

The practice of effect doctrine and China's response

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Abstract

The effects doctrine, which permits a state to assert jurisdiction over extraterritorial conduct producing substantial effects within its territory, has evolved from a contested instrument of United States antitrust enforcement into a jurisdictional approach increasingly adopted across multiple legal domains by the major economic powers. This article traces its doctrinal development in competition law before examining its expanding application in domestic criminal law and international criminal adjudication. Against this comparative backdrop, the article analyses China's legislative and judicial engagement with the effects doctrine, arguing that recent developments in competition, securities, anti-money laundering, and counter-sanctions legislation collectively constitute an emerging framework for the extraterritorial application of Chinese domestic law. In the criminal sphere, a purposive reading of the existing territorial jurisdiction provision provides a viable doctrinal bridge. While affirming the legitimacy of China's effects-based jurisdictional claims, the article cautions that their exercise must remain conditioned on effects that are substantial, direct, and reasonably foreseeable, and must respect the principles of proportionality and international comity.

Keywords: effect doctrine; extraterritorial application; antitrust law; securities law; criminal law

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1. Introduction

According to the traditional principles of international law, the domestic law of a state is territorial in nature, and the sovereign state enjoys legislative, enforcement and judicial jurisdiction only within its domain. The 1927 S.S. Lotus case (France v. Turkey)¹ loosened the strict constraints of territorial jurisdiction by accepting that the territorial principle can take two forms, namely subjective territorial jurisdiction and objective territorial jurisdiction. The former allows jurisdiction over crimes that begin in the national territory but are not completed there, while the latter allows jurisdiction over crimes that are completed in the national territory but do not begin there. As for the effect doctrine, which uses effects as a basis for extraterritorial jurisdiction, it is a product of the U.S. expansion of territorial jurisdiction even further based on Lotus case, meaning that a country can assert jurisdiction over cases that occur outside its territory but have serious effects within its borders, without requiring that one of the constituent elements of the crime occur in the territory of that country.

The effect doctrine allows U.S. courts to hold an alien liable under U.S. law for acts committed outside the country, even if they are lawful or even encouraged outside the country, as long as they have a direct, substantial and foreseeable effect within the United States. Thus, the effect doctrine has been controversial from its inception, with proponents arguing that the most important limitation on a State's exercise of jurisdiction under international law is the establishment of a reasonable link or sufficiently close contact between domestic territory and the crimes occurring abroad, and that the effect doctrine is strictly limited.² Besides, A state may exercise jurisdiction only where, on the basis of a reasonable connection, the effects satisfy three cumulative requirements: they must be direct, substantial, and reasonably foreseeable.³ Under these conditions, the effect doctrine does not unduly threaten state sovereignty. Moreover, the effects principle is properly understood as an aspect of territorial jurisdiction.⁴ It responds to the regulatory demands of globalization with respect to transnational anti competitive conduct by multinational enterprises, and it helps remedy the limitations of existing jurisdictional principles in international law. Opponents believe that states must respect the rights of other states outside their territories and must not apply their own legislation to acts committed by foreigners outside their territories, otherwise it will lead to serious jurisdictional contradictions and legal conflicts. Besides, the effect principle essentially exports the economic and political values of one country to other countries.⁵

¹ The Lotus Case, France v. Turkey, PCIJ Res Ser.A, No.10(1927).

² F. A. Mann, *The Doctrine of Jurisdiction in International Law*, 111 *Recueil des Cours*, 1964 I, p.43.

³ *Restatement of the Law: The Foreign Relations Law of the United States, Vol.1, 3rd Edition*. <http://www.kentlaw.edu/perritt/conflicts/rest403.html> (last accessed 17 February 2026).

⁴ *Restatement of the Law: The Foreign Relations Law of the United States, Vol.1, 3rd Edition, Comment d*, <http://www.kentlaw.edu/perritt/conflicts/rest402.html> (last accessed 17 February 2026).

⁵ Stanford, *The Application of the Sherman Act to Conduct Outside the United States: A View from Abroad*, Cornell

This paper firstly compares the historical evolution of the effects principle in the field of antitrust law and the practice of major jurisdictions. It then identifies a growing trend toward the application of the effects principle in domestic criminal law and in international criminal law. Finally, the author argues that, at the level of China's jurisdictional legislation, the Anti Monopoly Law, the Securities Law, and the Criminal Law all create legal space for asserting jurisdiction over extraterritorial conduct on the basis of the effects principle. These statutes provide important rule of law safeguards for responding to foreign interference, sanctions, and the expansion of long arm jurisdiction. China should therefore make fuller and more effective use of these legal instruments at the enforcement and adjudicative levels in order to better safeguard national security and protect the lawful rights and interests of its citizens.

This paper proceeds by way of qualitative comparative analysis, combining doctrinal examination of statutory texts with close reading of leading judicial decisions. The comparison runs along two axes, one jurisdictional and one functional. The jurisdictional axis traces how the United States, the European Union, and a range of other states have articulated and constrained the effects principle. The functional axis follows how a single jurisdictional rationale has migrated across antitrust, criminal, and counter sanctions regimes. The United States is treated as the originating system, having first codified and enforced the doctrine, and the European Union as the principal site of its doctrinal adaptation, while the further states considered below illustrate the range of legislative responses across civil law, common law, and transitional systems. The cases discussed were selected for their doctrinal significance, their representativeness of a given standard in operation, and their bearing on the criminal and counter sanctions questions that form the analytical core of the paper, with priority given throughout to primary sources.

2. Historical Evolution of the Effect Doctrine

The United States was the first to enact and actually enforce antitrust laws. The Sherman Act, the Clayton Act and the Federal Trade Commission Act constitute the basic framework of antitrust law in the United States. As the pioneer of enforcing antitrust law, the antitrust legislation and enforcement measures of the United States have been referred and imitated by other countries. The history of the development of antitrust law showed that the U.S. initially adhered to strict territoriality in antitrust law until 1945 when the U.S. courts formally established the effect doctrine and extended the scope of applying antitrust law outside the United States. Even so, the exercise of jurisdiction under U.S. law on the basis of the effect doctrine is not out of rules. The international comity, rule of reason, and balancing test all play a role in limiting the effect doctrine.

