



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-570-051, C-570-052
Scope Inquiry
Petitioner-Masterbrand 2018 Scope
Public Document
E&C/V: AB

September 10, 2018

By Certified Mail Notification

To All Interested Parties:

On April 6, 2018 and July 13, 2018,¹ pursuant to 19 CFR 351.225, the Coalition for Fair Trade in Hardwood Plywood and Masterbrand Cabinets Inc. (collectively, the requestors), requested a scope ruling by the Department of Commerce (Commerce). Enclosed is a memorandum containing Commerce's decision and analysis. We will notify U.S. Customs and Border Protection of this decision. If you have any questions on this matter, please contact Amanda Brings at (202) 482-3927.

Sincerely,

Catherine Bertrand
Program Manager, Office V
Enforcement and Compliance

¹ On April 6, 2018, the requestors submitted a scope ruling request. On July 13, 2018, the requestors submitted an amendment to their scope ruling request.





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Scope Inquiry

Petitioner-Masterbrand 2018 Scope

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DATE: September 7, 2018**MEMORANDUM TO:** James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations**FROM:** James C. Doyle
Director, Office V
AD/CVD Operations**SUBJECT:** Final Scope Ruling for Certain Hardwood Plywood Products from
the People's Republic of China: Request by the Coalition for Fair
Trade in Hardwood Plywood and Masterbrand Cabinets Inc.

I. Summary

Based on the analysis below, we recommend that the Department of Commerce (Commerce) determine that the products as described by Coalition for Fair Trade in Hardwood Plywood and Masterbrand Cabinets Inc. (Masterbrand) (collectively, the requestors), in their amended scope ruling request are within the scope of the antidumping duty (AD) and countervailing duty (CVD) orders on certain hardwood plywood products from the People's Republic of China (China).¹

II. Background

On April 6, 2018, pursuant to 19 CFR 351.225, the requestors requested that Commerce issue a scope ruling confirming that "all hardwood plywood that meets the physical description in the scope and does not qualify for an express exclusion" is covered by the scope of the *Orders*, and to confirm that "this is true regardless of whether the hardwood plywood has undergone minor processing and/or is packaged/shipped with other items and regardless of the HTSUS code under

¹ See *Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 83 FR 504 (January 4, 2018) and *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order*, 82 FR 513 (January 4, 2018) (collectively, the *Orders*).



which the merchandise enters the United States.”² On April 12, 2018, April 16, 2018, and April 26, 2018, Commerce established a schedule for comments and rebuttal comments on the Scope Ruling Request.³

On April 23, 2018, Fabuwood Cabinetry Corp. (Fabuwood), CNC Associates N.Y., Inc., Cubitac Cabinetry Corp., En Pointe Cabinetry, LLC, and St. Martin America, Inc. (collectively, U.S. Importers); Linyi Sanfortune Wood Co., Ltd./Shandong Sanfortune Home and Furniture Co., Ltd., Honsoar New Building Material Co., Ltd., Pizhou OUYM Import & Export Trade Co., Ltd./Xuzhou OUMEC Based Panel Co., Ltd., Tech Forest Cabinetry Co., Ltd., Shandong Lifang Furniture Co., Ltd., Shandong Huanmei Wood Co., Ltd., Shandong Fusheng Wood Co., Ltd., and Qingdao Shousheng Industry Co., Ltd. (collectively, Chinese Exporters); JS International, Inc. (JSI); and Shandong Sanfortune Home and Furniture Co., Ltd. and Xuzhou Oumec Wood-Based Panel Co., Ltd. (Shandong and Xuzhou) submitted timely comments on the Scope Ruling Request.⁴ On May 1, 2018, the requestors submitted timely rebuttal comments.⁵ Also on May 1, 2018, IKEA submitted rebuttal comments, which Commerce subsequently rejected, in part, as they contained arguments not responsive to any comments on the Scope Ruling Request.⁶ The corrected rebuttal comments were timely filed on May 23, 2018.⁷ Also on May 23, 2018, IKEA requested that Commerce reconsider its rejection of certain arguments in its original May 1, 2018 rebuttal comments.⁸

On May 25, 2018, Commerce denied IKEA’s request to reconsider its rejection.⁹ On May 8, 2018, Commerce extended the time period for issuing a final scope ruling, or initiating a formal

² See Letter re: “Certain Hardwood Plywood Products from the People’s Republic of China: Request for Scope Ruling,” dated April 6, 2018 (Scope Ruling Request).

³ See Memorandum, “Certain Hardwood Plywood Products from the People’s Republic of China: Deadline for Comments on the Petitioner-Masterbrand 2018 Scope Ruling Request,” dated April 12, 2018; Memorandum, “Petitioner-Masterbrand 2018 Scope Ruling Request Comments Extension,” dated April 16, 2018; and Memorandum, “Certain Hardwood Plywood Products from the People’s Republic of China: Deadline for Rebuttal Comments on the Petitioner-Masterbrand 2018 Scope Ruling Request,” dated April 26, 2018.

⁴ See Letter re: “Hardwood Plywood from the People’s Republic of China Comments in Opposition to Request for Scope Ruling,” dated April 23, 2018 (U.S. Importers’ Comments); Letter re: “Hardwood Plywood from the People’s Republic of China Comments in Opposition to Request for Scope Ruling,” dated April 23, 2018 (Chinese Exporters’ Comments); Letter re: “Scope Inquiry: Certain Hardwood Plywood Products from the PRC (A-570-051); Scope Comments of JS International Inc.,” dated April 23, 2018 (JSI’s Comments); and Letter re: “Hardwood Plywood from the People’s Republic of China: Comments in Opposition to Request for Scope Ruling,” dated April 23, 2018 (Shandong and Xuzhou’s Comments).

⁵ See Letter re: “Certain Hardwood Plywood Products from the People’s Republic of China: Rebuttal Comments,” dated May 1, 2018 (Requestors’ Rebuttal Comments).

⁶ See Letter re: “Certain Hardwood Plywood Products from the People’s Republic of China: Petitioner-Masterbrand 2018 Scope Ruling Request—Rejection of Submission,” dated May 21, 2018.

⁷ See Letter re: “Certain Hardwood Plywood Products from the People’s Republic of China Resubmission of Rebuttal Comments Related to Petitioner and Masterbrand’s Scope Inquiry Request,” dated May 23, 2018.

⁸ See Letter re: “Certain Hardwood Plywood Products from the People’s Republic of China Request to Reconsider Rejection of Rebuttal Comments Related to Petitioner and Masterbrand’s Scope Inquiry Request,” dated May 23, 2018.

⁹ See Letter re: “Certain Hardwood Plywood Products from the People’s Republic of China: Petitioner-Masterbrand 2018 Scope Ruling Request- Response to IKEA’s Request to Reconsider,” dated May 25, 2018.

scope inquiry, to July 5, 2018.¹⁰ On May 10, 2018, counsel for, and representatives from, Fabuwood met with Commerce officials to discuss issues relating to their comments filed on April 23, 2018.¹¹ On May 16, 2018, U.S. Importers submitted comments, which Commerce subsequently rejected because they contained untimely, unsolicited scope comments and new factual information.¹² On June 29, 2018, the counsel for the requestors spoke on the phone with Commerce officials.¹³ On this call, Commerce discussed issues related to the Scope Ruling Request, and requested that the requestors file additional detailed information related to the Scope Ruling Request.¹⁴ On July 3, 2018, counsel for the requestors spoke on the phone with Commerce officials.¹⁵ On this call, counsel for the requestors discussed with Commerce issues related to Commerce's request that the requestors file more detailed information regarding the Scope Ruling Request.¹⁶ On July 3, 2018, Commerce extended the time period for issuing a final scope ruling, or initiating a formal scope inquiry, to July 19, 2018.¹⁷

On July 11, 2018, counsel for, and representatives from, Fortune Brands, the parent company of Masterbrand, spoke on the phone with Commerce officials concerning issues relating to the Scope Ruling Request.¹⁸

On July 13, 2018, the requestors submitted an amendment to the Scope Ruling Request.¹⁹

On July 17, 2018, U.S. Importers submitted a request to strike the amendment to the Scope Ruling Request.²⁰ Also on July 17, 2018, Commerce extended the time period for issuing a final scope ruling, or initiating a formal scope inquiry, to August 10, 2018.²¹ On July 19, 2018, Commerce officials met with officials from Masterbrand and Fortune Brands.²² During the meeting, officials from Masterbrand explained their concerns with regard to the scope of the

¹⁰ See Letter re: "Certain Hardwood Plywood Products from the People's Republic of China: Petitioner-Masterbrand 2018 Scope Ruling Request," dated May 8, 2018.

