

Transnational Tort Litigation as a Trade and Investment Issue

Alan O. Sykes (Stanford Law School) has posted “**Transnational Tort Litigation as a Trade and Investment Issue**” on SSRN. Here’s the abstract:

Tort plaintiffs regularly bring cases in U.S. courts seeking damages for harms that have occurred abroad, attracted by higher expected returns than are available in the jurisdiction where the harm arose. Such claims are especially likely to be filed by plaintiffs from developing countries, who commonly argue that the remedies available to them in their home jurisdictions are deficient or non-existent. This paper focuses on a potential inefficiency of forum shopping that is of special importance in transnational tort litigation against business defendants – the potential distortion of trade and investment patterns that can result from implicit “discrimination” in the applicability of legal rules to producers or investors of different nationalities. These distortions are akin to those associated with discriminatory tariff or tax policies. They can reduce global economic welfare, and afford a potentially important argument for limiting foreign tort plaintiffs to the law and forum of the jurisdiction in which their harm arose. The problem arises even if the substantive or procedural law of the foreign jurisdiction in question is demonstrably inferior to U.S. law from an economic standpoint. The analysis has implications for a number of areas of legal doctrine, including the construction of the Alien Tort Statute, the rules governing choice of law in transnational tort cases, and the doctrine of forum non conveniens.

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