



A-570-051, C-570-052
Scope Inquiry – CBP EAPA Inv. No. 7252
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August 26, 2021

MEMORANDUM TO: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

THROUGH: Shawn Thompson
Director, Office V
Antidumping and Countervailing Duty Operations

FROM: Nicolas Mayora
International Trade Analyst, Office V
Antidumping and Countervailing Duty Operations

RE: Antidumping Duty and Countervailing Duty Orders on Certain
Hardwood Plywood Products from the People's Republic of China,
Enforcement and Protect Act (EAPA) Investigation No. 7252:
Preliminary Scope Ruling

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that two-ply panels are covered by the scope of the antidumping duty (AD) and countervailing duty (CVD) orders on certain hardwood plywood products (hardwood plywood) from China,¹ based on an analysis under 19 CFR 351.225(k)(1). Further, Commerce preliminarily determines that the plywood Finewood Company Limited (Finewood) exported to the United States, which was produced in the Socialist Republic of Vietnam (Vietnam) using two-ply panels imported from the People's Republic of China (China), are Chinese country of origin, because the two-ply panels are not substantially transformed by the processing occurring in Vietnam.

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*, 83 FR 513 (January 4, 2018) (collectively, the *Orders*).



II. BACKGROUND

On February 24, 2016, the Trade Facilitation and Trade Enforcement Act of 2015 was signed into law, which contains Title IV – Prevention of Evasion of Antidumping and Countervailing Duty Orders (Pub. L. 114-125, 130 Stat. 122, 155, Feb. 24, 2016). This law is also known as the “Enforce and Protect Act of 2015” or “EAPA.” Effective August 22, 2016, section 421 of the EAPA added section 517 to the Tariff Act of 1930, as amended (the Act), which establishes a formal process for U.S. Customs and Border Protection (CBP) to investigate allegations of the evasion of AD and/or CVD orders. Section 517(b)(4)(A) of the Act provides that if, during the course of an EAPA investigation, CBP is unable to determine whether the merchandise at issue is covered merchandise within the meaning of section 517(a)(3) of the Act, it shall refer the matter to Commerce to make such a determination. Section 517(a)(3) of the Act defines covered merchandise as merchandise that is subject to an AD order issued under section 736 of the Act or a CVD order issued under section 706 of the Act. Section 517(b)(4)(B) of the Act states that Commerce, after receiving a covered merchandise referral from CBP, shall determine whether the merchandise is covered merchandise and promptly transmit its determination to CBP. The Act does not establish a deadline within which Commerce must issue its determination.

On September 16, 2019, Commerce received a covered merchandise referral from CBP regarding CBP EAPA Investigation No. 7252,² which concerns the *Orders* a. Specifically, based on an allegation by Plywood Source LLC, a company located in California, CBP requested that Commerce issue a determination as to whether hardwood plywood produced by Finewood from two-ply panels of Chinese origin, which are incorporated into the plywood cores and further processed in Vietnam to include the face and back veneers of non-coniferous wood, are within the scope of the *Orders*.

On January 17, 2020, we initiated a formal scope inquiry.³ In the *Initiation Notice*, we stated that “Commerce may request factual information from any person to assist in making its determination, including soliciting information directly from Finewood to conduct our analysis, and may verify submissions of factual information, if Commerce determines that such verification is appropriate.”⁴

On March 12, 2020, we solicited information from Finewood in an initial questionnaire.⁵ On March 17, 2020, Finewood reported difficulties in responding to Commerce’s initial

² See Memorandum, “U.S. Customs and Border Protection Enforce and Protect Act Investigation No. 7252, Certain Hardwood Plywood Products from the People’s Republic of China (A-570-051 and C-570-052); Placement of Covered Merchandise Referral Documents on the Record,” dated January 21, 2020 (CBP Referral) (placing on the record CBP’s Letter, “Scope Referral Request for Merchandise under EAPA Cons. Investigation 7252, Imported by Far East America, Inc., CIEL Group, American Pacific Plywood, Interglobal Forest, and Liberty Woods International, Inc., (‘Importers’), and Concerning the Investigation of Evasion of the Antidumping and Countervailing Duty Orders on Hardwood Plywood from the People’s Republic of China (A-570-051 and C-570-052),” dated September 16, 2019).

³ See *Certain Hardwood Plywood from the People’s Republic of China: Notice of Covered Merchandise Referral and Initiation of Scope Inquiry*, 85 FR 3024 (January 17, 2020) (*Initiation Notice*).

⁴ See *Initiation Notice*, 85 FR at 3024.

⁵ See Commerce’s Letter, “Certain Hardwood Plywood from the People’s Republic of China Scope Inquiry: Questionnaire,” dated March 12, 2020 (Initial Questionnaire).

questionnaire because it claimed that the company had ceased operations and no longer existed.⁶ On April 2, 2020, Finewood submitted a request that Commerce rescind the initial questionnaire.⁷ On April 6, 2020, we notified Finewood that Commerce did not intend to withdraw its questionnaire.⁸ Thereafter, Finewood requested that Commerce stagger the deadlines for certain portions of the Initial Questionnaire, which we granted.⁹ Finewood submitted its responses to the initial questionnaire on April 9 and 23, 2020.¹⁰

On April 23, 2020, Finewood reported that all of its entries of hardwood plywood subject to this scope inquiry had been liquidated by CBP, and it requested that Commerce instruct CBP to continue suspension of the liquidation of Finewood's entries covered by this scope inquiry.¹¹ On May 18, 2020, we informed Finewood that Commerce has no legal authority to direct CBP to re-suspend liquidated entries, and that it is incumbent upon Finewood or its importers to pursue this matter with CBP.¹²

Also on May 18, 2020, we extended the deadline to issue a final scope ruling to June 30, 2020.¹³ However, following the initiation of anti-circumvention and scope inquiries pertaining to hardwood plywood that is assembled in Vietnam using inputs imported from China,¹⁴ we aligned the deadline for the final determinations in these scope inquiries with the deadlines for the final determinations in the parallel anti-circumvention/scope inquiries.¹⁵

⁶ See Finewood's Letter, "Hardwood Plywood from the People's Republic of China Scope Inquiry Questionnaire – Notice of Difficulties in Responding," dated March 17, 2020.

⁷ See Finewood's Letter, "Hardwood Plywood from the People's Republic of China – EAPA Scope Inquiry: Request to Rescind Questionnaire Issued to Finewood," dated April 2, 2020.

⁸ See Commerce's Letter, "Certain Hardwood Plywood from the People's Republic of China Scope Inquiry: Request to Rescind Questionnaire Issued to Finewood," dated April 6, 2020. On April 7, 2020, we received comments on Finewood's request to rescind the initial questionnaire from the Coalition for Fair Trade in Hardwood Plywood (the petitioner). See Petitioner's Letter, "Hardwood Plywood Products from the People's Republic of China: Response to Finewood's Request to Rescind Questionnaire," dated April 7, 2020.

⁹ See Finewood's Letter, "Hardwood Plywood from the People's Republic of China: Scope Inquiry Extension of Time Request for Finewood to File Certain Exhibits," dated April 6, 2020; see also Commerce's Letter, "Certain Hardwood Plywood from the People's Republic of China Scope Inquiry: Extension of Questionnaire Response Deadline," dated April 6, 2020.

¹⁰ See Finewood's Letters, "Hardwood Plywood from the People's Republic of China: EAPA Scope Inquiry Finewood Questionnaire Response," dated April 9, 2020 (Finewood's April 9, 2020 IQR); and "Hardwood Plywood from the People's Republic of China: EAPA Scope Inquiry Finewood Questionnaire Response for Certain Exhibits," dated April 23, 2020 (Finewood's April 23, 2020 IQR). On May 7, 2020, we received timely-filed comments from the petitioner on Finewood's initial questionnaire responses. See Petitioner's Letter, "Hardwood Plywood Products from the People's Republic of China: Comments on Vietnam Finewood's Questionnaire Responses," dated May 7, 2020. On May 13, 2020, Finewood submitted comments in response to this submission. See Finewood's Letter, "Hardwood Plywood from the People's Republic of China: EAPA Scope Inquiry Rebuttal Comments to Comments on Finewood's Questionnaire Responses," dated May 13, 2020.

¹¹ See Finewood's Letter, "Hardwood Plywood from the People's Republic of China: EAPA Scope Inquiry – Request to Issue CBP Instructions," dated April 23, 2020.

¹² See Commerce's Letter, "Certain Hardwood Plywood from the People's Republic of China Scope Inquiry: Liquidation of Entries," dated May 18, 2020.

¹³ See Memorandum, "Extension of Final Determination Deadline," dated May 18, 2020.

¹⁴ See *Certain Hardwood Plywood Products from the People's Republic of China: Initiation of Anti-Circumvention Inquiries on the Antidumping and Countervailing Duty Orders; Vietnam Assembly*, 85 FR 36350 (June 17, 2020).

¹⁵ See Memorandum, "Extension of Final Determination Deadline," dated June 22, 2020.

On March 2, 2021, we issued a supplemental questionnaire to Finewood that requested, *inter alia*, information related to Commerce’s substantial transformation analysis, to which Finewood responded between March 30 and April 20, 2021.¹⁶ On March 4, 2021, we requested from all interested parties comments on factors relevant to the substantial transformation analysis.¹⁷ On March 11, 2021, we extended the deadline for the final determinations in these scope inquiries to August 24, 2021.¹⁸

On April 21, 2021, we received comments from the petitioner on the substantial transformation factors.¹⁹ Both Finewood and the petitioner filed rebuttal and sur-rebuttal comments between April 30 and May 13, 2021.²⁰

III. SCOPE OF THE ORDERS

The merchandise subject to these *Orders* is hardwood and decorative plywood, and certain veneered panels as described below. For purposes of this proceeding, 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 or otherwise bonded together. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP-1-2016 (including any revisions to that standard).

