Bloomberg Law Reports®

October 12, 2011

Antitrust & Trade

International Trade

Foreign Trade Antitrust Improvements Act

Getting Out from Under Antitrust Litigation: How it just got harder for foreign entities to stay out of the U.S. antitrust labyrinth


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Making sense of U.S. antitrust law is a nearly impossible feat. If you have ever attempted it, you likely found yourself entangled in a labyrinth of intricate rules, followed by an even larger web of obscure exceptions to those rules. The murky nature of antitrust law is further exacerbated when foreign corporations, or foreign affiliates of U.S. corporations, find themselves in a U.S. court defending against allegations of anticompetitive conduct.

While this may be of little consolation to foreign entities, the reality is that the existing case law is inconsistent. Nonetheless, the livelihood of a foreign entity may hinge on knowing how to defend against an antitrust lawsuit. To make matters worse, in the most recent antitrust case involving foreign companies, *Animal Science Products, Inc. v. China Minmetals Corporation*,[1] the Third Circuit made it more complicated for foreign defendants to get out from under complex and expensive litigation. In that case, the court significantly tipped the scales against foreign entities defending against violations of antitrust law, particularly with respect to litigation exposure and costs. If this decision is any indication of the future for antitrust litigation, foreign defendants undoubtedly will face an increasingly uphill battle. Ironically, as the litigation stakes become higher, the law seems to become muddier.

But it is not all doom and gloom - a strong line of defense is often the best strategy for a successful attack. This article aims to assist foreign entities with navigating the waters of U.S. antitrust law in order to effectively combat lawsuits. The following analysis of the principal statute governing this subject area, the Foreign Trade Antitrust Improvements Act (FTAIA),[2] as well as its case law progeny, explains why U.S. courts have struggled to apply the law consistently - the FTAIA itself is marred by unwieldy language and, as a result, judicial interpretation has proven difficult to both predict and reconcile. By examining the statutory and case law, this article endeavors to set forth the governing legal framework, to forecast the implications of the Third Circuit's decision on foreign defendants, and ultimately, to find the light at the end of the antitrust law tunnel. We conclude with strategic recommendations to foreign entities defending against antitrust suits in the United States.

A Primer on U.S. Antitrust Law

The Sherman Antitrust Act (Sherman Act) was the first attempt by Congress to regulate anticompetitive practices. The statute prohibits "restraint of trade," as well as attempts or conspiracies to monopolize. In enacting the law, Congress cast a wide net of potential liability on the basis of anticompetitive conduct, both domestically and internationally. The Sherman Act was written using broad language, which failed to define crucial terms, such as "restraint of trade" and "commerce." This wide net resulted in

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inconsistent case law regarding "the proper test for determining whether United States antitrust jurisdiction over international transactions exists."[3]

In an effort to both clarify and demarcate the international reach of the Sherman Act, Congress enacted the FTAIA. The FTAIA sought to clean up the lingering confusion triggered by the Sherman Act and "to promote certainty in assessing the applicability of American antitrust law to international business transactions[.]"[4] As the Supreme Court has explained, "the FTAIA's language and history suggest that Congress designed the FTAIA to clarify, perhaps to limit, but not *to expand* in any significant way, the Sherman Act's scope as applied to foreign commerce."[5]

Over the years, the FTAIA became known as a "limiting statute." But *how* exactly does it limit the reach of U.S. antitrust law? Did Congress intend the statute to limit a U.S. court's *jurisdiction* over extraterritorial activity? Or, did Congress hope to impose *substantive* merits-based limitations on antitrust lawsuits?

Ferreting out the Sherman Act and its companion, "little sister" statute, the FTAIA, is tricky. We must begin with the general rule that U.S. antitrust law does *not* regulate extraterritorial anticompetitive conduct. The FTAIA articulates this general rule by broadly removing from the Sherman Act's reach - but doing so in somewhat vague language - "all (non-import) activity involving foreign commerce[.]"[6] In plain English, and as a general proposition, the United States does not, and cannot, regulate activity that occurs overseas.

