From Bananas to Vitamins: The Evolving Doctrine of the Extraterritorial Application of US Antitrust Law

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It is no surprise that antitrust plaintiffs from all over the world like to sue in the United States. US courts afford them extraordinarily broad discovery and class action procedures. If plaintiffs prevail, they are rewarded with treble damages and attorney fees.

But under what circumstances can a plaintiff sue in the United States when the anticompetitive conduct at issue occurred outside of the United States or affected primarily non-US consumers? The US courts and Congress have struggled with this question for over a century. On the one hand, courts and Congress do not want to let foreign wrongdoers escape US liability when their anticompetitive conduct clearly brings harm to US markets and consumers. On the other, they fear that needlessly expanding US antitrust jurisdiction will create tensions with other nations by interfering with their regulation of their own commerce.

In this article, we explore how recent developments in US case law bear on the continuing availability of the United States as a forum for claims concerning anticompetitive conduct occurring in foreign countries or primarily affecting foreign consumers, with particular emphasis on claims concerning foreign IP licensing practices. The Supreme Court's opinion in *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*[1] and the DC Circuit's recent decision on remand in that case[2] suggest that US courts will be increasingly skeptical of claims brought by plaintiffs that have been injured outside the United States. Whether such plaintiffs can file suit largely depends on whether their injury flowed directly from the US effects of the relevant anticompetitive conduct. Unless the plaintiffs satisfy this condition, US courts will likely bar them from bringing an antitrust suit. These decisions will probably bar antitrust suits claiming injury from a foreign IP licensing practice unless the practice had a demonstrable anticompetitive effect on consumers in the United States.

Historical Application of the US Antitrust Laws to Foreign Anticompetitive Conduct

American Banana and *Alcoa*

Courts have struggled to resolve the extent to which the Sherman Act applies to conduct or harm occurring outside the United States in no small part because, before the enactment of the Foreign Trade Antitrust Improvements Act (FTAIA), the Sherman Act said little on this issue. Section 1 of the Sherman Act prohibits agreements "in restraint of trade or commerce among the several States, *or with foreign nations* . . . ."[3] Similarly, Section 2 prohibits monopolization of "trade or commerce among the several states, *or with foreign nations* . . . ."[4] Thus, key provisions of US antitrust law clearly anticipate that some conduct or harm occurring abroad will be subject to the US antitrust laws, but they are unclear about how far US antitrust jurisdiction extends beyond the borders of the United States.

The first major Supreme Court case to address this issue was *American Banana Co. v. United Fruit Co.*[5] In this case, an American banana company claimed that its rival had engaged in anticompetitive conduct in Central America. The plaintiff asserted, for example, that the defendant had wrongfully instigated the Costa Rican Government to seize its landholdings in Costa Rica.[6] In rejecting the claim, Justice Holmes, writing for the Court, narrowly construed the extraterritorial reach of the US antitrust laws, holding that "the general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done."[7] The Court held that the Sherman Act did not reach any of defendant's conduct because the conduct occurred outside of the United States.

Although the language of *American Banana* seemed to establish a broad territorial rule immunizing all anticompetitive conduct taking place outside the United States from the Sherman Act, the case did not involve anticompetitive conduct taking place

overseas but causing anticompetitive *effects* in the United States.[8] That was the situation in *United States v. Aluminum Co. of America* (*Alcoa*),[9] when the US Department of Justice alleged that foreign companies had perpetuated an international price-fixing cartel that restricted the output of aluminum available for import into the United States.[10] Judge Learned Hand, citing the governing principles for resolving conflicts of law between two states, held that anticompetitive conduct occurring abroad is subject to US antitrust laws if the conduct was "intended to affect imports and did affect them."[11] This formulation became known as the "effects test," which the Supreme Court later ratified.[12]

If applied exactly as written, *i.e.*, that any foreign conduct that is intended to and does have an impact on US commerce is subject to the Sherman Act—the "effects test" would permit application of US antitrust law to a very broad range of foreign anticompetitive conduct. Taken in context with the facts of *Alcoa*, however, the "effects test" can be construed to apply only to conduct that (1) had a significant impact in the United States, and (2) injured US consumers. Judge Hand warned, for example, that courts "should not impute to Congress an intent to punish all whom its courts can catch, for conduct which has no consequences within the United States."[13]He further observed that any anticompetitive agreement between foreign competitors might indirectly affect US consumers, but "when one considers the international complications likely to arise from an effort in this country to treat such agreements as unlawful, it is safe to assume that Congress certainly did not intend the Act to cover them."[14] In *Alcoa*, the foreign anticompetitive conduct unequivocally had a substantial effect on US commerce and targeted US consumers.