For purposes of these *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

¹⁶ See Commerce’s Letter, “Certain Hardwood Plywood from the People’s Republic of China: Vietnam Finewood Company Limited Supplemental Questionnaire,” dated March 2, 2021; see also Finewood’s Letters, “Hardwood Plywood from the People’s Republic of China: EAPA Scope Inquiry Finewood Supplemental Questionnaire Response – Part I,” dated March 30, 2021 (Finewood’s SQR Part I); “Hardwood Plywood from the People’s Republic of China: EAPA Scope Inquiry Finewood Supplemental Questionnaire Response – Part II & III,” dated April 13, 2021 (Finewood’s SQR Parts II & III); and “Hardwood Plywood from the People’s Republic of China: EAPA Scope Inquiry Finewood Supplemental Questionnaire Response – Part IV and Information on Substantial Transformation,” dated April 20, 2021 (Finewood’s SQR Part IV).

¹⁷ See Memorandum, “Certain Hardwood Plywood from the People’s Republic of China: Request for Additional Information,” dated March 4, 2021.

¹⁸ See Memorandum, “Certain Hardwood Plywood Products from the People’s Republic of China: Extension of Final Determination Deadline,” dated March 11, 2021.

¹⁹ See Petitioner’s Letter, “Hardwood Plywood Products from the People’s Republic of China: Response to the Department’s Request for Additional Information,” dated April 20, 2021 (Petitioner’s RFI Response).

²⁰ See Finewood’s Letters, “Hardwood Plywood from the People’s Republic of China: EAPA Scope Inquiry – Finewood Rebuttal to Petitioner’s Additional Information,” dated April 30, 2021 (Finewood’s April 30, 2021 Response); and “Hardwood Plywood from the People’s Republic of China: EAPA Scope Inquiry – Finewood Sur-Rebuttal to Petitioner’s May 4, 2021 Rebuttal Comments,” dated May 13, 2021 (Finewood’s May 13, 2021 Response); see also Petitioner’s Letter, “Hardwood Plywood Products from the People’s Republic of China: Rebuttal to Substantial Transformation Information,” dated May 4, 2021 (Petitioner’s May 4, 2021 Response).

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 these *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: ultraviolet 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 these *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 *Orders* 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 these *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 these *Orders* 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 these *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 these *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 these *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 these *Orders* are finished countertops that are imported in finished form and require no further finishing or manufacturing.

Excluded from the scope of these *Orders* are laminated veneer lumber (LVL) 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.

Excluded from the scope of these *Orders* are certain door stiles and rails made of LVL that have a width not to exceed 50 millimeters, a thickness not to exceed 50 millimeters, and a length of less than 2,450 millimeters.

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; 4412.31.4155; 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; 4412.32.5700; 4412.33.0620; 4412.33.0640; 4412.33.0670; 4412.33.2630; 4412.33.3235; 4412.33.3255; 4412.33.3265; 4412.33.3275; 4412.33.3285; 4412.33.5700; 4412.34.2600; 4412.34.3235; 4412.34.3255; 4412.34.3265; 4412.34.3275; 4412.34.3285; 4412.34.5700; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 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 4412.10.9000; 4412.94.5100; 4412.94.9500; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 9403.90.7005; 9403.90.7010; and 9403.90.7080. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.

IV. DESCRIPTION OF THE MERCHANDISE SUBJECT TO THESE SCOPE INQUIRIES

As explained above, the covered merchandise referral from CBP EAPA Investigation No. 7252,²¹ includes hardwood plywood made by Finewood in Vietnam with two-ply panels imported from China.²² CBP requested that Commerce make a determination as to whether the two-ply panels of Chinese origin, which are further processed in Vietnam to make hardwood plywood by adding the face and back veneers of non-coniferous wood, are covered merchandise subject to the *Orders*.²³

²¹ See CBP Referral.

²² *Id.*

²³ *Id.* In the CBP Referral, CBP described the products at issue as “two-ply cores” of Chinese origin.

V. LEGAL FRAMEWORK

In making a scope determination, Commerce first examines the scope language of the order(s) at issue and the description of the products for which it is issuing a scope ruling.²⁴ As the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) has upheld, a scope “inquiry begins with the Orders’ scope to determine whether it contains an ambiguity and, thus, is susceptible to interpretation.”²⁵ If the scope “is unambiguous, the plain meaning of the Orders’ language governs.”²⁶ Pursuant to Commerce’s regulations, Commerce may also examine other information, including the description of the merchandise contained in the petition, the records from an investigation, and relevant prior determinations by Commerce (including prior scope rulings) and the International Trade Commission (ITC).²⁷ If Commerce determines that these sources are sufficient to decide the matter, it will issue a final scope ruling stating whether the merchandise is covered by an order.²⁸

Conversely, where these descriptions of the merchandise described in 19 CFR 351.225(k)(1) are not dispositive, Commerce will consider the five additional factors set forth in 19 CFR 351.225(k)(2). These factors are: (i) the physical characteristics of the merchandise; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the 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 consideration of all evidence before Commerce.

Because AD and CVD orders apply to merchandise from particular countries, determining the country where the merchandise is produced is fundamental to proper administration and enforcement of the AD and CVD statute. The scope of an AD or CVD order is limited to merchandise that originates in the country covered by the orders.²⁹ Commerce has explicitly stated that the scope of an AD order is “defined by the type of merchandise and the country-of-origin.”³⁰

²⁴ See *Star Pipe Products v. United States*, 981 F.3d 1067, 1073 (Fed. Cir. 2020); see also *Whirlpool Corporation v. United States*, 890 F.3d 1302, 1308 (Fed. Cir. 2018) (*Whirlpool Corp. CAFC 2018*); and *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (Fed. Cir. 2010).

²⁵ See *Whirlpool Corp. CAFC 2018*, 890 F.3d at 1308.

²⁶ *Id.*; see also *Meridian Products, LLC v. United States*, 851 F.3d 1375, 1381 (Fed. Cir. 2017) (*Meridian Prods. CAFC 2017*).

²⁷ See 19 CFR 351.225(k)(1); see also *Whirlpool Corp. CAFC 2018*, 890 F.3d at 1308.

²⁸ See 19 CFR 351.225(d).

²⁹ See *Stainless Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 69 FR 74495 (December 14, 2004) (*SSPC from Belgium*), and accompanying Issues and Decision Memorandum (IDM) at Comment 4.

³⁰ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062 (July 9, 1993), where Commerce stated that “{the} scope of an antidumping or countervailing duty order is defined by the type of merchandise and by the country of origin (e.g., widgets from Ruritania). For merchandise to be subject to an order it must meet both parameters, i.e., product type and country of origin. In determining country of origin for scope purposes, Commerce applies a ‘substantial transformation’ rule.” This language was quoted by the Court of International Trade in *Advanced Tech & Materials Co., Ltd. v. United States*, 35 CIT 1380, 1384 (2011) and *Ugine and ALZ Belgium, N.V. v. United States*, 517 F. Supp. 2d 1333, 1345 (CIT 2007) (*Ugine CIT 2007*).

In determining the country of origin of a product, Commerce's practice has been to conduct a substantial transformation analysis.³¹ The Court of International Trade (CIT) has upheld Commerce's "substantial transformation" analysis as a means to carry out its country of origin analysis.³² The CIT has stated, and the Federal Circuit has upheld, that "{the} 'substantial transformation' rule provides a yardstick for determining whether the processes performed on merchandise in a country are of such significance as to require that the resulting merchandise be considered the product of the country in which the transformation occurred."³³ Because the covered merchandise referral addressed finished plywood products assembled in a third country that contain two-ply panels imported from China, we have used a substantial transformation analysis to determine the country of origin of the finished plywood products exported by Finewood to the United States.

Commerce's substantial transformation analysis asks:

- (1) whether, as a result of the manufacturing or processing, the product loses its identity and is transformed into a new product having a new name, character, and use;³⁴ and
- (2) whether through that transformation, the new article becomes a product of the country in which it was processed or manufactured.³⁵

Commerce may examine a number of factors in conducting its substantial transformation analysis, and the weight of any one factor can vary from case to case and depends on the particular circumstances unique to the products at issue.³⁶ For these scope inquiries, Commerce considered the following factors when performing our substantial transformation analysis:

1. Class or Kind of Merchandise
2. Product Properties, the Essential Component of the Merchandise, and Intended End-Use
3. Nature/Sophistication of Processing in the Country of Exportation
4. Cost of Production/Value Added
5. Level of Investment.³⁷

³¹ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Glycine from India*, 73 FR 16640 (March 28, 2008), and accompanying IDM at Comment 5; and *SSPC from Belgium* IDM at Comment 4.

³² See *Bell Supply Co. v. United States*, 888 F.3d 1222, 1229 (Fed. Cir. 2018) (*Bell Supply CAFC 2018*) (citing *E.I. DuPont De Nemours & Company v. United States*, 8 F. Supp. 854, 858 (CIT 1993)) ("noting that in determining if merchandise exported from an intermediate country is covered by an antidumping order, Commerce identified the country of origin by considering whether the essential component is substantially transformed in the country of exportation.")

³³ *Id.*

³⁴ See, e.g., *Bell Supply CAFC 2018*, 888 F.3d at 1228–29.

³⁵ See *Ugine CIT 2007*, 517 F. Supp. 2d at 1337 n.5.

³⁶ *Laminated Woven Sacks from the People's Republic of China: Final Results of First Antidumping Duty Administrative Review*, 76 FR 14906 (March 18, 2011) (*Laminated Woven Sacks*), and accompanying IDM at Comment 1b.

³⁷ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 3086 (January 19, 2011), and accompanying IDM at Comment 6; *Laminated Woven Sacks* IDM at Comment 1b; *Final Determination of Sales at Less Than Fair Value: Certain Artist Canvas from the People's Republic of China*, 71 FR 16116 (March 30, 2006), and accompanying IDM at Comment 1; and *Bell Supply CAFC 2018*, 888 F.3d at 1228–29.

VI. ANALYSIS

In order to address the full breadth of issues pertaining to the origin of the merchandise described in CBP's referral, we conducted a two-part analysis. First, we considered whether two-ply panels, in general, are covered merchandise subject to the *Orders*. Second, we used a substantial transformation analysis to determine whether Finewood's two-ply panels that it imported from China and further processed in Vietnam are substantially transformed in Vietnam, so that we could determine the country of origin of the finished hardwood plywood exported by Finewood to the United States.

