

U.S. Supreme Court Says Interpretative Statements on Foreign Law by Foreign Governments not Binding on U.S. Courts



On 14 June 2018, the U.S. Supreme Court (the **Supreme Court**) gave judgment in *Animal Science Products et al. v. Hebei Welcome Pharmaceutical Co. Ltd et al.* finding that a federal court determining foreign law is not bound to accord conclusive effect to submissions of a foreign government.

The unanimous judgment concerned the application of Federal Rule of Civil Procedure 44.1 (**Rule 44.1**), which provides that a court may consider "any relevant material or source" when making a determination of foreign law, and that any such determination "must be treated as a ruling on a question of law". In the case at hand, U.S. purchasers of vitamin C alleged that Chinese producers had formed a cartel and conspired to fix prices and quantities of exports in violation of U.S. antitrust law. The Chinese producers claimed that they were not liable for such a violation as they were legally obliged to comply with a pricing regime set by the Chinese

Government.

At trial, the Chinese Ministry of Commerce intervened as *amicus curiae* in support of the Chinese producers. In its submission, the Chinese Government stated that the alleged cartel conspiracy was “*a regulatory pricing regime mandated by the government of China*”. The U.S. producers disputed this characterisation, and noted that the Chinese Government had (i) failed to identify any law or regulation expressly authorising such a regime and (ii) submitted in unrelated WTO proceedings that China had abandoned the practice of export administration of vitamin C.

At first instance, the District Court for the Eastern District of New York held that the Chinese Government’s submission was not conclusive and denied the Chinese producers’ application to dismiss the proceedings. [On appeal](#), the Court of Appeals for the Second Circuit (the **Appeals Court**) reversed that decision, holding that it was “*bound to defer*” to reasonable interpretative statements made in court by a foreign government regarding the construction and effect of the foreign government’s own laws and regulations. The Supreme Court was therefore called upon to determine whether such statements could be considered conclusive when a federal court was required to determine foreign law in accordance with Rule 44.1.

While the Supreme Court agreed that “*the spirit of international comity*” and the principle of reciprocity suggest that a court should “*carefully consider a foreign state’s views about the meaning of its own laws*”, it disagreed with the “*highly deferential*” rule applied by the Appeals Court. In particular, it observed that if a foreign government’s interpretative statement were to bind a federal court, that would preclude the court from considering any other “*relevant material or source*”. Rule 44.1 instead gives flexibility to federal courts when determining foreign law. In this regard, the Supreme Court held that a single uniform rule was not

desirable. Rather, the federal court should consider, amongst others, *“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”*. In particular, the Supreme Court noted that an interpretative statement offered in the course of litigation or which appears to contradict a previous public statement may prompt the federal court to exercise additional caution when according weight to a foreign government’s submission.

The judgment of the Appeals Court was therefore vacated and remitted for reconsideration.

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