No. 10-76

In the Supreme Court of the United States

GOODYEAR LUXEMBOURG TIRES, S.A., ET AL.,
PETITIONERS

v.

EDGAR D. BROWN AND PAMELA BROWN,
CO-ADMINISTRATORS OF THE ESTATE OF
JULIAN DAVID BROWN, ET AL.

ON WRIT OF CERTIORARI
TO THE NORTH CAROLINA COURT OF APPEALS

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether the Due Process Clause of the Fourteenth Amendment permits a state court to exercise personal jurisdiction over a foreign corporation in a cause of action not arising out of, or related to, the corporation's contacts with the State, on the grounds that goods produced by the corporation entered the State via the stream of commerce, and that the corporation's parent company does business in the State.

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INTEREST OF THE UNITED STATES

This case concerns the limits that the Due Process Clause of the Fourteenth Amendment places on a state court's exercise of "general" personal jurisdiction over a foreign corporation in a cause of action not arising out of or related to the corporation's contacts with the State. With respect to certain questions of personal jurisdiction, the interests of the United States are served by permitting suits against foreign entities to go forward in domestic courts. But as the United States explained in its brief as amicus curiae in *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408 (1984), decisions in this field can also "have a significant impact on the for-

eign trade relations of the United States." U.S. Br. at 1, *Helicopteros*, *supra* (No. 82-1127).

The state appellate court's reasoning and result here potentially threaten the United States' foreign trade and diplomatic interests. Acceptance of that reasoning and result could dissuade foreign corporations from sending their products into the United States, just as a United States corporation concerned about facing a similar rule abroad might be equally dissuaded from exporting its products. Such impediments to the free flow of international commerce could harm the domestic economy by reducing overall United States exports, and could deprive United States consumers of the full benefits of foreign trade. Foreign governments' objections to state courts' broad assertions of personal jurisdiction over non-United States corporations have also been a significant obstacle to the conclusion of international agreements on reciprocal recognition and enforcement of judgments—agreements that serve the United States' interest in a fair, predictable, and stable system for the resolution of disputes that cross national boundaries.

STATEMENT

1. "The Due Process Clause of the Fourteenth Amendment limits the power of a state court to exert personal jurisdiction over a nonresident defendant." *Asahi Metal Indus. Co.* v. *Superior Court*, 480 U.S. 102, 108 (1987) (opinion of O'Connor, J.). This limitation on state authority "protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.'" *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 471-472 (1985) (quoting *International Shoe Co.* v. *Washington*, 326 U.S. 310, 319 (1945)). It also

"gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297 (1980). As a general matter, due process requirements are satisfied if "a nonresident corporate defendant * * * has 'certain minimum contacts with [the forum] such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."'" *Helicopteros Nacionales de Colombia, S.A.*, v. *Hall*, 466 U.S. 408, 414 (1984) (brackets in original) (quoting *International Shoe*, 326 U.S. at 316).

In delineating the types of contacts that may permit a forum to exercise personal jurisdiction over a defendant, this Court has distinguished between "specific jurisdiction" and "general jurisdiction." See *Helicopteros*, 466 U.S. at 414 & nn.8-9; see also *Calder* v. *Jones*, 465 U.S. 783, 786-787 (1984). Specific jurisdiction is the exercise of "personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum." *Helicopteros*, 466 U.S. at 414 n.8. By contrast, a State's assertion of general jurisdiction over a defendant potentially subjects the defendant to a broader range of suits because general jurisdiction extends to cases "not arising out of or related to the defendant's contacts with the forum." *Id.* at 414 n.9; see generally 4 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1067.5, at 499 n.5 (3d ed. 2003) (Wright & Miller).

This Court has specified different prerequisites for the exercise of specific and general jurisdiction. The determination whether a state court may exercise specific jurisdiction in a particular case turns on the "rela-

tionship among the defendant, the forum, and the litigation." *Helicopteros*, 466 U.S. at 414 (quoting *Shaffer* v. *Heitner*, 433 U.S. 186, 204 (1977)). Thus, a forum may assert specific jurisdiction over a defendant "if the defendant has 'purposefully directed' his activities at residents of the forum, and the litigation results from alleged injuries that 'arise out of or relate to' those activities." *Burger King*, 471 U.S. at 472-473 (quoting *Keeton* v. *Hustler Mag., Inc.*, 465 U.S. 770, 774 (1984), and *Helicopteros*, 466 U.S. at 414). That test is ordinarily satisfied if a corporation "'delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State' and those products subsequently injure forum consumers." *Id.* at 473 (quoting *World-Wide Volkswagen*, 444 U.S. at 298).

Establishing general jurisdiction is in one respect easier, and in another respect more difficult, than establishing specific jurisdiction. To establish general jurisdiction, the plaintiff need not demonstrate any link between the forum State and the events that gave rise to the suit.[1] For purposes of general jurisdiction, however, it is not sufficient that the defendant directed its goods into the stream of commerce with the expectation that they would be purchased in the forum State. Rather, a defendant can be subjected to general jurisdiction only in a State with which it has "the kind of continuous and

[1] Some Members of this Court have suggested that this approach to general jurisdiction is limited to corporate defendants. See *Burnham* v. *Superior Court*, 495 U.S. 604, 610 n.1 (1990) (opinion of Scalia, J.). All of the petitioners in this case are organized as corporations. See Pet. iii.

systematic general business contacts" that satisfy due process concerns. *Helicopteros*, 466 U.S. at 416.[2]

2. Petitioners are tire manufacturers incorporated in Luxembourg, Turkey, and France. Pet. App. 2a. They are indirect subsidiaries of The Goodyear Tire and Rubber Company (Goodyear U.S.A.), an Ohio corporation. Pet. iii.[3] Respondents are the administrators of the estates of Matthew Helms and Julian Brown, residents of North Carolina who were killed in a 2004 bus accident near Paris, France. Pet. App. 2a.