The Plain Language of the Scope the *Orders*

Finewood's Comments:

- The plain language of the scope of the *Orders* as published in both Commerce's initiation notice and the *Orders* is "a generally flat, multilayered plywood or other veneered panel, consisting of two or more layers or plies of wood veneers and a core."³⁸
- The scope language clarifies that at least two veneer sheets must be combined with the core to produce an article that is covered by the scope.³⁹
- Finewood's two-ply products purchased from China are not composed of a core and a minimum of two layers of veneers and are, therefore, not covered by the *Orders*.⁴⁰
- Because the scope language is unambiguous, Commerce need not progress to the analysis of the factors under 19 CFR 351.225(k)(1) and (k)(2).⁴¹
- Both CBP and the World Customs Organization Council, which administers the Harmonized Tariff Schedule (HTS), define "plywood" as requiring at least three plies.⁴²
- Finewood does not dispute that veneered panels with only one veneer sheet on a base are properly classified under HTSUS 4412. The "certain veneered panels" that are included in the scope of the *Orders*, however, must fit the scope description of products composed of a face and back veneer and a core - for a minimum of three distinct layers or plies.⁴³
- Finewood's two-ply panels are composed of only two veneer sheets and are not covered by the plain language of the scope.⁴⁴ Thus, Commerce's answer to CBP must be that Finewood's two-ply panels of Chinese origin, which are further processed in Vietnam to include the face and back veneers are not within the scope of the *Orders*.⁴⁵
- The subject of CBP's referral is the two-ply panels sourced from China and not the finished plywood produced in Vietnam.⁴⁶

Petitioner's Comments:

- The scope covers "hardwood and decorative plywood, *and certain veneered panels.*"⁴⁷

³⁸ See Finewood's May 13, 2021 Response at 2.

³⁹ *Id.*

⁴⁰ See Finewood's SQR Part IV at 11.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at 4.

⁴⁴ *Id.* at 6.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See Petitioner's May 4, 2021 Response at 6 (citing the scope of the *Orders*) (emphasis added).

- The scope language is more reasonably read as defining hardwood plywood as a multilayered plywood or other veneered panel that consists of two or more layers or plies of: (1) wood veneers; and (2) a core. Once a product has multiple plies, whether those plies be face/back veneers or core veneers, it falls within this definition.⁴⁸
- The fact that CBP referred this matter to Commerce indicates that it is not clear whether products of two-ply are covered by the scope of the *Orders*.

Commerce's Position:

We have examined the plain language of the scope and preliminarily find it to be ambiguous with regards to “certain veneered panels.” Therefore, the plain language of the scope is not dispositive in determining whether two-ply panels, generally, are included within the scope of the *Orders*.⁴⁹

It is a fundamental principle that merchandise subject to an order must be the type of merchandise described in the order and from the particular country covered by the order; if the merchandise does not meet both parameters, it is outside the scope of an order.⁵⁰ Whether particular merchandise meets these parameters involves two separate inquiries (*i.e.*, whether the product at issue is of the type described in the order, and whether the country of origin of the product is that of the subject country).⁵¹ For the first part of the analysis, Commerce must determine whether the products described in the scope inquiry are the type of merchandise covered by the *Orders*.

The type of merchandise is determined by the language of the scope of an order.⁵² The scope of the *Orders* provides, in relevant part, that “{t}he merchandise subject to {these *Orders*} is hardwood and decorative plywood, and certain veneered panels as described below. For purposes of {these proceedings}, 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....” The scope further defines hardwood and decorative plywood as “consisting of two or more layers or plies of wood veneers and a core.” However, the scope does not define “certain veneered panels,” nor does it provide any examples of what are considered certain veneered panels. Commerce, therefore, determines that the language of the scope is ambiguous as to what constitutes “certain veneered panels.”

⁴⁸ *Id.* at 3.

⁴⁹ See *Whirlpool Corp. CAFC 2018*, 890 F.3d at 1307-08; see also *Meridian Prods. CAFC 2017*, 851 F.3d at 1381.

⁵⁰ See *Bell Supply Co., LLC v. United States*, 179 F. Supp. 3d 1082, 1092 (CIT 2016); see also *Sunpower Corp. v. United States*, 179 F. Supp. 3d 1286, 1298 (CIT 2016) (*Sunpower*); *Ugine CIT 2007*, 517 F. Supp. 2d at 1345, affirmed 551 F. 3d 1339 (Fed. Cir. 2009) (“{I}f merchandise does not meet one of the parameters – either class or kind, or country of origin – it is outside the scope of the AD or CVD Order”); and *Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37065 (July 9, 1993).

⁵¹ See *Sunpower*, 179 F. Supp. 3d at 1298; see also *Final Determination of Sales at Less Than Fair Value: 3.5” Microdisks and Coated Media Thereof from Japan*, 54 FR 6433, 6435 (February 10, 1989).

⁵² See *Kyocera Solar, Inc. v. United States*, 253 F. Supp 3d 1294, 1307 (CIT 2017) (“This definition of subject merchandise demonstrates that the scope of a proceeding establishes the ‘class or kind of merchandise.’ Because the statute refers to the ‘class or kind of merchandise’ that is within the scope, one must look to the scope itself to find the parameters of the ‘class or kind or merchandise.’”)

Finewood argues that the scope should be read as requiring a minimum of three plies (*i.e.*, at least two layers or plies of wood veneers and a core), and, under this reading, Finewood's two-ply panels are not covered by the *Orders*. Finewood also argues that the scope language is unambiguous, and that Commerce need not progress to the analysis of the factors under 19 CFR 351.225(k)(1) and (k)(2). The petitioner disagrees and argues that the term "certain veneered panels" in the scope language is distinct from the language describing hardwood and decorative plywood, and that the former covers products consisting of two plies such as Finewood's two-ply panels.

A plain reading of the scope indicates that the *Orders* cover two general types of merchandise: (1) hardwood and decorative plywood, and (2) certain veneered panels. The scope defines "hardwood and decorative plywood" 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." However, the scope does not provide a definition for "certain veneered panels." We conclude for this preliminary determination that the ambiguity of the term "certain veneered panels" in the scope precludes Commerce from making a determination as to whether Finewood's two-ply panels are subject to the *Orders* based solely on the plain language of the scope. Therefore, in this respect, we preliminarily determine that the scope of the *Orders* is ambiguous, not dispositive, and susceptible to interpretation. Accordingly, Commerce must consider whether the 19 CFR 351.225(k)(1) sources provide additional guidance on whether Finewood's two-ply panels from China are covered by the scope of the *Orders*.⁵³

19 CFR 351.225(k)(1) Analysis

Finewood's Comments:

- The reference to "veneer core platforms" in the scope was deleted because the scope defines plywood as a flat panel composed of at least three layers. Commerce specifically considered whether to include "veneer core platforms" before initiation of the investigations, and it rejected this language.⁵⁴
- The petitioner cannot claim that "veneer core platforms" are now covered. Accordingly, an analysis under 19 CFR 351.225(k)(1) in this case must show that two-ply panels are not within the scope.⁵⁵
- The questionnaire issued by Commerce in the investigations requested information regarding product characteristics, but with respect to the number of plies, "three" was the lowest number of plies that could be reported by a respondent. If Commerce understood two-ply articles to be within the scope of the investigation, the identifiers for the subject merchandise would begin with two plies.⁵⁶

⁵³ The Federal Circuit has clarified that, before Commerce considers the sources under 19 CFR 351.225(k)(1), its "inquiry must begin with the order's scope to determine whether it contains an ambiguity and, thus, is susceptible to interpretation." *See Meridian Prods. CAFC 2017*, 851 F.3d at 1381; *see also Mid Continent Nail Corp. v. United States*, 725 F.3d 1295, 1302 (Fed Cir. 2013). Thus, in reviewing Commerce's application of 19 CFR 351.225, the Federal Circuit has held that a finding of ambiguity is a condition precedent for Commerce to proceed to consider the materials listed in 19 CFR 351.225(k)(1), and, if further necessary, the sources listed in 19 CFR 351.225(k)(2).

⁵⁴ *See* Finewood's SQR Part IV at 14.

⁵⁵ *Id.*

⁵⁶ *Id.*

Petitioner's Comments:

- The Petition states that “veneer core platforms” are included in the definition of subject merchandise, and the original scope included a reference to “veneer core platforms.”⁵⁷
- Finewood incorrectly concludes that the removal of the reference to veneer core platforms from the scope is meaningful. Finewood fails to recognize two other scope modifications: (1) including “veneered panels;” and (2) changing the scope language from “two or more layers or plies of wood veneers *in combination with a core*” to “two or more layers or plies of wood veneers *and a core*,”⁵⁸
- The World Customs Organization and CBP, in the explanatory notes to the HTS, define veneered panels as consisting of two wood veneers. Thus, the Petition and investigation remove any doubt as to whether two-ply panels are covered.⁵⁹

Commerce's Position:

We preliminarily find that two-ply panels, generally, are “veneered panels” covered by the scope of the *Orders*, based on an analysis under 19 CFR 351.225(k)(1).

In accordance with 19 CFR 351.225(k)(1), when considering whether a particular product is included within the scope of an order, Commerce will take into account the description of the merchandise contained in the Petition, the initial investigation, and the determinations of the Secretary and the ITC. As explained above, the scope includes hardwood and decorative plywood and “certain veneered panels.” However, the ambiguity of the phrase “certain veneered panels” precludes Commerce from determining whether two-ply panels are covered by the scope based solely on the plain language of the scope itself.

We reviewed the product descriptions of the merchandise contained in the Petition and confirmed that the Petition references “veneer core platforms,”⁶⁰ which it defines as “two or more wood veneers that form the core of an otherwise completed hardwood plywood product (*i.e.*, a hardwood plywood product to which the outer (face and back) veneers have not yet been affixed).”⁶¹ However, the record also shows that, although the scope initially submitted with the Petition included a reference to veneer core platforms, the language was removed prior to the initiation of the investigations of hardwood plywood from China and language regarding “certain veneered panels” was added to the scope.⁶²

The explanatory notes to the HTS, examined in the Preliminary Scope Decision Memorandum of the investigation⁶³ and provided by Finewood in a supplemental questionnaire response, define veneered panels as “panels consisting of a thin veneer of wood affixed to a base, usually of

⁵⁷ See Petitioner's May 4, 2021 Response at 3 (citing Finewood's SQR Part IV at Exhibit SQ1-25 (Excerpts from Petitions for the Imposition of Antidumping and Countervailing Duties (Petition))).

