

LEGAL UPDATES

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# Dramatic Change to Scope of Anti-Dumping Duty Order Puts Many Importers at Risk

In a scope ruling issued May 27, 2014, the U.S. Department of Commerce (“DOC”) found that four chests marketed as living room pieces were within the scope of the anti-dumping duty order on wooden bedroom furniture from the People’s Republic of China. The scope ruling was made at the request of Ethan Allen Operations, Inc. (“Ethan Allen”). Three of the four chests were decorative stand-alone pieces marketed and sold as living room or hallway separates, while the fourth chest, manufactured with a mirrored surface, was marketed and sold as part of a living room set.

This ruling has the potential to disrupt the business plans of many companies because many products previously thought to be exempt from dumping duties may now be swept into the anti-dumping duty order.

Dumping duties in this case are assessed at different amounts depending on the exporter, but can exceed 200 percent of the value of the goods.

## A Radical Ruling

This ruling stands out for a number of reasons:

1. The domestic industry (petitioners in this case) stated that it had no objection to finding the chests outside the scope of the anti-dumping duty order. Consequently, the DOC ruling was contrary to the wishes and understanding of both the importer *and* the domestic industry. Put another way, no party that was in the industry and actually familiar with the products argued that the merchandise was within the scope of the anti-dumping duty order. Only the DOC thought so.

2. The DOC had no evidence that any of the chests were actually used in a bedroom. The DOC apparently dismissed evidence that the chests were not intended for use in a bedroom and based its opinion on the conclusion that the chests were “physically consistent” with chests of drawers identified in the scope of the case. The DOC stated that three of the chests “would be able to store clothing without difficulty” and the mirrored chest shared “the size and dimensions of other wooden chests” covered by the anti-dumping duty order. Significantly, the DOC also focused on Ethan Allen’s “New Eclecticism” web marketing program which promotes “furniture versatility” or use of furniture manufactured, marketed and sold for other home areas, in the bedroom. Thus, it now seems that the potential for using a chest in the bedroom to store clothes is all that is required for the chest to be included within the scope of the anti-dumping duty order.

On June 26, 2014, Ethan Allen filed an appeal in the U.S. Court of International Trade against the DOC contesting its ruling on the four accent chests. We do not anticipate a court decision will be released anytime soon. One year for an initial ruling is not unusual, and even then, the case may be sent back to the DOC for further proceedings.

### **What This Means to You**

Companies will need to take action while these issues are pending. Companies who import furniture should consider the following action items:

Review unliquidated entries as soon as possible. Entries that are unliquidated may be reclassified as being subject to the anti-dumping duty order and it is critical, from a business point of view, to determine the potential exposure.

Be ready to contest any reclassifications vigorously. Unless products are virtually identical to those that the DOC ruled on, and the circumstances of their advertising and other factors are the same, we suggest contesting any change administratively, particularly if there is any major financial exposure.

Consider filing an *amicus curiae* brief in the Court of International Trade supporting Ethan Allen. This change in scope affects all furniture importers. It is important that the court be aware of the potentially devastating effect that the DOC scope ruling may have on importers, and of the lack of industry support for the government’s interpretation of the term “wooden bedroom furniture.”

Determine if working with the U.S. domestic industry to undertake a “changed circumstances” ruling to exempt certain furniture from the anti-dumping duty order is possible. This prospective approach would require agreement on language for exclusions with the domestic industry, but may provide greater certainty going forward if successful.

Discuss the possibility of obtaining assistance from members of Congress to urge the DOC to reverse its position. Asking the DOC to go to the court and have its actions reconsidered and ultimately reversed, may yield the best solution for importers. No private party has expressed support for the government’s position. If the DOC hears from members of Congress throughout the country whose constituents are being affected, there is hope that it will be persuaded to reconsider its decision.

### **Contact Us**

If you have questions, the members of our international trade team are here to help. For more information, please contact Partner Jeffrey S. Neeley or Robert D. Stang or any one of Husch Blackwell’s Customs & Trade attorneys.