



A-570-106

Scope Inquiry - Malaysia

~~Business Proprietary Document~~

E&amp;C/OI: MR

**PUBLIC VERSION**

March 16, 2023

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

**THROUGH:** Alex Villanueva  
Senior Director, Office I  
Antidumping and Countervailing Duty Operations

**FROM:** Michael Romani  
Senior International Trade Compliance Analyst, Office I  
Antidumping and Countervailing Duty Operations

**SUBJECT:** Wooden Cabinets and Vanities and Components Thereof from the  
People's Republic of China – Preliminary Scope Determination

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## I. SUMMARY

In accordance with 19 CFR 351.225(k)(1), and 351.225(j), we recommend the U.S. Department of Commerce (Commerce) determine that Scenario 1 wooden cabinets and vanities and components thereof (wooden cabinets) that contain doors, drawer faces and frame components produced in the People's Republic of China (China), and combined in Malaysia with wooden cabinet boxes and drawer boxes produced in Malaysia and exported to the United States are Chinese in origin and, thus, covered by the scope of the antidumping duty (AD) and countervailing duty (CVD) *Orders* on wooden cabinets and components from China.<sup>1</sup>

We also recommend finding that the record contains insufficient information to issue a preliminary scope determination for Scenarios 2 and 3 wooden cabinets, *i.e.*, semifinished wooden doors, drawer faces, and frames produced in China and further processed in Malaysia, that are combined in Malaysia with a wooden cabinet box and drawer box produced in Malaysia. Finally, we recommend finding that for Scenario 4 wooden cabinets, containing a toe kick produced in China and all other wooden parts produced in Malaysia, are third country in origin and, thus, not covered by the scope of the *Orders*.

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<sup>1</sup> 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 China AD Order*) and *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Countervailing Duty Order*, 85 FR 22134 (April 21, 2020) (collectively, *Orders*).



## II. BACKGROUND

On April 22, 2022, the American Kitchen Cabinet Alliance (the petitioner) requested that Commerce determine whether wooden cabinets and components thereof that are produced in China and undergo further processing in Malaysia, before being exported from Malaysia to the United States, are subject to the *Orders*.<sup>2</sup>

On May 13, 2022, Commerce asked the petitioner to clarify the product in question, and the petitioner responded on May 17, 2022.<sup>3</sup> The petitioner explained that the products covered in the application:

- are any and all merchandise that meets the scope of the *Orders* that are further processed in Malaysia and that continue to meet the scope of the *Orders* after further processing in Malaysia and upon entry into the United States;
- include but are not limited to the following components of wooden cabinets and vanities if they are made in China and further processed in Malaysia: (1) wooden cabinet and vanity frames; (2) wooden cabinet and vanity boxes (which typically include a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves); (3) wooden cabinet or vanity doors; (4) wooden cabinet or vanity drawers and drawer components (which typically include sides, backs, bottoms, and faces); (5) back panels and end panels; and (6) desks, shelves, and tables that are attached to or incorporated in the subject merchandise; and,
- include all unassembled, assembled, and/or “ready to assemble” (RTA) wooden cabinets and vanities, also commonly known as “flat packs,” if they are made in China and further processed in Malaysia, except to the extent such merchandise is already covered by the scope of orders.<sup>4</sup>

The petitioner illustrated the type of processing covered by the scope application by providing a non-exhaustive list of four production scenarios:

Scenario 1: finished wooden doors, drawer faces, and frames produced in China are combined in Malaysia with wooden cabinet boxes and drawer boxes started and finished in Malaysia.

Scenario 2: semifinished wooden doors, drawer faces, and frames produced in China are further processed in Malaysia and then combined in Malaysia with wooden cabinet boxes and drawer boxes produced in Malaysia.

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<sup>2</sup> See Petitioner’s Letter, “Scope Ruling Application and Request for Circumvention Inquiry Concerning Imports of Wooden Cabinets and Vanities and Components Thereof from Malaysia,” dated April 22, 2022 (Malaysia Scope Ruling Request) at 2-4.

<sup>3</sup> See Commerce’s Letter, “Questionnaire,” dated May 13, 2022; see also Petitioner’s Letter, “Response to Request for Additional Information,” dated May 17, 2022 (Supplemental Questionnaire Response).

<sup>4</sup> See Supplemental Questionnaire Response at 3-4.

Scenario 3: semifinished parts of wooden cabinet and vanity doors, drawer faces, and frames (all the rails, stiles, and panels) are produced in China and are further processed in Malaysia and then combined in Malaysia with wooden cabinet boxes and drawer boxes produced in Malaysia.

Scenario 4: finished wooden toe kicks produced in China are combined in Malaysia with all other components necessary to build a complete wooden cabinet which were started and finished in Malaysia.<sup>5</sup>

On May 24, 2022, Commerce initiated a scope inquiry to determine whether the wooden cabinets and components identified in the petitioner's scope inquiry request are subject to the *Orders*.<sup>6</sup>

On June 29, 2022, we extended the deadline for parties to submit comments on the initiation of the scope inquiry to July 7, 2022.<sup>7</sup> We received timely comments from American Home Furnishings Alliance (American Home), Brokering Solutions, Inc (Brokering Solutions), Cabinets to Go, LLC (Cabinets to Go), Cabinetworks' Companies, DH Exporters, MasterBrand Cabinets, Inc. (MasterBrand), Prominent Target Sdn Bhd (Prominent Target), Value Plus Cabinetry SDN BHD (Value Plus), and Worldwide Furniture Sdn Bhd (Worldwide Furniture) on July 7, 2022.<sup>8</sup> The petitioner filed rebuttal comments on July 28, 2022.<sup>9</sup>

### III. SCOPE OF THE *ORDERS*

The merchandise subject to these *Orders* consists of wooden cabinets and vanities that are for permanent installation (including floor mounted, wall mounted, ceiling hung or by attachment of plumbing), and wooden components thereof. Wooden cabinets and vanities and wooden components are made substantially of wood products, including solid wood and engineered wood products (including those made from wood particles, fibers, or other wooden materials such as plywood, strand board, block board, particle board, or fiberboard), or bamboo. Wooden cabinets and vanities consist of a cabinet box (which typically includes a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves) and may or may

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<sup>5</sup> See Supplemental Questionnaire Response at 5-6.

<sup>6</sup> See Memorandum, "Initiation of Scope Inquiry," dated May 24, 2022 (Malaysia Initiation Memorandum).

<sup>7</sup> See Commerce's Letter, "Filing Errors and Extensions of Deadline," dated June 29, 2022.

<sup>8</sup> See American Home's Letter, "Comments and Rebuttal Factual Information on Anti-Circumvention Inquiry Request," dated July 7, 2022 (American Home's Comments); Brokering Solution's Letter, "Rebuttal Comments on Scope Inquiry Request," dated July 7, 2022 (Brokering Solutions' Comments); Cabinets to Go's Letter, "Rebuttal Comments on Scope Inquiry Request," dated July 7, 2022 (Cabinets to Go's Comments); Cabinetworks' Companies' (AC Products, Inc., Master Woodcraft Cabinetry, L.L.C., Smart LLC, ACPI Wood Products, Cabinetworks Group Michigan, LLC, and Cabinetworks Group Middlefield LLC, collectively, Cabinetworks Companies) Letter, "Scope Comments," dated July 7, 2022 (Cabinetworks Companies' Comments); DH Exporter's (Home Styler Furniture Sdn. Bhd, Ly Furniture Sdn. Bhd., and Artz Master Sdn. Bhd., collectively DH Exporters) Letter, "Post-Initiation Comments on Petitioner's Request for Scope Inquiry," dated July 7, 2022 (DH Exporter's Comments); MasterBrand Cabinets, Inc.'s (MasterBrand) Letter, "Comments on Scope Ruling Application," dated July 7, 2022 (MasterBrand's Comments); Prominent Target Sdn Bhd's Letter, "Scope Inquiry (Malaysian Processed) in the Antidumping/Countervailing Duty Orders on Wooden Cabinets and Vanities (WCV) from the People's Republic of China," dated July 7, 2022 (Prominent Target's Comments); Value Plus Cabinetry Sdn Bhd's Letter, "Comments on Scope (Malaysia)," dated July 7, 2022 (Value Plus' Comments); and, Worldwide Furniture's Letter, "Comments on Scope (Malaysia)," dated July 7, 2022 (Worldwide Furniture's Comments).

<sup>9</sup> See Petitioner's Letter, "Response to Rebuttal Comments and Factual Information," dated July 28, 2022 (Petitioner's Rebuttal Comments).

not include a frame, door, drawers and/or shelves. Subject merchandise includes wooden cabinets and vanities with or without wood veneers, wood, paper or other overlays, or laminates, with or without non-wood components or trim such as metal, marble, glass, plastic, or other resins, whether or not surface finished or unfinished, and whether or not completed.

Wooden cabinets and vanities are covered by these *Orders* whether or not they are imported attached to, or in conjunction with, faucets, metal plumbing, sinks and/or sink bowls, or countertops. If wooden cabinets or vanities are imported attached to, or in conjunction with, such merchandise, only the wooden cabinet or vanity is covered by the scope.

Subject merchandise includes the following wooden component parts of cabinets and vanities: (1) wooden cabinet and vanity frames (2) wooden cabinet and vanity boxes (which typically include a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves), (3) wooden cabinet or vanity doors, (4) wooden cabinet or vanity drawers and drawer components (which typically include sides, backs, bottoms, and faces), (5) back panels and end panels, (6) and desks, shelves, and tables that are attached to or incorporated in the subject merchandise.

Subject merchandise includes all unassembled, assembled and/or “ready to assemble” (RTA) wooden cabinets and vanities, also commonly known as “flat packs,” except to the extent such merchandise is already covered by the scope of antidumping and countervailing duty orders on *Hardwood Plywood from the People’s Republic of China*. 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); *Certain Hardwood Plywood Products from the People’s Republic of China: Countervailing Duty Order*, 83 FR 513 (January 4, 2018). RTA wooden cabinets and vanities are defined as cabinets or vanities packaged so that at the time of importation they may include: (1) wooden components required to assemble a cabinet or vanity (including drawer faces and doors); and (2) parts (e.g., screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a cabinet or vanity. RTAs may enter the United States in one or in multiple packages.

Subject merchandise also includes wooden cabinets and vanities and in-scope components that have been further processed in a third country, including but not limited to one or more of the following: trimming, cutting, notching, punching, drilling, painting, staining, finishing, assembly, or any other processing that would not otherwise remove the merchandise from the scope of the *Orders* if performed in the country of manufacture of the in-scope product.

Excluded from the scope of these *Orders*, if entered separate from a wooden cabinet or vanity are:

(1) Aftermarket accessory items which may be added to or installed into an interior of a cabinet and which are not considered a structural or core component of a wooden cabinet or vanity. Aftermarket accessory items may be made of wood, metal, plastic, composite material, or a combination thereof that can be inserted into a cabinet and which are utilized in the function of organization/accessibility on the interior of a cabinet; and include:

- Inserts or dividers which are placed into drawer boxes with the purpose of organizing or dividing the internal portion of the drawer into multiple areas for the purpose of

- containing smaller items such as cutlery, utensils, bathroom essentials, *etc.*
  - Round or oblong inserts that rotate internally in a cabinet for the purpose of accessibility to foodstuffs, dishware, general supplies, *etc.*
- (2) Solid wooden accessories including corbels and rosettes, which serve the primary purpose of decoration and personalization.
  - (3) Non-wooden cabinet hardware components including metal hinges, brackets, catches, locks, drawer slides, fasteners (nails, screws, tacks, staples), handles, and knobs.
  - (4) Medicine cabinets that meet all of the following five criteria are excluded from the scope:
    - (1) wall mounted;
    - (2) assembled at the time of entry into the United States;
    - (3) contain one or more mirrors;
    - (4) be packaged for retail sale at time of entry; and
    - (5) have a maximum depth of seven inches.

Also excluded from the scope of the *Orders* are:

- (1) All products covered by the scope of the antidumping duty order on *Wooden Bedroom Furniture from the People's Republic of China*. 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).
- (2) All products covered by the scope of the antidumping and countervailing duty orders on *Hardwood Plywood from the People's Republic of China*. 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); *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order*, 83 FR 513 (January 4, 2018).

Imports of subject merchandise are classified under Harmonized Tariff Schedule of the United States (HTSUS) statistical numbers 9403.40.9060 and 9403.60.8081. The subject component parts of wooden cabinets and vanities may be entered into the United States under HTSUS statistical number 9403.90.7080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.

#### IV. LEGAL FRAMEWORK

When a request for a scope ruling is filed, Commerce examines the scope language of the order{s} at issue and the description of the product contained in the scope-ruling request.<sup>10</sup> Pursuant to Commerce's regulations at 19 CFR 351.225(k)(1), Commerce may consider the language of the scope and may make its determination on this basis alone if the language of the scope, including the descriptions of the merchandise expressly excluded from the scope, is dispositive.<sup>11</sup> Commerce may also examine other information from sources set forth at 19 CFR 351.225(k)(1)(i), including the description of the merchandise contained in the petition, the descriptions of the merchandise from the investigation, relevant prior scope determinations, and

<sup>10</sup> See *Walgreen Co. v. United States*, 620 F.3d 1350, 1357 (CAFC 2010) (*Walgreen*).

<sup>11</sup> See 19 CFR 351.225(k)(1). See also *Regulations To Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 86 FR 52300, 52322 (September 20, 2021) (*Regulations Final Rule*).

relevant U.S. International Trade Commission (ITC) determinations.<sup>12</sup> If Commerce determines that these sources are sufficient to decide the matter, it will issue a final scope ruling as to whether the merchandise is covered by an order.<sup>13</sup>

Conversely, where the descriptions of the merchandise in the sources described in 19 CFR 351.225(k)(1)(i) are not dispositive, Commerce will consider the five additional factors set forth at 19 CFR 351.225(k)(2)(i). These factors are: (A) the physical characteristics of the merchandise; (B) the expectations of the ultimate users; (C) the ultimate use of the product; (D) the channels of trade in which the product is sold; and (E) the manner in which the product is advertised and displayed. The determination as to which analytical framework is most appropriate in any given scope proceeding is made on a case-by-case basis after consideration of all evidence before Commerce.

Further, AD and CVD orders apply to merchandise from particular countries, determining the country where the merchandise is produced is fundamental to proper administration and enforcement of the AD and CVD statute. The scope of an AD or CVD order is limited to merchandise that originates in the country covered by the order.<sup>14</sup> Commerce has explicitly stated that the scope of an antidumping duty order is “defined by the type of merchandise and the country of origin.”<sup>15</sup>

In determining the country of origin of a product, Commerce’s practice is to conduct a substantial transformation analysis.<sup>16</sup> The U.S. Court of International Trade (CIT) stated that “{t}he ‘substantial transformation’ rule provides a yardstick for determining whether the processes performed on merchandise in a country are of such significance as to require that the resulting merchandise be considered the product of the country in which the transformation occurred.”<sup>17</sup> The U.S. Court of Appeals for the Federal Circuit (CAFC) held that Commerce may use the substantial transformation analysis to determine country of origin for an imported article, explaining that a “substantial transformation occurs where, ‘as a result of manufacturing

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<sup>12</sup> See 19 CFR 351.225(k)(1)(i)(A)-(D).

<sup>13</sup> See 19 CFR 351.225(d).

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

<sup>15</sup> See *Advanced Tech & Materials Co., Ltd. v. United States*, No. 09-511, 2011 Ct. Intl. Trade LEXIS 136, \* 11 (CIT 2011) (“{t}he scope of an antidumping or countervailing duty order is defined by the type of merchandise and by the country of origin (e.g., widgets from Ruritania.”). See also *Ugine and ALZ Belgium, N.V. v. United States*, 517 F. Supp. 2d 1333, 1345 (CIT 2007) (citing *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37065 (July 9, 1993) “For merchandise to be subject to an order it must meet both parameters, i.e., product type and country of origin.”) (*Ugine*)).

<sup>16</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Glycine from India*, 73 FR 16640 (March 28, 2008), and accompanying IDM at Comment 5; see also *Steel Plate Belgium* IDM at Comment 4.

<sup>17</sup> See *Bell Supply Co. v. United States*, 888 F.3d 1222, 1229 (CAFC 2018) (*Bell Supply CAFC 2018*) (citing *E.I. DuPont De Nemours & Company. v. United States*, 8 F. Supp. 2d 854,858 (CIT 1998) (citing *Smith Corona Corp. v. United States*, 811 F. Supp. 692,695 (CIT 1993) as “noting that in determining if merchandise exported from an intermediate country is covered by an antidumping order Commerce identified the country of origin by considering whether the essential component is substantially transformed in the country of exportation”).

or processing steps ... {a product} loses its identity and is transformed into a new product having a new name, character and use.”<sup>18</sup>

This practice was recently codified in Commerce’s update to its regulations, at 19 CFR 351.225(j).<sup>19</sup> Under these new regulations, Commerce may use any reasonable method and is not bound by the determinations of any other agency. Commerce may conduct a substantial transformation analysis and consider the following relevant factors on a case-by-case basis:<sup>20</sup> (i) whether the processed downstream product is a different class or kind of merchandise than the upstream product; (ii) the physical characteristics of the product; (iii) the intended end-use of the downstream product; (iv) the cost of production/value added of further processing in the third country; (v) the nature and sophistication of processing in the third country; and (vi) the level of investment in the third country or countries. In conducting a country-of-origin determination, Commerce also may consider where the essential component of the product is produced or where the essential characteristics of the product are imparted.

Therefore, the questions Commerce is seeking to answer when conducting a substantial transformation analysis are: (1) whether, as a result of the manufacturing or processing, the product loses its identity and is transformed into a new product having a new name, character, and use;<sup>21</sup> and (2) whether through that transformation, the new article becomes a product of the country in which it was processed or manufactured.<sup>22</sup>

The petitioner requested that Commerce determine if wooden cabinets produced in China and further processed in Malaysia are subject to the *Orders*. Because of the myriad varieties of wooden cabinets and components, we find this request to be too broad for Commerce to render a determination. As a result, we focused our analysis on the four illustrative production scenarios described by the petitioner in its scope ruling request. We considered each of the 19 CFR 351.225(j)(1) and (j)(2) criteria in making the country-of-origin determinations on each scenario.

