

Supplemental International Antitrust Discussion Outline

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.

[2] Recommend no statutory change to the FTAIA, but encourage courts to apply the D.C. Circuit’s *Empagran* standard.

[3] Recommend replacing the current FTAIA with alternative language, as follows:

(1) Sections 1 through 7 of this title shall not apply to conduct occurring outside the United States unless such conduct has a direct, substantial, and reasonably foreseeable effect on:

- (a) commerce within the United States;
- (b) import commerce with foreign nations; or
- (c) export commerce with foreign nations.

(2) Any person who suffers a direct and proximate injury as a result of such effect may bring an action under Sections 1 through 7 of this title. Any person who makes a purchase outside the United States from a seller outside the United States shall be deemed not to have suffered injury as a result of such effect.

(3) If sections 1 to 7 of this title apply to conduct only because of the operation of paragraph (1)(c), then only the United States may bring an action under Sections 1 through 7 of this title.

[Also make conforming changes to section 5(a)(3) of the FTC Act]