PETITIONING AND SETTLING TRADE CASES – WHERE ANTITRUST AND TRADE PRINCIPLES AVOID COLLISION

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U.S. antitrust and trade laws are meant to protect competition, but at times seem to move in different directions. While trade laws can push competitors together to petition or respond to antidumping or other alleged injury from import competition, antitrust laws seek to prevent cooperation between competitors that has anticompetitive effects or harms consumers. Concerns about antitrust exposure may lead many companies to suffer in silence, not wishing to exchange the problem of import competition for the risk of antitrust liability. But in jurisdictions like the United States, companies seeking relief through the trade laws should consider that there are several protections available to competitors acting in the petitioning and remedy phases including implied immunity, Noerr-Pennington, and the foreign sovereign compulsion defense. This article summarizes those protections and outlines how they may arise in the context of trade investigations and trade settlements if companies follow certain principles.

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U.S. antitrust and trade laws are both meant to protect fair, market-based competition, but at times seem to move in different directions. Often, trade laws can push competitors together to petition or respond to antidumping or other alleged injury from import competition. Conversely, U.S. antitrust laws are vigilant against cooperation between competitors that limit competition through various actions, including agreements between competitors to fix prices or not to compete in one way or another. This type of serious conduct can be prosecuted criminally in the United States, even when it occurs outside the United States.[2] U.S. antitrust enforcement priorities continue to evolve and trade remedies continue to be an important mechanism for ensuring the defense and competitiveness of U.S. industry, but it can be difficult to reconcile the need for joint action under the trade laws with the risks inherent to cooperation under the antitrust laws.

Recently, U.S. Federal Trade Commissioner ("FTC") Alvaro Bedoya drew attention to some of the evolving competition concerns by highlighting the struggles of shrimpers from Mississippi. These shrimpers are part of a U.S. industry that goes back hundreds of years, who allegedly have difficulty competing with shrimp and other aquaculture imports from India and other South and Southeast Asian countries.[3] According to Commissioner Bedoya, the Gulf Coast shrimpers do not fear competition, but they maintain that the competition must be fair. On the one hand, these imports offered low-cost alternatives for consumers and have contributed to growing consumption of shrimp; on the other hand, the imports impacted the livelihood of small, local businesses across the Gulf Coast. The allegations of unfairness range from false branding as shrimp from the Gulf Coast to allegations of unfair pricing. The domestic U.S. shrimp industry has already resorted to trade defense laws,[4] and Commissioner Bedoya now has indicated that the FTC would examine how aquaculture imports affect U.S. shrimpers and fishermen. Though Commissioner Bedoya did not specify the tools the FTC would use to investigate importers, his statement points to how the new wave of increased competition enforcement in the United States is aligning with traditional trade enforcement mechanisms, and the result could lead to a more significant impact on trade relationships and disputes in the United States.[5]

Examples like Gulf Coast shrimp occur increasingly, and within a world where both the antitrust and trade regulatory landscapes are changing globally. In the United States, there has been an increased use of both traditional and non-traditional trade defense mechanisms to limit import competition. At the same time, it is hard to miss the Neo-Brandeisian movement in antitrust, which is shifting away from the traditional competitive effects of consumer welfare, efficiency, and low prices to a broader view of competitive effects on structural market changes.[6] Commissioner Bedoya's example highlights the uncertainty of how these changes will intersect, but thankfully, U.S. antitrust laws provide some clear directions on how to steer a steady course through the rough waters where antitrust and trade laws intersect today, particularly at the petitioning and settlement phases under the trade laws. Specifically, U.S. antitrust laws have evolved to permit the type of joint action required to seek trade relief without creating antitrust exposure assuming the joint conduct remains within the confines of the trade relief process.

