

*Fabuwood Cabinetry Corp. v. United States*

**Consol. Court No. 18-00208, Slip Op. 20-121 (CIT August 19, 2020)**

**FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND**

**A. SUMMARY**

The Department of Commerce (Commerce) has prepared these final results of redetermination pursuant to the decision and remand order of the Court of International Trade (CIT) in *Fabuwood Cabinetry Corp. v. United States*, Consol. Court No. 18-00208, Slip Op. 20-121 (CIT August 19, 2020) (*Remand Opinion and Order*). These final results of redetermination concern the scope ruling issued by Commerce on September 7, 2018,<sup>1</sup> pursuant to a request for a scope ruling by the Coalition for Fair Trade in Hardwood Plywood and Masterbrand Cabinets Inc. (collectively, the requestor or Petitioner-Masterbrand).<sup>2</sup> In its August 19, 2020, *Remand Opinion and Order*, the CIT held that Commerce failed to demonstrate that its acceptance of the Amended Scope Ruling Request was based on substantial evidence, and that, because Commerce relied on the Amended Scope Ruling Request to issue a final scope ruling, the Petitioner-Masterbrand Scope Ruling is invalid.<sup>3</sup> The CIT remanded Commerce’s final scope ruling, with the instruction for Commerce to explain its acceptance of the Amended Scope Ruling Request in

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<sup>1</sup> See Memorandum, “Final Scope Ruling for Certain Hardwood Plywood Products from the People’s Republic of China: Request by the Coalition for Fair Trade in Hardwood Plywood and Masterbrand Cabinets Inc.,” dated September 7, 2018 (Petitioner-Masterbrand Scope Ruling).

<sup>2</sup> See Petitioner-Masterbrand’s Letter, “Certain Hardwood Plywood Products from the People’s Republic of China: Request for Scope Ruling,” dated April 6, 2018 (Initial Scope Ruling Request); see also Petitioner-Masterbrand’s Letter, “Certain Hardwood Plywood Products from the People’s Republic of China: Amendment to Request for Scope Ruling,” dated July 13, 2018 (Amended Scope Ruling Request).

<sup>3</sup> See *Remand Opinion and Order* at 15.

light of opposing comments submitted by various interested parties.<sup>4</sup> The CIT further ruled that, should Commerce accept the Amended Scope Ruling Request, it must look to the factors enumerated in 19 CFR 351.225(k)(1) in its analysis of the ready-to-assemble (RTA) kitchen cabinets exclusion language included in the scope of the *Orders*.<sup>5</sup>

On November 3, 2020, Commerce uploaded to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) the Draft Results of Redetermination. On November 20, 2020, the Coalition for Fair Trade in Hardwood Plywood and Masterbrand Cabinets Inc. (Petitioner-Masterbrand); CNC Associates N.Y., Inc. (CNC Associates); and IKEA Supply AG (Ikea) submitted comments on the Draft Results of Redetermination.<sup>6</sup>

As set forth in detail below, pursuant to the CIT's *Remand Opinion and Order*, we have revisited the record and reevaluated the Amended Scope Ruling Request as well as the comments from interested parties. Consequently, we determine that the Amended Scope Ruling Request does not meet the requirements of 19 CFR 351.225(c)(1) because it suffers from several deficiencies that must be remedied before Commerce is able to evaluate the products for which the requestor seeks a scope ruling.

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<sup>4</sup> See *Remand Opinion and Order* at 24.

<sup>5</sup> See *Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 83 FR 504 (January 4, 2018), and *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order*, 82 FR 513 (January 4, 2018) (collectively, *Orders*); see also *Petitioner-Masterbrand Scope Ruling* at 8-18.

<sup>6</sup> See Petitioner's Comments, "Comments on Draft Results of Redetermination Pursuant to Court Remand," dated November 20, 2020 (Petitioner-Masterbrand's Draft Comments); CNC Associates' Comments, "CNC Associates N.Y., Inc.'s Comments on Draft Remand Results," dated November 20, 2020 (CNC Associates' Draft Comments); and Ikea's Comments, "IKEA Supply AG's Comments on Draft Remand Redetermination in Cons. Court No. 18-00208," dated November 20, 2020 (Ikea's Draft Comments).

## B. BACKGROUND

### 1. The Amended Scope Ruling Request

In the Amended Scope Ruling Request, the requestor asked that Commerce issue a scope ruling that confirms that three products are subject to the *Orders*:

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

In support of the request, the requestor included: (1) an affidavit from an individual who attests that plywood that is being entered into the United States under the exclusion for RTA kitchen cabinets in shipments that do not satisfy all of the requirements to qualify for that exclusion, and that plywood that has undergone minor processing in the People's Republic of China (China) and third countries is being identified as not subject to antidumping and countervailing (AD/CVD) duties; (2) an affidavit from an individual regarding the costs associated with various types of minor processing; and (3) several printouts from websites with information about the edge-banding process.<sup>7</sup>

In response to the Amended Scope Ruling Request, Commerce received comments in opposition to the request from various interested parties, including Fabuwood Cabinetry Corp.,

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<sup>7</sup> See Amended Scope Ruling Request at Exhibits 1-6.

CNC Associates N.Y., Inc., Cubitac Cabinetry Corp., En Pointe Cabinetry, LLC, and St. Martin America, Inc., and Team Efforts LTD, U.S. (collectively, Concerned Importers),<sup>8</sup> and IKEA Supply AG (Ikea).<sup>9</sup>

## 2. Commerce's Scope Ruling

In the Petitioner-Masterbrand Scope Ruling, Commerce determined that the Amended Scope Ruling Request was sufficient for purposes of 19 CFR 351.225(c)(1).<sup>10</sup> Regarding the products under the RTA kitchen cabinet exclusion, Commerce found that the plain language of the scope of the *Orders* is dispositive with respect to hardwood plywood shipped without the materials required by the RTA kitchen cabinet exclusion and not packaged in a manner suitable for purchase by an end-use consumer.<sup>11</sup> In looking to the plain language of the scope of the *Orders*, Commerce determined that the plain language provides that, to qualify for the RTA exclusion, the RTA kitchen cabinets must be packaged in a single, discrete package at the time of importation and in a manner that an end-use retail consumer would be able to open the package and assemble the kitchen cabinets with only the included components.<sup>12</sup>

Regarding hardwood plywood that has undergone minor processing, as identified in the Amended Scope Ruling Request, Commerce also found that the plain language of the scope of the *Orders* is dispositive.<sup>13</sup> In evaluating the plain language of the scope of the *Orders*, Commerce determined that the plain language makes clear that hardwood plywood that has been

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<sup>8</sup> See Concerned Importers' Letter, "Hardwood Plywood from the People's Republic of China Comments In Opposition to Request for Scope Ruling," dated August 7, 2018 (Concerned Importers' Comments).