¹¹ See Memorandum, "Certain Hardwood Plywood Products from the People's Republic of China: Petitioner Masterbrand 2018 Scope Ruling Request, Ex-Parte Meeting Memorandum," dated May 14, 2018.

¹² See Letter re: "Certain Hardwood Plywood Products from the People's Republic of China: Petitioner-Masterbrand 2018 Scope Ruling Request—Rejection of Submission," dated May 21, 2018.

¹³ See Memorandum, "Certain Hardwood Plywood Products from the People's Republic of China: Petitioner Masterbrand 2018 Scope Ruling Request, Meeting Memorandum," dated July 17, 2018.

¹⁴ *Id.*

¹⁵ See Memorandum, "Certain Hardwood Plywood Products from the People's Republic of China: Petitioner Masterbrand 2018 Scope Ruling Request, Meeting Memorandum," dated July 17, 2018.

¹⁶ *Id.*

¹⁷ See Letter re: "Certain Hardwood Plywood Products from the People's Republic of China: Petitioner-Masterbrand 2018 Scope Ruling Request, dated July 3, 2018.

¹⁸ See Memorandum, "Certain Hardwood Plywood Products from the People's Republic of China: Petitioner Masterbrand 2018 Scope Ruling Request, Ex-Parte Meeting Memorandum," dated July 12, 2018.

¹⁹ See Letter re: "Certain Hardwood Plywood Products from the People's Republic of China: Amendment to Request for Scope Ruling," dated July 13, 2018 (Amendment to Scope Ruling Request). Hereafter, the Scope Ruling Request, as amended is referred to as the Amended Scope Ruling Request.

²⁰ See Letter re: "Hardwood Plywood from the People's Republic of China: Request to Strike Amendment to Request for Scope Ruling," dated July 17, 2018.

²¹ See Letter re: "Certain Hardwood Plywood Products from the People's Republic of China: Petitioner-Masterbrand 2018 Scope Ruling Request," dated July 17, 2018.

²² See Memorandum, "Hardwood Plywood from China – Meeting with MasterBrand Cabinets, Inc.," dated July 25, 2018.

Orders and explained the worsening effect on their business as a major user of hardwood plywood, and submitted additional documentation to Commerce.²³ On July 20, 2018, the U.S. Importers submitted a request for clarification and extension of time to respond.²⁴ On July 24, 2018, counsel for, and representatives of, the U.S. Importers, met with Commerce officials to discuss their comments filed on April 23, 2018, July 17, 2018, and July 20, 2018.²⁵

On July 25, 2018, JSI submitted timely comments on the requestors' amended scope ruling request.²⁶ On August 6, 2018, Linyi City Shenrui International Trade Co., Ltd. and Linyi Jiahe Wood Industry Co., Ltd., in cooperation with the China National Forest Product Industry Association and the Cabinet/Custom Made Sub-Association (CNFPIA); U.S. Importers,²⁷ Chinese Exporters; IKEA Supply AG (IKEA); and JSI (collectively, the respondents) submitted timely comments on the requestors' Amended Scope Ruling Request.²⁸ On August 7, 2018, Commerce extended the time period for issuing a scope ruling to September 12, 2018.²⁹ On August 9, 2018, Commerce officials spoke with two U.S. Senate staff members regarding the general requirements and process involved in scope inquiries.³⁰ On August 17, 2018, the requestors submitted timely rebuttal comments.³¹

III. Scope of the *Orders*

The merchandise covered by the *Orders* is hardwood and decorative plywood, and certain veneered panels as described below. For purposes of the *Orders*, hardwood and decorative plywood is defined as a generally flat, multilayered plywood or other veneered panel, consisting of two or more layers or plies of wood veneers and a core, with the face and/or back veneer made of non-coniferous wood (hardwood) or bamboo. The veneers, along with the core may be glued

²³ *Id.*; see also Letter re: "Certain Hardwood Plywood Products from the People's Republic of China: Masterbrand's Factual Information," dated July 23, 2018.

²⁴ See Letter re: "Hardwood Plywood from the People's Republic of China: Request For Clarification and Extension of Time to Respond," dated July 20, 2018.

²⁵ See Memorandum, "Certain Hardwood Plywood Products from the People's Republic of China: Petitioner Masterbrand 2018 Scope Ruling Request, Ex-Parte Meeting Memorandum," dated July 25, 2018.

²⁶ See Letter re: "Scope Inquiry: Certain Hardwood Plywood Products from the PRC (A-570-051/C-570-052); Scope Comments of JS International Inc.," dated July 25, 2018 (JSI's 1st Amendment Comments).

²⁷ In this filing, the U.S. Importers also included Team Efforts LTD.

²⁸ See Letter re: "Hardwood Plywood Products from the People's Republic of China: Comments in Opposition to Petitioners-Masterbrand's Amended Request for a Scope Ruling," dated August 6, 2018 (CNFPIA Amendment Comments); Letter re: "Hardwood Plywood from the People's Republic of China: Comments in Opposition to Request for a Scope Ruling," dated August 6, 2018 (U.S. Importers' Amendment Comments); Letter re: "Hardwood Plywood from the People's Republic of China: Comments in Opposition to Request for a Scope Ruling," dated August 6, 2018 (Chinese Exporters' Amendment Comments); Letter re: "Certain Hardwood Plywood Products from the People's Republic of China: Comments Related to Petitioner and Masterbrand's Amendment to Request for Scope Ruling," dated August 6, 2018 (IKEA's Amendment Comments); and Letter re: "Scope Inquiry: Certain Hardwood Plywood Products from the PRC (A-570-051/C-570-052); JS International Inc's Amended Scope Ruling Request Comments on Masterbrand's Factual Information," dated August 6, 2018 (JSI's 2nd Amendment Comments).

²⁹ See Letter re: "Certain Hardwood Plywood Products from the People's Republic of China: Petitioner-Masterbrand 2018 Scope Ruling Request, dated July 3, 2018.

³⁰ See

³¹ See Letter re: "Certain Hardwood Plywood Products from the People's Republic of China: Rebuttal to Comments on Amendment to Scope Request," dated August 17, 2018 (Requestors' Rebuttal Comments on Amended Request).

or otherwise bonded together. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP1-2016 (including any revisions to that standard).

For purposes of the *Orders* a “veneer” is a slice of wood regardless of thickness which is cut, sliced or sawed from a log, bolt, or flitch. The face and back veneers are the outermost veneer of wood on either side of the core irrespective of additional surface coatings or covers as described below.

The core of hardwood and decorative plywood consists of the layer or layers of one or more material(s) that are situated between the face and back veneers. The core may be composed of a range of materials, including but not limited to hardwood, softwood, particleboard, or medium density fiberboard (MDF).

All hardwood plywood is included within the scope of the *Orders* regardless of whether or not the face and/or back veneers are surface coated or covered and whether or not such surface coating(s) or covers obscures the grain, textures, or markings of the wood. Examples of surface coatings and covers include, but are not limited to: ultra violet light cured polyurethanes; oil or oil-modified or water based polyurethanes; wax; epoxy-ester finishes; moisture-cured urethanes; paints; stains; paper; aluminum; high pressure laminate; MDF; medium density overlay (MDO); and phenolic film. Additionally, the face veneer of hardwood plywood may be sanded; smoothed or given a “distressed” appearance through such methods as hand-scraping or wire brushing. All hardwood plywood is included within the scope even if it is trimmed; cut-to-size; notched; punched; drilled; or has underwent other forms of minor processing. All hardwood and decorative plywood is included within the scope of the *Orders*, without regard to dimension (overall thickness, thickness of face veneer, thickness of back veneer, thickness of core, thickness of inner veneers, width, or length). However, the most common panel sizes of hardwood and decorative plywood are 1219 x 1829 mm (48 x 72 inches), 1219 x 2438 mm (48 x 96 inches), and 1219 x 3048 mm (48 x 120 inches).

Subject merchandise also includes hardwood and decorative plywood that has been further processed in a third country, including but not limited to trimming, cutting, notching, punching, drilling, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope product.

