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Stretching the Long-Arm in Asahi Metal Industry Co., Ltd. v. Superior Court: Worldwide Jurisdiction After World-Wide Volkswagen?

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I. INTRODUCTION

The Supreme Court first announced its minimum contacts standard for personal jurisdiction forty years ago in *International Shoe Co. v. Washington*. Since then, the Court has periodically refined that standard, at times restricting the power of the states to assert personal jurisdiction over a defendant, and at other times expanding it. Although the unifying themes in *International Shoe* and its progeny have been “minimum contacts,” “fair warning,” “substantial connection,” and “reasonableness,” the decisions themselves have been distinguished more by their oscillations than by any pattern of consistency. Nevertheless, at least one common theme emerges: individuals engaged in interstate transactions have been held subject to jurisdiction in forums with which their activities have had a close connection, whereas businesses engaged in interstate transactions have been held subject to jurisdiction in forums where their activities have relatively local effects.
The impact of the commercial jurisdictional cases can be significant for businesses engaged in interstate and foreign commerce. For example, the products liability exposure of foreign manufacturers is substantial where manufacturers' products enter the stream of world commerce and eventually end up causing injury in the United States. Foreign manufacturers who cultivate the U.S. market by selling directly to the United States, or who do so indirectly through subsidiaries or distributors, are clearly on notice that they need to evaluate their potential tort liability exposure in the U.S. market and to plan accordingly. The problem, however, is different for those businesses who neither deal directly with the United States nor endeavor to cultivate the U.S. market, but whose products end up in the United States and allegedly cause injury there. Despite the absence of affiliating contacts with the United States, some businesses may still risk being subject to liability in any of the fifty states, each state having its own standard of liability for injury caused by allegedly defective or dangerous products. Risk planning for these businesses is a serious concern. Added costs reflected in the price of goods traded internationally are genuine. Whether such risk bearing and additional costs are justified is open to serious dispute.

The nexus necessary for a court to properly assert personal jurisdiction over a foreign business, consistent with due process, remains unclear in Supreme Court jurisprudence. Some lower court decisions on this question, however, indicate that the necessary nexus may be very thin indeed. In a recent decision, the California Supreme Court concluded that personal jurisdiction existed over a foreign manufacturer who had no direct dealings or ties with California. More specifically, the court in Asahi Metal Industry Co., Ltd. v. Superior Court affirmed that California was justified in exercising personal jurisdiction in a products liability action over a Japanese component parts manufacturer which had no direct contacts in California. The court reasoned that since Asahi Metal Industry knew that a substantial number of its parts would be incorporated into finished products in Taiwan which would be eventually sold in the United States, a California court could constitutionally exercise personal jurisdiction over the company. The

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7 See, e.g., World-Wide Volkswagen, 444 U.S. at 286. As used in this article, "foreign" corporation refers to an alien or foreign-country corporation, not a corporation incorporated in a sister state.


9 Asahi Metal, 39 Cal. 3d at 35, 702 P.2d at 543, 216 Cal. Rptr. at 385.

10 Id.

Asahi Metal decision stretches the limits of due process and portends serious adverse consequences for international trade.

This article first examines Asahi Metal in light of recent Supreme Court case law on personal jurisdiction and concludes that the California Supreme Court's analysis fails to satisfy the criteria of the United States Supreme Court's recent decisions dealing with personal jurisdiction. The Asahi Metal decision is then analyzed from an international trade perspective. This section focuses on long-arm jurisdictional statutes like California's which may have the effect of a non-tariff barrier to trade when used to reach remote foreign manufacturers of component parts. The article proposes that Congress enact legislation, pursuant to its commerce clause power, which (1) regulates personal jurisdiction by state courts over foreign corporations and other foreign business entities, and (2) adopts a national products liability law. Such legislation is necessary to alleviate the inevitable friction with U.S. trading partners which overly expansive jurisdictional cases such as Asahi Metal will undoubtedly create.

II. A Review of the Asahi Metal Decision

In 1978 the operator of a motorcycle was injured and his wife was killed when a tire on their motorcycle blew out while they were driving along a California freeway. Both the operator and his wife were California residents. The tire's tube was manufactured in Taiwan by Cheng Shin Rubber Industrial Co., Ltd. and incorporated a tube valve assembly manufactured by Asahi Metal Industry Co., Ltd., a Japanese manufacturer of tire valve assemblies. The operator of the motorcycle and his children brought suit against Cheng Shin and others, but not against Asahi. More than two years after the action was instituted, Cheng Shin filed a cross-complaint for indemnity against its co-defendants and against several new cross-defendants, including Asahi. Asahi moved to quash service of the summons on the cross-complaint for lack of personal jurisdiction, contending that it lacked the requisite contacts with California to support an assertion of jurisdiction there.

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12 Asahi Metal, 39 Cal. 3d at 48-49, 702 P.2d at 549-50, 216 Cal. Rptr. at 393.
13 Id. at 40-41, 702 P.2d at 544, 216 Cal. Rptr. at 387. Asahi Metal Industry Co., Ltd. v. Superior Court, 194 Cal. Rptr. at 742.
14 Asahi Metal, 39 Cal. 3d at 41, 702 P.2d at 544, 216 Cal. Rptr. at 387. Asahi Metal Industry Co., Ltd. v. Superior Court, 194 Cal. Rptr. at 742.
15 Asahi Metal, 39 Cal. 3d at 41, 702 P.2d at 544, 216 Cal. Rptr. at 387. Asahi Metal Industry Co., Ltd. v. Superior Court, 194 Cal. Rptr. at 742.
16 Also named as a defendant was the California retailer, Sterling May Co. Asahi Metal, 39 Cal. 3d. at 41, 702 P.2d at 544, 216 Cal. Rptr. at 387; Asahi Metal Industry Co., Ltd. v. Superior Court, 194 Cal. Rptr. at 742.
17 194 Cal. Rptr. at 742. Service of process was effected in Japan pursuant to treaty. Id.
18 Id.
According to the uncontested evidence, Asahi did no business in California.\(^{19}\) It had no property, office, agent or employees there.\(^{20}\) Asahi did not advertise, nor did it solicit business in California.\(^{21}\) In the ten-year period prior to the lawsuit, Asahi had sold tire valves to Cheng Shin for use on motorcycle tire tubes in Taiwan.\(^{22}\) All such sales occurred in Taiwan. Cheng Shin bought and incorporated 150,000 Asahi valve assemblies in 1978; 500,000 in 1979; 500,000 in 1980; 100,000 in 1981; and 100,000 in 1982.\(^{23}\) Sales to Cheng Shin accounted for 1.24 percent of Asahi's gross income in 1981 and 0.44 percent in 1982.\(^{24}\) Cheng Shin purchased valve assemblies from suppliers other than Asahi and sold tire tubes throughout the world, approximately twenty percent of which went to the United States.\(^{25}\) Like Asahi, Cheng Shin was a nonresident manufacturer.\(^{26}\) Although Asahi's president stated that Asahi had never contemplated that its sales to Cheng Shin in Taiwan would subject it to jurisdiction in California,\(^{27}\) Cheng Shin's manager countered that in discussions with Asahi the fact had been mentioned that Cheng Shin sold tubes throughout the world, including the United States.\(^{28}\)