<sup>9</sup> See Ikea's Letter, "Comments Related to Petitioner and Masterbrand's Amendment to Request for Scope Ruling," dated August 6, 2018 (Ikea's Comments).

<sup>10</sup> See Petitioner-Masterbrand Scope Ruling at 9, footnote 39.

<sup>11</sup> *Id.* at 17, 19.

<sup>12</sup> *Id.* at 17-18.

<sup>13</sup> *Id.* at 22.

cut-to-size, painted, laminated, stained, ultra-violet light finished, grooved, and/or covered in paper, regardless of where such processing took place, is covered by the *Orders*.<sup>14</sup>

Finally, regarding hardwood plywood that has been edge-banded, Commerce again found that the plain language of the scope of the *Orders* is dispositive.<sup>15</sup> In analyzing the plain language of the scope of the *Orders*, Commerce determined that the plain language provides an exemplary list of surface coatings and minor processes that do not remove otherwise subject merchandise from the scope of the *Orders*.<sup>16</sup> Commerce also determined that the plain language indicates this list is not all-inclusive and contemplates that there are other surface coatings and forms of minor processing not expressly enumerated in the scope that would also not remove otherwise subject merchandise from the scope of the *Orders*.<sup>17</sup> Accordingly, Commerce determined that hardwood plywood that has been edge banded is covered by the scope of the *Orders*.

Additionally, because Commerce determined the unambiguous plain language of the scope of the *Orders* was dispositive for each of the products described by the requestor, Commerce did not analyze the criteria set forth in 19 CFR 351.225(k)(1) or the additional factors provided in 19 CFR 351.225(k)(2).<sup>18</sup>

### **3. The CIT's *Remand Opinion and Order***

In its *Remand Opinion and Order*, the CIT held that Commerce's scope ruling failed to address the threshold question of whether the product definitions in Petitioner-Masterbrand's Amended Scope Ruling Request were specific enough to provide an adequate basis for a scope

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<sup>14</sup> *Id.* at 23.

<sup>15</sup> *Id.* at 24.

<sup>16</sup> *Id.* at 25.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 17, 22, and 24.

ruling, consistent with 19 CFR 351.225(c)(1), and that it failed to address the opposing comments submitted by the Concerned Importers and Ikea with respect to the sufficiency of the accompanying supporting evidence.<sup>19</sup> Therefore, the CIT held that Commerce’s scope ruling was invalid.<sup>20</sup> Accordingly, the CIT remanded the scope ruling to Commerce for further explanation on whether the Amended Scope Ruling Request met the regulatory requirements of 19 CFR 351.225(c)(1).<sup>21</sup>

Additionally, in the interest of judicial economy, the CIT also addressed plaintiffs’ challenge to Commerce’s determination regarding the RTA kitchen cabinet exclusion based on the plain language of the scope of the *Orders*.<sup>22</sup> The CIT held that the language of the *Orders* is ambiguous regarding the packaging and consumer language contained in the RTA kitchen cabinets exclusion.<sup>23</sup> Specifically, the CIT held that the RTA kitchen cabinet exclusion language in the scope of the *Orders* did not have a “single clearly defined or stated meaning” regarding the manner of packaging or definition of end-users.<sup>24</sup> Accordingly, because the CIT held that this language is ambiguous, it ordered that, if, upon reconsideration, Commerce continues to accept the Amended Scope Ruling Request, Commerce must address the factors identified in 19 CFR 351.225(k)(1) with respect to the RTA kitchen cabinets portion of the inquiry. The CIT also held that, if those factors are not dispositive, Commerce must also address the factors identified in 19 CFR 351.225(k)(2).<sup>25</sup>

Further, the CIT recognized the plaintiffs’ arguments that Commerce’s scope ruling had impermissibly expanded the scope to cover furniture and furniture parts. However, the CIT

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<sup>19</sup> See *Remand Opinion and Order* at 14.

<sup>20</sup> *Id.* at 15.

<sup>21</sup> *Id.* at 17.

<sup>22</sup> *Id.* at 18.

<sup>23</sup> *Id.* at 21.

<sup>24</sup> *Id.* at 22.

<sup>25</sup> *Id.* at 23.

determined that it “need not reach this issue” because it was remanding for further explanation Commerce’s acceptance of the Amended Scope Ruling Request.<sup>26</sup> That said, the CIT held that Commerce “is limited in its scope ruling to inclusion only of merchandise within the underlying ITC investigation.”<sup>27</sup>

Finally, the CIT held that concerns of circumvention did not render Commerce’s scope ruling unlawful.<sup>28</sup>

### C. ANALYSIS

Pursuant to 19 CFR 351.225(c)(1), a party seeking a scope ruling from Commerce must submit the following information, *to the extent reasonably available to the interested party*:

- (i) A detailed description of the product, including its technical characteristics and uses, and its current U.S. Tariff Classification number;
- (ii) A statement of the interested party’s position as to whether the product is within the scope of an order or a suspended investigation, including:
  - (A) A summary of the reasons for this conclusion,
  - (B) Citations to any applicable statutory authority, and
  - (C) Any factual information supporting this position, including excerpts from portions of the Secretary’s or the Commission’s investigation, and relevant prior scope rulings.

In the underlying scope inquiry, Concerned Importers and Ikea argued that the Amended Scope Ruling Request suffers from numerous fatal defects, including an overly-broad description of the product (contrary to the requirements of 19 CFR 351.225(c)(i)) and insufficient supporting factual information (contrary to the requirements of 19 CFR 351.225(c)(ii)).<sup>29</sup>

Specifically, Concerned Importers argued that the requestor failed to define in sufficient detail the merchandise that is the subject of their request, and that in similar instances,

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<sup>26</sup> *Id.* at 24.

<sup>27</sup> *Id.* at 23-24. The ITC is the International Trade Commission.

<sup>28</sup> *Id.* at 17-18.

<sup>29</sup> *See* Concerned Importers’ Comments at 20-23; and Ikea’s Comments at 7-12.

Commerce has rejected scope ruling requests as deficient.<sup>30</sup> Further, Ikea argued that the Amended Scope Ruling Request is not supported by actual evidence, but, instead, contains only declarations relating to internal discussions from individuals with no first-hand knowledge of the facts and/or vague references to public data without specific citations.<sup>31</sup> Ikea identified seven instances from the Amended Scope Ruling Request that it claims represent examples where the requestor provided information in declarations based on conversations and reports by individuals other than the declarants themselves.<sup>32</sup>

In its *Remand Opinion and Order*, the CIT held that Commerce failed to: (1) address the threshold question of whether the Amended Scope Ruling Request was specific enough to provide an adequate basis for a scope ruling, based on the requirements of 19 CFR 351.225(c)(1); and (2) address the opposing comments submitted by the plaintiffs suggesting that the request was not adequately supported.<sup>33</sup> In light of the CIT's ruling that questions the sufficiency of the Amended Scope Ruling Request and calls for further evaluation of the arguments made in opposition to the request, Commerce, in these final results of redetermination, addresses the relevant interested party arguments below.

