

Comity or Compulsion

On Tuesday, the United States Court of Appeals for the Second Circuit issued a decision reversing a \$147.8 million price-fixing judgment against two Chinese manufacturers of Vitamin C. The plaintiffs alleged that the Chinese manufacturers engaged in price fixing and supply manipulation in violation of U.S. antitrust laws. In its first ever appearance as an amicus before a U.S. court, the Chinese government filed a formal statement asserting that Chinese law required the Chinese manufacturers to set prices and reduce the quantities of Vitamin C sold abroad. Relying on this statement, the Second Circuit held that because the Chinese manufacturers could not comply with both Chinese law and the U.S. antitrust laws, principles of international comity compelled dismissal of the case.

This case raises a host of interesting questions. First, did the Second Circuit reach the right result? Second, is this a comity case or a foreign sovereign compulsion case? Third, what level of deference is due to a foreign sovereign that appears in private litigation to explain their country's laws? Fourth, should U.S. judges defer to such an explanation?

It will be interesting to see whether this case makes it to the United States Supreme Court.