The scope of the *Orders* excludes the following items: (1) structural plywood (also known as “industrial plywood” or “industrial panels”) that is manufactured to meet U.S. Products Standard PS 1-09, PS 2-09, or PS 2-10 for Structural Plywood (including any revisions to that standard or any substantially equivalent international standard intended for structural plywood), and which has both a face and a back veneer of coniferous wood; (2) products which have a face and back veneer of cork; (3) multilayered wood flooring, as described in the antidumping duty and countervailing duty orders on Multilayered Wood Flooring from the People’s Republic of China, Import Administration, International Trade Administration. See Multilayered Wood Flooring from the People’s Republic of China, 76 FR 76690 (December 8, 2011) (amended final determination of sales at less than fair value and antidumping duty order), and Multilayered Wood Flooring from the People’s Republic of China, 76 FR 76693 (December 8, 2011)

(countervailing duty order), as amended by Multilayered Wood Flooring from the People's Republic of China: Amended Antidumping and Countervailing Duty Orders, 77 FR 5484 (February 3, 2012); (4) multilayered wood flooring with a face veneer of bamboo or composed entirely of bamboo; (5) plywood which has a shape or design other than a flat panel, with the exception of any minor processing described above; (6) products made entirely from bamboo and adhesives (also known as "solid bamboo"); and (7) Phenolic Film Faced Plyform (PFF), also known as Phenolic Surface Film Plywood (PSF), defined as a panel with an "Exterior" or "Exposure 1" bond classification as is defined by The Engineered Wood Association, having an opaque phenolic film layer with a weight equal to or greater than 90g/m³ permanently bonded on both the face and back veneers and an opaque, moisture resistant coating applied to the edges.

Excluded from the scope of the *Orders* are wooden furniture goods that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of this order is "ready to assemble" (RTA) furniture. RTA furniture is defined as (A) furniture packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes 1) all wooden components (in finished form) required to assemble a finished unit of furniture, 2) all accessory parts (e.g., screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a finished unit of furniture, and 3) instructions providing guidance on the assembly of a finished unit of furniture; (B) unassembled bathroom vanity cabinets, having a space for one or more sinks, that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional component shape/size, painted or stained prior to importation, and stacked within a singled shipping package, except for furniture feet which may be packed and shipped separately; or (C) unassembled bathroom vanity linen closets that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional shape/size, painted or stained prior to importation, and stacked within a single shipping package, except for furniture feet which may be packed and shipped separately.

Excluded from the scope of the *Orders* are kitchen cabinets that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of the *Orders* are RTA kitchen cabinets. RTA kitchen cabinets are defined as kitchen cabinets packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes 1) all wooden components (in finished form) required to assemble a finished unit of cabinetry, 2) all accessory parts (e.g., screws, washers, dowels, nails, handles, knobs, hooks, adhesive glues) required to assemble a finished unit of cabinetry, and 3) instructions providing guidance on the assembly of a finished unit of cabinetry.

Excluded from the scope of the *Orders* are finished table tops, which are table tops imported in finished form with pre-cut or drilled openings to attach the underframe or legs. The table tops are ready for use at the time of import and require no further finishing or processing.

Excluded from the scope of the *Orders* are finished countertops that are imported in finished form and require no further finishing or manufacturing.

Excluded from the scope of the *Orders* are laminated veneer lumber door and window components with (1) a maximum width of 44 millimeters, a thickness from 30 millimeters to 72

millimeters, and a length of less than 2413 millimeters (2) water boiling point exterior adhesive, (3) a modulus of elasticity of 1,500,000 pounds per square inch or higher, (4) finger-jointed or lap-jointed core veneer with all layers oriented so that the grain is running parallel or with no more than 3 dispersed layers of veneer oriented with the grain running perpendicular to the other layers; and (5) top layer machined with a curved edge and one or more profile channels throughout.

Imports of hardwood plywood are primarily entered under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4412.10.0500; 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4150; 4412.31.4160; 4412.31.4180; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.5235; 4412.31.5255; 4412.31.5265; 4412.31.5275; 4412.31.6000; 4412.31.6100; 4412.31.9100; 4412.31.9200; 4412.32.0520; 4412.32.0540; 4412.32.0565; 4412.32.0570; 4412.32.0620; 4412.32.0640; 4412.32.0670; 4412.32.2510; 4412.32.2525; 4412.32.2530; 4412.32.2610; 4412.32.2630; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5600; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5700; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3141; 4412.94.3161; 4412.94.3175; 4412.94.4100; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5115; and 4412.99.5710.

Imports of hardwood plywood may also enter under HTSUS subheadings 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.10.9000; 4412.94.5100; 4412.94.9500; and 4412.99.9500. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

IV. Legal Framework

When a request for a scope ruling is filed, we examine the scope language of the *Orders* at issue and the description of the product contained in the scope ruling request.³² Pursuant to Commerce's regulations, we may also examine other information, including the description of the merchandise contained in the petition, the record from the investigation, and prior scope determinations made for the same product.³³ If we determine that these sources are sufficient to decide the matter, we will issue a final scope ruling as to whether the merchandise in question is covered by an order.³⁴

Conversely, where the descriptions of the merchandise in the sources described in 19 CFR 351.225(k)(1) are not dispositive, we will consider the five additional factors set forth in section 351.225(k)(2) of Commerce's regulations. These criteria are: (i) the physical characteristics of the merchandise; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the

³² See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

³³ See 19 CFR 351.225(k)(1).

³⁴ See 19 CFR 351.225(d).

product; (iv) the channels of trade in which the product is sold; and (v) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope inquiry is made on a case-by-case basis after careful consideration of all evidence before Commerce.

V. Description of Merchandise Subject to This Scope Request

The requestors describe three products upon which the Amended Scope Ruling Request is based:

- (1) Hardwood plywood, regardless of size, coating, and/or minor processing, that is not packaged for sale for ultimate purchase by a consumer end user in a package containing (i) all the wood components of the kitchen cabinet, (ii) all the hardware accessories (*e.g.*, screws, washers, dowels, nails, handles, knobs, hooks, and adhesive glues), and (iii) written instructions needed for the consumer to assemble the kitchen cabinet. Specific products include: hardwood plywood that is shipped without all of the following: (i) all wooden components of the kitchen cabinet, (ii) all required hardware, and (iii) written instruction so that the end user can assemble the cabinet; and shipments of all three of the above required contents but not packaged in a manner suitable for purchase by an end-use consumer;³⁵
- (2) Hardwood plywood that has been cut-to-size, painted, laminated, stained, ultra-violet light finished, grooved, and/or covered in paper, regardless of where such processing took place;³⁶ and
- (3) Hardwood plywood that has been edge banded.³⁷

The requestors explain that these products are likely entering the United States under the following HTSUS categories: 9403.40.90.60; 9403.40.90.80; and 9403.60.80.81.³⁸

³⁵ See Amendment to Scope Ruling Request at 3.

³⁶ *Id.*

³⁷ *Id.*

³⁸ The requestors state that the merchandise at issue may also be entering under the following HTSUS categories: 4412.10.0500; 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4150; 4412.31.4160; 4412.31.4180; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.5235; 4412.31.5255; 4412.31.5265; 4412.31.5275; 4412.31.6000; 4412.31.6100; 4412.31.9100; 4412.31.9200; 4412.32.0520; 4412.32.0540; 4412.32.0565; 4412.32.0570; 4412.32.0620; 4412.32.0640; 4412.32.0670; 4412.32.2510; 4412.32.2525; 4412.32.2530; 4412.32.2610; 4412.32.2630; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5600; 4412.32.3235; 4412.32.3255; 4412.32.3265; 4412.32.3275; 4412.32.3285; 4412.32.5700; 4412.94.1 030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3141; 4412.94.3161; 4412.94.3175; 4412.94.4100; 4412.99.0600; 4412.99.1020; 4412.99.1 030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.10.9000; 4412.94.5100; 4412.94.9500; and 4412.99.9500. See Amendment to Scope Ruling Request at 3-5.

