



A-570-890
Remand - Ethan Allen Chests
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Ethan Allen Operations Inc. v. United States
Consol. Court No. 14-00147 (December 1, 2015)
FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT ORDER

Summary

The U.S. Department of Commerce (the “Department”) prepared these final results of redetermination pursuant to the remand order of the U.S. Court of International Trade (“CIT” or the “Court”) in *Ethan Allen*.¹ This litigation pertains to the Department’s determination in the *Ethan Allen Scope Ruling*² that, consistent with the language of the scope of the antidumping duty order covering wooden bedroom furniture from the People’s Republic of China,³ which states that a “chest of drawers is typically a case {piece} containing drawers for storing clothing,” and that a “chest” is also used to “store clothing,”⁴ the Vivica, Marlene, Nadine, and Serpentine chests sold by Ethan Allen Operations, Inc. (“Ethan Allen”) are subject to the *WBF Order*. The Department is respectfully conducting this remand under protest.⁵

In *Ethan Allen*, the Court held that with respect to the Vivica chest, “because the (k)(1) factors are dispositive as to the Vivica chest and demonstrate that the Vivica chest is not within the scope of the *WBF Order*, the court does not proceed to an analysis of the (k)(2) factors and remands to Commerce to issue a ruling consistent with this opinion.”⁶ The Court further held

¹ See *Ethan Allen Operations, Inc. v. United States*, Consol. Court No. 14-00147 (December 1, 2015) (“*Ethan Allen*”).

² See “Wooden Bedroom Furniture from the People’s Republic of China: Scope Ruling on Ethan Allen Operations Inc.’s Chests,” dated May 27, 2014 (“*Ethan Allen Scope Ruling*”).

³ See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People’s Republic of China*, 70 FR 329 (January 4, 2005) (“*WBF Order*”).

⁴ See the footnotes below to the scope of the *WBF Order* describing a “chest of drawers” and “chest.”

⁵ See *Viraj Group, Ltd. v. United States*, 343 F.3d 1371 (Fed. Cir. 2003).

⁶ See *Ethan Allen* at 16.

that with respect to the Marlene, Nadine, and Serpentine chests “because the (k)(1) factors are non-dispositive {in the *Ethan Allen Scope Ruling* the Department determined that the Marlene, Nadine, and Serpentine chests were covered by the *WBF Order* after analyzing the criteria listed in 19 CFR 351.225(k)(1)}, Commerce should evaluate the (k)(2) factors consistent with this decision,” which states that “the proper inquiry should focus on the intended function of the product, *i.e.*, whether it was intended and designed for use in the bedroom.”⁷ With regard to Ethan Allen’s challenge that the Department’s liquidation instructions to U.S. Customs and Border Protection (“CBP”) impermissibly have a retroactive effect, the Court stated that Ethan Allen “should submit information to Commerce as to whether or not there are live entries within a period in which there was no actual suspension of liquidation by Customs. On remand, Commerce should consider this newly submitted entry information to help evaluate whether Commerce’s post-scope inquiry liquidation instructions were proper.”⁸

Accordingly, the Department is issuing a remand redetermination consistent with the Court’s decision that an analysis of the evidence placed on the record by Ethan Allen using the factors found in 19 CFR 351.225(k)(1) demonstrates that the Vivica chest is not subject to the scope of the *WBF Order*. For the Marlene, Nadine, and Serpentine chests, the Department has evaluated the information placed on the record by Ethan Allen, applying the 19 CFR 351.225(k)(2) factors, as instructed by the Court, and based upon the Court’s conclusions and analysis, has determined that the Marlene, Nadine, and Serpentine chests are not covered by the scope of the *WBF Order*. Because none of the chests have been determined to be covered by the scope, should this remand be affirmed, the Department will issue new CBP instructions and any challenge to the earlier suspension and/or liquidation instructions will be mooted.

⁷ *Id.* at 13.

⁸ *Id.* at 20.

