

Chinese Vitamin C Producers Price-Fixing Verdict Raises Questions of Comity and Conflict with Executive Branch Views

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In a case that potentially has important implications for U.S. antitrust enforcement and for U.S. trade relations with the People's Republic of China, this month a New York jury found Chinese manufacturers of vitamin C liable for fixing prices of vitamin C exported from China into the U.S., in violation of U.S. antitrust laws. In the private suit, the plaintiff class of direct purchasers were awarded \$162.3 million following a jury verdict that explicitly rejected the Chinese vitamin manufacturers' central defense: that their agreement on prices was compelled by the Chinese government. That rejection is all the more striking because the Chinese government itself claimed responsibility for ordering the defendants to fix the prices in question. Since the jury verdict on March 14, the Chinese government has swiftly and unequivocally criticized the judgment. The director general of the Anti-Monopoly Bureau of the Ministry of Commerce ("MOFCOM"), Shang Ming, expressed his "deep dissatisfaction" that the U.S. district court refused to defer to China's own interpretation of Chinese law, stating that the court proceeding – in which the judge accused China of providing less than a "complete and straightforward explanation of Chinese law" – "shows disrespect" for China. A MOFCOM spokesman termed the verdict "unfair," "inappropriate," and "wrong," stating that, if the verdict stands, it could promote international disputes and harm America's interests. The judgment – which the defendants plan to appeal – presents some difficult and far-reaching questions for U.S. antitrust law and for U.S./China trade.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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