We proceed with a two-step approach, first considering whether merchandise resulting from a particular scenario is considered subject merchandise under 19 CFR 351.225(k)(1), and then considering the country of origin of the merchandise pursuant to 19 CFR 351.225(j). We consider each of the 19 CFR 351.225(j)(1) and (j)(2) criteria in making the country-of-origin determination.

## V. ANALYSIS PURSUANT TO 19 CFR 351.225(k)(1)

The plain language of the scope of the *Orders* identifies two types of merchandise, “wooden cabinets and vanities” (complete wooden cabinets) and “wooden components thereof” (wooden cabinet components). The *Orders* describe wooden cabinets as those that “consist of a cabinet box (which typically includes a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves) and may, or may not include a frame, door, drawers

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<sup>18</sup> See *Bell Supply Company, LLC v. United States*, 393 F.Supp.3d 1228-1229 (citing *Bestfoods v. United States*, 165 F.3d 1371, 1373 (CAFC 1999)).

<sup>19</sup> See *Regulations Final Rule*, 86 FR at 52375-76.

<sup>20</sup> See 19 CFR 351.225(j)(1) and (j)(2).

<sup>21</sup> See, e.g., *Bell Supply* CAFC 2018, 888 F.3d at 1228-29.

<sup>22</sup> See *Ugine*, 517 F. Supp. 2d at 1337 n.5.

and/or shelves.” The *Orders* also state that “{s}subject merchandise includes the following {six} “wooden component parts” of cabinets and vanities: (1) wooden cabinet and vanity frames, (2) wooden cabinet and vanity boxes (which typically include a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves), (3) wooden cabinet or vanity doors, (4) wooden cabinet or vanity drawers and drawer components (which typically include sides, backs, bottoms, and faces), (5) back panels and end panels, (6) and desks, shelves, and tables that are attached to or incorporated in the subject merchandise.<sup>23</sup>

Both lists include cabinet boxes and provide identical lists of the typical subcomponent parts of a cabinet box including: (1) top, (2) bottom, (3) sides, (4) back, (5) base blockers, (6) ends/end panels, (7) stretcher rails, (8) toe kicks, and/or (9) shelves.<sup>24</sup> Two of the identified subcomponents of a cabinet box, end panels and shelves, are also identified as individual wooden cabinet components. The component list also provides a list of the typical subcomponents of a drawer including (1) sides, (2) backs, (3) bottoms, and (4) faces (*a.k.a.*, fronts). This component list also references “drawers and drawer components,” rather than just “drawers.”<sup>25</sup>

The scope of the *Orders* also states that:

“{s}subject merchandise includes wooden cabinets...whether or not surface finished or unfinished, and whether or not completed” and that wooden cabinets are substantially made of solid wood, engineered wood, or bamboo. “Subject merchandise also includes wooden cabinets and vanities and in-scope components that have been further processed in a third country, including but not limited to one or more of the following: trimming, cutting, notching, punching, drilling, painting, staining, finishing, assembly, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product.”<sup>26</sup>

The scope is silent on the inclusion of third-country origin, like components, in merchandise that otherwise meets the physical description of subject merchandise (*i.e.*, complete wooden cabinets); therefore, we will determine the country of origin of wooden cabinets containing components started in China and a third country, and exported to the United States from the third country, pursuant to 19 CFR 351.225(j)(1) and (j)(2) below.

We considered the language of the scope with respect to each of the four production scenarios identified in the scope ruling request.

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<sup>23</sup> See *Wooden Cabinets China AD Order*, 85 FR at 22134-35.

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

<sup>25</sup> Several of the petitioner’s production scenarios under examination feature wooden drawer faces produced and/or started in China. For purposes of our analysis, we considered these drawer faces (either simple one-piece or complex five-piece (two rails, two stiles, and a raised panel)), and drawer boxes (two sides, back, and bottom) to be “drawer components.”

<sup>26</sup> See *Wooden Cabinets China AD Order*, 85 FR at 22134-35.

**Scenario 1:** Finished wooden doors, drawer faces, and frames produced in China are combined in Malaysia with wooden cabinet boxes and drawer boxes started and finished in Malaysia.<sup>27</sup>

**Analysis:** In this scenario, the petitioners identified a product that contains the following wooden cabinet components: cabinet box, doors, drawer boxes, drawer faces, and a frame. The cabinet box component is started and finished in the third country, while the frame and door components are started and finished in China. Drawer boxes are started and finished in the third country and drawer faces are started and finished in China. Final assembly and packaging for shipment were conducted in the third country. Final assembly and packaging are the only further processing steps conducted on the doors, drawer faces, and frames started and finished in China.

Doors, drawer components, and frames are expressly identified by the *Orders* as subject “wooden cabinet component parts.” Pursuant to 19 CFR 351.225(k)(1), we find that the wooden doors, drawer faces, and frames identified in this scenario produced in China are within the scope of the *Orders* because these wooden cabinet components are expressly identified in the plain language of the scope.

The complete wooden cabinet, which is comprised of a cabinet box, doors, drawer boxes, drawer faces, and a frame, shares the physical characteristics of subject merchandise, in that scope language states subject wooden cabinets consist of a wooden cabinet component cabinet box and may or may not include the wooden cabinet components frame, doors, drawers and/or shelves. However, because the complete wooden cabinet in this scenario contains wooden cabinet components produced in China (*i.e.*, the components doors, drawer faces, and a frame) and components produced in a third country (*i.e.*, the components cabinet box and drawer box), it is necessary to evaluate the country of origin of the completed cabinet pursuant to 19 CFR 351.225(j)(1) and (j)(2).

**Scenario 2:** Semifinished wooden doors, drawer faces, and frames produced in China are further processed in Malaysia and then combined in Malaysia with wooden cabinet boxes and drawer boxes produced in Malaysia.<sup>28</sup>

**Analysis:** In this scenario, the petitioners identified a product that contains the following wooden cabinet components: cabinet box, doors, drawer boxes, drawer faces, and a frame. The cabinet box component is started and finished in the third country, while the frame and door components are started in China and finished in the third country. Drawer boxes are started and finished in the third country and drawer faces are started in China and finished in the third country. For Scenario 2 merchandise, we treated the doors and drawer faces as single pieces given that, of the four scenarios, only the Scenario 3 description specifically identifies the parts of the doors and drawer faces included in the product. We also considered that some packing

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<sup>27</sup> See Supplemental Questionnaire Response at 5 (“A Malaysian company imports finished {wooden cabinet} doors, drawer fronts, and frames that are produced in China. The Malaysian company produces {wooden cabinet} boxes and drawers in Malaysia. The Malaysian company combines these items in Malaysia.”)

<sup>28</sup> *Id.* (“A Malaysian company imports semifinished {wooden cabinet component} doors, drawer fronts, and frames that are produced in China. The Malaysian company performs further processing of these components from China in Malaysia such as trimming, cutting, notching, punching, drilling, painting, staining, or other finishing processes. The Malaysian company produces {wooden cabinet} boxes and drawers in Malaysia. The Malaysian company combines these items in Malaysia.”)

occurred when shipping semifinished components from China. Further, we considered that final assembly and packaging, plus the finishing processes conducted on semifinished doors, drawer faces and frame component parts, are the extent of the further processing for Scenario 2.

Doors, drawer components, and frames are identified by the *Orders* as subject “wooden cabinet component parts.” The petitioner stated that the doors, drawer faces, and frames are “semifinished” at export from China, indicating that certain production processes occur in China, and others occur in the third country; however, the Scenario 2 description does not precisely explain what processing steps are conducted in each country and therefore does not identify the amount of further processing conducted on the product in the third country. All the processes mentioned in the description of the scenario fall within the further processing language in the scope of the *Orders* and are not of the type that would otherwise remove subject wooden cabinet components from the scope of the *Orders* if performed in China.

Thus, pursuant to 19 CFR 351.225(k)(1), we find that the wooden cabinet components started in China in this scenario (*i.e.*, doors, drawer faces, and frame) are within the scope of the *Orders* because these wooden cabinet components or component parts are expressly identified in the plain language of the scope, and do not undergo processing in the third country that would otherwise remove them from the scope. The complete wooden cabinet, which is comprised of a cabinet box, doors, drawer box, drawer faces, and a frame, shares the physical characteristics of subject merchandise, in that scope language states subject wooden cabinets consist of a cabinet box and may or may not include a frame, door, drawers and/or shelves. However, because the wooden cabinet in this scenario contains wooden cabinet components which were started into production in China (*i.e.*, semifinished doors, drawer faces, and frames) and components produced in a third country (*i.e.*, a cabinet box and drawer boxes), it is necessary to evaluate the country of origin of the completed cabinet pursuant to 19 CFR 351.225(j)(1) and (j)(2).

**Scenario 3:** semifinished parts of wooden cabinet and vanity doors, drawer faces, and frames (all the rails, stiles, and panels) are produced in China and are further processed in Malaysia and then combined in Malaysia with wooden cabinet boxes and drawer boxes produced in Malaysia.<sup>29</sup>

**Analysis:** The petitioners identified a product that contains the following wooden cabinet components: cabinet box, doors, drawer boxes, drawer faces, and a frame. The cabinet box component is started and finished in the third country while the frame and door component parts are started in China and finished in the third country. Drawer boxes are started and finished in the third country and drawer faces are started in China and finished in the third country. For Scenario 3 merchandise, the scenario description states that wooden cabinet component doors, drawer faces, and frames include rails, stiles, and panels. In a frame component, rails and stiles usually come in pairs and border either the horizontal or vertical space of an opening for drawers and doors. A pair of rails, and a pair of stiles combined with a panel makes a multi-part door or

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<sup>29</sup> *Id.* (“A Malaysian company imports semifinished parts of {wooden cabinet} doors, drawer fronts, and frames that are produced in China. The parts of the {wooden cabinet} doors, drawer fronts, and frames include the rails, stiles, and panels. The Malaysian company performs further processing of these component parts from China in Malaysia such as trimming, cutting, notching, punching, drilling, painting, staining, or other finishing processes, including the assembly of the parts to produce fully finished {wooden cabinet} doors, drawer fronts, and frames. The Malaysian company produces {wooden cabinet} boxes and drawers in Malaysia. The Malaysian company combines these items in Malaysia.”)

drawer face. Although the Scenario 3 description indicates that only some parts of the doors, drawer faces, and frames are started in China, if we consider that all the rails, stiles, and panels were started in China, its likely no other pieces remain; thus, it is unclear which component parts underwent which processes in China and the third country.

Doors, drawer components, and frames are identified by the *Orders* as subject “wooden cabinet component parts.” The petitioner stated that these items were “semifinished” at export from China, indicating that certain processes occur in China, and others occur in the third country; however, the scenario description does not precisely explain what processing steps are conducted in each country and therefore does not identify the amount of further processing conducted on the product in the third country. All the processes mentioned in the description of the scenario fall within the further processing language in the scope of the *Orders*, and are not of the type that would otherwise remove subject wooden cabinet components from the scope of the *Order* if performed in China. Thus, pursuant to 19 CFR 351.225(k)(1), we find that the wooden cabinet components started in China in this scenario (*i.e.*, doors, drawer faces, and a frame) are within the scope of the *Orders*, because these wooden cabinet components or component parts are expressly identified in the plain language of the scope and do not undergo processing in the third country that would otherwise remove them from the scope. The complete wooden cabinet, which is comprised of a cabinet box, doors, drawer boxes, drawer faces, and a frame, shares the physical characteristics of subject merchandise, in that scope language states subject wooden cabinets and vanities consist of a cabinet box and may or may not include a frame, door, drawers and/or shelves. However, because the wooden cabinet in this scenario contains wooden cabinet components produced in China (*i.e.*, “semifinished” doors, drawer faces, and a frame) and components produced in a third country (*i.e.*, cabinet box and drawer box), it is necessary to evaluate the country of origin of the completed cabinet pursuant to 19 CFR 351.225(j)(1) and (j)(2).

**Scenario 4:** finished wooden toe kicks produced in China are combined in Malaysia with all other components necessary to build a complete wooden cabinet which were started and finished in Malaysia.<sup>30</sup>

**Analysis:** The petitioners did not explicitly identify which wooden parts are contained in the Scenario 4 product beyond the toe kick which was produced in China. For the purposes of this analysis, we have concluded, reasonably, that Scenario 4 merchandise is a complete wooden cabinet that contains a cabinet box, doors, drawer boxes, drawer faces, and a frame, like the products in Scenarios 1, 2, and 3.

For Scenario 4 merchandise, the wooden cabinet component doors, drawers, and frame were all started and finished in the third country. The cabinet box is produced in the third country except for the toe kick, which is produced in China. The toe kick was finished in China, packaged for shipment to the third country, and then combined with all other component parts of a cabinet box, and other required wooden cabinet components produced in the third country (*i.e.*, doors, drawers, and frame) that are necessary to produce the complete wooden cabinet.

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<sup>30</sup> *Id.* at 5-6 (“A Malaysian company imports finished {wooden cabinet} toe kicks that are produced in China. The Malaysian company produces all other wooden cabinet components necessary for a complete cabinet or vanity in Malaysia. The Malaysian company combines these items in Malaysia.”).

The scope of the *Orders* expressly identifies toe kicks in its nine, typical, wooden parts of a cabinet box. While the toe kick is not identified as a covered “wooden cabinet component part,” it is mentioned in the scope as a typical part of a cabinet box component, and, thus, we reasonably conclude that a toe kick is a subject wooden cabinet component part.<sup>31</sup> Therefore, pursuant to 19 CFR 351.225(k)(1), we find that the toe kick is a subject component based on the plain language of the scope of the *Orders*. Here, the toe kick undergoes further processing in the third country, in that it is assembled with all the components produced in the third country. We find that this further processing does not remove the toe kick from the scope of the *Order* if performed in the third country, because none of the processes performed to complete the wooden cabinet turn the wooden cabinet into a product other than a wooden cabinet.

The complete wooden cabinet, which is comprised of a cabinet box, doors, drawer boxes, drawer faces, and a frame, shares the physical characteristics of subject merchandise, in that the scope language states subject wooden cabinets consist of a cabinet box and may or may not include a frame, door, drawers and/or shelves. However, because the Scenario 4 wooden cabinet contains a wooden cabinet component produced in China (*i.e.*, the toe kick) and components produced in a third country (*i.e.*, cabinet box except toe kick, doors, drawers, and a frame), it is necessary to evaluate the country of origin of the completed cabinet pursuant to 19 CFR 351.225(j)(1) and (j)(2).

### **Summary Results of 19 CFR 351.225(k) Analysis**

In summary, pursuant to 19 CFR 351.225(k)(1), and based on the plain language of the *Orders*, we preliminarily determine that the wooden cabinet components produced in China in Scenarios 1 through 4 are subject to the *Orders*. While a completed wooden cabinet produced in China is subject to the *Orders*, the complete wooden cabinets produced in Scenarios 1, 2, and 3, contain wooden cabinet components started in both China and the third country, and Scenario 4, contains a single wooden part produced in China combined with many other wooden parts produced in the third country. All these products, therefore, contain wooden parts produced in both countries. After reviewing the four scenarios, we find it is necessary to conduct an analysis pursuant to 19 CFR 351.225(j)(1) and (2) to determine the country of origin of the complete wooden cabinets described in Scenarios 1 through 4 because they include both Chinese and Malaysian origin wooden cabinet components.

## **VI. ANALYSIS PURSUANT TO 19 CFR 351.225(j)**

Commerce country of origin determinations are governed by 19 CFR 351.225(j):

In considering whether a product is covered by the scope of the order at issue, the Secretary may need to determine the country of origin of the product. To make such a determination, the Secretary may use any reasonable method and is not bound by the determinations of any other agency, including tariff classification and country of origin marking rulings issued by the Customs Service.

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<sup>31</sup> See *Wooden Cabinets China AD Order*, 85 FR at 22126, 22132 (the relevant scope language states, “Wooden cabinets and vanities consist of a cabinet box (which typically includes a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves) and may or may not include a frame, door, drawers and/ or shelves.”)

(1) In determining the country of origin, the Secretary may conduct a substantial transformation analysis that considers relevant factors that arise on a case-by-case basis, including:

- (i) Whether the processed downstream product is a different class or kind of merchandise than the upstream product;
- (ii) The physical characteristics (including chemical, dimensional, and technical characteristics) of the product;
- (iii) The intended end-use of the downstream product;
- (iv) The cost of production/value added of further processing in the third country or countries;
- (v) The nature and sophistication of processing in the third country or countries; and
- (vi) The level of investment in the third country or countries.

(2) In conducting a country of origin determination, the Secretary also may consider where the essential component of the product is produced or where the essential characteristics of the product are imparted.

Although the scope of the *Orders* contains further processing language which preserves Chinese country of origin status for wooden cabinet components that undergo certain processing/finishing in third countries,<sup>32</sup> that language does not address scenarios where a completed wooden cabinet (which would otherwise meet the physical description of subject merchandise) is assembled in a third country using both components produced in China (finished and unfinished) and components produced in a third country. Therefore, it is necessary to evaluate the country of origin of completed cabinets that contain such components. We first review each of the factors and then summarize our decisions for every factor of each production scenario.

**Factor (j)(1)(i): Whether the processed downstream product is a different class or kind of merchandise than the upstream product**

We find that there is a single class or kind of merchandise that includes both the upstream product (*i.e.*, wooden cabinet components) and the downstream product (*i.e.*, full wooden cabinets).<sup>33</sup>

As explained above, completed wooden cabinets and wooden cabinet components are both expressly included in the scope of the *Orders*. The inclusion of the further processing language in the scope of the *Orders* means that any wooden part produced in China is considered a subject component, even if it undergoes some further processing in a third country (so long as the processing would not otherwise remove the merchandise from the scope of the *Orders* if performed in China). Therefore, we preliminarily determine that wooden cabinet components, whether complete or unfinished, are the same class or kind of product as complete wooden

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<sup>32</sup> The scope states:

Subject merchandise also includes wooden cabinets and vanities and in-scope components that have been further processed in a third country, including but not limited to one or more of the following: trimming, cutting, notching, punching, drilling, painting, staining, finishing, assembly, or any other processing that would not otherwise remove the merchandise from the scope of the *Order* if performed in the country of manufacture of the in-scope product.

