

MEMORANDUM TO: Laurie Parkhill
Office Director
China/NME Group

FROM: Robert Bolling
Program Manager

SUBJECT: Issues and Decision Memorandum Concerning 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 The merchandise covered in the investigation is wooden bedroom furniture as described in the "Scope of the Investigation" section of the preliminary determination.² The period of investigation ("POI") is April 1, 2003, through September 30, 2003. As a result of that determination, we have received extraordinary public interest concerning the suspension of liquidation of entries with respect to mirrors. 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.

GENERAL COMMENTS

Comment 1: Exclusion of Certain Mirrors from the Scope of the Investigation

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 Fed. Reg. 35312 (June 24, 2004).

²See Preliminary Determination, 69 Fed. Reg. at 35317.

BACKGROUND

From July 28, 2004, through July 30, 2004, twelve interested parties provided timely comments concerning the scope of the investigation. An additional four companies provided timely rebuttals to these scope comments. This memorandum addresses only the arguments raised with respect to excluding certain mirrors from the scope of the investigation except the arguments concerning the exclusion of cheval mirrors³ from the scope of the investigation. Cheval mirrors have been excluded from the scope of the investigation through a separate decision memorandum.⁴ This memorandum addresses comments received from four parties⁵ and the Petitioners⁶ September 23, 2004, submission. 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 any time in this investigation should be construed as opposition to such comment."⁷ Consequently, the Department intends to address all other comments concerning the scope of its investigation in the final determination.

DISCUSSION OF THE ISSUES:

Comment 1: Exclusion of Certain Mirrors from the Scope of the Investigation

The Importers' Coalition asserts that the Petitioners intended to include only certain types of mirrors in the scope of the investigation, *i.e.*, mirrors that are attached to, incorporated in, sit on, or hang above a dresser. The Importers' Coalition argues that entries of mirrors that are not subject merchandise have been rejected by the U.S. Bureau of Customs and Border Protection ("CBP") because the Harmonized Tariff Schedule of the United States ("HTSUS") number for mirrors is also included in the scope language. The Importers' Coalition contends that, even if duties are not applied ultimately to shipments

³See Letter of July 30, 2004 from the Importers' Coalition at 6 to 10, recommending that the scope of the investigation explicitly exclude cheval mirrors.

⁴See Memorandum to Laurie Parkhill from Robert Bolling: 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 ("Cheval Mirrors Decision Memorandum"), August 31, 2004.

⁵Importer Coalition's July 30, 2004, Submission, Rosenbaum Fine Art's July 30, 2004, Submission, the Stanley Works-Home Decor Division ("Stanley Home Decor") July 30, 2004, Submission, and the Furniture Retailers of America ("FRA") July 30, 2004, Submission.

⁶The 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.

⁷See Letter of August 6, 2004, from the Petitioners at 23.

of mirrors being suspended at the port of entry, companies must undergo significant delays and unnecessary disruption to business operations in order to have the entries of mirrors cleared. The Importers' Coalition argues that the accent-furniture industry is increasingly complex and that many mirrors are marketed and used as decorative display items for the purpose of showcasing a main part of the house, such as the entryway to a home or above a mantle or fireplace. The Importers' Coalition proposes the insertion of the following specific language to describe decorative mirrors in the exclusions section of the Department's scope description:

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

Rosenbaum Fine Art argues first that the Department should exclude certain mirrors expressly from the scope of the investigation because they are not typically sold in suites. Rosenbaum Fine Art urges the Department further to exclude from the scope of the investigation all mirrors that are not a part of dressers with mirrors. Rosenbaum Fine Art argues that the Department should clarify the scope definition to state clearly that framed glass mirrors that are not attached to, incorporated in, sit on, or hang over a dresser, as part of a wooden bedroom furniture suite, are expressly outside the scope of the investigation. In addition, Rosenbaum Fine Art argues that the Department should clarify the scope description by eliminating reference to HTSUS 7009.92.5000 which applies to all framed glass mirrors without regard to end use. Rosenbaum Fine Art contends that any reference in the scope definition to HTSUS numbers should be limited to 9403.50.9040 as ‘wooden beds’ and 9403.50.9080 of the HTSUS as ‘other furniture of a kind used in the bedroom’. Rosenbaum Fine Art argues that, by referring to HTSUS 7009.92.5000, the Department has allowed unnecessary ambiguity and effectively expanded the scope of the investigation to cover all framed glass mirrors from the PRC. Rosenbaum Fine Art asserts that the Department has the authority to narrow or clarify the scope of an investigation if the original scope definition, as written, creates ambiguities.⁸ Rosenbaum Fine Art urges the Department to clarify the scope by excluding reference not only to HTSUS 7009.92.5000 but also any reference in the written description to “glass mirrors *** framed.” If the Department decides to continue to include references to 7009.92.5000, Rosenbaum Fine Art argues, the Department should add a clear statement to the scope definition indicating that end-use certificates filed with CBP by the importers of record may be used to exclude the entry from the scope of the investigation. Further, Rosenbaum Fine Art suggested language for the end-use certificate: “The framed glass mirrors do not contain wood or engineered wood products and/or were not designed, or intended for sale with, coordinating groups of bedroom furniture.”