⁵⁸ See Petitioner's May 4, 2021 Response at 4.

⁵⁹ *Id.* at 5.

⁶⁰ See Petition at 7.

⁶¹ *Id.* at 7.

⁶² *Id.* at 1.

⁶³ See Petitioner's May 4, 2021 Response at Exhibit 1 (LTFV Preliminary Scope Decision Memorandum at 3).

inferior wood, by gluing under pressure.⁶⁴ The ITC Report also noted that a plywood core can be composed entirely of veneers or other types of wood material (*e.g.*, MDF and oriented strand board).⁶⁵ Although certain parties argued for the removal of the phrase “certain veneered panels” from the scope during the investigations, citing possible confusion because there is no specific description of the physical characteristics or uses that define “certain veneered panels,” Commerce stated that removal of the “certain veneered panels” language was not warranted and clarified that the phrase referred to “a veneer of hardwood which has been affixed to a base (including a core) of inferior wood or a non-wood product.”⁶⁶ Therefore, we determine that it is reasonable to define “certain veneered panels” as a veneer of hardwood affixed to a base, usually of inferior wood, by gluing under pressure, in accordance with the explanatory notes of the HTS.

The two-ply panels that Finewood imported from China consist of two layers of [] core veneers already glued together,⁶⁷ and range from [] mm in thickness.⁶⁸ The above definition of “veneered panels” encompasses Finewood’s imported two ply-panels and, thus, we preliminarily find that such two-ply panels are “veneered panels” subject to the *Orders*.

While Finewood notes that the initial questionnaire issued in the investigation provided for reporting the number of plies in the imported product, with the lowest available number being “3,” we note that the product characteristics in the investigation were issued on January 12, 2017,⁶⁹ while Commerce did not clarify its position that, “based on petitioners’ explanation of ‘certain veneered panels’ ... that this phrase means ... a veneer of hardwood which has been affixed to a base (including the core) of inferior wood or a non-wood product” until April 17, 2017.⁷⁰ We further note that the questionnaire also leaves open the possibility for respondents to report additional codes (10-n) and code 02 could be used for parties to report a two-ply product.⁷¹ Therefore, we disagree with Finewood that the questionnaire reflects Commerce’s understanding that subject merchandise must have at least three plies because the construction of the control number (CONNUM) allowed for parties to report products with two plies.

Based on this analysis of the 19 CFR 351.225(k)(1) sources, including the Petition, the ITC Report, and prior determinations, we preliminarily determine that Finewood’s two-ply panels meet the definition of certain veneered panels and are, thus, covered by the scope of the *Orders*.

⁶⁴ See Finewood’s SQR Part IV at Exhibit SQ1-50 (World Customs Organization Explanatory Notes to HTS subheading 4412).

⁶⁵ *Id.* at 16 (citing U.S. International Trade Commission: Hardwood Plywood from China – Investigation Nos. 701-TA-565 and 731-TA-1341 Final (ITC Report) at I-13).

⁶⁶ See Petitioner’s May 4, 2021 Response at Exhibit 1 (LTFV Preliminary Scope Decision Memorandum at 3).

⁶⁷ See Finewood’s April 9, 2020 IQR at 9; *see also* Finewood’s April 23, 2020 IQR at Exhibit 4.

⁶⁸ See Finewood’s April 23, 2020 IQR at Exhibit 4; *see also* Finewood’s SQR Part IV at 27.

⁶⁹ See Memorandum, “Product Characteristics and Deadline for Sections C and D of the Antidumping Duty Questionnaire,” dated January 12, 2017 (Product Characteristics Memorandum).

⁷⁰ See Memorandum, “Certain Hardwood Plywood Products from the People’s Republic of China: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated April 17, 2017.

⁷¹ See Product Characteristics Memorandum at 9.

Substantial Transformation Analysis

The Federal Circuit has upheld Commerce’s substantial transformation analysis as a reasonable method to determine the country of origin of a product.⁷² The Federal Circuit has held that a substantial transformation occurs where a product is transformed into a new product bearing a “new name, character and use.”⁷³ In order to assess whether substantial transformation has occurred, Commerce has applied, as appropriate, the following analysis: (1) whether the processed downstream product falls into a different class or kind or product when compared to the upstream product; (2) whether processing in a third country changes the important qualities or use of the component; (3) what are the nature and sophistication of processing; (4) what are the cost of production/value added to the product; and (5) how extensive is the level of investment.⁷⁴ To determine the country of origin of Finewood’s hardwood plywood, we have examined these criteria in conducting our substantial transformation analysis:

1. Class or Kind

Finewood’s Comments:

- Commerce’s “class or kind” analysis is tied to the scope of the plywood *Orders*. This analysis asks whether the scope covers both the upstream and downstream products.⁷⁵
- Finewood’s two-ply panels cannot be “two-ply cores”⁷⁶ because they are not stable enough to act as plywood substrates or platforms. Additional plies must be added to the product to form a core. In reality, the upstream product is more akin to reinforced veneer or “board-onboard” veneer.⁷⁷
- As the Explanatory Note for subheading 4412 of the HTS published by the World Customs Organization explains, a “veneered panel” requires a veneer and a base, and the veneer must give the panel its essential character. Thus, the explanatory note’s definition of a veneered panel does not apply to Finewood’s two-ply panels because they have no base and no veneer, elements that give the two-ply panel the essential characteristic of a “veneered panel.”⁷⁸
- CBP erroneously cites to the Explanatory Note in issuing Ruling N146815, in which it stated that “{s}ubstrates of only two layers do not constitute plywood, but instead are laminated panels – also of Heading 4412, HTSUS. The lamination of a veneer face ply onto a substrate of two layers renders plywood, yet does not significantly change the classification; the article is still classifiable in Heading 4412, HTSUS. The lamination of the veneer face ply to the substrate, therefore, does not render a new and different article.”⁷⁹ CBP’s reading of the Explanatory Note was incorrect because the Explanatory Note defines a veneered panel as requiring both a veneer and a base, and the veneer must give the panel its essential character.⁸⁰

⁷² See *Bell Supply CAFC 2018*, 888 F.3d at 1228-1229.

⁷³ *Id.*, 888 F.3d at 1228.

⁷⁴ *Id.*, 888 F.3d at 1229.

⁷⁵ See Finewood’s SQR Part IV at 2.

⁷⁶ As noted above, in the CBP Referral, CBP described the products at issue as “two-ply cores” of Chinese origin.

⁷⁷ *Id.* at 5.

⁷⁸ *Id.* at 6.

⁷⁹ *Id.*

⁸⁰ *Id.*

- Because Finewood’s two-ply panels have no base and no veneer that gives the two-ply panel an essential characteristic as a “veneered panel,” Ruling N146815 supports a ruling that Finewood’s two-ply panels are not “plywood,” and that the proper HTS classification of Finewood’s two-ply panels is, therefore, as a reinforced core veneer under HTS subheading 4408.⁸¹
- Even if Finewood’s two-ply panels are included in the same tariff schedule heading as plywood, it is not determinative of Commerce’s “class or kind” analysis.⁸²
- Commerce has conducted many scope rulings related to the AD/CVD orders on wood flooring, which have scope language that is similar to the orders on hardwood plywood. In those rulings, Commerce has consistently determined that: (1) wood flooring is made of plywood; and (2) two-ply panels are outside the scope of the wood flooring orders; further, Commerce published a clarification notice related to those orders stating, “two or more layers or plies of wood veneer(s) in combination with a core” refers to a product “with a minimum of three layers.”⁸³
- In response to a request to remove the reference to veneered panels from the scope language, Commerce stated: “we clarify that this phrase means, in the context of this investigation, a veneer of hardwood which has been affixed to a base (including the core) of inferior wood or a non-wood product.”⁸⁴
- In the investigations, the petitioner indicated that “certain veneered panels” are, for example, “a three-ply hardwood panel with oak front and rear faces and with a core of particleboard or a core of {MDF}.”⁸⁵
- Although cores may be composed of a range of materials which may be considered “veneered panels,” these panels must be composed of at least three plies.⁸⁶
- The scope of the *Orders* does not cover all articles that are properly classified under HTSUS subheading 4412, even if “certain veneered panels” justifiably covers those articles with three plies that have a core composed of particleboard or MDF and that may be understood in the industry as “veneered panels” rather than plywood.⁸⁷

Petitioner’s Comments:

- The plain language of the scope, as confirmed by the Petition, covers two-ply panels.⁸⁸
- The scope language should be read to define subject plywood as a multilayered plywood or other veneered panel that consists of two or more layers or plies of: (1) wood veneers; and (2) a core. Once a product has multiple plies, whether those plies be face/back veneers or core veneers, it falls within this definition.⁸⁹
- The Petition clearly identified veneer core platforms, such as the two-ply cores purchased by Finewood, as covered by the scope.⁹⁰

⁸¹ *Id.*

⁸² *Id.* at 7.

⁸³ *Id.*

⁸⁴ See Finewood’s May 13, 2021 Response at 3.

⁸⁵ *Id.* (citing Petitioner’s May 4, 2021 Response at Exhibit 1 (LTFV Preliminary Scope Decision Memorandum at Comment 4)).

⁸⁶ *Id.* at 4.

⁸⁷ *Id.* at 5.

⁸⁸ See Petitioner’s May 4, 2021 Response at 2.

⁸⁹ *Id.* at 3.

⁹⁰ *Id.*

- The inclusion of “certain veneered panels” in the scope indicates that face/back veneers do not have to be “in combination with a core” to be covered.⁹¹
- The explanatory notes for HTS subheading 4412 define “veneered panels” as “panels consisting of a thin veneer of wood affixed to a base, usually of inferior wood, by gluing under pressure.” CBP has found that two-ply panels fall under HTS subheading 4412.⁹²
- Export data indicate that the plywood components are being shipped to Vietnam under the same HTS number that subject plywood from China is shipped under when exported directly to the United States.⁹³

Commerce’s Position:

Commerce “has generally found that substantial transformation has taken place when the upstream and downstream products fall within two different ‘classes or kinds’ of merchandise ... {c}onversely, Commerce almost invariably determines substantial transformation has not taken place when both products are within the same ‘class or kind’ of merchandise.”⁹⁴ The merchandise subject to these inquiries (*i.e.*, the class or kind of merchandise under examination) is described in the scope, which as discussed above, covers both hardwood plywood and certain veneered panels.