<sup>33</sup> See Malaysia Scope Ruling Request at 26.

cabinets. This finding is consistent with the ITC’s finding during the investigation that “under a semi-finished products analysis, wooden components and full units of cabinets and vanities encompass a single domestic like product.”<sup>34</sup>

Accordingly, analysis of this factor supports finding, for all four scenarios, that the subject merchandise (wooden cabinet components) was not substantially transformed in the third country because both wooden cabinet components and complete wooden cabinets are subject merchandise. Thus, for all four scenarios, we preliminarily determine this factor supports finding that the completed wooden cabinets have Chinese country of origin.

**Factor (j)(1)(ii): The physical characteristics (including chemical, dimensional, and technical characteristics) of the product**

Although the petitioner provided general descriptions of wooden cabinets at issue in the four production scenarios, the description lacks explanations of specific physical characteristics of this merchandise in some respects.<sup>35</sup> Based on the names of the wooden cabinet components used to assemble the completed merchandise, the products share the same general physical characteristics as subject merchandise. The scope of the *Orders* states that a wooden cabinet consists of a cabinet box, and may or may not also contain doors, drawers, a frame, and shelves and we preliminarily determine that the combination of those components in the third country into a complete cabinet does not substantially alter the components. We recognize that production processes such as trimming, cutting, notching, punching, and drilling remove material and shape the final dimensions of each wooden cabinet component part. Finishing operations such as painting, staining, and finishing may also alter the surface finish of the product and may impart water impermeability, color, texture, and aging characteristics different to those of the plain wood. However, this further processing does not transform the cabinet components into another product, and thus does not remove the merchandise from the scope of the *Orders*.

Further, we find that assembly does not substantially alter the physical characteristics of the wooden cabinet components, but rather, combines the components into their final, planned combination,<sup>36</sup> resulting in either complete wooden cabinets in either fully assembled form or packaged or shipment “flat packs.” Therefore, we preliminarily determine that wooden cabinet components, whether finished or unfinished, retain their original general physical characteristics when finished and when assembled into a complete wooden cabinet of either form, and are, therefore, not substantially transformed in the third country. Accordingly, analysis of this factor supports finding, for all four scenarios, that the subject merchandise (*i.e.*, wooden cabinet components) was not substantially transformed in the third country because components introduced in the third country did not alter the physical characteristics beyond those of subject merchandise. Thus, for all four scenarios, we preliminarily determine this factor supports finding that the completed wooden cabinets have Chinese country of origin.

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<sup>34</sup> See U.S. International Trade Commission’s Publication 5042, “Wooden Cabinets and Vanities from China Investigation Nos. 701-TA-620 and 731-TA-1445 (Final),” dated April 2022 (ITC Final Report) at I-10.

<sup>35</sup> See Supplemental Questionnaire Response at 5-6.

<sup>36</sup> See ITC Final Report at I-9 (The ITC stated that wooden cabinets and parts thereof “have physical characteristics applicable to the intended use for storage and easy access to various household items” and, “{t}ypically, items for storage include kitchen equipment, utensils, and food in the case of cabinets, and toiletries, medicine, cosmetics, and other bathroom related products in the case of vanities.”).

**Factor (j)(1)(iii): The intended end-use of the downstream product**

The intended end-use of the downstream product (*i.e.*, complete wooden cabinets) does not change as the product transitions from an upstream (*i.e.*, wooden cabinet components) product to the downstream complete wooden cabinet. A wooden cabinet made entirely in China of Chinese-origin components versus one made in a third country with only some Chinese wooden cabinet components, has the same end-use.

The Petition describes wooden cabinets as having “the purpose and function of permanently affixed cabinetry typically found throughout the home, including kitchen and bath cabinetry, modular vanities, pedestal vanities..., whether finished or unfinished, and wooden parts and components thereof.”<sup>37</sup> The products may also be “used in places other than in a home kitchen or bathroom (*e.g.*, as laundry room cabinets, closets, permanently affixed home office cabinets, kitchen and bathroom cabinetry found in commercial buildings, apartments, hotels, assisted living or healthcare facilities, or other environments).”<sup>38</sup> Additionally, wooden cabinets “are typically intended to be permanently installed... and are not designed to be moved.”<sup>39</sup> The ITC also described the uses of wooden cabinets and components thereof in its final affirmative determination of material injury stating that wooden cabinets “are wood-constructed products used for permanently installed cabinetry that are usually found in the kitchen (in the case of cabinets) or in the bathroom (in the case of vanities).”<sup>40</sup>

When a wooden cabinet component is exported from China to a third country for additional processing, the processing does not substantially transform the component into a product with a different intended use in the third country. Both the finished and unfinished components are intended to fill the functional role of a wooden cabinet component as part of permanently installed cabinetry. Additionally, the complete wooden cabinet, which contains Chinese-origin and third-country origin like components, has the same intended use, *i.e.*, to function as permanently installed cabinetry.

Therefore, we preliminarily determine that wooden cabinet components, whether finished, or unfinished when requiring further processing in the third country, share the same intended end-use as complete wooden cabinets – to function as permanently installed cabinetry. Accordingly, analysis of this factor supports finding, for all four scenarios, that the subject merchandise (wooden cabinet components) was not substantially transformed in the third country because components introduced in the third country did not alter the physical characteristics of the complete wooden cabinet beyond those of subject merchandise. Thus, for all four scenarios, we preliminarily determine this factor supports finding that the completed wooden cabinets have Chinese country of origin.

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<sup>37</sup> See Malaysia Scope Ruling Request at Exhibit 3 (Petitions for the Imposition of the Antidumping and Countervailing Duties Pursuant to Sections 701 and 703 of the Tariff Act of 1930, Volume 1: Common Issues and Injury Petition at 7 (Petition)).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at I-8.

<sup>40</sup> *Id.* at I-9.

**Factor (j)(1)(iv): The cost of production/value added of further processing in the third country**

Any cost of production or value-added analysis of further processing in the third country requires clearly identifying the country in which each input is introduced into the production process and the country where each production step occurred. Because Commerce considers China a non-market economy (NME) for antidumping duty purposes, it is necessary to use surrogate values from a market economy at a similar level of economic development to price inputs and production costs in China. Neither the scope inquiry request nor the record provides precise descriptions of each wooden part used to produce any of the four types of scenario merchandise. Further, for Scenarios 2 and 3 merchandise, the extent of processing in China and the third country are not fully described. Such information would allow for segregation of inputs and processes between China and the third country and is necessary to determine the cost of production and value added of further processing in the third country. For example, we do not have precise information describing: (1) the wooden parts required to make each component (*e.g.*, which of the “typical” parts of a cabinet box are actually in the scenario merchandise, or how many wooden parts are in the doors and drawer faces for scenarios other than 3); (2) the dimensions and type of wood used to produce each wooden component part; (3) the number of drawers and doors in the scenario merchandise; (4) the hardware/accessory parts and the country in which they were introduced into production; (5) whether the scenario merchandise is RTA; (6) a list of processes required to finish each wooden part (including identifying the required tooling, the cost of the assets, and the costs of the facilities required to operate the assets considering the factors in 19 CFR 351.225(j)(1)(v) and (vi)), as well as, the country in which those processes occurred in; and, (7) a method by which we can analyze cost and the value added nature of inputs introduced into the production process in the third country. As explained below, we have relied on relevant information from the most recently completed review of the *Wooden Cabinets China AD Order* to address some of these concerns.

*Identifying Useable Information for Conducting a Cost of Production/Value-Added Analysis*

The complete wooden cabinets subject to this inquiry consist of the following components: cabinet box, doors, drawers, and a frame. Scenario 1 merchandise includes doors, drawer faces, and frame wooden cabinet components started and finished in China. Scenario 2 merchandise includes doors, drawer faces and a frame, as well as wooden cabinet components that were “semifinished” in China and completed in the third country. However, it is unclear from the petitioner’s scenario descriptions: (1) which wooden parts constitute the doors, drawer faces and frame wooden cabinet components; (2) what wood types they are made of; or (3) the processing conducted on each wooden part in each country. Indeed, it is unclear whether merchandise from Scenarios 1, 2, and 4, contain simple one-piece doors and drawer faces, or doors and drawer faces, consisting of multiple wooden parts (*e.g.*, two rails, two stiles, and a panel). The Scenario 3 description indicates that only the rails, stiles, and panels of the doors, drawer faces, and frame were started and “semifinished” in China. These wooden parts are then shipped to a third country, where production is completed. For Scenario 3 merchandise, it is unclear which wooden parts (other than rails, stiles, and door panels) comprise the door, drawer face, and frame components started in China, and it is unclear whether those other parts were started or finished in China. The Scenario 4 description does not identify which wooden cabinet components the Scenario 4 complete wooden cabinet incorporates, and only states that a single wooden part, the

“toe kick,” is finished in China. Although the Scenario 4 description lacks this precision, as we explained above, we find it reasonable to consider that the Scenario 4 complete wooden cabinet contains a finished cabinet box, doors, drawers, and a frame, consistent with the descriptions of the other scenarios.

Given the need for additional information to conduct a cost of production and value-added analyses, we examined the record of the AD wooden cabinets proceeding. We determined that information from the first administrative review of the *Wooden Cabinets China AD Order* could supplement the information on this administrative record and assist in the analyses here.<sup>41</sup> Specifically, on the record of the first administrative review, there are two bills of materials reported in mandatory respondent Qufu Xinyu Furniture Company Ltd.’s (Qufu) December 30, 2021, response to a supplemental questionnaire. One bill of materials is for a “[ ],” and the second bill of materials is for a “[ ].”<sup>42</sup> Both of these wooden cabinets are [ ] cabinets. The first bill of materials, for [ ], is for a wooden cabinet with a cabinet box, four multi-part drawers, two multi-part doors, and a solid wood frame. The second bill of materials, for [ ], is for a tall cabinet with three multi-part drawers, two multi-part doors, a solid wood frame, and a shelf.<sup>43</sup> [ ] is similar to the scenario merchandise described by the petitioner because: (1) it is a [ ] wooden cabinet; (2) it has [ ] wooden cabinet components (*i.e.*, [ ]); and, (3) it has a [ ] (*i.e.*, [ ]).<sup>44</sup>

#### *Choosing the Most Similar Design to Scenario Merchandise*

We are using [ ] to illustrate the complete wooden cabinets in all four scenarios because no other information is available on the record that identifies the dimensions and wood type of every constituent wooden part of a cabinet design similar to scenario merchandise for this scope inquiry. This bill of materials identifies all the wooden parts of the complete wooden cabinet. This information, combined with the scenario descriptions, is sufficient to allow identification of the country that each wooden part was started in for the purpose of segregating expenses into the countries in which they were incurred.

Although [ ] potentially differs from the range of complete wooden cabinets that may fall under each scenario, it is a reasonable representation of all the scenario merchandise because it contains the same four wooden cabinet components as scenario

<sup>41</sup> See Memorandum, “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China, Preliminary Scope Determination – Information from the First Administrative Review,” (AR1 Memorandum), dated concurrently with this memorandum.

<sup>42</sup> *Id.* at Attachment 2 (containing Qufu’s Letter, “Qufu Xinyu First Supplemental Questionnaire Response,” dated December 30, 2021 (Qufu SQR), at Exhibit SQ1-5).

<sup>43</sup> *Id.*

<sup>44</sup> The scenario descriptions do not state whether the cabinets are RTA. Also, using only [ ] to illustrate all four types of scenario merchandise does not capture variation in the potential complexity of drawer faces and doors. This cabinet is identical to Scenario 3 merchandise because it has doors and drawer faces made of all rail, stiles, and panels; but, it is not clear if it is identical to the other scenarios’ doors and drawer faces. It is possible that Scenarios 1, 2, and 4 have one-part doors and drawer faces given that the petitioner’s scenario descriptions do not stipulate the number or type of wooden pieces which make up each component, except in the case of Scenario 3. See Memorandum, “Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China – Preliminary Scope Determination – Analysis Memorandum,” dated concurrently with this memorandum (Analysis Memorandum) at 4.

merchandise (*i.e.*, cabinet box, doors, drawers, and a frame). We used the bill of materials for this cabinet, to establish, the exact dimensions, count, and wood type of all the wooden parts contained in a similar wooden cabinet design and to group the parts by wooden cabinet component according to the scenario definitions. It was necessary to combine this information with the scenario descriptions because the scenario descriptions define scenario wooden cabinets according to which wooden cabinet components (*i.e.*, box, doors, *etc.*) and drawer sub-components (*i.e.*, drawer faces and drawer boxes) the wooden cabinets contain. The scenario descriptions do not provide: (1) a detailed description of every part required to produce the wooden cabinet (including dimensions for lumber, and appropriate measures of other inputs (*e.g.*, weight of nails consumed, *etc.*)); (2) a description of the layout of the cabinet; (3) the number of drawers and doors; and (4) whether those doors are made of one or multiple pieces (and any joinery is required).

*Using Qufu's Experience to Build up Cost for the Most Similar Design to Scenario Merchandise*

We are using the calculated values from the first administrative review to value production prices in China where Malaysia was the surrogate country.<sup>45</sup>

Qufu produced and sold [ ] during the period of review in the first administrative review; although it did not produce the exact same cabinet design as the bill of materials gathered from the same administrative review. The bill of materials product is [ ] than the product which Qufu produced even though they have the same [ ]. Both the bill of materials product and Qufu's produced product have the same [ ] under the *Orders*. Using this bill of materials, we built up the cost of manufacturing (COM) using our NME calculation methodology, and added the value for packing by combining country-specific volume-starts data with input and freight information from the [ ], to construct country-specific, partial COM, plus packing statistics for each petitioner described type of scenario merchandise. For non-wooden inputs, we identified whether each input was attributable to phase 1, phase 2, or phase 3 production inputs based on the ITC's descriptions of the production process:

The ITC Final Report describes the following three-phase production process of wooden cabinets:

The first phase of production involves the collection and preparation of sheets of wood products which are intended as the predominant composition of a wooden cabinet. The wood is then cut to shape using a variety of wood cutting and forming machinery to form the outer faces, interior drawers, backings, cabinet frames, door frames, drawer faces, and any other component that, when assembled, constitutes a completed cabinet. Aside from the forming of wooden components into the proper size and shape, components may be drilled, notched, punched or otherwise processed, where required.

In the second phase of production, the components are typically painted, stained, coated, or overlaid with other components or coverings, yielding a finished component. The inputs here include primer, paints and stains, clear coat protective

<sup>45</sup> See Analysis Memorandum at 2.

lacquers, enamels, glazing materials, vinyl, or other plastic overlay materials. At this stage, mounting and assembly hardware and components, such as hinges, screws, dowels, cams, and slides may be attached to the cabinet components.

In the third phase of production, depending on the order and customer, the finished components may be assembled into a finished cabinet that is then shipped to a customer, or the various components may be arranged in an RTA package.<sup>46</sup>

We used these phases of production to group the other tangible inputs in our country-specific partial cost buildups and refer to them below as phase 1, phase 2, and phase 3 production.

The further processing language in the *Orders* identifies “trimming, cutting, notching, punching, and drilling,” as processes which remove material from the wooden inputs used to produce the wooden parts, and these processes are identified as phase 1 production by the ITC. The only step occurring before these processes is the “collection and preparation” of the input materials.<sup>47</sup> In addition, the further processing language of the *Orders* identifies “painting, staining, and finishing” as additive processes which occur in phase 2 of production as described by the ITC. Also, the further processing language of the *Orders* stipulates that “assembly” occurs during phase 3 of production as described by the ITC. Finally, the further processing language of the *Orders* identifies “any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the in-scope product;” however, no such processes have been identified here.

From the bill of materials information, we can: (1) identify the country in which each wooden component part is started; (2) calculate country-specific volumes and values for [ ]; and (3) calculate a total volume of solid wooden component parts and percentages of the total for China and the third country. We used the latter as our allocation ratio for expenses other than hardware and accessories added at [ ] assembly.

For cabinets in which all wooden cabinet components were finished in the country they were started in (*i.e.*, for Scenarios 1 and 4) we can use the volume of wood started in each country to allocate all other expenses except assembly. This is because volume is a reliable allocation method given larger wooden parts require stronger connecting hardware and create more surface area to work or cover. For example, Qufu used [ ] inputs during phase 1 production, and the volume of wood processed into components in each country, appears to be a reasonable allocation method for determining which country consumed specific amounts of these inputs because logically it takes more sanding inputs to sand more area.<sup>48</sup> For all scenarios, we allocated all the assembly costs to the third country; because assembly for [ ] wooden cabinets amounts to filling a bag with the phase 3 inputs hardware/accessory parts and packing those parts with the wooden parts into a flat pack. It is not possible to discern assembly labor from other direct labor using Qufu’s cost data; therefore, it is allocated based on wood volume along with the other direct labor.

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<sup>46</sup> See ITC Final Report at I-11 through I-12; see also Malaysia Scope Ruling Request at Exhibit 3 (Petition at 12-14).

<sup>47</sup> See ITC Final Report at I-11.

<sup>48</sup> See Analysis Memorandum at Calculation Workbook, Tab ‘Cost Buildup.’

Also, we calculated separate country-specific percentages of the total volume of [ ] to allocate [ ], a phase 1 input, because Qufu applied [ ] to [ ] but not [ ].<sup>49</sup>

#### *Determination for Scenarios 1 and 4*

For Scenarios 1 and 4, we were able to build up country-specific cost of manufacture (COM) plus packing for China and the third country by using the percentages of total wood volume started into production in each country to allocate all other expenses except phase 3 assembly inputs. Phase 3 assembly inputs were all allocated to the third country where the complete wooden cabinet is assembled. Because the petitioner's description of Scenarios 1 and 4 merchandise indicate that all phase 1 and phase 2 production processes started in China were finished in China, we can establish which country all [ ] wooden parts, identified in the bill of materials for [ ], were processed (*i.e.*, started and finished) in. Although Qufu explained every [ ], and every [ ] of its cabinets, this information did not allow us to refine our analysis further because it was unclear whether all of these processes were used in the production of [ ].<sup>50</sup> For Scenarios 1 and 4, the percentage of the total wood volume started in each country represents a reasonable means to allocate the remaining expenses, other than assembly, because: (1) no production was shifted outside the country in which a wooden cabinet component started production; and, (2) it is reasonable for the volumes of wood should correlate with consumption of other inputs, given that increased wood volume represents additional mass and surface area, requiring stronger hardware and additional surface area to work and finish. There is no information on the record which presents a more reliable allocation methodology for this purpose.

