

APPENDIX

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APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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

Plaintiffs-Appellants,

v.

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

Defendants-Appellees.

No. 24-4470

D.C. No.
3:19-md-02918-MMC

OPINION

Appeal from the United States District Court
for the Northern District of California
Maxine M. Chesney, District Judge, Presiding

Argued and Submitted June 6, 2025
San Francisco, California

Filed January 8, 2026

Before: Consuelo M. Callahan and Kenneth K. Lee,
Circuit Judges, and Scott H. Rash, District Judge.*

Opinion by Judge Lee

SUMMARY**

Antitrust

The panel vacated the district court's partial summary judgment in favor of defendants NHK Spring Co., Ltd., et al. and remanded for further proceedings in an antitrust action brought under the Sherman Act by Seagate Technology LLC, an American company, and two Seagate foreign entities.

The Seagate plaintiffs sought to bring antitrust claims against Japanese-owned NHK for unlawful price-fixing. In a separate federal criminal proceeding, NHK pleaded guilty to conspiring with its competitors to fix the price of suspension assemblies sold in the United States and elsewhere in the world. Seagate's foreign entities bought those price-fixed suspension assemblies, which were incorporated into Seagate's hard drives, outside the United States. The district court ruled that the Sherman Act did not extend to such foreign injury.

The panel held that Seagate alleged a viable theory of extraterritorial reach under the Foreign Trade Antitrust

* The Honorable Scott H. Rash, United States District Judge for the District of Arizona, sitting by designation.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Improvements Act, which provides that U.S. antitrust laws can apply, even if an injury occurs beyond U.S. borders, if the anticompetitive conduct (1) involves goods imported into the United States that Americans buy (the “import commerce” exclusion) or (2) has a direct effect on domestic commerce that in turn causes the foreign antitrust injury to the plaintiff (the “domestic effects” exception). The panel held that the import commerce exclusion did not apply because the suspension assemblies were not directly imported into the U.S. But under the domestic effects exception, Seagate sufficiently alleged that NHK’s price-fixing in the U.S., as reflected in a master product supply agreement negotiated in the U.S., led to the domestic harm of higher prices for the suspension assemblies in the U.S., and that effect also directly caused an antitrust injury abroad because Seagate’s foreign entities overpaid for the suspension assemblies based on the inflated U.S. price.

The panel remanded to the district court to determine whether Seagate adduced sufficient evidence of proximate cause to survive summary judgment.

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OPINION

LEE, Circuit Judge:

American antitrust laws broadly prohibit anticompetitive conduct and authorize private parties to seek treble damages. Congress, however, largely closed our courthouse doors to antitrust claims based on injuries outside the United States. But it carved out two narrow exceptions under the Foreign Trade Antitrust Improvements Act (FTAIA). 15 U.S.C. § 6a. U.S. antitrust laws can still apply—even if the injury occurs beyond our borders—if the anticompetitive conduct (1) involves goods imported into the United States that Americans buy (the “import commerce” exclusion) or (2) has a direct effect on domestic commerce that in turn causes the foreign antitrust injury to the plaintiff (the “domestic effects” exception).

In an increasingly globalized economy, it can sometimes be thorny, as in this case, to tease out when these narrow statutory provisions allow extraterritorial reach of our antitrust laws. Seagate Technology LLC (an American company based in California) and two Seagate foreign entities (Seagate Thailand and Seagate Singapore) argue that they can bring antitrust claims against Japanese-owned NHK Spring Co., Ltd. for unlawful price-fixing. In a separate federal criminal proceeding, NHK pleaded guilty to conspiring with its competitors to fix the price of “suspension assemblies” sold in the United States and elsewhere in the world. But Seagate’s foreign entities bought those price-fixed suspension assemblies—which are incorporated into Seagate’s hard drives—outside the United States. The district court thus granted partial summary judgment for NHK, ruling that the Sherman Act did not extend to such foreign injury.

We vacate the district court’s order because Seagate¹ has alleged a viable theory of extraterritorial reach under the FTAIA. According to Seagate’s complaint, NHK’s price-fixing scheme was reflected in a master product supply agreement negotiated in the United States with Seagate Technology LLC. That agreement reflected an artificially high price for suspension assemblies. Then this NHK-Seagate Technology LLC agreement in turn allegedly set the pricing parameters for Seagate’s foreign entities because they were obligated to accept those (fixed) prices in the agreement. Put another way, NHK’s price-fixing in the U.S. led to domestic harm (*i.e.*, higher prices for the suspension assemblies in the United States), and that effect also directly caused an antitrust injury abroad (because Seagate’s foreign entities overpaid for the suspension assemblies based on the inflated U.S. price). We, however, remand for the district court to determine whether Seagate has adduced sufficient evidence of proximate cause to survive summary judgment.

BACKGROUND

I. Factual Background

A. Seagate foreign entities buy SAs from NHK and other suppliers.

Nearly every consumer electronic device needs a way to store data. Many devices—such as computers, gaming consoles, and servers—rely on hard disk drives (HDDs) for bulk storage. Hard disk drives resemble electro-magnetic “filing cabinets” containing several drawers (or

¹ We will use the term “Seagate” to refer to Seagate Technology LLC, Seagate Thailand, and Seagate Singapore collectively. But we will refer to each Seagate entity by its individual name if that distinction is relevant to our discussion.

“platters”) with millions of folders (or “sectors”) storing electronic data.

Seagate Technology LLC, a California-based company, is a leading manufacturer of hard disk drives. But Seagate Technology LLC does not produce all the key components that go into a hard disk drive, including a part called the “suspension assembly” (sometimes called “SA”). Each platter in a hard drive constantly spins to allow the user to access all the data sectors on that platter. A suspension assembly holds a recording head 12 nanometers above a platter turning at 150–170 miles per hour, requiring precision like “a 747 aircraft flying full speed 1/16th of an inch above a [jagged] desert surface.”

Reflecting the global nature of commerce today, a Seagate hard disk drive is built with parts bought and assembled across the world by various Seagate foreign entities. Most of Seagate’s suspension assemblies are bought in Thailand by the Thai entity, Seagate Technology (Thailand) Ltd (“Seagate Thailand”). There, the suspension assemblies are incorporated into another part called a head gimbal assembly. Next, Seagate incorporates the head gimbal assembly into yet another part called a head stack assembly either in Thailand or China. The head stack assemblies are then incorporated into finished hard disk drives in Thailand, China, or Singapore, and all the hard disk drives are shipped to Seagate Singapore International Headquarters Pte. Ltd. (“Seagate Singapore”) for distribution. Seagate Singapore either sells the hard disk drives directly or distributes them to other Seagate entities to sell, such as Seagate Technology LLC in California. In other words,

only the finished hard disk drives are directly imported into the United States.²

Seagate buys its suspension assemblies from a few suppliers. Since the 1980s, the suspension assembly manufacturing industry has consolidated greatly and only two main players remain. One of those is NHK Spring Co., Ltd., a leading Japanese manufacturer of springs and other engineered components like suspension assemblies. During the relevant period, NHK often received “the majority of the Seagate business” for suspension assembly projects, despite being the highest-priced bidder on Seagate’s proposals.

B. NHK rigs suspension assembly prices based on a U.S. agreement.

In July 2019, NHK pleaded guilty to criminal price-fixing under the Sherman Antitrust Act, 15 U.S.C. § 1. From before June 2008 to at least April 2016, NHK engaged in a global conspiracy with another competitor to fix the price of suspension assemblies in the United States and elsewhere. NHK’s officers and employees held meetings with another competitor in which they agreed “to refrain from competing on prices for, fix the prices of, and allocate their respective market shares for[] HDD suspension assemblies.” As part of NHK’s plea agreement, the U.S. Department of Justice sought a criminal fine of \$28.5 million dollars, which was approved by the U.S. District Court for the Eastern District of Michigan. But the government did not seek restitution “in light of the availability of civil causes of action.” *See United States v. NHK Spring Co. Ltd.*, ECF 25 at 8, No. 2:19-cr-20503 (E.D. Mich. Jan. 31, 2020).

² A few SAs are directly imported for testing and product development purposes; these parts are not at issue in this appeal.

NHK's plea agreement explains that suspension assembly suppliers "exchanged . . . pricing information, including anticipated pricing quotes," "and used the exchanged pricing information to inform their negotiations with U.S. and foreign customers that purchased" those parts. The "primary purpose" of this conspiracy was to "fix the prices of [hard disk drive] suspension assemblies sold in the United States and elsewhere." These centralized "pricing quotes" apparently were at the heart of how Seagate sourced suspension assemblies: Importantly for our case, although nearly all of Seagate's suspension assemblies were purchased by its foreign entities abroad, these foreign entities apparently lacked any authority to decide on any terms of purchase, whether price, quantity, or even the timing of their orders. Such parameters all were determined centrally by Seagate Technology LLC's Commodities Management Team ("CMT") in Minnesota. The foreign companies—primarily Seagate Thailand—simply entered orders into their purchase order systems at precisely the times, rates, and prices that CMT instructed them to enter.

Pricing was negotiated by Seagate CMT with suppliers quarterly. Although the master Product Supply Agreements between Seagate Technology LLC and each supplier contained some pricing terms (such as price floors, ceilings, or most-favored-nation provisions), these were average or expected prices—not actual transaction prices. Actual transaction prices were finalized by Seagate's CMT unit each quarter through bidding on an RFQ, or "Request for Quotation." First, Seagate Technology LLC would send a complex, custom grid to each supplier like NHK. The supplier placed its bids across several dimensions, such as prototypes, mass-production price, model, volume band, and program. These RFQ "responses" from suppliers were then

negotiated by Seagate Technology LLC's CMT on U.S. soil, along with the purchase volumes "allocated" to each supplier. Finally, the agreed-upon prices and volumes were sent by Seagate CMT to Seagate Thailand and Singapore to use to purchase suspension assemblies at the appropriate time.

These RFQ responses, called "anticipated pricing quotes" in NHK's plea agreement, also were the chief instrument that NHK would use to fix prices. First, NHK's head of American SA sales would discuss specific proposed RFQ responses for a given Seagate product with his competitors. Next, he would relay the contents of these discussions to top NHK executives in Yokohama, one of whom was later indicted for his role in the conspiracy, and another who candidly explained that NHK would use competitor pricing information "as reference" for its own RFQ responses. Finally, to entrench this process, NHK's head of American SA sales even tried to make a job posting for a position for NHK in Minnesota that included the requirement, "Find out competitor's information, pricing information"—because he "underst[oo]d that collecting competitor pricing information" simply was part of the job. When NHK executives in Yokohama caught wind of this, one of them advised, "Just scratch pricing information on competitors. That you can verbally tell once we hire."

II. Procedural History

Shortly after NHK was sentenced in its criminal case, Seagate sued in the Northern District of California, alleging violations of the Sherman Act, violations of antitrust statutes in Minnesota and California, and common-law breach of contract. Seagate sought treble damages under Section 4 of the Clayton Act, 15 U.S.C. § 15(a), among other relief. Seagate amended its complaint twice, in October 2020 and in April 2021.

While discovery was ongoing, NHK moved for Partial Summary Judgment Regarding Foreign Commerce. NHK alleged that Seagate’s “direct purchaser claims arising from component sales that took place outside the U.S.”—in other words, claims “based on sales of [suspension assemblies] billed and shipped to Seagate Thailand and Singapore”—were barred by the FTAIA. 15 U.S.C. § 6a. The FTAIA bars Sherman Act claims based on conduct involving “trade or commerce with foreign nations,” unless that conduct (1) involves imported goods that Americans buy or (2) “has a direct, substantial, and reasonably foreseeable effect” on U.S. domestic commerce or certain exports and “such effect gives rise to” an independent Sherman Act claim. *Id.* NHK essentially argued that, for example, if a suspension assembly was bought by a Thai subsidiary in Thailand, this qualified as wholly foreign commerce ineligible for Sherman Act relief.

The district court at first agreed with NHK in part. In its May 15, 2023 order, the court found that most of the suspension assemblies purchased by Seagate Thailand and Seagate Singapore never entered the United States at any point. These were indeed “wholly foreign transactions,” the court ruled, ineligible for Sherman Act relief. *In re Hard Disk Drive Suspension Assemblies Antitrust Litig.* (“*In re HDD*”), No. 19-md-02918, 2023 WL 3483242, at *8 (N.D. Cal. May 15, 2023). But about one-third of Seagate’s foreign suspension assembly purchases did eventually enter the U.S. as part of finished hard drives. True, these parts first were integrated into the hard drives overseas, and the FTAIA’s import exclusion only covers conduct involving “import trade or import commerce.” 15 U.S.C. § 6a. But the court held that “the import . . . exclusion can be established without a showing that the defendants *themselves* shipped price-fixed goods into” the U.S. and thus denied summary judgment in part. *Id.* at *6 (emphasis added).

The district court changed direction when asked by NHK to reconsider. First, the court held that the defendant *did* have to directly ship the price-fixed goods into the United States for the import exclusion to apply, and no suspension assemblies were directly shipped to the U.S. here. *In re HDD*, 2023 WL 8007985, at *3 (Nov. 17, 2023 order). Next, the court held that Seagate also could not establish an “effect” on domestic trade or commerce “giv[ing] rise to” an independent Sherman Act claim. *Id.* at *5. Despite the collusive “agreements in the United States . . . whereby the prices for SAs . . . were set,” it was “the overall price-fixing conspiracy [that] proximately caused the effect abroad,” the court held, and not those collusive agreements. *Id.* at *4 (quoting *In re Dynamic Random Access Memory (DRAM) Antitrust Litig.*, 546 F.3d 981, 988 (9th Cir. 2008) (“*In re DRAM*”). The district court thus granted NHK’s partial summary judgment motion in full.

Finally, the court found Seagate’s Second Amended Complaint did not include any “factual allegations that any Seagate Plaintiff indirectly purchased an SA or a product containing an SA.” *Id.* at *5. The court denied leave to amend to add any such “indirect purchaser” claims, *id.* at *6, and it certified the May 15, 2023 and November 17, 2023 orders for interlocutory appeal.

Seagate advances several positions on appeal: (1) that the FTAIA does not apply to any of its claims, (2) that the domestic effects of NHK’s price-fixing proximately caused Seagate’s antitrust injuries abroad, and (3) that at least a subset of its claims qualify as “import trade or commerce.” *See* 15 U.S.C. § 6a. Seagate also argues that Seagate Technology LLC—rather than Seagate Thailand or Seagate Singapore—was the “direct purchaser” of all the suspension assemblies. We have jurisdiction under 28 U.S.C. § 1292(b), and we hold that Seagate’s theory of

domestic effects might be viable. We thus vacate the district court's orders and remand the case.

DISCUSSION

“We review the district court’s grant of summary judgment de novo.” *Desire, LLC v. Manna Textiles, Inc.*, 986 F.3d 1253, 1259 (9th Cir. 2021) (citation omitted). We ask, “viewing the evidence in the light most favorable to the nonmoving party, whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law.” *Delta Sav. Bank v. United States*, 265 F.3d 1017, 1021 (9th Cir. 2001) (citation omitted). We may address “any issue fairly included” within an order certified for appeal, “because it is the order that is appealable, and not the controlling question identified by the district court.” *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1063 (9th Cir. 2004) (citations omitted).

I. The FTAIA places geographic limits on the reach of U.S. antitrust law.

Congress enacted the FTAIA in 1982 in part to clarify United States antitrust jurisdiction over international transactions—a question that had vexed our courts. *See Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 796 n.23 (1993); *United States v. LSL Biotechnologies*, 379 F.3d 672, 677–78 (9th Cir. 2004). The statute provides that the Sherman Act:

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 [Sherman Act].

15 U.S.C. § 6a. In other words, the statute generally bars the Sherman Act from reaching foreign commercial activity, but then adds a caveat allowing jurisdiction for foreign commerce if the anticompetitive conduct (1) involves “import trade or . . . commerce” (*i.e.*, goods imported into the United States and bought by Americans) or (2) sufficiently affects American domestic or (certain) export commerce that in turn proximately causes an antitrust injury. *In re DRAM*, 546 F.3d at 985. These limits ensure that the Sherman Act protects “*American* consumers and *American* exporters, not foreign consumers or producers,” and does not overly burden U.S. companies’ conduct overseas. *Id.* at 986 (citation omitted).

The phrasing of the FTAIA has been called confusing at times, but the general thrust of the statute is clear. It underscores that American courts generally are not open to antitrust injuries occurring overseas, no matter how those injuries arise: “American exporters” and “firms doing business abroad” may “enter[] into business arrangements,” no matter how “anticompetitive, as long as those arrangements adversely affect only foreign markets.” *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 161 (2004) (citing House Report). If a foreign country does not forbid certain anticompetitive conduct, then American companies doing business there can engage in such conduct, even if it would be unlawful here.

Otherwise, we would be disadvantaging American companies competing in foreign markets.

Congress thus did not expand the purview of our antitrust laws to reach “foreign conduct that causes independent foreign harm,” except “where that conduct also causes domestic harm.” *Id.* at 166. As this court has noted, a “transaction between two foreign firms, even if American-owned, should not, merely by virtue of the American ownership, come within the reach of our antitrust laws,” unless specifically provided for by the FTAIA. *United States v. Hui Hsiung*, 778 F.3d 738, 754 (9th Cir. 2015) (quoting House Report).

Indeed, there is good reason to be circumspect when it comes to the Sherman Act’s territorial scope. Beyond merely supporting American firms’ competitiveness abroad, the Supreme Court has highlighted international comity and refraining from interfering in other countries’ regulation of their own economies, at least where no Americans are harmed. *See, e.g., Empagran*, 542 U.S. at 164–68. Even where it is an American-owned company that suffers antitrust injury abroad, so long as that company chose to incorporate overseas, it must take the good with the bad when it comes to that country’s legal regime. As the Seventh Circuit noted, a company cannot “pick and choose from the benefits . . . of [U.S.] corporate citizenship” by availing itself of the Sherman and Clayton Acts while avoiding compliance with United States tax, labor, and environmental requirements by choosing to do business through foreign entities. *Motorola Mobility LLC v. AU Optronics Corp.*, 775 F.3d 816, 822, 827 (7th Cir. 2015); *see also Empagran*, 542 U.S. at 166.

In short, American antitrust protections apply only when there is a direct and proximate link to U.S. harm. Congress provided a few ways to establish that link even where the ultimate antitrust injury occurs overseas.

First, “import trade” and “import commerce” are excluded from the FTAIA’s ban on extraterritorial reach (*i.e.*, the Sherman Act applies). *See* 15 U.S.C. § 6a; *Hui Hsiung*, 778 F.3d at 754. For example, if Japanese carmakers fix prices of their cars in Japan but import them into the United States, then American antitrust laws would cover such conduct under the FTAIA’s “import commerce” exclusion.

Second, the Sherman Act also applies to anticompetitive conduct (a) that has a harmful effect on domestic or (certain) export trade or commerce, and (b) such effect “gives rise to” an independent Sherman Act claim. 15 U.S.C. § 6a(1)–(2); *see Empagran*, 542 U.S. at 174. This is sometimes called the FTAIA’s “domestic effects” exception.

We next turn to whether Seagate meets either the “import commerce” exclusion or the “domestic effects” exception under the FTAIA.³

II. The FTAIA’s “import commerce” exclusion does not apply because the SAs were not directly imported into the United States.

Seagate Thailand and Seagate Singapore bought price-fixed suspension assemblies outside the United States. One way these foreign entities could bring a Sherman Act claim for their purchases is if the suspension assemblies were directly imported into this country. NHK’s price-fixing conduct would then be “conduct

³ Seagate argues that the FTAIA is not relevant here because this case involves price-fixing conduct that took place in the United States, while the FTAIA only covers “wholly foreign” commerce. Not so. The Supreme Court held that the FTAIA applied in *Empagran* even though “some of the anticompetitive price-fixing conduct alleged . . . took place in *America*,” 542 U.S. at 163, 165, and we did the same in *Hui Hsiung*, 778 F.3d at 743, 753.

involving . . . import trade or . . . commerce,” and would be exempt from the FTAIA’s ban on extraterritorial application of U.S. antitrust law. 15 U.S.C. § 6a.

But NHK’s price-fixing conduct did not involve “import trade or . . . commerce” because the suspension assemblies by themselves were not imported into the United States. Only the finished hard disk drives were imported into the United States. Any trade or commerce involving suspension assemblies was thus not “import trade or . . . commerce,” but merely “trade or commerce . . . with foreign nations.” *Id.*

A few factual clarifications may be helpful. First, Seagate does not dispute that none of the suspension assemblies at issue were directly sent to the United States after Seagate bought them. They were first incorporated into hard disk drive components and hard disk drives, which were later imported to the U.S. Second, Seagate also concedes that it does not sell suspension assemblies—indeed, there is no consumer market for them, only for finished hard disk drives.

Seagate mainly relies on two related arguments to argue that the “import exclusion” applies: (1) that a qualifying import need not be a direct import but may come through intermediate steps in “the supply chain,” and (2) that the FTAIA exempts not only import trade and commerce but also “conduct *involving* . . . import commerce,” which, again, includes the broader “supply chain.” Seagate thus argues that the one-third of suspension assemblies that later entered the U.S. as part of finished hard disk drives qualify as imports under the FTAIA, and that NHK’s price-fixing activity constitutes conduct involving import trade.

These arguments are unconvincing. For starters, we usually interpret words as “understood in their ordinary, everyday meanings.” Antonin Scalia & Bryan A. Garner,

READING LAW: THE INTERPRETATION OF LEGAL TEXTS 69 (2012). And we have never defined “import trade or commerce” so broadly as to encompass parts incorporated into the imported goods. Rather, we usually refer to the final end-product, not specific parts within it, when we talk about an imported good. Take smartphones made by the South Korean company Samsung. Many of its phones use batteries or other parts made in third countries such as China or Vietnam. We would normally describe Samsung phones as imported goods from South Korea, despite some internal parts being made elsewhere.

In *Hui Hsiung*, we strongly suggested that the “import trade or commerce” exception in the FTAIA applies only to the final imported end-product. That case dealt with TFT–LCD liquid crystal display panels found in many computer screens. While the case involved both panels that were directly sold into the United States *and* panels first incorporated into computers abroad and then sold here, 778 F.3d at 753, we considered *only* panels that came directly to the U.S. (as panels) in analyzing “import trade,” *see id.* at 755. We repeatedly emphasized that the defendant manufacturers sold panels “to customers in the United States.” *Id.* And most of all, we explained that even though the defendants “did not manufacture any consumer products for importation into the United States,” they “negotiated with United States companies in the United States to sell TFT–LCD panels at [fixed] prices [and] [*i*]mportation of this critical component of various electronic devices is surely ‘import trade or import commerce.’” *Id.* at 756 (emphasis added). In other words, the display panels by themselves were imported as components in *Hui Hsiung*. We thus held that “transactions directly between the U.S. plaintiff purchasers and the defendant cartel members *are* . . . import commerce,” and “goods manufactured abroad and sold in the United States [are] import commerce.” *Id.* at

755 (citations omitted). In contrast here, the suspension assemblies were neither purchased by buyers in the United States nor “sold” in (or into) the United States. In short, mere parts in the international supply chain lack sufficient U.S. nexus to justify the extraterritorial reach of American antitrust laws.

True, *Hui Hsiung* dealt with the sufficiency of an indictment and of evidence to support a jury verdict and thus did not define the outer limits of import trade. *See id.* at 755–56 & n.8. But nothing in the case suggests that it would include activities “up and down the supply chain,” as Seagate suggests. It is also true that suspension assemblies “have no use other than as a hard-drive component,” as Seagate notes. But Seagate fails to explain why this should work in its favor. No circuit authority suggests that every foreign component cartel must have redressability under the FTAIA’s import exclusion, seeing as relief may still be available under the statute’s effects exceptions. *See, e.g., Hui Hsiung*, 778 F.3d at 760.

In sum, Seagate was harmed not in the import trade but several steps up in its manufacturing supply chain—and a “transaction between two foreign firms” typically must seek relief not through the FTAIA’s import commerce exclusion but through the domestic effects exception. *Id.* at 754. We turn to that next.

III. The FTAIA’s “domestic effects” exception might apply and allow Seagate to pursue its antitrust claims against NHK.

The FTAIA has another exception—“domestic effects”—that allows extraterritorial application of American antitrust law. Foreign non-import commerce can fall within the Sherman Act if the anti-competitive conduct (1) has a “direct, substantial, and reasonably foreseeable effect” on certain U.S.-based commerce, and (2) *that effect* “gives rise to” an antitrust claim. *See* 15

U.S.C. § 6a. As the Supreme Court stated in *Empagran*, “there should be no American antitrust jurisdiction absent a direct, substantial and reasonably foreseeable effect on domestic commerce or a domestic competitor.” 542 U.S. at 163 (quoting House Report); accord *Hui Hsiung*, 778 F.3d at 754.

The two requirements above are strict by design. A “direct” effect on U.S.-based commerce means the effect must “follow[] as an immediate consequence of the defendant’s activity.” *LSL*, 379 F.3d at 680; see *Hui Hsiung*, 778 F.3d at 758 & n.9. An “effect cannot be ‘direct’ where it depends on . . . uncertain intervening developments.” *LSL*, 379 F.3d at 681. And to “give[] rise to” a Sherman Act claim means the effect (on U.S. commerce) must proximately cause the antitrust injury. *In re DRAM*, 546 F.3d at 988. “[B]ut for’ causation cannot suffice for the FTAIA,” such as where intervening forces may have caused the ultimate antitrust injury. *Id.* at 987; see *Hui Hsiung*, 778 F.3d at 758.

Together, these requirements ensure there is a sufficient nexus to the United States such that we open our courts despite the foreign elements. They require a tight causal link between the defendant’s anticompetitive conduct, the effect on U.S. commerce, and the ultimate antitrust injury. There must be a direct impact in the United States tethered to a Sherman Act violation. Put differently, U.S. courts are only open to foreign antitrust injuries that arise *through* harm to U.S. commerce. See *Empagran*, 542 U.S. at 174.

A. NHK’s price-fixing had a harmful effect on U.S. domestic commerce.

We address the first prong of the domestic effects exception: Seagate must show that NHK’s conduct caused an immediate harm to U.S. domestic commerce. See *id.* (requiring an adverse effect). Seagate asserts that “NHK

colluded to rig bids in the United States, and the domestic effects of that conduct [were] distorted bidding, suppressed competition, and binding agreements incorporating price-fixed terms.”

These facts are largely undisputed. NHK admits in its plea deal with the United States government that it agreed with another competitor “to refrain from competing on prices for, fix the prices of, and allocate their respective market shares for, HDD suspension assemblies to be sold *in the United States* and elsewhere.” It further admits it “exchanged [suspension assembly] pricing information, including anticipated pricing quotes,” with its competitor and “used the exchanged information to inform their negotiations with *U.S.* and foreign *customers that purchased HDD suspension assemblies.*” The parties in their briefing have not identified how many of NHK’s price-fixed SAs were sold within the United States or to American companies but NHK sold them to a wide range of companies, including Seagate, Toshiba, Western Digital, Quantum, IBM, Fujitsu, Samsung, and Hitachi, during the relevant period. While we do not know the dollar value of the price-fixed SAs sold in the United States, NHK in its plea deal conceded that “[d]uring the relevant period, the conspiracy . . . had a *direct, substantial, and reasonably foreseeable effect* on *interstate* and import trade [] *commerce.*” So NHK’s plea agreement alone appears to confirm the first prong of the domestic effects exception: NHK admits to fixing prices of suspension assemblies sold in the United States (as well as around the world), and NHK’s actions apparently had a direct, substantial, and reasonably foreseeable effect on U.S. commerce. *See* 15 U.S.C. § 6a(1).⁴

⁴ NHK’s argument that a corrupt U.S. bidding process can only constitute “*conduct*” under the FTAIA—and not an “*effect*” of conduct—betrays its plea deal that “the conspiracy involved and had

To be sure, the domestic effect from NHK’s anticompetitive conduct did not directly injure Seagate Technology LLC because it did not buy the suspension assemblies here—its foreign entities did abroad. But the first prong of the domestic effects exception still has been met because NHK admitted in its plea deal that it “fix[ed] the prices” of “suspension assemblies to be *sold in the United States* and elsewhere.” (emphasis added). In other words, NHK’s price-fixing apparently had a significant and direct impact on domestic commerce because companies (other than Seagate Technology LLC) overpaid for the suspension assemblies bought here in the states.

The FTAIA’s statutory language does not require more than that to satisfy the first prong: The anticompetitive conduct must have “a direct, substantial, and reasonably effect on trade or commerce which is not trade or commerce with foreign nations [*i.e.*, domestic commerce] or on import trade or import commerce with foreign nations.” 15 U.S.C. § 6a. Unlike the second prong (which refers to a Sherman Act “claim” by the plaintiff), the first prong makes no mention of “claim” or “injury” by the plaintiff—it just requires a direct and substantial “effect” on the American economy. Stated differently, the first prong does not require the plaintiff to have suffered an injury in the United States in addition to outside of it; indeed, if it did suffer harm in the United States, the FTAIA may not even apply. We recognized this point in *In re DRAM*: The plaintiff there was a “foreign consumer

a direct, substantial, and reasonably foreseeable effect on” interstate commerce. While the actual “stuff” of NHK’s conspiracy (illicit meetings, illegal bids, and so on) count as conduct, “higher U.S. prices” can be a “domestic effect.” *In re DRAM*, 546 F.3d at 984, 988; *see also Empagran*, 542 U.S. at 175 (calling “higher prices in the United States” an “adverse domestic effect”); 15 U.S.C. § 1 (prohibiting conduct with the effect of restraining trade).

that made its purchases entirely outside of the United States,” but we assumed that the first prong of the domestic effects exception had been met because the conspiracy had “raise[ed] the price of DRAM to customers in both the United States and foreign countries.” 546 F.3d at 989, 984. The plaintiff’s claim in *In re DRAM*, however, failed because it could not meet the second prong that the domestic effect of higher U.S. prices proximately caused its foreign injury. *Id.* The D.C. Circuit appears to share our view of the first prong requirement of the domestic effects exception. *See Empagran S.A. v. F. Hoffman-LaRoche Ltd.*, 417 F.3d 1267, 1269 (D.C. Cir. 2005) (plaintiffs “need only demonstrate therefore that the U.S. effects of the [defendants’] allegedly anti-competitive conduct ‘[g]ave rise to’ their claims” because the statutory text looks at the “situs of the *effects* of the allegedly anti-competitive conduct,” not the “situs of the . . . resulting *injuries*”) (emphasis added).

Similarly here, 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. It is enough to show that NHK’s actions had a direct, substantial, and reasonably foreseeable effect on domestic commerce by fixing prices of suspension assemblies sold here. But that is not the end of the matter. Under the second prong, Seagate must show that this domestic effect gave “rise to a claim under the [Sherman Act].” *Id.* We address that next.

B. The tainted RFQ prices potentially gave rise to Seagate’s antitrust claims.

To meet the second prong of the domestic effects exception, Seagate must show that the harm of NHK’s conduct on U.S. domestic commerce directly caused Seagate Thailand’s and Seagate Singapore’s respective

overcharge claims. *See* 15 U.S.C. § 6a(2). In other words, we ask whether “[o]ther actors or forces may have affected the foreign prices”—if so, then the plaintiff has not met the second prong. *In re DRAM*, 546 F.3d at 988.

Most foreign injury claims fail at this step because it is often difficult to show that the harmful effect on U.S. domestic commerce proximately caused the foreign antitrust injury. Too often the link is too speculative or attenuated. Seagate’s claim, however, appears to be viable because of the unique nature of how the master Product Supply Agreement and the quarterly RFQs—all negotiated in the United States by Seagate Technology LLC—set the U.S. prices for suspension assemblies, which in turn set the prices of the foreign suspension assembly purchases. As discussed, Seagate has provided evidence that its foreign subsidiaries lacked any authority over the price, quantity, or timing of their orders. They had to follow the lead of U.S.-based Seagate Technology LLC and entered orders at the (inflated) prices negotiated by Seagate Technology LLC’s CMT unit. At oral argument, NHK admitted that suspension assembly prices were negotiated not per transaction but “quarterly”—*i.e.*, through the RFQ process. Thus, the higher U.S. prices for suspension assemblies resulting from NHK’s price-fixing would have directly caused Seagate’s foreign subsidiaries to overpay. Or as Seagate would have it, there only was *one* price, the U.S. and foreign prices being “one and the same.”

The district court credited this evidence in its May 15 order, finding that Seagate Technology LLC’s U.S.-based “agreement[s] governed the sales when ‘purchase orders’ for SAs were placed by Seagate Thailand” including as to price. The court in its November 17 order also acknowledged Seagate’s theory that “the prices for SAs to be charged to Seagate entities located outside the United

States were set” directly by the tainted “agreements in the [U.S.]” Yet the district court called this theory “essentially the same” as *In re DRAM*, 546 F.3d at 988–89. The court observed, “[T]hat the conspiracy had effects in the United States and abroad, does not show that the effect in the United States, rather than the overall price-fixing conspiracy itself, proximately caused the effect abroad.” *In re HDD*, 2023 WL 8007985, at *4 (quoting *In re DRAM*, 546 F.3d at 988).

We believe the district court erred in reading *In re DRAM* as categorically holding that rigged U.S. prices cannot proximately cause injuries abroad. In that case, we rejected the tenuous theory that higher U.S. prices for computer memory chips (*i.e.*, the domestic effect) proximately caused higher global pricing (*i.e.*, the foreign injury) because the plaintiff relied on the interconnected nature of the computer memory chip market and the leading role of U.S. buyers. 546 F.3d at 984. Relying on a chain of inferences about global pricing of memory chips, the plaintiff in *In re DRAM* did “not sufficiently allege a theory that the higher U.S. prices proximately caused [the plaintiff’s] foreign injury of having to pay higher prices outside the United States.” *Id.* at 989. In short, there were links missing in the chain: “Other actors or forces may have affected the foreign prices.” *Id.* at 988.

Seagate’s theory, in contrast, is rooted in the certainty of binding pricing contracts—not the complex vagaries of the global pricing market. It does not rely on the alleged equivalence of prices across global trading markets that many courts have rejected. *See id.*; *see also Empagran*, 542 U.S. at 175.⁵ Rather, Seagate explains exactly how

⁵ In *Empagran*, the Court held that the “domestic effect” exception did not apply because it “assumed that the anticompetitive conduct here *independently* caused foreign injury; that is, the conduct’s domestic effects did not help to bring about that foreign injury.” 542

“[d]efendants’ activities resulted in the U.S. prices directly setting the worldwide price” and thus causing the foreign antitrust injury: NHK and a competitor conspired to fix prices, setting inflated U.S. prices (*i.e.*, the domestic effect) that Seagate’s foreign entities then accepted as a matter of company policy and contractual requirements (*i.e.*, the foreign injury). *In re DRAM*, 546 F.3d at 989.