#### Product Specificity

The Concerned Importers argued that the “Amended Scope Ruling Request {does not} contain any serviceable definition of the merchandise that is the subject of such request.”<sup>34</sup> After evaluating the product definitions in that request, however, we continue to disagree. As noted

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<sup>30</sup> *Id.* at 20-21 and Exhibit 2.

<sup>31</sup> *See* Ikea's Comments at 7-12.

<sup>32</sup> *Id.*

<sup>33</sup> *See Remand Opinion and Order* at 14.

<sup>34</sup> *See* Concerned Importers' Comments at 20.

above, the requestor provided the following descriptions of three product categories for which they were requesting a scope ruling from Commerce:

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

Although none of the descriptions above contain specific model numbers or other product identifiers (*i.e.*, typically the type of product description Commerce receives in scope ruling requests),<sup>36</sup> the regulations allow for the application for a scope ruling to contain information that is “reasonably available to the interested party.”<sup>37</sup> We find it reasonable to expect that the information “reasonably available” to different types of interested parties is not information always available to all parties.

As demonstrated by the sample letters notifying interested parties of scope inquiry initiations, Commerce typically receives requests for scope rulings from the importers or producers of the merchandise, *i.e.*, those parties that have first-hand detailed product information of the product(s) subject to the scope ruling request.<sup>38</sup> Consequently, the importer or producer of

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<sup>35</sup> See Amended Scope Ruling Request at 3.

<sup>36</sup> See, *e.g.*, Concerned Importers’ Comments at Exhibit 1.

<sup>37</sup> See 19 CFR 351.225(c)(1).

<sup>38</sup> See, *e.g.*, Concerned Importers’ Comments at Exhibit 1.

a product would be in a position to know the product-specific SKU numbers, dimensions, detailed descriptions, and technical characteristics of the products subject to the scope ruling request. By contrast, a party that was not involved in the production, export, or import of the products subject to the request, such as a petitioner or other domestic interested party, would not necessarily have access to the same type of detailed information that a producer or importer would have, and, thus, a product description provided by a petitioner or other domestic interested party may contain less detail than one provided by other parties because this is the only information reasonably available to it.

We acknowledge that Commerce has previously rejected as deficient scope ruling requests containing similarly detailed product descriptions than the product descriptions in Petitioner-Masterbrand's Amended Scope Ruling Request.<sup>39</sup> However, the letters submitted by Concerned Importers' to support their claim are of limited relevance because those examples appear to involve scope ruling requests from parties that would likely have been in possession of the types of information available to an importer or producer of the products subject to the request.<sup>40</sup> In contrast, here, Petitioner-Masterbrand explained in its Amended Scope Ruling Request that "neither Petitioners nor Masterbrand are the importers of the merchandise at issue..." indicating that Petitioner-Masterbrand would not have as much detailed product information reasonably available to it as the parties that submitted the scope ruling requests Commerce determined were insufficient.<sup>41</sup>

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<sup>39</sup> See Concerned Importers' Comments at 20-22 and Exhibit 2.

<sup>40</sup> *Id.*

<sup>41</sup> See Amended Scope Ruling Request at footnote 3 ("As neither Petitioners nor Masterbrand are the importers of the subject merchandise at issue, the exact tariff classification of the merchandise subject to this request is not reasonably available; accordingly, Petitioners and Masterbrand have identified the relevant USHTS categories based on information reasonably available to it").

This is not to say there is a separate *per se* product description standard for a petitioner (or non-importing) party and an importer or exporter party in applying for a scope ruling; it is merely an acknowledgement of the reality that the information “reasonably available” to different parties may vary, and there is limited value in comparing the sufficiency of scope ruling requests filed by producers or importers of a product at issue with that filed by Petitioner-Masterbrand here.

As noted above, 19 CFR 351.225(c) requires that a party seeking a scope ruling from Commerce must submit “a detailed description of the product, including its technical characteristics and uses, and its current U.S. Tariff Classification number” to the extent reasonably available to the interested party. It does not require that party to provide information that it does not have and cannot get, as the Concerned Importers imply. Therefore, for the foregoing reasons, we continue to find that the product descriptions in the Amended Scope Ruling Request are sufficient for purposes of initiating a scope inquiry in this proceeding.

#### Sufficiency of Supporting Evidence

Ikea argued that the Amended Scope Ruling Request is insufficiently supported and is based on rumor and unsupported claims.<sup>42</sup> After reexamining the information contained in the request, we agree that the request is insufficiently supported because: (1) the requestor stated that it had additional, relevant information reasonably available to them (for RTA kitchen cabinets and further-processed products) which they did not supply;<sup>43</sup> or (2) they failed to supply information showing that the products in support of their allegation were in production (for edge banded products).<sup>44</sup> Thus, we find that the Amended Scope Ruling Request did not meet the

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<sup>42</sup> See Ikea’s Comments at 7-12.

<sup>43</sup> See Amended Scope Ruling Request at Exhibit 1 (Declaration).

<sup>44</sup> See, e.g., Amended Scope Ruling Request at Exhibits 3 -5.

requirements of 19 CFR 351.225(c)(ii). The analysis on which this conclusion is based is set forth below.

Because the primary document submitted in support of the Amended Scope Ruling Request is the Declaration at Exhibit 1, we first revisited the contents of the Declaration.<sup>45</sup> In the Declaration, the declarant, [ ], indicates that the individual has regular conversations with [ ] sales team about what they have seen and been told about their competitors in the U.S. market, that the individual has received direct reports concerning importers that are inappropriately entering Chinese plywood under the RTA kitchen cabinet exclusion and are not paying AD/CVD duties, and that these reports have been provided by various individuals, including [ ]

[ ].<sup>46</sup> The declarant goes on to state that “{b}ased on information I have received, I believe that Chinese hardwood plywood is being shipped in containers that do not contain all the wooden cabinet components, hardware and instructions necessary for consumer end users to install the cabinets in their homes.”<sup>47</sup> Therefore, this declaration indicates that the requestor has additional information that they could provide in support of their request for a scope ruling in the form of declarations from at least [ ] as well as any other information that the declarant has received concerning these practices. Given that the [ ] and the declarant is [ ], Commerce determines that this is information reasonably available to Petitioner-Masterbrand to support its request for Commerce to make a scope ruling.<sup>48</sup> First-hand statements, as opposed to second-hand information not directly obtained by

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<sup>45</sup> See Amended Scope Ruling Request at Exhibit 1 (Declaration).