Stanley Home Decor asserts that the framed glass mirrors which it imported and sold are not designed or sold as part of any bedroom suite or as part of any bedroom dresser. Stanley Home Decor explains

⁸ Rosenbaum Fine Art cites Initiation of Antidumping Duty Investigations: Spring Table Grapes From Chile and Mexico, 66 Fed. Reg. 26831 (May 15, 2001), Notice of Preliminary Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand From Mexico, 68 Fed. Reg. 42378 (July 17, 2003), and Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From Japan, 68 Fed. Reg. 8203 (February 20, 2003).

that, although the consumer who purchases the mirrors is not precluded from using the mirrors in the bedroom, the design of the mirrors in question and the retail establishments in which they are sold demonstrate that they are intended as general-purpose mirrors for multiple uses. Stanley Home Decor argues that the Department should clarify that framed glass mirrors not designed or sold specifically for use in the bedroom, and not designed as part of any bedroom furniture piece, should be outside the scope of the investigation. Stanley Home Decor argues that, without such clarification, CBP officials will have to inquire as to the use of all mirrors being imported from the PRC in order to make a determination as to whether such products are subject to the investigation and, it asserts, this is clearly outside the scope of CBP's authority. Stanley Home Decor argues that the Department's clarification of the scope in this regard will eliminate confusion on the part of CBP officials and the public and will restore consistency with the petition as it was filed, wherein coverage of the products subject to the investigation was limited to "bedroom" furniture.

Stanley Home Decor requests that the Department issue a clarification of the scope of the investigation as follows:

“only framed glass mirrors specifically designed and sold as part of a bedroom suite, or as part of a bedroom furniture piece, such as a dresser, are covered by the investigation”

With regard to several products, including framed mirrors, the FRA argues that the phrase "other bedroom furniture consistent with the above list" needs to be removed from the scope description in order to eliminate ambiguity. Specifically, the FRA argues that the scope of the investigation should exclude framed glass mirrors that are not attached to, incorporated in, or sold in combination with a dresser. The FRA argues that, although the written description of the scope only discusses a small category of mirrors, the HTSUS category 7009.92.5000 includes all framed glass mirrors with more than 929 square centimeters of reflecting area, regardless of whether the mirrors are sold with dressers or intended for use in a bedroom.

The FRA contends that typically retailers do not include other decorative or accent mirrors in a bedroom suite or advertise mirrors together with bedroom furniture. The FRA asserts that typically large wooden furniture companies such as the Petitioners and the Chinese producers that the Department is investigating do not produce mirrors other than the dresser/mirror combinations. As a result, the FRA argues, the Chinese producers of other framed mirrors did not have an opportunity to request a separate rate or otherwise participate in the investigation because they were not on notice that their products could be within the scope of the investigation.

The FRA argues that, if the Department does not exclude all other mirrors besides dresser/mirror combinations, there will be tremendous uncertainty and potential that CBP will require antidumping duties on an overly broad category of mirrors. The FRA argues that the only clear dividing line with respect to whether a mirror is "bedroom furniture" is that mirrors combined with dressers are "bedroom furniture" but all other mirrors should be considered multi-use products outside the scope of the

investigation because they can be used in any room.

The FRA provided examples of mirrors that its members produce that CBP officials might conclude are “other bedroom furniture,” despite the facts that the mirrors are not sold as bedroom furniture and similar mirrors are not produced by the Petitioners.

The FRA argues that the Department should modify the scope to include only mirrors that are attached to, incorporated in, or sold in combination with a dresser. The FRA argues that “sold in combination with a dresser” should replace “sit on, or hang over the dresser” because almost any mirror, including a mirror that was never intended for use in the bedroom, could conceivably sit on or hang over a dresser.

The Petitioners assert that their intent from the outset of the investigation was to cover only those mirrors that are designed or otherwise intended to be sold together with a dresser. The Petitioners acknowledge that certain officials of CBP have been applying provisional measures to entries of all types of wooden framed mirrors. In order to avoid the application of antidumping duties to products that are not within the scope of this investigation, the Petitioners propose the following exclusionary language:

“The scope 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.”

The Petitioners assert that this language clarifies that the scope covers only mirrors that are designed and marketed to be sold with a dresser as part of a dresser-mirror set. Further, the Petitioners argue that importers would be able to demonstrate clearly whether certain imported mirrors are designed and marketed to be sold with a dresser by referring to marketing materials (e.g., catalogues, sell sheets, retail advertisements, etc.). The Petitioners assert that mirrors shipped in the same containers with other subject merchandise would be presumptively subject merchandise, but the importer would be able to rebut that presumption by demonstrating that the mirrors are not designed or intended to be sold with a dresser as part of a dresser-mirror set. Conversely, the Petitioners state, mirrors shipped in containers without subject merchandise would be presumptively non-subject merchandise. The Petitioners claim that importers would be potentially liable for criminal and/or civil penalties if mirrors imported separately from subject merchandise actually were designed or marketed to be sold with a dresser as part of a dresser-mirror set and the importer did not declare the merchandise as subject to the investigation or order at the time of entry.

Department’s Position: Because the Petitioners agree that they did not intend to include 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 this investigation and because it provided exclusion language to our satisfaction, we propose to modify the scope to exclude certain mirrors as follows:

“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.”

RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above position and clarifying the scope of the investigation accordingly. If the recommendation is accepted, we will amend our description of the scope of the investigation. At present, entries of various types of 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 excluded mirrors pursuant to this determination.

AGREE X

DISAGREE _____

signed
Laurie Parkhill
Office Director
China/NME Group

September 28, 2004
Date