To buildup country-specific cost of production, we started by calculating country-specific volumes of each wood type (*i.e.*, [ ]), to apportion the value of the wooden inputs to China and the third country, by multiplying the country-specific volume of each wood type by the total value for the wood type.<sup>51</sup> That value was calculated using the appropriate surrogate value.<sup>52</sup>

Next, in order to apportion to the appropriate country the value of all other inputs, we summed all wood volumes started into production in each country for Scenarios 1 and 4 to establish country-specific percentages of total wood started into production, and used the outcomes to allocate the cost of all other inputs except assembly hardware.<sup>53</sup> We found that for Scenario 1, [ ] percent of total wood volume was started in China, and [ ] percent of total wood volume was started in the third country, and for Scenario 4, [ ] percent of total wood volume was started in China, and [ ] percent of total wood volume was started in the third country.<sup>54</sup> We multiplied these percentages by the subtotal of input costs for phase 1 and phase 2

<sup>49</sup> See ARI Memorandum at Attachment 2 (Qufu's SQR at Exhibit SQ1-11 at 1 and 3).

<sup>50</sup> *Id.* (Qufu's SQR at Exhibit D-2).

<sup>51</sup> See Analysis Memorandum at Calculation Workbook, Tab 'Cost Buildup.'

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> See Analysis Memorandum at Calculation Workbook, Tab 'Wooden Component Analysis.'

production, as well as, labor, energy, and packing to arrive at country-specific partial costs for each cost category (*i.e.*, phase 1, phase 2, labor, energy, and packing).

We treated phase 3 assembly as occurring in the third country, given that the design product and Qufu produced merchandise are both [ ], and because the scenario descriptions lack clarity on this point. Additionally, we did not include overhead in our buildup because: (1) it is unclear whether the amount of overhead would remain the same when production is split between two countries; and (2) there was no evidentiary basis upon which to allocate overhead between the two countries considering our limited understanding of the cost of the tools required to produce the specific component parts. We summed the country-specific input costs to arrive at a total of COM plus packing for China and the third country. We calculated the percentage of the total of COM plus packing for China and the third country and used these outcomes to evaluate the locus of cost of production. To complete the product analysis, we preliminarily determined to include the hardware in our calculations.

We found that 76.85 percent of the cost for Scenario 1 occurred in the third country, and 98.28 percent of the cost for Scenario 4 occurred in the third country when we include the hardware. Therefore, we preliminarily determine that the cost of production is higher in the third country than in China for Scenario 1, and that the cost of production is significantly higher in the third country than in China in Scenario 4. Thus, we preliminarily determine that this factor supports a finding that substantial transformation occurred in the third country and that Scenarios 1 and 4 merchandise have a third country-of-origin.

#### *Analysis for Scenarios 2 and 3*

For calculating the cost of production for Scenarios 2 and 3 merchandise under this factor, we are unable to allocate phase 1 and phase 2 production inputs, labor, energy, or packing, which are necessary to calculate country-specific cost, because the scenario descriptions do not clearly indicate which processes occur in China and which occur in the third country. Further, it is unclear whether the term “semifinished” in the Scenario 2 and 3 descriptions: (1) refers to the extent of phase 2 finishing production that occurred in China; (2) is more overarching, meaning that most or all phase 1 production occurred in China; or (3) describes another production method. It is also unclear what type of door and drawer faces are included in scenario 2 and which wooden parts are included in Scenarios 2 and 3 (*i.e.*, an itemized list of the parts that make up the doors, drawer faces and frames in Scenario 2, compared to Scenario 3, and a list of the processes conducted in each country is required to differentiate these scenarios). Also, it is unclear which parts are started in China in Scenario 2 that are not started in China in Scenario 3, considering the scenario 3 description indicates that only the rails, stiles, and panels are started in China and finished in the third country. Therefore, there is insufficient information to determine country-specific percentages to apply to all the non-wooden components of cost, based solely on the scenario definitions, and, therefore, we have not calculated a cost of production or value added by further processing in the third country under this factor for Scenarios 2 and 3.

#### *The Petitioner’s Arguments Concerning the Cost of Production and Value Added*

The petitioner claims that: (1) the cost of raw materials for producing these wooden components, accounts for approximately half of the cost of goods sold; (2) the raw materials and

labor-intensive production process for doors, drawer faces, and frames alone accounts for a substantial majority of the cost to produce a wooden cabinet; and (3) the production process for the remaining component, (*i.e.*, cabinet box, which is made in Malaysia), is simpler, less costly and adds little value.<sup>55</sup>

The petitioner alleged that “the cost of raw materials for producing these wooden components, by itself, accounts for approximately half of the cost of goods sold.”<sup>56</sup> The cost of goods sold is determined during the creation of the income statement, and it is not calculated during the buildup of the cost of production, in our NME price methodology in use here; however, the COM is calculated, and it amounts to the direct materials, labor, and the energy required to manufacture scenario merchandise. Using Qufu’s cost experience to assemble [ ] product reveals that direct materials (*i.e.*, wooden inputs, plus phase 1, phase 2, and phase 3 inputs) account for [ ] percent of COM and of those, wooden direct materials (*i.e.*, [ ] account for [ ] percent of COM. Labor and energy average [ ] percent of COM.<sup>57</sup> For Scenario 1 merchandise, direct materials valued at [ ] USD were started in China, and [ ] USD were started in in the third country.<sup>58</sup> For Scenario 4 merchandise, direct materials valued at [ ] USD were started in China, and [ ] USD were started in the third country. In our example, direct materials represent much more than half of COM, while labor and energy only total [ ] percent of COM.<sup>59</sup> These calculations show that direct wooden inputs account for half of COM, in line with the petitioner’s allegation.

The petitioner alleged that “raw materials and labor-intensive production process for doors, drawer faces, and frames alone accounts for a substantial majority of the cost to produce a full {wooden cabinet} unit;” however, for Scenario 1 merchandise, direct materials introduced into production in China account only for [ ] percent of COM, and third country direct materials account for [ ] percent of COM, and for Scenario 4 merchandise, direct materials introduced into production in China only account for [ ] percent of COM.<sup>60</sup> Under this analysis, China-specific direct materials combined with all direct and indirect labor accounts for less than half of COM. This analysis counters the petitioner’s claim that “{b}ecause Malaysian companies are sourcing {wooden cabinet} components from China, little value is added by the further processing in Malaysia.”<sup>61</sup> Based on the information available on the record for this analysis, the majority of value in the cabinet box and drawer box was added in the third country and the differences in processing cost intensity between fully processing the doors, drawer faces and frames in China was less than that for the cabinet box and drawer box in the third country.

The petitioner also claims that “the production process {es} for the remaining {wooden cabinet} components {are} simpler and less costly;” however, based on the information available on the record the analysis shows, most of the cost is related to the inputs and little cost is related to labor, energy, or packing.<sup>62</sup> Therefore, differences in production which shift production

<sup>55</sup> See Malaysia Scope Ruling Request at 27.

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

<sup>57</sup> See Analysis Memorandum at Calculation Workbook, Tab ‘Cost Buildup’ (2: Piece Counts Compared to Country-Specific Wood Volume and Value).

<sup>58</sup> *Id.*

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

<sup>60</sup> *Id.*

<sup>61</sup> See Malaysia Scope Ruling Request at 27.

<sup>62</sup> *Id.*

processes from one country to another are mainly shifting input costs, and decisions about whether to finish parts started in China may have less effect on overall costs.

**Factor (j)(1)(v): The nature and sophistication of processing in the third country or countries**

Generally, some wooden cabinet components are produced in both China, and the third country for Scenarios 1, 2, and 3 merchandise. For Scenario 4 merchandise, most of the production and the resource-intensive parts of the production process are conducted in the third country.

It appears that all assembly of [ ] including [ ] occurs in the third country considering that it is only possible to assemble [ ] once the remaining components are completed in the third country. There is nothing in the scenario descriptions to indicate whether scenario merchandise are [ ] products or whether they include the required [ ], but [ ] are the least sophisticated processes conducted during manufacture of scenario merchandise. These processes amount to either [ ] or simple assembly of the complete wooden cabinet using the hardware.

Because Scenario 1 components are started and finished in China, we can discern which processes occurred in both China and the third country based on where each piece of wood was started into production using the information obtained in Qufu's bill of materials. It is unclear which production processes occurred in which countries for Scenarios 2 and 3 merchandise; therefore, we were unable to determine country-specific processing descriptions necessary to conduct even a basic analysis. In every scenario, the wooden cabinet component cabinet boxes and drawer boxes are produced in the third country, meaning that phase 1 and 2 production for all the parts necessary to produce a complete wooden cabinet occurred in the third country. This includes all phase 1 production steps which cut, shape, and finish wooden cabinet components and also phase 2 production steps that prepare surfaces and apply finishes.

For Scenario 1 merchandise, it is reasonable to infer that the nature and sophistication of processing in the third country are both considerably advanced compared to assembly, and nearly as advanced as the processing conducted in China, requiring tools sufficient to work all three wooden input types through many simple and some complex production processes. Certain labor- and machine-cost intensive processing steps for shaping door and drawer face profiles occur in China for Scenario 1 merchandise. The Scenario 1 description, however, does not state that the doors and drawer faces required complex joinery or consist of multiple parts; therefore, we find it reasonable to infer that the number of complex steps conducted in China is much lower than it could be if those features were also present.<sup>63</sup>

For Scenario 4 merchandise, considering our example, all [ ] wooden parts other than the "toe kick" are produced completely in the third country. The toe kick does not require any complex processing such as joinery and all complex processes required to manufacture Scenario 4 merchandise are conducted in the third country. For this scenario we find that the nature and

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<sup>63</sup> Multiple part doors and drawer faces require complex joinery, to make high quality part interfaces, which often combine five wooden parts (*i.e.*, two rails, two stiles, and a panel) rather than having a simple one-piece construction.

sophistication of the processing in the third country is considerably more advanced than assembly and more advanced than the processes required to produce the toe kick. The Scenario 4 description does not indicate whether it has complex door and drawer faces, whether it requires complex drawer-box joinery, or requires other complex processes; therefore, we were unable to make a more detailed analysis with the available information.

With the available information, it is not possible to conduct a full accounting of processing steps and make a comparative analysis of the complexities of steps undertaken in both countries because there is no information on the record with sufficient detail to do so, *e.g.*, a description of each process, the tools required to accomplish the task (and for factor 6 below, the cost of those tools and facilities). While we have Qufu's explanation of every processing step required to make a cabinet, including: the machines they use and machining times for processing, this information, in isolation, is insufficient for this analysis. Further, although we have Qufu's production description, it is not clear if every process Qufu identified is required to produce the Qufu product we are using as a surrogate (and for Scenarios 2 and 3 it is not clear which countries the production processes occurred in).<sup>64</sup> It is necessary to know the country in which every step of the process occurred, and what tooling was used to process every wooden part in China and in the third country to evaluate the differences in the nature and sophistication of all the processes conducted in each country. Importantly, we need to know what each process does to the inputs, and need some way to compare one process's sophistication to another process, beyond whether a process occurs on a more expensive machine. For Scenarios 1 and 4 merchandise, we were able to use wood volumes to allocate the rest of the processes between China and the third country because the components are produced entirely in one country, and for Scenarios 2 and 3, it is not feasible to use this method because it is unclear how much, and to what extent, processing of parts occurs in China versus the third country.

#### *Petitioner's Allegations and Commerce's Analysis*

In the petitioner's view, manufacturing of the wooden components accounts for much of the cost of production. The petitioner supports its contention by citing a domestic producer's testimony before the ITC that "{m}uch of the labor and capital equipment involved in the cabinet manufacturing process occurs at the component manufacturing stage."<sup>65</sup> It appears that the domestic producer is referring to phase 1 and phase 2 production processes, including all processes that shape the wooden inputs and finish the wooden pieces (*e.g.*, [ ], if we rely on Qufu's illustrative experience producing a cabinet with the same wooden cabinet components).

For scenario merchandise, however, there are some phase 1 and phase 2 production processes occurring in the third country because the cabinet box and drawer box were started in the third country; thus, part of the "component manufacturing stage" conducted for all four scenarios occurred in both countries distributing the most critical production processes between the two countries. Therefore, the petitioner's statement regarding the labor and capital equipment involved in the cabinet manufacturing process, needs to be considered as either occurring in China or a third country as part of the analysis under this factor.

<sup>64</sup> See Qufu's SQR at Exhibit D-2.

<sup>65</sup> See Malaysia Scope Ruling Request at 27.

For Scenario 1 merchandise, [ ] of the volume of the [ ] was started in China, indicating that the [ ] of the most complex processes were conducted in China and that volume accounts for [ ] of [ ] wooden pieces. Being able to determine where and how each piece was processed for Scenarios 2 and 3 would allow us to make a determination for those scenarios, but such information is not currently available.

The petitioner alleges that third-country companies, involved in the production of wooden cabinets containing Chinese-origin wooden cabinet components, are often limited to conducting assembly and packaging or repackaging, which are minor and insignificant processes relative to the labor-intensive and relatively more complex process of manufacturing wooden cabinet components. However, none of the production scenarios presented by the petitioner limit third country companies to assembly of finished cabinets or RTA packs and all the scenarios call for phase 1 and phase 2 manufacturing to occur in the third country for some wooden cabinet components; therefore, this point is not instructive for our purposes.<sup>66</sup>

The petitioner also alleges that phase 2 finishing operations, and phase 3 assembly operations, such as painting, staining, or mounting assembly hardware respectively, are also not nearly as complex and labor-intensive as the initial stages of cutting and shaping the raw wood materials into their final shape.<sup>67</sup> We are not able to discern labor costs by process or country with the information available to us on the record and, therefore, it is difficult to evaluate this assertion. Packing labor is a line item in the packing group of inputs, but there is no information available to discern packing in China (for intermediate components) from packaging in the third country; this information is required to disaggregate the labor by country at a higher degree of accuracy. For Scenarios 2 and 3 merchandise, it is unclear how to distribute phase 1 and phase 2 input consumption. It is more likely that a producer would complete some or most of phase 1 production before transferring the product to a third country because the product is still unfinished, but it is unlikely that a producer would stop phase 2 production once started in a country because all the steps lead up to applying a finish, and once stopped would likely require being repeated to assure good adherence of the finish. For Scenarios 1 and 4, wooden parts were [ ] in the country the parts were finished in.

We consider the allocation by wood volume used in Scenario 1 and 4 for labor to be a reasonable method for allocating country-specific labor where all components were finished in the country they were started in, but find insufficient detail exists on the record to allocate labor for Scenarios 2 and 3 when it is unclear which processes were conducted in which countries. For example, for Scenarios 2 and 3 merchandise, the petitioner's description does not specify which phase 1 and phase 2 processing steps occurred in China for each part. Also, the scenario descriptions do not explain whether a few pieces were completely processed through phase 2 and others were not. Thus, for Scenarios 2 and 3 merchandise, we are unable to answer these questions for all phase 1 and phase 2 production, labor, energy, packing (or overhead) cost groups based on record information.

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<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

## Conclusion

For Scenario 1, most of the wooden inputs are processed in China by count, (*i.e.*, [ ] of [ ]). Of the [ ] wood types included in our example, the [ ] is used in doors, drawers, and the frame and it is used wherever there is complex joinery. [ ] of the volume of the [ ] was started in China, indicating that a majority of the most complex processes were conducted in China. For Scenario 1, while some phase 1 processing is conducted in both countries, more of the most complex, cost-intensive work on the [ ] parts is conducted in China, and for Scenario 4 merchandise, almost no phase 1 production occurs in China. For phase 2 production, we are only able to place the processes in the appropriate country for Scenarios 1 and 4, because it is unclear which processes occur in China or the third country for Scenarios 2 and 3 merchandise. For all the scenarios, all the least sophisticated phase 3 processing occurs in the third country.

For Scenario 1 merchandise, the nature and sophistication of processing in the third country is considerably more advanced than assembly considering that phase 1, phase 2, and phase 3 processing all occur in the third country; however, processing the doors, drawer faces, and frame in China leads to more of the most advanced work being conducted in China on more solid wood pieces (*i.e.*, [ ]), indicating that, even though phase 1 production is split between China and the third country, more sophisticated processes are occurring in China. For Scenario 1 merchandise, the nature and sophistication of production in the third country is advanced, but not as advanced as that in China; therefore, this factor favors finding that substantial transformation did not occur in the third country and that the complete wooden cabinet has a Chinese country of origin.

For Scenarios 2 and 3, we are unable to discern which phase 1 and phase 2 processes occurred in China, and which occurred in the third country; therefore, we are unable to discern whether the nature and sophistication of processing in the third country was advanced such that it substantially transformed the components started in China.

For Scenario 4 merchandise, almost all the processes occurred in the third country, meaning that almost all the sophistication resided in the third country; therefore, this factor favors finding that substantial transformation occurred in the third country and, thus, that the country of origin is the third country.

### **Factor (j)(1)(vi): The level of investment in the third country or countries**

The level of investment likely follows the nature and sophistication of the processing conducted in each country on the product considering that different tooling is needed for conducting different steps of the production process.<sup>68</sup> Phase 1 production requires many complex tools, factory space to house the process chains, and input storage spaces to house inputs and scrap. Phase 2 production requires some spray tooling, but still a substantial amount of factory space to finish and cure the products. Phase 3 requires a lot of packaging machinery and handling

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<sup>68</sup> See AR1 Memorandum at Attachment 2 (Qufu's SQR Exhibit SQ1-11).

equipment, factory space to assemble the packages, storage space for packaging inputs and finished products.<sup>69</sup>

Because all the production scenarios include at least a component cabinet box and drawer box started and completed in the third country, a portion of the “complex” phase 1 production is conducted in third country, requiring machinery to conduct phase 1 processing steps, characterized by the petitioner as more capital- and labor-intensive than the tooling required in phase 2 finishing and phase 3 assembly tasks. Without a way to tie tools and facilities to the processes that were conducted on specific components it is not reasonable to make more than a basic analysis here. Further, without information regarding the differences in costs for a company operating all three phases of production in two countries rather than in a single country there is insufficient information to scale or allocate overhead; therefore, we have not included overhead in our analysis under this factor.