According to Finewood, the merchandise imported from China, which we refer to as “two-ply panels” in this preliminary scope ruling, should be categorized as “reinforced core veneers.” Finewood argues further that the imported merchandise is a separate class or kind of merchandise from the hardwood plywood or certain veneered panels included in the scope of the *Orders*. To support this claim, Finewood attempts to differentiate its products from those described in the explanatory note to the HTS, as not containing the “base” element required by the definition in the note, and because that definition further requires that the veneer must give the panel its essential character.⁹⁵ Finewood ultimately concludes that its two-ply panels must, therefore, be properly classified under HTS subheading 4408,⁹⁶ rather than under HTS subheading 4412.⁹⁷

We agree, however, with CBP’s reasoning in Ruling N146815 regarding a product that is physically similar to hardwood plywood in that it consists of combined veneers, *i.e.*, engineered wood flooring. In a country of origin determination regarding further processing in a third country of plywood substrates of Chinese origin, CBP explained that:

⁹¹ *Id.* at 4.

⁹² *Id.* at 6.

⁹³ See Petitioner’s RFI Response at 6.

⁹⁴ See *Notice of Final Determination of Sales at Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbons from France*, 69 FR 10675, 10675-10676 (March 8, 2004).

⁹⁵ See Finewood’s SQR Part IV at 6.

⁹⁶ Subheading 4408 is defined as “Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm.” More detailed subheadings only refer to the species of wood.

⁹⁷ Subheading 4412 is defined as “Plywood, veneered panels and similar laminated wood.” More detailed subheadings only refer to the species of wood.

Substrates of only two layers do not constitute plywood, but instead are laminated panels – also of Heading 4412, HTSUS. The lamination of a veneer face ply onto a substrate of two layers renders plywood, yet does not significantly change the classification; the article is still classifiable in Heading 4412, HTSUS. The lamination of the veneer face ply to the substrate, therefore, does not render a new and different article.⁹⁸

While Finewood attempts to dismiss Ruling N146815 based on a supposed misunderstanding of the explanatory note, we note that Ruling N146815’s only reference to the explanatory note relates to the definition of plywood, and only obliquely references the definition of veneered panels with which Finewood takes issue. Therefore, we do not find that the explanatory note is particularly relevant or illuminating in this circumstance, particularly as the definition of “veneered panels”:⁹⁹ (1) does not definitively exclude another veneer from serving as the “base” to which a “thin veneer of wood {is} affixed”; and (2) further limits the requirement that a veneer provide the product’s essential character to a product with a base of something other than wood (such as panels of plastics). Moreover, we do not agree with Finewood’s conclusion that the products at issue are better classified under HTS subheading 4408, as information on record indicates that all of the two-ply panels imported by Finewood from China to Vietnam were classified under HTS subheading 4412, *i.e.* the heading for hardwood plywood and veneered panels, while Finewood only reported importing various types of veneers under HTS subheading 4408.¹⁰⁰ In addition, HTS subheading 4408 is defined as “Sheets for veneering (including those obtained by slicing laminated wood), for plywood or for similar laminated wood and other wood, sawn lengthwise, sliced or peeled, whether or not planed, sanded, spliced or end-jointed, of a thickness not exceeding 6 mm,” and the more detailed subheadings only refer to species of wood.¹⁰¹ In other woods, there does not appear to be a 4408 subheading under which a “reinforced veneer” could be appropriately classified and such a product would instead fall under the description of a veneered panel under subheading 4412.

As noted in the scope of the *Orders*, the HTSUS subheadings are only provided for convenience and customs purposes, while the written description of the scope in the *Orders* is dispositive. Commerce has already determined above through an analysis under 19 CFR 351.225(k)(1) that Finewood’s two-ply panels of Chinese origin are covered by the scope of the *Orders*. Although the two-ply panels of Chinese origin undergo further processing in Vietnam to produce finished hardwood plywood, both the “upstream” and “downstream” merchandise are covered by the language of the *Orders*. Thus, we preliminarily determine that the two-ply panels imported by Finewood from China are of the same class or kind of merchandise as the finished hardwood plywood that they are used to produce.

Accordingly, because the upstream products (two-ply panels) and downstream products (finished plywood) are of the same class or kind of merchandise in that they both are covered by the scope

⁹⁸ See Petitioner’s May 4, 2021 Response at Exhibit 2.

⁹⁹ The explanatory notes define “veneered panels” as “panels consisting of a thin veneer of wood affixed to a base, usually of inferior wood, by gluing under pressure,” or “{w}ood veneered on to a base other than wood (*e.g.*, panels of plastics. . . provided it is the veneer which gives the panel its essential character.”

¹⁰⁰ See Finewood’s SQR Part I at Exhibit SQ1-6.

¹⁰¹ See Petitioner’s May 4, 2021 Response at Exhibit 7.

of the *Orders*, our analysis of this factor supports the conclusion that the two-ply panels that Finewood imported from China are not substantially transformed *via* the processing performed in Vietnam.

2. Product Properties/Essential Components and End Use

Finewood's Comments:

- The two-ply panels have only one important quality and use - they are suitable for use in veneer core platforms for further manufacture into plywood.¹⁰²
- Two-ply panels look like, and function as, reinforced core veneers.¹⁰³
- The two-ply panels are not a plywood core and have no use as a type of core.¹⁰⁴
- All the processing steps necessary to incorporate the two-ply panels into a finished product that exhibits the essential characteristics of finished hardwood plywood are performed in Vietnam.¹⁰⁵
- The two-ply panels contain none of the dimensional, physical, or mechanical properties required of finished hardwood plywood.¹⁰⁶
- Two-ply panels are also used as reinforced face veneer and can conceivably be used for fencing, boxes, bins, crates, or other packaging that do not require a stable plywood construction.¹⁰⁷

Petitioner's Comments:

- The processing that occurs in Vietnam does not change how, or for what, the two-ply panels are used.¹⁰⁸
- The two-ply panels are dedicated for assembly into plywood and have no other purpose.¹⁰⁹
- The two-ply panels and core veneers undergo no transformation in Vietnam other than to be glued and assembled together (including with a face and back veneer) and potentially trimmed, sanded, and finished. This process does not result in any significant change to the physical characteristics of the panels or modify how the panels are used.¹¹⁰
- The two-ply panels have the same essential qualities as finished plywood shipped from Vietnam. Once veneers are produced, there are no significant changes to the important qualities or use of the components.¹¹¹

Commerce's Position:

In examining whether the essential component of the merchandise is substantially transformed in the country of exportation, Commerce considers whether processing in the exporting country

¹⁰² See Finewood's SQR Part IV at 21.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 23.

¹⁰⁶ *Id.* at 24.

¹⁰⁷ See Finewood's April 30, 2021 Response at 6.

¹⁰⁸ See Petitioner's May 4, 2021 Response at 11.

¹⁰⁹ See Petitioner's RFI Response at 6.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 7.

changes the important qualities or use of the component.¹¹² In this case, when focusing on the essential qualities of the imported two-ply panels, it appears that neither the veneers nor the glue alone constitutes the essential component of the product subject to these inquiries. Neither the individual veneer nor the glue is functional as plywood or as a veneer core platform¹¹³ until these two elements are combined. The essential characteristic of the two-ply panels imported by Finewood is imparted when two veneers are glued together and processed into a panel that is suitable for future use in the production of plywood. This process, performed prior to the incorporation of a two-ply panel into finished hardwood plywood or into a veneer core platform, alters the inherent nature of the veneers alone. Specifically, the gluing process imparts the qualities that make two-ply panels suitable for use in, or as, veneer core platforms and for later incorporation into finished plywood. Further processing in Vietnam, such as further cutting, patching, trimming, and sanding, are minimal and do not change the essential characteristics (*i.e.*, basic nature or function) of a two-ply panel.

Based on the record developed in these inquiries, the two-ply panels used by Finewood to produce the plywood that it exported to the United States were glued and processed into two-ply panels in China, not Vietnam.¹¹⁴ Thus, the essential characteristic of the two-ply panels is established in the country subject to the *Orders*. Finewood acknowledges that the primary use of its two-ply panels is for use in veneer core platforms that then undergo further processing into finished plywood.¹¹⁵ The end use of the two-ply panels imported from China and the finished products resulting from the further processing by Finewood is the same, namely, the construction of plywood or veneer core platforms, which are suitable for use in the construction of plywood.¹¹⁶ Similarly, the end use of certain veneered panels and plywood is the same, because panels are incorporated into plywood for the same ultimate end use. Furthermore, no evidence has been placed on the record to suggest that a two-ply panel would ever become anything other than finished hardwood plywood or a veneer core platform, as even Finewood has acknowledged that “{t}he two-ply panels have only one important quality and use - they are suitable for use in veneer core platforms for further manufacture into plywood.”¹¹⁷

In addition, we note that the scope has no requirements for dimensional, physical, or mechanical properties that would remove veneered panels (including those used as veneer core platforms) from the scope. The two-ply panels imported by Finewood were [] mm thick,¹¹⁸ which is [], as the finished plywood products sold by Linyi Chengen Import and Export Co., Ltd. (Linyi Chengen) and its affiliated producer, Dongfangjuxin Wood Co., Ltd. (Dongfangjuxin) (collectively, Chengen), that were also produced using two-ply

¹¹² See, e.g., *Erasable Programmable Read Only Memories (EPROMs) from Japan: Final Determination of Sales at Less than Fair Value*, 51 FR 39680, 39691-39692 (October 30, 1986).

¹¹³ As explained *supra*, the Petition defines a “veneer core platform” as “two or more wood veneers that form the core of an otherwise completed hardwood plywood product (*i.e.*, a hardwood plywood product to which the outer (face and back) veneers have not yet been affixed).” See Petition at 7. Therefore, all veneer core platforms also fall under the definition of “certain veneered panels,” but not vice versa.

¹¹⁴ See Finewood’s April 9, 2020 IQR at 4; see also Finewood’s April 23, 2020 IQR at Exhibit 4.

¹¹⁵ *Id.*

¹¹⁶ As Finewood itself notes, “{t}wo-ply looks like, and function as, reinforced core veneer.” See Finewood’s SQR Part IV at 21.

