



# Who Interprets Foreign Law in U.S. Federal Courts?

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Federal courts are frequently called upon to evaluate foreign law in a variety of contexts—from [routine breach of contract](#) and [tort claims](#) to complex cases implicating the [judicial branch’s role in international affairs](#). In *Animal Science Products, Inc. v. Hebei Welcome Pharmaceutical Co. Ltd.*, the Supreme Court announced the standard of deference for U.S. federal courts to apply when considering a foreign government’s interpretation of its own law. Prior to the Court’s ruling, federal courts took a range of approaches on the degree of deference given to a foreign government’s official explanation of its domestic law. Some courts viewed a foreign nation’s interpretation as [effectively binding](#) (at least as long as it was [reasonable](#)), but others were willing to [deviate](#) from the nation’s position if it was [inconsistent](#) with prior statements or [not supported](#) by affidavits and expert testimony. In *Animal Science Products, Inc.*, the Supreme Court [unanimously held](#) that federal courts must give “respectful consideration” to a foreign government’s interpretation, but they are not “bound to defer” to that position.

## Why Do U.S. Courts Interpret Foreign Law?

In recent decades, analysis of foreign law has become important in cases when litigants claim to be subject to conflicting obligations under U.S. and foreign law. For example, U.S. courts have [ordered](#) companies to turn over documents held overseas when [foreign bank secrecy](#) laws prohibited their disclosure. And a business operating in the United States and abroad may be subject to conflicting legal requirements when, for example, American antitrust law prohibits anticompetitive sales practices at the same time [foreign law mandates](#) the business engage in those practices.

When considering cases involving irreconcilable legal duties between U.S. and foreign law, federal courts have, at times, [excused](#) violations of U.S. law or [moderated](#) the penalty imposed for the violations. But it may not always be clear what foreign law requires or whether there is an actual conflict between U.S. and foreign legal obligations. Although foreign governments have submitted [official written explanations](#) of their national law in some cases, prior to *Animal Science Products*, federal courts of appeals took differing

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approaches to their analysis of foreign governments' submissions. Whereas [some courts scrutinized](#) the foreign government's views for consistency with prior statements and external evidence, others adopted the nation's analysis with [little to no independent analysis](#). Most recently, the United States Court of Appeals for the Second Circuit (Second Circuit) [concluded](#) that it was bound to defer to a foreign government's reasonable interpretation of its own law, and it declined to analyze statements or evidence that contradicted the foreign government's views. In *Animal Science Products*, the Supreme Court rejected the Second Circuit's approach, [holding](#) that "a federal court is neither bound to adopt the foreign government's characterization nor required to ignore other relevant materials."

### **Background on *Animal Science Products***

*Animal Science Products* arose out of allegations that several Chinese manufacturers and exporters of vitamin C agreed to fix the price and quantity of exports to the United States in violation of [Section 1 of the Sherman Act](#) (a provision discussed in more detail in this [Sidebar](#)). The Chinese companies moved to dismiss the case on the ground that they should be shielded from liability because Chinese law required them to follow a nationally determined price and quantity setting regime for vitamin C exports. Initially, the district court denied the motion to dismiss, the case went to trial, and the jury found the defendants liable for violating the Sherman Act. On appeal, the Second Circuit reversed, holding that principles of comity—or [respect for foreign sovereignty](#)—required dismissal if Chinese law mandated compliance with the price and quantity controls.

The Second Circuit's analysis hinged on whether the defendants could comply with both U.S. antitrust law and Chinese law. In an amicus brief filed with the trial court, the Ministry of Commerce of the People's Republic of China ([Ministry](#)) analyzed the relevant Chinese law and concluded that the alleged anticompetitive behavior was, in fact, mandated by the Chinese government. The plaintiffs disputed the Ministry's interpretation, noting that it was not based on a written law or regulation, and that, in a 2002 document filed with the World Trade Organization (WTO), China stated that it "[gave up export administration . . . of Vitamin C](#)[".]” Faced with competing explanations of Chinese law, the Second Circuit declined to evaluate evidence or statements outside the Ministry's submission, and the court inspected only the Ministry's submission and the sources cited therein. Based on this material, the court concluded that it must defer to the Ministry's views because they were facially reasonable. Having accepted the Ministry's interpretation, the Second Circuit held that American and Chinese law imposed conflicting legal requirements, and based on this consideration and other factors, principles of comity warranted the dismissal of plaintiffs' claims.

### **The Supreme Court's Opinion**

In a unanimous opinion written by Justice Ginsburg, the Supreme Court held that the Second Circuit erred in applying such a "[highly deferential](#)" standard to the Ministry's submission. Instead, the Court held that the Second Circuit should have afforded the submission "[respectful consideration](#)"—a standard applied in a [variety of other contexts](#), but that had not been a part of the Supreme Court's jurisprudence involving interpretation of foreign domestic law. Under this less deferential standard, federal courts should "carefully consider a foreign state's views about the meaning of its own laws," the Court [explained](#). But U.S. courts are not bound by the foreign government's interpretation if circumstances make that interpretation unreliable. "Given the world's many and diverse legal systems, and the range of circumstances in which a foreign government's views may be presented," the High Court [reasoned](#), U.S. courts can consider a variety of factors before deciding to accept a foreign government's analysis.

The Supreme Court noted that its view was consistent with [Federal Rule of Civil Procedure 44.1](#), which states that, when determining foreign law, federal courts "may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the [Federal Rules of Evidence](#)." The Court also distinguished *United States v. Pink*, a 1943 decision, in which the Court treated an official declaration from the Soviet Union regarding the legal effect of a Soviet nationalization decree

as “conclusive.” Not only did *Pink* “arise in unusual circumstances[.]” the *Animal Science Products* Court [explained](#), the ruling pre-dates Rule 44.1, and therefore was not applicable to the case.

The Supreme Court did not resolve the underlying question of whether Chinese law conflicts with U.S. antitrust law or the impact of such a conflict on the defendants’ liability. However, the Court [found](#) that the Second Circuit had not considered all relevant materials—including China’s potentially inconsistent statements before the WTO—in its decision to dismiss the case. Therefore, the Supreme Court remanded the case to the Second Circuit to reevaluate its holding in a manner consistent with the Court’s opinion.

### **Implications for Congress**

The *Animal Science Products* decision may have implications in a variety of contexts, including upon the United States’ efforts to address anticompetitive trade practices abroad. In recent years, some executive branch [officials](#) and [Members of Congress](#) have expressed interest in combating what have been described as “[predatory](#)” economic practices of foreign countries, including China. (For additional background and analysis of U.S.-China trade issues, see this [CRS Report](#).) As noted above, if foreign law mandates that private companies engage in economic practices that violate U.S. law, existing legal doctrines in the United States—such as the doctrines of comity, foreign sovereign compulsion, and act of state (described [here](#))—may allow federal courts to excuse or moderate the sanction for violation of U.S. law. While *Animal Science Products* does not impact these underlying legal doctrines, it may result in federal courts using a more critical eye when evaluating a foreign government’s claim that its national law conflicts with legal obligations in the United States.