# Wiki Doc Round 1

# 1NC

### 1NC – States CP

#### The 50 states, territories and DC should substantially increase prohibitions on anticompetitive business practices by the private sector by at least expanding the scope of its core antitrust laws pursuant to a comity balancing test.

### 1NC – Trade DA

#### The United States federal government should limit the extraterritorial scope of its core antitrust laws

#### American corporations bought out judges – they’ll use the aff in protectionist ways

Root 19 [Danielle Root, director of voting rights and access to justice on the Democracy and Government Reform team at the Center for American Progress. Sam Berger, vice president of Democracy and Government Reform at the Center for American Progress. “Structural Reforms to the Federal Judiciary.” 5/8/2019. https://www.americanprogress.org/issues/courts/reports/2019/05/08/469504/structural-reforms-federal-judiciary/]

Discussions of the federal judiciary often focus on the substance of decisions made—which side wins and which side loses—and rightly so. These individual opinions are frequently of incredible importance, not just to the parties involved but in shaping the law more broadly. Yet this focus on substantive decisions has obscured deeper structural factors at play in the nation’s federal judiciary. Structural problems—such as lack of judicial diversity, ideologue judges, and lack of judicial accountability—undercut the courts’ legitimacy and have tangible negative effects on judicial decision-making. Instead of protecting everyday Americans by serving as a check on abuses of power, too often the federal courts have become a tool for carrying out the agendas of special interests and corporations.

Structural problems with the judiciary have always existed to varying degrees. But they have been exacerbated in recent years due to an ongoing campaign by conservatives to take control of the federal courts, often through procedural changes that have significant effects but garner little public attention. The problem has now reached a crisis point. Conservatives have shown a willingness to abandon any and all norms to undermine the judicial nominations process and pack the courts with judges who will help them realize political goals they cannot achieve through the political process. These judges have proven more than willing to carry out the task, supporting the most specious of legal claims in order to skew the system in favor of conservative interests and even prevent many Americans from accessing the courts at all.

#### That means selective enforcement

Bradford 12 [Anu Bradford, Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School, expert in international trade law, the author of The Brussels Effect: How the European Union Rules the World. “Antitrust Law in Global Markets.” 2012. https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2977&context=faculty\_scholarship]

Antitrust laws rarely plainly favor local firms at the expense of their foreign counterparts. But even facially neutral antitrust laws can lead to discrimination if those unbiased laws are enforced selectively. Antitrust agencies are often vested with substantial discretion. Organized domestic interest groups could exploit that discretion by seeking protection from antitrust enforcement or by urging the domestic authorities to take on cases against their foreign competitors. This could lead to deliberate underenforcement of the anticompetitive conduct of domestic corporations, or to deliberate overenforcement of the anticompetitive conduct of foreign corporations.149

#### That ends free trade

Murray 19 [Allison Murray, Loyola Law, Judicial Law Clerk for U.S. Bankruptcy Courts. Edited by Loyola Law Professor David Kesselman and the ILR team of editors and staff. “Given Today’s New Wave of Protectionism, is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade’s Coffin?” 2/28/2019. https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1785&context=ilr]

Antitrust law can be enforced to reach protectionist aims and to combat them. It is a tool that allows nations to achieve individual protectionist aims without undermining the future of trade between countries and the cooperative framework underpinning the relatively delicate global free trade enjoyed today. However, the perception of enforcement of antitrust laws as an abusive and solely protectionist mechanism may cause the death of even the smallest semblance of international free trade that remains in the international marketplace today.

#### Nuke war

Oppenheimer 21 [Dr. Michael F. Oppenheimer, Clinical Professor at the Center for Global Affairs at New York University, Senior Consulting Fellow for Scenario Planning at the International Institute for Strategic Studies, Former Executive Vice President at The Futures Group, Member of the Council on Foreign Relations, The Foreign Policy Roundtable at the Carnegie Council on Ethics and International Affairs, and The American Council on Germany, “The Turbulent Future of International Relations”, in The Future of Global Affairs: Managing Discontinuity, Disruption and Destruction, Ed. Ankersen and Sidhu, p. 23-30]

Four structural forces will shape the future of International Relations: globalization (but without liberal rules, institutions, and leadership)1; multipolarity (the end of American hegemony and wider distribution of power among states and non-states2); the strengthening of distinctive, national and subnational identities, as persistent cultural differences are accentuated by the disruptive effects of Western style globalization (what Samuel Huntington called the “non-westernization of IR”3); and secular economic stagnation, a product of longer term global decline in birth rates combined with aging populations.4 These structural forces do not determine everything. Environmental events, global health challenges, internal political developments, policy mistakes, technology breakthroughs or failures, will intersect with structure to define our future. But these four structural forces will impact the way states behave, in the capacity of great powers to manage their differences, and to act collectively to settle, rather than exploit, the inevitable shocks of the next decade.

Some of these structural forces could be managed to promote prosperity and avoid war. Multipolarity (inherently more prone to conflict than other configurations of power, given coordination problems)5 plus globalization can work in a world of prosperity, convergent values, and effective conflict management. The Congress of Vienna system achieved relative peace in Europe over a hundred-year period through informal cooperation among multiple states sharing a fear of populist revolution. It ended decisively in 1914. Contemporary neoliberal institutionalists, such as John Ikenberry, accept multipolarity as our likely future, but are confident that globalization with liberal characteristics can be sustained without American hegemony, arguing that liberal values and practices have been fully accepted by states, global institutions, and private actors as imperative for growth and political legitimacy.6 Divergent values plus multipolarity can work, though at significantly lower levels of economic growth-in an autarchic world of isolated units, a world envisioned by the advocates of decoupling, including the current American president. 7 Divergent values plus globalization can be managed by hegemonic power, exemplified by the decade of the 1990s, when the Washington Consensus, imposed by American leverage exerted through the IMF and other U.S. dominated institutions, overrode national differences, but with real costs to those states undergoing “structural adjustment programs,”8 and ultimately at the cost of global growth, as states—especially in Asia—increased their savings to self insure against future financial crises.9

But all four forces operating simultaneously will produce a future of increasing internal polarization and cross border conflict, diminished economic growth and poverty alleviation, weakened global institutions and norms of behavior, and reduced collective capacity to confront emerging challenges of global warming, accelerating technology change, nuclear weapons innovation and proliferation. As in any effective scenario, this future is clearly visible to any keen observer. We have only to abolish wishful thinking and believe our own eyes.10

Secular Stagnation

This unbrave new world has been emerging for some time, as US power has declined relative to other states, especially China, global liberalism has failed to deliver on its promises, and totalitarian capitalism has proven effective in leveraging globalization for economic growth and political legitimacy while exploiting technology and the state’s coercive powers to maintain internal political control. But this new era was jumpstarted by the world financial crisis of 2007, which revealed the bankruptcy of unregulated market capitalism, weakened faith in US leadership, exacerbated economic deprivation and inequality around the world, ignited growing populism, and undermined international liberal institutions. The skewed distribution of wealth experienced in most developed countries, politically tolerated in periods of growth, became intolerable as growth rates declined. A combination of aging populations, accelerating technology, and global populism/nationalism promises to make this growth decline very difficult to reverse. What Larry Summers and other international political economists have come to call “secular stagnation” increases the likelihood that illiberal globalization, multipolarity, and rising nationalism will define our future. Summers11 has argued that the world is entering a long period of diminishing economic growth. He suggests that secular stagnation “may be the defining macroeconomic challenge of our times.” Julius Probst, in his recent assessment of Summers’ ideas, explains:

…rich countries are ageing as birth rates decline and people live longer. This has pushed down real interest rates because investors think these trends will mean they will make lower returns from investing in future, making them more willing to accept a lower return on government debt as a result.

Other factors that make investors similarly pessimistic include rising global inequality and the slowdown in productivity growth…

This decline in real interest rates matters because economists believe that to overcome an economic downturn, a central bank must drive down the real interest rate to a certain level to encourage more spending and investment… Because real interest rates are so low, Summers and his supporters believe that the rate required to reach full employment is so far into negative territory that it is effectively impossible.

…in the long run, more immigration might be a vital part of curing secular stagnation. Summers also heavily prescribes increased government spending, arguing that it might actually be more prudent than cutting back – especially if the money is spent on infrastructure, education and research and development.

Of course, governments in Europe and the US are instead trying to shut their doors to migrants. And austerity policies have taken their toll on infrastructure and public research. This looks set to ensure that the next recession will be particularly nasty when it comes… Unless governments change course radically, we could be in for a sobering period ahead.12

The rise of nationalism/populism is both cause and effect of this economic outlook. Lower growth will make every aspect of the liberal order more difficult to resuscitate post-Trump. Domestic politics will become more polarized and dysfunctional, as competition for diminishing resources intensifies. International collaboration, ad hoc or through institutions, will become politically toxic. Protectionism, in its multiple forms, will make economic recovery from “secular stagnation” a heavy lift, and the liberal hegemonic leadership and strong institutions that limited the damage of previous downturns, will be unavailable. A clear demonstration of this negative feedback loop is the economic damage being inflicted on the world by Trump’s trade war with China, which— despite the so-called phase one agreement—has predictably escalated from negotiating tactic to imbedded reality, with no end in sight. In a world already suffering from inadequate investment, the uncertainties generated by this confrontation will further curb the investments essential for future growth. Another demonstration of the intersection of structural forces is how populist-motivated controls on immigration (always a weakness in the hyper-globalization narrative) deprives developed countries of Summers’ recommended policy response to secular stagnation, which in a more open world would be a win-win for rich and poor countries alike, increasing wage rates and remittance revenues for the developing countries, replenishing the labor supply for rich countries experiencing low birth rates.

Illiberal Globalization

Economic weakness and rising nationalism (along with multipolarity) will not end globalization, but will profoundly alter its character and greatly reduce its economic and political benefits. Liberal global institutions, under American hegemony, have served multiple purposes, enabling states to improve the quality of international relations and more fully satisfy the needs of their citizens, and provide companies with the legal and institutional stability necessary to manage the inherent risks of global investment. But under present and future conditions these institutions will become the battlegrounds—and the victims—of geopolitical competition. The Trump Administration’s frontal attack on multilateralism is but the final nail in the coffin of the Bretton Woods system in trade and finance, which has been in slow but accelerating decline since the end of the Cold War. Future American leadership may embrace renewed collaboration in global trade and finance, macroeconomic management, environmental sustainability and the like, but repairing the damage requires the heroic assumption that America’s own identity has not been fundamentally altered by the Trump era (four years or eight matters here), and by the internal and global forces that enabled his rise. The fact will remain that a sizeable portion of the American electorate, and a monolithically pro- Trump Republican Party, is committed to an illiberal future. And even if the effects are transitory, the causes of weakening global collaboration are structural, not subject to the efforts of some hypothetical future US liberal leadership. It is clear that the US has lost respect among its rivals, and trust among its allies. While its economic and military capacity is still greatly superior to all others, its political dysfunction has diminished its ability to convert this wealth into effective power.13 It will furthermore operate in a future system of diffusing material power, diverging economic and political governance approaches, and rising nationalism. Trump has promoted these forces, but did not invent them, and future US Administrations will struggle to cope with them.

What will illiberal globalization look like? Consider recent events. The instruments of globalization have been weaponized by strong states in pursuit of their geopolitical objectives. This has turned the liberal argument on behalf of globalization on its head. Instead of interdependence as an unstoppable force pushing states toward collaboration and convergence around market-friendly domestic policies, states are exploiting interdependence to inflict harm on their adversaries, and even on their allies. The increasing interaction across national boundaries that globalization entails, now produces not harmonization and cooperation, but friction and escalating trade and investment disputes.14 The Trump Administration is in the lead here, but it is not alone. Trade and investment friction with China is the most obvious and damaging example, precipitated by China’s long failure to conform to the World Trade Organization (WTO) principles, now escalated by President Trump into a trade and currency war disturbingly reminiscent of the 1930s that Bretton Woods was designed to prevent. Financial sanctions against Iran, in violation of US obligations in the Joint Comprehensive Plan Of Action (JCPOA), is another example of the rule of law succumbing to geopolitical competition. Though more mercantilist in intent than geopolitical, US tariffs on steel and aluminum, and their threatened use in automotives, aimed at the EU, Canada, and Japan,15 are equally destructive of the liberal system and of future economic growth, imposed as they are by the author of that system, and will spread to others. And indeed, Japan has used export controls in its escalating conflict with South Korea16 (as did China in imposing controls on rare earth,17 and as the US has done as part of its trade war with China). Inward foreign direct investment restrictions are spreading. The vitality of the WTO is being sapped by its inability to complete the Doha Round, by the proliferation of bilateral and regional agreements, and now by the Trump Administration’s hold on appointments to WTO judicial panels. It should not surprise anyone if, during a second term, Trump formally withdrew the US from the WTO. At a minimum it will become a “dead letter regime.”18

As such measures gain traction, it will become clear to states—and to companies—that a global trading system more responsive to raw power than to law entails escalating risk and diminishing benefits. This will be the end of economic globalization, and its many benefits, as we know it. It represents nothing less than the subordination of economic globalization, a system which many thought obeyed its own logic, to an international politics of zero-sum power competition among multiple actors with divergent interests and values. The costs will be significant: Bloomberg Economics estimates that the cost in lost US GDP in 2019- dollar terms from the trade war with China has reached $134 billion to date and will rise to a total of $316 billion by the end of 2020.19 Economically, the just-in-time, maximally efficient world of global supply chains, driving down costs, incentivizing innovation, spreading investment, integrating new countries and populations into the global system, is being Balkanized. Bilateral and regional deals are proliferating, while global, nondiscriminatory trade agreements are at an end.

Economies of scale will shrink, incentivizing less investment, increasing costs and prices, compromising growth, marginalizing countries whose growth and poverty reduction depended on participation in global supply chains. A world already suffering from excess savings (in the corporate sector, among mostly Asian countries) will respond to heightened risk and uncertainty with further retrenchment. The problem is perfectly captured by Tim Boyle, CEO of Columbia Sportswear, whose supply chain runs through China, reacting to yet another ratcheting up of US tariffs on Chinese imports, most recently on consumer goods:

We move stuff around to take advantage of inexpensive labor. That’s why we’re in Bangladesh. That’s why we’re looking at Africa. We’re putting investment capital to work, to get a return for our shareholders. So, when we make a wager on investment, this is not Vegas. We have to have a reasonable expectation we can get a return. That’s predicated on the rule of law: where can we expect the laws to be enforced, and for the foreseeable future, the rules will be in place? That’s what America used to be.20

The international political effects will be equally damaging. The four structural forces act on each other to produce the more dangerous, less prosperous world projected here. Illiberal globalization represents geopolitical conflict by (at first) physically non-kinetic means. It arises from intensifying competition among powerful states with divergent interests and identities, but in its effects drives down growth and fuels increased nationalism/populism, which further contributes to conflict. Twenty-first-century protectionism represents bottom-up forces arising from economic disruption. But it is also a top-down phenomenon, representing a strategic effort by political leadership to reduce the constraints of interdependence on freedom of geopolitical action, in effect a precursor and enabler of war. This is the disturbing hypothesis of Daniel Drezner, argued in an important May 2019 piece in Reason, titled “Will Today’s Global Trade Wars Lead to World War Three,”21 which examines the pre- World War I period of heightened trade conflict, its contribution to the disaster that followed, and its parallels to the present:

Before the First World War started, powers great and small took a variety of steps to thwart the globalization of the 19th century. Each of these steps made it easier for the key combatants to conceive of a general war. We are beginning to see a similar approach to the globalization of the 21st century. One by one, the economic constraints on military aggression are eroding. And too many have forgotten—or never knew—how this played out a century ago.

…In many ways, 19th century globalization was a victim of its own success. Reduced tariffs and transport costs flooded Europe with inexpensive grains from Russia and the United States. The incomes of landowners in these countries suffered a serious hit, and the Long Depression that ran from 1873 until 1896 generated pressure on European governments to protect against cheap imports.