In international community, the initial formulation and application of the effect doctrine was vigorously opposed by many countries and led to diplomatic protests, international controversy and unanimous criticism. The United Kingdom was one of the most drastic opponents of the effect doctrine.¹ In response, it enacted the Shipping Contracts and Commercial Documents Act 1964, which empowered designated authorities to prohibit persons within the United Kingdom from complying with foreign judicial or administrative demands where compliance would prejudice the United Kingdom's jurisdiction. This approach was subsequently reinforced by the Protection of Trading Interests Act 1980, which, *inter alia*, afforded a defendant company suffering loss as a result of a foreign antitrust action a cause of action to recover multiple, or "excess," damages from the successful claimant. Beyond the United Kingdom, Australia,² France,³ Canada,⁴ and other jurisdictions adopted comparable blocking measures designed to resist the extraterritorial application of foreign competition laws. However, countries' accusations of extraterritorial application of U.S. antitrust laws and the establishment of their own blocking statutes have not been able to completely block the effect doctrine. In fact, while criticizing the United States, countries have coincidentally established their own system of extraterritorial jurisdiction of antitrust law. Scattered across national jurisprudence and legislative regulation, the effect doctrine has gradually become a recurrent feature of competition enforcement among the major trading economies, even if it cannot yet be described as a settled principle of general international law.

2.1 The Creation and Development of Effect Doctrine in the United States

On jurisdictional issues, under U.S. statutory law, the effect doctrine applies to extraterritorial commercial conduct that has a direct, substantial and foreseeable effect on the territory of United States.⁵ In case law, a rudimentary form of the effects principle appeared as early as *Strassheim* (1911)⁶, the Court observed that a state

International Law Journal, 1978.

¹ J. Philip Rosen, *The Protection of Trading Interests Act*, International Lawyer, p.217.

² *Foreign Antitrust Judgements (Restriction of Enforcement) Act* (1979).

³ *Law No.80-538* (1980).

⁴ *Foreign Extraterritorial Measures Act* 1985.

⁵ *Foreign Trade Antitrust Improvements Act* 15 U.S.C. § 6a.

⁶ *Strassheim v. Daily*, 221 U.S. 280 (1911).

may punish conduct occurring outside its territory where the conduct was intended to, or did, produce harmful effects within the state's jurisdiction. It was not until 1945 that the U.S. Court of Appeals for the Second Circuit formally established the effect doctrine in *United States v. Aluminium Co. of America (Alcoa)* (1945), breaking the precedent of strict territoriality that had been upheld since 1909 in *American Banana Co. v. United Fruit Co* (1909). In *Alcoa*, the United States alleged that Aluminium Limited, a Canadian company, had participated in an export price agreement concluded outside the United States among firms in the United Kingdom, France, Switzerland, and other states. The agreement was said to have had the effect of restricting aluminium production and exports affecting the United States market. On that basis, the United States asserted that section 1 of the Sherman Act applied extraterritorially. Judge Learned Hand emphasised that where an agreement made abroad by foreign enterprises was intended to affect, and in fact did affect, commerce in the United States, a United States court could apply domestic antitrust law.¹ The application of the effect doctrine in this case was based on the "intent-effect" standard, which means that both intent and actual effects on U.S. import and export trade must be present. The effect doctrine soon became widely accepted in the United States, and Section 402(1)(c) of the *Restatement (Third) of the Foreign Relations Law of the United States of 1987* provides that the United States has jurisdiction over conduct abroad insofar as it is intended to have, or has, a substantial effect within the United States. In the "intent-effect" standard, the effect doctrine applied if "intent" and "substantial effect" presented. But in this Act, only "intent" or "substantial effect" is required, which means the scope of application of the effect doctrine is further expanded.

Whether exercising effect doctrine or not on foreign affairs is decided by the judges. In facing numerous challenges from the international community, the judges have attempted to show their respect for the sovereignty of other countries by weighing the interests of other countries against those of the United States, and have made different restrictions on the application of the effect doctrine in a series of precedents.

2.1.1 International comity

The relationship between extraterritorial jurisdiction and international comity was discussed detailedly in *Timberlane Lumber Co. v. Bank of America* (1976), which reflects the limits on the effect doctrine.² In that case, the U.S. Timberlane Corporation and its Honduran subsidiary intended to acquire the Honduran company Lima in order to expand the U.S. source of lumber imports. When Lima ran into operational difficulties, the local union claimed a right of first refusal on Lima's property and the creditor, Bank of America, sought to auction off the property. Timberlane brought an antitrust and tort action in the United States, alleging a conspiracy to prevent Timberlane from exporting lumber from Honduras to the U.S. The court held that the elements of extraterritorial jurisdiction in antitrust cases include the type of conduct, the subjective intent of the actor, and the effect it caused on U.S. commercial market. At the same time, international comity and fairness cannot be ignored.³ It is imperfect to apply the effects doctrine without regard to the interests of other countries, and the extent to which the parties affect the U.S. commercial market and the interests of other countries involved in the case should be weighed in deciding whether to exercise extraterritorial jurisdiction.⁴ Given that Honduran commerce was far more affected than that of the U.S., the court demonstrated its deference to foreign governments by abandoning extraterritorial jurisdiction based on principle of international comity.

However, in *Hartford Fire Ins. Co. v. California* (1993), the court again appeared to deny the limiting attitude of international comity on the effect doctrine. In that case, Hartford Reinsurance Company, based in London, entered into reinsurance agreements with domestic reinsurers in the U.S. to fix coverage under domestic commercial liability policies, and Hartford argued that the agreements with the U.S. reinsurers were fully consistent with English law. The U.S. court did not have jurisdiction based on international comity. The district court also dismissed the case for lack of jurisdiction based on international comity. However, the U.S. Supreme Court held that international comity bars extraterritorial jurisdiction only in two special circumstances: first, where the law of a foreign sovereign requires the defendant to engage in commerce in a manner inconsistent with the Sherman Act; Second, where there is a conflict of laws between U.S. law and the defendant's domestic law. This case does not fall under either of these scenarios, and given that the illegal collusion between the British reinsurance company and the domestic company has had a substantial impact on the U.S. insurance market, the doctrine of international comity cannot prevent the United States from exercising jurisdiction over a company located outside its borders.⁵ The decision has been widely criticized as an ambitious expansion of U.S. antitrust law.⁶

¹ *United States v. Aluminium Co. of America*, 148F. 2d,416,443 (2d Cir.1945).