California's long-arm statute provides that its courts "may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States."\(^{29}\) Every case arising under that statute, therefore, assumes constitutional dimensions under the Due Process Clause of the Fourteenth Amendment. It was Asahi's contention that its connection with California did not warrant the exercise of jurisdiction over it by a California court, and therefore, was inconsistent with due process. The California Supreme Court rejected this contention,\(^{30}\) relying heavily on the United

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\(^{19}\) Id. at 743.
\(^{20}\) Id.
\(^{21}\) Id.
\(^{22}\) Id. at 742.
\(^{23}\) Id.
\(^{24}\) Id. at 742-43.
\(^{25}\) Id. at 743.
\(^{26}\) Id.
\(^{27}\) Id.
\(^{28}\) Id.
\(^{29}\) CAL. CIV. PROC. CODE § 410.10 (West 1973). Unlike most state long-arm statutes which list acts submitting one to jurisdiction within that state, see, e.g., FLA. STAT. ANN. § 48.193 (West 1986); ILL. ANN. STAT. ch. 110 § 2.208 (Smith-Hurd 1983); N.Y. CIV. PROC. LAW § 302(a)(2) (McKinney 1972). The California legislature took a flexible statutory approach which was easy to draft and which ensured that California would keep in step with all constitutional developments in the area of personal jurisdiction. As a consequence, however, ease of drafting and flexibility necessarily sacrificed predictability of application. See generally Secrest Machine Corp. v. Superior Court, 33 Cal. 3d 664, 660 P.2d 399, 190 Cal. Rptr. 175 (1983); Cornelison v. Chaney, 16 Cal. 3d 143, 545 P.2d 264, 127 Cal. Rptr. 352 (1976).
\(^{30}\) Asahi Metal, 39 Cal. 3d at 47-48, 702 P.2d at 549-50, 216 Cal. Rptr. at 392-93.
States Supreme Court’s decision in World-Wide Volkswagen Corp. v. Woodson.  

The issue as framed by the California Supreme Court was whether “California [could] constitutionally exercise personal jurisdiction over a manufacturer of component parts who made no direct sales in California but had knowledge that a substantial number of its parts would be incorporated into finished products sold in the state. . . .” The court began its analysis by tracing the history of the International Shoe minimum contacts standard from the first of its progeny, McGee v. International Life Insurance Co., through Hanson v. Denckla and Shaffer v. Heitner, and ultimately to World-Wide Volkswagen Corp. v. Woodson. The court placed greatest reliance on the World-Wide Volkswagen decision. 

Chief Justice Bird, speaking for the California Supreme Court, viewed World-Wide Volkswagen as essentially a stream-of-commerce theory decision. Under that theory, “[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.” The United States Supreme Court’s rationale for allowing personal jurisdiction to be asserted over such a defendant is that when a defendant’s conduct is such that the defendant purposefully avails itself of the privilege of conducting business in the forum state, it is thereby on notice that it is subject to suit in that state. With that notice, a business can purchase insurance, pass the costs of doing business on to customers, or withdraw from the forum state altogether.

Chief Justice Bird noted that each party to the dispute relied on World-Wide Volkswagen as a source of longer jurisdictional reach, and constitutional law—in personam jurisdiction: federalism and fairness as functions of minimum contacts—a conceptual failure.

31 444 U.S. at 286.
32 Asahi Metal, 39 Cal. 3d at 40, 702 P.2d at 544, 216 Cal. Rptr. at 386-87.
33 Id. at 42-43, 702 P.2d at 545-46, 216 Cal. Rptr. at 387-88.
34 355 U.S. at 220.
35 357 U.S. at 235.
37 444 U.S. at 286.
38 Asahi Metal, 39 Cal. 3d at 43-45, 702 P.2d at 546-48, 216 Cal. Rptr. at 388-90.
39 Id. at 46, 702 P.2d at 548, 216 Cal. Rptr. at 390-91.
41 World-Wide Volkswagen, 444 U.S. at 297.
42 Id.
Wide Volkswagen to support its respective positions, but found Asahi’s reliance misplaced. Asahi’s valve assembly was sold in the forum state as part of a finished product, thus reaching California in the stream of commerce. More importantly, Asahi not only engaged in substantial business in California, in Justice Bird’s opinion, but did so with the expectation that its products would be sold in the state. Although Asahi had not actively attempted to exploit the forum’s market, the court deemed mere knowledge of the distribution system enough to satisfy the expectation requirement. Citing in support several component part manufacturer cases, the court found that the minimum contacts requirement had been met where the manufacturer is aware that a substantial number of its products will be sold in the forum state.

Having cleared the minimum contacts hurdle, Chief Justice Bird next determined another due process question: whether the exercise of personal jurisdiction would be fair and reasonable under the circumstances. Even though the plaintiffs’ complaint had been dismissed with prejudice, presumably pursuant to a settlement, the court rejected Asahi’s contention that California had no interest in adjudicating an indemnity dispute between two foreign manufacturers. The court instead found three considerations favoring the exercise of jurisdiction: California’s interest in protecting its consumers, the interest in orderly administration of the laws since most of the evidence was in California, and the avoidance of inconsistent results given that Cheng Shin had named numerous defendants in its cross-complaint. Even though the plaintiffs’ complaint had been dismissed, the court stated that California had a continuing interest in the litigation to determine how

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43 Asahi Metal, 39 Cal. 3d at 47, 702 P.2d at 549, 216 Cal. Rptr. at 391.
44 Id.
45 Id.
46 Id. at 48, 702 P.2d at 549-50, 216 Cal. Rptr. at 392.
47 Id. at 49, 702 P.2d at 550-51, 216 Cal. Rptr. at 393. The court found support for this conclusion in Nelson by Carson v. Park Industries, Inc., 717 F.2d 1120, 1126 n.7 (7th Cir. 1983).
49 Asahi Metal, 39 Cal. 3d at 50, 702 P.2d at 552, 216 Cal. Rptr. at 394.
50 Id. The court expressed doubt as to the continuing relevance of the fairness determination in light of the World-Wide Volkswagen decision’s heavy emphasis on forum contacts. 39 Cal. 3d at 52 n.8, 702 P.2d at 552 n.8, 216 Cal. Rptr. at 394 n.8.
51 Id. at 52 n.9, 702 P.2d at 552 n.9, 216 Cal. Rptr. at 395 n.9. See The Economist, May 3, 1986, at 34, col. 2.
52 Asahi Metal, 39 Cal. 3d at 52, 702 P.2d at 552, 216 Cal. Rptr. at 395.
53 Id.
liability would be apportioned. The court concluded that the inconvenience to Asahi of defending itself in a foreign country was not outweighed by California's interest in asserting jurisdiction.