…The primary lesson to draw from the years before 1914 is not that economic interdependence was a weak constraint on military conflict. It is that, even in a globalized economy, governments can take protectionist actions to reduce their interdependence in anticipation of future wars. In retrospect, the 30 years of tariff hikes, trade wars, and currency conflicts that preceded 1914 were harbingers of the devastation to come. European governments did not necessarily want to ignite a war among the great powers. By reducing their interdependence, however, they made that option conceivable.

…the backlash to globalization that preceded the Great War seems to be reprised in the current moment. Indeed, there are ways in which the current moment is scarier than the pre-1914 era. Back then, the world’s hegemon, the United Kingdom, acted as a brake on economic closure. In 2019, the United States is the protectionist with its foot on the accelerator. The constraints of Sino-American interdependence—what economist Larry Summers once called “the financial balance of terror”—no longer look so binding. And there are far too many hot spots—the Korean peninsula, the South China Sea, Taiwan—where the kindling seems awfully dry.

### 1NC – Agency Resources DA

#### Antitrust agencies are strapped now – every dollar counts – the aff triggers new litigation that tanks other efforts and makes enforcing the aff impossible

Nylen 20 [leah, covers antitrust and investigations for POLITICO Pro. Before joining POLITICO, Leah spent eight years covering antitrust at MLex. She has also worked for Bloomberg and Congressional Quarterly and was selected as an Abe Journalist Fellow in 2014 for a reporting project in Japan on price-fixing cartels and cartel deterrence policies. “FTC Suffering a Cash Crunch as it Prepares to Battle Facebook” https://www.politico.com/news/2020/12/10/ftc-cash-facebook-lawsuit-444468]

The agency that just launched a landmark antitrust suit to break up Facebook is so strapped for cash that its leaders have discussed shrinking their staff and warned against taking on more cases.

In a series of emails to all Federal Trade Commission staff, obtained by POLITICO, Executive Director David Robbins said the agency would face a period of “belt tightening” to cut costs — and that filing fewer cases and trimming litigation expenses must be on the table.

“[W]e will either need to bring fewer expert intensive cases or significantly decrease our litigation costs (e.g. experts, transcripts, litigation support contractors, etc.),” Robbins said in an Oct. 29 email.

The emails offer an increasingly dire portrait of the money woes facing the FTC, which has launched a record amount of litigation in the past year even as the pandemic has caused a sharp reduction in the corporate merger filing fees that normally supply about half its budget. The crunch also raises the possibility that the FTC may not have the cash it needs to win its case against Facebook, which is gearing up for an expensive fight, or to take on additional companies like Amazon.

The agency released the emails in response to a Freedom of Information Act request.

In a follow-up email on Nov. 17, Robbins told staff that the agency had frozen all promotions for the foreseeable future, along with hiring and the bonuses or additional time-off awards that the FTC normally gives out at the end of December. The FTC had asked the Office of Personnel Management — the human resources management policy shop for the federal civil service — for permission to offer buy-outs or early retirement options but was denied, he said.

“[I]t should be no secret that the agency will have to make some tough choices in an environment where we simply do not have the funds to do everything we might like to do,” Robbins said in his first email to staff about the budget situation on Sept. 29.

The FTC declined to comment Thursday on Robbins’ emails or its budget situation. But Edith Ramirez, who chaired the agency under President Barack Obama, said Robbins’ emails about the budget picture were “concerning.”

“It does not serve the public interest for the agency not to be able to bring the cases it believes should be brought because of budget limitations,” said Ramirez, now a partner at the law firm Hogan Lovells.

POLITICO reported last month that the agency brought in just $102 million in merger filing fees, or $39 million below what it had expected, during the budget year that ended Sept. 30. The FTC also received $179 million from Congress, but some Republicans have rejected Democrats’ suggestions for a sharp increase in funding to cope with the rising needs.

The FTC had an overall budget of $331 million in fiscal 2020. The government is now operating under a continuing resolution set to expire Friday, although the Senate is expected to vote to extend that deadline to Dec. 18. Those bills keep the FTC’s funding at the same level.

House and Senate negotiators are still ironing out details for a $1.4 billion omnibus spending bill to fund the government through the rest of the fiscal year.

The FTC sued Facebook in federal court Wednesday, alongside a coalition of 46 states plus Washington, D.C., and Guam. The twin complaints allege the company engaged in a “buy or bury” strategy, scooping up promising startups before they could grow into competitors and cutting off other potential rivals’ access to Facebook’s data in often successful efforts to stifle their growth.

Facebook denies the allegations and says it intends to vigorously contest the case. The company already has three high-powered D.C. law firms on retainer to aid in litigating the antitrust case: Covington & Burling and Davis Polk, both of which are well-known for their antitrust practices and boast former FTC leaders among their ranks, and the litigation powerhouse Kellogg Hansen.

The FTC would use its in-house lawyers to litigate the Facebook case, but both sides will also need to hire economic experts to help make their arguments. Those experts can charge as much as $1,350 an hour, ProPublica found in a 2016 investigation.

Facebook, which ranks 46th on Fortune’s list of the largest U.S. companies, has much deeper pockets: It brought in nearly $21.5 billion in the three months that ended on Sept. 30.

Worries about the economy or the pandemic haven’t kept the FTC from filing a record number of new cases, Chair Joseph Simons said in a speech last month, noting that the commission “had more merger enforcement actions in fiscal year 2020 than any other year in the past 20 years.” Simons, a Republican, had made bringing the Facebook case a major priority before his expected departure in the next month.

The FTC’s antitrust cases tend to require more money than its consumer protection ones because of the need for economic experts, said Ramirez, the former chair. And conduct cases require even more funds than merger challenges do, she said.

“Litigation can take years, and is typically very expensive, no question about that,” she said.

The budget crunch could hamper Democratic efforts to ramp up antitrust and privacy enforcement in President-elect Joe Biden’s administration. The FTC has spent the past year speaking to retailers that sell products on Amazon as part of an investigation into potential antitrust violations by the online retail giant, though the exact contours of its probe are unknown. The budget crunch could harm the agency’s ability to move forward with that probe if prosecutors decide a case is warranted.

Ramirez, though, said the FTC will probably find a way to press on with its work despite any budget problems.

“The agency will do its utmost to find ways to continue an active agenda despite its resource constraints,” she said.

#### Intervention in healthcare consolidation is key to innovation

Richman et. al 17 (Barak, Professor of Law, Duke University Law School; \* Elena Vidal, Professor of Strategic Management at University of Toronto, Will Mitchell, Rotman School of Business; Assistant Professor of Management, Baruch, and Kevin Schulman, College/CUNY, Zicklin School of Business; Professor of Medicine, Duke University Medical School. “Pharmaceutical M&A Activity: Effects on Prices, Innovation, and Competition” p. 798-799 <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=6441&context=faculty_scholarship>]

Perhaps even more important than the potential impact on prices, some observers and theorists suggest that M&A activity in the pharmaceutical sector might reduce innovative activity in the industry. Commentators not only worry that industry consolidation increases prices, but also that it reduces incentives to innovate.34 These commentators express concern that large pharmaceutical firms exhibited diminishing R&D productivity—producing fewer discoveries, generating less valuable discoveries, and creating discoveries that represent more incremental and duplicative innovations.35 In parallel, commentators suggest that the recent merger trend contributed to big pharma’s diminishing innovation, in part because mergers are often followed by layoffs in R&D personnel, changes in management and research priorities, and reductions in total R&D spending.36

#### Key to stop bioterror.

Poupard 11. (James Poupard received a BA in natural science from Temple University, an MS in clinical microbiology from Thomas Jefferson Medical College, and he started his PhD studies in the history of science at Bryn Mawr College and completed his PhD studies at the University of Pennsylvania. He was supervisor of clinical microbiology at the Hospital of the University of Pennsylvania and microbiology director of Bryn Mawr Hospital and later became associate professor of microbiology, pathology, and medicine at the Medical College of Pennsylvania. Pharmaceutical Industry. Encyclopedia of Bioterrorism Defense, 2nd Edition. 2011. Edited by Rebecca Katz and Raymond Zilinskas)

INTRODUCTION The pharmaceutical and biotechnology industries play an important role in providing anti-infective drugs, vaccines, and biologicals (a category of pharmaceutical products consisting not of chemical agents like drugs and not of vaccines but rather of products such as immunomodulators, interferons, and monoclonal antibodies, which are often produced in facilities similar to vaccine production lines since they are usually derived from tissue cultures or, in some cases, from organisms like modified Escherichia coli but are not classic vaccines) **for use in** responding to a bioterrorist attack. **Research, development, and production programs initiated by the pharmaceutical industry will play a key role in providing new therapeutic agents for use against potential bioterrorist threats,** and the industry will be an important element in determining future policies relating to bioterrorism defense.

#### Extinction.

Myhrvold 13 Bynathan Myhrvold, former Chief Technology Officer at Microsoft, MA and PhD from Princeton University, he held a postdoctoral fellowship at the University of Cambridge working under Stephen Hawking¶ Strategic Terrorism a Call to Action, The Lawfare Research Paper Series¶ research paper no. 2 – 2013¶ July 2013¶ <http://www.lawfareblog.com/wp-content/uploads/2013/07/Strategic-Terrorism-Myhrvold-7-3-2013.pdf>

¶ For the first time in human history, the curve of cost ¶ versus lethality has turned rapidly downward, falling ¶ many orders of magnitude in just a generation. Today, ¶ tremendously lethal technology is available on the cheap. ¶Anyone—even a stateless group—can have the deadliest weapons on earth. Several trends led to this inflection ¶ point. one is nuclear proliferation, which in recent years ¶ reached a tipping point at which access to nuclear weapons ¶ became impossible to control or limit in any absolute way. ¶ The collapse of the soviet Union scattered ex-soviet weapons across many poorly governed and policed states, and ¶ from there, the weapons may spread further into the hands ¶ of terrorists. At the same time, the set of ragtag countries ¶ that have developed homegrown nuclear devices is large ¶ and growing. The entrance to the nuclear-weapons club, ¶ once limited to a small number of sophisticated and stable ¶ countries, is now far more open.¶ It is only a matter of time before a nuclear bomb gets ¶ into the hands of a terrorist group, whether by theft or construction. A nuclear weapon smuggled into an American ¶ city could kill between 100,000 and 1,000,000 people, depending on the nature of the device, the location of ground ¶ zero, and the altitude of detonation. an optimist might say ¶ that it will take another decade for such a calamity to take ¶ place; a pessimist would point out that the plot may already ¶ be under way.¶ Chemical weapons, particularly nerve agents, are another new addition to the terrorist arsenal. Sarin, a frighteningly lethal poison discovered in 1938 and stockpiled ¶ (although never used) by the nazis, was produced and released in locations in the tokyo subway system in 1995 by ¶ aum shinrikyo, a Japanese religious cult. The attack injured ¶ nearly 3,800 people and killed 12. A botched distribution ¶ scheme in the tokyo subway spared many of the intended¶ victims; better dispersal technology would have resulted in ¶ a vastly higher death toll. ¶ Cult members had more morbid ambitions than a ¶ subway attack. They had gathered hundreds of tons of raw ¶ materials and had procured a Russian military helicopter ¶ to use in spraying the nerve agent over tokyo. Experts ¶ have estimated that aum shinrikyo had the ingredients to ¶ produce enough sarin to kill millions of people in an all-out ¶ attack. The civil war in syria, whose military is known to ¶ possess stockpiles of sarin and other chemical weapons, ¶ raises the prospect that these munitions could fall into the ¶ hands of extremists.¶ Frightening as such possibilities are, nuclear bombs ¶ and chemical agents pale in lethality when compared with ¶ biological weapons. indeed the term “weapon” is not entirely adequate because biological agents include not only ¶ pathogens that are controllable (in the traditional sense) ¶ but also those that are not.¶ even more so than with nuclear weapons, the cost ¶ and technical difficulty of producing biological arms has ¶ dropped precipitously in recent decades with the boom in ¶ industrial molecular biology. A small team of people with ¶ the necessary technical training and some cheap equipment can create weapons far more terrible than any nuclear ¶ bomb. Indeed, even a single individual might do so.¶ Ether, these trends utterly undermine the ¶ lethality-versus-cost curve that existed throughout all of ¶ human history. Access to extremely lethal agents—even to ¶ those that may exterminate the human race—will be available to nearly anybody. Access to mass death has been democratized; it has spread from a small elite of superpower ¶ leaders to nearly anybody with modest resources. Even the ¶ leader of a ragtag, stateless group hiding in a cave—or in a ¶ Pakistani suburb—can potentially have “the button.”

### 1NC – New Agency CP

#### CP: The United States federal government should establish a purpose-built competition agency comprised of industry and subject matters experts. The agency should:

#### Develop and enforce ex ante behavioral standards that prohibit activities that violate a comity balancing test

#### Enforce ex post prohibitions on those activities

#### The counterplan is the only way to solve the case – Court-initiated regulations will fail

Ganesh Sitaraman, professor of law at Vanderbilt, October 26, 2018 The Guardian

https://www.theguardian.com/commentisfree/2018/oct/26/antitrust-monopolies-courts-concentration

America has a concentration problem. Across the political spectrum – from progressives like Joe Stiglitz to centrists at Brookings and conservatives at Breitbart – experts and commentators agree that antitrust needs to be a priority. But there has been significant debate on what to do: do we need more enforcement or new laws? Is the problem technical or ideological? This year, one thing has become clear: the courts are a barrier to making progress in fighting the new age of monopoly power – and reform will have to involve taking antitrust away from the courts.

Some background will be helpful. Antitrust policymaking differs from virtually every other area of policymaking. In other areas of policymaking, Congress passes laws commanding government agencies to regulate different areas. The EPA regulates pollution in air and water. The National Highway Transportation Safety Administration ensures that cars and trucks are safe. The Consumer Products Safety Commission oversees children’s toys. Each agency is filled with experts in these fields, and they rely on this expertise in issuing regulations. They are also required to follow an extensive process to receive input from industry and from the general public. Courts do review regulations, but they grant significant deference to the agency’s expertise.

Antitrust isn’t like this. In antitrust law, the courts have become the primary expositors of antitrust policy. They interpret the main antitrust statutes in a “common law” fashion – in other words, judges have embraced the role of policymakers. This is a serious problem. First, in our constitutional system, judges are not supposed to be policymakers. They are supposed to interpret the laws and review regulations to ensure they are not outside the scope of the law. Second, the courts have no expertise in the economy. They don’t conduct studies or investigations, and certainly can’t keep up with our dynamic, fast-moving business sector. The courts thus make policy by relying on the parties in a case and on amicus briefs, and the result is an unbalanced set of intellectual inputs. Third, the courts are not politically accountable. The judicial process has limited public participation and oversight. Judges can’t be fired for coming up with the wrong decisions. And it is very difficult for Congress to fix an incorrect judicial decision. These are all virtues when judges are interpreting the constitution and the laws, but they are vices when judges become policymakers.

Earlier this year, this problem became acutely apparent to everyone. First, a federal judge allowed the merger of AT&T and Time Warner, over the objections of the justice department. Then, in the final days of its term, the supreme court issued the most important antitrust decision of the year. In Ohio v American Express, the supreme court found that American Express’s use of “anti-steering” provisions was not anticompetitive. AmEx charges much higher fees to retailers than Discover, and as part of its contract with retailers, it prevents them from informing consumers of this fact (and steering them to Discover instead). The US government and a number of states alleged this was illegal, anticompetitive behavior because AmEx can jack up the fees without facing competitive pressure. Putting aside the merits of whether or not anti-steering provisions are anti-competitive and should be illegal, the real question is this: why should the supreme court make that decision? Policy choices like this should be the job of Congress and agencies, not the courts.