<sup>46</sup> *Id.* at 1.

<sup>47</sup> *Id.* at 2.

<sup>48</sup> See 19 CFR § 351.225(c)(1).

the declarant, provide information directly from the source of such information and provide greater assurances of accuracy. Accordingly, when available, first-hand statements are preferable to second-hand information and, in this case, are not only reasonably available but are also readily available.

Additionally, according to the declarant, the individual's sales team stated that plywood that has undergone minor processing in China and in third countries is being identified as not subject to AD/CVD duties, and that "public records indicate that the volume of these shipments under {Harmonized Tariff Schedule of the United States (HTSUS) subheading} 9403.40.90.60 {have} increased approximately 40 percent in the first quarter of 2018."<sup>49</sup> The declarant further states that "many of these products fall within the physical description in the scope and do not meet any exclusions."<sup>50</sup> However, the requestor did not provide the referenced "public records" in their Amended Scope Ruling Request, nor did they explain what products are covered by this HTSUS subheading or why such products fall within the physical description of the hardwood plywood *Orders* and do not meet any exclusions.<sup>51</sup> Again, we find that these public records were reasonably available to the requestor and were supporting documentation of a type that is necessary to the evaluation of the sufficiency of the scope inquiry.

Finally, although the Amended Scope Ruling Request contains several exhibits related to the edge-banding production process and associated costs, the Amended Scope Ruling Request does not address whether edge-banded plywood is being produced in China and/or that such Chinese products are entering the United States. Further, the Amended Scope Ruling Request does not address the reason that the request was made with respect to edge-banded plywood and

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<sup>49</sup> See Declaration at 2.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

why a ruling on such products is warranted. The requestor has also not explained whether information concerning the extent of production and/or importation of Chinese plywood that has been edge-banded is reasonably available, and if not, what steps they took to identify relevant information. In the absence of such information, it is unclear why a scope ruling would be necessary to address such a scenario.

For the foregoing reasons, we conclude for these final results of redetermination that the Amended Scope Ruling Request is insufficiently supported with information that is reasonably available to the requestor and is, therefore, deficient in critical respects that require remediation before Commerce is able to conduct a scope inquiry within the framework required by the CIT.<sup>52</sup> Accordingly, Commerce intends to notify the requestor that its request does not contain all of the requisite information as required by 19 CFR 351.225(c)(1) and that we will not consider its request for a scope ruling until such deficiencies are cured. In the interim, should the requestor wish to submit a revised request for a scope ruling separate from the related ongoing litigation, Commerce will assess the merits of that request in a separate segment.

To the extent that the requestor submits a revised scope ruling request separate from this litigation, we encourage the requestor to provide all information supporting the request that is reasonably available to it, as noted above. In addition, with respect to merchandise that clearly meets the plain language of the scope of the *Orders*, it is likely that no further inquiry is necessary. To the extent that the requestor believes a scope inquiry is nevertheless necessary to reiterate the plain language of the scope, the requestor should explain in detail the reasons why. Further, if merchandise that clearly meets the plain language of the scope of the *Orders* is being misclassified and entered as non-subject merchandise, Commerce is able to refer such allegations

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<sup>52</sup> See 19 CFR 351.225(c)(1).

to U.S. Customs and Border Protection for further investigation and enforcement, if appropriate. Finally, should the requestor submit a revised scope ruling request with respect to any of the product types described in the Amended Scope Ruling Request, and the RTA kitchen cabinet exclusion in particular, Commerce invites the requestor to include an analysis of the factors described in 19 CFR 351.225(k)(1) and (k)(2) in the request.

#### **D. SUMMARY AND ANALYSIS OF COMMENTS FROM INTERESTED PARTIES**

On November 3, 2020, Commerce released the Draft Results of Redetermination and invited parties to comment.<sup>53</sup> As noted above, on November 20, 2020, Petitioner-Masterbrand, CNC Associates, and Ikea submitted comments on the Draft Results of Redetermination.<sup>54</sup> No other interested parties submitted comments.

##### **Issue 1: Whether the Product Description Was Sufficient**

###### *Petitioner-Masterbrand's Comments:*

- The draft remand results correctly recognized that the regulations require that information be provided only to the extent it is reasonably available to the party requesting the scope inquiry.<sup>55</sup>
- Although Petitioner-Masterbrand did not provide all of the same type of information that other parties, such as importers or foreign producers, may be able to provide, that does not render its scope request deficient as such information was not reasonably available to it.<sup>56</sup>

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<sup>53</sup> See Draft Results of Redetermination.

<sup>54</sup> See Petitioner-Masterbrand's Draft Comments; CNC Associates' Draft Comments; and Ikea's Draft Comments.

<sup>55</sup> See Petitioner-Masterbrand's Draft Comments at 6.

<sup>56</sup> *Id.*

- Petitioner-Masterbrand provided a detailed description of the merchandise subject to its review based on the information reasonably available to it, thereby satisfying Commerce’s regulations.<sup>57</sup>

*CNC Associates’ Comments:*

- The product descriptions in the Amended Scope Ruling Request were not sufficient for purposes of initiating a scope inquiry for the reasons argued in its briefs before the CIT.<sup>58</sup>
- Commerce should reconsider its decision that the product descriptions were sufficient in its final remand results.<sup>59</sup>

*Ikea’s Comments:*

- The product under consideration was not adequately defined or supported by sufficient information regarding the technical characteristics and uses of the product.<sup>60</sup>
- Commerce should reconsider its draft remand results with regard to its finding that the product descriptions are sufficient for purposes of initiating a scope inquiry.<sup>61</sup>

**Commerce’s Position:**

We disagree with CNC Associates and Ikea that the products identified in the Amended Scope Ruling Request were not adequately defined for purposes of initiating a scope inquiry. As explained in our draft remand results, 19 CFR 351.225(c) requires that a party seeking a scope ruling from Commerce must submit “a detailed description of the product, including its technical characteristics and uses, and its current U.S. Tariff Classification number” to the extent reasonably available to the interested party. We continue to find that the level of detail of the

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<sup>57</sup> *Id.*

<sup>58</sup> See CNC Associates’ Draft Comments at 1.

<sup>59</sup> *Id.* at 2.

<sup>60</sup> See Ikea’s Draft Comments at 3.