VI. Evaluation of Certain Hardwood Plywood Products Under the RTA Kitchen Cabinet Exclusion³⁹

Requestors' Comments

- One of the narrowly tailored specific exclusions included in the scope concerns ready-to-assemble (RTA) kitchen cabinets (the RTA kitchen cabinet exclusion).⁴⁰ In the event that merchandise is claimed to fall within the RTA kitchen cabinet exclusion, it must demonstrably meet all of the requirements of the exemption.⁴¹ Specifically, the importer/producer must be able to demonstrate that the product is shipped in packaging that could be shipped to an end user (*i.e.*, a consumer's home) containing (i) all the wood components of the kitchen cabinet, (ii) all hardware accessories (*e.g.*, screws, washers, dowels, nails, handles, knobs, hooks, and adhesive glues), and (iii) written instructions needed for the consumer to assemble the kitchen cabinet.⁴²
- Chinese hardwood plywood that otherwise meets the description of the scope is entering the United States as non-subject merchandise pursuant to the RTA kitchen cabinet exclusion, despite the fact that such merchandise does not meet the requirements of the exclusion.⁴³
- Specifically, Chinese producers and exporters are shipping hardwood plywood without *all* necessary wooden components for a cabinet, without *all* parts necessary for the cabinet, and/or without instruction booklets necessary for the cabinet, but claiming that these products meet the exclusion for RTA kitchen cabinets.⁴⁴
- Similarly, hardwood plywood cabinet components, cabinet accessory parts, and instruction booklets that are not packaged in a manner that could be sent to a consumer's home are improperly being identified as meeting the RTA kitchen cabinet exclusion.⁴⁵
- An end-use consumer would not be able to simply open one of these packages and assemble a specific, pre-determined cabinet with, and only with, the included components.⁴⁶

³⁹ The hardwood plywood products evaluated in this portion of our analysis are, as described by the requestors: "Hardwood plywood, regardless of size, coating, and/or minor processing, that is not packaged for sale for ultimate purchase by a consumer end user in a package containing (i) all the wood components of the kitchen cabinet, (ii) all the hardware accessories (*e.g.*, screws, washers, dowels, nails, handles, knobs, hooks, and adhesive glues), and (iii) written instructions needed for the consumer to assemble the kitchen cabinet. Specific products include: Hardwood plywood that is shipped without all of the following: (i) all wooden components of the kitchen cabinet, (ii) all required hardware, and (iii) written instruction so that the end user can assemble the cabinet; and shipments of all three of the above required contents but not packaged in a manner suitable for purchase by an end-use consumer."

See Amendment to Scope Ruling Request at 3.

⁴⁰ *Id.* at 5.

⁴¹ *Id.*

⁴² *Id.* at 5-6.

⁴³ *Id.* at 6.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 7.

- The language of the scope, as well as common sense, demonstrates that “packaged for sale for ultimate purchase by an end-user” requires packaging suitable for retail purchase.⁴⁷ An “end-user” is the person that ultimately uses the *finished* product, *i.e.*, the person (such as a home owner) that uses the finished kitchen cabinet.⁴⁸ That the products must be packaged in a manner suitable for retail purchase is confirmed by the requirement that the merchandise must be shipped with assembly instructions.⁴⁹
- This is also the logical reading of the scope from an enforcement standpoint, because U.S. Customs and Border Protection (CBP) can easily identify if a single package contains the components, accessories, and instructions necessary to assemble a kitchen cabinet.⁵⁰ In contrast, if CBP is faced with a container of multiple packages each containing various components, there would be no means of determining if the packages together included all wooden components, all accessories, and instructions necessary to assemble a discrete number of kitchen cabinets.⁵¹

Interested Party Comments⁵²

U.S. Importers’⁵³ Comments

- Furniture and furniture parts are not, and were never intended to be, included in the scope of the *Orders*.⁵⁴ The requestors’ scope ruling asks Commerce to redefine plywood to include wooden furniture and furniture parts.⁵⁵
- Commerce may not find that unassembled cabinets and furniture parts made from hardwood plywood are included within the scope of the *Orders* just because they are not expressly excluded.⁵⁶
- Masterbrand’s appearance as co-applicant for the original and amended scope ruling request demonstrates that it is Masterbrand’s and the petitioners’ interest to expand the

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* at 7-8.

⁵¹ *Id.* at 8.

⁵² CNFPIA, Chinese Exporters, IKEA, Shandong and Xuzhou, and U.S. Importers also argue in their comments and amendment comments that Commerce should reject the requestors’ Scope Ruling Request and Amendment to the Scope Ruling Request, arguing that the request is deficient because it only generally describes various alleged products, does not have complete or detailed information on any specific product as imported into the United States, and is insufficiently supported with actual evidence. *See* CNFPIA Amendment Comments at 2-7; Chinese Exporters’ Comments at 2-5; Chinese Exporters’ Amendment Comments at 7-14; Shandong and Xuzhou’s Comments at 2-9; U.S. Importers’ Comments at 2-8; U.S. Importers’ Amendment Comments at 2; IKEA’s Amendment Comments at 7-12. In issuing this final scope ruling, we find, consistent with 19 CFR 351.225(c)(1) (which provides that a scope ruling request must contain certain information “to the extent reasonably available” to the interested party), that the requestors’ Amended Scope Ruling Request provides all requisite information reasonably available to the requestors, and provides sufficient detail regarding the products at issue for Commerce to make a final scope ruling.

⁵³ Fabuwood Cabinetry Corp., CNC Associates N.Y., Inc., Cubitac Cabinetry Corp., En Pointe Cabinetry, LLC, St. Martin America, Inc., and Team Efforts LTD.

⁵⁴ *See* U.S. Importers’ Amendment Comments at 2.

⁵⁵ *Id.* at 3.

⁵⁶ *Id.* at 3-4.

scope of the *Orders* to include imported cabinets, furniture, and parts of cabinets and furniture.⁵⁷

- Hardwood plywood is classified under HTSUS 4412, whereas furniture and furniture parts are properly classified under HTSUS 9403 and are distinguishable from subject merchandise.⁵⁸
- Numerous CBP rulings demonstrate that CBP is capable of distinguishing furniture and furniture parts from materials of which they are fabricated, and minor processing that does not remove a plywood panel from classification as plywood and major processing that turns it into furniture.⁵⁹
- Commerce should rule that if the product is “furniture” or a “furniture part” as defined by CBP, then the product is outside the scope of the *Orders*.⁶⁰
- The product characteristics that make up the product matching control numbers (CONNUMs) for wooden bedroom furniture are different than for plywood, indicating that furniture and furniture parts can be distinguished from plywood.⁶¹
- Although the scope of the *Orders* includes an express exclusion for products subject to the multilayered wood flooring orders, no such exclusion exists for the wooden bedroom furniture order.⁶² There should exist no overlap between the wooden bedroom furniture order and the plywood *Orders*, but no party suggested an exclusion because no party assumed there would be overlap between these orders.⁶³
- The inclusion of furniture parts in the scope has serious implications for the industry support calculation that was the basis for the injury analysis of the investigations.⁶⁴
- The proper method to seek relief for unfairly traded furniture and furniture parts is in the form of a new petition.⁶⁵
- In addition, the requestors seek to change the scope of the *Orders* by their addition of the phrase “regardless of size, coating, and/or minor processing,” thus attempting to include hardwood plywood that has undergone minor processing sufficient to turn such hardwood plywood into a furniture part within the scope of the *Orders*.⁶⁶
- The exclusion for RTA kitchen cabinets applies to merchandise that, as set forth in the scope description, is for “sale for ultimate purchase by the end user.”⁶⁷ But the requestors claim, without support, that: (1) end-user is the home owner who uses the finished kitchen cabinet; and (2) the kitchen cabinets “must be packaged in a manner suitable for retail purchase.”⁶⁸

⁵⁷ *Id.* at 5-6.

⁵⁸ See U.S. Importers’ Comments at 8; U.S. Importers’ Amendment Comments at 7.

⁵⁹ See U.S. Importers’ Comments at 9-12; U.S. Importers’ Amendment Comments at 8-9..

⁶⁰ See U.S. Importers’ Comments at 13.

⁶¹ *Id.* at 20.

⁶² *Id.* at 23.

⁶³ *Id.*

⁶⁴ *Id.* at 24-25.

⁶⁵ *Id.* at 25-26.

⁶⁶ See U.S. Importers’ Amendment Comments at 10.

⁶⁷ *Id.* at 11-12.