The FTAIA, however, then carves out a narrowly circumscribed exception - often referred to as the "domestic injury exception" - in instances where otherwise-immunized extraterritorial conduct will be swept back into the Sherman Act's clutches. Under the two-prong domestic injury exception, foreign conduct will make its way back into the ambit of the Sherman Act where (1) "it has a direct, substantial, and reasonably foreseeable effect" on U.S. commerce, and (2) "such effect gives rise to a claim" under the Sherman Act.[7]

At first blush, the domestic injury exception seems simple enough: merely apply each prong to the facts at issue in the case and, *voilá*, the court's job is done. But, as with many areas of the law, the case law interpreting the domestic injury exception is dotted with ambiguity and contradiction. Does the *effect* have to occur on U.S. soil, or must it merely have some sort of impact on U.S. commerce? How *substantial* must that effect be? And what if the effect impacts *both* U.S. and overseas commerce? Courts have struggled with these questions, and the resulting case law is a patchwork of divergent statutory interpretations.[8]

Case Law Interpreting the FTAIA

Judges and scholars alike have had some choice words for the FTAIA - it has been described as "inelegantly phrased,"[9] "cumbersome,"[10] and replete with "convoluted language."[11] Not surprisingly, the statute has been the cause of considerable judicial prodding and probing over the years. Unfortunately, the resulting judge-made law seems only to have complicated matters.[12] The federal courts' confusion does not bode well for litigants who have no reliable means by which to predict how a court will rule or even how a court will interpret the law itself.

The Supreme Court's first attempt at making sense of the FTAIA was in *F. Hoffman-LA Roche Ltd. v. Empagran S.A* (*Empagran*).[13] The plaintiffs in that case were vitamin purchasers who alleged that vitamin manufacturers in the United States and overseas entered into a price-fixing agreement. The defendants moved to dismiss the suit as to the *foreign* purchasers, all of whom had purchased vitamins only outside of the United States.

The Court restricted its subject matter jurisdiction by establishing the rule that the FTAIA's domestic injury exception is inapplicable where the conduct "significantly and adversely affects both customers outside the United States and customers within the United States, but the adverse foreign effect is *independent* of any adverse domestic effect."[14] Because the vitamin purchasers in foreign countries suffered alleged injuries that were purely foreign in nature, the domestic injury exception did not apply, and as a result, they were precluded from seeking relief in the United States.

Courts have reflected on the FTAIA as intending to keep U.S. courts "from nosing about where they do not belong."[15] The *Empagran* decision naturally led lower courts to regard the FTAIA as imposing *jurisdictional* limitations.[16] What this effectively means is that the FTAIA broadly strips U.S. courts of the jurisdiction to regulate extraterritorial conduct, regardless of its anticompetitive nature. However, the FTAIA gives back the power where the claim falls within the domestic injury exception. As the following discussion explains, this interpretation of the FTAIA has resulted in many defense-friendly rulings.

– Prong I: "Direct, Substantial, and Reasonably Foreseeable" Effect

To fall within the purview of the domestic injury exception, a plaintiff must adequately allege a "direct, substantial, and reasonably foreseeable" effect on U.S. commerce. Judicial efforts to parse apart these adjectives, which describe the "effect" of the foreign conduct, have produced a mixed bag of case law precedent, much of which has favored defendants.

Courts have routinely held that the "direct" effect requirement is *not* satisfied where a plaintiff alleges only that the anticompetitive activity had a "spillover" impact on domestic commerce. For example, in *In re Monosodium Glutamate Antitrust Litigation*,[17] the plaintiffs, who were foreign corporations, alleged that the defendants engaged in a global conspiracy to fix the prices of MSG and that they were injured by the higher prices charged outside of the United States. The plaintiffs argued these factual allegations satisfied the domestic injury exception, stating that the U.S. market necessarily was included within the conspiracy "because the fungible nature and worldwide flow of these

products made the domestic and foreign markets interconnected, such that super-competitive prices abroad could be sustained only by maintaining super-competitive prices in the United States."[18]