III. CAN KNOWLEDGE OF A MARKET ALONE SATISFY DUE PROCESS?

The crux of the court's decision in Asahi Metal is that Asahi arguably knew that Cheng Shin sold tire tubes in the U.S. market which incorporated Asahi's valves. Consequently, Asahi could have reasonably anticipated being haled into court in the United States. Did Asahi know, however, that its goods were being sold specifically in California, or did it know only generally that a portion of its valve sales to Cheng Shin reached the U.S. market? If not, could knowledge of sales in the United States then be imputed? Is such knowledge the equivalent of purposefully availing oneself of the benefits and privileges of the forum state's laws, thereby subjecting oneself to jurisdiction in that forum? What if Asahi had made a conscious and successful effort to remain ignorant of Chen Shin's distribution chain? Would affirmative answers to any of these questions lead to a different result?

As a threshold consideration, the California Supreme Court did not identify a single instance of knowledge on Asahi's part that its valves were destined for California as opposed to the U.S. market as a whole. The court did not cite any facts tending to show that Asahi had attempted to cultivate a market for its goods within California (or the United States as a whole). Given these considerations, can it be said that Asahi could have reasonably foreseen the possibility of litigation in California, as the term "reasonably foreseen" is understood in the context of the "purposeful availment" requirement of Hanson v. Denckla? Although Asahi's contacts in the United States, if aggregated, might arguably have afforded an adequate basis for

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54 Id. at 53 n.10, 702 P.2d at 553 n.10, 216 Cal. Rptr. at 395 n.10.
55 Id. Notwithstanding the court's reservations concerning the continued importance of the reasonableness/fairness criterion in personal jurisdiction evaluations, ("[i]n light of the heavy emphasis on defendant-forum contacts in World-Wide Volkswagen, the continuing relevance of the fairness determination is unclear"), id. at 52 n.8, 702 P.2d at 552 n.8, 216 Cal. Rptr. at 394 n.8. little doubt on that score can remain after the Supreme Court's most recent decision on personal jurisdiction in Burger King Corp., 105 S. Ct. 2174, 2184-85 (1985).
56 Asahi Metal, 39 Cal. 3d at 48, 702 P.2d at 550, 216 Cal. Rptr. at 392.
57 See Hanson v. Denckla, 357 U.S. at 253.
58 See Max Daetwyler Corp. v. R. Meyer, 762 F.2d 290, 298 & n.11 (3d Cir. 1985), cert. denied, _ U.S. _, 106 S. Ct. 383 (1986); Lilly, Jurisdiction Over Domestic and Alien Defendants, 69 VA. L. REV. 85, 124-25 & n.147 (1983) [hereinafter Lilly], where the author notes that in the vast majority of cases, an alien must have sufficient contacts with a particular state.
59 357 U.S. at 253.
personal jurisdiction in federal court under a national contacts theory, nothing in the Asahi Metal opinion indicated that Asahi had purposefully availed itself of the benefits and privileges of the forum state in the sense of attempting to cultivate a market for its goods in either the state of California or the United States as a whole.

The import of the Supreme Court’s guidelines is that some showing must be made that a defendant, such as Asahi, “purposefully directed” its activities at residents of the forum. In the Supreme Court’s most recent decision on personal jurisdiction, Burger King Corp. v. Rudzewicz, the Court reaffirmed its line of decisions on personal jurisdiction and stressed that the “purposeful availment” requirement [first announced in Hanson v. Denckla] ensures that a defendant will not be haled into a jurisdiction solely as a result of ‘random,’ ‘fortuitious,’ or ‘attenuated’ contacts, . . . or of the ‘unilateral activity of another party or a third person . . . .” As the Court cautioned in World-Wide Volkswagen, “[i]f foreseeability were the criterion, . . . [e]very seller of chattels would in effect appoint the chattel his agent for service of process. His amenability to suit would travel with the chattel.” The inquiry is thus one of the relationship among the defendant, the forum, and the litigation, to the end of restricting state power. “[T]he


61 Compare Max Daetwyler Corp., 762 F.2d at 298 n.11.


63 105 S. Ct. at 2174.

64 Id. at 2183.

65 Id. (citations omitted).

66 World-Wide Volkswagen, 444 U.S. at 296. Despite this seeming caveat by the Court against a sweeping assertion of jurisdiction by state courts, as one commentator has observed, “[t]he case law . . . has almost uniformly sustained the assertion of state court jurisdiction over the foreign-country defendant, especially the foreign manufacturer in products liability suits.” Hay, Judicial Jurisdiction Over Foreign-Country Corporate Defendants—Comments on Recent Case Law, 63 OR. L. REV. 431, 434 (1984).


68 As noted by the Supreme Court in World-Wide Volkswagen, “the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgement.” 444 U.S. at 294. But see Burger King Corp., 105 S. Ct. at 2182 n.13 (“Although this protection [of minimum contacts] operates to restrict state power, it ‘must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause’ rather than as a function ‘of federalism concerns.’ ”).
foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State. Rather, it is that the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.”

While modern transportation and communication have made it less burdensome to defend in a distant forum, the expansion of interstate and foreign commerce “has hardly dictated the abandonment of all limits on personal jurisdiction.” The California Supreme Court did not base its decision on any showing of such “purposeful availing” or “purposeful direction” by Asahi vis-à-vis the state of California. If principles of federalism and the orderly administration of the laws in a federal system are indeed the overarching considerations, then it is far from clear that the California state courts properly exercised personal jurisdiction over Asahi.

Conceding Asahi’s knowledge of Cheng Shin’s distribution chain, can it be said that Asahi’s contacts with the United States were anything more than attenuated? And if not attenuated, were those contacts with the United States merely the result of a third party’s unilateral activity? Nothing in the record indicated that Asahi and Cheng Shin acted in concert in marketing the former’s valves and the latter’s tire tubes. On the contrary, from the record as disclosed by the California Supreme Court, Cheng Shin informed Asahi of its U.S. market gratuitously. If there was any business or other economic justification for that disclosure, the California Supreme Court did not say what it was, let alone whether it was of constitutional significance.

Sensitivity to federalism concerns should be especially high when analyzing the propriety of asserting jurisdiction over a foreign manufacturer. This, however, is not the only consideration. The decision to exercise jurisdiction over a foreign component parts manufacturer can also have tremendous influence on foreign trade and the U.S. economy, as well as in the interest of international comity. The next part of this article examines the international trade ramifications of the Asahi Metal decision.

69 World-Wide Volkswagen, 444 U.S. at 297 (emphasis added). See Seidelson, supra note 40, at 18, where the author observes that “World-Wide Volkswagen’s primary rationale [was that] the [D]ue [P]rocess [C]lause is intended to protect the nonresident defendant from jurisdictional surprise.”

70 Burger King Corp., 105 S. Ct. at 2183.

71 Chung v. NANA Development Corp., 783 F.2d 1124, 1126 (4th Cir. 1986).

72 Computer World-Wide Volkswagen, 444 U.S. at 292-94, with Burger King Corp., 105 S. Ct. at 2182 n.13.

73 See, e.g., Raffaele v. Compagnie Generale Maritime, S.A., 707 F.2d 395, 398 (9th Cir. 1983) (“Normally, a court should refrain from exercising jurisdiction when another state has expressed a substantially stronger sovereignty interest . . .”); Rocke v. Canadian Auto. Sport Club, 660 F.2d 395, 399 (9th Cir. 1981) (“Where the defendant is a resident of a foreign nation rather than a resident of another state within our federal system, the sovereignty barrier is ‘higher.’ ”).

IV. LONG-ARM STATUTES AS A NON-TARIFF BARRIER TO TRADE

The reach of a state’s long-arm statute is virtually unbounded under the California Supreme Court’s analysis in Asahi Metal. Simply knowing that its products may eventually end up in the United States subjects a remote foreign manufacturer or seller to the potential jurisdiction of any state court within the United States for products liability. The standard for allowing a state to hale a foreign corporation into its courts should be premised on factors more substantial and concrete than mere knowledge of the distribution system of which the manufacturer’s products are an indirect part. Under the court’s analysis in Asahi Metal, if the critical factor is mere knowledge or awareness of the chain of distribution, manufacturers would be penalized for making the effort to acquire complete information of the markets in which they deal directly or even indirectly. Ignorance of those markets would, conversely, be rewarded. Moreover, if knowledge of the distribution chain were to be imputed, the requirement of “purposeful availment” would be rendered virtually meaningless, since few, if any, instances exist where it could not be found that a component parts manufacturer lacked such knowledge. Imputing knowledge could lead to a per se rule of personal jurisdiction over foreign component parts manufacturers whose goods are incorporated into products which enter the United States and subsequently cause injury.

The exercise of jurisdiction over a remote foreign component parts manufacturer in a products liability suit is effectively tantamount to an indirect administrative non-tariff barrier comparable to health and safety regulations or environmental controls. Such regulations and controls are implemented nominally to achieve some positive domestic policy, like clean air and clean water, but in the process have the negative effect of impairing trade. One author has suggested that these administrative and technical barriers to trade have a greater impact on international trade than either subsidies or quotas. For example, since health and safety regulations differ from country to country, they either make trade in certain goods impracticable or reduce the volume of trade. Such regulations may serve salutary purposes and are not to be condemned wholesale. Nominal health and safety regulations, however, may be used deliberately to raise costs of foreign manufacturers and thereby distort trade flows.

75 As used in this context, “remote” means that the manufacturer did not introduce its product directly into the United States or indirectly through a subsidiary or distributor who acts as a go-between.
77 Id. at 148.
78 Id.
79 For example, trade in live animals is usually subject to tight controls in order to contain the spread of communicable diseases. Id. at 148.
80 Id.
When trading with the United States, a foreign manufacturer is confronted with the daunting prospect of meeting the health and safety laws and regulations of some fifty states plus the federal government. As part of the Tokyo Round of Trade Negotiations concluded in 1979 under the auspices of the General Agreement on Tariffs and Trade (GATT), the contracting parties to GATT concluded the Agreement on Technical Barriers to Trade. That Agreement was designed to ensure "that technical regulations and standards [regarding health and safety, for example] are not prepared, adopted, or applied with a view to creating obstacles to international trade." In addition, national governments made a commitment "to take such reasonable measures as may be available to them to ensure that local government bodies within their territories comply with the provisions of Article 2."  

Exercising jurisdiction over a foreign manufacturer in a products liability action does not, strictly speaking, constitute a technical regulation within the contemplation of the Agreement on Technical Barriers to Trade. However, the exercise of such jurisdiction is a means to the enforcement of state products liability laws. These laws are grounded on the protection of consumers, a matter that is contemplated by the Agreement on Technical Barriers to Trade. In Title IV of the Trade Agreements Act of 1979,

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82 31 U.S.T. 405, T.I.A.S. No. 9616, done at Geneva, April 12, 1979 (entered into force, Jan. 1, 1980). The implementing legislation is contained at 19 U.S.C. §§ 2531-73 (1982). Two GATT articles are also relevant in this connection: article III, the national treatment provision of GATT; and article XX, the health and welfare exception. The term "national treatment" as used in GATT means that "imported goods will be accorded the same treatment as goods of local origin with respect to matters under government control, such as taxation and regulation." J. Jackson, World Trade and the Law of GATT 273 (1969). Article XX contains a list of exceptions to the GATT obligations and provides in part:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

. . .

(b) necessary to protect human, animal or plant life or health; . . .

See Jackson, supra this note, at 742-45.
83 Agreement on Technical Barriers to Trade, supra note 82, art. 2.1.
84 Id., art. 3.1.
85 See, e.g., section 401 of the Trade Agreements Act of 1979, 19 U.S.C. § 2532, which permits the states to adopt health and safety regulations and other laws to protect consumer interests.
Congress made it clear that "no State agency . . . should engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States."\(^{88}\) "Standards-related activity" and "State agency" are defined broadly enough to encompass state court civil enforcement of a state's products liability laws.\(^{89}\)

For a remote component parts manufacturer, such standards-related activity may create an unnecessary obstacle to trading with the United States. Although the states may have a legitimate interest in protecting its residents from defective product injuries, that interest is adequately protected by allowing actions against the immediate seller or manufacturer-assembler.\(^{90}\) Such liability will induce care on the part of the seller of the finished product in selecting its parts suppliers. A strict liability standard will relieve the injured party from the burden of proving where in the marketing chain a defect originated.\(^{91}\) Even when liability is based on negligence, a business which labels a product as its own is treated the same as if it had manufactured the product.\(^{92}\) Again, victims are relieved of the burden of suing all the potentially numerous component parts manufacturers whose parts went into the finished product. Tort law has sufficiently advanced such that the state's interests in protecting its residents from defective products is fully served without the need for drawing into the litigation all of the remote parts manufacturers from around the world.

From a practical standpoint, component parts manufacturers cannot control the flow of their products once they enter the stream of commerce. To subject such manufacturers to products liability in a forum with which they have had no direct contact erects a barrier to international trade as insidious as any tariff or quota. Unlike tariffs and quotas, there is no standard regulation, and the visibility of such a barrier is extremely low. Presently, it is extremely difficult to predict with any degree of certainty when or to what

\(^{88}\) 19 U.S.C. § 2533(a) (1979). The term "State agency" is defined as "any department, agency, or other instrumentality of the government of any State or of any political subdivision of any State." Id. § 2571(16) (1979). The term "standard" is defined in part as "[t]he specification of the characteristics of a product, including, but not limited to, levels of quality, performance, safety, or dimensions." Id. § 2571(13)(A) (1971). The term "standards-related activity", in turn, is defined as "the development, adoption, or application of any standard or any certification system." Id. § 2571(14) (1971).

\(^{89}\) See id. §§ 2533(a); 2571(13)(A), (14), (16).

\(^{90}\) See generally W. PROSSER & W. KEETON, HANDBOOK OF THE LAW OF TORTS 703-07 (1984). See also Hutson v. Fehr Bros., Inc., 584 F.2d 833 (8th Cir. 1978), cert. denied, 439 U.S. 983 (1978), where the court rejected the argument that the forum had jurisdiction over a remote seller, noting that the plaintiffs in that case could sue the packager, distributor, and retailer of the allegedly defective product. Id. at 837 n.1.

\(^{91}\) PROSSER & KEETON, supra note 90, at 706.