² J. Philip Rosen, *The Protection of Trading Interests Act*, International Lawyer, p.218.

³ *Timberlane Lumber Co. v. Bank of America*, 749 F.2d 1378,1379(1984).

⁴ *Timberlane Lumber Co. v. Bank of America*, 549 F.2d 597 609(9th Cir.1976).

⁵ *Hartford Fire Ins. Co. v. California*. 509 U.S. 764,796 (1993).

⁶ Julian Wilson, *U.S. Exports in Antitrust: The Primacy of Economic Muscle over International Law*, 1995 INT'L LITIG NEWS 3.

2.1.2 Reasonableness

The jurisdictional “reasonableness” was introduced in the *Timberlane* case¹ in 1976 and subsequently applied in the *Mannington Mills* (1979).² In *Mannington*, both the plaintiff Mannington Mills, Inc. and the defendant Congoleum, Inc. are U.S. companies. The plaintiff filed suit in the U.S. District Court for the District of New Jersey, claiming that the defendant's fraudulent acquisition of patents in foreign markets violated the Sherman Act, restricted U.S. export trade, and intended to monopolize the relevant markets. The court held that if based on personal jurisdiction, since both the plaintiff and the defendant were U.S. enterprises, there was no jurisdictional issue, but the case involved subject matter jurisdiction, i.e., whether the conduct of U.S. enterprises abroad was subject to the jurisdiction of U.S. courts, and therefore, it involved whether the court could have extraterritorial jurisdiction. Similar to the *Timberlane*, the Court did not simply follow the “intended impact” standard in the Aluminum case, but proposed a series of factors to be weighed in determining whether the U.S. antitrust laws could be applied extraterritorially. First, whether the conduct is intended to have or has had an impact on U.S. commerce; second, whether the impact on the plaintiff is serious enough to subject the defendant to civil liability under the antitrust laws; finally, whether the conduct is sufficiently close to U.S. interests, and whether the impact on the United States is more serious than that of any other country, to justify the exercise of extraterritorial jurisdiction by the United States.

2.1.3 Balance of Interest

The standards for the limitation of effect doctrine are not entirely consistent across U.S. case law; for example, in the *Westinghouse* (1977)³, the court adopted neither international comity nor reasonableness. In that litigation, Westinghouse claimed that a sharp rise in uranium prices and a shortage of supply on the international market prevented it from performing its uranium supply contracts. Following its investigation, Westinghouse argued that the non performance was attributable to a conspiracy among twenty domestic companies and nine foreign companies to fix the price of uranium on the world market, with the harmful effects of this international cartel materialising within the United States.⁴ On that basis, Westinghouse alleged that the conduct violated United States antitrust law. The *amici curiae* of United Kingdom submitted that there is a reasonable basis to believe that the U.S. effects doctrine is not settled law⁵ and accused the district court of abusing its discretion to expand the scope of application of the effects doctrine. In response, the Court of Appeals upheld the district court's decision, taking into account the complexity of the current multi-state and multiparty litigation, the seriousness of the conduct complained of, and the subjective attitude of the violator, and held that the district court did not abuse its discretion to expand its jurisdiction,⁶ and thus could exercise extraterritorial jurisdiction under the Sherman Act.

2.2 The EU's variant application of the effect doctrine

From the time the United States advanced the effects principle through the 1960s, a number of states, including the United Kingdom, France, Germany, and Australia, opposed its application. They argued that where a state is harmed by conduct occurring abroad, the proper course is to pursue bilateral diplomatic negotiations between the governments concerned. Over time, however, as the preservation of domestic competitive order came to be regarded as a major economic interest, state attitudes softened. An increasing number of jurisdictions began to emulate the United States and to assert extraterritorial jurisdiction on the basis of their own competition laws. Within the European Union, the Legal Committee of the Consultative Assembly of the Council of Europe stated in a report submitted in 1966 that each state is entitled, under its law, to adjudicate agreements concluded outside its territory, even where the parties are not its nationals.⁷ The 2004 Commission Notice on cooperation within the Network of Competition Authorities went further, expressly recognising the applicability of the effects principle in the field of antitrust enforcement.⁸

On the question of whether EU antitrust law can be applied extraterritorially, the European Court of Justice (ECJ) and the EC Commission differed only in terms of the basis of application, and the Court did not adopt the Commission's proposal to apply the effects doctrine directly, but instead proposed a variation of the effects

¹ The *Timberlane* decision calls for a three pronged inquiry in cases concerning the extraterritorial reach of antitrust law: (1) whether the challenged conduct was intended to affect, or in fact has affected, United States trade or commerce; (2) whether the nature and magnitude of the challenged conduct are such that it may be characterised as a violation of the Sherman Act; and (3) whether, in light of international comity and principles of fairness, the exercise of extraterritorial jurisdiction by the United States is justified.

² *Mannington Mills, Inc. v. Congoleum Corporation*, 595 F.2d 1287 (1979).

³ *In re Westinghouse Electric Corporation Uranium Contract Litigation* 436 F.Supp.990 (1977).

⁴ *In re Westinghouse Electric Corporation Uranium Contract Litigation* 436 F.Supp.990 995(1977).

⁵ *In re Uranium Antitrust Litigation*, 617 F.2d 1248 (7th Cir. 1980) (noting *amici curiae* submissions; “the *amici*, in particular the United Kingdom contend that Alcoa is ‘no longer to be accepted ... as “settled law” ...”).

⁶ *In re Uranium Antitrust Litigation*, 617 F.2d 1248, 1256 (7th Cir. 1980).

⁷ Case 48/69 *Imperial Chemical Industries Ltd (ICI) v. Commission*[1972], ECR 619.

⁸ Commission Notice on cooperation within the Network of Competition Authorities, OJ EU [2004] C 101/43.

doctrine by introducing the "single economic entity" doctrine and the "place of performance" doctrine. The Court of Justice did not adopt the Commission's proposal of direct application of the effects principle, but made a variation of the effects principle by proposing the doctrine of "single economic entity" and the "implementation test", which to a certain extent achieved the purpose of direct application of the effects principle and avoided endless debates on the legality and reasonableness of the effects principle in theory and practice.

2.2.1 Single economic entity

The "single economic entity" doctrine has served as a jurisdictional basis for the European Communities to regulate monopolistic conduct carried out by multinational enterprises. In *Imperial Chemicals v. Commission* (1972),¹ the UK based ICI group, established outside the European Community, coordinated pricing with undertakings located in France, Germany, and Italy, resulting in three parallel increases in dyestuff prices. The Commission considered that, although the foreign parent did not itself sell products directly within the Community, it instructed its local branches or subsidiaries established in the Community to raise prices. Given the particular relationship between parent and subsidiary, the price fixing conduct could be attributed to the parent as conduct carried out within the Community. It therefore constituted concerted pricing within the meaning of Article 85(1) of the Treaty establishing the European Economic Community (EEC Treaty), objectively capable of affecting trade between Member States and having as its object or effect the prevention, restriction, or distortion of competition within the common market. Moreover, even if the ICI group's conduct were characterised as occurring entirely outside the Community, the effects or harm materialised within the common market; on an effects based account, the Community would likewise possess jurisdiction.² The European Court of Justice (ECJ) did not apply the effects principle proposed by the Commission, but endorsed the "same economy" doctrine by interpreting the Community's territorial jurisdiction. The Court reasoned that the UK parent company held all, or the majority, of the shares in the Community subsidiaries; it was able to exercise decisive influence over the subsidiaries' pricing and sales policy in the common market and in fact did so with respect to the three price increases. The independent legal personality that the subsidiary had was not sufficient to exclude the possibility of attributing its actions to the parent company, especially when the subsidiary was subject to the parent company's orders and could not independently make its own decisions in the market. The Court concluded that the fact that the foreign parent company and the domestic subsidiary, although operating in different locations and having separate legal personality, did not break through the fact that they belonged to the same economy in the Community market and that, in fact, the foreign company had committed concerted price-fixing within the Community,³ and that the ECJ had jurisdiction over the ICI Group's action. This doctrine was applied again in the *Europemballage Corporation and Continental Can Co. Inc. v. Commission* (1973).⁴ There, the Court emphasised that a subsidiary's separate legal personality does not exclude the possibility that it acts in accordance with the parent's instructions, especially where the subsidiary is unable to determine its own market behaviour autonomously.

2.2.2 Implementation test

The *Woodpulp* (1988) case⁵ developed a new doctrinal basis for the extraterritorial application of EU competition law, namely the "implementation test". In that case, the European Commission imposed penalties on foreign undertakings from Canada, Finland, the United States, and elsewhere for allegedly fixing prices within the European Community. Because the price fixing agreement had been concluded outside the Community, and because most of the undertakings had neither branches nor subsidiaries within the Community, a strict reliance on the "single economic entity" doctrine would have compelled the Court, at least in respect of some foreign undertakings, to acknowledge a lack of jurisdiction. That outcome would have risked enabling non EU enterprises to evade EU antitrust rules simply by engineering the place where agreements were concluded, an approach inconsistent with the Community's interest in safeguarding competitive conditions within the internal market. The Commission again invoked the effects principle, arguing that, although the price fixing agreement and concerted practices occurred outside the Community, they produced direct, substantial, and intentional economic effects within the Community. Provided that no peremptory norm of international law was infringed, the Commission maintained that it was entitled to assert jurisdiction over such extraterritorial conduct. The Court, however, did not decide the case by direct reference to the effects principle. Instead, it held that, under Article 85 of the EEC Treaty, price fixing involves two constitutive elements: first, the formation of the agreement; and second, its implementation.⁶ Both the pricing arrangement as such (the formation of the agreement) and the

¹ Case 48/69 *Imperial Chemical Industries Ltd (ICI) v. Commission* [1972], ECR 619.

² *Ibid.*, ECR 629.

³ Case 6/72 *Europemballage Corporation and Continental Can Co Lnc v. Commission* [1972] ECR 215.

⁴ *Ibid.*

⁵ Joined Cases C-89/85, C-104/85, C-114/85, C-116/85, C-117/85 and C-125/85 to C-129/85, *Ahlström Osakeyhtiö et al. V. Commission* [1988], ECR I.

⁶ *Ibid.*, ECR I-1411.

marketing of products at fixed prices within the market (the implementation of the agreement) fell within the scope of the Community competition rules. The Court therefore considered that the exercise of jurisdiction over such conduct reflected the generally recognised territorial principle in public international law.¹

By adopting the "implementation test", the ECJ in effect moved away from the "single economic entity" approach, thus bringing its own understanding of the territoriality principle actually closer to the effects principle.

2.2.3 the effect doctrine

The foregoing cases illustrate a measure of divergence between the Commission and the ECJ. The Commission has tended to advocate a direct reliance on the effects principle, whereas the Court has sought to adapt the logic of effects through alternative doctrinal constructions, thereby safeguarding the overall interests of the common market while reducing the risk of provoking strong opposition from other states. Yet, even as it developed and applied the "single economic entity" doctrine and the "implementation test", the Court did not wholly abandon the effects based rationale. In *Gencor* (1999),² the Commission prohibited a concentration in which a South African undertaking and a United Kingdom undertaking acquired joint control over another South African undertaking. All of the companies concerned exported platinum to the European Union, but neither the transaction itself nor its implementation took place within the Union. The Commission found that the merger would create a duopolistic position in the platinum market and applied EU competition law on the basis that the concentration would produce immediate and substantial anti competitive effects on the Community market. The Court likewise held that, where it is foreseeable that the proposed merger will have direct and significant effects within the European Union, the application of the EU Merger Regulation is justified.³

Table 1. The United States intent effect standard and the European Union single economic entity doctrine compared

Dimension	United States: intent effect standard	European Union: single economic entity doctrine
Leading authority	<i>Alcoa</i> (1945), as refined by the Restatement (Third).	<i>Imperial Chemicals</i> (1972), with the <i>Woodpulp</i> implementation test and <i>Gencor</i> (1999).
Stated jurisdictional basis	Direct reliance on the effects of foreign conduct within the domestic market.	Territoriality, reached by attributing a subsidiary's conduct to the foreign parent or by locating implementation within the Union.
Trigger for jurisdiction	Intent to affect domestic commerce together with actual effect under <i>Alcoa</i> , later relaxed to intent or substantial effect under the Restatement.	Control of a subsidiary by a foreign parent, or the marketing of products at agreed prices inside the Union.
Principal limiting devices	International comity, the rule of reason, and the balancing of national interests, applied unevenly across the case law.	The requirement of a genuine territorial nexus and the condition that effects be foreseeable, direct, and substantial.
Posture toward the effects label	Openly invokes effects as the ground of jurisdiction.	Reaches comparable outcomes while presenting them as applications of territoriality, reserving open reliance on effects for cases such as <i>Gencor</i> .

2.3 The Reception of the Effects Doctrine in Other States

The intensification of global economic integration has interwoven state interests to an extent unparalleled in earlier periods. States can scarcely remain indifferent to restrictive competitive conduct that is undertaken abroad but produces serious repercussions within their own markets. It is therefore unsurprising that the effects principle has increasingly found expression in domestic jurisprudence and legislation across jurisdictions. In functional

¹ *Ibid*, ECR I-1331.

² Case T-102/96 *Gencor Ltd. v. Commission* [1999], ECR II-759.

³ *Ibid*, ECR II-785.

terms, it is better understood not as a universally accepted principle of international law but as a growing trend among the major economic powers, whose reception of the doctrine remains uneven across legal traditions. Legislative practice provides a clear illustration. Germany's Act against Restraints of Competition (GWB) expressly provides that the competition rules apply to "all restraints of competition having an effect within the area of application" of the Act, even where the conduct originates outside that area.¹ Poland's Act on Competition and Consumer Protection similarly extends the Act to practices and concentrations that "cause or may cause effects" on the territory of the Republic of Poland.² Russian competition legislation likewise contemplates application where conduct or agreements concluded outside the territory of the Russian Federation "lead or may lead to restricted competition" or entail other adverse consequences on markets in the Russian Federation.³ In Korea, the Monopoly Regulation and Fair Trade Act (MRFTA) provides that the Act "shall also apply to acts done outside Korea, if such acts affect the domestic market".⁴ Bangladesh's Competition Act further empowers the Commission to inquire into anti competitive acts committed abroad where they cause an adverse effect on the relevant domestic market.⁵

The trajectory traced through antitrust enforcement carries a logic that extends beyond competition law. In each of the cases surveyed above, jurisdiction followed the place where the economic harm was felt rather than the place where the conduct was performed. Once a state accepts that the substantial domestic consequences of foreign corporate behaviour can ground jurisdiction over an anti competitive agreement, the same reasoning becomes difficult to confine to the regulatory sphere alone. Conduct that distorts a domestic market may equally injure investors, defraud consumers, or finance criminal enterprises, and the harm it produces within the territory is no less real for having originated abroad. The extension of effects based jurisdiction from administrative and civil regulation to the criminal sphere thus reflects a continuity of underlying rationale rather than a departure from it. Because criminal jurisdiction engages state sovereignty and individual liberty more directly than economic regulation, the reception of effects based reasoning in the criminal field has been more cautious and more contested. As the cases discussed below indicate, however, that caution has not prevented states from asserting criminal jurisdiction on an effects basis, and the conditions developed in the regulatory context, namely that effects be direct, substantial, and reasonably foreseeable, supply a workable framework for doing so.

3. The Expansion of The Application of Effect Doctrine in The Criminal Field

The primary basis of criminal jurisdiction is territoriality. A state may not, in disregard of the rights of other sovereign states under international law, unilaterally define the scope of its penal authority at will. Accordingly, although the effects principle was originally extrapolated from jurisdictional reasoning in the criminal law context, most notably in the S.S. "Lotus" case, it was for a long time rarely invoked by states in relation to traditional criminal offences. Since the beginning of the twenty first century, however, the deepening of globalization has intensified inter state interdependence. Sovereignty has increasingly lost the absolute and supreme character often ascribed to it, and the extension of jurisdiction to apply domestic law to extraterritorial conduct is no longer confined to antitrust. Comparable dynamics are now evident in criminal law as well. In particular, amid the growing prevalence of transnational economic crime and cybercrime, the effects principle has assumed increasing practical significance for crime control and for the maintenance of peace and stability within the international community.

3.1 The application of the principle of effect in domestic criminal law in various countries

The application of the principle of effects in the field of traditional criminal offences primarily reflects the function of criminal law to prevent impunity, as exemplified by the *Mharapara* (1986).⁶ In that case, the defendant, a Zimbabwean national, was working for a Zimbabwean mission on a visit to Belgium. He was accused of stealing money from the mission, and since Zimbabwean law did not permit the exercise of personal jurisdiction, the full constituent elements of the crime of theft occurred in Belgium, and a strict application of the principle of territoriality would have rendered Zimbabwe unable to govern the case. The Court held that traditional territorial jurisdiction was increasingly unsuited to the realities of the international community as globalization intensified, and that although the crime took place in Belgium, the Court had territorial jurisdiction on that basis based on the harmful effects of the crime being felt in Zimbabwe.

¹ Germany, Act against Restraints of Competition (Gesetz gegen Wettbewerbsbeschränkungen, GWB), s 185(2) (official English version) https://www.gesetze-im-internet.de/englisch_gwb/englisch_gwb.html, accessed 28 February 2026.

² Poland, Act of 15 December 2000 on Competition and Consumer Protection (English text), art 1(2).

³ Russia, Law 'On Competition and Limitation of Monopolistic Activity on Commodity Markets' (English translation reproduced in WTO accession materials), art 2.

