UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION IN RE: BEARINGS	Master File No. 12-md-02311 Honorable Marianne O. Battani
THIS RELATES TO: ALL DIRECT PAYOR ACTIONS ALL DEALERSHIP ACTIONS ALL END-PAYOR ACTIONS	 2:12-cv-00501 2:12-cv-00502 2:12-cv-00503

PLAINTIFFS' MEMORANDUM OF LAW REGARDING FOREIGN TRADE ANTITRUST IMPROVEMENTS ACT IN RESPONSE TO NTN DEFENDANTS' SUPPLEMENTAL REPLY IN SUPPORT OF MOTION TO DISMISS

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STATEMENT OF ISSUES PRESENTED

Whether the Foreign Trade Antitrust Improvements Act ("FTAIA") bars any of Plaintiffs' claims where:

a. Defendants' conspiracy is alleged to have been carried out in the United States, where the Defendants make and sell domestically produced bearings and bearings that they import, and where Defendant's co-conspirators have been criminally prosecuted under the Sherman Act and have pleaded guilty;

b. Defendants' conspiracy was directed at the United States; and

c. Defendants' conspiracy foreseeably caused injury in the United States?

STATEMENT OF CONTROLLING OR APPROPRIATE AUTHORITY

1. FTAIA, Pub. Law. 97-290.

2. *F. Hoffman-La Roche Ltd. v. Empagran S.A.,* 542 U.S. 155 (2004).

3. *Carrier Corp. v. Outokumpu Oyj,* 673 F.3d 430 (6th Cir. 2012).

4. *Minn-Chem, Inc. v. Agrium, Inc.,* 683 F.3d 845 (7th Cir. 2012).

5. *Animal Sci. Prods. v. China Minmetals Corp.,* 654 F.3d 462 (3d Cir. 2011).

6. *Lotes Co., Ltd. v. Hon Hai Precision Indus. Co.,* 2014 WL 2487188 (2d Cir. June 4, 2014).

7. *California v. Arc America Corp.,* 490 U.S. 93 (1989).

8. *In re TFT-LCD (Flat Panel) Antitrust Litig.,* 822 F. Supp.2d 953 (N. D. Cal. 2011).

9. *Boyd v. AWB Ltd.,* 544 F. Supp.2d 236 (S.D.N.Y. 2008).

10. *Pinney Dock and Transport Co. v. Penn Cent. Corp.,* 838 F.2d 1445 (6th Cir. 1988).

11. *In re Aurora Dairy Corp. Organig Milk Mktg. & Sales Practices Litig.,* 621 F.3d 781 (8th Cir. 2010).

INTRODUCTION

"The Foreign Trade Antitrust Improvements Act of 1982 ("FTAIA") excludes from the Sherman Act's reach much anticompetitive conduct ***that causes only foreign injury***." *F.Hoffmann-La Roche Ltd v. Empagran S.A.*, 542 U.S. 155, 158 (2004) ("*Empagran*") (emphasis added). The FTAIA does not bar Plaintiffs' claims because the Defendants' conspiracy is alleged to have been carried out in the United States where the Defendants make and sell domestically produced bearings and sell bearings that they import, was directed at the United States, and foreseeably caused injury within the United States. The United States Department of Justice ("DOJ") has said that the auto parts price-fixing conspiracy – which includes Bearings – has had a greater impact on United States consumers and businesses than any other antitrust conspiracy. NTN's argument that Plaintiffs seek to "advance a brand new theory of global antitrust jurisdiction" never before permitted is wrong.[1] NTN ignores the allegations of the Complaints and misconstrues the law.

STATEMENT OF FACTS

This case concerns a conspiracy to unlawfully fix and artificially raise the price of Bearings in the United States and elsewhere, which "successfully targeted the long-struggling United States automotive industry, raising prices for car manufacturers and purchasers alike." AD ¶ 19;[2] *see also* EP ¶ 1;[3] DP ¶ 6.[4] The Defendants manufactured, marketed, and/or sold Automotive Bearings in the United States and elsewhere. AD ¶¶ 111-45, 157-58; DP ¶¶ 18-28, 47-48; EP CC ¶¶ 18, 69-98, 103-106. Investigations by the DOJ and enforcement agencies in other countries have resulted in multiple guilty pleas and enforcement actions. AD ¶¶ 181-215;

[1] While this argument is made by both NTN defendants, it could only apply to NTN Corporation as NTN USA both makes and sells bearings in the United States.
[2] References to "AD" refer to the Consolidated Class Action Complaint filed by the Auto Dealers (Dkt. No. 67).
[3] References to "EP" refer to the Corrected Consolidated Amended Class Action Complaint filed by End Payors (Dkt. No. 70).
[4] References to "DP" refer to the Consolidated Amended Class Action Complaint filed by the Direct Purchasers (Dkt. No. 100).

DP ¶¶ 60-99; EPP ¶¶ 125-58. A Deputy Assistant Attorney General in the DOJ's Antitrust Division stated that the automotive parts investigation appears to be the biggest criminal antitrust investigation ever encountered, and in particular, the "***biggest with respect to the impact on U.S. businesses and consumers***[.]" AD ¶ 216; EPP ¶ 143. JTEKT Corporation and NSK Ltd. pled guilty to violating the Sherman Act, 15 U.S.C. § 1. JTEKT admitted that its sales of bearings to Toyota Motor Company in the United States totaled approximately $395 million and that the conspiracy included sales to Japanese automobile and component manufacturers in the United States and elsewhere. The conspiratorial conversations and meetings took place in the United States and elsewhere. NSK entered into a similar plea agreement, admitting that its "sales of bearings affecting Japanese automobile and component manufacturers in the U.S. totaled approximately $355 million."

Plaintiffs allege that Defendants' unlawful activities "substantially affected commerce throughout the United States, causing injury to Plaintiffs and members of the Classes" including by significantly increasing prices paid by U.S. purchasers. AD ¶¶ 15, 23, 161-66, 227, 232, 262, 266; DP ¶¶ 3, 109-13, 117-21, 133-35; EP ¶¶ 9, 19, 109-14, 174, 179-83. Thus, even to the extent that any of Defendants' foreign manufacturing and sales activities did not constitute import commerce, Defendants' unlawful conduct had "a direct, substantial and reasonably foreseeable effect on United States commerce." AD ¶¶ 19-24; DP ¶¶ 6, 7; EP ¶¶ 15-18.

ARGUMENT

I. THE FTAIA DOES NOT BAR PLAINTIFFS' CLAIMS BECAUSE THE COMPLAINTS ALLEGE THAT BEARINGS WERE MANUFACTURED AND SOLD WITHIN THE UNITED STATES AS PART OF THE CONSPIRACY.

The FTAIA does not apply to domestic purchases. *Carrier Corp. v. Outokumpu Oyj*, 673 F.3d 430, 438 n. 3 (6th Cir. 2012) ("*Carrier*") (domestic purchases are not the type of foreign commerce that would be implicated by the FTAIA."); *Minn-Chem, Inc. v. Agrium Inc.*, 683 F.3d 845, 854 (7th Cir. 2012) ("*Minn-Chem*"). Purchases made in domestic commerce are included within Plaintiffs' claims. "Defendants and their co-conspirators manufactured Automotive Bearings (a) in the United States for installation in vehicles manufactured and sold in the United

States." DP ¶ 48, 158; EP ¶ 105, 106. Accordingly, the FTAIA does not apply to bearings which Defendants sold in the United States.

II. THE FTAIA DOES NOT BAR PLAINTIFFS' CLAIMS BECAUSE THE COMPLAINTS ALLEGE THAT BEARINGS WERE IMPORTED INTO THE UNITED STATES AS PART OF THE CONSPIRACY.

The FTAIA does not bar claims involving "import trade or import commerce" (the "import trade or commerce" exception). *Animal Sci. Prods. v. China Minmetals Corp.*, 654 F.3d 462, 466 (3d Cir. 2011) ("*Animal Sci.*"); 15 U.S.C. § 6a.[5] NTN argues that Plaintiffs fail to allege that imported bearings are "the subject of any anticompetitive arrangement," or that import trade has been affected. (Supp. Reply at 3-4). This misstates Plaintiffs' claims, which encompass price-fixed bearings imported into the U.S. the increased cost of which was charged to Plaintiffs.