<sup>61</sup> *Id.*

particular products identified in Petitioner-Masterbrand’s Amended Scope Request was sufficiently descriptive to the extent reasonably available to it. Additionally, in accordance with the requirements of 19 CFR 351.225(c), the Amended Scope Ruling request identified the three HTSUS subheadings under which the requestor believes the merchandise is likely entering the United States, in addition to other HTSUS subheadings under which the products may also be entering the United States. This information was provided to the extent reasonably available to Petitioner-Masterbrand.<sup>62</sup>

In the draft remand results, we stated our concern regarding [ ] statement that “public records indicate that the volume of these shipments under {HTSUS subheading} 9403.40.90.60 {have} increased approximately 40 percent in the first quarter of 2018.”<sup>63</sup> While we explained in the draft remand results that this statement was insufficiently supported because it failed to provide information Commerce determined should be reasonably available to the requestor (*i.e.*, the referenced public records), the product description nonetheless included identification of HTSUS subheadings relevant to the three products Petitioner-Masterbrand described in its scope ruling request.<sup>64</sup>

Moreover, as explained in the draft remand results, although none of the product descriptions in the Amended Scope Ruling Request contain specific model numbers or other product identifiers (*i.e.*, the type of product description Commerce typically receives in scope ruling requests),<sup>65</sup> the regulations allow for the application for a scope ruling to contain

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<sup>62</sup> See Amended Scope Request at 3 and footnote 3 (explaining that “{a}s neither Petitioners nor Masterbrand are the importers of the merchandise at issue, the exact tariff classification of the merchandise subject to this request is not reasonably available; accordingly, Petitioners and Masterbrand have identified the relevant USHTS categories based on information reasonably available”).

<sup>63</sup> See Draft Results of Redetermination at 12-13.

<sup>64</sup> *Id.* at 13.

<sup>65</sup> See, *e.g.*, Concerned Importers’ Comments at Exhibit 1.

information that is “reasonably available to the interested party.”<sup>66</sup> We therefore continue to find it reasonable to expect that the information “reasonably available” to different types of interested parties is not information always available to all parties. As explained in the draft remand results, in reality, the information “reasonably available” to different parties may vary, and Commerce’s regulations do not require a requestor to provide information that it does not have and is unable to obtain.

Therefore, we continue to find that the product descriptions in the Amended Scope Ruling Request are sufficient for purposes of initiating a scope inquiry, notwithstanding the other deficiencies identified elsewhere in the request.

## **Issue 2: Whether the Information Provided to Support the Amended Scope Ruling Request Was Sufficient**

### *Petitioner-Masterbrand’s Comments:*

- In finding that the Amended Scope Ruling Request was insufficient, Commerce failed to demonstrate that the identified information is not on the record, is required by the agency’s regulations, and/or is otherwise necessary for it to make its scope determination.<sup>67</sup>
- Commerce identified additional information from at least [   
 ] that was reasonably available and should have been provided, but this information was provided in the Initial Scope Ruling Request.<sup>68</sup> Thus, the absence of this information cannot serve as a basis for finding that the Amended Scope Ruling Request did not satisfy the regulatory requirements.<sup>69</sup>

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<sup>66</sup> See 19 CFR 351.225(c)(1).

<sup>67</sup> See Petitioner-Masterbrand’s Draft Comments at 7.

<sup>68</sup> *Id.* at 7-8 (citing Initial Scope Ruling Request).

<sup>69</sup> *Id.* at 8.

- Commerce identified a declaration that discussed publicly-available import data but did not provide the underlying data. Although Commerce stated that these data were reasonably available and documentation of a type that is necessary to the evaluation of the sufficiency of the scope inquiry, Commerce failed to provide any explanation for this conclusion.<sup>70</sup>
- Commerce did not identify how the public import data are necessary for it to make, or how the absence of this information prevents it from making, a scope ruling.<sup>71</sup> To the extent that Commerce believes the underlying import data should have been provided to demonstrate that the products at issue are in existence, the Initial Scope Ruling Request contained declarations to demonstrate this.<sup>72</sup>
- Commerce faults Petitioner-Masterbrand for not addressing whether edge-banded plywood is being produced in China and/or that such products are entering the United States, but the Initial Scope Ruling Request identified edge banding as a form of minor processing that Petitioner-Masterbrand had reason to believe was occurring on Chinese plywood entering the United States.<sup>73</sup> In support Petitioner-Masterbrand provided declarations that, although they did not explicitly cite edge banding, identify Chinese producers performing minor processing on plywood and claiming such merchandise as “furniture parts.”<sup>74</sup>
- If the aforementioned statements are insufficient, Petitioner-Masterbrand pointed to a Custom Service ruling placed on the record by another party regarding plywood from

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<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 9.

<sup>74</sup> *Id.* (citing Initial Scope Ruling Request at Exhibit 1).

China that had been cut-to-size and had an ultra-violet finish and edge banding, establishing that plywood from China with edge banding was in production and had been imported into the United States.<sup>75</sup>

- Commerce has not identified any information that is required by its regulations or that was necessary for it to make its scope determination that was not on the record and, accordingly, Commerce’s finding that the Amended Scope Ruling Request did not satisfy the regulatory requirements is not supported by the record. Thus, Commerce should reverse this finding for the final results of redetermination.<sup>76</sup>

*CNC Associates’ Comments:*

- Commerce should continue to find that it cannot issue a final scope ruling due to the critical deficiencies in the Amended Scope Ruling Request.<sup>77</sup>

*Ikea’s Comments:*

- Commerce should adopt the conclusion, made in the draft remand results, that the Amended Scope Ruling Request was deficient in critical respects.<sup>78</sup>

**Commerce’s Position:**

In response to comments from interested parties, we have revisited the record and reevaluated the Amended Scope Ruling Request, as well as the Initial Scope Ruling Request and other documentation on the record of this inquiry. After this review, we continue to find the

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<sup>75</sup> *Id.* (citing to Petitioner-Masterbrand’s Letter, “Certain Hardwood Plywood Products from the People’s Republic of China: Rebuttal Comments,” dated May 1, 2018 at 19; and Concerned Importer’s Letter, “Hardwood Plywood from the People’s Republic of China Comments In Opposition to Request for Scope Ruling,” dated April 23, 2018, at Exhibit 2).

<sup>76</sup> *Id.* at 10.

<sup>77</sup> See CNC Associates’ Comments at 2.

<sup>78</sup> See Ikea’s Comments at 3.

Amended Scope Ruling Request deficient, even when supplemented with information in the Initial Scope Ruling Request.