We acknowledge, however, that factual questions exist about whether the post-RFQ prices truly set and limited what the foreign subsidiaries could pay. For example, was Seagate Singapore controlled just as Seagate Thailand was for suspension assembly purchases, and did they always use the same price? These would be best for the district court to consider: While we suspect Seagate has adduced enough evidence of a direct, proximate relationship to pass summary judgment, *see* 15 U.S.C. § 6a(2), we remand to assess this issue.

C. Foreign antitrust injury is only eligible for relief when U.S. commerce is first harmed.

We conclude with a few remarks on why this case is different from other cases involving foreign antitrust injuries. Opening 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 abroad. Why should that foreign company have access to our courts based on our laws? Indeed, the Seventh Circuit’s decision in *Motorola*, 775 F.3d 816, offers valid reasons to tread cautiously in the realm of extraterritorial jurisdiction. Although that case ultimately was decided based on standing rather than the

U.S. at 175 (emphasis added). The Court used the word “independent” 35 times in the opinion, underscoring that the domestic effect must cause the foreign injury. Here, Seagate appears to have adduced evidence that its foreign injuries are not independent of the conspiracy’s domestic effects.

FTAIA, *see Hui Hsiung*, 778 F.3d at 760, it flagged the practical problems of redressing wholly foreign injuries in American courts.

“[T]he immediate victims of the price fixing were [Motorola’s] foreign subsidiaries, and . . . U.S. antitrust laws are not to be used for injury to foreign customers.” *Motorola*, 775 F.3d at 820. “Companies operate overseas . . . to take advantage of many legal provisions of that country: labor law, environmental law, and tax law.” *Id.* at 827. “The mind boggles at the . . . number of antitrust suits that major American corporations could file against the multitudinous suppliers of their prolific foreign subsidiaries if Motorola had its way.” *Id.* at 826 (all citations omitted).

The court thus held that Motorola’s parent entity—Motorola Mobility LLC—could not sue on its subsidiaries’ behalf for the injuries the subsidiaries suffered abroad. *Id.* at 820, 825 (declining “to give Motorola rights to take the place of its foreign companies and sue on their behalf under U.S. antitrust law”).

These appear valid points, but the facts and context of our case are significantly different. If we look deeper, our holding is consistent with the Supreme Court’s rule in *Empagran*, considerations of judicial policy, and the decisions of our sister circuits.

First off, the Seventh Circuit in *Motorola* did not substantially grapple with the FTAIA’s language or the case law construing that statutory text, and instead only glancingly referenced them—perhaps because its holding was based on standing for a derivative buyer, not the FTAIA. As a policy matter, the Seventh Circuit advocated a bright-line rule that American courts should not entertain Sherman Act claims based on foreign injuries

because the harmed parties could seek relief under the laws of the foreign country. *Motorola*, 775 F.3d at 820. But the parties here (correctly) agree that the FTAIA does not bar foreign injuries from relief under that statute so long as the required domestic effect and proximate cause are shown. As the Supreme Court has noted, “Congress [did not] place the relevant words ‘gives rise to a claim’ in the FTAIA to suggest any geographical limitation.” *Empagran*, 542 U.S. at 174 (citing 15 U.S.C. § 6a); *see also Empagran*, 417 F.3d at 1269 (“FTAIA’s ‘domestic effects’ requirement ‘does not exclude all persons abroad from recovering under the antitrust laws of the United States’”) (citation omitted). And as we explained earlier, the domestic effect of higher U.S. prices gave rise to the foreign injury suffered by Seagate Thailand and Seagate Singapore because they adopted those rigged U.S. pricing in buying the suspension assemblies.

Second, we are not confronted with a typical foreign injury here but rather a case suffused with domestic elements. Seagate Singapore and Seagate Thailand suffered injuries because of the price-fixing first inflicted *on U.S. soil* and suffered by *Americans*. NHK admitted it entered into a conspiracy to “fix the prices of . . . suspension assemblies to be sold *in the United States* and elsewhere.” Nearly all the misconduct in this case—whether bid rigging, illegal job posts, and so on—either targeted or centered on the United States because fixing U.S. commercial activity meant inflating the price of suspension assemblies everywhere. According to *Empagran*, the Sherman Act very much was intended to cover harm like this. 542 U.S. at 163. Put another way, if a claim for foreign injury passes the FTAIA’s proximate cause test, then such foreign harm no longer is “independent” of the domestic harm that is properly the province of our courts—the harms are “intertwined.” *Id.* at 166. Simply put, Americans too were harmed by NHK’s

price-fixing, even if foreign companies are the ones suing based on their injuries suffered abroad.⁶ In such a unique scenario, we can and must allow civil claimants to claim damages, especially given the government’s decision not to seek restitution in its criminal prosecution because of its assumption that civil remedies would be available to private parties.

And because the FTAIA imposes very stringent “direct effect” and proximate cause requirements, it ensures that any foreign injuries covered by the Sherman Act are the direct result of harm to United States commerce—just as Congress intended. *See Empagran*, 542 U.S. at 163 (citing House Report). Tenuous or speculative injuries will not pass this test. *See, e.g., In re DRAM*, 546 F.3d at 989–90 (dismissing theory of causation that was too vague, speculative, and could not be explained by counsel at oral argument). Nor will indirect or modest effect on domestic commerce—it must be “direct” and “substantial.” We thus do not see our decision as opening U.S. courts to a flood of lawsuits from suppliers overseas.

Finally, the international comity concerns raised in *Motorola* are addressed (or perhaps outweighed) by the price-fixing’s substantial impact on United States commerce. *See* 775 F.3d at 824. As the Court noted in *Empagran*, we “have long held that application of our antitrust laws to foreign anticompetitive conduct is . . . consistent with principles of prescriptive comity[] insofar as they reflect a legislative effort to redress *domestic*” harm. 542 U.S. at 165. International comity may have to be cast aside when foreign misconduct harms Americans. When foreigners engage in unlawful behavior in the United States that harms Americans, we need not

⁶ To be fair, Americans will not directly reap the benefits of any damages award in this case. But the deterrent effect on future anticompetitive behavior will still benefit the United States.

reflexively close our courthouse doors just because another foreign company takes the lead against such illegal conduct.

* * * *

Finally, we affirm the district court’s determination that Seagate Thailand was not a mere purchasing agent for Seagate Technology LLC because it did not purchase the suspension assemblies “for” Seagate LLC but bought them for its own purposes. But the district court’s statement that Seagate’s Second Amended Complaint “includes no factual allegations that any Seagate Plaintiff indirectly purchased an SA or a product containing an SA” appears to be incorrect. While indirect purchases are not the focus of the Second Amended Complaint, it repeatedly alleges that Seagate Technology LLC bought suspension assemblies; these purchases necessarily were indirect. Moreover, Seagate’s Sherman Act claim alleges that NHK “[sold] suspension assemblies to customers in the U.S. or elsewhere for incorporation into *products sold in the U.S. at supracompetitive prices*”—which appears to state a pass-on theory of harm.

Because an allegation under FED. R. CIV. PROC. 8 does not require any magic words but only a short and plain statement of the claim, Seagate Technology LLC may be entitled to test whether its alleged high degree of control over Seagate Thailand and Seagate Singapore gives it standing to sue as an indirect purchaser of price-fixed suspension assemblies. *See Ill. Brick Co. v. Illinois*, 431 U.S. 720, 736 n.16 (1977); *Del. Valley Surgical Supply Inc. v. Johnson & Johnson*, 523 F.3d 1116, 1123 n.1 (9th Cir. 2008) (recognizing “standing for an indirect purchaser if . . . the direct purchaser is owned or controlled by the indirect purchaser”); *see also In re ATM Fee Antitrust Litig.*, 686 F.3d 741, 749 (9th Cir. 2012) (“[I]ndirect purchasers may sue when customers of the direct

purchaser own or control the direct purchaser “). We leave it to the district court in the first instance to determine whether Seagate Technology LLC has a viable indirect purchaser claim under *Illinois Brick*.

CONCLUSION

We vacate the district court’s May 15, 2023 and November 17, 2023 orders granting partial summary judgment for NHK and remand for further proceedings consistent with this opinion.

VACATED AND REMANDED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: HARD DISK DRIVE SUSPENSION ASSEMBLIES ANTITRUST LITIGATION	Case No. 19-md-02918-MMC Case No. 20-cv-01217-MMC
This Document Relates to: <u>Seagate Technology, LLC,</u> <u>et al. v. Headway</u> <u>Technologies, Inc., et al.,</u> Case No. 3:20-cv-01217 MMC	ORDER GRANTING IN PART AND DENYING IN PART NHK DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT [DOC. NO. 535] May 15, 2023

Before the Court is the “Motion for Partial Summary Judgment Regarding Foreign Commerce” (Doc. No. 535), filed August 2, 2022, by defendants NHK Spring Co., Ltd. (“NHK Spring”), NHK International (“NHKI”), NAT Peripheral (Dong Guan) Co., Ltd. (“NAT Peripheral (Dong Guan)”), NAT Peripheral (Hong Kong) Co., Ltd (“NAT Peripheral (Hong Kong)”), and NHK Spring (Thailand) Co., Ltd (“NHK Spring (Thailand)”) (collectively, “NHK Defendants”), whereby said defendants seek partial summary judgment as to “certain categories of claims” (see NHK Defs.’ Mot. at 1:6-7) asserted by plaintiffs. On October 14, 2022, plaintiffs Seagate Technology LLC (“Seagate LLC”), Seagate Technology (Thailand) Ltd. (“Seagate Thailand”), Seagate Singapore International Headquarters Pte. Ltd. (“Seagate Singapore”), and Seagate Technology

International (“Seagate International”) (collectively, “Seagate Plaintiffs”) filed opposition, to which NHK Defendants replied. Thereafter, with leave of court, the parties filed supplemental briefing. Having read and considered the papers filed in support of and in opposition to the motion, including the supplemental briefing, the Court rules as follows.¹

BACKGROUND

In the operative pleading, the Second Amended Complaint (“SAC”), Seagate Plaintiffs allege NHK Defendants entered into a conspiracy with defendants TDK Corporation, Hutchinson Technology Inc., Magnecomp Precision Technology Public Co., Ltd., Magnecomp Corporation, and SAE Magnetix (H.K.) Ltd. (collectively, “TDK Defendants”)² to “fix the prices and allocate market shares of suspension assemblies” (see SAC ¶ 5), “an indispensable component of computer hard disk drives” (see SAC ¶ 1). According to Seagate Plaintiffs, Seagate LLC “purchas[ed] affected suspension assemblies directly from [d]efendants at prices illegally fixed by [d]efendants” (see SAC ¶ 32), and Seagate Thailand, Seagate Singapore, and Seagate International “assisted [Seagate LLC] at times with Seagate’s purchase of the affected suspension assemblies directly from certain [d]efendants at prices illegally fixed by [d]efendants” (see SAC ¶¶ 33-35). Seagate Plaintiffs further allege that, “[a]s a result of [defendants’ conduct], Seagate’s business and property were injured, in that Seagate paid more for

¹ By order filed February 21, 2023, the Court took the matter under submission.

² On April 8, 2022, Seagate Plaintiffs voluntarily dismissed their claims against the TDK Defendants (see Amended Stipulation and Order of Dismissal With Prejudice by Seagate Plaintiffs and TDK Defendants, filed April 8, 2022), leaving NHK Defendants as the sole remaining group of defendants.

suspension assemblies than it would have paid in the absence of [d]efendants' unlawful conduct." (See SAC ¶¶ 263, 272, 281; see also SAC ¶ 291.)

Based on said allegations, Seagate Plaintiffs assert four claims alleging antitrust violations, specifically, Count I, asserting a violation of the Sherman Act, Count II, asserting a violation of California's Cartwright Act, Count III, asserting a violation of California's Unfair Competition Law, and Count IV, asserting a violation of Minnesota's Antitrust Law of 1971. In addition, Seagate Plaintiffs assert a claim for breach of contract, specifically, Count V, alleging defendants disclosed Seagate Plaintiffs' confidential material in violation of nondisclosure agreements.