⁶⁸ *Id.*

- “Ultimate purchaser” is defined in 19 CFR 134.1(d) as the “last person in the United States who will receive the article in the form in which it was imported.”⁶⁹ Thus, an installer who assembles cabinets for resale is the “ultimate purchaser”⁷⁰ and CBP rulings have confirmed this fact.⁷¹
- Because assemblers of imported kits are the end users of the articles, Commerce cannot conclude that kits sold to assembly plants do not meet the RTA exclusion.⁷²
- The requestors limit the RTA kitchen cabinet exclusion to apply only if a homeowner personally assembles the kitchen cabinet, not using any other person or entity whose business is to assemble kitchen cabinets, and this construction of the exclusion is not supported by the reality of the kitchen cabinet industry.⁷³
- Multiple CBP rulings have found that when all components for an exact number of designed articles are imported together, the imported merchandise will be treated as kits and classified as completed articles.⁷⁴
- The scope exclusion for RTA kitchen cabinets contains no requirement that components be shipped in a single package; in contrast, such a requirement exists for unassembled bathroom vanity linen closets.⁷⁵

Chinese Exporters’ Comments

- Although an exclusion exists for RTA kitchen cabinets, the exclusion does not mean that other furniture and cabinet parts are in-scope, because it is through a combination of minor processes that plywood is transformed into a downstream product, such as cabinets or furniture parts.⁷⁶
- There are valid reasons for classifying a product as furniture parts under HTSUS 9403 instead of HTSUS 4412.⁷⁷
- Commerce should confirm that, as long as the product needs no further manufacturing upon importation, that product is out of scope and need not be imported in full sets.⁷⁸

JSI’s Comments

- The requestors’ interpretation of the RTA cabinet exclusion suggests that the RTA exclusion applies only to units that are actually delivered to ultimate end-users in the same condition as imported and without any prior assembly.⁷⁹ However, the RTA kitchen cabinet exclusion does not require that excluded items be delivered to ultimate end-users in the same condition described in the exclusion, nor does it preclude the assembly of RTA kitchen cabinets by distributors, retailers, contractors, or any other parties.⁸⁰

⁶⁹ *Id.* at 12.

⁷⁰ See U.S. Importers’ Comments at 15; U.S. Importers’ Amendment Comments at 12.

⁷¹ *Id.*

⁷² See U.S. Importers’ Comments at 16.

⁷³ See U.S. Importers’ Amendment Comments at 12.

⁷⁴ See U.S. Importers’ Comments at 16-17.

⁷⁵ *Id.* at 18; see also U.S. Importers’ Amendment Comments at 13.

⁷⁶ See Chinese Exporters’ Comments at 3-5; Chinese Exporters’ Amendment Comments at 12-13.

⁷⁷ See Chinese Exporters’ Comments at 4; Chinese Exporters’ Amendment Comments at 13.

⁷⁸ See Chinese Exporters’ Comments at 4-5.

⁷⁹ See JSI’s Comments at 2-3; JSI’s 2nd Amendment Comments at 4.

⁸⁰ *Id.*

- The requestors claim that certain shipments should be disqualified from the exclusion, because the products are not packaged at the time of importation for sale for ultimate purchase by an end-user but, instead, are imported for further assembly by a distributor based in the United States.⁸¹ However, the plain text of the *Orders* does not distinguish between RTA kitchen cabinets eventually assembled by the end-user and RTA kitchen cabinets eventually assembled by distributors, retailers, contractors, or other parties.⁸²
- In prior scope ruling requests regarding the RTA or “kits” exclusions, Commerce has not considered relevant who actually performs the post-importation assembly if, at the time of importation, the kit contains all of the necessary elements to be considered a kit of the assembled product.⁸³
- The RTA kitchen cabinet exclusion does not require that each individual unit of RTA cabinetry be packaged in a single flatpack or carton.⁸⁴
- The RTA kitchen cabinet exclusion does not require that all constituent packages of a single unit of RTA cabinetry be imported in the same container, as long as all constituent packages of a single unit are imported in the same ship or entry.⁸⁵
- In the prior AD/CVD investigations covering certain hardwood plywood, kitchen cabinets were not excluded from the scope of the investigations, whereas in the current proceeding, kitchen cabinets have been excluded.⁸⁶ The requestors now seek to augment the final determinations by both Commerce and the International Trade Commission by adding the very products that appear to have been deliberately excluded from the agencies’ investigations.⁸⁷
- The requestors inappropriately replace the concept of “end-user” with the undefined terms of “consumer” and “end-use consumer.”⁸⁸ The word “consumer” does not appear in the language and is not a natural extension of the word “end user.”⁸⁹

CNFPIA’s Comments

- The language of the scope in the *Orders* does not stipulate that excluded RTA kitchen cabinets be packaged with ultimate purchase by a “consumer,” and only stipulates that excluded RTA kitchen cabinets must be “packaged for sale for ultimate purchase by an end user.”⁹⁰
- The language of the scope of the *Orders* also does not specify requirements like the cabinet being in a “single package” or packaged for “retail purchase,” to qualify for the exclusion.⁹¹

⁸¹ *Id.* at 4.

⁸² *Id.*; JSI’s 1st Amendment Comments at 7.

⁸³ JSI’s Comments at 5.

⁸⁴ *Id.* at 6-9; JSI’s 1st Amendment Comments at 8-12.

⁸⁵ *Id.*

⁸⁶ *See* JSI’s 1st Amendment Comments at 4-5.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.* at 7.

⁹⁰ *See* CNFPIA’s Comments at 8.

⁹¹ *Id.*

IKEA's Comments

- The scope language makes no requirement, nor reference, to the concept that all items must be included within a single package.⁹² The specific inclusion of a requirement that RTA bathroom vanities be shipped within a single package and the specific exclusion of a similar requirement for RTA kitchen cabinets indicate that no such requirement was originally intended.⁹³ The “single package” concept further ignores common commercial shipping methods and packaging considerations specifically designed for end-use customers.⁹⁴
- While the exclusion may be interpreted to require the shipment of all component packages of a single RTA kitchen cabinet unit together in the same entry, the exclusion cannot be reasonably interpreted to require that all constituent packages of a single RTA kitchen cabinet be included in a single package.⁹⁵
- The requestors’ inclusion of the term “end-use consumer” will generate confusion as the Amended Scope Ruling Request does not provide a definition of the term “consumer” within the context of “end-use consumer.”⁹⁶
- Commerce recently found in a scope determination on aluminum extrusions from China that the fact that a product is imported in more than one box does not preclude a determination that the product is excluded as a finished goods kit if that merchandise is listed on the same customs entry.⁹⁷
- Furniture and furniture parts properly classified under HTSUS 9402 are distinguishable from subject hardwood plywood.⁹⁸ If the requestors wish to seek relief for potentially unfairly traded imports of furniture and furniture parts, they may do so by filing a new petition.⁹⁹

Requestors’ Rebuttal Comments

- The respondents claim that the requestors incorrectly rely on terms such as “consumer” and “retail purchase” in interpreting the RTA kitchen cabinet exclusion, as these terms do not appear in the scope.¹⁰⁰ While it is true that these exact words are not in the scope, a plain reading of the RTA kitchen cabinet exclusion makes clear that these concepts are envisioned.¹⁰¹
- Specifically, the RTA kitchen cabinet exclusion requires that the merchandise at issue be “packaged for sale for *ultimate* purchase by an *end-user*.”¹⁰² The only logical reading of this language is that packaging must be suitable for purchase by the final purchaser, a retail consumer.¹⁰³

⁹² See IKEA Comments at 4-5; IKEA’s Amendment Comments at 3-4.

⁹³ *Id.*

⁹⁴ See IKEA’s Amendment Comments. at 4.

⁹⁵ *Id.* at 5.

⁹⁶ *Id.* at 6.

⁹⁷ See IKEA’s Comments at 6.

⁹⁸ *Id.* at 6-7.

⁹⁹ *Id.* at 7-8.

¹⁰⁰ See Requestors’ Rebuttal Comments at 6.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

- In particular, by requiring that the merchandise meeting the exclusion be “packaged for sale” to an end-user, the scope necessarily requires that the merchandise be “suitable” for purchase by an end-user.¹⁰⁴ Further, the plain meaning of the term “end-user” is “the ultimate consumer of a finished product.”¹⁰⁵ In the context of kitchen cabinets, the ultimate consumer of the finished product is a retail purchaser.¹⁰⁶ As such, requiring that merchandise be packaged in a manner that is “suitable for purchase by a retail consumer” is fully consistent with the scope language.¹⁰⁷
- The respondents’ argument that “{a}n ultimate purchaser is generally the last person in the United States who will receive the article in the form in which it was imported,” fails because the scope does not state that the exclusion is for merchandise packaged for an ultimate purchaser; instead, the scope identifies merchandise “packaged for sale for ultimate purchase by an end-user.”¹⁰⁸ Thus, the definition of “ultimate purchaser” is irrelevant.¹⁰⁹
- The use of the terms “ultimate purchaser” and “end user” are intentional and must be given meaning.¹¹⁰ Together, they demonstrate that, while the merchandise at issue may move through multiple parties (*e.g.*, distributor, retailers), the packaging must be suitable for the ultimate receipt by an end-user, *i.e.*, retail consumer.¹¹¹
- The requirements of the exclusion were specifically crafted to ensure that it covered only merchandise suitable for purchase by an end-user (*i.e.*, retail customer), meaning that all necessary components are included in a discrete package.¹¹² Were the exclusion to be interpreted otherwise, parties could enter boxes of hardwood plywood and claim that such merchandise was part of RTA kitchen cabinets, the other components of which were being shipped separately.¹¹³ Not only would this create significant enforcement issues, but such a scenario is what the petitioners sought to avoid in agreeing only to the narrowly tailored exclusion.¹¹⁴
- The respondents’ reliance on prior scope determinations on aluminum extrusions is misplaced, as different scope language is at issue here.¹¹⁵ The scope of the orders on aluminum extrusions contains an exclusion for a “finished goods kit,” whereas here, the RTA kitchen cabinet exclusion specifies not only that certain parts must be packaged together, but also that the merchandise is “packaged for sale for ultimate purchase by an end-user.”¹¹⁶ As this language is an integral part of exclusion and there is no equivalent

¹⁰⁴ *Id.* at 8.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 8-9.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 9.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 9-10.