I. TRADE LAWS AND THE POTENTIAL CLASH WITH ANTITRUST PRINCIPLES

U.S. trade laws are designed to protect the "domestic industry," mostly from "unfair" trade, but also from too much trade. The most well-known examples of the former are the antidumping law and the countervailing duty law. The antidumping law focuses on the unfairness that manifests itself through low prices; that is, a foreign supplier's decision to sell below a "normal value," which can be a reference to prices in the supplier's home market, another export market, or a value constructed based on production costs and a normal profit.[7] The countervailing duty law aims to protect the domestic industry from the unfairness of government subsidies which meet enumerated requirements (a "financial contribution"

2 15 U.S.C. §§ 1-7; the federal antitrust laws apply to foreign conduct that has a substantial and intended effect in the United States. *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 796 (1993); but see *Dee-K Enters. v. Heveafil Sdn. Bhd*, 299 F.3d 281, 287 (4th Cir. 2002) ("No antitrust statute defines 'foreign conduct.' Nor does any statute explicitly address any aspect of a case involving the effect of foreign conduct on United States *import* commerce . . . .").

3 See Alvaro Bedoya (@BedoyaFTC), X (July 15, 2024, 3:44 PM), https://x.com/BedoyaFTC/status/1812936395142340989.

4 The U.S. government currently is considering trade cases against Ecuador, India, Indonesia, and Vietnam. See Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam Investigation Nos. 701-TA-699-702 and 731-TA-1659-1660 (Preliminary), USITC Pub. No. 5482 (Dec. 2023). As explained on page I-5 of this publication, the current cases are considered the third round of trade cases alleging injury from unfairly traded imports, with the previous rounds in 2003 and 2012 (the former, successful; the latter not). The current investigations are scheduled for decision later in 2024. See Investigation 701-699, Frozen Warmwater Shrimp from Ecuador, India, Indonesia, and Vietnam; Inv. No. 701-TA-699-702 and 731-TA-1659-1660 (Final), https://ids.usitc.gov/case/8152/investigation/8505.

5 This is not the first time U.S. federal agencies investigated this industry. In 2011, the U.S. Department of Justice ("DOJ") prosecuted a company for intentionally and misleadingly labeling Vietnamese fish. See e.g. Press Release, Department of Justice, Seafood Wholesaler Sentenced For False Labeling Of Fish (May 24, 2011), https://www.justice.gov/archive/usao/ma/news/2011/May/KATZsentPR.html. However, this may be the first time this industry is investigated from an antitrust perspective.

6 See e.g. Lina M. Khan, *Amazon's Antitrust Paradox*, 126 Yale L.J. 710, 737-46 (2017); see also Tim Wu, The Curse of Bigness: Antitrust in the New Gilded Age (2018).

7 19 U.S.C. §§ 1673, 1677b.

(direct or indirect) from a government, "specificity," and a benefit to the recipient).[8] The subsidy may or may not affect the export price levels, but subsidies linked to the act of exporting are particularly disfavored, and are considered to satisfy the "specificity" requirement by definition.

The "safeguard" law is designed to protect the domestic industry, but it does not concern itself with whether the trade is unfair.[9] Rather, the safeguard law begins with the proposition that too much—or an unexpected level—of import competition can cause "serious" injury to the domestic industry, and it is designed to give the domestic industry temporary protection until it can adjust to the higher levels of import competition.

From this broad description, it should be obvious that the trade defense laws are different than antitrust laws in their (almost) singular focus on protecting the domestic industry. All three trade laws require a demonstration of some type of "injury" "caused by" the imports under investigation, and among the considerations in determining injury and causation include an analysis of the purchasers/consumers. However, the purchasers/consumers have input to determine whether the domestic and imported products sufficiently compete, and, to a certain extent, whether there is sufficient supply available in the market. But the design and implementation of all these laws is clear: the purchaser/consumer has no right to unfairly traded imports that harm the domestic industry, and they do not have a right to unlimited quantities of imports that overwhelm and cause serious injury to the domestic industry. Domestic industries have a clear right to petition their government for relief from both unfair and "too much" trade, and if they provide enough information to get the investigations going, the relevant government agencies conduct those investigations in a manner that often leads to relief in the form of additional import duties or other measures designed to address the injury arising from import competition.