Many courts after *Alcoa*, however, missed the forest for the trees. They applied the "effects test" very literally, without taking into account Judge Hand's warnings against exceedingly broad extraterritorial application of the US antitrust laws. Some courts held that plaintiffs only need show that the foreign conduct at issue had slightly more than a *de minimis* anticompetitive effect on imports into the United States *or* on US companies exporting to foreign markets for the US antitrust laws to apply.[15] As a result, conduct that sometimes had only tenuous or no effect on US consumers was nonetheless subject to US antitrust rules and treble damages.

Early Foreign IP Licensing Cases

In the years following *Alcoa*, US courts extended US antitrust jurisdiction to many IP licensing disputes that seemed to affect only foreign consumers because the plaintiffs could demonstrate that the relevant conduct had some type of connection to the United States—injury to a US exporter, for example. *Zenith Radio Corp. v. Hazeltine Research, Inc.* is a preeminent example.[16] In that case, Canadian, English, and Australian patent pools denied licenses that were necessary to sell televisions in those countries to a US television manufacturer on the ground that the manufacturer exported televisions from the United States rather than made the televisions in those countries. Although the denial of licenses affected only foreign markets for televisions, the Court held that the pool's denial of IP licenses to a US exporter was actionable in US courts under Section 1 of the Sherman Act.

Some courts held that *Walker Process* claims extended to conduct involving applications for foreign patents as well as US patents. In *Mannington Mills, Inc. v. Congoleum Corp.*,[17] for instance, a US manufacturer sued under Section 2 of the Sherman Act, claiming that the defendant had restrained the export trade of the United States when it threatened to file infringement actions in foreign courts against a US manufacturer for infringing its foreign patents. The Third Circuit reversed the district court's dismissal, observing that a *Walker Process* claim was likely available if the defendant acted fraudulently in obtaining the foreign patents.[18] The court even suggested that a *Walker Process* claim may be available in US courts even if the foreign patent was valid under foreign law, so long as the conduct would be deemed fraudulent under American law and application of US antitrust law would not unduly harm international relations.[19] The court directed the district court to develop the record and evaluate whether the court should nonetheless decline jurisdiction, taking into consideration factors such as the degree of conflict with foreign law, the nationality of the parties, and the possible effects on foreign relations if the court were to exercise jurisdiction.[20]

Perhaps the most remarkable exercise of US antitrust jurisdiction over a foreign licensing dispute involved the licensing of American television programs in South Africa. In *Waldbaum v. Worldvision Enterprises, Inc.*,[21] a South African licensee claimed that an American licensor conditioned its provision of licenses of copyrighted materials on the licensee paying for licenses it did not want (this practice is known as "block booking" and is a form of a tying arrangement). The deal did not harm any US consumers. The court concluded, however, that US antitrust law prohibited block booking in South Africa on the ground that such an arrangement "foreclos[ed] other United States distributors from the market

in South Africa which would be available if not for funds the plaintiff spent on the tied products."[22] The court did not explain how other distributors (or licensors) were foreclosed, and permitted plaintiff's suit to go forward even though there was no evidence that any other distributor (or licensor) sought plaintiff's business.[23]

The New Regime: The Foreign Trade Antitrust Improvements Act of 1982

In 1982, partly in response to the lower courts' ever-broadening extraterritorial application of US antitrust laws, Congress enacted the Foreign Trade Antitrust Improvements Act (FTAIA). One of the purposes of the FTAIA was to help clarify and limit the circumstances in which the US antitrust laws would reach anticompetitive conduct occurring overseas. Unfortunately, the language of the FTAIA is so confusing that it raises more issues than it resolves. The FTAIA provides,

> [The Sherman Act] shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless—
>
> (1) Such conduct has a direct, substantial, and reasonably foreseeable effect—
> (A) On trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or
> (B) On export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and
> (2) Such effect gives rise to a claim under the provisions of [the Sherman Act], other than this section.
>
> If [the Sherman Act] appl[ies] to such conduct only because of the operation of paragraph (1)(B), then [it] shall apply to such conduct only for injury to export business in the United States.[24]

Although some have argued that this language was intended only to clarify the existing law,[25] much of the wording seems to limit the extraterritorial approach that had developed in the lower courts after *Alcoa*. Most relevant here, in requiring that the US effect give rise to "a claim," the FTAIA left unclear whether a US effect must give rise to the plaintiff's *own* injury (or just *an* injury to someone in the United States).

Before the Supreme Court's decision in *Empagran*, US courts of appeals were split on this issue. In *Den Norske Stats Oljeselskap AS v. HeereMac VOF* (*Statoil*),[26] the Fifth Circuit held that plaintiffs injured outside of the United States by an international price-fixing conspiracy must show that the US effect from that conspiracy gave rise to *their* claim. In that case, providers of heavy barge services purportedly agreed to allocate markets between them, with one to provide services in the North Sea and the other to serve the Gulf of Mexico.[27] The Fifth Circuit held that a Norwegian oil company could not recover under the Sherman Act for its injury in the North Sea because the US effects of the international conspiracy did not "give rise to" the Norwegian company's claims.[28]

By contrast, in *Kruman v. Christie's International, Plc*,[29] the Second Circuit held that any plaintiff injured by a global conspiracy could bring suit under US antitrust law, so long as *someone* was injured by reasons of the conspiracy's effects on US commerce. There, a class of purchasers at auctions held outside the United States filed a Section 1 case against Sotheby's and Christie's for fixing premiums that purchasers paid to the auction houses.[30] Even though the purchasers were injured outside the United States, the Second Circuit held that they could sue under Section 1 because the illegal conduct had injured someone (though not those particular plaintiffs) at auctions held in the United States.[31]

F. Hoffmann-La Roche Ltd. v. Empagran S.A.: Clarifying the Reach of US Antitrust Law

The Supreme Court Decision

The *Empagran* case was similar to *Statoil* and *Kruman* in that it also involved plaintiffs injured abroad by a global conspiracy that also affected the United States. The case concerned class action lawsuits that followed guilty pleas for Sherman Act violations made by major vitamin producers in US courts. The *Empagran* plaintiffs were a class that had purchased vitamins in foreign countries and claimed that the manufacturers from whom they had purchased had conspired to fix prices and allocate markets worldwide.[32] The manufacturers' fixing of prices in the United States, the foreign purchasers claimed, had forestalled arbitrage flowing from the United States that otherwise would have undermined the effects of the conspiracy in the countries where they pur-

chased vitamins. Thus, they posited, the US effects of the global conspiracy "gave rise to" their claims and allowed them to sue in the United States. The trial court dismissed their claims for want of jurisdiction; the DC Circuit initially reinstated the suit.[33]

When the US Supreme Court agreed to review the *Empagran* case, many hoped that its decision would finally resolve the confusion surrounding the proper interpretation of the FTAIA. Instead the Court's opinion spawned new uncertainty. It was clear on one point: *Statoil's* interpretation of the FTAIA was correct. That is, a plaintiff has a claim only when it can show that the US effects from a conspiracy gave rise to its *own* injury.[34]

The Court's opinion, though, raised entirely new issues. The Court ruled that the FTAIA barred US jurisdiction over the claims of the foreign vitamin purchasers, at least so long as their injuries were "independent" of the conspiracy's effects on US commerce.[35] The Court, however, neither defined what it meant by "independent" nor described the circumstances in which US effects might "give rise to" a plaintiff's claim. It did not even resolve the case. Instead, it remanded the case back to the DC Circuit to determine the merits of the foreign purchasers' argument, *i.e.*, that the vitamin manufacturers' fixing of prices in the United States "gave rise to" their injuries by preventing arbitrage and whether the argument had been properly preserved in the lower courts.[36] Thus, the Court left it to the DC Circuit to determine in the first instance the scope and practical effects of the potential opening left for plaintiffs purchasing outside the United States to sue in US courts.

Observers were left to wonder if the DC Circuit would permit US jurisdiction whenever a purchaser in foreign commerce could allege that its injuries were in some way connected to, and thereby not "independent" of, the conspiracy's effects on US commerce.

The DC Circuit Decision

In June 2005, the DC Circuit delivered its answer: The purchasers' injuries were not sufficiently linked to the alleged conspiracy's effect on US commerce to overcome the FTAIA jurisdictional hurdle.[37] The court first observed that antitrust injuries sustained in foreign commerce may be redressed in US courts in only limited circumstances. To obtain relief, plaintiffs must show that their injuries bear a "direct causal relationship" to the US effects of the alleged anticompetitive conduct.[38]

The DC Circuit then held that it lacked jurisdiction over the purchasers' claims because the US effects of the manufacturers' conspiracy were not the *direct* cause of the purchasers' alleged injuries. It observed that the direct cause of the purchasers' injuries was in fact the *foreign* effects of the global conspiracy, *i.e.*, the artificially inflated prices of vitamins sold in foreign countries.[39] The court recognized that the fixing of vitamin prices in the United States may have facilitated the manufacturers' fixing of vitamin prices in foreign countries, and that the manufacturers may have foreseen or intended this result. It concluded, however, that the artificially inflated vitamin prices in the United States were only an *indirect* cause of the purchasers' injury in overseas markets. There was no "direct tie" between the US effects and the injuries that the purchasers sustained. Accordingly, the effects of the conspiracy on US commerce did not "give rise to" the purchasers' claims as the FTAIA required, and the US courts therefore lacked jurisdiction to hear the purchasers' claims.[40]

Implications: Closing the Door to Plaintiffs Injured Outside US Commerce?

Most of the courts interpreting the FTAIA after the Supreme Court decision in *Empagran* have, like the DC Circuit, dismissed antitrust suits based on injuries sustained outside the United States.[41] Not even the US Department of Justice is immune—the Ninth Circuit recently ruled that a civil complaint it brought pertaining to a non-compete provision in an Israeli settlement agreement was barred by the FTAIA.[42]

The courts have been reluctant to permit antitrust plaintiffs injured in foreign commerce to sue in US courts for two principal reasons. First, in *Empagran*, the Supreme Court instructed lower courts interpreting the FTAIA, when construing ambiguities in the statutory language, to pay special attention to considerations of "prescriptive comity," *i.e.*, the presumption that Congress intended to respect (and avoid interfering with) other nations' regulation of competition in their own territory. The Court reasoned that if the United States were to regulate injuries arising from anticompetitive effects occurring entirely in another nation, it ran a "serious risk of interference" with that country's ability to regulate its own affairs.[43] The Court cited with approval, for example, *amici* briefs filed by foreign governments, which argued that the application of US antitrust laws under such circumstances would interfere with their amnesty programs for antitrust wrongdoers.[44]

The Court's intensive emphasis on comity concerns in *Empagran* (while harkening back to older jurisprudence) was quite different from its approach a decade earlier in *Hartford Fire Ins. Co. v. California*.

In that case, the Court ruled that, insofar as foreign conduct concerns a good or service imported into the United States, that conduct is subject to the Sherman Act so long as it has a substantial anticompetitive effect on US commerce.[45] In *Hartford Fire*, the Supreme Court held that prescriptive comity is not a consideration in interpreting the Sherman Act unless the defendant could not follow US antitrust law without affirmatively violating the law of the foreign jurisdiction in which the conduct occurred.[46] In *Empagran*, by contrast, the Court more seriously considered the ramifications of applying US antitrust law to foreign conduct, particularly how the threat on treble damage actions in the United States may bear on foreign nation's efforts to enforce their own competition laws.[47] The DC Circuit and other courts thus cited prescriptive comity as a critical consideration in adopting the requirement that the injury giving rise to the plaintiff's claim be very closely linked to the US effects of foreign anticompetitive conduct at issue.

Second, courts interpreting the FTAIA after *Empagran* have incorporated concepts emanating from "antitrust standing" doctrine into their analysis of the extraterritorial application of US antitrust laws. Under this doctrine, it is not enough for a plaintiff to assert that its injuries bore some connection to anticompetitive conduct—the injury asserted must have been *proximately* caused by the conduct. In *Associated General Contractors of California, Inc. v. California State Council of Carpenters*,[48] the Court explained that the standing inquiry requires the court to consider, among other factors: whether the injury asserted is of the type that Congress intended to remedy, whether there is a plaintiff that was more directly affected by the conduct that can bring suit, whether the plaintiff's injuries appear speculative, and whether proving damages would be unduly complex or require duplicative recoveries.[49]

The influence of standing doctrine in post-*Empagran* decisions is apparent from courts' emphasis on whether a US effect is the *proximate*, rather than merely a "but for," cause of the plaintiff's injury.[50] Thus, in its decision on remand in *Empagran*, the DC Circuit found it insufficient for jurisdictional purposes that anticompetitive effects on US commerce may have had some bearing on plaintiffs' injuries when their injuries did not arise *directly* from any such effects. Just as plaintiffs suffering indirect injury lack standing to challenge the anticompetitive conduct that purportedly harmed them, so too plaintiffs suffering injuries through purchases overseas are barred from suing under US antitrust laws if their injuries stemmed only from a ripple emanating from the United States.

What then of *Zenith, Mannington Mills,* and the other cases in which courts upheld the application of US antitrust laws to foreign IP licensing disputes? Even before *Empagran*, the Supreme Court seemed to change its view about complaints by US suppliers that their export business had been injured by conduct affecting only non-US markets. In *Matsushita Electrical Industrial Co. v. Zenith Radio Corp.*, the Court dismissed out of hand any possibility that American television manufacturers could seek damages under US antitrust laws for injuries arising in the Japanese market because "American antitrust laws do not regulate the competitive conditions of other nations' economies."[51]

The FTAIA's explicit language and the *Empagran* decisions also may limit the viability of older cases that permit application of US antitrust laws to foreign IP licensing practices based on injuries to US exporters. One of the primary purposes of the FTAIA was to assure US exporters that they could participate in anticompetitive conduct overseas without fear of reprisal under the US antitrust laws.[52] Hence, the FTAIA provides that foreign anticompetitive conduct is actionable against US exporters only insofar as the harm is caused to exporters *in the United States*.[53] No court has yet interpreted this provision of the FTAIA, although *Empagran's* emphasis on comity concerns suggests that courts will be skeptical about entertaining claims with questionable ties to US consumers.

Courts are more likely to apply US antitrust laws to foreign IP licensing practices if those licensing practices concern US *import* commerce. If the foreign conduct directly affects US imports, the Sherman Act will apply to that conduct, subject to *Alcoa's* effects test. The cases over the last decade, however, provide no clear answer about the extent to which US antitrust law applies when the conduct *indirectly* affects US import commerce, or whether a court will apply the effects test or the FTAIA in such circumstances.

On the one hand, in *United States v. Nippon Paper Indus.*, the First Circuit, citing *Alcoa* and *Hartford Fire*, ruled that a price-fixing agreement between two Japanese companies that directly injured only Japanese distributors was nonetheless subject to US antitrust law because the agreement was intended to and had a substantial effect on US import commerce.[54] In *United States v. LSL Biotechnologies*, by contrast, the Ninth Circuit ruled that the FTAIA barred the Department of Justice from bringing suit against two foreign companies that had settled a licensing dispute whereby one company agreed not to sell tomato seeds to Mexican farmers.[55] (Thus, the direct victims of any anticompetitive effects would be the Mexican farmers.) The Ninth Circuit held that although the toma-

toes grown by the Mexican farmers would inevitably be imported into the United States, the purportedly anticompetitive effect of the settlement agreement did not have a sufficiently direct nexus to US commerce to permit the application of US antitrust laws.

Conclusion

Empagran sheds some light on one of the murkiest areas of U.S. antitrust law. Nevertheless, many questions remain about when US antitrust law might apply to injuries suffered by purchasers in foreign markets or by purchasers in US commerce who have been harmed only indirectly by foreign conduct. Furthermore, the post-*Empagran* cases interpreting the FTAIA thus far have concerned only Section 1 of the Sherman Act, which prohibits agreements between two or more entities that restrain trade. No court has yet considered how *Empagran* affects the Section 2 liability of a monopolist that operates internationally when conduct that it engages in abroad might injure its competitors in both US and foreign markets. *Empagran*, though, provides a strong lodestar for courts that will face these issues in the future: US antitrust laws should not apply to injuries having little or nothing to do with the United States. Such injuries are governed by the law of the jurisdiction in which those injuries arose.

1. F. Hoffmann-La Roche Ltd. v. Empagran S.A., 542 U.S. 155 (2004).
2. F. Hoffmann-La Roche Ltd. v. Empagran S.A., 417 F.3d 1267 (D.C. Cir. 2005).
3. 15 U.S.C. § 1 (emphasis added).
4. *Id.* § 2 (emphasis added).
5. American Banana Co. v. United Fruit Co., 213 U.S. 347 (1909).
6. *Id.* at 354–355.
7. *Id.* at 356.
8. Justice Holmes did note, however, that the "direct effect" of the injuries to the plaintiff emanated in Costa Rica from actions by the Costa Rican government. *Id.* at 359. Later Supreme Court decisions have been explicit that *American Banana*'s rule does not control when the foreign conduct at issue causes effects within the United States. *See* Steele v. Bulova Watch Co., 344 U.S. 280, 288 (1952) (*American Banana* "was not meant to confer blanket immunity on trade practices which radiate unlawful consequences here, merely because they were initiated or consummated outside the territorial limits of the United States.").
9. United States v. Aluminum Co. of Am. (Alcoa), 148 F.2d 416 (1945). Because the Supreme Court lacked a quorum of Justices, the Second Circuit sat as the court of last resort. *Id.* at 421.
10. *Id.* at 444.
11. *Id.*
12. *See, e.g.*, Hartford Fire Ins. Co. v. California, 509 U.S. 764, 795 (1993) ("[I]t is well established by now that the Sherman Act applies to foreign conduct that was meant to produce and did in fact produce some substantial effect in the United States.").
13. *Alcoa*, 148 F.2d at 443.
14. *Id.*
15. *See, e.g.*, Dominicus Americana Bohio v. Gulf & Western Indus., 473 F. Supp. 680, 687 (S.D.N.Y. 1979) ("[I]t is probably not necessary for the effect on foreign commerce to be both substantial and direct as long as it is not *de minimus*.").
16. Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 113 n.8 (1969) ("Once Zenith demonstrated that its exports from the United States had been restrained by pool activities, the treble damage liability of the domestic company participating in the conspiracy was beyond question.").
17. Mannington Mills, Inc. v. Congoleum Corp., 595 F.2d 1287 (3d Cir. 1979).
18. *Id.* at 1296.
19. *Id.* at 1296–1296.
20. *Id.* at 1297–1298.
21. Waldbaum v. Worldvision Enters., Inc., 203 U.S.P.Q. 926 (S.D.N.Y. 1978).
22. *Id.* at 929–930.
23. *Id.* at 930.
24. 15 U.S.C. § 6a.
25. *See* United States v. LSL Biotechnologies, 379 F.3d 672, 691 (9th Cir. 2004) (Aldisert, J., dissenting).
26. Den Norske Stats Oljeselskap AS v. HeereMac VOF (Statoil), 241 F.3d 420 (5th Cir. 2001).
27. *Id.* at 422.
28. *Id.* at 427.
29. Kruman v. Christie's Int'l, 284 F.3d 384 (2d Cir. 2002).
30. *Id.*. at 390–391.
31. *Id.* at 399–400.
32. *F. Hoffmann-La Roche, Ltd.*, 124 S. Ct. 2359, 2363–2364 (2004).
33. *Id.* at 2364.
34. *Id.* at 2371–2372.
35. *Id.* at 2363.
36. *Id.* at 2372.
37. *Empagran*, 417 F.3d 1267, 1269 (D.C. Cir. 2005).
38. *Id.* at 1271.
39. *Id.*
40. *Id.*
41. Sniado v. Bank Austria AG, 378 F.3d 210 (2d Cir. 2004); Latino Quimica-Amtex S.A. v. Akzo Nobel Chem. B.V., No. 03 Civ. 10312 (BHF), 2005 WL 2207017 (S.D.N.Y. Sept. 8, 2005); eMag Solutions LLC v. Toda Kogyo Corp., No. C 02-1611 PJH, 2005 WL 1712084 (N.D. Cal. July 20, 2005).
42. *See* United States v. LSL Biotechnologies, 379 F.3d 672 (9th Cir. 2004).
43. *F. Hoffmann-La Roche, Ltd.*, 124 S. Ct. at 2366–2369.
44. *Id.* at 2368.
45. Hartford Fire Ins. Co. v. California, 509 U.S. 764, 795–796 (1993).
46. *Id.* at 798–799.
47. Of course, in *Empagran*, unlike in *Hartford Fire*, the plaintiffs were seeking redress for injuries occurring outside of US commerce. That may have made the Court more comfortable in aggressively applying comity principles.
48. Associated Gen. Contractors of California, Inc. v. California State council of Carpenters, 459 U.S. 519.
49. *Id.* at 539–545.
50. *See* Latino Quimica-Amtex S.A., 2005 WL 2207017, at *8 ("the proximate causation standard advanced by both parties is consistent with antitrust principles requiring that an antitrust injury-in-fact be caused directly by a defendant's conduct. In considering whether a plaintiff's injury was 'too remote' to establish standing.").
51. Matsushita Electrical Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 582 (1986).
52. See H.R. Rep. 97-686 at 2 (1982) (noting that one of the purposes for the FTAIA was "the apparent perception among businessmen that American antitrust laws are a barrier to joint export activities that promote efficiencies in the export of American goods and services.").
53. 15 U.S.C. § 6a.
54. United States v. Nippon Paper Indus, 109 F.3d 1, 4 (1st Cir. 1997).
55. *LSL Biotechnologies*, 379 F.3d at 683. The agreement required the company to withdraw from selling specialty tomato seeds in North America, but the particular type of tomato seed at issue was sold only to Mexican farmers.