Motorola Mobility: How Far Should a Nation’s Law Reach?

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As we honor the Renaissance man Judge Richard Posner, who has contributed so much to law, philosophy, law and economics, law and literature, and law and life, I explore an important corner: Judge Posner, antitrust law, and the world. This is a bottom-up essay with, hazardously, only one inflection point: Motorola Mobility LLC v. AU Optronics Corp., 1 including what we can infer from it about the appropriate reach of the U.S. antitrust laws in a marketplace that extends far beyond U.S. shores.

Motorola Mobility is the case of an offshore cartel in Taiwan, Korea, and elsewhere in Asia to fix the price of liquid crystal display (LCD) panels that were sold from the manufacturers’ home countries to Motorola-China (wholly-owned subsidiaries of Motorola Mobility, sometimes called Motorola US or Motorola) to be assembled as part of cell phones. These, in turn, were to be sold to Motorola US and other buyers around the world for resale. Motorola US, unaware of the conspiracy, negotiated the price of the LCD panels to be bought by its Chinese subsidiaries, and subsequently bought 42 percent of the cell phones assembled by these subsidiaries that included the price-fixed panels. The Chinese subsidiaries sold 57 percent of the devices to buyers abroad. The remaining 1 percent of the panels were sold directly from the Asian price fixers to Motorola US for Motorola’s resale in the United States. The price fixing of the 1 percent of the panels was clearly subject to the Sherman Act, and the 57 percent were not claimed to be covered by the Sherman Act, so the panels in point are the 42 percent.

Should Motorola US be entitled to recover under the Sherman Act for losses it suffered from the price fix? That was the question in the case before Judge Posner and his fellow panel members of the Seventh Circuit Court of Appeals. The case arose against the backdrop of a sister criminal case brought by the United States against Taiwanese manufacturer AU Optronics (AUO) for price fixing LCD panels sold to Motorola’s Chinese subsidiaries. In that case, certain AUO executives were convicted and sentenced in the United States. 2 The other price fixers settled with the Department of Justice. 3

What is the proper reach of national law? Can the United States hold offshore price fixers to account? Can it require them to pay damages to a step-removed buyer? Can a U.S. court sentence them to jail even if their nation’s competition law does not have or apply jail terms? Is the U.S. answer the right answer for the world? These are basic questions on the cutting edge of international/comparative competition law, and likewise on the cutting edge of other disciplines of economic law where conduct in one nation affects the world but there is no international law.

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1 775 F.3d 816 (7th Cir. 2015) (Motorola Mobility II).
2 United States v. Hui Hsiung, 778 F.3d 738 (9th Cir. 2015).
I approach these questions in four parts. First, I give a brief background of the evolution of national antitrust law applied to offshore transactions and identify a growing global consensus. Second, I explain the relevant U.S. statute, the Foreign Trade Antitrust Improvements Act of 1982 (FTAIA). Third, I tell the saga of the Motorola Mobility case as decided by Judge Posner. Fourth, I ask both local and global questions, including: Is there merit to an alternative big-picture narrative for reach and restraint of national law applicable to the global commons of competition?

Application of National Law to Offshore Transactions that Hurt the Nation: The Evolution

The United States was the pioneer in devising legal principles to protect its citizens from offshore acts that harmed them. In United States v. Alcoa, the Second Circuit, sitting as the court of last resort, decreed that the Sherman Act applies to acts done with the intent and effect (which could be implied from intent) to affect U.S. commerce. The court qualified the effect requirement; it held that the effect must be more than mere repercussions. This effects doctrine was—and remains—solidly U.S. law, but it was controversial for many years. Our trading partners—particularly the UK, which then allowed most cartels—argued that international principles precluded the reach of U.S. law to acts done on British shores that were legal in the UK. The tables were turned when European buyers were harmed by an alleged offshore wood pulp cartel (and the UK had joined the EU). If Europe could not protect itself, who would? Even the UK, a recalcitrant Member State, was obliged to accept a version of the effects doctrine when the European Court of Justice decided the Wood Pulp case. That case held that EU law reached offshore agreements “implemented” in the EU. A cartel involving offshore sales directly to purchasers established in the EU was “implemented” in the EU. With the much-later Intel case—which involved agreements on computer chips between the U.S. and China and sales of the integrated product from China to the world—the Court of Justice of the European Union expanded the Wood Pulp test. Specifically, it declared that EU jurisdiction extends also to foreseeable immediate and substantial impacts in the European Economic Area, and it gave enormous flexibility to each of those three words.

The effects doctrine is no longer controversial in the world. Almost all nations embrace it. It is a fixture of global policy understood as necessary to protect people from global harms in the absence of a global competition law. The controversy today surrounds national legal interpretations at the margins. In the United States, two legal questions have come into play: (1) When is an effect of challenged conduct sufficiently direct? and, (2) In view of the U.S. FTAIA, when does the effect of conduct that has a direct, substantial, and reasonably foreseeable effect on U.S. commerce “give rise to a claim” under the Sherman Act or FTC Act? Both questions arose in the Motorola Mobility case, on which Judge Posner has, influentially, ruled.

These questions arise against a soft global consensus that cartels are wrong and are, at least if without state sponsorship or explicit exemption, illegal. Nonetheless, and despite multiple sources of anti-cartel enforcement around the world, world cartels are rampant. Further, the glob-

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4 148 F.2d 416 (2d Cir. 1945).
5 Id. at 443.
6 Joined Cases 89, 104, 114, 116, 117 and 125 to 129/85, A. Ahlström Osakeyhtiö v. Comm’n (Wood pulp), 1988 E.C.R. 05193, ¶¶ 12, 16 (holding that the decisive factor is the place of implementation).
al economy does not stand still. The drive for cheapest execution has produced the global value chain. Whereas outsourcing once meant one stop abroad, global value chains commonly entail production in country A, assembly in country B, and sales to country C.

**The FTAIA**

The FTAIA was enacted in 1982. It was intended to help American businesses bolster their competitiveness abroad by clarifying that U.S. law did not follow U.S. firms into foreign markets. Thus, U.S. law would neither reach export cartels nor any other restraint whose effects were felt only abroad and that hurt only foreigners. As co-sponsor Chairman Peter Rodino said, “[The FTAIA] would remove . . . any unnecessary barriers to export trading by U.S. firms. At the same time, it would continue to provide antitrust protection for American consumers and competitors.”

The FTAIA does not apply to import commerce; the statute treats import commerce as not raising territorial issues. As for non-import commerce, the legislature took the following approach: For the Sherman or FTC Acts to reach conduct in foreign commerce, the commerce must have “a direct, substantial and reasonably foreseeable effect” on U.S. commerce, and [paragraph 2] “such effect gives rise to a claim” under the provisions of [the Sherman Act or FTC Act] other than this section.” The legislative history explains paragraph 2 as necessary to clarify that not any U.S. effect—such as profitability or employment in the United States—would evoke Sherman Act coverage. It must be an antitrust effect—i.e., credibly raising an antitrust issue.

For the next two decades, courts and parties did not treat paragraph 2 as a stumbling block to jurisdiction for it seemed merely reinforcing of the general understanding that the relevant effect on U.S. commerce had to be an antitrust-relevant effect. The important questions surrounded the phrase “direct, substantial, and reasonably foreseeable” when the major antitrust harms were abroad. For example, was American harm from a restrictive distribution system abroad too indirect? (It was.) Then, in the new millennium, the defendants in *Empagran* (foreign cartelists who injured foreign plaintiffs on foreign soil and whose cartel would have been beyond Sherman Act reach without the FTAIA) argued successfully that the FTAIA shrank the Sherman Act by importing standing concepts into a reach-of-the-law statute. They argued that the phrase “a claim [must arise from the U.S. effect]” meant “the claim” of the particular plaintiff must arise from the U.S. effect, and thus that the Sherman Act’s prohibitions are inapplicable unless the plaintiff’s antitrust case stems from the conduct’s domestic effect. The Supreme Court’s interpretation of paragraph 2 in *Empagran* was to become a critical factor in Judge Posner’s disposition of *Motorola Mobility*.

