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Supreme Court Clarifies Deference Owed a Foreign Government's Statement on Its Domestic Law

Jeffrey May (Wolters Kluwer) · Saturday, June 16th, 2018

In a decision that will have a significant impact on antitrust enforcement, particularly private damages actions against international cartels, a unanimous Supreme Court ruled that a federal court considering a case in which foreign law is relevant is not bound to defer to an official interpretation of the law offered by the foreign government. The decision is *Animal Science Products, Inc. v. Hebei Welcome Pharmaceutical Co. Ltd.*, No. 16-1220.

“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 held in a June 14 opinion written by Justice Ruth Bader Ginsburg. A [decision](#) of the U.S. Court of Appeals in New York City that a federal court was bound to defer to an interpretation offered by a foreign government that “directly participates in U.S. court proceedings” that is “reasonable under the circumstances” was vacated.

In the underlying suit, U.S.-based purchasers of vitamin C alleged that Chinese sellers had formed a cartel “facilitated by the efforts of their trade association,” the Chamber of Commerce of Medicines and Health Products Importers and Exporters.

The defending Chinese sellers argued that the claims should be rejected on the ground that Chinese law required them to fix the price and quantity of vitamin C exports. They contended that they were shielded from antitrust liability by the act of state doctrine, the foreign sovereign compulsion doctrine, and principles of international comity. The Ministry of Commerce of the People’s Republic of China filed a brief as *amicus curiae* in support of the Chinese sellers.

The district court rejected the defendants’ contentions and allowed the case to go to a jury. The jury found that the Chinese sellers had fixed prices and were not “actually compelled” by China to enter into those agreements. The jury awarded more than \$54 million before trebling. On appeal, the Second Circuit reversed. The Supreme Court has now vacated that decision. The U.S. Department of Justice had filed an [amicus brief](#) and participated in oral argument in the case, supporting the petitioners.

The appellate court applied a “highly deferential standard,” according to the Supreme Court. The appellate court’s decision that Chinese law required the Chinese sellers to engage in the challenged conduct was based solely on the statements of the Ministry of Commerce. According to the Supreme Court, the Second Circuit panel disregarded the submissions made by the U.S. purchasers

casting doubt on the foreign government's submission.

Federal Rule of Civil Procedure 44.1 specifies that a court's determination of foreign law "must be treated as a ruling on a question of law," rather than as a finding of fact, the Supreme Court explained. However, Rule 44.1 does not address the weight a federal court determining foreign law should give to the views presented by the foreign government.

The High Court pointed out that "no single formula or rule will fit all cases in which a foreign government describes its own law." It was error, however, for the appellate court to deem the submission of the Ministry of Commerce as binding, so long as facially reasonable. The High Court called this approach an "unyielding rule [that] is inconsistent with Rule 44.1."

Reciprocity concerns. The High Court also noted that the appellate court's concern for reciprocity was sound but did not warrant the judgment. "[T]he United States, historically, has not argued that foreign courts are bound to accept its characterizations or precluded from considering other relevant sources," the Court said. Two international treaties that establish formal mechanisms by which one government may obtain from another an official statement characterizing its laws also support the approach that a foreign government's view of its own law is ordinarily entitled to substantial but not conclusive weight, it was noted.

Remand. The Supreme Court remanded the matter for renewed consideration in light of its decision. The appellate court had failed to consider the shortcomings in the submission by the Ministry of Commerce identified by the district court. "[T]he materials identified by the District Court were at least relevant to the weight the Ministry's submissions should receive and to the question whether Chinese law required the Chinese sellers' conduct," the High Court concluded.

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