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# Supreme Court Rules That Foreign Governments' Interpretations of Their Own Laws Are Not Entitled to Conclusive Deference in U.S. Courts

On June 14, 2018, the Supreme Court reversed a decision of the Second Circuit tossing out a $147 million antitrust judgment against a Chinese producer of vitamin C that was based upon the People's Republic of China's interpretation of its own laws. In the case below, *In re Vitamin C Antitrust Litigation*, 837 F.3d 175 (2d Cir. 2016), the Second Circuit held that a foreign government's interpretation of its own laws, if reasonable, must be accorded conclusive deference by a U.S. federal court. In a unanimous opinion authored by Justice Ginsberg, the Supreme Court disagreed, ruling that although "[a] federal court should accord respectful consideration to a foreign government's submission," it is "not bound to accord conclusive effect to the foreign government's statements." *Animal Science Products, Inc.* v. *Hebei Welcome Pharmaceutical Co.*, No. 16-1220, 585 U.S. __ (2018), slip op. at 1. The Court held that, instead, a federal court may consider any relevant material in resolving a question of foreign law. *See id.*

## Background

This case originated as a class action suit by U.S.-based purchasers of vitamin C alleging that Chinese vitamin C sellers had agreed to fix the price and amount of vitamin C exported from China, violating Sherman Act Section 1. The plaintiffs alleged that the sellers formed a cartel using a trade association known as the Chamber of Commerce of Medicines and Health Products Importers and Exporters (the "Chamber"). The Chamber's Vitamin C Subcommittee set quotas and minimum prices for vitamin C exports under a policy called "Verification and Chop," wherein the Chamber would inspect each export contract for compliance with price and quantity controls and certify compliance by affixing a seal known as a "chop." *Id.* at 3 n.1.

The defendants moved to dismiss, arguing that Chinese law compelled them to fix prices and quantities of vitamin C for export, and that they were therefore "shielded from liability under U.S. antitrust law by the act of state doctrine, the foreign sovereign compulsion doctrine, and principles of international comity." *Id.* at 2. The Ministry of Commerce of the People's Republic of China filed an *amicus* brief supporting the defendants' position and asserting that the Chamber's vitamin C export quotas and minimum prices were mandated by the Chinese government. The plaintiffs disagreed with this characterization. Plaintiffs argued that the Ministry had not cited any written law or regulation mandating the defendants' pricing agreement, and also pointed to a Chamber announcement touting the vitamin C manufacturers' "self-regulated agreement . . . without any government intervention." *Id.* at 4 (internal quotation omitted). The plaintiffs also put forward an expert witness, who opined that the Chinese government's authorization of the



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Chamber's Vitamin C Subcommittee did not necessarily mean that the Chamber's price fixing was required by Chinese law. The district court denied the defendants' motion to dismiss and a subsequent motion for summary judgment, and the case was tried to a jury, which returned a $147 million verdict for plaintiffs.

The Second Circuit reversed on appeal, holding that the district court should have granted conclusive deference to the Chinese government's interpretation of its own laws and regulations. In particular, the Second Circuit held that "[w]hen a foreign government . . . directly participates in U.S. court proceedings by providing a statement regarding the construction and effect of [its] laws and regulations, which is reasonable under the circumstances presented, a U.S. court is bound to defer to those statements." *Id.* at 6 (quoting *In re Vitamin C*, 837 F.3d at 189) (alterations in original omitted). Applying this rule, the Second Circuit determined that the defendants' price-fixing and quota-setting conduct was compelled by Chinese law and that the plaintiffs' U.S. antitrust claims should have been dismissed.

**The Supreme Court's Decision**

The Supreme Court reversed, holding that although submissions of foreign governments regarding the content of their laws should always be accorded "respectful consideration" by U.S. federal courts, the specific weight they should be accorded depends on the facts and circumstances of the particular case. The Supreme Court's analysis hinged on Federal Rule of Civil Procedure 44.1, which provides that "[i]n determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination must be treated as ruling on a question of law." Prior to the enactment of this rule, issues of foreign law had been treated as questions of fact. Rule 44.1 was intended to make clear that going forward such issues should be treated as questions of law. The district court in *Vitamin C* interpreted Rule 44.1 as granting it substantial discretion to consider evidence beyond the Chinese government's own characterization of its laws. But the Second Circuit rejected this interpretation, observing that Rule 44.1 was silent on the weight to be assigned to particular evidence and did not modify the traditional deference due to submissions of foreign governments regarding their own laws.

