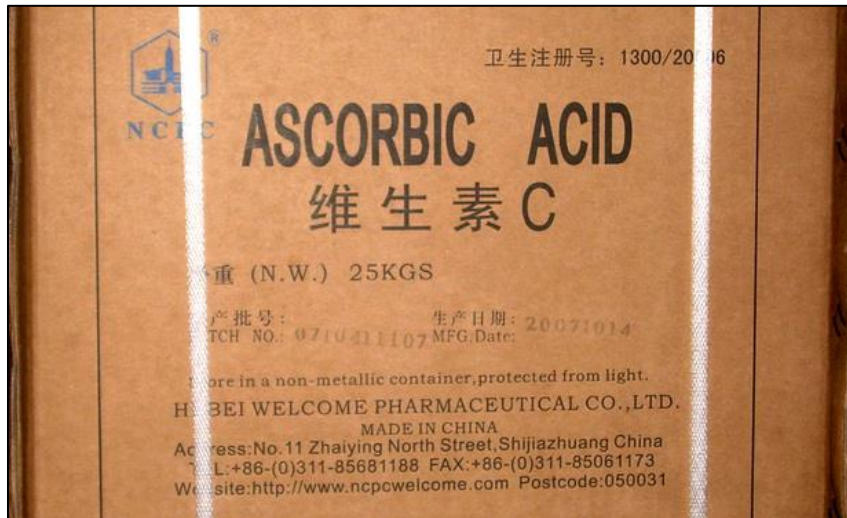


# Appeals Court Vacates \$147M Judgment Over Chinese Vitamin C

[Mark Hamblett](#), New York Law Journal



Chinese vitamin C sellers are off the hook for violating U.S. antitrust law because they were compelled by the Chinese government to set prices and reduce quantities for the vitamin.

The U.S. Court of Appeals for the Second Circuit on Tuesday vacated a \$147 million judgment and injunctive relief secured at trial in Brooklyn federal court by two plaintiff companies who said they were the victims of a price-fixing conspiracy.

The reason, a three-judge panel said, was that the Chinese government filed a formal statement in the Eastern District saying that Chinese law required the companies, Hebei Welcome Pharmaceutical and North China Pharmaceutical Group, to set prices and lower quantities of vitamin C sold abroad.

Because the companies "could not simultaneously comply with Chinese law and U.S. antitrust laws, the principles of international comity required the district court to abstain from exercising jurisdiction in this case," the court said in *In re Vitamin C Antitrust Litigation*, 13-4791-cv.

The decision came in multidistrict litigation that has been percolating since the first suits were filed in 2005, just four years after Chinese companies had captured 60 percent of the worldwide vitamin C market. The cases were consolidated in Brooklyn in 2006.

Judges Jose Cabranes, Richard Wesley and Peter Hall vacated the judgment that two plaintiff vitamin C purchasers, Animal Science Products Inc. and The Ranis Co., had secured before Eastern District Judge Brian Cogan.

Cogan had denied the defendants' motion to dismiss and a jury in March 2013 found the defendants liable under Section 1 of the Sherman Act.

Comity, Hall explained for the court, "is both a principle guiding relations between foreign governments and a legal doctrine by which U.S. courts recognize an individual's acts under foreign law."

Here, he said, the lower court had subject matter jurisdiction, but it should have abstained from exercising jurisdiction on comity grounds because "there is a true conflict between U.S. law and Chinese law in this case."

Hall said there was a split among the circuit courts on the degree of deference to afford a foreign nation's interpretation of its own laws: "We reaffirm the principle that when a foreign government, acting through counsel or otherwise, 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 to those statements," he said.

To fail to extend deference in the circumstances of this case, he said, "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."

William Isaacson of Boies, Schiller & Flexner argued for the plaintiffs.

Jonathan Jacobson of Wilson Sonsini Goodrich & Rosati argued for the defendants.

Jacobson called Cogan's decision "an unprecedented rejection of a sovereign's formal statement to a U.S. institution."

Had the court gone the other way and not required conclusive deference when a foreign sovereign makes a formal appearance in cases, Jacobson said, it would have caused "significant international confusion and disrespect for the law across the world."