On January 20, 2016, the Department released a draft of its redetermination (“Draft Redetermination”) to interested parties and provided interested parties with an opportunity to comment on the draft. On January 27, 2016, the American Furniture Manufacturers Committee for Legal Trade and Vaughn-Bassett Furniture Company, Inc. (collectively, “Petitioners”) submitted comments on the Draft Redetermination. No other interested parties commented on the Draft Redetermination. The Department has addressed Petitioners’ comments in detail below.

Background

On May 27, 2014, the Department issued the *Ethan Allen Scope Ruling*, determining that the Marlene, Nadine, and Serpentine chests were subject to the *WBF Order* based on an analysis under 19 CFR 351.225(k)(1) and that the Vivica chest was also subject merchandise based on an analysis of the factors under both 19 CFR 351.225(k)(1) and (k)(2) (the “(k)(2) analysis”). Ethan Allen subsequently appealed the Department’s scope ruling on all four chests to the Court. The Department then requested a voluntary remand to allow further notice and comment from parties on its (k)(2) analysis of the Vivica chest, which the Court granted. In the Voluntary Remand, the Department responded to the arguments of the parties to the dispute and determined, again, under a (k)(2) analysis that Ethan Allen’s Vivica chest is subject to the scope of the *WBF Order*.⁹ On December 1, 2015, the Court issued its opinion in *Ethan Allen*, remanding each of the Department’s determinations back to the agency for further analysis.

The Scope of the *WBF Order*

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the

⁹ See Final Results of Voluntary Redetermination Pursuant To Court Order (November 26, 2014) (“Voluntary Remand”).

same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,¹⁰ highboys,¹¹ lowboys,¹² chests of drawers,¹³ chests,¹⁴ door chests,¹⁵ chiffoniers,¹⁶ hutches,¹⁷ and armoires;¹⁸ (6) desks,

¹⁰ A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

¹¹ A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

¹² A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

¹³ A chest of drawers is typically a case containing drawers for storing clothing.

¹⁴ A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

¹⁵ A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

¹⁶ A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

¹⁷ A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

¹⁸ An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate;¹⁹ (9) jewelry armories;²⁰ (10) cheval mirrors;²¹

¹⁹ As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. *See* CBP's Headquarters Ruling Letter 043859, dated May 17, 1976.

²⁰ Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24 inches in width, 18 inches in depth, and 49 inches in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. *See* Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, concerning "Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China," dated August 31, 2004; *see also* *Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review, and Determination To Revoke Order in Part*, 71 FR 38621 (July 7, 2006).

²¹ Cheval mirrors are any framed, tiltable mirror with a height in excess of 50 inches that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.*, a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet line with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See* *Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review and Determination To Revoke Order in Part*, 72 FR 948 (January 9, 2007).

(11) certain metal parts;²² (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; (13) upholstered beds²³; and (14) toy boxes.²⁴ Also excluded from the scope are certain enclosable wall bed units, also referred to as murphy beds, which are composed of the following three major sections: (1) a metal wall frame, which attaches to the wall and uses coils or pistons to support the metal mattress frame; (2) a metal frame, which has euro slats for supporting a mattress and two legs that pivot; and (3) wood panels, which attach to the metal wall frame and/or the metal mattress frame to form a cabinet to enclose the wall bed when not in use. Excluded enclosable wall bed units are imported in ready-to-assemble format with all parts necessary for assembly. Enclosable wall bed units do not include a mattress. Wood panels of enclosable wall bed units, when imported separately, remain subject to the order.

Imports of subject merchandise are classified under subheadings 9403.50.9042 and 9403.50.9045 of the Harmonized Tariff Schedule of the United States (“HTSUS”) as “wooden . . . beds” and under subheading 9403.50.9080 of the HTSUS as “other . . . wooden furniture of a

²² Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.*, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under HTSUS subheadings 9403.90.7005, 9403.90.7010, or 9403.90.7080.

²³ Upholstered beds that are completely upholstered, *i.e.*, containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part*, 72 FR 7013 (February 14, 2007).

