

**Unclassified**

**DAF/COMP/WP3/WD(2015)37**

Organisation de Coopération et de Développement Économiques  
Organisation for Economic Co-operation and Development

**07-Oct-2015**

---

**English - Or. English**

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
COMPETITION COMMITTEE**

**Working Party No. 3 on Co-operation and Enforcement**

**-- United States --**

1.



### 3. Country C

12. Assuming the United States is Component X appears to be conduct involving wholly foreign commerce, that is, commerce between Country A and Country B. Such conduct can constitute a conspiracy in restraint of . . . with foreign nations in violation of Section 1 if the conduct sufficiently affects U.S. import commerce. To determine whether Section 6a exempts the conduct, the DOJ would focus on whether the conduct has a direct, substantial, and reasonably foreseeable effect on import commerce in finished electronic products incorporating the price-fixed Component X.

13. The circumstance that the price-fixed component was first sold to integrators in Country B, where it was incorporated into finished electronic products which were then sold in, or for delivery to, the United States would not render indirect an effect on import commerce in those products. *See Hsiung*, 778 F.3d at 758-60. Nor would the circumstance that the finished products were sold around the world or that Alpha and Beta were unaware or indifferent to whether the finished products were sold in the United States render insubstantial or not reasonably foreseeable the effect on import commerce. In this context, substantiality is not a question of proportion. So long as the effect on U.S. commerce was not insignificant, even if smaller than the effect outside the United States, it is substantial. And reasonable foreseeability is an objective standard, which asks not whether the conspirators actually foresaw the effect, but rather whether a reasonable person would foresee the effect on U.S. commerce.

14. Of course, evidence that the conspirators actually expected their conduct to cause an effect on commerce in the finished products would help to

17. The DOJ would likely pursue criminal sanctions against Alpha, Beta, and their culpable officers and employees. As explained in the Country B section above, in each case the DOJ would seek criminal