**Motorola Mobility**

AUO, Samsung, Sanyo, and several other Japanese, Korean, and Taiwanese firms manufactured and price fixed LCD panels. These panels were sold, as noted, to Motorola-China (Motorola’s Chinese wholly-owned subsidiaries), which incorporated them into cell phones. Motorola-China

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sold 42 percent of these phones to Motorola for resale in the United States and sold 57 percent into world commerce. The question at issue in Motorola Mobility was whether Motorola could maintain its U.S. lawsuit for damages on the overcharge for the 42 percent. The district court dismissed this part of the complaint. The court of appeals (Judge Posner presiding) agreed to hear an interlocutory appeal and, without any briefing or argument on the merits, affirmed dismissal. The court, in an opinion by Judge Posner, held (in a soon-to-be vacated opinion):

[W]hat is missing from Motorola’s case is a “direct” effect. The effect is indirect—or “remote”. . . . The alleged price fixers are not selling the panels in the United States. They are selling them to foreign companies (Motorola’s subsidiaries) . . . . The effect of component pricing on the price of the product of which it is a component is indirect compared to the situation in Minn-Chem, where the “foreign sellers allegedly created a cartel, took steps outside of the United States to drive up the price that is wanted in the United States, and then (after succeeding in doing so) sold that product to U.S. customers.” . . . It is closer to the situation in which . . . action in a foreign country filters through many layers and finally causes a few ripples in the United States.12

Thus, indirectness was the first ground of the decision; the Asian price fix of the component was too remote from the (high) price Motorola had to pay for the assembled phone. Second, Judge Posner found that the effect of the cartel on U.S. commerce did not “give rise to” an antitrust claim. Any U.S. effect on competition would depend on what Motorola decided to charge its U.S. customers. Motorola’s claim was not based on any illegality in Motorola’s prices, “in which event Motorola would be suing itself.”13 (Here, Judge Posner is playing around with the solipsistic absurdities to which the Empagran interpretation of paragraph 2 leads.) Rather than a U.S. effect on competition that hurt Motorola, said Judge Posner, the effect of the price fixing was on Motorola’s Chinese subsidiaries. The subsidiaries have remedies in their own country. If the remedies are not adequate, this was a risk that the subsidiaries assumed.

Finally, Judge Posner turned to policy. There would be big negative practical stakes in allowing this lawsuit to proceed, he said. Global supply chains are common. Manufacturers may be located in countries that do not have or do not enforce antitrust laws, or whose laws or their remedies are far more lenient than ours. “The Supreme Court has warned that rampant extraterritorial application of U.S. law ‘creates a serious risk of interference with a foreign nation's ability independently to regulate its own commercial affairs.’”14 A finding of the Sherman Act’s applicability under these circumstances would enormously increase the global reach of the Sherman Act, creating friction and resentment at the U.S. role of police officer for the world. “It is a concern to which Motorola is oblivious.”15

12 746 F.3d 842, 844 (7th Cir. 2014), reh’g granted and opinion vacated, Order No. 14-8003 (7th Cir. July 1, 2014) (Motorola Mobility I).

13 Judge Posner cites WILLIAM GADDIS, A FROLIC OF HIS OWN (1994). This may be the key to the whole decision. A Frolic of His Own is a novel about an undistinguished college instructor, Oscar Crease, who has written a long philosophical Civil War play that never got published. Many years later he sees a Hollywood blockbuster film that, in his mind but probably not in reality, duplicates the ideas in his play. He sues for plagiarism “and is promptly sucked down into wholesale legal disaster: depositions, bills, opinions, more bills, appeals, more bills, bills and bills.” KIRKUS REVIEW (Nov. 1, 1993), https://www.kirkusreviews.com/book-reviews/william-gaddis/a-frolic-of-his-own/. The novel (a very long one, which I confess not having read), appears to Kafkaesque except the hero is not eaten by the system but the system is eaten by the hero. Perhaps Judge Posner is asking, is Motorola an unworthy litigant, paranoid or opportunistic, trying to bring someone else’s claim and doing so in the wrong forum? Will the Motorolas of the nation pull the system down?

14 Motorola Mobility I, 746 F.2d at 846 (quoting F. Hoffman-LaRoche Ltd. v. Empagran S.A., 542 U.S. 155, 165 (2004)).

15 Id.
Motorola petitioned the court of appeals to vacate the decision and hear arguments on the merits. The Justice Department, alarmed that the circuit court decision might put offshore component price fixers beyond its reach, even for products destined for the U.S. market, filed an amicus brief in support of the petition.\(^\text{16}\)

The same panel reheard the case and it affirmed the result, but with this difference in the reasoning: Judge Posner, perhaps not wanting to take on the Justice Department or to undermine its foreign enforcement program, said he would assume that the U.S. effect was sufficiently direct (although the language of the case suggests he never believed that this assumption was true). On this second round, Judge Posner articulated a quite different view (from his first and now vacated decision) of “directness.” He now said, referring to the chain from price fix of the component in Taiwan, to assembly in China, to sale to Motorola for resale in the United States: “This doesn’t seem like ‘many layers,’ resulting in just a few ripples” in the United States cellphone market. . . .\(^\text{17}\)

The case was decided instead on the basis of FTAIA paragraph 2: the U.S. effect did not give rise to Motorola’s claim. Judge Posner said: “What trips up Motorola’s suit is the statutory requirement that the effect of anticompetitive conduct on domestic U.S. commerce give rise to an antitrust cause of action.”\(^\text{18}\) The effect did not give rise to a U.S. cause of action by Motorola because:

(1) The price fixing that engendered the price increase “occurred entirely in foreign commerce.” The immediate victims were Motorola’s foreign subsidiaries, which were separate from Motorola; corporate formalities matter. Motorola itself was only derivatively injured and was forum shopping.

(2) Motorola’s case collided with the indirect-purchaser doctrine of \textit{Illinois Brick}.$^\text{19}$ Under this doctrine, even if the cartel premium was passed on to Motorola, Motorola has no antitrust cause of action. \textit{Illinois Brick} is based on the difficulties of apportioning damages and preventing windfall damages, both of which would be a danger here. We do not know (said the court) if and how much Motorola was harmed; whether it increased prices to cover a pass-on charge and by how much; whether it lost sales; or even whether competitors likewise increased prices and they all profited through tacit collusion. Besides, since Motorola had argued that its subsidiaries’ harm was its harm, the court held that Motorola waived the claim that its damages arose from the inflated cost of the cellphones to it.

(3) The court then repeated the policy arguments that it made in the first (now vacated) opinion: with the forming of global value chains and the multitudinous products that incorporate components from foreign manufacturers—some of whom are located in countries that do not enforce their antitrust laws or have weaker remedies than the United States—recognizing this claim would be “rampant extraterritoriality” and “unreasonable interference with the sovereign authority of other nations.”\(^\text{20}\)

Finally, the court turned to the amicus brief of the Justice Department. The Justice Department had worried about the effect of the \textit{Motorola I} decision on its successful criminal prosecution of


\(^\text{17}\) \textit{Motorola Mobility II}, 775 F.3d at 819.

\(^\text{18}\) \textit{Id}.


\(^\text{20}\) \textit{Motorola Mobility II}, 775 F.3d at 824.
Taiwanese company AU Optronics and its employees (who were sentenced to jail). It wanted comfort that the court’s ruling would not interfere with the criminal and injunctive remedies it sought against foreign firms in general. Specifically, the Justice Department wanted a reversal of the prior holding that the components conspiracy filtered through Chinese assembly had no direct effect on U.S. commerce.

Judge Posner obliged, while expressing “surprise” with the amicus brief’s “absence of any but glancing references to the concerns that our foreign allies have expressed with rampant extraterritorial enforcement of our antitrust laws.”21 (The DOJ brief did not undercut the plaintiff’s position.) Judge Posner accepted the DOJ statement that “the Justice Department has worked out a modus vivendi with foreign countries regarding the Department’s antitrust proceedings against foreign companies.” He stated (but incorrectly)22 that “foreign antitrust laws rarely authorize private damages actions.”23 He noted that the U.S. government has reason to weigh sovereignty concerns in bringing foreign commerce cartel cases while private plaintiffs do not. And he repeated the “mind-boggling” thought of the number of private damage claims that could be brought if private purchasers of assembled products containing price-fixed components can sue. Thus, the court held, the FTAIA precludes a U.S. purchaser of an assembled product containing foreign-price-fixed components from suing the price fixers for damages but does not preclude the United States from criminally prosecuting those price fixers, including putting individual offenders in jail.

Judge Posner the Pragmatist, and Another View of the Cathedral

Judge Posner is a pragmatist, self-styled. His disposition of Motorola Mobility is a fine example.

If I may be allowed to speculate: He believed from the start that component price fixing abroad with assembly abroad and importation of the assembled product at an elevated price was just too remote. The pragmatic course was to dismiss the case at the outset. It was natural for him to play the hand that Empagran handed him: Call the conduct “not direct.” Perhaps he was amused to observe, playing with paragraph 2 of the FTAIA, that the effect on U.S. commerce (a supra-competitive price) could not give rise to Motorola’s claim because the effect was Motorola’s claim.