With the clear emphasis on the "domestic industry," one might ask who forms part of this domestic industry and how the members—presumably competitors—act to convey their common concern with imports. This is a particularly relevant question at two moments in the process of seeking relief from import competition: the petitioning phase, and, at times, the remedy phase in those occasional cases in which some type of alternative to import duties is sought. Both stages require intensive cooperation and consultation among members of the domestic industry, and the discussions necessarily involve issues that competitors will recognize as those that can lead to potential antitrust exposure: specifically, price, volume, and competitive sales information, to name a few.

Information exchanges between competitors such as these potentially can be unlawful if they lead to an anticompetitive effect, or if the exchange of information between competitors leads to an agreement to fix prices or limit output which would be considered per se illegal, and subject to criminal prosecution.[10] There is a risk that the U.S. Department of Justice ("DOJ") would investigate any system through which competitors agree to restrict or limit output, such as information sharing about production volumes or agreements to establish production quotas, particularly where there is no government involvement or compulsion.[11]

Concerns about antitrust exposure may lead many companies to suffer in silence, not wishing to exchange the problem of import competition for the risk of antitrust liability. But in jurisdictions like the United States, companies seeking relief through the trade laws should consider that there are several protections available to competitors acting in the petitioning and remedy phases including implied immunity, *Noerr-Pennington*, and the foreign sovereign compulsion defense described below.

II. ANTITRUST DEFENSES AND PROTECTIONS AVAILABLE TO COMPETITORS IN THE TRADE CONTEXT

Under U.S. antitrust and trade laws, certain joint activity can be afforded certain protections that would not otherwise be available to competitors engaging in the same conduct outside of the trade context. For example, joint efforts to petition the U.S. government for relief under the trade laws

8 19 U.S.C. § 1671.

9 19 U.S.C. § 2251.

10 Section 1 of the Sherman Act (15 U.S.C. § 1) outlaws "every contract, combination . . . or conspiracy" in restraint of interstate or foreign trade. U.S. antitrust laws prohibit agreements between competitors such as on prices or on terms that may affect prices, allocating markets or customers, and restricting output. Certain categories of agreements are per se illegal. *Bus. Elecs. Corp. v. Sharp Elecs. Corp.*, 485 U.S. 717, 723 (1988). The U.S. Supreme Court has recognized that "per se rules are appropriate only for conduct that is manifestly anticompetitive . . . that is, conduct that would always or almost always tend to restrict competition and decrease output." *Id.* (internal quotations and citations omitted). Section 1 of the U.S. Sherman Act makes illegal agreements that unreasonably restrain trade or competition. Because Section 1 outlaws "agreements," it requires at least two actors, which are typically horizontal competitors. The nature of the parties, the information exchanged, and the effect of the activity are all relevant to the antitrust analysis of an information exchange.

11 Foreign government involvement in conduct that involves or affects U.S. commerce is a consideration for the U.S. antitrust authorities when determining whether to investigate the conduct and "[t]he agencies consider four legal doctrines that lie at the intersection of government action and the antitrust laws: (1) foreign sovereign immunity; (2) foreign sovereign compulsion; (3) act of state; and (4) petitioning of sovereigns." The Antitrust Guidelines for International Enforcement and Cooperation ("2017 Antitrust International Guidelines") 2017, at § 4.2.

is generally immune from liability under U.S. antitrust laws. Likewise, settlements in the form of "suspension agreements"[12] benefit from implied immunity because the agreement is necessary to comply with U.S. trade laws. In addition, the protections can extend to foreign exporters and their U.S. customers who seek to defend themselves and in these proceedings. Any anticompetitive conduct from competitors (as part of the domestic industry, foreign exporters, or their U.S. customers) can come under the jurisdiction of U.S. antitrust laws if there are agreements or conduct outside the scope of the petitioning conduct or the negotiation of a suspension agreement if done for a purpose other than to influence U.S. trade authorities.

