

ALERT

Supreme Court Clarifies the Deference Owed to a Foreign State's Interpretation of Foreign Law

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On June 14, 2018, the Supreme Court issued an opinion in *Animal Science Products Inc. v. Hebei Welcome Pharmaceutical Co.* (No. 16-1220), holding that federal courts should accord "respectful consideration" to, but are not bound by, a foreign government's submission on the meaning and interpretation of its domestic laws. The decision is highly relevant for all international litigators.

In *Animal Science*, a class of U.S.-based purchasers of Vitamin C (the "U.S. purchasers") sued a group of Chinese Vitamin C manufacturers and exporters (the "Chinese sellers") in the United States District Court for the Eastern District of New York. The U.S. purchasers alleged that the Chinese sellers had formed a cartel to fix the price and quantities of Vitamin C exported to the United States in contravention of §1 of the Sherman Act, 15 U.S.C. §1. Slip Op. at 2.

The Chinese sellers moved to dismiss, asserting that Chinese law required them to fix the price and quantity of Vitamin C exports and that they were thus shielded from liability by the act of state doctrine, the foreign sovereign compulsion doctrine, and principles of international comity. Slip Op. at 2. The Ministry of Commerce of the People's Republic of China (the "Ministry") filed an *amicus* brief supporting these assertions. Slip Op. at 2.

The District Court denied the Chinese sellers' motion, concluding that while the Ministry's views on Chinese law were "entitled to substantial deference," they were not conclusive. *In re Vitamin C Antitrust Litigation*, 584 F.Supp. 2d 546, 559 (E.D.N.Y. 2008). Because the U.S. purchasers had introduced materials indicating that the price fixing

Authors

Tatiana Sainati
Partner
202.719.3544
tsainati@wiley.law

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was not legally mandated, the District Court determined that further inquiry into the voluntariness of the Chinese seller's actions was required. *Id.* After further submissions, the District Court held that Chinese law did not require the Chinese sellers to fix the price of Vitamin C exports. *Id.* at 525.

The Court of Appeals reversed, holding that the District Court was bound by China's reasonable interpretation of its own law – and that no other contrary evidence should have been considered. Slip Op. at 6. Based on this deferential standard, the court held that a true conflict between U.S. and Chinese law existed – that is, the Chinese sellers could not comply both with Chinese law and U.S. antitrust laws. *Id.* at 192. That holding – coupled with its consideration of other international comity factors, such as the location of the parties, the conduct, and the alleged harm – led the Second Circuit to conclude that the District Court should have declined jurisdiction over the dispute on international comity grounds. *Id.* at 193. The Supreme Court disagreed.

In so doing, the Court noted that Federal Rule of Civil Procedure 44.1 requires that determinations of foreign law be treated as “a ruling on a question of law,” rather than a finding of fact. Accordingly, while comity considerations require federal courts to “carefully consider” a foreign state's views on its own laws, “a federal court is neither bound to adopt the foreign government's characterization nor required to ignore other relevant materials.” Slip Op. at 8-9.

The Court emphasized that “no single formula or rule will fit all cases in which a foreign government describes its own law,” instructing federal courts to consider issues including the clarity and thoroughness of the foreign state's submissions, its context and purpose, “the transparency of the foreign legal system,” the role and authority of the entity or agency making the submission for the foreign state, and the statement's consistency with other representations made by the foreign government about its laws. Slip Op. at 9. A Court noted that particular caution is warranted when, as in this case, a foreign state's representations are either (i) contrary to previous statements, and/or (ii) provided in the context of a specific litigation.

The Court remanded the case for renewed consideration, noting that the evidence considered by the District Court was “at least relevant to the weight [China's] submissions should receive and to the question of whether Chinese law” required the price-fixing. Slip Op. at 12.

Animal Science potentially reinvigorates the use of antitrust laws to address the conduct of state-owned entities in China and beyond. More broadly, the decision will provide ammunition in U.S. courts for litigants facing foreign sovereigns by underscoring that international comity principles, and deference to foreign governments, are not limitless.