

## The Cost of Doing Business: Supreme Court Vacates Chinese Defendants' Antitrust Win

### IN SHORT

**The Situation:** In *Animal Science Products, Inc. v. Hebei Welcome Pharmaceutical Co.*, the defendants in an anticompetition matter—who were China-based manufacturers of vitamin C—claimed that Chinese law required them to coordinate prices and export volumes.

**The Result:** In its ruling, the U.S. Supreme Court unanimously held that a federal court is not bound to give conclusive deference to a foreign government's interpretation of its law.

**Looking Ahead:** The Court's case-specific test giving "reasonable consideration" to governments' interpretations, which includes considering "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 ... past positions," provides limited guidance to foreign companies looking to comply with local regulations without conflicting with U.S. laws.

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### Background

The case, *Animal Science Products, Inc. v. Hebei Welcome Pharmaceutical Co.*, began in 2005 when a group of vitamin C purchasers filed various lawsuits against Chinese manufacturers of vitamin C. These lawsuits were consolidated into a multidistrict class action in the Eastern District of New York. The plaintiffs allege that the defendants conspired to fix the price and supply of vitamin C sold to U.S. companies and others worldwide in violation of the Sherman Act and the Clayton Act. They assert that the defendants established an illegal cartel designed to limit production and increase the price of vitamin C to create a shortage of supply in the international market and thereby maintain China's position as the global market leader.

In motions to dismiss and for summary judgment, the defendants sought dismissal of the plaintiffs' claims on the grounds that, as Chinese entities, they were acting pursuant to Chinese regulation—specifically from the Ministry of Commerce of the People's Republic of China ("MOFCOM")—that required them to coordinate prices and export volumes in conflict with U.S. antitrust law.



The Court stressed that 'no single formula or rule will fit all cases in which a foreign government describes its own law'; instead, the weight to be accorded a foreign state's views about the meaning of its own laws will 'depend upon the circumstances.'



Surprisingly, the Chinese government, through MOFCOM, filed an *amicus curiae* brief in support of the defendants, asserting that: (i) MOFCOM is the highest authority within the Chinese government authorized to regulate foreign trade; (ii) MOFCOM authorizes and supervises the Chamber to regulate vitamin C export prices and output levels; and (iii) MOFCOM compelled the setting and coordination of vitamin C prices. MOFCOM went so far as to say that all vitamin C legally exported during the relevant period was required to be sold at industrywide coordinated prices.

The district court twice rejected the defendants' argument, concluding that Chinese law did not compel the defendants' anticompetitive conduct. The district court exercised its "substantial discretion" in considering different types of evidence, including expert testimony regarding Chinese law. In 2013, the case went to trial, and a jury found the defendants liable for violations of the Sherman Act for approximately \$147 million in damages.

On appeal, the U.S. Court of Appeals for the Second Circuit vacated the judgment, reversed the district court's order denying the motion to dismiss, and remanded with instructions to dismiss the plaintiffs' complaint. The key area of disagreement between the Second Circuit panel and the district court was the level of deference to be afforded to MOFCOM's position on what Chinese law required.

Had MOFCOM not appeared, the court acknowledged "the district court's careful and thorough treatment of the evidence ... would have been entirely appropriate." However, in finding MOFCOM's interpretation to be "reasonable," the court showed it total deference and held that Chinese law required the defendants to collude in conflict with U.S. antitrust law. The court then proceeded to apply a multifactor balancing

test to conclude that the principles of international comity supported abstention.

### Supreme Court Decision

In a unanimous ruling, the Supreme Court reversed and remanded the Second Circuit's decision, holding that a "federal court should accord respectful consideration to a foreign government's submission, but is not bound to accord conclusive effect to the foreign government's statements." The Court stressed that "no single formula or rule will fit all cases in which a foreign government describes its own law"; instead, the weight to be accorded a foreign state's views about the meaning of its own laws will "depend upon the circumstances."

The focus of the Court's analysis was Federal Rule of Civil Procedure 44.1, which specifies that a determination of foreign law "must be treated as a ruling on a question of law," as opposed to a finding of fact, and that "the court may consider any relevant material or source" in making its determination.

### Impact Going Forward

While the Court offered several criteria courts should consider, its list is not exhaustive. Even if it were, such a multifactor balancing approach casts more uncertainty for parties than the Second Circuit's more rigid approach.

The Supreme Court's test also limits the ability of foreign governments to affect the reach of U.S. antitrust regulations. Had the Second Circuit's decision been upheld, foreign governments could have felt more emboldened to participate in litigation involving interpretation of their laws. The Supreme Court's case-by-case approach may dampen any such motivation.

Broader implications from this litigation are on the horizon. Here, MOFCOM's *amicus* brief stated that the policies at issue were put in place "to meet the need of building the socialist market economy and deepening the reform of foreign economic and trade management system." Similar contentions may arise between other socialist economies and the United States. The cost of doing business in the United States may well be liability for these foreign companies under U.S. competition laws.

## TWO KEY TAKEAWAYS

1. In *Animal Science Products, Inc. v. Hebei Welcome Pharmaceutical Co.*, the U.S. Supreme Court noted that "federal court should accord respectful consideration to a foreign government's submission, but is not bound to accord conclusive effect to the foreign government's statements."
2. The Supreme Court's case-by-case approach may discourage foreign companies from testing U.S. antitrust regulations.

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Cleveland



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Eric P. Enson  
Los Angeles / San Francisco

*Alexandra L. Schill, an associate in the Columbus Office, and Michael Stork, an associate in the Washington Office, assisted in the preparation of this Commentary.*

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