The Eighth Circuit disagreed, holding that the domestic effects - the increased prices of MSG in the United States - were not the direct cause of the alleged injuries. Instead, the *foreign* effects of the alleged scheme - the increased MSG prices abroad - were an intervening link in the causal chain. Although prices in the United States may have been a vital link in the conspiracy to fix the prices of MSG worldwide, the plaintiffs could not establish that these prices were sufficiently substantial to constitute the direct cause of their injury. Once the requisite causal link was severed, the plaintiffs' theory, at best, could establish only an indirect connection between the defendants' scheme and the plaintiffs' injury.

– Prong II: Foreign Conduct Must "Give Rise To" Plaintiff's Injury

Much litigation involving the FTAIA has focused on the second prong of the domestic injury exception: whether the foreign conduct at issue has the requisite effect on U.S. commerce, which gives rise to the plaintiff's injury. Courts have concluded that an antitrust claim must be that of the plaintiff, not a claim in general.[19] For example, allegations that a defendant's conspiracy to create a "single worldwide price increase," without more, are insufficient to establish that the domestic effects of the foreign conduct - rather than the anticompetitive conduct itself - gave rise to the purported injuries.[20]

In *In re DRAM Antitrust Litigation*,[21] the plaintiff, a British computer manufacturer, alleged that the defendants, domestic and foreign manufacturers and sellers of dynamic random access memory (DRAM), conspired to fix prices around the world.[22] The plaintiff claimed that these factual allegations satisfied the first prong of the domestic injury exception because the defendants could not have maintained the artificially inflated foreign prices without also fixing DRAM prices in the United States and, therefore, the anticompetitive conduct must have given rise to the alleged injury.[23]

The Ninth Circuit, however, rejected this "but-for" theory. While the alleged conspiracy *might have* affected DRAM prices in the United States, and while maintaining inflated prices in the United States *might have* been necessary for the global conspiracy to succeed, the British plaintiff failed to show "that the higher U.S. prices *proximately caused* its foreign injury of having to pay higher prices abroad."[24] To the contrary, "[o]ther factors or forces may have affected the foreign prices. In particular, that the conspiracy had effects in the United States and abroad does not show that the effect in the United States, rather than the overall price-fixing conspiracy itself, proximately caused the effect abroad."[25] The court ruled that even "a direct correlation between prices" does not pass muster where the complaint does not "set forth a theory with any specificity of how this price-setting occurred or how it shows a direct causal relationship."[26] In rejecting the plaintiff's "but-for" theory and, instead adopting a proximate cause standard, the court concluded that the domestic effect did not sufficiently give rise to the alleged injury so as to satisfy the domestic injury exception's second prong.

Similarly, in *Den Norske Stats Oljeselskap*,[27] the Fifth Circuit found that the requisite domestic effect of the alleged foreign conduct did *not* give rise to the alleged injury. The plaintiff, a U.S. oil company, claimed that the defendants, foreign barge service providers, conspired to fix the prices for their services in the North Sea.[28] The plaintiff further alleged that as a result of the defendants' price-fixing scheme, it was forced to pay inflated prices for the same services in the United States.[29]

The court dismissed the case, holding that the alleged conspiracy for barge services in the North Sea did *not* give rise to the alleged domestic injury. While recognizing that there *may have* been a connection between the high prices paid for services in the United States and the high prices paid in the North Sea, the FTAIA requires more than a "close relationship" between the domestic injury and the plaintiff's claim; it demands that the domestic effect *give rise* to the antitrust claim.[30] In the court's view, the plaintiff's theory amounted to nothing more than a ripple effect - i.e., that in the global marketplace, the defendants' foreign conduct had some effect in the United States, which then caused a ripple effect that would necessarily "be felt" by the plaintiff.[31]

As with the first prong of the domestic injury exception, the case law underscores the difficulty plaintiffs have faced in establishing that U.S. antitrust law reaches a foreign defendant's conduct. What the "gives rise to" prong means is that a plaintiff cannot sue for injuries incurred as a result of foreign conduct that has some sort of anticompetitive effect in U.S. commerce *unless* the domestic effect gave rise to the plaintiff's particular injury.