While Qufu’s production description lists the processes and machines used in production, its response was generalized to all its products. Therefore, it is unclear whether all those processes are required here.<sup>70</sup> From this information, we can identify likely machinery but are unable to value it to assess the level of investment required for each country-specific set of production steps conducted because this information is unavailable with respect to Qufu, particularly with respect to operating parts of the production line in two countries.

For Scenario 1 merchandise, with the available information, we find it reasonable to infer that the level of investment in the third country is likely less than that in China because more components are started and completed in China than in the third country. Indeed, the piece count started in China is higher than that started in the third country (*i.e.*, [ ] of [ ] pieces were started in China), the majority of the [ ] volume which requires more complex tooling to work and join was started in China (*i.e.*, [ ] percent of the volume of the [ ] was started in China), and the majority of components went through stage 2 processing in China.

For Scenario 1 merchandise, considering that certain components are started and finished in each country, some phase 1, and phase 2 production and all phase 3 production work is conducted in the third country, and some phase 1 and 2 production work is conducted in China.<sup>71</sup> A small amount of phase 3 packing of intermediate products is also conducted in China. The Scenario 1 description does not indicate whether its door faces and frames are made of single or multiple parts, or whether the drawer boxes required complex joinery; however, the illustrative Qufu bill of materials indicates that Scenario 1 does require some of these processes (*e.g.*, [ ]); however, no information, at this level of specificity, is available on the record, which allows us to specifically account for [ ] doors and drawer faces to introduce this variation into the analysis. On balance, regarding Scenario 1, although production is distributed between China and the third country, we find preliminarily that higher piece counts overall and higher volume of [ ] consumed in China compared to the third

<sup>69</sup> See Qufu’s SQR at Exhibit D-2.

<sup>70</sup> See AR1 Memorandum at Attachment 2 (Qufu’s SQR Exhibit SQ1-11).

<sup>71</sup> The petitioner’s affidavit provides some detail on cost of sets of production equipment required to complete certain sets of processes, which roughly relate to the ITC phases of production, but it is incomplete insofar as the identified [ ] and because it is based on indistinct groups of machinery, we have not relied on it. See Supplemental Questionnaire Response Exhibit 27 at 4.

country indicates requiring more tooling and facility space; thus, the level of investment in China is greater than that of the third country. Therefore, for Scenario 1, this factor favors finding that substantial transformation did not occur in the third country and that the country of origin of the complete wooden cabinet is China.

For Scenarios 2 and 3 merchandise, there is insufficient information on the record to determine which processes are conducted in China and which processes are conducted in the third country; therefore, we did not reach a determination for this prong of the analysis.

For Scenario 4 merchandise, we find that almost all the investment occurred in the third country because nearly every process in the production chain occurred there. Almost all phase 1, 2, and 3 production occurred in the third country. A small amount of phase 1, 2, and 3 production, necessary to construct the toe kick, occurred in China. Because almost all most of the processing for every wooden part of the cabinet except one is conducted in the third country, this factor favors finding that substantial transformation occurred in the third country for Scenario 4; thus, the country of origin for Scenario 4 complete wooden cabinets is the third country.

**Factor (j)(2): Where the Essential Component of the Product is Produced or Where the Essential Characteristics of the Product are Imparted**

In determining country of origin, Commerce may, pursuant to 19 CFR 351.225(j)(2), consider where the essential component of the product is produced or where the essential characteristics are imparted. As part of its country-of-origin analysis Commerce has previously considered whether processing in the exporting country changes the important, or essential, qualities or use of the component.<sup>72</sup> We find that the important qualities and end-use of the complete wooden cabinets are established by the wooden components that make up the structure of each cabinet.

Taken together, the different wooden cabinet components impart the completed cabinets' functionality, thus establishing the wooden inputs as the essential elements of the cabinet. Combining components allows the creation of wooden cabinets of specific use. Each cabinet has a certain number of storage spaces built into it, some of which can be covered by doors. Each cabinet can also contain shelves, and drawers in a variety of layouts and counts. Doors and drawer faces cover openings in the frame that house recesses which contain the drawers and open storage space areas within the structure. The frame is built on the cabinet box, which acts as the substructure of a wooden cabinet. The closed wooden cabinet houses storage areas and drawers in their stored positions. Doors and drawer faces have attached hardware that allows the user to access the individual storage space by opening the door or pulling the drawer out until it reaches an open position, through its attached knob or handle hardware. All other production inputs are consumed, cover the product, or are used as hardware or accessories which: (1) allow the wooden parts to function stably; (2) secure wooden component parts together as hardware;

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<sup>72</sup> See *Erasable Programmable Read Only Memories (EPROMs) from Japan: Final Determination of Sales at Less Than Fair Value*, 51 FR 39680, 39691-39692 (October 30, 1986) (EPROMs); see also Memorandum, "Antidumping Duty and Countervailing Duty Orders on Certain Hardwood Plywood Products from the People's Republic of China, Enforcement and Protect Act (EAPA) Investigation No. 7252: Preliminary Scope Ruling," dated August 26, 2021, at 8, unchanged in Memorandum, "Antidumping Duty and Countervailing Duty Orders on Certain Hardwood Plywood Products from the People's Republic of China, Enforcement and Protect Act (EAPA) Investigation No. 7252: Final Scope Ruling," dated January 21, 2022.

or, (3) provide interactive functionality (e.g., the hinge allows the door to swing, but does not close the storage area like the door itself). Although the hardware combines the wooden cabinet components, the components create the different kinds of utility provided by each cabinet design. For these reasons, we find that the wooden components, taken together, are the essential components of a complete wooden cabinet. As a result, the country in which the wooden components are placed into production is significant for purposes of our analysis, considering the scope of the *Orders* covers wooden cabinets and components that undergo certain further processing. In order to incorporate this concept into our analysis, we analyzed three different measures of how much wood was started in each country. We considered the piece count started into production in each country, (e.g., 1 for the toe kick) and we also considered the volume and value of wood started in each country.

A wooden cabinet consists of many wooden parts that are intrinsically connected and together are necessary for the cabinet to meet its design functionality. For all four production scenarios, individual wooden components enter into production in China and the third country at rates which can be measured by describing the ratio of wood volume and value of component parts started in China compared to that in the third country and by counting wooden pieces started into production in both China and the third country. We attributed wood to the country in which the individual wooden part was placed into production. We considered three measures of the wooden component parts as a guide to determining where the locus of the wooden component parts entered into the production process.

For Scenario 1 merchandise, [ ] of [ ] pieces or 71.29 percent of wooden parts were placed into production in China. These parts amount to 31.08 percent of the total volume of all wooden parts, and 31.58 percent of the value of the wooden parts.<sup>73</sup> The high piece count overall (i.e., [ ] of [ ]) started into production in China indicates that the essential characteristic of the complete cabinet is imparted in the third country. Although these pieces represent only nearly a third of volume and value, they are processed by the most advanced tooling, requiring the most skill. Also, 60.98 percent of the [ ] volume was started into production in China, and these [ ] wood pieces require the most complex work. Thus, we preliminarily determine that this factor favors finding that the essential characteristic is imparted in China because more wooden components, and those that are hardest to produce, were produced in China rather than in the third country (i.e., doors, drawer faces, and frame were produced in China and the cabinet box and drawer boxes were produced in the third country). Therefore, for Scenario 1 merchandise, this factor favors finding that the complete wooden cabinet has Chinese country of origin.

For Scenarios 2 and 3 merchandise, there was insufficient information on the record to determine which processes were conducted in which countries, therefore we did not reach a determination for this prong of the analysis.

For Scenario 4 merchandise, the piece count started in China is [ ] of [ ] wooden parts or 0.99 percent of wooden parts. These parts amount to 2.37 percent of the volume of wooden parts, and 2.31 percent of the value of the wooden parts.<sup>74</sup> For scenario 4, almost all of the production

<sup>73</sup> See Analysis Memorandum, Tab 'Cost Buildup' (2: Piece Counts Compared to Country-Specific Wood Volume and Value).

<sup>74</sup> *Id.*

occurred in the third country, and the toe kick appears to be of simple construction.<sup>75</sup> Also, 100 percent of the [ ], which requires the most complex work, was processed in the third country. For Scenario 4, almost all the wooden parts were started into production in the third country including all the parts for the doors, drawers, and frame wooden cabinet components, and all parts of the cabinet box except the toe kick. For this reason, this factor weighs in favor of finding that more of the essential characteristic is imparted in the third country through construction of components including all the ones that are difficult to produce and, thus, this factor favors finding the third country is the country of origin with respect to the complete cabinet in Scenario 4.

## VII. SUMMARY DETERMINATION FOR EACH SCENARIO

Below is a summary of each country-of-origin factor for each scenario.

### *Scenario 1 Determination Summary*

- (j)(1)(i) Class or Kind: Both the upstream product (*i.e.*, wooden cabinet components) and the downstream product (*i.e.*, full wooden cabinets) are a single class or kind because they are both described in the scope of the *Orders*. Doors, frames, and drawer faces are described as subject component parts, whether further processed or not in China (as long as the processing would not remove the merchandise from the scope if performed in China), and wooden cabinets consisting of a cabinet box combined with doors, drawers, and a frame are considered subject merchandise. This factor weighs in favor of finding that substantial transformation did not occur in the third country and the complete wooden cabinet is **Chinese** in origin.
- (j)(1)(ii) Physical Characteristics: Based on the names of the components and general description of the completed wooden cabinet, the products appear to share the same physical characteristics as subject merchandise. This factor weighs in favor of finding that substantial transformation did not occur in the third country and the complete wooden cabinet is **Chinese** in origin.
- (j)(1)(iii) Intended End-Use: The intended end-use of the downstream product does not change from the beginning of producing the first component in China until the end of packaging the full wooden cabinet in the third country. This factor weighs in favor of finding that substantial transformation did not occur in the third country and the complete wooden cabinet is **Chinese** in origin.
- (j)(1)(iv) Cost of Production/Value Added: We found that 76.83 percent of the cost of production for Scenario 1 occurred in the third country. The analysis favors finding that substantial transformation occurred in the third country. This result favors finding that substantial transformation occurred in the third country and therefore the **third country** is the country of origin of the complete cabinet.
- (j)(1)(v) Nature and Sophistication of Third Country Processing: One full and one partial wooden cabinet component (cabinet box and drawer box) are started and finished in the third country. Two full and one partial wooden cabinet component (doors, frames, and drawer faces) are started and finished in China. Final assembly is conducted in the third country. Components are started in both countries, meaning that both countries conduct the most labor- and capital-intensive processes (*i.e.*, phase 1 production

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<sup>75</sup> *Id.*

processes, that remove material from wooden inputs), both countries also conduct the less labor- and capital-intensive phase 2 steps (finishing steps that add coatings), and both conduct some of the least labor- and capital-intensive, phase 3, packaging steps. China packages its finished components for shipment to the third country, and Malaysia packages the final product. All assembly is conducted in the third country. The scenario description does not indicate whether door faces and frames are simple or complex, or whether the drawer boxes required complex joinery. For Scenario 1 merchandise, the nature and sophistication of processing in the third country are both advanced compared to assembly, and nearly as advanced as the processing conducted in China, requiring tools sufficient to work all three wooden input types through many simple and some complex production processes. However, the majority of the [ ] is started into process in China and the [ ] requires the most complex processes of any component parts. This factor weighs in favor of finding that substantial transformation did not occur in the third country and the complete wooden cabinet is **Chinese** in origin.

- (j)(1)(vi) Level of Investment in the Third Country: Some phase 1, 2, and 3 production work is conducted in the third country, and some phase 1 and 2 production work is conducted in China. The scenario description does not indicate whether door fronts and frames are simple or complex, or whether the drawer boxes required complex joinery. Less components are finished in the third country than in China, and those components require the most complex processes, favoring finding that substantial transformation did not occur in the third country and that the complete wooden cabinet is **Chinese** in origin.
- (j)(2) The Essential Component or Character: [ ] of [ ] pieces or 71.29 percent of wooden parts were started into production in China. These parts amount to 31.08 percent of the volume of wooden parts, and 31.58 % of the value of the wooden parts.<sup>76</sup> The high piece count started into production in China indicates that the essential characteristic of the complete cabinet is imparted in China. Although these pieces represent only nearly a third of volume and value, they are processed by the most advanced tooling, requiring the most skill. Also, 60.98 percent of the [ ] volume was started into production in China, and these solid wood pieces require the most complex work. This indicates that the essential characteristic of the complete cabinet is imparted in China, and thus this factor weighs in favor of finding that the complete wooden cabinet is **Chinese** in origin.

Based on the totality of the factors in the analysis, we preliminarily find the country of origin for merchandise under Scenario 1 is **China**. Therefore, we find that complete cabinets produced under Scenario 1 are subject to the scope of the *Orders*.

### *Scenario 2 Determination Summary*

- (j)(1)(i) Class or Kind: Both the upstream product (*i.e.*, wooden cabinet components) and the downstream product (*i.e.*, full wooden cabinets) are a single class or kind because they are both described in the scope of the *Orders*. Doors, frames, and drawer faces are described as subject component parts, whether further processed or not in China (as

<sup>76</sup> See Analysis Memorandum, Tab 'Cost Buildup' (2: Piece Counts Compared to Country-Specific Wood Volume and Value).

long as the processing would not remove the merchandise from the scope if performed in China), and wooden cabinets consisting of a cabinet box combined with doors, drawers, and a frame are considered subject merchandise. This factor weighs in favor of finding that substantial transformation did not occur in the third country and the complete wooden cabinet is **Chinese** in origin.

- (j)(1)(ii) Physical Characteristics: Based on the names of the components and general description of the complete cabinet, the products appear to share the same physical characteristics as subject merchandise. This factor weighs in favor of finding that substantial transformation did not occur in the third country and the complete wooden cabinet is **Chinese** in origin.
- (j)(1)(iii) Intended End-Use: The intended end-use of the downstream product does not change from the beginning of producing the first component in China until the end of packaging the full wooden cabinet in the third country. This factor weighs in favor of finding that substantial transformation did not occur in the third country and the complete wooden cabinet is **Chinese** in origin.
- (j)(1)(iv) Cost of Production/Value Added: There was insufficient record information to make a determination.
- (j)(1)(v) Nature and Sophistication of Third Country Processing: There was insufficient record information to make a determination.
- (j)(1)(vi) Level of Investment in the Third Country: There was insufficient record information to make a determination.
- j(2) The Essential Component or Character: [ ] of [ ] pieces or 71.29 percent of wooden parts were started into production in China. These parts amount to 31.08 percent of the volume of wooden parts, and 31.58 percent of the value of the wooden parts.<sup>77</sup> The high piece count started into production in China indicates that the essential characteristic of the complete cabinet is imparted China. Although these pieces represent only nearly a third of volume and value, they are processed by the most advanced tooling, requiring the most skill. Also, 60.98 percent of the [ ] volume was started into production in China, and these solid wood pieces require the most complex work. This indicates that the essential characteristic of the complete cabinet is imparted in China, and thus this factor weighs in favor of finding that the complete wooden cabinet is **Chinese** in origin.

For Scenario 2, we did not reach a country of origin determination based on a totality of the factors because there was insufficient record information.

### *Scenario 3 Determination Summary*

- (j)(1)(i) Class or Kind: Both the upstream product (*i.e.*, wooden cabinet components) and the downstream product (*i.e.*, full wooden cabinets) are a single class or kind because they are both described in the scope of the *Orders*. Doors, frames, and drawer faces are described as subject component parts, whether further processed or not in China (as long as the processing would not remove the merchandise from the scope if performed in China), and wooden cabinets consisting of a cabinet box combined with doors, drawers, and a frame are considered subject merchandise. This factor weighs in favor

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<sup>77</sup> See Analysis Memorandum, Tab 'Cost Buildup' (2: Piece Counts Compared to Country-Specific Wood Volume and Value).

of finding that substantial transformation did not occur in the third country and the complete wooden cabinet is **Chinese** in origin.

- (j)(1)(ii) Physical Characteristics: Based on the names of the components and the general description of the completed cabinet, products appear to share the same physical characteristics as subject merchandise. This factor weighs in favor of finding that substantial transformation did not occur in the third country and the complete wooden cabinet is **Chinese** in origin.
- (j)(1)(iii) Intended End-Use: The intended end-use of the downstream product does not change from the beginning of producing the first component in China, until the end of packaging the full wooden cabinet in the third country. This factor weighs in favor of finding that substantial transformation did not occur in the third country and the complete wooden cabinet is **Chinese** in origin.
- (j)(1)(iv) Cost of Production/Value Added: There was insufficient record information to make a determination.
- (j)(1)(v) Nature and Sophistication of Third Country Processing: There was insufficient record information to make a determination.
- (j)(1)(vi) Level of Investment in the Third Country: There was insufficient record information to make a determination.
- j(2) The Essential Component or Character: [ ] of [ ] pieces or 71.29 percent of wooden parts were started into production in China. These parts amount to 31.08 percent of the volume of wooden parts, and 31.58 percent of the value of the wooden parts.<sup>78</sup> The high piece count started into production in China indicates that the essential characteristic of the complete cabinet is imparted in China. Although these pieces represent only nearly a third of volume and value, they are processed by the most advanced tooling, requiring the most skill. Also, 60.98 percent of the [ ] volume was started into production in China, and these solid wood pieces require the most complex work. This indicates that the essential characteristic of the complete cabinet is imparted in China, and thus this factor weighs in favor of finding the wooden cabinet is still **Chinese** in origin.

We did not reach a country-of-origin determination based on a totality of the factors because there was insufficient record information.

#### *Scenario 4 Determination Summary*

- (j)(1)(i) Class or Kind: Both the upstream product (*i.e.*, wooden cabinet components) and the downstream product (*i.e.*, full wooden cabinets) are a single class or kind because they are both described in the scope of the *Orders*. Toe kicks are described as subject component parts (a typical part of a cabinet box), and wooden cabinets consisting of a cabinet box combined with doors, drawers, and a frame are considered subject merchandise. This factor weighs in favor of finding that substantial transformation did not occur in the third country and the complete wooden cabinet is **Chinese** in origin.
- (j)(1)(ii) Physical Characteristics: Based on the names of the components and the general description of the completed cabinet, products appear to share the same physical characteristics as subject merchandise. This factor weighs in favor of finding that

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<sup>78</sup> See Analysis Memorandum, Tab 'Cost Buildup' (2: Piece Counts Compared to Country-Specific Wood Volume and Value).

substantial transformation did not occur in the third country and the complete wooden cabinet is **Chinese** in origin.

- (j)(1)(iii) Intended End-Use: The intended end-use of the downstream product does not change from the beginning of producing the first component in China until the end of packaging the full wooden cabinet in Malaysia. This factor weighs in favor of finding that substantial transformation did not occur in the third country and the complete wooden cabinet is **Chinese** in origin.
- (j)(1)(iv) The cost of production/value added of further processing in the third country: We found 98.27 percent of the cost for Scenario 4 occurred in the third country and 1.73 percent of the cost occurred in China. This factor weighs in favor of finding that substantial transformation occurred in the third country and the wooden cabinet is **third country** in origin.
- (j)(1)(v) Nature and Sophistication of Third Country Processing: Every part of the box except the toe kick was started in Malaysia. The toe kick was started and finished in China. Some packaging occurs in China and final assembly and packaging is conducted in Malaysia. Phase 1 and phase 2 production was performed in China for the toe kick. Phase 1 and 2 production was performed in Malaysia for every wooden part except the toe kick. Some Phase 3 packaging was performed in China to export the toe kick to Malaysia. The remaining Phase 3 assembly and packaging were conducted in China. Because almost all production is conducted in Malaysia this factor favors finding that substantial transformation occurred in the third country and the wooden cabinet is **third country** in origin.
- (j)(1)(vi) Level of Investment in the Third Country: Almost all phase 1, 2, and 3 production occurred in the third country. A small amount of phase 1, 2, and 3 production occurred in China. Because almost all most of the processing for every component except one is conducted in the third country, this factor weighs in favor of finding that substantial transformation occurred in the third country and the wooden cabinet is **third country** in origin.
- j(2) The Essential Component or Character: The piece count started in China is [ ] of [ ] or 0.99 percent of wooden parts. These parts amount to 2.37 percent of the volume of wooden parts, and 2.31 percent of the value of the wooden parts.<sup>79</sup> Also, 100 percent of the [ ] was started into production in the third country. Almost all of the wood was started into production in the third country. This factor indicates that the essential characteristic of the complete cabinet is imparted in the third country, and thus weighs in favor of finding that the wooden cabinet is **third country** in origin.

Based on the totality of the factors in the analysis, we preliminarily find the country of origin for merchandise under Scenario 4 is the **third country**. Therefore, we find that complete cabinets produced under Scenario 4 are not subject to the scope of the *Orders*.

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<sup>79</sup> *Id.*

## VIII. COMMENTS FROM INTERESTED PARTIES

### Issue 1: Whether Commerce Properly Initiated the Scope Ruling Inquiry

#### American Home

- Commerce should terminate the scope inquires because the petitioner’s scope ruling request failed to provide a sufficiently detailed product description for Commerce’s consideration and that could be enforced by U.S. Customs and Border Protection (CBP).<sup>80</sup>
  - The petitioner vaguely described in its scope ruling applications non-exhaustive scenarios, in which Chinese-origin components are used to produce wooden cabinets in Malaysia.<sup>81</sup>
  - In its initiation of the scope inquiry, Commerce contravenes its regulatory and past practice to limit its scope rulings to the products set forth in the relevant applications, thereby recognizing the petitioner’s failure to define a specific product, or set of products, by soliciting comments from interested parties to identify other specific production scenarios occurring in Malaysia.<sup>82</sup>
  - The scope requests were not specific enough to provide an adequate basis for Commerce to issue scope rulings because they did not contain product information corresponding to the third-country processing scenarios at issue.<sup>83</sup>
  - American Home cannot sufficiently address the factors Commerce typically evaluates in its substantial transformation analysis without a clear understanding of the products alleged to be circumventing the *Orders*, and the related processing in the third countries.<sup>84</sup>
  - The preamble to Commerce’s new scope regulations, confirms that Commerce intended to require “parties submitting scope ruling applications to provide a concise public description of the product at issue,”<sup>85</sup> which the petitioner did not do in this case.
  - The CIT has clarified that Commerce must address the “threshold question of whether the request was specific enough to provide an adequate basis for a scope ruling.”<sup>86</sup>
  - Section 351.225(a) of Commerce’s regulations and Commerce’s past practice confirm that Commerce only issues scope rulings on a particular product at issue, *i.e.*, whether a particular product is covered by the scope of an antidumping or countervailing duty order.<sup>87</sup>
  - The CAFC has held that Commerce’s explanation for its determination may be unreasonable if it “fail{s} to consider an important aspect of the problem,” and,

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<sup>80</sup> See American Home’s Comments at 2.

<sup>81</sup> *Id.* at 5.

<sup>82</sup> *Id.* at 6 (citing Malaysia Initiation Memorandum at 3-4).

<sup>83</sup> *Id.* at 6 (citing 19 CFR 251.225(c)(2)(1)(E)).

<sup>84</sup> *Id.* at 6 (citing Malaysia Initiation Memorandum at 4).

<sup>85</sup> *Id.* at 3 (citing *Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*, 85 FR 49472, 49477 (August 13, 2020) (*Regulations Proposed Rule*)).

<sup>86</sup> *Id.* at 3 (citing *Fabuwood Cabinetry Corp. v. United States*, 469 F. Supp. 3d 1373, 1383 (CIT 2020)).

<sup>87</sup> *Id.* at 4 (citing 19 CFR 351.225(a); Memorandum, “Antidumping and Countervailing Duty Orders on Forged Steel Fittings from the People’s Republic of China: Final Scope Ruling on Midwest Diversified Technologies’ Self-Drilling Anchor Bolt Systems Couplers,” dated July 1, 2021, Exhibit 1; and Memorandum, “Final Scope Ruling: U.S. Wheel’s Passenger Vehicle and Light Truck Discs and Rims,” dated May 3, 2021, 16 (“{W}e note that our findings here are limited to the specific products at issue in the request”), Exhibit 2).

accordingly, has an “obligation to address important factors raised by comments from petitioners and respondents.”<sup>88</sup>

### Cabinets to Go

- A scope inquiry is not necessary here, because a circumvention inquiry is adequate to determine if these products, processed in a third country, are subject to duties.<sup>89</sup>
  - A scope inquiry is intended to seek clarification regarding whether a particular item is subject merchandise while a circumvention inquiry is meant to determine whether “a product in the penumbra of an order, outside the literal scope of its language, is covered by that order.”<sup>90</sup> However, the petitioner is asking Commerce to simultaneously perform both inquiries resulting in confusion and potentially an unlawful expansion of the scope of the *Orders*.
  - As the CIT explained in *Ceramark*, “{c}ircumvention takes two forms, either a product’s country of origin has been manipulated (merchandise completed or assembled in the United States and merchandise completed or assembled in other foreign countries), or the product itself has been manipulated (minor alteration of merchandise or later developed merchandise).”<sup>91</sup>
  - While Commerce may expand the scope of the order beyond its literal terms in circumvention rulings, “{Commerce} cannot,” however, change the order or interpret it “in a way contrary to its terms.”<sup>92</sup>
    - The scope is generally defined at the time that Commerce initiates the investigation and is derived from the description of the “class or kind” of merchandise contained in the domestic industry’s petition.<sup>93</sup>
    - Commerce defines the scope.<sup>94</sup>

### Cabinetworks’ Companies

- The petitioner’s scope ruling request is deficient.
  - The blanket scope request does not sufficiently describe a particular product subject to the scope injury, as required under 19 CFR 351.225(c).<sup>95</sup>

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<sup>88</sup> See American Home’s Comments at 7 (citing *SKF USA Inc. v. United States*, 630 F.3d 1365, 1374 (CAFC 2011)).

<sup>89</sup> See Cabinets to Go’s Comments at 4.

<sup>90</sup> *Id.* at 4 (citing *Ceramark Tech., Inc. v. United States*, 11 F. Supp. 3d 1317, 1322 (CIT 2014) (*Ceramark*) (citing 19 U.S.C. § 1677j (2012)).

<sup>91</sup> *Id.* (citing *Ceramark* at 1399 n.9).

<sup>92</sup> *Id.* (citing *Eckstrom Indus., Inc. v. United States*, 254 F.3d 1068, 1072 (CAFC 2001)). There is, however, a statutory provision for modifying the scope language to include “later-developed merchandise” should the court find that such merchandise is circumventing the scope of the order. See 19 U.S.C. § 1677j(d) (2012); *Target Corp. v. United States*, 609 F.3d 1352, 1363 (CAFC 2010) (finding that Commerce’s determination that mixed-waxed candles are “later-developed merchandise” covered by the antidumping duty order on petroleum candles from China was supported by substantial evidence).

<sup>93</sup> *Id.* at 5 (citing *Hardwood and Decorative Plywood from the People’s Republic of China*, 77 FR. 65,172, 65,173 (Oct. 25, 2012) (The scope language is subject to revision even up until the publication of the antidumping and/or countervailing duty order. After publication of those orders, the scope language may be changed only by interpretation in the context of requests by interested parties for scope rulings or by changed-circumstances reviews. The scope of an antidumping/countervailing duty order may not be expanded through the scope ruling process.)).

<sup>94</sup> See Cabinets to Go’s Comments at 5 (citing *Trade Assocs. Grp., Ltd. v. United States*, 961 F. Supp. 2d 1306, 1313 (CIT 2014) (citing 19 U.S.C. §§ 1673(1), 1673e(a)(2)).

<sup>95</sup> See Cabinetworks’ Companies’ Comments at 3-4.

- The petitioner did not avail itself of the opportunity granted by Commerce to provide details on specific products for consideration.<sup>96</sup>
- The petitioner’s request for “any and all merchandise” fails to meet the standard of detailed description of a particular product, which is a fundamental requirement for a valid scope ruling application under Commerce’s regulations.<sup>97</sup>
- The lack of a specific product in the request also presents due process concerns as interested parties are deprived from commenting on a specific product and providing Commerce with pertinent factual information.<sup>98</sup>

## DH Exporters

- In accordance with 19 CFR 351.225(c)(2)(i), an application for a scope inquiry must include a detailed description of the product; however, the petitioner’s vague request lacks product specificity.<sup>99</sup>
  - The petitioner’s initial scope application includes finished and unfinished wooden cabinet components that are manufactured in China and that undergo further processing in Malaysia before being exported to the United States.<sup>100</sup> In its supplemental questionnaire response, the petitioner expanded upon its initial scope application to further include unfinished parts of wooden cabinet components that are manufactured in China and that undergo further processing in Malaysia before being exported to the United States.<sup>101</sup>
  - The petitioner has not described the physical characteristics of “semifinished {wooden cabinet component} doors, drawer faces, and frames” in Scenario 2 or “semifinished parts...rails, stiles, and panels” in Scenario 3.<sup>102</sup>
  - Commerce’s regulations have always required that the party filing the scope application must provide a clear physical description of the product subject to the scope ruling request.<sup>103</sup> Moreover, new regulations have been added to 19 CFR 351.225(c) which require “clear and legible photographs” and “description of parts.”<sup>104</sup> However, the petitioner’s scope ruling application does not include any of these.
  - It is not clear that information regarding what the petitioner considers to be unfinished wooden cabinet components and unfinished parts of components are not “reasonably available” to them.<sup>105</sup>
  - DH Exporters provided a small sample of Commerce’s scope rulings rejection letters detailing three 2022 rejections of scope applications for lacking public summaries of the product’s description and/or a description of the parts, materials, and the production processes.<sup>106</sup>

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<sup>96</sup> *Id.* at 4-5.

<sup>97</sup> *Id.* at 5.

<sup>98</sup> *Id.*

<sup>99</sup> *See* DH Exporters’ Comments at 3.

<sup>100</sup> *Id.* at 4; *see also* Malaysia Scope Ruling Request at 5.

<sup>101</sup> *Id.* (citing petitioner’s Letter, “Response to Request for Additional Information,” dated May 17, 2022 (Petitioner’s SQR)).

<sup>102</sup> *Id.* (citing Petitioner’s SQR at 5).

<sup>103</sup> *Id.* (citing 19 CFR 351.225(c)(i) (2020); 19 CFR 351.225(c)(2)(i) (2022)).

<sup>104</sup> *See* 19 CFR 351.225(c)(2)(i)(E)&(F).

<sup>105</sup> *See* DH Exporters Comments at 6.

<sup>106</sup> *Id.* at Exhibit 1.

## Petitioner's Rebuttal Comments

- Commerce properly initiated the scope inquiry, so there is no reason to reconsider initiation or rescind the inquiry.<sup>107</sup>
  - The product description in the allegation was not deficient. It was filed properly using Commerce's standardized application and contains all reasonably available information and documentation.<sup>108</sup>
  - The inquiry covers "any and all" merchandise that meets the scope of the *Orders*, that is further processed in Malaysia and continues to meet the scope of the *Orders*.<sup>109</sup>
  - The list of four possible production scenarios, is non-exhaustive, clarifies the product at issue, and illustrates how duties under the *Orders* should be assessed in each of the four scenarios.<sup>110</sup>
  - Commerce accepted the scope ruling application and initiated a scope inquiry allowing respondent interested parties sufficient notice regarding the products at issue.<sup>111</sup>
  - The fact that the preamble to Commerce's updated scope regulations acknowledges that the domestic industries will have limited information about exporters and production experiences shows that Commerce adopted a flexible standard, which the petitioner's allegation has met.<sup>112</sup>
  - The level of detail of the product description and the nature of the inquiry is similar to other inquiries initiated by Commerce, e.g., *Quartz Surface Products Initiation*. The fundamental purpose of this scope inquiry is to determine whether subject merchandise produced in China and then further processed in a third country remains subject to the *Orders*.<sup>113</sup>
  - Commerce has the legal authority to use scope inquiries to address evasion concerns and transshipment of merchandise subject to AD/CVD orders.<sup>114</sup>
    - Congress vested Commerce with the authority to address evasion and circumvention,<sup>115</sup> and there is nothing in the law that precludes Commerce from using scope ruling procedures to prevent third-country processing and transshipment from undermining AD/CVD relief.<sup>116</sup>
    - Commerce explained that the purpose of the recent modifications to its regulations, including for scope rulings, was to better use its statutory authority to address evasion of AD/CVD orders, including to make class or kind determinations.<sup>117</sup>

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<sup>107</sup> See Petitioner's Rebuttal Comments at 2-8.

<sup>108</sup> *Id.* at 3 (citing to 19 CFR.225(c)).

<sup>109</sup> *Id.* at 5.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 6.

<sup>112</sup> *Id.* (citing *Regulations Final Rule*, 86 FR at 52300, 52315 and 19 CFR 351.225(c)(2)(i)).

<sup>113</sup> *Id.* at 7 (citing *Quartz Surface Products from the People's Republic of China: Initiation of Scope and Circumvention Inquiries of the Antidumping Duty and Countervailing Duty Orders*, 87 FR 6844 (February 7, 2022); and *Certain Quartz Surface Products from the People's Republic of China: Antidumping and Countervailing Duty Orders*, 84 FR 33053, 33055-56 (July 11, 2019) (*Quartz Surface Products Initiation*)).

<sup>114</sup> *Id.* at 8-10.

<sup>115</sup> *Id.* at 9 (citing *MS Int'l v. United States*, 32 F.4th 1145, 1151 (citing *Mitsubishi Elec. Corp. v. United States*, 700 F. Supp. 538, 555 (1988) (CIT 1988), and *NTN Bearing Corp. of Am. v. United States*, 747 F. Supp. 726, 732 (CIT 1990))).

<sup>116</sup> *Id.* at 9 (citing 19 CFR 351.225(a)).

<sup>117</sup> *Id.* (citing *Regulations Proposed Rule*).

**Commerce's Position:** We agree with the petitioner and find no basis to rescind the initiation of this inquiry. Although there was insufficient information to make a scope determination on “any and all” wooden cabinets produced in China and further processed in Malaysia, given the myriad varieties of wooden cabinets and components, we were able to focus our analysis on the four illustrative production scenarios described by the petitioner and make a determination on two of those four scenarios. The petitioner has not provided a sufficiently detailed description of the rest of the continuum of products that would be encompassed by examining all cabinets produced in the third country, containing at least a single wooden part which was started in China for us to proceed with a broader analysis. Further, as explained above, we do not have sufficient information on the record to complete an examination of Scenarios 2 and 3 merchandise. For these reasons, we can only make determinations on products for which we could complete the analysis for every factor of 19 CFR 351.225(j)(1) and (j)(2).

American Home contended that there was insufficient information to initiate this inquiry. At the time of initiation, we considered pre-initiation comments. We are cognizant of the asymmetries of available information to different types of interested parties and understand that parties other than the foreign manufacturers do not usually have access to all foreign production data.<sup>118</sup>

DH Exporters and Cabinetworks argued that there are substantial deficiencies due to vagueness in the scenario descriptions. Although we initiated, and gathered information from the first administrative review, we found that the record still did not have sufficiently detailed information to make a country-of-origin determination with respect to Scenario 2 and 3 merchandise. Therefore, Commerce reasonably concluded that is only able to proceed with scope determinations for Scenarios 1 and 4.

In response to Cabinets to Go's argument that a circumvention inquiry is appropriate and a scope determination is not required, we clarify that we cannot proceed with a circumvention inquiry until we have determined whether products at issue are subject to the scope of the *Orders*. Because products at issue contain wooden cabinet components of mixed provenance, we must first determine the country of origin of the complete wooden cabinets, which we do as part of a scope analysis pursuant to 19 CFR 351.225(j).

