



Court of Justice of the European Union

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Press and Information

Judgment in Case C-337/09 P
Council v Zhejiang Xinan Chemical Industrial Group Co. Ltd

The Court dismisses the Council's appeal in an anti-dumping case concerning the Chinese company Xinanchem which specialises in the production of glyphosate

The Chinese State's control over the general meeting of Xinanchem's shareholders does not automatically exclude that company from the benefit of market economy treatment

The EU protects its internal market against dumped imports from non-member countries, that is against imports of goods at an artificially low price. In accordance with the 'basic anti-dumping' regulation¹, those goods are subject to a procedure for determining their normal value. The difference between that value and the declared value is used to establish the amount of anti-dumping duty which is imposed on the importer in order to deny it the competitive advantage from which it would benefit as a result of the dumping.

When the dumped imports come from a non-market economy country, normal value is, as a general rule, determined on the basis of the price or constructed value of the goods in question in an analogous market economy third country. However, if it is shown – at the request of a producer subject to an anti-dumping investigation and coming from one of a number of non-market-economy third countries, including China – that market rules prevail for that producer, it must be treated as a company from a market economy third country. In order to benefit from that market economy treatment ('MET'), the producer must submit evidence demonstrating, *inter alia*, that its decisions regarding prices, costs and inputs are made in response to market signals reflecting supply and demand, and without significant State interference in that regard. The grant of MET means that the anti-dumping margin is calculated on the basis of the producer's individual data which, as a general rule, results in a lower anti-dumping margin, if any.

In 1998, the Council imposed a definitive anti-dumping duty on imports of glyphosate – a basic herbicide chemical widely used by farmers throughout the world – originating in China.

During the review of those anti-dumping measures in 2003, Zhejiang Xinan Chemical Industrial Group ('Xinanchem') – a Chinese company producing and selling glyphosate in China and in world markets – requested MET.

In September 2004, on a proposal from the Commission, the Council adopted a regulation extending those anti-dumping measures². By that regulation, Xinanchem's request for MET was refused on the ground, in particular, that the Chinese State exercised significant control over that company as a shareholder and interfered in the setting of Xinanchem's export prices through the Chinese Chamber of Commerce's stamping system. Consequently, Xinanchem was subject to the

¹ Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1), as amended by Council Regulation (EC) No 461/2004 of 8 March 2004 (OJ 2004 L 77, p. 12).

² Council Regulation (EC) No 1683/2004 of 24 September 2004 imposing a definitive anti-dumping duty on imports of glyphosate originating in the People's Republic of China (OJ 2004 L 303, p. 1). On 13 December 2010, the Council adopted Implementing Regulation (EU) No 1187/2010 terminating the anti-dumping proceeding on imports of glyphosate originating in the People's Republic of China (OJ 2010 L 332, p. 31). That regulation repealed, as from its entry into force on 17 December 2010, the anti-dumping measures concerning those imports and terminated the proceeding concerning them. However, in the present case, since the events occurred prior to that date, Regulation 1683/2004 is still applicable.

general anti-dumping duty, set at 29.9% on the basis of data obtained from producers in a market economy third country, namely Brazil.

Xinanchem brought an action against that regulation before the General Court which, in its judgment of 17 June 2009³, annulled that regulation in so far as it concerned the company.

The General Court found that, although a minority State shareholder in Xinanchem, the Chinese State, by virtue of the wide dispersion of the non State-owned shares, controlled that company's general meeting which appointed the members of the board of directors. However, the General Court held that the State control exercised by the Chinese State could not be equated, as a matter of principle, to significant State interference in the producer's decisions regarding prices, costs and inputs⁴. Consequently, the Council and the Commission could not automatically refuse Xinanchem the benefit of MET without taking into account the evidence which that company had provided.

In addition, the General Court found that the evidence submitted by Xinanchem was capable of demonstrating that the Chinese Chamber of Commerce's export contract stamping mechanism had not been imposed by the Chinese State and that Xinanchem was free to decide on export prices. The General Court inferred from this that, without putting in issue the probative value or sufficiency of that evidence, the institutions could not conclude that, by means of the mechanism in question, the State had exercised significant control over those prices.

The Council brought an appeal before the Court of Justice against the General Court's judgment.

In its judgment delivered today, the Court of Justice declares that the 'basic anti-dumping' regulation does not preclude all types of State interference in producer undertakings, but only significant interference in decisions regarding prices, costs and inputs. In so far as that regulation seeks to ensure that those decisions are taken in accordance with the applicable market economy conditions, State interference that is neither by its nature nor effect capable of rendering such decisions incompatible with market economy conditions cannot be considered significant.

Accordingly, the Court upholds the General Court's finding that **the control exercised by the Chinese State in the present case, as a minority shareholder, over Xinanchem cannot be equated, automatically, to significant State interference in that company's decisions regarding prices, costs and inputs.**

The Court notes in that regard that such control is not, by its nature, incompatible with market economy rules and does not necessarily mean that the Chinese State did in fact significantly interfere in Xinanchem's decisions regarding prices, costs and inputs. The Court concludes that it was therefore for the Council and the Commission to assess whether the evidence submitted by that company was sufficient to demonstrate that the latter takes its decisions regarding prices, costs and inputs in response to market signals and without significant State interference, which, however, those institutions failed to do.

The Court makes clear, nevertheless that, in the context of a non-market economy country, the fact that a company established in that country is *de facto* controlled by State shareholders raises serious doubts as to whether the company's management is sufficiently independent of the State to be able to take decisions regarding prices, costs and inputs autonomously and in response to market signals. It was therefore open to the Commission and the Council, in the examination of the evidence submitted by Xinanchem, to take account of that fact.

Next, as regards the export contract stamping mechanism, the Court rejects the Commission's argument that the fact that the Chinese Chamber of Commerce was able to refuse to stamp export contracts if the reference price was not complied with is *prima facie* evidence of State interference in setting prices. In that regard, the Court holds that the institutions cannot restrict their assessment to an analysis of the 'prima facie' situation if the producer furnishes evidence which is capable of rebutting that analysis. The wide discretion which the Council and the Commission have in the

³ Case [T-498/04 Zhejiang Xinan Chemical Industrial Group v Council](#)

⁴ Prices, costs and inputs include for instance raw materials, cost of technology and labour, output, sales and investment.

realm of measures to protect trade does not relieve them of the obligation to have due regard to that evidence.

Since none of the arguments advanced by the Council and the Commission may be upheld, **the Court dismisses the appeal in its entirety.**

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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