The Third Circuit Marches to a "Substantive" Beat

On the surface, the FTAIA seemed quite content with acting as a jurisdictional statute. Plaintiffs bore a heavy burden in the preliminary stages of a case to proffer evidence supporting a court's subject matter jurisdiction. As discussed above, plaintiffs often fell short of satisfying this burden of proof. That is, until the Third Circuit changed the long-standing analytical framework in the *Animal Science Products* decision.

The case involved a class action suit filed by two U.S. corporations against several Chinese producers and exporters of magnesite, as well as one U.S. affiliate, alleging that the defendants engaged in a price-fixing scheme. As a result of the conspiracy, the plaintiffs alleged, they purchased the defendants' magnesite at supra-competitive prices. The district court *sua sponte* raised the issue of jurisdiction and ultimately dismissed the case without prejudice on the basis that it lacked subject matter jurisdiction. The plaintiffs then filed an amended complaint, which included more detailed factual allegations to support their claims and to convince the court that jurisdiction existed. But again, they struck out, and the court held that the FTAIA deprived it of subject matter jurisdiction to adjudicate the case.

On appeal, the Third Circuit upended the existing jurisdictional focus of the district court on the FTAIA, and it did so with the backing of legislative history and Supreme Court precedent on statutory interpretation in general. The court began by echoing the Supreme Court's recent criticism of federal courts' "profligate" and "less than meticulous" use of the term "jurisdiction."[32] Indeed, courts have consistently failed to properly distinguish "between substantive merits and jurisdiction - that is, in differentiating between statutory elements that serve as a predicate to establishing a successful federal claim for relief on the merits, and statutory elements that define a federal court's adjudicative authority."[33]

Such "drive-by jurisdictional rulings" [34] have clouded the spirit and intent of the FTAIA. Moreover, hinging a ruling on the non-existence of a critical element of a case as a jurisdictional defect, rather than merely a failure to prove an element of a claim, can impose significant consequences. A decision premised on jurisdiction relates to a court's constitutional authority to act at all, whereas a decision premised on substance relates to whether an individual plaintiff's claim has merit.

Turning to the FTAIA's legislative history, the *Animal Science Products* court concluded that there was nothing to support the judge-made law that the FTAIA was intended to strip jurisdiction from U.S. courts (absent the narrow carve-out for cases falling within the domestic injury exception). Analogizing the Supreme Court's ruling in *Arbaugh* that a provision of Title VII "neither speaks in jurisdictional terms nor refers in any way to the jurisdiction of district courts,"[35] the *Animal Science Products* court found the FTAIA to be silent as to jurisdiction as well. For this reason, and this reason alone, the court overruled not only the district court, but also an entire body of antitrust case law, and held that the FTAIA is a substantive statute. Moreover, the Third Circuit stated that, on remand, the district court may consider only a 12(b)(6) motion to dismiss for failure to state a claim. Practically speaking, and "[u]nmoored from the question of subject matter jurisdiction, the FTAIA becomes just one additional merits issue."[36]

Jurisdiction vs. Substance: Does it really matter?

From an academic standpoint, the *Animal Science Products* decision has teed up the FTAIA for Supreme Court review. But until then, the holding has immediate and practical consequences for foreign entities. Appreciating the significance of the decision requires an understanding of the difference between "jurisdictional" and "substantive" statutes. These labels are often conflated, but they have vastly different implications. A jurisdictional statute delineates when a U.S. court has the power to resolve a case. If a court lacks the jurisdiction to even consider a claim, the underlying merits of that claim are moot.