As an initial matter, we note that the record of this segment indicates a timeline of events that is not necessarily consistent with Commerce’s current practice for conducting scope inquiries. Specifically, in determining whether to initiate a scope inquiry, our current practice is to reject deficient filings and instruct the requestor to submit the missing information along with a revised scope request in its entirety.<sup>79</sup> In this scope proceeding, however, although we permitted Petitioner-Masterbrand to supplement its initial request with detailed information, we did not officially reject it; rather, we extended the deadline for a ruling on the request on multiple

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<sup>79</sup> See, e.g., Concerned Importers’ Comments at Exhibit 2 (explaining to the requestor: “Because your scope request does not contain all information needed to make a scope ruling, we are not considering your scope request at this time, and the 45-day time period noted in 19 CFR 351.225(c) will begin on the date that all information necessary for making a scope ruling is properly submitted to the record. **Please note that when you file the response to this letter, you must also refile Maquilacero’s April 12, 2018, scope request in its entirety, in the same submission.**” (emphasis in original)).

occasions.<sup>80</sup> On September 10, 2018, Commerce released to interested parties its Final Scope Ruling.<sup>81</sup>

Under Commerce’s current practice, a scope ruling request that required fundamental clarification as to the products for which a scope ruling was being requested would have been rejected, the requestor would have been instructed to refile its complete scope ruling request, including whatever information Commerce deemed to be missing from the initial request, and the 45-day regulatory timeline for issuing a final scope ruling or initiating a scope inquiry would have restarted from that point. This would have eliminated the need to extend this deadline multiple times, as was the case with the request at issue, and it also would have made it unnecessary to meet with Petitioner-Masterbrand to request additional information.

In the draft remand results, Commerce looked to the information in the Amended Scope Ruling Request as a standalone request, consistent with its current practice. However, as noted by Petitioner-Masterbrand in its comments on the draft results, the Amended Scope Ruling

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<sup>80</sup> Specifically, on April 6, 2018, Petitioner-Masterbrand filed its Initial Scope Ruling Request. *See* Initial Scope Ruling Request. On May 8, 2018, Commerce extended the May 21, 2018, deadline to issue a final ruling or initiate a scope inquiry by 45 days until July 5, 2018, citing “the complexity of this request and the numerous comments filed by interested parties.” *See* Commerce’s Letter, “Certain Hardwood Plywood Products from the People’s Republic of China: Petitioner-Masterbrand 2018 Scope Ruling Request,” dated May 8, 2018. On June 29, 2018, Commerce met with Petitioner-Masterbrand to “discuss issues related to the petitioner’s and Masterbrand’s April 6, 2018, scope inquiry request, and requested that the petitioner and Masterbrand file additional detailed information related to their scope inquiry request.” *See* Memorandum, “Meeting Memorandum,” dated July 17, 2018. On July 2, 2018, Commerce again extended the deadline to issue a final ruling or initiate a scope inquiry by 14 days until July 19, 2018. *See* Commerce’s Letter, “Certain Hardwood Plywood Products from the People’s Republic of China: Petitioner-Masterbrand 2018 Scope Ruling Request,” dated July 3, 2018. On July 13, 2018, Petitioner-Masterbrand provided an amendment to the Initial Scope Ruling Request, in which it provided “clarification with respect to the products for which they request {Commerce} to make a scope determination” and provided descriptions of the three categories of products described above. *See* Amended Scope Ruling Request at 2-3. On July 17, 2018, Commerce extended the deadline to issue a final scope ruling or initiate a scope inquiry by an additional 22 days until August 10, 2018, citing to the complexity of the request and number of comments received. *See* Commerce’s Letter, “Certain Hardwood Plywood Products from the People’s Republic of China: Petitioner-Masterbrand 2018 Scope Ruling Request,” dated July 17, 2018. On August 7, 2018, Commerce again extended the deadline to issue a final scope ruling or initiate a scope inquiry by an additional 42 days to September 12, 2018. *See* Commerce’s Letter, “Certain Hardwood Plywood Products from the People’s Republic of China: Petitioner-Masterbrand 2018 Scope Ruling Request,” dated August 7, 2018.

<sup>81</sup> *See* Final Scope Ruling (although the Final Scope Ruling was dated September 7, 2018, the file was uploaded to ACCESS with a cover letter dated September 10, 2018).

Request states that the Amended Scope Ruling Request “contains additional information to be used by {Commerce} in its consideration of the April 6 scope request.”<sup>82</sup> Therefore, because we agree with Petitioner-Masterbrand that the information submitted with its April 6 scope request should be considered as part of the Amended Scope Ruling Request, and to be responsive to the CIT’s order to reconsider the Amended Scope Ruling Request,<sup>83</sup> we analyze the documentation contained in the Initial Scope Ruling Request below.

As noted above, in the draft remand results, Commerce found the Amended Scope Ruling Request deficient, in part, because a declaration included in the Amended Scope Ruling Request indicated that the requestor had additional information that it could have provided in support of its request for a scope ruling in the form of declarations from at least [

]. We further found that this was information reasonably available to Petitioner-Masterbrand and could have been provided to support its scope ruling request.<sup>84</sup> Petitioner-Masterbrand countered that this information was provided in the Initial Scope Ruling Request. Accordingly, we examined the Initial Scope Ruling Request to determine whether the declarations contained therein lend additional support to the request for a scope ruling or whether the request remains deficient despite this additional information.

The Initial Scope Ruling Request contains four additional declarations from the [ ] identified in the Amended Scope Ruling Request.<sup>85</sup> However, a review of the additional declarations indicate that they suffer from some of the same, and perhaps even more severe, deficiencies than the declaration, discussed above, in

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<sup>82</sup> See Amended Scope Ruling Request at 1-2.

<sup>83</sup> See *Remand Opinion and Order* at 13-17 (discussing the Initial Scope Ruling Request and subsequent filings), and 24 (remanding for reconsideration the Amended Scope Ruling Request).

<sup>84</sup> See 19 CFR § 351.225(c)(1).

<sup>85</sup> See Initial Scope Ruling Request at Exhibits 1 through 4.

the Amended Scope Ruling Request. For example, the declaration of [ ] states that the declarant has “heard from Chinese suppliers of hardwood plywood, such as [ ], of various ways that certain cabinet manufacturers are avoiding antidumping and countervailing duties on hardwood plywood... {by} performing minor processing on plywood and calling the plywood ‘furniture parts’ and importing various cabinet components...and declaring the imports to be whole kitchen cabinet sets.”<sup>86</sup> Notwithstanding the fact that this appears to be the only primary source named in any of the declarations, there appear to be other plywood suppliers not named that were reasonably available to this declarant, as indicated by the phrase “such as.” The declaration goes on to identify one cabinet manufacturer, [ ], that is allegedly importing plywood with processed features and appearances as “furniture parts” to avoid paying duties and another method whereby cabinet components are loaded into a container and declared as sets of kitchen cabinets.<sup>87</sup> It is not explicitly stated whether either of these two scenarios was described by [ ] or another source and, therefore, the source of this information is not definitively identified. We find that the source of this information is information reasonably available to this declarant.

