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Judgments of the General Court in Case T-480/20 and T-540/20 | Hengshi Egypt Fiberglass Fabrics and Jushi Egypt for Fiberglass Industry v Commission

A subsidy granted by China can be attributed to Egypt as the country of origin or export of a product subject to countervailing measures

Countervailing duties may be imposed on undertakings which are established in the China-Egypt Suez Economic and Trade Cooperation Zone but which are subsidised by China

Following a complaint lodged on 1 April 2019, the European Commission adopted Implementing Regulation 2020/776 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics ('GFF') originating in China and Egypt. [1]

Following a second complaint lodged on 24 April 2019, the Commission moreover adopted Implementing Regulation 2020/870 imposing a definitive countervailing duty and definitively collecting the provisional countervailing duty imposed on imports of continuous filament glass fibre products ('GFR') originating in Egypt, and levying the definitive countervailing duty on the registered imports of that GFR. GFR constitutes the main raw material used to produce GFF. [2]

Hengshi Egypt Fiberglass Fabrics SAE ('Hengshi') and Jushi Egypt for Fiberglass Industry SAE ('Jushi'), two companies formed in accordance with Egyptian laws whose shareholders are Chinese entities, produce GFF and export it to the European Union. Jushi also produces GFR and exports it to the European Union. Those two companies are established in Egypt in the China-Egypt Suez Economic and Trade Cooperation Zone ('the SETC-Zone'), which was created jointly by Egypt and China in accordance with their respective national strategies, namely the Suez Canal Corridor Development Plan for Egypt and the 'Belt and Road' Initiative for China. The latter initiative enables the government authorities of China to grant certain benefits, in particular financial support, to Chinese undertakings established in the SETC-Zone.

Taking the view that they had been harmed by the countervailing duties imposed by the Commission, Hengshi and Jushi brought an action before the Court for annulment of Implementing Regulation 2020/776. In a separate action, Jushi moreover sought the annulment of Implementing Regulation 2020/870.

In dismissing those actions, the Court clarified the conditions under which the Commission may attribute to the government of the country of origin or export of a product subsidies granted by the government of another country

[1] Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt and amending Commission Implementing Regulation (EU) 2020/492 imposing definitive anti-dumping duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ 2020 L 189, p. 1).

[2] Commission Implementing Regulation (EU) 2020/870 of 24 June 2020 imposing a definitive countervailing duty and definitively collecting the provisional countervailing duty imposed on imports of continuous filament glass fibre products originating in Egypt, and levying the definitive countervailing duty on the registered imports of continuous filament glass fibre products originating in Egypt (OJ 2020 L 201, p. 10).

for the purpose of imposing, under the basic anti-subsidy regulation, [3] a countervailing duty on imports of the product concerned into the European Union.

Findings of the Court

In support of their actions, the applicants put forward, inter alia, a plea alleging infringement of Article 3(1)(a) of the basic anti-subsidy regulation, according to which a subsidy is deemed to exist if there is a financial contribution by a government in the country of origin or export. In that regard, the applicants dispute in particular the line of argument followed by the Commission in the implementing regulations, consisting in attributing to the Government of Egypt financial contributions granted by Chinese public bodies to undertakings established in the SETC-Zone.

First of all, the Court rejects the applicants' complaint alleging that the Commission erred in law in its interpretation of the concept of 'government' of the country of origin or export within the meaning of Article 3(1)(a) of the basic anti-subsidy regulation.

As regards that concept of 'government', the Court notes that Article 2(b) of the basic anti-subsidy regulation is limited to defining that concept as including the government or public bodies of the country of origin or export. However, it is not apparent from that provision that a financial contribution may not be attributed to the government of the country of origin or export of the product concerned on the basis of the specific evidence available. Moreover, the fact that that regulation requires that a financial contribution be granted by the government 'within the territory of a country' [4] does not imply that that contribution must come directly from the government of the country of origin or export.

Thus, the basic anti-subsidy regulation does not preclude the possibility that a financial contribution granted to companies established in Egypt by Chinese public bodies, and not directly by the Government of Egypt, may be attributed to the latter as government of the country of origin or export.

This conclusion is all the more relevant in the specific context of the SETC-Zone, which enables the government authorities of China to confer directly all the facilities inherent in the 'Belt and Road' initiative on the Chinese undertakings established in that zone. In those circumstances, it cannot be accepted that an economic and legal construct of such a scale as that of the SETC-Zone is not covered by the basic anti-subsidy regulation.

Next, the Court rejects the applicants' line of argument that the Commission's interpretation of Article 3(1)(a) of the basic anti-subsidy regulation is contrary to Article 10(7) and Article 13(1) of that regulation.

In that regard, the Court notes, first, that Article 10(7) of the basic anti-subsidy regulation, which requires the Commission, upon receipt of a complaint, to invite the country of origin or export concerned for consultations with the aim of clarifying the situation, does not preclude the government of that country from being consulted on the financial contributions attributable to them. In the present case, it is apparent from the file that the Commission did indeed invite the Government of Egypt for consultations on issues such as the preferential loans granted by Chinese entities.

As regards, second, Article 13(1) of the basic anti-subsidy regulation, which allows, inter alia, the country of origin or export to eliminate or limit the subsidy or take other measures concerning its effects, such a possibility remains valid where the financial contribution may be attributed to the government of that country. Thus, it was open to the Government of Egypt to stop the close cooperation with the Government of China in relation to the financial contributions or to propose measures to limit the effects of the subsidies at issue.

It follows that neither Article 3(1)(a) of the basic anti-subsidy regulation nor the general scheme of that regulation

[3] Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (OJ 2016 L 176, p. 55).

[4] Recital 5 of the basic anti-subsidy regulation.

precludes a financial contribution granted by the Government of China from being attributed to the Government of Egypt, as country of origin or export, in a case such as that at issue in the present case.

Lastly, contrary to what the applicants submit, that conclusion is supported inter alia by the provisions of Article 1 of the Agreement on Subsidies and Countervailing Measures, [5] in the light of which the basic anti-subsidy regulation must be interpreted.

Article 1.1(a)(1) of that agreement, which Article 3 of the basic anti-subsidy regulation seeks to implement, defines a subsidy as a financial contribution by a government or any public body within the territory of 'a' Member of the WTO. That wording does not therefore preclude the possibility that a financial contribution granted by a third country may be attributed to the government of the country of origin or export, since it is sufficient that the financial contribution of the government or any public body is within the territory of 'a' Member of the WTO.

In the light of those considerations, the Court finds that the Commission correctly interpreted Article 3(1)(a) of the basic anti-subsidy regulation and rejects the plea raised by the applicants. The Court also rejects the other pleas put forward by the applicants in both actions and, consequently, those actions in their entirety.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

The full text of the judgments (T-480/20 and T-540/20) is published on the CURIA website on the day of delivery.

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[5] Agreement on Subsidies and Countervailing Measures (OJ 1994 L 336, p. 156), in Annex 1A to the Agreement establishing the World Trade Organisation (WTO) (OJ 1994 L 336, p. 3), signed in Marrakesh on 15 April 1994.