# Wiki Doc 4

# 1NC 4

### 1NC – Trade DA

#### **Antitrust expansion opens the floodgates of protectionism – 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]

Although a system of truly free world trade has never been perfected, past world leaders have eliminated most of the protectionist trade mechanisms that once ran rampant in the international economy. They did so by implementing multilateral and bilateral trade agreements. These webs of agreements have bolstered decades of support for free trade, or at least some version of it. By and large, tariff policies and other forms of protectionism were either eliminated or dramatically reduced. Now, as we have seen in the media, when a government imposes a tariff, it becomes a rather extreme political statement which sends a shockwave of significant global consequences.

Protectionism did not end when the age of overbearing tariff policies did, despite then-leaders’ best efforts to vilify it. Rather, the end of the tariff era forced nations to achieve protectionist goals through more subtle trade vehicles, like antitrust law.3 So, the recent resurgence of protectionist rhetoric should mean that these subtle trade vehicles, including antitrust law, will be relied on more heavily. It is a fear of many that antitrust law may become overused and inequitably applied to achieve and combat protectionist aims.

Notwithstanding the recent uptick in tariff threats, it is unlikely that all Western leaders will revamp or terminate the trade agreements set forth by their predecessors and bring back the kinds of tariff policies that once existed in their place. Although in the United States (“U.S.”), President Trump recently imposed tariffs on steel imports, it appears that his intent is to limit this behavior to a specific industry rather than institute a widespread policy favoring the use of tariffs generally.4 To remedy bad behavior in a specialized set of industries is not to instigate a global paradigm shift. This purpose is underscored by his use of the national security exemption, which is largely interpreted as being used for individual situations rather than general policy schemes.5 Many still hope that his course of action will be retracted and is merely a strong negotiation tactic. However, there is no doubt that Trump is far more comfortable than past leaders with subverting the status quo on trade relations.

Trump is not the only high-profile leader flirting with staunch protectionism. Western leaders in the E.U. appear to be growing more comfortable than their predecessors with considering similar policies. However, Western lawmakers themselves do not seem as persuaded by the statements of their leadership. The general sentiment among international policymakers is that there has been too much political wherewithal spent on loosening international trade barriers to take actions that could counteract that progress.6 Presidential actions taken because of dissatisfaction with current global trade relations aside, a complete overhaul of trade agreements may be too daunting and difficult a task, especially absent ample political support in legislative bodies.

Given the anticipated continuation of cooperative trade agreements and the proliferation of protectionist rhetoric as the new norm of public opinion, leaders will be forced to rely on existing avenues to meet protectionist aims. Again, we find ourselves relying squarely on antitrust law, the more subtle and widely accepted mechanism of restricting trade, to address perceived inequities. In the words of the World Trade Organization (“WTO”), “once formal trade barriers come down, other issues become more important.”7 Among the important issues lies antitrust law. Antitrust and competition laws can form a subtle trade barrier resulting in the imposition of tariff-like measures.

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 – 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 investigate and prohibit anticompetitive cross-border mergers and acquisitions.

#### 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 – Agency Resources DA

#### FTC is focused on healthcare now but its under the radar

Levine 8-25-2021, master’s degree from the Columbia University Graduate School of Journalism and a bachelor of arts in English from the University of Pennsylvania. She is also an alumna of the Fellowships at Auschwitz for the Study of Professional Ethics, a program in Germany and Poland that explores the ethics of reporting on politics, war and genocide (Alexandra, “How Biden's tech trustbuster could change health care,” *Politico*, <https://www.politico.com/newsletters/future-pulse/2021/08/25/how-bidens-tech-trustbuster-could-change-health-care-797333>)

Lina Khan’s Federal Trade Commission has its eyes on health care. The agency known for efforts to rein in Big Tech companies like Facebook and Amazon is also enmeshed in high-stakes health care and health tech battles that extend well beyond Silicon Valley. Case in point: The FTC trial that kicked off yesterday examining monopoly concerns in the market for cancer screening technology. (More on that below.) That closely watched antitrust case — involving the giant Illumina and startup Grail — predates Khan’s confirmation as FTC chair. But it underscores how health issues are looming over the agenda, particularly heading into the pandemic's second year. The way health care companies and consumer health apps handle sensitive data “is an area that I'm sure [Khan’s] very, very interested in,” said Jessica Rich, former director of the FTC’s consumer protection bureau, adding that the Biden administration's FTC will also be closely scrutinizing hospital mergers. “I expect her and the commission to take a very bold approach to what constitutes harm for both,” Rich said. “I expect her to pay close attention to algorithms and potential discrimination in health care, both denials and pricing issues which the FTC's laws can address.” The FTC’s jurisdiction touches nearly the entire health economy. While its competition bureau looks at health care mergers like the Illumina-Grail deal, its consumer protection side is focused on health privacy and data security issues, as well as fighting bogus medical claims on everything from weight loss to Covid cures. When Congress passed the Covid-19 Consumer Protection Act last year, the agency was granted new authority to police Covid scams. Although Khan hasn't spoken publicly about her health care agenda, she's likely to take issue with health apps and companies whose business models maximize, incentivize and monetize data collection. Of particular concern is how firms disclose what they’re doing with consumers’ data — and whether it may still be deceptive or unfair.

#### 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 – Adv CP

Advantage CP:

The United States federal government should:

* deepen its cooperation and integration with Five Eyes,
* create a CFIUS Article III court fully funded and empowered to investigate and prohibit foreign transaction,
* increase its criminal prosecution of drug cartels, including shift its counter-narcotics strategy away from eradication to prioritize interdiction, alternative development, and focused deterrence and expand international cooperation against illicit financial flows and transnational crime.
* create a democratic alliance for norms governing emerging technologies.

#### It solves tech leadership.

Jain **’20** [Ash; 2020; Senior fellow with the Scowcroft Center for Strategy and Security; Strategic Studies Quarterly; “Present at the Re-Creation: A Global Strategy for Revitalizing, Adapting, and Defending a Rules-Based International System,” <https://www.atlanticcouncil.org/wp-content/uploads/2019/10/Present-at-the-Recreation.pdf>]

The United States and its democratic allies need to work with other major powers to develop a framework for harnessing emerging technology in a way that maximizes its upside potential, while mitigating against its downside risks, and also contributing to the maintenance of global stability. The existing international order contains a wide range of agreements for harnessing the technologies of the twentieth century, but they need to be updated for the twenty-first century. The world needs an entire new set of arms-control, nonproliferation, export-control, and other agreements to exploit new technology while mitigating downside risk. These agreements should seek to maintain global strategic stability among the major powers, and prevent the proliferation of dangerous weapons systems to hostile and revisionist states.

A new technology committee established under the auspices of a revamped D10 could serve as a forum for the democratic core to converge on common standards for the protection of privacy, individual rights, and liberal values amid rapid technological change. It is also imperative that the United States and its democratic allies maintain their innovation edge. This means cultivating their traditional advantages in this area, including in education, research and development, openness to immigration, and strong capital markets. It could discuss the creation of formal norms and standards to guide the ethical uses of technology, from AI to genetic engineering to “killer robots.” This D10 Technology Norms Committee could also serve as a platform to coordinate on strategies to ensure that the United States and its democratic allies maintain their innovation edge in areas of critically sensitive technology, and forge agreements to address threats posed by adversaries. It also means properly understanding the threat posed by Chinese technology. China’s 5G investments in Europe, for example, are not about business, but about Chinese Communist Party (CCP) control. The democratic core should counter China’s industrial policies that violate international trading standards, and defend against the national security threat posed by the penetration of Chinese technology into their societies.

#### CFIUS solves.

Gent ’16 [Will; 2016; Executive Editor, Oregon Law Review, J.D. at the University of Oregon; Oregon Law Review, “Tilting at Windmills: National Security, Foreign Investment, and Executive Authority in Light of Ralls Corp. v. CFIUS,” vol. 94]

Globalization has made international markets increasingly interdependent, but it has also made potential security threats more diffuse, proximate, and clandestine. As foreign capital pours into U.S. assets, there are more opportunities than ever for American adversaries to infiltrate the nation’s critical infrastructure and spy on its military capabilities. In this context, CFIUS’s role in identifying national security threats in foreign transactions has taken on a heightened importance. From port terminals in New York City to green energy development in rural Oregon, the federal government must assess international mergers and acquisitions for risk. But, as the Ralls Corp.’s attempted purchase of four wind farms demonstrates, the complexities of international trade can pit the protections of the U.S. Constitution against the executive branch’s national security prerogatives.

The D.C. Circuit’s opinion in Ralls II, however, fails to adequately address this core conflict. By creating minimum due process standards for CFIUS review without reference to specific threats, the Ralls II decision intrudes on presidential authority, yet in a way that makes additional CFIUS transparency improbable. Rather than allow the judiciary to erode executive discretion and reflexively lurch from one decision to the next, Congress should create a special court of national security judges to review foreign transactions. This court would impartially supervise executive national security assessments in a way that affords due process to affected parties. In attempting to balance the fundamental tension between liberty and security, a special CFIUS court is the best way to bring certainty and equilibrium to foreign transactions.

#### Resilience solves.

Lewis ’20 [James Andrew; 8/17/20; senior vice president and director of the Strategic Technologies Program at the Center for Strategic and International Studies; "Dismissing Cyber Catastrophe," https://www.csis.org/analysis/dismissing-cyber-catastrophe]

One major failing of catastrophe scenarios is that they discount the robustness and resilience of modern economies. These economies present multiple targets and configurations; they are harder to damage through cyberattack than they look, given the growing (albeit incomplete) attention to cybersecurity; and experience shows that people compensate for damage and quickly repair or rebuild. This was one of the counterintuitive lessons of the Strategic Bombing Survey. Pre-war planning assumed that civilian morale and production would crumple under aerial bombardment. In fact, the opposite occurred. Resistance hardened and production was restored.1

### 1NC – Politics DA

#### 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 – T Subsets

#### ‘Core antitrust laws’ means ALL three

Phaffenroth 21 [Sonia Kuester Pfaffenroth, Sonia Kuester Pfaffenroth, Partner, Arnold and Porter, focuses her practice on helping clients address complex antitrust issues in the US and globally. She rejoined the firm in 2017 from the Antitrust Division of the US Department of Justice (DOJ) where she served most recently as Deputy Assistant Attorney General for Civil and Criminal Operations. In that role, Ms. Pfaffenroth was responsible for supervising both civil and criminal antitrust enforcement efforts, as well as the Division's work with antitrust and competition law enforcement agencies worldwide. Justin Hedge, Counsel, Arnold and Porter, and Monique N. Boyce, Sr. Associate, Arnold and Porter. “A Comparison Of Proposed Antitrust Legislation In 2021: Federal And New York State.” 7/2/21. https://www.mondaq.com/unitedstates/antitrust-eu-competition-/1086194/a-comparison-of-proposed-antitrust-legislation-in-2021-federal-and-new-york-state]

At the federal level, there are three core antitrust laws: (1) the Sherman Act, in which Section 1 outlaws "every contract, combination, or conspiracy in [unreasonable] restraint of trade," and Section 2 outlaws any "monopolization, attempted monopolization, or conspiracy or combination to monopolize";1 (2) the Federal Trade Commission Act, which prohibits "unfair methods of competition" and "unfair or deceptive acts or practices";2 and (3) Section 7 of the Clayton Act, which prohibits mergers and acquisitions where the effect "may be substantially to lessen competition, or to tend to create a monopoly."3 Criminal violations of the Sherman Act carry a maximum penalty of a $100 million fine for corporations, and a maximum penalty of 10 years in prison and a $1 million fine for individuals. A prevailing plaintiff in a civil suit can recover treble damages and attorneys' fees. But federal law currently does not provide for civil penalties when the government brings an antitrust case, only injunctive relief.

#### The aff only expands the scope of 1 antitrust law.

#### Vote neg for limits and ground --- there are thousands of advocates for individual scope expansion, requiring advocates for combined action forces manageable debates about business activities like M&A and horizontal conduct that allow sufficient neg prep and give us DA links. AND, precision --- voting for untopical affs sets a precedent for further, unpredictable transgressions down the line, err on the side of caution

## Solvency

### 1NC – Plan Flaw

#### The plan does nothing. There is no such thing as “15 § 41” which means the plan changes nothing. This is a voting issue for every stock issue. And here’s evidence to prove their citation is meaningless:

Akron Law School Aug 30, 2021 https://law.uakron.libguides.com/c.php?g=627783&p=5861337

The United States Code is the official code for federal statutes. It is updated annually and a new print edition is published every six years. It can also be found on the web. For information on where to find these codes online, please click here. If the federal statute that you are citing is still in force, Bluebook Rule 12.2.1 states that you should cite to the official code or its supplement if available.

There are generally four elements in a citation to a statute in the United States Code:

The title number

The abbreviation of the code used (here, U.S.C.)

The section symbol (§) followed by a space and the section number containing the statute

The year of the code. (optional if citing to the current code - Bluebook R. 12.3.2 per the 21st edition of the Bluebook)

For example, if you were writing about civil rights in public health and welfare law and wanted to reference a statute discussing civil actions for deprivation of rights, the proper citation would be: 42 U.S.C. § 1983.

In some instances you may need to give the name of the statute within the citation. Those instances are usually limited to if the statute is commonly cited that way or if the information would otherwise aid in identification. For additional information, please see Bluebook Rule 12.3.1.

#### No solvency - courts won’t enforce the plan

Martha J. Dragich, Associate Professor of Law at Missouri-Columbia, 2-1995

44 Am. U.L. Rev. 757

Perhaps the most troublesome manner in which selective publication, summary dispositions, and vacatur weaken the development of the law is their failure to provide guidance for future conduct and for resolving future disputes. That is, even if a relevant decision can be located, and its precedential value ascertained, it may provide insufficient information about the facts of the case, the relevant rules, and the reasoning behind the rules' application. 260 Judges, no less than attorneys, must be able to evaluate prior decisions based upon a sophisticated understanding of what the court actually decided. Failing to provide sufficient guidance for future decisions jeopardizes the courts' ability to decide cases consistently and according to the law. 261 [\*798] Two examples illustrate the practical difficulties judges face in applying summary dispositions and unpublished opinions. In Burgin v. Henderson, 262 a district judge dismissed the complaint, relying on a previous, unreported decision that had been orally affirmed by the Second Circuit. 263 On appeal, the Second Circuit remanded Burgin for a factual hearing. 264 The appellate court stated that the question was still open because its affirmance of the district judge's earlier opinion was of no precedential value. 265 Thus, even though affirmance indicates that the lower court reached the correct result in the earlier case, it is impossible to know whether the lower court's analysis was sound. In future cases the trial judge cannot rely with confidence on the rationale previously employed.

### 1NC – Circumvention

#### 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.

## Adv---MMAC

### Alt Causes---1NC

#### Five Eyes is resilient to any shock.

Evans 18 (Michael, Former Defence Editor of The London Times, 1998 to 2010, and Pentagon Correspondent in Washington 2010-2013. Author of First With the News, a memoir of a frontline reporter, “Five Eyes Wide Shut: The legendary ‘Five Eyes’ sharing intelligence are in trouble. From Trump-Russia to these Australian cabinet papers, in a used cabinet, it’s hard to know who to trust anymore”, February 2, 2018, <https://www.thedailybeast.com/australia-sold-years-of-secret-documents-in-an-old-piece-of-furniture>,

Whether it compromises British techniques or not, the political context surrounding the House Intelligence Committee memo raises serious issues for the Five Eyes organization. The club has experienced its fair share of embarrassing episodes in the last few years, the most devastating of which was the exposure by Edward Snowden of thousands of top secret files copied and removed from the U.S. National Security Agency (NSA) where he had been working as a contractor. The Five Eyes members have clung to each like lovers despite a rapidly changing world in which intelligence-sharing between nations can make the difference between life and death, so grave is the threat from international terrorists and rogue states. Why then is Five Eyes still so exclusively limited to the English-speaking powers? Is there not a case for the club to invite in more members from Europe and from trusted nations in the Middle East? Would the world be a safer place if Five Eyes was now Ten Eyes or Twenty Eyes? The answer is complex. There are already numerous arrangements under which “third-party” countries can benefit from intelligence acquired by the Five Eyes partners. Countries such as France, Norway, The Netherlands, Denmark, Germany, Spain, Italy, Belgium and Sweden have all at some point been allowed into the club as unofficial members when their national security interests are at stake. But only for intelligence relevant to their concerns. Cooperation between the Five Eyes members and other intelligence services has increased markedly since 9/11. European intelligence agencies are also more coordinated than ever, and NATO’s intelligence-gathering set-up has improved. Trust is the absolute gold standard for intelligence sharing. Most people in the intelligence community would say that the more countries you share intelligence with on a regular basis the greater the risk of a leak or a security breach. So, the Five Eyes is likely to remain Five Eyes for that very reason. The arrival of Donald Trump in the White House was met with some trepidation, although never openly or officially. He had railed against the CIA in his election campaign and he openly admired Russian President Vladimir Putin. To the British government’s dismay, he also appeared to back an American media commentator’s accusation that GCHQ had been asked by President Barack Obama to eavesdrop on his suite of rooms at Trump Tower in New York. The allegation was dismissed by GCHQ as “utterly ridiculous”. One of the tenets of the Five Eyes is that intelligence gleaned within the club can never be shared to third parties without the approval of the nation which specifically collected the information. It’s a general rule for most intelligence services. Trump seemed to have broken that rule when he revealed details of an Islamic State terrorist plot when talking to Sergei Lavrov, the Russian foreign minister, during a meeting in the White House in May last year. It was later reported that the intelligence had come from the Israelis, and had not even been passed to U.S. allies. “The Five Eyes members have clung to each like lovers despite a rapidly changing world.” British Prime Minister Theresa May had to intervene with President Trump when secret operational details about the Manchester bombing in May last year were leaked to the U.S. media. The bomber was identified before the Manchester police were ready to publish that information, and pictures appeared of the bomb remains. The police were so angry they temporarily suspended sharing information with U.S. counterparts. The Obama administration was also involved in a breach of the intelligence-sharing rules. In 2012, details of a plot by Nigerian Umar Farouk Abdulmutallab to detonate an explosive device in his underwear on a passenger plane flying from Amsterdam to Detroit were released to the American press. It exposed the involvement of a British intelligence source who played a vital role in foiling the plot. It caused outrage in the British intelligence community. With the latest intelligence spat over the Russia collusion memo, what expectation can there be that the historic Five Eyes arrangement, which lies at the heart of the so-called “special relationship” between the U.S. and U.K., can survive in its current format? The answer lies in the unbreakable bond that exists between the intelligence services of the five countries. Irrespective of who is in government, the operational heads of the agencies themselves work so closely together that they can maintain the flow of intelligence whatever is going on in the political world. The trust between them is built on decades of cooperation and the forging of personal relationships. “I wouldn’t expect this to rock the boat. The Five Eyes agreement is based on day-to-day cooperation which makes it much more important than any of these individual instances [such as the publication of the memo],” Sir David said.