Examination of the additional declarations reveals even sparser sourcing, and none of them identifies a single source of the activities alleged.<sup>88</sup> For example, [ ] declares that “it has been reported

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<sup>86</sup> *Id.* at Exhibit 1.

<sup>87</sup> *See* Initial Scope Ruling Request at Exhibit 1. We note that cabinet components that are not subject to the plywood *Orders* are currently subject to the AD/CVD orders on wooden cabinets and vanities and components thereof from China, rendering the claim that certain cabinet manufacturers are avoiding AD/CVD duties on hardwood plywood questionable. *See Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Antidumping Duty Order*, 85 FR 22126 (April 21, 2020); *Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Countervailing Duty Order*, 85 FR 22134 (April 21, 2020).

<sup>88</sup> *Id.* at Exhibits 2 through 4.

to me” that certain cabinet manufacturers are importing processed plywood with other cabinet parts and “I believe these practices may be resulting in the non-payment of duties.”<sup>89</sup> The declarant further states that “I believe” that another company, [ ] is importing plywood cabinet parts and that [ ] also “appears to be importing plywood parts with other components as ‘kits.’”<sup>90</sup> Similarly, the declaration of [ ] states that “I have recently learned” of cabinet manufacturers avoiding AD/CVD duties, that importers “appear to be increasingly bringing in cabinet plywood parts” and that “I have heard” that [ ] and [ ] are importing plywood cabinet parts that do not meet the requirements for the RTA cabinets exclusion.<sup>91</sup> Finally, the declaration of [ ] states that “I have recently become aware” of cabinet manufacturers who appear to be importing Chinese plywood without paying AD/CVD duties, also identifying [ ], without any source, as a culprit.<sup>92</sup>

In short, although there appears to be one source vaguely identified in only one of the declarations and three importers referenced in all of the declarations, all declarations suffer from either a loose attribution as to the source of the allegations, or no source at all beyond a passing reference to having heard something or become aware of these activities. Each of these declarations should provide concrete attribution as to the source of the allegations or they are unsupported, and therefore unreliable. The source(s) of these allegations is information reasonably available to the declarants.

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<sup>89</sup> *Id.* at Exhibit 2.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at Exhibit 3.

<sup>92</sup> *Id.* at Exhibit 4.

With regard to Petitioner-Masterbrand’s comment that Commerce faulted Petitioner-Masterbrand for not providing publicly-available import data but did not explain why such data were necessary,<sup>93</sup> Petitioner-Masterbrand clearly considered the data and deemed them relevant to the request for scope ruling; also, the data were reasonably available to the requestor but not provided. Commerce must properly consider a request for a scope ruling, and we cannot base such a ruling on hearsay alone; some degree of substantive evidence is required.<sup>94</sup> Without a concrete basis to issue a scope ruling or initiate an inquiry, Commerce would find itself in the position of addressing every allegation that interested parties chose to raise. As explained above, the declaration included in the Amended Scope Ruling Request claims that “plywood that has undergone minor processing in China and in third countries is being identified as not subject to antidumping and countervailing duties” and that “the volume of *these* shipments under {HTSUS} 9403.40.90.60 has increased by approximately 40 percent in the first quarter of 2018.”<sup>95</sup> To the extent that Petitioner-Masterbrand is able to glean from public records that plywood that has undergone “minor processing” in China or in a third country but being entered into the United States as not subject to the appropriate AD/CVD duties, such public records would most certainly be relevant to the requestor’s claims that such activities have been occurring. However, because the public records referenced by Petitioner-Masterbrand were not submitted with either the Initial Scope Ruling Request or the Amended Scope Ruling Request, we cannot speculate as to the relevance of any such information to a request for a scope ruling.

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<sup>93</sup> See Petitioner-Masterbrand’s Draft Comments at 8.

<sup>94</sup> See 19 CFR 351.225(c)(1) and (1)(ii)(C) (requiring that the application “must contain the following, to the extent reasonably available to the interested party: . . . any factual information supporting {the party’s position as to whether the product is within the scope of the order} . . .”).

<sup>95</sup> See Amended Scope Ruling Request at Exhibit 1 (emphasis added).

Petitioner-Masterbrand further argues that, if Commerce believes that the import data were necessary to demonstrate that the products exist, the Initial Scope Ruling Request contained declarations demonstrating just that.<sup>96</sup> However, the declarations included in the Initial Scope Ruling Request only included a reference to a cabinet manufacturer that appears to be shipping processed plywood under an HTSUS subheading different than the one referenced in the Amended Scope Ruling Request,<sup>97</sup> and another declaration that refers, without citation to a source, to a company importing plywood panels that have undergone a particular type of “minor processing,” but makes no mention of any import data or HTSUS subheadings.<sup>98</sup> Thus, it is unclear how these references in the Initial Scope Ruling Request support the “public records” referenced in the Amended Scope Ruling Request.

Moreover, although two declarations in the Initial Scope Ruling Request describe plywood with paper laminate on one side and ultra-violet finish on the other, or ultra-violet finish on both sides, entering the United States as not-subject to AD/CVD duties,<sup>99</sup> they do not discuss the production or importation of Chinese plywood with any other forms of the allegedly minor processing that is at issue in the Amended Scope Ruling Request.<sup>100</sup> Other declarations included in the Initial Scope Ruling Request describe plywood that has been “cut-to-size, grooved, or laminated,”<sup>101</sup> but the Amended Scope Ruling request alleges that Chinese plywood that has been “cut-to-size, painted, laminated, stained, ultra-violet light finished, grooved, and/or covered in paper,” has been entering the United States as non-subject merchandise, with no support for many of these processes except those limited processes identified in the Initial Scope Ruling

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<sup>96</sup> See Petitioner-Masterbrand’s Draft Comments at 8 (citing Initial Scope Ruling Request at Exhibits 1 and 4).

<sup>97</sup> See Initial Scope Ruling Request at Exhibit 1.

<sup>98</sup> *Id.* at Exhibit 4.

<sup>99</sup> *Id.* at Exhibit 1 and 4.

<sup>100</sup> See Amended Scope Ruling Request at 3.

<sup>101</sup> See Initial Scope Ruling Request at Exhibit 3.