But then the Justice Department brief alerted Posner to the effect of his opinion on a significant part of U.S. enforcement, an unintended consequence that he felt he did not need to produce. So he assumed that the effect on U.S. commerce was sufficiently direct and based his opinion on the next clause of the FTAIA: the effect on U.S. commerce did not give rise to Motorola’s claim. This, we saw, had three prongs: Motorola and its Chinese subsidiaries were not one, and Motorola could not recover for their harm under the Sherman Act; Motorola waived its claim that it was suing for its own (indirect buyer) harm; and Motorola had no indirect claim by reason of Illinois Brick.

Neat and pragmatic, but is there another view of the Cathedral?

I ask four questions and present an alternative picture.

First, does Judge Posner succeed in painting DOJ criminal enforcement against component price fixers as legitimate and not “rampant extraterritorial enforcement,” while painting Motorola’s private damage action as illegitimate and “rampant extraterritorial enforcement”? Criminal enforcement with incarceration, because of its severity, moral ramifications, and often cultural uniqueness, is usually more territorial than civil enforcement. True, the DOJ considers comity concerns before

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21 Id. at 825.
22 See, e.g., DAVID ASHTON & DAVID HENRY, COMPETITION DAMAGES ACTIONS IN THE EU, LAW AND PRACTICE (2014).
23 Motorola Mobility II, 775 F.3d at 826.
prosecuting, but the effect of civil suitors’ lack of concern with international consequences is overstated. Normally, a victim of price fixing has a cause of action that the courts must enforce. Comity dismissals are rare, but where they are appropriate, the court will dismiss the case. Moreover, the Justice Department appeared in this very case and (to Judge Posner’s expressed surprise) did not express a worry that our foreign allies would regard the case as impermissibly extraterritorial.

Second, did Judge Posner give too short shrift to the single-enterprise argument offered by Motorola (and also suggested by the DOJ in its brief)? Uniquely, in this case, the subsidiaries were wholly owned by Motorola. Motorola itself negotiated the price they paid for the screens, the price fixers knew that the screens were for Motorola devices, neither China nor the homes of the price fixers were likely to be receptive to private damage actions against them in their courts, and one can hardly imagine that the Chinese subsidiaries and not Motorola US were the ultimate and foreseeable victims (as between the two). Does the single-enterprise argument, in light of these facts, make sense here?

Third, does Judge Posner convince us that the harm to Motorola from the component price-fixing conspiracy in Motorola Mobility is less direct than the harm to the U.S. potash buyers from the potash cartel in Minn-Chem? In Minn-Chem, the potash cartelists studiously did not sell directly into the United States. The Canadian and Russian firms had nearly monopolized the supply of potash. Campotex, the sales agent for the big producers in all markets except Canada and the United States, was bargaining to sell potash to China, and during this period of difficult negotiations with China, the producers agreed to restrict and did restrict supply. The supply restriction “compelled Chinese buyers to accept a price increase.” The price of the deal set the world benchmark. The potash producers then applied the high benchmark prices to sales to the United States, which is a big market for potash and was known to be.24

In Motorola Mobility, on the other hand, the component makers knew they were making the LCD screens for Motorola devices. They knew the line of the supply and assembly chain, and would have known that a very large portion of the assembled products were earmarked for the United States. The Chinese firms, wholly-owned subsidiaries of Motorola, were manufacturers/assemblers in the Motorola supply chain. In the criminal case, the jury found that the LCD price fixers “targeted” the United States. The price fixers intended to, and did, harm U.S. commerce.25 Motorola’s harm was part of that commerce, and a specifically foreseeable part.26

24 Minn-Chem, Inc. v. Agrium, Inc., 683 F.3d 845 (7th Cir. 2012) (en banc) (holding that the Sherman Act applies and the requirement of directness should be construed flexibly where the overcharges to U.S. customers were substantial and plainly foreseeable by the off-shore cartelists, especially where the home of the price fixers has no incentive to sue).

25 In its Sentencing Memorandum for sentencing AUO and its top executives, the Justice Department called the LCD price-fixing cartel “the most serious cartel ever prosecuted by the United States.” “[T]he conspirators sold $23.5 billion . . . in price-fixed panels destined for the United States.” “The conspiracy affected every family, school, business, charity and government agency that paid more to purchase notebook computers, computer monitors, and LCD televisions during the conspiracy” and all those who did not purchase because of the increased prices. United States’ Sentencing Memorandum at 1, United States v. AU Optronics Corp., No. CR-09-0110 SI (N.D. Cal.).