Interpreting the FTAIA as a jurisdictional statute enables a U.S. court to make an early decision and, more significantly, to avoid trekking through the trenches in examining whether a plaintiff has a meritorious antitrust claim. It is easier for a defendant to succeed on a 12(b)(1) motion to dismiss a case for lack of subject matter jurisdiction. First, the plaintiff bears the burden of establishing that the court has the power to hear the case. Second, courts may engage in jurisdictional fact-finding before ruling on this type of motion. Not only that, but it is the plaintiffs who must proffer such evidence, and they are afforded neither the benefit of the doubt nor the benefit of discovery to support their argument. Finally, courts must resolve jurisdictional questions at the earliest possible stage of a case, and they may raise the issue *sua sponte*. Defendants shoulder a relatively small fraction of the burden when moving for 12(b)(1) dismissal.

On the other hand, if the FTAIA is a substantive statute, it is but one additional element of a plaintiff's antitrust claim, and "the jury is the proper trier of contested facts."[37] Interpreting the FTAIA as imposing substantive limits requires a court to investigate the merits of the case, which necessarily implicates factual questions. *Facts* are relevant to the substance of a claim. And once facts become pertinent (provided they relate to material issues of the case), a court's ability to resolve a case in its early stages vanishes. The burden instead rests upon the defendant, either on a 12(b)(6) motion to dismiss or a 56(c) motion for summary judgment. In both types of motions, the plaintiff has the upper-hand.

Foreign Entities Beware

So, what exactly does all of this mean for foreign entities embroiled in antitrust litigation? If other courts follow the Third Circuit's lead, defendants must think big picture strategy - setting aside the general concept of jurisdiction, they must jump into battle on the merits.

The best defense is often a strong offense. The following bullet points set forth strategic recommendations for foreign entities defending against allegations of anticompetitive conduct.

- **Picking apart the legalese.** "Substantial," "reasonably foreseeable," "gives rise to" - the FTAIA's domestic injury exception is fraught with ambiguity. Courts have not yet articulated more precise guidelines to identify what facts a plaintiff must allege and prove. But after stripping away the fancy lingo, foreign defendants still have a fighting chance. A complaint which broadly alleges that a global conspiracy had an effect on U.S. commerce risks surviving the second prong of the domestic injury exception: that the anticompetitive conduct's effect in the U.S. gave rise to the plaintiff's injury. The alleged "effect" on domestic commerce is insufficient where it depends on uncertain intervening events. In other words, a plaintiff cannot succeed on a "ripple effect" theory - i.e., that the conduct, in some undefined way, caused ripples of harm, which in turn, gave rise to the plaintiff's antitrust claim. It is not enough, for example, for a U.S. plaintiff to allege that foreign conduct directed at a foreign market had a spillover impact on U.S. consumers, thereby giving rise to the plaintiff's antitrust cause of action.

- **Breaking the chain.** With the merits taking center stage, a foreign defendant must strategize ways to poke holes in a plaintiff's allegations. The first line of defense is to attack the facts as alleged in the complaint. For instance, generalized allegations of hypothetical conspiracy that "must have" affected domestic commerce are insufficient to establish causation in antitrust law. Courts have interpreted the "direct, substantial, and reasonably foreseeable" threshold to require a showing of *proximate causation*. Foreign defendants must aim to break the necessary nexus between the foreign conduct, the domestic effect, and the plaintiff's injury. Where a plaintiff alleges that a defendant's price-fixing conspiracy caused global inflation, mere allegations that U.S. prices somehow caused domestic or foreign injury are insufficient. As the *DRAM* court stated, even "a direct correlation between prices does not establish a sufficient causal relationship" where the complaint does not "set forth a theory with any specificity of how this price-setting occurred or how it shows a direct causal relationship."[38]
- **Aggressive litigation tactics prevail.** It is axiomatic that defending against an antitrust lawsuit must be approached with the same vigor as defending against any type of litigation. If the FTAIA is no longer interpreted as a jurisdiction-stripping statute, the onus is on the foreign defendant to convince the court that the plaintiff's case cannot survive.
  - *12(b)(6) Motion to Dismiss.* Although defendants now face an uphill battle, Sherman Act claims can be resolved on a motion to dismiss. In light of the refined pleading standards set forth in *Twombly*,[39] *Iqbal*,[40] and their progeny, an antitrust suit cannot withstand a motion to dismiss if it contains nothing more than "unadorned, the-defendant-unlawfully-harmed-me accusation[s]."[41] Putting the FTAIA aside, an antitrust claim must be dismissed where the complaint fails to state a plausible claim for relief. For example, conclusory allegations that foreign defendants entered into a conspiratorial agreement must be disregarded on a motion to dismiss. Rather, the complaint must include particularized facts that suggest an agreement to engage in anticompetitive conduct. While circumstantial allegations may suffice, they must indicate a right to relief above pure speculation.
  - *56(c) Motion for Summary Judgment.* On a summary judgment motion, a defendant should seek to reap the fruits of aggressive discovery. Narrowly tailoring discovery requests is critical. A foreign defendant should seek discovery as to whether the alleged conspirators, targets, and effects are primarily foreign or domestic in nature. Additionally, in establishing damages in an antitrust suit, a plaintiff must proffer direct or circumstantial evidence of an *agreement* by defendants to engage in some sort of price-fixing scheme. Without such evidence, the antitrust claim cannot survive.

