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In Re Vitamin C: Supreme Court Rules Foreign Government's Statement of Law Not Binding on Federal Courts

In a 9-0 [opinion](#) delivered by Justice Ruth Ginsburg, the United States Supreme Court last week ruled that the federal courts are not "bound to accord conclusive effect" to a foreign government's statement of its own law under Federal Rule of Civil Procedure 44.1, in *Animal Science Products, Inc. et al., v. Hebei Welcome Pharmaceutical Co. Ltd. et al.*

The decision overruled the opinion of the U.S. Court of Appeals for the Second Circuit in *In re Vitamin C Antitrust Litigation*, 837 F. 3d 175 (2d Cir. 2016), in which the circuit court had set forth a "highly deferential rule" and concluded that whenever a government makes a reasonable statement of its own law in U.S. court proceedings, the U.S. court is bound to follow it. This issue had come before the Second Circuit on an appeal of a \$147M damages award for illegal price fixing of vitamin C by Chinese sellers. China's Ministry of Commerce had argued to the U.S. District Court for the Eastern District of New York that the conduct was required by Chinese law and that the defendants were shielded by the act of state doctrine. The district court was not persuaded and had ruled in favor of purchasers Animal Science Products, Inc. and The Rains Co. that the anticompetitive conduct was a voluntary agreement between the Chinese vitamin C manufacturers. The case proceeded to trial, and the jury awarded \$147 million in treble damages. The Second Circuit reversed, based on the ministry's statement of Chinese law.

No rule or statute, including FRCP 44.1, addresses the weight that a federal court should ascribe to the views of a foreign government when deciding questions of foreign law. Recognizing this, the Supreme Court stated that "[i]n the spirit of 'international comity,' a federal court should carefully consider a foreign state's views about the meaning of its own laws." Nevertheless, the Court concluded that a federal court retains the right to determine "the appropriate weight" to accord those views. "[A] federal court is neither bound to adopt the foreign government's characterization nor required to ignore other relevant materials." The Court offered examples of circumstances in which the foreign government's submission may be due more or less weight, such as "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."

Against this backdrop, the Court held that the Second Circuit's inflexible rule was in error. The Court highlighted that the Second Circuit failed to address other evidence in the record that showed the "shortcomings" of the ministry's position. The Court expressed no opinion on the meaning of the law at issue, but it vacated the Second Circuit's judgment and remanded to the lower court for consideration consistent with its opinion. In light of the standard adopted by the Supreme Court, however, parties may face greater scrutiny when relying on the foreign compulsion defense or the international comity defense, which may make mounting such defenses more challenging.

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