⁴ Republic of Korea, Monopoly Regulation and Fair Trade Act, art 2-2 (official English version) <https://law.go.kr/LSW/lsInfoP.do?lsiSeq=182148&urlMode=engLsInfoR&viewCls=engLsInfoR>, accessed 28 February 2026.

⁵ Bangladesh, Competition Act 2012, s 22 (Government Gazette) https://www.dpp.gov.bd/upload_file/gazettes/20533_10683.pdf, accessed 28 February 2026.

⁶ *S v. Mharapara* [1986] 1 SA 556 (Zimbabwe SC).

In emerging areas of criminality, including transnational economic crime, an increasing number of states assert criminal jurisdiction on the basis of harmful effects suffered within their territory. This development serves not only to protect domestic victims but also to safeguard international order. *United States v. Nippon Paper Industries Co.* (1997) marked the first occasion on which the United States imposed criminal sanctions on a foreign corporation on an effects based rationale.¹ The indictment alleged that Nippon entered into a horizontal price fixing agreement with Japanese manufacturers, sold fax paper to Japanese trading companies at the fixed price, and instructed those trading companies to resell the fax paper into the United States at a fixed price. The scheme was said to have produced a substantial adverse effect on United States commerce and thus to violate the Sherman Act. On this account, the conduct constituting the alleged offence occurred entirely in Japan and was carried out by Japanese fax paper manufacturers. Nippon argued that the alleged acts all occurred in Japan, that the criminal provisions of the Sherman Act did not apply to acts that occurred entirely outside the United States, and that the district court strictly construed the Sherman Act to dismiss the indictment on the ground that "the alleged crimes all occurred outside " and dismissed the indictment on the ground that "all of the crimes charged occurred outside the United States. The Appellate Division instead reversed the district court, holding that although all of the defendants' conduct occurred abroad, the adverse effects of the conduct occurred within the United States, and that "the basic canon of statutory construction" indicates that the Sherman Act should be uniformly applied in both civil and criminal proceedings, and further states that international comity is not a fixed national obligation that prevents prosecutors from prosecuting defendants. The court's primary consideration is not the outdated concepts of territory and international comity, but whether the conduct abroad had the intended substantial domestic impact.

In the Internet era, the effects of criminal conduct frequently extend beyond the confines of physical territory. Traditional territorial jurisdiction struggles with the fact that cybercrime often lacks a clear physical locus. The effects doctrine therefore allows a state to assert jurisdiction, notwithstanding territorial limits, over conduct abroad that produces tangible and significant effects within its territory. The Internet has not diminished states' authority and responsibility to regulate activities within their territory. Rather, permitting states to apply their domestic law to extraterritorial conduct that causes substantial domestic effects has been characterised as a rule of customary international law.² The Tallinn Manual, prepared under NATO auspices, likewise states explicitly that a state may exercise effects based jurisdiction over cyber activities occurring abroad that produce sufficiently direct and intended or foreseeable effect within its territory.³ A number of jurisdictions, including Germany,⁴ France,⁵ Italy,⁶ Canada,⁷ and Australia,⁸ have imposed criminal sanctions in relation to transnational defamation, the dissemination of pornographic material, and the propagation of extremist and violent speech. Among these, the French Yahoo! litigation is particularly illustrative. Yahoo!'s headquarters were located in the United States, and it provided online services pursuant to U.S. law, targeting primarily English speaking U.S. users. It had no relationship of affiliation with Yahoo! France. Nevertheless, both entities were accused of offering Nazi memorabilia for sale on an auction website accessible to the public in France. While such conduct violated French criminal law, it would ordinarily be protected under the First Amendment to the U.S. Constitution. On that basis, Yahoo! argued that the auction activity occurred in the United States and that France lacked jurisdiction; its co founder, Jerry Yang, reportedly stated at a press conference that French courts cannot require an American company to do anything.⁹ The French court, however, reasoned that a sovereign state is entitled to determine, within its territory, what forms of speech and conduct are lawful. Because the defendants' conduct produced harmful effects within France, French law could be applied.

3.2 Trends in the Expansion of Territorial Jurisdiction in International Criminal Law

The expansion of territorial jurisdiction in the criminal sphere has been applied not only in the domestic criminal law of States, but also in international criminal law. The International Criminal Court (ICC) is the first independent and permanent international criminal tribunal established with the aim of prosecuting the most serious crimes of concern to the international community. Under Article 12(2)(a) of the Rome Statute, unless a

¹ *United States v. Nippon Paper Indus. Co.* 109 F.3d 1(1997).

² Jack L. Goldsmith, *Against Cyberanarchy*, 65 U. CHI. L. REV. 1199,1208 (1998).

³ Michael N. Schmitt (ed.), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (Cambridge University Press, 2017), p.58.

⁴ BGH 46, 212, Urteil vom 12.12.2000.

⁵ *Yahoo!, Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme*, 169 F.Supp.2d 1181 (2001).

⁶ Moshe D., Italy. Cass., closed session, Nov. 17 - Dec. 27, 2000, Judgment No.4741.

⁷ *Bangoura v. Washington Post*, Decision of Jan. 27, 2004, available at <https://www.ontariocourts.ca/decisions/2005/september/C41379.htm>. (last accessed 17 February 2026).

⁸ *Dow Jones & Company Inc v. Gutnick* [2002] HCA 56.

⁹ Edouard Launet, "La justice française est très naïve," *Libération*, 16 juin 2000. <http://www.liberation.fr/multi/actu/20000612/20000616venzc.html> (last accessed 17 February 2026).

situation is referred to the Prosecutor by the United Nations Security Council or a non-State Party lodges a declaration accepting the Court's jurisdiction, the Court may exercise territorial jurisdiction only in two circumstances: (1) where the conduct in question occurred on the territory of a State Party, or the relevant crime was committed on board a vessel or aircraft registered in a State Party; and (2) where the accused is a national of a State Party.¹ In the Myanmar situation, Myanmar's armed forces drove more than 670,000 Rohingya Muslims into neighbouring Bangladesh, allegedly committing a range of crimes in the process, including murder, rape, torture, and forcible transfer.² The United Nations High Commissioner for Human Rights described the Myanmar military's conduct as a textbook example of ethnic cleansing.³ The core controversy surrounding the ICC's ruling concerns whether the Court may, without the consent of a non-State Party, exercise jurisdiction over crimes committed on that State's territory.