¹¹⁷ *Id.* While Finewood speculates that two-ply panels could be used for other purposes, such as for the construction of boxes, bins, crates, or fencing, it provided no actual evidence that two-ply panels are sold for those purposes.

¹¹⁸ See Finewood’s April 23, 2020 IQR at Exhibit 4.

vener core platforms.¹¹⁹ Finewood argues that the two-ply panels at issue are reinforced veneers and cannot be, functionally, the cores of completed hardwood plywood,¹²⁰ but there is record evidence that producers manufacture hardwood plywood with thinner two-ply panels as the cores. Specifically, record information indicates that Chengen sold more than [] m³ of a [], poplar core product that was [] mm thick, indicating that the veneer core platform incorporated into that product was, in fact, a two-ply panel similar to the type imported by Finewood from China.¹²¹ Based on this information, we can reasonably conclude that a two-ply panel comprised of veneers can be a veneer core platform used to produce completed hardwood plywood. Moreover, the ITC Report confirmed that a core can be composed entirely of wood veneer or other wood materials.¹²² Although Finewood argues that the two-ply panels cannot be cores alone, the essential characteristic of certain veneered panels, which is imparted when two veneers are glued together and processed into a panel that is suitable for future use in the production of plywood, does not change with the gluing of additional two-ply panels and/or veneers to build a core platform. Thus, regardless of whether Finewood's two-ply panels can function as core platforms, the essential characteristic of certain veneered panels is not transformed by the additional processing into hardwood plywood.

Accordingly, Commerce preliminarily determines that this factor weighs in favor of finding that the two-ply panels imported by Finewood, by virtue of the gluing and assembly process, have their essential character as a veneered panel imparted in China, and that, furthermore, this factor does not support the conclusion that further processing of these products in Vietnam substantially transforms the upstream product because the gluing and assembly of additional veneers (and in certain cases, other components) into a veneered panel or plywood does not alter the essential characteristic of the two-ply panels. As such, our analysis of this factor supports the conclusion that the two-ply panels that Finewood imported from China are not substantially transformed *via* the processing performed in Vietnam.

3. The Nature and Sophistication of Processing

Finewood's Comments:

- The sophistication in the production of plywood with a veneer core comes from the positioning of one individual veneer on top of another, properly gluing and pressing these wood sheets together, cutting, patching, trimming, and sanding, and, in Finewood's case, adding ultraviolet (UV) coating; all of these steps are all done in Vietnam.¹²³

¹¹⁹ See Finewood's Letter, "Hardwood Plywood from the People's Republic of China: Scope Inquiry – Placing Information from POR1 on the Record," dated April 13, 2021 (Finewood's AR1 Info Submission) at Exhibit A1-2 (Chengen Section C & D Questionnaire Response at Exhibit C-1 (Chengen U.S. Sales Database)). As described in further detail below, Finewood was unable to obtain actual FOP data from its Chinese suppliers of two-ply panels. Therefore, it provided the data submitted by Chengen, the only mandatory respondent in the first review of the AD order, as a proxy.

¹²⁰ See Finewood's SQR Part IV at 10.

¹²¹ *Id.*

¹²² See ITC Report at 9.

¹²³ See Finewood's SQR Part IV at 24.

- Finewood did not produce its own veneers, but rather purchased veneer sheets from third-party suppliers in Vietnam and China. The purchases from Vietnamese and Chinese suppliers include both single sheets and two-ply panels.¹²⁴
- In comparing Finewood’s production process with the production process of Chinese producer Chengen, Commerce must disregard the initial harvesting and debarking since this step is not specific to plywood production but is necessary for production of all wood products.¹²⁵
- Finewood’s production process is the same as that of Chinese plywood producers, including Chengen.¹²⁶
- The inputs from China (*i.e.*, individual veneers, two-ply panels and UV coating) are worthless to the consumer who requires plywood for a project. Finewood’s production steps in Vietnam impart the commercial identity of the plywood.¹²⁷
- The petitioner failed to address the significance of assembling plywood, which is different in Vietnam (and China) than in the United States. In Vietnam, smaller sheets of veneers are assembled into a larger sheet (with glue, tape, putty, *etc.*, as necessary). This process is labor intensive but reduces scrap loss.¹²⁸
- U.S. plywood production generally employs a “one-step” process, which is a continuous system from the log to the finished product; this is simply not the same production method that Chinese plywood manufacturers use.¹²⁹
- The petitioner’s argument that Commerce should include two initial steps (*i.e.*, the harvesting and debarking of logs) in its analysis of the nature and sophistication of processing has no merit. Chengen did not harvest logs at all or debark logs for core veneer production.¹³⁰
- The record does not support a finding that harvesting logs is part of plywood production or veneer production. The petitioner cites to the ITC Report as record evidence, but the report does not mention harvesting logs as part of the manufacturing process.¹³¹

Petitioner’s Comments:

- Finewood’s claim that Commerce should disregard “the initial harvesting and debarking of the logs” and that “the only step that {Chengen} takes that is specific to plywood production that Finewood does not is the rotary cutting of the veneer off the log and cutting to size of the veneer sheets” is questionable given that Finewood seeks to rely on Chengen’s production data, as a supposedly representative company, but then also seeks to have Commerce ignore a significant part of the production process.¹³²
- The production of hardwood plywood begins with the conditioning and debarking of logs of a size and quality suitable for cutting or slicing to make veneers.¹³³

¹²⁴ *Id.* at 25.

¹²⁵ *Id.* at 29.

¹²⁶ *Id.*

¹²⁷ *Id.* at 30.

¹²⁸ *See* Finewood’s April 30, 2021 Response at 4.

¹²⁹ *Id.*

¹³⁰ *See* Finewood’s May 13, 2021 Response at 8.

¹³¹ *Id.* at 9.

¹³² *See* Petitioner’s May 4, 2021 Response at 12.

¹³³ *Id.* at 13 (citing ITC Report at I-14).

- Chengen’s production steps require significant investment and are highly sophisticated and, thus, there is no basis for ignoring them. Finewood’s failure to address them undermines its analysis.¹³⁴

Commerce’s Position:

We preliminarily determine that the nature and sophistication of the processing that occurs in China is greater than the nature and sophistication of the processing undertaken by Finewood in Vietnam.

When considering the extent of processing, Commerce must examine whether the processing was substantial or sophisticated.¹³⁵ To illustrate that Finewood’s production process is similar to that of Chinese producers, Finewood compares its plywood production process to that of Chengen, the sole participating mandatory respondent in the first administrative review of the AD order.¹³⁶ In this comparison, Finewood argues that the initial harvesting and debarking of the logs must be disregarded as those steps are not limited to plywood production but are necessary for the production of all wood products.¹³⁷

As an initial matter, we disagree with Finewood that it is appropriate to disregard the initial steps of plywood production. An accurate comparison of the production processes undertaken in China and in Vietnam must include all production steps required to produce two-ply panels, and plywood, regardless of whether a single Chinese producer (*i.e.*, Chengen) undertook such steps. The Petition states that “hardwood plywood begins with the debarking of logs of a size and quality suitable for peeling or slicing to make veneer.”¹³⁸ The ITC also described the manufacturing process for hardwood plywood in its report:

The production of hardwood plywood begins with the conditioning and debarking of logs of a size and quality suitable for cutting or slicing to make veneer... Harvested logs, bolts, and flitches are kept moist while they are stored in a yard to prevent dry out and end checking. The heating of veneer logs in a vat or steam chamber temporarily softens wood, making it more pliable. This also smooths the surface and reduces the likelihood of knife checks. The logs are then sawn to the desired length and debarked.¹³⁹

Despite Finewood’s claims to the contrary, harvesting and debarking of logs, along with all of the other production steps involved in producing plywood, are relevant to our analysis under this factor.¹⁴⁰ The harvesting and debarking of the logs, which are required in the production of two-

¹³⁴ *Id.* at 14.

¹³⁵ *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Wax and Wax/Resin Thermal Transfer Ribbon from the Republic of Korea*, 69 FR 17645, 17647 (April 5, 2004).

¹³⁶ *See* Finewood’s SQR Part IV at 28.

¹³⁷ *Id.* at 29.

¹³⁸ *See* Petition at 9.

¹³⁹ *See* ITC Report at I-14-15.

¹⁴⁰ Despite Finewood’s argument that certain processes should be excluded from this analysis, debarking was a process explicitly observed at Chengen’s verification. *See* Finewood’s May 13, 2021 Response at Exhibit SR-3 (Chengen’s Verification Report) at 13 (“After the logs are delivered, company officials explained the first step is to debark the logs. We observed a worker hand scraping bark off logs.”)

ply panels and plywood in China but not undertaken by Finewood in Vietnam, are both labor- and resource-intensive.¹⁴¹ These processes, together with soaking and drying of the logs, also require forestry management resources and much more physical space than is required for Finewood's assembly facility.¹⁴² As discussed further below, these steps, as well as a number of other production steps that are only undertaken in China, clearly show that the processing in China is more intensive and sophisticated compared to the processing in Vietnam.

With respect to the level of sophistication of the processing occurring in China versus Vietnam, the record demonstrates that veneers are produced on equipment that is calibrated to specific and precise sizes with finished product tolerances of as little as only [] mm per ply, suggesting a highly sophisticated and technical process.¹⁴³ In addition, bills of materials for plywood produced by Chengen demonstrate that the face veneers are a mere [] mm in thickness, the core veneers are between [] mm thick, and the tolerance of the finished goods is only [] mm and [] mm,¹⁴⁴ which are extremely precise measurements that would require a high level of calibration and sophistication to maintain accurately. Specifically, the degree to which the veneer peeling machinery is tuned, such that veneers can be produced and adjusted by fractions of a millimeter, indicates a level of sophistication far greater than the hot press and cold presses used by Finewood to assemble the finished plywood. By contrast, Finewood's assembly process only involves gluing and pressing components.¹⁴⁵

In addition, an analysis of the number of steps undertaken in the production of two-ply panels in China to the number of steps carried out in the production of plywood in Vietnam (using purchased two-ply panels), indicates that the production process in China involves [] steps while the process in Vietnam only involves [] steps.¹⁴⁶ A similar analysis of the production steps involved in producing plywood in China (starting with the harvesting of logs) versus the steps involved in producing plywood in Vietnam (using purchased two-ply panels) indicates that China production process involves [] steps as compared to the [] steps undertaken by Finewood.¹⁴⁷

Accordingly, we preliminarily determine that the nature of the processing in Vietnam is less intensive and sophisticated than the processing conducted in China. Therefore, this factor does not weigh in favor of finding that the processing in Vietnam substantially transforms the upstream product.

¹⁴¹ See Petitioner's RFI Response at Exhibit 1.

¹⁴² *Id.*

¹⁴³ See Finewood's AR1 Info Submission at Exhibit A1-5 (Chengen Section D Supplemental Response at Exhibit SQ3-24).

¹⁴⁴ *Id.*

¹⁴⁵ See Finewood's SQR Part IV at 24.

¹⁴⁶ See Memorandum, "Analysis Memorandum for the Preliminary Determination," dated August 27, 2021 (Preliminary Analysis Memorandum) at 1.

¹⁴⁷ *Id.*

4. The Cost of Production and Value Added to the Product

Finewood's Comments:

- Finewood has documentation of consumption for only its wood inputs and UV coating.¹⁴⁸
- Finewood calculated the value of two-ply panels using factors of production (FOPs) data reported by Chengen for its affiliated producer, Dongfangjuxin, in the 2017-2018 administrative review of hardwood plywood from China.¹⁴⁹
- For valuing inputs sourced in China, Finewood used surrogate values (SVs) from Malaysia and for valuing inputs sourced in Vietnam, Finewood used SVs from India.¹⁵⁰
- Finewood's cost of production and value added constituted 64.61 percent of the total cost of plywood, well above the 38 percent range that Commerce has found to support a finding of substantial transformation.¹⁵¹
- The petitioner's calculation of cost of production and value added is based on a fully integrated U.S. plywood mill, beginning with loaders, log transport equipment, and debarking. Chinese plywood producers do not incur any of these expenses.¹⁵²
- Since Chinese and Vietnamese plywood production is far more labor intensive than in the United States, manual labor is a significant cost of each step in the production of plywood.¹⁵³
- The petitioner's argument that Commerce should limit its analysis to exclude CONNUMs that did not incorporate two-ply panels should be rejected as it is contrary to Commerce's practice to conduct its analysis on a CONNUM, rather than a product-specific basis.¹⁵⁴

Petitioner's Comments:

- The majority, and most significant portion, of the production process for plywood and the associated cost and value are in the production of two-ply panels. The raw material costs of plywood account for the overwhelming majority of the cost of production.¹⁵⁵
- In the investigations, the ITC found that the percentage of the cost of goods sold for plywood which was accounted for by raw materials alone ranged from 78.8 percent to 79.4 percent from 2014 through 2016, and that the major raw material costs for plywood are the hardwood veneer and other plywood used in its production.¹⁵⁶
- Finewood's assertion that the value added in Vietnam accounts for 64.61 percent of the overall cost of plywood it produces is based on its calculated cost of production for all plywood it manufactured, including those CONNUMs that did not contain any two-ply panels from China.¹⁵⁷
- Finewood has reported that certain of its CONNUMs did not incorporate two-ply panels. Thus, the costs associated with the further processing of two-ply panels in Vietnam is

¹⁴⁸ See Finewood's SQR Part IV at 31.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 34.

¹⁵² See Finewood's April 30, 2021 Response at 11.

¹⁵³ *Id.*

¹⁵⁴ See Finewood's May 13, 2021 Response at 13.

¹⁵⁵ See Petitioner's RFI Response at 9.

¹⁵⁶ *Id.*

¹⁵⁷ See Petitioner's May 4, 2021 Response at 14.

necessarily distorted because they also include the cost of production of products that did not incorporate two-ply panels.¹⁵⁸

- For the seven of Finewood's CONNUMs incorporating two-ply panels, the weighted-average cost of production added in Vietnam was only 37.55 percent. Thus, when considering just those products that are subject to this inquiry, Finewood's data show that the value added in Vietnam is limited.¹⁵⁹

Commerce's Position:

We preliminarily find that the value added by Finewood in Vietnam to the Chinese two-ply panels does not represent a significant proportion of the value of the plywood sold to the United States.

Commerce does not have an established threshold for determining when a certain percentage of the cost of production in a third country represents a substantial transformation so as to confer country of origin. Accordingly, we consider the facts and circumstances of each case in making our determination.

Finewood states that it ceased operations and is unable to retrieve all of the documents needed to build up a complete FOP database for its production of plywood in Vietnam.¹⁶⁰ Because Finewood does not produce its own two-ply panels, but imports them from China, Finewood has stated that it made direct requests for FOP data to the upstream Chinese suppliers but has yet to receive a reply.¹⁶¹ As an alternative, Finewood calculated the value of the two-ply panels using Chengen's FOP data and valued its inputs sourced in China and Vietnam using Malaysian and Indian SVs respectively.¹⁶² The record, however, does not demonstrate that Chengen's data would be a representative basis by which to calculate the value of the two-ply panels purchased by Finewood because we cannot assume that Chengen's production process or consumption rates accurately reflect other producers in China or Finewood's Chinese suppliers, about which we know nothing. The record also does not demonstrate that Chengen's data would be appropriate to use for production steps that occurred in a completely different country, *i.e.*, Vietnam. Nevertheless, given the absence of any other data by which to value Finewood's two-ply panels, Commerce has considered the only available information on the record of this inquiry. Further, given the above concerns with using Chengen's data as a basis to conduct this analysis, we have made several adjustments to Finewood's calculations where necessary.

Although we recognize that our analysis above of the production steps necessary to produce plywood examines the activities performed by all parties in the production chain, while our analysis under this factor is a company-specific analysis based on the production experience of Finewood, this is a deliberate methodological decision. Our comparison of the production steps occurring in China versus those performed by Finewood is not based on the experience of a single company, because it would then be in Finewood's interest to select a trader/reseller as the

¹⁵⁸ *Id.* at 15.

¹⁵⁹ *Id.* at 16.

¹⁶⁰ See Finewood's SQR Parts II & III at 3.

¹⁶¹ *Id.*

¹⁶² See Finewood's SQR Part IV at 31.

comparison point and simply report that there was only one production step occurring in China, *i.e.*, the purchase of two-ply panels, versus several steps occurring in Vietnam. Thus, a complete analysis of all of the production steps that occur in China in order to produce the two-ply panels imported by Finewood must include all steps of the process.¹⁶³ In contrast, our analysis of the cost of production of the two-ply panels imported by Finewood and the value added by Finewood in Vietnam is necessarily a company-specific exercise that focuses on the production experience of Finewood. Ideally, we would prefer to base this analysis on the FOPs of Finewood's suppliers and compare that cost of production to the value of Finewood's U.S. sales. However, as noted above, in response to our request for supplier FOPs, Finewood attempted to obtain FOPs from its suppliers and claimed that the suppliers did not respond.¹⁶⁴ Instead, we know nothing about the production process of Finewood's Chinese suppliers and whether they are integrated companies, trader/resellers, or somewhere in between.

Finewood claims that its cost of production and value added in Vietnam constituted 64.61 percent of the total cost of finished plywood, which is above the 38 percent range that Finewood claims Commerce has previously found to support a finding of substantial transformation. In making this claim, Finewood calculated the value of its two-ply panels using an SV for logs.¹⁶⁵ However, Finewood also reported that "most large Chinese plywood producers purchase veneer,"¹⁶⁶ and Finewood itself purchased the two-ply panels from an entity located in the []. Thus, it is illogical that Finewood calculated the value of its two-ply panels using SVs for logs instead of veneers or its own purchase costs.

Therefore, we revised Finewood's calculation of the cost of production for the two-ply panels it purchased to base the FOP build up on the average veneer consumption reported by Chengen and an SV for poplar veneers submitted by Finewood.¹⁶⁷ Our revised analysis that considered the cost of veneers rather than logs results in a value for two-ply panels of \$[]/m³ instead of the \$[]/m³ calculated by Finewood. As part of its U.S. sales reporting, Finewood provided the quantity of two-ply panels consumed to produce each U.S. sale.¹⁶⁸ Using this quantity and the revised unit value of two-ply panels referenced above, we calculated the total value of Finewood's two-ply panels; we then compared the resulting total value for two-ply panels to the total value of its U.S. sales of finished plywood. This comparison demonstrates that 82.4 percent of the value of Finewood's U.S. sales was attributable to the value of its two-ply panels.¹⁶⁹

This percentage is also consistent with the assessment of the costs of producing plywood detailed in the ITC Report from the underlying investigation.¹⁷⁰ In its report, the ITC found that the percentage of the cost of goods sold of plywood accounted for by raw materials alone ranged

¹⁶³ As noted above, debarking was a process observed at Chengen's verification. *See* Chengen's Verification Report at 13 ("After the logs are delivered, company officials explained the first step is to debark the logs. We observed a worker hand scraping bark off logs.")

¹⁶⁴ *See* Finewood's SQR Parts II & III at 3.

¹⁶⁵ *Id.* at 34 and Exhibit SQ1-40.

¹⁶⁶ *Id.* at 29.

¹⁶⁷ *See* Preliminary Analysis Memorandum at 1-2.

¹⁶⁸ *See* Finewood's April 23, 2020 IQR at 9.

¹⁶⁹ We provide a more detailed analysis in a separate, business proprietary memorandum. *See* Preliminary Analysis Memorandum at 1-2.

¹⁷⁰ *See* Petitioner's RFI Response at Exhibit 2 (ITC Report).

from 78.8 percent to 79.4 percent from 2014 through 2016, and that the major raw material costs for plywood are the hardwood veneers and other plywood used in its production.¹⁷¹ Our revised calculation of the value of Finewood's two-ply panels is also more consistent with Finewood's actual purchase price than with the value it calculated starting with logs. Specifically, Finewood's purchases of Chinese two-ply panels ranged in price from \$[]/m³ to \$[]/m³.¹⁷² Accordingly, our revised calculation of the value of the two-ply panels imported by Finewood from China is a more accurate valuation of the products than Finewood's calculation, based on a comparison to the ITC Report and Finewood's own purchase prices.