    As with a motion to dismiss, the general law governing summary judgment is important. Foreign defendants must convince the court that no genuine disputes of material fact exist. For example, imagine a scenario where a plaintiff argues that the defendants' global conspiracy caused injury both domestically and internationally. It is patently insufficient for the plaintiff to proffer only generalized evidence that the defendants' price-fixing scheme had adverse effects on some global level. While such a theory is not necessarily fatal, the plaintiff must adduce evidence to support the argument that it was the *domestic* effect of the defendants' conduct that gave rise to the alleged injury.

    Moreover, antitrust defendants may succeed in certain cases in moving for partial summary judgment. For instance, if a complaint names as defendants both a foreign entity and its U.S. affiliate, but the plaintiff fails to adduce evidence that implicates the involvement of the U.S. affiliate in the alleged foreign conspiracy, an effective strategy would be to file a summary judgment motion as to the claims against the U.S. affiliate. Eliminating the U.S. entity from the suit will save significantly on litigation costs. The same holds true for seeking partial summary judgment of claims asserted by particular plaintiffs. Where plaintiffs in the United States and abroad file suit on the basis of the same anticompetitive conduct, a defendant could move for summary judgment as to the foreign plaintiff if the evidence fails to support the allegation that the *domestic* effect of the alleged conspiracy gave rise to the foreign plaintiff's injury.

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[1] --- F.3d ----, 2011 BL 214477 (3d Cir. Aug. 17, 2011).

[2] 15 U.S.C. § 6a.

[3] H.R. Rep. No. 97-686, at 1 (1982), *reprinted in* 1982 U.S.C.C.A.N. 2487.

[4] *Id.* at 7.

[5] *F. Hoffman-LA Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 169 (2004) (emphasis in original).

[6] *See* 15 U.S.C. § 6a.

[7] *Id.* Note that the FTAIA actually creates two distinct exceptions that restore the authority of the Sherman Act. The other exception provides that the Sherman Act reaches foreign conduct where the defendants were involved in "import trade or import commerce." The "import trade or commerce exception" is beyond the scope of this article.

[8] It is not surprising that courts have conflated jurisdiction and substance – after all, Congress seems to have been confused from the start about the role of the FTAIA. The congressional reports highlight how the term "jurisdiction" was tossed around in the context of both subject matter jurisdiction and substantive merits. *Compare* H.R. Rep. No. 97-686, at 9 (describing the FTAIA as "only establish[ing] the standards necessary for assertion of United States antitrust jurisdiction[,]" and further noting that "substantive antitrust issues on the merits of the plaintiffs' claim would remain unchanged.") *with id.* at 1 (stating that the FTAIA was intended to "serve as a simple and straightforward clarification" of existing substantive law, creating a "clear benchmark").