The Supreme Court found that the Second Circuit's rule that a foreign government's submission is "binding, so long as facially reasonable," was too inflexible and "unyielding" to comport with Rule 44.1. *Id.* at 9. Rule 44.1, the Court observed, was intended "'to make the process of determining alien law identical with the method of ascertaining domestic law to the extent that it is possible to do so.'" *Id.* at 8 (quoting 9A C. Wright & A. Miller, Federal Practice and Procedure § 2444 (3d ed. 2008)). Unlike the Second Circuit, the Supreme Court declined to endorse any hard-and-fast rule, writing that "no single formula or rule will fit all cases." *Id.* at 9. Instead, the Court identified numerous relevant considerations for assessing the weight a foreign government's statement should be accorded: "the statement's clarity, thoroughness and support; its context and purpose; the transparency of the foreign legal system; the role and authority of the entity or official offering the statement; and the statement's consistency with the foreign government's past positions." *Id.* By way of example, the Court analogized to its own treatment of U.S. states' submissions regarding the

contents of their laws, noting that although the decision of a state's highest court is binding on the Supreme Court, the views of a state's attorney general are not. Likewise, the Court noted that the Second Circuit's decision failed to address prior statements by the Chinese government that seemed to be inconsistent with its position in this litigation. These included a prior representation by the Chinese government to the World Trade Organization that it had ceased export administration of vitamin C. *See id.* at 10.

The Supreme Court acknowledged concerns that the Second Circuit had raised regarding reciprocity—specifically, that a foreign government's submission should receive the same deference in U.S. federal courts that the United States would expect to receive in a foreign court. The Court noted, however, that such concerns did "not warrant the Court of Appeals' judgment" because "the United States, historically, has not argued that foreign courts are bound to accept its characterizations or precluded from considering other relevant sources." *Id.* at 11. Indeed, the Court noted that the view that foreign governments' submissions are entitled to "substantial but not conclusive weight" is consistent with the approach taken by several multilateral treaties (to which the United States is not a party) establishing processes for one government to obtain an official statement from another characterizing its laws. *Id.* at 12.

Accordingly, the Supreme Court vacated the Second Circuit's judgment and remanded the case for further consideration consistent with its opinion.

**Significance**

As a legal matter, the effect of Animal Science Products may not be seismic: as the Supreme Court noted, foreign governments' views regarding the contents of their own laws and regulations should be and routinely are afforded substantial weight by U.S. federal courts. There is no reason to believe that in most cases where a foreign government weighs in, the Supreme Court's decision will mandate a different outcome than the more deferential standard adopted by the Second Circuit in *In re Vitamin C*. What is clear, however, is that a submission from a foreign government adopting a favorable and facially reasonable interpretation of its laws is not a silver bullet in a litigant's holster.

For Chinese companies and those doing business in China, the Supreme Court's opinion is also interesting, and perhaps consequential, for how its treatment of the Chinese legal system contrasts with the Second Circuit's decision below. The Second Circuit fixated on the differences between the U.S. and Chinese legal regimes as supporting its decision, "reiterat[ing] that deference in this case is particularly important because of the unique and complex nature of the Chinese legal- and economic-regulatory system and the stark differences between the Chinese system and ours." *In re Vitamin C*, 837 F.3d at 190. In particular, the Second Circuit cited as reasons to defer to the Chinese government's interpretation of its laws the fact that, "rather than codifying its statutes, the Chinese government frequently governs by regulations promulgated by various ministries" and "the danger that an interpretation suggested by the plain language of a governmental directive may not accurately reflect Chinese law." *Id.* at 190-91 (internal quotations and citations omitted). The Supreme Court, on the other hand, did not address, let alone dwell upon, specific

differences between the Chinese and U.S. legal systems in its decision. Tellingly, however, the Court's opinion does cite as a factor for consideration "the transparency of the foreign legal system," slip op. at 9, suggesting that the opacity and ambiguity in the Chinese legal system that Second Circuit described may be a factor weighing against, rather than for, according substantial weight to the Chinese government's interpretation of its own laws.

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