Based on the analysis above, we preliminarily find that the value added by Finewood to the two-panels imported from China and further processed in Vietnam is not a significant proportion of the value of the hardwood plywood that Finewood sold to the United States. Accordingly, this factor does not weigh in favor of finding that the two-ply panels are substantially transformed in Vietnam by the further processing conducted by Finewood.

5. The Level of Investment

Finewood's Comments:

- A comparison of the level of investment in Finewood and in Dongfangjuxin demonstrates that Dongfangjuxin's registered capital was \$[], whereas Finewood's registered capital was \$[].¹⁷³
- A similar comparison demonstrates that Dongfangjuxin's paid-in capital was \$[] while Finewood's was \$[] and Dongfangjuxin's paid-in capital plus short term loan was \$[], while Finewood's paid-in capital plus short term loan was \$[].¹⁷⁴
- Dongfangjuxin invested \$[] in fixed assets and construction while Finewood invested \$[]. This comparison shows that Finewood's investment in equipment and machinery is larger than Dongfangjuxin's investments.¹⁷⁵
- Dongfangjuxin's cost of production was \$[] while Finewood's was \$[] for the same period.¹⁷⁶
- Because Finewood outsourced a substantial amount of core platform production to tollers while Dongfangjuxin performed all production steps itself, the number of employees between the two companies is not fully comparable.¹⁷⁷
- The petitioner's calculation for the level of investment required for veneer machinery compared to plywood layup machinery is not representative of a typical veneer production factory in China.¹⁷⁸
- The petitioner's comparison of the physical space needed for veneer production in a U.S. mill and a plywood layup workshop is also not representative of Chinese production.

¹⁷¹ *Id.*

¹⁷² *See* Finewood's April 23, 2020 IQR at Exhibit 4.

¹⁷³ *See* Finewood's SQR Part IV at 35.

¹⁷⁴ *Id.* at 36.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 37.

¹⁷⁷ *Id.*

¹⁷⁸ *See* Finewood's April 30, 2021 Response at 9.

The rotary cutting machine that Chinese producers use requires little space, and drying veneers only requires open space around the factory at no additional cost other than general rent.¹⁷⁹

- The petitioner’s comments on the research and development (R&D) costs required to set up a veneer mill do not apply to Chinese plywood production. It does not take “years to identify and establish a legitimate, sustainable log resource” in China because Chinese veneer producers source logs from local farmers who regularly drop off logs at the factory. Moreover, a typical Chinese veneer production facility is nothing more than a workshop and does not take months or years to be constructed and begin operations.¹⁸⁰
- Finewood cannot, nor does it need to, segregate the investment dedicated to two-ply panels, because plywood containing two-ply panels and plywood not containing two-ply panels underwent the same production process at Finewood.¹⁸¹
- Finewood has demonstrated that its level of investment exceeds Chengen’s in term of initial capital, purchases of equipment, and cost of production; Finewood’s operations are otherwise comparable to Chengen’s. Therefore, Commerce should find Finewood’s investment significant, which supports a finding of substantial transformation.¹⁸²

Petitioner’s Comments:

- The level of investment required for veneer production, including the production of two-ply panels, is substantial relative to the investment required to assemble two-ply panels into a core and add face and back veneers.¹⁸³
- Based on a new plant that would have the ability to produce 5,000 panels per day, the total cost for equipment alone would be approximately \$[]; of this, \$[], or [] percent is required for equipment relating to veneer production, while only \$[], or [] percent is required for plywood layup and panel production.¹⁸⁴
- Machinery needed for producing veneers is very sophisticated, labor intensive to operate, and takes a long time to set up and construct, while the machinery needed to layup panels has a short start up time and requires much less expertise to assemble and operate.¹⁸⁵
- The physical space needed for veneer production is substantially greater than that needed for laying up panels.¹⁸⁶
- The R&D required to set up a veneer mill is substantial, while the R&D needed to set up an assembly operation is minimal. For a fully-integrated facility, approximately 90 percent of the R&D costs would relate to veneer production, while only 10 percent of R&D costs would relate to panel layup.¹⁸⁷
- Finewood has made no distinction between plywood produced with two-ply panels, and thus subject to this inquiry, and other merchandise. Instead, for its level of investment analysis, Finewood simply compares its broad data to that of Chengen.¹⁸⁸

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* at 10.

¹⁸¹ See Finewood’s May 13, 2021 Response at 12.

¹⁸² *Id.*

¹⁸³ See Petitioner’s RFI Response at 7.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 8.

¹⁸⁸ See Petitioner’s May 4, 2021 Response at 16.

- Finewood’s level of investment data are of limited value as Finewood makes no attempt to identify the investment, equipment, employment and costs associated with the production of plywood manufactured from two-ply panels.¹⁸⁹

Commerce’s Position:

We preliminarily determine that the level of investment required to produce two-ply panels in China is more significant than the level of investment required to assemble the two-ply panels into hardwood plywood in Vietnam.

Finewood claims that Dongfangjuxin’s experience is an appropriate representation of the level of investment of Chinese producers. Finewood then compares its level of investment to that of Dongfangjuxin and argues that Finewood’s level of investment is significant compared to Dongfangjuxin’s.¹⁹⁰ However, a comparison of the levels of investment of one company to another is relative and arbitrary without a control for known differences. In addition, and as noted by the petitioner, Finewood’s level of investment analysis does not distinguish between plywood produced with two-ply panels and plywood that is not.¹⁹¹ As a result, we do not find Finewood’s reported level of investment to be an accurate representation of its level of investment with respect to two-ply panels. In addition, Dongfangjuxin’s level of investment, and Finewood’s to some extent, is expressed in a non-market economy currency and, thus, does not serve as an appropriate comparison point. Nonetheless, in the absence of other evidence on the record, we analyze the information provided by Finewood, with the above-expressed reservations, below.

Finewood further argues that its level of investment on equipment and machinery is larger relative to Chengen’s level of investment.¹⁹² However, the value of Finewood’s machinery is not comparable to that of Chengen’s because Chengen’s machinery would have depreciated in value since its purchase. Finewood is a fairly new company as compared to Chengen; Finewood was established in December 2017, while Linyi Chengen and Dongfangjuxin were established in March 2015 and October 2003, respectively, and the record does not establish whether Dongfangjuxin’s machinery and equipment were purchased new or used.¹⁹³ A more accurate comparison would be the value of Dongfangjuxin’s machinery in the year it was established, adjusted for inflation to the date of Finewood’s machinery valuation. In addition, Finewood’s calculation of its own investment versus Dongfangjuxin’s ignores any investment in its affiliate, Linyi Chengen.¹⁹⁴ Chengen reported that it was the exporter, while Dongfangjuxin was the producer, of subject merchandise, that Chengen worked as the “export sales department of Dongfangjuxin,” and that both companies were managed by the same team and operated at the

¹⁸⁹ *Id.* at 17.

¹⁹⁰ *See* Finewood’s SQR Part IV at 34.

¹⁹¹ *See* Petitioner’s May 4, 2021 Response at 16.

¹⁹² *Id.* at 36-37.

¹⁹³ *See* Finewood’s April 9, 2020 IQR at 3; *see also* Finewood’s AR1 Info Submission at Exhibit A1-1.

¹⁹⁴ *See Certain Hardwood Plywood Products from the People’s Republic of China: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part*, 82 FR 28629 (June 23, 2017), and accompanying Preliminary Decision Memorandum at 22, unchanged in *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).

same address.¹⁹⁵ Thus, no sales were made without the coordination between these affiliated parties and they carried out the production and sales activities that Finewood carried out on its own, in tandem. If we include Linyi Chengen's investment with Dongfangjuxin's, the registered capital, paid in capital, short terms loans, and equipment and machinery totals exceed Finewood's investment, [].¹⁹⁶ Moreover, if we allocate investment levels to production volume for a comparable period, Finewood's investment amounts to \$[]/m³ of plywood sales volume, while Linyi Chengen/Dongfangjuxin's investment amounts to \$[]/m³ of plywood sales volume.¹⁹⁷ In reference to the number of employees, although Finewood acknowledged that it outsourced a substantial amount of its core platform production while Dongfangjuxin performed all production processes itself, Chengen's employment range (between 134 and 427 employees) is more than twice as much as Finewood's at the higher end (between 127 and 184 employees).¹⁹⁸ Nevertheless, these data do not provide an appropriate basis for comparison because simply comparing the employment numbers of one company against another company's is an arbitrary comparison. In addition, we do not know the number of employees involved in the production processes of Finewood's tollers and we also do not know how many of either Finewood's or Chengen's employees were seasonal or temporary. Indeed, Finewood also acknowledges this shortcoming.¹⁹⁹

Accordingly, based on our analysis above, we preliminarily determine that the level of investment required to produce the two-ply panels in China is more significant than that required to further process the two-ply panels in Vietnam into finished plywood. Therefore, this factor does not weigh in favor of finding that the processing in Vietnam substantially transforms the upstream product.

6. Conclusion

Because we preliminarily find that none of the factors in the substantial transformation analysis weigh in favor of finding that the subject merchandise used by Finewood (Chinese-origin two-ply panels) are substantially transformed when used to produce hardwood plywood in Vietnam, we preliminarily find that the country of origin of such hardwood plywood is China, and thus is subject to the *Orders*.

VII. COMMENTS FROM INTERESTED PARTIES

In accordance with 19 CFR 351.225(f)(3), interested parties have until 20 days from the date of this memorandum in which to file comments on this preliminary scope ruling and have until 10 days thereafter in which to submit rebuttal comments.

¹⁹⁵ See Finewood's AR1 Info Submission at Exhibit A1-1 (Chengen Section A Questionnaire Response at A-11-12).

¹⁹⁶ See Preliminary Analysis Memorandum at 2.

¹⁹⁷ *Id.*

¹⁹⁸ See Finewood's SQR Part IV at 37.

¹⁹⁹ *Id.*

VIII. RECOMMENDATION

Based upon the above analysis, we recommend preliminarily finding that the two-ply panels at issue are subject to the scope of the *Orders*, the further processing of the two-ply panels in Vietnam does not result in a substantial transformation of the product, and that the country of origin of Finewood's plywood that it produced using two-ply panels imported from China and that it exported to the United States remains China.

Agree

Disagree

8/26/2021

X

James Maeder

Signed by: JAMES MAEDER

James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations