No.

In the Supreme Court of the United States

NHK SPRING CO., LTD.; NHK INTERNATIONAL CORPORATION; NHK SPRING (THAILAND) CO., LTD.; NAT PERIPHERAL (DONG GUAN) CO., LTD.; NAT PERIPHERAL (H.K.) CO., LTD.,

Petitioners,

v.

SEAGATE TECHNOLOGY LLC; SEAGATE TECHNOLOGY (THAILAND) LTD.; SEAGATE SINGAPORE INTERNATIONAL HEADQUARTERS PTE., LTD.; SEAGATE TECHNOLOGY INTERNATIONAL,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In 1982, Congress enacted the Foreign Trade Antitrust Improvements Act ("FTAIA") "to promote certainty in assessing the applicability of American antitrust law to international business transactions." H.R. Rep. No. 97-686, at 9 (1982). As relevant here, the FTAIA permits antitrust suits based on conduct involving foreign commerce only where the defendant's conduct "has a direct, substantial, and reasonably foreseeable effect . . . on trade or commerce which is not trade or commerce with foreign nations," and "such effect" then "gives rise to" the plaintiff's claim. 15 U.S.C. § 6a(1)-(2).

In the decision below, the Ninth Circuit became the first court in history to hold that foreign defendants can be held liable to foreign purchasers for foreign transactions based solely on the fact that those transactions were negotiated in part in the United States. In so holding, the court broke sharply from the Seventh Circuit, which has held in materially identical circumstances that transactions abroad between a foreign seller and a foreign buyer are not subject to the Sherman Act even if some of the transactions' terms were negotiated in the United States.

The question presented is:

Whether domestic negotiations are sufficient to bring foreign injuries from allegedly price-fixed foreign transactions within the reach of the Sherman Act, even where those negotiations have no intervening "effect . . . on trade or commerce which is not trade or commerce with foreign nations." 15 U.S.C. § 6a(1)(A).

PARTIES TO THE PROCEEDING

Petitioners NHK Spring Co., Ltd. (TYO: 5991); NHK International Corporation; NHK Spring (Thailand) Co., Ltd.; NAT Peripheral (Dong Guan) Co., Ltd.; and NAT Peripheral (H.K.) Co., Ltd. were appellees in the court of appeals and defendants in the district court.

Respondents Seagate Technology LLC; Seagate Technology (Thailand) Ltd.; Seagate Singapore International Headquarters Pte., Ltd.; and Seagate Technology International were appellants in the court of appeals and plaintiffs in the district court.

CORPORATE DISCLOSURE STATEMENT

Petitioners NHK Spring Co., Ltd. (TYO: 5991); NHK International Corporation; NHK Spring (Thailand) Co., Ltd.; NAT Peripheral (Dong Guan) Co., Ltd.; and NAT Peripheral (H.K.) Co., Ltd. disclose that:

NHK Spring Co., Ltd. is the parent corporation of NHK International Corporation. NHK Spring Co., Ltd. is the only publicly held corporation that owns 10% or more of NHK International Corporation's stock.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *Seagate Technology LLC v. NHK Spring Co., Ltd.*, No. 24-4470 (9th Cir.) (judgment entered Jan. 8, 2026);
- *Seagate Technologies, LLC v. NHK Spring Co., Ltd.*, No. 24-2854 (9th Cir.) (petition for permission to appeal granted July 18, 2024); and
- *Seagate Technology LLC v. Headway Technologies, Inc.*, No. 20-cv-1217 (N.D. Cal.) (certified for interlocutory appeal on Apr. 22, 2024).

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Petitioners NHK Spring Co., Ltd.; NHK International Corporation; NHK Spring (Thailand) Co., Ltd.; NAT Peripheral (Dong Guan) Co., Ltd.; and NAT Peripheral (H.K.) Co., Ltd. respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-31a) is reported at 163 F.4th 1272. The orders of the district court (App., *infra*, 32a-49a, 50a-62a) are not

reported in the Federal Supplement but are available at 2023 WL 3483242 and 2023 WL 8007985.

JURISDICTION

The judgment of the court of appeals was entered on January 8, 2026. A petition for rehearing was denied on March 6, 2026 (App., *infra*, 63a-64a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 1 of the Sherman Act, 15 U.S.C. § 1, provides in relevant part that "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal."

The Foreign Trade Antitrust Improvements Act, 15 U.S.C. § 6a, provides in relevant part that:

> Sections 1 to 7 of this title shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations unless—
>
> (1) such conduct has a direct, substantial, and reasonably foreseeable effect—
>
> (A) on trade or commerce which is not trade or commerce with foreign nations, or on import trade or import commerce with foreign nations; or
>
> (B) on export trade or export commerce with foreign nations, of a person engaged in such trade or commerce in the United States; and
>
> (2) such effect gives rise to a claim under the provisions of sections 1 to 7 of this title, other than this section.

INTRODUCTION

"It is a basic premise of our legal system that, in general, 'United States law governs domestically but does not rule the world.'" *RJR Nabisco v. Eur. Cmty.*, 579 U.S. 325, 335 (2016) (citation omitted). That premise applies with particular force in the antitrust context, where the United States tends to impose stricter penalties than its foreign counterparts. *See F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 167 (2004) ("The application . . . of American private treble-damages remedies to anticompetitive conduct taking place abroad has generated considerable controversy."). To ensure that U.S. antitrust remedies are reserved for violations with a sufficient U.S. connection, therefore, Congress passed the Foreign Trade Antitrust Improvements Act ("FTAIA"), 15 U.S.C. § 6a. As relevant here, the FTAIA permits antitrust suits based on claims arising from foreign commerce only where the defendant's conduct first "has a direct, substantial, and reasonably foreseeable effect . . . on trade or commerce which is not trade or commerce with foreign nations"—i.e., a so-called domestic effect—and "such effect" then "gives rise to" the plaintiff's claim. 15 U.S.C. § 6a(1)-(2).

Applying that standard a decade ago, the Seventh Circuit held that a plaintiff cannot recover under the FTAIA for allegedly price-fixed transactions abroad between two foreign companies, based merely on the fact that certain terms of the transactions were negotiated and approved in the United States. *See Motorola Mobility LLC v. AU Optronics Corp.*, 775 F.3d 816, 819-20 (7th Cir. 2015). Instead, the Seventh Circuit recognized, any "relief for restraints of trade" must be sought under the laws of the countries in which the purchases actually occurred. *Id.* at 820.

In the decision below, however, a panel of the Ninth Circuit held that foreign defendants *can* be held liable for allegedly price-fixed sales abroad from one foreign company to another based solely on the fact that those transactions were negotiated in part in the United States. In doing so, the panel explicitly rejected the Seventh Circuit's analysis in *Motorola*, claiming that "the Seventh Circuit . . . did not substantially grapple with the FTAIA's language or the case law construing that statutory text." App., *infra*, 27a.

That decision cries out for this Court's review. The panel not only created a square conflict over the application of U.S. antitrust law to transactions between foreign businesses abroad, but also adopted an incorrect approach to that issue that will henceforth be binding in the nation's largest circuit. Indeed, for all its criticism of the Seventh Circuit's reasoning, the panel never even *tried* to explain how overseas sales from one foreign company to another—the transactions at issue in the relevant negotiations—can qualify as "trade or commerce which is not trade or commerce with foreign nations." 15 U.S.C. § 6a(1)(A). Any impact Petitioners' conduct had on the negotiation of those sales, therefore, was not an "effect . . . on trade or commerce which is not trade or commerce with foreign nations," *id.*, regardless of where the negotiations occurred.

If left uncorrected, the panel's decision will have vast repercussions for U.S. courts and U.S. businesses. Even the panel recognized that "[o]pening our federal courts to an injury like this one may seem extraordinary at first blush." App., *infra*, 26a. Quite so. Permitting foreign plaintiffs to recover under U.S. law based on the locus of negotiations—especially for purchases of products that never touch U.S. soil—will open the floodgates to litigation

concerning wholly foreign transactions. It will subject U.S. companies to the uniquely harsh damages remedies of U.S. antitrust law for their business abroad, putting them at a competitive disadvantage with foreign counterparts who engage in materially identical transactions with the same foreign customers, but who do not negotiate those transactions from the United States. And it will deter multinational companies from negotiating overseas deals in the United States out of fear that they will trigger otherwise inapplicable U.S. antitrust laws, thereby undermining the United States' status as a hub of global trade.

Congress sought to avoid all of those consequences when it enacted the FTAIA. The law was specifically intended "to make clear to American exporters (and to firms doing business abroad) that the Sherman Act does not prevent them from entering into business arrangements . . . , however anticompetitive, as long as those arrangements adversely affect only foreign markets." *Empagran*, 542 U.S. at 161. This case is an ideal vehicle for the Court to reaffirm that central purpose of the FTAIA and hold that the mere occurrence of negotiations in the United States does not justify applying U.S. antitrust law to sales between foreign companies that take place halfway around the world.

STATEMENT OF THE CASE

A. Statutory Background

In 1982, Congress enacted the FTAIA "to promote certainty in assessing the applicability of American antitrust law to international business transactions." H.R. Rep. No. 97-686, at 9 (1982). In the years leading up to enactment, courts had articulated varying formulations for assessing when U.S. antitrust laws applied abroad—with some of the more aggressive exercises of

extraterritorial jurisdiction "giv[ing] offense to foreign governments." John DeQ. Briggs, *Schrödinger's Cat and Extraterritoriality*, 29 Antitrust 79, 79 (Fall 2014). "[P]artially in response to the international protests about these cases," *id.*, and given that "international trade play[ed] an immense and increasingly important role in the economy," H.R. Rep. No. 97-686, at 6, Congress found it "appropriate . . . to formulate a standard to be applied uniformly throughout the federal judicial [system]," *id.* In particular, Congress sought to make "clear that wholly foreign transactions as well as export transactions" are not subject to U.S. antitrust law. *Id.* at 10.

To achieve that objective, Congress in the FTAIA "la[id] down a general rule placing *all* (nonimport) activity involving foreign commerce outside the Sherman Act's reach." *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 162 (2004); *see* 15 U.S.C. § 6a ("Sections 1 to 7 of this title shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations . . . ."). It then brought such activity back within the Sherman Act's reach if two conditions were met: First, the challenged conduct must "sufficiently affect[] American commerce" by "ha[ving] a 'direct, substantial, and reasonably foreseeable effect' on American domestic, import, or (certain) export commerce." *Empagran*, 542 U.S. at 162 (quoting 15 U.S.C. § 6a(1)). Second, "the 'effect' must 'give rise to a Sherman Act claim.'" *Id.* (alterations omitted) (quoting 15 U.S.C. § 6a(2)); *see also id.* at 174 (holding that the "claim" to which the effect gives rise must be the plaintiff's claim). That so-called "domestic effects exception" aims to reach conduct that "causes domestic harm" while respecting the rights of other countries "independently to regulate [their] own commercial affairs." *Id.* at 165-66.

This Court has explained that "[t]he FTAIA seeks to make clear to . . . firms doing business abroad . . . that the Sherman Act does not prevent them from entering into business arrangements . . . , however anticompetitive, as long as those arrangements adversely affect only foreign markets." *Id.* at 161. To that end, "Congress sought to *release* domestic (and foreign) anticompetitive conduct from Sherman Act constraints when that conduct causes foreign harm." *Id.* at 166. Congress intended to clarify for exporters in particular that U.S. antitrust laws were not "a barrier to joint export activities that promote efficiencies in the export of American goods and services." H.R. Rep. No. 97-686, at 2. But Congress also viewed the FTAIA's protections as essential for all U.S. companies that conducted business globally. *See id.* (explaining that the FTAIA would "make explicit" the "inapplicability" of U.S. antitrust law to "foreign joint ventures").

In shielding businesses from liability for conduct that causes foreign injuries, "Congress, of course, did make an exception where that conduct also causes domestic harm." *Empagran*, 542 U.S. at 166. "But any independent domestic harm . . . has, by definition, little or nothing to do with" claims by plaintiffs seeking relief for injuries they suffered overseas. *Id.* Indeed, it was well recognized even before the FTAIA's enactment that the Sherman Act applied abroad only where necessary to "redress *domestic* antitrust injury that foreign anticompetitive conduct has caused." *Id.* at 165. And because "Congress designed the FTAIA to clarify, perhaps to limit, but not *to expand* in any significant way, the Sherman Act's scope as applied to foreign commerce," *id.* at 169, claims based on the foreign effects of allegedly anticompetitive conduct are not redressable under the FTAIA.

B. Factual Background

1. Petitioners' Foreign Sales Of Hard Disk Drive Components

This case involves foreign sales and purchases of suspension assemblies ("SAs"), which are subcomponents of hard disk drives ("HDDs") used in larger electronic devices. App., *infra*, 6a-7a. Petitioner NHK Spring Co., Ltd. ("NHK Spring") is a Japanese corporation with foreign subsidiaries that design, manufacture, and sell SAs. 3 C.A. E.R. 345-46. Respondents Seagate Technology LLC ("Seagate LLC"), Seagate Technology (Thailand) Co., Ltd. ("Seagate Thailand"), Seagate Singapore International Headquarters Pte. Ltd. ("Seagate Singapore"), and Seagate Technology International are subsidiaries of an Irish multinational corporation that design, manufacture, and/or sell HDDs. 7 C.A. E.R. 1122.

In 2008, NHK Spring and Seagate LLC entered into a Product Supply Agreement ("PSA"), which established procedures and a framework pursuant to which Seagate's foreign procurement and manufacturing entities (Seagate Thailand and Seagate Singapore) could purchase SAs from NHK entities located in Asia in the future. 6 C.A. E.R. 890-903. The PSA did not include final pricing, design, or technical specifications, nor did it purport to effectuate any sale of goods. 6 C.A. E.R. 891-98. Rather, Seagate entities solicited bids for their SA supply on a quarterly basis (their quarterly "Request for Quotations" or "RFQ"). 7 C.A. E.R. 1133; 3 C.A. E.R. 352; 7 C.A. E.R. 1201. The bidding and negotiations relevant here were conducted by employees of Petitioners NHK Spring (in Japan) and NHK International Corporation (in the United States) on the one hand, and Seagate's Commodity Management Team ("CMT") on the other. 3 C.A. E.R.

351; 7 C.A. E.R. 1124. The CMT consisted of personnel around the world employed by Seagate Singapore, Seagate Thailand, and U.S.-based Seagate LLC, among other entities. 5 C.A. E.R. 696; 7 C.A. E.R. 1121.

While the PSA and RFQs set a framework for purchases, the actual ordering, payment, and receipt of mass-produced SAs (the only type of SAs at issue here) occurred in Asia pursuant to contracts between foreign NHK entities and Seagate Thailand or Seagate Singapore. 5 C.A. E.R. 696; 7 C.A. E.R. 1143; 5 C.A. E.R. 877-78. After the SAs were purchased and delivered in Thailand or Singapore, they were subject to a series of transfers and intra-company sales among Seagate entities in Thailand, China, Malaysia, and Singapore, as they were incorporated into larger subcomponents and eventually into HDDs. 7 C.A. E.R. 1137-38; 7 C.A. E.R. 1145; App., *infra*, 40a-41a. Those HDDs were then sold all over the world. App., *infra*, 11a. Some were imported into the United States by Seagate LLC, but most never touched U.S. soil. *Id.* And with minor exceptions not relevant here, Seagate entities did not themselves import SAs into the United States at all. *Id.* at 8a n.2.[1]

2. NHK Spring's Plea Agreement

In 2019, NHK Spring pled guilty to conspiring to fix the prices of SAs sold between 2008 and 2016. 3 C.A. E.R. 308. NHK Spring acknowledged that it "sold foreign-manufactured HDD suspension assemblies outside the United States for incorporation into products—namely, hard disk drives—that were sold in, or for delivery to, the

[1] As the panel explained, "[a] few SAs are directly imported for testing and product development purposes." App., *infra*, 8a n.2. Petitioners did not move for summary judgment with respect to those SAs, though, and they "are not at issue in this appeal." *Id.*

United States." 3 C.A. E.R. 312. NHK Spring agreed that some of those sales "had a direct, substantial, and reasonably foreseeable effect on interstate and import trade and commerce." *Id.* The plea agreement did not specify the identity and scope of the sales at issue, though, nor did it specify which purchasers' claims fell within or were proximately caused by the conspiracy's U.S. effects.

C. Procedural Background

1. Following NHK Spring's plea, Respondents filed this case in the U.S. District Court for the Northern District of California, asserting claims under federal and state antitrust laws based on their direct purchases of SAs from Petitioners. 2 C.A. S.E.R. 257. Respondents also filed suit in the Yokohama District in Japan concerning the same alleged conduct and purchases. *See Seagate Tech. LLC v. NHK Spring Co., Ltd.*, Rei 4 (wa) no. 450 (Yokohama Chihō Saibansho [Yokohama Dist. Ct.] Feb. 9, 2022). In addition, several other civil actions were filed against Petitioners in the United States and abroad. *See In re Hard Disk Drive Suspension Assemblies Antitrust Litig.*, No. 19-md-2918 (N.D. Cal.) (certified classes of U.S. resellers and end-users); *Cheung v. NHK Spring Co., Ltd.*, No. S-1910612 (BCSC, Vancouver Registry) (Canadian purchasers); CivA (DC Lod) *Tzahor v. TDK Corp.*, No. 58318/11 (2021) (Isr.) (Israeli purchasers).

In August 2022, Petitioners moved for partial summary judgment in this case, explaining that the FTAIA bars Respondents' claims insofar as those claims arise from direct purchases of SAs that took place outside the United States—i.e., the direct purchases that Seagate Thailand and Seagate Singapore made abroad. 7 C.A. E.R. 1147. After initially granting Petitioners' motion in part, the district court reconsidered its decision and granted the motion in full. *See* App., *infra*, 32a-49a, 50a-

62a. The court explained that purchases in Asia by Seagate Thailand and Seagate Singapore qualified as trade or commerce with foreign nations that presumptively fell outside the reach of the Sherman Act. *Id.* at 41a; *see* 15 U.S.C. § 6a ("Sections 1 to 7 of this title shall not apply to conduct involving trade or commerce (other than import trade or import commerce) with foreign nations . . . ."). The court further explained that to bring Petitioners' conduct back within the reach of the Sherman Act, Respondents would need to show that the FTAIA's "domestic effect[s]" exception applied. App., *infra*, 55a.[2] That is, Respondents would need to show that Petitioners' alleged price-fixing conspiracy "ha[d] a direct, substantial, and reasonably foreseeable effect . . . on trade or commerce which is not trade or commerce with foreign nations," and that "such effect g[ave] rise to [Respondents'] claim under the" Sherman Act. 15 U.S.C. § 6a(1)(A), (2).

The district court found that Respondents could not make that showing. As the court explained, Respondents' theory was that Petitioners' alleged price-fixing conspiracy had domestic effects because it resulted in higher prices being paid by U.S. customers. App., *infra*, 56a. The problem with that theory, the court observed, was that higher U.S. prices could not have given rise to Respondents' claims, because Respondents' "claims are based on . . . purchases of SAs in, respectively, Thailand and Singapore, which purchases preceded the purchases by any customer in the United States." *Id.*

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[2] The court also considered and rejected Respondents' arguments that Petitioners' conduct could be brought back within the reach of the Sherman Act because (i) it involved import trade or import commerce, App., *infra*, 55a; or (ii) Seagate Thailand was Seagate LLC's agent, *id.* at 39a-41a.

The district court also rejected Respondents' argument that the alleged conspiracy's impact on the parties' negotiations in the United States was a qualifying "effect . . . on trade or commerce which is not trade or commerce with foreign nations," from which the court should assess causation on the prices that Seagate Thailand and Seagate Singapore paid for SAs abroad. *See id.* at 57a-58a. In so holding, the court relied on the Seventh Circuit's decision in *Motorola Mobility LLC v. AU Optronics Corp.*, 775 F.3d 816 (7th Cir. 2015), which recognized that a plaintiff cannot recover for price-fixed purchases that its foreign affiliates make abroad, even where the plaintiff and defendant negotiated and agreed upon those prices from a location in the United States. App., *infra*, 58a.

2. Respondents appealed, and the Ninth Circuit vacated the district court's orders. *Id.* at 1a-31a.[3] As relevant, the panel held that the district court had erred in its analysis of the FTAIA's domestic effects exception.[4] Beginning with the "first prong" of that exception—i.e., the requirement that the defendant's conduct have "a direct, substantial, and reasonably foreseeable effect . . . on trade or commerce which is not trade or commerce with

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[3] Although Petitioners moved for, and the district court granted, only partial summary judgment, Respondents sought certification of the district court's orders under 28 U.S.C. § 1292(b). 2 C.A. E.R. 46.

[4] Like the district court, the panel held that Petitioners' conduct did not involve "import trade or commerce." App., *infra*, 17a (alteration omitted) (quoting 15 U.S.C. § 6a). The panel also rejected Respondents' argument that the FTAIA did not apply at all, because this case involves price-fixing conduct that allegedly took place in the United States. *See id.* at 16a n.3. And the panel affirmed the district court's determination that Seagate Thailand was not an agent of Seagate LLC, while remanding for further consideration of Respondents' indirect purchaser theory of liability. *See id.* at 30a-31a.

foreign nations," 15 U.S.C. § 6a(1)(A)—the panel held that Petitioners' alleged price-fixing conduct had a domestic effect because NHK Spring admitted in its plea agreement that at least some price-fixed SAs were sold directly into the United States. App., *infra*, 21a-22a. The panel acknowledged that this domestic effect "did not directly injure Seagate Technology LLC because it did not buy the suspension assemblies here—its foreign entities did abroad." *Id.* at 22a. The panel nevertheless concluded that "Seagate need not show that it was injured directly from the domestic effect of NHK's anticompetitive conduct here in America under the first prong of the domestic effects exception." *Id.* at 23a.

Moving to the "second prong" of the domestic effects exception—i.e., the requirement that the domestic effect "gives rise to [the plaintiff's] claim under the provisions of" the Sherman Act, 15 U.S.C. § 6a(2)—the panel stated that Respondents' claim "appears to be viable because of the unique nature of how the master Product Supply Agreement and the quarterly RFQs . . . set the U.S. prices for suspension assemblies, which in turn set the prices of the foreign suspension assembly purchases." App., *infra*, 24a. The panel appeared to concede (again) that the effect it had focused on in analyzing the first prong—higher SA prices paid by U.S. direct purchasers—was irrelevant at the second prong, because "Seagate Technology LLC . . . did not buy the suspension assemblies here." *Id.* at 22a. But the panel nevertheless concluded that Respondents could satisfy the second prong of the domestic effects exception by relying on their negotiations with Petitioners in the United States, reasoning that those domestic negotiations gave rise to the asserted claims because they

set the prices at which Seagate Thailand and Seagate Singapore purchased SAs in Asia. *See id.* at 23a-26a.[5]

The panel acknowledged that the Seventh Circuit had reached a different result in *Motorola*, which held that the FTAIA barred materially identical claims based on foreign purchases of components whose prices were set by negotiations in the United States. *Id.* at 26a-27a. The panel dismissed *Motorola*, though, on the ground that the Seventh Circuit "did not substantially grapple with the FTAIA's language or the case law construing that statutory text." *Id.* at 27a. The panel also downplayed "the international comity concerns raised in *Motorola*" regarding the expansion of the extraterritorial reach of U.S. antitrust law, asserting that "[i]nternational comity may have to be cast aside when foreign misconduct harms Americans." *Id.* at 29a; *see also id.* at 29a n.6 (noting that although "Americans will not directly reap the benefits of any damages award in this case . . . the deterrent effect . . . will still benefit the United States"). In focusing on the need for deterrence of alleged harms to Americans, however, the panel made no mention of the separate civil actions brought against Petitioners by U.S. resellers and end-users, in which the Northern District of California had recently certified multiple plaintiff classes. *See In re Hard Disk Drive Suspension Assemblies Antitrust Litig.*, No. 19-md-2918 (N.D. Cal. Jan. 10, 2025), ECF No. 1194.

Finally, the panel conceded that "[o]pening our federal courts to an injury like this one may seem extraordinary at first blush: After all, a foreign company bought a price-fixed good from another foreign company

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[5] The panel noted that there was some uncertainty in the record as to "whether the post-RFQ prices truly set and limited what the foreign subsidiaries could pay." App., *infra*, 26a. The panel remanded to the district court to assess that issue in the first instance. *Id.*

abroad. Why should that foreign company have access to our courts based on our laws?" App., *infra*, 26a. The panel nevertheless concluded that it was appropriate to allow Respondents' claims to proceed, based on what it perceived to be the "unique scenario" presented by this case. *Id.* at 29a.

REASONS FOR GRANTING THE PETITION

In holding that domestic price negotiations are sufficient by themselves to bring foreign sales within the scope of the Sherman Act, the decision below expressly broke from the Seventh Circuit's decision in *Motorola Mobility LLC v. AU Optronics Corp.*, 775 F.3d 816 (7th Cir. 2015), which reached the opposite conclusion on materially identical facts. The decision below is also wrong. Negotiations over the terms of foreign sales are not "effect[s] . . . on trade or commerce which is not trade or commerce with foreign nations." 15 U.S.C. § 6a(1)(A). Any injuries to downstream consumers allegedly suffered in the United States, moreover, cannot "give[] rise to" antitrust claims by manufacturers like Respondents who purchased components overseas at an earlier stage of the supply chain—particularly where, as here, many of the allegedly price-fixed components never entered the United States at all. 15 U.S.C. § 6a(1)-(2). If left uncorrected, the Ninth Circuit's decision will open the floodgates to litigation concerning wholly foreign transactions, a consequence that the panel itself recognized would be "extraordinary." App., *infra*, 26a. This Court should therefore grant a writ of certiorari and reverse, reaffirming the comity-based limitations on the international reach of U.S. antitrust law that Congress sought to impose through the FTAIA.

I. THE NINTH CIRCUIT EXPRESSLY BROKE FROM THE SEVENTH CIRCUIT'S DECISION IN *MOTOROLA*

In the decision below, the Ninth Circuit expressly rejected the Seventh Circuit's decision in *Motorola*. That conflict warrants this Court's intervention.

1. In *Motorola*, the Seventh Circuit considered an antitrust action identical to this one in all material respects. There, as here, the plaintiff (Motorola) was in the business of importing electronic goods into the United States. 775 F.3d at 817. There, as here, the plaintiff brought price-fixing claims against foreign manufacturers—some of whom were convicted of price fixing—based on component parts that foreign affiliates had purchased abroad. *Id.* And there, as here, the plaintiff argued that it could assert claims under U.S. antitrust law—even though the component parts had been purchased abroad—because its "subsidiaries issued purchase orders at the price and quantity determined by Motorola in the United States." *Id.* at 822 (internal quotation marks omitted); *see id.* (explaining that Motorola had "told the subsidiaries how much they could pay the cartel sellers for the panels"). Specifically, Motorola contended that "the approval of a single, artificially-inflated LCD panel price in the United States . . . proximately caused all of Motorola's damages, because that same artificially-inflated price applied wherever and whenever a Motorola facility placed a purchase order and paid for a panel." *Id.* at 823-24.

The Seventh Circuit rejected that argument, holding that the FTAIA barred Motorola from seeking relief based on the component purchases that its foreign subsidiaries made abroad. *See id.* at 819. In doing so, the court assumed that the defendants' conduct satisfied the

first prong of the domestic effects test—that is, that it had "a direct, substantial, and reasonably foreseeable effect on domestic commerce"—because a portion of the LCD panels that the defendants sold abroad were incorporated into cellphones that Motorola imported and sold into U.S. commerce. *Id.* The court concluded, though, that Motorola's claim failed as a matter of law on the second prong. As the court explained, "[w]hat trips up Motorola's suit is the [FTAIA's] requirement that the effect of anticompetitive conduct on domestic U.S. commerce give rise to an antitrust cause of action." *Id.* (citing 15 U.S.C. § 6a(2)). Because "the cartel-engendered price increase in the components and in the price of cellphones that incorporated them occurred entirely in foreign commerce," Motorola's claims arose from effects on foreign commerce, not effects on domestic commerce. *Id.* And it made no difference that the prices paid for the components abroad had been "'determined by Motorola in the United States'" following "'manipulated . . . price negotiations'" with the defendants because the commerce at issue in those negotiations was still "foreign commerce." *Id.* at 819, 822.

The Seventh Circuit emphasized the importance of the question before it. A ruling in Motorola's favor, it explained, would "enormously increase the global reach of the Sherman Act, creating friction with many foreign countries and resentment at the apparent effort of the United States to act as the world's competition police officer, a primary concern motivating the Foreign Trade Antitrust Improvements Act." *Id.* at 824 (internal quotation marks and alteration omitted). The court observed that "[n]othing is more common nowadays than for products imported to the United States to include components that the producers bought from foreign manufacturers." *Id.* And "[s]ome of those foreign

manufacturers are located in countries that . . . are more lenient than ours, especially when it comes to remedies." *Id.* To nevertheless subject those manufacturers to U.S. antitrust laws based solely on the fact that certain terms of the foreign transactions were negotiated and agreed to in the United States, the court explained, would be to engage in "unjustified interference with the right of foreign nations to regulate their own economies." *Id.*

2. The circumstances here are materially indistinguishable from the circumstances in *Motorola*. Both cases involve attempts to recover under the FTAIA for component purchases abroad based on allegations that the foreign purchases relied on prices set by negotiations in the United States. There was accordingly no way for the panel to rule for Respondents without breaking from the Seventh Circuit.

Respondents recognized as much in their briefing below. Respondents conceded that the Seventh Circuit in *Motorola* had adopted the same position as the district court here, holding—in Respondents' words—that "the FTAIA's 'effects exception' does not apply in a price-fixing case when the supply terms (*e.g.*, design, price, volume) for the transactions are bid, negotiated, and agreed to inside the United States, but the products are paid for and initially delivered outside the country." 2 C.A. E.R. 47. Respondents argued, however, that the Ninth Circuit "should not follow [*Motorola*] because that ruling disregards the FTAIA's text and controlling Supreme Court precedent." Resp. C.A. Br. 41.

The Ninth Circuit panel followed Respondents' lead, expressly rejecting the Seventh Circuit's analysis in *Motorola* on the ground that it "did not substantially grapple with the FTAIA's language or the case law construing that statutory text." App., *infra*, 27a. Whereas

the Seventh Circuit had held that U.S.-based negotiations were not enough to give rise to Sherman Act claims when "the immediate victims of the price fixing were" located overseas, 775 F.3d at 820 (citing *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 173-75 (2004)), the panel here rejected that rule and held that Respondents could recover for "the foreign injury suffered by Seagate Thailand and Seagate Singapore because they adopted . . . rigged U.S. pric[es] in buying the suspension assemblies," App., *infra*, 28a.

The panel also disagreed with the Seventh Circuit about the consequences of expanding the Sherman Act's extraterritorial reach. Whereas the Seventh Circuit warned that "rampant extraterritorial application of U.S. law 'creates a serious risk of interference with a foreign nation's ability independently to regulate its own commercial affairs,'" *Motorola*, 775 F.3d at 824 (quoting *Empagran*, 542 U.S. at 165), the panel here concluded that "the international comity concerns raised in *Motorola* are addressed (or perhaps outweighed) by the price-fixing's substantial impact on United States commerce," App., *infra*, 29a. Indeed, the panel wrote that "[i]nternational comity may have to be cast aside when foreign misconduct harms Americans." *Id.* And the panel reached that conclusion notwithstanding the fact that here—as in *Motorola*—there were separate actions by downstream U.S. purchasers proceeding against Petitioners for their alleged price-fixing activities, which could allow recovery on U.S.-based claims entirely independently of Respondents' suit focused on foreign harms. *See* p. 10, *supra*; *see also In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. 3:07-md-1827 (N.D. Cal.).[6]

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[6] *See also* p. 10, *supra* (noting Japanese, Canadian, and Israeli cases pending against Petitioners).

Despite expressing disagreement with the Seventh Circuit on multiple issues, the panel sought to downplay any direct conflict by asserting that *Motorola* "ultimately was decided based on standing rather than the FTAIA." App., *infra*, 26a-27a. That description, however, is plainly incorrect—which presumably explains why even Respondents never sought to distinguish *Motorola* on that ground. As explained above, the Seventh Circuit squarely held that the FTAIA barred Motorola's claim because Motorola could not satisfy the second prong of the domestic effects exception. *See* 775 F.3d at 819 ("What trips up Motorola's suit is the statutory requirement that the effect of anticompetitive conduct on domestic U.S. commerce give rise to an antitrust cause of action." (citing 15 U.S.C. § 6a(2))). While the court *also* held that U.S.-based Motorola LLC lacked "antitrust standing," it did so only after concluding that Motorola's direct purchaser claims brought on behalf of its foreign subsidiaries failed to satisfy the FTAIA's domestic effects test. *See id.* at 821; *see also Motorola Mobility, Inc. v. AU Optronics Corp.*, No. 09-cv-6610, 2014 WL 258154, at *1 (N.D. Ill. Jan. 23, 2014) (explaining that "Motorola's foreign affiliates have assigned their claims to Motorola").

The Seventh Circuit made clear, moreover, that Motorola's claim would have been barred even if Motorola and its foreign affiliates were treated as a single purchaser—thereby eliminating any antitrust standing problems—because that single company would have "bought the price-fixed components abroad," such that "[t]he sales to consumers would therefore have been the first sales in the United States—the first in domestic commerce." 775 F.3d at 823. There is accordingly no way to read the Seventh Circuit's decision as being "decided based on standing rather than the FTAIA." App., *infra*, 26a-27a.

In sum, the panel's decision is irreconcilable with *Motorola* in both reasoning and result. This Court's intervention is necessary to resolve that inter-circuit disagreement.

II. THE DECISION BELOW CONFLICTS WITH THE TEXT OF THE FTAIA AND WITH THIS COURT'S DECISION IN *EMPAGRAN*

The panel's decision is also wrong. The plain text of the FTAIA, Congress's purposes in adopting that text, and this Court's precedent all make clear that the mere presence of negotiations in the United States is not sufficient to trigger application of U.S. antitrust law to sales abroad between a foreign seller and a foreign buyer. In fact, Congress's desire to exempt U.S. entities doing business abroad from liability in such scenarios is precisely what motivated the FTAIA's passage in the first place.

1. The domestic effects exception permits antitrust suits arising from foreign commerce only where the defendant's conduct first "has a direct, substantial, and reasonably foreseeable effect . . . on trade or commerce which is not trade or commerce with foreign nations," and "such effect" then "gives rise to" the plaintiff's claim. 15 U.S.C. § 6a(1)-(2). The panel held that the exception could be satisfied here because "the higher U.S. prices for suspension assemblies resulting from NHK's price-fixing would have directly caused Seagate's foreign subsidiaries to overpay." App., *infra*, 24a. By "higher U.S. prices," the panel necessarily meant the price terms set by the quarterly RFQs that were partially negotiated in the United States.[7] But those price terms cannot bring

[7] As the panel recognized, Respondents "did not buy the suspension assemblies here [in the United States]." App., *infra*, 22a. Rather,

Respondents' claims within the domestic effects exception for two fundamental reasons.

First, the price terms set by the quarterly RFQs were not domestic effects. As noted above, the domestic effects exception applies in relevant part only if the plaintiff's claim arises from "a direct, substantial, and reasonably foreseeable effect . . . on trade or commerce *which is not trade or commerce with foreign nations*." 15 U.S.C. § 6a(1)(A) (emphasis added). Even if (counterfactually) quarterly price negotiations between Petitioners and Respondents had taken place entirely in the United States, those negotiations *exclusively* concerned "trade or commerce with foreign nations," because the price terms that the parties set were for SAs that Seagate Thailand and Seagate Singapore would purchase for delivery abroad from a Japanese supplier. *Id.* Put differently, an effect on the price negotiated for transactions between companies in Singapore, Thailand, and Japan is not an effect "on trade or commerce which is not trade or commerce with foreign nations," *id.*, because the *commerce* at issue is unquestionably "commerce with foreign nations," *id.*, regardless of where the *negotiations* occur.

As discussed above, the Seventh Circuit recognized in *Motorola* that price-fixing and price-setting activities in the United States cannot by themselves satisfy the domestic effects exception if the sales at issue exclusively involve foreign commerce. *See* pp. 16-18, *supra*. This Court's decision in *Empagran* confirms that point as well. There, the Court held that the FTAIA barred antitrust

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"only the finished hard disk drives [were] directly imported into the United States." *Id.* at 8a. While "[a] few SAs [were] directly imported for testing and product development purposes[,] these parts are not at issue in this appeal." *Id.* at 8a n.2.

claims brought by foreign purchasers of vitamin products—even though "some of the anticompetitive price-fixing conduct alleged" against the vitamin manufacturers and distributors "took place in America"—because the foreign effects on the plaintiffs were independent of any domestic effects of the defendants' conduct. *See* 542 U.S. at 163-66 (emphasis omitted). The Court explained that "the higher foreign prices of which the foreign plaintiffs here complain are not the consequence of any domestic anticompetitive conduct that Congress sought to forbid," because Congress did not seek to forbid domestic anticompetitive conduct that "causes independent foreign harm." *Id.* at 165-66 (emphasis omitted). In other words, where a plaintiff's claim rests on foreign harm that occurred prior to (or otherwise independently from) any harm to U.S. commerce, the FTAIA forecloses recovery on that claim under the Sherman Act without regard to where the price fixing or price setting may have occurred. *See id.*

Second, but relatedly, the negotiations resulting in the quarterly RFQs are not "effects" at all. Rather, they are part of the alleged conduct. Indeed, the FTAIA explicitly distinguishes between "conduct" and "effect." 15 U.S.C. § 6a(1)-(2). "Conduct," within the meaning of the FTAIA, is activity that could—absent the FTAIA—give rise to liability under other parts of the Sherman Act. That includes the formation of a "contract, combination, . . . or conspiracy, in restraint of trade or commerce." 15 U.S.C. § 1.

The "effects" to which the FTAIA refers, by contrast, must be something other than contracts, combinations, or conspiracies to restrain or monopolize trade. *See Pulsifer v. United States*, 601 U.S. 124, 149 (2024) ("In a given statute, . . . different terms usually have different

meanings."). Rather, they are the "effect[s] of a kind that antitrust law considers harmful" or, put differently, the "antitrust injury that foreign anticompetitive conduct has caused." *Empagran*, 542 U.S. at 162, 165. As this Court has explained, the FTAIA draws a distinction between (i) anticompetitive conduct and (ii) the effects of that conduct on U.S. commerce. In *Empagran*, for example, the Court noted that while "some of the anticompetitive price-fixing conduct alleged here took place in America," that provided no basis on which to allow foreign plaintiffs to recover for higher foreign prices because Congress "did not seek to forbid any such conduct . . . when that conduct causes foreign harm." *Id.* at 165-66 (emphasis omitted). The Department of Justice and Federal Trade Commission have likewise taken the position that domestic negotiations can provide evidence that a subsequent domestic effect was foreseeable—a position that would make no sense if the negotiations were domestic effects themselves. *See* U.S. Dep't of Justice & Fed. Trade Comm'n, *Antitrust Guidelines for International Enforcement and Cooperation* 22-24 (Jan. 13, 2017). The upshot is that setting prices in the United States for overseas purchases is a form of domestic *conduct*—and the Sherman Act does not authorize recovery for the foreign effects of that conduct.

2. Separate from its discussion of the negotiations in the United States, the panel also concluded that the first prong of the domestic effects test was satisfied because direct purchasers other than Respondents paid higher prices in the United States as a result of Petitioners' anticompetitive conduct. App., *infra*, 20a-23a. That conclusion cannot justify Respondents' claims here, though, because there is no plausible argument that such prices gave rise to *Respondents'* injuries, which instead resulted from purchases by Seagate Thailand and Seagate

Singapore abroad. Indeed, the panel appeared to acknowledge as much, writing that "the domestic effect from NHK's anticompetitive conduct did not directly injure Seagate Technology LLC because [Seagate] did not buy the suspension assemblies here—its foreign entities did abroad." *Id.* at 22a. And Respondents have also recognized that they cannot claim that Seagate Thailand and Seagate Singapore were injured by higher prices that customers in the United States paid for SAs. *See* Resp. C.A. Br. 45 (approvingly citing the Ninth Circuit's decision in *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546 F.3d 981 (9th Cir. 2008), as rejecting "an 'arbitrage' theory that 'defendants could not have maintained' high prices in the United Kingdom 'without also fixing the prices in the United States'" (alteration omitted) (quoting *DRAM*, 546 F.3d at 987)). Even assuming that Petitioners' conduct led to increased prices to other direct purchasers in the United States, Respondents cannot bring a claim based on the independent foreign effects of the alleged conduct.

Empagran is clear on that point, too. In holding that the FTAIA barred antitrust claims based on foreign injuries that were independent of the domestic effects of the defendants' conduct, the Court explained that it was obligated to construe the FTAIA "to avoid unreasonable interference with the sovereign authority of other nations," because "America's antitrust laws, when applied to foreign conduct, can interfere with a foreign nation's ability independently to regulate its own commercial affairs." 542 U.S. at 164-65. Although such interference might be justified insofar as it "reflect[s] a legislative effort to redress *domestic* antitrust injury," the Court reasoned that Congress's primary goal in passing the FTAIA was "to *release* domestic (and foreign) anticompetitive conduct from Sherman Act constraints

when that conduct causes foreign harm." *Id.* at 165-66. Accordingly, "any independent domestic harm the foreign conduct causes here has, by definition, little or nothing to do with the matter." *Id.* at 166. It is only when the foreign harm results in downstream effects on U.S. commerce that the domestic effects exception comes into play for plaintiffs injured by those U.S. effects.

Relatedly, Respondents have not argued that higher prices of *HDDs* in the United States gave rise to the higher prices that Seagate Thailand and Seagate Singapore paid for SAs abroad. And for good reason. As the Seventh Circuit recognized in *Motorola*, the higher price of finished products in the United States is a result of higher prices paid abroad for components at earlier stages of the supply chain, rather than the other way around. *See* 775 F.3d at 819. A plaintiff that purchased component parts abroad therefore cannot claim that its injury arises from higher prices for finished products in the United States. Indeed, to allow Respondents' claims to proceed on such a theory would conflict with decisions of other courts of appeals that have rejected claims under the FTAIA when "the direction of causation runs the wrong way." *Lotes Co. v. Hon Hai Precision Indus. Co.*, 753 F.3d 395, 414 (2d Cir. 2014).

III. THE QUESTION PRESENTED IS IMPORTANT, AND THIS CASE IS AN IDEAL VEHICLE TO RESOLVE IT

This Court's correction of the Ninth Circuit's faulty analysis is critically important. If allowed to stand, the decision below will open the floodgates to litigation concerning wholly foreign transactions, permitting foreign plaintiffs to recover under U.S. antitrust law for purchases of products that never touch American soil. No prior court has permitted such claims to proceed, and doing so here

would expose U.S. companies operating abroad to liability for transactions worldwide, while deterring commercial activity in the United States.

The panel suggested that this case presents "a unique scenario." App., *infra*, 29a. There is nothing unique, though, about multinational companies negotiating contract terms in the United States for transactions that will be executed entirely abroad. The foreign subsidiaries in *Motorola* are a perfect example, as they "issued purchase orders at the price and quantity determined by Motorola in the United States." 775 F.3d at 822. And myriad recent cases follow the same fact pattern. *See, e.g.*, *In re Capacitors Antitrust Litig.*, No. 14-cv-3264, 2018 WL 4558265, at *6-7 (N.D. Cal. Sept. 20, 2018); *In re Optical Disk Drive Antitrust Litig.*, No. 10-md-2143, 2017 WL 11513316, at *6 (N.D. Cal. Dec. 18, 2017); *Sun Microsystems Inc. v. Hynix Semiconductor Inc.*, 608 F. Supp. 2d 1166, 1188 (N.D. Cal. 2009).

As *Motorola* explained, moreover, large-scale multinational corporations almost invariably "utilize global supply chains and foreign [procurement] subsidiaries to effectively compete in the global economy." 775 F.3d at 824. Given that economic reality, "[t]he mind boggles at the thought of the number of antitrust suits" that will be brought in courts in the Ninth Circuit based on overseas transactions between foreign buyers and foreign sellers if U.S.-based negotiations, without more, are treated as sufficient to satisfy the domestic effects exception. *Id.* at 826. The result will not only divert U.S. judicial resources to police wholly foreign disputes that involve no harm to U.S. consumers, but also affirmatively harm U.S.-based businesses by subjecting their overseas transactions to U.S. antitrust standards (and remedies) from which their competitors abroad are immune.

Unless corrected, the decision below would also allow companies to "pick and choose from the benefits and burdens of United States corporate citizenship," availing themselves of the Sherman Act's aggressive treble-damages provisions even as they establish foreign subsidiaries (and build foreign supply chains) to avoid American tax and labor laws. *Id.* at 822. Respondents are a case in point: They have spent decades devising an international network of separately incorporated entities in order to avoid billions of dollars in U.S. taxes and the legal obligations that come with U.S. citizenship. *See* 1 C.A. S.E.R. 27 n.7. Having made that choice, they cannot insist on applying U.S. antitrust law to their alleged injuries overseas, rather than accepting the antitrust regimes in the countries in which they have chosen to build their supply chains.

Indeed, by focusing on the location of negotiations themselves, rather than the location of the trade or commerce being negotiated, the panel frustrated Congress's assurances "to American exporters (and to firms doing business abroad)" that they may "enter[] into business arrangements . . . however anticompetitive, as long as those arrangements adversely affect only foreign markets." *Empagran*, 542 U.S. at 161. Contrary to Congress's intent, the decision below threatens to subject such companies to liability unless they conduct all negotiations abroad. And it risks precisely the kind of "unreasonable interference with the sovereign authority of other nations" that Congress sought to avoid. *Id.* at 164.

This Court should intervene before the Ninth Circuit's expansive view of extraterritorial application can further harm foreign affairs and domestic commerce. And this case is an ideal vehicle in which to do so. The decision below turned entirely on the panel's assumption that

domestic negotiations are sufficient to bring foreign sales within the Sherman Act's reach. While the panel instructed the district court to evaluate on remand the connection between the domestic negotiations and the foreign injury, App., *infra*, 26a, that factual inquiry is wholly irrelevant under a proper application of the FTAIA. Rather, domestic negotiations, even where they unambiguously set foreign prices, cannot give rise to an antitrust claim unless and until they have an effect on domestic commerce. Even then, the FTAIA authorizes only claims by plaintiffs whose alleged injuries were proximately caused by that domestic effect. *See Empagran*, 542 U.S. at 161. Because the injuries that Respondents rely on here rest entirely on alleged effects on *foreign* commerce, correcting the Ninth Circuit's legal error will conclusively resolve the asserted claims in Petitioners' favor.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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