

IN THE SUPREME COURT OF THE UNITED STATES

No. 16-1220

ANIMAL SCIENCE PRODUCTS, INC., ET AL., PETITIONERS

v.

HEBEI WELCOME PHARMACEUTICAL CO. LTD., ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as amicus curiae supporting petitioners and that the United States be allowed ten minutes of argument time. Petitioners have agreed to cede ten minutes of argument time to the United States and therefore consent to this motion.

1. This case presents the question whether a federal court deciding an issue of foreign law under Federal Rule of Civil Procedure 44.1 must treat as conclusive a submission from the relevant foreign government. Petitioners are U.S. companies that purchase vitamin C. Respondents are Chinese exporters of vitamin C. In 2005, petitioners filed this suit alleging that respondents had violated Section 1 of the Sherman Act, 15 U.S.C. 1, by fixing the prices and quantities of vitamin C exported to the United States. Respondents did not deny that they had fixed prices and quantities. Instead, they asserted that their actions had been compelled by Chinese law and that petitioners' claim were therefore barred by the act of state doctrine, the foreign sovereign compulsion doctrine, and principles of comity. The Ministry of Commerce of the People's Republic of China (Ministry) submitted an amicus brief supporting respondents' characterization of Chinese law. Pet. App. 4a-10a.

2. The district court rejected respondents' contention that their actions had been compelled by Chinese law. The court explained that, under Rule 44.1, the determination of foreign law is "an issue of law" to be decided by the court based on "any relevant material or source." Pet. App. 93a (citations omitted). The court held that a foreign government's characterization of its laws warrants deference, but not "absolute and conclusive deference." Id. at 97a. Here, the court "respect-

fully decline[d] to defer to the Ministry's interpretation" of the Chinese law governing respondents' conduct. Id. at 117a-118a. Among other things, the court explained that the Ministry's submissions had "fail[ed] to address critical provisions of the [governing legal regime] that, on their face, undermine its interpretation." Id. at 119a.

After a trial, a jury found that respondents had agreed to fix the prices and quantities of vitamin C exports. Pet. App. 11a. The district court entered judgment for petitioners, awarding roughly \$147 million in treble damages. Ibid.

3. The court of appeals reversed, holding that petitioners' claims were barred by principles of international comity. Pet. App. 1a-38a. The court's decision rested on its conclusion that respondents' conduct had been required by Chinese law, which in turn rested on the court's holding that it was bound to defer to the Ministry's statements characterizing Chinese law. The court acknowledged that some courts have declined to "accept such statements as conclusive." Id. at 20a-21a. But the court disagreed with those decisions, holding instead that when a foreign sovereign "directly participates in U.S. court proceedings by providing a sworn evidentiary proffer regarding the construction and effect of its laws and regulations, which is reasonable under the circumstances presented, a U.S. court is bound to defer." Id. at 25a.

4. The United States has filed a brief as amicus curiae supporting petitioners. The brief argues that although a federal court deciding a question of foreign law under Rule 44.1 should ordinarily give substantial weight to a submission expressing the views of the relevant foreign government, the court is neither bound to accept the foreign government's characterization nor barred from considering other relevant materials. The brief contends that the court of appeals' rule of binding deference departs from those principles and is inconsistent with the policies embodied in Rule 44.1.

5. The United States has a substantial interest in the Court's resolution of this case. Th

e proper determination of issues of foreign law affects the enforcement of many federal statutes. In addition, the federal courts' treatment of submissions from foreign governments has implications for the Nation's foreign relations. At the Court's invitation, the Solicitor General filed an amicus brief on behalf of the United States at the petition stage. We therefore believe that oral presentation of the views of the United States would be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

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