In its decision, the Pre-Trial Chamber first observed that, unlike "forcible transfer", "deportation" necessarily entails the coerced displacement of persons across an international border. Deportation therefore contains an intrinsic cross-border element, such that at least one legal element of the crime occurs on the territory of the State Party, Bangladesh. Second, applying treaty interpretation in accordance with the Vienna Convention on the Law of Treaties, the Chamber noted that the ordinary meaning of Article 12(2)(a) does not specify whether a single element of a crime suffices to constitute the relevant "conduct". The Chamber therefore relied on "relevant rules of international law" as interpretive guidance and cited numerous domestic statutory provisions and judicial decisions to support the proposition that, where one element of a crime is committed on the territory of a State Party, the Court may exercise jurisdiction. Third, in light of the ICC's object and purpose, namely to prosecute the most serious crimes of concern to the international community and to prevent impunity, the Chamber affirmed that the exercise of jurisdiction in the Myanmar situation possessed a measure of justification.⁴

Beyond these interpretations, the Chamber further noted that, by 2018, more than 670,000 Rohingya refugees had sought protection in Bangladesh and that the mass influx had generated a grave humanitarian crisis,⁵ with serious economic and social consequences on the territory of a State Party. Bangladesh is already among the most densely populated regions in the world. Some commentators argue that the Chamber thereby hinted that, even if no element of the crime were located on the territory of the State Party, the effects of deportation were nonetheless palpably manifested within Bangladesh.⁶

4. Extraterritorial Application of China's Criminal Law Through Effect Doctrine

4.1 Legislative Practice of the Effects Doctrine in Civil, Commercial, and Economic Regulatory Law

The most mature application of the effects doctrine in Chinese law is found in competition law. The second sentence of Article 2 of the Anti-Monopoly Law⁷ provides that the Law applies to "monopolistic conduct outside the territory of the People's Republic of China where such conduct has the effect of eliminating or restricting competition in the domestic market." By conditioning jurisdiction on the actual competitive effects produced within China, this provision confers on Chinese antitrust enforcement authorities and courts the power to adjudicate extraterritorial monopolistic conduct that impairs the domestic market. This principle found concrete judicial expression in *Huawei Technologies Co., Ltd. v. InterDigital Group*,⁸ in which the Guangdong Higher People's Court held that InterDigital's licensing practices regarding standard-essential patents had a substantial, direct, and reasonably foreseeable effect on Huawei's production activities, export opportunities, and trade within China, and were therefore subject to Chinese antitrust law. This ruling stands as the leading case for the extraterritorial application of China's Anti-Monopoly Law under the effects doctrine and continues to guide the adjudication of analogous disputes.

The anti-money laundering domain represents the most recent and significant legislative development. The

¹ Rome Statute, 12(2)(a).

² Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute, ICC-RoC46(3)-01/18-1, 9 April 2018, para.9.

³ OHCHR, Brutal attacks on Rohingya meant to make their return almost impossible – UN human rights report, 11 October 2017, para. 10.

⁴ Decision on the "Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute", ICC-RoC46(3)-01/18, 6 September 2018, paras.52-73.

⁵ Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute, ICC-RoC46(3)-01/18-1, 9 April 2018, para.11.

⁶ Tanushree Nigam, Basis and Implications of the ICC's Ruling Against Myanmar, <https://www.publicinternationallawandpolicygroup.org/lawyer-justice-blog/2020/5/22/basis-and-implications-of-the-iccs-ruling-against-myanmar> (last accessed 17 February 2026).

⁷ Anti-monopoly Law of the People's Republic of China (2022 Amendment).

⁸ *Huawei Technologies Co. Ltd. v InterDigital Technology Corporation, InterDigital Communications, Inc. and InterDigital, Inc.*, Guangdong Higher People's Court, Civil Judgment No. 306, Yue Gao Fa Min San Zhong Zi (2013).

Anti-Money Laundering Law,¹ comprehensively revised in November 2024 and in force since 1 January 2025, introduces, for the first time in this field, an explicit provision on extraterritorial effect. Article 12 of the revised Law provides that money laundering and terrorist financing activities occurring outside China's territory that endanger China's sovereignty and security, infringe upon the lawful rights and interests of Chinese citizens and organizations, or disrupt the domestic financial order shall be governed by the Law. The jurisdictional nexus is therefore the actual harmful impact that the offshore conduct produces on China's financial system and national security, making this a textbook application of the effects doctrine to the financial sector. Further, Article 49 empowers competent Chinese authorities, in the course of lawfully investigating money laundering and terrorist financing, to require cooperation from foreign financial institutions that maintain correspondent banking accounts in China or otherwise have close financial ties with the country, thereby providing a concrete enforcement mechanism for the law's extraterritorial reach. Equally significant is Article 50, which establishes a blocking provision: where a foreign state or organization, in violation of the principle of reciprocity, directly demands that domestic financial institutions produce customer identification information or transaction records, or freeze and transfer domestic assets, such institutions are prohibited from complying unilaterally and must promptly report to the competent financial regulatory authority. This dual architecture of actively asserting extraterritorial jurisdiction while simultaneously shielding domestic institutions from foreign enforcement overreach reflects China's increasingly assertive and self-protective stance on cross-border financial governance.

4.2 From Defence to Initiative: The Construction of a Counter-Sanctions Legislative Framework

If the legislation discussed above represents the effects doctrine operating primarily in a reactive mode within traditional economic regulation, the counter-sanctions legal framework that China has assembled in recent years signals a decisive strategic shift: from defensive accommodation to proactive legislative assertion of extraterritorial authority.