LEGAL STANDARD

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, a "court shall grant summary judgment if the movant shows that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." See Fed. R. Civ. P. 56(a).

The Supreme Court's 1986 "trilogy" of Celotex Corp. v. Catrett, 477 U.S. 317 (1986), Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), and Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986), requires that a party seeking summary judgment show the absence of a genuine issue of material fact. Once the moving party has done so, the nonmoving party must "go beyond the pleadings and by [its] own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." See Celotex, 477 U.S. at 324 (internal quotation and citation omitted). "When the moving party has carried its burden under Rule 56[], its opponent must do more than simply show that there is some metaphysical doubt as to the material facts."

Matsushita, 475 U.S. at 586. “If the [opposing party’s] evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” Liberty Lobby, 477 U.S. at 249-50 (citations omitted). “[I]nferences to be drawn from the underlying facts,” however, “must be viewed in the light most favorable to the party opposing the motion.” See Matsushita, 475 U.S. at 587 (internal quotation and citation omitted).

DISCUSSION

By the instant motion, NHK Defendants seek judgment as to Seagate Plaintiffs’ “direct purchaser claims arising from component sales” (see NHK Defs.’ Mot. at 1:12-14), namely, sales of suspension assemblies (“SAs”),³ “that took place outside the U.S.” (see NHK Defs.’ Mot. at 1:12-14). NHK Defendants argue such claims are barred by the Foreign Trade Antitrust Improvements Act (“FTAIA”).⁴

The FTAIA, in relevant part, provides:

Sections 1 to 7 of this title [the Sherman Act] shall not apply to conduct involving trade or commerce

³ In the SAC, Seagate Plaintiffs use no abbreviation for the term “suspension assemblies. In their opposition, however, Seagate Plaintiffs state suspension assemblies are also known as “trace gimbal assemblies” (see Seagate Pls.’ Opp. at 4:15-16) and, throughout their briefing, refer to such components as “TGAs,” whereas NHK Defendants, in their briefing, use the abbreviation “HDD Suspensions.” For the sake of clarity, the Court will refer to the subject components as “SAs.”

⁴ NHK Defendants do not seek summary judgment as to claims based on sales of SAs that were “billed and shipped directly to the U.S.,” i.e., claims based on “Seagate’s purchases of unincorporated [SAs] that were imported directly into the U.S.” (see NHK Defs.’ Mot. at 6:8-10, 26-27), nor do NHK Defendants make reference to Seagate Plaintiffs’ breach of contract claim.

(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 [the Sherman Act].

See 15 U.S.C. § 6a.

As explained by the Supreme Court, the FTAIA “initially lays down a general rule placing all (nonimport) activity involving foreign commerce outside the Sherman Act’s reach,” see F. Hoffman-La Roche Ltd. v. Empagran S.A., 542 U.S. 155, 162 (2004); “[i]t then brings such conduct back within the Sherman Act’s reach provided that the conduct both (1) sufficiently affects American commerce, i.e., it has a ‘direct, substantial, and reasonably foreseeable effect’ on American domestic, import, or (certain) export commerce, and (2) has an effect of a kind that antitrust law considers harmful, i.e., the ‘effect’ must ‘giv[e] rise to a [Sherman Act] claim,’ ” see id. (quoting 15 U.S.C. §§ 6a(1), 6a(2); alterations in original); see also United States v. Hsiung, 778 F.3d 738, 756 (9th Cir. 2015) (referring to statutory exception as “domestic effects exception”). The Ninth Circuit has further clarified that the FTAIA’s “gives rise to” language “requires a direct or proximate causal relationship.” See In re Dynamic Random Access Memory (DRAM) Antitrust Litig., 546 F.3d 981, 988 (9th Cir. 2008).

Although, on its face, the FTAIA only sets forth limitations with respect to the Sherman Act, district courts to have considered the matter have found, and this Court agrees, that state law antitrust claims are “limited by the FTAIA to the same extent as any federal law claims.” See In re Optical Disk Drive Antitrust Litig., 2017 WL 11513316, at *2 (N.D. Cal. December 18, 2017) (citing cases); see also In re Capacitors Antitrust Litig., 2016 WL 5724960, at *8 (N.D. Cal. September 30, 2016) (holding reach of state antitrust laws do not extend “beyond the FTAIA”); In re Static Random Access Memory (SRAM) Antitrust Litig., 2010 WL 5477313, at *4 (N.D. Cal. December 31, 2010) (rejecting argument that “FTAIA does not apply to [plaintiffs’] state law claims”; explaining “foreign commerce is preeminently a matter of national concern on which the federal government has historically spoken with one voice”) (internal quotation and citation omitted).

A. Direct Purchaser

As noted, NHK Defendants seek summary judgment on Seagate Plaintiffs’ direct purchaser claims that arise from sales of SAs outside the United States.⁵ In support of their motion, NHK Defendants first offer evidence that such foreign sales occurred. Specifically, NHK Defendants offer evidence that (1) the four NHK Defendants that engage in sales, specifically, NHK Spring, a Japanese corporation (see Okuma Decl. ¶¶ 6, 7(a)), NAT Peripheral (Dong Guan), a Chinese corporation (see id. ¶ 7(b)), NAT Peripheral (Hong Kong), a Hong Kong corporation (see id. ¶ 7(c)), and NHK Spring (Thailand), a Thai corporation (see id. ¶ 7(d)), “billed and

⁵ To establish a claim for price-fixing under the Sherman Act, the plaintiff must be a direct purchaser of the price-fixed item. See Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977).

shipped” SAs to Seagate Thailand (see id. ¶ 21, Ex. A),⁶ and (2) two of the TDK Defendants, specifically, Magnecomp Precision Technology Public Co. Ltd., a Thai corporation (see Misuta Decl. ¶ 4), and Hutchinson Technology Inc., a Minnesota corporation (see id. ¶ 6), “sold” and “delivered” SAs to Seagate Thailand and Seagate Singapore (see id. ¶¶ 18, 21, 27, 29-30).

Seagate Plaintiffs offer no evidence to the contrary, but, as to sales made to Seagate Thailand, argue the direct purchaser is Seagate LLC, a company located in the United States, under the theory that, when Seagate Thailand purchased SAs from NHK Defendants and TDK Defendants, Seagate Thailand was acting as an agent for Seagate LLC.⁷ In support of thereof, Seagate Plaintiffs rely on In re Cathode Ray Tube (CRT) Antitrust Litig., 2016 WL 7805628 (N.D. Cal. August 4, 2016), in which the district court concluded that, where the “first party to purchase a price-fixed good” is “merely a purchasing agent for the party to whom it later resells the price-fixed

⁶ Seagate Plaintiffs’ objection to the above statement, on grounds of lack of personal knowledge, improper lay opinion testimony, and hearsay, is hereby OVERRULED. The declarant is the current Director of the Disk Drive Suspension, Component & Microcontactor Sales Department of NHK Spring. (See id. ¶ 1.) From 1992 to the present, he has held a position with an NHK entity and, with the exception of a couple of interstitial periods, has held a position as an officer in NHK Spring’s sales department during the entire period of the alleged conspiracy. (See id. ¶¶ 1-2.) Under such circumstances, one would expect he would be familiar both with NHK Spring’s sales and sales by its subsidiaries, particularly given the challenged statement is based on his own personal observations and experience (see id. ¶ 4), as well as records maintained by NHK Spring, such as orders from customers (see id. Ex. A).

⁷ Seagate Plaintiffs do not contend Seagate Singapore, when purchasing SAs or engaging in any other activity, acted as the agent of Seagate LLC.

good,” the “principal will have standing as the direct purchaser, not the agent.” See id. at *14.

As to issues of agency, district courts have held, and this Court agrees, that federal common law is “guided by [the] principles set forth in the Restatement of Agency. See Sun Microsystems Inc. v. Hynix Semiconductor Inc., 622 F. Supp. 2d 890, 899 (N.D. Cal. 2009) (citing cases). Under the Restatement of Agency, the party seeking to establish a principal-agent relationship must demonstrate: “(1) a manifestation by the principal that the agent shall act for him; (2) that the agent has accepted the undertaking; and (3) that there is an understanding between the parties that the principal is to be in control of the undertaking.” See id. (citing Restatement (Third) of Agency, § 1.01.)

Here, as to the question of agency, Seagate Plaintiffs offer evidence that Seagate LLC employees negotiated with each seller of SAs the “price, allocation, and other terms” of the “purchase process” to be applied to that seller’s sales of SAs for a specified period of time (see Floeder Decl. ¶¶ 31, 54; see also id. ¶¶ 32-53, Exs. F, L, N),⁸ that both sides acted through U.S. based employees (see id. ¶¶15, 31), and that, once an agreement with a seller was reached, the terms were memorialized in a written agreement (see id. ¶¶ 55-60, Exs. F-Q), which governed the sales when “purchase orders” for SAs were placed by Seagate Thailand (see id. ¶¶ 63-72; Tangwongchai Decl.

⁸ Because the Court has granted Seagate Plaintiffs’ request to file under seal the details of the purchase process, as well as the manner by which Seagate Thailand placed orders for SAs, the manner in which Seagate Thailand paid for the SAs it ordered, and the use Seagate Thailand and other Seagate companies in foreign countries made of the SAs, the Court has not set forth those details, and, instead, has described them in the above paragraph and elsewhere herein using general terms.

¶¶ 10-13; VanHooreweghe Decl. Ex. 4 at 389:16-20). Seagate Plaintiffs also offer evidence that Seagate LLC, rather than Seagate Thailand, addressed any questions from sellers about receiving payment for the SAs (see Tangwongchai Decl. ¶¶ 20-22), that Seagate LLC directed Seagate International to transfer to Seagate Thailand the funds needed to pay for the SAs (see Floeder Decl. ¶ 62; Choi Decl. ¶¶ 7, 9), and that Seagate International transferred to Seagate Thailand the necessary funds, using money held in Seagate International's accounts (see Floeder Decl. ¶ 62).

The Court finds the evidence offered by Seagate Plaintiffs is insufficient to create a triable issue as to whether Seagate Thailand, when purchasing and paying for SAs, acted as an agent for Seagate LLC. Although Seagate Plaintiffs analogize the relationship between Seagate Thailand and Seagate LLC to that of a stockbroker purchasing securities for investors, there is no evidence to support a finding that, similar to a stockbroker, Seagate Thailand's only part in the transaction was the purchase of products that then were to be transferred to another person or entity who was the intended owner of the products. Rather, it is undisputed that Seagate Thailand, upon paying for the SAs with funds not belonging to Seagate LLC (see Shay Decl. second ¶ 2),⁹ used the SAs for its own purposes, namely, to manufacture "head gimbal assemblies" ("HGAs") (see Floeder Decl. ¶¶ 1, 77-78; Lee Decl. Ex. 3 at 101:10-18, 102:14-103:4), a step in the manufacturing of HDDs (see Floeder Decl. ¶¶ 77-82) that was one of Seagate Thailand's corporate "functions" (see Lee Decl. Ex 1 at 82:3-22, 84:23-85:8, Ex. 2). Further, it is undisputed that, after Seagate Thailand completed its part of the HDD manufacturing

⁹ The Shay Declaration contains two paragraphs denominated "¶ 2."

process, it issued an “invoice” to Seagate Singapore and received payment in return. (See Shay Decl. ¶ 17 and n.3; id. ¶ 20.)

Under such circumstances, Seagate Plaintiffs have not shown a trier of fact reasonably could find Seagate Thailand’s purchases of SAs constituted acts “for” Seagate LLC, see Restatement (Third) of Agency, § 1.01, as opposed to acts on its own behalf. See Sun Microsystems Inc. v. Hynix Semiconductor, Inc., 608 F. Supp. 2d 1166, 1188-89 (N.D. Cal. 2009) (holding where plaintiff negotiated prices pursuant to “global procurement strategy,” thus “control[ing]” prices its subsidiaries paid for price-fixed components, subsidiaries were not plaintiff’s agents when they purchased price-fixed components; finding subsidiaries “took delivery of the [components] they purchased, and used [those components] to manufacture finished . . . products that were sold through the subsidiaries’ own . . . sales offices”).

Accordingly, as the plaintiffs with standing to assert the claims challenged by the instant motion are Seagate Thailand and Seagate Singapore, their purchases constitute international commerce, and, in the absence of a showing that such conduct constitutes import activity or that the FTAIA “brings [it] back within the Sherman Act’s reach,” see F. Hoffmann-La Roche, 542 U.S. at 162, claims based thereon are barred. The Court next turns to whether either such showing has been made.¹⁰

¹⁰ In their supplemental briefing, Seagate Plaintiffs assert Seagate LLC was injured in ways other than paying supracompetitive prices for SAs. In particular, Seagate Plaintiffs argue, defendants “depressed the quality of the [SAs]” (see Seagate Pls.’ Response, filed January 20, 2023, at 5:6) and also that, if Seagate LLC is not deemed a direct purchaser, it nonetheless is entitled to assert injuries as an “indirect purchaser” (see id. at 6:18-19). Given that the instant motion seeks judgment solely on direct purchaser claims arising from

B. Applicability of FTAIA

As noted, the instant motion seeks summary judgment as to claims based on direct sales of SAs by NHK Defendants or their alleged conspirators to foreign purchasers, i.e., sales to Seagate Thailand and Seagate Singapore.

For purposes of analysis, NHK Defendants contend there are four “categories” of claims based on such direct sales: “1. [c]laims based on component sales between a foreign defendant manufacturer and a foreign direct purchaser, where the direct purchaser incorporated the component into a product that it sold to a foreign indirect purchaser and that did not enter the United States; 2. [c]laims based on component sales between a foreign defendant manufacturer and a foreign direct purchaser, where the direct purchaser incorporated the component into a product that it sold to a foreign indirect purchaser, who then incorporated the component into a product that entered the United States; 3. [c]laims based on component sales between a foreign defendant manufacturer and a foreign direct purchaser, where the direct purchaser incorporated the component into a product that it imported into the United States; and 4. [c]laims based on component sales exported from the United States by a domestic defendant manufacturer to a foreign direct purchaser.” (See NHK Defs.’ Mot. at 12:1-9.) Seagate Plaintiffs contend there are two categories of claims based on direct sales, namely claims based on “purchases of [SAs] that *do not* enter the United States (Category A)” and “purchases of [SAs] that *do* enter the United States

defendants’ sales of SAs outside the United States, the Court does not further consider herein any other asserted claims and thus has not considered at this time NHK Defendants’ argument that such other claims have not been timely disclosed.

(Category B).” (See Seagate Pls.’ Opp. at 14:6-8 (emphasis in original)).¹¹

As NHK Defendants acknowledge in their reply, NHK Defendants’ Category 1 and Seagate Plaintiffs’ Category A cover the same set of sales, NHK Defendants’ Categories 2 and 3 together cover the same set of sales as Seagate Plaintiffs’ Category B, and the sales comprising NHK Defendants’ Category 4 can be split into Seagate Plaintiffs’ Categories A and B, depending on whether the SAs sold by exporter Hutchinson Technology, Inc. were incorporated into products that did or did not enter the United States. In light thereof, and given both parties focus on whether products containing SAs enter or do not enter the United States, the Court has analyzed the direct sales claims based on two categories, namely, products that did enter and products that did not enter the United States, and begins with the former.

1. Products Entering the United States

With regard to products containing SAs that entered the United States, the parties dispute whether claims based on sales of the SAs incorporated in those products are claims “involving . . . import trade or import commerce,” and thus exempt from the prohibition set forth in the FTAIA. See 15 U.S.C. § 6a. As discussed below, the Court finds a trier of fact could conclude such claims are not barred by the FTAIA.

The Court does agree with NHK Defendants that the following facts are undisputed: that, after Seagate

¹¹ Although Seagate Plaintiffs identify, as a third category, “Seagate LLC’s internal purchase of HDDs in the United States for sale in the United States” (see *id.* at 14:8-9), those purchases constitute Seagate LLC’s purchases of HDDs from Seagate Singapore, and, as noted above, the Court has not addressed herein Seagate LLC’s indirect purchaser claims.

Thailand purchased SAs, it incorporated them into HGAs (see Lee Decl. Ex. 3 at 101:10-18, 102:14-103:4; Floeder Decl. ¶¶ 1, 77-78), that the HGAs were next incorporated into head stack assemblies (“HSAs”) in a Seagate facility in Thailand or in another foreign country (see Lee Decl. Ex. 3 at 103:20-104:16; Floeder Decl. ¶¶ 80-81), that the HSAs were then assembled with other components into HDDs in a Seagate facility in Thailand or in another foreign country (see Misuta Decl. ¶ 35; Floeder Decl. ¶¶ 82-83),¹² that the manufactured HDDs were shipped by Seagate Singapore to its customers and to four other Seagate entities, one being Seagate LLC, and that those four entities, in turn, shipped the HDDs to their customers (see Lee Decl. Ex. 3 at 104:17-20; Shay Decl. ¶¶ 10-11, 18-19).¹³

NHK Defendants, citing the above evidence and pointing to an absence of evidence that, other than shipments of SAs not challenged by the instant motion, any SAs or any products containing SAs were shipped by any defendant to the United States, argue Seagate Plaintiffs cannot establish the applicability of the import trade or commerce exclusion. Case authority, however, is to the contrary, in that district courts have found the import trade or commerce exclusion can be established without a showing that the defendants themselves shipped price-fixed goods into the United States.

For example, in In re Capacitors Antitrust Litig., 2018 WL 4558265 (N.D. Cal. September 20, 2018), the district

¹² According to Seagate Plaintiffs, some HDDs were manufactured by a Seagate entity in the United States. (See Floeder Decl. ¶ 82.) As noted, however, the instant motion does not challenge claims arising from sales of SAs defendants shipped to the United States.

¹³ As to SAs purchased by Seagate Singapore, said plaintiff’s “involvement” in the HDD manufacturing process “was similar to that of [Seagate Thailand].” (See Floeder Decl. ¶ 9.)

court found a triable issue of fact existed as to the import trade or commerce exclusion, where the defendants sold price-fixed components to foreign purchasers, which in turn incorporated the components into products that were shipped to the United States. In so holding, the district court pointed to evidence that the defendants had negotiated in the United States the prices the foreign purchasers would pay for the components and that the defendants thereafter sold the components to plaintiff's foreign affiliates, "knowing [the components] would be incorporated into goods that were intended to be (and were) shipped to the U.S." for "specific U.S. customers" whose identities were known to defendants. See id. at *4-5.

Similarly, in Optical Disk Drive, the defendants sold price-fixed components to foreign purchasers and the components were incorporated into consumer products that the purchasers and their "affiliates" shipped to the United States; the district court found a triable issue of fact existed as to the import commerce exclusion, in light of evidence that the defendants negotiated in United States the prices the foreign purchasers would pay and defendants "knew that [the price-fixed components] they sold to [foreign direct purchasers] would be sold for the purpose of incorporation into [products] sold [in the United States]." See Optical Disk Drive, 2017 WL 11513316, at *4; see also In re Lithium Ion Batteries Antitrust Litig., 2017 WL 2021361, at *4 (May 12, 2017) (finding, at pleading stage, where plaintiff alleged its "affiliates" purchased price-fixed components for "purpose of manufacturing goods for their U.S. customers" and defendants "knew or should have known that a substantial portion of the products they sold to affiliates would be manufactured into goods sold to U.S. consumers," plaintiff "alleged a plausible basis for import

trade or commerce”) (internal quotation and citation omitted).

Here, similar to the evidence found sufficient in Capacitors and Optical Disk Drive, Seagate Plaintiffs, in addition to the above-cited evidence to which NHK Defendants cite, offer evidence that, during the negotiations, the alleged conspirators “required” Seagate LLC to disclose the names of Seagate customers, which included large companies located in the United States. (See VanHooreweghe Decl. Ex. 6 at 411:17-412:6, 413:15-415:7; see also id. Ex. 95 at 334:8-15, 338:3-5, 340:5-16 (NHK executive’s testimony that, during negotiations, he learned from Seagate LLC identities of Seagate customers located in United States that were or would be using Seagate HDDs in their products).)

Accordingly, NHK Defendants have not shown they are entitled to summary judgment as to Seagate Plaintiffs’ antitrust claims that are predicated on direct purchases of SAs made by Seagate Thailand and Seagate Singapore, where products containing those SAs were then shipped to the United States.

2. Products Not Entering the United States

NHK Defendants assert, and Seagate Plaintiffs do not disagree, that products containing SAs not entering the United States do not involve import trade or commerce. Consequently, claims based on direct purchases of SAs by Seagate Thailand and Seagate Singapore, where the SAs are components of products that do not enter the United States, are barred by the FTAIA unless the domestic effects exception set forth in the FTAIA applies.

As noted, the domestic effects exception applies where the conduct on which the plaintiff’s claim is based has a “direct, substantial, and reasonably foreseeable

effect' on American domestic, import, or (certain) export commerce," see Empagran, 542 U.S. at 162 (quoting 15 U.S.C. § 6(a)(1)), "the 'effect' " gives rise to a Sherman Act claim, see id. (quoting 15 U.S.C. § 6(a)(2)), and there is a "direct or proximate causal relationship" between the effect and the plaintiff's claim, see Dynamic Random Access Memory, 546 F.3d at 988.

Here, NHK Defendants argue that, where products containing SAs never entered the United States, any effect resulting from the direct purchases of SAs by Seagate Thailand or Seagate Singapore occurred overseas. Seagate Plaintiffs, by contrast, argue that the requisite domestic effect existed by reason of the direct purchasers' having paid prices that were determined during the "rigged" pricing negotiations in the United States. (See Seagate Pls.' Opp. at 25:12-13.)

At least two district courts in this district have considered claims substantially similar to those asserted here by Seagate Plaintiffs, i.e., claims based on direct purchases by foreign plaintiffs of price-fixed components that were incorporated into products that did not enter the United States, and found such claims barred by the FTAIA even though those foreign plaintiffs had purchased the components at prices negotiated in the United States. See Optical Disk Drive, 2017 WL 11513316, at *6 (distinguishing "conduct" from "effects"; finding purchases of products not entering the United States and purchases of products entering the United States "may be subject to the same conduct by [d]efendants—collusion and price negotiation in the United States by U.S.-based employees"—but the "effects" of the former "are foreign sales of [price-fixed components] to foreign [purchasers] for incorporation into computers that were sold to foreign consumers"); Capacitors, 2018 WL 4558265, at *6-7 (finding price-fixed goods purchased abroad and then

incorporated into finished goods sold outside United States had “no impact on a U.S. purchaser or consumer”; characterizing as “infirm” plaintiffs’ argument that price agreements made in United States setting global price for component constituted “proximate cause” of foreign plaintiffs’ claimed injuries).