## **Issue 2: Whether Commerce Should Conduct a Substantial Transformation Analysis**

### **Prominent Target**

- Consideration of each substantial transformation regulatory criterion supports a finding that [ ] used by Prominent Target to produce wooden cabinets in Malaysia is substantially transformed in Malaysia.<sup>119</sup>
  - A wooden cabinet is a different class or kind from raw lumber (and other wood inputs), as they can be used in a myriad of applications.<sup>120</sup>
  - The intended end use of a wooden cabinet is fundamentally different from those of the raw materials, because wooden cabinets have a physical characteristic applicable to a particular intended use.<sup>121</sup>

<sup>118</sup> See *Regulations Final Rule*, 86 FR at 52315.

<sup>119</sup> See Prominent Target's Comments at 9-10 (citing 19 CFR 351.213(j)).

<sup>120</sup> *Id.* at 9 (citing 19 CFR 351.2{25}(j)(1)(i)).

<sup>121</sup> *Id.* at 9-10 (citing 19 CFR 351.2{25}(j)(1)(ii); *Final Determination*, I-9).

- The cost of production/value added of Prominent Target’s production process in Malaysia is substantial and constitutes a significant amount of the total cost.<sup>122</sup>
- Equipment lists and equipment purchase records demonstrate that Prominent Target’s manufacturing processes in Malaysia are highly sophisticated, and are not just simple processing.<sup>123</sup>
- Prominent Target’s tax returns and financial statements show that it is heavily invested in Malaysia with substantial expenditures for property, plant, and equipment.<sup>124</sup>

### Petitioner’s Rebuttal Comments

- The record needs to be further developed to conduct a substantial transformation analysis, particularly regarding products that are produced by combining Chinese-origin wooden cabinet components and component parts with Malaysian-origin wooden cabinet components and component parts.<sup>125</sup>
  - A substantial transformation analysis is generally used to determine the country of origin for a product.<sup>126</sup> It was recently codified into Commerce’s regulations, and it is a reasonable method to make country-of-origin determinations.<sup>127</sup>
  - A substantial transformation analysis concerning scenarios involving products made for a combination of wooden cabinet component and component parts cannot be done without producer-specific information from the quantity and value (Q&V) questionnaire responses and surrogate values to determine production costs and value-added amounts.<sup>128</sup>

**Commerce’s Position:** We find it is appropriate to conduct a country-of-origin analysis here, because the scope is silent on the inclusion of third-country origin, like components, in merchandise that otherwise meets the physical description of subject merchandise (*i.e.*, complete wooden cabinets). Commerce’s regulations at 19 CFR 351.225(j) address how Commerce evaluates country of origin, and we have explained the outcomes of our analyses at length above.

### Issue 3: Whether Commerce Should Include a Certification Program

#### American Home

- Commerce should limit participation to only producers, importers, and exporters of wooden cabinets.<sup>129</sup>
  - In its initiation, Commerce failed to clarify that these inquiries do not cover household wooden furniture that is not for permanent installation.<sup>130</sup> These scope inquiries should be limited to the scope of the *Orders*.<sup>131</sup>

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<sup>122</sup> *Id.* at 10 and Exhibit 8 (citing 19 CFR 351.2{25}(j)(iii)).

<sup>123</sup> *Id.* at 10 and Exhibit 3 (citing 19 CFR 351.2{25}(j)(iv)).

<sup>124</sup> *Id.* at 10 and Exhibit 12 (citing 19 CFR 351.2{25}(j)(v)).

<sup>125</sup> See Petitioner’s Rebuttal Comments at 19-22.

<sup>126</sup> *Id.* at 20 (citing *Bell Supply Company, LLC v. United States*, 888 F.3d 1222, 1228-29 (CAFC 2018)).

<sup>127</sup> *Id.* (citing 19 CFR 351.225(j)(1)).

<sup>128</sup> *Id.* at 21-22.

<sup>129</sup> See American Home’s Comments at 8-13; see also American Home’s Letter, “Pre-initiation Comments,” dated May 19, 2022 (American Home’s Pre-Initiation Comments) at 3-4.

<sup>130</sup> *Id.* at 8 (citing Malaysia Initiation Memorandum at 1-4).

<sup>131</sup> *Id.* at 8-11.

- Commerce also failed to clarify in the initiation the HTSUS codes that it intends to use in the inquiry.<sup>132</sup> To the extent that Commerce uses CBP data to identify potential recipients of a Q&V questionnaire, it should use only HTSUS 9403.40.9060, instead of over-inclusive data using six-digit HTS subheadings, *i.e.*, 9403.40, 9403.60, and 9403.90, which results in a sweeping list of producers, importers, and exporters of non-subject merchandise.<sup>133</sup>
- Commerce should not require importer or exporter certification for entry of non-wooden cabinet wooden furniture from Malaysia into the United States, because such furniture is not subject to the scope of the *Orders*.<sup>134</sup> A certification requirement would impose an undue burden on importers and exporters of household furniture.<sup>135</sup>

### Brokering Solutions

- Commerce should establish an importer and/or exporter certification process as early as possible.<sup>136</sup>

### Cabinets to Go

- Importers of wooden cabinets not including Chinese inputs are being harmed by this inquiry. Commerce should allow exporters/importers to complete a certification for entries from Malaysia that remain unliquidated and did not incorporate any Chinese wooden components.<sup>137</sup>

### Petitioner's Rebuttal Comments

- Issuing Q&V questionnaires and implementing a country-wide certification process to administer an affirmative scope determination will address respondent parties' concerns.<sup>138</sup>
  - Commerce should request CBP entry data based on HTSUS subheading 9403.40.9060 to identify Malaysian producers/exporters of wooden cabinets and wooden cabinet components for the 33-month period following the initiation of the investigation, and then issue Q&V questionnaires.<sup>139</sup>
  - The Q&V questionnaires should require Malaysian exporters to report the Q&V of wooden cabinet shipments to the United States using Chinese components/parts in various stages of completion, explain how they determined the Q&Vs, and provide descriptions of the Chinese-origin components/parts/raw wood material, or otherwise explain why such merchandise is not covered by the *Orders*.<sup>140</sup>

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<sup>132</sup> *Id.* at 8 (citing Malaysia Initiation Memorandum at 1-4); American Home's Pre-Initiation Comments at 5-7.

<sup>133</sup> *Id.* at 8, 11-13.

<sup>134</sup> *Id.* at 14; *see also* American Home's Pre-Initiation Comments at 7-9.

<sup>135</sup> *Id.* at 15.

<sup>136</sup> *See* Brokering Solutions' Comments at 6-8.

<sup>137</sup> *See* Cabinets to Go's Comments at 7 (citing *Certain Hardwood Plywood Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders*, 84 FR 65,783 (November 29, 2019), Appendices II (Instructions on Certification Process), III (Importer Certification Language) & IV (Exporter Certification Language)).

<sup>138</sup> *See* Petitioner's Rebuttal Comments at 17-19.

<sup>139</sup> *Id.* at 17.

<sup>140</sup> *Id.* at 18.

- Companies that participate in this certification process and demonstrate that they do not rely on wooden cabinet components from China will benefit because competition would be reduced by companies that do rely on wooden cabinet components from China.<sup>141</sup>
- An affirmative scope determination should be applied on a country-wide basis and Commerce should issue a list of companies that are eligible to participate in the certification process.<sup>142</sup>
  - Commerce's regulations allow it to apply its determinations on a producer-specific, exporter-specific, or importer-specific basis, or on a country-wide basis.<sup>143</sup>
  - The scope application shows over 600 Malaysian exporters and Commerce initiated the scope inquiry on a country-wide basis, so applying an affirmative scope determination on a company-specific basis would be inconsistent with the reasons for initiation and do little to stop transshipments.<sup>144</sup>
  - A well-crafted certification requirement for all Malaysian exporters (and their U.S. importers) is essential to ensure that antidumping and countervailing duties under the *Orders* are properly applied to the merchandise at issue.<sup>145</sup>
  - The certification process should be like those implemented for other country-wide determinations, except it should require U.S. importers to report importer and exporter certifications in CBP's Automated Commercial Environment as part of the entry process, and it should presume that all companies are not eligible unless they demonstrate otherwise.<sup>146</sup>

**Commerce's Position:** Here, we preliminarily determine that Scenario 1 merchandise is within the scope of the *Orders*, and the Scenario 4 merchandise is not within the scope of the *Orders*. Additionally, as explained below, Commerce is applying this determination on a country-wide basis. Although 19 CFR 351.228(a) gives us the latitude to implement a certification regime during any AD or CVD proceeding, we have determined that, at this time, it is not appropriate to implement a certification process or collect Q&V information in this proceeding because we also initiated, and are conducting, a separate circumvention inquiry in this proceeding. We intend to examine any merchandise found not to be covered by the scope of the *Orders* in our final scope ruling during the ongoing circumvention inquiry. As part of our circumvention inquiry, we intend to evaluate whether a certification regime is appropriate in this proceeding.

#### **Issue 4: Whether we are Expanding the Coverage of the Scope Over Malaysian Production of Wooden Cabinet Like Merchandise**

##### **Brokering Solutions**

- The cabinets Brokering Solutions imports are produced entirely in Malaysia and do not include any Chinese-origin wooden components.<sup>147</sup>

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<sup>141</sup> *Id.* at 19.

<sup>142</sup> *Id.* at 22-25.

<sup>143</sup> *Id.* at 23 (citing 19 CFR 351.225(m)(1)).

<sup>144</sup> *Id.* at 23-24.

<sup>145</sup> *Id.*

<sup>146</sup> *Id.* at 24 (citing 19 CFR 351.228(a)(1)(ii)).

<sup>147</sup> See Brokering Solutions' Comments at 3-6.

- Commerce should explicitly clarify that the scope application was filed only against cabinets exported from Malaysia that incorporated subject wooden components (*i.e.*, components listed in the scope of the *Orders* that were produced in China).<sup>148</sup>

### Cabinets to Go

- Commerce must make it clear that wooden cabinets and components thereof, produced entirely in Malaysia, are not covered by the scope of the *Orders*, and it should make that decision ahead of its deadlines to end the confusion which this inquiry has created in the industry.<sup>149</sup>

### Prominent Target

- Prominent Target's wooden cabinet exports are not subject to the *Orders* based on: (a) the plain language of the scope; (b) the 19 CFR 351.225(k)(1) sources identified by regulation; and (c) the substantial transformation of raw lumber to finished components and wooden cabinet products that occurs in Malaysia.<sup>150</sup>
- In determining whether Prominent Target's wooden cabinet products fall within the scope an order, Commerce must first examine the language of the order,<sup>151</sup> and "it is the language of Commerce's final order that defines the scope of the order."<sup>152</sup>
  - The plain scope language confirms that that wooden cabinet products, which are completely produced in Malaysia, from overwhelmingly Malaysian wood inputs, such as Prominent Target's products, are not covered by the scope.<sup>153</sup>
  - The "plain language" is the "paramount" consideration in scope inquiries and compels the finding that Prominent Target's wooden cabinets produced in Malaysia are not subject to the *Orders*.<sup>154</sup>
- The descriptions of the merchandise contained in the Petition, the initial investigation, and prior determinations of Commerce (including scope determinations) and the ITC all support the conclusion that Prominent Target's wooden cabinets are not subject to the *Orders*.<sup>155</sup>
  - The ITC detailed the wooden cabinet manufacturing process, the same process Prominent Target follows in Malaysia, and did not evaluate injury in Malaysia, which supports the finding that the wooden cabinets exported by Prominent Target are not subject merchandise.<sup>156</sup>
  - Commerce's scope memoranda from the AD/CVD investigations provide no indication that wooden cabinets fully manufactured in Malaysia, with overwhelmingly Malaysian wood inputs, could be considered subject merchandise.<sup>157</sup>

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<sup>148</sup> *Id.* at 5-6.

<sup>149</sup> *See* Cabinets to Go's Comments at 3.

<sup>150</sup> *See* Prominent Target's Comments at 5-10.

<sup>151</sup> *Id.* at 5 (citing *Walgreen*, 620 F.3d 1350, 1356 (CAFC 2010); *Laminated Woven Sacks Comm. v. United States*, 716 F. Supp. 2d 1316, 1321-22 (CIT 2010)).

<sup>152</sup> *Id.* at 5 (citing *Walgreen*, 620 F.3d at 1357; *Duferco Steel, Inc. v. United States*, 296 F.3d 1087, 1097 (CAFC 2002)).

<sup>153</sup> *Id.* at 5-6 (citing *Orders*).

<sup>154</sup> *Id.* at 6-7 and Exhibit 8 (citing *King Supply Co. v. United States*, 674 F.3d 1343, 1345 (CAFC 2012)).

<sup>155</sup> *Id.* at 7-8 (citing 19 CFR 351.22(k)(1)).

<sup>156</sup> *Id.* at 7-8 and Exhibit 6 (citing ITC Final Report at I-11).

<sup>157</sup> *Id.* at 8 and Exhibit 11.

### Value Plus and Worldwide Furniture

- Commerce should confirm that cabinets made without the use of Chinese materials are outside the scope.<sup>158</sup> There is no conceivable scenario where production undertaken in a third country on materials not of Chinese origin can create a product which falls within the scope.<sup>159</sup>
- Commerce should confirm that cabinets made without the use of Chinese-origin wood but use non-wooden components of Chinese origin are outside the scope.<sup>160</sup> The scope expressly excludes non-wood components, so the use of such components cannot confer Chinese origin on the resultant cabinet.<sup>161</sup>
- The use of Chinese-origin lumber should not confer origin unless the Chinese-origin lumber undergoes substantial operations that converts it into a Chinese-origin wood cabinet part.<sup>162</sup>

**Commerce's Position:** All of the specific product scenarios we have analyzed in this scope ruling include some wooden cabinet components or a single wooden part started in China, and some started in a third country. The petitioner did not request a scope ruling on products that were wholly sourced and produced in the third country, nor did we initiate a scope ruling on such merchandise. Purchase of inputs other than wooden cabinet components or wooden parts from China (*e.g.*, plywood) is not the purchase of subject wooden cabinet components or wooden parts and is therefore, not a scenario subject to this scope inquiry.

We relied on all seven factors available to us in the 19 CFR 351.225(j) analysis to evaluate the available information. We made determinations only on the specific scenarios described by the petitioner, not on all wooden cabinets produced in Malaysia. As such, we preliminarily made a country-wide determination that Scenario 1 is within the scope of the *Orders*. Additionally, we preliminarily determined that a product with a single Chinese produced toe kick, *i.e.*, a Scenario 4 product, is third-country in origin.

### Issue 5: Whether there is Unwarranted Expansion of the Scope in Analyzing Products Started in China and Finished in a Third Country when there is Further Processing Language in an Order

#### Cabinetworks' Companies

- Commerce cannot expand the scope of the *Orders*. The scope of *Orders* is unambiguous and does not cover unfinished inputs as broadly described in Scenarios 2 or 3 of the scope ruling request.<sup>163</sup>
  - Because the plain scope language is dispositive with regards to the exclusion of “semifinished” products as described by the petitioner, further analysis of the factors listed in 19 CFR 351.225(k)(1) is unnecessary.<sup>164</sup>
  - By using the term “semifinished,” the petitioner asks that Commerce deem products that are not yet subject components (*i.e.*, unfinished components) to be subject components.

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<sup>158</sup> See Value Plus' Comments at 2; *see also* Worldwide Furniture's Comments at 2.

<sup>159</sup> See Value Plus' Comments at 2; *see also* Worldwide Furniture's Comments at 3.

<sup>160</sup> See Value Plus' Comments at 2-3; *see also* Worldwide Furniture's Comments at 3.

<sup>161</sup> See Value Plus' Comments at 3; *see also* Worldwide Furniture's Comments at 3-4.

<sup>162</sup> See Value Plus' Comments at 3; *see also* Worldwide Furniture's Comments at 4.

<sup>163</sup> See Cabinetworks' Companies' Comments at 9-10.

<sup>164</sup> *Id.*

A plain reading of the scope language provides that if the product at the time of import into Malaysia never meets the requirements to qualify as subject merchandise initially, then the product is not subject merchandise regardless of the additional processing.<sup>165</sup>

- Consistent with Commerce’s determinations in other scope proceedings that involved similar third-country processing scope language, here, if unfinished parts enter Malaysia as non-subject inputs and undergo further processing there, such unfinished inputs are non-subject merely because they generally meet the scope language after the third-country processing.<sup>166</sup>
- Similarly, the Petition makes it clear that the scope of the proceeding includes finished components. The petitioner emphasized that to be subject to the scope following third-country processing, the components must be “in-scope” to begin with.<sup>167</sup>
- The broad products set forth in Scenarios 1 and 4 of the petitioner’s scope ruling request describe non-subject merchandise.
  - With respect to Scenario 4, the scope language is clear that it covers the wooden cabinet and vanity boxes as subject components, but does not cover the inputs (*i.e.*, toe kicks) as a subcomponent part of the subject box.<sup>168</sup>
  - Commerce’s regulations specifically address factors to be considered where merchandise contains or consists of two or more components and the product at issue in the scope inquiry is a component of that merchandise.<sup>169</sup> The scope ruling application provides no information to allow Commerce to properly evaluate regulatory considerations that must be considered by Commerce to address whether the considered blanket products fall under the scope of the *Orders*.<sup>170</sup>
- The scope does not cover merchandise considered a product of a third country.
  - Commerce must determine the country of origin of the products under the definitions set forth, consistent with 19 CFR 351.225(j).<sup>171</sup>
  - The scope language of the *Orders* does not cover merchandise that is considered a product of a third country, such as Malaysia. Commerce’s regulations and the scope of the *Orders* do not allow the assessment of antidumping and countervailing duties on parts or semi-finished inputs of a completed cabinet with a country of origin that is different from the country for which duties are imposed.<sup>172</sup>

## DH Exporters

- Commerce may not unlawfully expand the scope of the *Orders*.<sup>173</sup>
  - The petitioner’s references to semifinished components (in Scenario 2) and semifinished parts of components (in Scenario 3) unreasonably expands the scope of the *Orders*.<sup>174</sup>
  - “The general rule is that Commerce, when determining whether merchandise falls within the scope of an existing antidumping duty order, may interpret the scope language of the

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<sup>165</sup> *Id.* at 10-12.

<sup>166</sup> *Id.* at 12-13.