### No China Rise---1NC

#### No China war or rise.

Norrlof ’21 [Carla; March 23; Visiting Professor at the Finnish Institute of International Affairs in Helsinki, Senior Fellow at The Atlantic Council and at Massey College, Associate Professor at the University of Toronto, and Research Associate at The Graduate Institute of Geneva; The Washington Quarterly, “The Ibn Khaldûn Trap and Great Power Competition with China,” vol. 44]

The return of great power rivalry has been the defining feature of the 21st century. Since the beginning of the new millennium, China and Russia have openly defied the United States and upset the stability of the liberal international order. Both China and Russia share physical and material attributes possessed by the United States that are traditionally required for great power status: land mass, a sea portal, a large population, and technology to field and develop a competitive military capability. Most scholars and policymakers agree that China presents the largest challenge to US interests and the US-led liberal international order. Economic and military growth in China has been astounding, surpassing Russian expansion. China’s outward extension is not primarily resource-based as is Russia’s but multidimensional, posing a structural challenge to US military and economic dominance.

Much ink has been spilled over the nature of US-China rivalry and whether the two great powers are destined for war. Structural factors figure prominently when predicting US-China relations. A famous deadly Greek trap describes how the fear of a hegemonic power sparks catastrophic war with a rising power. In the History of the Peloponnesian War, Thucydides writes, “What made war inevitable was the growth of Athenian power and the fear which this caused in Sparta.” 1 Thucydides’ statement has been widely adopted as a metaphor for the dangers associated with great-power transition. Both A.F.K. Organski’s power transition theory and Robert Gilpin’s realism see great-power wars as most likely to occur when a rising challenger is about to surpass a declining hegemonic power. 2 Today, the Thucydides Trap is highly relevant insofar as we have a clear incumbent power, the United States, and according to many measures of great powerhood, a clear rising power—China—with military, manufacturing, and commercial, and corporate power.

However, the analogy mismatches international hierarchy and regime type. In classical times, the incumbent land power, Sparta, was the authoritarian power who feared the rise of the democratic maritime power, Athens.3 This incongruity is not even the biggest problem with the analogy. In order for the Thucydides Trap to apply, China would have to significantly narrow the power gap with the United States. While China has caught up with the United States in important respects, it has not caught up with the United States in terms of the logic and networks that inform dominance in the key economic and security areas required for power transition.4 Apart from the obvious inhibiting factors of nuclear weapons and economic interdependence, the United States and China are nowhere close to the power parity likely to spark a major power war between them. The Thucydides Trap is a powerful analogy for bellicose dynamics between a hegemonic power and a rising power, but in the near term, war between the United States and China for the reasons proposed in the Thucydidean analogy is highly unlikely.

### No Russia Cyber---1NC

#### No Russian cyber threat.

Softness 17 – Nicole Softness, a graduate student at Columbia University’s School of International and Public Affairs, studying International Security & Cyber Policy. [How Should the U.S. Respond to a Russian Cyber Attack? Yale Journal of International Affairs, Volume 10, http://yalejournal.org/wp-content/uploads/2017/08/2017a\_99\_softness.pdf]

Russia’s past strategic choices, demonstrate an unwillingness to commit an act that could trigger a full-scale war, potentially with nuclear weapons. The country’s focus on battlefield preparation and intelligence gathering suggests that strategies would work to take advantage of U.S. complacency via the preponderance of smaller-scale cyber attacks, and would conduct an attack unlikely to trigger a full-scale military response. By choosing an industry with consequences limited to the United States, Russia could avoid damaging its alliances or inciting other states to join forces against Russia militarily, politically, or economically. According to this analysis, Russia would choose not to conduct a cyber attack on the majority of the United States’ critical infrastructure sectors, for fear of over-escalation.15 Attacks on the defense, nuclear, and chemical sectors could be immediately considered acts of war, while attacks on the financial, food and agricultural, or critical manufacturing sectors would be likely to enrage other states dependent on the United States for economic stability. Thus, with these strategic choices and toolkits in mind, if Russia were to conduct a cyber-to-conventional attack against the United States, it would choose to target either the communications or IT critical infrastructure sectors.

## Adv---FTC Leadership

### Squo Solves

#### Cooperation now solves

Michael Ristaniemi 20, PhD Candidate in Commercial Law at the University of Turku, Vice President for Sustainability at the Metsä Group, Participant in the Visiting Scholar Programme at the University of California, Berkeley, “International Antitrust: Toward Upgrading Coordination and Enforcement”, Doctoral Dissertation, October 2020, https://core.ac.uk/download/pdf/347180879.pdf

Despite the above, the major powers do have an interest in cooperating internationally in competition issues. The EU and the US appear to desire further convergence of practices and substantive thinking. Officially, China does not appear to have a strong stance on convergence, but recent practice shows that it too has engaged in an increasing amount of dialogue on competition matters. Indeed, there is an increasing amount of cooperation in relation to investigating international cartels, referring to cartels that operate in several nations concurrently and which seek to cartelize them.208

Further, the competition authorities of major powers have an incentive to ensure that merger control procedures affecting mergers benefiting their respective regions are as internationally streamlined and coordinated as possible given the number of multinationals that originate from each of their respective territories. Nonetheless, there are a few hurdles for streamlining international merger control. First is the dichotomous leadership of the US and the EU systems, with no single leading standard to become the global standard. Second, there are clear differences in nations’ scope of merger review that may arise from partially differing sets of goals should they attempt to address public interest or other non-competition related concerns concurrently with competition concerns.209 In any case, the aggregate cost of a fragmented system of international merger control is arguably higher than it would need to be. Improved, more structured coordination could help, as discussed further in Chapters 5 and 6 below.

### No ‘Cartels’---1NC

#### No cartels.

Wesseling ’13 [Rein; December 17; Competition Policy International, “Is the Definition of a Cartel Ballooning?,” https://www.competitionpolicyinternational.com/is-the-definition-of-a-cartel-ballooning/]

The media tend to refer to gangs that produce and distribute drugs as “cartels.” Of course these are not cartels as we, as antitrust lawyers, traditionally use the concept. In fact “drug cartels” seem to operate as businesses in the various regular forms we know: conglomerates, cooperatives, or “one-product firms.” Note, too, that the media habitually refer to rival drug cartels, meaning that these cartels are competing fiercely. So, in the antitrust context, are these cartels? To the extent we understand the agreements underlying the drug cartels, they would not seem to be that. An antitrust assessment of the workings of drug cartels, therefore, would need to be undertaken on the basis of a “rule of reason” analysis.

One may wonder therefore why the reference to drug gangs as “cartels” seems ineradicable. Perhaps that is due to the fact that there is no set definition of the concept of a cartel. Traditionally, however, this has not been an issue in the enforcement of antitrust laws around the world. Although the concept is perhaps difficult to define, cartels have historically been easy to recognize.

The application of the cartel concept has been restrained by a number of factors. The focus on prosecuting cartels originated and was historically centered in the United States, where the cartel rules are enforced within a criminal law framework. It is almost inherent in criminal law enforcement that the legal norms that businesses and individuals have to comply with, lest they might go to jail, have to be clearly defined and curtailed. And, as one of the contributions to this issue highlights, “hard-core cartels”-those which can be prosecuted criminally-need to be “naked” and typically “covert” agreements between competitors not to compete, fix prices, or divide markets. There has been no need for a strict definition of cartels since a jury could work on the basis of the “elephant test;” in spite of the absence of a definition, cartels can be recognized instantly when spotted in the evidence

Arguably, however, the factors preventing the cartel concept from widening and becoming more blurred are no longer as pre-eminent as the concept has moved away from the U.S. criminal law framework. Numerous authorities are enforcing national or regional competition laws around the world. Many of them focus on prosecuting cartels, but the applicable governing laws diverge considerably as to procedures, institutions, and substance. Thus we are witnessing a process in which the cartel concept is arguably inflating. As the various contributions in this issue illustrate, this is a process that is going on in numerous jurisdictions worldwide.

### No Terrorism---1NC

#### Barriers check terrorism.

Mueller 18 John Mueller, Political Science Professor at Ohio State University. [Nuclear Weapons Don’t Matter but Nuclear Hysteria Does, Foreign Affairs, https://www.foreignaffairs.com/articles/2018-10-15/nuclear-weapons-dont-matter]

As for nuclear terrorism, ever since al Qaeda operatives used box cutters so effectively to hijack commercial airplanes, alarmists have warned that radical Islamist terrorists would soon apply equal talents in science and engineering to make and deliver nuclear weapons so as to destroy various so-called infidels. In practice, however, terrorist groups have exhibited only a limited desire to go nuclear and even less progress in doing so. Why? Probably because developing one’s own bomb from scratch requires a series of risky actions, all of which have to go right for the scheme to work. This includes trusting foreign collaborators and other criminals; acquiring and transporting highly guarded fissile material; establishing a sophisticated, professional machine shop; and moving a cumbersome, untested weapon into position for detonation. And all of this has to be done while hiding from a vast global surveillance net looking for and trying to disrupt such activities.

### No Food Wars---1NC

#### Food wars are a statistical myth.

Vestby ’18 [Vestby, Ida Rudolfsen, and Halvard Buhaug; 5-18-18; Doctoral Researcher at the Peace Research Institute Oslo; doctoral researcher at the Department of Peace and Conflict Research at Uppsala University and PRIO; Research Professor at the Peace Research Institute Oslo (PRIO); Professor of Political Science at the Norwegian University of Science and Technology (NTNU); and Associate Editor of the Journal of Peace Research and Political Geography; “Does hunger cause conflict?” Prio, https://blogs.prio.org/ClimateAndConflict/2018/05/does-hunger-cause-conflict/]

It is perhaps surprising, then, that there is little scholarly merit in the notion that a short-term reduction in access to food increases the probability that conflict will break out. This is because to start or participate in violent conflict requires people to have both the means and the will. Most people on the brink of starvation are not in the position to resort to violence, whether against the government or other social groups. In fact, the urban middle classes tend to be the most likely to protest against rises in food prices, since they often have the best opportunities, the most energy, and the best skills to coordinate and participate in protests.

Accordingly, there is a widespread misapprehension that social unrest in periods of high food prices relates primarily to food shortages. In reality, the sources of discontent are considerably more complex – linked to political structures, land ownership, corruption, the desire for democratic reforms and general economic problems – where the price of food is seen in the context of general increases in the cost of living. Research has shown that while the international media have a tendency to seek simple resource-related explanations – such as drought or famine – for conflicts in the Global South, debates in the local media are permeated by more complex political relationships.

## Adv---Competitiveness

### 1NC – D

#### CFIUS stable and pressuring china

Covington 1/29 [Globally recognized law firm, Ranked in this listing of twenty elite US law firms based on financial performance, pro bono activity, associate satisfaction. Recognized for “Global M&A Deal of the Year: Japan” and “Global Dispute of the Year: Investigations (Asia).” “CFIUS in the Biden Administration” https://www.cov.com/en/news-and-insights/insights/2021/01/cfius-in-the-biden-administration]

Presidential transitions historically have brought near-term uncertainty for parties undertaking mergers and acquisitions in the United States, particularly transactions subject to review by the Committee on Foreign Investment in the United States (CFIUS). It typically takes time for the new Administration to gain its footing with respect to CFIUS and for the career staff in each CFIUS member agency to adapt to new political leadership. This time, however, the opposite is true. Since the inauguration, there has been a palpable sense of return to traditional norms in government, and a renewed clarity and confidence in Executive Branch processes, including CFIUS, that comes from an incoming Administration perceived to have a stronger commitment to the rule of law and a more mature interagency policymaking process coordinated by the White House. There likely will be occasional timing delays in the CFIUS process for certain matters, which is a natural result of the transition; these hiccups no doubt will be magnified somewhat by the greater bureaucracy created around the CFIUS process through the reforms of the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA). Additionally, investments from countries such as China that are viewed by the U.S. government as strategic competitors will continue to face close scrutiny and skepticism. Overall, however, investors and transaction parties can have confidence in the substance and the process of CFIUS under the new Administration.

The following reflects our present assessment of the key questions and issues relating to the Biden Administration’s approach to foreign direct investment and CFIUS.

Will the United States Remain Open to Foreign Direct Investment?

Yes. Every Administration since that of President Carter—including the previous Administration—explicitly affirmed the United States’ openness to foreign direct investment. We expect the same will occur in the Biden Administration and that this commitment will be even stronger in practice, for three distinct reasons.

First, President Biden is inheriting an economy facing serious pandemic-driven challenges. As a consequence, we expect that the Administration will likely be oriented toward policies that are focused on attracting capital and maintaining and bolstering investor confidence.

Second, President Biden has made it clear that his Administration will focus on restoring U.S. relationships with traditional allies. Restoring those relationships very likely will include reaffirming allies’ roles as trade and investment partners, particularly to balance the continued rise of China’s economic power. This view of alliances is also informed by a fundamental belief that the United States should lead by example and compete based on its openness, rather than adopt policies motivated by protectionist fears. While CFIUS is not necessarily central to these policy perspectives, the reality is that such commitments to alliances and openness frequently carry over to the CFIUS process, which ultimately reports to the White House and, in turn, is informed by the policy perspectives of the President. An Administration that is internationalist in its outlook will inherently instill a discipline of openness and undoubtedly will be more favorably disposed to solutions that balance security and economic interests in ways that have been largely missing for the last four years.

Third, the rhetoric of the last Administration furnished—in subtle and not-so-subtle ways—protective cover for bureaucratic decision-makers to be more cautious and risk-averse in reviewing foreign investments. Thus, while the United States has generally remained open to foreign investment over the last four years, there unquestionably were circumstances in which the hyperbole of the Administration had a chilling effect on certain determinations of risk arising from foreign investment and, in turn, on the willingness of Administration officials to consider solutions to mitigate identified risks. This unfortunately resulted in some transactions being prohibited outright where the risks otherwise might have been mitigated. We expect this dynamic to recede, at least to some degree, in the Biden Administration.

Taken together, these factors mean that the United States, under the Biden Administration, will be strongly committed to foreign direct investment. At the same time, however, certain transactions—particularly those involving industries that have been the focus of China-related concerns—will continue to receive deeper political and regulatory scrutiny.

How Will the CFIUS Process Change in the Biden Administration?

We expect that the CFIUS process will change in two material ways, which may not be completely transparent to investors.

First, we believe that there will be a greater balance between the CFIUS member agencies with traditional national security responsibilities (for example, the Departments of Defense, Justice, and Homeland Security) and those with broader economic and trade responsibilities (namely, the Departments of State and Commerce and the Office of the U.S. Trade Representative). Reflecting the policies and personalities of the Trump Administration, over the last several years the economic agencies were uncharacteristically aggressive on national security issues within CFIUS—at times in ways that seemed at odds with their agency missions. This disrupted the long-standing and intentional balance of a Committee established by Congress with the goal of protecting U.S. national security within the broader context of an open investment environment. The prior Administration’s broad support for the views of national security hawks arguably prompted the Committee to identify more facts as presenting national security concerns, and in turn made resolving those concerns more challenging. We expect the normative balance of the Committee to be restored

under the Biden Administration.

Second, and equally important, the Biden Administration will have a strong commitment to interagency processes managed and informed by a strong National Security Council process at the top. This was largely absent in the last four years. Instead, as has been well documented, the Trump Administration often was characterized by a “tribalist” approach of competing views at senior levels, and a notable absence of process, with decision-making at times turning on the personal whims of the President and the advisor with whom he had most recently spoken. This dynamic made it very challenging for sub-cabinet level officials and staff to work through complicated issues and resolve differences. That behind-the-scenes discussion and compromise is critical to the effective functioning of the CFIUS process, especially given that there are nine different voting agencies that require consensus to act on every important matter before the Committee. We believe that this internal dialogue will improve considerably in the Biden Administration, and that ultimately, as sub-cabinet level officials assume their posts, there will emerge a stronger process than we saw under the previous Administration—a CFIUS process predicated on greater trust and comity among and between the agencies, their staff, and their leadership. As a result, we expect to see more efficient, coherent, and effective resolution of different views and perspectives among the agencies in the CFIUS process that more closely adhere to the governing statute, regulations, and policy.

In all events, given the absence of Senate-confirmed, sub-cabinet officials for the next several months, in the near-term we would expect there to be a slight drag on the timelines for CFIUS cases, but overall we expect the process to be smoother and more predictable in the Biden Administration.

How Will CFIUS Approach Chinese Investment in the Biden Administration?

We expect that CFIUS will continue to approach Chinese transactions with caution and skepticism, and apply close scrutiny to such transactions. We also believe, however, that the Biden Administration will approach such transactions with less rhetoric and a greater commitment to a consensus-driven process that carefully and objectively evaluates risk and seeks to use mitigation as a tool, where appropriate. That is, we do not expect a sea change in the U.S. government’s approach to potential perceived risks posed by Chinese investment, but we do think that there will be somewhat more equilibrium in and coherence to the process.

As a foundational point, it is important to note that the door was not closed to all Chinese investment over the last four years—CFIUS did approve a number of transactions involving Chinese acquirers. However, there was deep skepticism of Chinese investors and a presumption of “no” for most cases involving technologies in areas of competition between the two countries, large volumes of data, and/or proximity to sensitive U.S. government facilities. It equally should be underscored that the concerns about China that animated the CFIUS process over the last several years were not strictly political; they emanated to a considerable degree from a consensus analysis by the professional corps of the U.S. national security community, including the U.S. Intelligence Community, which predated the Trump Administration, regarding the near-term and long-term threats and challenges posed to the United States by China. Because these perspectives were not solely political, they are not likely to change drastically with the new Administration, and they will continue to inform the CFIUS approach to China-related transactions.

Candidate Biden also campaigned on the basis of being tough on China and, for many years, one of the few areas of consensus between Democrats and Republicans has been on strong policy and legislative action directed at addressing geopolitical and economic competition with China. Indeed, when announcing his foreign policy team earlier this month, then President-elect Biden made clear that his Administration will continue a strong focus on competing with China across a range of areas, including technology. Thus, the policy perspectives of the new Administration are unlikely to result in a dramatic change in the CFIUS approach to Chinese investment. Equally, however, the Biden approach to China has been more pragmatic and careful in how the rivalry is characterized—emphasizing strategic competition rather than ideological confrontation—and we expect the Biden Administration to pursue a more multi-lateral, deliberate approach to addressing competition with China, rather than the unilateral and very aggressive approach to containing and combating Chinese power that informed the Trump Administration. Contrary to the Trump Administration, there is no significant constituency for broad economic decoupling from China among incoming senior Biden Administration officials, who favor a more targeted approach to reducing dependencies and limiting interactions with China. In addition to national security, human rights concerns will likely receive more attention as a consideration in deciding when decoupling, such as restricting technology flows, is warranted.

In this context, we expect that the Biden Administration will view CFIUS as a tool to address risks with respect to U.S. competition with China, but only as one of many, and not necessarily a primary one. And, while we think the Biden Administration will not hesitate to prohibit Chinese investment where it deems there to be unresolvable national security concerns, we expect the orientation of the Administration, as noted, to focus on the process; generally to prefer that CFIUS, rather than the White House, be the body to resolve matters—and to do so quietly, consistent with the confidentiality protections of the statute; and to foster a balance of views among the different CFIUS member agencies to inform consensus-based decision-making with respect to both national security risks and potential mitigation.

### Turn---1NC

#### Scrutinizing mergers harms tech leadership.

Jamison '21 [Mark; 7/13/21; nonresident senior fellow at the American Enterprise Institute, director and Gunter Professor of the Public Utility Research Center at the University of Florida’s Warrington College of Business, Ph.D. in economics from the Warrington College of Business at the University of Florida; "Joe Biden sets regulation and antitrust back 100 years," https://www.aei.org/technology-and-innovation/joe-biden-sets-regulation-and-antitrust-back-100-years/]

The EO vaguely states a desire for greater scrutiny of mergers and for the FTC to become a rulemaking body like the FCC in order to limit tech firms’ data collection and control how e-commerce sites develop and market their own retail products.

As I have explained, more merger controls would result in fewer startups and less innovation, as acquisition by an established firm is sometimes a startup’s goal. Absent such acquisitions, numerous important products might never have existed. For example, Earle Dickson created Band-Aid for his wife’s use. Business development wasn’t his strong suit, so he gave the invention to his employer, Johnson & Johnson, who gave him a promotion and turned the product into a household name. In the tech space, products such as Microsoft’s Disc Operating System, Microsoft Word, Apple’s mouse, and Facebook’s Instagram all originated elsewhere and became business successes via companies with the necessary acumen.

Limits on data collection and retail product development will have similar effects. Fraudulent and deceptive data collection should not be tolerated, but gathering data on users who voluntarily let tech companies record their behaviors should not be restricted. Companies and users should be free to engage in relationships that both deem mutually beneficial (including third-party sellers using a platform to sell their products). As long as e-commerce platforms are honest about their data collection, third-party sellers and consumers alike can conduct cost-benefit analyses of whether to use them.

The bottom line

Biden’s approach to regulation and antitrust harkens back to the populist movement about a century ago that empowered Louis Brandeis’ version of antitrust — a largely ad hoc, “big is bad” approach that hastened the regulatory state’s emergence. As I have written, more regulation results in larger firms and fewer successful startups. Thus, if the president really wants more competition, he should emphasize less government control of markets and business.

### Hegemony---1NC

#### Hegemony is high and resilient.

Beckley 18 Michael Beckley, International Relations Professor at Tufts University, PhD at Columbia. [Unrivaled: Why America Will Remain the World's Sole Superpower, an addition to the series Cornell Studies in Security Affairs, edited by Robert J. Art, Robert Jervis, and Stephen M. Walt, Cornell University Press]

By most measures, the United States is a mediocre country. It ranks seventh in literacy, eleventh in infrastructure, twenty-eighth in government efficiency, and fifty-seventh in primary education. 1 It spends more on healthcare than any other country, but ranks forty-third in life expectancy, fifty-sixth in infant mortality, and first in opioid abuse. 2 More than a hundred countries have lower levels of income inequality than the United States, and twelve countries enjoy higher levels of gross national happiness. 3 Yet in terms of wealth and military capabilities—the pillars of global power—the United States is in a league of its own. With only 5 percent of the world’s population, the United States accounts for 25 percent of global wealth, 35 percent of world innovation, and 40 percent of global military spending. 4 It is home to nearly 600 of the world’s 2,000 most profitable companies and 50 of the top 100 universities. 5 And it is the only country that can fight major wars beyond its home region and strike targets anywhere on earth within an hour, with 587 bases scattered across 42 countries and a navy and air force stronger than that of the next ten nations combined. 6 According to Yale historian Paul Kennedy, “Nothing has ever existed like this disparity of power; nothing.” The United States is, quite simply, “the greatest superpower ever.” 7 Why is the United States so dominant? And how long will this imbalance of power last? In the following pages, I argue that the United States will remain the world’s sole superpower for many decades, and probably throughout this century. We are not living in a transitional post–Cold War era. Instead, we are in the midst of what could be called the unipolar era—a period as profound as any epoch in modern history. This conclusion challenges the conventional wisdom among pundits, policymakers, and the public. 8 Since the end of the Cold War, scholars have dismissed unipolarity as a fleeting “moment” that would soon be swept away by the rise of new powers. 9 Bookstores feature bestsellers such as The Post-American World and Easternization: Asia’s Rise and America’s Decline; 10 the U.S. National Intelligence Council has issued multiple reports advising the president to prepare the country for multipolarity by 2030;11 and the “rise of China” has been the most read-about news story of the twenty-first century. 12 These writings, in turn, have shaped public opinion: polls show that most people in most countries think that China is overtaking the United States as the world’s leading power. 13 How can all of these people be wrong? I argue that the current literature suffers from two shortcomings that distort peoples’ perceptions of the balance of power. First, the literature mismeasures power. Most studies size up countries using gross indicators of economic and military resources, such as gross domestic product (GDP) and military spending. 14 These indicators tally countries’ resources without deducting the costs countries pay to police, protect, and provide services for their people. As a result, standard indicators exaggerate the wealth and military power of poor, populous countries like China and India—these countries produce vast output and field large armies, but they also bear massive welfare and security burdens that drain their resources. To account for these costs, I measure power in net rather than gross terms. In essence, I create a balance sheet for each country: assets go on one side of the ledger, liabilities go on the other, and net resources are calculated by subtracting the latter from the former. When this is done, it becomes clear that America’s economic and military lead over other countries is much larger than typically assumed—and the trends are mostly in its favor. Second, many projections of U.S. power are based on flawed notions about why great powers rise and fall. Much of the literature assumes that great powers have predictable life spans and that the more powerful a country becomes the more it suffers from crippling ailments that doom it to decline. 15 The Habsburg, French, and British empires all collapsed. It is therefore natural to assume that the American empire is also destined for the dustbin of history. I argue, however, that the laws of history do not apply today. The United States is not like other great powers. Rather, it enjoys a unique set of geographic, demographic, and institutional advantages that translate into a commanding geopolitical position. The United States does not rank first in all sources of national strength, but it scores highly across the board, whereas all of its potential rivals suffer from critical weaknesses. The United States thus has the best prospects of any nation to amass wealth and military power in the decades ahead.

# 2NC

### Adv CP

#### Antitrust law is distinct from CFIUS CP – antitrust is Sherman, clayton, ftc

FTC ’13 [Federal Trade Commission; first saved on the Wayback Machine’s Internet Archive on December 14, 2013; “The Antitrust Laws,” https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/antitrust-laws]

Congress passed the first antitrust law, the Sherman Act, in 1890 as a "comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade." In 1914, Congress passed two additional antitrust laws: the Federal Trade Commission Act, which created the FTC, and the Clayton Act. With some revisions, these are the three core federal antitrust laws still in effect today.

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**GibbsLawGroup ’21** (Antitrust Law (2021), “Laws against anticompetitive practices”, https://www.classlawgroup.com/antitrust/ , 2021)

**Antitrust Law Definition Antitrust laws are statutes or regulations designed to promote free and open markets. Also called “competition laws,” antitrust laws prohibit unfair competition.** Competitors in an industry cannot use certain tactics, such as market division, price fixing, or agreements not to compete. And companies cannot abuse their monopoly power to force smaller competitors out of business. antitrust law dictionary Consumers who pay an inflated price for a product due to an antitrust violation can generally bring an antitrust lawsuit for treble damages (three times the amount they overpaid). Antitrust Laws Examples There are many examples of antitrust laws at both the federal and state level. Some federal antitrust law examples include: the Sherman Antitrust Act and the Clayton Antitrust Act. The Sherman Act prohibits agreements among companies not to compete (such as by fixing the price of the products they sell). The Clayton Act was designed to prevent mergers and acquisitions that consolidate too much market power in one company. Some state antitrust law examples include: the California Cartwright Act and New York Donnelly Act. And some common examples of illegal practices that are prohibited under antitrust laws are: price fixing and market division. What are the three major antitrust laws? **The three major antitrust laws in the U.S. are: the Sherman Act; the Clayton Act; and the Federal Trade Commission Act (FTCA).**

#### Aff says signal is key – that already happened when the US signed

Kapur and Shin ’20 (Anchal Kapur, Paul Shin, “The Five Eyes look to enhance antitrust sharing and co-operation”, <https://www.claytonutz.com/knowledge/2020/september/the-five-eyes-look-to-enhance-antitrust-sharing-and-co-operation>, September 17, 2020)

The agreement signals greater transparency in the sharing of information between competition agencies about companies doing business across borders. Competition agencies already co-operate in investigations and merger cases – but how they co-operate can vary and the lived experience in one matter can be different in the next. The newly signed co-operation agreement between the Five Eyes signals an intention on the part of competition agencies to co-operate more, and in a more transparent way, about companies in relation to cross-border antitrust investigations and merger control. As a step toward recording publicly existing co-operation practices, the principles outlined between the competition agencies signal an effort toward more transparent co-operation in a globalised economy. An understanding of the framework set by the agreement will be helpful in giving companies more certainty when making decisions in response to co-operation requests and understanding the implications of that co-operation. Overview The competition agencies of Australia (Australian Competition and Consumer Commission), the United States (Department of Justice/Federal Trade Commission), the United Kingdom (Competition and Markets Authority), Canada (Competition Bureau) and New Zealand (Commerce Commission) (Parties) have signed the Multilateral Mutual Assistance and Co-operation Framework for Competition Authorities (MMAC). The MMAC is a memorandum of understanding which provides a framework for co-operation as well as the entry into bilateral or multilateral arrangements between the Parties based on the Model Agreement at Annexure A to the MMAC. What this means for corporates and individuals doing business in Australia The MMAC signals increased and more seamless co-operation between the Parties on areas including antitrust investigations, merger control, areas of future enforcement and competition policy. As shown by the proposed acquisition of Fitbit by Google resulting in concurrent reviews by the ACCC, the European Commission and the US Department of Justice, companies should be aware that competition agencies around the world share information between each other, especially in connection with merger clearance or market studies, and perhaps to a lesser extent, cartel investigations, with a global reach. This means that companies must ensure adopting a careful balancing exercise between: responding to a local competition agency's requests for waivers as each agency will have idiosyncratic issues to consider or prioritise for its own domestic market; and ensuring broader consistency – for example in a joint cartel defence or merger clearance review – taking into account the fact that interactions with an agency in a particular jurisdiction in one way may affect investigations in another jurisdiction. An additional consequence of interagency co-operation and concurrent reviews is that agencies may hold off from publishing a decision or agreeing on a remedy until all agencies in each relevant jurisdiction have made a decision on that particular issue, further adding uncertainty to companies involved. What remains to be seen is how much co-operation between the Parties will reflect what is in the Model Agreement, or diverge from current practice. For example, while the MMAC notes that the Parties intend to deliver the maximum co-operation possible, it also acknowledges that the Parties may not be able to meet every element of the co-operation framework set out in the Model Agreement; and that the Parties may enter into bilateral or multilateral agreements to co-operate. Key provisions of the MMAC and the Model Agreement Information to be shared between Parties is defined in the MMAC as: Agency Confidential Information. Information that is in the possession of a Party that it is not prohibited from disclosing by law, but normally treats as non-public. Investigative Information. Information related to an investigation that is not in the public domain, which has been either compulsorily acquired by, or provided voluntarily to, a Party and that the Party is required to protect from disclosure. Some types of co-operation contemplated under the MMAC by the Parties include: exchanging information and experience on competition issues, policies, laws, and advocacy and outreach; increasing agency capacity and effectiveness by way of mutual sharing of training and best practices; collaborating on projects of mutual interest through working groups; and providing assistance and co-operation on investigations by: sharing confidential information subject to certain protections, limitations on use and privilege); coordinating investigations; facilitating voluntary witness interviews; and other co-operation as requested. As noted above, the Parties have also developed the Model Agreement in order to assist the Parties to enter into a more detailed agreement for reciprocal investigative assistance, either bilaterally or multilaterally. Examples of such investigative assistance contemplated by the Model Agreement include: disclosing, providing or discussing Investigative Information to the extent possible under each Party's laws; and obtaining Investigative Information at the request of a Party by: (i) facilitating witness interviews; (ii) obtaining Investigative Information; (iii) locating witnesses or things; and (iv) executing searches and seizures. The Model Agreement broadly provides that the requesting Party provides, in writing, a description of the assistance it seeks and to the extent necessary, any procedural or evidentiary requirements which need to be observed (for example, recording of witness statements, process for obtaining oaths, retention of privilege and confidentiality issues, records authentication, obligation of the requesting Party to retain Investigative Information). The Parties are to also generally discuss the procedures in executing the request and whether there are any legal requirements and processes for obtaining and handling any Investigative Information. There are also protections and protocols in place in the Model Agreement pertaining to the handling of information shared between the Parties under the Model Agreement. These include provisions relating to the following: Return or destruction of documents. Parties are to return or destroy all Investigative Information at the request of the Party which provided that Investigative Information, at the conclusion of a matter. Privileged communications. If information shared by a Party pursuant to a request for investigative assistance is later found to be privileged, then the Party which receives that privileged information is to not use it for the purposes of enforcement and use all appropriate procedures to limit the disclosure of such information in other contexts (unless it is determined after discussions with the Party which provided that information, that any such privilege has been waived or otherwise lost). Denying or postponing assistance. A Party responding to a request for investigative assistance may deny or postpone the assistance in whole or in part if, among other things, the request would: (i) exceed its reasonably available resources; (ii) be contrary to its law or other important interests; or (iii) the requesting Party is unable to give assurances with regard to confidentiality or the purposes for which the information will be used. Confidentiality. The Parties will, to the fullest extent possible and consistently with its laws, maintain confidentiality of any Investigative Information including the fact that a request for Investigative Information has been communicated or received. Limitation of use. Subject to certain exceptions, Investigative Information received by way of a request for assistance must only be used for the purposes enforcing competition laws (whether for the matter for which the information was sought, or for another competition enforcement matter). Building on existing practices The MMAC complements the other forms of mutual assistance already in place, for example: Treaties. Australia and the United States have treaties in place to exchange evidence and assist each other in relation to matters involving competition law enforcement activities. Memoranda. The memorandum of understanding recently entered into between the ACCC and the Australian Prudential Regulation Authority (APRA) the purpose of which is to promote a competitive, well-regulated and stable financial system in Australia by way of the two agencies coordinating, co-operating and sharing information on the back of a transparent and collaborative relationship. Also, the ACCC signed a memorandum of co-operation in 2019 with the United States' Federal Bureau of Investigation with a view to enhance the two agencies' capabilities in investigating criminal antitrust conduct by way of mutual training and exchange of information. Other frameworks. The Organisation for Economic Co-operation and Development, and the International Competition Network provides a forum for competition agencies to engage on policy and provide recommendations to one another about matters including international co-operation between competition agencies.

#### The CP solves global cartels.

Osler, 15– Professor of Law University of St. Thomas School of Law (Mark, Legal Studies Research Paper No. 15-04 , “LAW & TACTICS FOR A MARKET-REALITY NARCOTICS POLICY”, SSRN)

To focus our forfeiture efforts on cash flow rather than profits, product, or labor, it is worth starting out by recognizing what does not need to change. Importantly, new statutes are not necessary; the ones we have in place are plenty broad (even overly broad, critics say)114 and perfectly adequate to allow an aggressive pursuit of money flowing back to narcotics sources like water filtering back to a reservoir. Similarly, we do not need to hire a new wave of narcoticsfighters; we have plenty. Nor do we need more funding—there is plenty, perhaps too much, already being spent. What we need is new tactics for the same soldiers, using the funds and statutes we have in place.

In short, law enforcement needs to focus more on cash flow, and less on incarcerating labor, seizing drugs, and forfeiting profits. How can this be accomplished? The Department of Justice’s premier organization in this area, the Organized Crime Drug Enforcement Task Forces (“OCDETF”), is well positioned to lead the attack on narcotics cash flow, and should do so. For that to happen, the metrics of success will have to change, as we look more towards money seized (and narcotics businesses which are disrupted) rather than towards defendants arrested and incarcerated. The idea of taking down money but not people cuts against the prevailing culture within some corners of law enforcement; yet it is worth it to try to change that culture if the payoff is better results with less incarceration.

American law enforcement is composed of a multitude of overlapping, independent agencies. These agencies may coordinate with each other, or they may not. Consider this situation: If I were to sell one of my students a bag of crack during class, who could take action? Certainly, the campus police could step in, as could the Minneapolis police. The Hennepin County Sheriff’s office could also arrest me; they have a task force directed specifically against narcotics.115 The Minnesota State Patrol could also arrest me, of course,116 and at the federal level I could be targeted by the Drug Enforcement Agency or other federal agencies that might find a way to claim interest. That is five very independent investigative agencies, whose jurisdictions all overlap at the precise place I would stand with my bag of crack.

This granulation is a challenge to any effort to move toward the forfeiture of cash flow to narcotics sources as a primary tactic. Having many small operations doing the same thing makes it difficult to gather the large-view intelligence on narcotics networks that we need. The patience to gather information before acting comprehensively would be crucial to the success of a cashflow- first approach.

Fortunately, there is a good center of operations already in place, thanks to the now-fading War on Drugs. One attempt at centralization at the federal level was the formation of inter-agency task forces focused upon narcotics. The Department of Justice’s Organized Crime Drug Enforcement Task Force initiative began in 1982, and focused on several “hub” cities around the country through coordinated efforts and long-term investigations.117

OCDETF has two important assets that would be crucial to a cash-flow attack on a specific organization. One is the OCDETF Fusion Center, a hub for intelligence about narcotics organizations drawn from a variety of sources.118 Because the specialists there already gather and analyze financial information relating to drug trafficking, it would be a potent tool for a new focus on cash flow. The second existing asset within OCDETF is the Consolidated Priority Organization Target List, which comprehensively catalogues the "’command and control’ elements of the most prolific international drug trafficking and money laundering organizations,” according to the DOJ.119 This would be the obvious starting point for identifying targets.

Just as current statutes already contain the tools needed for a strike against cash flow, OCDETF already has some of the structure needed within the federal law enforcement community. The problem is that though OCDETF does pursue financial investigations and considers asset forfeiture a priority,120 this is not the same thing as narrowly attacking cash flow. More importantly, current OCDETF investigations have as a primary focus the take-down and arrest of multiple defendants, and it is this operation that almost by necessity takes priority. As one former chief the OCDETF unit in the Massachusetts U.S. Attorney’s Office said, “Drug prosecution is a very labor-intensive job. When you’re indicting 20 people at a time, that takes a lot effort and a lot of manpower.”121 He is right, and indicting and arresting 20 people at a time is a distraction of time and money from the more important task of depriving those 20 people of a job through business failure.

Moreover, it seems that some of those targeted by OCDETF are well below the kingpin level, and it is the incarceration of these small-time actors that has played a role in the mass incarceration problem. For example, in January 2013, a press release titled “Third Defendant Sentenced in OCDETF Case” described the 70-month sentence given to a defendant charged with distributing “more than five grams of methamphetamine,” while another defendant in the same case had been taken down for “possession with intent to distribute a small amount of cocaine.”122 Other OCDETF cases have been remarkable disasters for other reasons—including the infamous “Fast and Furious” case out of Arizona.123

Small-time cases and big-time debacles are a part of OCDETF reality. What this paper is suggesting is not eliminating OCDETF, but re-focusing it to produce better long-term results with less incarceration. Rather than having those crucial OCDETF assets used to conduct “expanded, nationwide investigations against all the related parts of the targeted organizations” (as the website for OCDETF puts it),124 Law enforcement should look to succeed in just one thing—the civil forfeiture of cash flow of drug money within an identified set of criminal networks. It is not necessary to change everything at once; a good start would be to pluck one drug network from the Consolidated Priority Organization Target List and then attack it through cash flow seizures. If the business fails or is significantly disrupted, the interests of the American public are served.

It is not necessary to give up on arresting people for narcotics. The arrest of high-level traffickers will always be warranted. However, at least a portion of the most sophisticated part of the federal government’s crime-fighting apparatus should shift its focus to the interdiction of cash flow to sources of narcotics.125 The hope is not that no one will be indicted, convicted, and incarcerated, but that fewer people will be, and that these convictions will be less crucial to the ultimate success of a large-scale narcotics interdiction, which is the dissolution of the drug network itself. This shift in focus by OCDETF would further the goal of federalism as well, by leaving to the federal government only that part of the anti-drug fight that best suits its strengths and international reach. At the same time, this shift will take forfeitures out of the hands of local task forces which now create many of the problems described in Section III(C)(1).

If a group like OCDETF identifies a discrete criminal network, it should establish specific goals. The ultimate goal, of course, is the disbandment of the criminal network. The interim goal should be seizing the amount of cash flow that will make that criminal network unsustainable. Rather than tacking pictures of individuals to a board and drawing lines between them, it is the stream of money that should be above a lead case agent’s desk.

To do this, some parts of law enforcement culture will have to give way, particularly the singleminded focus on individual guilt and punishment as we move towards action directed against financial systems.126 Moreover, new attempts to disrupt the flow of money to narcotics sources might also disrupt the flow of money to law enforcement, as well. If the tactic works, task forces based on arrest and conviction models may be disbanded, for example. Not surprisingly, ideas that threaten the status quo of law enforcement practices are sometimes opposed by law enforcement.127

Conclusion

The primary metric for success in law enforcement has long been the successful arrest. Policy makers and the public seem to be rejecting the model of mass incarceration that results, however. More recently—as reflected by the actions of OCDETF and others—forfeitures have become a secondary measure. It is time for the third step in that evolution, which is to narrowly focus those forfeitures on cash flow, and make those forfeitures a primary rather than a secondary tactic in continuing the fight against illegal narcotics.

Such an effort would simultaneously address two problems: mass incarceration and the continuing problem of drug trafficking and abuse. In the end, the use of government’s sword should be reserved for those operations where a problem is actually being solved. History’s verdict is now clear: Mass incarceration has not solved the problem of narcotics use. It is time, at the very least, to encourage a shift in weight among our federal narcotics bureaucracy towards striking out at cash flow in a way that is focused, fierce, and effective.

#### Certainty is about NEW CFIUS rules – the CP that establishes a CFIUS court changes that and solves clarity – we’ll insert yellow

**Naso ’20** (Chelsea Naso, “Shifting Regulatory Market Clouds US Deal Certainty In 2020”, Law360, <https://www.law360.com/articles/1228314/shifting-regulatory-market-clouds-us-deal-certainty-in-2020>, January 1, 2020)

**Savvy dealmakers can pave the way for mergers and acquisitions even in times of heightened regulatory scrutiny, but shifting U.S. regulations and enforcement in areas like foreign investment and antitrust are set to cloud deal certainty in the coming year.** The year 2020 is shaping up to be one of change, as the Committee on Foreign Investment in the United States adopts a new review framework for overseeing U.S. inbound transactions, a U.S. presidential election opens the door for a new administration to take the reins, and antitrust regulators mull the best way to approach reviews of vertical mergers. Here, Law360 looks at the major M&A-related regulatory changes on tap for 2020. New Rules for Oversight for U.S. Inbound Deals Are Coming **CFIUS, which reviews certain U.S. inbound deals for national security concerns, will see its reach greatly expanded by a set of new rules expected to be adopted around February. The new rules are poised to spur some uncertainty as dealmakers digest their implications and how they might apply to foreign investment in the U.S. "We're expecting the final regulations to be issued in early 2020. This is a major overhaul of the CFIUS landscape and will become more and more of a gating item for transactions that involve foreign investment in the United States," said Jeanine McGuinness, an Orrick Herrington & Sutcliffe LLP international trade and compliance partner.** The U.S. Department of the Treasury released a draft version of the much-anticipated regulations in September, a little over a year after the Foreign Risk Review Modernization Act of 2018 was signed into law. **The draft rules sought to clearly depict which foreign investments and acquisitions are of interest to the committee and introduce a few new ideas to the CFIUS realm. The comment period has since come to a close, and dealmakers are now waiting to see what adjustments will be made before the final rules are put into place in February.** The new rules — some of which were implemented during a 2019 pilot program — are anticipated to have a dampening effect on U.S.-targeted deals as companies and investors digest how the playing field has changed. Recently released data on CFIUS enforcement shows that even before FIRRMA was signed into law, the committee was ramping up its investigation efforts. A report covering reviews conducted during the 2016 and 2017 calendar years shows a steep increase in deals being submitted for review and deals being abandoned during the process. There are some concerns that the added level of scrutiny and a further increase to CFIUS' already large workload could slow the process, especially in the early months of the new rules being in place. "I do think that the case volume is expected to rise, and I think one of the concerns about having more transactions be subject to the CFIUS regime is that the parties will be concerned about having extended review processes that can affect deal timing," McGuinness said. **Deputy Secretary of the Treasury Justin Muzinich tried to assuage concerns that the new rules meant the government was cracking down or somehow limiting foreign investment into the U.S., emphasizing in a November speech that CFIUS has been reviewing transactions more efficiently and focusing only on deals with actual risks. "It is worth noting that along with strengthening CFIUS, we have been running the review process more efficiently," he said in the speech. "When there are no national security risks, we are letting the parties know quickly, so that they can proceed with their transactions. The United States remains very much open to foreign investment." There is certainly a hope that as the new rules are firmed up, they will allow CFIUS to drill down on inbound deals in sensitive industries while more quickly clearing ones that do not present a national security risk. "I do think there is going to be an interesting CFIUS environment, which will be characterized by the desire to show they are not trying to chill foreign investment, so approval or quick approval in non-strategic industries," said Howard Shelanski, a Davis Polk & Wardwell LLP partner. "But they are going to want to be firm and show these new rules have bite by enforcing in those strategic industries, particularly in regard to certain countries,"** he added. Antitrust Enforcement Is Difficult to Predict as Elections Approach The antitrust climate in the U.S. is also difficult to predict, given not only the unexpectedly active review environment established by the current Republican administration but also the fact that a U.S. presidential election is approaching. Dechert LLP's quarterly Dechert Antitrust Merger Investigation Timing Tracker found that 20 "significant merger investigations" were resolved by the U.S. Department of Justice and Federal Trade Commission in 2019 through September. That compares to 15 probes that were wrapped up in the first nine months of 2018. According to Dechert, the pace of the Trump administration is in line with the activity seen under the Obama administration from 2011 to 2014, although the final two years of the Obama administration were more active. The competition watchdogs are expected to continue to search for deals that they can challenge in the coming year as well. "I do think it's going to be active. The FTC and the DOJ are both still being aggressive, appropriately aggressive they would say, and taking a long look at [deals] they think warrant a longer look," said Matt Reilly, a Kirkland & Ellis LLP antitrust litigation partner. And although dealmakers have had the last three years to get accustomed to the DOJ and FTC under the Trump administration, the upcoming presidential election in the U.S. could usher in new leadership. "I think that there is uncertainty going into an election year, particularly one where firm size and large mergers have received a fair bit of political attention, especially in the tech sector. We can see a situation where there is some desire to get deals done in advance of the election because the sense [is] the antitrust environment could become quite politicized and there could be heightened scrutiny going forward in a new administration," Shelanski said. Adding to the normal level of uncertainty generally derived from a presidential election year is also the fact that the Democratic pool of potential party nominees represents a broad range of policy positions that make it even harder for buyers and sellers to guess what sort of regime their deal might be reviewed under. "If you look at some of the Democratic nominees — in particular Sen. [Elizabeth] Warren — they've been rather vocal on their views on the need for antitrust enforcement and the proposals to change antitrust law for increased enforcement," said Ian John, a Kirkland antitrust and competition partner. **Dealmakers will also be on the lookout for any potential updates to how the agencies plan to approach vertical mergers. Any clarity on the matter would come at a time when it seems like more large industry players are eyeing vertical, rather than horizontal, tie-ups and after a year that saw some divergence on how best to approach such reviews.** "While a lot of people thought there was going to be a sea change in vertical mergers based on the DOJ's decision to go after the AT&T-Time Warner merger, I think empirically we haven't seen much of an enhanced focus," Shelanski said.

#### CFIUS depoliticizes investment and balances foreign interest – solves balancing internal

Gent ’16 [Will; 2016; Executive Editor, Oregon Law Review, J.D. at the University of Oregon; Oregon Law Review, “Tilting at Windmills: National Security, Foreign Investment, and Executive Authority in Light of Ralls Corp. v. CFIUS,” vol. 94]

Additionally, to the extent that CFIUS is plagued with opacity, a special court would depoliticize the CFIUS process and restore transparency to national security reviews. Independent judicial supervision would make CFIUS review more predictable, thus decreasing the uncertainty that can surround foreign investments. By taking the CFIUS review process out of the sole purview of the executive branch, a special court could also help the Committee avoid the political theater of decisions like DP World. Furthermore, by tailoring a fact-specific hearing, the CFIUS court could ensure that applicants receive meaningful due process and access to all relevant, non-sensitive evidence. Each of these steps would improve investors’ perception of CFIUS by making the Committee more accountable.

A CFIUS court, modeled after the FISC, is the best hope to balance foreign-owned property interests with U.S. national security. As the Ralls saga illustrates, the CFIUS system is currently in a state of judicial limbo, which tarnishes the investment credibility of the United States while also subjecting American strategic assets to serious risks. Although further exploration is needed, an independent Article III court could provide parties with the judicial review and constitutional protections they need, without sacrificing national security.

#### A CFIUS court solves best and avoids protectionism – answers the no link argument below

Wang ’16 [Yang; Winter; J.D. Candidate at the University of Houston Law Center and Chief Articles Editor of the Houston Journal of International Law; Houston Journal of International Law, “incorporating the third branch of government into U.S. National security review of foreign investment,” vol. 38]

A wealth of academic writing has criticized the politicization of the CFIUS process and its harm to foreign investment. 247 [\*362] Within the U.S. tripartite government, the framers designed the federal judiciary to be insulated from political pressure. 248 Thus, judicial review helps cool down the often-overheated CFIUS process.

Politicization often steers decision makers with emotion rather than fact. 249 Although decision-making processes in Washington are colored by political influences in varying degrees, CFIUS review invites more manipulation because the catchy phrases, foreign ownership, and national security easily grab attention from constituents who may oppose certain foreign investors due to their particular worldview or self-interest. 250

The opposition to the Dubai Ports Acquisition took advantage of the anti-Arab sentiment after the attacks of September 11, 2001. 251 Dubai Ports World, a firm based in Dubai, had obtained the CFIUS clearance in its acquisition of Peninsular and Oriental Steam Navigation Company (P&O), a ports operator owned by a British firm. 252 However, after public denunciations from Congress, CFIUS came back with a more rigorous review. 253 Senator Frank Lautenberg (D-NJ) stated: [\*363] "Don't let them tell you this is just the transfer of title. Baloney. We wouldn't transfer title to the Devil; we're not going to transfer title to Dubai." 254 Another congressman's press conference invited families of victims of the September 11 attacks to appeal to the hearts and minds of the American public. 255 The saga ended with a Capitol Hill newsletter titled "House Puts a Bullet in Port Deal's Corpse" and has since cast a shadow on Gulf States' investments in the United States. 256

A small company's self-interest apparently catalyzed the political controversy. 257 A small firm based in Miami, Eller & Co., had a long-standing commercial dispute with P&O. 258 In order to increase its leverage in negotiations with P&O, the company lobbied Congress to block the deal; before then, the Dubai World transaction had received almost no attention on Capitol Hill. 259

Another transaction, CNOOC's proposed acquisition of Unocal, was blocked by a strong anti-China sentiment in Congress. 260 Other than the fear that "the Chinese are coming, the Chinese are coming," 261 the strong interest of a domestic company, Chevron Corp., in competing for the bid also fueled the [\*364] sentiment. 262 After a month-long attack by members of Congress, CNOOC withdrew its bid. 263 From a market efficiency standpoint, Chevron's bid of $ 1 billion less than that of the CNOOC's should not have won. 264

In marked contrast to CNOOC's Waterloo in bidding for Unocal, CNOOC successfully acquired Nexen's assets in the Gulf of Mexico seven years later. 265 Other than the fact that Nexen's moderate name recognition drew less political attention and that CNOOC stepped up their political lobbying efforts, no other reason could seemingly explain why the same company succeeded in the Nexen acquisition but failed in the previous one. 266

CFIUS may keep a better balance between open investment and national security than Congress, 267 but the ultimate decision to block or divest a transaction falls to the President. 268 Many observers noted that the rare presidential order to block the Ralls transaction came at the time when President Obama [\*365] was accused of being too soft on China during the 2012 presidential campaign. 269 Giving the executive branch unfettered discretion increases the chance that a future protectionist-minded administration will overzealously block benign transactions. 270 As critics have noted, national security is susceptible to too many interpretations, and this could easily lead the President to abuse the CFIUS power and deter foreign investment. 271

Compared to Congress and the President, Article III judges enjoy lifetime tenure and salary protections, so they are insulated from the motivation to please constituents. 272 Article III directs that "[t]he judicial Power of the United States[] shall be vested in one supreme Court" 273 and serves to "safeguard litigants' right to have claims decided before judges who are free from potential domination by other branches of government." 274 Judicial oversight of the decision-making process is necessary to maintain a cool, balanced approach in evaluating whether a proposed transaction poses a national security threat. 275

VII. CONCLUSION

CFIUS review of foreign investment was born amid the national sentiment that foreign enemies might take control of key U.S. industries and that the existing statute, IEEPA, could not adequately protect national security in situations where [\*366] declaring a hostility against the country was improper. 276 Yet, unlike IEEPA, CFIUS's authorizing statute, FINSA, granted the agency and the President unchecked power by precluding judicial review. 277 The no judicial-review provision is improper when it violates investors' due process rights and could result in the executive branch's abuse of power. Moreover, courts regularly review antitrust issues, a major component of the CFIUS review, so the scope of judicial review should extend to the President's substantive decisions as it does in matters of antitrust regulation.

To balance necessity of judicial review and the sensitivity of national security, this comment proposes to allow Article III courts to review foreign investors' complaints in camera, or establish a special court much like the court established by the Foreign Intelligence Surveillance Act (FISA). 278 The FISA Court decides whether to grant warrants related to domestic surveillance in national security investigations. 279 Just like 'the FISA Court's duty to watch for Fourth Amendment violations, a similar court could help decide whether national security concerns may warrant the President's decision in prohibiting, blocking, or divesting a foreign transaction under FINSA.

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#### Even if it was included it fails —courts refuse to enforce, including SCOTUS – this is independent of the other arguments

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.

#### 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.

#### Not perceived now – we’re yellow

**Hoofnagle et al. ’19** (Chris Jay Hoofnagle, Adjunct Professor of Information and Law - University of California, Berkeley, Woodrow Hartzog, Professor of Law and Computer Science - Northeastern University, Daniel J. Solove, John Marshall Harlan Research Professor of Law - George Washington University Law School, The Brookings Institute, “The FTC can rise to the privacy challenge, but not without help from Congress,” [https://www.brookings.edu/ blog/techtank/2019/08/08/the-ftc-can-rise-to-the-privacy-challenge-but-not-without-help-from-congress/](https://www.brookings.edu/%20blog/techtank/2019/08/08/the-ftc-can-rise-to-the-privacy-challenge-but-not-without-help-from-congress/), August 8, 2019)

Others, however, saw the five-billion-dollar fine, oversight reforms, and compliance certification measures as a drop in the bucket compared to Facebook’s profits. Two dissenting FTC commissioners and other critics pointed out that the FTC did not change Facebook’s fundamental business model nor hold Mark Zuckerberg personally liable, despite hints that the company fell out of compliance with its original 2010 FTC consent order soon after that agreement was inked. Some privacy advocates and lawmakers even argued that the limits of the settlement are evidence that the FTC, the leading privacy regulator in the US since the late 1990s, is no longer the right agency to protect our personal information from Big Tech. They support creating a new, consumer privacy-focused federal agency. We think the FTC is still the right agency to lead the US privacy regulatory effort. In this essay, we explain the FTC’s structural and cultural strengths for this task, and then turn to reforms that could help the FTC rise to modern information privacy challenges. Fundamentally, the FTC has the structure and the legal powers necessary to enforce reasonable privacy rules. But it does need to evolve to meet the challenge of regulating modern information platforms. The FTC wields great powers tempered with experience The FTC has remarkable powers. At its creation a century ago, Congress gave it unprecedented investigatory and enforcement tools. These have been broadened over time as the FTC has faced new wrongs. Today, the FTC can examine business practices even where there is no investigatory predicate, and as a general-purpose consumer protection agency, it can sue almost any business. **As a result, the FTC is nimble and can adapt to new technologies without an act of Congress. Founded in the days of misleading newspaper advertising, the FTC was quick to pivot to radio, television, and internet fraud. The breadth and generality of its powers are also a source of strength. Much more than just data protection, modern consumer problems involve platforms, power, information asymmetries, and market competition. In theory, the FTC has a broad enough jurisdiction and charge to handle diverse issues often labeled as “privacy,” such as algorithmic manipulation and accountability.** In the information economy, privacy is among the most important values that law and norms should protect. Yet at the same time, privacy must also accommodate other important values, including the risks inherent in economic development. In our view, privacy is a means to the ends of freedom and autonomy in our personal lives and in our polity. It is a key component for human flourishing. The FTC has achieved much with limited resources and without consistent congressional support Related People look at data on their mobiles as background with internet wire cables on switch hub is projected in this picture illustration taken May 30, 2018. Picture taken May 30, 2018. REUTERS/Kacper Pempel/Illustration - RC138602D200 Why protecting privacy is a losing game today—and how to change the game A doorway of the Federal Trade Commission building is seen in Washington on March 4, 2012. REUTERS/Gary Cameron (UNITED STATES) - WM1E834139A01 Highlights: Commissioners discuss the future of the FTC’s role in privacy The Federal Trade Commission building is seen in Washington Five reforms the FTC can undertake now to strengthen the agency Many privacy issues are thought to be new. But the FTC has decades of experience handling privacy problems, particularly in credit reporting and debt collection. The FTC’s earliest information privacy matters, in 1951 and then a series of cases in the 1970s, recognized the general consumer preference against commercialization of personal data. Using its enforcement powers, the FTC sued companies for deceptive data collection, and for the sale of data collected in preparing tax returns. The agency brought its first internet-related fraud case in 1994, long before most consumers shopped online. Since then, the FTC has pursued the biggest names in internet commerce. It has steadily broadened the duties for fair information handling, particularly in the information security domain. The FTC’s broadest jurisdiction is its enforcement against unfair and deceptive practices under Section 5 of the FTC Act. Despite a wide reach, however, Section 5 has some significant limits in power. The FTC generally cannot issue a fine for Section 5 violations initially—fines can only be issued for violations of consent decrees, as happened in the Facebook case. Resources are the FTC’s greatest constraint. It is a small agency charged with a broad mission in competition and consumer protection. It carries out this mission with a budget of just over $300 million and a total staff of about 1,100, of whom no more than 50 are tasked with privacy. In comparison, the U.K.’s Information Commissioner’s Office (ICO) has over 700 employees and a £38 million budget for a mission focused entirely on privacy and data protection. In addition, for much of modern history, Congress has kept the FTC on a short leash. In 1980, Congress punished the agency for being too aggressive, causing it to shut down twice. Congress has held authorization over the agency’s head and used oversight power to scrutinize what members of Congress perceive as the expansive use of FTC legal authority, including its interpretation of privacy harm. Related Books Government Policy toward Open Source Software Edited by Robert W. Hahn 2002 Broadband Edited by Robert W. Crandall and James H. Alleman 2003 The Need for Speed By Robert E. Litan and Hal J. Singer 2013 **Given these constraints, FTC attorneys make pragmatic choices in their case selection. At any given time, line attorneys are investigating many companies and weighing decisions on where to target limited enforcement resources. The FTC can only bring actions against a small fraction of infringers, and it has chosen cases wisely to make loud statements to industry about how to protect privacy. Even with these severe limitations, it has managed to bolster important norms and send strong signals to industry that have influenced the practices of many companies. It has become a significant enforcement agency that industry pays attention to. It has an enforcement record that compares quite well to other agencies in the US as well as around the world.** Some critics of the Facebook settlement have focused only on its shortcomings. Despite flaws and limits in the consent order, the five-billion-dollar fine was the biggest privacy settlement worldwide by far. It is an order of magnitude greater than the highest fine under the EU’s General Data Protection Regulation so far (the UK ICO’s €183 million fine against British Airways) and roughly double the record fine under EU competition law, which privacy advocates have urged as the reference for privacy fines. The settlement also contains significant and noteworthy measures, such as forcing Facebook to make privacy a board-level concern and requiring Mark Zuckerberg to verify compliance. As dissenting Commissioners Chopra and Slaughter note, the FTC’s settlement doesn’t solve every problem; Facebook’s structure and business model remain the same. But no existing enforcement agency has come close to matching the FTC’s impact in this case, and foreign data protection agencies similar to proposed in the U.S. as FTC alternatives have not demonstrated the power or political capital to do so. As privacy enforcers go, the FTC stacks up well to others in many regards. The FTC resists capture and partisanship The FTC is resistant, though not immune, to capture by the industries it regulates. One reason the FTC resists capture is because it regulates no single, coherent industry. Even the “technology industry” is a heterogeneous group, with competing and conflicting fundamental interests. While some tech companies have accompanied their business models with commitments to privacy as a human right, this is not typical in Silicon Valley. The FTC’s most recent capture episode related to the credit bubble. The agency drank deeply from the credit well, with one official even coining the phrase “ miracle of instant credit” to describe what he believed to be a sound granting system that could take proper risks even with subprime borrowers. At the time, the FTC—and virtually all other regulators—embraced industry preferences for data selling and joined the industry in opposing real reforms to protect consumers. The response to the credit meltdown is instructive in assessing the strengths and weaknesses of the FTC in consumer protection. The disaster shook congressional confidence in the FTC, causing Congress to think that financial services needed its own consumer protection regulator, the Consumer Financial Protection Bureau (CFPB). With a new presidential appointee at its head, the CFPB has shifted away from a serious enforcer to a vessel for mere “consumer education.” Unlike the CFPB, the FTC has thus far weathered the Trump Administration. The FTC’s appointed leadership is well-qualified and fundamentally on board with a consumer protection mission. Agencies can become captured not only by industries, but also by ideologies. As important as privacy is, the risk of a privacy agency is that it could become too pro-privacy, too narrowly focused on the largely procedural protections of fair information practices. The FTC has generally avoided veering too far in any of these directions. It is tasked with a more holistic goal of protecting consumers. It doesn’t treat privacy as an end in itself, but has aimed to promote privacy within an environment of thriving markets and technological development. The FTC’s structure, with no more than three out of five commissioners allowed to be from the same political party, has helped it remain bipartisan. And, in practice, the FTC has generally operated with a broad consensus in privacy cases. Most privacy enforcement actions have received 5-0 votes by the commissioners. Reinforcing the FTC’s Existing Powers **Despite the FTC’s balanced and consistent enforcement, it is not realizing the full potential of its authority. The agency should take more ground-breaking and norm-nudging cases. Most of its modern cases are slam dunks because the agency is risk-averse and fears blowback from Congress. Indeed, in a different era when Congress backed the FTC, the FTC took on cases that were more normatively consequential. But in recent decades, it has proceeded more cautiously and incrementally, negotiating consent orders and only rarely litigating. Aside from doing more to advance norms, the FTC has powers that could create more deterrence, if used. The DC Circuit recently affirmed a broad power to impose personal liability on people who directly participate in or control deceptive practices. This would seem to be an excellent remedy for platform companies like Facebook and Google. These companies continue to be founder-controlled in a real sense, and the founders have demonstrated little or inconsistent respect for users’ privacy interests. In its investigations, the FTC has uncovered numerous emails by executives in which they discuss information predations. Holding these executives more responsible could have a dramatic deterrent effect.** The FTC also could achieve greater deterrence by leveraging an obscure power known as “non-respondent liability.” In cases where the FTC has a fully-adjudicated matter concerning some business practice, the agency can use that precedent to issue civil penalties to others engaging in the same activity . The power is limited to instances of actual knowledge of a closely-matching precedent by the new defendant, but this can be established by sending that company notice of its wrongdoing and the relevant previous order. If we think about recent privacy wrongs—poor data security, selling data despite promising not to, and so on—many are widespread, recurring practices. If the FTC were willing to adjudicate just one case involving information “sale,” changing users’ settings, or even storing passwords in plain text, hundreds of companies could inherit exposure to civil penalty liability though this mechanism. The FTC’s existing powers would be strengthened by broadening its economic analysis. Some within the FTC see privacy as an economic interest, but the FTC’s application of economic principles has been overly doctrinaire. The FTC takes businesses’ claims of utility gained from personal information at face value—just look at how the agency kowtowed to subprime lenders. At the same time, the FTC has been skeptical of the economic consequences to consumers from information trade, including the transaction costs that businesses can shape and opportunistically impose on consumers. The FTC is out of step with the best behavioral evidence concerning how consumers (mis)conceive of the information economy. With a broader economic conception of consumer behavior and privacy wrongs, the FTC could use its power to police many norm-violating practices. The FTC has not fully appreciated the challenge of the information marketplace and platform power, resulting in under-conceptualized cases and missed opportunities. The modern consumer challenge is not information scarcity and a discrete choice between buying an Abdominizer or Ab Roller. The modern information dynamic is of information glut, and many transactions are continuous, where companies attempt to capture consumers in a platform. Platforms have unfathomable means and poorly-understood ends, can change terms on consumers, and will keep user data forever if they can. Platform power is thus bigger than our individual decisions. Platform powers shape our decisions and skew what we think is even possible. That is the modern challenge that the FTC needs to tackle. It is bigger than privacy, and an agency focused only on data protection could not tackle it. Reforming the FTC **With greater resources, the FTC could handle many more cases. How many depends on the kinds of companies and the business areas. A horseshoe effect plagues FTC privacy enforcement: Some small companies may think themselves immune because they believe they are too inconsequential for FTC attention, while some of the largest companies have proven themselves willing to do almost anything to gain platform status.** Clearly, the number of cases the agency is doing now is not enough. On average, the FTC announces about 15-20 Section 5 enforcement settlements per year. It could start by doing on the order of 100 cases, and then study the deterrent effect among small and large companies. But it needs far more resources to scale up like this. Regardless of whether it adopts comprehensive privacy legislation that expands FTC enforcement authority, Congress should significantly expand the agency’s appropriations to enforce existing law. Additionally, as threats from platforms evolve and become clear, the FTC might need to go beyond pushing back against deception and unfair actions that cause harm, and also target manipulation and abusive practices. Platforms and apps are now regularly deploying manipulative interfaces, sometimes called “dark patterns,” to wheedle, pressure, and convince people to act against their own interests for the benefit of the company. These dark patterns are often not outright deceptive nor do they necessarily cause the significant kind of harm contemplated by unfairness rules. Rather, they leverage people’s own limitations against them in an adverse way. Congress could embolden the FTC to fight these dark patterns by modifying Section 5 to prohibit “abusive” trade practices in addition to deceptive and unfair ones, which would mirror the powers of the CFPB. The real thing that upset the two dissenting commissioners and many critics is that the FTC didn’t change Facebook’s business model; it just created a better paper trail for when Facebook surveils its users. However, if the FTC is going to get serious about privacy, Congress is going to have to get serious about limiting platform power, among other issues. The FTC can’t boldly do all the things that must be done without Congress also taking action. Conclusion We think the FTC has done well given its limits on civil penalties and rulemaking. The FTC’s performance has to be evaluated in the context of its hostile environment. It is constantly outgunned by powerful business groups. The FTC has far fewer resources than most of the enterprises it examines, as well as its peer agencies elsewhere in the world. Given its power, its position, the law, and all the pressures on it, the FTC has navigated these waters well. It has been generally bipartisan and avoided much of the politicization seen at the Federal Communications Commission and CFPB. But if the **FTC is to be a successful regulator of tech platforms, it needs more resources, more tools, a greater shield from political pressure, and a clear Congressional mandate.** Only then can it develop and give effect to a broader vision of privacy, power, and human flourishing for a safe and sustainable information society.

#### perception of weakness

Gellman 16 [Robert, Privacy and information policy consultant for the ACLU, worked with privacy issues for over 40 years, including 17 as legislative staff on Capitol Hill. “Can Consumers Trust the FTC to Protect Their Privacy?” https://www.aclu.org/blog/privacy-technology/internet-privacy/can-consumers-trust-ftc-protect-their-privacy]

The FTC has no effective general authority to issue privacy regulations beyond a few specific statutes. Decades ago, the FTC was more aggressive in other areas, and the Congress (in the Magnuson-Moss Warranty—Federal Trade Commission Improvement Act of 1975) placed severe limits on the FTC’s authority so that new regulations are nearly impossible.

The FTC could make greater use of its authority to define “unfair” trade practices, but it only occasionally does so in privacy cases. The FTC much prefers relying on its authority over deceptive trade practices because it’s a lot easier to show that a company didn’t comply with a promise than to establish a standard for unfairness. All deception cases, however, are similar at heart. They break no new ground and set no real standards. All we learn is that saying one thing and doing another is actionable. But we don’t know what substantive privacy practices are appropriate and which should be banned. The FTC’s actions tend to merely encourage companies to make fewer and more ambiguous promises.

So a preliminary conclusion here is that the FTC doesn’t do all that much to protect consumer privacy. It does bring a modest number of privacy (and security) cases each year, and the FTC waves the privacy flag in workshops and reports. No one argues that the FTC is insincere or lacks knowledgeable people, but different viewers weight the value of these activities differently.

In my view, the FTC lacks actual statutory authority to take aggressive steps to protect privacy, and it fails to use effectively the authority it does have. Worse, the FTC uses some of its limited resources to protect business interests by arguing in Europe that the American privacy system is better than it is. None of the FTC’s activities in Europe does anything to help American consumers.

Unlike the FTC, the FCC has lots of regulatory authority with respect to telecommunications carriers, and its current effort to write privacy rules for companies that provide broadband services is a much-needed exercise of that authority. But the telecommunications companies have argued long and hard that the FCC should adopt FTC’s privacy standards, supposedly for the sake of “consistency.”

The real point is that business interests see the FTC as a weaker regulator than the FCC—after all, if a business has a choice of regulatory agencies, it will invariably select the agency with weaker standards, power, and enforcement. In fact, the FTC has no actual privacy rules that would govern broadband providers. Further, any privacy standards inferred from FTC case law, reports, and statements are much more subject to revision due to political changes in FTC members. Actual regulations are harder to change.

#### Market doesn’t perceive antitrust – FTC failures means companies harden behaviors and prepare for cumbersome litigation which triggers the innovation DA – BUT it doesn’t solve competition

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.

### 1

#### Signalling and engagement are not key, no line that they’ve highlighted says that. To the extent coop is key, the MMAC created frameworks for coop that are sufficient to ensure coordination. Cal’s yellow.

Kapur and Shin ’ (Anchal Kapur, Paul Shin, “The Five Eyes look to enhance antitrust sharing and co-operation”, <https://www.claytonutz.com/knowledge/2020/september/the-five-eyes-look-to-enhance-antitrust-sharing-and-co-operation>, September 17, 2020)

The agreement signals greater transparency in the sharing of information between competition agencies about companies doing business across borders. Competition agencies already co-operate in investigations and merger cases – but how they co-operate can vary and the lived experience in one matter can be different in the next. The newly signed co-operation agreement between the Five Eyes signals an intention on the part of competition agencies to co-operate more, and in a more transparent way, about companies in relation to cross-border antitrust investigations and merger control. As a step toward recording publicly existing co-operation practices, the principles outlined between the competition agencies signal an effort toward more transparent co-operation in a globalised economy. An understanding of the framework set by the agreement will be helpful in giving companies more certainty when making decisions in response to co-operation requests and understanding the implications of that co-operation. Overview The competition agencies of Australia (Australian Competition and Consumer Commission), the United States (Department of Justice/Federal Trade Commission), the United Kingdom (Competition and Markets Authority), Canada (Competition Bureau) and New Zealand (Commerce Commission) (Parties) have signed the Multilateral Mutual Assistance and Co-operation Framework for Competition Authorities (MMAC). The MMAC is a memorandum of understanding which provides a framework for co-operation as well as the entry into bilateral or multilateral arrangements between the Parties based on the Model Agreement at Annexure A to the MMAC. What this means for corporates and individuals doing business in Australia The MMAC signals increased and more seamless co-operation between the Parties on areas including antitrust investigations, merger control, areas of future enforcement and competition policy. As shown by the proposed acquisition of Fitbit by Google resulting in concurrent reviews by the ACCC, the European Commission and the US Department of Justice, companies should be aware that competition agencies around the world share information between each other, especially in connection with merger clearance or market studies, and perhaps to a lesser extent, cartel investigations, with a global reach. This means that companies must ensure adopting a careful balancing exercise between: responding to a local competition agency's requests for waivers as each agency will have idiosyncratic issues to consider or prioritise for its own domestic market; and ensuring broader consistency – for example in a joint cartel defence or merger clearance review – taking into account the fact that interactions with an agency in a particular jurisdiction in one way may affect investigations in another jurisdiction. An additional consequence of interagency co-operation and concurrent reviews is that agencies may hold off from publishing a decision or agreeing on a remedy until all agencies in each relevant jurisdiction have made a decision on that particular issue, further adding uncertainty to companies involved. What remains to be seen is how much co-operation between the Parties will reflect what is in the Model Agreement, or diverge from current practice. For example, while the MMAC notes that the Parties intend to deliver the maximum co-operation possible, it also acknowledges that the Parties may not be able to meet every element of the co-operation framework set out in the Model Agreement; and that the Parties may enter into bilateral or multilateral agreements to co-operate. Key provisions of the MMAC and the Model Agreement Information to be shared between Parties is defined in the MMAC as: Agency Confidential Information. Information that is in the possession of a Party that it is not prohibited from disclosing by law, but normally treats as non-public. Investigative Information. Information related to an investigation that is not in the public domain, which has been either compulsorily acquired by, or provided voluntarily to, a Party and that the Party is required to protect from disclosure. Some types of co-operation contemplated under the MMAC by the Parties include: exchanging information and experience on competition issues, policies, laws, and advocacy and outreach; increasing agency capacity and effectiveness by way of mutual sharing of training and best practices; collaborating on projects of mutual interest through working groups; and providing assistance and co-operation on investigations by: sharing confidential information subject to certain protections, limitations on use and privilege); coordinating investigations; facilitating voluntary witness interviews; and other co-operation as requested. As noted above, the Parties have also developed the Model Agreement in order to assist the Parties to enter into a more detailed agreement for reciprocal investigative assistance, either bilaterally or multilaterally. Examples of such investigative assistance contemplated by the Model Agreement include: disclosing, providing or discussing Investigative Information to the extent possible under each Party's laws; and obtaining Investigative Information at the request of a Party by: (i) facilitating witness interviews; (ii) obtaining Investigative Information; (iii) locating witnesses or things; and (iv) executing searches and seizures. The Model Agreement broadly provides that the requesting Party provides, in writing, a description of the assistance it seeks and to the extent necessary, any procedural or evidentiary requirements which need to be observed (for example, recording of witness statements, process for obtaining oaths, retention of privilege and confidentiality issues, records authentication, obligation of the requesting Party to retain Investigative Information). The Parties are to also generally discuss the procedures in executing the request and whether there are any legal requirements and processes for obtaining and handling any Investigative Information. There are also protections and protocols in place in the Model Agreement pertaining to the handling of information shared between the Parties under the Model Agreement. These include provisions relating to the following: Return or destruction of documents. Parties are to return or destroy all Investigative Information at the request of the Party which provided that Investigative Information, at the conclusion of a matter. Privileged communications. If information shared by a Party pursuant to a request for investigative assistance is later found to be privileged, then the Party which receives that privileged information is to not use it for the purposes of enforcement and use all appropriate procedures to limit the disclosure of such information in other contexts (unless it is determined after discussions with the Party which provided that information, that any such privilege has been waived or otherwise lost). Denying or postponing assistance. A Party responding to a request for investigative assistance may deny or postpone the assistance in whole or in part if, among other things, the request would: (i) exceed its reasonably available resources; (ii) be contrary to its law or other important interests; or (iii) the requesting Party is unable to give assurances with regard to confidentiality or the purposes for which the information will be used. Confidentiality. The Parties will, to the fullest extent possible and consistently with its laws, maintain confidentiality of any Investigative Information including the fact that a request for Investigative Information has been communicated or received. Limitation of use. Subject to certain exceptions, Investigative Information received by way of a request for assistance must only be used for the purposes enforcing competition laws (whether for the matter for which the information was sought, or for another competition enforcement matter). Building on existing practices The MMAC complements the other forms of mutual assistance already in place, for example: Treaties. Australia and the United States have treaties in place to exchange evidence and assist each other in relation to matters involving competition law enforcement activities. Memoranda. The memorandum of understanding recently entered into between the ACCC and the Australian Prudential Regulation Authority (APRA) the purpose of which is to promote a competitive, well-regulated and stable financial system in Australia by way of the two agencies coordinating, co-operating and sharing information on the back of a transparent and collaborative relationship. Also, the ACCC signed a memorandum of co-operation in 2019 with the United States' Federal Bureau of Investigation with a view to enhance the two agencies' capabilities in investigating criminal antitrust conduct by way of mutual training and exchange of information. Other frameworks. The Organisation for Economic Co-operation and Development, and the International Competition Network provides a forum for competition agencies to engage on policy and provide recommendations to one another about matters including international co-operation between competition agencies.

#### They don’t solve this internal-link---their Zheng evidence concedes.

Zheng ’21 (Sarah Zheng, Sarah Zheng joined the Post as a reporter in 2016. She graduated from Tufts University with a degree in international relations and film and media studies. She reports on China's foreign policy, “Are the Five Eyes nations banding together in united front against China?”, <https://www.scmp.com/news/china/diplomacy/article/3135913/are-five-eyes-nations-banding-together-united-front-against>, June 3, 2021)

For the last seven decades the network has been an intelligence platform for the US, Britain, Canada, Australia and New Zealand. But a common message on Hong Kong suggests its remit could become broader. It’s the oldest intelligence network in the world, and for more than seven decades the members of the Five Eyes – the United States, Britain, Canada, Australia and New Zealand – have exchanged surveillance information. The grouping grew out of the aftermath of World War II and continued through the Cold War, swapping classified data on the activities and interference by other countries. For that time, the focus was on intelligence but then last year, that appeared to change, with all five members issuing a statement on Beijing’s imposition of a national security law in Hong Kong and the disqualification of legislative candidates in the former British colony. This time the focus was squarely on China, shifting from more private intelligence sharing to a more public stance on policy towards Beijing. Besides Hong Kong, the five have also shared concerns over the security of 5G technology from the Chinese telecoms giant Huawei. Even until very recently, the Five Eyes was still outwardly concentrating on security, with ministers from each country meeting yearly since 2013 to collaborate on shared national security concerns such as access to end-to-end encrypted apps to act against illegal online activities. The focus on China became clearer last year, as Beijing’s political crackdown in Hong Kong intensified. Last summer, British Foreign Secretary Dominic Raab said he had spoken to his Five Eyes counterparts about “burden sharing if we see a mass exodus from Hong Kong” and shared concerns about a national security law Beijing had imposed on the former British colony. In May, the US, Canada, Britain and Australia released joint statements raising concerns about the impending national security law while New Zealand signed on after the legislation came into effect. Five Eyes: why New Zealand wants to go its own, quieter way on China 1 Jun 2021 All five countries also suspended their extradition treaties with Hong Kong after the enactment of the national security law. Canadian Industry Minister Francois-Philippe Champagne said in early April that “Western democracy … is having a moment”. “That’s why I feel that countries who share the same values and principles are keen to work together,” Champagne told Bloomberg. In Beijing it was confirmation that the group was carrying out a joint strategy to contain its rise, as the rift between China and the West deepens. Beijing fears the spy alliance could become a multilateral mechanism to coordinate Western policy on China. Canadian Industry Minister Francois-Philippe Champagne says nations with the same values and principles “are keen to work together”. Photo: Barcroft Media via Getty Images Canadian Industry Minister Francois-Philippe Champagne says nations with the same values and principles “are keen to work together”. Photo: Barcroft Media via Getty Images Researchers from Renmin University in Beijing argued in a commentary last August that the Five Eyes had moved from “operating in a secret and low-profile manner” to openly becoming “another major political alliance for the US to contain China”, shifting its target from the Soviet Union to terrorism to China under former US president Donald Trump. “The coordination mechanism is no longer limited to intelligence sharing and cooperation but is seeking to unite the Five Eyes countries’ stances and policies on Huawei’s 5G technology, Hong Kong’s national security law, the Indo-Pacific strategy,” the researchers said. “We cannot rule out the possibility that the Five Eyes alliance will be elevated to become a comprehensive political and security alliance, and even develop into an information industry and economic alliance.” Why is the Five Eyes intelligence alliance in China’s cross hairs? 20 Jun 2020 In response to Champagne’s comments, Chinese foreign ministry spokeswoman Hua Chunying said it did not make sense for the Five Eyes to unite to deal with China since the United Nations had more than 190 members, and that countries should not seek to “form enclosed small cliques with ideology as the yardstick”. Ministry spokesman Zhao Lijian warned in November that “no matter how many eyes they have, five or 10 or whatever”, anyone who dared to undermine China’s interests should “be careful not to get poked in the eye”. Beijing says ‘Five Eyes’ allies risk having ‘eyes poked out’ for meddling in Hong Kong affairs Srdjan Vucetic, an assistant professor of international relations at the University of Ottawa who has researched the Five Eyes, said the intelligence grouping was “acting in unison more than ever before” on foreign policy, in part due to international collaboration between sub-state intelligence and security agencies and the changing structure of international politics. “This compels foreign ministers of at least some Five Eye states to issue joint statements on Hong Kong, Nagorno-Karabakh [disputed region within Azerbaijan’s borders], global trade and other issues of common concern,” he said. “All of this builds on a long and mostly uninterrupted history of trust-building among state officials that goes back decades.” Despite the united front on Hong Kong, there have been key differences in how the five countries have approached China, including on the security threat from Chinese telecoms giant Huawei . Five Eyes group demands ways to access WhatsApp, other encrypted apps 12 Oct 2020 Canada, for instance, remains the only Five Eyes country to not have a formal policy banning Huawei’s 5G technology, despite calls to do so from officials such as Champagne. Australia and New Zealand expressed support for but did not follow Canada, Britain and the US in issuing sanctions on Chinese officials over Beijing’s repression of ethnic minorities in Xinjiang , in solidarity with European Union sanctions. And New Zealand Foreign Minister Nanaia Mahuta said in mid-April that while it was sometimes necessary to speak out on Hong Kong or Xinjiang , her country would do so “in association with others that share our views and sometimes we will act alone”. New Zealand also said in April that it was uncomfortable with the expanded remit of the Five Eyes. Randy Phillips, who spent 28 years with the US Central Intelligence Agency and served as the agency’s chief representative in China, said Beijing would be concerned if there was a “genuine multilateral defensive mechanism” to form a more effective counterbalance to China. But, he said, the Five Eyes was traditionally centred on intelligence sharing and counter-intelligence rather than on foreign policy or trade policy, and he expected cooperation between the grouping to remain limited to intelligence. “It’s been more driven by a reaction to what China has been doing in each of the countries involved as far as an intelligence threat – whether it’s cyber collection or human intelligence collection or signals intelligence – and comparing notes on what is being done to each of the partners,” said Phillips, who is now a partner at the business consultancy Mintz Group. “The China issues are really only one of a number of things there, and frankly, if China was not threatening, then there wouldn’t be an issue for Five Eyes to even worry about, but it is, so therefore they are.” Pang Zhongying, a specialist in international relations at Ocean University of China, said US President Joe Biden ’s administration had made it clear it sought to repair relationships with its allies, including those in the Five Eyes, to better deal with China. Beijing is concerned about a joint strategy to contain its rise. Photo: Xinhua Beijing is concerned about a joint strategy to contain its rise. Photo: Xinhua But Pang said the Five Eyes mechanism had changed since the Cold War era, and that its importance might now be more symbolic. “The Biden administration’s line of thinking is to support democratic countries and US allies to work together to confront China, connected by their shared values and interests,” he said. “But the world has changed drastically over the last four years. They are using existing tools in their toolbox, including the Five Eyes alliance, to deal with a world that has already changed.” The growing tensions between China and Western countries were “no doubt a big challenge”, the coordination between those nations would not be easy, he said. China policy will never divide us, Australia and New Zealand leaders say 4 Jun 2021 “I think the strategy that China employs is an old one – breaking them up individually,” he said. “Within the Five Eyes, they are coordinating, but to what extent they can coordinate is still a challenge. China can use the divergences in the coordination or cooperation between them to deal with them bilaterally.” There has also been interest from Japan in joining the anglophone alliance – with Japan’s former foreign and defence minister Taro Kono a vocal proponent – but observers have said this is unlikely in the short term. Michito Tsuruoka, an associate professor at Keio University and former senior research fellow at the Japanese defence minister’s National Institute for Defence Studies, said it was more likely for there to be informal cooperation, either in a “Five Plus One” format or greater intelligence-sharing cooperation between Japan and individual Five Eyes countries, such as the US. He argued that Tokyo would need to overcome various hurdles for membership, including revamping its intelligence gathering system, strengthening its counter-intelligence capabilities and ensuring it would be willing to take appropriate action on China, such as the joint Five Eyes statements’ on Hong Kong. “This is exactly the trickiest aspect and I am not quite optimistic,” Tsuruoka said. “Tokyo’s response to Hong Kong and Xinjiang have been quite muted compared to the US or UK.” Phillips, from the Mintz Group, said he expected friction between China and the West to only get worse, citing concerns over the volume of China’s intelligence collection and domestic influence attempts in Five Eyes countries. “China’s been very aggressive, particularly in the Xi Jinping era in collection and activities in each of the member countries,” he said. “At the end of the day, it’s going to take some level of cooperation among countries outside of China to stand together in a sense to show that there are limits on what they will take, and China will have to decide what that means and how they want to react to that.”

### 2

#### Aff ev is about drugs in Southeast Asia.

1AC Nellemann et. Al. ’18 (Nellemann, C.; Henriksen, R., Pravettoni, R., Stewart, D., Kotsovou, M., Schlingemann, M.A.J, Shaw, M. and Reitano, T. (Eds). 2018. World atlas of illicit flows. A RHIPTO-INTERPOL-GI Assess- ment. RHIPTO -Norwegian Center for Global Analyses, INTERPOL and the Global Initiative Against Transnational Organized crime. <https://globalinitiative.net/wp-content/uploads/2018/09/Atlas-Illicit-Flows-FINAL-WEB-VERSION-copia-compressed.pdf>, 2018)

The interest in natural resources is rising, especially gold and oth- er minerals, and timber, among many armed and criminal groups, and this can be currently seen in the Great Lakes region of Africa, Colombia, Peru and Central America, and South East Asia. The biggest source of revenue – that is, from one single illicit product category – for non-state armed groups in conflict is drugs, which, as mentioned, account for 28% of their funding. Most of this rev- enue comes from taxation of drugs by groups such as FARC and the Taliban. Illegally procured oil, gas, gasoline and diesel provides 20% of their income (this was the predominant source of financing for Islamic State in 2014 and 2015). Illegal income from oil is also crucial for organizations outside of the seven main global insurgent and terrorist groups discussed in detail here, including funding organ- ized crime in conflict zones. Gasoline and diesel smuggling is a key source of criminal networks’ fi- nancing particularly in parts of Latin America, Libya and Nigeria. After drugs and oil, taxation and extortion, and il- legal mining, follow, with both representing 17% of revenue. Then, kidnapping for ransom, and ex- ternal funding and donations each represent 3%. Charcoal and antiquities constitute 1% each, but these categories feature more predominantly as financial sources in particular regions, especially charcoal. Combined, these illicit flows directly fund an estimated 96 900 full-time fighters, and an un- known number of part-timers, associated with the seven most notable non-state insurgent and terror- ist groups, plus the multitude of non-state armed groups active in north-eastern DRC. Introduction: Environmental crime has become largest financial driver of conflict Recent surveys by INTERPOL of member countries showed over 84% reported convergence of environ- mental crime with other forms of serious crime. Sim- ilarly, EUROPOL reported in 2017 that 45% of crimi- nal groups in Europe were involved in several crime types – a sharp increase against the 2013 figure.2 Some 40 000 members of the Taliban totalled an estimated annual income of US$75–95 million from taxation – particularly of drugs, land and agricultural produce – and from donations from abroad. In mid- 2017, Islamic State made an estimated US$10 mil- lion a month.3 Today, with dramatic losses of territory, Islamic State probably has at their disposal no more than a quarter of this. This comes largely from con- fiscations and illegal taxation. In all likelihood, they also have considerable reserves, of an unknown size. This figure is 98% down from their high of US$549–1 693 million in 2014.4 The merged al-Qaeda groups Hay’at Tahrir al-Sham (HTS) in Syria and Jama’at Nasr al-Islam wal Muslimin (JNIM) in the Sahel make an estimated US$18–35 million and US$5–35 mil- lion, respectively, from illegal taxation, donations, kid- napping for ransom, extortion, smuggling of counter- feit cigarettes, drugs and illegal taxation. Al-Shabaab receives an estimated US$20 million, half from the illicit charcoal trade and the rest from other forms of taxation,5 while Boko Haram made an estimated US$5–10 million mainly from taxa- tion, bank robberies, donations from other terrorist groups and kidnapping for ransom. Over 8 000 re- bels6 inside the DRC make at least US$13 million7 a year from the exploitation and taxation of natural re- sources – and this sum is but a small portion of the total estimated value attributed to illegally exploited resources in the eastern DRC, which has been put at over US$770 million a year. The smuggling and facilitation of migrants along the trans-Saharan routes have evolved into a high- ly lucrative industry for armed groups, with an esti- mated annual revenue of US$450–765 million (of which US$89–236 million is accounted for within Libya alone).8 Organized criminals use smuggling networks that also increasingly enable foreign fight- ers to move across borders to safe havens, and to stockpile or ship resources by means of formal and informal networks of financial flows. Over 2 600 un- accounted-for (predominantly Islamic State) foreign fighters have left Syria and Iraq, an unknown number of them via Libya, using these illicit smuggling net- works, and they use them to get access to forged pa- pers, as well as routes to safe havens. Collectively, for the seven main extremist groups of insurgents and terrorists (referred to above) – al- Shabaab, Boko Haram, FARC, HTS, JNIM, Islamic State and the Taliban, plus the DRC fighters, the combined funding totals about US$1–1.39 billion a year. Taxation of natural resources and drugs is the most significant, readily available and acces- sible source of income, ranging from taxation of vehicles at checkpoints, agricultural produce, pro- tection money targeting commercial activity to re- ligious taxes. The 96 900 fighters who make up the seven extremist groups (and the DRC combatants) earn an average of US$12 342 a year each. Although this is well above a typical combatant’s ‘salary’, which can be as low as US$100 a month, this amount also includes the fund- ing for their campaigns, the cost of weapons, logis- tics, bribes and operations, and expenses for govern- ance provision. In some cases, such as the Taliban and FARC, and most likely Islamic State too, a large amount is saved for future governance efforts. Besides groups that are designated as terrorist or- ganizations, and including regular organized-crime groups in and around conflict, the scale of criminal economies is in the US$24–39 billion rang

#### It concedes standard terrorist groups thump.

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#### The overall environment is resilient---‘existential’ threats are false

Ronald Bailey 20, Science Correspondent at Reason, Member of the Society of Environmental Journalists and the American Society for Bioethics and Humanities, “The Global Environmental Apocalypse Has Been Canceled”, Reason Magazine, 8/1/2020, <https://reason.com/2020/08/01/the-global-environmental-apocalypse-has-been-canceled/> [grammar edit]

According to these activists and politicians, humanity is beset on all sides by catastrophes that could kill off civilization, and maybe even our species. Are they right?