The Court finds the reasoning in the above-cited cases persuasive and that the conclusions reached therein are in “accord[] with the policy behind the FTAIA,” see Optical Disk Drive, 2017 WL 11513316, at *6, namely, “that U.S. antitrust laws concern the protection of American consumers and American exporters, not foreign consumers or producers,” see Dynamic Random Access Memory, 546 F.3d at 986. Here, as to HDDs manufactured by Seagate entities outside the United States that never entered the United States, the direct purchaser claims arise from “wholly foreign transactions,” as the subject products “never wind up in this country’s stream of commerce,” see Optical Disk Drive, 2017 WL 11513316, at *6-7, and, at least on the record presented, have not been shown to have “affected domestic U.S. commerce” such as to “g[i]ve rise to a cause of action under the Sherman Act,” see Motorola Mobility LLC v. AU Optronics Corp., 775 F.3d 816, 819 (7th Cir. 2015); see also Empagran, 542 U.S. at 165 (noting “America’s antitrust laws, when applied to foreign conduct, can interfere with a foreign nation’s ability independently to regulate its own commercial affairs”).

Accordingly, as to Seagate Plaintiffs’ antitrust claims that are predicated on direct purchases of SAs by Seagate Thailand and Seagate Singapore, where products containing those SAs did not enter the United States, the motion will be granted.

CONCLUSION

For the reasons stated above, NHK Defendants' motion for partial summary judgment is hereby GRANTED in part and DENIED in part:

1. To the extent NHK Defendants seek summary judgment as to Seagate Plaintiffs' antitrust claims that are predicated on direct purchases of SAs by Seagate Thailand and Seagate Singapore, where products containing those SAs did not enter the United States, the motion is GRANTED.

2. To the extent NHK Defendants seek summary adjudication as to Seagate Plaintiffs' antitrust claims that are predicated on direct purchases of SAs by Seagate Thailand and Seagate Singapore, where products containing those SAs were then shipped to the United States, the motion is DENIED.

IT IS SO ORDERED.

Dated: May 15, 2023

/s/ Maxine M. Chesney

MAXINE M. CHESNEY

United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

<p>IN RE: HARD DISK DRIVE SUSPENSION ASSEMBLIES ANTITRUST LITIGATION</p>	<p>Case No. 19-md-02918-MMC</p> <p>ORDER GRANTING, ON RECONSIDERATION, NHK DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT; DENYING SEAGATE PLAINTIFFS' MOTION FOR LEAVE TO AMEND</p> <p>Nov. 17, 2023</p>
<p>This Document Relates to:</p> <p><u>Seagate Technology, LLC,</u> <u>et al. v. Headway</u> <u>Technologies, Inc., et al.,</u> Case No. 3:20-cv-01217 MMC</p>	

Before the Court is Seagate Plaintiffs'¹ "Opening Brief," filed September 7, 2023, "on NHK's Oral Motion for Reconsideration,"² NHK Defendants'³ "Supplemental Brief," filed September 28, 2023, "on Oral Motion for Reconsideration of May 15 FTAIA Order," and Seagate Plaintiffs' "Reply Brief," filed October 10, 2023, "on

¹ Seagate Plaintiffs are Seagate Technology LLC ("Seagate LLC"), Seagate Technology (Thailand) Ltd. ("Seagate Thailand"), Seagate Singapore International Headquarters Pte. Ltd. ("Seagate Singapore"), and Seagate Technology International ("Seagate International"),

² The motion for reconsideration was orally made at a hearing conducted on July 28, 2023.

³ NHK Defendants are NHK Spring Co., Ltd., NHK International, NAT Peripheral (Dong Guan) Co., Ltd., NAT Peripheral (Hong Kong) Co., Ltd., and NHK Spring (Thailand) Co., Ltd.

NHK’s Oral Motion for Reconsideration.” Also before the Court is Seagate Plaintiffs’ Motion, filed August 31, 2023, “for Leave to Amend the Complaint,” NHK Defendants’ opposition thereto, and Seagate Plaintiffs’ reply to the opposition. Having read and considered the parties’ respective written submissions, the Court rules as follows.⁴

A. Motion for Reconsideration of Order Granting in Part and Denying in Part NHK Defendants’ Motion for Partial Summary Judgment Regarding Foreign Commerce

In the operative complaint, the Second Amended Complaint (“SAC”), Seagate Plaintiffs allege that NHK Defendants were members of a conspiracy to “fix the prices and allocate market shares of suspension assemblies [‘SAs’],” a component used in the manufacture of hard disk drives, a product manufactured by Seagate. (See SAC ¶¶ 1-2, 5.)

On August 2, 2022, NHK Defendants filed a Motion for Partial Summary Judgment Regarding Foreign Commerce, whereby NHK Defendants sought judgment in their favor on Seagate Plaintiffs’ direct purchaser antitrust claims to the extent such claims are based on sales of SAs billed and shipped to Seagate Thailand and Seagate Singapore.⁵ Specifically, NHK Defendants

⁴ By order filed October 23, 2023, the Court took NHK Defendants’ motion for reconsideration under submission. The motion for leave to amend has not been noticed for hearing, and the Court finds said matter likewise is suitable for determination on the parties’ respective written submissions.

⁵ NHK Defendants did not seek summary judgment on Seagate Plaintiffs’ antitrust claims to the extent those claims are based on SAs shipped to Seagate LLC in the United States, nor did they seek summary judgment on Seagate Plaintiffs’ claim that NHK Defendants breached the terms of non-disclosure agreements.

argued, those claims are barred by the Foreign Trade Antitrust Improvements Act (“FTAIA”), which Act, in relevant part, provides:

Sections 1 to 7 of this title [the Sherman Act] 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 [the Sherman Act].

See 15 U.S.C. § 6a.

By order filed May 15, 2023, the Court issued its Order Granting in Part and Denying in Part NHK Defendants’ Motion for Partial Summary Judgment (“May 15 Order”). Specifically, (1) as to “antitrust claims . . . predicated on direct purchases of SAs made by Seagate Thailand and Seagate Singapore, where products containing those SAs were then shipped to the United States” (see May 15 Order at 12:23-26), the Court found NHK Defendants were not entitled to summary judgment, Seagate Plaintiffs’ having offered evidence sufficient to establish the applicability of the FTAIA’s import trade/commerce exemption, and (2) as to “antitrust claims . . . predicated on direct purchases of SAs by Seagate Thailand and Seagate Singapore, where products

containing those SAs did not enter the United States” (see id. at 14:23-25), the Court found NHK Defendants were entitled to summary judgment, Seagate Plaintiffs’ having failed to offer evidence to establish the FTAIA’s domestic effect exception applied.⁶

NHK Defendants now seek reconsideration of the first of the above-referenced findings. In particular, NHK Defendants, noting there is no dispute that the subject goods were sent to the United States by Seagate Singapore or by a customer downstream of Seagate Singapore, and not by any NHK Defendant or alleged co-conspirator, argue the import trade/commerce exemption does not, as a matter of law, apply.

Courts of Appeal have differed on whether, for the import trade/commerce exemption to apply, a defendant or co-conspirator must be the entity sending the goods into the United States. Compare Motorola Mobility LLC v AU Optronics Corp., 775 F.3d 816, 818 (7th Cir. 2015) (holding import trade/commerce exemption does not apply where plaintiffs, rather than defendants, “import[] [price-fixed goods] into the United States”), with Animal Science Products, Inc. v. China Minmetals Corp., 654 F.3d 462, 470 (3rd Cir. 2011) (rejecting argument that import trade/commerce exemption “requires that the defendants function as the physical importers of goods”). District courts likewise have reached differing conclusions on that issue. Compare In TFT-LCD (Flat Panel) Antitrust Litig., 2010 WL 2610641, at *4-6 (N.D. Cal. June 28, 2010) (holding plaintiff failed to show import trade/commerce exemption applied, where “foreign-purchased products” were sent to United States “by [plaintiff’s] affiliates”), with In re Optical Disk Drive Antitrust Litig., 2017 WL

⁶ With respect to the above-described second group of claims, Seagate Plaintiffs did not argue that the import trade/import commerce exemption applied.

11513316, at *4 (N.D. Cal. December 18, 2017) (finding import trade/commerce exemption applied where “[plaintiffs] and their subsidiaries, and not [d]efendants, imported [goods with price-fixed components] into the United States”).

Having considered the above-cited decisions, as well as the other cases cited by the parties in their respective written submissions, the Court, in retrospect, finds the authority on which NHK Defendants rely is, as discussed below, more persuasive.

“Import trade and commerce are excluded at the outset from the coverage of the FTAIA in the same way that domestic interstate commerce is excluded,” while “non-import, non-domestic commerce” is included within the FTAIA. See Minn-Chem, Inc. v. Agrium, Inc., 683 F.3d 845, 854 (7th Cir. 2012). The “pragmatic reason” for excluding import trade/commerce from the FTAIA is that “[t]he applicability of U.S. law to transactions in which a good or service is being sent directly into the United States, with no intermediate stops, is both fully predictable to foreign entities and necessary for the protection of U.S. consumers.” See id. (emphasis added) (noting “[f]oreigners who want to earn money from the sale of goods or services in American markets should expect to have to comply with U.S. law”).

Thus, when determining whether the import trade/commerce exemption applies, “[t]he relevant inquiry is whether the conduct of the defendants—not the plaintiffs—involves import trade or commerce,” see Kruman v. Christie’s Int’l, PLC, 284 F.3d 384, 395 (2nd Cir. 2002), and, here, as noted, it is undisputed that no defendant or co-conspirator sent the subject goods into the United States, see, e.g., United States v. Hsuing, 778 F.3d 738, 755 (9th Cir. 2015) (holding “transactions that are directly between the [U.S.] plaintiff purchasers and the

defendant cartel members *are* the import commerce of the United States”) (internal quotation and citation omitted; alteration and emphasis in original). Rather, the SAs, having been incorporated into consumer products made by a foreign Seagate entity or by a foreign customer of a foreign Seagate entity, were imported into the United States only after they made intermediate stops in Thailand, Singapore, and, in some cases, additional locations overseas.

Accordingly, on reconsideration, the Court finds the import trade/commerce exclusion does not apply to the direct purchaser claims asserted by Seagate Thailand and Seagate Singapore.

The Court next considers whether the domestic effect exception applies to Seagate Thailand and Seagate Singapore’s claims, to the extent those claims are predicated on said entities’ direct purchases of SAs that later entered the United States in products containing them.⁷

The domestic effect exception applies where the defendant’s conduct has a “‘direct, substantial, and reasonably foreseeable effect’ on American domestic, import, or (certain) export commerce,” see F. Hoffmann-La Roche Ltd. v. Empagran, 542 U.S. 155, 162 (2004) (quoting 15 U.S.C. § 6(a)(1)), and “the ‘effect’ ” gives rise

⁷ As noted, the Court, in its May 15 Order, found, as to claims predicated on direct purchases by Seagate Thailand and Seagate Singapore, where products containing SAs did not enter the United States, that NHK Defendants were entitled to summary judgment, Seagate Plaintiffs’ having failed to show the domestic effect exception applied. In light of the Court’s findings, set forth in the May 15 Order, with regard to the import trade/commerce exclusion, however, the Court did not at that time consider the applicability of the domestic effect exception to products containing SAs that did enter the United States.

to a Sherman Act claim, see id. (quoting 15 U.S.C. § 6(a)(2)).

In the SAC, Seagate Plaintiffs allege that the price-fixing conspiracy “produce[d] a direct, substantial, and reasonably foreseeable harmful effect on domestic and import commerce in the United States in the form of artificially high prices being paid for [SAs] by U.S. customers.” (See SAC ¶ 229.) As NHK Defendants point out, however, any such effect could not have given rise to Seagate Thailand or Seagate Singapore’s claims, as said claims are based on those plaintiffs’ purchases of SAs in, respectively, Thailand and Singapore, which purchases preceded the purchases by any customer in the United States. See Lotes Co. v. Hon Hai Precision Industry Co., 753 F.3d 395, 402, 414 (2nd Cir. 2014) (holding domestic effect exception inapplicable where plaintiff foreign entity asserted it was injured in China by defendants’ conduct; finding plaintiff’s allegation that defendants’ conduct “had the effect of driving up the prices of [goods]” in United States unavailing where plaintiff’s alleged injury “precede[d]” any such effect).