²⁴ To be excluded the toy box must: (1) be wider than it is tall; (2) have dimensions within 16 inches to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials (“ASTM”) standard F963-03. Toy boxes are boxes generally designed for the purpose of storing children’s items such as toys, books, and playthings. *See Wooden Bedroom Furniture from the People’s Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part*, 74 FR 8506 (February 25, 2009). Further, as determined in the scope ruling memorandum “Wooden Bedroom Furniture from the People’s Republic of China: Scope Ruling on a White Toy Box,” dated July 6, 2009, the dimensional ranges used to identify the toy boxes that are excluded from the wooden bedroom furniture order apply to the box itself rather than the lid.

kind used in the bedroom.” In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9042 or 9403.50.9045 of the HTSUS as “parts of wood.” Subject merchandise may also be entered under subheadings 9403.50.9041, 9403.60.8081, or 9403.20.0018. Further, framed glass mirrors may be entered under subheading 7009.92.1000 or 7009.92.5000 of the HTSUS as “glass mirrors . . . framed.” The order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

REMANDED ISSUES

1. Vivica chest

In reaching its decision with respect to the Vivica chest, the Court focused on the scope language which states that “other non-bedroom furniture” is excluded from the scope of the *WBF Order*.²⁵ Further, the Court pointed out that the “petition itself defines furniture with reference to its ‘intended use in a bedroom.’”²⁶ Based on the foregoing, the Court found that the *WBF Order* intended “to omit from the scope other non-bedroom furniture, such as living room furniture.”²⁷ The Court held that the “Vivica chest’s coordinated design in a living room set indicates that its intended use is in a living room, not a bedroom.”²⁸ Thus, the Court concluded that “the (k)(1) factors are dispositive as to the Vivica chest and demonstrate that the Vivica chest is not within

²⁵ See *Ethan Allen* at 16.

²⁶ *Id.* at 15.

²⁷ *Id.* at 16.

²⁸ *Id.*

the scope of the *WBF Order*.”²⁹ The Court then directed the Department to issue a ruling “consistent with this opinion.”³⁰

In the *Ethan Allen Scope Ruling*, the Department acknowledged that the Vivica chest was a “chest designed, manufactured, and marketed as part of a living room set.”³¹ That fact has never been at issue. However, in the Voluntary Remand, the Department placed on the record pictures on Ethan Allen’s own Facebook page depicting the Vivica chest in a bedroom.³² While we continue to believe that this is significant evidence demonstrating that the intended use of the Vivica chest includes use as both living room and bedroom furniture, the Court found a (k)(1) analysis dispositive with respect to the Vivica chest. Furthermore, the Court disagreed with the Department’s conclusion regarding the Facebook pictures and held that such evidence was insufficient to make furniture intended for use in the living room subject to the *WBF Order*.

Thus, consistent with the Court’s holding and factual findings, we have determined on remand, in accordance with the factors listed under 19 CFR 351.225(k)(1), that: 1) the record evidence reflects that Ethan Allen’s Vivica chest was designed primarily for use in a living room set; 2) the scope language in the *WBF Order* excludes “other non-bedroom furniture;” and 3) the Petitioners stated in the petition that they did not intend to include, specifically, living room furniture under the *WBF Order*.³³ Accordingly, we have determined on remand that Ethan Allen’s Vivica chest is not wooden bedroom furniture subject to the *WBF Order*.

²⁹ *Id.* at 16.

³⁰ *Id.*

³¹ See Ethan Allen Scope Ruling at the section entitled “The Vivica Chest.”

³² See Voluntary Remand at Exhibit 1.

³³ See Letter from the American Furniture Manufacturers Committee for Legal Trade and the Cabinet Makers, Millmen, and Industrial Carpenters Local 721 to the Department, Re: “Petition for the Imposition of Antidumping Duties Against Wooden Bedroom Furniture from China,” dated October 31, 2003, at 21 (“Petition”) (attached to the Ethan Allen Scope Ruling as Attachment 5).