<sup>167</sup> *Id.* at 13-14 (citing Petition, Volume 1 at 9).

<sup>168</sup> *Id.* at 15.

<sup>169</sup> *Id.* (citing 19 CFR 351.225(l)(3) and 19 CFR 351.225(k)(3)(iii)).

<sup>170</sup> *Id.* at 15-16.

<sup>171</sup> *Id.* at 16.

<sup>172</sup> *Id.*

<sup>173</sup> *See Orders*.

<sup>174</sup> *See DH Exporters’ Comments* at 8.

order but may not modify it.”<sup>175</sup> The scope of the *Orders* does not include unfinished wooden cabinet components or unfinished parts of wooden cabinet components, and therefore, Commerce may only enlarge the scope of an order thus in an anti-circumvention proceeding.

- Commerce has a long history of stating that the order covers unfinished merchandise or unfinished components, if such unfinished merchandise or unfinished components are indeed meant to be included.<sup>176</sup>
- The lack of “finished or unfinished” in the *Orders* demonstrates that the *Orders* only include the enumerated list of finished {wooden cabinet} components. The scope of the language is clear and dispositive in that respect.<sup>177</sup>
- The petitioner cannot use the third-country minor processing (including trimming, cutting, notching, punching, *etc.*) language in the scope of the order to cover unfinished wooden cabinet components or unfinished parts of components. The minor processing language in the scope is to cover processing “that would not otherwise remove the merchandise from the scope of the order,” meaning that such merchandise has to be in the order in the first place.<sup>178</sup>
- Moreover, it would be entirely inappropriate for Commerce to discount the processing and finishing done on unfinished components or unfinished parts of components, given that they can be “complex and labor-intensive.” In the underlying investigation, a member of the petitioning coalition, Kitchen Kompact Inc., testified before the ITC to that effect.<sup>179</sup>

### Petitioner’s Rebuttal Comments

- The plain language of the scope covers finished, semifinished, and unfinished wooden cabinet components and parts, and, therefore, the scope ruling request is not an unlawful expansion of the scope.<sup>180</sup>
  - The scope explicitly states that it includes wooden cabinets and wooden cabinet components that are finished or unfinished.<sup>181</sup>
  - The scope explicitly states that it includes wooden cabinets and wooden cabinet components that have been further-processed in a third country, and that processing of in-scope wooden cabinet components in a third country does not remove the product from the scope’s coverage.<sup>182</sup>

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<sup>175</sup> *Id.* (citing *Peer Bearing Company – Changshan v. United States*, 38 C.I.T. 823, 830 (CIT 2014) and *Duferco Steel*, 296 F.3d 1087, 1097 (CAFC 2002)).

<sup>176</sup> *Id.* at 9 (citing *Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan*, 52 FR 37352 (October 6, 1987); *Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles from the People’s Republic of China*, 56 FR 6622 (February 19, 1991); *Antidumping Duty Order: Small Diameter Graphite Electrodes from the People’s Republic of China*, 74 FR 8775 (February 26, 2009); and *Certain Oil Country Tubular Goods from the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 75 FR 28551 (May 21, 2010)).

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at 10.

<sup>179</sup> *Id.* at Exhibit 2

<sup>180</sup> See Petitioner’s Rebuttal Comments at 10-17.

<sup>181</sup> *Id.* at 11 (citing *Wooden Cabinets China AD Order*, 85 FR at 22134-35).

<sup>182</sup> *Id.* at 12 (citing *Wooden Cabinets China AD Order*, 85 FR at 22134-35).

- The description of the merchandise contained in the petition from the investigation also supports a reading that the scope includes finished, semifinished, and unfinished merchandise.<sup>183</sup>
- The scope also expressly covers the individual parts of wooden cabinet components, not just complete wooden cabinet components.<sup>184</sup>

**Commerce's Position:** As explained above, we find it is appropriate to conduct a country-of-origin analysis pursuant to 19 CFR 351.225(j) here, because the scope is silent on the inclusion of third-country origin, like components, in merchandise that otherwise meets the physical description of the *Orders*.

We were able to make a determination for the less complex and better-defined merchandise for two types of scenarios presented, (*i.e.*, for Scenarios 1 and 4). We were able to make a substantial transformation determination where all wooden parts were started and finished in the same country, but were unable to describe a suitable country-specific allocation methodology for non-wooden inputs (*i.e.*, for phase 1 and phase 2 production, energy, labor, and packing portions of cost), and, thus, were unable to reach a decision for Scenarios 2 and 3 merchandise. Thus, we concluded there was insufficient information to complete an analysis of Scenario 2 and 3 with the record information available to us, and have not issued a scope determination for Scenarios 2 and 3 merchandise. More detailed information would improve the analysis by identifying where each input entered production, what processes were used, what machines were used, how much those machines cost, and how much it cost to house the machines and associated processing. Additional information would also provide cost information about overhead for running processing operations in two countries rather than one.

#### **Issue 6: Whether the Plain Language of the Orders Limits Subject Wooden Cabinet Components to a Discrete Number of Components**

##### **MasterBrand**

- The scope expansion the petitioner is requesting is unwarranted.<sup>185</sup> The petitioner described the product subject to the scope ruling application as wooden cabinets and vanities and components thereof produced using wooden cabinet components (*i.e.*, frames, boxes, doors, drawers, panels, and any desks, shelves, and tables that are attached to or incorporated in subject merchandise), whether finished or unfinished, that are manufactured in China and that undergo further processing (*e.g.*, trimming, cutting, notching, punching, drilling, painting, staining, finishing, assembly, repackaging, and combining into a “ready to assemble” wooden cabinet unit) in Malaysia before being exported from Malaysia to the United States.<sup>186</sup>
  - The scope language specifies six components of wooden cabinets and vanities that are covered by the *Orders* and the language defining the in-scope components is an

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<sup>183</sup> *Id.* at 12 and Exhibit 3, part 7.

<sup>184</sup> *Id.* at 12-14.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.* at 2-3 (citing Malaysia Scope Ruling Request at 3, 5).

exhaustive list, not an illustrative list.<sup>187</sup> No other wooden cabinet or vanity components are covered by the scope.<sup>188</sup>

- In response to Commerce’s request for information after initiation, the petitioner expanded the scope of the inquiry to include a non-exhaustive list of scenarios where further processing in Malaysia involves finished and unfinished components made in China combined with components made in Malaysia<sup>189</sup>
- The scope specifies that in-scope components that are further processed in a third country, including assembly, are still subject merchandise. Therefore, mixed shipments or ready to assemble wooden cabinets and vanities including any of the six in-scope Chinese components are covered by the scope to the full value of the entire RTA.<sup>190</sup>

### Petitioner’s Rebuttal Comments

- Commerce’s model matching methodology supports a ruling that the scope includes parts of wooden components.<sup>191</sup> Control numbers are created to identify a product’s specific physical characteristics in a hierarchal order such that the first number denotes the most important characteristic, and for wooden cabinets, “stage of completeness” is the first.<sup>192</sup> Respondents are instructed to report the merchandise exported to the United States using the following codes:

- 01 Fully assembled wooden cabinet or vanity
- 03 Ready to assemble wooden cabinet or vanity
- 10 Components – front face with doors and/or drawers
- 11 Components – front face
- 13 Components – drawer box(es) and doors
- 20 Components – drawer boxes
- 24 Components – doors and drawer faces
- 25 Components – doors
- 26 Components – drawer faces
- 30 Components – side or rear faces (*e.g.*, found on rear of cabinet island)
- 33 Components – outside covers
- 37 Components – toe kicks
- 40 Components – crown molding
- 50 Components – other (describe)

- The specific codes for individual parts of the wooden cabinet components in Commerce’s antidumping questionnaire demonstrate that parts of components are covered by the scope and must be reported as subject merchandise when they are sold as separate items.<sup>193</sup>

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<sup>187</sup> *Id.* at 5.

<sup>188</sup> *Id.* at 5.

<sup>189</sup> *Id.* at 3-4.

<sup>190</sup> *Id.* at 5-6.

<sup>191</sup> See Petitioner’s Rebuttal Comments at 14-16.

<sup>192</sup> *Id.* at 14 (citing *Maverick Tube Corp. v. United States*, 107 F. Supp. 3d 1318, 1329 (CIT 2015); *JTEKT Corp. v. United States*, 33 CIT 1797, 1805, 675 F.Supp.2d 1206, 1218 (2009); *Fagersta Stainless AB v. United States*, 32 CIT 889, 893, 577 F.Supp.2d 1270, 1276 (2008)) and Exhibit 1.

<sup>193</sup> *Id.* at 14-15 and Exhibits 2, 3a and 3b.

- Commerce’s decision in a recent new shipper review supports the petitioner’s views that the scope language includes component parts.<sup>194</sup>
- In the investigation, the ITC clearly understood that the scope covered not only the components listed in the scope language but also the individual parts of these components.<sup>195</sup>

**Commerce’s Position:** The plain language of the scope includes cabinet boxes in complete wooden cabinets under the first scope definition and wooden cabinet components under the second scope definition.<sup>196</sup> In both of those definitions, toes kicks are included in the list of wooden parts identifies as being typically included in a cabinet box according to those descriptions. Therefore, based on the plain language of the scope we are treating these as subject wooden cabinet components.

## Issue 7: Whether Commerce Should Create a Value-Added Floor

### Value Plus and Worldwide Furniture

- To determine whether a product is within scope, Commerce should establish a minimum content requirement to ensure that only cabinets with a substantial portion of the value created by the third country are in scope.<sup>197</sup>
  - Such a requirement would be in line with free trade and similar agreements, as well as established U.S. rules of origin.<sup>198</sup>
  - Commerce should establish a value-added floor, where if the value of the operations in the third country, the value of non-wood components, and the value of non-Chinese wood component is at least 75 percent of total value of the finished cabinet, the origin should be of the third country where the cabinet was made.<sup>199</sup>

**Commerce’s Position:** We considered all factors under 19 CFR 351.225(j)(1) and (j)(2), and made our country of origin determination based on a totality of the circumstances of these seven factors. Value Plus and Worldwide Furniture have not identified a basis in the scope language, or in any of the (k)(1) sources that would support its assertion that there should be a minimum content requirement for in-scope merchandise. Value Plus and Worldwide Furniture also fail to explain how a value-added floor would provide additional clarity to the decision making process here. Therefore, we have not considered any such threshold in our preliminary determination.

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<sup>194</sup> *Id.* at 16 (citing *Wooden Cabinets and Vanities and Components Thereof from the People’s Republic of China: Rescission of Antidumping Duty New Shipper Review*; 2020, 86 FR 62788 (November 12, 2021)).

<sup>195</sup> *Id.* at 16 (citing ITC Final Report at IV-11).

<sup>196</sup> The scope of the *Orders* states that “wooden cabinets...consist of a cabinet box (which typically includes a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves) and may or may not include a frame, door, drawers and/or shelves;” and “subject merchandise includes the following wooden component parts (1) wooden cabinet and vanity frames (2) wooden cabinet and vanity boxes (which typically include a top, bottom, sides, back, base blockers, ends/end panels, stretcher rails, toe kicks, and/or shelves), (3) wooden cabinet or vanity doors, (4) wooden cabinet or vanity drawers and drawer components (which typically include sides, backs, bottoms, and faces), (5) back panels and end panels, (6) and desks, shelves, and tables that are attached to or incorporated in the subject merchandise.”

<sup>197</sup> See Value Plus’ Comments at 4; see also Worldwide Furniture’s Comments at 4.

<sup>198</sup> See Value Plus’ Comments at 4; see also Worldwide Furniture’s Comments at 4.

<sup>199</sup> *Id.*; Worldwide Furniture’s Comments at 4.

## Issue 8: Whether Commerce Should Rely on Information from the Enforce and Protect Act Determinations made by CBP

### Cabinetworks' Companies

- Subject Chinese merchandise transshipped through Malaysia must be addressed by CBP.
  - Examples of unlawfully transshipped wooden cabinets provide no support for the scope ruling application - a scope proceeding is not the place to address transshipment concerns.<sup>200</sup>
  - CBP is well equipped to handle allegations of evasion and fraudulent shipments and does so routinely under Section 19 U.S.C. § 1592 or the Enforce and Protect Act of 2015 (EAPA) investigations.<sup>201</sup>
  - Any determination that pulls Malaysian manufactured/origin merchandise under the scope of the Chinese *Orders* would unlawfully expand the scope under the guise of a scope ruling.<sup>202</sup>
- EAPA determinations, by themselves, are insufficient to support scope determinations.
  - EAPA determinations are not relevant to scope proceedings – Commerce, not CBP, determines the scope of the order.<sup>203</sup>
  - EAPA investigations determine whether an importer has evaded antidumping and/or countervailing duties on subject merchandise and do not address whether a product falls under the scope of AD/CVD orders.<sup>204</sup>
  - EAPA determinations in scope proceedings are inherently unreliable, due to the lack of public information – because there is no APO in EAPA proceedings, interested parties do not have access to confidential information that is relevant to CBP's EPA decisions.<sup>205</sup>

### Prominent Target

- In CBP scope ruling N313752, CBP determined that the production processes and the facts surrounding Prominent Target's production of finished wooden cabinets and RTA wooden cabinets in Malaysia resulted in a product of Malaysian origin.<sup>206</sup>
- Prominent Target produces wooden cabinets, including all wood and wood-based components, in Malaysia, using wood materials that are sourced predominantly from Malaysia.<sup>207</sup>
  - All wood components begin with rough, sawn-on-four-sides lumber [ ], and all plywood and high-density fiberboard (HDF)/MDF materials are sourced locally in Malaysia.<sup>208</sup>
  - Production of fully finished wooden cabinets requires sawing, cutting to length, doweling, rough sanding, boring, fine sanding, ultraviolet coating, and spray finishing.<sup>209</sup>
  - In addition to the [ ], some of the [ ]].

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<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.* at 6.

<sup>203</sup> *Id.* at 6 (citing 19 CFR 351.225; and *Wirth Limited v. United States*, 5 F. Supp. 2d 968 (CIT 1998)).

<sup>204</sup> *Id.* at 6-7.

<sup>205</sup> *Id.* at 7.

<sup>206</sup> See Prominent Target's Comments at 3 and Exhibits 4 (Request for CBP Ruling) and 5 (CBP Ruling N313752).

<sup>207</sup> *Id.* at 3 and Exhibits 4, 5 and 6.

<sup>208</sup> *Id.* at 3-4 and Exhibits 4, 5, 6 and 8.

<sup>209</sup> *Id.* at 3-4 and Exhibits 2, 4-10, 13.

- However, the value of the finished cabinets, as well as the percentage of Malaysian wood inputs, dwarf the value of the [ ].<sup>210</sup>
- Utilities and wage records for production demonstrate that Prominent Target is a full-fledged wooden cabinet producer in Malaysia, as opposed to merely assembling Chinese wooden cabinets or components thereof in Malaysia or transshipping Chinese wooden cabinets through Malaysia.<sup>211</sup>
  - CBP ruling N313752 determined that the country of origin for Prominent Target’s wooden cabinets, for customs purposes, is Malaysia, the country where Prominent Target’s wooden cabinets are manufactured using inputs that are mostly sourced locally.<sup>212</sup>
    - CBP’s test for determining whether a substantial transformation, conferring country of origin, has occurred is whether, based on the totality of the evidence, an article emerges from a process with a new name, character, or use, different from that possessed by the article prior to processing.<sup>213</sup>
  - Despite the petitioner’s extensive reliance in its scope inquiry request on investigations by CBP under EAPA and investigations that found evasion of the *Orders*, Prominent Target has not been subject to any CBP investigations.<sup>214</sup>

**Commerce’s Position:** EAPA determinations submitted onto this record were not related to the products described by the petitioner; therefore, we did not rely on them in making our determinations.

## IX. COUNTRY-WIDE DETERMINATION

Pursuant to 19 CFR 351.225(m)(1)(ii), we determine whether the scope ruling should be applied to “all products from the same country with the same relevant physical characteristics, (including chemical, dimensional and technical characteristics) as the product at issue, on a country-wide basis, regardless of the producer, exporter or importer of those products.” Here we have determined that Scenario 1 merchandise is within the scope of the *Orders*, and scenario 4 merchandise is outside the scope of the *Orders*. Given that the scenarios are non-producer specific, we have made this determination on a country-wide basis.

## X. OPPORTUINIY TO PROVIDE ADDITIONAL INFORMATION AND COMMENTS

Interested parties may provide additional information with respect to (1) factor 4, the cost of production -- any information pertaining to methods that may differentiate by country or allocate: phase 1 and 2 production, labor, energy, and packing for Scenarios 2 and 3; (2) factor 5, the nature and sophistication of production in the third country –any information which defines every production step, identifies the required tooling and country in which the processing occurred; and, (3) factor 6, the level of investment in the third country –any information

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<sup>210</sup> *Id.* at 4 and Exhibits 7-9.

<sup>211</sup> *Id.* at 4 and Exhibits 2 and 10.

<sup>212</sup> *Id.* at 8 and Exhibit 5.

<sup>213</sup> *Id.* at 9 (citing *Texas Instruments Inc. v. United States*, 69 C.C.P.A. 151 (1982); *National Hand Tool Corp. v. United States*, 16 CIT 308 (1992), *aff’d*, 989 F.2d 1201 (CAFC 1993)).

<sup>214</sup> *Id.* at 11.

regarding the costs of the equipment and facilities required to house production in a two-country production chain.

Additional factual information must be submitted by March 30, 2023, and rebuttal factual information by April 6, 2023. Interested parties are invited to comment on the preliminary determination by April 20, 2023, and rebuttal comments by April 27, 2023.

**XI. RECOMMENDATION**

For the reasons discussed above, and in accordance with 19 CFR 351.225(k)(1) and 19 CFR 351.225(j), we recommend preliminarily finding that Scenario 1 merchandise is within the scope of the *Orders*, that we are unable to issue a determination for Scenarios 2 and 3, and that Scenario 4 merchandise is not within the scope of the *Orders*. If the recommendation is accepted, we will serve a copy of this determination to all interested parties on the scope service list, as directed by 19 CFR 351.225(d).

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

3/16/2023

X

*James Maeder*

Signed by: JAMES MAEDER

James Maeder

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations