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Foreign Trade Antitrust Improvements Act is Not a Jurisdictional Bar to Antitrust Suit

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In *Animal Science Products, Inc. v. China Minmetals Corp.*, the U.S. Court of Appeals for the Third Circuit overturned its prior decisions in *Turicentro, S.A. v. Am. Airlines Inc.* and *Carpet Group Int'l v. Oriental Rug Importers Ass'n*, and held that the Foreign Trade Antitrust Improvements Act (the "FTAIA") sets forth substantive merits requirements for private antitrust claims rather than a jurisdictional threshold to antitrust suits brought in connection with foreign commerce and international trade.

The Sherman Act, the primary source of U.S. antitrust law, was limited in scope by the FTAIA, which provides that the Sherman Act will not apply to conduct involving trade or commerce with foreign nations. There are two exceptions. Under the "import trade or commerce" exception, the Sherman Act will apply where the defendants are involved in import trade or import commerce. Under the "effects" exception, the Sherman Act will apply where the conduct at issue in the antitrust action has a direct, substantial, and reasonably foreseeable effect on domestic, import, or export commerce.

The plaintiff in *Animal Science Products, Inc. v. China Minmetals Corp.*, a domestic purchaser of magnesite, sued seventeen Chinese business entities under Section 1 of the Sherman Act, alleging that Chinese producers and exporters conspired to fix prices of the magnesite exported to and sold in the United States. The District Court, applying earlier Third Circuit precedent, determined that the court lacked subject matter jurisdiction because the plaintiff failed to plead facts showing that either of the FTAIA's exceptions applied.

In vacating the District Court's decision, the Third Circuit relied on the Supreme Court's decision in *Arbaugh v. Y&H Corp.*, holding that, unless Congress expressly states otherwise, federal courts should not interpret statutory language as creating limitations on a district court's subject matter jurisdiction. The Third Circuit found that the District Court had subject matter jurisdiction because plaintiff's claim "arose under" a federal statute and nothing in the FTAIA mentioned subject matter jurisdiction. The FTAIA's two exceptions should be analyzed in the context of determining whether the complaint states a viable cause of action, not as jurisdictional issues.

The Third Circuit adjusted the tests for the FTAIA exceptions as well. Under the “import trade or commerce” exception, the Third Circuit noted that defendants need not be engaged in the physical import of goods to be subject to an antitrust suit. A foreign company may be liable under United States antitrust laws if the alleged anticompetitive behavior “was directed at an import market.” As for the “effects” exception, the Third Circuit rejected the proposition that a plaintiff must demonstrate that the defendants “subjectively intended” to impact U.S. commerce. A plaintiff needs to only demonstrate that, as an objective matter, it was reasonably foreseeable that the defendant’s conduct would have a direct and substantial effect on U.S. commerce. *Animal Science Products, Inc. v. China Minmetals Corp., et al.*, No. 10-2288 (3d Cir. Aug. 17, 2011).

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