\(^{92}\) Id. at 704-05.
extent a remote foreign seller of a component part, with no perceivable contacts with the forum, will find itself subject to suit for products liability. As the Supreme Court has stated repeatedly, the minimum contacts analysis is qualitative, not quantitative or mechanical,93 necessarily precluding any accurate predictions as to the likelihood of being subject to suit in a United States forum.

The potential exposure, on the other hand, can be extraordinarily high, particularly in the case of a wrongful death action. Even when a foreign component parts manufacturer sells its products directly to the United States, the disparity in products liability laws among the fifty states,94 coupled with the vagaries of jury awards, injects an element of business uncertainty sufficiently great that the U.S. market to foreign manufacturers can be effectively closed. As the next section discusses, the need for a multi-faceted legislative and judicial response is imperative.

The assertion of jurisdiction in these circumstances may represent, in effect, a non-tariff barrier to international trade.95 Not only is this result wholly untenable for foreign businesses, it should raise concerns within Congress as well. The Commerce Clause of the Constitution commits to Congress the power to regulate trade with foreign nations.96 In this connection the exercise of state court jurisdiction has been measured not only against the Due Process Clause of the Fourteenth Amendment, but also against the Commerce Clause.97 One rationale for restricting the exercise of


state court jurisdiction under the Commerce Clause includes the burden of defending in remote jurisdictions, which impairs efficiency of operations and adds commensurate expense.\textsuperscript{98} In one case, for example, the exercise of jurisdiction over a nonresident corporate defendant was found to constitute an unreasonable interference with interstate commerce where the defendant had no offices or employees in the forum state but merely solicited business there.\textsuperscript{99} Although other courts have implicitly acknowledged the soundness of the burden-on-commerce argument, they have nevertheless concluded on the facts of the particular case that commerce was not unduly burdened by the exercise of jurisdiction in the forum.\textsuperscript{100}

Despite the promise of the Commerce Clause as a jurisdictional shield for foreign component parts manufacturers, the additional limitation placed on the exercise of jurisdiction by the Commerce Clause, as observed by some commentators, has not developed substantially.\textsuperscript{101} One explanation for why the Commerce Clause has atrophied as a control over the exercise of personal jurisdiction is that the commerce clause limitation on state court jurisdiction is superfluous given "the recent revival of federalism constraints in the Volkswagen case . . . ."\textsuperscript{102} The World-Wide Volkswagen case, in the view of Professors Friedenthal, Kane, and Miller, raised the threshold for assertions of state jurisdiction and injected "some predictability and certainty into a test that is the source of so much litigation."\textsuperscript{103} If the World-Wide Volkswagen decision raised such a threshold under the Due Process Clause, it must have been a very low one given the apparent ease with which the Asahi Metal court stepped over it. A revival of the commerce clause limitation may, therefore, be essential, at least insofar as ensuring that the

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\textsuperscript{98} See Davis v. Farmers Co-operative Co., 262 U.S. at 315.
\textsuperscript{101} J. Friedenthal, M. Kane & A. Miller, Civil Procedure 139 (1985); R. Field, B. Kaplan & K. Clermont, Materials for a Basic Course in Civil Procedure 824 (5th ed. 1984) ("the [C]ommerce [C]lause has only very rarely been invoked for such purpose, and its continuing vitality as an independent limitation on a state's exercise of judicial authority is somewhat in doubt."). See Comment, Constitutional Limitations on State Long Arm Jurisdiction, 49 U. Chi. L. Rev. 156, 173-80 (1982), for a discussion of the Commerce Clause as a limitation on jurisdiction.
\textsuperscript{102} Friedenthal, Kane & Miller, supra note 101, at 139.
\textsuperscript{103} Id. at 138.
free flow of international trade is not curtailed consistent with domestic health and safety considerations.\textsuperscript{104}

V. LEGISLATIVE AND JUDICIAL RESPONSES TO \textit{Asahi Metal}

One legislative step by Congress in response to expansive jurisdictional cases such as \textit{Asahi Metal} would be enactment of a statute pursuant to its commerce clause power regulating personal jurisdiction over foreign-country manufacturers whose goods enter the United States and thereafter give rise to alleged products liability.\textsuperscript{105} One proposal would be enactment of a jurisdictional statute subjecting foreign manufacturers or distributors of allegedly defective products to personal jurisdiction in the United States only if they were doing business in the United States within the meaning of 28 U.S.C. \textsection{1391}(c).\textsuperscript{106} In effect, jurisdiction over foreign parts manufact-

\textsuperscript{104} See Note, \textit{International Products Liability and Long-Arm Jurisdiction}: Hutson v. Fehr Bros., Inc., 5 N.C.J. \textsc{Int’l} L. \& \textsc{Com. Reg.} 319, 322 (1980) [hereinafter \textit{International Products Liability}], where the author suggests that where international defendants are involved, the courts should return to the traditional jurisdictional standards applicable between sovereigns and find jurisdiction “only when the forum has a more traditional ‘power’ to support jurisdiction over the defendant . . . [in the form of] substantial contacts. . . .”

\textsuperscript{105} While many statutory provisions currently exist conferring jurisdiction upon the U.S. Court of International Trade in matters involving international trade, see 28 U.S.C. \textsection{1581}(a)-(i) (1980) and \textsection{1582} (1948), those provisions are essentially in rem, affecting only the imported merchandise, not in personam on the foreign manufacturer or producer. See generally Kennedy, \textit{A Proposal to Abolish the U.S. Court of International Trade}, 4 \textsc{Dick. J. Int’l} L. 13 (1985). One exception is civil penalty actions under 19 U.S.C. \textsection{1592} (1982). In addition, those jurisdictional statutes do not confer power upon the Court of International Trade to hear cases involving injury to persons resulting from imported products.

In addition, section 1.03(a)(4) of the Uniform Interstate and International Procedure Act, 13 U.L.A. 459 (1980), provides for jurisdiction over a foreign manufacturer who causes tortious injury within the state by an act or omission outside that state only if that defendant “regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this state.” \textsc{Unif. Interstate and Int’l Procedure Act} \textsection{1.03}(a)(4) (1980). See \textsc{Weintraub, Jurisdiction Over the Foreign Non-Sovereign Defendant}, 19 \textsc{San Diego L. Rev.} 431 (1982), where the author notes: “The flaw in this provision [section 1.03(a)(4)] is that it draws no distinction between the defendant who ships the product directly into the forum or sells to a distributor for forum sale and a defendant who does not expect its product to reach the forum in the ordinary course of commercial distribution.” \textsc{Id.} at 435. See generally \textsc{Cohen, In Personam Jurisdiction in Federal Courts Over Foreign Corporations: The Need for a Federal Long-Arm Statute}, 14 \textsc{Den. J. Int’l} L. \& \textsc{Pol’y} 59 (1985).

\textsuperscript{106} 28 U.S.C. \textsection{1391}(c) (1948) provides:

A corporation may be sued in any judicial district in which it is incorporated or licensed to do business or is doing business, and such judicial district shall be regarded as the residence of such corporation for venue purposes.
ers would be synonymous with the "doing business" venue provision for corporations contained in title 28, United States Code.

