Inc. provided comments concerning patient room furniture used in the long-term care, nursing-home, or similar markets. On July 30, 2004, the Birchfield Design Group, Inc., provided comments recommending that the Department limit the scope of the investigation to matching furniture sold in suites

memorandum addresses only the arguments raised in the Importers' Coalition's July 30, 2004, submission concerning the exclusion of jewelry armoires and cheval mirrors⁴ from the scope of the investigation and Petitioners'⁵ August 6, 2004, submission agreeing in principal with certain aspects of their arguments. Further, Petitioners' August 6, 2004, submission states that "petitioners stand by the scope language as set forth in the preliminary determination, and petitioners' silence with respect to any scope comment filed last week or at any other time in this investigation should be construed as opposition to such comment."⁶ Consequently, we intend to address all other scope comments in the final determination of this investigation.

and as suites. On July 30, 2004, Dorel Asia provided comments that ready-to-assemble/knock-down bedroom furniture should be excluded from the scope of this investigation. On July 30, 2004, Importers' Coalition provided comments recommending that the scope of the investigation explicitly exclude jewelry armoires, cheval mirrors, decorative mirrors, chests not for storing clothing, quilt display racks and day beds. On July 29, 2004, Home Decorators, Inc. ("HDC"), provided comments concerning the exclusion of wooden RTA furniture from PRC. On July 30, 2004, the Neiman Marcus Group ("NMG") provided comments concerning the importance of the use of the "in suite" language in the scope as a means of interpreting the scope. On July 30, 2004, Rosenbaum Fine Art provided comments recommending that all mirrors that are not part of dressers with mirrors should be excluded from the scope of the investigation. On July 30, 2004, The Stanley Works-Home Decor Division, New Britain, Connecticut, provided comments recommending that framed glass mirrors specifically designed and sold as part of a bedroom furniture should be covered by the investigation. On July 30, 2004, Tumac Lumber Co., Inc., provided comments recommending that imported parts that are not specifically identified in the scope should be excluded from the investigation.

³On August 6, 2004, Petitioners provided rebuttal comments responding to the above-mentioned comments. 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. On August 6, 2004, Sunrise Medical provided rebuttal comments proposing specific language to exclude patient-care furniture products from the scope of the investigation.

⁴See Letter of July 30, 2004 from the Importers' Coalition at 6 to 10.

⁵The 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.

⁶See Letter of August 6, 2004 from petitioners at 23.

The merchandise covered in the investigation is wooden bedroom furniture as described in the “Scope of the Investigation” section of the preliminary determination.⁷ The period of investigation (“POI”) is April 1, 2003, through September 30, 2003.

As a result of our analysis, we have made changes to the scope of the investigation. We recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this Memorandum. Below is the complete list of the issues covered in this memorandum.

GENERAL COMMENTS

Comment 1: Exclusion of Jewelry Armoires from the Scope of the Investigation

Comment 2: Exclusion of Cheval Mirrors from the Scope of the Investigation

BACKGROUND

Comment 1: Exclusion of Jewelry Armoires from the Scope of the Investigation

The Importers’ Coalition argues that the scope of the investigation should be limited to furniture that is typically sold in suites such as beds, dressers, chest of drawers, night stands and armoires that match those pieces. The Importers’ Coalition recommends, therefore, that items that are not sold in suites, such as cheval mirrors, jewelry armoires and hope or quilt chests, should be excluded from the scope of the investigation. The Importers’ Coalition argues that petitioners did not intend for cheval mirrors, jewelry armoires, and hope or quilt chests to be within the scope of the investigation. According to the Importers’ Coalition, petitioners have not objected to the proposed exclusion of these items from the scope of the investigation.⁸

The Importers’ Coalition argues that jewelry armoires have never been produced in the United States and are not produced by petitioners. They contend that a jewelry armoire typically is designed to store rings, bracelets, and necklaces. In contrast, the Importers’ Coalition argue, the scope of the investigation describes armoires as typically tall cabinets or wardrobes (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.⁹ In addition, the Importers’ Coalition asserts that the scope explains that bedroom armoires may also be used to hold

⁷See Preliminary Determination at 69 FR 35312, 35317.

⁸See January 13, 2004, comments submitted by Furniture Retailers of America, who first raised the issue of excluding furniture sold in suites.

⁹See Preliminary Determination, 69 FR 35312, 35317 at footnote 9.

television receivers and/or other audio-visual entertainment systems.¹⁰ Therefore, the Importers' Coalition contends, the scope of the investigation does not address jewelry armoires.

