

Supreme Court to Consider Civil Price-Fixing Case Against Chinese Vitamin C Makers

High court to decide whether U.S. judges must defer to legal submissions made by the Chinese government



The Supreme Court said it will hear a civil price-fixing case against Chinese vitamin C makers

By Brent Kendall

WASHINGTON—The Supreme Court on Friday said it would hear an antitrust case involving price fixing by Chinese vitamin C makers, agreeing to decide whether U.S. judges must defer to legal submissions made by the Chinese government.

The case raises delicate political, economic and legal questions about how U.S. courts should treat foreign companies that say their conduct was mandated by a foreign government. And it asks the high court to consider how judges should view a foreign government's characterization of its own laws.

The case, which originated in 2005, centers on a lawsuit brought by vitamin C purchasers, including a Texas animal-feed company and a New Jersey vitamin distributor, that alleged the Chinese vitamin C makers were conspiring to fix prices and supplies in the U.S.

The Chinese firms, rather than denying the allegations, said their actions were required under Chinese regulations that directly address vitamin C export pricing.

China's Ministry of Commerce, in an unprecedented move, participated in the case by filing a friend-of-the-court brief that urged dismissal of the lawsuit. The Chinese government said the companies' actions were mandated by Chinese law and argued the lawsuit was an inappropriate interference with Chinese industrial policy.

A Brooklyn judge said the Chinese government's characterization of its laws during the litigation was contradicted by other evidence about how the regulations worked, as well as evidence that suggested the vitamin C makers' actions weren't compelled by the government.

A Brooklyn jury found the companies liable in 2013, and the judge awarded \$147 million in damages.

The Second U.S. Circuit Court of Appeals in New York, however, sided with the Chinese companies in 2016 and threw out the judgment, relying heavily on the Chinese government's submission.

"Not extending deference in these circumstances disregards and unravels the tradition of according respect to a foreign government's explication of its own laws, the same respect and treatment that we would expect our government to receive in comparable matters before a foreign court," the appeals court wrote in dismissing the lawsuit.

The Supreme Court will review that ruling.

The Trump administration urged the high court to hear the case, arguing that the appeals court was too deferential to China's legal submission.

The defendants are Hebei Welcome Pharmaceutical Co. and an affiliated company, North China Pharmaceutical Group Corp. They asked the justices not to hear the case, saying the earlier dismissal was correct.