In a new paper, I offer a blueprint for how to fix this state of affairs. At a minimum, we need to start by making antitrust like other areas of law. Congress should pass a law that states clearly that the Federal Trade Commission has the power in the first instance to issue regulations under all of the antitrust laws. The law should also expand the FTC’s inspection and investigation powers and allow for greater enforcement of antitrust laws by state attorneys general. Under this system, the courts would still retain the power to review regulations to ensure they are not outside of Congress’s statutorily granted authority. But the courts would no longer be the primary makers of antitrust policy.

In addition, reforms should go further to revitalize antitrust law and policy. Right now, merger approvals are split between the FTC and the Department of Justice. Which agency reviews what mergers is largely a function of tradition, not statutory command. Merger approvals should all be concentrated in the FTC, ensuring consistency in their application. Second, proposed mergers should be subject to a period of public comment, and the FTC should have to respond to public comments, as regulatory agencies do in every other sector when setting important policies. This would allow members of the public to raise concerns about mergers that economists and industry players might not be thinking about. As is conventional in other areas, courts would be able to strike down an agency approval for failure to consider these comments adequately.

There is no good reason for antitrust to diverge from every other area of law. Judges are not experts in the complexities of the economy nor in the cutting edge of business practices. They are insulated from public accountability. And, under our constitutional system, they are not supposed to be policymakers. Economic concentration is one of the most pressing policy issues of our time. If we want to address concentration, we will need to take antitrust away from the courts.

### 1NC - Politics

#### Infrastructure and reconciliation will pass now because Biden drove a successful reset – PC is key.

Bresnahan 10/1 [JOHN BRESNAHAN, ANNA PALMER AND JAKE SHERMAN, Punchbowl News PM, 10/1/21 at 7:33 PM EDT, https://email.punchbowl.news/t/ViewEmail/t/9ACF7F5903A4DC8A2540EF23F30FEDED/28A0A10B8D38581C63B21DE8DA818551]

Here’s how the White House and House Democratic leadership view President Joe Biden’s visit to Capitol Hill this afternoon — a successful reset.

Biden came to a closed-door meeting and laid out some uncomfortable truths for the House Democratic Caucus.

→ To the progressives: Biden said that Democrats would have to consider a reconciliation package that’s less than $3.5 trillion. He said the bill may total up to $2.3 trillion.

“Even a smaller bill can make historic investments -- historic investments in childcare, daycare, clean energy,” Biden said in the private meeting. “You get a whole hell of a lot of things done. We can be consequential and build upon [ARP], not pull back from.”

→ To the moderates: Biden made clear that House Democrats won’t vote on the bipartisan infrastructure package until there’s a bicameral deal on reconciliation. Period. He said the infrastructure bill “ain’t going to happen until we reach an agreement on the next piece of legislation.” Biden added that if Democrats had the votes to pass the infrastructure, he would support it, but they do not. Biden urged Democrats to “figure out what we are for in reconciliation… and then we can move ahead.”

Here's Biden's take on the reconciliation bill: “Every one of the major things that are in the reconciliation bill are overwhelmingly positive with the American people…It’s because we talked about things that affect people's lives -- ordinary people.”

This was a job, perhaps, that only Biden could do -- and one the leadership had been urging the president to tackle for some time. As we noted this morning, Speaker Nancy Pelosi had been straddling the fence between the moderate and progressive caucuses for days, trying to appease both. Biden is detached from the internal House Democratic Caucus politics and was able to force-feed them the medicine that Pelosi had been trying to delicately spoon feed them for days. In essence, Biden was the bad cop here.

The House is likely to leave town for a few days, and will be on alert to come back to Washington on three-days notice.

“It doesn't matter whether it's in six minutes, six days or six weeks,” Biden told reporters upon leaving the Capitol. “We're gonna get it done."

Let’s acknowledge a couple things briefly here -- Progressives won. Big time. And moderates lost. Big time.

But it’s just one round. There’s a long, long way to go on reconciliation. And moderates will have a lot more to say in the coming weeks and months.

And remember this -- Progressives need reconciliation more than moderates need the infrastructure bill. Don’t underestimate that fact moving forward.

It will be incumbent now upon the White House, Pelosi and Senate Majority Leader Chuck Schumer to craft a reconciliation bill that can pass muster with Sens. Kyrsten Sinema (D-Ariz.), Joe Manchin (D-W.Va.), Bernie Sanders (I-Vt.) and the Congressional Progressive Caucus.

A few more dynamics worth considering

→ Biden is now fully embracing the concept that infrastructure and reconciliation are twinned -- after Democrats had avoided that construct for some time. This is a black eye for groups that were suggesting the two could be separated. They’re not any longer.

#### Antitrust requires PC—that trades off

Carstensen 21 [Peter; February 2021; Fred W. & Vi Miller Chair in Law Emeritus at the University of Wisconsin Law School; Concurrences, “The ‘Ought’ and ‘Is Likely’ of Biden Antitrust,” <https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en#carstensen>]

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities.

15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate!

16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Quickly secures the vulnerable grid.

Carney 21 [Chris, August 6; Senior Policy Advisor at Nossaman LLC, former US Representative, Former Professor of Political Science at Penn State University; JD Supra, “The US Senate Infrastructure Bill: Securing Our Electrical Grid Through P3s and Grants,” https://www.jdsupra.com/legalnews/the-us-senate-infrastructure-bill-4989100/]

As we begin to better understand the main components of the Infrastructure Investment and Jobs Act that the US Senate is working to pass this week, it is clear that public-private partnerships ("P3s") are a favored funding mechanism of lawmakers to help offset high costs associated with major infrastructure projects in communities. And while past infrastructure bills have used P3s for more conventional projects, the current bill also calls for P3s to help pay for protecting the US electric grid from cyberattacks. Responding to the increasing number of cyberattacks on our nation’s infrastructure, and given the fragile physical condition of our electrical grid, the Senate included provisions to help state, local and tribal entities harden electrical grids for which they are responsible.

Section 40121, Enhancing Grid Security Through Public-Private Partnerships, calls for not only physical protections of electrical grids, but also for enhancing cyber-resilience. This section seeks to encourage the various federal, state and local regulatory authorities, as well as industry participants to engage in a program that audits and assesses the physical security and cybersecurity of utilities, conducts threat assessments to identify and mitigate vulnerabilities, and provides cybersecurity training to utilities. Further, the section calls for strengthening supply chain security, protecting “defense critical” electrical infrastructure and buttressing against a constant barrage of cyberattacks on the grid. In determining the nature of the partnership arrangement, the size of the utility and the area served will be considered, with priority going to utilities with fewer available resources.

Section 40122 compliments the previous section as it seeks to incentivize testing of cybersecurity products meant to be used in the energy sector, including SCADA systems, and to find ways to mitigate any vulnerabilities identified by the testing. Intended as a voluntary program, utilities would be offered technical assistance and databases of vulnerabilities and best practices would be created. Section 40123 incentivizes investment in advanced cybersecurity technology to strengthen the security and resiliency of grid systems through rate adjustments that would be studied and approved by the Secretary of Energy and other relevant Commissions, Councils and Associations.

Lastly, Section 40124, a long sought-after package of cybersecurity grants for state, local and tribal entities is included in the bill. This section adds language that would enable state, local and tribal bodies to apply for funds to upgrade aging computer equipment and software, particularly related to utilities, as they face growing threats of ransomware, denial of service and other cyberattacks. However, under Section 40126, cybersecurity grants may be tied to meeting various security standards established by the Secretary of Homeland Security, and/or submission of a cybersecurity plan by a grant applicant that shows “maturity” in understanding the cyber threat they face and a sophisticated approach to utilizing the grant.

While the final outcome of the Infrastructure Investment and Jobs Act may still be weeks or months away, inclusion of these provisions not only demonstrates a positive step forward for the application of federal P3s and grants generally, they also show that Congress recognizes the seriousness of the cyber threats our electrical grids face. Hopefully, through judicious application of both public-private partnerships and grants, the nation can quickly secure its infrastructure from cyberattacks.

#### Grid vulnerabilities spark nuclear war.

Klare 19 [Michael; November; Professor Emeritus of Peace and World Security Studies at Hampshire College; Arms Control Association, “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation,” https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation]

Yet another pathway to escalation could arise from a cascading series of cyberstrikes and counterstrikes against vital national infrastructure rather than on military targets. All major powers, along with Iran and North Korea, have developed and deployed cyberweapons designed to disrupt and destroy major elements of an adversary’s key economic systems, such as power grids, financial systems, and transportation networks. As noted, Russia has infiltrated the U.S. electrical grid, and it is widely believed that the United States has done the same in Russia.12 The Pentagon has also devised a plan known as “Nitro Zeus,” intended to immobilize the entire Iranian economy and so force it to capitulate to U.S. demands or, if that approach failed, to pave the way for a crippling air and missile attack.13

The danger here is that economic attacks of this sort, if undertaken during a period of tension and crisis, could lead to an escalating series of tit-for-tat attacks against ever more vital elements of an adversary’s critical infrastructure, producing widespread chaos and harm and eventually leading one side to initiate kinetic attacks on critical military targets, risking the slippery slope to nuclear conflict. For example, a Russian cyberattack on the U.S. power grid could trigger U.S. attacks on Russian energy and financial systems, causing widespread disorder in both countries and generating an impulse for even more devastating attacks. At some point, such attacks “could lead to major conflict and possibly nuclear war.”14

### 1NC – Adv CP

#### The United States federal government should

#### remove restrictions on cobalt trade between the United States and Cuba.

#### substantially relieve debt from African governments, including using debt swaps to promote Sustainable Development Goals

#### Plank 1 solves advantage 1

Birnbaum 16 [Benjamin Birnbaum joined Newmark Knight Frank in 2007 at the firm's New York headquarters, where he is a vice chairman specializing in retail for landlords and tenants on both a national and local level. "United States-Cuba Relations: Policy Recommendations to Advance Normalization." http://wws.princeton.edu/sites/default/files/content/WWS%20591C%20Final%20Report%20US%20Cuba%202016.pdf]

Imports from Cuba are even more tightly controlled, as no large-scale Helms-Burton carve-outs exist. Still, the issue is worthy of study given the potential economic benefits of certain Cuban commodities, specifically nickel and cobalt. Currently, the United States imports 85 percent of its cobalt, used in alloys for aircraft engines. It also imports 43 percent of its nickel, used in stainless steel and other alloys resistant to corrosion. Recent sanctions on Russia—previously one of the United States’ main nickel suppliers—have caused prices of that mineral to rise above its historical average. Were restrictions on nickel and cobalt to be lifted, Cuba would be able to compete with current exporters to the United States, saving American companies millions.

#### Cuba solves – its also an alt cause to the aff

Chatsko 18 [Maxx Chatsko graduated from SUNY-ESF (2012) with a Bachelor of Science in Bioprocess Engineering and from Carnegie Mellon University (2016) with a Master of Science in Materials Science & Engineering. "Is Cuba the Solution to America's Cobalt Insecurity?" 3/1. https://www.fool.com/investing/2018/03/01/is-cuba-the-solution-to-americas-cobalt-insecurity.aspx]

If you were asked to rank the top exports of the struggling economy of Cuba, then you'd probably list a few predictable things: sugar, tobacco, pharmaceuticals. Those are the no-brainers, but dig a little deeper, and you'll see that the island nation is one of the top global producers of two important 21st-century metals: nickel and cobalt.

In fact, despite having just 1% of the land area of the United States, Cuba produces 550% more cobalt than the U.S. and owns the third-largest cobalt reserves on the planet. Those should be sobering statistics for investors and policymakers for several reasons. Chief among them is the fact that cobalt has become an indispensable component in the latest chemistries for lithium-ion batteries. It comprises up to 15% of the mass of some batteries (compared to just 1% for lithium) and currently sells for $80,000 per metric ton. Lithium sells for roughly $20,000 per metric ton.

#### Third plank solves advantage 2 – debt is an alt cause

Haughton 18 [Howard Haughton Kings College London, and Jodie Keane, Overseas Development Group UK, 2021 “Alleviated Debt Distress and Advancing the Sustainable Development Goals”, https://onlinelibrary.wiley.com/doi/epdf/10.1002/sd.2198]  
  
External debt levels will be unprecedented in 2021—in this last decade of action tosecure the sustainable development goals (SDGs)—and mostly in distress for low-income-developing countries (LIDC) and least developed countries (LDCs). However, increased levels of debt distress were on the horizon even before the dire economic effects of COVID-19. These high levels of external debt and a decreasing inability to access international capital were already expected to impede the advancement of the SDGs; the situation has become far graver because of the Great Lockdown and efforts to stymie transmission of COVID-19. The international community faces per-haps its greatest challenge: it must alleviate poor countries debt burdens exacerbated by COVID-19 to effectively combat its spread, but there is no consensus as to howto achieve this. Though there is no historical parallel to the current debt crisis, the heavily indebted poor country initiative (HIPC) suggests debt relief alone will beinsufficient to keep the SDGs on track. While the challenges that arise with regards to the scaling up of debt swap initiatives—learned from previous efforts—are formi-dable, this article provides critical reflection as to their effective operationalization within the current context: responding to the economic and social devastation wrought by COVID-19 and keeping the SDGs on track. It shows how debt swaps can be effectively deployed as part of a revitalized global partnership for development,for the advancement of the SDGs and broader debt sustainability.

### 1NC – WTO CP

#### The President of the United States should prohibit anticompetitive business practices under an executive order administered by the Office of Foreign Asset Control

#### The US Trade Representative should launch a formal claim in the WTO DSB alleging that anticompetitive business practices violate WTO obligations under the GATT and WTO accession protocols.

#### The United States federal government should limit the recovery for foreign plaintiffs claims in antitrust

#### Plank 1 solves – OFAC can prohibit any dollar transaction anywhere in the world.

Paul Marquardt & Chase D. Kaniecki, Counsel @ Cleary Gottlieb, ‘20, “President Trump Authorizes Restrictions on WeChat and TikTok; Details to Come” https://www.clearytradewatch.com/2020/08/president-trump-authorizes-restrictions-on-wechat-and-tiktok-details-to-come/

Last night, President Trump issued two Executive Orders establishing a framework for prohibiting transactions involving popular Chinese-owned communications apps WeChat and TikTok.[1] Contrary to some press reports, the Executive Orders do not prohibit all transactions with their respective parent companies; they do not in fact set out the scope of the restrictions. Rather, they give the Commerce Department authority to prohibit any transaction involving a U.S. person or within the jurisdiction of the United States involving the two services; each of the Executive Orders clearly states “45 days after the date of this order, the Secretary shall identify the transactions subject to subsection (a) of this section [which contains the broad authority to prohibit].”[2] Furthermore, the scope of Commerce’s authority is subtly (and no doubt intentionally) different in the two Executive Orders: with respect to TikTok, the authority covers any transaction with ByteDance, TikTok’s parent; with respect to WeChat, the authority covers any transaction relating to WeChat involving its parent, Tencent Holding. Commerce will, within 45 days, take further action specifying exactly which transactions will be prohibited; it is even possible, particularly with respect to TikTok if the mooted divestiture of U.S. operations occurs, that no restrictions will be imposed.[3] Unless and until Commerce implements the Executive Orders, no restrictions are in place and their precise future scope is unknown.

To speculate on the possible shape of the ultimate restrictions, it appears unlikely that they will be quite as broad as the authorizing language suggests. The language identifying the transactions that may be prohibited is familiar from U.S. economic sanctions. Furthermore, as with the previous Executive Order relating to the information technology and communications supply chain permitting Commerce to review transactions with foreign suppliers on a case-by-case basis (to which the new Executive Orders refer),[4] the Executive Orders rely upon the framework statute underlying most sanctions programs administered by the Treasury Department’s Office of Foreign Assets Control (OFAC).[5] If taken to its maximum extent, this language would permit Commerce to prohibit any U.S. person or U.S. company anywhere in the world, and any person physically within the United States, from engaging in any transaction directly or indirectly involving or benefiting Tencent, if the transaction related to WeChat, or ByteDance—including processing any U.S. dollar payment clearing through the U.S. financial system (as the vast majority of global interbank U.S. dollar payments do).

However, the sanctions analogy is likely misleading. If the Administration intended to prohibit all transactions with ByteDance and TikTok, it would have been far simpler and more usual to designate them under an executive order administered by OFAC, as the United States has done in the past with parties considered malicious cyber-actors.[6] The Administration’s public statements hint at a narrower scope. The prefatory language of the Executive Orders emphasizes “the spread in the United States of mobile applications developed and owned by companies in the People’s Republic of China” and “access to Americans’ personal and proprietary information.” Furthermore, two days ago Secretary of State Michael Pompeo announced the “Clean Network” policy initiative, which includes the “Clean Store” effort to ”remove untrusted applications from U.S. mobile app stores.”[7] While there is no guarantee, it appears that the primary focus of the initiative may be blocking the use and availability of the apps within the United States, rather than prohibiting ordinary-course commercial transactions with ByteDance or (to the extent they relate to WeChat) Tencent generally to the extent they relate to operations outside the United States.

Ultimately, though, until Commerce takes implementing action any discussion of scope is educated guesswork. We will continue to monitor and report on developments.

#### Planks 2 solves – WTO will penetrate foreign export cartels and rule for the US.

Weimin Shen, L.L.M, J.S.D., Washington University School of Law, ’20, "The Role of Transnational Legal Process in Enforcing WTO Law and Competition Policy," Journal of Transnational Law & Policy 30 (2020-2021): 59-118

While export cartels are consistently outlawed in established competition law regimes, virtually every state with a meaningful competition law acknowledges export cartels either explicitly or implicitly. 19 The rules of the General Agreement on Tariffs and Trade ("GATT") generally prohibit quantitative restrictions on exports and recognize that quantitative restrictions must not be imposed through direct government action and purchases of state trading enterprises ("STEs").20 Notably, WTO rules do not prevent these entities from exerting market power in export markets through the prices they charge abroad. 21 In that regard government-sponsored export cartels might potentially breach the GATT rules generally prohibiting quantitative export restrictions. Further guidance concerning export restraints is provided in Article 11.1(b), the WTO Agreement on Safeguards, which requires WTO Members to "not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side." 22 These include actions taken by a single Member as well as actions under agreements, arrangements, and understandings entered into by two or more Members. 23 In the same Article, it further requires Members not to encourage or support the adoption or maintenance by public and private enterprises of equivalent non-governmental measures, recognizing that it is sometimes difficult to establish the degree of government involvement in such measures. 24

#### Third plank solves advantage two

Murray ’17 [Sean; 2017; J.D. from Fordham University, B.A. from Vassar College; Fordham International Law Journal, “With a Little Help from my Friends: How a US Judicial International Comity Balancing Test Can Foster Global Antitrust Redress,” vol. 41]

With nowhere else to go, private litigants have naturally flocked to the United States for remedial assistance, creating an issue for developing antitrust regimes.12 Several implications attend foreign plaintiffs seeking recovery in the United States. American courts have recognized the importance of allowing foreign plaintiffs to bring claims in the United States under the Sherman Act.13 Before 2004, there was a significant chance that parties injured abroad by global cartels that directly harmed the United States would be able to sue in US courts to recover their losses.14 But, as illustrated above, private litigants applying US antitrust law for redressing harm that occurred abroad create tensions over sovereignty with other countries.15

Moreover, bringing claims to the United States strips valuable opportunities for young foreign antitrust regimes to develop their own jurisprudence, depressing the effectiveness of global antitrust enforcement and stalling the emergence of private redress.16 Worldwide jurisdictions are increasingly recognizing the importance of private rights of action to enforcement efforts.17 Within the past ten years several countries have expanded private parties’ ability to recover harm from unlawful anticompetitive behavior by allowing collective action.18 However, private actions remain rare in many developing antitrust jurisdictions with little, if any, precedent establishing the basis for compensatory damages or discovery.19

### 1NC – T ‘Scope’

#### Minor changes don’t “expand the scope”

Moran 7 [Kevin J. Moran, Vice President and Assistant General Counsel - Franchising · Hyatt Hotels Corporation. Max J. Schott, II, Larkin Hoffman Franchise Attorney. “The Amended FTC Franchise Rule: Much Ado About Nothing?” May 2007. https://www.lathropgpm.com/media/newsletter/15160\_006105.pdf]

The Amended Rule represents the culmination of a 12-year amendment process conducted by the FTC and its staff. The process included an Advanced Notice of Proposed Rulemaking (1997), a Notice of Proposed Rulemaking (1999), and a Staff Report containing the Staff’s recommendations to the FTC regarding an amended version of the old FTC Rule (2004). Along the way, franchisors, franchisees and franchise attorneys have monitored the amendment process, debated the issues and provided comments to the FTC. So after all of the analysis, debate and build-up, is the FTC’s approval of the final version of the Amended Rule much ado about nothing? Yes and no.

Yes, in the sense that, despite a number of suggestions to the contrary, the Amended Rule did not expand the scope of old FTC Rule. The Amended Rule still only mandates pre-sale disclosure and does not require any type of federal registration or approval. In addition, the Amended Rule does not regulate franchisor/ franchisee relationships. More significantly, the Amended Rule simply adopts much of the existing UFOC Guidelines with some new twists. Accordingly, although adjusting Amended Rule will require franchisors to make some changes to their UFOCs (which become “Disclosure Documents” under the Amended Rule) and their disclosure practices, these changes will not be all that significant.

On the other hand, to argue that the Amended Rule is much ado about nothing, is to downplay the importance of the new twists, a number of which are desirable from a franchisor’s perspective. These new twists represent the efforts on the part of the FTC and its staff to improve the UFOC Guideline disclosure requirements and format. In this article, we briefly summarize what we see as the most significant and interesting of these new twists and discuss what franchisors can and should be doing now to gear up for the Amended Rule.

#### Vote neg for limits and ground – allowing insubstantial increases in prohibitions allows thousands of small AFFs based on individual sectors, types of conduct, and exemptions; many of which don’t link to core neg arguments OR alter the status quo enough to trigger links

## Cartels

### 1NC – Inherency

#### Rigorous multi-factor test now – solves the aff

Cardenas 8/19 [Natalie Cardenas, Vinson and Elkins LLC attorney. “Had Enough Vitamin C? Second Circuit Dismisses Antitrust Claims Against Chinese Vitamin C Manufacturers Yet Again.” 8/19/21. https://www.jdsupra.com/legalnews/had-enough-vitamin-c-second-circuit-2307332/]

On August 10, 2021, the United States Court of Appeals for the Second Circuit (the “Second Circuit”) once again drew on principles of international comity to dismiss antitrust price-fixing claims against Chinese vitamin C manufacturers.1 The court found that a true conflict existed between Chinese law and U.S. law, making it impossible for the China-based defendants to comply with both. This, in combination with other international comity factors favoring dismissal, supported the court’s position that U.S. law could not reach the defendants’ conduct abroad. The Second Circuit’s decision strengthens the international comity defense in cases that meet certain criteria, providing foreign companies with a potential shield against U.S. antitrust liability.

How Did We Get Here?: The Procedural Posture

In 2005, U.S. purchasers of vitamin C filed suit in the Eastern District of New York, alleging that China-based defendants, Hebei Welcome Pharmaceutical Co. Ltd. and North China Pharmaceutical Group Corporation, violated U.S. antitrust laws by conspiring to fix the price of vitamin C exported into the U.S.2 The defendants did not deny the allegations. Instead, they argued that the district court should decline jurisdiction and dismiss the case on international comity grounds because price fixing was required under Chinese law. China’s Ministry of Commerce (the “Ministry”) supported the defendants’ interpretation of the law in an amicus curiae brief submitted to the court. This, notably, was the first time the Chinese government had inserted itself into U.S. court proceedings. The district court rejected the defendants’ claims, finding that Chinese law did not compel the alleged conduct and that international comity did not require dismissal of the case. After the defendants lost at trial, the court entered a $147.8 million judgment against them.

On appeal in 2017, the Second Circuit reversed the district court’s ruling, finding that the lower court abused its discretion in denying the defendants’ motion to dismiss.3 The Second Circuit held that U.S. courts are bound to defer to a foreign government’s interpretation of its own laws when that foreign government submits an official interpretation. Applying this rule, the court found that international comity required the lower court to dismiss.

The Supreme Court overturned the Second Circuit’s ruling in 2018, finding that the circuit court gave too much deference to the Ministry’s submission.4 The Court held that “[a] federal court should accord respectful consideration to a foreign government’s submission, but is not bound to accord conclusive effect to the foreign government’s statements.”5 The Court remanded the case back to the Second Circuit for reconsideration in accordance with its holding.

Second Circuit Decision

On remand, the Second Circuit followed the Supreme Court’s direction and “carefully consider[ed]” the Ministry’s statements supporting the defendants’ position.6 The court proceeded to apply a multi-factor balancing test to determine whether international comity applied to the case, focusing heavily on the first factor — the existence of a “true conflict.”7

The Second Circuit found that, during the period in question, Chinese vitamin C exporters were required to coordinate on price pursuant to price-fixing controls enacted by the Chinese government. In coming to this conclusion, the court relied on materials, including regulatory documents and the Ministry’s own statements. These sources supported the conclusion that a true conflict existed because abiding by Chinese law would have required the defendants to violate U.S. antitrust law.

While the majority of the Second Circuit’s analysis focused on the first factor, the court noted that additional comity factors also weighed in favor of dismissal. These factors include (1) the defendants’ nationality and the site of the anticompetitive conduct, (2) reciprocity expectations if the U.S. had laws similar to those in China, and (3) the possible effect on foreign relations. In regard to this third factor, the court noted the Department of State’s lack of guidance regarding the effects on foreign relations. Absent executive input pointing to the contrary, the court relied on the Ministry’s statements indicating that China saw the proceedings “as threatening its rights as a sovereign to enact and enforce regulations governing Chinese companies conducting business within China’s borders.”8

The Second Circuit acknowledged the U.S. interest in “the uniform enforcement of its antitrust laws,” but again pointed to the fact that neither the U.S. Department of Justice nor the Department of State participated or weighed in on the proceedings.9 To address U.S. concerns, the court listed a number of alternative means for which the U.S. could enforce its interest, including “bilateral diplomatic efforts, multilateral discussions, trade proceedings in the [World Trade Organization], or dispute resolution in another international forum.”10

### 1NC – Antitrust Fails – Laundry List

#### Antitrust fails – history, resources, and political opposition

Jones 20 [Alison Jones, Professor of Law at King's and a solicitor at Freshfields Bruckhaus Deringer LLP. William E. Kovacic, George Mason University Foundation Professor at the George Mason University School of Law. “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” 2020. https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884]

The proponents of change have set out a breathtaking agenda for reform. The various papers and reports are powerfully reasoned and argued but devote relatively little attention to the question of how their proposals can be achieved successfully. Rather many of them seem to be predicated on the assumption that any legislative changes required can be introduced rapidly and that the new, more aspiring, program can be driven home straightforwardly by agencies led by courageous leaders and supported by a larger staff that shares the vision for fundamental change.

The discussion below, and history, seems to indicate, however, that more courage and more people will not necessarily overcome the implementation obstacles that stand in the way of a program that requires the rapid prosecution of a large number of complex cases against well-resourced and powerful companies. Indeed, the criticisms levied at the current system, the proposals for more effective enforcement and reform, and the scale of the action being demanded bear some resemblance to those that led to a more re-invigorated and aggressive antitrust enforcement policy in the 1960s and early 1970s. For example, at that time complaints that the FTC was in decay, was obsessed with trivial cases and failing to address matters of economic importance, anticompetitive conduct, and rising concentration,77 led the FTC to embark on a new, bold, and astoundingly broad enforcement program.78 In an effort to meet criticisms of it as a shambolic and failing institution, the FTC sought to upgrade its processes for policy planning, made concerted efforts to improve its human capital in management and case handling, and sought to improve substantive processes and the quality of its competition and consumer protection analysis.

In the end, FTC’s efforts to improve capability proved insufficient to support the expanded enforcement agenda, partly because the Commission failed to formulate an adequate plan to overcome the full range of implementation obstacles. The FTC seriously overreached because it did not grasp, or devise strategies to deal with, the scale and intricacies of its expanded program of cases and trade regulation rules, the ferocious opposition that big cases with huge remedial stakes would provoke from large defendants seeking to avoid divestitures, compulsory licensing, or other measures striking at the heart of their business, and the resources required to deliver good results. The Commission lacked the capacity to run novel shared monopoly cases that sought the break-up of the country’s eight leading petroleum refiners and four leading breakfast cereal manufacturers79 and simultaneously pursue an abundance of other high stake, difficult matters involving monopolization, distribution practices, and horizontal collaboration. The FTC also overlooked swelling political opposition, stoked by the vigorous lobbying of Congress, that its aggressive litigation program provoked.80

New legislation envisaged by reform advocates could ease the path for current government agencies seeking to reduce excessive levels of industrial concentration by arresting anticompetitive behavior of dominant enterprises (through interim and permanent relief) and by blocking mergers that pose incipient threats to competition. It seems clear, however, that such dramatic legislative proposals are likely to be fiercely contested through the legislative process and so will take time, and be difficult, to enact. Further, even if armed with a more powerful mandate, the DOJ and the FTC will still have to bring what are likely to be challenging cases applying the new laws (see Section F). The adoption, setting up, and bedding in of new legislation or regulatory structures and bodies is therefore unlikely to happen very quickly and is, consequently, unlikely to meet the demands of those seeking urgent and immediate action now.

These difficulties suggest that for the near future, at least, the agencies will have to achieve successful extensions of policy mainly through launching themselves into a number of lengthy, complex investigations and litigation based on the current regime. This means establishing violations under existing judicial interpretations of the antitrust laws and making a convincing case for the imposition of effective remedies, including structural relief.

### 1NC – AT: Noko

#### North Korea wont strike the US

Hutchins 17 Aaron Hutchins is a multiple award-attending journalist who writes about business, politics and public policy., 8-29-2017, "What would nuclear war with North Korea look like?," Macleans.ca, <https://www.macleans.ca/politics/worldpolitics/what-would-nuclear-war-with-north-korea-look-like/>)

For starters, it is highly unlikely Kim would launch an unprovoked nuke straight for Washington D.C. Experts suggest the North Koreans are more likely to use nuclear weapons to try and stop a U.S. invasion—which is exactly why they are putting so much work into developing their arsenal. America is equally trying to use whatever means it has to convince North Korea to stop its pursuit of nuclear weapons, including Trump saying “all options are on the table.”

What you end up with is two sides showcasing how ready and willing they are to use military action— though neither side really wants it.

“It’s really about political coercion, that the other side is not going to get their way so let’s move into the next phase of this,” says Rodger Baker, vice president of strategic analysis at the U.S. geopolitical intelligence firm Stratfor. “These build-ups lend themselves to small shows of action by each side. At this moment, the environment is such that those can get out of control rather quickly.

### 1NC – D

#### No REM shortages---stockpiles, new deposits, and recycling.

Lovins 17, Cofounder and Chairman Emeritus of Rocky Mountain Institute, energy advisor to major firms and governments in 70+ countries for 45+ years, has written 31 books and more than 600 papers, advised major firms and governments worldwide, and received 12 honorary doctorates and many international awards. (Amory, 5-23-2017, "Clean energy and rare earths: Why not to worry", *Bulletin of the Atomic Scientists*, https://thebulletin.org/2017/05/clean-energy-and-rare-earths-why-not-to-worry/)

Rare earths’ uses are highly specialized but diverse. These elements are used in mobile phones, superstrong magnets and hence advanced motors and generators, some oil-refinery catalysts, certain lasers and fluorescent-lamp or flat-screen phosphors, some batteries and superconductors, and other technologies important to modern life. Some rare earths are particularly useful in energy applications. Around 2010, some articles and commentators warned that shortages of rare earths, or China’s near-monopoly on them, could choke off the West’s shift to renewable energy and other clean technologies. This was never true—but the myth persists.

Bubble and burst. Rare earths concerned only specialists until about 2009–10. In the mid-1990s, China had consolidated its control over most of the global rare-earth market, and the last US mine and mill, once the world’s dominant producer, closed in 2002 because it was unprofitable. China began imposing export quotas in 2006, and limited exports to Japan (a major user of rare earths for high-tech miniature motors) during a diplomatic spat in 2009–10, so global prices and anxieties soared. US government agencies published urgent reports about the rare-earth crisis and its threat to national security. Could China’s control of these crucial elements—roughly 97 percent at the time—block Washington’s ability to produce Tomahawk missiles, F-35 jets, and night-vision goggles, as some military writers warned, never mind electric vehicles and wind-power turbines?

As a technologist who had advised major mining companies, written two books on metal mining and a 445-page text on efficient motor systems, done rare-earth physics experiments at MIT Lincoln Laboratory, and consulted for MIT’s Francis Bitter Magnet Laboratory, I knew enough to be unconvinced by rare-earth alarm bells. It all felt like a commodity bubble, based more on a shortage of understanding—of rare earths, economic geology, and resource efficiency and substitution—than on a shortage of rare earths.

Sure enough, the debate was heavy on the supply of rare earths but light and often misinformed on the demand side. The few observers who focused more on demand suspected that rare earths’ price spike wouldn’t last long, whether or not it reflected mining-stock hype. I called the coming crash, to general ridicule, in 2010. Rare-earth prices soared through spring 2011—when a rare-earth bonanza was fondly predicted for Helmand Province in Afghanistan—but then plummeted.

US supplier Molycorp reopened its California rare-earth mine in 2012, but went broke in 2015 when low world prices wouldn’t support its high costs. By 2015, MIT Technology Review asked, “What Happened to the Rare-Earths Crisis?” It misleadingly called rare earths “crucial to the permanent magnets used in wind turbines and motors in hybrid or electric cars,” and concluded that worries about them had “seemingly dissipated without much fanfare” as “demand fell more than expected,” but never connected the dots by asking why demand did that. By 2016–17, the market was in the doldrums, with China planning to limit annual production to 140,000 metric tons beginning in 2020 to try to raise prices again. An investor in the rare-earth industry in 2007 would have lost 81 percent of her portfolio value after a classic decade-long boom-and-bust wild ride (see the chart at the top of this article from buyupside.com).

This is not how a durably scarce and valuable commodity behaves. What happened? Just what you’d expect of a thin market influenced by ignorance but ultimately tamed by reality. When prices soared, stockpiles rose, idle mines reopened, explorers sought and found new deposits, and recycling increased (for example, cerium in glass polishing). Most important, as customers from General Electric to Toyota to Ford sought to cut costs and boost performance, the costlier materials were used more frugally and often replaced with cheaper, better solutions—all as I’d predicted in 2010. Prices fell accordingly.

#### No energy wars.

Meierding 20, assistant professor of national security affairs at the Naval Postgraduate School in Monterey, California. (Emily, 8-2-2020, "The Exaggerated Threat of Oil Wars", *Lawfare*, https://www.lawfareblog.com/exaggerated-threat-oil-wars)

Happily, the historical record indicates that China and its neighbors are unlikely to escalate their energy sparring. Contrary to overheated rhetoric, countries do not actually “take the oil,” to use President Trump’s controversial and inaccurate phrase. Instead, my recent research demonstrates that countries avoid fighting for oil resources. No Blood for Oil Between 1912 and 2010, countries fought 180 times over territories that contained—or were believed to contain—oil or natural gas resources. These conflicts ranged from brief, nonfatal border violations, like Turkish jets entering Greek airspace, to the two world wars. Many of these clashes—including World War II, Iraq’s invasion of Kuwait (1990), the U.S. invasion of Iraq (2003), the Iran-Iraq War (1980-1988), the Falklands War (1982), and the Chaco War between Bolivia and Paraguay (1932-1935)—have been described as classic oil wars: that is, severe international conflicts in which countries fight to obtain petroleum resources. However, a closer look at these conflicts reveals that none merits the classic “oil war” label. Although countries did fight over oil-endowed territories, they usually fought for other reasons, including aspirations to regional hegemony, domestic politics, national pride, or contested territories’ other strategic, economic, or symbolic assets. Oil was an uncommon trigger for international confrontations and never caused major conflicts. On approximately 20 occasions, over almost a century, countries engaged in minor conflicts to obtain oil resources. However, these “oil spats” were brief, mild, mostly nonfatal, and generally involved countries whose hostility predated their resource competition. Greece and Turkey have prosecuted oil spats. So have China and Vietnam, Guyana and Venezuela, and a dozen other pairs of countries. These confrontations inspired aggressive rhetoric while they were underway, but none of them ever escalated into a larger armed conflict.

## Indigenous Regimes

### 1NC – D

#### Litany of reasons SGDs fail – poor climate protections, lack of G20 leadership and commitment, budget commitment failure

Bertelsmann-Stiftung 19

“Long in words but short on action: UN sustainability goals are threatened to fail,” *Bertelsmann-Stiftung*, 6/19/19. https://www.bertelsmann-stiftung.de/en/topics/latest-news/2019/june/long-in-words-but-short-on-action-un-sustainability-goals-are-threatened-to-fail

What began as a historic summit could end up as mere lip service. In 2015, 193 states agreed to implement the 17 UN Sustainable Development Goals by 2030. The fight against poverty and hunger is just as important as the commitment to more climate protection or better educational opportunities. This year, the heads of state and government want to meet for the first time for an interim review in New York. The results should be sobering: The latest edition of the SDG Report\* shows that no country is currently on track to meet all targets by 2030.

The industrialized countries play an ambivalent role in their implementation. On the one hand, they come closest to fulfilling the goals. On the other hand, they hinder global implementation by incurring environmental and economic costs for third countries due to high living standards and consumer preferences. These are the findings of the current Sustainable Development Report, based upon which we and the Sustainable Development Solutions Network (SDSN) have been analyzing the implementation of the UN goals since 2015.

[Image omitted]

Need for catching up in the protection of climate and environment and in sustainable consumption

Sweden, Denmark and Finland have achieved the highest rankings in the country comparison with around 83 points. In other words, these countries have already met three quarters of the requirements of the UN goals. Overall, the authors see the greatest need for catching up in the indicators relating to climate protection and sustainable consumption.

On the whole, all OECD countries scored the worst here. Another weak point is agriculture, which accounts for a quarter of the world's greenhouse gas emissions. On top of this is soil pollution: More than two-thirds (78 percent) of all countries surveyed are in the red for nitrate pollution caused by fertilizers and pesticides, and have thus scored poorly. The authors have criticized the disparity between malnutrition and an overproduction of food: One third of food worldwide ends up in garbage cans or is disposed of unused, even though more than 800 million people are malnourished, according to the authors.

Poor role models: The richest states do not do enough

On a structural level, the authors have above all criticized G20 states for being poor role models. Apart from the "No Poverty" and "Quality Education" goals, the G20 countries are responsible for around half of the implementation gaps in achieving the goals, according to the authors. Brazil, China, India, Indonesia and the US account for around two percent of this negative weight alone.

"The G20 countries have a decisive role in making the UN goals a success. This includes financial support, for example through development aid. However, out of the G20 club, only a few countries have given the 0.7 percent of gross domestic product (GDP) as required by the UN for development aid," according to Christian Kroll, co-author of the study.

[Image omitted]

Consumption preferences in G20 states cause costs abroad

Further major grounds for criticism of the G20 is its role as a cost driver: "The living standards and consumer preferences in industrialized countries often incur costs in third countries," said Christian Kroll. Other examples of external costs include intense demand for palm oil in industrialized countries, fueling deforestation in the tropics, or support for tax havens and secret accounts that can also contribute to the misappropriation of public funds or development funds; money that is urgently needed in developing countries.

At the top of the list of cost drivers are small, internationally networked industrialized countries such as Luxembourg, Singapore and Switzerland. In addition, there is a lack of budget commitments for the implementation of the UN goals. Sustainability targets are actually mentioned in the national budget plans of only 18 of the 43 G20 and emerging economies surveyed. Only Bangladesh and India have expressly provided funds to implement the goals.

#### No African instability OR US draw-in.

Fettweis 20, Associate Professor of Political Science at Tulane University. (Christopher J., 6-3-2020, "Delusions of Danger: Geopolitical Fear and Indispensability in U.S. Foreign Policy", A Dangerous World? Threat Perception and U.S. National Security, https://www.cato.org/publications/publications/delusions-danger-geopolitical-fear-indispensability-us-foreign-policy)

Hegemonic stability theory’s flaws go way beyond the absence of simple correlations to support them, however. The theory’s supporters have never been able to explain adequately how precisely 5 percent of the world’s population could force peace on the other 95 percent, unless, of course, the rest of the world was simply not intent on fighting. Most states are quite free to go to war without U.S. involvement but choose not to. The United States can be counted on, especially after Iraq, to steer well clear of most civil wars and ethnic conflicts. It took years, hundreds of thousands of casualties, and the use of chemical weapons to spur even limited interest in the events in Syria, for example; surely internal violence in, say, most of Africa would be unlikely to attract serious attention of the world’s policeman, much less intervention. The continent is, nevertheless, more peaceful today than at any other time in its history, something for which U.S. hegemony cannot take credit.43 Stability exists today in many such places to which U.S. hegemony simply does not extend.

### 1NC – EU Turn

#### EU soft power hinges on winning the global regulatory race of competition law – indigenous antitrust destroys it

Bradford 19 [Anu Bradford, Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School, expert in international trade law. Adam S. Chilton, UChicago Law School, Katerina Linos, University of California, Berkeley, Alex Weaver, Linklaters. “The Global Dominance of European Competition Law Over American Antitrust Law.” 7/2/2019. https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3517&context=faculty\_scholarship]

The EU and the US not only have their regulatory differences, but they also want the rest of the world to follow their respective regulatory models. Both jurisdictions have actively promoted their competition laws as “best practices” abroad, urging developed and developing countries alike to adopt domestic competition laws and build institutions to enforce them (Kovacic 2015; Tappan and Byers 2013; Kovacic 2008; Fox 1997). They promote their models through a specialized network of competition regulators—the International Competition Network (ICN)—and also more general bodies—notably the Organization for Economic Cooperation and Development (OECD) and the United Nations Conference on Trade and Development (UNCTAD) (Tritell and Kraus 2018). They also employ bilateral tools in their promotion effort—including offering technical assistance to emerging competition law jurisdictions (Tritell and Kraus 2018). In its trade agreements, the EU also explicitly conditions access to its markets on the adoption of a competition law, exporting its own law in the process (Bradford and Chilton 2019), while the US relies primarily in its persuasive powers rather than on formal treaties in exporting its laws (Kovacic 2015).

There are multiple motivations for states to seek export their laws abroad. For one, having the rest of the world replicate one’s regulatory framework lowers the costs of entering foreign markets. The regulatory similarity with the EU is expected to lower the entry costs for EU companies to those third markets given that the EU companies already comply with similar standards at home. For the same reason, the US prefers to export its model and hence avoid adjustment costs that its companies may face when confronted with regulatory differences. For another, exporting one’s rules ensures that competition takes place on “optimal,” “efficient,” or “fair” terms across the global markets—as defined by the jurisdiction that successfully exports its laws. Finally, the winner of the regulatory race is able to export its economic philosophy to third countries, which serves as a testament to the appeal of that jurisdiction’s value system. In case of competition law, the countries’ choice of aligning themselves with the EU or the US reflects a more fundamental choice between an ideology that either places greater trust in the governments’ ability to improve outcomes through intervention (EU model) or, alternatively, trust in the markets’ ability to self-correct (US model).

These efforts to globalize competition law appear, at first glance, largely successful: today, over 130 jurisdictions have a domestic competition law, making competition law one of the most widespread forms of economic regulation around the world. But, because the EU and US competition laws differ in key respects, understanding the type of competition law a country has adopted is critical to understanding which country is having greater influence. For example, whereas promoting consumer welfare is the goal of US antitrust law, EU competition law has historically allowed additional goals to enter the analysis, including the protection of small and medium enterprises, employment, regional development, and, most critically, market integration. Moreover, the EU is generally more likely to find that a company is abusing its dominant position in a market and to challenge vertical and conglomerate mergers. In addition, the EU and US competition enforcement institutions differ dramatically: EU law is dominated by administrative actions and US law is dominated by private litigants. And whereas the EU relies on administrative fines, US antitrust law is also backed by criminal sanctions. While competition law scholars are familiar with the major differences between the EU and US regimes, and with individual examples of countries emulating the EU or the US, the relative influence of each regime has not been studied quantitatively.

By leveraging a novel and highly detailed data coding of competition statutes around the world, this article is the first systematic study the relative influence of EU and US competition regimes in shaping the global regulatory landscape. Using data on dozens of competition law provisions from 126 countries, we trace the evolution of competition regimes for over a half a century of lawmaking, from when the EU joined the US as another major competition regulator in the world in 1957 to 2010. Our analyses reveal that the majority of jurisdictions with competition law regimes have laws that more closely resemble the European Union’s competition laws than the United States’ antitrust laws. Moreover, our detailed data allows us to trace the evolution of EU and US influence over time. This analysis reveals that the European model of competition became more emulated than United States’ model in the 1990s, and the EU’s “sphere of influence” in the domain of competition regulation has continued to increase ever since. Thus, the significant diffusion of competition rules we have witnessed over the past three decades has not only led to a globalization of competition law, but also to a notable “Europeanization” of competition regulation across the world markets.

The Europeanization, rather the Americanization, of global competition law is notable because the US has a considerably longer history of using competition law. Indeed, the United States the Sherman Act long before the EU and its competition laws were conceived. The US has also been an influential leader in competition economics and law alike, spearheading early efforts to adopt competition law regimes in many parts of the world—including in the EU. However, after the EU adopted its own competition law, it eventually eclipsed the US as the leader in providing the template for the global expansion of competition laws, marginalizing the US’s global influence in the decades that followed. In other fields, such as corporate law, thousands of articles have been devoted to debating whether there’s a race to the top or the bottom, what mechanisms drive the race, whether shareholders or managers benefit, and more (e.g., Romano 1987; Roe 2003).11 However, because the literature on the world’s competition regimes is in its infancy, a key contribution of this article is to document that there exists a global regulatory race in the area of competition law, and that the EU is clearly winning it.

We also advance a set of explanations for why the European model has come to predominate. First, a set of “push factors” explains the EU’s ability to effectively externalize its laws. The EU’s competition law dominance can be partially traced to the EU’s conscious efforts to expand its regulations through a myriad of trade, association, and other political agreements. The EU has required many countries seeking greater market access or closer political association to adopt competition laws. In addition, as Bradford (2012) outlines in “The Brussels Effect,” the EU has the greatest ability to shape foreign jurisdictions’ laws given that the companies often apply the most stringent regulatory standard—typically the EU standard—across their global operations to capture the benefits of uniform production while maintaining compliance worldwide. Second, the EU competition law model also spreads due to strong “pull factors.” In many countries, domestic politics are more conducive to EU-style competition laws, which accommodate more diverse policy goals and defer less to markets and more to governments’ ability to correct market failures. Another major pull factor is the EU’s tendency to promulgate more precise and detailed rules, making them easier to copy in the absence of technical expertise in the adopting country.

Our findings have several implications. First, our results offer evidence of the EU’s outsized influence in regulating global markets. This narrative stands in contrast to many critics who have declared the end of the EU’s influence and ability to shape outcomes globally as its relative economic and political power wanes. Second, our results suggest that, although the law and economics movement may have had a large influence on the development of America’s antitrust law and policy, it may have had a more modest influence on the development of competition policy in the rest of the world (Bradford et al. 2020). Third, and more generally, our analysis illustrates the ability of a single jurisdiction to attract countries with starkly different characteristics into its orbit, vesting it with a sizable regulatory influence that spans economic, linguistic, and political boundaries. Out of this dynamic, a new form of globalization of norms emerges—globalization emerging as a result of EU’s unilateralism as opposed to multilateralism. Finally, beyond illuminating the regulatory influence in the competition law context, our results speak more broadly to the literature on regulatory competition, diffusion of norms, and legal transplants. Competition between the European and US regulatory schemes has been prominent in many areas, ranging from privacy (Schwartz 2013; Schwartz and Peifer 2017), to chemicals (Scott 2009), to finance (Gadinis 2010), to discrimination law (Linos 2010), to name but a few. Documenting the specific pathways through which the EU has succeeded in externalizing its models thus contributes to a broad range of fields and advances the diffusion literature, which to date has primarily focused on countries receiving foreign models and not on the entities promoting them.

# 2NC

### T

#### Nationalizing law doesn’t ‘expand the scope’

Samuel 12 [Tianja Samuel, St. John’s Bankruptcy Research Library J.D. Candidate, now Greenberg Traurig Associate Lawyer. “The Evolution of the Settlement Payment Defense?” 2012. https://www.stjohns.edu/sites/default/files/uploads/bank-research2012-no-22.pdf]

Ultimately, the Second Circuit did not expand the scope of the settlement payment defense in In re Enron Creditors Recovery Corp. It merely placed its stamp of approval on conclusions that were already made by other circuit courts. The idea that Enron is an expansion of the settlement payment defense is merely a mirage that becomes clear once you delve into the history of the defense.

### **Adv CP**

#### Their ev is about cobalt

Umbach ‘18 [Frank; 2018; Research director of the European Centre for Energy and Resource Security (EUCERS) at King’s College, London; adjunct senior fellow at the S. Rajaratnam School of International Studies (RSIS) at the Nanyan Technological University (NTU) in Singapore, senior associate at the Centre for European Security Strategies (CESS GmbH), Munich, executive advisor of Proventis Partners GmbH, Munich, and a visiting professor at the College of Europe in Natolin/Warsaw (Poland); "Energy Security in a Digitalised World and its Geostrategic Implications," <https://www.kas.de/documents/265079/265128/Energy+Security+in+a+Digitalised+World+and+its+Geostrategic+Implications+Final.pdf/07691140-d019-4f4c-5363-795d9aeea361?version=1.0&t=1541645390708>]

The worldwide electrification of the transport and other industry sectors, the development of a new generation of batteries for electricity storage as well as the digitalization of the industries, including the spread of robotics and artificial intelligence systems in the industry (‘industry 4.0’) will further boost the worldwide demand for CRMs such as lithium, cobalt and others. As a result, it might create new and unprecedented challenges, including bottlenecks and supply shortages, for the global supply chains of the CRMs on each stage ranging from mining to processing, refining and manufacturing.

The worldwide electrification of the transport and other industry sectors, the development of a new generation of batteries for electricity storage as well as the digitalization of the industries, including the spread of robotics and artificial intelligence systems in the industry (‘industry 4.0’) will further boost the worldwide demand for CRMs such as lithium, cobalt and others. As a result, it might create new and unprecedented challenges, including bottlenecks and supply shortages, for the global supply chains of the CRMs on each stage ranging from mining to processing, refining and manufacturing.

The production of CRMs is geopolitically - compared with the concentration of conventional oil and gas resources - more challenging and problematic as currently 50% of CRMs are located in fragile states or politically unstable regions. Moreover, security of supply risks are not just constrained to primary natural resources and CRMs but also to the import of semimanufactured and refined goods as well as finished products. Manipulated prices, restricted supplies and attempts at cartelization of CRM markets with wide-ranging negative economic consequences are not restricted just to producing and exporting countries. Powerful states and private companies have also been responsible for non-transparent pricing mechanisms for many precious CRMs. Global supply chains have become ever more complex due to the blurring of boundaries between physical and financial markets and weakly governed market platforms. These market imperfections lead to the manipulation of prices and threaten the stability of the future security of supply of CRMs.

### Cartels

#### FS solves both advantages – murray is about considering international concerns

Murray ’17 [Sean; 2017; J.D. from Fordham University, B.A. from Vassar College; Fordham International Law Journal, “With a Little Help from my Friends: How a US Judicial International Comity Balancing Test Can Foster Global Antitrust Redress,” vol. 41]

Chiefly, this balancing test would supplement the FTAIA. The underlying impetus for the FTAIA’s enactment – responding to international criticism of expansive US extraterritorial jurisdiction and to calls for recognizing foreign sovereignty where the basis for US prescriptive jurisdiction is weak – functions as this balancing test’s modus operandi. While the difficulty in interpreting “direct” has instigated its introduction, the balancing test does not attempt to shed any more light on the FTAIA’s contemplation of “direct.” Instead, it provides an alternative framework to properly apply the FTAIA where the statute’s language makes it impossible to do so.

As was the balancing test in Timberlane, a balancing test here may also be criticized as leaving too much discretion over political inquiries (i.e., foreign policy considerations) to the judiciary rather than to the executive and legislative branches, where such decisions may rightly belong.200 Professor William Dodge, while asserting that US courts should engage in judicial unilateralism rather than international comity considerations, points out that the judiciary plays an important complementary role to a country’s political branches by encouraging dialogue and negotiation between sovereigns.201 Though Congress and antitrust agencies may be better suited than courts to take account of the interest of other nations, courts are nonetheless faced with the task of weighing those interests when judging a party’s right to redress in private antitrust litigation.202

Footnote 201:

201. Dodge, supra note 2, at 106-07. American courts are also well-versed in taking into account foreign interests through allowing sovereign representatives to articulate official positions in litigation. See, e.g., Empagran, 542 U.S. at 167-68 (relying on non-US government amicus curiae briefs asserting national interests in considering international comity); In re Vitamin C Antitrust Litig., 837 F.3d at 179 (“When, as in this instance, we receive from a foreign government an official statement explicating its own laws and regulations, we are bound to extend that explication the deference long accorded such proffers received from foreign governments.”); BREYER, supra note 7, at 92 (“Since there is no Supreme Court of the World, national courts must act piecemeal, without direct coordination, in seeking interpretations that can dovetail rather than clash with the working of foreign statutes. And so our Court does, and should, listen to foreign voices, to those who understand and can illuminate relevant foreign laws and practices.” (emphasis added)).

“Judicial unilateralism,” as defined by Professor Dodge, implies that courts should only consider whether or not the forum’s legislature intended to regulate the conduct at issue without regard to foreign interests. See Dodge, supra note 2, at 104-05 (“[A] court should apply a statute extraterritorially whenever doing so appears to advance the purposes of the statute and should not worry about resolving conflicts of jurisdiction with other nations.”); see also supra note 16.

End of footnote 201.

The balancing test should be an exercise in both comity and cooperation, an attempt to harmonize counterpoints in the debate over antitrust extraterritoriality. As Professor Fox posits, the question is not “when should we defer to the inconsistent interests of other nations?” but rather “how can the antitrust jurisdictions of the world work together to maximize their shared interest in competitive markets, to the benefit of consumers and robust or potentially robust business?”203 Indeed, this comports with Supreme Court’s current approach to comity analysis of harmonization rather than avoiding conflict among laws.204 Accordingly, the test will have a slightly different focus than the one constructed by the Ninth Circuit in Timberlane, which reflects an outdated period of international antitrust regulation lacking potent modern enforcement tools such as amnesty programs. It will, however, encourage the growth of overall worldwide antitrust enforcement, both public and private, which ultimately contributes to properly functioning international markets.205

The challenge of achieving proper adjudication of an antitrust claim consisting of conduct and injury in two different jurisdictions is that national laws must conform to a market that ignores national borders.206 With this in mind, the goal should be to promote adjudication in the most efficient locale in an effort to maximize world welfare, foster growth of antitrust jurisdictions, and avoid overregulation.207 There are currently over 120 antitrust jurisdictions, many of which are new antitrust jurisdictions or have enacted fresh laws allowing for greater access to private redress, such as Israel (2006), China (2008), the European Union (2014), the United Kingdom (2015), and Hong Kong (2015).208 Letting the laws of these jurisdictions develop and inculcate international standards for antitrust enforcement strengthens the deterrence of anticompetitive behavior and the ability of injured parties to seek recompense.209 Achieving greater international involvement in turn would ostensibly mitigate some of the need behind extraterritorial application of US antitrust law.210

Footnote 209:

209. See, e.g., First, supra note 16, at 732-34 (arguing that international political consensus is integral to effective international antitrust enforcement and that the case-by-case common law process of law development is the optimal path to that consensus in the absence of a single system of or approach to market place regulation); Org. for Econ. Co-operation & Dev., Recommendation of the Council Concerning Effective Action Against Hard Core Cartels 2 (May 1998), http://www.oecd.org/daf/competition/2350130.pdf [https://perma.cc/35HUTEWZ] (last visited Oct. 26, 2017) (“[C]loser co-operation is necessary to deal effectively with anticompetitive practices in one country that affect other countries and harm international trade.”). As noted above, while national recourse for compensating private loss is currently available in a minority of antitrust jurisdictions, it is increasingly acknowledged as a necessary tool for under-resourced national competition authorities. See Pheasant, supra note 11, at 59 (explaining that the European Commission “decided that it would be appropriate to enhance the role of private enforcement to support and supplement public enforcement of the competition rules” given insufficient resources for governmental competition authorities); Edward Cavanagh, Antitrust Remedies Revisited, 84 OR. L. REV. 147, 153-54 (2005) (“Congress created the private right of action to supplement public enforcement because it was aware that the government would not have the necessary resources to uncover, investigate, and prosecute all violations of antitrust laws.”); see also supra note 25.

End of footnote 209.

#### They don’t understand markets – static view

Keating 21 [Raymond J. Keating, chief economist for the Small Business & Entrepreneurship Council and an adjunct professor in the MBA program at the Townsend School of Business at Dowling College. “The Treacherous Turn on Antitrust Regulation of U.S. Tech Companies.” https://sbecouncil.org/2021/02/24/the-treacherous-turn-on-antitrust-regulation-of-u-s-tech-companies/]

Insurmountable Challenges. From the perspectives of economics and market realities, antitrust law and regulation suffer from two challenges that are insurmountable. First, a static picture of the market currently is just that, i.e., static, and therefore, stands ignorant of the realities of market dynamism. Second, if elected officials, antitrust regulators and the courts were to recognize market dynamism, and also somehow guide antitrust enforcement by such dynamism, this would amount to nothing more than wild speculation about the future of existing and future industries. Each case would be dangerously disconnected from economic reality.

#### Enforcement is too slow – investigation, litigation, and appeals

Jones 20 [Alison Jones, Professor of Law at King's and a solicitor at Freshfields Bruckhaus Deringer LLP. William E. Kovacic, George Mason University Foundation Professor at the George Mason University School of Law. “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” 2020. <https://journals.sagepub.com/doi/pdf/10.1177/0003603X20912884>]

In the discussion above, we have been addressing the types of remedies that are imposed at the conclusion of a lawsuit. A problem in highly dynamic markets, however, is that the lag between the initiation of a case and a final order on relief may be so great that market circumstances have changed dramatically or the victim of allegedly improper exclusion may have left the market or otherwise lost its opportunity to expand and contest the position of the incumbent dominant firm. In this context, the antitrust cure arrives far too late to protect competition. The relatively slow pace of antitrust investigations and litigation (with appeals that follow an initial decision) has led some observers to doubt the efficacy of antitrust cases as effective policy-making tools in dynamic commercial sectors.

#### Economy is broadly resilient and fears are overblown

* Institutional intervention and complex safety nets prevent full collapse
* Resilience is broadly true – can withstand a lot, and COVID made it stronger
* WW2 and Korea prove

Ranson 20 [R. David, Research Fellow at the Independent Institute and the President and Director of Research at HCWE Inc. He holds an M.A. and B.Sc. degrees from Queen’s College, Oxford, and an M.B.A. in finance and a Ph.D. in business economics from the University of Chicago. “Resilient US Economy Has Overcome the COVID-19 Recession” https://www.independent.org/news/article.asp?id=13290]

Though the president and first lady weren’t able to dodge the COVID-19 bullet, the U.S. economy, we now know, has adapted remarkably well to the pandemic and social distancing. As a result, the worst of the COVID-19 recession is over.

Fear pushed public and even professional opinion to be bearish about the prospects of economic recovery. On both sides of the aisle, it became commonplace to assume that economic vitality depended largely on financial aid from Washington.

Therein lies a Catch-22 that’s keeping us from paying attention to the economy’s rebound. If markets and the economy recover or perform well, the conventional wisdom attributes this to government “stimulus.” If they stagnate or perform poorly, it’s attributed to Washington’s sloth and stinginess. In short, we’ve been too focused on vulnerability—and the perceived need for artificial stimulation—and not focused enough on resilience.

Real GDP dropped like a stone in the second quarter (April-June) of 2020, at a record annual rate of 31.7%. The great majority of forecasters did not anticipate that we could recover from such a blow anytime soon—even taking into account unprecedented government largesse. Their predictions of sustained weakness are being overtaken by events.

Weeks ago the largest component of gross domestic product, consumer spending, already had bounced back to pre-pandemic levels, recovering twice as fast as employment or industrial production. Within just two months, May and June, retail sales had completed a full round trip. In July and August they rose further.

How well does this good news reflect the economy as a whole? That requires an estimate of GDP itself. With forecasters in broad disagreement, it might seem that we’ll have to wait until third quarter results are in.

Happily, thanks to the Center for Quantitative Economic Research at the Federal Reserve Bank of Atlanta, there’s now a more timely source of information, unavailable in past downturns, and derived from real-time hard data: the bank’s GDPNow estimate. As of Sept. 24 the GDPNow team calculated third-quarter annualized growth of 32%.

This figure exceeds all but three of the 62 forecasts in The Wall Street Journal’s September survey of forecasters, and reflects a huge upward revision from GDPNow’s earliest estimate at the end of July.

Such quarter-to-quarter growth would be twice the record set by the Korean War buildup. And it implies that the economy already had recaptured three-fourths of its second-quarter collapse in a single quarter.

The speed and vigor of the U.S. rebound can be interpreted in two contrasting ways. One is that federal intervention has been much more effective than expected. There will be no shortage of politicians waiting to take credit for that. The other is that, collectively, virtually all of the so-called experts underestimated the economy’s intrinsic resilience.

Back in the days when federal “stimulus” was puny by today’s standards, GDP already showed an ability to bounce back from drastic financial shocks, natural disasters, widespread strikes and global crises. To paraphrase Independent Institute senior fellow Richard Vedder, professor emeritus of economics at Ohio University, perhaps the most impressive example is the economic transition following demobilization at the end of World War II. Millions of military personnel became jobless within months and military spending plummeted. But the economy’s resilience came to the rescue and the predicted sharp rise in overall unemployment never occurred.

It’s not clear whether government “stimulus” funds add to or subtract from the economy’s resilience. Relief to those among the newly unemployed who are too pressed to fend for themselves may actually help them become more resilient. On the flip side, moderate deprivation may be a greater spur to self-reliance, encouraging the unemployed to seek work rather than temporary income from government.

Either way, the resilience of the U.S. economy is overpowering the COVID-19 recession, which soon could be history.

### Indigenous Regimes

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### Politics DA

#### Ev indicates congress – GG – we ainsert blue

Ryu ‘16 [Jae Hyung; Fall 2016; J.D. Candidate (2017), Washington University School of Law, St. Louis, Missouri; Wake Forest Journal of Business and Intellectual Property Law; “Deterring Foreign Component Cartels in the Age of Globalized Supply Chains,” vol. 17, no. 1, https://heinonline.org/hol-cgi-bin/get\_pdf.cgi?handle=hein.journals/wakfinp17&section=6]

Resolving these conflicting ideas will be a difficult task because import commerce encompasses a complex web of transactions and implicates multiple aspects of economic policy-making.166 Therefore, Congress, which has not made major amendments to the Sherman Act or the FTAIA since their enactments,167 should clarify the statutes' scopes. As the above mentioned trade data suggest, the world economy is much more interconnected, and other countries have already begun to flex their antitrust muscles outside their borders in the context of price-fixed components.168 Moreover, because many corporations are multinational and thus subject to the corresponding jurisdictions' competitions laws, competition laws are starting to converge, mostly to resemble those of the United States.169 Congress, through its committees, research commissions, and hearings that will elicit expert testimonies, is in the best position to examine in detail which form of antitrust law would best serve the needs of American consumers and businesses.

In doing so, Congress should consider combining the Sherman Act and the FTAIA to clarify the interaction between the two statutes. 1 7 0 Because the FTAIA modifies the Sherman Act, instead of having a distinct section, the FTAIA's language can simply be added to the Sherman Act to make the Sherman Act more self-contained and easily understandable. In revising the statutes, Congress should define the contours of import commerce to provide courts with clearer guidance. Furthermore, considering that one of the major concerns involving a broad reading of the FTAIA is international comity, 172 it is more appropriate for Congress to consider complex foreign relation concerns than for the judiciary. Congress could update U.S. antitrust law in the face of increasing cross-border antitrust collaborations and other countries' practices of expanding extraterritorial applications of antitrust law. 17 3

#### New SCOTUS action links—anti-court sentiment drives

Quinn 21 [MELISSA QUINN, "Democrats vow to protect abortion rights after Supreme Court decision on Texas law", 9/3/21, https://www.cbsnews.com/news/texas-abortion-law-rights-democrats-supreme-court/]

President Biden and congressional Democrats are vowing to take action to protect a woman's right to an abortion after a divided Supreme Court allowed a Texas law outlawing the procedures after six weeks of pregnancy to remain in effect in a late-night decision Wednesday.

House Speaker Nancy Pelosi pledged Thursday that once the House returns to Washington, D.C., later this month from its recess, it will take up legislation that enshrines the right to an abortion into federal law and prohibits "medically unnecessary restrictions" on abortion services or facilities.

"This ban necessitates codifying Roe v. Wade," Pelosi said in a statement condemning the Supreme Court's decision. The high court established the woman's right to an abortion in its 1973 decision in Roe.

#### He’s driving efforts to compromise within the party

Zanona 10/1 [Melanie Zanona, Lauren Fox, Ryan Nobles, Clare Foran and Daniella Diaz, CNN, "Biden vows 'we're going to get this done' as Democrats attempt to overcome divisions to enact agenda", 10/1/21, 6:35 PM EDT, https://www.cnn.com/2021/10/01/politics/house-vote-infrastructure-democrats/index.html]

President Joe Biden vowed on Friday that Democrats will deliver on their agenda as congressional leaders attempt to resolve divisions between moderates and progressives that have put passage of a sweeping economic package and a separate bipartisan infrastructure bill in jeopardy.

"We're going to get this done," Biden told reporters. Pressed on a timeline, the President said, "It doesn't matter when. It doesn't whether it's in six minutes, six days, or six weeks -- we're going to get it done."

Biden was on Capitol Hill Friday afternoon meeting with members of the House Democratic Caucus as Democratic leaders and White House officials labor to strike a deal on the economic framework that they hope can unlock enough votes for infrastructure.

The comments from the President may relieve some of the deadline pressure on Democrats to swiftly strike a deal and resolve the impasse, but are just as likely an acknowledgment of the reality that a deal is not expected to be reached immediately given the number of sticking points that remain.

Two sources familiar with ongoing talks told CNN that a deal on the so-called framework of the economic package isn't finished or imminent at this current moment.

The price tag

One of the major outstanding issues that Democrats must come to an agreement on is the overarching price tag of their economic package that would expand the social safety net. Progressives have wanted $3.5 trillion, but key moderates have balked at the number and said it will have to be lower.

After days of stalemate between moderates and progressives, however, there now appears to be more of an effort underway to find common ground and compromise over the cost of the economic package.

WHERE THINGS STAND

House Speaker Nancy Pelosi delayed a vote on a trillion-dollar infrastructure bill after progressives rebelled, potentially delaying consideration until Democrats strike an agreement on separate, much larger social safety net and climate legislation.

Sen. Joe Manchin made clear $1.5 trillion was the price tag he was willing to settle on for his party's plan to expand the social safety net. Meanwhile, Sen. Kyrsten Sinema's critics in Arizona are speaking out.

Here's what's in the bipartisan infrastructure bill.

As they left the meeting with Biden, several lawmakers said that the President had informed them that the top-line number where they are likely to find agreement is somewhere between $1.9 trillion and around $2 trillion.

Rep. Henry Cuellar of Texas said that was the range Biden told the group and asked them to find common ground within that number.

Cuellar said he viewed Biden's pitch as a way to show progressives that they are on the same page, but they were going to have to find ways to compromise.

Congressional Progressive Caucus Chairwoman Pramila Jayapal suggested Friday that progressive Democrats may have to have to reduce the number they are asking for.

"We need to get this reconciliation bill," said Jayapal, a Democrat from Washington state. "And you know, it's going be tough. We're going to have to come down in our number, and we're going to have to do that work. So we're going to get to work and see what we can get to."

But Jayapal also said that Biden was "very clear" that the package and the bipartisan infrastructure bill are "tied together."

"We need to get both bills done, and that's what we're going to do," she said.

Rep. Jamie Raskin of Maryland left a meeting with House progressives and said the group is optimistic about the path forward, but he did acknowledge that he and his fellow progressives will have to find ways to trim their $3.5 trillion package in a way that meets most of their goals.

"We understand that there are different proposals for the amounts of money to be spent, and we're just going to have to come up with the right number and maybe not everything can be funded for 10 years," Raskin said.

"Maybe it's going to be a lesser period of time, but at least we'll be able to develop these programs and make a commitment to the American people, then we'll be able to make a judgment after four years or five years of the programs. Are they working? Do they deserve more investment or do they not?"

Biden's visit to Capitol Hill

After the roughly half hour meeting with the President, Democrats described a leader who was in his element and not working to change minds as much as remind members of their shared and unified goals as a caucus.

Biden tried to break down the stalemate and the tensions that have hung over the party for weeks, reminding them that he's not on one side or the other. At one point, he made a reference to his own political ideology, saying, "Who knows what label I get."

To which House Speaker Nancy Pelosi replied: "President," prompting loud laughter from the room.

Biden also talked about how he had redone his office to have paintings hung of Lincoln and FDR -- "a deeply divided country and the biggest economic transformation," said Rep. David Cicilline of Rhode Island, "which is kind of the moment we're in."

However, some members left the meeting with Biden happy to have seen him but still perplexed by next steps.

One Democrat who spoke on the condition of background said they still weren't sure what was happening Friday night but quipped that everyone wanted to know including their family and "my dogs."

"It's unclear what's happening the rest of the day, let alone the rest of the week or month," said Rep. Abigail Spanberger of Virginia.

The high-stakes visit to the Hill by the President comes as some Democrats have been calling for Biden to play a more active role in the process.

Democratic Rep. Steve Cohen of Tennessee said on Friday ahead of the visit, "I think the President should be involved," and said "very few of us have seen the President in nine months he's been President. And I think he should come to a caucus."

#### They’ll get to compromise but need time—Biden’s key to continuing talks on reconciliation to get infrastructure over the finish line

Weisman 10/1 [Jonathan Weisman and Emily Cochrane, "Biden Pulls Back on Infrastructure Bill, Tying It to Social Policy Measure", 10/1/21, 9:17 pm ET, https://www.nytimes.com/2021/10/01/us/politics/biden-democrats-infrastructure.html]

Democratic leaders insisted they had moved closer together and still had plenty of time to resolve their differences over the bigger bill and deliver on the president’s promises.

“While great progress has been made in the negotiations to develop a House, Senate and White House agreement on the Build Back Better Act, more time is needed,” Ms. Pelosi wrote in a letter to her colleagues. “Clearly, the bipartisan infrastructure bill will pass once we have agreement on the reconciliation bill.”

The gap between a $1.5 trillion spending limit demanded by Senator Joe Manchin III, a centrist Democrat, and the policy demands of Democratic leaders and the White House proved too wide to immediately overcome.

To buy negotiating space, the House passed a stopgap measure to extend federal highway programs that expired on Friday, and the Senate planned to pass the measure as early as Saturday.

Continuing talks between the White House and two holdout moderate senators, Kyrsten Sinema of Arizona and Joe Manchin III of West Virginia, centered on getting them to around $2 trillion in spending on climate change and social policies such as universal prekindergarten and paid family leave. But Ms. Sinema left Washington for a medical appointment and fund-raising retreat in Phoenix — complete with a morning donor hike and an evening cocktail hour and dinner — without a resolution.

Mr. Biden told Democrats in the private meeting that in his aides’ talks with the senators, they had discussed spending as much as $2.3 trillion. That is far below the $3.5 trillion the president has proposed. Still, he told the lawmakers that it would make a significant difference in Americans’ lives, accelerating economic growth, creating millions of good-paying jobs and delivering once-in-a-generation benefits to the middle class.

#### Manchin’s on board to make a deal—but­—tensions within the party could ruin it

Leonhardt 10/1 [David Leonhardt, "Democrats, Divided", NYT, 10/1/21, https://www.nytimes.com/2021/10/01/briefing/infrastructure-bill-democrats-divided.html]

These are many of the same priorities that progressives have, even if Manchin’s proposed cost means that the party will need to make hard choices about what to exclude from the bill. But the terms of the negotiations now seem clearer than they have been.

Manchin himself suggested as much. “We need a little bit more time,” he said yesterday, according to Chad Pergram of Fox News. “We’re going to come to an agreement.”

Several political analysts echoed that confidence:

Matt Glassman of Georgetown: “Oddly, now that the progressives have done their flex, I think the prospects for a deal increased a bit.”

Russell Berman, The Atlantic: “These setbacks are not final or fatal, and time is still on their side. The deadlines Democrats missed this week were largely artificial, and House leaders said a vote on the infrastructure bill could still happen as early as Friday.”

Karen Tumulty, Washington Post: “My theory: We are moving toward a deal. … What everyone is waiting for at this point is an announcement by Biden of a deal, and a call from the president for Democrats to rally around it.”

The Democrats have enormous incentives to come to agreement. If they fail, Biden’s domestic agenda is largely sunk, and the party will have forfeited a chance to pass major legislation while controlling the White House, the Senate and House — a combination that does not come along often. Democrats will also have to face voters in next year’s midterms looking divided if not incompetent.

All of that suggests they will find a path to an agreement. But it’s far from assured. The tensions within the party are more serious than they have been in years.

### Trade DA

#### Trade turns and solves the case---foreign competition is better than antitrust

Anu Bradford 19, Henry L. Moses Professor of Law and International Organization at Columbia Law School, LLM from Harvard Law School, Master of Laws from University of Helsinki, JD from Harvard Law School, and Dr. Adam S. Chilton, University of Chicago, Professor of Law and the Walter Mander Research Scholar at the University of Chicago Law School, MA in Political Science from Yale University, JD and PhD in Political Science from Harvard University, “Trade Openness and Antitrust Law”, Journal of Law & Economics, Volume 62, Number 1, 62 J. Law & Econ. 29, February 2019, Lexis

2.1. Trade and Antitrust Law as Substitutes

Many scholars suggest that trade liberalization may make adopting an anti trust regime unnecessary (Bhagwati 1968; Helpman and Krugman 1989; Blackhurst 1991; Neven and Seabright 1997; Melitz and Ottaviano 2008). According to this view, free trade is an effective way to ensure that markets remain competitive because facilitating entry checks market power (Baumol, Panzar, and Willig 1982). For example, when an economy is open to trade, monopolists refrain from abusing their market power because low external barriers ensure that competitors can enter the market and contest any such abusive practices. In this way, trade liberalization renders an anti trust intervention into monopolistic practices superfluous. Exports fueled by trade liberalization should also enhance market competition. New opportunities in export markets ensure that more firms can reach an efficient scale of production, which further spurs competition and reduces the need for an anti trust regime (Bartók and Miroudot 2008).

Relying on trade liberalization to safeguard market competition could have several advantages. First, foreign producers must incur certain fixed costs and variable trade costs to enter a new market that domestic producers do not incur. If foreign firms are able to enter and effectively compete even after incurring those costs, they are presumably more efficient and hence may act as an even more effective discipline on the market than domestic firms (Bartók and Miroudot 2008). Second, choosing free trade over anti trust regulation eliminates the need to rely on government bureaucracies. Many who remain skeptical of governmental intervention favor free trade and thus prefer to have imports discipline [\*33] anticompetitive behavior. This argument may gain all the more force today considering the complexities associated with antitrust regulators from over 130 countries all applying different rules in an effort to regulate the global marketplace. Finally, although trade openness may "act as an effective antitrust policy" (Pomfret 1992, p. 11), an effective antitrust policy does not act as an effective trade policy. For example, if the United States were to impose a 30 percent tariff on foreign producers today, foreign firms would likely not enter no matter how competitive the markets are behind the border. Domestic antitrust laws thus may do little to facilitate market entry in the presence of highly protectionist trade policy.

#### Courts don’t care about the laws – will selectively enforce the aff and vagueness magnifies the link

Newman 19 [John Newman is a University of Miami School of Law professor and a former attorney with the U.S. Department of Justice Antitrust Division, "What Democratic Contenders Are Missing in the Race to Revive Antitrust", 4/1/19, https://www.theatlantic.com/ideas/archive/2019/04/what-2020-democratic-candidates-miss-about-antitrust/586135/]

But the federal courts represent a massive stumbling block for any progressive antitrust movement. Reformers have identified two paths forward; both lead eventually to the court system. The first is relatively moderate: appoint regulators who will actually enforce the laws already on the books. Warren’s plan rests in part on this straightforward idea. The second, more audacious path requires congressional action to amend and strengthen our current laws. Warren’s call for a new ban on technology companies’ buying and selling via their own platforms falls into this category. Klobuchar has also proposed new antitrust legislation that would make it easier to block harmful mergers and acquisitions.

But no matter its content, enforcing a law requires persuading a judge. When it comes to U.S. antitrust laws, federal judges—not Congress, and not regulatory agencies—are the ultimate arbiters. The Department of Justice Antitrust Division, one of our two public enforcement agencies, files all its cases in federal courts. And although the Federal Trade Commission (the other) can decide cases internally, the inevitable appeals eventually end up in court as well.

No matter how strongly worded a law may be, ideologically driven judges can usually find a way around enforcing it. The cyclical history of U.S. antitrust law is proof that judges wield nearly limitless institutional power in this area.

Soon after Congress passed the Sherman Act in 1890, a conservative Supreme Court began to chip away at its effectiveness. Congress reacted in 1914 with the Clayton Act, which sought to ban anticompetitive mergers. In 1936, at the height of the New Deal era, Congress passed the Robinson-Patman Act, which prohibits price discrimination (charging different prices to different buyers for the same product). These laws were actively enforced for decades.

But starting in the late 1970s, conservative judges began to erode the Clayton Act. Today, megamergers among competitors such as Bayer and Monsanto barely raise eyebrows. So-called vertical mergers, which combine suppliers and their customers, are now all but immune from antitrust enforcement—see the DOJ’s failed challenge to AT&T and Time Warner’s recent tie-up.

Under the business-friendly Roberts Court, the Robinson-Patman Act has similarly been eviscerated. By the 2000s, the ideas of the conservative Chicago School had become mainstream in antitrust circles. Robinson-Patman, a law intended to protect small businesses, was an easy target for Chicago School critics narrowly focused on efficiency and low consumer prices. Their attacks found a receptive audience in the federal judiciary. Among insiders, Robinson-Patman is now known as “zombie law.” It remains on the books, but regulators no longer bother trying to enforce it.

If Democrats want to change antitrust law, they will first and foremost need to change the judges who apply it. Yet none of the 2020 contenders championing antitrust reform have even mentioned the possibility of appointing progressive antitrust thinkers to the bench.

Conservatives, on the other hand, have long recognized the centrality of antitrust to broader questions about the apportionment of power in society. In his seminal work, The Antitrust Paradox, Robert Bork called antitrust a “microcosm in which larger movements of our society are reflected.” Battles fought in this arena, Bork wrote, “are likely to affect the outcome of parallel struggles in others.” Strong antitrust enforcement keeps powerful monopolies in check. Toothless antitrust allows the unlimited accumulation of corporate power.

Recognizing the high stakes, the Republican Party has gone to great lengths to appoint conservative antitrust experts to the federal judiciary. Bork was an antitrust professor at Yale Law School before becoming an appellate judge in 1982.\* Frank Easterbrook practiced and taught antitrust before donning the black robe in 1985. Douglas Ginsburg served as the head of the Justice Department’s Antitrust Division before he became a federal judge in 1986. None of the three managed to join the Supreme Court, but not for lack of trying. Reagan nominated both Bork and Ginsburg to serve as justices, though Ginsburg withdrew and Bork was famously rejected after a contentious Senate hearing.

And whom did the GOP select as its very first U.S. Supreme Court nominee during the Trump Administration? None other than Neil Gorsuch, who practiced antitrust law for more than a decade before joining the Tenth Circuit. Even as a judge, Gorsuch continued to teach a law-school course on antitrust until his confirmation to the Supreme Court in 2017.

Once upon a time, progressives demonstrated similar concern about judicial treatment of antitrust laws. Justice Stephen Breyer, for example, served as special assistant to the head of the DOJ Antitrust Division before his judicial appointment by President Jimmy Carter. Earlier still, Justice John Paul Stevens was an antitrust lawyer, scholar, and professor before his appointment to the bench.

Today’s Democratic 2020 hopefuls seem to have forgotten the lessons of history. Their antitrust proposals focus exclusively on appointing the right regulators and amending our current statutes. These are right-minded ideas, but they overlook the central role judges play in our political system.

There is an old saying in the legal community: “Hard cases make bad law.” That may be true, but it is just as often the case that bad judges make bad law. Real antitrust reform will require more than regulatory and legislative tweaks; it will require the right judges.

#### Historically, not a single law has been interpreted faithfully

Crane 21 [Daniel A Crane. Frederick Paul Furth, Sr. Professor of Law, University of Michigan. I am very grateful for many helpful comments from Tom Arthur, Jonathan Baker, Steve Calkins, Dale Collins, Eleanor Fox, Rebecca Haw, Hiba Hafiz, Jack Kirkwood, Bob Lande, Christopher Leslie, Alan Meese, Steve Ross, Danny Sokol, and other participants at the University of Florida Summer Antitrust Workshop. "ANTITRUST ANTITEXTUALISM." https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlr]

In sum, from the courts’ earliest forays into interpreting the Sherman Act up through contemporary antitrust jurisprudence, the courts have manifested a systematic tendency to interpret the substantive antitrust statutes contrary to their texts, legislative histories, and often their spirit.236 Sometimes, as with the rule of reason and labor exemption, the judicial disregard of text and purpose has occurred fairly immediately. In other cases, as with the Robinson-Patman and Celler-Kefauver Acts, an initial period of statutory fidelity has slipped gradually into a period of statutory infidelity. In some cases, as with respect to section 5 of the FTC Act and section 3 of the Clayton Act, the courts continue to proclaim their fidelity after they functionally move to infidelity. In many cases, the courts stop pretending after a while and admit quite candidly that they are taking liberties with the statute.

If this antitrust antitextualism is merely the product of common-law methodology, one would expect to see movement away from the statute’s text in both permissive and restrictive directions, or, to put it more crassly, both in favor of big capital and against it. But the movement has all been in one direction: loosening a congressional check on big capital. Thus, the rule of reason allowed courts to bless large combinations of capital that the courts deemed reasonable; narrowing the labor exemption frustrated labor’s ability to countervail capital’s power; restricting the private right of action for treble damages significantly curtailed the private-litigation check on business; judicial narrowing of the Clayton Act’s exclusive dealing and tying restrictions allowed (mostly big) firms to exploit market power; reading “unfair” out of the FTC Act eliminated section 5 as a check on business morality; eviscerating the Robinson-Patman Act protections for small and independent businesses favored large and powerful businesses; and requiring proof of likely price increases and technical relevant market definition in merger cases immunized many large-scale mergers from legal challenge. Throughout the history of American antitrust law, the courts have shown a systematic tendency to read down the antitrust statutes in favor of big capital.

But the story of antitrust antitextualism is not simply one of conservative/progressive ideological struggle between Congress and the courts. Much of the action away from statutory text and purpose was accomplished by, or with the support of, judges of the political left. Unlike in other fields, Congress has not responded with statutory overrides. And far from buttressing its atextual statutory readings of the antitrust laws through veiled constitutional warnings about congressional overreaching, the Court has repeatedly pulled in the opposite direction, asserting quasi-constitutional reverence for antitrust law.237 Despite ample opportunity to do so, the Court has not removed antitrust law from the reach of congressional reconsideration by constitutionalizing its atextual readings. Antitrust antitextualism does not follow a conventional left/right ideological pattern. Its actual pattern is more subtle.

#### TS ninth circuit- Vitamin C was limited, narrow, and still unresolved – cases will still be challenged

Donovan 8/17 [Molly M. Donovan, Partner at Winston & Strawn LLP. "Chinese Vitamin Defendants Prevail Again, Showing Limits of U.S. Antitrust Law’s Extraterritorial Reach." 8/17/21. https://www.winston.com/en/competition-corner/chinese-vitamin-defendants-prevail-again-showing-limits-of-us-antitrust-laws-extraterritorial-reach.html]

While the defendants in the Vitamin C situation are on the winning side of this latest decision, they had to engage in years of expensive and burdensome litigation to get there, with the help of a very narrow and rarely applicable defense, and yet another appeal to the Supreme Court still remains possible.

It is advisable for companies operating abroad who import products to the U.S., or whose products otherwise may make their way into the U.S., to seek guidance of U.S. and home-based counsel before engaging in conduct that is such an obvious violation of U.S. antitrust laws: price-fixing, market allocation, customer allocation, and/or bid-rigging. With appropriate guidance, it may be possible for companies positioned like those in the Vitamin C case to avoid years of litigation trauma and expense by proactively addressing these and similar issues on the front end.

#### The aff is selectively enforced

Murray 19 [Allison Murray, Loyola Law, Judicial Law Clerk for U.S. Bankruptcy Courts. Edited by Loyola Law Professor David Kesselman and the ILR team of editors and staff. “Given Today’s New Wave of Protectionism, is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade’s Coffin?” 2/28/2019. https://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1785&context=ilr]

Although the U.S. appears to be quick to make these allegations, it is not immune from being on the receiving end of similar charges.161 The U.S. has also attempted to preserve its own “economically important industries which are threatened by import competition” through protectionism on many occasions, though perhaps with more subtlety than China.162 Some academics observe that the U.S. appears to be “less keen to go after its own monopolies, although [the U.S.] appears to have no problem going after foreign ones.”

#### Lobbying – it guarantees protectionism

Bradford 12 [Anu Bradford, Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School, expert in international trade law, the author of The Brussels Effect: How the European Union Rules the World. “Antitrust Law in Global Markets.” 2012. https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2977&context=faculty\_scholarship]

Antitrust laws rarely plainly favor local firms at the expense of their foreign counterparts. But even facially neutral antitrust laws can lead to discrimination if those unbiased laws are enforced selectively. Antitrust agencies are often vested with substantial discretion. Organized domestic interest groups could exploit that discretion by seeking protection from antitrust enforcement or by urging the domestic authorities to take on cases against their foreign competitors. This could lead to deliberate underenforcement of the anticompetitive conduct of domestic corporations, or to deliberate overenforcement of the anticompetitive conduct of foreign corporations.149

#### Private claims – Increasing prohibitions skyrockets them

LW 21 [Latham & Watkins Antitrust and Competition Practice. "US Senate Bill Would Reshape Antitrust Enforcement and Litigation." 2/18/21. https://www.lw.com/thoughtLeadership/US-Senate-Bill-Would-Reshape-Antitrust-Enforcement-and-Litigation]

CALERA would increase antitrust enforcement and private actions

Widen scope of anticompetitive conduct

In addition to broadening the definition of market power and lowering the standard for prohibited mergers, CALERA would add a new prohibition on “exclusionary conduct that presents an appreciable risk of harming competition.” “Exclusionary conduct” is defined by CALERA as conduct that “materially disadvantages one or more actual or potential competitors,” or “tends to foreclose or limit the ability or incentive of one or more actual or potential competitors to compete.” This prohibition would lead to an increase in claims, and novel allegations of anticompetitive conduct, as litigants would likely try to take advantage of these broad and undefined terms and shape the precedent.

#### Perception – Adverse enforcement is inevitable and will be perceived as protectionist

Dr. Andrew Guzman 11, Professor of Law, Director of the Advanced Law Degree Programs, and Associate Dean for International and Executive Education at Berkeley Law School, University of California, Berkeley, JD Magna Cum Laude from Harvard Law School, PhD in Economics from Harvard University, BSc from the University of Toronto, Cooperation, Comity, and Competition Policy, Ed. Guzman, p. 354-355

IV. COSTS OF NONCOOPERATION

As the above theoretical explanation shows, attempts to regulate international trade creates costs and benefits that are not fully accounted for in the domestic policy decisions of states. Transaction costs and bias stand out as two prominent costs of the de facto regime.

Since regulatory bodies exist in many different countries, and since some of those bodies apply their laws extraterritorially, firms that conduct business on a global scale must contend with increased and duplicative costs. In order to operate in accord with regulatory policies in many different countries, firms must retain legal counsel in multiple states in order to satisfy jurisdictional differences in reporting and disclosure requirements. This is slow, burdensome, and expensive for the fi rms, while it also increases costs carried by the various regulatory agencies. Because regulatory bodies in different states all act independently, from the perspective of global efficiency, the regulatory bodies are expending duplicative energy in reviewing the same activities.

In the context of international trade under the de facto international competition policy regime, firms operating in multiple states are subject to multiple regulatory reviews. As already noted, this overregulation is costly in terms of duplicative work on the part of both fi rms and regulatory states, but it also introduces yet another cost of noncooperation in the form of bias. A regulatory agency has the temptation to be more lenient when reviewing activities by local firms and potentially more restrictive when reviewing activities by foreign firms.

From the point of view of the firms, even if regulatory activities by states are unbiased, it might appear that unfavorable rulings stem from bias. Perception, in this case, is important because the way firms perceive regulatory actions or regulatory policies by states has implications for the way firms conduct their business activities. Furthermore, states might perceive the regulatory activities of other states on their firms as biased or even as punitive regulatory activity, which potentially drives a wedge between any possibility of interstate regulatory cooperation. Bias is more apparent in the choice of which cases to pursue, rather than in statutory language, but nevertheless, the presence of export cartel exemptions is the most ready example of substantial evidence that points to state bias in regulatory activity. Again, as mentioned above, the United States reveals its bias in exemptions for firms operating in the international markets in aviation, energy, ocean shipping, and communications.

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### Trade DA

#### Trade is stable and growing---governments are avoiding protectionism, the key threat

Dr. Daniel **Gros 21**, Director of the Centre for European Policy Studies, Ph.D. in Economics from the University of Chicago, Fulbright Scholar, Former Visiting Professor at the University of California at Berkeley, BA in Economics from the University of Rome, Former Economic Advisor to the Directorate General II of the European Commission, “The Great Lockdown and Global Trade”, Project Syndicate, 6/8/2021, <https://www.project-syndicate.org/commentary/how-globalization-and-trade-survived-the-pandemic-by-daniel-gros-2021-06?barrier=accesspay>

Global supply chains have **weathered** the pandemic **intact**, and the deep recession has **not** unleashed a wave of protectionism. That is **good for global trade**, and probably for foreign direct investment, too, and suggests that **predictions** of globalization’s **demise** were **premature**.

Trade is **recovering robustly** alongside the upticks in growth in major economies. This good news deserves more attention. Less than 12 months ago, many observers were **predict**ing an **end to globalization**. The pandemic disrupted supply chains, and governments, suddenly confronted with the resulting vulnerabilities and dependencies, encouraged “reshoring” production of critical goods.

Today, the outlook is **much brighter**. There is **little indication** of a **sustained** movement away from global supply chains. And many governments have realized that trade is **more** of an **opportunity** than a **threat** to national sovereignty. As a result, the **W**orld **T**rade **O**rganization expects the volume of global trade to **increase** by 8% in 2021, **more than offsetting** last year’s 5.3% decline.

True, foreign direct investment (FDI) still lags, having plummeted 42% in 2020. Europe actually recorded a negative flow. But the pandemic’s differential impact on trade and investment is not surprising. Transporting goods around the world requires little physical human interaction. Giant cranes, often remotely operated, load and unload containers, and supertankers pump oil ashore.

In contrast, acquiring a firm or establishing a new production facility in another country requires travel to meet potential partners, and in many cases close contact with foreign governments to obtain permits. Pandemic-induced border closures and travel restrictions obviously made this much more difficult.

But FDI is notoriously volatile, often plunging one year and recovering the next, so it could still bounce back strongly in 2021. In fact, the OECD has already detected signs of a recovery.

Moreover, global supply chains have proved to be less vulnerable than many had feared. The notion of a “supply chain” conjures up an image of a fragile arrangement, with each enterprise depending on inputs from the adjacent link. And a chain is only as strong as its weakest link.

The global trading system’s vulnerability to choke points seemed to be driven home in March, when a single large freighter blocked the Suez Canal, after sandstorms restricted visibility and transformed the huge stack of containers on board into sails. But this incident, which was resolved relatively quickly, is not representative of how global trade works.

It is more accurate to talk of interrelated networks of suppliers than supply chains. Most enterprises have more than one supplier of key components, and multinational companies with operations in many countries source supplies from many other countries. The pandemic has reinforced multi-sourcing, rather than triggering a retrenchment from the division of labor.

Yes, governments almost everywhere have interfered with trade during the pandemic to address acute shortages of key products, such as personal protective equipment in 2020 and COVID-19 vaccines during the first few months of 2021. But both of these products, while vital in the context of the pandemic, play only a marginal role in the wider economy. The rich countries could vaccinate the entire world for less than a dollar a week from each citizen.

The **main danger** is that governments, fearing similar dependence on foreign suppliers for many other key products, introduce **protectionist measures**. Prompted by the EU’s concern that such dependence could leave the bloc **vulnerable** to **political pressures** from hostile governments, the European Commission has recently completed a fascinating study of strategic dependencies and capacities.

The Commission examined more than 5,000 products and found only 137 in the most sensitive sectors, accounting for about 6% of all EU imports by value, for which the EU is highly dependent on imports from outside the bloc. For 34 of these products, constituting only 0.6% of all imports, the EU could be more vulnerable, owing to the low potential for further import diversification or substitution through EU production.

In other words, for the overwhelming majority of products, large economies like the EU have a sufficiently diversified supply base to make them independent of any single supplier. And broad protectionist measures like tariffs or quotas would have little impact on the few goods for which only a single source may exist.

Moreover, most of the 137 sensitive products that the Commission identified are raw materials and related commodities that are easy to store. It would thus be relatively straightforward for the EU to build up strategic stockpiles of those goods.

In the end, governments do **not** appear to have resorted to protectionism in response to the COVID-19 crisis. Although precise data on new trade barriers erected last year are not yet available, the strong expansion of trade in 2021 implies that the use of such measures must have been **limited**.