[9] *Turicentro, S.A. v. Am. Airlines Inc.*, 303 F.3d 293, 300 (3d Cir. 2002) (quoting *United States v. Nippon Paper Indus. Co. Ltd.*, 109 F.3d 1, 4 (1st Cir. 1997)).

[10] Phillip E. Areeda & Herbert Hovenkamp, Antitrust Law 288 (3d ed. 2006).

[11] *Turicentro*, 303 F.3d at 300.

[12] *See generally Kruman v. Christie's Int'l PLC*, 284 F.3d 384, 393, 395-96 (2d Cir. 2002) (expansive interpretation of the FTAIA); *Den Norske Stats Oljeselskap As v. HeereMac Vof*, 241 F.3d 420, 428 (5th Cir. 2001) (narrow interpretation of the FTAIA).

[13] 542 U.S. 155 (2004).

[14] *Id.* at 164 (emphasis added).

[15] *United Phosphorus, Ltd. v. Angus Chem. Co.*, 322 F.3d 942, 952 (7th Cir. 2003) (en banc).

[16] *See, e.g.*, *United States v. LSL Biotechnologies*, 379 F.3d 672, 679-80 (9th Cir. 2004) (holding that the FTAIA provides the "binding test for determining jurisdiction over foreign restraints on trade"); *Sun Microsystems Inc. v. Hynix Semiconductor Inc.*, 608 F. Supp. 2d 1166, 1183 (N.D. Cal. 2009) (discussing the plaintiffs' burden of proof in demonstrating subject matter jurisdiction under the two-prong test).

[17] 477 F.3d 535 (8th Cir. 2007).

[18] *Id.* at 536-37.

[19] *See, e.g.*, *Emerson Elec. Co. v. Le Carbone Loraine, S.A.*, 500 F. Supp. 2d 437, 444 (D.N.J. 2007) (insufficient to allege that a theoretical plaintiff injured in the United States *might* have a Sherman Act claim; rather, the foreign anticompetitive conduct must have a domestic effect that gives rise to a plaintiff's claim); *Sniado v. Bank Austria AG*, 378 F.3d 210 (2d Cir. 2004) (holding that a foreign conspiracy's effect on domestic commerce must give rise to the plaintiff's claims, not a claim in general).

[20] *In re Rubber Chems. Antitrust Litig.*, 504 F. Supp. 2d 777, 786 (N.D. Cal. 2007) (dismissing claims based on foreign injury and noting that the plaintiffs' allegations "gloss[ed] over the FTAIA's requirement that it must be the domestic effects of the Defendants' anticompetitive conduct, rather than the anticompetitive conduct itself, which gives rise to Plaintiffs' foreign injuries").

[21] 546 F.3d 981 (9th Cir. 2008).

[22] *Id.* at 984.

[23] *Id.*

[24] *Id.* at 988 (emphasis added).

[25] *Id.*

[26] *Id.* at 989-90.

[27] 241 F.3d 420 (5th Cir. 2001).

[28] *Id.* at 426.

[29] *Id.*

[30] *Id.* at 427-28.

[31] *Latino-Quimica-Amtex SA v. Akzo Nobel Chemicals BV*, 2005 BL 75190, at *22-23 (S.D.N.Y. Sept. 19, 2005) (concluding that the FTAIA does not contemplate causes of action alleging anticompetitive conduct ultimately having a "ripple effect" on U.S. commerce).

[32] *Animal Science Prods.*, 2011 BL 214477, at *9 (quoting *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 510, 511 (2006)).

[33] *Id.* at *10.

[34] *Id.* (quoting *Arbaugh*, 546 U.S. at 511).

[35] *Id.* at *13 (citation omitted).

[36] *Id.* at *17.

[37] *Arbaugh*, 546 U.S. at 514.

[38] *In re DRAM Antitrust Litig.*, 546 F.3d at 989-90.

[39] *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

[40] *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009).

[41] *Id.* at 1949.