***Noerr-Pennington* doctrine**. Under the *Noerr-Pennington* doctrine, petitioning activity (including joint petitioning) intended to influence executive, legislative, administrative, or judicial decision-making in the United States or in other ex-U.S. jurisdictions generally is immune from U.S. antitrust laws (and certain other laws).[13] Immunities under the *Noerr-Pennington* doctrine are broad and cover most petitioning activities meant to influence governmental decision-making, including U.S. trade matters.[14] This allows exporters to participate in petitioning and to work together on a common strategy to convince the U.S. government that imports are causing the requisite injury to the domestic industry without running afoul of U.S. antitrust laws.

Immunities under the *Noerr-Pennington* doctrine include U.S. trade matters, and cover activity regardless of anticompetitive intent, motive, or purpose.[15] Under the Noerr-Pennington doctrine, an entity cannot be liable for injuries that indirectly result from its petitioning activity, even if the objective of such activity was to obtain a competitive advantage.[16] Nevertheless, if there is an attempt to use petitioning activity in a manner that is "not genuinely intended to influence governmental action," such activities could be seen as a "sham" and will not be afforded the protections of the *Noerr-Pennington* doctrine.[17] For example, using a trade petition as a sham for merely sharing competitively sensitive cost and pricing data between industry participants would be outside of the protections of *Noerr-Pennington*.[18] The *Noerr-Pennington* doctrine extends to petitioning of foreign governments, subject to the same stipulations as any other case, including sham activities where the petitioning activity is a cover "to interfere directly with the business relationships of a competitor."[19]

Implied Immunity. The petitioning activity is not the only stage of a trade investigation requiring joint activity by competitors. In fact, it is common for the petitioning entities to form an ad hoc coalition with their competitors to press their joint case beyond presentation of the petition and the formal initiation of the investigation. As the formal investigations draw closer to a conclusion, there may be a need for consideration of an alternative remedy, one that serves the industry's interest more than additional duties imposed at the border.

It is the policy of U.S. antitrust authorities that certain trade settlements under the Tariff Act of 193020 be granted implied immunity, even if a settlement involves price and quantity agreements or otherwise implicates U.S. antitrust laws.[21] The doctrine of implied immunity holds

12 Under U.S. laws, the U.S. Department of Commerce can enter into an agreement to suspend an antidumping duty and/or countervailing duty investigation when the relevant parties to the case reach an agreement and when certain statutory and policy criteria are met. See *Suspension Agreements*, Int'l Trade Admin., U.S. Dep't of Com., https://www.trade.gov/suspension-agreements (last visited July 17, 2024).

13 See generally *Eastern R.R. Presidents Conf. v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961); *United Mine Workers v. Pennington*, 381 U.S. 657 (1965). *Noerr-Pennington* applies to petitions to all departments of government, including administrative agencies. See *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (concluding *Noerr-Pennington* immunity extends to "the approach of citizens or groups of them to administrative agencies…and to courts").

14 See e.g. *JSW Steel (USA) Inc. v. Nucor Corp.*, 586 F. Supp. 3d 585, 597-99 (S.D. Tex. 2022) (alleged cooperation between competitors to influence steel policy and operation of Section 232 program protected by *Noerr-Pennington* doctrine and is not a violation of the Sherman Act).

15 See *Cheminor Drugs, Ltd. v. Ethyl Corp.*, 168 F.3d 119, (3d Cir. 1999) (applying *Noerr-Pennington* doctrine to the filing of an antidumping and countervailing duty petition with the ITC); 381 U.S. at 669-70.

16 See e.g. *City of Columbia v. Omni Outdoor Advert., Inc.*, 499 U.S. 365, 380-81 (1991).

17 *Allied Tub & Conduit Corp v. Indian Head, Inc.*, 486 U.S. 492, 507, n.10 (1988).