DPs assert claims on behalf of those who purchased bearings directly "in the United States from one or more of the Defendants," including NTN Defendants specifically, who sold bearings in the United States at artificially inflated prices. DP ¶¶ 2, 6, 13, 18-29. Further, "[t]he United States imports 40% of its Bearings from Asia," and NTN's foreign entities "acted as supplier to the domestic subsidiary." (*Id.* at ¶¶ 117-121.) In other words, NTN Defendants imported many of the bearings they sold to Plaintiffs at illegally fixed prices. The EP and AD Complaints allege that, "Defendants and their co-conspirators manufactured Automotive Bearings . . . (b) abroad for export to the United States and installation in vehicles manufactured and sold in the United States . . .." EP ¶105; AD ¶ 158; *see also* EP ¶18 ("Automotive Bearings manufactured abroad by Defendants [were] sold for use in automobiles either manufactured in the United States or manufactured abroad and sold in the United States."); AD ¶ 22 (same).

NTN argues that the import commerce exception does not apply because it is somehow "clear" that the claims of those Plaintiffs are limited to "imports … not made by any Defendant"

[5] Foreign import commerce includes "transactions in which the seller is located abroad while the buyer is domestic and the goods flow into the United States." *Carrier,* 673 F.3d at 438 n. 3 (quoting IB Phillip Areeda & Herbert Hovenkamp, Antitrust Law ¶ 27214, at 290 (3d ed. 2006)).

(and instead imported by third parties). (Supp. Reply at 3-4.) Defendants cite nothing in the Complaints to support this assertion. Even if NTN's reading of the Complaints was correct (which it is not), the FTAIA import exception is not so narrow because the exception encompasses not only physical importers but defendants whose conduct "target[s] import goods or services," or "was directed at an import market". *Animal Sci.,* 654 F.3d at 470; AD ¶¶ 19, 114, 213, 262; EP ¶¶ 1, 15, 200. The market for Japanese-made cars imported for sale into the United States is an import market.

NTN argues that the "foreign charges" against Defendants do not specifically state "an anticompetitive arrangement with respect to bearings imported into the U.S." (Supp. Reply at 3.). But Plaintiffs' Complaints are not limited by the charges or statements of foreign governments pertaining to their own jurisdictions. The fact that NTN's cartel partners in Japan (NSK and JTEKT) pleaded guilty to the same price-fixing conduct in the U.S. and to fixing prices to manufacturers "in the United States and elsewhere" plausibly demonstrates that the conspiracy impacted and was aimed at the U.S. import market. NTN further ignores that it derives the majority of its revenue from sales into the U.S., and that it is under investigation by the U.S. Department of Justice. *See, e.g.,* EP ¶¶ 138-143. If the Sherman Act is not applicable to NTN, it would not be the subject of DOJ's criminal investigation. Because the conspiracy alleged by Plaintiffs plausibly includes bearings imported into the U.S., the FTAIA does not bar Plaintiffs' claims under the import trade or commerce exception.

III. THE COMPLAINTS ALLEGE THAT DEFENDANTS' ANTICOMPETITIVE CONDUCT HAD A "DIRECT, SUBSTANTIAL, AND REASONABLY FORSEEABLE EFFECT" ON U.S. COMMERCE AND IS THUS NOT PROTECTED BY THE FTAIA.

Regardless of whether the import exception applies, "the FTAIA's bar is inapplicable if the defendants' 'conduct has a direct, substantial, and reasonably foreseeable effect' on domestic commerce, import commerce, or certain export commerce and that conduct 'gives rise' to a Sherman Act claim (the "domestic effects" exception)." *Animal Sci.,* 654 F.3d at 466 (citations omitted); *see also Empagran*, 542 U.S. at 162. All of Plaintiffs' claims meet this

exception. The Second Circuit in *Lotes Co., Ltd. v. Hon Hai Precision Indus. Co.*, 2014 WL 2487188 (2d Cir. June 4, 2014) ("*Lotes Co.*") held that the "domestic effects" exception applies to facts like those presented here, adopting the interpretation of the Seventh Circuit in *Minn-Chem* and as advocated by the United States and Federal Trade Commission in briefs submitted to the Second Circuit.[6] The court held:

> [F]oreign anticompetitive conduct can have a statutorily required "direct, substantial, and reasonably foreseeable effect" on U.S. domestic or import commerce even if the effect does not follow as an immediate consequence of the defendant's conduct, ***so long as there is a reasonably proximate causal nexus between the conduct and the effect***.

Id. at *5 (emphasis added) (citing *Minn-Chem,* 683 F.3d at 856-58, holding same). Thus, plaintiffs need only plead allegations from which such a causal nexus of effects between foreign anticompetitive conduct and its effects on U.S. commerce can be considered "plausible." (*Id.*).

While NTN's arguments here rely on the interpretation of the Ninth Circuit in *United States v. LSL Biotechnologies*, 379 F.3d 672 (9th Cir. 2004) ("*LSL*"), the Second Circuit rejected that interpretation and found its reasoning flawed, as did the Seventh Circuit in *Minn-Chem*, rendering the Ninth Circuit the minority view. *Lotes Co.,* 2014 WL 2487188 at *12-14. The Ninth Circuit relied on two interpretive sources inapplicable to the language of the FTAIA: (1) a Webster's dictionary definition of "direct," even though the dictionary also provides an alternative definition that would have created a different result; and (2) a "nearly identical" term that appears in another statute having an entirely different purpose and textual context. (*Id.*) Rejecting this analysis, the Second Circuit held that: "Interpreting 'direct' to require only a reasonably proximate causal nexus, by contrast, avoids these problems while still addressing antitrust law's classic aversion to remote injuries. Indeed, 'directness' is one of the traditional formulations courts have used to talk about the common-law concept of proximate causation." (*Id.* at *14).

[6] The Sixth Circuit has not yet addressed this issue.

Thus, courts have rejected placing "near-dispositive weight," as NTN seeks to do here, on the fact that a component was manufactured and assembled into the finished product in a foreign country before being sold in the United States. (*Id.*) Instead, "***[t]his kind of complex manufacturing process is increasingly common in our modern global economy, and antitrust law has long recognized that anticompetitive injuries can be transmitted through multi-layered supply chains***." *Id.* at *15 (citing *California v. ARC America Corp.*, 490 U.S. 93, 102 (1989) ("*Arc America")* (emphasis added)). NTN's arguments are therefore misplaced.

Each of the Complaints makes extensive allegations of a price-fixing conspiracy that specifically targeted the United States and has had direct, substantial, and reasonably foreseeable effects on U.S. commerce -- including by artificially raising prices paid by U.S. purchasers. AD ¶¶ 1, 6, 8, 15, 19-23, 158, 161-66, 182-85, 213-15, 227, 232, 262, 266; EP ¶¶ 1, 8, 9, 16-19, 69-98, 105-06, 109-14, 138-43, 174, 179-83, 200, 203; DP ¶¶ 1, 3, 6, 7, 48, 55, 60, 77-82, 106, 108-13, 117-21, 133-35. Plaintiffs have plausibly alleged that Defendants' conspiracy was the proximate cause of such anticompetitive effects in the U.S. (as Defendants intended) and, under any standard, Plaintiffs have alleged far more than the potential for "a few ripples" or "an inchoate hope" of effects in the United States (Supp. Reply at 4-5).[7] NTN's cited authorities are thus inapposite.[8]

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[7] Defendants' attempt to distinguish *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 822 F. Supp. 2d 953 (N.D. Cal. 2011) falls flat. In *TFT-LCD*, the court denied defendants' FTAIA summary judgment motion reasoning that, *inter alia*, defendants' overseas and U.S.-based collusion targeted the U.S. and increased the price of the LCD components, which in turn "caused the prices of finished products in the United States to increase." *Id.* at 965. Plaintiffs plausibly allege the same here. As the *TFT-LCD* court emphasized: "If this effect is not 'direct,' it is difficult to imagine what would be." *Id.*

[8] NTN Defendants' heavy reliance on *Motorola Mobility LLC v. AU Optronics Corp.*, 746 F.3d 842 (7th Cir. 2014), *petition for rehearing en banc pending* ("*Motorola*"), is misplaced. That case was decided on summary judgment, and did not concern the sufficiency of the pleadings on a motion to dismiss. Second, the issue in *Motorola* involved the applicability of the FTAIA to component parts that were purchased by the plaintiff's foreign subsidiaries from foreign defendants and incorporated by the foreign subsidiaries into products which were then shipped to the plaintiff in the United States. In contrast, plaintiff purchasers here are all United States

Finally, NTN argues that antidumping orders show "why [all Plaintiffs] cannot meet the 'direct' test," and submits a purported antidumping order as an exhibit (*See* Reply at 7, Ex. 1). The matter before the Court, however, is what has been plausibly alleged by Plaintiffs' Complaints -- which make no reference to any antidumping orders. Defendants' offered exhibit is thus improper. Moreover, as discussed above, the Ninth Circuit's *LSL* "directness" analysis that forms the basis for NTN's argument is not the majority view of the "domestic effects" exception, and this Court should reject it for the same reasons articulated by the Second and Seventh Circuits.[9] Thus, because the conspiracy alleged by Plaintiffs plausibly had a direct, substantial, and reasonably foreseeable effect on U.S. commerce, the FTAIA does not bar Plaintiffs' claims.

IV. THE STATE LAW CLAIMS CAN PROCEED REGARDLESS OF THE COURT'S RULING ON THE APPLICABILITY OF FTAIA TO SHERMAN ACT CLAIMS.

Nothing in the express language of the FTAIA or its legislative history reveals a Congressional intent to limit state law or immunize companies from state antitrust liability for foreign conduct that injured residents of a state.[10] The FTAIA specifically refers to the amendment of the Sherman Act and says nothing about its applicability to state law.[11] More

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citizens and businesses, the conspiracy involved American Defendants, and was directed towards the United States. Third, in *Motorol*a all but 1% of the components were manufactured and sold outside the United States so that the effect of the price increase existed outside of the United States. That is simply not the case here, where the price increase impacted American consumers and businesses.

[9] What's more, Plaintiffs are not a party to any such antidumping proceedings as the government was in *LSL*, rendering Defendants' discussion even more inapposite. And whether complied with or not by Defendants, the antidumping order only helps demonstrate substantial exports to the U.S. and a likely effect on U.S commerce from Defendants' price-fixing. The order, which was lifted in 2010, in no way makes it possible to conclude on the pleadings that any claims against NTN are "impossible" as a matter of law.

[10] *See also Rambus Inc. v. Micron Technology, Inc.*, San Francisco Superior Court Case No. 04-431105, order dated May 29, 2009 denying Defendants' Motion for Summary Adjudication of, or in the Alternative, Motion to Dismiss, Plaintiff's Claims Based on "Foreign Commerce" for Lack of Subject Matter Jurisdiction, attached hereto as Exhibit A. The California Court of Appeal summarily denied a petition for a writ of mandate to review this order. Exhibit B.

[11] *Boyd v. AWB Ltd.*, 544 F. Supp. 2d 236, 247 (S.D.N.Y. 2008) ("FTAIA by its express terms

tellingly, the Export Trading Company Act of 1982, passed on the same day that Congress passed the FTAIA, as part of the same bill, includes express language limiting both federal and state antitrust law in the foreign commerce context.[12] This strongly suggests that Congress did not intend that the FTAIA would limit the reach of state law claims.

Defendants argue that "harmonization statutes" and/or the "little FTC Act" of the various states demonstrate that such provisions are proof that the same FTAIA analysis applies equally to state law claims. But Defendants have failed to demonstrate that every state intended to incorporate the FTAIA as a limit to its respective laws. Moreover, "Congress intended the federal antitrust laws to supplement, not displace, state antitrust remedies. And on several prior occasions, the Court has recognized that the federal antitrust laws do not pre-empt state law." *ARC America*, 490 U.S. at 102; *see also Pinney Dock and Transport Co. v. Penn Cent. Corp.*, 838 F.2d 1445, 1481 (6th Cir. 1988) (finding "no suggestion that Congress has preempted the entire field of antitrust regulation"). Courts have repeatedly rejected preemption arguments pertaining to state consumer protection law, absent compelling evidence of an intention to preempt, because this field has been historically occupied by the state, not Congress. *Aguayo v. U.S. Bank*, 653 F.3d 912, 917 (9th Cir. 2011) (noting that "consumer protection law is a field traditionally regulated by the states") (citation omitted); *In re Aurora Dairy Corp. Organic Milk Mktg. & Sales Practices Litig.*, 621 F.3d 781, 794 (8th Cir. 2010) ("Consumer protection is quintessentially a field which the States have traditionally occupied.") (citation and internal quotation marks omitted).

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applies only to Sherman Act claims. . . ."); Pub. L. No. 97-920, §§ 401-03, 96 Stat. at 1246-47; S. Rep. No. 97-644, at 29 (1982) (stating that the FTAIA's provisions "modify the Sherman Act and Section 5 of the Federal Trade Commission Act").

[12] Public Law 97-290, enacted by the 97th Congress 8 October 1982, consisted of the "Export Trading Company Act of 1982" (Title I), and "Bank Export Services Act" (Title II), and creation of export trade certificates of review (Title III), and the "Foreign Trade Antitrust Improvements Act of 1982" (Title IV). Title I expressly defines "antitrust laws" to include "*any State antitrust or unfair competition law*" (Pub. L. No. 97-290, § 103(a)(7), 96 Stat. at 1235 (emphasis added), as does Title III (*id*. § 311(6), 96 Stat. at 1245); Title IV, the FTAIA, does not do so.

NTN's preemption arguments are further contradicted by the states' right to establish more extensive antitrust remedies for indirect purchasers than federal law provides. *ARC America.*, 490 U.S. at 105 (affirming states' right to provide indirect purchasers with redress for antitrust injuries, despite prohibition of indirect-purchaser damages claims under federal law). Moreover, within the limits of the U.S. Constitution, there is significant state interest to regulate foreign anticompetitive conduct that inflicts injury upon residents of the states.

In *Crosby v. Nat'l Foreign Trade Council,* 530 U.S. 363 (2000) ("*Crosby*"), which NTN cites, the First Circuit concluded that the Massachusetts Burma Law was preempted by the sanctions that Congress had enacted against Burma. Among other things, the court used conflict preemption to invalidate the law, holding that "Massachusetts's unilateral strategy toward Burma directly contradicts the federal law's encouragement of a multilateral strategy," and was therefore invalid. *Nat'l Foreign Trade Council v. Natsios,* 181 F.3d 38, 76 (1st Cir. 1999). The Supreme Court affirmed the First Circuit's decision on the conflict preemption grounds. *Crosby,* 530 U.S. at 388. Conflict preemption occurs where state law conflicts with federal law, either because it is impossible to comply with both ("direct conflict preemption") or the state law is an obstacle to achieving the full purposes and objectives of the federal policy ("obstacle conflict preemption"). Defendants have failed to meet their "heavy" burden to establish either form of preemption. *See, e.g., In re Methyl Tertiary Butyl Ether (MTBE) Products Liab. Litig.,* 725 F.3d 65, 100-101 (2d Cir. 2013) (explaining burden). Congress knew that the state antitrust/consumer protection laws might be applied differently to domestic antitrust injury arising out of anticompetitive conduct that occurred overseas, but did nothing to displace or limit state laws through the FTAIA. Nothing in the FTAIA's 30-year history indicates that Congress has regarded state antitrust litigation against foreign companies as an obstacle to achieving its objectives under the FTAIA, otherwise it surely would have enacted an express preemption provision. *See Wyeth v. Levine*, 555 U.S. 555, 574-75 (2009) (state-law duty to provide a stronger warning in drug labeling was not preempted by federal law where "Congress has indicated its awareness of the operation of state law in a field of federal interest, and has

nonetheless decided to stand by both concepts and to tolerate whatever tension there [is] between them.") (internal citation omitted).

Defendants' alternative argument based on the dormant Foreign Commerce Clause also fails. The Supreme Court has explained that, where Congress has acquiesced to state regulation in foreign commerce, the dormant Foreign Commerce power is, by definition, not violated. *Barclays Bank PLC v. Franchise Tax Bd. of Cal.*, 512 U.S. 298, 327 (1994) (holding no violation given "indicia of Congress' willingness to tolerate" state regulation "applied to foreign corporations"). Defendants rely on *Japan Line Ltd. v. County of Los Angeles,* 441 U.S. 434, 448 (1979) ("*Japan Line*"), to argue that the Supremacy Clause forbids any differences between the application of state and federal law to foreign companies. *Japan Line* involved a state property tax that would create discrimination against foreign corporations in international maritime taxation. (*Id.* at 453). Defendants have not articulated such an "asymmetry" between the applicability of state law to the conduct of foreign and domestic corporations here.

Likewise, the reasoning in *In re Intel Corp. Antitrust Litig.*, 476 F. Supp.2d 452, 457 (D. Del. 2007) ("*Intel*"), does not apply. The plaintiffs in *Intel* declined to fully address the argument that the state claims were limited by the FTAIA on the basis that the defendant's foreign conduct fell within the reach of the FTAIA. (*Id.* at 457). Accordingly, the Court based its decision solely on defendants' arguments without any countervailing arguments to consider. Here, Plaintiffs have demonstrated that the FTAIA does not apply to their state law claims. Even if it does, as explained in previous sections of this brief, Defendants' conduct satisfies the statutory exceptions to the FTAIA.

CONCLUSION

For the foregoing reasons, the FTAIA does not bar any of Plaintiffs' claims. In the event that the Court nonetheless chooses to dismiss any claims, Plaintiffs request leave to amend their Complaint(s).

Dated: June 23, 2013

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