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Advocate General's Opinion C-478/21 P | China Chamber of Commerce for Import and Export of Machinery and Electronic Products e.a. / Commission

## Anti-Dumping Challenge: Advocate General Medina suggests the Court should recognise the legal standing of the China Chamber of Commerce as a representative association

The China Chamber of Commerce meets the criteria of a representative association within the meaning of the basic regulation and, thus, of the fourth paragraph of Article 263 TFEU

The China Chamber of Commerce for Import and Export of Machinery and Electronic Products (CCCME) is an association governed by Chinese law whose members include Chinese exporting producers of certain cast iron articles (manhole covers). In 2018, the CCCME had unsuccessfully challenged before the General Court a Commission Regulation<sup>1</sup> that imposed an anti-dumping duty on imports of cast iron articles originating in the **People's Republic of China (PRC)**. By the present appeal, the CCCME is asking the Court to set aside the General Court<sup>2</sup> judgment of May 2021.

The Commission, as well as a number of European companies operating in the cast iron market (interveners) request that the Court dismiss this appeal. In particular, the Commission and interveners argue that the CCCME cannot be an association representing exporting producers in the PRC, since it acts under the supervision, management and business direction of the PRC ministries concerned. The interveners add that CCCME does not merely take instruction from the State, but acts on behalf of the State in the organisation of the commercial activities of the exporting producers.

In today's Opinion, Advocate General Laila Medina analyses in particular the issues raised concerning the standing of the CCCME under the fourth paragraph of Article 263 TFEU. The Advocate General also examines the procedural rules governing the disclosure obligations of the Commission in anti-dumping administrative procedure.

Advocate General Medina assesses in the first place **the pleas of inadmissibility**. In this respect, Advocate General Medina emphasises that the legal characterisation of the CCCME as an interested party cannot be presumed. It is for the General Court to ascertain the status and which (if any) procedural rights the CCCME should have been granted by the Commission in accordance to the basic regulation. Advocate General Medina takes the view that the General Court was wrong to hold that the CCCME was individually concerned on the ground that the Commission had granted it procedural rights during the anti-dumping proceedings, whilst not verifying whether the grant of

<sup>&</sup>lt;sup>1</sup> Commission Implementing Regulation (EU) 2018/140 of 29 January 2018 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain cast iron articles originating in the PRC and terminating the investigation on imports of certain cast iron articles originating in India (OJ 2018 L 25, p. 6).

<sup>&</sup>lt;sup>2</sup> Judgment of 19 May 2021, Case T-254/18, China Chamber of Commerce for Import and Export of Machinery and Electronic Products v Commission.

those rights was consistent with the basic regulation<sup>3</sup>. Although the Commission recognised, during the administrative proceedings, the CCCME as an interested party, such recognition and grant constitute an administrative practice, which is not binding for the determination carried out by the EU judicature in an action for annulment. Therefore, the Advocate General proceeds with an in depth analysis of the characterisation of the CCCME.

The Commission and the interveners contend that the term 'association' should be understood according to the common traditions of the EU Member States, as relating to an entity that is constituted and acts in a democratic manner and is independent from government. Advocate General Medina is of the opinion that **the concept of** 'representative association' under the basic regulation encompasses not only that of freedom of association but also the concept of trade or business association within the meaning of international trade law. When the said freedom of association does not apply, an entity can still be representative of its members within the meaning of the basic regulation and in the context of international trade law. The freedom of association cannot be used in a way in order to restrict the rights of an entity, which claims to represent undertakings or an industry.

The Advocate General notes that, according to the Statutes of the Association, the purpose of the CCCME is to represent certain exporters of the PCR of cast iron.

Insofar as State interference is concerned, the Advocate General finds that while, according to the Statutes of the CCCME, it appears that the Chinese State exercises some control over that entity, such broad terms are not sufficient to demonstrate that the State exercises control in a manner that precludes the representation of the interests of the exporters or constitutes an emanation of the PRC. For the purposes of the anti-dumping proceedings under the basic regulation, it must be shown that the control exercised by the State applies specifically to the decisions made by that association in relation to those proceedings.

Advocate General Medina therefore takes the view that, **irrespective of the alleged interference of the PRC in the CCCME**, **that entity meets the criteria of a representative association within the meaning of the basic regulation**. Therefore, it should be considered as individually concerned within the meaning of Article 263 TFEU on account of the failure to observe its procedural rights.

According to the Commission, an interpretation whereby a trade association is part of a State and at the same time defends the collective interests of its members against that same State is not in line with the fundamental principles of representative democracy. In this respect, Advocate General Medina finds that **an alleged connection to the State is insufficient to declare the CCCME as an emanation of the State or that the CCCME is not organised in a democratic manner.** The evidence provided to the General Court does not suffice to show that the decision to bring court proceedings was taken without the consent of the members and at the behest of the government. The Advocate General therefore suggests that the Court should reject the plea of inadmissibility based on the allegation that the CCCME is not representative of its members in legal proceedings.

Concerning the **disclosure obligations of the Commission**, the CCCME obtained, during the anti-dumping procedure, overall figures in relation to the microeconomic and macroeconomic indicators. That entity asserts however that the Commission should have provided in aggregated form the calculations underlying those indicators that enabled the assessment of the injury caused to the EU.

In this regard, Advocate General Medina notes that the decision to grant the confidential treatment of data entails striking a balance between the protection of the data of the EU producers (who initiate the proceedings and whose complaint is the foundation of the investigations) and the rights of access to information of the third country exporting producers and their representative associations.

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<sup>&</sup>lt;sup>3</sup> Regulation of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (OJ 2016 L 176, p. 21).

In the light of that balance, it should be considered that the presentation of overall figures does not necessarily entail an infringement of the rights of the defence of the CCCME. In that respect, it is important to emphasise that the cooperation of the producers from third countries' or EU producers constitutes the basis of the anti-dumping investigation. Therefore, macroeconomic data, when based on the estimates provided by the EU producers and on their market knowledge of the EU industry, ought to be granted confidential treatment.

**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

**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 <u>full text</u> of the Opinion is published on the CURIA website on the day of delivery.

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