In connection with the instant motion for reconsideration, Seagate Plaintiffs argue that the requisite effect is something in addition to that described above, specifically, defendants’ “eliminating competition in domestic bids” (see Pls.’ Opening Br. on NHK’s Oral Mot. for Recons. at 7:14), a reference to defendants alleged entry into a global conspiracy to fix the prices of SAs (see SAC ¶¶ 73-76, 224-225) and alleged entry into agreements in the United States with Seagate LLC, whereby the prices for SAs to be charged to Seagate entities located outside the United States were set.⁸

⁸ A summary of the evidence Seagate Plaintiffs offered in support of their allegation that the pricing negotiations occurred in the United

In support of their argument that such conduct caused the requisite domestic effect for purposes of the FTAIA, Seagate Plaintiffs cite United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940), in which the Supreme Court reaffirmed its prior holdings that “uniform price-fixing by those controlling in any substantial manner a trade or business in interstate commerce is prohibited by the Sherman [Act]” and that “[t]he aim and result of every price-fixing agreement, if effective, is the elimination of one form of competition.” See id. at 212-213 (internal quotations and citations omitted). In reliance of such authority, Seagate Plaintiffs argue that the existence of an agreement to fix prices, even one prior to any such fixed price being paid by a customer, itself causes a domestic effect in the form of an injury to competition, and that, in the instant case, such a domestic effect preceded the purchases made by Seagate Thailand and Seagate Singapore.

Both the Ninth and Seventh Circuits, however, have rejected essentially the same arguments.

First, in In re Dynamic Random Access Memory (DRAM) Antitrust Litig., 546 F.3d 981 (9th Cir. 2008), wherein a foreign purchaser alleged “the defendants engaged in a global conspiracy to fix DRAM prices,” the Ninth Circuit found that “the domestic effect of the defendants’ conspiracy did not give rise to [the plaintiff’s] alleged foreign injury,” concluding the fact “that the conspiracy had effects in the United States and abroad does not show that the effect in the United States, rather than the overall price-fixing conspiracy itself, proximately caused the effect abroad.” See id. at 988-89 (noting foreign

States is set forth in the Court’s May 15 Order. (See May 15 Order at 7:4-12.)

purchaser “has recourse under its own country’s antitrust laws”).⁹

Second, in Motorola, wherein a domestic plaintiff negotiated in the United States the prices its foreign subsidiaries paid abroad for defendants’ price-fixed products, the Seventh Circuit found the domestic effect exception did not apply where the plaintiff sought to recover overcharges the subsidiaries paid abroad. See Motorola, 775 F.3d at 822-825. Rather, after “assum[ing] that the requirement of a direct, substantial, and reasonably foreseeable effect on domestic commerce ha[d] been satisfied,” see id. at 819, the Seventh Circuit found the claim on behalf of the subsidiaries did not arise from any such effect, noting “U.S. antitrust laws are not to be used for injury to foreign customers,” see id. at 820 (internal quotation and citation omitted); they must instead “seek relief for restraints of trade under the laws either of the countries in which they are incorporated or do business or the countries in which their victimizers are incorporated or do business,” see id.

Here, the Court likewise finds the domestic effect exception does not apply to the direct purchaser claims raised by Seagate Thailand and Seagate Singapore.

Accordingly, as neither the import trade/commerce exemption nor the domestic effect exception applies to the direct purchaser claims asserted by Seagate Thailand and Seagate Singapore, NHK Defendants’ motion for partial summary judgment will be granted.

⁹ The Ninth Circuit did not address the nature of the domestic effect exception, the issue not having been raised on appeal. See id. at 986.

B. Motion for Leave to Amend

In the SAC, the sole references to purchases are allegations that Seagate Plaintiffs purchased SAs from defendants (see SAC ¶¶ 2, 5, 22-23, 27, 32, 93, 95, 98, 153-157, 159-163, 166-167, 171, 177, 179, 181, 209, 216, 221, 229-232, 237, 249-255, 263, 272, 281, 285-286, 290-291, 302), which purchases are described as having been made “directly” from defendants (see SAC ¶¶ 32, 251). The SAC includes no factual allegations that any Seagate Plaintiff indirectly purchased an SA or a product containing an SA.

Seagate Plaintiffs now seek leave to file a proposed Third Amended Complaint (“Proposed TAC”), for purposes of “clarify[ing] that NHK’s conspiracy harmed Seagate indirectly,” specifically, an amendment to allege Seagate LLC and Seagate Singapore seek damages based on their having indirectly purchased SAs, and to add other “clarifications and updates on the case.” (See Pls.’ Mot. for Leave to Amend at 2:2-3, 28.)

“As a general rule, leave to amend should be ‘freely given when justice so requires.’” Lockheed Martin Corp. v. Network Solutions, Inc., 194 F.3d 980, 986 (9th Cir. 1999) (quoting Fed. R. Civ. P. 15(a)). In considering whether to afford leave to amend, courts consider the following four factors: “(1) bad faith on the part of the plaintiffs; (2) undue delay; (3) prejudice to the opposing party; and (4) futility of the proposed amendment.” See id.

Here, the Court does not find Seagate Plaintiffs, in seeking leave to amend, are acting in bad faith or that all of the proposed amendments would be futile.¹⁰ As set forth

¹⁰ Although the issue was not raised by NHK Defendants, the Court notes that, to the extent Seagate Plaintiffs seek leave to allege that, under the laws of California and Minnesota, Seagate Singapore is entitled to recover any overcharges it indirectly paid, those claims are futile. Specifically, such state law claims would be subject to dismissal

below, however, the Court finds Seagate Plaintiffs have unduly delayed in seeking leave to amend and that the proposed amendments would prejudice NHK Defendants.

“[I]n evaluating undue delay, [a court] inquire[s] whether the moving party knew or should have known the facts and theories raised by the amendment” at the time it filed “the original pleading.” See AmerisourceBergen Corp. v. Dialysist West, Inc., 465 F.3d 946, 953 (9th Cir. 2006) (internal quotation and citation omitted). Here, the facts and theories now asserted on behalf of Seagate LLC and Seagate Singapore in support of the proposed indirect purchaser claim, and the facts and theories pertaining to the role Seagate International, a Cayman Island company, played in connection with purchases by other Seagate entities, a role Seagate Plaintiffs allege has a connection to the proposed indirect purchaser claim,¹¹ were known by Seagate Plaintiffs at the time the instant action was filed in February 2020, more than two years ago, as all of those facts and theories are based on internal transactions conducted among the Seagate Plaintiffs themselves. (See

for lack of standing, there being no allegation that the subject indirect purchases were made in California and/or Minnesota. See In re Capacitors Antitrust Litig., 154 F. Supp. 3d 918, 925-27 (N.D. Cal. 2015) (dismissing for lack of standing state antitrust claims, where plaintiff did not allege “an in-state purchase of a [price-fixed product] at a supra-competitive price”); In re Glumetza Antitrust Litig., 2020 WL 1066934, at *10 (N.D. Cal. March 5, 2020) (holding, where “injury alleged is the overcharge at each purchase . . . , the scope of standing is limited to the locations of the purchases”).

¹¹ Contrary to Seagate Plaintiffs’ assertion that the Court “asked” Seagate Plaintiffs to add facts “clarify[ing]” Seagate International’s role in the events giving rise to the instant case (see Pls.’ Reply in Support of . . . Mot. for Leave to Amend at 8:22), the Court simply noted what was obvious from the record at the time, namely, that no party had set forth the basis for Seagate International’s antitrust claims. (See Transcription of Proceedings, July 28, 2023, 10:17-21 (noting, “they’re just out there at the moment”).)

Proposed TAC ¶¶ 36, 44, 47, 74-77.) Under such circumstances, their delay in bringing claims predicated on those facts and theories is unreasonable. See AmerisourceBergen Corp., 465 F.3d at 953 (finding “eight month delay between the time of obtaining a relevant fact and seeking a leave to amend is unreasonable”).

Further, “[a] need to reopen discovery and therefore delay the proceedings supports a district court’s finding of prejudice from a delayed motion to amend the complaint.” See Lockheed Martin Corp., 194 F.3d at 986; see also Solomon v. North American Life & Casualty Ins. Co., 151 F.3d 1132, 1139 (9th Cir. 1998) (holding motion to amend properly denied where granting motion to amend “would have required re-opening discovery, thus delaying the proceedings”). Here, the deadline to conduct fact discovery elapsed over a year ago (see Amended Order Re Case Schedule, filed May 5, 2022 (setting deadline of October 21, 2022, for “close of fact discovery”)), and, as shown by NHK Defendants, adding the proposed indirect purchaser claims would necessitate the reopening of fact discovery. In particular, discovery would need to be conducted as to the practices of and agreements among the various Seagate Plaintiffs with respect to pricing and transfers of products, as well as discovery as to the prices actually paid during the thirteen years of the alleged conspiracy.¹² Additionally, discovery would be necessary as to other types of damages Seagate Plaintiffs now seek to recover in addition to overcharges, namely, damages resulting from defendants’ alleged “delay[ing]

¹² Although Seagate Plaintiffs contend NHK Defendants have sought and received discovery as to “pass-on defenses” (see Pls.’ Mot. for Leave to Amend at 12:1-4), NHK Defendants have explained that the discovery sought and obtained pertained to whether the alleged price-fixed amounts were passed on to customers downstream of Seagate (see Transcript of Proceedings, July 28, 2023, 84:22-85:13).

introduction of new designs” and “suppressing the quality of the [SAs] sold to Seagate” (see Proposed TAC ¶ 121),¹³ which conduct, according to Seagate Plaintiffs, resulted in Seagate Plaintiffs’ “receiving worse products” (see Proposed TAC ¶ 272) and causing “lost sales and profits” (see Proposed TAC ¶¶ 255, 276, 278).

Accordingly, the motion for further leave to amend will be denied.

CONCLUSION

For the reasons stated above:

1. On reconsideration, NHK Defendants’ motion for partial summary judgment is hereby GRANTED;

2. Seagate Plaintiffs’ motion for leave to file their Proposed TAC is hereby DENIED.

IT IS SO ORDERED.

Dated:

November 17, 2023

/s/ Maxine M. Chesney

MAXINE M. CHESNEY

United States District Judge

¹³ In their reply, Seagate Plaintiffs contend their “allegations of technology suppression” are not new and were included in both the Amended Complaint and the SAC. (See Pls.’ Reply in Support of [Their] Mot. for Leave to Amend at 5:13-16.) The paragraphs in those two pleadings to which Seagate Plaintiffs cite, however, include no reference to the suppression of technology, let alone any allegation that defendants engaged in such conduct.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SEAGATE TECHNOLOGY LLC; et al.,	No. 24-4470
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Plaintiffs-Appellants,

v.

NHK SPRING CO., LTD.;
et al.,

Defendants-Appellees.

D.C. No.

3:19-md-02918-MMC

Northern District of

California,

San Francisco

ORDER

Mar. 6, 2026

Before: CALLAHAN and LEE, Circuit Judges, and RASH, District Judge.*

The panel has voted to deny the petition for panel rehearing. Judge Lee and Judge Callahan have voted to deny the petition for rehearing en banc, and Judge Rash has recommended denying the petition. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 40. The petition for panel rehearing and the petition for rehearing en banc, Dkt. 81, are **DENIED**.

* The Honorable Scott H. Rash, United States District Judge for the District of Arizona, sitting by designation.

Appellees filed a notice of intent to file publicly Appellees' Petition for Rehearing or Rehearing En Banc. *See* 9th Cir. R. 27-13(f). No other party has filed a motion to file or maintain these documents under seal. Therefore, the Clerk will unseal the notice, Dkt. 80, and file publicly Appellees' Petition for Rehearing or Rehearing En Banc, Dkt. 82.