The quantum of contacts needed to establish "doing business" venue under section 1391(c) have generally been found by the courts to exceed the International Shoe minimum contacts needed for personal jurisdiction. However, as Professors Wright, Miller and Cooper point out, "[u]nfortunately the cases espousing this view give very little indication of how much more is required." One well-articulated test of "doing business" developed in the Eastern District of Pennsylvania, and adopted by the First Circuit in slightly modified form, requires that the corporate defendant be engaged in sufficiently extensive activities within the forum state to the effect that it should be able to obtain a license to do business there. As formulated by the First Circuit in Johnson Creative Arts, Inc. v. Wool Master, Inc., a corporation is "doing business" under section 1391(c), "if

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108 15 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3811, at 118-19 (1985). See Note, supra note 107, at 309, where the author notes that "most of the cases that have differentiated between 'transacting business' for personal jurisdiction and 'doing business' for federal venue have failed to provide ascertainable guidelines for determining what criteria will, in fact, constitute 'doing business' under section 1391(c)."


110 Johnson Creative Arts, 743 F.2d at 947.

111 See supra note 109 and cases cited therein. In Remington Rand, 139 F. Supp. at 613, the court concluded that a corporation is "doing business" for purposes of section 1391(c) if its activities within the district are such that "some state would probably" require the foreign corporation to be licensed as a condition precedent to doing that volume of business within its borders. Id. at 620-21.

112 743 F.2d at 947. The Johnson Creative Arts court in essence agreed with the district court's test in Remington Rand, supra notes 109, 111, "to the extent that it stands for the proposition that 'doing business' as used in the federal venue statute requires some kind of localization of the corporation." 743 F.2d at 954.
it is doing such business there that the state in which the district is located would require the corporation to obtain a license or register.”

In the *Johnson Creative Arts* decision the court rejected the argument that “the test for ‘doing business’ under the venue statute should be the same as the test for determining whether a corporation is amenable to service of process.” The argument essentially was that the minimum quantum of contacts necessary to satisfy the due process “fairness” requirement should equally suffice to meet the “doing business” test of section 1391(c). The First Circuit noted that such an equation was misguided because “[v]enue limitations generally are added by Congress to insure a defendant a fair location for trial and to protect him from inconvenient litigation,” whereas “[t]he minimum contacts test for personal jurisdiction is based on the minimum amount of ‘fairness’ required in order to comport with due process.” Thus, more forum contacts are required to satisfy the “doing business” test under section 1391(c) than are necessary to meet the minimum contacts test of *International Shoe* and its progeny. Conversely, if the “doing business” test under section 1391(c) is satisfied, then *International Shoe* minimum contacts would exist *ipso facto*, provided the claim which was the subject of the particular lawsuit related to the defendant’s business activities in the forum.

The proposed legislation would raise the level of minimum contacts for jurisdictional purposes by measuring them against the “doing business” test of section 1391(c) as formulated by the First Circuit in *Johnson Creative Arts*. If adopted, this proposal would inject a certain quantitative element into the contacts analysis, but would still preserve the qualitative nature of the contacts inquiry as formulated by the Supreme Court. In short, unless the quantum of contacts necessary to meet section 1391(c)’s “doing business” criterion were met—that is, unless a state could require the foreign corporation to obtain a license or register—then a state could not exercise jurisdiction over it. Under this jurisdictional standard, the Commerce Clause would become the source for determining whether the exercise of jurisdiction over an alien corporation is proper, not the Due Process Clause.

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113 *Johnson Creative Arts*, 743 F.2d at 954.
114 *Id.* at 949. The court acknowledged the contrary views on this point held by Professor Moore “that if a corporation is amenable to service of process it should be held to be ‘doing business’ for venue purposes.” *Id.* (quoting from 1 J. Moore, W. Taggart & J. Wicker, *Moore’s Federal Practice* ¶ 110.142, at 1411).
115 *Johnson Creative Arts*, 743 F.2d at 949.
116 *Id.* (emphasis in original).
118 See supra note 93.
119 * Cf. Johnson Creative Arts*, 743 F.2d at 954 (state licensing requirements of corporations are subject to the Commerce Clause); 15 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 3811, at 121 (1985).
the First Circuit’s view, “uniformity will be achieved if ‘doing business’ . . . mean[s] engaging in transactions [in the district] to such an extent and of such a nature that the state in which the district is located could require the foreign corporation to qualify to ‘do business’ there.”

Although the issue of whether a corporation is “doing business” is a factual question, the Commerce Clause places a limitation upon when a state may require a foreign corporation to obtain a license to do business in that state. For example, a state may not require a foreign corporation to qualify to do business absent some intrastate activity or localization of the business in that state. In addition, more than a single transaction or casual activity within the state is required before a corporation may be regarded as doing business there. A statutory requirement that jurisdiction may be asserted over an alien corporation in a products liability action only if it is “doing business” in the forum within the meaning of section 1391(c) would only slightly break with prior Supreme Court cases which have focused on the quality of forum contacts. Although greater stress would be placed on

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120 Johnson Creative Arts, 743 F.2d at 954 (emphasis in original; footnote omitted).

There is no exact formula under which the question can be decided. To reach the proper answer, consideration must be given to such relevant factors as the general character of the corporation, the nature and scope of its business operations, the extent of the authorized corporate activities conducted on its behalf within the forum district, the continuity of those activities, and its contacts within the district. A corporation is present within the forum district when its activities there have not only been continuous and systematic but also give rise to the liability sued on, even though no consent to be sued or authorization of an agent to accept service of process has been given.

Id. at 290.

122 Allenberg Cotton Co. v. Pittman, 419 U.S. 20, 31-32 (1974); Dahnke-Walker Milling Co. v. Bondurant, 257 U.S. 282 (1921). Although the Commerce Clause “is not as directly concerned as the Due Process provision is with ‘fairness,’ . . . [t]he Commerce Clause limitation on licensing requirements is used as the test for ‘doing business’ . . . because it sets the minimum amount of activity necessary to require a corporation to obtain a license from a particular state.” Johnson Creative Arts, 743 F.2d at 954 n. 11.

123 Allenberg Cotton Co., 419 U.S. at 33. In Allenberg Cotton, the Court rejected a state court finding that a corporation was “doing business” in Mississippi when it had no offices or warehouses there, when no employees solicited business or worked there on a regular basis, and when the transactions which were the subject of the lawsuit were in the stream of interstate commerce and conducted primarily through the mail. Id. at 33.

124 15 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3811, at 123 (1985). For a comparison of cases holding on particular facts that a corporation was or was not “doing business” within a district, see id. at 126-31.

125 See supra note 93.
the quantity of those contacts, the nature of those contacts would remain important. As a corollary to this legislative proposal, national products liability legislation is needed to create a uniform standard for products liability throughout the United States. Presently, foreign manufacturers—not to mention domestic manufacturers—must run a gauntlet of fifty state product liability laws. Of course, it will always be arguable that this is the price of doing business with a nation such as the United States or The Federal Republic of West Germany. It is impossible, however, to rationally plan for liability contingencies when the possibility exists of being subject to suit in a state with which the foreign manufacturer does not directly deal. The current product liability laws, coupled with jury awards which may at times appear arbitrary, can only have the effect of burdening international trade. A legislative response by Congress is clearly needed. While Congress and the Commerce Department have initiated proposals for enactment of national products liability legislation, those efforts have failed to date. 