18 See *Columbia Steel Casting Co. v. Portland GE*, 111 F.3d 1427, 1446 (9th Cir. 1996) ("Applying to an administrative agency for approval of an anticompetitive contract is not lobbying activity within the meaning of the Noerr-Pennington doctrine."); *Clipper Exxpress v. Rocky Mountain Motor Tariff Bureau, Inc.*, 690 F.2d 1240, 1265 (9th Cir. 1982) (holding that a sham petition and rate-fixing conspiracy is not granted immunity under Noerr-Pennington as the "doctrine is not that extensive, and the antitrust laws are not that impotent").

19 See 2017 Antitrust International Guidelines at § 4.2.4 ("It is the view of the [U.S. Antitrust] Agencies that the principles undergirding [the *Noerr-Pennington*] doctrine apply to the petitioning of foreign governments."); see also *Amarel v. Connell*, 102 F.3d 1494, 1520 (9th Cir. 1996) (applying the *Noerr-Pennington* doctrine to a case in which plaintiff accused defendant of illegally petitioning foreign government officials); *Coastal States Mktg., Inc. v. Hunt*, 694 F.2d 1358, 1366 (5th Cir. 1983) ("The Sherman Act, as interpreted by Noerr, simply does not penalize as an antitrust violation the petitioning of a government agency. We see no reasons why acts that are legal and protected if done in the United States should in a United States court become evidence of illegal conduct because performed abroad."); *Carpet Group Int'l v. Oriental Rug Imps. Ass'n*, 256 F. Supp. 2d 249, 266 (D.N.J. 2003) ("[L]obbying of foreign governments, whether performed at home or abroad, is protected from antitrust liability under *Noerr-Pennington*.").

20 19 U.S.C. §§ 1202 *et seq.*

21 See 2017 Antitrust International Guidelines, at § 2.12.

that judicial application of U.S. antitrust laws "may be preempted where a federal statute expressly exempts an area of commerce from the antitrust laws or, where no statute provides an express exemption, immunity from the antitrust laws must be implied to maintain the integrity of a regulatory scheme mandated by Congress."[22] However, the U.S. Supreme Court has held that a finding of implied immunity from antitrust liability is appropriate "only if necessary to make the [other statute] work, and even then only to the minimum extent necessary."[23]

The policy of U.S. antitrust authorities is to recognize that "certain settlements of trade disputes entered under specific procedures set forth in U.S. trade laws are granted implied immunity under [The Tariff Act of 1930], even if the settlement involves price and quantity agreements or otherwise implicates the antitrust laws."[24] However, U.S. antitrust authorities caution that "[a]greements among competitors that do not comply with specific procedures in U.S. trade laws or go beyond the measures authorized by such laws, however, are subject to the antitrust laws to the same extent as conduct unrelated to the settlement of a trade dispute."[25] Thus, while a trade settlement agreement may likely be immune from antitrust liability where the parties comply with the conduct contemplated by the Tariff Act of 1930 and none of the participants has engaged in conduct beyond what is necessary to implement U.S. trade laws, implied immunity could apply only in limited instances to foreign defendants since almost all cases applying implied immunity arise from U.S. governmental directives, rather than foreign directives.[26] It is also important to emphasize that U.S. antitrust authorities' view of implied immunity for suspension agreements is limited to the federal government enforcement of U.S. antitrust laws. Private plaintiffs could file an antitrust complaint alleging that joint conduct violated U.S. antitrust laws, thereby forcing the U.S. industry or foreign defendants to raise Noerr-Pennington, implied immunity, or other defenses to the allegations.[27]

The Foreign Sovereign Compulsion Defense. Another defense potentially available to foreign exporters is foreign sovereign compulsion.[28] Where implied immunity is not available or at least uncertain, foreign sovereign compulsion may be the only defense for a foreign exporter that is complying with a foreign government directive on quotas or similar trade restrictions on shipments to the United States.[29] The 2017 Antitrust International Guidelines outline the following test for the application of the foreign sovereign compulsion defense:

1. The foreign government must have compelled the anticompetitive conduct under circumstances in which a refusal to comply with the foreign government's command would give rise to the imposition of penal or other severe sanctions;
2. The defense generally applies only when the compelled conduct can be accomplished entirely within the foreign sovereign's own territory; and
3. The order must come from the foreign government acting in its governmental capacity.[30]

While there is scant recent case law interpreting the foreign sovereign compulsion defense, several key federal court decisions provide useful guidance. Recently, in a case involving vitamin C supplements the U.S. Supreme Court ruled that while "[a] federal court should accord respectful consideration to a foreign government's submission [of its interpretation of its own laws], [it] is not bound to accord conclusive effect to the

22 See e.g. Joe Sims & Edith E. Scott, *Antitrust Consequences to Private Parties of Participation in and Settlement of Selected of Trade Actions*, 56 Antitrust L.J. 561, 589 (1987); see also *Keogh v. Chicago & Northwestern Ry.*, 260 U.S. 156 (1922).

23 *Silver v. New York Stock Exch.*, 373 U.S. 341, 357 (1963).

24 2017 Antitrust International Guidelines, at § 2.12.

25 *Id.* U.S. antitrust authorities further note that, "In the absence of legal authority, the fact, without more, that U.S. or foreign government officials were involved in or encouraged measures that would otherwise violate the antitrust laws does not immunize such arrangements." Id. (footnote omitted).

26 See *Shields v. Fed'n Internationale de Natation*, 419 F. Supp. 3d 1188 (N.D. Cal. 2019) (Court considered, but ultimately denied, granting an implied immunity defense plead by a foreign defendant in a putative class-action suit brought by U.S. plaintiffs).

27 See e.g. 2017 Antitrust International Guidelines, at n. 6.

28 A related concept is the Act of State Doctrine which generally says that courts should avoid "judging the validity of a foreign state's sovereign acts" as a means of preserving diplomacy on matters that could have a foreign affairs nexus. *W. S. Kirkpatrick & Co. v. Envt'l. Tectonics Corp., Int'l*, 493 U.S. 400, 406 (1990); see also e.g. *Petróleos de Venezuela S.A. v. MUFG Union Bank, N.A.*, Nos. 20-3858, 20-4127, 2024 U.S. App. LEXIS 16270, at *14-15 (2d Cir. July 3, 2024); *Sea Breeze Salt, Inc. v. Mitsubishi Corp.*, 899 F.3d 1064, 1068 (9th Cir. 2018); 2017 Antitrust International Guidelines, at §4.2.3 ("[T]he [U.S. Antitrust] Agencies may exercise enforcement discretion and decline to challenge foreign acts of state if the facts and circumstances indicate that: (1) the specific conduct complained of is a public act of the sovereign, (2) the act was taken within the territorial jurisdiction of the sovereign, and (3) the conduct relates to a matter that is governmental, rather than commercial.") (footnote omitted).

29 See Joe Sims & Edith E. Scott, *Antitrust Consequences to Private Parties of Participation in and Settlement of Selected Trade Actions*, 56 Antitrust L.J. 561, 595 (1987) ("The foreign sovereign compulsion defense, properly applied, should protect a private party from antitrust challenge arising from actions taken abroad in response to the initiative of a foreign government in implementing a trade dispute settlement with the U.S.").