Respondents sued petitioners, Goodyear U.S.A., and others in the Superior Court of Onslow County, North Carolina. Respondents alleged—and, at least for purposes of analyzing personal jurisdiction, the state courts found—that the accident was caused by the failure of one of the bus's tires; that the tire at issue was a Goodyear Regional tire manufactured by petitioner Goodyear Lastikleri T.A.S.; and that such tires were designed and distributed by all of the petitioners. Pet. App. 30a-32a. Respondents sought relief on a number of theories, including that petitioners had negligently designed, con-

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[2] This Court has also recognized certain other bases for a State's assertion of personal jurisdiction, such as the express or implied consent of the defendant, see *Burger King*, 471 U.S. at 472 n.14; *Insurance Corp. of Ir.* v. *Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703-705 (1982); *National Equip. Rental, Ltd.* v. *Szukhent*, 375 U.S. 311, 314-316 (1964), and personal service on a defendant while he is temporarily within the State's territorial jurisdiction (sometimes referred to as "tag" jurisdiction), *Burnham*, *supra*. This case does not implicate those other bases of personal jurisdiction.

[3] The trial court stated that petitioner Goodyear Lastikleri T.A.S. was a wholly owned subsidiary of Goodyear U.S.A.; the court stated that petitioners Goodyear Luxembourg Tires, SA, and Goodyear Dunlop Tires France, SA, were also subsidiaries of Goodyear U.S.A., but it did not detail the extent of ownership. Pet. App. 34a.

structed, tested, and inspected the failed tire, and that they had failed to warn about latent defects in the tire. *Id*. at 2a-3a.

Petitioners moved to dismiss the complaint, arguing that the North Carolina trial court could not exercise personal jurisdiction over them consistent with the Due Process Clause of the Fourteenth Amendment.[4] Pet. App. 3a. The trial court denied the motions to dismiss. *Id*. at 30a-36a. The court identified three aspects of petitioners' activities as relevant to the jurisdictional inquiry.

First, the trial court found that the "subject tire contained information that was written entirely in English, including warnings and directions, U.S. Department of Transportation [DOT] markings placed on the tire to allow it to be sold in the United States, and markings to show it was manufactured as qualified for sale in the United States." Pet. App. 32a. The court inferred from those markings that petitioners had "deliberately attempted to take advantage of the tire market in North Carolina." *Id*. at 34a. Second, the trial court found that between 2004 and 2007, at least 46,231 tires manufactured by petitioners "were shipped into North Carolina for sale," albeit through Goodyear U.S.A. and affiliated companies rather than "by the original manufacturer." *Id*. at 32a-33a. Third, the court found that "[petitioners] are subsidiaries of Goodyear [U.S.A.], and as such have additional, abundant ties to the United States." *Id*. at 34a.

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[4] North Carolina's long arm statute, N.C. Gen. Stat. § 1-75.4(1)(d) (2007), authorizes the State's courts to exercise personal jurisdiction to the full extent permitted by the Constitution. Pet. App. 11a (citing *Dillon* v. *Numismatic Funding Corp.*, 231 S.E.2d 629, 630 (N.C. 1977)).

The trial court concluded that petitioners "knew or should have known that some of [their] tires were distributed for sale to North Carolina residents," and that petitioners therefore "could reasonably anticipate being haled into court in North Carolina." Pet. App. 33a-34a. The court further concluded that the "quantity" and "quality" of petitioners' contacts with North Carolina "weigh[ed] in favor of a finding of general jurisdiction." *Id.* at 34a-35a. The court also found that North Carolina had a "substantial interest in allowing its citizens a forum for the redress of grievances," while petitioners would not be inconvenienced by litigating in North Carolina. *Id.* at 35a. The court concluded that petitioners had "continuous and systematic ties" to, and "substantial" activities in, North Carolina, such that the "[e]xercise of general jurisdiction over [petitioners] comports with Due Process and does not offend traditional notions of fair play and justice." *Id.* at 35a-36a.

3. The North Carolina Court of Appeals affirmed. Pet. App. 1a-29a. The court acknowledged that the case "is not related to, nor did it arise from, [petitioners'] contacts with North Carolina," and that the case therefore "involves general rather than specific jurisdiction." *Id.* at 12a-13a. It therefore framed the question before it as whether petitioners' "'activities in the forum are sufficiently continuous and systematic'" to "justify[] the exercise of general personal jurisdiction over [petitioners]." *Id.* at 13a (quoting *Skinner* v. *Preferred Credit*, 638 S.E.2d 203, 210 (N.C. 1977)).

In analyzing that question, the North Carolina Court of Appeals stated that the existence of "continuous and systematic contacts" with the forum turned on whether petitioners had "engage[d] in acts by which they purposefully avail[ed] themselves of the privilege of con-

ducting activities within the forum State." Pet. App. 13a (quoting *Lulla* v. *Effective Minds, LLC,* 646 S.E.2d 129, 133 (N.C. Ct. App. 2007)). Quoting this Court's decision in *World-Wide Volkswagen*, 444 U.S. at 298, the court explained that "'purposeful availment' has been found where a corporation 'delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.'" Pet. App. 14a. The state court concluded that, under its precedents, the pertinent inquiry was whether petitioners had "purposefully injected [their] product into the stream of commerce without any indication that [they] desired to limit the area of distribution of [their] product so as to exclude North Carolina." *Id.* at 20a (quoting *Bush* v. *BASF Wyandotte Corp.*, 306 S.E.2d 562, 568 (N.C. Ct. App. 1983)) (brackets in original).

In applying that standard, the North Carolina Court of Appeals found three of the trial court's factual findings to be significant. First, the appellate court viewed the DOT markings on the tire as an indication "that the tire in question was manufactured in such a manner that it could * * * be sold in the United States." Pet. App. 25a. Second, the court found "that tires manufactured by [petitioners] were shipped to the United States for sale and that there was no attempt to keep these tires from reaching the North Carolina market." *Ibid.*[5]

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[5] Although the trial court found that petitioners had "caus[ed]" tires to be shipped into North Carolina, Pet. App. 34a-35a, the appellate court concluded that petitioners "were not directly responsible for the presence in North Carolina of tires that they had manufactured," *id*. at 22a-23a. Rather, the appellate court explained, "the available evidence tends to show that other entities were responsible for the shipment of tires manufactured by [petitioners] to the United States and, as a part of that process, the tires arrived in North Carolina." *Id.* at 22a.

Third, the appellate court understood "the distribution chain through which tires manufactured by [petitioners] were shipped into the United States" to be "'a continuous and systematic' process rather than a sporadic or episodic one," implemented "through a regular process employed within the Goodyear organization." *Id.* at 26a.[6]

Based on those findings, the appellate court concluded that petitioners had "purposefully and intentionally manufactured tires and placed them into the stream of interstate commerce without any limitation on the extent to which those tires could be sold in North Carolina." Pet. App. 27a. As for the fairness of exercising personal jurisdiction over petitioners, the appellate court adverted to North Carolina's "well-recognized interest in providing a forum in which its citizens are able to seek redress for injuries that they have sustained." *Ibid.* The court further explained that "a greater burden would be imposed upon [respondents] in the event that they were required to litigate their claims in France compared to the burden that would be imposed upon [petitioners] in the event that they are required to defend [respondents'] claims in the [North Carolina courts]." *Id*. at 27a-28a.

The state appellate court acknowledged petitioners' contention that "'stream of commerce' analysis simply does not apply in instances involving general, as com-

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[6] Unlike the trial court, the appellate court did not regard the subsidiary/parent relationship between petitioners and Goodyear U.S.A. as relevant to its analysis of petitioners' contacts with North Carolina. The appellate court did, however, anticipate that petitioners' burden of litigating in North Carolina would be "alleviated to some extent by the fact that [petitioners] have corporate affiliates in the United States with business interests in North Carolina." Pet. App. 27a.

pared to specific, jurisdiction." Pet. App. 28a. The court rejected the argument because petitioners "ha[d] not cited a North Carolina case to this effect," and because it "believe[d] that the real issue is the extent to which [petitioner's] products were, in fact, distributed in North Carolina markets." *Ibid.*

4. Petitioners sought review in the Supreme Court of North Carolina. That court found no "substantial constitutional question" warranting mandatory review, and it declined to exercise discretionary review. Pet. App. 37a-38a.

SUMMARY OF ARGUMENT

The North Carolina Court of Appeals fundamentally erred in determining whether petitioners were subject to *general* jurisdiction in North Carolina by using a truncated version of this Court's test for the permissible exercise of *specific* jurisdiction. The state courts' reasoning and result potentially threaten the United States' foreign trade and diplomatic interests. The judgment of the North Carolina Court of Appeals should be reversed.

A. The North Carolina courts cannot properly exercise specific jurisdiction in this case because respondents' suit does not "arise[] out of or relate[] to [petitioners'] contacts with [North Carolina]." *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414 n.8 (1984). Nothing about the bus accident or the tire at issue relates to petitioners' contacts with North Carolina. And neither North Carolina's interest in providing a forum for the suit, nor the fact that other tires unrelated to the accident have entered North Carolina, provides a legally sufficient basis for the exercise of specific jurisdiction here.

B. A State may assert general personal jurisdiction over a defendant consistent with the Due Process Clause of the Fourteenth Amendment when "the foreign corporation, through its [agent] 'ha[s] been carrying on in [the forum State] a continuous and systematic * * * part of its general business.'" *Helicopteros*, 466 U.S. at 415 (quoting *Perkins* v. *Benguet Consol. Mining Co.*, 342 U.S. 437, 438 (1952)). The North Carolina Court of Appeals held that defendants establish "continuous and systematic contacts" with a forum when they "engage in acts by which they purposefully avail themselves of the privilege of conducting activities within the forum State." Pet. App. 13a (citation omitted). That was error. This Court has consistently used the latter standard only when evaluating a State's exercise of specific jurisdiction, while the "continuous and systematic" contacts test has long been associated with a State court's exercise of general jurisdiction. The distinction between the two tests is essential because the concept of specific jurisdiction would serve no practical purpose if the test for personal jurisdiction in *all* suits against a defendant (general jurisdiction) were the same as the test in suits based on forum-directed conduct (specific jurisdiction).

Under the "continuous and systematic" contacts test, North Carolina's courts may not permissibly exercise general jurisdiction over petitioners. Petitioners appear to have established no physical presence in North Carolina, and the facts on which the state courts relied do not amount to "continuous and systematic" contacts. The distribution of petitioners' goods into North Carolina was not petitioners' own undertaking; the DOT markings on the tire are not themselves contacts with the State; and petitioners' status as subsidiaries of a United States corporation reveals little about their contacts

with North Carolina. Even taken together, those facts merely reflect petitioners' participation in the ordinary channels of interstate and foreign commerce; they are not systematic corporate activity of the kind this Court has found to support a State's exercise of general jurisdiction.

C. The United States has certain interests that favor relatively broad exercises of personal jurisdiction over foreign defendants. Some of those interests are protected through States' reasonable exercises of specific jurisdiction. Others are uniquely federal and are therefore not implicated by this case, which presents a question about the limitations the Due Process Clause of the Fourteenth Amendment places on a *state* court's exercise of personal jurisdiction.

By contrast, a State's excessive assertion of general jurisdiction potentially threatens particular harm to the United States' foreign trade and diplomatic interests. Decisions like the one at issue here may dissuade foreign companies from doing business in the United States, thereby depriving United States consumers of the full benefits of foreign trade. Conversely, a United States corporation concerned about facing a similar rule abroad might be equally dissuaded from exporting its products. In the diplomatic sphere, state courts' exercises of general jurisdiction have been a source of friction, and have proven to be a particular obstacle to the conclusion of beneficial international agreements on the reciprocal recognition and enforcement of judgments.

ARGUMENT

THE NORTH CAROLINA COURTS LACK PERSONAL JURISDICTION OVER PETITIONERS IN THIS SUIT

The gravamen of respondents' suit is that an allegedly defective tire manufactured in Turkey caused a fatal bus accident in France, and they contend that suit should be heard by a North Carolina state court. The North Carolina Court of Appeals held that the State's courts could hear the suit because petitioners had purposefully availed themselves of commercial opportunities in the State by placing tires into the stream of commerce with the understanding that some would be sold in North Carolina. That analysis might have provided a sufficient basis for subjecting petitioners to the state courts' *specific* jurisdiction had a tire sold in North Carolina caused the accident. To establish *general* jurisdiction over a suit that is unrelated to any of petitioners' forum-related activities, however, respondents were required to demonstrate much more substantial overall contacts between petitioners and the State. Because respondents failed to make that showing, the judgment of the North Carolina Court of Appeals should be reversed.

A. The North Carolina Courts May Not Exercise Specific Personal Jurisdiction Over Petitioners On The Claims In This Suit

The exercise of specific jurisdiction is reserved for suits "arising out of or related to the defendant's contacts with the forum." *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414 n.8 (1984); see *Burger King Corp.* v. *Rudzewicz*, 471 U.S. 462, 472-473 & n.15 (1985). This suit does not arise out of or relate to petitioners' contacts with North Carolina because all of

petitioners' alleged acts and omissions in connection with the deaths of respondents' decedents occurred outside that State. The bus accident occurred in France, and the allegedly defective tire was manufactured in Turkey. See Pet. App. 2a. And there is no suggestion in the state courts' opinions that the particular tire involved in the accident was designed in, or distributed through, North Carolina.

None of the factors identified by the state courts as bases for entertaining the suit is relevant to that specific-jurisdiction inquiry. The state appellate court suggested that the exercise of jurisdiction was supported by North Carolina's "well-recognized interest in providing a forum in which its citizens are able to seek redress for injuries that they have sustained." Pet. App. 27a. But the fact that *respondents*' decedents were North Carolina residents does not link the suit to any of *petitioners*' contacts with the forum. See *Helicopteros*, 466 U.S. at 414 (explaining that the specific-jurisdiction inquiry focuses on the "relationship among the defendant, the forum, and the litigation") (quoting *Shaffer* v. *Heitner*, 433 U.S. 186, 204 (1977)); *Keeton* v. *Hustler Mag., Inc.*, 465 U.S. 770, 780 (1984) (noting that the plaintiff's State of residence may be relevant, but only insofar as it "enhance[s] defendant's contact with the forum" or is "the focus of the activities of the defendant out of which the suit arises"); *Rush* v. *Savchuk*, 444 U.S. 320, 329, 332 (1980) (plaintiffs' contacts with forum cannot be decisive in assessing defendant's due process rights); cf. *Burger King*, 471 U.S. at 475 ("Jurisdiction is proper * * * where the contacts proximately result from actions by the defendant *himself* that create a substantial connection with the forum.") (internal quotation marks and citation omitted).

Similarly misplaced was the trial court's view (Pet. App. 35a) that this case is "closely related" to petitioners' contacts with North Carolina because it involves a tire designed or manufactured by petitioners, and other tires designed or manufactured by petitioners have been sold in North Carolina. This Court has suggested that to support specific jurisdiction, a contact must be "the subject matter of the case" or "related to the operative facts of the * * * action." *Rush*, 444 U.S. at 329. The entry of other tires into the State is neither; it played no role in causing respondents' injury, and it is irrelevant to respondents' claim on the merits. The relationship the trial court perceived is too tenuous to "give[] a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 297 (1980).

This Court's decision in *Keeton* provides an instructive contrast. In *Keeton*, the Court upheld the application of New Hampshire's long-arm statute to a suit in which the plaintiff alleged that she had been libeled in a nationally circulated publication, 10,000-15,000 copies of which had been sold each month in that State. 465 U.S. at 772-774. The Court noted that, under the "single publication rule," the plaintiff sought to recover in a single proceeding for all the harms she had suffered nationwide. *Id.* at 774, 777. The Court emphasized, however, that the plaintiff "was suing, at least in part, for damages suffered in New Hampshire," *id.* at 776; that "New Hampshire has a significant interest in redressing injuries that actually occur within the State," *ibid.*; and that "[t]he tort of libel is generally held to occur wherever the offending material is circulated," *id.* at 777. Here,

by contrast, respondents do not allege that any tire sold in North Carolina was defective or contributed to their injury. Neither *Keeton* nor any other decision of this Court suggests that a defendant can be subjected to specific jurisdiction simply because it sold within the forum State goods of the same general character as those alleged to have caused injury elsewhere.

B. The North Carolina Courts May Not Exercise General Personal Jurisdiction Over Petitioners

The state appellate court erred by importing into its general-jurisdiction analysis tests this Court has enunciated in the specific-jurisdiction context. The proper inquiry in this context is whether "the foreign corporation, through its [agent] 'ha[s] been carrying on in [North Carolina] a continuous and systematic * * * part of its general business.'" *Helicopteros*, 466 U.S. at 415 (quoting *Perkins* v. *Benguet Consol. Mining Co.*, 342 U.S. 437, 438 (1952)). That test is not satisfied here because petitioners did not engage in "continuous and systematic" activities in North Carolina as the Court has used that phrase.

1. Evidence that petitioners "purposefully availed" themselves of commercial opportunities in North Carolina would not establish the "continuous and systematic contacts" necessary for the state courts to exercise general personal jurisdiction

The state appellate court began its general-jurisdiction analysis by correctly stating that the question before it was whether petitioners' "activities in the forum are sufficiently continuous and systematic." Pet. App. 13a (quoting *Skinner* v. *Preferred Credit*, 638 S.E.2d 203, 210 (N.C. 1977)). The court erred, however, by suggesting (*ibid.*) that the requisite "continuous

and systematic" contacts could be established merely through proof that petitioners had "purposely availed" themselves of commercial opportunities in North Carolina.

a. This Court's decisions exclusively associate concepts of "purposeful availment" and "stream of commerce" (see Pet. App. 14a) with specific jurisdiction. See *Republic of Argentina* v. *Weltover, Inc.*, 504 U.S. 607, 609-610, 619-620 (1992) (case arising from default on sovereign debt payable in forum State); *Asahi Metal Indus. Co.* v. *Superior Court*, 480 U.S. 102, 105-106 (1987) (case arising from injury suffered in the forum State allegedly caused by defective tire tube valve assembly manufactured by defendant); *Burger King*, 471 U.S. at 472-473 & n.15 (associating "purposefully directed" standard with specific jurisdiction); *Keeton*, 465 U.S. at 774, 780 (emphasizing that "the cause of action arises out of the very activity being conducted, in part, in [the forum State]"); *World-Wide Volkswagen*, 444 U.S. at 288, 297 (case arising from injury suffered in forum State while using product sold by defendant); *Kulko* v. *Superior Court*, 436 U.S. 84, 86, 94 (1978) (case concerning obligation of nonresident parent to support child resident in the forum State); *Shaffer*, 433 U.S. at 213-216 (applying "purposefully avail" standard to derivative suit against directors of a Delaware corporation only after assuming *arguendo* that Delaware always has an interest in cases concerning the management of the corporations it charters); *Hanson* v. *Denckla*, 357 U.S. 235, 238, 253 (1958) (case arising from dispute over inclusion of certain trust assets in an estate distributed pursuant to a will admitted to probate in the forum State).

By contrast, the "continuous and systematic" contacts test has long been associated with a State court's exercise of general jurisdiction. See *Helicopteros*, 466 U.S. at 409-410, 415-416 (case brought in Texas arising from helicopter crash in Peru); *Perkins*, 342 U.S. at 438-439, 445-448 (case brought in Ohio by aggrieved stockholder in Philippines corporation); see also *Ruhrgas AG* v. *Marathon Oil Co.*, 526 U.S. 574, 581 n.4 (1999) (noting district court's application of "systematic and continuous contacts" test to evaluate whether defendant was "subject * * * to general jurisdiction in [the forum State]") (citation omitted); *Burnham* v. *Superior Court*, 495 U.S. 604, 610 n.1 (1990) (opinion of Scalia, J.) (associating "'continuous and systematic' contacts" test with "jurisdiction with respect to matters unrelated to activity in the forum") (quoting *Perkins*, 342 U.S. at 438). Use of the more demanding "continuous and systematic" contacts standard for general jurisdiction reflects the common-sense insight that more extensive connections between a defendant and the forum State are needed to potentially subject the defendant to suit there for *all* its activities than to potentially subject it to suit for conduct directed at the forum.[7]

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[7] The courts of appeals widely recognize that the exercise of general jurisdiction requires more substantial overall contacts between the defendant and the forum State than does the exercise of specific jurisdiction. See, *e.g.*, *Metropolitan Life Ins. Co.* v. *Robertson-Ceco Corp.*, 84 F.3d 560, 568 (2d Cir.) ("Because general jurisdiction is not related to the events giving rise to the suit, courts impose a more stringent minimum contacts test."), cert. denied, 519 U.S. 1006, and 519 U.S. 1007 (1996); *ESAB Group, Inc.* v. *Centricut, Inc.*, 126 F.3d 617, 623 (4th Cir. 1997) ("[T]he threshold level of minimum contacts to confer general jurisdiction is significantly higher than for specific jurisdiction."), cert. denied, 523 U.S. 1048 (1998); *Purdue Research Found.* v. *Sanofi-Synthelabo, S.A.*, 338 F.3d 773, 787 (7th Cir. 2003) ("[T]he constitu-

If "purposeful availment" of commercial opportunities within a State alone were sufficient to establish "continuous and systematic" contacts with the forum, the entire concept of specific jurisdiction would be rendered superfluous. The core rationale for specific jurisdiction is that, even if a defendant's activities directed at a particular State are insufficient to potentially subject it to suit there for all its conduct worldwide, the defendant may reasonably expect to be sued in the State for any harms resulting from those activities. See *Keeton*, 465 U.S. at 779-780 (explaining that, although the defendant's "activities in [New Hampshire] may not be so substantial as to support jurisdiction over a cause of action unrelated to those activities," its business activities in that State were "sufficient to support jurisdiction when the cause of action arises out of the very activity being conducted, in part, in New Hampshire"). Specific jurisdiction would serve no practical purpose if the test for personal jurisdiction in *all* suits against a defendant were the same as the test in suits based on forum-directed conduct.

The state appellate court thus erred by invoking the "purposeful availment" standard designed for specific-jurisdiction cases to resolve the general-jurisdiction question presented here. As this Court explained in *Burger King*, the Due Process Clause's "fair warning requirement is satisfied if the defendant has purposefully directed his activities at residents of the forum, *and the litigation results from alleged injuries that arise out of or relate to those activities*." 471 U.S. at 472 (emphasis added; citations and internal quotation

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tional requirement for general jurisdiction is considerably more stringent than that required for specific jurisdiction.") (internal quotation marks and citation omitted).

marks omitted). Use of a "purposeful availment" test in this context reads the italicized language out of the standard and would obviate any need to consider (as this Court has repeatedly considered) the "relationship among the defendant, the forum, *and the litigation*." *Shaffer*, 433 U.S. at 204 (emphasis added).

The practical consequences of such an approach are far-reaching. If mere "purposeful availment" of commercial opportunities in a particular State were sufficient to subject an enterprise to the general jurisdiction of that State's courts, a corporation that sold its goods to an independent distributor, intending that they be resold in all 50 States, could potentially be brought to judgment in any State, on any claim against it, regardless of where in the world the claim arose. Such a result would be incompatible with "our traditional conception of fair play and substantial justice." *International Shoe Co.* v. *Washington*, 326 U.S. 310, 320 (1945). In addition, by attaching disproportionate jurisdictional consequences to limited commercial undertakings directed at a particular State, that regime would create significant disincentives to geographic diversification of business. See pp. 30-31, *infra*.

b. The constitutional criteria governing a state court's exercise of general jurisdiction are set forth in this Court's decisions in *Perkins* and *Helicopteros*. The defendant in *Perkins*, a Philippines mining company, had stopped its physical operations when the islands were invaded by Japan. 342 U.S. at 448. The company's president relocated to Ohio, where he continued to carry on the company's business, such as it was, from an office in that State. *Id*. at 447-448. Within that office, the president "kept * * * office files of the company," "carried on * * * correspondence relating to the busi-

ness of the company," and "drew and distributed salary checks on behalf of the company." *Id.* at 448. The corporation employed two secretaries in Ohio, maintained "two active bank accounts carrying substantial balances," and used an Ohio bank to "act[] as transfer agent for [its] stock." *Ibid.* The president hosted "[s]everal directors' meetings * * * at his home or office" in Ohio, "supervised policies dealing with the rehabilitation of the corporation's properties in the Philippines," and "dispatched funds to cover purchases of machinery for such rehabilitation." *Ibid.* This Court concluded that, through those activities, the president had "carried on in Ohio a continuous and systematic supervision of the necessarily limited wartime activities of the company." *Id.* at 438. That course of conduct meant the Fourteenth Amendment did not prevent the Ohio courts from exercising personal jurisdiction over the company, even in a suit that "did not arise in Ohio and d[id] not relate to the corporation's activities there." *Id.* at 438, 448.

In *Helicopteros*, by contrast, this Court held that the Texas courts could not exercise general jurisdiction over a Colombian helicopter transportation company (Helicol) in a suit arising from a fatal helicopter crash in Peru. 466 U.S. at 418-419. The decedents' employer, a Texas-based joint venture, had contracted with Helicol in Peru to provide transportation in Peru. *Id.* at 410-411. As summarized by the Court:

> Helicol's contacts with Texas consisted of sending its chief executive officer to Houston for a contract-negotiation session; accepting into its New York bank account checks drawn on a Houston bank; purchasing helicopters, equipment, and training service from [a Texas helicopter manufacturer] for substan-

> tial sums; and sending personnel to [the manufacturer's] facilities in Fort Worth for training.

Id. at 416.

This Court concluded that those contacts with the forum State did not "constitute the kind of continuous and systematic general business contacts * * * found to exist in *Perkins*." *Helicopteros*, 466 U.S. at 416. The Court explained that the single visit to Texas by the chief executive "cannot be described or regarded as a contact of 'continuous and systematic' nature." *Ibid.* The Court viewed Helicol's receipt of checks drawn on a Texas bank as a factor "of negligible significance" because there was "no indication that Helicol ever requested that the checks be drawn on a Texas bank." *Ibid.*; see *id.* at 417 ("Such unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction."). And Helicol's purchases of goods and training from the Texas helicopter manufacturer were found not to establish general jurisdiction because "purchases and related trips, standing alone, are not a sufficient basis for a State's assertion of jurisdiction." *Ibid.* (discussing *Rosenberg Bros.* v. *Curtis Brown Co.*, 260 U.S. 516 (1923)).

Taken together, *Perkins* and *Helicopteros* establish that the relevant inquiry is whether "the foreign corporation, through its [agent] 'ha[s] been carrying on in [the forum State] a continuous and systematic * * * part of its general business,'" typified by the Ohio activities of the foreign corporation in *Perkins*. *Helicopteros*, 466 U.S. at 415 (quoting *Perkins*, 342 U.S. at 438). That test is demanding. In particular:

- "Carrying on" connotes active undertaking by the defendant, rather than results worked by third parties. Thus, in *Helicopteros*, the payments to the defendant drawn on a Texas bank were irrelevant because "unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts." 466 U.S. at 417.
- "Continuous" refers to a practice "[o]perated without interruption." *Webster's New International Dictionary* 577 (2d ed. 1958) (*Webster's Second*). Thus, the "one trip to Houston by Helicol's chief executive officer" could not "be described or regarded as a contact of a 'continuous and systematic' nature." *Helicopteros*, 466 U.S. at 416.
- "Systematic" refers to conduct "that forms a system," which is an "aggregation * * * of objects united by some form of regular action or interdependence." *Webster's Second* 2562. Thus, in *Perkins*, the determinative factor was not the magnitude of the defendant's activities within Ohio; the corporation had only three agents in that State (its president and two secretaries), and its mining "operations [had been] completely halted." 342 U.S. at 447-448. Rather, what mattered was that the corporation's contacts with Ohio—banking, employment, recordkeeping, holding office space, conducting corporate affairs, etc., see *ibid.*—together formed the very embodiment of the defendant's corporate control structure.

These limitations are appropriate because in combination they afford the "degree of predictability to the

legal system," *World-Wide Volkswagen*, 444 U.S. at 297, that potential defendants need in organizing their affairs. The need for such predictability is particularly acute when the result of specified contacts with a forum is that a defendant may potentially be sued in that forum for *all* of its conduct worldwide.

2. The state courts' decisions in this case identify no basis on which North Carolina courts may exercise general personal jurisdiction over petitioners

Under the standard enunciated in *Helicopteros* and *Perkins*, none of the petitioners has "carr[ied] on in [North Carolina] a continuous and systematic * * * part of its general business.'" *Helicopteros*, 466 U.S. at 415 (quoting *Perkins*, 342 U.S. at 438). The Fourteenth Amendment therefore precludes the courts of that State from exercising general personal jurisdiction over petitioners.

Unlike the defendant corporation in *Perkins*, petitioners do not appear to have established any physical presence within the forum State. The state courts' opinions do not suggest that petitioners' employees or other agents have ever been stationed in North Carolina or that petitioners have owned real or personal property there. Rather, taken together, the opinions of the state trial and appellate courts identify three potential bases for the exercise of personal jurisdiction.

First, the state appellate court noted that some of petitioners' products "eventually found their way into North Carolina markets through the operation of a continuous and highly organized distribution process." Pet. App. 27a; see *id.* at 25a-26a. Second, the appellate court observed that the tire involved in the accident bore markings that would have permitted its sale in the

United States. See *id.* at 25a. Third, the state trial court emphasized that petitioners are subsidiaries of Goodyear U.S.A., which does business in North Carolina. See *id.* at 34a. None of those factors, either singly or in combination, provides a constitutionally sufficient basis for the North Carolina courts' exercise of general jurisdiction in this case.

The fact that goods manufactured by petitioners made their way via the stream of commerce into North Carolina cannot justify the state courts' exercise of general jurisdiction. As the state appellate court explained, petitioners "were not directly responsible for the presence in North Carolina of tires that they had manufactured." Pet. App. 22a-23a. Rather, "the available evidence tends to show that other entities were responsible for the shipment of tires manufactured by [petitioners] to the United States and, as a part of that process, the tires arrived in North Carolina." *Id.* at 22a. At least in the general-jurisdiction context, the "unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction." *Helicopteros*, 466 U.S. at 417.[8]

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[8] This case therefore does not present the question whether, or under what circumstances, a defendant's own sales directly into a forum would permit the forum State to exercise general jurisdiction over the defendant. Compare *Johnston* v. *Multidata Sys. Int'l Corp.*, 523 F.3d 602, 612 (5th Cir. 2008) ("[N]either Multidata's sale of approximately $140,000 worth of goods in a five-year time period to Texas customers nor its employees' occasional travels to Texas to service equipment or attend trade conventions are sufficient to justify exercising general jurisdiction."), with *Gator.Com Corp.* v. *L.L. Bean, Inc.*, 341 F.3d 1072, 1078 (9th Cir. 2003) (finding general jurisdiction "in light of L.L. Bean's extensive marketing and sales in California, its extensive contacts with California vendors, and * * * its website[,] * * * structured to

And while the state appellate court attached significance to the "substantial number of tires manufactured by [petitioners]" that were ultimately sold in North Carolina, that number (approximately 45,000 in the years 2004-2007) was a tiny fraction of the more than 90 million tires that petitioners manufactured during that period. Compare Pet. App. 26a with Pet. 4.

The markings on the tire at issue also do not permit the state courts to exercise personal jurisdiction. Such markings may have some probative force in determining, under a specific-jurisdiction analysis, whether the defendant knowingly or intentionally directed its product toward the forum State. But see pp. 31-33, *infra* (noting recognition of DOT standards by other countries). But they are not properly regarded as an independent "contact" with the forum State.

The bare fact that petitioners are the subsidiaries of a United States corporation, Goodyear U.S.A., is likewise irrelevant to the general-jurisdiction analysis. In *Keeton*—which was argued in tandem with *Helicopteros*—this Court admonished that "[e]ach defendant's contacts with the forum State must be assessed individually," and it specifically cautioned that "jurisdiction over a parent corporation [does not] automatically establish jurisdiction over a wholly owned subsidiary." 465 U.S. 781 n.13.[9] The trial court failed to respect that principle

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operate as a sophisticated virtual store in California"), dismissed as moot, 398 F.3d 1125 (9th Cir. 2005) (en banc).

[9] In some cases, a different analysis may be warranted by the case-specific interactions between particular affiliated corporations, as when a subsidiary acts as the agent or alter ego of the parent corporation, or vice-versa. See *Donatelli* v. *National Hockey League*, 893 F.2d 459, 465-466 (1st Cir. 1990) ("In those cases where personal jurisdiction over the parent has been found to exist, there is invariably a 'plus' factor—

by relying on the bare existence of the corporate relationship. See Pet. App. 34a. The appellate court committed a similar error in focusing on the "regular process employed within the Goodyear organization" (*id.* at 26a), effectively treating the parent and subsidiary corporations as an undifferentiated entity for distribution of petitioners' products.

Finally, even if all the facts found by the state courts were relevant to the due process analysis, they would not together establish the "systematic" contacts necessary to permit the state courts to exercise general jurisdiction over petitioners. Unlike the prototypically systematic contacts in *Perkins*—which, taken together, were the very essence of the defendant corporation's control structure, such as it was—petitioners' contacts here merely reflect their participation in the ordinary channels of interstate and foreign commerce. Those

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something beyond the subsidiary's mere presence within the bosom of the corporate family."); 4 Wright & Miller § 1069.4, at 174 ("[I]f the subsidiary is merely an agent through which the parent company conducts business in a particular jurisdiction or its separate corporate status is formal only and without any semblance of individual identity, then the subsidiary's business will be viewed as that of the parent and the latter will be said to be doing business in the jurisdiction through the subsidiary for purposes of asserting personal jurisdiction."); Gary B. Born & David Westin, *International Civil Litigation in United States Courts: Commentary and Materials* 144 (2d ed. 1992) ("Some courts have considered whether jurisdiction over a U.S. parent company also permits a U.S. court to exercise jurisdiction over foreign subsidiaries of the parent. Lower courts have generally applied the same sort of alter ego analysis that governs the reverse situation."); cf. *United States* v. *Scophony Corp. of Am.*, 333 U.S. 795, 813-816 (1948) (holding that a foreign parent corporation was "found" in the United States due to its "constant supervision and intervention" in the activities of its United States subsidiaries going well "beyond normal exercise of shareholders' rights").

contacts do not reflect a system of corporate activity in North Carolina any more than they reflect such a system anywhere else in the world that petitioners' products may be found. The Due Process Clause of the Fourteenth Amendment does not permit North Carolina to exercise general personal jurisdiction over petitioners on so scant a basis.

C. A State Court's Exercise Of General Jurisdiction Over Non-United States Corporations In Circumstances Like Those Presented Here Would Undermine The United States' Foreign Trade And Foreign Affairs Interests

1. With respect to certain questions of personal jurisdiction that are largely not presented here, the interests of the United States are served by permitting suits against foreign entities to go forward in domestic courts. For example, United States residents benefit from the availability of convenient domestic fora to obtain redress for injuries caused by foreign entities. That interest, however, is often vindicated by reasonable exercises of specific jurisdiction, without resort to general jurisdiction.

The United States also has an interest in ensuring that claims under federal law, brought in courts of the United States, are not unduly constrained by a minimum contacts analysis that is narrowly focused on a particular State instead of the Nation as a whole. See Fed. R. Civ. P. 4(k)(2); Fed. R. Civ. P. 4(k) advisory committee's note (1993) (Amendment). Such interests are not directly implicated by this Court's interpretation of the Due Process Clause of the Fourteenth Amendment, however, because that constitutional provision applies only to the conduct of *state* governments and officials. In prior cases, this Court has appropriately reserved the

question whether "a federal court could exercise personal jurisdiction, consistent with the Fifth Amendment, based on an aggregation of the defendant's contacts with the Nation as a whole, rather than on its contacts with the State in which the federal court sits." *Omni Capital Int'l, Ltd.* v. *Rudolf Wolff & Co.*, 484 U.S. 97, 102 n.5 (1987); see *Asahi*, 480 U.S. at 113 n.* (opinion of O'Connor, J.).

2. The state courts' assertions of general jurisdiction over petitioners here present quite different considerations, particularly with regard to the United States' foreign trade and foreign relations interests. If broadly construed and adopted by other States, the North Carolina courts' reasoning in this case would significantly increase the exposure of non-United States businesses to lawsuits not arising out of or related to those businesses' contacts with the forum State. At the extreme, state courts could entertain a broad range of litigation wholly unconnected to the United States.

Although the plaintiffs in this case are North Carolina residents, and the North Carolina Court of Appeals noted the State's "interest in providing a forum in which its citizens are able to seek redress" (Pet. App. 27a), the residence of the plaintiffs is irrelevant to a proper general-jurisdiction analysis (see p. 14, *supra*), and the state appellate court did not suggest that this factor was essential to its holding. If this suit had been brought instead by a French citizen injured in the bus accident, the state appellate court might have ordered the case dismissed based on generalized fairness concerns (see Pet. App. 26a-28a), or perhaps on forum non conveniens principles. Nothing in the "purposeful availment" standard would require that result, however, and the possibility that some suits might be dismissed on more amor-

phous rationales would provide little predictability to non-United States businesses seeking to ascertain the jurisdictional consequences that particular commercial activities would entail.

The North Carolina courts' exercise of jurisdiction here exceeds what many nations would recognize as reasonable. For example, the Restatement (Third) of the Foreign Relations Law of the United States (1986) (Restatement) identifies as "reasonable" certain "exercise[s] of jurisdiction to adjudicate." Restatement § 421(2), at 305. When the defendant is an artificial entity, an exercise of general jurisdiction is reasonable under the Restatement view if the "juridical person[] is organized pursuant to the law of the state" or "regularly carries on business in the state." *Id.* § 421(2)(e) and (h) at 305-306; see *id.* § 421 reporter's note 3, at 310 (discussing general and specific jurisdiction).[10] By contrast, the *Restatement* recognizes only specific jurisdiction as reasonable if "the person, whether natural or juridical, had carried on outside the state an activity having a substantial, direct, and foreseeable effect within the state." *Id.* § 421(2)(j) at 306. Insofar as other nations apply similar jurisdictional principles, they might object to the state courts' exercise of general jurisdiction in this case.

With respect to both imports and exports, the repercussions of such objections could be particularly damaging to the United States' foreign trade relations. The state court's decision creates an obvious disincentive for foreign manufacturers to allow their goods to be distrib-

[10] In the Restatement, the term "state" refers to nations, as distinguished from the several States. See Restatement § 201. The Restatement does not address "allocation of jurisdiction among domestic courts within a state for example, between national and local courts in a federal system." *Id.* § 421 cmt. f at 307.

uted in the United States. Any resulting diminution in import traffic would harm United States residents, who would otherwise benefit from a broader range of available goods. If the situation were reversed, a United States corporation concerned about potentially having to answer abroad for its conduct anywhere in the world might be dissuaded from exporting its products. Any resulting diminution of export traffic would be especially undesirable in light of the importance of increased exports to the Nation's long-term economic health. See, *e.g.*, Exec. Order No. 13,534, § 1, 75 Fed. Reg. 12,433 (2010) ("A critical component of stimulating economic growth in the United States is ensuring that U.S. businesses can actively participate in international markets by increasing their exports of goods, services, and agricultural products. Improved export performance will, in turn, create good high-paying jobs.").

The state courts' identification of the DOT-approved markings on the tire at issue as a factor supporting jurisdiction could pose an additional threat to United States interests. The United States has sought to encourage its trading partners to accept United States standards-related measures—which include United States technical measures and results of United States testing and inspection processes known formally as "conformity assessment procedures"—as sufficient to meet their own requirements. For example, the United States seeks to negotiate agreements providing for other governments to accept as equivalent United States standards-related measures for certain goods. See U.S. Trade Rep., *2010 Report on Technical Barriers to Trade*

28-30.[11] Indeed, several of the United States' trade agreements recognize the benefits of encouraging equivalence.[12]

More specifically, in determining whether particular motor vehicle parts, including tires, can permissibly be imported, a number of countries treat compliance with DOT standards, including through use of DOT markings, as evidence that the products are safely manufactured.[13] The adoption of United States standards-related measures by our trading partners lowers trade barriers for United States manufacturers wishing to export their products, since those manufacturers are often already compliant with those standards-related measures. Decisions like the state courts' rulings here,

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[11] This report is available at http://www.ustr.gov/sites/default/files/REPORT%20ON%20TECHNICAL%20BARRIERS%20TO%20TRADE%20FINALTO%20PRINTER%2025Mar09.pdf.

[12] See, *e.g.*, Agreement on Technical Barriers to Trade, Art. 2.7, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, Legal Instruments—Results of the Uruguay Round, H. Doc. No. 316, 103d Cong., 2d Sess. 1427, 1429 (1994), 1868 U.N.T.S. 120, 122 ("Members [of the World Trade Organization] shall give positive consideration to accepting as equivalent technical regulations of other Members * * * provided they are satisfied that these regulations adequately fulfill the objectives of their own regulations."); Dominican Republic-Central America-United States Free Trade Agreement, Ch. 7, Aug. 5, 2004, http://www.ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta/final-text.

[13] See, *e.g.*, WTO Comm. on Technical Barriers to Trade (WTO-TBT), Notification, G/TBT/N/ISR/460 (Oct. 25, 2010) (Israel's adoption of United States Federal Motor Vehicle Safety Standard (FMVSS) No. 116); WTO-TBT, Notification, G/TBT/N/MYS/7 (Feb. 5, 2007) (Malaysia's adoption of FMVSS Nos. 109 and 119); WTO-TBT, Notification, G/TBT/N/CAN/186 (Dec. 13, 2006) (Canada's adoption of FMVSS Nos. 110 and 120).

however, could reduce the willingness of foreign manufacturers to certify their products as complying with standards and procedures in use in the United States, out of fear that such markings could subject them to general jurisdiction in state courts in the United States. That reluctance could in turn deter other countries from adopting United States standards-related measures, thereby potentially creating barriers to the export of goods manufactured in the United States.

Finally, foreign governments' objections to our state courts' expansive views of general personal jurisdiction have in the past impeded negotiations of international agreements on the reciprocal recognition and enforcement of judgments. See, *e.g.*, Friedrich K. Juenger, *The American Law of General Jurisdiction*, 2001 U. Chi. Legal F. 141, 161-162 ("[T]he broad sweep of American general jurisdiction became problematic when this country began to negotiate with other nations for an international judgments recognition convention under the auspices of the Hague Conference on Private International Law.").[14] The conclusion of such international compacts

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[14] One commentator traced the prominent and contentious role that United States assertions of general jurisdiction played in the Hague Conference: "Most delegations focused on jurisdictional rules they believed went too far, were 'exorbitant,' and thus should be placed on the prohibited list of Article 18(e). * * * [G]eneral doing business jurisdiction w[as] quickly voted onto that list." Ronald A. Brand, *The 1999 Hague Preliminary Draft Convention Text on Jurisdiction and Judgments: A View from the United States, in The Hague Preliminary Draft Convention on Jurisdiction and Judgments* 12 (Fausto Pocar & Costanza Honorati, eds., 2005). Indeed,

> [t]he most debated issue of allocation of jurisdiction was what to do with "doing business" jurisdiction in U.S. law. Brussels States, in particular, wanted it clearly ensconced on the prohibited list of Article 18(2), and that happened in the Preliminary Draft Convention

is an important foreign policy objective of the United States because such agreements serve the United States' interest in providing its residents a fair, predictable, and stable system for the resolution of disputes that cross national boundaries. Reversal of the state court's judgment, in accordance with this Court's precedents, would thus serve the diplomatic interests of the United States.

Text with the language of Article 18(2) lit. *e*, which prohibits jurisdiction based solely on "the carrying on of commercial or other activities by the defendant in [the forum State], except where the dispute is directly related to those activities." This would have placed U.S. general doing business jurisdiction on the prohibited list in all circumstances, something the U.S. delegation had almost no hope of selling to the U.S. Senate upon efforts for ratification if the Preliminary Draft Convention Text had been adopted by the Hague Conference.

Id. at 8-9.

CONCLUSION

The judgment of the North Carolina Court of Appeals should be reversed.

Respectfully submitted.

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