First, the Importers' Coalition contends that a jewelry armoire is classified as an accent piece and is not designed, sold, or marketed in connection with bedroom collections. Second, they claim, although a jewelry armoire does have doors and drawers, the drawers are not "either exterior below or above the doors or interior behind the doors." Third, the Importers' Coalition maintains a jewelry armoire is generally less than 50 inches in height. Fourth, the Importers' Coalition contends that a jewelry armoire does not have any apparatus for storing clothes and is not intended to store clothes. Therefore, the Importers' Coalition argues, the Department should specifically exclude jewelry armoires from the scope of the investigation. The Importers' Coalition proposes the following amendment to the scope of the investigation:

(12) The Subject merchandise excludes: ... Jewelry armoires, i.e., 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, at least one lined side door with necklace hangers and a flip-top lid with inset mirror.

Petitioners agree that they did not intend the scope of this investigation to cover certain jewelry armoires. Petitioners agree to add an additional exclusion to the existing scope language for certain jewelry armoires, provided that it is framed in the detailed and highly specific manner suggested by the Importers' Coalition. Petitioners propose the following language for the scope exclusion pertaining to jewelry armoires:

Jewelry armoires, i.e., 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.

Department's Position: Because petitioners agree that they did not intend to include jewelry armoires in the scope of this investigation and because they provided exclusion language to our satisfaction, we propose to modify the scope to exclude jewelry armoires 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

¹⁰Id.

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.

Comment 2: Exclusion of Cheval Mirrors and Hall Mirrors from the Scope of the Investigation

The Importers' Coalition contends that the scope of the investigation includes dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser. The Importers' Coalition states that scope of the investigation published in the Department's preliminary determination also includes the Harmonized Tariff Schedule ("HTS") number for mirrors that are not designed for or marketed as bedroom furniture.

The Importers' Coalition argues that the description of the scope written by petitioners intends to cover only mirrors that are attached to, incorporated in, sit on, or hang above a dresser. The Importers' Coalition maintains that the scope language provided by petitioners describes exactly which mirrors are subject merchandise. The Importers' Coalition argues that, because the HTS number provided in the scope language includes all framed glass mirrors, entries of mirrors that are not subject merchandise have been treated by U.S. Customs and Border Protection ("CBP") as subject merchandise. According to the Importers' Coalition, shipments of mirrors have been held up at the port of entry and, in some cases, the duty was applied in error. It argues that, even if duties are ultimately not applied, companies must undergo significant delays and unnecessary disruption to business operations in order to have the entries cleared.

The Importers' Coalition asserts that, in the furniture industry, the mirror is not marketed simply for the purpose of reflecting an image; the accent-furniture industry focuses on mirrors as decorative display items for the purpose of showcasing a main part of the house. The Importers' Coalition argues that a cheval mirror is a floor-length mirror in a frame which can be tilted and as such it is designed and marketed as an accent piece, not a bedroom piece. Further, the Importers' Coalition states that many decorative mirrors are designed and marketed for use in the foyer or entryway to a home or designed for display above a mantle or fireplace.

As a result, the Importers' Coalition proposes the following amendment to the scope of the investigation to exclude cheval mirrors:

(11) 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.

In addition, the Importers' Coalition proposes the following amendment to the scope of the investigation to exclude hall mirrors:

(12) Mirrors not sold as part of a bedroom collection or suite.

Petitioners explain that they are sympathetic to importers which believe that cheval mirrors should not be covered by the investigation. Petitioners propose the following language for the scope exclusions pertaining to cheval mirrors:

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.

Department's Position: Because petitioners agree that they did not intend to include cheval mirrors in the scope of this investigation and because they provided exclusion language to our satisfaction, we propose to modify the scope to exclude cheval mirrors using the following definition:

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.

The Petitioners did not make an affirmative statement regarding the Importers' Coalition's request to exclude mirrors not sold as part of a bedroom suite. Therefore, we do not propose to make a determination here on this issue.

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting the scope of the investigation accordingly. If these recommendations are accepted, we will amend our description of the scope of the investigation. At present, entries of jewelry armoires and cheval mirrors from the PRC are being suspended pursuant to the Department's preliminary determination and subsequent instructions to CBP. Because all parties have agreed to the exclusion of these items and in order to facilitate entry and liquidation of this non-subject merchandise, we will instruct CBP to terminate the suspension of liquidation of entries of jewelry armoires and cheval mirrors pursuant to this determination.

AGREE_____

DISAGREE_____

DISCUSS_____

Laurie Parkhill
Office Director
China/NME Group

Date