30 Antitrust Guidelines for International Enforcement and Cooperation, at § 4.2.2. Recently, courts have imposed the following two requirements on defendants seeking to apply this defense: "the person in question appears likely to suffer severe sanctions for failing to comply with foreign law" and "has acted in good faith to avoid the conflict." Restatement (Fourth) of Foreign Relations Law § 442 (2018) (emphasis added); see also In re Sealed Case, 932 F.3d 915, 940 (D.C. Cir. 2019) (same); *Interamerican Refining Corp. v. Texaco Maracaibo, Inc.*, 307 F. Supp. 1291, 1298 (D. Del. 1970).

foreign government's statements."[31] On remand, the U.S. Court of Appeals for the Second Circuit, in analyzing the foreign sovereign compulsion defense and true conflicts of foreign law with U.S. law, emphasized the true conflict analysis over the compulsion element of the foreign sovereign compulsion defense. The Court found that the defendant must demonstrate that there is a "true conflict" between the laws of the domestic and foreign country. That is, the "legal demands must be irreconcilable."[32] The Court further noted that "[a]s a matter of first principles, 'comity' is characterized by respect for another country's sovereign authority within its borders, not by examination of whether such authority exerts duress-like pressure that leaves defendants little or no choice but to engage in the prohibited conduct. In focusing on the foreign state rather than the defendants, we consider primarily what the state as sovereign legislates—not the severity of the penalties the state imposes on non-compliance."[33] Although the Second Circuit's more lenient view of the degree of compulsion required to invoke the foreign sovereign compulsion defense is limited to its Circuit, exporter defendants faced with an antitrust claim will be able to point to the more lenient standard in arguing the foreign sovereign compulsion defense.

Consistent with the discussion above, an exporter invoking a foreign sovereign compulsion defense must also show that a "foreign government's order … compelled [its] business to violate American antitrust law."[34] The applicable government regulation must be "a specific order or action from [the] foreign government directed at the defendant."[35] The government compulsion must also be genuine. For example, the foreign sovereign compulsion defense was unavailable to defendants where the conspirators "by their own deliberate acts . . . brought about forbidden results within the United States."[36] In the same way, "[o]ne asserting the defense must establish that the foreign decree was basic and fundamental to the alleged antitrust behavior and more than merely peripheral to the illegal course of conduct."[37] Moreover, the foreign sovereign compulsion doctrine "applies only to the scope of conduct actually compelled under threat of severe sanction."[38] Some courts have required that defendants make a good faith effort to comply with U.S. law where there are conflicting orders from foreign sovereigns.[39]

III. CONCLUSION

Competition and trade enforcement are evolving, reflecting changing attitudes toward the most desirable balance between economic efficiency, consumer welfare, and open trade. Other political, economic, and social goals (such as high employment levels, low inflation, and maintaining a sufficiently strong national production base and national security) come into play and likely will affect the direction of competition and trade policy. Competitors need not face the changing environment alone; there is room for joint activity if they follow the principles set forth above.

31 *Animal Sci. Prods. v. Hebei Welcome Pharm. Co.*, 138 S. Ct. 1865, 1869 (2018).

32 *Animal Sci. Prods. v. Hebei Welcome Pharm. Co. (In re Vitamin C Antitrust Litig.)*, 8 F.4th 136, 144 (2d Cir. 2021); see also *Hartford Fire Ins. Co. v. Cal.*, 509 U.S. 764, 799 (1993) (noting that compliance with laws of both countries must be "impossible").

33 *Animal Sci. Prods.*, 8 F.4th 136, 146-147.

34 *Mannington Mills, Inc. v. Congoleum Corp.*, 595 F.2d 1287, 1293 (3d Cir. 1979); see also *Continental Ore Co. v. Union Carbide & Carbon Corp.*, 370 U.S. 690, 706-07 (1962).

35 *United States v. Brodie*, 174 F. Supp. 2d 294, 301 (E.D. Pa. 2001).

36 *United States v. Sisal Sales Corp.*, 274 U.S. 268, 276 (1927).

37 *Mannington Mills, Inc. v. Congoleum Corp.*, 595 F.2d 1287, 1293 (3d Cir. 1979).

38 *Animal Sci. Prods. v. Hebei Welcome Pharm. Co.*, 8 F.4th 136, 147 (2d Cir. 2021).

39 See *Mannington Mills, Inc.*, 595 F.2d at 1293; see also *Societe Internationale pour Participation Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 201 (1958).

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