Request.<sup>102</sup> Although the Amended Scope Ruling Request contains an affidavit that states that the declarant is familiar with all of the processes alleged, that declaration does not state that such merchandise is entering the United States as non-subject merchandise.<sup>103</sup> Thus, the record only indicates that plywood that has been cut-to-size, grooved, laminated with paper, or ultra-violet finished has entered the United States as non-subject merchandise and does not speak to whether plywood that has been subjected to other types of processing are entering the United States as non-subject merchandise. We find this information should be reasonably available to Petitioner-Masterbrand to support its allegation that plywood that has undergone these types of processing has been entering the United States as non-subject merchandise and are included in the scope of the *Orders*.<sup>104</sup>

Finally, the requestor acknowledges that, although the Initial Scope Ruling Request and the Amended Scope Ruling Request did not address or support the claim that edge banding is being produced in China and that such products are entering the United States, information submitted by other interested parties to this proceeding indicate that such products are entering the United States.<sup>105</sup> However, this only supports the conclusion that the Initial Scope Ruling Request and the Amended Scope Ruling Request, on their own merits, provided an insufficient basis for Commerce to reach a scope ruling or initiate a formal inquiry. Accordingly, for these final results of redetermination, we continue to find that Petitioner-Masterbrand's request for a scope ruling was deficient and did not provide a sufficient basis for Commerce to reach a final scope ruling.

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<sup>102</sup> See Amended Scope Ruling Request at 3 and 8-11.

<sup>103</sup> *Id.* at Exhibit 2.

<sup>104</sup> See 19 CFR 351.225(c)(1)(ii)(C) requiring that the application must contain, to the extent reasonably available to the interested party, "any factual information supporting {its} position."

<sup>105</sup> See Petitioner-Masterbrand's Draft Comments at 9.

### Issue 3: Whether Commerce Should Allow the Requestor to Cure Its Request

#### *Petitioner-Masterbrand's Comments:*

- Should Commerce continue to find that the Amended Scope Ruling Request was insufficient, Commerce should reopen the record to allow Petitioner-Masterbrand to cure the identified deficiencies.<sup>106</sup>
- The alleged deficiencies relate to information regarding the existence of the products subject to the request and not whether the merchandise at issue does or does not fall within the scope of the orders.<sup>107</sup>
- Accepting additional information would not require Commerce to reconsider its scope determination as there is nothing to suggest that any of this information would impact Commerce's findings that the identified merchandise is within the scope of the orders.<sup>108</sup>

#### **Commerce's Position:**

Commerce has considered the feasibility of Petitioner-Masterbrand's proposal to reopen the record of this scope inquiry and declines to do so at this time. The *Remand Opinion and Order* initially allowed Commerce 90 days from August 19, 2020 to consider the issues remanded.<sup>109</sup> In an effort to sufficiently consider the viewpoints of all parties involved, Commerce met to discuss the *Remand Opinion and Order* with all parties that wished to do so, and held video conferences with those parties on September 25 and 29, 2020.<sup>110</sup> Consultations with interested parties, and internal deliberations, resulted in the release of Commerce's draft

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<sup>106</sup> *Id.* at 10.

<sup>107</sup> *Id.* at 10-11.

<sup>108</sup> *Id.* at 11.

<sup>109</sup> See *Remand Opinion and Order* at 24.

<sup>110</sup> See Memorandum, "Video Conference Meeting Memorandum," dated September 24, 2020; Memorandum, "Video Conference Memorandum," dated September 29, 2020; and Memorandum, "Video Conference Memorandum," dated September 29, 2020.

results on November 3, 2020, just two weeks before the final results were due to the CIT. On November 10, 2020, the CIT granted Commerce an extension of the deadline for filing the final results of redetermination to January 11, 2020.<sup>111</sup> Commerce received parties' comments on November 20, 2020. Upon close consideration of all comments, we conclude that the deadline for submission of the final results of redetermination does not afford Commerce sufficient time to reopen the record and solicit new information, allow parties to comment on that new information, and consider all issues raised by interested parties before these final results are due to the CIT.

In addition, we disagree with Petitioner-Masterbrand that it is a foregone conclusion that the merchandise at issue falls within the scope of the orders and that reopening the record for additional evidence and comment would be a formality. Even if we permitted Petitioner-Masterbrand to cure the deficiencies in its request, we cannot make a determination as to whether all of the products described in the Amended Scope Ruling Request are covered by the scope of the *Orders* without examining the record further.<sup>112</sup>

Commerce's current regulations allow for 45 days to consider a scope ruling request before deciding whether to issue a final ruling or initiate a formal scope inquiry.<sup>113</sup> Commerce's practice dictates that deficient requests for a scope ruling will be rejected, the missing or deficient information identified, and the requestor provided notice as to how to cure those deficiencies.<sup>114</sup> If Commerce chooses to initiate a formal inquiry, the regulations state that Commerce will normally issue a final determination within 120 days after the initiation of a

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<sup>111</sup> See ECF No. 81 in *Fabuwood Cabinetry Corp. v. United States*, CIT Ct. No. 18-00208.

<sup>112</sup> See *Remand Opinion and Order* at 24 (holding that “{s}hould Commerce accept the Amended Scope Ruling Request, Commerce must look to the § 351.225(k)(1) factors in determining the products related to the RTA kitchen exclusion language in the original scope.”).

<sup>113</sup> See 19 CFR 351.225(c)(2).

<sup>114</sup> See, e.g., Concerned Importers' Comments at Exhibit 2.

formal inquiry,<sup>115</sup> which may involve issuing questionnaires and verification of submissions,<sup>116</sup> as well as soliciting additional evidence from the parties and allowing for additional comments and arguments related to that evidence. Thus, conducting a scope inquiry based on a new request for a scope ruling under the authority of Commerce's scope ruling regulations offers greater flexibility than conducting an accelerated review within the constraints of the CIT's *Remand Opinion and Order*, particularly if Commerce determines that an analysis of those factors enumerated in 19 CFR 351.225(k)(1) or (k)(2) is necessary to reach a conclusion regarding the numerous categories of merchandise described in the Amended Scope Ruling Request. Further, as indicated in our draft remand results, Petitioner-Masterbrand may submit a revised scope ruling request separate from this remand proceeding and ongoing litigation.<sup>117</sup> Should Petitioner-Masterbrand decide to resubmit its scope ruling requests, Commerce encourages it to do so separately so each product can be considered on its own merits and the timeline of a ruling related to one product will not affect an expeditious decision on any other product.

#### **E. FINAL RESULTS OF REDETERMINATION**

Pursuant to the CIT's *Remand Opinion and Order*, we have revisited the record and reevaluated the Amended Scope Ruling Request, as well as the comments from interested parties. Consequently, we continue to determine that the Amended Scope Ruling Request does not meet the requirements of 19 CFR 351.225(c)(1) because it suffers from several deficiencies

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<sup>115</sup> See 19 CFR 351.225(f)(5).

<sup>116</sup> See 19 CFR 351.225(f)(2).

<sup>117</sup> See Draft Results of Redetermination at 14.

that must be remedied before Commerce is able to evaluate the products for which the requestor seeks a scope ruling.

1/11/2021

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Signed by: JEFFREY KESSLER

Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance