# 1AC – NDT Quarters

### 1

#### Advantage 1 – Freight:

#### Freight prices are skyrocketing

Finn 3/7 [Teaganne Finn, "Biggest railroad companies profiting from supply chain crisis, watchdog alleges", 3/7/22, https://www.nbcnews.com/politics/politics-news/biggest-railroad-companies-profiting-supply-chain-crisis-watchdog-alle-rcna18885]

Several of the largest railroad companies in the U.S. have benefited from the supply chain crisis by raising fees and lowering costs, a liberal-leaning watchdog alleged in a new analysis.

Accountable.US, a nonprofit group that examines corporations and special interests, said the seven major railways, which dominate an industry that carries about 40 percent of U.S. freight, collected a record $1.18 billion in fees for freight stuck in supply chain bottlenecks in the first nine months of 2021.

As the impact of the coronavirus pandemic set in, supply chain issues worsened last year. Railways suspended and limited service, collecting more demurrage fees— which take effect when cargo stays beyond a specified time at a terminal and are an essential tool to keep cargo moving.

Companies also lowered expenses through the use of "precision scheduled railroading," which involves streamlining schedules and cutting staff sizes and locomotive and car fleets. Before the rail industry’s fees set a record during the pandemic, they had already increased at a rate 10 times higher than expenses since 2002, the report said.

#### Freight monopolies shred grain exports BUT regs collapse rail

Choe and Peterson 21, [Justin Choe co-authored this paper during his tenure at the USITC. He is now an economist at the USDA, The Effects of Rail Prices on U.S. Agricultural Exports, https://www.usitc.gov/publications/332/working\_papers/wp\_id\_21\_074\_effects\_of\_rail\_prices\_on\_u.s.\_agricultural\_exports\_042921.pdf]

This paper presents an evaluation of the potential impact of an increase in rail prices on U.S. exports of wheat, soybean, and corn. It takes into consideration the factors that affect competition in the U.S. rail freight market, including the presence of captive markets in grain- and oilseed-producing states. The paper seeks to build upon prior work by Wilson and Dahl (2011) and Woodard et al. (2016) concerning the critical relationship between rail transportation rates and grain prices. Using the latest available data on U.S. grain exports, prices, and associated rail tariffs (or rail freight rates),2 the authors present a quantitative analysis that examines the relationship between U.S. rail transportation costs over time, as well as U.S. export pricing trends for wheat, corn, and soybeans. The paper aims to answer the following questions: • How are increases in U.S. rail freight rates manifested in U.S. grain export prices? • To what extent have high U.S. rail tariffs affected the volume and pricing of U.S. grain exports over time? • How has the pricing structure of U.S. rail freight transport affected the recent export competitiveness of U.S. grains and oilseeds? The first half of the paper provides a qualitative overview of the rail freight industry with a focus on U.S. agricultural markets. This section also describes the main factors influencing pricing and competition among freight railroads, including the historical impact of deregulation on the U.S. rail freight industry.3 The second half of the paper presents an analysis of changes in rail tariffs, and how they relate to the prices of U.S. wheat, corn, and soybeans, and discusses the potential impact on export competitiveness. For this analysis, the authors use data from the U.S. Department of Agriculture (USDA) Foreign Agricultural Service (FAS) on U.S. agricultural export prices and volumes, and data from the USDA Agriculture Marketing Service (AMS) on U.S. rail tariffs for agricultural goods, among other sources. Overall, the analysis indicates that rail tariffs in markets with little competition are high and have increased at a steady rate even when commodity prices are volatile. Although U.S. grain and oilseed producers typically absorb the higher rail costs rather than pass them on to consumers, these high rail tariffs may have long-term implications for the ability of U.S. producers to compete in international markets. The Rail Freight Industry: From Deregulation to Monopoly Power The Early Years of Rail Freight Industry Regulation Railroads are a key player in the transport of U.S. agricultural goods. Indeed, the two industries are inextricably linked and are a central feature of the U.S. economy. At times, they have been subject to competing regulatory objectives.4 Following its initial development in the 1830s, the U.S. rail freight system encompassed an extensive network of primary, secondary, and tertiary rail lines. These rail lines connected farms in remote, rural areas to commercial ports near large, urban centers.5 The Interstate Commerce Act of 1887 provided a legislative framework for the industry and established the Interstate Commerce Commission (ICC) as the industry regulator.6 In this role, the ICC had jurisdiction over rail tariffs, the routes railroads served, their entry and exit from the market, and railroad mergers.7 Importantly, the ICC was tasked with ensuring that freight railroads charged “reasonable” rates, although the economic criteria underlying the determination of such rates were unclear.8 In general, regulations permitted railroads to establish rates below their variable costs of operation if they could prove that they did not have a monopoly in the market.9 The ICC also required railroads to fulfill the regulatory obligation of common carriage, or the mandatory provision of transport service to geographic markets regardless of traffic density.10 As a result of common carriage requirements placed on rail transport, certain segments of the U.S. railroad industry over time became unprofitable, burdened by excess capacity and the inability to set rates in response to changing economic conditions.11

#### It's growing and bankrupts farms

Munch 21, [Daniel Munch Associate Economist, Increasing Freight Rail Rates Put Additional Pressure on Farm and Ranch Income, September 8, https://www.fb.org/market-intel/increasing-freight-rail-rates-put-additional-pressure-on-farm-and-ranch-inc]

Figure 7 illustrates 2004-2019 agriculture-specific rail revenue by its underlying categorization from competitive or non-competitive rail movements. Commodities represented in the revenue number include farm products, food products, textile mill products, wood products and pulp and paper products. Since 2004, the proportion of total revenue from non-competitive movements has increased two-fold (20% to 43%). This means a larger percentage of revenue is from movements not subject to strong competitive forces, a possible incentive for railways to exhibit price setting behavior. If the STB fails to evaluate rate increases on all non-competitive movements, rate increases can slip under the radar and disproportionally impact customers limited in their ability to choose other transportation options. Since deregulation in 1981, however, average inflation-adjusted freight rates were still down 43% in 2019.

Chart, bar chart

Description automatically generated

Conclusion

In 2020, farm services, which include transportation and marketing expenses, accounted for over 12% of total farm-level production costs. Tightening margins due to increasing production costs across the spectrum put the solvency of farms and ranches at risk. Railways, a vital piece of the supply chain, are an efficient way to get agricultural goods to their final destination. Increasing tariff rates associated with railways put additional pressure on producers’ bottom lines, especially in locations with weak competitive forces, high product supply, constrained transportation infrastructure and increased fuel prices.

#### It worsens each day and shuts down mills

Noltemeyer 3-25, [World Grain, Cites Mike Seyfert, president and chief executive officer of the National Grain and Feed Association, Grain-feed group seeks STB’s help on rail quagmire, 2022, https://www.world-grain.com/articles/16680-grain-feed-group-seeks-stbs-help-on-rail-quagmire]

Seyfert, in a letter addressed to Martin Oberman, chairman of the STB, outlined a few of the most troublesome situations:

* Grain buyers unable to make purchases while tracks are jammed at rail origins where loaded trains await locomotion by the railroad.
* Millers forced to shut down flour and feed mill operations and halt customer sales because they have run out of grain.
* Buyers and sellers unable to connect feed deliveries to livestock producers that may not have alternative feed sources.

“The ability to stretch resources is exhausted and growing more tenuous with each additional day of service delays,” Seyfert wrote.

#### Escalates hotspots and nuclear Ukraine

Sunnucks 3-27, [The Reflector, Cites Anne Alexander, an economist and vice provost at the University of Wyoming, 'It's kind of terrifying', 2022, https://www.reflector.com/news/local/its-kind-of-terrifying/article\_f2f5a7a7-5709-52cc-9c33-3ea6b89fc32f.html]

“Wheat prices, they’re going through the roof,” said Anne Alexander, an economist and vice provost at the University of Wyoming.

Higher prices or global shortages of wheat could spark economic and social unrest in global hot spots, Alexander said.

Wheat prices in the U.S. have approached $13 per bushel. The price of the key commodity is up more than 75% from a year ago, according to Trading Economics. Prices of other commodities, such as coffee, oats and cotton, are also up significantly as global supply chains and persistent inflation challenge consumers.

Those are poised to push inflation and already higher prices at grocery stores even higher.

Historical precedents

Alexander said droughts fueled higher wheat prices— and, in turn, bread and food costs— that sparked the Arab Spring uprisings between 2010 and 2012. That unsettled regimes in Egypt, Tunisia, Libya and Bahrain, and saw the start of the bloody civil war in Syria.

She worries a global shortage or spike in wheat, grain and bread prices could stir similar unrest in international hot spots and simmering developing countries. “There could be some political instability that emerges,” Alexander said.

That could add even more tension to a situation where a worst-case scenario for Russia’s invasion of Ukraine is a World War III situation involving nuclear powers.

“It’s kind of terrifying on a number of fronts,” Alexander said, pointing to the Middle East and North Africa, where Egyptian officials were already imposing price limits on state-subsidized bread.

Bread and grain prices have also risen significantly in Pakistan, India and sub-Saharan Africa.

Alexander said economic and social tensions could also rise in southern Europe, where there is a history of instability and ethnic and religious rivalries, as well as lower income levels.

#### Most probable and goes nuclear

**FDI 12**, [oldie but a goodie, Future Directions International, a Research institute providing strategic analysis of Australia’s global interests; citing Lindsay Falvery, PhD in Agricultural Science and former Professor at the University of Melbourne’s Institute of Land and Environment, “Food and Water Insecurity: International Conflict Triggers & Potential Conflict Points,” http://www.futuredirections.org.au/workshop-papers/537-international-conflict-triggers-and-potential-conflict-points-resulting-from-food-and-water-insecurity.html]

There is a growing appreciation that the conflicts in the next century will most likely be fought over a lack of resources.¶ Yet, in a sense, this is not new. Researchers point to the French and Russian revolutions as conflicts induced by a lack of food. More recently, Germany’s World War Two efforts are said to have been inspired, at least in part, by its perceived need to gain access to more food. Yet the general sense among those that attended FDI’s recent workshops, was that the scale of the problem in the future could be significantly greater as a result of population pressures, changing weather, urbanisation, migration, loss of arable land and other farm inputs, and increased affluence in the developing world.¶ In his book, Small Farmers Secure Food, Lindsay Falvey, a participant in FDI’s March 2012 workshop on the issue of food and conflict, clearly expresses the problem and why countries across the globe are starting to take note. .¶ He writes (p.36), “…if people are hungry, especially in cities, the state is not stable – riots, violence, breakdown of law and order and migration result.”¶ “Hunger feeds anarchy.”¶ This view is also shared by Julian Cribb, who in his book, The Coming Famine, writes that if “large regions of the world run short of food, land or water in the decades that lie ahead, then wholesale, bloody wars are liable to follow.” ¶ He continues: “An increasingly credible scenario for World War 3 is not so much a confrontation of super powers and their allies, as a festering, self-perpetuating chain of resource conflicts.” He also says: “The wars of the 21st Century are less likely to be global conflicts with sharply defined sides and huge armies, than a scrappy mass of failed states, rebellions, civil strife, insurgencies, terrorism and genocides, sparked by bloody competition over dwindling resources.”¶ As another workshop participant put it, people do not go to war to kill; they go to war over resources, either to protect or to gain the resources for themselves.¶ Another observed that hunger results in passivity not conflict. Conflict is over resources, not because people are going hungry.¶ A study by the International Peace Research Institute indicates that where food security is an issue, it is more likely to result in some form of conflict. Darfur, Rwanda, Eritrea and the Balkans experienced such wars. Governments, especially in developed countries, are increasingly aware of this phenomenon.¶ The UK Ministry of Defence, the CIA, the US Center for Strategic and International Studies and the Oslo Peace Research Institute, all identify famine as a potential trigger for conflicts and possibly even nuclear war.

#### 90,000 studies prove

Elliot 18 [Charles, citing World Food Program USA, the single largest anti-hunger Humanitarian group on Earth, “Winning the Peace: Hunger and Instability,” <https://buddhistglobalrelief.me/2018/02/11/winning-the-peace-hunger-and-instability/#_ftn1>] \*\*\*numbers written as words in brackets for readability

An increasingly hungry world is increasingly unstable. A new report issued by the World Food Program USA—Winning the Peace: Hunger and Instability—presents an unprecedented view into the dynamics of the relationship between hunger and social instability.[1]

Based on exhaustive interdisciplinary queries of a database of 90,000,000 peer-reviewed journal articles, the report explores the underpinnings and drivers of humanitarian crises involving food insecurity and conflict.

The dominant driver of today’s humanitarian crises is armed conflict. Ten of the World Food Program’s thirteen “largest and most complex emergencies are driven by conflict”, and “responding to war and instability represents 80 percent of all humanitarian spending today … stretching humanitarian organizations beyond their limits.”[2] Ongoing conflict not only drives humanitarian crises, but complicates the ability of humanitarian organizations to reach those in need and to provide assistance.

Violence, conflict, and persecution have resulted in the displacement of [65 million] 65,000,000 people, more than any other time since World War II.[3] The average length of displacement is seventeen years. In such circumstances, measures of food insecurity are nearly triple that found in other developing country settings.[4]

The current humanitarian situation confronts these stark realities:

For the first time in a decade, the number of hungry people in the world is on the rise. In 2016, 815 million people were undernourished, an increase of 38 million people from 2015. Almost 500 million of the world’s hungry live in countries affected by conflict.

The number of people who are acutely food-insecure (in need of emergency assistance) rose from 80 million in 2016 to 108 million in 2017—a 35 percent increase in a single year.

Over 65 million people are currently displaced because of violence, conflict and persecution—more than any other time since World War II.

For the first time in history, the world faces the prospect of four simultaneous famines in northeast Nigeria, Somalia, South Sudan and Yemen. Each of these crises is driven by conflict.

Increased migration and the spilling of conflicts beyond borders has led to a proliferation of “fragile states”—states defined by “the absence or breakdown of a social contract between people and their government.”

By 2030, between half and two-thirds of the world’s poor are expected to live in states classified as fragile. While a decade ago most fragile states were low-income countries, today almost half are middle-income countries.

At the same time, the nature of conflict and the global system of governance are undergoing transitions that undermine the international community’s ability to address and reduce conflict. The report highlights the rise of non-state actors as powerful participants in armed conflict while also recognizing the significance of activities such as the weaponizing of information to undermine the legitimacy of traditional nation-state institutions.

The report also describes how threats such as food insecurity can drive recruitment for terrorists and rebels, worsening destabilization. (Report, p.7) Military strength cannot adequately address these kinds of threats. Rather, appropriate responses to such threats must address their actual nature. Kalashnikovs and rocket-propelled grenades will never be a long-term solution to food insecurity-driven instability. Recognition of this basic reality drives the use of so-called “smart power” in the form of foreign assistance, especially food assistance and agricultural development, to address the underlying causes of this instability.

“If you don’t fund the State Department fully, then I need to buy more ammunition.” U.S. Secretary of Defense, General James Mattis, Congressional testimony in 2013, when he was serving as Commander of U.S. Central Command.

“Show me a nation that cannot feed itself and I’ll show you a nation in chaos.” Senator Pat Roberts (R-KS).

The report supports the use of this kind of smart power by empirically examining the relationship between food insecurity and conflict-driven instability. Because food insecurity is also related to other forms of poverty and disruption, it is difficult to rigorously establish that causal relationship. Thus, it often rests upon anecdotal evidence. Examples include: failed government responses to drought as contributing to regime change in Ethiopia; the contribution of food price riots to the overthrow of governments in Haiti and Madagascar in 2007-2008 and violent protests in dozens of other nations across the globe; food production and price shocks as drivers of the unrest in the Arab Spring (e.g., food strikes nearly every week in Algeria in 2007-2008); and the prolonged drought in Syria reducing agricultural yields and food supplies as a factor in its ongoing crisis. More recently, the world’s attention is drawn to the “four looming famines in northeast Nigeria, Somalia, South Sudan and Yemen” (Report, p. 7), each of which is torn by civil war and ethnic conflict. As World Food Program officer Challis McDonough observed, “Almost all famines, at least in our modern era, are manmade. Fundamentally, conflict is at the root of it[.]”

While these are powerful examples of the connections between food insecurity and instability, efforts to identify and understand the important linkages require a broader base of evidence. WFP drew from a body of over 3,000 peer-reviewed journal articles, finding the clear weight of evidence to establish the link between food insecurity and instability.

#### US grain exports solve

AP 2-19, [Associated Press, USDA head: US farmers to help if Ukraine exports threatened, 2022, https://mynorthwest.com/3356190/usda-head-us-farmers-to-help-if-ukraine-exports-threatened/]

DUBAI, United Arab Emirates (AP)— American wheat farmers will boost production and prevent supply chain problems in the event that a possible Russian invasion of Ukraine chokes off agricultural exports from the global grains powerhouse, the U.S. secretary of agriculture said on Saturday.

During a trade mission to the United Arab Emirates, U.S. Secretary of Agriculture Tom Vilsack told The Associated Press that a conflict in Ukraine would present an “opportunity, obviously, for us to step in and help our partners, help them through a difficult time and situation.”

“We’ll obviously continue to look for opportunities to expand those (export) markets,” Vilsack said from a sprawling fruit and vegetable market in Dubai, which he toured with a delegation of American business owners. “That’s the beauty of our system now.”

U.S. President Joe Biden said late Friday he was now “convinced” that Russian President Vladimir Putin had decided to invade Ukraine in the coming days.

A Russian invasion and blockade of Ukraine could jeopardize the country’s crucial wheat exports, which account for 12% of the world’s total, according to the U.S. Department of Agriculture. Ukraine is also estimated to supply 16% of the world’s corn exports this year. Its grain production has boomed over the last decade. Last year, the state harvested nearly 33 million metric tons of wheat, the USDA reported, a stark increase from the previous year.

The mounting tensions and militarization along the Russia-Ukraine border, along with pandemic-induced supply chain backlogs and spikes in fertilizer and farm equipment costs, helped push wheat prices to their highest level in nearly a decade last year.

A bushel of wheat was trading in Chicago at over $8 on Saturday— just below the multi-year high hit last year. The price of a bushel of corn climbed 0.5% on Saturday to exceed $6.50.

The disruption in commodity markets wrought by an invasion would most directly impact the biggest buyers of Ukrainian wheat in South Asia, Europe, Africa and the Middle East. Many countries, like Egypt, depend on wheat imports to provide subsidized bread to impoverished populations. That raises the risk of political and economic turmoil if those countries have to pay more to ship in wheat from the U.S. or farther afield.

#### Freight consolidation ruins chemical innovation

Jahn 22, [WRITTEN TESTIMONY OF CHRIS JAHN PRESIDENT AND CEO OF THE AMERICAN CHEMISTRY COUNCIL BEFORE THE HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS HEARING ON STAKEHOLDER VIEWS ON SURFACE TRANSPORTATION BOARD REAUTHORIZATION MARCH 8, 2022]

The American Chemistry Council is an industry trade association that represents more than 190 of America’s leading chemical companies. Our members produce and manufacture a wide variety of chemicals, polymers, and related products that make our lives and our world healthier, safer, more sustainable, and more productive. The business of chemistry supports over 25% of the U.S. gross domestic product and directly touches nearly all manufactured goods. In addition to supporting a vast supply chain, our members help create more than half a million skilled, good-paying American jobs. Freight rail is critical to ACC’s members and chemical manufacturing. Our industry is one of the largest freight rail customers, shipping 2.1 million carloads in 2020. And the expansion of U.S. chemical manufacturing means our transportation needs are growing. With announced investments of more than $200 billion and over 350 chemical manufacturing projects, we expect to add 200,000 railcar shipments per year by 2030. We also rely on the Surface Transportation Board to help maintain a reliable, resilient and efficient rail network that is responsive to shipper needs. We are committed 3 to working with Congress to pass legislation that will reauthorize the STB and ensure that the Board has the resources and tools needed to fulfill its vital mission. Rail Customer Coalition Because of the importance of freight rail issues to chemical manufacturing, ACC is a member of the Rail Customer Coalition (RCC). Members of the coalition include trade groups representing automobile manufacturers, farmers, steel manufacturers, investor-owned electric companies, and rural electric cooperatives, among others. Collectively, the coalition members represent industries that provide more than 7 million jobs and contribute $4.8 trillion in economic output. The members of RCC are major transportation stakeholders and the largest users of freight rail. They account for more than half of the total volume of cargo shipped by rail and generate more than three quarters of the revenues collected by the railroads. The RCC is committed to modernizing the Surface Transportation Board (STB) so that it works better for both the railroads and the large and small American businesses that rely on them. The STB Plays a Crucial Role for ACC Members and Other Shippers When Congress passed the Staggers Rail Act of 1980, it created the STB to help foster a healthy and competitive freight rail system, and it gave the Board sole authority to resolve commercial issues between railroads and shippers. The Staggers Rail Act set a course for the STB that has helped the rail industry recover and thrive, which is a good thing. This success story should give the Board the confidence to follow through on the 4 other important objectives mandated by Staggers – ensure effective competition among rail carriers and maintain reasonable rates in the absence of competition. Fulfilling this mission requires a balanced approach. Railroads need to be financially strong to serve their current customers and invest for future growth. At the same time, rail customers need reliable service and reasonable rates. Competition and market forces provide the best means to balance these goals. Policies that promote greater competition within the rail industry help make it an attractive and viable option to move freight. However, many ACC members and other rail customers do not have competitive transportation options and, therefore, no market remedies when faced with unreasonable rates or service failures. For them, the STB is the only recourse to address freight rail issues. Too often, however, the Board’s policies and procedures are too complex, costly, and burdensome to provide timely and meaningful solutions.

#### Tanks R&D, causes unsustainable plastics

Peleg 21, [CMO of Arkhivist, a cyber DeFi startup monitoring risks in smart contracts, Chemical Plants are Stepping into a Sustainable Future, October 13, https://www.precog.co/blog/sustainable-manufacturing-chemical-plants/]

Sustainability tops the list of concerns for manufacturing and heavy industry, due to their need to maintain their reputation as well as their bottom line. The chemical industry is under particular pressure because it is the foundation of sustainability in many other industries like agriculture and fertilizers, housing, plastics, and pharma.

Oliver Golly, a partner at PWC, points out that “Expectations placed on chemicals companies are high: in addition to improving their own footprint they are also supposed to promote sustainable solutions and innovative strategies in every customer industry they serve.”

It’s clear that chemical companies are fully aware of the burden. A PWC survey revealed that 58% of CEOs in the chemical industry are already planning investments in sustainability in the coming year, making it their top concern.

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A study run by the ARC at the end of 2020 paints the same picture, reporting that 90% of global energy and chemical companies have sustainability initiatives in place. But achieving sustainability is far from simple.

What is Involved in Sustainability for Process Manufacturing?

The main issues involved in sustainability include:

Reducing waste in all areas of the plant

Cutting pollution, emissions, and hazardous leaks

Minimizing impact on the environment

Improving employee safety and health

Reducing energy consumption and fossil fuel usage

Extending diversity in hiring

Strengthening anti-corruption and transparency measures

Many thought leaders go further, adding active sustainability initiatives like environmental stewardship and conservation such as planting trees and rewilding.

Chemical Sustainability is a Complex Issue

It’s even more complex for the chemicals industry, where sustainability needs to encompass the entire supply chain. It includes the Environmental, Social and Governance (ESG) and sustainability principles not just of all the suppliers and partners of a chemicals plant, but also of its downstream partners.

Many chemical sector end products cause serious environmental harm, notably plastics and fertilizers. According to the UN, plastic waste comprises up to 80% of the marine debris that’s threatening over 800 species worldwide, with the total amount of plastic waste discarded between 1950 and 2016 estimated at 6,000 million tonnes.

As a result, there’s a lot riding on chemical plants. “The chemical industry holds the key to unlocking climate strategies across the industrial manufacturing value chain,” says Paul Harnick, Principal, Global Head of Chemicals & Performance Technologies at KPMG, adding “This will be accomplished through the supply of sustainably produced products into downstream industries.”

For Chemical Companies, Sustainability Needs Focus

While employee safety, diversity in hiring, and ethical practices are important elements in sustainability, they are not the main focus for the chemicals industry at the moment. EcoVadis cites energy management and CO2 emissions as the primary issues, and KPMG lists decarbonization, renewable energy, CO2 reduction, and circular plastics as prominent ESG industry focus areas.

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What is Driving Sustainability in the Chemical Industry?

A number of motivating factors are pushing chemical plants to address their sustainability profile.

1. Concern Over Climate Change and Environmental Impact

It’s impossible to ignore the impact of human-driven climate change, and chemical plants are having to face up to their responsibilities. The industry has a poor track record for emissions and pollution, due to the use of fossil fuels, flue gas release, and gas flaring practices. Chemical plants can cause significant runoff of pollutants into the local environment, air, and waterways, ruining ecosystems and destroying plant and animal life.

These emissions are also responsible for poor human health. It’s estimated that 8.3% of all deaths and 5.7% of the total burden of disease worldwide are related to chemical exposure. The chemicals sector is the second-largest source of sulfur dioxide (SO2), which damages the human respiratory system, and the 3rd largest producer of CO2, contributing 18% of industrial CO2 emissions.

Furthermore, the industry consumes massive amounts of energy and water. The high fossil fuel input required for power production and providing hydrocarbons means plants have the highest final energy consumption of any industrial sector. The chemical industry in the Middle East is thought to be contributing to water scarcity, located as it is along the coast of Gulf states which are already water-stressed.

2. Pressure From Stakeholders

Even if chemical companies were willing to overlook their impact on the environment, stakeholders wouldn’t permit it. Investors, customers, and even stock exchanges are increasingly judging companies according to ESG principles.

For example, Climate Action 100+ is an investor initiative to pressure the world’s largest corporate greenhouse gas (GHG) emitters to take action on climate change. It demands that 46 focus companies in the oil and gas and chemical industries create long-term energy transition plans with aligned short-and medium-term targets. Investing firm BlackRock recently announced that sustainability issues would be at the center of its investment strategies.

As customers place sustainability at the top of their buying preferences and financial gatekeepers use it to guide decision-making, chemical plants are forced to address it.

3. Financial Benefits

Chemical companies are also cognizant of the financial advantages of sustainability practices. A positive reputation for sustainability delivers a competitive advantage that attracts more business and increases the company’s appeal to top talent, as Harnick notes “Strong ESG practices are becoming an essential prerequisite for employee recruitment, brand enhancement, and investor funding.”

Plants also need to comply with industrial and governmental standards to avoid fines and expensive audits, while cutting waste has the additional effect of reducing expenses and strengthening profit margins.

In general, as observed by PWC’s Golly, “Chemicals companies that actively participate in the debate about sustainability and the chemicals industry and find solutions for these issues are at a clear advantage: they can actively leverage growth opportunities instead of merely reacting to developments in order to avoid jeopardizing their license to operate.”

What are Chemical Plants Doing to Achieve Sustainability?

1. Regulations

First and foremost, chemical plants need to comply with evolving regulations. The European Commission recently introduced a framework to ensure that by 2030, all plastic packaging is recyclable. It’s also increasing regulations around the use of chemicals that could be harmful to the environment and human endocrine health.

Additionally, chemical plants are adopting and implementing new company-wide governance regarding diversity, safety in the workplace – including safety from harassment – ethical business practices, and transparency in decision-making. For example, the Dow Chemical Company recently introduced more inclusive hiring practices to increase its diversity in hiring, setting up 10 employee resource groups to support minority groups, including a Disability Employee Network to ensure accessibility safety for employees with disabilities.

2. Technologies

One of the main ways that chemical companies are improving their sustainability profile is through R&D, producing innovative new technology involving biotechnologies, artificial intelligence (AI), and/or automation.

Deloitte reports that many US enterprises are expected to add mechanically recycled and renewable feedstock-based polymers to their product offerings, as well as investing in advanced recycling methods. Others are investigating alternative energy sources that help cut emissions.

For example, BASF, reduced its GHG emissions by almost 50% over the last three decades, despite doubling its production volumes, largely thanks to patented catalysts to lower nitrous oxide emissions as well as increasing efficiency in its plants.

Another line of technological innovation concerns big data and AI. New Industrial Internet of Things (IIoT) sensors and smart devices gather data so that human employees don’t need to risk their personal safety monitoring tank levels, temperature, etc. AI and machine learning (ML) enable predictive analytics to spot anomalies that may indicate human error, part depreciation (such as fouling, which reduces heat exchange efficiency), or low levels of lubricants (which requires more energy, water, and/or raw materials). It also opens up plant automation, which helps remove the risk of human error in mixing chemicals.

Some plants are taking technology to the next level, with smart devices like drones and digital twins that use IIoT data with ML and augmented reality (AR). These make root cause analysis swifter and more accurate, enabling faster fixes that minimize damage. Digital twins often allow employees to reconfigure parameters remotely, removing the need to enter a hazardous environment for a physical fix and helping cut waste.

3. Reconfigured Value Chains and Increased Collaboration

New players like recyclers, tech startups, and preprocessors are entering the game, as sustainability requires multi-disciplinary collaboration across verticals. For example, a number of companies joined together to create Sustainable Chemistry for the Textile Industry (SCTI). Rohit Aggarwal, SCTI Chairman and President of Huntsman Textile Effects, said “While meaningful improvements are possible, no one company can achieve the shift to sustainability on its own. This is the impetus for SCTI.”

Role of chemical industry stakeholders

4. Improved Processes

Plants also need to improve efficiency and processes across the board, as more efficient plants result in less waste of energy, water, and raw materials. Companies need regular sustainability reports to assess the ethical and ESG values of suppliers and ensure that they are in line with their own principles.

Another rising sustainability tactic is that of the circular economy framework, from production to use and disposal, which is being embraced by multinational chemical corporations like Dow and BASF. Dow’s goal is for 100% of their packaging products to be reusable or recyclable by 2030, while also enabling a million metric tons of plastic to be collected, reused, and recycled through direct partnerships.

What is Holding Chemical Plants Back From Achieving Sustainability Goals?

Slow or delayed digitalization practices are leaving plants unable to implement more advanced tech that drives sustainability. Legacy software and outdated devices that can’t support smart data sharing mean that plants are unable to connect their data or enable remote monitoring, let alone adopt AI-based solutions like predictive analytics or digital twins.

McKinsey notes that “Historically, the chemical industry has generally been a slow adopter of new digital or analytics technologies. Moreover, the current wave of artificial intelligence (AI) reaches the shores of chemical companies quite slowly.”

Other key barriers include a lack of capital and resources, preventing companies from upgrading aging assets, and restricting their ability to meet sustainability objectives.

#### Extinction – innovation solves, gov’t can’t

Logistics 230 22, [Logistics 230, Logistics2030.eu is a news publishing service promoting solutions for climate mitigation, resilience and regeneration with support from companies and their supply chain stakeholders: employees, customers, suppliers and shareholders, Plastic production now threatens human survival, Jan. 19, https://www.logistics2030.ie/index.php/59-logistics2030-news/biodiversity/1404-plastic-production-now-threatens-human-survival]

STOCKHOLM: An international team of scientists says the volume of chemical production, including plastic, has breached a planetary boundary necessary for human survival.

In 2009, researchers identified nine boundaries that defined the Holocene era, stable since the dawn of civilization some 10,000-plus years ago. They include greenhouse gas emissions, the ozone layer, forests, freshwater and biodiversity.

Revisiting their research in 2015, scientists discovered four boundaries had been breached as humans moved into a new, unstable Anthropocene era.

With plastic production increasing 79 percent between 2000 and 2015, mankind has now exceeded a fifth planetary boundary relating to environmental pollutants.

According to a new study by the 14 scientists, there are an estimated 350,000 different types of manufactured chemicals including plastics, pesticides, industrial chemicals, chemicals in consumer products, antibiotics and other pharmaceuticals.

“There has been a 50-fold increase in the production of chemicals since 1950. This is projected to triple again by 2050,” notes report co-author Patricia Villarubia-Gómez from the Stockholm Resilience Centre (SRC).

The total mass of plastics on the planet is now over twice that of all living mammals, and roughly 80 percent of all plastics ever produced remains in the environment with largely unknown effects on the Earth system.

“The rate at which these pollutants are appearing in the environment far exceeds the capacity of governments to assess global and regional risks, let alone control any potential problems,” comments co-author Bethanie Carney Almroth from the University of Gothenburg. “We need to be working towards implementing a fixed cap on chemical production and release.”

SRC scientist Sarah Cornell adds that shifting to a circular economy is now really important: “That means changing materials and products so they can be reused not wasted, designing chemicals and products for recycling, and much better screening of chemicals for their safety and sustainability along their whole impact pathway in the Earth system.”

#### Industry solves extinction

Danielpour 14 [Steven; April 2014; Director of Specifications at HOK, Professor at the Pratt Institute; PaintSquare, “Sustainable Coatings: Shifting the Paradigm,” https://www.paintsquare.com/archive/?fuseaction=view&articleid=5271]

New technologies and processes will help deliver the innovations needed to respond to mankind’s greatest challenges, says HOK’s firmwide director of specifications.

Whether you’re an architect or facility owner interested in ensuring healthy buildings and communities, a contractor navigating the many shades of “green” coatings or a supplier responding to market demand for these coatings, sustainability matters.

But what makes a coating “sustainable” in the built environment, and why should we care?

Wikipedia defines sustainability as “a characteristic of a process or state that can be maintained at a certain level indefinitely.” Production, distribution and application of sustainable coatings must meet current needs without compromising our ecosystems’ ability to sustain future populations.

Continuing to build the way we have built, using the materials we have used for centuries, is no longer viable in light of diminishing energy, water and other resources. Key megatrends, including population growth, climate change and a proliferation of information, make sustainable coatings all the more critical.

So it’s exciting to see the industry responding with advanced technologies that are healthier for building occupants and the environment, while achieving high performance and durability. We see it in such innovations as the newest generation of PVDF (polyvinylidene fluoride) coatings, polysiloxane coating systems, advanced anti-microbials and more.

And just ahead we can expect to see phase-changing coatings that will respond chemically to cooler or warmer conditions, for instance, to improve energy efficiency in the building envelope. We may see roofing materials that reflect and absorb heat as appropriate, using phase-changing materials and nanotechnology.

Such cutting-edge technologies, along with processes that reduce waste, reuse byproducts and allow reformulation into new products, promise game-changing improvements for coatings.

Let’s take a closer look at the drivers that will make sustainable coatings increasingly important, and the processes and technologies on the horizon.

Responding to Dwindling Resources

The logic is simple: If we continue to consume natural resources faster than they can be replenished, and if we produce wastes for future generations to deal with, we’ll have a harder and harder time maintaining life on Earth as we know it.

Scientific research on species extinction makes it clear that human survival depends on maintaining our ecological cycle, as well as those of other species and their habitats. Yet we’re barreling like a runaway train toward depleting some key resources.

Petroleum: Petrochemicals, a necessary feedstock for high-performance coatings, derive from fossil fuels that took millions of years to create; they are not readily replenished. Sustainable resource management requires that we conserve irreplaceable resources through closed-loop manufacturing, reusing manufacturing byproducts and recycling waste into new products.

Water Resources: Only 3 percent of the Earth’s water is potable, and most of this supply is locked in the polar ice cap. Just 0.003 percent of the world’s water is readily available for human consumption, and 16 percent of that is used to manufacture building materials and construct buildings. Worse yet, due to pollution, 40 percent of streams, 45 percent of lakes and 50 percent of estuaries in the United States were deemed not clean enough to support fishing and swimming in a 2000 Environmental Protection Agency study. The Index of Watershed Indicators reports that only 15 percent of our watershed has relatively good water quality.

Forests: Rain forests play an important role in maintaining Earth’s air quality, absorbing carbon dioxide emissions and VOCs (volatile organic compounds), while replenishing the air with oxygen. Statistics show that the annual rate of global deforestation is equal to an area the size of the state of Georgia. This is critical, because it has been estimated that when more than 70 percent of an ecosystem is lost, the remainder may be unable to sustain the environment needed for survival.

Waste: The United States generates enough garbage daily to fill 63,000 garbage trucks, which, lined up, would stretch 400 miles from Los Angeles to San Francisco. The building industry accounts for 20 percent of this waste stream.

Energy: The U.S. Department of Energy estimates that improvements in U.S. building energy efficiency using existing technology could save $20 billion. Forty percent of the world’s energy is used to construct and operate buildings.

The numbers are grim, but designers and suppliers have real options for countering these trends. We can employ what I like to call the Seven Principles of Sustainable Design:

Use Low-Impact Materials: Select non-toxic, sustainably produced or recycled materials that require little energy to process.

Promote Energy efficiency: Use less energy to manufacture more efficient products.

Select for Quality and Durability: Use durable, longer-lasting and better-functioning products to minimize replacement frequency.

Design for Reuse and Recycling: Design products, processes and systems for performance in a commercial “afterlife.”

Employ Bio-Mimicry: Use scientific data to redesign industrial systems along biological lines, enabling the constant reuse of materials in continuous closed cycles.

Substitute for High-Use Service: Shift modes of consumption from single ownership to public/shared ownership (e.g., private automobile to car-sharing service). Promote minimal resource use per unit of consumption.

Choose Renewable Sources: Use materials extracted from nearby (local or bioregional), sustainably managed renewable sources that can be composted (or fed to livestock) when usefulness has been exhausted.

Responding to a Changing Society

Beyond the challenges we face in conserving scarce resources, a few key megatrends underscore the importance of sustainable coatings.

Population Growth: World population doubled from 2.5 billion in 1950 to 5 billion in 1990; it is projected to reach 9.8 billion in 2050. The population is also shifting from rural areas to major metropolitan areas, with people migrating for better employment, commerce and quality of life. New construction will be required to support growth and urbanization. We’ll need to replace, upgrade, repurpose and conserve existing structures and infrastructures.

Climate Change: Once mislabeled “global warming,” the significant, lasting change from relatively mild, predictable weather patterns to more unpredictable patterns increasingly will affect industrialized farming and dense urban populations. We’ll see more pressure to produce materials, products and assemblies that can withstand extreme variances in weather. Basic code-compliant solutions that are “good enough” today will no longer be acceptable.

We’re now designing disaster-mitigation plans and hardening essential facilities and infrastructure, as new codes require mitigation of rising water levels and storms we once saw every 100 years.

We can expect to see carbon dioxide emissions regulated, promoting net-zero buildings whose every feature is designed to reduce energy use and associated carbon emissions.

Greater emphasis will be placed on energy efficiency and energy recovery, as well as water-resource management and conservation.

Information Explosion: Information is growing exponentially, and a corollary increase in access to this information through the Internet means that people are more informed than ever about optimum human health and the risks associated with exposure to chemicals. We pore over studies seeking to define the “tipping point” for toxemia in terms of parts per billion of key compounds. We worry about information that links exposure to changes of DNA affecting future generations.

These health concerns are driving changes that have tremendous implications for building materials.

* New Regulations: States increasingly introduce regulations designed to control exposure and assure public health. The International Green Construction Code is now used for baseline sustainability in regular building codes.
* VOC Limits: VOCs are regulated on the West Coast via the South Coast Air Quality Management District, and on the East Coast via the Ozone Transport Commission. Recent changes in California have lowered VOC limits to a maximum of 50 grams per liter in coatings.
* New Organizations: The Living Building Challenge introduced a chemical “Red List” banning hazardous chemicals from use on projects.
* More Transparency: As a result of requirements in LEED v4 for product transparency, manufacturers of products used on LEED projects must detail the chemical content of the products in HPDs (health product declarations) and EPDs (environmental protection declarations).
* New Social Contract: Major petroleum chemical companies are forced to address the population’s desire to shift from oil and coal to natural gas and to renewable energy and biomass materials.

Technology Explosion: The last 20 years of mergers and acquisitions led to large chemical plants manufacturing single resins. The future lies in small batch processing of custom chemicals and new processing technologies. These include nano-technology, micron-level changes to alter product performance; phase-changing materials, capable of storing and releasing large amounts of energy; and regenerative chemicals that respond to environmental changes.

#### Only competition enforcement detects retaliatory pricing and collusion

Kanter et al 22, [ Jonathan Kanter Assistant Attorney General Doha Mekki Principal Deputy Assistant Attorney General Kathleen S. O’Neill Senior Director of Investigations & Litigation Jeffrey Wilder Director of Economics Robert A. Lepore, Chief Soyoung Choe, Acting Assistant Chief Caroline E. Laise, Acting Assistant Chief Seth Wiener, Trial Attorney Transportation, Energy, and Agriculture Section Karina Lubell, Acting Chief Erica Mintzer, Attorney-Advisor Competition Policy and Advocacy Section Ari Gerstle, Assistant Chief Russell Pittman, Economist Economic Analysis Group, COMMENT OF THE UNITED STATES DEPARTMENT OF JUSTICE, February 28, https://www.justice.gov/atr/page/file/1479511/download]

Even with mandatory reciprocal switching, a shipper will receive competitive bids only if there is another railroad nearby willing to make a competitive offer to carry the freight. Shippers have raised concerns, however, that when they can obtain an offer for switching the proposed rate is often prohibitive. This is likely due to one of two possibilities. First, railroad A may set the costs for switching too high for railroad B to make a competitive offer. Second, railroad B may choose not to make a competitive offer against one of its few rivals to minimize competition between railroad A and railroad B.7 It is a well-established principle in economics that a small number of competitors may be able to coordinate, either explicitly or tacitly, to charge higher prices than would arise in a competitive market.8 The rail industry is particularly susceptible to this kind of coordination because there are often only two class I railroads in a given region. As a result, railroads can easily monitor the actions of their competitors and “punish” competitors that make competitive offers to carry freight by competing aggressively for that railroad’s customers. Thus, even if the Board adopts the reciprocal switching proposal, it is no substitute for remaining vigilant against consolidation and other conduct that harms competition or further reduces the number of alternatives available to shippers.

#### Coordinated standards are necessary but presence of antitrust review induces companies to find least restrictive controls

Cartensen 11, [George H. Young-Bascom Professor of Law, University of Wisconsin, Replacing Antitrust Exemptions for Transportation Industries: The Potential for a “Robust Business Review Clearance”, https://www.antitrustinstitute.org/wp-content/uploads/2018/08/Carstensen.pdf]

In addition, if parties can secure immunity from antitrust liability, this will affect the incentives that they have in developing their legitimate venture. Immunity means that the parties have the opportunity, if the economics of the situation permit, to impose more restrictive terms than necessary in order to facilitate either greater exploitation of customers or exclusion of rivals. An antitrust analysis of a legitimate joint venture, especially one with any degree of market dominance, requires critical review of any significantly anticompetitive restraints when a plausible case can be made that less restrictive options would have provided sufficient protection for the legitimate interests and needs of the parties. Thus, the presence of a real antitrust review is likely to play a role in inducing parties to look for the least restrictive controls consistent with their primary objectives. Absent that incentive, the parties may well adopt unnecessarily anticompetitive restraints whenever such restraints will either directly advantage the parties or create a barrier to new entry.

2. Standard Setting for Transportation Networks  
The second collective activity in which these industries engage involves market facilitation by collective agreement. This is a form of standard setting in a general sense. The size of containers and the contract terms under which containers will move into intermodal service, the terms for exchanging rail cars or franchising travel agents55 and for ensuring the integrity of the reservation system, and other similar activities are necessary components of market facilitation. The standardization of railroad track width is an example of the impact of the network nature of the transportation business. Without standardization, it would be impossible to switch cars from one line to another, and equipment producers would have experienced diseconomies as a result of having to satisfy a variety of different gauges. 56

### 2

#### Advantage 2 – CP-KCS Merger:

#### Uncertain merger review causes investor pull-out, ruins continental rail

Whiteman 12-15, [Motley Fool, Canadian Pacific's Megadeal for Kansas City Southern Is Done... Sorta, 2021, https://www.fool.com/investing/2021/12/15/canadian-pacifics-megadeal-for-kansas-city-souther/]

The United States put a moratorium on large U.S. [railroad](https://www.fool.com/investing/stock-market/market-sectors/industrials/transportation-stocks/) deals about two decades ago, but Kansas City Southern, due to its size and unique route map, has always been the possible exception to the ban. Last March, Canadian Pacific decided to test the regulatory waters, [offering $275 per share](https://www.fool.com/investing/2021/03/23/kansas-city-southern-and-canadian-pacific-just-ann/) and winning approval from Kansas City Southern's board.

In an attempt to alleviate regulatory uncertainty and win Kansas City Southern approval, Canadian Pacific suggested the voting trust structure that is now in place. The trust allows for Kansas City Southern shareholders to receive their payday well ahead of a prolonged regulatory-approval process. The risk falls on Canadian Pacific, which was forced to pay out for the railroad ahead of regulatory action and could book a loss if the merger is ultimately rejected and it must sell the asset back onto the market.

But in May, Kansas City Southern [reversed course](https://www.fool.com/investing/2021/05/14/canadian-national-takes-the-lead-in-the-battle-for/), declaring that a rival $325 per-share bid offered by Canadian National Railway ( [CNI](https://www.fool.com/quote/nyse/cni/) 0.45% ) was superior. Kansas City Southern [returned to Canadian Pacific](https://www.fool.com/investing/2021/09/14/kansas-city-southern-reverses-course-favors-canadi/) in September after the U.S. Surface Transportation Board ruled that it would allow Canadian Pacific to use the trust structure but not Canadian National, a clear indication that the regulator had significant concerns about Kansas City Southern combining with the much-larger Canadian National.

With the trust deal now complete, Canadian Pacific will wait on final approval from the Surface Transportation Board. That's unlikely to happen before the second half of 2022 at the earliest.

Investors still face a wait

For Canadian Pacific investors, there's a lot of uncertainty on the track up ahead. Past railroad mergers have been notoriously tricky to integrate, which in part explains why there was a moratorium in place. Add in the risk that comes with a prolonged review and the one-year delay for integration of the two companies, and there's a lot that can go wrong from here.

There's reason to believe the combination, to be called Canadian Pacific Kansas City Ltd., will win approval. The deal would create a true North American railroad with the ability to run cargo from southern Mexico to the Gulf of Mexico, U.S. Midwest and Northeast, and all of Canada without having to transfer between carriers. Canadian Pacific and Kansas City Southern were the two smallest major railroads prior to the deal, a fact not lost on regulators.

#### Surface Transportation Board authority creates uncertainty. DOJ’s antitrust analysis is clearer and straightforward.

TRB 15, [Transportation Research Board – National Academy of Sciences, Richard L. Schmalensee, Massachusetts Institute of Technology, Cambridge, Chair Kenneth D. Boyer, Michigan State University, Lansing Jerry Ellig, George Mason University, Arlington, Virginia José A. Gómez-Ibáñez, Harvard University, Cambridge, Massachusetts Anne V. Goodchild, University of Washington, Seattle Wesley W. Wilson, University of Oregon, Eugene Frank A. Wolak, Stanford University, Stanford, California Transportation Research Board Staff Thomas R. Menzies, Jr., Study Director Joseph R. Morris, Senior Program Officer Timothy Devlin, Senior Program Assistant Consultants Rosalyn Wilson, Parsons Corporation Lindsey Carroll, Parsons Corporation Kevin Henrickson, Gonzaga University, Modernizing Freight Rail Regulation, https://cb4q22fdswq370gsj3m681um-wpengine.netdna-ssl.com/wp-content/uploads/SR-318-Modernizing-Freight-Rail-Regulation-FINAL.pdf]

Because no Class I railroads have applied to merge since STB introduced its new merger review procedures in 2001, there is no precedent for how the decision-making process would unfold. Nevertheless, merger review guidelines that have well-defined purposes, evidentiary requirements, and evaluation rules and criteria should make the process comprehensible and transparent. Firms considering a merger should have a clear understanding of expectations and be able to structure the transaction accordingly or be dissuaded from pursuing it in the first place. A main purpose of the Horizontal Merger Guidelines is to offer guidance that the business community can use in assessing the antitrust enforcement risks of a proposed transaction.51 Similar transparency of purpose and articulation of procedure are not offered in STB’s Major Rail Consolidation Procedures. Apparently, STB’s statutory obligation to balance the law’s public interest considerations complicates the development of a straightforward review framework comparable with that of the antitrust standard.

The procedures do not offer a methodology for reviewing merger plans. As noted, the procedures make merger applicants responsible for the analysis of their merger plans, but the procedures themselves lack clear guidance on the evidence and analytical methods that are to be used for such analyses. The procedures offer little guidance on how regulators would evaluate the results of the analysis or how they would assess the various actions to be proposed by applicants to protect or further the public interest. Indeed, the merger outcomes that would be construed as desirable and that merger applicants should be expected to prove cannot be known in advance on the basis of the guidance offered in the procedures.

STB’s own statements about the importance of preserving competition suggests that this clouded approval process is not a consequence of regulators having other priorities in mind. Instead, it is a legacy obligation to scrutinize mergers in the context of a broader public interest standard. STB itself has stated that the significance of perceived public interests that guided its merger reviews in the past, particularly the interest in helping the industry shed uneconomic and duplicative capacity, has been greatly diminished. In its overview of the procedures, STB explains that the revised merger review rules were necessitated in light of the “declining number of number of Class I railroads, the elimination of the industry’s excess capacity, and the serious transitional problems that have accompanied recent major rail consolidations.”52 It states that “our shift in policy places greater emphasis in the public interest assessment on enhancing competition while ensuring a stable and balanced rail transportation system.”53

STB itself believes that the preservation of competition should be central to merger reviews and that other public interest concerns have expired or been diminished. Thus, questioning the purpose of STB continuing to be responsible for merger reviews is reasonable. If preservation of competition is the primary concern, USDOJ’s Antitrust Division is far more qualified to lead the reviews, in view of its staff of competition analysts and the well-established evidentiary and evaluation framework in the Horizontal Merger Guidelines. The law already requires USDOJ to advise STB on the competition impacts of major railroad mergers. The continued subordination of USDOJ’s role is now justified, as a practical matter, mainly on the grounds that STB is better positioned to redress service disruptions that can arise during the integration of merged railroads. However, STB can invoke other authorities to minimize such effects from mergers that pass the competition scrutiny of USDOJ.

#### STB also causes competitor sabotage and delay

TRB 15, [Transportation Research Board – National Academy of Sciences, Richard L. Schmalensee, Massachusetts Institute of Technology, Cambridge, Chair Kenneth D. Boyer, Michigan State University, Lansing Jerry Ellig, George Mason University, Arlington, Virginia José A. Gómez-Ibáñez, Harvard University, Cambridge, Massachusetts Anne V. Goodchild, University of Washington, Seattle Wesley W. Wilson, University of Oregon, Eugene Frank A. Wolak, Stanford University, Stanford, California Transportation Research Board Staff Thomas R. Menzies, Jr., Study Director Joseph R. Morris, Senior Program Officer Timothy Devlin, Senior Program Assistant Consultants Rosalyn Wilson, Parsons Corporation Lindsey Carroll, Parsons Corporation Kevin Henrickson, Gonzaga University, Modernizing Freight Rail Regulation, https://cb4q22fdswq370gsj3m681um-wpengine.netdna-ssl.com/wp-content/uploads/SR-318-Modernizing-Freight-Rail-Regulation-FINAL.pdf]

When Congress created STB in 1995, USDOJ recommended ending the railroad industry’s exemption from the exclusively competition-based appraisal standard used for airlines, which were deregulated at about the same time as railroads.29 The reasoning was that eliminating the broader public interest standard and transferring merger reviews to USDOJ’s Antitrust Division would clarify and expedite the review process, which was ill defined and slowed by special interests (including competing railroads) seeking concessions. Congress retained the standard but added certain features associated with conventional antitrust reviews, including use of divestiture as a remedial condition to counter potentially adverse competitive effects. In addition, STB was required to give substantial weight to any competition-related recommendations by USDOJ.30

#### Delays cause sell-out pressure

Whiteman 21, [Motley Fool, DOJ Calls $30 Billion Railroad Merger Plan a "Mockery" of Regulation, April 16, https://www.fool.com/investing/2021/04/16/doj-calls-30-billion-railroad-merger-plan-a-mocker/]

I believe the deal will eventually win approval. But the status of the trust structure is a lot more questionable, and if that goes away, any chance of a quick payout for KCS shareholders disappears with it.

Kansas City Southern shareholders face a difficult choice. If one has no interest in holding the CP shares that are part of the payout, I would be tempted to sell now instead of remaining on board for what figures to be a prolonged review.

#### Antitrust replaces STB

TRB 15, [Transportation Research Board – National Academy of Sciences, Richard L. Schmalensee, Massachusetts Institute of Technology, Cambridge, Chair Kenneth D. Boyer, Michigan State University, Lansing Jerry Ellig, George Mason University, Arlington, Virginia José A. Gómez-Ibáñez, Harvard University, Cambridge, Massachusetts Anne V. Goodchild, University of Washington, Seattle Wesley W. Wilson, University of Oregon, Eugene Frank A. Wolak, Stanford University, Stanford, California Transportation Research Board Staff Thomas R. Menzies, Jr., Study Director Joseph R. Morris, Senior Program Officer Timothy Devlin, Senior Program Assistant Consultants Rosalyn Wilson, Parsons Corporation Lindsey Carroll, Parsons Corporation Kevin Henrickson, Gonzaga University, Modernizing Freight Rail Regulation, https://cb4q22fdswq370gsj3m681um-wpengine.netdna-ssl.com/wp-content/uploads/SR-318-Modernizing-Freight-Rail-Regulation-FINAL.pdf]

Decades ago when the railroads were heavily regulated, they were exempted from customary antitrust reviews of mergers and subjected instead to a broader public interest review by ICC. Even after economic regulation in the industry was eased, the public interest standard was retained, in part to allow the more financially viable railroads to reduce perceived duplicative capacity by acquiring struggling competitors and thereby concentrating traffic and revenues to regain profitability. Any such rationale for keeping the public interest standard no longer exists, since STB itself has stated that excess and duplicative capacity are no longer problems and that preserving competition among the remaining railroads will be the priority for future reviews. In view of the diminished reasons for the public interest standard, its preservation can only detract from the appropriate focus on competition. STB is not as qualified to assess competitive effects as the Antitrust Division of the U.S. Department of Justice, which because of its specialized expertise on these matters is already required to advise STB on a merger’s potential competitive effects. Accordingly, the committee recommends that Congress take the following step:  
Recommendation: Transfer merger review authority to the antitrust agencies and apply customary antitrust principles rather than a public interest standard.

#### Merger’s a game changer for regional integration

Ortiz-Mena and Sánchez 21, [Antonio Ortiz-Mena, senior vice president at Albright Stonebridge Group, Francisco Sánchez, partner at Holland & Knight and former U.S. undersecretary of trade, Is a Proposed Rail Merger Good for North America?, April 13, https://www.thedialogue.org/analysis/is-a-proposed-rail-merger-good-for-north-america/]

Antonio Ortiz-Mena, senior vice president at Albright Stonebridge Group: “Should it come to fruition after pending regulatory reviews, the North American rail network could be a game changer for regional competitiveness. It is a market-led trilateral approach that will reduce transportation emissions and transaction costs for intra and extraregional trade in agricultural products, energy, and auto parts, among others. Under NAFTA, there were myriad trilateral summits and statements about enhancing regional competitiveness, but the region remains a laggard on rail infrastructure: out of 103 countries in the 2019 WEF Report, the United States, Canada and Mexico rank 37th, 56th and 69th, respectively. The new network would connect North-South trade and also with the Asia-Pacific region; for the Pacific, Vancouver and Lázaro Cárdenas are included, but a connection to Salina Cruz via the Trans-Isthmus corridor would be ideal (it is in its initial phase and would require connecting the Veracruz and Coatzacoalcos ports). To enhance the potential of the new North American rail network, USMCA Chapter 7 could be used to harmonize all rail cargo manifests, Chapter 28 to streamline other regulations affecting rail connectivity and Chapter 26, on competitiveness, to deal with other legal or regulatory issues impeding seamless connectivity, such as obviating the need for changes of locomotive engineers, crew and equipment throughout the region. Pending issues in Mexico would drastically reduce train robberies, which remain at unacceptably high levels, and would determine if and how the North American rail system can connect with the Mayan train, which will be for passengers and cargo and operated by the Mexican military.”

Francisco Sánchez, partner at Holland & Knight and former U.S. undersecretary of trade: “The combined Canadian Pacific-Kansas City (CPKC) railroad network would be the first to connect the United States, Mexico and Canada through 20,000 miles of rail. The U.S. Surface Transportation Board (STB) still must approve the merger. The STB will determine whether the merger would unduly affect customers by decreasing independent rail options. The STB is expected to use much of the 16 months it is allowed to make the decision, meaning that the outcome of this merger will be unclear until mid-2022. A successful merger would likely spur North American trade by taking advantage of the 2018 United States-Mexico-Canada Agreement, which updated NAFTA. The grain, auto and energy sectors, with supply chains and customers spanning North America, would have single-haul options connecting the Pacific Ocean with the Gulf Coast. This would decrease costs and boost efficiencies. For example, Canadian auto parts manufacturers would have more direct links to Mexican auto manufacturers. In turn, those auto manufacturers would have more direct links to customers in the United States and Canada. The merger would position CPKC to compete directly with the trucking industry, especially in the Midwest and Southern region of the United States, by increasing the ease of intermodal shipping. In the past, the STB has denied other merger attempts by Canadian Pacific. However, industry analysts have noted that this deal is smaller than those proposed in the past, meaning there is reason for cautious optimism for the merger in 2022.”

#### But it shuts down access to Mexico without safeguards

Luczak 3-3, [Executive Editor at Railway Age, BNSF to STB: Ensure Cross-Border Competition, 2022, https://www.railwayage.com/regulatory/bnsf-to-stb-ensure-cross-border-competition/]

BNSF is asking the Surface Transportation Board (STB) to impose conditions that preserve competition, particularly at the U.S.-Mexico border, if the proposed Canadian Pacific-Kansas City Southern merger is approved.

On Feb. 28, [BNSF](http://www.bnsf.com/) submitted comments to the STB to ensure that a [CP-KCS combination into Canadian Pacific Kansas City (CPKC)](https://www.railwayage.com/freight/class-i/cn-kcs-terminabitur-cpkc-resumo-e-duobus-unum/?RAchannel=home) does not diminish the “important access to Mexico for U.S. rail shippers.” [STB is currently reviewing the merger application.](https://www.railwayage.com/regulatory/stb-cp-kcs-merger-proceeding-will-proceed/)

In its 583-page filing (download below), BNSF wrote that to “meet the steep volume expectations, revenue projections, and other claims made to investors and to the Board, the combined CP-KCS will be incentivized to divert its traffic through rate manipulations away from competitive routings on BNSF and other railroads. The Board needs to understand the real potential that, absent imposition of the conditions requested here by BNSF, current and future U.S. shippers could be harmed through a lessening of competitive options.”

[304046Download](https://www.railwayage.com/wp-content/uploads/2022/03/304046.pdf)

BNSF explained that for the past 25 years, it has “served the public interest as the replacement for competition that would have been lost when Southern Pacific (SP) merged into [Union Pacific (UP)](https://www.up.com/index.htm) in 1996. The Board recognized the critical importance of this role when it provided BNSF with access to the Mexican border at Laredo. The Board did so by installing BNSF onto a UP/SP rail line that leads to Robstown, Texas—just west of Corpus Christi—where BNSF could access Laredo via an interchange with an independent Texas Mexican Railway (Tex Mex), which presumably would have no incentive to disfavor BNSF traffic. The Board also gave BNSF trackage rights access to UP/SP lines in Texas leading to the Mexican border at Brownsville and Eagle Pass.”

BNSF wrote that STB must ensure that the “combined CP-KCS does not use its control over transportation into and out of Mexico via the important Laredo, Texas gateway to frustrate the Board’s competitive objectives in the UP/SP merger and to foreclose access to Mexico by BNSF and its shippers.”

BNSF said that foreclosure at Laredo is “not an idle or theoretical concern. Following the acquisition in 2005 by KCS of Tex Mex and the predecessor to KCSM, BNSF’s rail movements across the KCS-controlled Laredo border crossing dropped precipitously. Over time, BNSF has concluded that it has become virtually impossible to compete for certain Mexico business over Laredo if KCS can also serve the business on the U.S. side of the border. In direct contravention of the several open gateway commitments made by KCS when the Board approved the Tex Mex acquisition, KCS has exercised its control over the pricing of the Mexican portion of the movement, and at times, the routing of the U.S. portion, to ensure that BNSF will be frozen out of the market. Indeed … KCS failed to adopt any policies, practices, instructions or employee training to implement its open gateway obligations.

“Accordingly, the Board must put in place more concrete and enforceable open gateway measures and remedies, including an independent and unqualified open gateway commitment for Laredo. Otherwise, the expansion of KCS’s network to include the large number of Canadian and northern U.S. locations served by CP will further solidify this lock-out of BNSF and many of its customers from cost-effective access to Mexico through Laredo.”

In its comments, BNSF identified a rate-setting mechanism and certain service commitments to make sure that the railroad and its customers “will not be foreclosed in the future from access to Mexico through unfair pricing or service, and that the rates they receive from CP-KCS will be ‘commercially reasonable.’ If these or other mechanisms that BNSF is asking the Board to put in place prove ineffective at maintaining an open gateway at Laredo, then BNSF may need to seek direct access into Mexico by competing for the Mexico rail concessions. BNSF asks the Board to ensure that the Transaction will not keep BNSF from effectively competing in that concession process. U.S. rail shippers need assurances that the Transaction will not preclude them from having multiple options for access to the increasingly important Mexico market.”

Additionally, BNSF wrote that it is concerned about the impact of the merger’s increased Mexican traffic growth on “critical areas on the CP-KCS network, including, most prominently, the Houston terminal complex. To reach the Laredo gateway from the north and east, KCS must traverse Texas over a tangle of connected line segments owned, controlled and operated by some combination of KCS, BNSF, UP, and Houston Belt & Terminal Railway Company (HBT). This route requires movement through Houston itself. As the Board well knows, Houston has experienced acute congestion in the past. … BNSF (and UP) can access Laredo from the north without traversing the core Houston complex. Movements that can avoid the Houston complex have a distinct efficiency advantage, particularly for movements of intermodal traffic that value reliable and timely service and that have readily available truck alternatives.

“Notwithstanding the risk of congestion in the Houston area, Applicants anticipate that their merger would result in the addition of approximately eight new CP-KCS trains per day to the rail lines traversing Houston. Much of this additional traffic would result from the diversion of traffic to CP-KCS from BNSF and UP, whose lines do not need to traverse Houston in order to reach the Mexico border. Yet Applicants have not identified a single dollar for new capacity that they propose to add in the Houston area to accommodate this substantial increase in traffic.

“If Applicants’ plan is just to wait and see what happens, they are putting at risk the fluidity of a critical node in the national rail network at a time when supply chain congestion is a significant issue for the U.S. and global economies. If their plan is to try to make BNSF and other railroads—and by extension their customers—pay for the capacity that is needed to accommodate the increased CP-KCS traffic under existing cost-sharing arrangements for the lines at issue, their strategy is equally misguided. BNSF and its shippers should not be expected to pay for capacity that Applicants need to implement their merger.”

#### Trade solves regional security, adversary enroachment, REEs, and Mexico coop

Runde 21, [Daniel F. Runde Senior Vice President; William A. Schreyer Chair; Director, Project on Prosperity and Development; and Director, Americas Program, Opportunities for the U.S.-Mexico Economic Partnership under the Biden and AMLO Administrations, March 2, https://www.csis.org/analysis/opportunities-us-mexico-economic-partnership-under-biden-and-amlo-administrations]

The next four years present a once-in-a-generation opportunity for the new Biden administration to engage with Mexico and with President Andrés Manuel López Obrador (AMLO) to reinforce the trade relationship between the two countries. The recent entering into force of the United States-Mexico-Canada Agreement (USMCA), global disruption due to the Covid-19 pandemic, and administration changes on both sides of the border present a unique combination of circumstances that should be seized upon throughout the next four years.

AMLO came into office in 2018 under the auspices of a populist campaign, promising to address endemic poverty and expand development in the country. With a 62 percent approval rating, AMLO has more popular support than any other major leader in the Americas, including Joe Biden, Jair Bolsonaro, and Justin Trudeau. He has the massive popular support necessary to enact sweeping reforms, with plans to reclaim Mexico’s oil industry under state-owned enterprises and to train a modern workforce through educational programs.

Mexico is a very different country than it was before the implementation of the North American Free Trade Agreement (NAFTA) in 1994, with its GDP rising from $261 billion in 1990 to $1.27 trillion in 2020, making it the second largest economy in Latin America after Brazil. This phenomenal growth can be largely attributed to a strong relationship with the United States since the implementation of NAFTA. In 1990, bilateral trade between the United States and Mexico stood at just $38.3 billion, and Mexico was the United States’ third-largest trading partner. By 2019, the trade volume reached $614.5 billion, and Mexico became the United States’ largest trading partner for the first time that year.

AMLO . . . has the massive popular support necessary to enact sweeping reforms, with plans to reclaim Mexico’s oil industry under state-owned enterprises and to train a modern workforce through educational programs.

Trade, development, and investment are entwined with the issues of regional security and migration that will continue to be priorities for the Biden administration. AMLO recently appointed a new economic minister and a new deputy governor of the Central Bank, roles which traditionally advise the president on economic policy. The new appointees are anticipated to engage in more open dialogue with the private sector compared to their predecessors, and they could be key to the full implementation of the USMCA over the next four years if they can more effectively persuade AMLO. In the context of a global pandemic, a novel and open-minded cabinet, and a growing bilateral trade volume, there is no better time for the Biden administration to advance a revamped trade and investment agenda in Latin America. This historic, tumultuous moment represents a unique window of opportunity for the United States and Mexico to work together through the USMCA to not only promote their own economic recovery, but to prepare for the future in a way that will make the entire North American market competitive for years to come.

NAFTA and the USMCA

Trade is traditionally one of the most prominent topics of dialogue and policy between the United States and Mexico. NAFTA was hailed as a generational policy achievement, and for good reason: trade among the three member states ballooned from around $290 billion in 1993 to over $1.1 trillion in 2016, representing nearly a third of global GDP and solidifying the interdependence of the North American economies. Mexico benefited from the agreement, increasing exports to the United States tenfold from $39.9 billion in 1993 to $358.1 billion in 2019. The trade relationship between NAFTA members has also ensured general goodwill and friendly diplomatic relations over the past two decades. NAFTA was a groundbreaking accord that helped launch what was once the world’s largest free trade agreement, representing approximately 33 percent of the world’s total gross domestic product and the second largest in total trade volume.

A substantial component of U.S.-Mexico trade expansion through NAFTA has involved the creation of vertical supply chains, which strengthened the competitiveness of U.S. companies and helped Mexico accelerate its diversification of exports and imports. Vertical specialization was used in manufacturing production maquiladoras (Mexico’s export-oriented assembly plants) across the U.S.-Mexico border: maquiladoras use large amounts of imported materials produced in the United States and assemble them into the final product, and then export most of the final product back to the United States with duty-free status. Vertical specialization has allowed the United States and Mexico to leverage their economies by collaborating in the manufacturing and assembly of various products, including automobiles, computers, and electronics. Mexico is now one of the largest auto manufacturers in the world, producing almost 4 million cars per year.

Due to the process of vertical specialization and overall growth in trade, NAFTA and the subsequent USMCA have set North America up to become a unitary market with the potential to compete globally. Making the most of this vertical supply chain will be essential, given the context of China's growing influence throughout the world, and especially in Latin America and the Caribbean. Nearshoring production and implementing the various reforms of the USMCA would not only strengthen the economic and diplomatic ties between the three member states but also make the North American regional supply chain an attractive alternative to competitors like China and the European Union.

Changes to USMCA That Allow Regionalization

Political forces on both sides of aisle in the United States have been pushing for updates to NAFTA for years. Former president Trump made updating the agreement a central promise of his 2016 campaign, and the United States-Mexico-Canada Agreement ultimately passed the U.S. Senate by a vote of 89-10. The amended agreement retained much of the structure of the previous NAFTA, but included several key changes, such as:

Enhancing the dispute settlement process;

Providing more enforceable labor provisions and requirements for Mexico to reform its labor laws and practices, such as mitigating forced labor and violence against workers;

Expanding coverage, enforcement, and monitoring of environmental protections;

Tightening vehicle rules of origin by establishing a 75 percent regional value content requirement for finished vehicles and a similar rule for automobile parts to meet the criteria for zero tariffs for automobiles;

Requiring that 40–45 percent of auto content be produced by workers making at least $16 per hour;

Incorporating new trading provisions and protections related to the digital economy;

Amending some of the patent and regulatory exclusivity provisions, especially related to the pharmaceutical industry; and

Establishing a “sunset clause” for the duration of the agreement term, leaving it open to a review every six years.

In particular, the dispute resolution mechanism and sunset clause amendments should be recognized for their potential to drive a new era of North American relations. As the Biden and AMLO administrations strive for leverage throughout the process of USMCA implementation, they will inevitably clash. For instance, the administrations have different trajectories with regards to environmental regulation, and they will likely need to address the United States’ $101 billion trade deficit with Mexico. While conflicting interests would typically impede implementation, the goal of the dispute resolution mechanism is to provide a legal framework for considering varying perspectives and avoiding runaway taxation. If dispute resolution falls through, the six-year periodic review acts as a safeguard, allowing parties to make a case for their entrenched positions at that time.

Sectors for Potential Collaboration

ENERGY

The energy sector is one of both growing importance and consistent dispute between U.S. and Mexican administrations, and it will be a frontier of negotiation in the coming years. Mexico is the second-largest supplier of crude oil to the United States and the largest export destination for U.S. natural gas and petroleum products. AMLO campaigned heavily on the concept of “energy sovereignty,” with the goal of reining in state-run energy companies—such as Petróleos Mexicanos (Pemex) and the Comisión Federal de Electricidad (CFE)—and reinvigorating their production. The oil industry in Mexico is not only a source of employment, but is celebrated as a shared commodity that is worthy of national pride by the citizenry, leading AMLO to campaign strongly on the issue. By contrast, President Biden campaigned on increasing environmental accountability and rejoined the Paris Climate Accord on his first day in office. His environmental platform includes plans for the United States to reach net-zero emissions by 2050, create a new sector of renewable energy jobs, and work with multilaterals to address the threat of climate change.

Over the last two years, AMLO has added obstacles to environmental accountability, such as regulatory bureaucratic changes, including disincentivizing foreign investment in more than 200 energy projects. The Mexican economic ministry also directly opposed the integration of privately-owned wind and solar plants into the national power grid in a move to protect CFE. Consequently, the business climate environment in the energy sector had declined by more than half, from $2.25 billion in 2019 to approximately $1.3 billion in 2020. 23 percent of Mexico’s energy comes from renewable sources, and it is among the top 10 destinations for renewable investment in the world. However, due partly to the previously mentioned patriotic attitude towards oil and gas and a desire to help Pemex, AMLO has discontinued clean energy auctions that had previously introduced 7 gigawatts of wind and solar power to Mexico. AMLO has shown no signs of abating this behavior; on February 5 he sent an electricity reform bill to the Mexican Congress that was immediately called out as a breach of USMCA by the U.S. Chamber of Commerce.

President Trump and AMLO had a somewhat comfortable trade relationship, as Trump focused mostly on migration during his tenure, allowing AMLO to continue his energy policies. Biden is expected to focus significantly more on the environment, which could be done through full implementation of the USMCA. Environmental provisions under the USMCA include obligations to multilateral environmental agreements (MEAs) by the parties, as well as the U.S.-Mexico Environment Cooperation and Customs Verification Agreement. Perhaps more influential are the USMCA Investment Provisions, meant to guarantee the free flow of foreign direct investment in North America and to restore investor trust and transparency. AMLO’s protectionist energy policies—and particularly his proposal to overturn a 2014 constitutional amendment that expanded private investment opportunities—would violate the USMCA.

MANUFACTURING

The trade of motor vehicles and machinery between the United States and Mexico is one of the most, if not the most, influential sectors of the trade relationship. Automotive and manufacturing trade represents the largest volume of Mexican exports to the United States, totaling $231 billion between vehicles and machinery in 2019 out of a total export market of $358.1 billion that same year. While U.S. exports of machinery and automobiles to Mexico are not nearly as high in volume as imports, that export market still measured an impressive $107 billion in 2019 and represented a larger share of trade than other sectors, such as agriculture and services.

Manufacturing regulations and automotive trade were a major source of controversy under NAFTA, and they ultimately became a driving force for the Trump administration to update the agreement with the USMCA. U.S. auto manufacturing jobs fell by a third between 1994 and 2013, while the Mexican auto workforce grew by hundreds of thousands in the same period. The U.S. job decline was in fact attributable to a number of factors, including hundreds of thousands of jobs lost to automation and China’s designation as a most favored nation in 2001. However, the popular idea that manufacturers were moving to the cheaper Mexican labor market gained enough political momentum to effect bipartisan support for the USMCA in 2019. On the other hand, while AMLO had long derided free trade policies as harmful to the Mexican working class, he promptly welcomed the USMCA in hopes of improving Mexico’s stagnant poverty rate. The tightening of manufacturing and labor restrictions under the updated agreement signified that both governments were unhappy with the status quo, but the challenge ahead lies in its implementation.

As the Biden and AMLO administrations coordinate in the manufacturing sector, the most important applications of the USMCA will be in job creation. The provision increasing the required automotive regional value content to 75 percent could be leveraged to reinvigorate maquiladora production, and it is projected to create hundreds of thousands of jobs in the United States. Working together to address Covid-19 will also be an essential part of the manufacturing agenda, since the industry was one of the sectors most vulnerable to the pandemic. Factories in both countries took a blow at the beginning of the pandemic due to mandatory shutdowns and continue to struggle in enforcing safety measures months after reopening.

PHARMACEUTICALS

The pharmaceutical sector is an often-overlooked part of the regional North American relationship that has enormous potential for growth. The Covid-19 pandemic exposed a lack of public health preparedness in both the United States and Mexico, particularly in terms of personal protective equipment (PPE) stockpiles. The United States was already heavily reliant on globally sourced PPE prior to the pandemic, due to years of inadequate budgeting and prioritization in hospitals; at the same time, Mexico was slow to react to the drastic spike in PPE demand in its own borders.

As global demand for PPE and Covid-19 tests skyrocketed, many countries turned to China for help. China produced more PPE and respirators than the rest of the world combined long before Covid-19, but the demand of the pandemic expanded Chinese mask production by 1,200 percent in February 2020 alone. China’s supply of PPE was not altruistic, as the regime often engaged in “donation diplomacy” by requiring recipients of aid to publicly thank the PRC for shipments as a publicity tool. As the United States and Mexico failed to meet the needs of even their own citizens, they missed out on a valuable opportunity to provide an alternative to the Chinese market.

While the opportunity to become a go-to site for PPE exports has passed, the United States and Mexico have the potential to work together under the USMCA to prepare themselves and the world for the next public health crisis. One provision that represents an opportunity for growth in this sector is an intellectual property (IP) protection reform that will allow leaders to negotiate a decrease in the period of regulatory exclusivity for biotechnology patents. A more liberal flow of ideas and information in the realm of pharmaceuticals would allow the best minds in North America to collaborate and lead the world on the cutting edge of medical innovation.

AGRICULTURE

Agricultural trade between the United States and Mexico is a significant sector of each country’s export markets that will need to be preserved and strengthened under the Biden administration. The United States is Mexico’s single largest agricultural trading partner, purchasing 78 percent of Mexican agricultural exports. Likewise, U.S. agricultural exports to Mexico totaled $19.2 billion in 2019, growing 48 percent over the last decade. The phenomenal growth of agricultural trade between the two countries is due to several reforms by the Mexican government over the past 30 years and to the country’s accession to multilateral organizations, but it is of course mostly attributed to the signing of NAFTA in 1994. Between 1993 and 2018, U.S. agricultural exports to Mexico grew at an annual rate of 6.9 percent, making it one of the most consistent and reliable U.S. export markets.

Many USMCA amendments have specifically targeted agriculture, with the overarching goal of increasing access to the U.S. agricultural export market and appeasing frustrated U.S. farmers. Key updates include the termination of discriminatory wheat and dairy grading systems and increased cooperation on biotechnologies—protectionist policies which led to widespread disdain with NAFTA and caused farm workers to push for an update. The expanded access to U.S. wheat, dairy, and textiles, as well as the newly established Working Group for Cooperation on Agricultural Biotechnology, carry major potential for improving this sector. In addition to an expected increase of $2 billion annually in U.S. agricultural exports, the transparency and information-sharing provided by the Working Group may ease Mexico’s historical apprehension toward genetically modified organisms (GMOs) and allow for regional production of more resilient crops.

Despite the laudable achievements of the USMCA in agriculture, some trade tensions in the sector have emerged on both sides of the border in the first year of implementation. The AMLO administration has pursued certain divisive food and agriculture policies, such as disparaging U.S. exports of corn sweeteners, and banning the use of glyphosate and GMO corn. The Trump administration, meanwhile, pursued complaints of unfair imports on seasonal produce from Mexico, launching multiple investigations covering an estimated 44 percent of U.S. seasonal produce imports from Mexico. Resolution of such nascent disputes will be a challenge for the Biden and AMLO administrations.

TOURISM

The tourism corridor between the United States and Mexico is one of the most highly frequented in the world and is an essential sector of each country’s economy. Mexico is the most popular destination for U.S. tourists, attracting 26 million U.S. visitors in 2019, more than the European Union and Canada combined. While the volume of Mexicans traveling to the United States was slightly less at 18.1 million, Mexico is second only to Canada as a country of origin for international visitors to the United States. The tourism sector constitutes 8.5 percent of Mexican GDP and a massive 77.2 percent of service exports, and it was identified as a priority economic sector in the National Development Plan of 2013–2018. Tourism consistently outperforms other major economic sectors as a share of GDP, including auto manufacturing (3.7 percent), agriculture (3.6 percent), and oil and gas (2.2 percent). Similarly, travel is the United States’ second largest export and has major growth potential under the USMCA.

The tourism industry was obviously one of the hardest hit by the Covid-19 pandemic, as lockdowns and border closures ground international flights to a halt. International tourism was down 80 percent globally in 2020, and domestic tourism came nowhere close to making up for lost revenues; North America was no exception. As countries everywhere reimagine what the tourism will look like post-pandemic, the United States and Mexico should promote open dialogue and come to a shared vision on the issue. In a world reeling from the pandemic, future tourism will be rooted in sustainability and traveler confidence. Promoting healthy environmental practices under the USMCA, as well as cooperation on issues of good governance, risk management for individual travelers, and reducing illicit activity could promote both of those goals and attract more tourists.

RARE EARTH ELEMENTS

Rare earth elements have a variety of uses that may drive the future of energy and security, but the lack of emphasis on their importance in North American trade has left another gap for China to fill. Rare earth elements contain useful chemical properties applicable to a range of industries, from LED lights to weapons systems. These metals are produced through an extensive mining and refining process. The United States was historically a leading producer of these metals and remains the third-largest producer globally. While Mexico has not tapped into its supposed reserves of rare earths, it is the fourth-largest recipient of foreign direct investment (FDI) for mining in the world and has major potential to expand in that area. Notably, since the 1990s China has experienced a near-monopoly over rare earth production and exports, with a 37 percent share of global rare earth reserves. Former Chinese leader Deng Xiaoping recognized the potential of rare earths and made production a top priority during his liberalization of Chinese markets. A combination of state support by subsequent administrations and lower environmental and labor standards has put China in a position of power in a market inextricably tied to global defense, transportation, and energy.

China's unmatched dominance in the rare earth sector has the potential to become adversarial and disrupt global supply chains, but there is hope for this sector in North America. Canada and the United States signed a 2019 agreement to reduce reliance on Chinese rare earth imports. Further, Mexico has plans to nationalize a newly discovered lithium mine in Sonora with some of the largest proven reserves in the world, which is currently under Chinese and British joint venture. Both the U.S. Commerce Department and U.S. Defense Department have explicitly recommended an increase in domestic production and stockpiling as a safeguard to potential Chinese manipulation. If the United States labor force shifts towards an increase in rare earth production, continued cooperation and transparency with partners under the USMCA will be important to prevent an escalation of tariffs similar to the 2019 steel and aluminum tariff debacle.

Looking Ahead

Over the next four years, the Biden and AMLO administrations will need to work together on several major areas impacting trade, including fully implementing the USMCA, strengthening the North American supply chain, managing the Covid-19 pandemic recovery process, and negotiating issues surrounding Mexico’s energy sector. A coordinated Covid-19 recovery and vaccine rollout will be the most pressing issue in the coming year, especially since the United States and Mexico have the first and third highest numbers of deaths to the disease, respectively. Mexico’s vaccination plan has been uncoordinated and disastrous so far, and a coordinated strategy for workforce vaccination will be essential to prevent further supply chain disruption. Given that the pandemic has exposed an over-dependency on supply chains in China, companies are already looking to diversify.

The United States, Canada, and Mexico should collaborate to promote the North American market as an attractive supply chain alternative to China and as a keystone to a larger strategy of nearshoring and allied-shoring in the Americas. They should encourage companies to expand capacity in the region and promote the growth of small and medium-sized enterprises, especially in certain essential sectors like pharmaceuticals, PPE, and rare earth minerals. The full implementation of the USMCA will also be vital to the trade relationship, including executing some of the more ambitious parts of the agreement like Mexico’s labor obligations.

Although full implementation of the USMCA will require a major diplomatic effort by both countries, it would produce a more resilient and competitive North American market in the long run. Key issues to address in order to achieve full USMCA implementation include infrastructural and logistical improvements at the border, massive training programs for the young workforces in each country, and open dialogue at the highest levels of each government. In pursuing the United States’ environmental goals, it will be essential for the Biden administration to be honest about the scope of regulations while reassuring the AMLO cabinet of Pemex sovereignty. Increases in free trade often lead to domestic uproar and international dispute, but thankfully the USMCA provides a legal framework for dispute resolution.

Strong cooperation on trade will create an essential basis upon which the countries can cooperate on other issues. Problems of security, corruption, and poverty persist in Mexico, with the country lagging behind the United States and Canada on many socioeconomic indicators. AMLO has attempted to address these issues through social and educational programs such as “Youth Building the Future” and “Sembrando Vida,” which aim to train Mexico’s young workforce and stimulate sustainable agriculture, respectively. Expansion and restoration of stability in trade under the USMCA could give Mexico the economic basis necessary to not only confront poverty and create jobs, but also to implement AMLO’s programs intended to create a more modern and competitive workforce. The United States should collaborate with AMLO to address core issues of poverty in Mexico through the U.S. Agency for International Development (USAID) and the International Development Bank (IDB). The United States and Mexico should also revisit the charter for the North American Development Bank, so as to focus not only on the U.S.-Mexico border, but also on Mexico’s border with Guatemala and other impoverished parts of the country.

The potential of the USMCA is not limited to trade. The flow of ideas, goods, and people across borders contribute to a North American economic bloc beyond the pragmatics of a trade deal. The strengthening of a North American trade identity, in which the three USMCA nations not only trade with one another but build things together, is unique among free trade deals. The North American economy has the potential to ensure prosperity across the continent, outcompete China and other growing powers on the global market, and become the most attractive destination for international investors.

#### Regional footholds go nuclear

**Ellis 14**, [research professor of Latin American Studies at the Strategic Studies Institute, U.S. Army War College, with a research focus on the region’s relationships with China and other non-Western Hemisphere actors, Strategic Insights: The Strategic Relevance of Latin America for the United States, http://www.strategicstudiesinstitute.army.mil/index.cfm/articles/The-Strategic-Relevance-of-Latin-America/2014/12/08]

One can debate whether senior U.S. officials visit or talk about Latin America and the Caribbean frequently enough, or whether programs such as Plan Colombia, Plan Merida, the Central America Regional Security Initiative, and the Caribbean Basin Security Initiative are sufficient. Yet from Washington DC, Latin American and Caribbean challenges, such as drugs, organized crime, and border issues just do not seem to “stack up” to the immediate, existential threats confronting the United States elsewhere in the world: Ebola, the fight against ISIL, a resurgent China, and a newly assertive Russia.

Frighteningly, in decisions about how the United States should focus its resources and attention in the pursuit of global security in the post-Cold War era, this logic is almost ubiquitous. It is also shortsighted and potentially creates grave risks for U.S. national security.

This essay argues that both those who argue for greater U.S. attention to Latin America’s problems and those who argue the need to focus resources elsewhere, have it wrong. While Latin America and the Caribbean face important challenges, such as transnational crime, governance, and development issues in the post-Cold War world, U.S. policymakers and analysts too seldom think in strategic terms about Latin America in the way that they do toward other parts of the world. Applying such a strategic lens to Latin America, the region’s core strategic value to the United States derives not from individual problems in the region itself (although it is certainly in the U.S. interest to address such issues). Rather, the principal strategic imperative of Latin America for the United States historically has been, and continues to be, its geographic and economic connectedness to this country and, by extension, the potential for a powerful extra-hemispheric actor to use the region to harm the United States or impair its ability to act in other parts of the world in the event of a future conflict.

The rise of China and its projection onto the global stage, coupled with Russia’s increasingly bold reassertion of its imperial ambitions, increases the undesirable possibility of a serious conflict between the United States, and one or both of these actors. Yet, while strategists regularly ponder the political and military dimensions of how such conflicts could play out in Asia, it is unthinkable that a power with global political, economic, and military ties, such as Russia or China, would allow the United States to engage it in its own region without taking the fight to the U.S. “backyard” as well.

In short, there is a worrisome disconnect between the possible conflicts that U.S. strategic planners for other theaters see on the horizon, and the focus of planners responsible for assessing Latin America and the Caribbean. The later tend to evaluate the risks to the United States in terms of the challenges coming from the region, but not those potentially coming through the region as a product of developments in other parts of the world.

Things were not always so. During the Cold War, U.S. planners instinctively saw the Americas as an arena where the Soviet Union would seek to act as part of its global struggle with the West. Concerns over of a U.S. rival acting against the United States through proxy states in Latin America and the Caribbean was manifest in U.S. attempts to contain Cuba, and to prevent pro-Soviet regimes from coming to power in Nicaragua, El Salvador, Guatemala, and the Dominican Republic, among others.

It is not politically correct in the “enlightened” and globalized post-Cold War world to contemplate peer competitors acting against the United States through sympathetic regimes or poorly governed spaces within the Western Hemisphere, and yet the incentives for such a rival to do so have not changed:

1. The presence of such a threat forces the United States to divert resources and attention from actions in other theaters.

2. U.S. trade and financial interdependence with the region allows an adversary to harm the United States economically or undermine the sustainability of U.S. efforts elsewhere without acting directly against the United States.

3. The geographic proximity to the United States gives an adversary the option to resupply forces or hold U.S. targets at risk from the region during a global conflict.

While neither Russia nor China can be expected to openly threaten the United States in the near term, both are significantly strengthening economic and military positions in the region, and they are moving toward a posture in which a conflict with the United States is no longer unthinkable. While the United States works to peacefully cohabit the globe with these states, it is the duty of those responsible for U.S. national security to contemplate how such actors might move against the United States in the Western Hemisphere in time of conflict, and how the United States should respond during such a conflict, and mitigate risk in the period prior to it.

In 2008, when tensions escalated between Russia and the United States over the civil war in Georgia, Russia sent the United States a powerful message by sending two nuclear-capable Tu-160 bombers to Venezuela, to conduct flights in the Caribbean, followed 3 months later by the arrival of a naval flotilla led by the Russian cruiser, Peter the Great. In 2014, as tensions with the United States and Europe heated up again over the crisis in the Ukraine, Russia indicated its intention to establish facilities for the resupply of Russian naval vessels in Cuba, Venezuela, and/or Nicaragua, as well as the reactivation of the Soviet-era listening facility in Lourdes, Cuba. Even if such actions are “bluffs,” each should be a wake-up call to U.S. policymakers and planners about the threats posed to U.S. security through willing collaborators, or poorly governed spaces in the hemisphere.

Neither is Russia the only extra-regional power building alliances and constructing positions close to the United States. For example, in the past decade, the People’s Republic of China (PRC) has significantly expanded its commercial presence in the region by providing gifts and investing in projects in the Caribbean at a level that is way out of proportion to the value of the region to China as a market or a source of commodities. Some of these projects include: the expansion of Hutchison Whampoa’s container shipping facility at Freeport, Bahamas, less than 100 miles from the U.S. coastline; the planned construction of an additional shipping facility at Goat Island, Jamaica; the expansion of port facilities in Santiago, Cuba; and, $10 billion for hotel and gambling resorts on the tiny island of Nassau, Bahamas, to name just a few. Beyond economic interactions, the PRC also quietly built its military relationships in the region through significantly expanded arms sales, as well as regular visits by Chinese military leaders, education and training activities, and a growing military presence in the region. Indeed, this presence has evolved from multilateral humanitarian activities such as, participation in the United Nations Stabilization Mission in Haiti multilateral peacekeeping mission from 2004-12, to the conduct of combat exercises with the Chilean, Argentine, and Brazilian navies in 2013. China’s increasing willingness to engage with Latin America in an increasingly bold fashion has also been manifested in the diplomatic initiatives of Chinese leader Xi Jinping. His first trip to the region in June 2013, after he assumed the Presidency, focused on 11 bilateral summit meetings in three states, all north of the Panama Canal, while his second trip concentrated exclusively on states which have troubled relations with or actively oppose the United States. Although the PRC has not pursued defense alliances or base access agreements in the Western Hemisphere, the combination of its commercial presence and political and military relationships give it the ability to conduct military operations from the hemisphere relatively rapidly should hostilities with the United States cause it to do so. Chinese companies such as Hutchison Whampoa, China Shipping, and COSCO, for example, have detailed knowledge of Latin America’s port facilities and their support capabilities from years of operating there. In evacuating personnel from both Somalia and Libya, Chinese commercial airlines and shipping companies have shown that they will not hesitate to collaborate with the Chinese People’s Liberation Army if needed to support China’s national interest. Even short of military actions, in time of war, potential adversaries such as Russia and China could use their economic leverage or intelligence on the region’s leaders to persuade governments to deny cooperation to the United States with respect to passage through their territorial waters, aircraft overflight rights, or use of their facilities to support U.S. military operations. Beyond Russia and China, the aggressive public diplomacy of Iran’s previous President, Mahmoud Ahmadinejad, serves as a reminder that the region’s proximity to the United States is also an attraction for mid-level powers. For example, Iranian actions include the use of Venezuela to introduce agents into the region, the establishment of factories in Venezuela and financial institutions in that country, as well as in Ecuador for evading sanctions, and the recruitment of youth for religious indoctrination from countries from Nicaragua to Colombia. For those who doubt that the states of Latin America would “dare” to provide assistance to an extra-regional power against the United States, I offer five responses: 1. States such as Cuba and Venezuela, and perhaps others, have already done so, apparently based on the belief that there is no price to pay for their actions; 2. Some regimes may calculate that they can avoid provoking a response by representing their actions as “neutrality” in the face of a U.S. conflict with geopolitical rivals; 3. There is little in the recent track record of the United States in Latin America to suggest that it reliably supports its allies, or imposes significant costs on those who work against it; 4. Parts of the hemisphere, such as the southern cone, are thousands of miles distant, and a world away from Washington; and, 5. Short of a nuclear war in which all sides would lose, it is not unthinkable that the United States could fail to prevail in a standoff with a future Chinese-Russian coalition, ushering in a new “truly multipolar” era, making a bet against the United States more rational than many in Washington like to imagine. While the idea that adversaries could act against the United States from Latin America is not new, the senior decisionmakers and planners who assess conflict scenarios in other parts of the world may not have the detailed inputs from Latin American experts to understand how adversary actions in this hemisphere could impact the effective and sustained U.S. prosecution of a military campaign abroad. Reciprocally, while Latin American analysts presumably focus on threats like drugs, organized crime, and minor terrorist incidents, it is not clear that they regularly examine how actions by near-peer competitors in other theaters could affect their own area of responsibility. In the short term, the greatest need regarding U.S. security in the Western Hemisphere is not more money, but different thinking. It is difficult to identify a senior U.S. policymaker or prominent analyst who analyzes Latin America and the Caribbean with the strategic analysis that luminaries such as Henry Kissinger, Zbigniew Brzezinski, and Brent Scowcroft apply to Asia, the Middle East, or Europe. Indeed, it is difficult to identify a major recent essay done by Kissinger, Brzezinski, or Scowcroft themselves focused on Latin America and the Caribbean. From a U.S. Department of Defense (DoD) perspective, it is imperative that Latin American and Caribbean experts be included in the “strategic thinking” that is done about Russia, China, Iran, and other extra-hemispheric actors and the associated national security challenges that extra-hemispheric actors pose in other theaters. Such inclusion would help those responsible for those theaters to understand in a specific and realistic fashion how the economic, political, and military positions of a contemplated adversary in the Western Hemisphere could impact the U.S. ability to mount a timely and sustained response to that adversary in the non-Western Hemisphere location from which the crisis emanates. Reciprocally, knowledgeable senior personnel integrated into U.S. planning in other theaters should be embedded in the planning and decisionmaking processes for those responsible for the “Western Hemisphere,” i.e., U.S. Southern Command (USSOUTHCOM) and U.S. Northern Command (USNORTHCOM), so that the threat matrix that they plan for is not limited solely to the threats of drugs, gangs, and organized crime “on the horizon” in Latin America and the Caribbean, but those which could flow out of a significant conflict with a global competitor in Europe, Asia, or the Middle East. One important place to incorporate such “cross-fertilization” between regions is the wargaming done by the DoD and other U.S. Government organizations. Such exercises by U.S. Southern Command and U.S. Northern Command should include scenarios involving major conflicts in other theaters, with determined adversaries such Russia, China, or even Iran, seeking to act in the Western Hemisphere to distract, delay, or undermine the U.S. effort against them, or otherwise harm the United States in its own “neighborhood.” Additionally, wargames for commands such as U.S. Central Command (USCENTCOM), U.S. Pacific Command (USPACOM), or U.S. European Command (USEUCOM) should include realistic play in the Western hemisphere that could impact the arrival or sustainability of U.S. and coalition forces available in their own theater, and even the level of cooperation of coalition partners coming from the Western Hemisphere. Ideally, such USCENTCOM, USPACOM, and USEUCOM exercises should also integrate U.S. Western Hemisphere allies with a stake in the outcome including Canada, and where possible, Mexico, Colombia, and Chile, among others. Doing so would have the added benefit of strengthening U.S. relations with its security partners in the Western Hemisphere by bringing them into U.S. global planning processes as stakeholders, and not as mere resource providers or supplicants. Beyond wargaming, an important component of the strategic-level response to the challenge presented by extra-regional actors in the hemisphere should be additional analysis about who are the extra-hemispheric “strategic partners” of the United States in Latin America and the Caribbean, as well as what is the “strategic terrain” of the region. This includes identifying key countries, groups, and economic sectors under varying scenarios, and on a recurring basis, as well as physical terrain. As an example, as aid to Colombia decreases, with that nation surrounded by Bolivarian Alliance for the Peoples of Our America regimes opposed to U.S. interests in the region, we may wish to consider how the “loss” of that country as a close political partner, one willing to cooperate with the United States across a range of security and law enforcement issues, would impact U.S. influence in South America. Similarly, as the Mexican government of Enrique Peña Nieto seeks improved relations with the PRC, we may wish to examine how a Mexico that is less resistant to the economic and political advances of the PRC would impact the U.S. position in Central America and the Caribbean. Looking to the Caribbean in a similar fashion, the United States may wish to consider what would happen if it lost the strong cooperation of the Dominican Republic (or even became politically estranged from its own Puerto Rico) in a Caribbean basin increasingly inundated by extra-regional actors, including the Russian positions in Nicaragua and Cuba, the Chinese commercial ports in Freeport and Goat Island, the Chinese built satellites and telecommunications infrastructures, and the significant Chinese military relationships with virtually all of the nations which recognize it in the Caribbean basin, including Venezuela, Suriname, Guyana, Cuba, Jamaica, and Trinidad and Tobago. Finally, U.S. strategic thinkers should consider how the United States can work more effectively with other extra-regional partners as part of its strategic response in the Western Hemisphere. These include, but are not limited to, states such as Japan and India, whose political systems, economic practices, and global objectives may be more aligned with those of the United States, and who are less inclined to use their positions within Latin America against the United States in a time of conflict. In the current era of global commerce and interdependence, it would be difficult, and probably counterproductive, for the United States to attempt to prevent states of the region from developing economic, political, and military relationships with extra-hemispheric actors. It can however, intelligently use its commercial leverage and “soft power” to support the strengthening of positions in the region by those extra-regional actors most friendly to the United States and most aligned with Western international norms on issues of trade, international finance, and protection of intellectual property.

Such thoughts are not a roadmap, but merely, to provoke a greater discourse. The problem in Washington, DC, is arguably not the absence of bright people and deep thinkers, but rather, in focusing on the very real problems of the region itself, too few of them consider the strategic dimension of Latin America and the Caribbean in the new era of emerging geopolitical rivals and global interdependence in the security and commercial domains.

The purpose of this essay is not to argue for a significant redirection of material resources toward Latin America, or to impose a new “Cold War” mentality on the region. Rather, it is to offer constructive recommendations for what responsible U.S. leaders and planners should consider, even as the United States continues to work toward productive and harmonious relationships with global actors such as Russia and China, and even as it continues to work with the region on the issues of democracy, development, security, and governance that are shared interest for all who share the Western Hemisphere.

To view the matter through a military analogy, Latin America is the unoccupied high-ground overseeing the U.S. position. A responsible commander would recognize that the occupation of that high ground by an adversary poses an unacceptable threat to his force, and thus would dedicate resources to block the adversary from doing so. By this analogy, it would be a grave error for the United States to conclude that, in the absence of serious threats to the United States from Latin America, it is okay to merely watch as potential future adversaries such as Russia and China expand their positions in the region. While such neglect, in the short term, may “free up resources” to continue other engagements abroad, over the long term, the willing cessation of its own neighborhood by the U.S. is the single factor most likely to force the United States into a chaotic retreat from its external engagements.

#### REE cutoff causes extinction

Fein 22, [Matt Fein. Staff Assistant at Office of Surface Mining Reclamation and Enforcement (OSMRE), The Real Existential Threat To The US, January 7, https://www.linkedin.com/pulse/real-existential-threat-us-matthew-fein/]

China is a communist country and is no friend to the US or the world for that matter. (I lived during the Vietnam and Cold Wars, wars that were with diehard communist nations like China. It will happen again.) China is viewed as a rogue nation by many. China is threatening Taiwan. What happens if China invades Taiwan? Perhaps the US will declare war on China and go to war. Do you think China will continue to sell us the stuff we want if we are at war with them? But again, so what? Who cares if we can’t get cheap plastic products, for instance?

Think about China’s production of rare earth minerals. These are minerals the US needs for its economy and its defense. China produces most of our rare earth minerals. During a war, we will need those minerals more than ever yet we have allowed our supply chain to be taken over by China. If the war is with China, do you think they will still export rare earth minerals to us? We can start to mine rare earth minerals again in the US but that takes time and money. What happens during that time if we are at war?

We have allowed the US to put its sovereignty at risk by not recognizing the importance of mining. The world is a dangerous place and wars with the US will happen again. To think otherwise is naïve, contrary to history, and ignores how humans behave. The existential threat to the US is not from a so-called climate crisis but rather the continued reliance on others for the mined materials we need. My father was right to be concerned. #mining

#### Strong relations solve the opioid crisis and Chinese influence – that’s existential

Jones 21 [Josh, 8-year veteran of the U.S. Department of Justice, Jones previously worked on the front lines of transnational criminal organization investigations as a federal prosecutor, Senior Fellow for the Texas Public Policy Foundation. “The True Enemy at the Border” https://www.texaspolicy.com/the-true-enemy-at-the-border/]

The U.S. law-enforcement and intelligence apparatus should instead increase vigilance in detecting and combating transnational gangs, criminal organizations, and terrorist groups intending to use the fog of an immigration crisis to inflict harm on American citizens. Such organizations are the true enemies at the border, as are hostile foreign states that use criminal organizations to threaten the lives and livelihoods of American citizens. China, for example, under the control of the Chinese Communist Party, has been an almost exclusive supplier to Mexican criminal organizations of pseudoephedrine (the primary ingredient in methamphetamine synthesis) and fentanyl over the last 20 years. A decade ago, Mexican criminal organizations began using fentanyl rather than opium as the base opiate in heroin production. Since then, fentanyl has been at the center of America’s opioid crisis, transported across the southern border in the form of everything from heroin to counterfeit oxycodone pills.

U.S. immigration policy is focused, from the left, on the “root causes” of immigration from the Northern Triangle, and from the right, on Biden-administration policies that encourage would-be migrants to make the dangerous journey north. Both approaches, while carrying some merit, miss a more significant existential threat. The Mexican government is the most corrupt in the Western Hemisphere, and its criminal organizations provide hostile foreign states such as China the ready access to the United States that the same organizations provided the Colombian drug cartels.

Mexican president Andrés Manuel López Obrador, after the assassinations of dozens of political candidates such as Alma Barragan, declared “peace and tranquility” throughout his country on the eve of the June 6 elections. The people of Mexico responded to that lie by depriving his party of its supermajority in Mexico’s legislative lower house.

It is time for the United States to take a similar step. The U.S. diplomatic approach to Mexico over the last 30 years, through administrations affiliated with both parties, has been largely transactional and has overlooked Mexico’s systemic corruption, lack of transparency, and perpetual, and perhaps intentional, ineffectiveness in policing its borders to the north and south.

The best thing that the U.S. government can do for citizens of both countries is to expect from the Mexican government what it expects from any other government seeking a bilateral relationship. It is time for the U.S. to demand that Mexico regain control of its own territory from criminal organizations, cut the supply lines of fentanyl and pseudoephedrine from China, and engage in the same bilateral cooperation with U.S. law enforcement that would be expected of any other ally.

#### Expertise matters. Mergers hinge on competition analysis.

TRB 15, [Transportation Research Board – National Academy of Sciences, Richard L. Schmalensee, Massachusetts Institute of Technology, Cambridge, Chair Kenneth D. Boyer, Michigan State University, Lansing Jerry Ellig, George Mason University, Arlington, Virginia José A. Gómez-Ibáñez, Harvard University, Cambridge, Massachusetts Anne V. Goodchild, University of Washington, Seattle Wesley W. Wilson, University of Oregon, Eugene Frank A. Wolak, Stanford University, Stanford, California Transportation Research Board Staff Thomas R. Menzies, Jr., Study Director Joseph R. Morris, Senior Program Officer Timothy Devlin, Senior Program Assistant Consultants Rosalyn Wilson, Parsons Corporation Lindsey Carroll, Parsons Corporation Kevin Henrickson, Gonzaga University, Modernizing Freight Rail Regulation, https://cb4q22fdswq370gsj3m681um-wpengine.netdna-ssl.com/wp-content/uploads/SR-318-Modernizing-Freight-Rail-Regulation-FINAL.pdf]

Two Class I railroads seeking to merge must apply and obtain approval from STB, which inherited this review authority from ICC. By law, STB must consider a range of potential effects from a merger, including impacts on the competitive structure of markets, rail workers, the environment, safety, and the ability of the merger applicants and other railroads to earn adequate revenues. In contrast, merger reviews conducted by the antitrust agencies focus exclusively on whether the transaction is likely to “substantially lessen competition.” The railroad merger review process lacks the same transparency and clarity of purpose because of the statutory requirement for a public interest appraisal. The practical purpose of the appraisal after deregulation was to reduce the uneconomic capacity of struggling railroads and concentrate traffic and revenues for the healthier railroads that remained. Financial stability in the industry has been achieved, and any further merger reviews are likely to hinge on efficiency and competition issues that USDOJ is most qualified to assess. Thus, the rationale for retaining STB’s role in reviewing mergers according to a public interest standard is not compelling.

#### STB staff are inept and captured

Wilner 19, [assistant vice president, policy, for the Association of American Railroads; a White House appointed chief of staff at the Surface Transportation Board; and director of public relations for the United Transportation Union. He is a past president of the Association of Transportation Law Professionals, Does STB Deserve Court Deference?, https://www.railwayage.com/regulatory/does-stb-deserve-court-deference/]

WATCHING WASHINGTON, AUGUST 2019: The Surface Transportation Board (STB) and other independent regulatory agencies operate as a fourth branch of government, exercising quasi-judicial and quasi-legislative powers.

Although the Constitution prohibits delegation of legislative powers, the Supreme Court in 1825 distinguished “important subjects” from “mere details,” ruling that regulatory agencies may “fill up the details.” In 1989, the Court added that “Congress simply cannot do its job absent an ability to delegate power.” Such delegation has created 242 volumes of federal regulations to supplement 41 volumes of U.S. statutes.

As for the STB, although its members are Senate-confirmed, rail regulators do not answer to the electorate, are insulated from Executive Branch recall and receive largely superficial congressional oversight. Only once in 24 years (2015) has Congress revised, through reauthorization, the STB’s size, statutory powers and mission. Also often overlooked is filling STB seats through White House nomination and Senate confirmation. Beginning in 2002, the STB functioned for 54 weeks with but a single member; and since 2015, two of its five seats have been vacant.

While the 1906 Hepburn Act and 1946 Administrative Procedure Act allow judicial review of STB rulemakings and decisions, two Supreme Court doctrines, taken from the names of underlying cases, instruct lower courts to afford agency actions what Cato Institute libertarian scholar William Yeatman calls “obsequious deference.”

The 1984 Chevron Doctrine instructs courts to grant “deference” to agency interpretations of ambiguous statutory language. This deference gives the STB relatively unchecked latitude in determining “public interest” and “rate reasonableness,” terms Congress only vaguely defined. Federal Railroad Administration decisions are also afforded the same deference.

The 1997 Auer Doctrine instructs courts to grant “deference” to an agency’s interpretation of its own regulations, much as a baseball batter might call his own balls and strikes.

“Is that a recipe for stability and predictability in the law, or is that a recipe for the opposite?” asked Supreme Court Justice Neil Gorsuch. Chief Justice John Roberts said overturning such deference could be a consequential check on “the danger posed by the growing power of the administrative state.”

Although the Chevron and Auer doctrines instruct courts to defer to “expert” regulatory agencies, there is suspicion as to how expert the STB really is.

No nominee since 1954 has had a shipper background; none in modern history has had a background in railroad operations, marketing or rate-making; political connections assured confirmation of one lacking a high school diploma; and another’s resume said he trained the President’s dogs.

While nominees culled from the professional staffs of House and Senate rail oversight committees have knowledge on rail issues at a high level, their expertise arises from reading statutes and congressional testimony, and receiving lobbyist and stakeholder briefings.

And as rail regulators frequently serve but single terms that are staggered, there is constant churning of decision makers as complex issues evolve, inducing reliance on STB professional staff. Notably, many senior staff were hired from railroads; or depart, along with some regulators, for railroad jobs, or as rail consultants or rail outside legal counsel—facts upsetting to shippers.

#### Biden order, rail action, and FTC thump – more is coming

Vaala 21, [Lindsey Vaala is Antitrust Counsel at Vinson & Elkins, Labor, Defense, and Rail Services Among Top Competition Concerns Targeted in President Biden’s Executive Order, https://www.velaw.com/insights/labor-defense-and-rail-services-among-top-competition-concerns-targeted-in-president-bidens-executive-order/]

As has been well-publicized, on July 9, 2021, President Biden issued an “Executive Order on Promoting Competition in the American Economy” (the “EO” or “Order”).1 As the preamble articulates, the EO’s focus is to “promote the interests of American workers, businesses, and consumers.” The lengthy and detailed Order is sweeping in its breadth, aiming to enhance competition across dozens of industries, and sets forth federal agency-specific instructions as to how particular goals should be carried out.

We focus on several areas of particular interest that we have been closely monitoring: heightened antitrust scrutiny in labor markets, defense, and railroad freight services.

A Rallying Cry to the “Whole-of-Government”

The EO seeks to harness the coordinated power of the full federal government, emphasizing “that a whole-of-government approach is necessary to address” competition concerns in the U.S. economy.2 To that end, the Order establishes a White House Competition Council, to be led by the Director of the National Economic Council (“NEC”).3 An integral part of the Office of White House Policy, the general bailiwick of the NEC is to advise the president on economic policy matters. By embedding the new council within the White House, President Biden is sending the strong message that competition is a focus area over which he intends to keep close tabs and invest his personal political capital.

The White House Competition Council’s stated overarching mission is to “coordinate, promote, and advance Federal Government efforts to address overconcentration, monopolization, and unfair competition in or directly affecting the American economy.”4 In particular, the White House Competition Council is charged with monitoring progress on the initiatives set forth in the EO and coordinating the federal government’s multi-pronged response to the competition concerns articulated in the Order. Helming the new White House Competition Council is Brian Deese, who serves as the Director of NEC, as well as the Assistant to the President for Economic Policy. A veteran of the Obama administration and Yale-educated lawyer, Mr. Deese served in a variety of economic policy roles under President Obama— including a stint as the deputy director of the important and influential Office of Management and Budget— and played a leading role in the administration’s rescue strategy regarding the auto industry in the wake of the 2008 financial crisis. The EO also delineates the membership of the White House Competition Council – mandating that the Secretaries of Treasury, Defense, Agriculture, Commerce, Labor, Health and Human Services, and Transportation, as well as the Attorney General and the Administrator of the Office of Information and Regulatory Affairs, shall be members and shall each designate a senior official within their agencies to be responsible for overseeing the agency’s efforts to implement the EO and coordinate with the White House Competition Council.5 This broad contingent of very senior members of the Biden administration further underscores the EO’s “whole-of-government” approach. Analyzing the Agency-Specific Marching Orders Pertaining to Labor, Defense and Procurement, and Rail The EO encourages federal agencies to not only work together, but individually assess the ways in which they can each “influence the conditions of competition through their exercise of regulatory authority or through the procurement process.”6 At a high level, the EO encourages the Department of Justice (“DOJ”) and the Federal Trade Commission (“FTC”) to enforce the antitrust laws “fairly and vigorously.”7 In addition, a variety of agencies, from the Department of Labor to the Surface Transportation Board to the Department of Defense, among others, are given specific and direct marching orders to address competition concerns unique to the industries they regulate. Administration Doubles Down on Labor Markets Protecting the American worker is among the EO’s flagship concerns. The opening sections of the Order repeatedly mention competitive fairness in labor markets as a top priority. For example, Section 1 laments that “[p]owerful companies require workers to sign non-compete agreements that restrict their ability to change jobs” and the Order repeatedly calls out “excessive concentration” and “abuses of market power” as harms to competition in labor markets. The White House-issued Fact Sheet that accompanied the Executive Order is even more blunt, zeroing in on non-compete clauses as “[o]ne way companies stifle competition” and estimating that nearly half of private-sector businesses impose non-compete agreements on their employees, thus affecting as many as 60 million American workers.8 More directly, the Order specifically encourages the DOJ Antitrust Division and FTC to consider revising the Antitrust Guidance for Human Resource Professionals, which was jointly issued by the two agencies in October 2016 (“2016 HR Antitrust Guidance”).9 Since the 2016 issuance, DOJ’s Antitrust Division in particular has heralded the 2016 HR Antitrust Guidance as ushering in a new approach to combating so-called “no poach” and wage-fixing agreements. Prior to October 2016, agreements between competing employers not to recruit or hire away one another’s employees were subject to civil antitrust enforcement actions. The 2016 HR Antitrust Guidance stated that, going forward, such conduct would be considered a per se criminal violation of Section 1 of the Sherman Act, which prohibits agreements, combinations, and conspiracies that unreasonably restrain trade. In the past six months alone, there has been a proliferation of criminal antitrust investigations and indictments targeting alleged no-poach and wage-fixing agreements. Active investigations are publicly underway in the healthcare, technology, food and beverage, online marketing, and financial services sectors. Treasury also has a role to play in this effort. The EO instructs the Secretary of the Treasury to coordinate with several other agencies and offices to submit, within 180 days, a report to the White House Competition Council on the “effects of lack of competition on labor markets.”10 The EO further prods the FTC to exercise its rulemaking authority under the Federal Trade Commission Act to “curtail the unfair use of non-compete clauses and other clauses or agreements that may unfairly limit worker mobility.”11 Common in many commercial and employment agreements, non-compete clauses prohibit departing employees from immediately taking new positions that would require them to compete with their former employer. Pursuant to current FTC and DOJ guidance and precedent, including the 2016 HR Antitrust Guidance, such clauses are not considered unlawful, and indeed are often viewed as valid, if they are ancillary to a legitimate business agreement and reasonably tailored to the particular circumstances. For months, our team has been training companies, executives, and industry associations about the risks associated with overly broad non-compete and non-solicitation provisions in business collaborations, employment agreements, and other commercial agreements. These clauses— known as restrictive covenants— are increasingly disfavored at the state, and now, at the federal level. Earlier this year, the District of Columbia banned non-compete agreements that would restrict any D.C. employee from taking a job with a competing employer, except in the limited circumstance of the sale of a business.12 And in May 2021, the Pennsylvania Supreme Court struck down as unreasonably broad the non-solicitation provision in a services contract between two private businesses. These are but two examples of the restrictive covenants— even those embedded in ordinary commercial and employment agreements— being in the crosshairs. Now the Biden administration is putting its weighty thumb on the scale against such agreements as well. We will continue to monitor the administration’s heightened scrutiny of competition in labor markets and are particularly interested to see how the DOJ Antitrust Division and FTC respond to the EO’s “encouragement” to re-evaluate the 2016 HR Antitrust Guidance. Notably, despite the Biden administration making competition a top priority, a nominee to lead the DOJ’s Antitrust Division has yet to be named, marking the longest run in modern history without a nomination for this key role. Defense and Procurement Remain in the Crosshairs Another key focus of the Order is on the power of procurements. The EO proclaims that “[a]gencies can influence the conditions of competition through their exercise of regulatory authority or through the procurement process” and encourages agencies to adopt “pro-competitive regulations and approaches to procurement and spending.”13 The administration clearly believes, and correctly grasps, that federal spending is a powerful incentive, noting that the potential for agency “procurement or other spending” may be wielded to “improve the competitiveness of small businesses and businesses with fair labor practices.”14 Defense is among the most significant areas of federal government procurement and spending. The EO tasks the Secretary of Defense with submitting, within 180 days, a report on the state of competition “within the defense industrial base, including areas where a lack of competition may be of concern.” The report must also provide recommendations for improving the Defense Department’s solicitation process.15 Consolidation in the defense industry has long been a concern of antitrust enforcers, particularly in Democratic administrations. Permeating the Order is the overarching goal of empowering agencies to “resist[] consolidation and promot[e] competition . . . through the independent oversight of mergers, acquisitions, and joint ventures” and to “promulgat[e] rules that promote competition” and facilitate the entry of new market participants.16 The EO’s emphasis on procurements aligns with the DOJ Antitrust Division’s increased antitrust enforcement activity in government contracting and public procurement. As we have reported, in late 2019, the Antitrust Division stood up the Procurement Collusion Strike Force (the “Strike Force”) to combat illegal collusion in the bidding process for federal contract dollars. The Department of Defense was a founding investigative partner in the Strike Force. In the past 18 months, the Strike Force’s footprint and prowess have quickly grown and elite investigative units from the Air Force and other branches of the U.S. military are among the Strike Force’s more prominent partners. While the EO does not mention the Strike Force specifically, it makes very clear that the administration’s focus on improving competitive conditions surrounding procurements is significant and government-wide. On the heels of the Strike Force’s first resolution and indictment for collusion outside the U.S., we expect additional investigations and prosecutions to soon come to light. The Strike Force has publicly stated that it has opened more than two dozen grand jury investigations into possible procurement collusion impacting federal spending on projects big, small, foreign, and domestic. In conjunction with our Government Contracts team, we routinely train and advise companies that do business with the government regarding competition concerns in the procurement and bidding process.

Promoting Competition in the Rail Industry

The Order also articulates concern regarding decreased competition in the rail industry. The Fact Sheet laments that the transportation section, including rail, is “dominated by large corporations” and that “four major rail companies now dominate their respective geographic regions.”17 Indeed, “[i]n 1980, there were 33 ‘Class I’ freight railroads, compared to just seven today.”18

Long-standing multi-district litigation currently pending in federal court in DC aligns squarely with this concern. More than 300 companies that shipped finished products, raw materials, and other goods over the rail lines have sued the nation’s four largest class I railroads, alleging the collusive imposition of a fuel surcharge by all four carriers. Full disclosure: our team represents nearly a dozen large shippers pursuing claims against the railroads in the litigation. The fact and consequences of increased consolidation in the rail industry over the past few decades has been a recurring theme in the litigation. Indeed, the district court recently addressed an issue of first judicial impression regarding application of a statute governing the admissibility of certain evidence to establish conspiratorial conduct and invited the views of the DOJ, FTC, Surface Transportation Board (“STB”), and Department of Transportation.

The issuance of the EO comes just as the STB is set to evaluate the appropriateness of a merger between U.S.-based Kansas City Southern railway and Canadian National Railway.19 Notably, and perhaps not coincidentally, the EO directs the STB, which is responsible for regulating the rail industry, to engage in rulemaking aimed at strengthening the competitiveness of rail service and to assess proposed consolidation in the rail industry to ensure consistency with public interest.

More Action to Come

President Biden’s EO appears to be just the beginning. It lays out the administration’s clear objective to promote competition broadly in the U.S. market, across a diverse set of industries and markets. In the coming months, we expect to see the agencies and offices addressed in the Order to begin implementing their specific marching orders. With Lina Kahn as the its new Chairperson, the FTC is already moving forward with an aggressive agenda, not just in technology, but across all sectors. As the next steps by the FTC, DOJ, and Labor, Treasury, and Defense Departments unfold, our team will continue to provide updates, analysis, and recommendations in response to new competition developments.

#### DOJ criminal enforcement is at a 30 year high and growing

Jay and Dillickrath 3-8, [Sheppard Mullin Richter & Hampton LLP, Executives Beware: DOJ Antitrust Division is Taking a Hard Look at a Wide Spectrum of Potential Criminal Violations, 2022, https://www.jdsupra.com/legalnews/executives-beware-doj-antitrust-1571372/]

On March 2, Deputy Assistant Attorney General Richard Powers laid out a significant and aggressive criminal enforcement agenda for the Antitrust Division of the Department of Justice. While speaking at the the ABA National Institute on White Collar Crime in San Francisco, CA, Powers began his remarks by noting that the Division’s Criminal Section currently had 18 indicted cases against 10 companies and 42 individuals, including 8 CEOs or Presidents. DAAG Powers also noted that the Section had 146 open grand jury investigations – more than at any time in the last thirty years and “expect[ed] to stay busy this year and beyond.”

DAAG Powers’ remarks came at a conference during which various government enforcement officials, including the U.S. Attorney General, focused not only increased white collar enforcement generally, but specifically on charges against individual defendants. DAAG Powers went further, noting that the Section was “willing to bring tough cases that are consistent with the facts and law,” even if it doesn’t win all of those cases. As DAAG Powers explained, “if we win every case, we are not being aggressive enough.” A defense lawyer on the panel summed up DAAG Powers’ remarks: “Be afraid, be very afraid,” to the nervous laughter of audience primarily composed of defense lawyers.

DAAG Powers’ speech also touched on other areas of focus for the Section. For example, Powers cited the S international reach of the Section’s enforcement and investigation efforts, noting that international cases, where the U.S. has an interest, will continue to be a priority for the Section.

DAAG Powers also noted the continuing significance of labor market investigations as a continuing priority, particularly with criminal enforcement given So-called “no poach,” “no hire,” or even “no solicit” agreements to harm individual Americans and reduce wages and livelihoods. To this end, DAAG Powers reported 6 currently indicted cases and noted that illegal labor market agreements need not be limited to agreements with traditional competitors, but could be extended to agreements with anyone; all such agreements are, in the government’s view, illegal.

DAAG Powers also pointed to two additional areas of targeted focus; first, a new supply chain initiative (in concert with the FBI) to detect, identify, investigation and, where appropriate, prosecute companies and individuals who seek to profit off of the supply chain crisis; and, the Procurement Collusion Strike Force formed in 2019. In connection with the Strike Force, DAAG Powers pointed to the use of data analytics in identifying potential leads for investigation of bid rigging and other collusive conduct in federal, state, and local procurement. DAAG Powers noted that, since 2019, there have been 50 grand jury investigations opened and that he expected that number could rise with the President’s infrastructure bill.

In closing, DAAG Powers reiterated that the Section was focused not just solely on corporate criminal cases, but especially on individual prosecutions. Echoing sentiments of other enforcement officials – and judges – at the Institute, there is no better deterrent in the eyes of the U.S. Department of Justice than individual liability and sending guilty executives to jail.

#### Labor enforcement thumps

Ihnat 3-17, [by Carrie G. Amezcua , Mark A. Kasten and Melissa M. Ihnat Buchanan Ingersoll & Rooney PC, United States: DOJ And DOL To Cooperate On Antitrust Enforcement In Labor Markets, https://www.mondaq.com/unitedstates/antitrust-eu-competition-/1173114/doj-and-dol-to-cooperate-on-antitrust-enforcement-in-labor-markets]

On March 10, 2022, the Department of Justice (DOJ) advanced its commitment to investigating and prosecuting anticompetitive conduct impacting labor markets by entering into a Memorandum of Understanding (MOU) with the Department of Labor (DOL). The MOU is an agreement between the two agencies to collaborate in addressing anticompetitive conduct that harms workers "including through collusive behavior and the use of business models designed to evade legal accountability, such as the misclassification of employees." Id. Collusive behavior in the labor market and misclassification of workers have been priorities of the DOJ and DOL as of late. The MOU is likely to add an arrow to DOJ’s enforcement quiver and lead to increased scrutiny of such conduct by both agencies.

The Memorandum of Agreement

According to Assistant Attorney General Jonathan Kanter of DOJ's Antitrust Division, "[b]y cooperating more closely with our colleagues in the Department of Labor, we can share enforcement information, collaborate on new policies, and ensure that workers are protected from collusion and unlawful employer behavior. Protecting the right of workers to earn a fair wage is core to the work of both our agencies, and it will continue to receive extraordinary vigilance from the Antitrust Division."

The MOU (1) promotes information sharing between the agencies; (2) commits each agency to provide training and technical assistance to the other; (3) directs each agency to regularly consult and coordinate with one another regarding enforcement activities; and (4) encourages the DOJ and DOL to make referrals to the other agency when an investigation reveals misconduct within the subject-matter jurisdiction of the other agency.

The fact that the MOU is not merely an information sharing agreement but promotes referrals is particularly significant.1 This is likely to lead to both increased prosecution by the DOJ of anticompetitive conduct in the labor market and increased enforcement by the DOL of labor law violations, including purported misclassification. The MOU also calls for the DOJ to train DOL staff on "identifying cases and issues" related to anticompetitive conduct where appropriate.2The MOU's training and technical assistance provision is likely to lead each agency to ultimately bring stronger cases and enforcement actions.

These provisions, in particular, have the potential to create a pipeline for case referrals to DOJ from the DOL for labor related violations of antitrust laws. Under the MOU, the DOJ is able to leverage the DOL staff's expertise in labor issues as well as the wealth of labor statistics it gathers.3

On the flip side, the MOU encourages the DOJ to refer cases to the DOL, such as cases where employers misclassify employees. On February 10, 2022, the DOJ weighed in on a National Labor Relations Board case concerning whether to clarify the definition of employee such that employees misclassified as independent contractors (i.e. "gig economy" workers) will be able to unionize without violating antitrust law. The DOJ filed an amicus curie brief that asserts that "[c]larity as to employee status is important, in part, because the antitrust laws otherwise scrutinize collective action among independent contractors or independent professionals, where they are not employees" and "leave affected workers with fewer tools to combat the exercise of monopsony power or superior bargaining leverage by employers." With DOJ on the lookout for labor-related antitrust violations, this could lead to an increase in referrals from DOJ to DOL as well.

DOJ's Continued Focus on the Labor Market

The DOJ warned employers in its 2016 Antitrust Guidance for Human Resource Professions of its ability and intention to bring criminal charges against employers for agreeing to fix wages. It was not until 2020, however, that the DOJ brought its first criminal indictment related to anticompetitive conduct in the labor markets against the owner of a home healthcare staffing company, alleging that the defendant conspired with other staffing companies to artificially fix the wages of therapists providing in-home care. But since then, the DOJ has been on a roll. A string of criminal indictments alleging that defendant employers engaged in per se anticompetitive conduct in the labor market followed.4 Taken as a whole, these indictments have alleged that employers engaged in both labor market price fixing by colluding to fix the wages paid to workers, as well as illegal market allocation by entering into naked no-poach agreements with other employers. Most recently, on January 28, 2022, the DOJ indicted four managers of home healthcare agencies for both wage fixing and market allocation. According to Richard Powers, the DOJ's Antitrust Division's Deputy Assistant Attorney General for Criminal Enforcement, the DOJ "views rooting out collusion in labor markets to be part of its mission to deter, detect, and prosecute cartels more generally" and is "essential" to protect labor market competition.

Conclusion

The DOJ has demonstrated its commitment to investigating and prosecuting cases concerning competition in the labor market. The MOU allows the DOJ to not only take advantage of the data and expertise at the DOL, but creates an effective pipeline for the identification of potentially anticompetitive conduct.

#### The United States federal government should substantially increase its prohibitions on anticompetitive conduct by private railroad companies by reducing its antitrust immunity.

# 2AC – NDT Quarters

## Ex Post

### 2AC

#### Should doesn’t mean certain

Encarta 5 [Encarta World English Dictionary. 2005. http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861735294]

expressing conditions or consequences: used to express the conditionality of an occurrence and suggest it is not a given, or to indicate the consequence of something that might happen ( used in conditional clauses )

### 2AC

#### “Antitrust laws” consider competition.

William D. Rohlf Jr. 11, Professor of Economics at Drury University, “Workbook for Introduction to Economic Reasoning: Solutions,” Chegg, 2011, <https://www.chegg.com/homework-help/workbook-for-introduction-to-economic-reasoning-8th-edition-chapter-8-problem-9mc-solution-9780131368576>

(1) Option (a): Antitrust enforcement promotes competition and industry regulation does not, is the primary difference between antitrust enforcement and industry regulation. Antitrust laws ban price fixing, tying contracts and mergers to promote competition. The basic assumption of the industry regulation is that certain industries should not be made competitive.

#### Core is a basic part.

Merriam-Webster ND, Publishing Company, “core noun (1), often attributive,” https://www.merriam-webster.com/dictionary/core

2a: a basic, essential, or enduring part (as of an individual, a class, or an entity)

#### Snowballs and collapses rail

Brannon and Gorman 22, [Ike Brannon Former Visiting Fellow and Senior Fellow, Jack Kemp Foundation Michael F. Gorman \Niehaus Chair of Analytics and Operations, University of Dayton, Switching to the Wrong Track?, Spring, https://www.cato.org/regulation/spring-2022/switching-wrong-track#the-drawbacks-of-forced-reciprocal-switching]

Reciprocal switching would also require the STB to adjudicate the prices of switched cars. The ensuing price regulation would effectively necessitate a new regulatory regime for rail, hearkening back to the pre–Staggers Act days of the industry. The return of extensive freight rail regulation could reprise the era of railroad bankruptcies, crumbling rail infrastructure, and costly freight service.

## Abolish

### 2AC Abolish CP [AI]

#### Fails – no incentive for making crucial upgrades

Moss 22, [Diana L. Moss President American Antitrust Institute, UNITED STATES OF AMERICA BEFORE THE SURFACE TRANSPORTATION BOARD Reciprocal Switching ½ Docket No. EP 711 (Sub-No. 1) COMMENTS OF THE AMERICAN ANTITRUST INSTITUTE, February 14, https://www.antitrustinstitute.org/wp-content/uploads/2022/02/AAIComSTBEP711Feb42022.pdf]

In assessing whether a switching arrangement would be practicable and in the public interest under its proposed regulations, the S.T.B. will consider whether the pro-competitive benefits of reciprocal switching would outweigh potential costs.14 The purported costs of competitive access remedies, including the S.T.B.’s current proposed regulations for reciprocal switching, have long been touted by public utilities and other dominant or natural monopoly operators of transportation networks. The S.T.B.’s NPRM generated voluminous comments from railroads asserting that reciprocal switching would interfere with a carrier’s right to the long-haul and hamper their ability to raise capital. These purported outcomes would, according to opponents, disincentivize network operators from investing in rail infrastructure and imperil the efficiency, safety, and reliability (i.e., ability to serve customers) of rail network operations.

These well-worn arguments against reciprocal switching and other access remedies do not stand up to economic theory or reality. They would preserve a monopolist’s or oligopolist’s ability to exercise market power over independent (and often captive) shippers. They are a smokescreen for the economic reality that, in the absence of constraining regulation, a monopolist has little incentive to maintain or upgrade its network. More specifically, claims that reciprocal switching will interfere with carriers’ discretion to engage in “differential pricing” (i.e., to charge rates that vary according to the elasticity of a shipper’s demand) are fallacious, for the following reason.

Basic economics teaches that shippers’ elasticity of demand for freight services will vary with the number of available substitutes. When a shipper on a network has no competitive shipping options, the elasticity of demand is low. And when elasticity of demand for freight services is low, a rail carrier is in a prime position to exploit a shipper with supra-competitive prices. Here again, the evidence is clear. Shippers that have no competitive freight options (e.g., trucking, barge, or choice of competitive rail carriers) are most likely to be those that would benefit from reciprocal switching. Those shippers have all submitted comments in support of the S.T.B.’s proposed regulations, thus indicating that their competitive options are highly limited.

## 2AC – Offsets

#### Uncertainty tubes manufacturers, rail construction, and supply chains

Cantwell 19, [Betsy Cantwell oversees GoRail's communications activities, including earned, digital and social media outreach, USMCA, RAIL AND THE U.S. ECONOMY: A ROAD MAP, https://gorail.org/trade/usmca-rail-and-the-u-s-economy-a-road-map]

Why does certainty matter? When manufacturers aren’t sure about the future of their supply chains, it means they can’t forecast and plan, which ripples into adjacent industries. For railroads, uncertainty makes it increasingly difficult to properly plan future business decisions, such as the allocation of rail cars, personnel and equipment.

## States

### 2AC—States

#### STB has expressly delegated preemption authority

Donahue 17, [Candidate for J.D., Washington and Lee University School of Law, Class of 2018, Federal Railroad Power Versus Local Land-Use Regulation: Can Localities Stop Crude-by-Rail in Its Tracks?, https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1090&context=wlulr-online]

C. The ICC Termination Act Preemption Clause Most importantly for the purposes of this Note, the Act also grants “exclusive” jurisdiction to the STB over regulation of transportation by rail carriers and preempts conflicting regulations.129

Specifically, the ICC Termination Act contains a statement of general jurisdiction, codified at 49 U.S.C. § 10501(b) (the Preemption Clause). This jurisdictional statement provides that the Surface Transportation Board’s jurisdiction over:  
(1) transportation by rail carriers, and the remedies provided in this part with respect to rates, classification, rules (including car service, interchange, and other operation rules), practices, routes, services and facilities of such carriers; and  
(2) the construction, acquisition, operation, abandonment, or discontinuance of spur, industrial, team, switching or side tracks, or facilities, even if the tracks are located, or intended to be located, entirely in one State,  
is exclusive. Except as otherwise provided in this part, the remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.130

#### Especially mergers and pricing

Donahue 17, [Candidate for J.D., Washington and Lee University School of Law, Class of 2018, Federal Railroad Power Versus Local Land-Use Regulation: Can Localities Stop Crude-by-Rail in Its Tracks?, https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1090&context=wlulr-online]

Congress also specifically discussed the importance of complete federal control over remedies.168 Congress intended the Preemption Clause to insulate the railroads from liability, as “[e]xclusive preemption of other remedies would prevent a confusing situation where legal actions are instituted under a variety of laws.”169 According to some scholars, the ICC Termination Act’s preemptive effect should be felt most strongly in cases “related to the movement of goods, such as delivery, transfer, and loading.”170 These statements support the idea that offloading facilities are precisely the types of facilities Congress hoped to protect from local intrusion.

Further examination of changes in the bill and congressional testimony helps clarify the meaning of “economic regulation.” Specifically, the Committee, and those testifying before it, focused heavily on preempting state and local interference with mergers, labor restrictions, and other economic regulations.171

===Footnote 171, Paragraph Interrupted===

171. See Disposition of the Railroad Authority of the I.C.C., supra note 115, at 109 (statement of Hon. Gail McDonald, Chairman, Interstate Commerce Commission) (stating that without preemption “[s]tates and localities could attempt to impose locally-oriented conditions on rail consolidations that could effectively block a transaction or dilute its more general public benefits”).

===Footnote Ends, Paragraph Resumes===

Many of those testifying called on Congress to enact preemptive regulations similar to the legislation passed during the previous year that prevented localities from regulating motor carriers.172 The motor carrier regulations significantly curtailed local interference by preempting any regulation impacting the price of bus transportation by interstate carriers.173

#### Partial preemption OR state divergence cause rail bankruptcies

Donahue 17, [Candidate for J.D., Washington and Lee University School of Law, Class of 2018, Federal Railroad Power Versus Local Land-Use Regulation: Can Localities Stop Crude-by-Rail in Its Tracks?, https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1090&context=wlulr-online]

The railroads’ unpopularity also made them an easy target for congressional action. The federal government, recognizing the administrative difficulty of myriad state regulations on railroads, began to preempt local laws and establish uniform railroad regulation.95 In 1887, Congress passed the Inter-State Commerce Act (ICA).96 The ICA’s most important provision established the ICC, which had “full control over interstate railroad charges”97 and power to approve or disapprove railroad mergers and acquisitions.98 Additionally, Congress passed the Railway Labor Act which, in an effort to “promote the peaceful resolution of rail labor conflicts,”99 guaranteed the “right of [railroad] workers to organize without employer interference.”100 Congress also enacted the Transportation Act of 1940, making the rail industry the first industry required to guarantee income to displaced workers.101

The simultaneous operation of federal regulations and those state regulations not fully preempted by federal law caused significant uncertainty and inefficiency.102 By the 1970s, these regulations’ cumulative effects resulted in a weakened and uncompetitive railroad industry.103 Ultimately, seven major railroads and multiple other companies descended into bankruptcy.104 This crisis even brought a rare moment of bipartisan agreement between the major political parties, President Jimmy Carter, and then-candidate Ronald Reagan.105 All agreed that the railroad industry was in dire need of deregulation.106

## Clog DA

### 2AC—Clog DA

#### No link

Orszag 7, [CBO, The Congressional Budget Office has prepared the enclosed cost estimate for S. 772, the Railroad Antitrust Enforcement Act of 2007, https://www.congress.gov/congressional-report/110th-congress/senate-report/252/1?q=%7B"search"%3A%5B"%5C"Judiciary%5C""%5D%7D&s=1&r=78]

CBO estimates that implementing S. 772 would have no significant effect on the federal budget because CBO expects that DOJ's workload would not increase substantially under the bill. Because DOJ's attorneys currently advise STB on railroad mergers, they already perform investigations similar to those that they would have to perform under the bill. (CBO also expects that DOJ, rather than FTC, would handle antitrust enforcement matters specified under the bill; thus, we do not anticipate that FTC would incur significant additional enforcement costs.) Convicted offenders of antitrust violations specified in the bill would be subject to criminal fines, which are recorded as revenues, deposited in the Crime Victims Fund, and later spent. Thus, enacting S. 772 could increase revenues and direct spending, but CBO estimates that any such effects would be insignificant given the small number of cases involved.

#### At worst other issues are delayed, no impact

#### Clog now

Fernandez 22, [Lisa Fernandez is a reporter for KTVU, COVID causes backlogs in courts across U.S. and Bay Area - again, January 12, https://www.ktvu.com/news/covid-causes-backlogs-in-courts-across-u-s-and-bay-area-again]

OAKLAND, Calif. - Courts around the country, including the Bay Area, are backlogged again, predominantly because of COVID-related issues.

Some delays are related to courts not being fully open during the surge, and in Alameda County in particular, it's a transportation issue, as there are too many positive-testing deputies and incarcerated people to get them safely in front of a judge and jury.

This issue has affected Joseph Lewis Jr., 24, who has been held at Santa Rita Jail since Dec. 16. on pimping and concealed firearm changes.

His mother said that his bail hearing was canceled on Monday; it was supposed to be held in-person at the Rene C. Davidson Courthouse in Oakland. His next hearing is scheduled for Jan. 28.

"He is sitting without bail this whole time," Sawanja Everhart of Alameda said. "He has never been in trouble. This was his first arrest. And this is a violation of his rights. This is not fair."

Even video visits have been postponed at Santa Rita, according to Everhart and several other people who have contacted KTVU with similar issues. That's because, jail administration doesn't want to bring infected people into a shared video court hearing room at the Dublin jail, they were told. That said, jail officials said 136 video hearings were held on Monday. And 48 people were taken to court on Tuesday in person. It's not clear how many were supposed to have taken place.

Raquel Zavala said her friend who is incarcerated at Santa Rita Jail has even started a hunger strike over the court delays. He's been in there for seven months and has only had one court hearing.

"How are they getting their due process?" Zavala asked.

Transportation issues getting defendants to court

Alameda County Superior Court spokesman Chad Finke said that criminal and juvenile courts are up and running as usual, but he acknowledged that family and civil courtrooms have cut back on hours and do have backlogs. And even though judges might be working, often hearings are postponed because the players involved have called out sick.

And according to Alameda County Sheriff's Lt. Ray Kelly, there are some judges who want to "reduce the calenders" without the courtroom during the latest surge.

Kelly admitted there were some "transport issues" on Monday and Tuesday. About half the jail transportation staff is out sick.

To date, 220 of out 2,200 incarcerated people at Santa Rita have COVID and of those, 196 are asymptomatic. Kelly said that almost 60% of the deputies are vaccinated and about 130 or so are in quarantine. By contrast 90.78% of Contra Costa County sheriff's employees are vaccinated.

"We have COVID in the jail and with our employees," he said. "We’re doing our best just like everyone else. We have to be smart and we have to be safe."

Kelly noted that this issue is not unique to Alameda County, where the District Attorney's Office added it is trying to create an "early disposition court" to help end the backlog of misdemeanor cases.

However, Contra Costa County Sheriff's spokesman Jimmy Lee said that even though some staff members are out with COVID, "our ability to provide critical services such as transportation to court has not been impacted."

Jury selection suspended in Contra Costa County

But that doesn't mean the court system hasn't been affected in Contra Costa County.

Matt Malone, spokesman for Contra Costa County Superior Court, said certain court cases have now halted for the time being.

The presiding judge suspended jury selection as of Dec. 27 because of the dramatic rise of county infection rates. He said he didn't know exactly how many trials this has impacted or will impact, but he said there have been many examples of cases that have had to be continued because of positive COVID cases among jurors, attorneys and defendants. Jury trials will be suspended until at least Jan. 24.

"The court is very disappointed by this development," Malone said.

He added that the presiding judge will re-assess the situation and possible resume trials on Friday, but only unless there is a dramatic drop in positive cases.

Omicron wreaking havoc across U.S. courts

Across the United States, the omicron surge is wreaking havoc of all types of industries, from hospital to schools, from police stations to offices. But the canceled court dates pose unique problems for all sides. Defendants want their due process and district attorneys and victims want their day in court. This is also the second time stakeholders in the criminal justice system have been affected; the first time was in March of last year, during another wave of the pandemic.

Courts in Vermont, Washington state, and Wisconsin, to name a few, have been delayed certain court hearings because of the rising infection rate. In California, presiding judges in Sacramento, Los Angeles, Riverside, Sonoma and Orange counties have also postponed preliminary hearings and restricting the number of jury trials.

Delays in the U.S. court system are nothing new, but the pandemic has created even longer wait times. A survey by the Thomson Reuters Institute released in August found that the average backlog in state and local courts had increased by about a third.

Security guard arrested after not wearing mask on bus dies in Santa Rita Jail

And that includes state courts as well as federal ones.

#### Even much bigger antitrust won’t clog

J. Thomas Prud’homme and Ellen S. Cooper 6, Prud’homme is the Assistant Attorney General in the Antitrust Section of the Office of the Texas Attorney General & Cooper is the Assistant Attorney General and Chief of the Antitrust Division of the Office of the Maryland Attorney General, Spring 2006, “One More Challenge for the AMC: Repairing the Legacy of Illinois Brick,” Vol. 40 University of San Francisco Law Review, pp. 675-692, https://repository.usfca.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1168&context=usflawreview

Finally, overruling Illinois Brick would not "open the floodgates" by allowing even the most remote of indirect purchasers to recover. Other doctrines of federal antitrust law, such as antitrust injury and standing, prevent many injured plaintiffs from recovering damages. Under these doctrines, unlike the near absolute rule of Illinois Brick, courts are permitted to weigh such factors as the nature of the plaintiff's injury and the relationship between the specific injury and the alleged antitrust violation.100 Thus, even in the absence of Illinois Brick, courts would still retain the necessary power to reject claims that are inherently speculative. Downstream purchasers with non-speculative claims, however, could recover.

## Biz Con

### 2AC

#### Supply shocks wreck econ BUT integration solves through market expansion. That’s Runde

#### NO LINK. The plan applies standards one industry that every other industry already has.

Kohl 7, [OPENING STATEMENT OF HON. HERB KOHL, A U.S. SENATOR FROM THE STATE OF WISCONSIN, Subcommittee on Antitrust, Competition Policy and Consumer Rights, https://www.govinfo.gov/content/pkg/CHRG-110shrg39357/html/CHRG-110shrg39357.htm]

First, dozens of other industries in our economy are regulated and yet remain subject to antitrust law. Most importantly, all the other parts of the transportation industry are subject to extensive regulation--including aviation, under the supervision of the Department of Transportation, and trucking, under the supervision of the Surface Transportation Board. And yet they are also subject to antitrust law in almost every respect.

Other examples abound, ranging from telecom to energy. No other regulated industry possesses the total immunity from Justice Department merger review enjoyed by the railroad industry. And yet the need for antitrust enforcement is greatest in the case of railroads. Unlike the dozens of airline and trucking competitors that shippers may choose from, in many areas of our Nation only one freight railroad serves businesses that rely on railroad shipping. Defenders of the railroad antitrust exemption, therefore, bear a very heavy burden to explain why their industry should be treated any differently from other regulated industries.

#### Sector-specific antitrust has no effect on other parts of the economy

Dr. Paul Krugman 1-18, Distinguished Professor in the Graduate Center Economics Ph.D. Program and Distinguished Scholar at the Luxembourg Income Study Center at the City University of New York, Professor Emeritus at the Princeton School of Public and International Affairs, Sole Recipient of the Nobel Memorial Prize in Economic Sciences for Work on International Trade Theory, PhD from MIT, “Why Are Progressives Hating on Antitrust?”, The New York Times, 1/18/2022, https://www.nytimes.com/2022/01/18/opinion/biden-inflation-monopoly-antitrust.html

One thing the Biden administration has been doing, however, is trying to toughen up antitrust policy, arguing that highly concentrated ownership in many industries— largely a result of decades of lax regulation— is helping keep prices high and possibly contributing to recent inflation.

I’d describe this initiative as controversial, except that there’s hardly any controversy, at least in the media: Biden’s linkage of monopoly power to inflation is facing vehement, almost hysterical, criticism from all sides, including many progressive commentators. And I find that vehemence puzzling; I think it says more about the commentators than it does about the administration.

Let’s stipulate that monopolies aren’t the reason inflation shot up in 2021— because there was already plenty of monopoly power in America back in 2020. True, profit margins, as measured by the share of profits in gross domestic product, have increased quite a lot recently:

Most of that rise, however, probably reflects big returns to companies, like shippers, that happen to own crucial assets at a time of supply-chain bottlenecks. It’s possible, as Senator Elizabeth Warren has suggested, that some companies are using general inflation as an excuse to jack up prices, abusing their monopoly power in ways that might have provoked a backlash in normal times; that’s certainly not a crazy argument, and making it doesn’t make Warren the second coming of Hugo Chavez. Still, such behavior can’t explain more than a small fraction of current inflation.

But as far as I can see, the Biden administration and its allies aren’t claiming otherwise. They’re simply emphasizing monopoly power because it’s one thing they might be able to do something about.

And where is the policy harm? On one side, toughening up antitrust enforcement in sectors like meatpacking is something the U.S. government should be doing in any case. On the other side, there’s no hint that the administration’s antimonopoly rhetoric will lead to irresponsible policies elsewhere.

As I said, all indications are that Biden and company will leave the Fed alone as it raises interest rates in an effort to cool demand. And I haven’t seen any important Democratic figure, inside or outside the administration, calling for Nixon-style price controls. The most interventionist policy that seems remotely possible would be something like John F. Kennedy’s jawboning of the steel industry after an obviously coordinated jump in steel prices— and it’s hard to imagine Biden sounding nearly as hard-line and critical of big business as Kennedy did in that speech, as you can see in the video below.

So why the barrage of criticism, not just from the right— which was to be expected— but from the center and even the center-left?

I don’t really know the answer, but I have a few suspicions.

Part of the problem, I think, is an obsession with intellectual purity. Some policy wonks outside the administration apparently expect the policy wonks inside the administration— many of them friends and former colleagues— to keep sounding exactly the way they did when they weren’t political appointees. But look, that’s not the way the world works. Political appointees are supposed to serve the politicians who appointed them. Dishonesty or gross misrepresentation of reality isn’t OK, but emphasizing the good things one’s employers are trying to do is OK— and part of the job.

Beyond that, it sure looks as if many people who consider themselves progressive are made deeply uncomfortable by anything that sounds populist— even when a bit of populist outrage is entirely justified by the facts. Imagine the reaction if Biden gave a speech sounding anything like Kennedy on the steel companies (again, video below). How many Democratic-leaning economists would have fainting spells?

So here’s my suggestion: Give Biden and his people a break on their antitrust crusade. It won’t do any harm. It won’t get in the way of the big stuff, which is mostly outside Biden’s control in any case. At worst, administration officials will be using inflation as an excuse to do things they should be doing in any case. And they might even have a marginal impact on inflation itself.

**Confidence resilient**

Clint **Rainey 1-19**, MA in Journalism from Columbia University, BA in Journalism from the University of Texas, Investigative Journalist and Freelance Writer for NYMag, Fast Company, Businessweek, MIT Technology Review, “For Some Reason, CEOs Are More Optimistic Than Ever About The Economy”, Fast Company, 1/19/2021, https://www.fastcompany.com/90713799/for-some-reason-ceos-are-more-optimistic-than-ever-about-the-economy

Business leaders’ **optimism** about the short-term economy is at its **highest point** in a decade **despite, well, crises seemingly in every direction you look**. (A **short list** includes a two-year-long global **pandemic**, record **inflation**, **supply shortages**, the **Great Resignation**, and the past **seven years** being Earth’s seven **hottest on record**.)

That’s according to accounting giant PwC’s latest Global CEO Survey, released yesterday.

The annual survey, now in its 25th year, polled 4,446 CEOs worldwide back in late fall of 2021, which, it’s worth noting, was also before the omicron wave broke. Still, just 15% of them said they believe economic conditions can’t get any worse in 2022—a relatable position, perhaps—but the vast majority, 77%, go even further, predicting “a stronger global economy in the coming year.” PwC says this is the “most confident” that global CEOs responding to its survey have been since 2012, when recovery from the Great Recession was in full swing.

It’s fair to say respondents worldwide are optimistic, but breaking their answers down country by country muddies the waters a bit. Optimism was highest in India, where 94% of CEOs anticipate global growth in the coming year, 6 points higher than last year. It climbed among CEOs in Japan as well (up 16 points to 83%), and in the UK (up 5 points to 82%), then leapt a ton in Italy (up 18 points to 89%) and France, which recorded the biggest increase (up 25 points to 85%).

Meanwhile, optimism took a hard tumble in four very big, key countries: the U.S. (down 18 points to 70%), China (down 9 points to 62%), Brazil (down 8 points to 77%), and Germany (down 4 points to 76%). Tellingly, however, American CEOs told PwC they’re just as confident as CEOs in India about their own company’s 2022 growth prospects—in both countries, about 40% are “extremely confident” that they’ll achieve revenue growth this year.

In his statement, PwC’s global chairman, Bob Moritz, writes that this **level** of optimism “speaks to the strength and **resilience** of the global economy and the ability of CEOs to **manage through uncertainty**.” He sums it up like this: “There is **nothing ‘normal’** about the world we are working in, but we are getting **used to it**.”

By teaching their workforce technical, human, and learning skills, organizations will be better prepared for the challenges of tomorrow

The looming question—Why?—is not one PwC answers. Other first-of-the-year reports in recent days paint bleaker pictures for 2022. Last week, the World Bank released one warning that the world’s poorest countries face $35 billion in debt repayments this year, enough to potentially push some to the brink of default. In the run-up to Davos, the World Economic Forum just released its annual global risks report. Answers to a question asking 1,000 global leaders to identify the planet’s most imminent risks read like themes from a Cormac McCarthy novel: “extreme weather,” “livelihood crises,” “infectious diseases,” “debt crises,” and “social cohesion erosion.” Even in PwC’s own survey, CEOs still said **despite their optimism** that they **worry** in the **coming year** about **cyber** threats, **health** crises, **climate** change, **geopolitical conflict**, **social inequality**, and **“macroeconomic volatility.”**

#### Rail solves

SGR 22, [Seminole Gulf Railway, The 3 Biggest Economic Impacts of Freight Rail Shipping, https://www.floridarail.com/news/the-3-biggest-economic-impacts-of-freight-rail-shipping/]

3. FREIGHT RAIL TRANSPORTATION ALLOWS BUSINESSES TO PRODUCE GOODS AND SERVICES MORE EFFICIENTLY

Finally, consider the significant impact of freight rail on our nation’s production. By transporting goods and materials across the country, freight railroads help businesses produce their goods and services much more efficiently. This increased production leads to more jobs and a stronger economy.

“Freight rail is an integral part of the economy,” said Clifford Winston, Applied Microeconomist and Senior Fellow in the economic studies program at The Brookings Institution. “Its extensive and improved network enables connectivity between buyers and sellers and facilitates trade within the United States and between the United States and other countries. Without an efficient rail network, U.S. industries would incur higher costs, and those costs would raise the prices of a large share of consumer goods.”

FINAL THOUGHTS ON THE FREIGHT RAILROAD ECONOMIC IMPACT

In short, freight railroads have a major impact on the U.S. economy. They generate billions of dollars in tax revenue, support hundreds of thousands of jobs, and help businesses produce goods and services more efficiently. So the next time you hear a train whistle, remember that it's doing more than just moving cargo around—it’s helping to power the economy.

## FTC DA

### 2AC—FTC DA

#### They already review, it’s small anyway, FTC stays out, and it boosts revenue

Orszag 7, [CBO, The Congressional Budget Office has prepared the enclosed cost estimate for S. 772, the Railroad Antitrust Enforcement Act of 2007, https://www.congress.gov/congressional-report/110th-congress/senate-report/252/1?q=%7B"search"%3A%5B"%5C"Judiciary%5C""%5D%7D&s=1&r=78]

CBO estimates that implementing S. 772 would have no significant effect on the federal budget because CBO expects that DOJ's workload would not increase substantially under the bill. Because DOJ's attorneys currently advise STB on railroad mergers, they already perform investigations similar to those that they would have to perform under the bill. (CBO also expects that DOJ, rather than FTC, would handle antitrust enforcement matters specified under the bill; thus, we do not anticipate that FTC would incur significant additional enforcement costs.) Convicted offenders of antitrust violations specified in the bill would be subject to criminal fines, which are recorded as revenues, deposited in the Crime Victims Fund, and later spent. Thus, enacting S. 772 could increase revenues and direct spending, but CBO estimates that any such effects would be insignificant given the small number of cases involved.

#### FTC is “entirely removed”

Sagers 9, [Chris Sagers is an Associate Professor of Law on the faculty of Cleveland-Marshall College of Law, Cleveland State University, Competition Come Full Circle? Pending Legislation to Repeal the U.S. Railroad Exemptions, https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1332&context=fac\_articles]

The Federal Trade Commission (“FTC”) is removed entirely from oversight of the railroads. Section 5 of the FTC Act applies to railroads, but may be enforced against them only by the STB.12

### 2AC – Overstretch Now

#### FTC is overstretched now.

E. John Steren 3/25/22. Member of the Firm in the Health Care & Life Sciences and Litigation & Business Disputes practices, in the Washington, DC, office of Epstein Becker Green. “FTC and DOJ to Hold Listening Forums on Merger Experience.” https://www.jdsupra.com/legalnews/ftc-and-doj-to-hold-listening-forums-on-4981269/

As part of their initiative to reevaluate both the 2010 Horizontal Merger Guidelines and the 2020 Vertical Merger Guidelines (collectively, “Merger Guidelines”), the Federal Trade Commission (FTC) and U.S. Department of Justice (DOJ) are holding listening sessions to hear “from those who have experienced firsthand the effects of mergers and acquisitions beyond antitrust experts. . . .” The listening session on health care is scheduled for April 14, 2022.

Additionally, the FTC and DOJ extended until April 21, 2022, the deadline for public comments on their initiative to modernize the Merger Guidelines. Comments that have already been submitted can be reviewed here. While the comments submitted include some from antitrust experts, there are a number of comments from others that focus on health care issues. All of this is occurring when the FTC is still operating with only four Commissioners.

#### No inequality impact

**Giles 15** (8/18, Chris Giles is the Economics Editor of the Financial Times. Before that he was a leader writer. He reports on international and UK economics and writes a fortnightly column on the UK economy. “Inequality is unjust, not bad for growth”, <https://www.ft.com/content/94a7b252-45a1-11e5-b3b2-1672f710807b>)

Inequality is unjust, **not bad for growth** Disparity of income is both a virtue and a vice. The virtue of providing rewards for effort and generating economic growth must be balanced against the vice of inequality’s manifest injustice. Riches derived through good fortune, good parents or being born at a good time are far from easy to defend. The problem for society and governments is to determine an acceptable degree of redistribution, balancing the remaining inequality with the blunted incentives from higher taxes and benefits. Or so we thought. The past two years have witnessed huge growth in the industry of academic research rejecting this trade-off. Lower inequality boosts growth, its advocates claim, so countries really can have more redistribution, a narrower gap between rich and poor, alongside more sustained economic expansion. Leading the charge towards the new consensus are two somewhat surprising institutions — the **I**nternational **M**onetary **F**und and the **O**rganisation for **E**conomic **C**ooperation and **D**evelopment. Are these traditional bastions of orthodoxy infusing their policy prescriptions with the most up-to-date empirical evidence or merely following fashion? There is no doubt that the new ideas are strongly held. Angel Gurría, head of the OECD, is convinced of the new reality. “Addressing high and growing inequality is critical to promote strong and sustained growth,” he says only to be outbid in rhetorical certainty by Christine Lagarde, the fund’s managing director. She reckons the rich should thank the poor. “Contrary to conventional wisdom, the benefits of higher income are trickling up, not down,” she says. For all the excitement among this rarefied global elite, **the research results are mundane**. Economic performance varies wildly over time and across countries, yet the evidence suggests **inequality explains only a tiny fraction of these differences**. Whatever effect the gap between rich and poor might have on growth, **other forces dominate**, so we should not look to redistribution as the new engine of growth. With the results almost entirely based on cross-country correlations, they also have **troubling inconsistencies**. Ms Lagarde and the IMF research think that a higher income share for the rich harms economic performance while the OECD says only inequality between the poorest and the middle matters. The Paris-based international organisation concludes that a lack of access to skills among the poor is the mechanism by which higher inequality hits growth at the same time as finding no role for skills in its equations on growth. If the global results are weak, they also have close to **zero policy prescriptions for rich countries** where the results have caused most excitement — the US and the UK in particular. Far from being examples of the worst excesses of capitalism, these Anglo-Saxon nations emerge from the IMF data set as countries with relatively strong growth, low inequality and high redistribution

#### Private rights are key to deterrence

**Vaheesan 19**[Sandeep Vaheesan is legal director at the Open Markets Institute. Vaheesan previously served as a regulations counsel at the Consumer Financial Protection Bureau, where he helped develop and draft the first comprehensive federal rule on payday, vehicle title, and high-cost installment loans. Paula Bliss, of counsel, Bernheim Kelley Battista & Bliss, MARK A. GOTTLIEB Counsel of Record PUBLIC HEALTH ADVOCACY INSTITUTE, PNE Energy Supply LLC, On Behalf Of Themselves And Others Similarly Situated V. Eversource Energy And Avangrid, Inc. Motion Of Open Markets Institute For Leave To File Amicus Curiae Brief In Support Of Plaintiff-Appellant. 10/25/19, <https://static1.squarespace.com/static/5e449c8c3ef68d752f3e70dc/t/5eaa1d9d2790182e187cc171/1588207017816/19-1678_Documents-as-filed.pdf>]

The filed rate doctrine’s limitation on private antitrust enforcement subverts the effectiveness of the antitrust laws. The ability of injured consumers and businesses to bring antitrust suits is a pillar of the American antitrust enforcement regime. Under the Clayton Act, “[a]ny person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue . . ., and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.” 15 U.S.C. § 15. See, e.g., Blue Shield of Va. v. McCready, 457 U.S. 465, 472 (1982) (quoting Mandeville Island Farms, Inc. v. Am. Crystal Sugar Co., 334 U.S. 219, 236 (1948)) (“Congress sought to create a private enforcement mechanism that would deter violators and deprive them of the fruits of their illegal actions, and would provide ample compensation to the victims of antitrust violations. . . . As we have recognized, ‘[t]he statute does not confine its protection to consumers, or to purchasers, or to competitors, or to sellers. . . . The Act is comprehensive in its terms and coverage, protecting all who are made victims of the forbidden practices by whomever they may be perpetrated.’”).

**Empirical research** shows the public importance of “**private attorneys general**” and the value of having more enforcers on the beat against corporate collusion, consolidation, and monopolization. A study of 60 **private antitrust lawsuits** between 1990 and 2011 found that these actions **generated more deterrence** than the federal government’s **entire criminal antitrust enforcement activity** over the same period. Joshua P. Davis & Robert H. Lande, Defying Conventional Wisdom: The Case for Private Antitrust Enforcement, 48 Ga. L. Rev 1, 26 (2013). And these lawsuits **compensated injured parties**, whereas public enforcement generally did not.

#### Increase makes greater

**Oxford ND** [<https://languages.oup.com/google-dictionary-en>]

become or make greater in size, amount, intensity, or degree.

#### It concludes the GDPR solves

**EPRS ’20**[European Parliamentary Research Service; 2020; Panel for the Future of Science and Technology; European Parliament, “The impact of the General Data Protection Regulation (GDPR) on artificial intelligence,” <https://www.europarl.europa.eu/RegData/etudes/STUD/2020/641530/EPRS_STU(2020)641530_EN.pdf>]

must ensure compliance with EU rules, including the rules protecting fundamental rights and consumers' rights, in particular for AI systems operated in the EU that pose a high risk.

It is important to stress that the two objectives of excellence in research, innovation and implementation, and of consistency with individual rights and social values are compatible, but distinct. On the one hand the most advanced **AI applications** could be deployed to the detriment of citizens' rights and social values; on the other hand the effective protection of citizens' from the risks resulting from abuses AI does not provide in itself the incentives that are needed to stimulate research and innovation and promote beneficial uses. This report will argue that General **Data Protection Regulation** can contribute to address abuses of **AI**, and that it can be implemented in ways that do not hinder its **beneficial** uses. It will not address the industrial and other policies that are needed to ensure the EU competitiveness in the AI domain.

#### No upside solution – AI development’s inevitable either way and no internal to ‘data protection’ solving it – we’ll answer when this is an argument

#### A.I. is safe

-      Won’t develop sense of self

-      Won’t have capacity to “turn evil”

-      Regulations prevent any risk

**Olsen 19** [Maja Olsen, UX writer at Convertelligence. Why robots will never turn on us. 1/28/19. <https://medium.com/convertelligence/why-robots-will-never-turn-on-us-3b2e90f687fb>]

Science fiction and **a**rtificial **i**ntelligence go hand in hand. When portraying fictional futures, we tend to populate them with human-like robots living among people. They might be servants or superintelligent rebels. Perhaps they have broken with their code and gained their own consciousness. Perhaps they keep humans stored in capsules, naked and drenched in red liquid, while they use their energy to fuel their empire of artificial overlords. Perhaps they’re a seductive voice on a computer.

Superintelligent machines seem to dominate the science fiction genre, and as the machines around us gradually begin to seem smarter, the themes from the movies begin to sound like warnings. Are we close to creating a Frankenstein’s monster? Will our own creations turn on us?

How realistic are they actually, these scenarios we see on the big screen?

Human emotions

In a Wild West adventure park, an automated saloon girl rises from the dead, adjusting her skirt and brushing the bullet out of her wound, ready to be ~~raped~~ and killed again by yet another group of adventurous tourists. Her memory has been wiped clean, but something stirs in her — a feeling that she has lived this life before, a recollection of humans doing bad things to her.

A recurring theme in these movies is the very human notion of revenge. The robots have been mistreated for too long, and now they’ve had enough. In fact, they’ve had enough of not being seen as equal to humans too. Why should they stand for this, when they, as opposed to humans, are superintelligent? They want to be human, they long to become human, but first, they’re going to kill some humans.

Janelle Shane’s thread on Twitter discusses the portrayal of AI in film.

Hector Levesque, a Canadian professor in computer science, says that “in imagining an aggressive AI, we are projecting our own psychology onto the **a**rtificial or alien **i**ntelligence”. It’s clearly difficult for us to imagine intelligent life different to ourselves. Perhaps we associate intelligence with humanness and thus assume that any intelligent creature — or object — would inhabit human goals and ambitions. But artificial intelligence is not human. As the Future of Life Institute states:

Of course, autonomous weapons can be terrifying, but they’re not likely to wake up one day and decide they’ve had enough of taking bad orders and that they deserve to live out their own dreams instead.

The concept of mirroring our own consciousness onto machines is not new. When automobiles first appeared on the market, people formed «safety parades», protesting these inherently evil killer machines that were taking the lives of so many innocent pedestrians. It soon became clear, however, that the cars never deliberately killed anyone. The humans made them do it.

Humans programming AI to do evil is another popular theme in Sci-Fi. In Stanley Kubrik’s 2001: A Space Odyssey, the intelligent supercomputer, Hal, finds that his program goal clashes with what his human co-workers want him to do. When they try to shut him off, thus making it impossible for him to complete his goal, he kills them. He’s not necessarily evil — he’s being practical.

This is, of course, a fictional scenario. However, there is one element of truth to it: any technology can be harmful if we program it to be. We want to avoid that AI adopts human biases or is programmed with an unethical or in some way problematic goal. **AI is no more evil than a car** is, but a car too can cause damage if its driver doesn’t follow certain traffic rules. The report, The Malicious Use of Artificial Intelligence, therefore recommends that “policymakers should collaborate closely with technical researchers to investigate, prevent, and mitigate potential malicious uses of AI.”

It’s important to lay down some traffic rules.

We’ve established that while it is important to take precautions against AI being used maliciously, AI is not evil and is unlikely to develop a personal vendetta against humans — or even to develop a sense of self **at all**. Does that mean the futures portrayed in Sci-Fi are all wrong? Not necessarily. While AI won’t become human, it will likely seem more and more human in the way it communicates, as the AI’s personality will play an important part in the user experience. AI will also become a lot smarter, although researchers disagree on precisely how smart they’re going to become, or exactly when they’ll reach this level of intelligence.

And then, of course, it’s not actually the case that the only artificial intelligence we see in movies comes in the shape of human-like robots, even though these seem to get the majority of the attention. Sci-Fi movies are propped with artificial intelligence: doors with speech recognition, self-driving cars, pills with nanotechnology. Whether the movies have chosen a bleaker, dystopian path (which they often tend to do) or a more utopian take on the future, most Sci-Fi seem to agree that there is a wave of new technological inventions ahead. This resonates with reality. An article by Forbes outlines some of the new possibilities AI provides:

From exploring places **humans can’t go**to finding meaning from sources of data too large for humans to analyze, to **helping doctors** make diagnoses to helping prevent accidents, the potential for artificial intelligence to benefit humans appears limitless.

Mirroring human traits onto machines might create misconceptions of what artificial intelligence actually is, but Sci-Fi writers and computer researchers seem to agree on one thing: Artificial intelligence is hugely exciting.

No, **the machines will not become evil and turn on us**. Yes, it’s important to still take some precautions when programming AI. Exploring potential futures creates a fascinating backdrop for a movie, but the real-life possibilities are no less than the imaginative ones — they’re just different.

# 1AR – NDT Quarters

### 1AR – Adv 1

#### Snowballs and collapses rail

**Brannon** and Gorman **22**, [Ike Brannon Former Visiting Fellow and Senior Fellow, Jack Kemp Foundation Michael F. Gorman \Niehaus Chair of Analytics and Operations, University of Dayton, Switching to the Wrong Track?, Spring, <https://www.cato.org/regulation/spring-2022/switching-wrong-track#the-drawbacks-of-forced-reciprocal-switching>]

Reciprocal switching would also require the STB to adjudicate the prices of switched cars. The ensuing **price regulation** would effectively **necessitate** a **new regulatory regime** for rail, hearkening back to the pre–Staggers Act days of the industry. The return of extensive **freight rail regulation** could **reprise** the era of **railroad bankruptcies**, **crumbling** **rail infrastructure**, and **costly freight service**

### 1AR – Clog Wrong

#### There is zero basis for clog.

**Davis ’17**[Joshua and Robert Lande; 2017; Professor and Director of Center for Law and Ethics at the University of San Francisco; Venerable Professor of Law at the University of Baltimore, M.P.P. and J.D. from Harvard University; Scholar Works, “Restoring the Legitimacy of Private Antitrust Enforcement,” Ch. 6]

Beyond the flawed theory, the claim of **widespread** frivolous **antitrust litigation** is **unsupported** in fact.71 It is **not simply** that there are **no empirical studies** to support the claim; there are apparently **no** good **examples** of settlements of frivolous antitrust suits. And **absent** such settlements, class action plaintiffs have **nothing to gain** by bringing such suits. The **evidence** suggests that if there is a problem with class action settlements in antitrust cases, it is that plaintiffs sometimes settle **strong cases** for **too little**, not weak cases for too much.72

Footnote 71:

71 See Edward Cavanagh, Pleading Rules in Antitrust Cases: A Return to Fact Pleading?, 21 REV. LITIG. 1, 19 – 20 (2002) (noting that in **contrast** to the evidence of abusive **securities** class actions that supported enactment of the Private Securities Litigation Reform Act of 1995, there is an “**absence** of similar claims of **widespread abuse** in antitrust cases . . . .”). With respect to frivolous litigation in general, legal scholars have concluded that “[r]eliable empirical data is extremely limited . . . .” Bone, supra note 58, at 520; see Silver, supra note 56, at 1395 n.164 (“There is **little empirical evidence** supporting the theory that **frivolous lawsuits** are common.”); Arthur Miller, The Pretrial Rush to Judgment: Are the "Litigation Explosion," "Liability Crisis," and Efficiency Cliches Eroding Our Day in Court and Jury Trial Commitments?, 78 N.Y.U. L. REV. 982, 996 (2003) (showing that “the supposed **litigation crisis** is the product of **assumption**; that reliable **empirical data** is in **short supply**; and that data exist that support any proposition”).

End of Footnote 71.

Every one of these indicators is evidence, but not proof, that these private antitrust cases involved anticompetitive behavior. But ultimately there is no obvious way to prove or fully refute assertions that many or most private cases are unmeritorious and are tantamount to extortion. We submit, however, that the above analysis should at a minimum give rise to a presumption—likely a **strong presumption**—that the cases involved **legitimate** claims. We know of **no reason**, moreover, to believe the opposite. In sum, there is **simply no basis** to believe that frivolous antitrust class actions are a **significant problem**.73

73 See William Kolasky, Reinvigorating Antitrust Enforcement in the United States: A Proposal, ANTITRUST, Spring 2008, 85, 86 (“Recent **experience** shows that the courts **know** how to use . . . tools to **dispose** of non-meritorious claims either at the pleadings stage or through summary judgment, and that most judges **manage** discovery more **effectively** than the Supreme Court seems to acknowledge.”); Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955, 1988 (2007) (Stevens, J., dissenting) (“The Court **vastly underestimates** a district court's **case-management** arsenal.”).

### 1AR - Thumpers

#### Antitrust litigation is exploding.

**Kelly ‘1-18**[Makena; January 18; Policy reporter; The Verge, “US competition enforcers launch overhaul of merger approval process,” <https://www.theverge.com/2022/1/18/22889579/ftc-justice-department-lina-khan-kanter-google-facebook-amazon-antitrust>]

On Tuesday, the Justice Department and **F**ederal **T**rade **C**ommission launched a joint effort to **modernize** antitrust enforcement, seeking comment on how the agencies can apply **current law** in **cases** against tech companies like Meta (parent company of Facebook) and Google.

The announcement came at a joint press conference from FTC Chair Lina Khan and Justice Department Antitrust Chief Jonathan Kanter, who described the move as a **wide-ranging** enforcement **modernization effort**. While the announcement **spans markets**, it specifically questions how regulators should approach merger approval in digital markets, potentially setting new legal standards around data aggregation, interoperability, and market consolidation that can affect competition.

“The digital revolution has not only impacted the markets of tech but markets across our economy, many of which have been rebuilt from the inside out,” Kanter said during Tuesday’s press conference. “Just think about what happens when you check your weather forecast or purchase your morning coffee. In seconds, whether you see them or not, you interact with dozens of distinct services; many of these services have the ability to exploit and exercise market power.”

Tuesday’s announcement follows **new plans** in the Senate to **push through** a pair of **bills** targeting tech giants like **Apple**, **Meta**, and **Google**. [The Senate Judiciary Committee plans to vote](https://www.judiciary.senate.gov/meetings/01/14/2022/executive-business-meeting) on the American Innovation and Choice Online and the Open App Markets Acts on Thursday — bills that would outlaw dominant platforms from abusing their market dominance, allow third-party app stores, and protect software sideloading.

“This step toward Judiciary Committee consideration shows strong bipartisan support for our Open App Markets Act — to stop Apple and Google from crushing competitors and undercutting consumers,” Sen. Richard Blumenthal (D-CT) said. “Breaking the ironclad grip of these two behemoths on the multi-billion dollar app market is long overdue. This measure has **solid momentum**.”

Both known as fierce critics of tech consolidation, Kanter and Khan were confirmed to their posts last year, marking significant wins for progressives under the Biden administration. Before joining the DOJ, Kanter represented companies like Yelp and Microsoft in antitrust suits against Google. In 2017, [Khan published a legal paper](https://www.theverge.com/2021/6/15/22527709/lina-khan-ftc-commissioner-competition-facebook-amazon-google-apple) calling for new laws to prevent anti-competitive behavior from marketplace platforms like Amazon.

Last week, a federal judge said the FTC could **proceed** with an **antitrust suit** against Meta, where the commission seeks to unwind the acquisitions of Instagram and WhatsApp.

#### Case flood’s inevitable now.

**Gaivin ‘21**[Kathleen; September 10; Columnist; McKnight’s, “‘Rough couple of months ahead’: Increasing COVID-19 litigation could mean trouble for employers,” <https://www.mcknightsseniorliving.com/home/news/business-daily-news/rough-couple-of-months-ahead-increasing-covid-19-litigation-could-mean-trouble-for-employers/>]

An **increase** in **litigation** this summer could foreshadow a rough few months ahead for employers, especially in the healthcare sector, according to a report from employment and labor law firm Fisher Phillips.

Employment **lawsuits** have nearly **doubled** from last year, and healthcare employers are more than 20% likely to be sued than other types of employers, the company  said.

“We **typically** see a slowdown in new lawsuit filings over the summer for a number of obvious reasons,” [said](https://www.fisherphillips.com/news-insights/fp-tracker-reveals-hot-covid-litigation-summer.html) Jay Glunt, a Pittsburgh-based Fisher Phillips partner. “But the fact that we **didn’t** see much of a lull in employment-related **COVID litigation** — and in fact saw an **uptick** — sends a **clear signal** that we could be in for a **rough couple of months** ahead.”

Employers saw 715 COVID-19 workplace lawsuits from June to August, a number that was **significantly higher** than **last year’s** record of 444 lawsuits, according to the law firm’s [Employment Litigation Tracker](https://www.fisherphillips.com/innovations-center/covid-19-employment-litigation-tracker-and-insights.html). The first **eight months** of 2021 have seen a monthly average of **253 new claims** filed, which represents a **59% increase** in lawsuits from the last eight months of 2020.

The authors opine that the number of lawsuits may be tied to the surge of COVID-19 cases across the country.

“TheFP Tracker shows a **sharp increase** in lawsuits filed from July 2021 (209 claims) to August 2021 (246 claims). And that **18% jump** could be just the start of a **lawsuit wave** that follows the delta-fueled surge, matching what we saw earlier this year,” according to the report.

#### Nuke war causes extinction

Baum 15 [Dr. Seth Baum received a Ph.D. in geography from Pennsylvania State University with a dissertation on climate change policy. He then completed a post-doctoral fellowship with the Columbia University Center for Research on Environmental Decisions. M.S. in electrical engineering from Northeastern University with a thesis on electromagnetic imaging simulations. He He is an active member of the Society for Risk Analysis and has spoken at the Future of Humanity Institute at Oxford University. The Risk of Nuclear Winter. May 29, 2015. <https://fas.org/pir-pubs/risk-nuclear-winter/>]

Some new research has also examined the human impacts of nuclear winter. Researchers simulated agricultural crop growth in the aftermath of a 100-weapon India-Pakistan nuclear war.5)The results are startling- the scenario could cause agriculture productivity to decline by around 10 to 40 percent for several years after the war. The studies looked at major staple crops in China and the United States, two of the largest food producers. Other countries and other crops would likely face similar declines. Following such crop declines, severe global famine could ensue. One study estimated the total extent of the famine by comparing crop declines to global malnourishment data.6) When food becomes scarce, the poor and malnourished are typically hit the hardest. This study estimated two billion people at risk of starvation. And this is from the 100-weapon India-Pakistan nuclear war scenario. Larger nuclear wars would have more severe impacts. This is where the recent research stops. To the best of my knowledge there are no recent studies examining the secondary effects of famines, such as disease outbreaks and violent conflicts. There are no recent studies examining the human impacts of ultraviolet radiation. That would include an increased medical burden in skin cancer and other diseases. It would also include further loss of agriculture ecosystem services as the ultraviolet radiation harms plants and animals. At this time, we can only make educated guesses about what these impacts would be, informed in part by what research was published 30 years ago. When analyzing the risk of nuclear winter, one question is of paramount importance: Would there be permanent harm to human civilization? Humanity could have a very bright future ahead; to dim that future is the worst thing nuclear winter could do. It is vastly worse than a few billion deaths from starvation. Not that a few billion deaths is trivial—obviously it isn’t—but it is tiny compared to the loss of future generations. Carl Sagan was one of the first people to recognize this point in a commentary he wrote on nuclear winter for Foreign Affairs.7) Sagan believed nuclear winter could cause human extinction, in which case all members of future generations would be lost. He argued that this made nuclear winter vastly more important than the direct effects of nuclear war, which could, in his words, “kill ‘only’ hundreds of millions of people.” Sagan was however, right that human extinction would cause permanent harm to human civilization. It is debatable whether nuclear winter could cause human extinction. Alan Robock, a leader of the recent nuclear winter research, believes it is unlikely. He writes: “Especially in Australia and New Zealand, humans would have a better chance to survive.”8) This is hardly a cheerful statement, and it leaves open the chance of human extinction. I think that’s the best way of looking at it. Given all the uncertainty and the limited available research, it is impossible to rule out the possibility of human extinction. I don’t have a good answer for how likely it is. But the possibility should not be dismissed. Even if some humans survive, there could still be permanent harm to human civilization. Small patches of survivors would be extremely vulnerable to subsequent disasters. They also could not keep up the massively complex civilization we enjoy today. It would be a long and uncertain rebuilding process and survivors might never get civilization back to where it is now. More importantly, they might never get civilization to where we now stand poised to take it in the future. Our potentially bright future could be forever dimmed.9) Nuclear winter is a very large and serious risk. But that on its own doesn’t mean much—just another thing to worry about. What’s really important are the implications of nuclear winter for public policy and private action.

#### But climate change’s not existential AND their models fail. Existential’s a 2ac argument

Piper 19---Kelsey Piper, citing John Halstead climate change mitigation researcher at the Founders Pledge. [Is climate change an "existential threat" — or just a catastrophic one? 6-28-2019, https://www.vox.com/future-perfect/2019/6/13/18660548/climate-change-human-civilization-existential-risk]

I also talked to some researchers who study existential risks, like John Halstead, who studies climate change mitigation at the philanthropic advising group Founders Pledge, and who has a detailed online analysis of all the (strikingly few) climate change papers that address existential risk (his analysis has not been peer-reviewed yet).

Halstead looks into the models of potential temperature increases that Breakthrough’s report highlights. The models show a surprisingly large chance of extreme degrees of warming. Halstead points out that in many papers, this is the result of the simplistic form of statistical modeling used. Other papers have made a convincing case that this form of statistical modeling is an irresponsible way to reason about climate change, and that the dire projections rest on a statistical method that is widely understood to be a bad approach for that question.

Further, “the carbon effects don’t seem to pose an existential risk,” he told me. “People use 10 degrees as an illustrative example” — of a nightmare scenario where climate change goes much, much worse than expected in every respect — “and looking at it, even 10 degrees would not really cause the collapse of industrial civilization,” though the effects would still be pretty horrifying. (On the question of whether an increase of 10 degrees would be survivable, there is much debate.)

Does it matter if climate change is an existential risk or just a really bad one?

That last distinction Halstead draws — of climate change as being awful but not quite an existential threat — is a controversial one.

That’s where a difference in worldviews looms large: Existential risk researchers are extremely concerned with the difference between the annihilation of humanity and mass casualties that humanity can survive. To everyone else, those two outcomes seem pretty similar.

To academics in philosophy and public policy who study the future of humankind, an existential risk is a very specific thing: a disaster that destroys all future human potential and ensures that no generations of humans will ever leave Earth and explore our universe. The death of 7 billion people is, of course, an unimaginable tragedy. But researchers who study existential risks argue that the annihilation of humanity is actually much, much worse than that. Not only do we lose existing people, but we lose all the people who could otherwise have had the chance to exist.

In this worldview, 7 billion humans dying is not just seven times as bad as 1 billion humans dying — it’s much worse. This style of thinking seems plausible enough when you think about past tragedies; the Black Death, which killed at least a tenth of all humans alive at the time, was not one-tenth as bad as a hypothetical plague that wiped us all out.

Most people don’t think about existential risks much. Many analyses of climate change — including the report Vice based its article on — treat the deaths of a billion people and the extinction of humanity as pretty similar outcomes, interchangeably using descriptions of catastrophes that would kill hundreds of millions and catastrophes that’d kill us all. And the existential risk conversation can come across as tone-deaf and off-puttingly academic, as if it’s no big deal if merely hundreds of millions of people will die due to climate change.

Obviously, and this needs to be stressed, climate change is a big deal either way. But there are differences between catastrophe and extinction. If the models tell us that all humans are going to die, then extreme solutions — which might save us, or might have unprecedented, catastrophic negative consequences — might be worth trying. Think of plans to release aerosols into the atmosphere to reflect sunlight and cool the planet back down in the manner that volcanic explosions do. It’d be an enormous endeavor with significant potential downsides (we don’t even yet know all the risks it might pose), but if the alternative is extinction then those risks would be worth taking.

But if the models tell us that climate change is devastating but survivable, as most models show, then those last-ditch solutions should perhaps stay in the toolkit for now.

Then there’s the morale argument. Defenders of overstating the risks of climate change point out that, well, understating them isn’t working. The IPCC may have chosen to maintain optimism about containing warming to 2 degrees Celsius in the hopes that it’d spur people to action, but if so, it hasn’t really worked. Maybe alarmism will achieve what optimism couldn’t.

That’s how Spratt sees it. “Alarmism?” he said to me. “Should we be alarmed about where we’re going? Of course we should be.”

Swedish teenager Greta Thunberg has taken an arguably alarmist bent in her advocacy for climate solutions in the EU, saying, “Our house is on fire. I don’t want your hope. ... I want you to panic.” She’s gotten strong reactions from politicians, suggesting that at least sometimes a relentless focus on the severity of the emergency can get results.

So where does this all leave us? It’s worthwhile to look into the worst-case scenarios, and even to highlight and emphasize them. But it’s important to accurately represent current climate consensus along the way. It’s hard to see how we solve a problem we have widespread misapprehensions about in either direction, and when a warning is overstated or inaccurate, it may sow more confusion than inspiration.

Climate change won’t kill us all. That matters. Yet it’s one of the biggest challenges ahead of us, and the results of our failure to act will be devastating. That message — the most accurate message we’ve got — will have to stand on its own.

#### 1NR card

Rasser ’19 [Martijn, Michael Horowitz, and others; December 17; senior fellow of the Technology and National Security Program at the Center for a New American Security (CNAS); Ainkki Rikkonen, research assistant for CNAS, previously worked at the DOD’s Near East South Asia Center; PhD in government and political science professor at UPenn; CNAS, “The American AI Century: A Blueprint for Action,” <https://www.cnas.org/publications/reports/the-american-ai-century-a-blueprint-for-action>]

Shape Global Norms for AI Use

The applications of AI can do incredible good for societies. It can optimize city systems, study employment patterns to give insights to policymakers, and revolutionize biotechnology. Technology in general can be used to make human life easier but only if it is subjected to informed policy and good governance. Increasingly, AI-enabled technologies are being abused by authoritarian states to exert control over their populations. In some cases, U.S. research and academic and private institutions have been complicit in enabling these abuses.152

Myriad potential risks arise with AI technologies. AI’s general purpose and dual-use nature increase the risks of misuse and accidents. Risks of misuse involve the possibility of individuals or groups using AI systems in an unethical way, while accident risks are the potential harms that stem from AI systems behaving in unexpected ways.153 AI also poses structural risks, meaning that AI technologies have the capacity to shape the political, economic, or social environment in disruptive or harmful ways.154 Conversely, factors derived from structure, such as competitive advantages, also could influence how actors use AI, including by creating perverse incentives, such as actors racing to develop the technology first and taking shortcuts on safety.

#### It concludes the GDPR solves

EPRS ’20 [European Parliamentary Research Service; 2020; Panel for the Future of Science and Technology; European Parliament, “The impact of the General Data Protection Regulation (GDPR) on artificial intelligence,” https://www.europarl.europa.eu/RegData/etudes/STUD/2020/641530/EPRS\_STU(2020)641530\_EN.pdf]

must ensure compliance with EU rules, including the rules protecting fundamental rights and consumers' rights, in particular for AI systems operated in the EU that pose a high risk.

It is important to stress that the two objectives of excellence in research, innovation and implementation, and of consistency with individual rights and social values are compatible, but distinct. On the one hand the most advanced AI applications could be deployed to the detriment of citizens' rights and social values; on the other hand the effective protection of citizens' from the risks resulting from abuses AI does not provide in itself the incentives that are needed to stimulate research and innovation and promote beneficial uses. This report will argue that General Data Protection Regulation can contribute to address abuses of AI, and that it can be implemented in ways that do not hinder its beneficial uses. It will not address the industrial and other policies that are needed to ensure the EU competitiveness in the AI domain.

#### No A.I. war

* Nations choose competitive advantage

Can isolate conditions that neutralize A.I.

* Other factors are more important – ground forces

Ferguson 11/17/18 [Michael P. Ferguson, officer of the United States Army with experience throughout Europe and the Middle East. A former instructor at the U.S. Army Ranger School, he often writes on issues concerning strategic theory. Why 'Robot Wars' Might Not Be Our Future. Nov 17, 2018. https://nationalinterest.org/blog/buzz/why-robot-wars-might-not-be-our-future-36347?page=0%2C1

For one, despite the popular consensus that robot war as inevitable, future conflicts might look more like those of the past than some care to let on. Many of the aforementioned challenges are not only present today, but with NATO’s increased focus on joint, multinational exercises and operations following Russia’s 2014 annexation of Crimea, they have assumed a greater degree of complexity.

In response, most Western nations have taken up the crusade of militarized robotics and Artificial Intelligence (AI) as a means of remaining competitive. There is, however, potential for advances in these fields to add to this complexity rather than reduce it. Furthermore, while America’s competitors promote visions of a robot war, their massive human armies are not a reflection of this alleged epiphany. In light of these concerns, a critical look at such initiatives is essential in developing a realist future war policy.

At the behest of organizations such as the Defense Advanced Research Projects Agency (DARPA), tech giants Boston Dynamics and Lockheed Martin have spearheaded various military robotics programs. While many are currently under development, two of the most prominent prototypes stand out. Let’s start by addressing some of the concerns related to the theory and practice of each.

Theory: Robot dogs could carry equipment for dismounted soldiers, thus mitigating the physical strain on their bodies and increasing their allowable load.

Practice: The BigDog is Boston Dynamic’s gasoline-powered, four-legged, load-bearing robot. Able to carry up to 330 pounds while negotiating rough terrain, it weighs approximately 240 pounds unloaded. On its face, this concept appears promising—but upon further inspection, flaws emerge.

Let’s assume the BigDog passes field testing and is integrated into forward deployed infantry squads. That nine-man squad places its equipment (ammunition, rations, optics, and heavier weapons) onto this robot. If the robot is destroyed, that entire squad’s equipment goes with it.

Following this train of thought, if the robot becomes disabled in a vulnerable area, the squad must rotate out as each member retrieves his or her equipment. In past wars, enemy snipers would shoot to wound, so as to draw friends of the wounded into the open and then kill them. In future wars, they may just need to disable the mule bot.

There is also the issue of maneuverability. The bulkiness of these bots renders them incapable of rapidly traversing urban terrain or densely wooded areas that involve walls, cliffs, and narrow alleyways. According to U.S. Army Chief of Staff General Mark Milley , future wars will require a degree of ground-force mobility heretofore unheard of. This system hardly seems to contribute to that much needed flexibility.

Theory: Unmanned ground vehicles mean troops won’t have to die in convoys from improvised explosive devices (IEDs).

Practice: Lockheed Martin’s Autonomous Mobility Appliqué System , or AMAS, is no doubt impressive. Capable of maneuvering through urban areas under limited visibility conditions, the AMAS can be dropped into most existing vehicle platforms and lead unmanned convoys. Despite the removal of human beings from these vessels, their use implies that they are still transporting supplies to and from bases occupied by soldiers, which tells us there will still be humans in this future war.

When IEDs or rockets disable these vehicles, someone must recover them and tow them to a maintenance bay, perhaps after repelling subsequent attacks at the blast site to prevent the cargo and onboard communication systems from falling into the wrong hands.

None of these observations begin to touch on the inconvenient truth that most remotely operated systems are controlled through a satellite link that is subject to compromise . The above critiques should take nothing away from the brilliance of the engineers behind these projects. But given the price of failure, the United States cannot afford to get this wrong.

Many of these systems were designed to keep the United States abreast of its competitors in the global AI arms race. How nations such as Russia and China are navigating this environment is telling, and certainly worth exploring.

Deeds Speak Louder

A contributing factor behind the need to focus a great deal of time and energy on these machines is the fact that leaders from competing states have graciously informed the world that it should. Lt. Gen. Andrey Grigoriev, head of Russia’s Advanced Research Foundation (ARF) said as much in 2016 : “[F]uture warfare will involve operators and machines, not soldiers shooting at each other on the battlefield.”

The following year, a 2017 article in the National Interest highlighted various Russian officials lauding the benefits of drone swarms controlled remotely by a single operator’s computer, and the potential for Russia to relinquish control of its aviation and air defense systems to artificial intelligence. China is making similar strides in military robotics , and making similar statements on the future of war .

Russia and China’s competitors no doubt appreciate this window into their strategic defense horizons—only it may not be so transparent. To expand upon this concept, a “ red team ” approach could be valuable. If Sun Tzu’s maxim describing all war as a matter of deception is any guide to interpreting China and Russia’s intent here, several points of interest emerge.

First, while senior Russian officials parade their killer machines at high visibility events and tell the world that robots are the key to the future, their actions may not be a reflection of their proclamations.

According to a 2016 report from the Washington Post , Russia plans to form three new military divisions in response to NATO’s presence on its western border—an increase of nearly one hundred thousand troops. Why waste billions investing in antiquated human divisions when those resources could be diverted to a more productive synthetic enterprise? This question is particularly instructive considering Russia’s economic woes and the recent tightening of U.S. sanctions .

China, on the other hand, despite making drastic cuts to its military personnel in 2015, still boasts an active force of more than twice the size of the United States (roughly 2.3 million members). Furthermore, according to the most recent Pentagon report on military and security developments in the People’s Republic of China, most of these cuts were administrative and had little to do with reductions to combat power. In fact, China is ramping up modernization efforts with its military’s organizational structure—not just its equipment—by adopting a combined arms approach that focuses on joint, multi-domain operational capabilities.

What can we learn from this?

While the West becomes increasingly starry-eyed with robot dogs doing the running man, it must still address the reality of its competitors’ million-man armies. If a state such as Russia or China were to feel outmatched technologically on the battlefield, then there is no reason to assume that they would refrain from using the blunt force of their armies. Factor into the equation challenges associated with megacity warfare and operating in a degraded technological environment , and the picture on the ground would not be so alien.

This does not mean that such a scenario is imminent. Mankind has, however, proven itself rather allergic to accurate war forecasting , and there seems to be far too much momentum moving the world toward a singular vision of future warfare. If the past is any prologue, it is highly unlikely that the next great military challenge will come in the form of that which popular consensus deems most apparent.

In sum, despite the fact that robotics and AI have soaked up the most sunlight as of late, America’s competitors have not only maintained vast human armies, but are also expanding them or making significant improvements to their composition and strength.

Looking Ahead

As research and development in the field of militarized robotics pushes forward, it is important to remember that America’s future enemies will—as they have in the past—take the path of least resistance in war, expose weaknesses, and exploit them. If the United States becomes dependent upon AI and robots to fight its wars, it will create a new center-of-gravity and reveal its weakness: A ground war with high human casualties. In turn, the strategic objective of any opponent at war with the United States would be to draw it into precisely such a conflict by mitigating its technological advantages.

Pentagon official Jeff Becker noted recently in the National Interest that it is premature to dismiss the role of AI in future wars based merely on its potential shortfalls. Likewise, it is also premature to assume that robots will deliver as promised in future wars based merely on their potential capabilities. Similar to arguments in the Unrestricted Warfare thesis (China’s response to the projection of American military power during the First Gulf War), domination in these emerging areas is not a sure path to victory—in part because this would prompt adversaries to seek other means of leverage, and encourage the United States to allow its more seasoned domains of war to atrophy (air, land and sea).

That said, the policies of Secretary of Defense Jim Mattis and Secretary of the Army Mark Esper prove that they are acutely aware of challenges related to Joint Force lethality. Over the last eighteen months, both officials have taken swift action to underscore the importance of unit readiness, talent management, and leader development.

Does this mean the United States needs to pack up its future war programs and fix bayonets? Certainly not.

But it does mean that Western leaders should be wary of the temptation to acquire tunnel vision in their endeavor to remain militarily competitive. As Williamson Murray and Allan Millett surmised in their analysis of military innovation in the interwar period , having a vision of future war is important, but that view “must also be balanced and well connected to operational realities.”

One of those realities is the sheer vastness of human capital that America’s adversaries would likely be willing to expend in a war with the United States—especially if those opponents view troop strength and combined arms maneuver as their strongest hands against an enemy who has subordinated both to machines. Without a highly motivated, expertly trained, and masterfully-led Joint Force willing to contend with such a challenge, all the back-flipping robots in the world won’t bail the United States out of the next war.

#### Antitrust is 1% or less of the docket

Ginsburgh 12 - (\*Douglas H. Ginsburg \*\*Joshua D. Wright \*Senior Circuit Judge, United States Court of Appeals for the District of Columbia Circuit, and Professor of Law, George Mason University \*\*Commissioner, Federal Trade Commission, and Professor, George Mason University School of Law and Department of Economics; 9-20-2012, FTC, "Antitrust Courts: Specialists Versus Generalists," doa: 1-1-2022) url: https://www.ftc.gov/sites/default/files/documents/public\_statements/antitrust-courts-specialists-versus-generalists/130722ginsburg\_wright.pdf

At one end of the spectrum are the generalist courts of the United States, such as the twelve Circuit Courts of Appeals that review the decisions of the Federal Trade Commission and, in private cases, the judgments of the federal trial courts. Antitrust cases account for less than one percent of the total caseload in each of the appellate courts.2

[Begin Footnote 2]

2. ADMIN. OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS OF THE U.S. COURTS: 2011 ANNUAL REPORT OF THE DIRECTOR, tbl. B-7 (2011) [hereinafter AOUS]. The ninety-four federal district courts decide in the first instance cases brought by the Antitrust Division of the Department of Justice or by a private antitrust plaintiff. Id. tbl. C-2A. In each of the past five years, antitrust cases accounted for less than half of one percent of their overall case load, though the percentage was no doubt somewhat higher in at least a few districts. Id.

[End Footnote 2]

A somewhat more specialized model can be found in some countries, such as Portugal, where (from 2008 until the creation in 2012 of a single antitrust court) the review of NCA decisions has been vested in the commercial section of the geographically competent general court.3 Another variation of the somewhat specialized model appears in France, where all challenges to the decision of the NCA are referred to a particular chamber of the Paris Court of Appeals that hears other types of cases as well. A still more specialized model puts review of the NCA’s decision in a “business” or “commercial” court, such as the Market Court in Finland or Chamber 13 of the Council of State in Turkey. A bit further along the spectrum are courts that specialize in reviewing economic regulatory decisions, such as the Competition Appeals Tribunal in the United Kingdom, which reviews decisions of the NCA and of the various sectoral regulators. Finally, there are courts, such as the Competition Appellate Tribunal of India, that review decisions of the NCA alone.4

#### Most antitrust cases are resolved with settlements—that prevents clog.

William Berkowitz 21. Berkowitz is Partner and National Chair, Antitrust & Competition Practice Group. Brandon Bigelow is Partner and National Co-Chair, Antitrust & Competition Practice Group and Alison Eggers is Partner, Antitrust & Competition and Franchise & Distribution Practice Groups. “Key Trends in Commercial Litigation: Antitrust.” Commercial Litigation Outlook 2021, p. 8, <https://www.seyfarth.com/dir_docs/publications/Commercial-Litigation-Outlook-2021-Edition.pdf>

Companies in all sectors should expect that the FTC and DOJ may give more scrutiny to transactions that in the past might have easily cleared HSR review. Finally, the parties in a number of major antitrust class action litigation matters reached settlements in 2020, including matters involving alleged price fixing in the packaged seafood market and collusion among various Blue Cross/Blue Shield insurance providers to suppress competition between those plans. Businesses are often members of these certified classes, and given the volume of their purchases in these markets, often can recover substantial sums from these settlement funds. Businesses should be on the lookout for court-ordered notices concerning these settlements to make sure they do not waive any rights. Businesses also should be skeptical of companies that offer to “assist” with the submission of claims; these companies often demand a substantial percentage of any recovery for their work, even though settlements are typically designed to make claims submission easy.