



U.S. Jury Finds Chinese Companies Liable for Price-Fixing, Fined \$162 Million

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In a first-ever verdict, a U.S. jury last week found two Chinese companies liable for conspiring to fix the global prices charged for Vitamin C, resulting in a damages award of a whopping \$162 million.

Never before had Chinese companies been found liable for price-fixing. Plaintiffs' class action lawyers convinced the New York federal court jury that defendants Hebei Welcome Pharmaceutical Company Ltd and North China Pharmaceutical Group Corp., two of the world's largest producers of Vitamin C, had conspired with others to artificially inflate worldwide prices over a five-year period.

In a novel and high-risk defense, the companies did not deny price-fixing. Instead, they argued that the Chinese government directed them to align with competitors on pricing and supply output. The seldom-invoked foreign sovereign compulsion doctrine is intended to protect defendants who are compelled by their own government to break U.S. laws. In an unprecedented move, China's Ministry of Commerce came forward on behalf of defendants, filing an amicus brief in support of defendants' motion for summary judgment filed in 2009. The Ministry stated that the government had indeed created a regime under which defendants risked incurring penalties or loss of the right to export Vitamin C if they failed to coordinate pricing. A retired Chinese government official even testified at trial on behalf of defendants, stating the he had been tasked with coordinating export pricing and quantities in order to prevent "malicious competition."

The Brooklyn, New York-based federal court rejected this argument and denied defendants' pretrial motion. The court determined that Chinese law did not compel the defendants' conduct and, further, that the case should not be dismissed on grounds of international comity. But, the defendant companies were allowed to present this defense to the jury. Qiao Haili, an official in China's Ministry of Commerce, testified for the defense that the ministry would set price minimums for vitamin C and had the power to enforce these minimums.

On cross examination, plaintiffs' counsel successfully undermined Qiao Haili's credibility with a July 2003 memo he had authored. The memo stated that he was unsure of the ministry's enforcement power and referred to the regulations as "formalities that only honest fellows will follow". This evidence ultimately destroyed the sovereign compulsion defense and lost the case for defendants.

After less than a day of deliberations, a jury awarded a \$54 million dollar verdict, which Judge Brian Cogan tripled pursuant to U.S. antitrust laws. North China Pharmaceutical Group intends to appeal the award.

As has been evident throughout the course of the proceedings, far more is at stake here than the conduct of these defendant companies or the amount of damages suffered by the plaintiff class. To be sure, the verdict is an omen that other emerging Chinese companies will likely find themselves embroiled in litigation in the U.S. courts.

But consequences may extend beyond the courts. Within days of the jury verdict, the Chinese government publicly denounced the verdict, suggesting that the court decision would result in negative global repercussions and result in disputes adverse to U.S. interests. In a climate of already-tense trade relations between the United States and China, some have speculated that China may seek to retaliate against U.S. businesses operating there.