The Measures on Blocking Foreign Laws and Measures with Unjustified Extraterritorial Application (the "Blocking Measures"), promulgated by the Ministry of Commerce and effective from January 2021, constitute China's first comprehensive administrative instrument targeting the "long-arm jurisdiction" of foreign states, particularly the United States. The Blocking Measures establish a reporting obligation mechanism and an injunction system: once the designated inter-agency working mechanism determines that a foreign law or measure has been applied with unjustified extraterritorial effect, the Ministry of Commerce may issue an injunction directing persons within China neither to recognise, enforce, nor comply with the relevant foreign measure. Parties who suffer losses by reason of complying with such an injunction are entitled to bring civil proceedings before Chinese courts to recover those losses from the entities responsible. The underlying logic of the Blocking Measures is instructive: by generating a domestic "counter-effect" that mirrors the coercive mechanism of foreign extraterritorial legislation, China is, in essence, deploying the logic of the effects doctrine to neutralise the very same doctrine's abuse by other states.

The Anti-Foreign Sanctions Law,² enacted in June 2021, carried this counter-sanctions logic further, institutionalising it into a systematic, closed-loop mechanism. The Law establishes a counter-sanctions list regime: foreign individuals and entities that implement, assist, or support sanctions measures that endanger China's sovereignty, security, or development interests may be designated and subjected to countermeasures including denial of entry, asset freezes, and prohibition of transactions. Of particular doctrinal importance is Article 12, which grants Chinese citizens and organisations an explicit private right of action in Chinese courts against parties who violate the Law's provisions. This mechanism activates judicial jurisdiction through private enforcement and, as demonstrated by the landmark case before the Nanjing Maritime Court — the first lawsuit filed under Article 12 — creates a genuine chilling effect on foreign actors weighing compliance with conflicting foreign and Chinese legal obligations. In March 2025, the State Council issued the Regulations on Implementing the Anti-Foreign Sanctions Law, further specifying the scope of covered persons, the content of available countermeasures, and the allocation of enforcement responsibilities, marking the entry of China's counter-sanctions legal framework into a phase of "precision implementation and systemic coordination."

While the counter-sanctions legislation rests primarily on the territorial and protective principles as formal bases of jurisdiction, its regulatory logic closely converges with that of the effects doctrine: it takes the substantial harm inflicted on China's sovereign interests and the rights of its citizens by extraterritorial conduct as the normative justification for asserting jurisdiction, and supplements that assertion with enforcement-level countermeasures. This legislative design effectively embeds the effects doctrine's evaluative standard within the protective principle's doctrinal framework, revealing a deep practical integration of the two jurisdictional grounds.

4.3 The Interpretive Pathway in Criminal Law and Systemic Alignment

In the criminal law domain, the effects doctrine has not been expressly codified, yet its application remains

¹ Anti-Money Laundering Law of the People's Republic of China (2024 Revision).

² Anti-foreign Sanctions Law of the People's Republic of China.

normatively feasible through a purposive interpretation of existing jurisdictional provisions. Article 6, paragraph 3 of the Criminal Law of the People's Republic of China stipulates that where "either the act or the result of a crime takes place within the territory of the People's Republic of China, it shall be deemed to be a crime committed within the territory." Read broadly, "result" may be construed to encompass not only direct physical consequences but also the wider harmful impact or influence that the criminal conduct produces, an interpretation that creates textual space for the effects doctrine within the objective territoriality principle. This reading finds scholarly support: some commentators argue that the Lotus judgment itself suggests an intention to derive the effects doctrine from objective territorial jurisdiction;¹ others treat the effects of an offence as a component of the criminal act itself, characterising the effects doctrine as an extension of the objective territoriality principle.² Scholars from Taiwan have similarly held that "result" denotes "the state of legal injury caused by the criminal conduct or the external impact it produces."³

The legislative developments and judicial practice surveyed above demonstrate that China's legal framework for extraterritorial application through the effects doctrine has taken substantial institutional form, evolving from single-sector economic regulation to a multi-domain framework, and from reactive legal defence to proactive institutional construction. In the civil, commercial, and economic regulatory sphere, the Anti-Monopoly Law, and the revised Anti-Money Laundering Law have established systematic rules for applying the effects doctrine. In the national security domain, the Blocking Measures and the Anti-Foreign Sanctions Law, together with their implementing regulations, have created a versatile counter-sanctions architecture. In the criminal sphere, a purposive reading of Article 6(3) of the Criminal Law provides the doctrinal bridge through which the effects doctrine may operate.

Informed by comparative jurisprudence such as *United States v. Nippon Paper Industries* and the French Yahoo! litigation, it is submitted that in non-traditional criminal domains, particularly transnational economic crime and cybercrime, China's assertion of extraterritorial jurisdiction on the basis of the effects doctrine is both theoretically grounded and supported by a solid legislative and judicial foundation. That said, such jurisdiction is not unlimited. It must comply with the principles of proportionality and international comity, and be conditioned on a showing that the offshore conduct has produced effects that are substantial, direct, and reasonably foreseeable. Where jurisdictional conflicts arise, China should actively pursue international cooperation and mutual legal assistance, so as to balance the vindication of national interests with respect for the international legal order.

5. Conclusion

The effect doctrine is a subcategory of territorial jurisdiction. Plenty of domestic judicial practice and international judicial practice have indicated that giving the extraterritorial effect of national law through effect doctrine is not hegemonic, but is an objective phenomenon in the development of international law. Besides, it also adapts to the regulatory requirements for transnational criminal acts in the context of globalization, and makes up for the inadequacy of the existing international law jurisdictional loops. To a certain extent, it is conducive to punishing crimes and safeguarding the legitimate interests of the country. China should actively draw on the results of the development of jurisdiction in international law and accelerate the establishment of its own system of extraterritorial application of domestic law. Of course, China should also abide by the principles of international comity and reasonableness, refrain from excessive assertion of jurisdiction, and strengthen international criminal justice and law enforcement cooperation with other countries.

¹ Jones Sufrin, *EU Competition Law*, 4th ed, Oxford University Press 2011, p.1239.

² Bernard Oxman "Jurisdiction of States" in R Wolfrum(ed) *The Max Planck Encyclopedia of Public International Law*, Oxford University Press, 2012, vol 6 546, p.23.

³ Li Weizong, "Jurisdiction and Competence over Cybercrime," *Military Law Review* (Taiwan), vol.59, no.1 (2013).