Absolutely not, answers the longtime environmental activist Michael Shellenberger in an engaging new book, Apocalypse Never: Why Environmental Alarmism Hurts Us All. "Much of what people are being told about the environment, including the climate, is wrong, and we desperately need to get it right," he writes. "I decided to write Apocalypse Never after getting fed up with the exaggeration, alarmism, and extremism that are the enemy of positive, humanistic, and rational environmentalism." While fully acknowledging that significant global environmental problems exist, Shellenberger argues that they do not constitute inexorable existential threats. Economic growth and technological progress, he says, can ameliorate them.

Shellenberger's analysis relies on largely uncontroversial mainstream science, including reports from the Intergovernmental Panel on Climate Change (IPCC) and the Food and Agriculture Organization. And as a longstanding activist, Shellenberger is in a good position to parse the motives behind the purveyors of doom.

Shellenberger's activism is the real deal. To raise a donation to the Rainforest Action Network, he charged his friends $5 to attend his 16th birthday party. At 17 he went to Nicaragua to experience the Sandinista revolution. In the 1990s he worked with the Landless Workers' Movement in Brazil.

In 2003, Shellenberger and allies launched the New Apollo Project to jumpstart a no-carbon energy revolution over the next 10 years. In 2008, Time named him "A Hero of the Environment." He co-founded the ecomodernist Breakthrough Institute, which advocates the use of advanced technologies such as nuclear power and agricultural biotechnology to decouple the economy from the ecology, allowing both humanity and the natural world to flourish. More recently, he founded Environmental Progress, which campaigns for, among other things, the deployment of clean modern nuclear power. He is an invited expert reviewer of the Intergovernmental Panel on Climate Change's next assessment report.

Ohio Passes Controversial Conscience Clause for Doctors

So what does he say about climate change? "On behalf of environmentalists everywhere, I would like to formally apologize for the climate scare we created over the last 30 years," he wrote in an essay to promote his new book. "Climate change is happening. It's just not the end of the world. It's not even our most serious environmental problem." Needless to say, there are environmentalists everywhere who do not believe they have anything to apologize for. A group of six researchers assembled by the widely respected Climate Feedback fact-checking consortium rated his article as having low scientific credibility.

Shellenberger doesn't devote much of Apocalypse Never to the science behind man-made climate change. He basically accepts the consensus that it's a significant problem and instead focuses on various claims about the harms it is supposedly already causing. In that promotional essay, he argues that (1) human[s] being are not causing a "sixth mass extinction," (2) the Amazon rainforests are not the "lungs of the world," (3) climate change is not making natural disasters worse, and (4) fires have declined 25 percent around the world since 2003.

Shellenberger isn't denying the reality of man-made climate change. He's arguing that humanity is already adapting to the ways climate change has been making weather patterns evolve, and that we will continue to adapt successfully in the future. His book is ultimately a sustained argument that poverty is world's most important environmental problem, and that rising prosperity and increasing technological prowess will ameliorate or reverse most deleterious environmental trends.

#### No coordination OR risk.

Walt 16 – Stephen M. Walt, international relations professor at Harvard University. [My Top 5 Foreign-Policy Unicorns — and Why I Want to Kill Them, 9-8-2016, https://foreignpolicy.com/2016/09/08/my-top-5-foreign-policy-unicorns-and-why-i-want-to-kill-them/]

3. The terrorist mastermind. A close cousin to the nuclear rogue is the terrorist mastermind, busily concocting elaborate and highly destructive plots to bring the world to its knees. People like Osama bin Laden and Islamic State leader Abu Bakr al-Baghdadi have made extravagant and dire threats, but the good news is that they’ve never come close to toppling a foreign government, winning millions of followers, or threatening our way of life. I don’t deny that some terrorist groups have devised and executed successful assaults — of which the 9/11 attacks were by far the most damaging — but a word like “mastermind” conjures up images of Dr. Evil-style villains who will inevitably outwit our feeble efforts to stop them and unleash fearsome destruction on an innocent world. In fact, as John Mueller and others keep reminding us, the vast majority of contemporary terrorists are incompetent misfits, and even the very best of them fall well short of evil genius. They can and do stage small-scale attacks that cause modest amounts of harm, but they have repeatedly shown themselves to be incapable of orchestrating complicated operations that could actually bring a stable country to its knees. There have been serious terrorist attacks in Boston; London; Paris; Brussels; Orlando, Florida; and several other places in recent years, for example — yet in each case, these societies proved resilient, and they are thriving again today. Or just look at New York City, which suffered the worst single attack ever and has since fully recovered. Terrorism is a problem, the lives lost to it are an unfortunate tragedy, and those who employ it are dangerous criminals. A few terrorists are moderately clever; most are not. None rises to the level of a “mastermind,” and none poses an existential threat. Reporters, pundits, and speechwriters should drop this term from their lexicon, because this particular animal doesn’t exist. Fortunately.

### 3

#### The US can already challenge those mergers now – means the status quo solves the market certainty internal

Graves ’21 (Zach Graves, Zach Graves is head of policy at the Lincoln Network, a technology and policy group headquartered in Silicon Valley. Zach’s work focuses on the intersection of technology and governance issues. Prior to Lincoln, he was founder and former director of the R Street Institute’s technology and innovation policy program. Before R Street, he previously worked at the Cato Institute and the America’s Future Foundation. He is currently a fellow at the Internet Law and Policy Foundry, an associate fellow at the R Street Institute, and a visiting fellow at the National Security Institute at George Mason University’s Antonin Scalia Law School. He holds a master’s from the California Institute of the Arts and a bachelor’s from the University of California at Davis. Zach is married and lives in Washington, DC, “Expanding the FTC’s role to counter China”, <https://lincolnpolicy.org/2021/expanding-the-ftcs-role-to-counter-china/>, June 22, 2021)

The House Judiciary Committee’s package of anti-tech monopoly legislation heads to markup tomorrow. Included in it are several proposals to strengthen the Federal Trade Commission (FTC) and the Department of Justice’s Antitrust Division (DOJ-ATR), the two primary US competition enforcement agencies. Out of this package, the two bills that are least controversial, and thus most likely to move forward, are the State Antitrust Enforcement Venue Act of 2021 (H.R. 3460) and the Merger Filing Fee Modernization Act of 2021 (H.R. 3843). The former would empower state attorneys general to do more effective antitrust enforcement, and its Senate companion is co-sponsored by Sen. Mike Lee (R-UT) and Amy Klobuchar (D-MN). The latter bill would increase resources for FTC and DOJ-ATR, offset by new revenues from updated merger fees. As I’ve argued, I think the MFFMA is smart policy that will build long term enforcement capacity. But policymakers could take this opportunity to go further. A key dimension that’s often overlooked in these debates is the geopolitics of tech competition. As this and other FTC-related proposals move forward, policymakers should take steps to strengthen the agency’s ability to counter unfair competition from China’s state-backed tech sector, and exploitation of mergers and acquisitions (M&As) to gain access to strategic technology. This could be accomplished by giving FTC greater authority to scrutinize M&As involving companies that receive direct or indirect subsidies from foreign governments like China, complimenting CFIUS and other efforts by the law enforcement and intelligence communities, and putting US innovators on stronger competitive footing. Indeed, the US China Commission’s 2020 report to Congress outlines such a proposal: Congress expand the authority of the Federal Trade Commission (FTC) to monitor and take foreign government subsidies into account in premerger notification processes. • The FTC shall develop a process to determine to what extent proposed transactions are facilitated by the support of foreign government subsidies.The definition of foreign government subsidies shall encompass direct subsidies, grants, loans, below-market loans, loan guarantees, tax concessions, governmental procurement policies, and other forms of government support. • Companies operating in the United States that benefit from the financial support of a foreign government must provide the FTC with a detailed accounting of these subsidies whenundergoing FTC premerger procedures. • If the FTC finds foreign subsidies have facilitated the transaction, the FTC can either propose a modification to remedy the distortion or prohibit the transaction under Section 7 of the Clayton Act, which prohibits mergers and acquisitions where the effect “may be substantially to lessen competition, or to tend to create a monopoly.”

#### Hegemonic stability theory is bogus, held up by the illusion of control, egocentric bias, and overestimated benevolence.

Fettweis 18 Christopher J. Fettweis, Political Science Professor at Tulane University. [Psychology of a Superpower: Security and Dominance in US Foreign Policy, Columbia University Press]

THE ILLUSION OF CONTROL Could 5 percent of the world’s population enforce rules upon the rest? Would even a hegemonic United States be capable of producing the New Peace? Perhaps, but it also may be true that believers in hegemonic stability are affected by a common, nearly ubiquitous form of misperception. A variety of evidence has accumulated over the past forty years to support Ellen Langer’s original observations about the “illusion of control” that routinely affects observers. 85 Even in situations where outcomes are clearly generated by pure chance, like coin tosses and dice rolls, people believe that they can exert influence over events.86 As a result, actors—whether subjects in an experiment or leaders in a stateroom—overestimate their ability to control the external world. One of the earliest and strongest findings of this research is that such illusions are stronger when outcomes are positive. Psychologists and sociologists have long known that while actors are motivated to take responsibility when things are going well, their perceived agency shrinks in the face of bad news.87 People attribute failure to chance and success to themselves.88 This is related to, but not entirely identical with, the phenomenon that Anthony Greenwald labeled “beneffectance,” or the tendency of people to claim responsibility for desired, but not undesired, outcomes.89 Illusions of control over global stability and economic growth, which are manifestly desirable outcomes, should be quite powerful. The extensive research on the illusion has revealed two further findings that suggest Americans might be more susceptible to it than others. First, misperceptions of control appear to be correlated with power: individuals with higher socioeconomic status, as well as those who are members of dominant groups, are more likely to overestimate their ability to control events.90 Powerful people tend to be far more confident than others, often overly so, and that confidence leads them to inflate their own importance.91 Leaders of superpowers are thus particularly vulnerable to distorted perceptions regarding their ability to bring about preferred outcomes. U.S. observers had a greater structural predisposition than others, for example, to believe that they would have been able to control events in the Persian Gulf following an injection of “creative instability” in 2003. The skepticism of less-powerful allies was easily discounted. Second, culture matters. People from societies that value individualism are more likely to harbor illusions of control than those from collectivist societies, where assumptions of group agency are more common. When compared to people from other parts of the world, Westerners view the world as “highly subject to personal control,” in the words of Richard Nisbett.92 North Americans are particularly vulnerable.93 People in relatively powerful countries with individualistic societies are therefore at high risk for misperceiving their ability to influence events.94 For the United States, the illusion of control extends beyond the water’s edge. An oft-discussed public good supposedly conferred by U.S. hegemony is order in those parts of the world uncontrolled by sovereign states, or the “global commons.”95 One such common area is the sea, where the United States maintains the world’s only truly blue-water navy. That the United States is responsible for peace on the high seas is a central belief of hegemonic-stability theorists, one rarely examined in any serious way. The maritime environment has indeed been peaceful for decades: the biggest naval battles since Okinawa took place during the Falklands conflict in 1982, and they were fairly minor.96 If hegemony is the key variable explaining stability at sea, maritime security would be far more chaotic without the U.S. Navy. Perhaps, however, the reason so few other states are building blue-water navies is not because the United States dissuades them from doing so but because none feels that trade is imperiled. In earlier times, certainly during the age of mercantilism, zero-sum economics inspired efforts to cut off the trade of opponents on occasion, making control of the sea extremely important. Today the free flow of goods is critical to all economies, and no state would benefit from its interruption.97 Even in the few continued (or future) areas of maritime contestation, such as the South China Sea, riparian powers have vital interests in the unimpeded movement of goods. The Chinese worry about our ability to restrict trade through the area—what is sometimes referred to as their “Malacca Dilemma,” since a substantial portion of their trade (and all of their energy imports) transit the strait—just as much or more than we do about their ability to do so.98 Hegemonists often argue that without the U.S. presence, Iran would move to seal off the Strait of Hormuz, despite the obvious fact that doing so would be economic suicide for Tehran.99 Kori Shake spoke for many when she warned that, in the absence of compulsion, other countries might not choose policies that align with U.S. interests; however, we can be fairly confident that they would not take steps in diametric opposition to their own interests.100 In today’s interdependent order, what is good for one is often (if not always) good for all. Free trade at sea may no longer need protection, in other words, because it essentially has no enemies. The sheriff may be patrolling an essentially crime-free neighborhood.101 Robert Dahl famously defined power as the ability to get actors to do what they would normally not.102 If the states of the Pacific Rim, Persian Gulf, or anywhere else would be doing roughly the same things without the presence of the U.S. military, its power cannot be responsible for their actions. Oceans unpatrolled by the U.S. Navy appear to be just as stable as those with its carriers. U.S. leaders probably overestimate the degree to which they control the sea and the world at large. EGOCENTRIC AND SELF-SERVING BIASES IN ATTRIBUTION People commonly misperceive the role they play in the thinking process of others. Robert Jervis was the first to discuss the phenomenon now known as the “egocentric bias,” which has been put to the test many times since he wrote four decades ago. Building on what was known as “attribution theory,” Jervis observed that actors tend to overestimate their importance in others’ decisions. Rarely are our actions as consequential upon their behavior as we believe them to be.103 This is not merely ego gratification, though that plays a role; actors simply know much more about their own behavior and choices than they do about the internal deliberations going on in others’ heads. Because people are more likely to remember their contributions to an outcome, they naturally grant themselves more causal weight.104 They act with us in mind, or so we believe. Three further aspects of the egocentric bias suggest U.S. perceptions are particularly susceptible to its effects. First, once again the effect is magnified when the behavior of others is desirable. People generally take credit for positive outcomes and deflect responsibility for negative ones. This “self-serving bias” is one of the best established findings in modern psychology, supported by many hundreds of studies.105 Supporters of Ronald Reagan are happy to give him credit for ending the Cold War, for instance. Today, since few outcomes are more desirable than global stability and nonproliferation, it stands to reason that perceptions of the New Peace are prime candidates for distortion by egocentric and self-serving biases. When war breaks out, it is not the fault of U.S. leaders, but Washington is happy to take credit for peace. The connection between these biases and the self-esteem of actors is rather self-evident. Second, for some time psychologists debated whether self-serving biases were universal or whether their effects varied across cultures. Extensive research has essentially settled the matter: a direct relationship exists between cultural individualism and susceptibility to the bias, perhaps because individualistic societies value self-enhancement rather than self-effacement.106 Individuals from collectivist societies tend to have their egos rewarded in different ways, such as through contributions to the community and connections to others. People from Western countries are far more likely to take credit for positive outcomes than those from Eastern countries, in other words. U.S. leaders are particularly predisposed to believe that their actions are responsible for positive outcomes like peace. Third, self-perception appears to be directly related to egocentric attributions. Individuals with high self-esteem are more likely to believe that they are at the center of the decision-making process of others than those who think of themselves more modestly.107 Leaders of any unipolar state may well be more likely to hold their country in high regard and more vulnerable to exaggerated egocentric perceptions than their contemporaries in smaller states. It might not occur to the lead diplomat of other counties to claim, as did Madeleine Albright, that “if we have to use force, it is because we are America; we are the indispensable nation. We stand tall and we see further than other countries into the future.”108 Her predecessor as secretary of state, Henry Kissinger, said this two decades earlier: “Without our commitment to international security, there can be no stable peace. Without our constructive participation in the world economy, there can be no hope for economic progress. Without our dedication to human liberty, the prospect of freedom in the world is dim indeed.”109 American exceptionalism makes the U.S. security community even more vulnerable to this misperception than average. A classic case of egocentrism in action took place in Washington in December 1979, following the Soviet invasion of Afghanistan. Documents released from Russian archives make it clear that Moscow acted primarily to remove a troublesome puppet regime in its near-abroad.110 President Carter and his administration, however, interpreted the invasion as the first step in a grand design on the Persian Gulf.111 Despite the fact that the United States had made no effort to deter the Soviets in Central Asia, Carter assumed that they were testing U.S. mettle. His reaction—or overreaction, labeling the invasion the “greatest threat to peace since World War II”—turned a local crisis into a global one and scuttled détente.

112 In more recent times, many in the U.S. security community believed that the United States played a decisive role in Vladimir Putin’s decisions regarding Crimea and eastern Ukraine. President Obama’s various critics argued that perceptions of American weakness inspired or even invited Russian aggression. The refusal to act in Syria in particular emboldened Moscow (even though in 2008, despite ample U.S. action in the Middle East, Moscow had proven sufficiently bold to send troops into Georgia). Other critics suggested that a variety of provocative U.S. behaviors since the end of the Cold War, especially the expansion of NATO and dissolution of the Anti-Ballistic Missile Treaty, poisoned U.S.-Russian relations and led to an increase in Kremlin paranoia and eventually to the invasion.113 So, either through weakness or bullying, we were responsible for their actions. Egocentric misperceptions are so ubiquitous and pervasive that they generate something of a law of political psychology: We are probably less influential in their decision making than we think we are. While it may be natural for U.S. policy makers to interpret their role as crucial in the maintenance of world peace, it is very likely that Washington exaggerates its importance in the decision making of others and in the maintenance of international stability. The effect of the egocentric bias may be especially difficult for the unipolar United States to resist because other countries do regularly take Washington’s position into account before acting. But U.S. leaders, and the people who analyze them, should keep in mind that they are still probably less important to calculations made in other capitals than they believe. As a result, hegemony and the New Peace may be epiphenomenal, each existing alongside the other without interacting. OVERESTIMATED BENEVOLENCE After three years in the White House, Ronald Reagan had learned something surprising: “Many people at the top of the Soviet hierarchy were genuinely afraid of America and Americans,” he wrote in his autobiography. Perhaps this shouldn’t have surprised me, but it did … I’d always felt that from our deeds it must be clear to anyone that Americans were a moral people who starting at the birth of our nation had always used our power only as a force for good in the world.… During my first years in Washington, I think many of us took it for granted that the Russians, like ourselves, considered it unthinkable that the United States would launch a first strike against them.114 Reagan is certainly not alone in believing in the essential benevolent image of his nation. People find it exceedingly difficult to imagine that anyone could interpret their actions in negative ways. Actors are well aware of their own motives and assume that their peaceful intentions are transparent. We all overestimate the extent to which others see us as benevolent. Hegemonic-stability theorists purport to understand the perceptions of others, at times better than those others understand themselves. Complain as they may at times, foreigners know that the United States is acting in the common interest. Objections to unipolarity, even though they are at times widespread, are not “very seriously intended,” wrote Kagan, since “the truth about America’s dominant role in the world is known to most observers. And the truth is that the benevolent hegemony exercised by the United States is good for a vast portion of the world’s population.”115 In the 1990s, Russian protests regarding NATO expansion—though nearly universal—were not taken seriously, since U.S. planners believed the alliance’s benevolent intentions were apparent to all. Sagacious Russians understood that expansion would actually be beneficial, since it would bring stability to their western border.116 President Clinton and Secretary of State Warren Christopher were caught off guard by the hostility of their counterparts regarding the issue at a summit in Budapest in December 1994.117 Despite warnings from the vast majority of academic and policy experts about the likely Russian reaction, the administration failed to anticipate Moscow’s position.118 The Russians did not seem to believe American assurances that expansion would actually be good for them. The United States overestimated the degree to which others saw it as benevolent. Psychologists have long understood the significant differences in perception between actors and observers.119 One is so widespread and common that it has come to be known as the “fundamental attribution error” in accounting for the choices made by others: actors attribute the undesirable behavior of others to dispositional rather than situational factors, even though they feel the opposite is true for their own actions. In other words, although we understand that our actions are highly dependent upon the situation in which we find ourselves, we believe that their behavior is a reflection of who they are, of their immutable character flaws.120 Early in the Cold War, to cite a brief example, Secretary of State Dean Acheson had no doubts that Soviet requests for bases on the Dardanelles in Turkey were clear evidence of their aggressive ambitions, while a very similar U.S. action—fortifying U.S. installations on the Panama Canal—was an understandable response to legitimate security concerns.121 Actors are quick to take responsibility for positive outcomes and refuse blame for negative. This effect is directly related to the intensity of the harm: when severe, we strongly deny our culpability.122 This is partially a defense mechanism. Actors also believe that any behavior leading to negative outcomes is inconsistent with their general character, which everybody more or less knows to be true.123 It should be unsurprising that U.S. observers fail to perceive the same amount of damage, either direct or collateral, caused by their policies as do others. Once again, the culture of the United States might make its leaders more vulnerable to this misperception. The need for positive self-regard appears to be particularly strong in North American societies.124 Western egos tend to be gratified through self-promotion rather than humility and independence rather than interdependence. Americans are more likely to feel good if they are unique rather than a good cog in society’s wheel. The strong need to be perceived as benevolent, though universal, may well exert stronger encouragement for U.S. observers to project their perceptions onto others. Foreign ungratefulness always surprises U.S. leaders. In 2003, Condoleezza Rice was dismayed to discover resistance to U.S. initiatives in Iraq: “There were times,” she said later, “that it appeared that American power was seen to be more dangerous than, perhaps, Saddam Hussein.”125 Both liberals and neoconservatives probably exaggerate the extent to which U.S. hegemony is everywhere secretly welcomed. Understandable disagreement with U.S. policies, rather than mere petulant resentment, motivates counterhegemonic beliefs and behavior. The international community always has to worry about the potential for police brutality, even if it occurs only rarely. The United States almost certainly frightens others more than its leaders perceive. A quarter of the 68,000 respondents to a 2013 Gallup poll in sixty-five countries identified the United States as the “greatest threat to world peace,” which was more than three times the total for the second-place country (Pakistan).126 One suspects that when post-Trump polls begin to arrive, they will show similar disquiet in the periphery. To review, if U.S. leaders and analysts are subject to the same forces that affect every human being, they overestimate the amount of control Washington has over other actors and its importance in their decision making. And they probably perceive U.S. benevolence to be much greater than do others. These common phenomena all influence U.S. beliefs in the same direction and may well increase the apparent explanatory power of hegemony beyond what the facts would otherwise support. The United States is probably not as central to the New Peace as either liberals or neoconservatives believe.

#### No risk to tech leadership.

Swaine '21 [Michael; 4/21/21; PhD in Government from Harvard University, director of the East Asia program at the Quincy Institute; "China Doesn’t Pose an Existential Threat for America," https://foreignpolicy.com/2021/04/21/china-existential-threat-america/]

Some observers claim that Beijing could somehow set standards in critical technology areas and install tech hardware around the world, to the extent that China would be able to relegate the United States to a permanently inferior status in both the commercial and military realms, thus threatening the very existence of the country. This is also highly unlikely.

Chinese companies are certainly participating in standard-setting in key areas, including 5G. But this process is highly competitive globally, and U.S., Asian, and European companies all hold major portions of the standards and the standard-essential patents that undergird the global technology ecosystem. There is little if any chance that Chinese companies could come to dominate this process. Many tech experts state that the most likely worst-case outcome of Chinese gains regarding standards and hardware would be a fragmented technology ecosystem that would impoverish all countries, not give China a level of power that would enable it to vanquish the United States.

# 1NR

## Politics DA

#### Itll get done

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."

#### Sinema’s still continuing negotiations

Carney 10/1 [JORDAIN CARNEY, "Sinema in Arizona as Democrats try to get spending-infrastructure deal", 10/1/21, https://thehill.com/homenews/senate/574941-sinema-in-arizona-as-democrats-try-to-get-spending-infrastructure-deal]

Sen. Kyrsten Sinema (D-Ariz.) is back in Arizona on Friday as Democrats and the White House try to work out an agreement to unlock a stalled bipartisan infrastructure bill, which she spearheaded, and a sweeping social spending bill, where she's a key holdout.

Sinema, according to a spokesman, returned to Arizona for a "medical appointment" on Friday but is continuing "remote negotiations with the White House."

Sinema and her staff offered the "White House continued discussions and negotiations" for Friday, the spokesman added, and the two sides connected on Friday afternoon.

Sinema's return to her home state comes after she and Sen. Joe Manchin (D-W.Va.) met with White House domestic policy adviser Susan Rice and senior adviser Brian Deese late into Thursday night in a basement office in the Capitol.

## Trade DA

### 1NR – Turns Case

#### 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.

### 1NR – AT: Defense

#### a) Recent, robust studies

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Why does protectionism lead to conflict and why does free trade help prevent it? Learn about the connection between peace and free trade.

Frédéric Bastiat famously claimed that “if goods don’t cross borders, soldiers will.”

Bastiat argued that free trade between countries could reduce international conflict because trade forges connections between nations and gives each country an incentive to avoid war with its trading partners. If every nation were an economic island, the lack of positive interaction created by trade could leave more room for conflict. Two hundred years after Bastiat, libertarians take this idea as gospel. Unfortunately, not everyone does. But as recent research shows, the historical evidence confirms Bastiat’s famous claim.

To trade or to raid

In “Peace through Trade or Free Trade?” professor Patrick J. McDonald, from the University of Texas at Austin, empirically tested whether greater levels of protectionism in a country (tariffs, quotas, etc.) would increase the probability of international conflict in that nation. He used a tool called dyads to analyze every country’s international relations from 1960 until 2000. A dyad is the interaction between one country and another country: German and French relations would be one dyad, German and Russian relations would be a second, French and Australian relations would be a third. He further broke this down into dyad-years; the relations between Germany and France in 1965 would be one dyad-year, the relations between France and Australia in 1973 would be a second, and so on.

Using these dyad-years, McDonald analyzed the behavior of every country in the world for the past 40 years. His analysis showed a negative correlation between free trade and conflict: The more freely a country trades, the fewer wars it engages in. Countries that engage in free trade are less likely to invade and less likely to be invaded.

Trading partners

The causal arrow

Of course, this finding might be a matter of confusing correlation for causation. Maybe countries engaging in free trade fight less often for some other reason, like the fact that they tend also to be more democratic. Democratic countries make war less often than empires do. But McDonald controls for these variables. Controlling for a state’s political structure is important, because democracies and republics tend to fight less than authoritarian regimes.

McDonald also controlled for a country’s economic growth, because countries in a recession are more likely to go to war than those in a boom, often in order to distract their people from their economic woes. McDonald even controlled for factors like geographic proximity: It’s easier for Germany and France to fight each other than it is for the United States and China, because troops in the former group only have to cross a shared border.

The takeaway from McDonald’s analysis is that protectionism can actually lead to conflict. McDonald found that a country in the bottom 10 percent for protectionism (meaning it is less protectionist than 90 percent of other countries) is 70 percent less likely to engage in a new conflict (either as invader or as target) than one in the top 10 percent for protectionism.



### 1NR – Trade Up

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

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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 predicting 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 World Trade Organization 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.

#### Trade’s rebounding

Laura Wood 9-16, Senior Press Manager at Research and Markets, “Global Terminal Tractor Market (2021 to 2026) - Advancements in Terminal Tractors Presents Opportunities”, Research and Markets, 9/16/2021, https://www.globenewswire.com/en/news-release/2021/09/16/2298189/28124/en/Global-Terminal-Tractor-Market-2021-to-2026-Advancements-in-Terminal-Tractors-Presents-Opportunities.html

However, a strong rebound in global trade with the recovery of major industries across the globe since the middle of last year has helped soften the impact of the pandemic for trade. The global economic recovery is also expected to be fueled by the higher production of vaccines and vaccination rates, allowing businesses to reopen more quickly. According to World Trade Organization (WTO), the volume of world merchandise trade is expected to increase by 8.0% in 2021 after having fallen 5.3% in 2020, continuing its rebound from the pandemic-induced collapse that bottomed out in the second quarter of 2020.

### 1NR – AT: Antitrust Thumpers

#### The XO is empty talk that’s years from being implemented

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Despite its breadth, the immediate effect of the EO on law or regulation is less clear. The EO itself does not enact any new law or regulation. Rather, the EO often uses vague language in instructing or guiding the actions of agencies. This is likely purposeful in many instances, including when the EO refers to independent agencies, like the FTC, Federal Communications Commission, Maritime Commission, Consumer Financial Protection Bureau, and the Surface Transportation Board. Nonetheless, for almost every initiative, there is likely to be a significant gap between the action directed or encouraged by the EO and the time it will take for the relevant agency to investigate, evaluate, and potentially implement a new rule or policy. Even where the direction to an agency is explicit, issuing a new rule or regulation takes time. An agency must first draft a rule, allow for a notice-and-comment period, make any necessary revisions, and then issue and start to enforce a final rule. And this does not account for likely legal challenges. In some instances, the EO directs the agencies to submit a report on the issue first rather than make any immediate changes, pushing any resulting regulatory activity out at least until the period following completion of the report.

#### It's non-binding AND will be blocked by the court and Congress

Lewis Brisbois 21, JD, Lewis Brisbois Bisgaard & Smith LLP, “President Biden Signs Executive Order on Promoting Competition in the American Economy”, 7/12/2021, https://lewisbrisbois.com/newsroom/legal-alerts/president-biden-signs-executive-order-on-promoting-competition-in-the-american-economy

On July 9, 2021, President Biden signed an “Executive Order on Promoting Competition in the American Economy.” According to a Fact Sheet released in advance of the signing, the Executive Order takes “decisive action to reduce the trend of corporate consolidation, increase competition, and deliver concrete benefits to America’s consumers, workers, farmers, and small businesses.”

Among other things, the Executive Order encourages the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ) to focus enforcement efforts on problems in key markets and coordinate other federal agencies’ responses to corporate consolidation. Further, the Executive Order calls on the FTC and DOJ to “enforce the antitrust laws vigorously.” The Executive Order would also make it easier for high tech workers to change jobs by banning or limiting non-compete agreements, lower prescription drug prices by supporting programs to import cheaper prescription drugs from Canada, make it less expensive to repair products by limiting manufacturers from barring self-repairs or third-party repairs of their products, and increase opportunities for small businesses by directing all federal agencies to promote greater competition through procurement and spending decisions. In all, the Executive Order outlines 72 initiatives that attempt to rein in corporate powerhouses that control markets.

In the Fact Sheet, the Biden Administration compared its Executive Order to the responses of previous Administrations to “growing corporate power,” expressly citing the trust-busting efforts of the Theodore Roosevelt and FDR Administrations’ “supercharged antitrust enforcement” agendas.

Although Democratic lawmakers and union leaders have cheered the Executive Order, some business advocacy groups have reportedly warned that such measures as those in the Executive Order could slow the economy.

Executive Orders are expressions of policy intent that have no actual binding legal force. Their ability to change the law lies in follow-up implementation by federal agencies that act to implement presidential initiatives. Those changes are limited by the extent of underlying statutory authority, and the courts in recent years have appeared reluctant to expand the scope of what is considered anticompetitive activity under the antitrust laws. Business interests should keep a close eye on the regulatory proposals that result from this Executive Order and consider engaging on those that affect their business operations.

### 1NR – Link Wall

#### 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

#### They’re successful because it offsets increased antitrust enforcement against them

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Thirdly, and closely related to the two previous concerns, domestic corporations will have strong incentives to lobby for softer enforcement of competition law and might request additional protectionist measures as compensation for corporate generosity and flexibility during the pandemic. If some protectionist measures are arguably acceptable for some time, they should not be at the expense of strict enforcement of competition law in domestic markets.

In such a context, my concern is that competition policy might become excessively lenient. This would be a questionable policy choice. If protectionism was winning supporters before the pandemic, a post-COVID-19 world will tolerate more protectionism in order to back domestic industries and businesses.

#### Trump’s court packing guarantees the link

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.

#### 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.

#### It’s the nail in trade’s coffin

Allison Murray 19, JD from the Loyola Law School, Los Angeles Law School, BS in Business Administration from the University of Redlands, Judicial Law Clerk at the U.S. Bankruptcy Courts, Former Corporate Paralegal at Boeing, Degree in Economics and Management from the University of Oxford, “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?”, Loyola of Los Angeles International and Comparative Law Review, Volume 42, Number 1, 42 Loy. L.A. Int'l & Comp. L. Rev. 117, Winter 2019, Lexis

VI. CONCLUSION

There is a clear "conflict between the evolving economic and technical interdependence of the globe and the continuing compartmentalization of the world political system composed of sovereign states . . . ." 196 This conflict can breed protectionist political views. Unless and until there is a complete paradigm shift away from protectionism, which is impossible, the global economy will not meet the "rational" assumptions necessary to preserve free market efficiency.

Some amount of protectionism is inevitable. Although "inefficient" in economic and academic circles, protectionism preserves the sovereign powers enjoyed by certain countries. In this way, it is a necessity of free [\*146] trade. This paper is not intended to be a commentary on whether protectionism is right or wrong, but rather a demonstration and prediction that antitrust law, a tool of political and economic power, can and will be wielded by individual countries to promote protectionist policies that will affect the international trade landscape in the near term.

While attempting to act on this protectionism is difficult because of the web of international trade agreements currently in existence, individual countries may still use domestic antitrust law to meet protectionist aims, especially given that an international authoritative body governing the use of antitrust does not exist. Countries serious about preserving free trade may cooperate with one another to adopt realistic economic policies that serve to dull the blade of antitrust law through regional agreements, but ought not to attempt to eliminate it altogether.

Antitrust law, like medicine, must be used appropriately to be effective. While antitrust laws generally should encourage free trade, as promoting competition is the aim of their enforcement, they are also at risk of being used to thwart free trade. That risk is further exacerbated by perceptions of unfair enforcement and the divisive rhetoric of world leaders. In this way, antitrust law has the potential to weaken the already delicate international cooperative framework that exists to foster free trade. Absent a change in perceptions and the protectionist rhetoric fueling the current political landscape, antitrust law is likely to be manipulated to serve protectionist viewpoints, making it increasingly likely to become a nail in free trade's coffin, instead of the key to its preservation. It may be a nail that nations are able to ignore for the sake of its benefit, or it may be the one that finally puts an end to the pursuit of truly international free trade. Only time will tell, but one thing is clear: anti-trust law is a field that will impact the international economic community significantly for years to come.

### 1NR - UQ – Decoupling – Brink

#### Decoupling is on the brink.

Leonardo Dinic, NYU Alumnus, China-US Focus, 2-2-2021, "US-China Competition – Semiconductors and the Future of Tech Supremacy," https://www.chinausfocus.com/foreign-policy/us-china-competition-semiconductors-and-the-future-of-tech-supremacy

While Chinese investment in the U.S. slowed down during the Trump administration, goods and services trade volumes were less than 3 percent down from 2016 to 2019. The U.S. portfolio more than doubled from the end of 2016 to the end of 2019. So, we see a $13 billion trade decrease and a $120 billion increase in U.S. investment in China. Therefore, the two countries are still intimately tied. There is undoubtedly a threat of decoupling in tech if China can separate and develop a self-reliant ecosystem. Thus, the biggest losers from 'tech decoupling' are U.S. firms, which are heavily reliant on revenue from China. The U.S. could subsidize American firms to kedep their R&D levels steady, but this might not be easy in the immediate post-pandemic environment. The U.S. could tax businesses instead of taxpayers, but this could also prove to be a hurdle.

#### It’s especially likely now, post-COVID, Brexit, and in the wake of China disputes

Dr. Brian Ikejiaku 21, Senior Lecturer in Law at Coventry University, PhD from the Research Institute of Law, Politics, & Justice (RILPJ) at Keele University, and Cornelia Dayao, LL.M in International Business Law, “Competition Law as an Instrument of Protectionist Policy: Comparative Analysis of the EU and the US”, Utrecht Journal of International and European Law, Volume 36, Issue 1, Gale Academic Complete

Today, there is a growing fear of resurfacing protectionism, from United States’ trade-war with China, to UK’s Brexit, to the less known trade-restricting measures adopted by countries globally. The General Agreement on Trade & Tariff (GATT), superseded by the World Trade Organisation (WTO) since 1995, rendered the classic forms of protectionism such as tariffs obsolete. However, it did not defeat protectionism; instead, protectionism has evolved through its protean capacity to adapt into new and often undetectable forms, now labelled as ‘murky’ protectionism (e.g. competition law enforcement and the recent bailout packages). It is argued that there are two ways in which States can utilise competition law to impair free-trade and restrict foreign firms’ access to domestic markets: the exemption of certain anticompetitive conduct under national competition law and the strategic application of domestic competition law. This article considers competition law as an instrument of protectionist policy with comparative analysis of the US and the European Union. Using an international political economy (IPE) perspective underpinned by overlapping theories of (legal/political) realism, this article establishes that, while no direct robust empirical evidence of protectionist motivations on competition law enforcement exists, particularly on ‘merger regulation and export cartel exemptions’, the presence of political elements on the decision-making, the wide discretion granted to competition authorities and the ‘sponge’ nature of competition law present an opportunity for the use of competition law for protectionist tendencies.