

Fed. Circ. Axes Bid To Expand Chinese Plywood Duties

By **Nicole Rosenthal**

Law360 (June 15, 2022, 5:49 PM EDT) -- The Federal Circuit denied an appeal from a coalition of U.S. plywood producers alleging that a Chinese plywood maker dodged duties Wednesday, ruling that the wood in question was legally sold before the levies were sought.

A three-judge panel upheld decisions from the Court of International Trade and the U.S. Department of Commerce, ruling that wood products from Chinese manufacturer Shelter Forest International Inc., such as hardwood plywood and veneer panels, were sold in line with duty orders issued by Commerce since the products were on the market before the petition for duties was filed in December 2016.

The finding comes after a scrupulous analysis in the CIT of the resin and glue used in the plywood, with the court ultimately ordering Commerce to revisit its 2019 finding that the company circumvented U.S. duties with later-developed merchandise.

The Federal Circuit found that Commerce "sufficiently and reasonably" explained" the basis for its overturned conclusion, finding that Shelter Forest marketed and sold plywood prior to the imposition of new duties, honing in on the specific properties of glue used in the wood.

Commerce's final determination "includes documentation of the eZero glue formula [used in Shelter Forest products], which confirms that the eZero glue is majority urea formaldehyde," Federal Circuit Judge Raymond C. Clevenger wrote in the court's opinion. The record also included "documentation explaining that melamine was added to the eZero glue for waterproofing purposes and that this addition occurs after the glue is already mixed."

The Federal Circuit also found that, in its circumvention investigation, Commerce treated Shelter Forest unfairly by not being transparent about certain shortcomings in the company's submissions.

"We conclude that Commerce abused its discretion in the original proceeding by failing ... to notify Shelter Forest of any deficiency in its [Feb. 12, 2019,] Partial Response and to provide Shelter Forest with an opportunity to remedy or explain such deficiency," Federal Circuit Judge Raymond C. Clevenger wrote in the court's opinion.

"Commerce did not appear to have a monolithic vision as to the type of information and materials needed to show the glue criteria was met, as evidenced by Commerce's decision not to request a percentage breakdown of the third mandatory respondent's resin composition."

Shelter Forest did submit additional information regarding the composition of resin in its products following the 2019 decision, but Commerce dismissed the submission as untimely, Clevenger wrote. As a result, Commerce affirmed its decision in a final determination in November 2019, stating that Shelter Forest failed to "'identify the exact composition of its E0 glue,' even as Commerce had never requested such information from Shelter Forest and refused to accept that information when Shelter Forest attempted to provide it," according to the Federal Circuit opinion.

Shelter Forest, as well as other international parties — Shanghai Futuwood Trading Co. Ltd., Ikea Supply AG and Taraca Pacific Inc. — then appealed the decision to the CIT, which reversed Commerce's decision on the grounds that any missing or late information provided to Commerce by Shelter Forest was a result of the federal department's communication failures with the Chinese

plywood producer.

U.S. producers from the Coalition for Fair Trade in Hardwood Plywood, which initially urged the government to investigate Shelter Forest in 2018, in turn appealed the CIT's decision in the Federal Circuit.

"Our client Shelter Forest is very pleased that the Federal Circuit agreed with the conclusion that Shelter Forest did not circumvent any [Antidumping and Countervailing Duties]," Daniel L. Porter, an attorney for Shelter Forest, told Law360.

U.S. Circuit Judges Richard G. Taranto, Raymond C. Clevenger and Raymond T. Chen sat on the panel for the Federal Circuit.

Counsel for the government and the manufacturers did not immediately respond to requests for comment Wednesday.

Shelter Forest, Xuzhou Shelter Import & Export Co. and Shandong Shelter Forest Products Co. are represented by James P. Durling, James Beaty and Daniel Porter of Curtis Mallet-Prevost Colt & Mosle LLP.

Ikea Supply AG is represented by Patrick D. Gill and Kristen Suzanne Smith of Sandler Travis & Rosenberg PA.

Taraca Pacific Inc. and Patriot Timber Products Inc. are represented by Bryan P. Cenko, Jill Cramer, Jeffrey S. Grimson, Wenhui Ji, Yixin Li, Kristin Heim Mowry and Sarah Wyss of Mowry & Grimson PLLC.

The Coalition for Fair Trade in Hardwood Plywood is represented by Maureen E. Thorson of Wiley Rein LLP.

The government is represented by Sonia M. Orfield of the U.S. Department of Justice and Savannah R. Maxwell of the Office of the Chief Counsel for Trade Enforcement and Compliance at the U.S. Department of Commerce.

The case is Shelter Forest International Acquisition Inc. v. U.S., case number 21-2281, in the U.S. Court of International Trade.

--Editing by Andrew Cohen.