2. Marlene, Nadine, and Serpentine chests

For the other chests subject to this litigation, the Court has directed the Department to perform a (k)(2) analysis, and emphasized that this analysis should focus on whether the chests were “intended” and “designed” for use in the bedroom. The Court held that this analysis should reflect the Court’s finding that while the scope states that “[w]ooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms,” “the ‘generally, but not exclusively’ exception language is to be construed narrowly.”³⁴ Further, the Court held that the Department’s analysis should focus on whether the “decorative” aspects of the chests (such as “decorative finishes”) are features consistent with the qualities of a living room or bedroom chest.³⁵ Thus, in accordance with the parameters set forth by the Court and the factors set forth in 19 CFR 351.225(k)(2), we have analyzed the information regarding the three chests, placed on the record by Ethan Allen, to determine whether the Marlene, Nadine and Serpentine chests were intended and designed for use in the bedroom or the living room.

Analysis

(i) The Physical Characteristics of the Product (19 CFR 351.225(k)(2)(i))

Ethan Allen reported that each of the chests has three or four parallel drawers which are stacked one above another in a frame. Ethan Allen stated that the Marlene chest is constructed of oak and oak veneers and measures 38 inches wide by 19 inches deep by 34.25 inches high;³⁶ the Nadine chest is made with poplar and ash solids with ash veneers and measures 44 inches wide by 21 inches deep by 33 inches high;³⁷ and the Serpentine chest is constructed from wood with

³⁴ See *Ethan Allen* at 11.

³⁵ *Id.* at 13.

³⁶ See Ethan Allen’s Scope Request, at 3, Exhibit 1 and Exhibit 4.

³⁷ *Id.* at 3, Exhibit 1 and Exhibit 3.

black crackle finish over a canvass veneer and measures 34.5 inches wide by 17 inches deep by 34.5 inches high.³⁸

As we noted in the *Ethan Allen Scope Ruling* “{c}hests of drawers” and “chests” are specifically covered by the scope of the *WBF Order*. As shown in the footnotes to the scope of the *WBF Order* above, a chest of drawers is described as “typically a case {piece} containing drawers for storing clothing” and a chest is described as “typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.” The three chests all have stacked drawers that appear suitable for storing clothing. Thus, we found in the *Ethan Allen Scope Ruling*, and continue to find on remand, that the physical characteristics of these three chests are consistent with bedroom chests subject to the *WBF Order* with respect to their ability to store clothes, an essential function of bedroom chests. Notably, the Court agreed with this understanding of the physical capacity of these chests in *Ethan Allen*, recognizing each chest has this “quality” of wooden bedroom chests and that “the ability to hold clothing is a relevant factor for Commerce to consider.”³⁹

However, as this Court held in *Toys ‘R’ Us*,⁴⁰ not all wooden chests are covered by the *WBF Order* and some wooden chests may be built and sold to serve functions other than use in a bedroom. This Court held in *Ethan Allen* that the Department erred in finding in the *Ethan Allen Scope Ruling* that the ability to store clothing was “the dispositive factor,” and that “the proper inquiry should focus” instead on whether a product “was intended and designed for use in the

³⁸ *Id.* at 3; *see also* Ethan Allen Supplemental Response at 1-2.

³⁹ *See Ethan Allen* at 13.

⁴⁰ *See Toys “R” Us, Inc. v U.S.*, 32 CIT 814 (CIT July 16, 2008)) (“*Toys ‘R’ Us*”) (“The *WBF Order* also cannot be read to encompass wooden chests as subject merchandise unless explicitly excluded.”).

bedroom, as opposed to whether it is theoretically capable of storing clothing.”⁴¹

For purposes of focusing on the physical characteristics of chests, in accordance with 19 CFR 351.225(k)(2)(i), we note that during the investigation, petitioners acknowledged that some chests are manufactured and designed in a manner to be used in the living room and not in the bedroom. In the Petition, Petitioners stated that:

Chests to be used in the living room are made in a manner that differs fundamentally from chests used in a bedroom. Living room chests are usually much more decorative... and are typically not as deep as bedroom chests (because the primary purpose of bedroom chests, unlike living room chests, is for storage).”⁴²

With regard to the depth of the chests at issue in this case, while the Petition notes that “living room chests are typically not as deep as bedroom chests (because the primary purpose of bedroom chests, unlike living room chests, is for storage),” we have compared the three chests with photographs and descriptions of chests belonging to bedroom sets that Ethan Allen placed on the record,⁴³ and do not find the depth of any of the three chests at issue, which are between 17 and 21 inches, to be distinguishable from chests used in the bedroom. Indeed, the dimensions of the three chests appear similar to those of chests sold as part of Ethan Allen’s bedroom sets.⁴⁴ Accordingly, on this basis, it does not appear that the Marlene, Nadine and Serpentine chests reflect the “typical” living room chests described in the Petition.