26 Was the connection between the foreign conduct and domestic effect more direct under the circumstances of Minn-Chem or Motorola Mobility? Minn-Chem did not involve a chain of production and a transformed product, and Motorola Mobility did. In that respect, the connection was more direct in Minn-Chem. But Motorola involved a product made specifically for Americans, and Minn-Chem did not. In that respect, the connection was more direct (more closely connected) in Motorola Mobility.

But recall that in his second opinion in Motorola Mobility II, Judge Posner accepted arguendo (he assumed) that the connection was sufficiently direct. In the second opinion, he rested the case for dismissal on the FTAIA’s phrase: “gives rise to.” He held that the Taiwan price fix of components did not “give rise to” Motorola Mobility’s claim; not that it was too indirect.

Judge Posner sat on the en banc panel that reversed the grant of dismissal in Minn-Chem.
Fourth, is *Illinois Brick* a hazardous ground for declaring limits to the reach of the Sherman Act? Reach-of-the-law is an “umbrella” issue, not a personal (to plaintiff) issue.27 *Illinois Brick*, which held that indirect purchasers cannot sue, absent exceptions, is a procedural doctrine of U.S. federal antitrust law, and an exceptional one. It has been questioned even in the last few months by the U.S. Department of Justice, which may consider seeking its repeal.28 It is not the law in many states of the United States. EU law has rejected it and so have its Member States and the many jurisdictions that follow EU law. There is a case to be made that the reach of the Sherman Act should be a stable concept of general applicability, understandable (as generally applicable) to foreign manufacturers that consider fixing the price of components of products known to be en route to the United States.29

The Other View of the Cathedral

We are living in a world of global value chains with tightly calibrated (if geographically distant) steps from input to assembly to sale. There is world consensus on the law against price fixing. Nonetheless, price fixers are rampant and are gaming the system. If they fix prices of components in Asia, sell them to assemblers in countries with weak antitrust enforcement who assemble the finished product for shipment to the West, can they thus insulate themselves from at least one big element of liability? If countries like the United States draw in their reins for fear of interfering with other nations’ decisions about how to regulate their own economies,30 we are creating a price fixers’ paradise.

If this is the main narrative, the technicalities should follow. To begin, interpreters of paragraph 2 of the FTAIA can find their way around its improvident and sometimes silly constraints. And procedural doctrines such as *Illinois Brick* should not encumber a reach-of-the-Sherman Act inquiry, but should be left to another day.

Conclusion

Judge Posner gave us two provocative opinions in *Motorola Mobility*. They were, as usual, pragmatic. *Motorola Mobility* will not be the last word on the issue of input cartels with offshore assembly, or indeed the broader issue of proper spheres of geographic reach of nations’ laws.31

We would normally have looked forward to Judge Posner’s writing yet another chapter in the book on component cartels and geographic reach of the law. Or yet another book. Maybe he will grant this wish, but sadly, for the admirers of his jurisprudence, not from the bench.

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27 At least this should be so, but *Empagran* has complicated the issue.


29 *Illinois Brick* is a federal procedural doctrine and regards who can sue and recover damages. It can be repealed and it can be weakened. It is undermined by state laws. It is not the international standard. If global value chains flourish, if Americans are the foreseeable targets of component cartels at the top end of the chain, and if the first Americans hurt are indirect buyers, Congress or the courts may see fit to relax the doctrine. The reach of national antitrust laws is a grander concept than indirect purchaser treatment and should not be driven by an otherwise pragmatic barrier to private-firm damages.

30 Freedom from compensating victims abroad for price fixing of products destined for abroad is not a legitimate aspect of nations’ regulating their own economies. They all prohibit price fixing at home. If the problem is double counting for overcharges, this can be cured by a rule of law requiring offsets. If the problem is that the United States has real deterrent remedies and the home country does not, then exposure to U.S. antitrust law is a cost of making products for sale in the United States.

31 See Case C-413/14P, Intel v. Comm’n, ECLI:EU:C:2017:632 (transactions from US to China to the world market included in abuse of dominance violation); Iiyama v. Samsung, Philips & LG, [2018] EWCA Civ 220 (UK Court of Appeal) (reversing dismissal of damage claims for price fixing of LCD panels and cathode ray tubes first sold in Asia and assembled into monitors in Asia).