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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-890]

Wooden Bedroom Furniture from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On February 29, 2016, the United States Court of International Trade (“CIT” or “Court”) sustained the Department of Commerce’s (“Department”) final results of redetermination<sup>1</sup> in which the Department determined, under protest, that four chests of Ethan Allen Operations, Inc. (“Ethan Allen”) are not subject to the scope of the *WBF Order*,<sup>2</sup> pursuant to the CIT’s remand order in *Ethan Allen Operations, Inc. v. United States*, Consol. Court No. 14-00147 (December 1, 2015) (“*Ethan Allen*”).

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (“CAFC”) in *Timken*,<sup>3</sup> as clarified by *Diamond Sawblades*,<sup>4</sup> the Department is notifying the public that the Court’s final judgment in this case is not in harmony with the Department’s *Ethan Allen Scope Ruling* and is therefore amending its final scope ruling.<sup>5</sup>

EFFECTIVE DATE: March 10, 2016

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<sup>1</sup> *Ethan Allen Operations, Inc. v. United States*, Court No. 14-000147, Slip Op. 16-19 (CIT February 29, 2016) (“*Ethan Allen II*”), which sustained the Final Results of Redetermination Pursuant to Court Order, *Ethan Allen Operations, Inc. v. United States*, dated February 11, 2016 (“*Final Remand Results*”).

<sup>2</sup> See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People’s Republic of China*, 70 FR 329 (January 4, 2005) (“*WBF Order*”).

<sup>3</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (“*Timken*”).

<sup>4</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (“*Diamond Sawblades*”).

<sup>5</sup> See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Wooden Bedroom Furniture from the People’s Republic of China: Scope Ruling on Ethan Allen Operations Inc.’s Chests” (May 27, 2014) (“*Ethan Allen Scope Ruling*”).

FOR FURTHER INFORMATION CONTACT: Cara Lofaro, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-5720.

SUPPLEMENTARY INFORMATION:

Background

On May 27, 2014 the Department issued the *Ethan Allen Scope Ruling*, in which it determined that Ethan Allen’s Marlene, Nadine, and Serpentine chests were subject to the *WBF Order* based on an analysis under 19 CFR 351.225(k)(1), and that the Vivica chest was also subject merchandise based on an analysis of the factors under both 19 CFR 351.225(k)(1) and (k)(2) (the “(k)(2) analysis”). The Department then requested a voluntary remand to allow further notice to, and comment from, parties on its (k)(2) analysis of the Vivica chest, which the Court granted. In the *Voluntary Remand Results*, the Department responded to the arguments of the parties to the dispute and determined, again, based on a (k)(2) analysis, that Ethan Allen’s Vivica chest is subject to the scope of the *WBF Order*.<sup>6</sup>

On December 1, 2015, the Court issued its opinion on the *Ethan Allen Scope Ruling*, remanding each of the Department’s determinations back to the agency for further analysis,<sup>7</sup> as discussed in further detail in the *Final Remand Results*.<sup>8</sup> Specifically, the Court held that with respect to the Vivica chest, “because the (k)(1) factors are dispositive as to the Vivica chest and demonstrate that the Vivica chest is not within the scope of the *WBF Order*, the court does not proceed to an analysis of the (k)(2) factors and remands to Commerce to issue a ruling consistent

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<sup>6</sup> See Final Results of Voluntary Redetermination Pursuant To Court Order, dated November 26, 2014. (“*Voluntary Remand Results*”).

<sup>7</sup> See *Ethan Allen*.

<sup>8</sup> See *Final Remand Results* at 1-2.

with this opinion.”<sup>9</sup> The Court further held that with respect to the Marlene, Nadine, and Serpentine chests “because the (k)(1) factors are non-dispositive {in the *Ethan Allen Scope Ruling* the Department determined that the Marlene, Nadine, and Serpentine chests were covered by the *WBF Order* after analyzing the criteria listed in 19 CFR 351.225(k)(1)}, Commerce should evaluate the (k)(2) factors consistent with this decision,” in which the Court noted, in part, that “the proper inquiry should focus on the intended function of the product, *i.e.*, whether it was intended and designed for use in the bedroom.”<sup>10</sup>

Accordingly, the Department issued the *Final Remand Results* and, consistent with the Court’s analysis, determined that the Vivica chest is not subject to the *WBF Order*. Furthermore, in accordance with the Court’s holding that the Marlene, Nadine, and Serpentine chests should be evaluated using a (k)(2) analysis, Commerce conducted such an analysis and determined that “the weight of the record evidence supports a determination that the Nadine, Marlene, and Serpentine chests are not covered by the scope of the *WBF Order*.”<sup>11</sup>

In *Ethan Allen II*, the Court sustained the Department’s *Final Remand Results* in its entirety.<sup>12</sup>

#### Timken Notice

In its decision in *Timken*<sup>13</sup> as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to sections 516A(c) and (e) of the Tariff Act of 1930, as amended (the “Act”), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s February 29, 2016, judgment in *Ethan Allen II*, sustaining the Department’s decision

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<sup>9</sup> See *Ethan Allen* at 16.

<sup>10</sup> *Id.* at 13.

<sup>11</sup> See *Final Remand Results* at 14.

<sup>12</sup> See *Ethan Allen II*

<sup>13</sup> See *Timken*, 893 F.2d at 341.

in the *Final Remand Results* that the four chests at issue are not covered by the scope of the *WBF Order*, constitutes a final decision of that court that is not in harmony with the *Ethan Allen Scope Ruling*. This notice is published in fulfillment of the publication requirements of *Timken*.

Accordingly, the Department will continue the suspension of liquidation of the chests at issue pending expiration of the period to appeal or, if appealed, pending a final and conclusive court decision.

#### Amended Final Determination

Because there is now a final court decision with respect to the *Ethan Allen Scope Ruling*, the Department is amending its final scope ruling. The Department finds that the scope of the *WBF Order* does not cover the products addressed in the *Ethan Allen Scope Ruling*. The Department will instruct U.S. Customs and Border Protection (“CBP”) that the cash deposit rate will be zero percent for the four chests imported by Ethan Allen. In the event that the CIT’s ruling is not appealed, or if appealed, upheld by the CAFC, the Department will instruct CBP to liquidate entries of Ethan Allen’s four chests at issue without regard to antidumping and/or countervailing duties, and to lift suspension of liquidation of such entries.

This notice is issued and published in accordance with section 516A(c)(1) of the Act..

Dated: March 9, 2016.

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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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