On the other hand, with respect to the designs of these chests, there is a visible distinction between the exterior designs of the chests in Ethan Allen’s bedroom sets, the pictures of which Ethan Allen placed on the record, and the exterior designs of the three chests under consideration. The three chests’ contours and panels are more curved, with serpentine design

⁴¹ See *Ethan Allen* at 13.

⁴² See Petition at 21.

⁴³ See Ethan Allen’s Scope Request at Exhibit 6.

⁴⁴ *Id.*

and rounded edges as opposed to the chests sold in Ethan Allen’s bedroom sets that have relatively flat panels with straight contours. Further, the Marlene has a “careworn, markedly textured finish,” the Nadine has “antiqued silver-leaf or Raven black finishes,” and the Serpentine has a “black crackle canvas.”⁴⁵ The Court has ordered the Department to determine whether these stand-alone chests were “designed” for use in the bedroom. While we do not believe that we can necessarily distinguish non-bedroom chests from bedroom chests based on decorative design,⁴⁶ particularly when it comes to stand alone items that may often be part of an eclectic collection of furniture used in various rooms of the home, the Court itself held in *Ethan Allen*, based on its own review of the record, that the Marlene, Nadine and Serpentine chests have decorative qualities of “a wooden living room chest” and “all three of the chests have unique, decorative features, and there is no evidence on the record that these decorative features match that of other bedroom furniture sold by Ethan Allen.”⁴⁷

Accordingly, analyzing solely the physical characteristics of these chests, we can conclude based on the record evidence that each of the chests has the capacity to store clothing, has dimensions similar to those of chests used in wooden bedroom sets, and has design features which are distinctive from Ethan Allen’s bedroom sets. Taken in accordance with the Court’s holding in *Ethan Allen* and certain statements in the Petition, we have therefore determined, consistent with 19 CFR 351.225(k)(2)(i), that the Marlene, Nadine and Serpentine chests have the physical characteristics of both wooden bedroom furniture and wooden living room furniture.

(ii) Customer Expectations (19 CFR 251.225(k)(2)(ii)) and the Manner in Which the Product is Displayed and Advertised (19 CFR 251.225(k)(2)(v))

⁴⁵ See *Ethan Allen* at 13.

⁴⁶ We believe it is important to note that importers, exporters, and, at times, even producers may not be the parties that designed the furniture subject to a scope determination. Thus, it may be difficult to determine intentions with respect to a design, particularly when it comes to decorative design elements for which there appear to be no industry-wide standards or agreement on the extent and nature of the decorative elements required to consider a chest a living room chest.

⁴⁷ See *Ethan Allen* at 12-13.

Ethan Allen states that the Nadine, Marlene and Serpentine chests are primarily marketed as non-bedroom furniture⁴⁸ and are displayed and advertised in Ethan Allen’s stores, catalogue and website as “stand alone” accent pieces.⁴⁹ Ethan Allen has also stated that the Nadine, Marlene, and Serpentine chests are not designed, manufactured and offered for sale as part of coordinated bedroom groups.⁵⁰ While some of the advertising and product displays placed on the record by Ethan Allen show the chests in a bedroom setting,⁵¹ they are also shown in non-bedroom settings⁵² and thus neither such displays nor any other information on the record contradicts Ethan Allen’s assertions that the chests in question are primarily marketed as non-bedroom furniture.⁵³ Ethan Allen’s statements, declarations, and copies of its advertising are the only information on this record demonstrating how the chests are displayed and advertised, and the only information regarding customers’ possible expectations. As such, we find that the weight of the evidence on the record supports finding that the manner in which the Nadine, Marlene and Serpentine chests are displayed and advertised create customer expectations that they are designed to be non-bedroom furniture.