¹¹⁶ *Id.*

language in the aluminum extrusion scope, Commerce's findings regarding the aluminum extrusion finished goods kit exclusion do not control here.¹¹⁷

- The respondents' argument that the reference to "single shipping package" in the scope exclusion language for unassembled bathroom vanity linen closets and the lack of the same language in the RTA kitchen cabinet exclusion means that Commerce did not intend for the latter exclusion to require that all components be included in a single package lacks merit.¹¹⁸ The respondents fail to recognize that the "single shipping package" language in the bathroom vanity exclusion qualifies the immediately following language, "except for furniture feet which may be packed and shipped separately."¹¹⁹ Thus, the inclusion of such language in the bathroom vanity exclusion was necessary to recognize the circumstance in which it did not apply.¹²⁰ The fact that the RTA kitchen cabinet exclusion does not include such language does not demonstrate that a single package is not required; instead, it reflects the fact that there are no exceptions to the requirement that the components be in a single package.¹²¹
- The respondents further claim that if the "three content requirements" are met, then a product is "packaged for sale for ultimate purchase by an end-user."¹²² However, this reading would render the language "packaged for sale for ultimate purchase by an end-user" superfluous.¹²³
- The respondents' assertion that the requestors are impermissibly seeking to impose an end-use requirement such that an RTA kitchen cabinet would have to be purchased and/or assembled by a consumer to fall within the exclusion is incorrect.¹²⁴ The scope ruling request is based on the plain language of the scope, which requires merchandise to be "packaged for ultimate purchase by an end-user."¹²⁵ Thus, while the scope may not require that merchandise, in fact, be purchased directly by an end-user, it must be packaged in a manner such that it could be purchased directly by an end-user, *i.e.*, suitable for purchase by an end-use consumer.¹²⁶
- The fact that the exclusion explicitly requires the inclusion of assembly instructions further supports the fact that the merchandise must be packaged in a manner such that it could be purchased directly by a retail consumer.¹²⁷ It would be illogical to require the inclusion of assembly instructions if the RTA kitchen cabinets were intended to be assembled by cabinet assembly businesses before delivery to the end-user.¹²⁸

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 11.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ See Requestors' Rebuttal Comments at 15.

¹²⁸ *Id.*

Commerce's Analysis

Commerce evaluated the requestors' amended scope ruling request and finds that the plain language of the scope of the *Orders* is dispositive with respect to hardwood plywood shipped without the materials required by the RTA kitchen cabinet exclusion and not packaged in a manner suitable for purchase by an end-use consumer. Because the unambiguous scope language of the *Orders* is dispositive, Commerce did not analyze the criteria set forth in 19 CFR 351.225(k)(1) or the additional factors provided in 19 CFR 351.225(k)(2). For the reasons set forth below, we find that shipments of hardwood plywood do not qualify for the RTA kitchen cabinet exclusion if they are comprised of hardwood plywood, regardless of size, coating, and/or minor processing, that is not packaged for sale for ultimate purchase by a consumer end user in a package containing (i) all the wood components of the kitchen cabinet, (ii) all the hardware accessories (e.g., screws, washers, dowels, nails, handles, knobs, hooks, and adhesive glues), and (iii) written instructions needed for the consumer to assemble the kitchen cabinet. Specific products that do not qualify for the RTA kitchen cabinet exclusion include: hardwood plywood that is shipped without any or all of the following: (i) all wooden components of the kitchen cabinet, (ii) all required hardware, and (iii) written instruction so that the end user can assemble the cabinet; and shipments of all three of the above required contents but not packaged in a manner suitable for purchase by an end-use consumer. Thus, we find that such products are covered by the scope of the *Orders*.

The RTA kitchen cabinet exclusion, as established by the scope of the *Orders*, sets forth the following qualification criteria:

RTA kitchen cabinets are defined as kitchen cabinets packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes 1) all wooden components (in finished form) required to assemble a finished unit of cabinetry, 2) all accessory parts (e.g., screws, washers, dowels, nails, handles, knobs, hooks, adhesive glues) required to assemble a finished unit of cabinetry, and 3) instructions providing guidance on the assembly of a finished unit of cabinetry.

The RTA kitchen cabinet exclusion does not expressly address the manner in which RTA kitchen cabinets must be packaged to be suitable for purchase nor expressly define the term “end-user.” Nevertheless, the exclusion’s unambiguous requirements necessitate that, to qualify for the exclusion, RTA kitchen cabinets must be packaged in a single package suitable for purchase by a retail consumer. The plain language of the scope requires that the RTA kitchen cabinets be “packaged for sale for ultimate purchase by an end-user” and requires that the RTA kitchen cabinets be packaged with “instructions providing guidance on the assembly of a finished unit of cabinetry.” We find that, together, these requirements make clear that the end-user is a retail consumer, as retail consumers are the end users that would require instructions for assembling a finished unit of cabinetry.

The scope of the *Orders* also requires that, “at the time of importation,” the package must include “1) all wooden components (in finished form) required to assemble a finished unit of cabinetry, 2) all accessory parts (e.g., screws, washers, dowels, nails, handles, knobs, hooks, adhesive glues) required to assemble a finished unit of cabinetry, and 3) instructions providing

guidance on the assembly of a finished unit of cabinetry.” We find this language indicates that to qualify for the exclusion, all required parts (wooden components, accessory party, instructions) to assemble the RTA kitchen cabinets must be packaged in a single, discrete package at the time of importation. Thus, the plain language of the scope provides that to qualify for the exclusion, the RTA kitchen cabinets must be packaged at the time of importation in a manner such that an end-use retail consumer would be able to open the package and assemble a specific kitchen cabinet with, and only with, the included components.

Accordingly, we disagree with the U.S. Importers’, Chinese Exporters’, CNFPIA’s, IKEA’s, and JSI’s argument that the RTA kitchen cabinet exclusion contains no requirement that the components be shipped in a single package or that an end-user be a retail consumer. As explained above, we find that the plain language of the scope necessitates these requirements, and the Preliminary Scope Determination from the investigations supports this finding.

We disagree with the U.S. Importers’, Chinese Exporters’, and IKEA’s argument that the requestors’ scope ruling asks Commerce to redefine plywood to include wooden furniture and furniture parts. The petitioners made clear during the investigations that furniture was not covered by their proposed scope for these investigations.¹²⁹ This scope ruling does not expand the scope but, rather, clarifies that, to qualify for the RTA kitchen cabinet exclusion, the RTA kitchen cabinet must meet the requirements of the exclusion, and the requirements necessitate that the RTA kitchen cabinet components be in a single package suitable for purchase by an end-use retail consumer.

We also disagree with the U.S. Importers’ argument that the requestors seek to change the scope of the *Orders* by their use of the phrase “regardless of size, coating, and/or minor processing,” and are thus attempting to include hardwood plywood that has undergone minor processing sufficient to turn such hardwood plywood into a furniture part within the scope of the *Orders*.¹³⁰ The plain language of the scope makes clear that size, coating, and/or minor processing do not take otherwise subject merchandise outside the scope of the *Orders*. The requestors inclusion of this phrase in their description of the products at issue reiterates the plain language of the scope, and thus a finding that such merchandise is covered by the scope of the *Orders* does not impermissibly expand the scope.

