

Supplemental International Antitrust Discussion Outline

Note: Indications of support for particular recommendations are based on AMC Staff's consultation of deliberation meeting transcripts, notes regarding discussions during deliberation meetings, and views conveyed to Staff by Commissioners. No Commissioner is bound by the indications reflected in this document, and it is understood that Commissioners may change their positions from those tentatively indicated during previous deliberations.

I. <i>Foreign Trade Antitrust Improvements Act ("FTAIA")</i>
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Note: Deliberations on the following potential recommendations were not completed at previous deliberation meetings.

- [1] Recommend no statutory change to the FTAIA; allow courts to continue to develop application of the Act.
[5 Commissioners favored: SC, DC, DG, JJ, SL]
- [2] Recommend no statutory change to the FTAIA, but encourage courts to apply the D.C. Circuit's *Empagran* standard.
[6 Commissioner favored: BB, MD, JS, DV, JW, JY]
- [3] Recommend replacing the current FTAIA with alternative language.
[10 Commissioners favored consideration of new statutory language: BB, DC, MD, DG, JJ, DK, SL, DV, JW, JY. The following proposal remained under consideration at the conclusion of deliberations on July 26]

A private plaintiff may not recover damages for violation of Sections 1 through 7 of this title unless:

- (a) the conduct being challenged occurred in the United States or its territories, or at the time undertaken had a reasonably foreseeable direct effect on the United States or its territories;
- (b) the conduct being challenged proximately caused injury to competition in the United States or its territories; and,
- (c) the injuries claimed by the plaintiff were proximately caused by the violation's injury to competition in the United States or its territories.