Ultimate Use of the Product (19 CFR 251.225(k)(2)(iii))

Regarding the ultimate use of the product, the Court has ordered the Department to determine whether these chests were “intended and designed for use in the bedroom.”⁵⁴ Ethan Allen states that the Nadine, Marlene, and Serpentine chests are not designed or manufactured as part of any coordinated bedroom groups.⁵⁵ Instead, they are marketed as “stand alone” accent

⁴⁸ See Ethan Allen’s Scope Request at Exhibit 1.

⁴⁹ *Id.* at 12-13 and Exhibit 1.

⁵⁰ *Id.* at 8 and Exhibit 6.

⁵¹ *Id.* at Exhibit 6.

⁵² *Id.* at Exhibit 3 for the Nadine, Exhibit 4 for the Marlene, and Exhibit 5 for the Serpentine.

⁵³ *Id.* at Exhibit 2.

⁵⁴ *Ethan Allen* at 13.

⁵⁵ See Ethan Allen’s Scope Request at 8 and Exhibit 6.

pieces, suitable for use in many rooms, but primarily for use outside the bedroom.⁵⁶ As noted above, the record contains no information to contradict Ethan Allen's assertions.

We have considered this evidence in light of the Court's finding that the decorative features of the Marlene, Nadine, and Serpentine chests are consistent with furniture intended for use in the living room.⁵⁷ On that basis, we find that the Nadine, Marlene, and Serpentine chests are ultimately intended to be used outside of the bedroom.

Channels of Trade in Which the Product is Sold (19 CFR 251.225(k)(2)(iv))

Ethan Allen states that, like many items of furniture that it sells, the Nadine, Marlene, and Serpentine chests are sold in stores and through its website and catalogs, and that any product carried and sold by Ethan Allen, both bedroom furniture and non-bedroom furniture, can be purchased online, through catalogs, and in stores.⁵⁸

Ethan Allen sells both bedroom and non-bedroom furniture in its stores and through its website and catalogs, just as it does the chests in question.⁵⁹ Because Ethan Allen's subject wooden bedroom furniture cannot be distinguished from non-subject merchandise by the channels of trade through which it sells the furniture, we do not find the channels of trade through which Ethan Allen sells its Nadine, Marlene, and Serpentine chests indicative of whether they are covered by the scope of the *WBF Order*.

Conclusion

We find that the weight of the record evidence supports a determination that the Nadine, Marlene, and Serpentine chests are not covered by the scope of the *WBF Order*. While the dimensions of these chests are consistent with the dimensions of bedroom chests and allow the

⁵⁶ *Id.* at Exhibit 1.

⁵⁷ See *Ethan Allen* at 13.

⁵⁸ See Ethan Allen's Scope Request at 12-13.

⁵⁹ See Ethan Allen's Scope Request at 12-13.

chests to be used to store clothing, the three chests in question do have certain exterior design characteristics that distinguish them from chests in Ethan Allen's wooden bedroom sets that are pictured and described on the record. Further, the record contains no information that contradicts Ethan Allen's statements that it markets and advertises the Nadine, Marlene, and Serpentine chests primarily as non-bedroom furniture, and the Court's findings as to the design elements of those chests, along with Ethan Allen's statements on the record, lead us to conclude that these chests were ultimately intended to be used outside of the bedroom. Thus, we find, based on a consideration of the totality of the evidence, in accordance with 19 CFR 351.225(k)(2), that the Nadine, Marlene, and Serpentine chests are not subject to the scope of the *WBF Order*.

3. Liquidation and Suspension Instructions

As Commerce has determined, in accordance with the Court's order in *Ethan Allen*, that none of the chests at issue are covered by the scope of the *WBF Order*, the question of whether the suspension and/or liquidation instructions should have retroactive effect has been mooted.