In the absence of a congressional response, the Supreme Court could fine tune its “purposeful availment” requirement first announced in Hanson v. Denckla. A refinement of the “purposeful availment” requirement would incorporate the Supreme Court’s injunction against extending personal jurisdiction in cases where the defendant’s acts are fortuitous, random, or attenuated, or where the effects are the result of the unilateral activity of a third person. At the same time, the reach of long-arm statutes would not extend worldwide. Liability would be premised on a joint enterprise theory.

Under this theory, a foreign component parts manufacturer whose products entered the United States indirectly through some unrelated distributor or manufacturer would not be subject to jurisdiction—in the absence of other forum contacts—unless it could be established that a community of interest and common purpose in selling to the U.S. market existed between the

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127 See Johnson Creative Arts, 743 F.2d at 954.
128 Of course, the standards for products liability are the same or similar among many of the states. See generally PROSSER & KEETON, supra note 90, at §§ 95-104.
130 The Reagan administration has proposed similar federal legislation which would, inter alia, place a cap on product liability damage awards. See Chris. Sci. Mon., May 2, 1986, at 5.
component parts manufacturer and the finished goods manufacturer or distributor. While such a relationship could be established by contract or imputed by course of dealings, the critical inquiry under a joint enterprise theory would be whether the component parts manufacturer, in collaboration with the finished goods manufacturer or distributor, attempted to cultivate a market for its goods within the forum state. Trading in the U.S. market would have to be more than merely incidental to the arrangement. As the Supreme Court observed in World-Wide Volkswagen, "the foreseeability that is critical to due process analysis is not the mere likelihood that a product will find its way into the forum State." The mere likelihood that a product will enter the forum state is a constitutionally insufficient forum contact.

Under a joint enterprise theory, potential products liability plaintiffs would not be without a basis for recovery since they could still sue the distributor, ultimate manufacturer-assembler, or retailer either under a tort or breach of warranty theory. Such an approach to the problem of personal jurisdiction would be consonant with the "highly realistic" approach which the Supreme Court identified as preferable to mechanical or talismanic analyses. By requiring a more substantive showing of forum contact.

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131 See Max Daetwyler Corp., 762 F.2d at 298 n.11, where the court notes that "World-Wide Volkswagen . . . may thus be read to suggest that a defendant manufacturer need not have transacted business in the forum state if it has attempted to cultivate a market for its goods within the state. The requirement that a foreign manufacturer attempt to develop a market, however, must subsume those purposeful affiliation requirements, beyond mere foreseeability. . . ." See also Seidelson, supra note 40, at 24 (marketing activities within the forum are of constitutional significance). Such a requirement would also help ensure against forum shopping. If foreign manufacturers sell in the United States as a single distribution market, they would be amenable to suit in any one of the 50 states under the Asahi Metal court's analysis, regardless of whether the claim was related to the forum. See generally Terez, supra note 74, at 930.

132 See, e.g., Crimson Semiconductor, Inc. v. Electronum, 629 F. Supp. 903, 908 (S.D.N.Y. 1986) (defendant "purposefully availed itself of the privileges of American law by trying to create a market for its products here."). In Crimson Semiconductor, the defendant's representatives visited the United States several times in order to negotiate a distributorship agreement that would expand its business in the United States. It also advertised in national publications. Id. at 908. See also Lilly, supra note 58, at 99 ("Affiliations with the forum that involve the defendant but are instituted by another person do not meet the constitutional minimum.").

133 World-Wide Volkswagen, 444 U.S. at 297.

134 Max Daetwyler Corp., 762 F.2d at 298.

135 See Prosser & Keeton, supra note 100, at 677-721. Indeed, the plaintiffs in Asahi Metal brought suit against the California retailer of the allegedly defective product. Asahi Metal, 39 Cal. 3d at 40-41, 702 P.2d at 544, 216 Cal. Rptr. at 387.

136 See Burger King Corp., 105 S. Ct. at 2185; Colwell Realty Investments, Inc. v. Triple T Inns of Arizona, Inc., 785 F.2d 1330, 1334 (5th Cir. 1986). But see Hon-
contacts under a joint enterprise theory of jurisdiction, a foreign component parts manufacturer would be assured of not being haled into a forum because of an unrelated distributor’s unilateral activity.\textsuperscript{137} A joint enterprise analysis would further ensure that the foreign component parts manufacturer had purposefully availed itself of the benefits and privileges of the forum state. Finally, such an approach would more concretely establish sufficient minimum contacts with the forum state, thereby guaranteeing “that the States, through their courts, do not reach out beyond the limits imposed on them by their status as coequal sovereigns in a federal system.”\textsuperscript{138} It would, at the same time, guard against forum shopping.\textsuperscript{139}

In addition to adopting a joint enterprise theory of jurisdiction,\textsuperscript{140} the Supreme Court could break with its prior decisions by fashioning a rule whereby jurisdiction over an alien corporation in a products liability action would only be proper where “general jurisdiction” existed in the forum state. The distinction between “general jurisdiction” and “specific jurisdiction” was explained by the Supreme Court in \textit{Helicopteros Nacionales de Colombia, S.A. v. Hall}.\textsuperscript{141} In that case the Court characterized “specific jurisdiction” as follows: “It has been said that when a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the

\textit{eywell, Inc. v. Metz Apparatewerke}, 509 F.2d 1137, 1144 (7th Cir. 1975) (international manufacturer should not be able to insulate itself from jurisdiction by an intermediary or by professing ignorance of the ultimate destination of its products).

\textsuperscript{137} See, e.g., \textit{Hutson}, 584 F.2d at 833, where the court, sitting \textit{en banc}, concluded that an Italian corporation which had sold a chain to a British company which in turn sold it in the United States lacked sufficient contacts with an Arkansas forum:

Weissenfels’ contacts with Arkansas consist only of the fortuitous introduction of Weissenfels products into the forum state through the decision of Frank Fehr & Co., a British company. Weissenfels neither manufactured the defective chain nor sold or marketed it in the United States. Weissenfels’ only apparent connection with the chain was that at one time it repacked and resold it to Frank Fehr & Co. . . . Weissenfels did not consciously solicit or purposefully avail itself of the privilege to conduct business in the forum state. . . . The Fehr Co. exercises control over the selection of the customers and other marketing decisions relating to the sale of the Weissenfels product which it purchases.

584 F.2d at 837. The court also observed that while Arkansas had an interest in providing a forum for its residents who are injured by defective products of foreign corporations, the plaintiffs in the action “do not suffer from a dearth of available defendants.” \textit{Id.} at 837 n.1. \textit{See International Products Liability, supra} note 104, where the author concludes that the dispositive fact in \textit{Hutson} was Weissenfels’ status as a distributor rather than a manufacturer.

\textsuperscript{138} \textit{World-Wide Volkswagen}, 444 U.S. at 292.

\textsuperscript{139} \textit{See supra} note 131.

\textsuperscript{140} \textit{See supra} notes 130-38 and accompanying text.

defendant’s contacts with the forum, the State is exercising ‘specific jurisdiction’ over the defendant.’” The Court then defined ‘general jurisdiction’:

When a State exercises personal jurisdiction over a defendant in a suit not arising out of or related to the defendant’s contacts with the forum, the State has been said to be exercising ‘general jurisdiction’ over the defendant.

In order for general jurisdiction to exist, continuous and systematic general business contacts are required. A lesser quantum of contacts will suffice for specific jurisdiction. The standard for determining whether continuous and systematic contacts exist has been equated with that for determining whether a corporation is “doing business” within the meaning of section 1391(c). Under this approach, “if a corporation is doing enough business that it would be subject to general jurisdiction, it would be ‘doing business’” under section 1391(c).

As a standard for gauging the propriety of a state’s exercise of jurisdiction, the continuous and systematic general business contacts test, if equated with the “doing business” standard of section 1391(c), offers assurances that an alien corporation’s contacts with the forum state will be sufficiently great that the exercise of jurisdiction over it would not be the source of surprise or unfairness. Such a standard would have great utility by eliminating any

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142 Id. at 414 n.8 (1984) (citing in support von Mehren & Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 Harv. L. Rev. 1121, 1144-64 (1966)).

143 Id. at 414 n.9 (citing in support Brilmayer, How Contacts Count: Due Process Limitations on State Court Jurisdiction, 1980 Sup. Ct. Rev. 77, 80-81; von Mehren & Trautman, Jurisdiction to Adjudicate: A Suggested Analysis, 79 Harv. L. Rev. 1121, 1136-44 (1966)).


145 15 C. Wright A. Miller & E. Cooper, Federal Practice and Procedure § 3811, at 118 n.65 (1985). Jurisdiction may be premised simultaneously on general and specific jurisdiction, of course, where a suit is based on the defendant’s forum-related contacts in a forum where the defendant also has continuous and systematic general business contacts.


147 Id.

148 Such an equation has been in some of the venue cases construing the “doing business” language of section 1391(c). See, e.g., Flowers Indus., Inc. v. Bakery & Confectionary Union, 565 F. Supp. 286, 290 (N.D. Ga. 1983) (“A corporation is present within the forum district when its activities there have not only been continuous and systematic but also give rise to the liability sued on . . . .”).

149 In effect, such a standard would be equivalent to the “presence” test used by the Supreme Court prior to its International Shoe decision to determine the propriety of exercising jurisdiction over corporate defendants. See, e.g., Philadelphia & Reading Ry. v. McKibbin, 243 U.S. 264, 265 (1917) (“A foreign corporation is amenable to process to enforce a personal liability, in the absence of consent, only if it is doing
need for inquiry into such questions as whether or not the foreign corporation had "knowledge" that its allegedly defective products would be indirectly sold in the forum. Such corporate knowledge which, in effect was made synonymous with contacts in Asahi Metal, is too tenuous a standard upon which to exclusively base a forum's assertion of jurisdiction. Under the California Supreme Court's analysis, had Cheng Shin not informed Asahi that its valves would enter the U.S. market, Asahi would not have had the requisite knowledge upon which jurisdiction was based. Asahi was found to be subject to the jurisdiction of the California courts on a fortuitous event—that Cheng Shin mentioned to Asahi that the United States was one of several ultimate destinations for its parts. A much more rational basis for jurisdiction would be one premised on general jurisdiction interpreted in light of the "doing business" standard of section 1391(c). Under that standard, an alien corporation would be fairly apprised in advance that it could be sued only in those forums where it has continuous and systematic business contacts.

VI. CONCLUSION

The Asahi Metal decision has stretched the International Shoe minimum contacts test to the constitutional breaking point. It is patently unfair and unreasonable to subject a foreign manufacturer of a component part to a products liability defense in a forum with which it has absolutely no direct contacts and with which it has indirect and attenuated contacts solely by virtue of the unilateral activity of an unrelated third party. When it reviews the Asahi Metal case, the Supreme Court should refine its minimum contacts standard by requiring that such contacts be shown to be substantial before a state may properly exercise jurisdiction in a products liability action over a remote foreign manufacturer of a component part.

In the interests of promoting free and reasonably unfettered international trade, Congress should pass legislation pursuant to its commerce clause power that would regulate the exercise of jurisdiction over foreign component parts manufacturers in products liability actions. Congress should also enact a national products liability law so that our foreign trading partners could more rationally evaluate and plan for the risks and costs of doing business in the United States.†

business within the State in such a manner and to such an extent as to warrant the inference that it is present there."). See also Lilly, supra note 58, at 98-99 ("the principal cases support the general conclusion that the notion of territoriality, reaffirmed in Hanson, remains deeply embedded in the Supreme Court's thinking"); International Products Liability, supra note 104, at 322.

150 Asahi Metal, 39 Cal. 3d at 48-50, 702 P.2d at 550-51, 216 Cal. Rptr. at 392-95.
151 See id. at 48-49, 702 P.2d at 550, 216 Cal. Rptr. at 392 ("When Asahi sold valve assembles to Cheng Shin with knowledge that they would be placed in tubes sold in California, it purposefully availed itself of the California market and the benefits and protections of California's laws.").
† At the time this article went to print, the United States Supreme Court handed
down a plurality decision reversing the California Supreme Court and remanding *Asahi Metal*. 55 U.S.L.W. 4197 (U.S. Feb. 24, 1987). Except for Justice Scalia, all of the Justices found that California’s exercise of personal jurisdiction in *Asahi Metal* constituted an unreasonable and unfair violation of the Due Process Clause. *Id.* at 4199.

The Court could not agree, however, on a minimum contacts standard. Taking a narrow view of the stream-of-commerce theory which the Court set out in *Worldwide Volkswagen*, Justice O’Connor (joined by the Chief Justice, and Justices Powell and Scalia) concluded that, to satisfy the “purposeful availment” test for a minimum contacts finding, more is necessary than to merely place the product into the stream-of-commerce with an awareness that the product will find its way into the forum state. Rather, there must be “additional conduct” indicating an intent to serve the forum state’s market. *Id.* at 4199.

Justice Brennan (joined by Justices White, Marshall and Blackmun) similarly concluded that awareness that the product is being marketed in the forum state is necessary to satisfy the Due Process Clause, but that no additional showing of conduct is needed. *Id.* at 4200-01. Writing separately, Justice Stevens (joined by Justices White and Blackmun) noted that finding California’s exercise of jurisdiction unreasonable and unfair under the Due Process Clause rendered unnecessary any examination of minimum contacts. *Id.* at 4202.

It appears, therefore, that the Supreme Court’s analysis of *Asahi Metal* is in accordance with the author’s analysis to the extent both believe the California Supreme Court’s exercise of personal jurisdiction was unreasonable. However, the United States Supreme Court seems not to have refined the minimum contacts standard as the author advocated in this article.