

## U.S. Supreme Court Rules Foreign State's Views of Its Own Law Are Entitled to "Respectful Consideration"

On June 14, 2018, the U.S. Supreme Court ruled that federal courts are not required to treat a foreign state's interpretation of its domestic law as binding when determining the content of foreign law. Instead, courts "should accord respectful consideration to a foreign government's submission" in light of the circumstances of each case.<sup>1</sup> The Court's decision resolves a conflict among the lower courts of appeals on the degree of deference owed to a foreign state's views of its own law.

The question arose in a class action brought by U.S. purchasers of vitamin C against certain Chinese sellers of the nutrient. The U.S. purchasers claimed that the Chinese sellers had fixed the prices and quantities of vitamin C exports in violation of U.S. antitrust laws. They also alleged that the Chinese sellers "had formed a cartel" through their trade association, the Chamber of Commerce of Medicines and Health Products Importers and Exporters.<sup>2</sup> In motions to dispose of the case before trial, the Chinese sellers argued that they were required to fix prices and quantities under Chinese law and thus "were shielded from liability under U. S. antitrust law by the act of state doctrine, the foreign sovereign compulsion doctrine, and principles of international comity."<sup>3</sup>

The Ministry of Commerce of the People's Republic of China appeared as *amicus curiae* and filed a brief supporting the Chinese sellers' position. The Ministry stated that it was "the highest administrative authority in China authorized to regulate foreign trade," and that the Chamber was "an entity under the Ministry's direct and active supervision" and was "authorized to regulate vitamin C exports."<sup>4</sup> And, in the Ministry's view, the alleged price-fixing cartel was in fact "a regulatory pricing regime mandated by the government of China."<sup>5</sup> In response, the U.S. purchasers offered "evidence suggesting that the price fixing was voluntary."<sup>6</sup> The district court afforded the Ministry's views "substantial deference," but nevertheless concluded that "Chinese law did not require the sellers to fix the price or quantity of vitamin C export."<sup>7</sup> The case eventually made it to trial, and a jury returned a verdict in favor of the U.S. purchasers.

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<sup>1</sup> *Animal Sci. Prods. v. Hebei Welcome Pharm. Co.*, No. 16-1220, 2018 U.S. LEXIS 3684, at \*6 (June 14, 2018).

<sup>2</sup> *Id.* at \*7.

<sup>3</sup> *Id.* at \*7-8

<sup>4</sup> *Id.* at \*8 (internal citations omitted).

<sup>5</sup> *Id.* (internal citations omitted).

<sup>6</sup> *Id.* at \*9.

<sup>7</sup> *Id.* at \*9, \*10.

On appeal, the Second Circuit reversed the lower court's judgment, finding that the district court had failed to give the correct amount of deference to the Ministry's statements and thus erred in denying the Chinese sellers' pre-trial motion to dismiss the case. Because the Chinese government had appeared before the court and presented a "reasonable" interpretation of its domestic law, the court of appeals concluded that it was "bound to defer to those statements."<sup>8</sup>

The Supreme Court granted review and vacated the Second Circuit's decision. The Court held that the court of appeals' fundamental error was to treat the Ministry's submission as "binding, so long as facially reasonable."<sup>9</sup> The Supreme Court explained that the Federal Rules of Civil Procedure treat determinations of foreign law as questions of law, not of fact, and thus "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."<sup>10</sup> The Court recognized that "a government's expressed view of its own law is ordinarily entitled to substantial but not conclusive weight."<sup>11</sup> Nevertheless, it reasoned that the appropriate level of deference may vary depending on the circumstances: "Relevant considerations include 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." The case was remanded to the Second Circuit for reconsideration consistent with the principle set forth in the Court's opinion.

This new decision clarifies the degree of deference owed to a foreign state's views of its domestic law and gives lower courts guidance on how to make that determination on a case-by-case basis.

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<sup>8</sup> *Id.* at \*11 (quoting *In re Vitamin C Antitrust Litigation*, 837 F. 3d 175, 189 (2016)).

<sup>9</sup> *Id.* at \*15.

<sup>10</sup> *Id.* at \*14 (quoting 9A C. Wright & A. Miller, *Federal Practice and Procedure* § 2444 (3d ed. 2008)).

<sup>11</sup> *Id.* at \*18.

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