Summary and Analysis of Litigants' Comments

Petitioners have no objection to the Department's finding in the Draft Redetermination that the Nadine, Marlene, and Serpentine chests are excluded from the scope of the *WBF Order*, nor do Petitioners object to the Department's determination that the issue regarding suspension and/or liquidation instructions has been mooted. Petitioners also have no objection to the Department's finding in the Draft Redetermination that the Vivica Chest is excluded from the scope of the *WBF Order*, but believe it is important that the Department clarify certain language in the Draft Redetermination with respect to the Vivica Chest.⁶⁰

⁶⁰ Petitioners pointed as well to the incorrect use of the term "bedroom" on page 8 of the Draft Redetermination, where the Department intended to use the word "room." We have corrected that error in these final results of redetermination.

Petitioners contend that the Department should clarify the language of the Draft Redetermination by expressly recognizing that the Court did not broadly hold that whenever a chest has a design that coordinates with any living room furniture, then the chest necessarily is intended for use outside of the bedroom. Petitioners argue that while the fact that a chest coordinates only with living room furniture is indicative that the chest is intended to be used in the living room, as was the finding with the Vivica chest, the mere fact that a chest coordinates with living room furniture is not enough to exclude a chest from the scope of the *WBF Order*. Petitioners contend that other factors may show that such chests are intended for use in the bedroom, such as intensive advertising of the chests as bedroom furniture.

Petitioners also point out that the Court was not presented with a factual scenario in which a manufacturer sells coordinated bedroom and living room furniture with the same design. Petitioners note that the Court's analysis, as adopted by the Department in the Draft Redetermination, specifically concerned the Vivica chest and turned on the evidence placed on the record with respect to that specific stock-keeping unit. According to Petitioners, the Court's decision recognized that the Vivica chest was "part of a coordinated living room (*i.e.*, non-bedroom) set," but it was "not part of a coordinated bedroom set." Thus, Petitioners maintain that the Court's decision cannot be read to suggest that bedroom furniture would be excluded from the *WBF Order* because it also coordinates with a living room set. To the contrary, Petitioners assert that the Court's decision makes clear that "coordination" is relevant only insofar as it demonstrates intent. Therefore, Petitioners argue that the Department should clarify that even if a chest happens to coordinate with living room furniture, when the chest also coordinates with a bedroom set and is intended for use in the bedroom it remains subject to the *WBF Order*.

According to Petitioners, if the language of the Draft Redetermination is not clarified, it could be cited inappropriately by producers, exporters or importers in an effort to circumvent the *WBF Order*.

Department's Position:

We disagree with Petitioners' contention that the Draft Redetermination contains broad language. With respect to Ethan Allen's Vivica Chest, the Court remanded this matter to the Department to reconsider its decision regarding whether that particular chest is covered by the *WBF Order*. Our summary of the Court's decision in the Draft Redetermination relates to the Vivica Chest and in our decision in the Draft Redetermination we made it clear that we reconsidered the evidence with respect to only Ethan Allen's Vivica Chest in light of the Court's holding and factual findings, and reached a determination solely with respect to that chest. Specifically, in our conclusion we stated that "the record evidence reflects that Ethan Allen's Vivica chest was designed primarily for use in a living room set."


We also disagree with Petitioners that we should make a determination on remand addressing other hypothetical situations that they described in their comments, including addressing chests which share design elements with both a living room and a bedroom set. As Petitioners acknowledged, such a factual scenario was not addressed by the Court. Thus, this fact pattern is not at issue on remand. As no such chest is at issue in this litigation, and any scope determination on such a chest would necessarily be based on the facts before the Department in that proceeding, it would be inappropriate to make any determination on such a hypothetical situation in this remand redetermination.

FINAL RESULTS OF REDETERMINATION

Department in that proceeding, it would be inappropriate to make any determination on such a hypothetical situation in this remand redetermination.

FINAL RESULTS OF REDETERMINATION

In accordance with the Court's holding in *Ethan Allen*, the Department has determined on remand that the Vivica, Nadine, Marlene, and Serpentine chests are not subject to the scope of the *WBF Order*. Furthermore, as a result of our analysis in this remand redetermination, the question of whether the liquidation instructions concerning these chests should have retroactive effect has been mooted.



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

11 FEBRUARY 2016
Date