We disagree with the U.S. Importer’s claim that because the “ultimate purchaser” is defined in 19 CFR 134.1(d) as the “last person in the United States who will receive the article in the form in which it was imported,” an installer who assembles cabinets for resale is the “ultimate purchaser.” Here, the scope of the *Orders* does not state that the exclusion is for merchandise packaged for an “ultimate purchaser,” but rather identifies excluded merchandise that which “packaged for sale for ultimate purchase by an end-user.” Accordingly, we find that the definition of “ultimate purchaser” under 19 CFR 134.1(d) is not relevant to this case.

We also find the U.S. Importers’, JSI’s, and IKEA’s reliance on CBP rulings regarding kits is misplaced. The CBP rulings referenced pertain to the “finished goods kits” exclusion language in the antidumping and countervailing duty orders on aluminum extrusions from China.

¹²⁹ *Id.*

¹³⁰ *Id.*

Conversely, here, the RTA kitchen cabinet exclusion language does not pertain to “finished goods kits,” but has unique language specifying that certain components of the merchandise at issue must be packaged together, and “packaged for sale for ultimate purchase by an end-user.” There is no equivalent language in the CBP rulings cited and, thus, we find that the U.S. Importers’ reliance on these rulings is misplaced.

We also disagree with the U.S. Importers’ and IKEA’s argument that the reference to “single shipping package” in the scope exclusion language for unassembled bathroom vanity linen closets and the lack of the same language in the RTA kitchen cabinet exclusion means that Commerce did not intend for the latter exclusion to require that all components be included in a single package lacks merit. The “single shipping package” language in the bathroom vanity exclusion qualifies the immediately following language, “except for furniture feet which may be packed and shipped separately” and, thus, the inclusion of such language in the bathroom vanity exclusion was necessary to recognize the circumstance in which it did not apply. Contrary to this claim, and as explained above, we find that the plain language of the scope makes clear that the RTA kitchen cabinet components listed in the exclusion must be in a single package at the time of importation.

We disagree with the U.S. Importers’, JSI’s, and IKEA’s argument that the requestors seek to augment the final determinations by both Commerce and the International Trade Commission by adding kitchen cabinets to the scope of the *Orders*.¹³¹ Contrary to this claim, the requestors have not asked Commerce to expand the scope of the *Orders* but, rather, have requested that Commerce confirm the requirements of the RTA kitchen cabinet exclusion, in an effort to ensure that hardwood plywood that would otherwise be subject to the scope of the *Orders* is not being improperly entered under the RTA kitchen cabinet exclusion when it does not meet the requirements of the exclusion. .

Accordingly, because the plain language of the scope is unambiguous and dispositive, we find that shipments of subject merchandise do not qualify for the RTA kitchen cabinet exclusion if they are comprised of hardwood plywood, regardless of size, coating, and/or minor processing, that is not packaged for sale for ultimate purchase by a consumer end user in a package containing (i) all the wood components of the kitchen cabinet, (ii) all the hardware accessories (e.g., screws, washers, dowels, nails, handles, knobs, hooks, and adhesive glues), and (iii) written instructions needed for the consumer to assemble the kitchen cabinet. Specific products that do not qualify for the RTA kitchen cabinet exclusion include: hardwood plywood that is shipped without any or all of the following: (i) all wooden components of the kitchen cabinet, (ii) all required hardware, and (iii) written instruction so that the end user can assemble the cabinet; and shipments of all three of the above required contents but not packaged in a manner suitable for purchase by an end-use consumer.

¹³¹ *Id.*

VI. Hardwood Plywood That Has Been Cut-To-Size, Painted, Laminated, Stained, Ultra Violet Light Finished, Grooved, and/or Covered In Paper, Regardless of Where Such Processing Took Place

Requestors' Comments

- The scope language makes clear that minor processing does not remove otherwise subject merchandise outside of the scope.¹³² The scope further makes clear that the location in which the minor processing was performed does not affect this analysis.¹³³
- Despite this unambiguous language, Chinese hardwood plywood that has undergone minor alterations in one or more countries has been entering the United States as merchandise not subject to the *Orders*.¹³⁴ In particular, hardwood plywood that otherwise meets the scope description and that has been cut-to-size, painted, laminated, stained, ultra-violet light finished, grooved, and/or covered in paper has avoided antidumping and countervailing duties by being identified as non-subject merchandise because it has undergone these minor processes.¹³⁵
- It cannot be disputed that hardwood plywood that has undergone any of these processes individually (cut-to-size, painted, laminated, stained, ultra-violet light finished, grooved, or covered in paper) is covered by the scope.¹³⁶ Notably, the scope explicitly states that hardwood plywood is included in the scope regardless of whether it has been cut to size and regardless of whether the face and/or back has been coated or covered with paint, laminate, stains, ultra-violet finishes, or paper.¹³⁷
- Likewise, during the investigations, the petitioners specifically identified grooving as a minor process that would not move otherwise subject merchandise outside the scope, which Commerce recognized.¹³⁸ Similarly, hardwood plywood that has undergone more than one of these minor processes also remains within the scope of the *Orders*.¹³⁹ In other words, hardwood plywood that has been both cut-to-size and painted is subject merchandise.¹⁴⁰ This is consistent with the Commerce's findings during the underlying investigations, in which Commerce denied an exclusion request for wall paneling that had a laminate paper covering and had grooves.¹⁴¹
- Moreover, just as cutting-to-size, painting, laminating, staining, ultra-violet light finishing, grooving, and/or covering in paper, if performed in China, does not transform otherwise subject merchandise into non-subject merchandise, these same processes, if performed entirely or partially in third countries, do not transform otherwise subject merchandise into non-subject merchandise.¹⁴²

¹³² See Requestors' Amended Scope Ruling Request at 8-9.

¹³³ *Id.* at 9.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.* at 10.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* at 11.

Interested Party Comments

U.S. Importers' Comments

- Hardwood plywood is classified under HTSUS 4412, whereas furniture and furniture parts are properly classified under HTSUS 9403 and are distinguishable from subject merchandise.¹⁴³
- Numerous CBP rulings demonstrate that CBP is capable of distinguishing furniture and furniture parts from materials of which they are fabricated, and minor processing that does not remove a plywood panel from classification as plywood and major processing that turns it into furniture.¹⁴⁴
- Commerce should rule that if the product is “furniture” or a “furniture part” as defined by CBP, then the product is outside the scope of the *Orders*.¹⁴⁵

CNFPIA Comments

- Given all of the alleged “minor” processes that do not take a product outside of the *Orders*, one has to wonder as to the type or amount of processing that would result in a product being outside of the *Orders*.¹⁴⁶ There has to be a point after which hardwood plywood has undergone so many minor processes that it becomes a different type of merchandise.¹⁴⁷

Requestors' Rebuttal Comments

- The requestors are not asking Commerce to find that finished furniture is covered by the scope of the *Orders*.¹⁴⁸ During the underlying investigations, the petitioners emphasized that a plain reading of the scope demonstrates that an item of finished furniture is not covered by the scope.”¹⁴⁹ As a result, the petitioners expressed their belief that a scope exclusion specifying that finished furniture or finished kitchen cabinets are not covered by the scope was not necessary.¹⁵⁰
- The requestors are also not seeking to include furniture parts within the scope of the *Orders*. The petitioners made clear during the underlying investigations that they did not intend to include furniture parts and the requestors have made clear throughout this proceeding that the scope request does not address or intend to cover furniture parts. Instead, the scope request is concerned with hardwood plywood that meets the physical description of the scope and does not meet any of the express exclusions.
- U.S. Importers cite to various CBP tariff classification rulings predating the *Orders* and argue that Commerce should find that any merchandise classified under HTSUS 9403 is

¹⁴³ See U.S. Importers' Comments at 8; U.S. Importers' Amendment Comments at 7.

¹⁴⁴ See U.S. Importers' Comments at 11-12.

¹⁴⁵ *Id.* at 13.

¹⁴⁶ See CNFPIA Amended Rebuttal Comments at 9.

¹⁴⁷ *Id.*

¹⁴⁸ See Requestors' Rebuttal Comments at 17.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

not subject to the scope of the *Orders*.¹⁵¹ However, it is well-established that Commerce is not bound by CBP's rulings in making scope determinations.¹⁵²

- Further, the tariff classification rulings cited by the U.S. Importers demonstrate that merchandise covered by the scope of the *Orders* may also be classified under HTSUS Chapter 94.¹⁵³ For instance, in a tariff classification ruling for certain birch plywood cabinet panels, CBP found certain plywood panels to be classified under HTSUS 9403.90.7080.¹⁵⁴ One of the products identified in this ruling is described as a panel that has been cut-to-size and has a UV finish and edge banding, and these are the exact types of minor processing that the scope identifies as insufficient to deem merchandise out of scope.¹⁵⁵

Commerce's Analysis

Commerce evaluated the requestors' amended scope ruling request and finds that the plain language of the scope of the *Orders* is dispositive with respect to hardwood plywood that has been cut-to-size, painted, laminated, stained, ultra violet light finished, grooved, and/or covered in paper, regardless of where such processing took place. Because the unambiguous scope language of the *Orders* is dispositive, Commerce did not analyze the criteria set forth in 19 CFR 351.225(k)(1) or the additional factors provided in 19 CFR 351.225(k)(2). For the reasons set forth below, we find that hardwood plywood that has been cut-to-size, painted, laminated, stained, ultra violet light finished, grooved, and/or covered in paper, regardless of where such processing took place is covered by the scope of the *Orders*.

The scope of the *Orders* provides:

All hardwood plywood is included within the scope of the *Orders* regardless of whether or not the face and/or back veneers are surface coated or covered and whether or not such surface coating(s) or covers obscures the grain, textures, or markings of the wood. Examples of surface coatings and covers include, but are not limited to: ultra violet light cured polyurethanes; oil or oil-modified or water based polyurethanes; wax; epoxy-ester finishes; moisture-cured urethanes; paints; stains; paper; aluminum; high pressure laminate; MDF; medium density overlay (MDO); and phenolic film. Additionally, the face veneer of hardwood plywood may be sanded; smoothed or given a "distressed" appearance through such methods as hand-scraping or wire brushing. All hardwood plywood is included within the scope even if it is trimmed; cut-to-size; notched; punched; drilled; or has underwent other forms of minor processing.

The scope of the *Orders* also provides:

Subject merchandise also includes hardwood and decorative plywood that has been further processed in a third country, including but not limited to trimming, cutting,

¹⁵¹ See Requestors' Rebuttal Comments at 18-20.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

notching, punching, drilling, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the in-scope product.

Thus, the plain language of the scope makes clear that hardwood plywood that has been cut-to-size, painted, laminated, stained, ultra violet light finished, grooved, and/or covered in paper, regardless of where such processing took place, is covered by the *Orders*. The plain language of the scope expressly contemplates the minor processing and surface coatings enumerated by the requestors, and expressly contemplates that such minor processing does not remove otherwise subject merchandise from the scope, regardless if performed in a third country.

The U.S. Importers and CNFPIA argue that there is a difference between minor processing that does not remove a plywood panel from classification as plywood and major processing that turns it into furniture. The U.S. Importers and CNFPIA suggest that the requestors are attempting to use the minor processing language of the scope to cover furniture and furniture parts. However, the requestors have made clear that they do not intend to include finished furniture or furniture parts in their amended scope ruling request and explain that the petitioners also made clear during the investigations that they did not intend to include finished furniture or furniture parts in the scope.¹⁵⁶

The requestors explain that they seek this scope ruling to ensure that the *Orders* are properly enforced, *i.e.*, that all hardwood plywood that meets the physical description in the scope is treated as subject merchandise, unless it meets an express exclusion, not to expand the scope to include furniture and furniture parts. We agree with the requestors that their Amended Scope Ruling Request does not seek to expand the scope of the *Orders* to include furniture and furniture parts and that their scope ruling request merely aims to confirm that the plain language of the scope unambiguously includes the minor alterations and surface coatings enumerated in their request. Accordingly, because the plain language of the scope is unambiguous and dispositive, we find that hardwood plywood that has been cut-to-size, painted, laminated, stained, ultra violet light finished, grooved, and/or covered in paper, regardless of where such processing took place is covered by the scope of the *Orders*.

VII. Hardwood Plywood That Has Been Edge Banded

Requestors' Comments

- The scope expressly states that hardwood plywood otherwise subject to the scope of the orders that has undergone forms of minor processing is still covered by the scope.¹⁵⁷ While the scope identifies certain types of minor processing, the listed processes are not exclusive, as the scope recognizes that “other forms” of minor processing do not move merchandise outside the scope.¹⁵⁸ As described below, one form of minor processing that does not move merchandise outside of the scope is edge-banding.¹⁵⁹

¹⁵⁶ See Requestors' Amendment Rebuttal Comments at 12.

¹⁵⁷ See Requestors' Amended Scope Ruling Request at 11-14.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

- Edge-banding is the process of applying material, such as wood veneer, to the exposed edges of a piece of plywood. More specifically, “{e}dge banding is a thin material used to seal the exposed and raw edge of plywood. Heat sensitive adhesive on one side is applied to the board while the other side acts as a barrier against dirt and moisture.”¹⁶⁰ The purpose of edge-banding is to give a piece of plywood the same look as a solid piece of wood by covering the exposed edges with a strip of veneer or solid wood.¹⁶¹
- As this is largely an issue of aesthetics, it does not change or limit the ways in which a piece of hardwood plywood can be used.¹⁶² A piece of hardwood plywood can be used for the same applications and in the same manner regardless of whether it has been edge banded.¹⁶³
- Edge banding is a simple, inexpensive process that can be done in various ways, with the most common methods being with veneer tape or with a solid piece of wood.¹⁶⁴ Hardwood edging can be as simple as gluing a wood strip to the edge of the plywood and flush cutting the top edge to the plywood surface.¹⁶⁵

No other interested parties submitted comments specific to hardwood plywood that has been edge banded.

Commerce’s Analysis

In this scope proceeding, with respect to hardwood plywood that has been edge banded, Commerce examined the plain language of the scope, and the description of the product contained in the requestors’ amended scope ruling request. Because the unambiguous scope language of the *Orders* is dispositive, Commerce did not analyze the criteria set forth in 19 CFR 351.225(k)(1) or the additional factors provided in 19 CFR 351.225(k)(2). For the reasons set forth below, we find that hardwood plywood that has been edge banded is covered by the scope of the *Orders*.

The scope of the *Orders* provides:

All hardwood plywood is included within the scope of the *Orders* regardless of whether or not the face and/or back veneers are surface coated or covered and whether or not such surface coating(s) or covers obscures the grain, textures, or markings of the wood. Examples of surface coatings and covers include, but are not limited to: ultra violet light cured polyurethanes; oil or oil-modified or water based polyurethanes; wax; epoxy-ester finishes; moisture-cured urethanes; paints; stains; paper; aluminum; high pressure laminate; MDF; medium density overlay (MDO); and phenolic film. Additionally, the face veneer of hardwood plywood may be sanded; smoothed or given a “distressed” appearance through such methods as hand-scraping or wire brushing. All hardwood plywood is included within the scope even if it is trimmed; cut-to-size; notched; punched;

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 13.

¹⁶⁵ *Id.*

drilled; or has underwent other forms of minor processing.

The plain language of the scope provides an exemplary list of surface coatings and minor processes that do not remove otherwise subject merchandise from the scope of the *Orders*. The plain language of the scope also makes clear that this list is not all-inclusive and contemplates that there are other surface coatings and other forms of minor processing not expressly enumerated in the scope that would also not remove otherwise subject merchandise from the scope of the *Orders*.

The requestors have submitted information on the record which explains that edge banding is a simple, inexpensive process by which a wood strip or veneer tape is glued or applied to the edge of the plywood and flush trimmed to the plywood surface.¹⁶⁶ The information on the record demonstrates that edge banding is comparable to other surface coatings and minor processes expressly enumerated in the scope, such as a paper or film covering or trimmed/cut-to-size minor processes, and thus constitutes a form of minor process/surface coating contemplated by the plain scope language. Accordingly, given the unambiguous scope language and the record information concerning the edge banding process, we find that hardwood plywood that has been edge banded constitutes hardwood plywood that has undergone minor processing, and thus is covered by the scope of the *Orders*.

Recommendation

For the reasons discussed above, in accordance with 19 CFR 351.225, we recommend that Commerce find that the products described by the requestors in their Amended Scope Ruling Request are covered by the scope of the *Orders*. If the recommendation is accepted, we will serve a copy of this determination to all interested parties on the scope service list, as directed by 19 CFR 351.225(d).

☒
☐

Agree

Disagree

9/7/2018

X 

Signed by: JAMES MAEDER

James Maeder

Associate Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

¹⁶⁶ See Requestors' Amendment to Scope Ruling Request at 11-13.