# Wiki Doc 1

## 1NC

### 1NC – States CP

#### The 50 states, territories, and DC should substantially increase prohibitions on anti-competitive business practices by the private sector by at least expanding the extraterritorial scope of its core antitrust laws

### 1NC – FTC DA

#### FTC is putting healthcare 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.

#### The plan trades off

Nylen 20 [Leah Nylen, 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.

#### That crushes innovation

Richman et. al 17 [Barak Richman, 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 – Trade DA

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

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

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

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

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

#### That means selective enforcement

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

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

#### **That ends free trade**

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

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

#### Nuke war

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

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

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

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

Secular Stagnation

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

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

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

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

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

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

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

Illiberal Globalization

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

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

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

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

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

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

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

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

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

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

### 1NC – EU DA

#### The European Commission should substantially increase prohibitions on anti-competitive business practices by the private sector by expanding the extraterritorial scope of its competition laws

#### Extraterritorial application is zero-sum and trades off with EU influence

Fiebig 16 [Andre Fiebig, partner in the Chicago office of Quarles & Brady LLP. author of EU Business Law (2015), published by the Business Law Section of the American Bar Association. He is also coauthor of Antitrust and American Business Abroad (4th ed. 2016). “The Increasing Importance of EU Competition Law for U.S. Companies.” 1/20/16. https://www.americanbar.org/groups/business\_law/publications/blt/2016/01/06\_fiebig/]

Contraction of U.S. Extraterritorial Jurisdiction

As the Europeans have been expanding their extraterritorial jurisdiction, the U.S. courts have been on a contraction course. The liberal pleading rules, broad discovery, treble damages, contingency fees, and class actions have made the United States the Mecca for private antitrust cases. In Hoffmann-LaRoche v. Empagran, 542 U.S. 155, 165 (2004), for example, foreign purchasers of cartelized products acquired outside the United States from foreign sellers brought their claims in the United States and not in the country where the injury was suffered.

U.S. courts are increasingly refusing to hear cases based on foreign conduct which several decades ago they would have entertained. Motorola Mobility v. AU Optronics is a recent example of this contraction. In that case, a foreign subsidiary of Motorola Mobility acquired LCD screens which it assembled into Motorola mobile phones sold into the United States. The Seventh Circuit held that the U.S. Sherman Act was not applicable to foreign LCD screen manufacturers who had conspired to fix the prices of those LCD screens. According to Judge Posner, author of the opinion: “No longer is the United States the world’s competition policeman.” Motorola Mobility v. AU Optronics, 775 F.3d 816, 826 (7th Cir. 2014).

Implications of Expanded EU Extraterritorial Jurisdiction

The expansive extraterritorial application of EU competition law together with contracting U.S. extraterritorial jurisdiction will facilitate increased private litigation in Europe commensurate with the objectives of the European Commission. As of December 27, 2016, the new EU Damages Directive requires all EU member states to “ensure that any natural or legal person who has suffered harm caused by an infringement of competition law is able to claim and to obtain full compensation for that harm.” Directive 2014/104/EU, 2014 O.J. (L 349) 1.

This legislative development is not as insignificant as it may first appear to a U.S. observer. Consumers and companies injured by violations of EU competition law have generally not been able to bring a private claim in Europe for the injuries they suffered as a result of the anticompetitive conduct. In those member states where such private claims were theoretically possible, plaintiffs experienced significant hurdles. Consequently, private competition law claims were virtually nonexistent. The dominant view was that competition law is a public law which should be enforced by the public enforcement agencies. The Damages Directive is designed to promote more private cases to supplement the enforcement efforts of the European Commission and the national competition authorities.

In addition, the European Commission has issued a recommendation to the EU member states encouraging them to do more to facilitate collective actions. Although collective actions as envisaged by the recommendation can be roughly compared to U.S. class actions, they differ in several critical aspects. Out of fear of facilitating the perceived abuses associated with U.S.-style class actions, the Commission recommendation requires that each class member affirmatively opt-into the class in order to be bound by the result. Moreover, the recommendation prohibits contingency fees and the injured parties are limited to compensatory damages. Unfortunately these attributes of U.S.-style class actions which facilitate their abuse are the preconditions for the achievement of the public objectives which class actions were designed to achieve. Consequently, collective actions in the EU are moving toward a system in which third parties (claim aggregators) acquire the rights of several parties to bring a lawsuit. Although these claim aggregation agents are encountering resistance in Europe, once they break through, the European cases that the U.S. courts are increasingly reluctant to hear will be brought in the EU.

#### EU competition law leadership is key to SDGs that solve climate change

Fotis 21 [Panagiotis N. Fotis, Adjunct Professor, Hellenic Open University, Master in Business Administration (MΒΑ). Member of General Directorate of Competition at Hellenic Competition Commission. “Sustainable Development and Competition Policy.” 1/12/21. https://erl.scholasticahq.com/article/18578-sustainable-development-and-competition-policy]

Abstract

The European Union (EU) has in recent years made significant efforts to incorporate green growth issues to EU strategic policies in favor of public and private sectors. In this paper, we present critical aspects of the European Green Growth Deal and we discuss the role of competition policy on promoting sustainability issues. Competition policy should and can be a reliable mechanism to promote sustainable growth across the globe.

1. Introduction

The European Union (EU) has in recent years made significant efforts to incorporate green growth issues to a concrete framework that enables the implementation of green growth objectives in the EU strategic policies, in favor of public and private sectors. The objective of this paper is to present critical aspects of the European Green Growth Deal and to discuss the role of competition policy, on promoting and enhancing sustainability issues. For this purpose, Section 2 reviews the literature and Section 3 presents critical data of Sustainable Development Goals (SDGs). Section 4 highlights the role of competition policy and Section 5 concludes and offers some policy implications.

2. Literature Review

Competition policy relates to green growth, that is, it can take into account environmental and social priorities, through exceptions, exemptions and exclusions; through substantive competition rules fostering social or ecological purposes and through the enhanced application of competition laws (Gehring, 2006).[1] The second and the third categories are common methods used in many jurisdictions and are often perceived as the legitimate expression of broader public policy goals.

Koundouri et al. (2020) state that public and private funding should be channeled to those businesses that are sustainable and those that are willing to invest and to be monitored according to the EU taxonomy for sustainable investments. Sachs et al. (2019) suggest six transformations to achieve SDGs, that is, education, health, low – carbon energy, nutrition, environment and digital revolution, through the collaboration of state and businesses.

Lianos (2018) questions the monocentric model of competition law relying on the price-based revealed preference approach of a representative consumer and presents a polycentric competition law.

Schinkel & Spiegel (2017) argue that coordination of output or prices may boost investments in sustainability if firms are willing to choose green investments before choosing their profit maximized variables.

3. European Green Growth Agenda

Green Growth should foster economic development and natural assets must continue to provide the necessary resources in favor of humanity. Environmental sustainability seems to provide economic opportunities rather than challenges through the implementation of innovation and investments (OECD, 2011).

The European strategy, as part of European Green Deal, focuses on sustainable growth through smart, inclusive and competitive low-carbon economy. On the same ground, circular Action Plan, “focuses on the entire life of products [for ensuring] that the resources used are kept in the EU economy for as long as possible.”[2]

The European Green Growth Agenda (EGGA) is part of Commission’s policy to implement the United Nations (UN) 2030 Agenda as well as SDGs and covers all sectors of the economy (Sachs et al., 2019). It focuses on the transformation of the EU into a competitive economy with no net emissions of greenhouse gases in 2050. The SDGs, which were adopted in September 2015 by the General Assembly of the UN, defined 17 development goals for both developed and developing countries, encompassing economic, financial, institutional, social and environmental dimensions. Almost a year later, in 30 November 2016, the European Commission (EC), among others, proposed a new 30% energy efficiency target for 2030 (Polemis & Fotis, 2019).[3]

Table 1 presents critical indicators of SDGs of the top five EU countries and Greece from 2010 to 2018. Particularly, it is evident from Table 1 that Norway, Iceland, Sweden, Finland and Latvia are the first five countries with the highest share of renewable energy in gross final energy consumption by sector (SRE) in 2018. Slovenia, Belgium, Netherlands, Lithuania and Italy are the top five countries with the highest recycling rate of waste (RRW) in 2016. Slovenia has increased the percentage rate of recycling waste by 28% from 2010 to 2016.

Table 1 Critical indicators of SDGs of the EU28, Eurozone, Greece and top five EU countries from 2010 to 2018 **\*Table 1 Omitted for formatting\***

Table 1 also depicts greenhouse gas emissions intensity of energy consumption (GGE). Lithuania shows the highest intensity in 2018, following by Bulgaria, Netherlands, Cyprus and Luxembourg. The top five EU countries regarding energy import dependency (EID) in 2018 are Malta, Luxembourg, Cyprus, Belgium and Italy.

In regard with Greece, gross final energy consumption in 2018 is 18%, just above the average percentage of EU28. Also, Greece’s percentage share of energy import dependency in the same year is almost 70,6%, far above the average percentage of EU28 and Eurozone countries, while regarding greenhouse gas emissions, Greece is below the average figures of EU28 countries (81,4%), but it is far below also the corresponding percentage emissions of the top five EU countries.

In the light of the above evidence, the top five EU countries have made promised steps towards Green Growth regarding the use of renewable energy and the elimination of Greenhouse gas emissions. However, since all of them show high levels of energy import dependency, more efforts should be made towards the implementation of EGGA.

In regard with Greece significant progress needs to be made, in particular by expanding the cyclical economy, taking actions to tackle climate change and ensuring biodiversity and a sustainable environment. The latter is a priority, particularly for Greece, as an import intensive country (“National Plan for Energy and the Climate,” 2019), in order to follow a Sustainable Growth path for the transition of the Greek economy (Pissarides Commission, 2020).[4]

4. Green Growth and the Role of Competition Policy

Competition authorities should not provide straightforward competition rules when certain segments of a market need to be guaranteed to promote the development of a desirable new technology. Enhancing further competition in certain markets could also be in favor of green growth. Policies to encourage green growth consumption patterns have an enhanced link with competition policy. For instance, competition laws that prevent misleading advertising could be helpful to ensure greater respect for the rights of consumers, which is a component of sustainable development in many instances.

Around the globe one of the first cases encompassing sustainability issues is the Shell/Tepco Case[5]. In 2001, the Competition Tribunal of South Africa for the first time expressed its reading of the public policy evaluation in South African competition law. The European Court of Justice (ECJ), regarding Case C-379/98, stated that “[t]he use of renewable energy sources for producing electricity, is useful for protecting the environment in so far as it contributes to the reduction in emissions of greenhouse gases which are amongst the main causes of climate change which the European Community and its Member States have pledged to combat.” The ECJ decided that while the law was violated by the anti-competitive behavior of the dominant firm, it was doing so for protecting the environment.

According to the HCC (2020), the Greek Competition Commission, has the power to issue an exemption decision under article 1 par. 3 of Law No 3959/2011. In its Decision No. 457/V/2009 the HCC issued an exemption decision under article 1 par. 3 of Law No 3959/2011 to the Public Company of Electricity (DEH) for an exclusive supply agreement for 15 years with a lignite mine for the generation of electricity, among others, on the grounds that security of energy supply would benefit direct consumers (HCC, 2009). Moreover, in its Decision No. 627/V/2016 the HCC cleared with commitments the acquisition of Piraeus Port Authority SA (PPA) by COSCO (Hong Kong) Group Limited (COSCO), among others, on the grounds that the clearance of the acquisition would benefit the public sector and the “users” of the Greek port, by €368,5 million (HCC, 2016).[6]

With regard to Greek and European merger control, public interest considerations do not form part of the substantive test in both regimes. However, past case law indicates that HCC has engaged with green growth arguments, although in all of these cases sustainability has played a secondary role in the decision reached (HCC, 2020). Particularly, in HCC’s Decision No. 682/2019 the notifying party put forward two strategic objectives for the clearance of concentration; on the one hand, the reduction of energy required at all stages of its production process, through the recycling of aluminium products (scrap) by products whose use has been completed and, on the other hand, the achievement of acquired firm’s green attitude in favor of sustainable development (HCC, 2019).[7]

All in all, the above mentioned case law indicates that competition policy should and must be the driving force of sustainability. The next step is to internalize green growth externalities into completion law towards sustainable growth.

5. Results and Policy Implications

The interconnection between competition policy and sustainable growth is unquestionable. The former may play crucial role by enhancing sustainability through competition rules. National competition authorities must be the mechanism fostering sustainable growth by taking into account various aspects of externalities and comparing discounted gains against environmental costs. The analysis reveals that EU countries should strengthen their efforts towards Sustainable Development, particularly by eliminating their dependency from energy imports.

One of the critical requirements for green growth is green investments, as it has been set out by EGGA (EC, 2019). Competition policy should, therefore, offer the incentives to firms to improve technological progress towards greener technologies and to avoid investments funds being channeled to brown technologies for short-term returns (Capasso et al., 2019).[8] For these purposes, it should balance the negatives and positives during the evaluation of firms’ anti-competitive behavior for protecting the environment.

#### SDGs are leverage points that solve extinction BUT failure causes cascading risks that cumulatively outweigh any single risk, causing extinction.

Fenner and Cernev ‘20 [Richard Fenner; Jan. 2020; Director of the MPhil in Engineering for Sustainable Development at Cambridge; Australian National University, Canberra, Australia; “The importance of achieving foundational Sustainable Development Goals in reducing global risk,” Volume 115, https://www.sciencedirect.com/science/article/pii/S0016328719303544]

Fig. 3 demonstrates that cascade failures can be transmitted through the complex inter-relationships that link the Sustainable Development Goals. Randers, Rockstrom, Stoknes, Goluke, Collste, Cornell, Donges et al. (2018) have suggested that where meeting some SDGs impact negatively on others, this may lead to “crisis and conflict accelerators” and “threat multipliers” resulting in conflicts, instability and migrations. Ecosystem stresses are likely to disproportionately affect the security and social cohesion of fragile and poor communities, amplifying latent tensions which lead to political instabilities that spread far beyond their regions. The resulting “bad fate of the poor will end up affecting the whole global system"(Mastrojeni, 2018). Such possibilities are likely to go beyond incremental damage and lead to runaway collapse.

The World Economic Forums’ Global Risks Report for 2018 shows the top five global risks in terms of likelihood and impact have changed from being economic and social in 2008 to environmental and technological in 2018, and are closely aligned with many SDGs (World Economic Forum, 2018). The report notes “that we are much less competent when it comes to dealing with complex risks in systems characterised by feedback loops, tipping points and opaque cause-and-effect relationships that can make intervention problematic”. The most likely risks expected to have the greatest impact currently include extreme weather events natural disasters, cyber attacks, data fraud or theft, failure of climate change mitigation and water crises.

These are represented in Fig. 3 by the following exogenous variables. “Climate change” drives the need for Climate Action (SDG 13), “Cyber threat” may adversely impact technology implementation and advancement which will disrupt Sustainable Cities and Communities (SDG 11); Decent Work and Economic Growth (SDG 8) and the rate of introduction of Affordable and Clean Energy (SDG 7), with reductions in these goals having direct consequences in also reducing progress in the other goals which they are closely linked to. “Data Fraud or Threat” has the capacity to inhibit innovation and Industrial Performance (SDG 9), reducing competitiveness (and having the potential to erode societal confidence in governance processes). “Water Crises” (linked with climate change) have a direct impact on Human Health and Well Being (SDG 3) as well as reducing access to Clean Water and Sanitation (SDG 6) and reducing agricultural production which increases Hunger (SDG 2). The causal loop diagram also highlights “Conflict” as a variable (driven by multiple environmental-socio-economic factors) which together with regions most impacted by climate degradation will lead to an increase in migrant refugees enhancing the spread of disease and global pandemic risk, thus impacting directly on Human Health and Well Being (SDG 3)

4.2. Existential and catastrophic risk

The level and consequences of these risks may be severe. Existential Risks (ER) have a wide scope, with extreme danger, and are “a risk that threatens the premature extinction of humanity or the permanent and drastic destruction of its potential for desirable future development” (Farquhar et al., 2017,) essentially being an event or scenario that is “transgenerational in scope and terminal in intensity” (Baum & Handoh, 2014). With a smaller scope, and lower level of severity, global catastrophic risk is defined as a scenario or event that results in at least 10 million fatalities, or $10 trillion in damages (Bostrom & Ćirković, 2008). Global Catastrophic Risk (GCR) events are those which are global, but they are durable in that humanity is able to recover from them (Bostrom & Ćirković, 2008; Cotton-Barratt, Farquhar, Halstead, Schubert, & Snyder-Beattie, 2016) but which still have a long-term impact (Turchin & Denkenberger, 2018b).

Achieving the Sustainable Development Goals can be considered to be a means of reducing the long-term global catastrophic and existential risks for humanity. Conversely if the targets represented across the SDGs remain unachieved there is the potential for these forms of risk to develop. This association combined with the likely emergence of new challenges over the next decades (Cook, Inayatullah, Burgman, Sutherland, & Wintle, 2014) means that it is of great value to identify points within the systems representations of the Sustainable Development Goals that could both lead to global catastrophic risk and existential risk, and conversely that could act as prevention, or leverage points in order to avoid such outcomes. This identification in turn enables sensible policy responses to be constructed (Sutherland & Woodroof, 2009).

Whilst existential threats are unlikely, there is extensive peril in global catastrophic risks. Despite being lesser in severity than existential risks, they increase the likelihood of human extinction (Turchin & Denkenberger, 2018a) through chain reactions (Turchin & Denkenberger, 2018a), and inhibiting humanity’s response to other risks (Farquhar et al., 2017). It is necessary to consider risks that may seem small, as when acting together, they can have extensive consequences (Tonn, 2009). Furthermore, the high adaptability potential of humans, and society, means that for humanity to become extinct, it is most likely that there would be a series of events that culminate in extinction as opposed to one large scale event (Tonn & MacGregor, 2009; Tonn, 2009).

Whilst the prospect of existential risk, or global catastrophic risk can seem distant, the Stern Review on the Economics of Climate Change estimated the risk of extinction for humanity as 0.1 % annually, which accumulates to provide the risk of extinction over the next century as 9.5 % (Cotton-Barratt et al., 2016). With respect to identifying these risks, it is known that in particular, “positive feedback loops… represent the gravest existential risks” (Kareiva & Carranza, 2018), with pollution also having the potential to pose an existential risk.

### 1NC – Adv CP

#### ADVANTAGE CP:

The United States federal government should:

* create a democratic alliance for norms governing emerging technologies.
* fund cyber hardening and resiliency measures
* establish a national innovation policy, to oversee procurement reform, incentives for research and development, and workforce training;

#### Offer to fully fund any patent litigation from non-patent holders in the chemical sector

#### Should substantially increase its funding of small chemical companies and funding of research and development of nanotechnology and regenerative chemicals

#### Allies plank 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.

#### Resilience solves cyber.

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

#### National policy restarts innovation and solves slow growth without market disruption.

Sadat ’20 [Mir; November 22; former Policy Director leading interagency coordination on defense and space policy issues, including at the Department of Defense and National Security Council, Ph.D. from Claremont Graduate University; The Hill, “Why innovation is so important to America's global leadership,” <https://thehill.com/opinion/technology/526535-why-innovation-is-so-important-to-americas-global-leadership>]

The U.S. government must mitigate the harm to America’s innovation base. So far, the government has yet to craft a national innovation policy and stand up a true national innovation council to modernize government; coordinate between the government, industry and academia; transform monopolistic or oligopolistic markets into competitive sectors; and ensure that America regains global economic leadership through foreign partnerships. Reform of American innovation is necessary for several reasons.

First, to harness the untapped potential of exponential technologies, the government must democratize its requirements processes that have advantaged legacy systems and traditional technology providers. The government must evolve its industrial age procurement policies, practices and beneficiaries to the digital age by placing innovation at the core of its activities. The innovation base needs public and private investment capital, scaled to the risk and importance of the invention, to level the playing field for startups and scale-ups, and to increase competitiveness. In short, the government must increase funding and incentives for Apollo-scale research and development (R&D) programs.

Second, to create exponential technologies in an era of unprecedented disruption, America’s workforce requires continuous training and education. The “lone innovator” is a myth because every American invention is a mix of persistence, genius, teamwork, business model and resource management. The government must establish whole-of-nation policies that stimulate world-class innovators in the areas of science, technology, engineering and mathematics (STEM); support nationwide STEM access and diversity; promote R&D and economic growth in technologically underserved areas using economic opportunity zones; and improve mentorship programs for underrepresented persons.

Third, individual innovators and their teams are challenged to achieve successful outcomes because of the high costs and risks, the uncertainty and gaps in funding, and the vicissitudes of the market’s readiness. America’s innovators are strewn across the federal enterprise, the national security establishment, state and local governments, startups and established corporations, universities and research institutions, and other consortiums. Innovators must collaborate by leveraging innovation multipliers such as diversity of effort, thought and demographics.

Fourth, if rules-based, free-market innovation is to compete economically and demonstrate American leadership, then the government must create and enhance opportunities for innovators to compete in international markets and garner global funding. Innovation is the global competition that transcends borders. We must be the first to disrupt our markets, rather than others who could render particular industries potentially obsolete.

#### Last two planks solves chemicals – their only internal is threat of litigation – we’re blue

**Kovacic et al. ’21** [William, Robert Marshall, and Michael Meurer; 2021; Global Competition Professor of Law and Policy at George Washington University Law School; Distinguished Professor of Economics at Pennsylvania State University; Professor of Law at Boston University; Boston University School of Law Research Paper Series, “Patents and Price Fixing by Serial Colluders,” No. 21]

In a recent article on price fixing, we coined the term **“serial colluder”** to **designate multi-product firms that** have **participated in many cartels, involving a range of participants**, and initiated at different dates.15 **Several chemical firms meet this definition because of their participation in at least thirty different chemical cartels** spanning at least three decades.16 Our earlier article also addressed the business model of serial colluders and the failure of anti-cartel law to deter such behavior. In some cases, weak monitoring and high-powered incentive payments to product division managers may have fostered multiple cartels without encouragement from, or even contrary to the instructions of, upper management. This “rogue manager” explanation of serial collusion is often invoked by corporate directors seeking a story that deflects blame away from them. A more troubling explanation for serial collusion is that **price fixing is an integral part of the business model of certain firms, and** high-level **managers** advocate for and **assist with collusion** throughout the firm. We believe **serial colluders** in certain industries **have run “portfolios of cartels.”** In support of this “business model” explanation, in previous work we presented various kinds of indirect evidence that serial colluders in the chemical industry have indeed run a portfolio of cartels.17 Unaddressed in that previous work is an examination of how serial colluders may use patents and patent licensing schemes to initiate or maintain a cartel. In Section I of this paper, we find that **serial colluders** increased patenting during the duration of their cartels, which is consistent with the theory that these firms **use new patents to support cartelization. The magnitude of this increase is above and beyond incremental increases in patenting over time**. We also find that “core” serial colluders (but not other major serial colluding chemical firms) increased patenting on products that they did not produce but that were being cartelized by their fellow colluders, which is consistent with the view that serial colluders engage in reciprocal practices across distinct markets.18 On the whole, our **analysis of patenting** **practices for serial colluders in the chemical space suggests** ongoing **use of patents to initiate** or maintain **cartels**, a practice that may apply to other industries with serial colluders as well. Finding that **the empirical data support our hypothesis of serial colluders using patents to** create and **maintain cartels**, we next probe in Sections II and III reasons for why **this conduct might evade agency enforcement and effectively help to coordinate cartels**. Unlike the older cartels that openly used patents to directly restrain output, modern serial colluders running a portfolio of cartels potentially use patents in ways that are indirect and less likely to be noticed by private plaintiffs and government enforcers. We then explore how cartel participants in the modern era (excepting pay-for-delay cases like Actavis) appear to use patents to deter entry into cartelized markets, facilitate intrafirm communications and actions in support of collusive conduct, and communicate with other serial colluders about their portfolio of cartels under the guise of discussing their portfolio of patent licenses. For the remainder of the Article, we discuss how the **existing antitrust jurisprudence regarding patents and price fixing requires major upgrades to account for** the **dramatic** modern **improvements in** our understanding of **the economics of collusion**. In older cases, judges recognized that firms could use patent licenses directly to restrict output, raise prices, or boost competitors’ marginal costs, 19 but they may not have appreciated the many indirect ways that patents can increase cartel stability and profitability. As discussed in greater detail below, patents provide an avenue for ongoing communication among rivals about output and pricing. Patent pools and cross-licensing arrangements are especially useful for organizing cartels across product types. Furthermore, licensing regimes may permit a firm to organize supportive resources within the firm without raising legal compliance concerns. Anticipating these benefits to cartel formation and maintenance, this Article goes on to suggest that **serial colluders** may engage in strategic patenting. That is, they **procure patents to advance cartel goals rather than to promote innovation. We present data on** global **patent procurement by price fixers in the chemical industry that is consistent with this view**. Importantly, firms managing a portfolio of cartels can use patents in a reciprocal way to stabilize cartels across markets where not all firms participate as producers in each market. **Within the network of chemical cartels**, for example, **we see evidence that** certain **firms use patents to promote cartels in markets for products they do not produce. Firms may use the threat of a patent lawsuit to punish deviators and discourage outsiders from attempting to enter** a cartelized **market**. They may also use patent licenses to audit licensee sales and monitor compliance with cartel rules. One firm might perform such a service for other firms in the collusive network with the expectation that the non-participant would get similar help managing their own portfolio of cartels from other serial colluders in the future. Further, in this Article, we probe deeply into the ways serial colluders can coordinate their patent practices to enhance cartel profits and stabilize their cartels. Our previous work on serial collusion documented that **modern anti-collusion enforcement has not adequately deterred massive, prolonged multi-market price-fixing schemes**.20 We also explained how various forms of reciprocity among serial colluders increased their cartel profits and made cartels more resilient.21 We expand on this topic with respect to the use of patents for cartelization, which we touched on only briefly in previous work. This Article also describes gaps in existing antitrust enforcement and scholarly analysis of patenting practices. Recognition of serial collusion helps us to identify further flaws in the conventional treatment of patent licenses that allegedly facilitate price fixing. As one example, case law favors vertical patent licenses by applying rule of reason analysis to restrictions that could earn per se condemnation if organized as horizontal licenses.22 Such deference stems partly from worries that anti-collusion enforcement could weaken returns to patents and discourage research and innovation, as well as concerns that there may be legitimate reasons for suppliers, manufacturers, retailers to coordinate some activities. Yet, past practice of serial colluders show that firms can and do evade per se condemnation by simply organizing a middle man to stand as an upstream patent pool organizer. Thus, we reject such deference for vertically organized patent licenses in the context of serial colluders that are managing a portfolio of cartels, because what appears to be a vertical relationship is often part of the network of connections among serial colluders. Similarly, the leading scholarly commentary on patents and price fixing suggests that socially desirable licenses can be sorted from socially harmful licenses by determining whether significant rents flow to the licensor.23 This test may be effective in the context of an isolated cartel affecting a single market.24 As we explain in Section IV, this test has little or no value in the context of serial collusion where the firms are managing a portfolio of cartels. Finally, in this Article, we provide additional policy recommendations tailored to the abuse of patents by serial colluders. Our earlier work lays out various reforms to anti-collusion policy that could mitigate the harms of serial collusion. In Section V, we go further and explain how certain patent-related behaviors by firms that do not participate directly in cartelizing a particular market can be used to infer collusion in that market (when the outsider is part of a network of serial colluders). **We** also **discuss penalties and liability that antitrust** and patent **agencies should impose on firms that use their patents to facilitate collusion** by others. Specifically, we argue for generous application of the patent misuse defense to render unenforceable patents used to facilitate price fixing.25 Entry would be easier and patent-based cartel punishments would be eliminated if cartel patents are left unenforceable. Finally, we identify possible adjustments in the institutional arrangements by which the federal antitrust enforcement agencies address the use of patents and patent licensing to facilitate collusion. This Article is organized as follows. Section I presents empirical evidence that serial collusion is a serious problem, that serial colluders in the chemical industry use the patent system intensively in ways that suggest strategic patenting, and that their patenting behavior is consistent with their use of patents to enhance multi-market price fixing. Section II considers the evolution of antitrust doctrine and policy related to patent assertion and licensing as collusive devices. Notwithstanding existing strictures, this section reviews how patent practices can facilitate cartelization. Section III turns to the role that patents can play in supporting serial collusion. Section IV discusses the modernization of doctrines related to patents and price fixing in response to the threat of serial collusion. Section V offers policy recommendations and additional concluding comments. I. Serial Collusion and Patents: Case Study in the Global Chemical Industry **Serial collusion in the chemical industry** dates back to the 1880s and **has reappeared in most decades** since then.26 German chemical firms have been prominent price-fixers and often cartel ring-leaders, but **they have been joined by chemical firms from the United States**, England, France, Belgium, the Netherlands, Canada, Switzerland, South Korea, and Japan.27 **Dozens of different chemical products have been affected by price fixing** at some point.28 Historically, **some** of these collusive **agreements were regional; others were global**. Some were short-lived; others spanned decades. This history, and the specific role of patents to instituting and maintaining cartels in the global chemicals market, is described below. A. Historical and Modern Cartelization of the Global Chemical Industry **Patents played a significant role in chemical cartels during** the first half of **the twentieth century**. 29 Margaret Levenstein observes that **“[d]uring most of the 30 years preceding World War I**, bromine **producers in the United States and Europe colluded, pooling output, dividing up markets, and raising prices.”**30 In the period leading up to World War II, German **chemical firms engaged in** a variety of practices that Heinrich Kronstein has called **“monopolizing by patents.”** 31 One technique employed by the “combine” of chemical companies was **to direct the research arm of each participant to procure as many patents as possible**, to use them **for strategic ends**.32 From his study of patents and cartelization in 1920s Germany, Kronstein reported that “[m]ore and more **the chemical industry began to apply for patents on practically everything**. The research laboratories of the few remaining chemical works, connected among themselves by cartel and working agreements, systematically studied entire fields and closed them by a large number of patents.”33 In fields such as plastics and pharmaceuticals, “[e]ach publication in any chemical review or each patent application of any applicant in any country was given to the staff of the research laboratory to find anything that could be patented, no matter if the patent was a patent of evasion or supplement or protection against other inventors.”34 This phenomenon Kronstein described resembles the pattern of recent patenting behavior in the chemical sector we document below—where **patenting activity by cartel participants increases dramatically during the period of illegal collaboration for the purpose of consolidating market share for existing firms and keeping out entrants**.35 A second method documented by Kronstein and other researchers involves the extensive use of patent licensing agreements among major **U.S. and foreign chemical producers** and their subsidiaries to **establish effective networks for global cartelization**.36 Kronstein reports that in the decades leading up to World War II, “[t]he participation of an American enterprise in a world cartel chiefly through the device of patent exchange became very common.”37 In 1946, George Stocking and Myron Watkins reported “that **a division of market territories for products** coming **within the scope of [cartel] patents** and secret processes in a given field usually **entail[ed] a complete division of territories for all related products.”**38 A third method of cartelization involved the use of **multiple licensing arrangements to cartelize entire domestic markets**. In the late 1930s, the DOJ successfully challenged Ethyl Gasoline Company for creating an elaborate system of licensing arrangements for the production and use of tetra-ethyl lead to stabilize prices for motor fuel. 39 In another prominent American example of the technique applied outside the chemical sector, in the 1940s, the DOJ prosecuted United States Gypsum for using minimum price terms in patent licenses to cartelize the gypsum wallboard industry.40 For about a decade, Gypsum had granted licenses with largely identical price restrictions to nearly all of the industry’s numerous firms.41 In upholding the government’s challenge to Gypsum’s licensing terms, the Supreme Court observed, **“the industry is completely regimented, the production of competitive** unpatented **products suppressed, a class of distributors squeezed out, and prices** on unpatented products **stabilized.”**42 **The rash of chemical industry cartelization has continued to modern times. In the three decades since 1980, the European Commission** (EC) **prosecuted chemical producers for collusion in 32 separate markets**. 43 Notable **American antitrust cases** brought against chemical producers during this period **ended cartels in** the **markets for lysine, citric acid, and vitamin C**. 44 Since 2010, the Korean Fair Trade Commission (KFTC) fined participants in a chemical additives cartel. 45 Today, the EC is investigating an ethylene cartel, 46 and **a massive investigation of serial collusion by generic drug companies is ongoing in the United States**.47 Whereas the scope of these investigations has not focused on what role patents may have played in helping to facilitate these cartels, we suspect that patents did play a role.48 We explore this conjecture by examining the patenting behavior of colluding firms before, during, and after agency enforcement to explore whether these firms may have pursued patents for strategic ends.

#### Funding solves chemicals – Cal inserts blue

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

**New technologies** and processes **will** help **deliver the innovations needed to respond to mankind’s greatest challenges**, says HOK’s firmwide director of specifications. Whether you’re an architect or facility owner interested in ensuring healthy buildings and communities, a contractor navigating the many shades of “green” coatings or a supplier responding to market demand for these coatings, sustainability matters. But what makes a coating “sustainable” in the built environment, and why should we care? Wikipedia defines sustainability as “a characteristic of a process or state that can be maintained at a certain level indefinitely.” **Production**, distribution and application **of** sustainable **coatings must meet current needs without compromising our ecosystems’ ability to sustain future populations**. Continuing to build the way we have built, using the materials we have used for centuries, is no longer viable in light of diminishing energy, water and other resources. **Key megatrends, including population growth, climate change and a proliferation** ofinfo**rmation, make sustainable coatings** all the more **critical**. So **it’s exciting to see the industry responding with advanced technologies that are healthier for** building occupants and **the environment, while achieving high performance** and durability. We see it in such innovations as the newest generation of PVDF (polyvinylidene fluoride) coatings, polysiloxane coating systems, advanced anti-microbials and more. And just ahead we can expect **to** see phase-changing coatings that will respond chemically to cooler or warmer conditions, for instance, to improve energy efficiency in the building envelope. We may see roofing materials that reflect and absorb heat as appropriate, using phase-changing materials and nanotechnology. **Such cutting-edge technologies, along with processes that reduce waste, reuse byproducts and allow reformulation** into new products, **promise game-changing improvements** for coatings. Let’s take a closer look at the drivers that will make sustainable coatings increasingly important, and the processes and technologies on the horizon. Responding to Dwindling Resources The logic is simple: **If we continue to consume natural resources faster than** they can be **replenished, and** if we **produce wastes for future generations** to deal with, **we’ll have a harder and harder time maintaining life on Earth** as we know it. **Scientific research on species extinction makes it clear that human survival depends on maintaining our ecological cycle**, as well as those of other species and their habitats. **Yet we’re barreling like a runaway train toward depleting** some **key resources**. Petroleum: **Petrochemicals**, a necessary feedstock for high-performance coatings, derive from fossil fuels that took millions of years to create; they are not readily replenished. Sustainable resource management requires that we conserve irreplaceable resources through closed-loop manufacturing, reusing manufacturing byproducts and recycling waste into new products. **Water Resources**: Only 3 percent of the Earth’s water is potable, and most of this supply is locked in the polar ice cap. Just 0.003 percent of the world’s water is readily available for human consumption, and 16 percent of that is used to manufacture building materials and construct buildings. Worse yet, due to pollution, 40 percent of streams, 45 percent of lakes and 50 percent of estuaries in the United States were deemed not clean enough to support fishing and swimming in a 2000 Environmental Protection Agency study. The Index of Watershed Indicators reports that only 15 percent of our watershed has relatively good water quality. **Forests**: Rain forests **play an important role in maintaining Earth’s air quality, absorbing carbon dioxide emissions** and VOCs (volatile organic compounds), while replenishing the air with oxygen. Statistics show that the annual rate of global **deforestation** is equal to an area the size of the state of Georgia. This is critical, because it has been estimated that when more than 70 percent of an ecosystem is lost, the remainder **may be unable to sustain the environment needed for survival**. **Waste**: The United States generates enough garbage daily to fill 63,000 garbage trucks, which, lined up, would stretch 400 miles from Los Angeles to San Francisco. The building industry accounts for 20 percent of this waste stream. **Energy**: The U.S. Department of Energy estimates that improvements in U.S. building energy efficiency using existing technology could save $20 billion. Forty percent of the world’s energy is used to construct and operate buildings. The numbers are grim, but designers and **suppliers have real options for countering these trends**. We can employ what I like to call the Seven Principles of Sustainable Design: **Use Low-Impact Materials: Select non-toxic, sustainably produced** or recycled **materials that require little energy** to process. **Promote Energy efficiency**: Use less energy to manufacture more efficient products. Select for Quality and Durability: Use durable, longer-lasting and better-functioning products to minimize replacement frequency. Design for Reuse and Recycling: Design products, processes and systems for performance in a commercial “afterlife.” **Employ Bio-Mimicry: Use scientific data to redesign industrial systems along biological lines, enabling** the **constant reuse** of materials **in continuous closed cycles**. Substitute for High-Use Service: Shift modes of consumption from single ownership to public/shared ownership (e.g., private automobile to car-sharing service). Promote minimal resource use per unit of consumption. **Choose Renewable Sources**: Use materials extracted from nearby (local or bioregional), sustainably managed renewable sources that can be composted (or fed to livestock) when usefulness has been exhausted. Responding to a Changing Society Beyond the challenges we face in conserving scarce resources, **a few key megatrends underscore the importance of sustainable coatings**. **Population Growth**: World population **doubled from 2.5 billion** in 1950 **to 5 billion** in 1990; it is projected to reach 9.8 billion in 2050. The population is also shifting from rural areas to major metropolitan areas, with people migrating for better employment, commerce and quality of life. **New construction will be required to support growth and urbanization**. We’ll need to replace, upgrade, repurpose and conserve existing structures and infrastructures. **Climate Change**: Once mislabeled “global warming,” the significant, lasting change from relatively mild, predictable weather patterns to more unpredictable patterns increasingly will affect industrialized farming and dense urban populations. **We’ll se**e more **pressure to produce materials**, products and assemblies **that can withstand extreme variances in weather**. Basic code-compliant solutions that are “good enough” today will no longer be acceptable. **We’re** now **designing disaster-mitigation plans and hardening essential** facilities and **infrastructure**, as new codes require mitigation of rising water levels and storms we once saw every 100 years. **We can expect to see carbon dioxide emissions regulated, promoting net-zero buildings whose every feature is designed to reduce energy use** and associated carbon emissions. **Greater emphasis will be** **placed on energy efficiency and energy recovery**, as well as water-resource management and conservation. Information Explosion: Information is growing exponentially, and a corollary increase in access to this information through the Internet means that people are more informed than ever about optimum human health and the risks associated with exposure to chemicals. **We pore over studies** seeking **to define the “tipping point” for toxemia in** terms of **parts per billion** of key compounds. **We worry about** information that links exposure to **changes of DNA affecting future generations**. **These health concerns are driving changes** that have tremendous implications **for building materials**. New Regulations: States increasingly introduce regulations designed to control exposure and assure public health. The International Green Construction Code is now used for baseline sustainability in regular building codes. VOC Limits: VOCs are regulated on the West Coast via the South Coast Air Quality Management District, and on the East Coast via the Ozone Transport Commission. Recent changes in California have lowered VOC limits to a maximum of 50 grams per liter in coatings. New Organizations: The Living Building Challenge introduced a chemical “Red List” banning hazardous chemicals from use on projects. More Transparency: As a result of requirements in LEED v4 for product transparency, manufacturers of products used on LEED projects must detail the chemical content of the products in HPDs (health product declarations) and EPDs (environmental protection declarations). New Social Contract: Major petroleum chemical companies are forced to address the population’s desire to shift from oil and coal to natural gas and to renewable energy and biomass materials. Technology Explosion: **The last 20 years of mergers and acquisitions led to large chemical plants manufacturing single resins. The future lies in small batch processing of custom chemicals and new processing technologies. These include nano-technology**, micron-level changes **to alter product performance; phase-changing materials**, capable of storing and releasing large amounts of energy; **and regenerative chemicals that respond to environmental changes**. What do these megatrends mean for the chemical industry? They portend a shift in processes, standardization and approach. Closed-Loop Processes: Manufacturing closed loops are economically advantageous, reduce/ eliminate waste, reuse byproducts and allow reformulation into new products without downcycling. Shaw Carpet is one success story, creating nylon 6 fibers that can be recycled 100 percent into new carpet. Shaw’s activity resulted in record profits, as producing carpet with nylon 6 requires no new petrochemicals. Tightening of Standards/LCA: Life-cycle costing is the true measure of value instead of traditional first-cost thinking. That is important where better products require less maintenance. Tightening standards will help designers maintain quality through specifications. In fact, as coatings technologies advance, our reliance on standards increases. Standards organizations whose certifications for sustainable offerings fail to keep up with national programs, or whose certifications don’t perform as intended, will be bypassed. For coatings specific standard groups to survive, they must align with national standards and address high performance and durability. Stricter Guidelines: In the healthcare and science laboratory industries, stricter guidelines will be required to combat hospital-acquired infections and address the harsh chemicals/disinfectants necessary to stem infections. Alchemizing Toxic Chemicals: **The storage of large quantities of toxic chemicals** at various waste sites **necessitates** that **we incorporate** toxic **chemicals in ways that alchemize them, creating non-toxic, stable, safe products that can be reused** and recycled, without toxicity. For example, LEED supports the use of fly ash, the byproduct of coal manufacturing, as cement replacement in concrete production. **This activity will decrease chemical reservoirs** of fly ash so that **they no longer pose a health hazard**. Creating Coatings for the Future Coatings technology has evolved as manufacturers respond to market needs and awareness. Getting the Lead Out: For decades lead was added to paints and coatings to improve durability and color retention. Research into the hazards of lead paint, and lead dust, made the industry move from lead to safer alkyd formulations. Recent awareness of the high VOC content has led manufacturers to replace alkyds with lower-VOC acrylic latex systems. Where initial productions met market skepticism regarding performance and durability, formulation improvements now offer paint coatings with low VOCs and better performance, durability, color retention and color-hiding capability than older technologies. Improving Corrosion-Resistant Coatings: Corrosion-resistant coatings for architecturally exposed structural steel have been three-coat systems consisting of organic or inorganic zincrich primers, epoxy intermediate and aliphatic polyurethane topcoats as the most durable high-performance coatings. Advances in the last 20 years have led to two-coat polysiloxane coating systems that, for mild to moderate atmospheric exposure, provide excellent corrosion resistance along with color and gloss retention said to surpass that of polyurethanes. Improving Coatings to Protect Aluminum: Coatings to protect aluminum required chromate pretreatment for surface preparation and bonding of PVDF resin coatings. Awareness of the toxicity of hexavalent chromate prewashes led to development of coatings that do not need chromate prewashes but offer the same service life and durability. In addition, the EPA introduced a significant new use rule (SNUR) last September to limit/eliminate perfluorinated compounds (PFCs) in PVDF coatings in response to overwhelming evidence that these chemicals are persistent bioaccumulative toxicants. PFCs were used as surfactants to improve the bond between coatings and metals. Producers of PVDF coatings altered the chemistry to remove perfluorooctanoic acids. Combining PVDF coatings with acrylics, coatings companies created low-VOC, water-based PVDF coatings with the same performance as the solvent-based PVDFs and that can be applied in the field, making initial application and long-term maintenance easy. Other chemical companies altered the chemistry of PVDF coatings further, developing powder coatings that can be applied in the field or in the shop with the same performance as 20-year warrantable fluid-applied systems. Advancing Anti-Microbials: In high-performance interior coatings for laboratories and hospital facilities, epoxy paints and coatings recently have been replaced with two-component waterborne polyurethane systems based on advancements in polyurea technology. **These systems provide high-durability coatings that can contain anti-microbial additives**. They have great color retention and durability, while reducing dry time in shop preparations. Controlling Moisture in Buildings: Rain screen design and energy regulations led to improvement in the building energy envelope through creation of air barrier systems. Controlling the movement of moisture through the building envelope increases the durability and life of the thermal envelope. Fluid-applied air barriers face new challenges as IBC 2012 adopts NFPA 285, mandating assembly fire testing of the exterior envelope. Companies must alter formulations to respond to new requirements for fire test performance. Overcoming Issues of Fire-Resistant Chemicals: In the last year, fire-resistant coatings came under attack due to studies linking halogenated products to human health issues. Early formulations migrated, leaching chemicals in the environment. Independent research studies showed fire-retardant coatings to be carcinogenic and endocrine disruptors. Recent formulations provide more durability and intimate bond chemicals in chemical composition of insulation products to prevent leaching and the related hazards. However, the public damage sustained as a result of published reports has led makers of children’s clothing, bedding and toys to remove fire-resistant chemicals from their products. Some design professionals are pushing for building code legislation to remove the requirement that building insulation be fire resistant. So what developments can we expect in architectural coatings technology? Phase-Changing Technology: **Phase-changing materials will become** more **mainstream to address changes in environmental conditions. Coatings will change chemistry in response** to environmental changes. **These** coatings **will improve the energy efficiency** of the building envelope, while minimizing unwanted effects. Cool Roofing: Some debate surrounds cool roof technology. Reflective roof coatings help reduce energy demand during cooling cycles by reflecting heat from solar radiation. LEED points are available for use of cool roof coatings that help limit the heat island effect in urban environments. Recent research indicates that cool roofs are most effective in reducing the building energy use where the number of cooling days exceeds the number of heating days. Darker roofs may provide better energy performance in colder regions. However, water runoff from black roofs increases the temperature of water in rain and water runoff, and may be harmful to downstream biomes. Cool roof systems not only reduce the heat island effect locally, but also minimize this damage to ecosystems miles away. Titanium Dioxide Coatings: TiO2 coatings clean surfaces through photocatalytic action, using UV light to activate coatings to bond with carbon dioxide. They produce hydrocarbon runoff and oxygen and clean the environment. Here are some examples. As a concrete additive, titanium dioxide maintains white concrete surfaces, minimizing maintenance, by de-bonding with carbon and dirt. It cleans the air by cycling and capturing carbon particles and VOCs. In healthcare environments, TiO2 coatings may stimulate antimicrobial action. Operating rooms can “self-clean,” eliminating bacteria between operations by activating enzymatic action through exposure to UV, infrared or other spectral light. In another application of TiO2 used as a photocatalyst, the technology is used to coat “self-cleaning glass.” While relatively expensive, such technologies may be valuable in polluted areas like China, where rains pose a durability threat to building materials that **self-cleaning chemicals can mitigate**. Data reveal that indoor air quality is 10 times more toxic than exterior air. Tightening the building envelope has exacerbated this issue. Manufacturers have produced TiO2- based surface treatments that are activated by UV light to actively purify air when applied to interior and exterior surfaces. Reenvisioning What’s Possible **These are** exciting developments, but they’re **just the beginning**. Here are but a few innovations to look for in coming years. **Regenerative Coatings**. Such coatings **alter their chemistry** to respond to the environment in ways that are regenerative. For example, cool roof coatings will be developed to respond to hot days by reflecting light and to cold days by absorbing heat. This technology will be available **through** integration of **phase-changing materials and nanotechnology**. Better Insulation. Thinner, lighter, more efficient insulations will come down in price, become more mainstream and be adopted by building codes to increase thermal control of the interior environment. Inherently Fire-Resistant Coatings. These coatings will use nano-technology to produce products that are inherently flame and fire resistant, so fire retardants are not necessary. More broadly, we can expect the product transparency requirements in LEED v4 and chemical bans from groups like the Living Building Challenge to fundamentally change our approach to materials development and selection. **The industry will produce healthier, environmentally sustainable chemicals** and products **that mitigate problems while maintaining performance** and long life. This effort will depend on greater cooperation among design professionals, chemical companies, manufacturers and fabricators. It will take communication on individual projects, as well as collaboration through cross-industry channels. **The challenges** and stakes we face **are unprecedented in human history, but so are** the **opportunities**.

### 1NC – T Per Se

TOPICALITY:

#### ‘Prohibiting’ a practice requires per se illegality.

Lee Mendelsohn 6, Director at Edward Nathan, “KIPA Conduct Amounts to Price Fixing”, Business Day (South Africa), 6/12/2006, Lexis

The first step in any competition law analysis is to define the relevant market. There are two components to an analysis of the relevant market, namely the relevant product market and the geographic market.

The relevant product market consists of those products and services that operate as a competitive constraint on the behaviour of the suppliers of those products and/or services.

The relevant product market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to substitute the product with another product or would cause suppliers of other products to begin producing the product in question.

The relevant geographic market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to purchase the product from other geographic areas, alternatively suppliers of the product in other geographic areas to supply those products into the area in question.

For the purposes of this case study, we are instructed to accept that each medical speciality constitutes a relevant product market and that the relevant geographic market for each of them is Kleindorpie.

The Competition Act provides that "an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if … it involves … directly or indirectly fixing a purchase or selling price or any other trading condition".

An "agreement" is defined as including a contract, arrangement or understanding, whether or not legally enforceable. The term agreement is very widely defined. A "horizontal relationship" is defined as a "relationship between competitors".

The prohibition on the fixing of a purchase or selling price or any other trading condition is one of the so-called "per se" prohibitions which are included in our Competition Act. The prohibition is automatic and absolute and the fixing of prices or other trading condition cannot be justified on the basis of any technological, efficiency or other procompetitive gains that could outweigh the potential anticompetitive effect of the fixing of the price or trading condition. If the capitation plan of KIPA falls within the restrictive horizontal practice prohibiting price fixing and the fixing of other trading conditions, such practice will be a contravention of the act.

Limits---many standards, requiring distinct answers, make the topic unmanageable.

Ground---fringe standards dodge links and allow bidirectional permissiveness.

### 1NC – New Agency CP

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

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

#### Enforce ex post prohibitions on those activities

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

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

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

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

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

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

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

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

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

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

## Solvency

### 1NC – Comity Test

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

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

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

How Did We Get Here?: The Procedural Posture

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

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

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

Second Circuit Decision

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

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

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

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

### 1NC – Antitrust Fails – Laundry List

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

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

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

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

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

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

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

### 1NC – AT: Courts

#### Even new laws fail—courts refuse to enforce, including SCOTUS

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.

## China

### 1NC – AT: Private

#### China dodges US antitrust by nationalizing relevant businesses—plan is only private enterprises.

Kantner 13—(Partner in the international law firm of Jones Day, specializes in trade secret and other intellectual property litigation and counseling). Robert Kantner. “Protecting Trade Secrets Internationally Through A Comprehensive Trade Secret Policy.” The Practical Lawyer. February 2013. <http://files.ali-cle.org/thumbs/datastorage/lacidoirep/articles/TPL1302_Kantner_thumb.pdf>.

Foreign Defendants May Claim Foreign

Sovereign Immunity

Even if a plaintiff successfully exerts jurisdiction over a foreign entity, if the defendant is a state-owned entity, it may be able to claim that it is immune from suit under the Foreign Sovereign Immunities Act. Because economic espionage is being conducted more frequently by state-owned entities, particularly in China, many foreign defendants will likely seek immunity under this Act. While there are exceptions to the Act’s provision of immunity, briefing and arguing the matter will certainly extend the resolution of the case overall and possibly involve significant expense.

### 1NC – Fails

#### They don’t solve dollar heg – their ev cites AIIB and NDB expansion as the causes of the drain, then later, in an unrelated part, talks about emerging tech

Slawotsky 21 – Joel, former law clerk to the Hon. Charles H. Tenney, (U.S.D.J., S.D.N.Y.) and AV peer-review rated attorney at Sonnenschein (now Dentons). In practice, he represented large corporations litigating in federal and state courts at both the trial and appellate level. Joel has authored book chapters and law journal articles published by: Boston, Duke, Emory, Georgetown, U.Penn, Virginia as well as the following peer-review non-U.S. law school based venues: Chinese Journal of Global Governance, Journal of World Trade, Oxford University Press, Transnational Dispute Management journal, and the Qatar University law review. “U.S. EXTRATERRITORIAL JURISDICTION IN AN AGE OF INTERNATIONAL ECONOMIC STRATEGIC COMPETITION”, Georgetown Journal of International Law, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/geojintl52&div=16&id=&page=>, xx-xx-2021

A. The Rivalry and National Security The United States is the current Chief Architect 84 of the global governance architecture, wielding dominant positions in the triad of hegemonic power levers--military, economic, and technological. 85 However, an aspiring China seeks to replace the United States as the global hegemon. 86 President Xi Jinping acknowledges China has global ambitions to lead the "new world order" and to guarantee international [\*443] security: 87"[b]eing a big country means shouldering greater responsibilities for regional and world peace and development." 88 China views the United States with an understanding that each side is locked in a strategic battle particularly with respect to both domestic financial strength as well as international economic power. This is illustrated by the statement of Mei Xinyu, a research fellow with the Chinese Academy of International Trade and Economic Cooperation under the Ministry of Commerce: In this sense, we should attach importance to the mutual influence of trade disputes and financial markets so as to achieve the following targets: to minimize the impact of trade disputes on China's financial market, to contain any harm to the rival's side in the trade war, and to prevent the opponent from using the trade war to manipulate and attack the domestic financial market. 89 Therefore, the power contest between the United States and China will inevitably influence and shape financial markets and economic governance 90--a foundation of a sovereign's strength and a crucial component of overall domestic stability. 91 [\*444] To achieve its goal, China has embarked on several stratagems astutely developing and leading international financial institutions such as the Asian Infrastructure Investment Bank ("AIIB") and New Development Bank ("NDB") which are alternatives to the United States-led International Monetary Fund ("IMF") and World Bank. 92 Despite U.S. efforts to discourage U.S. allies from joining the AIIB, U.S. allies joined. 93While only at an incipient stage, both the AIIB (and the NDB) have the potential to develop into major financial actors in the longer-term, eroding the U.S. IMF and World Bank influence. China has also successfully implemented preliminary steps to promote Yuan internationalization and Yuan usage is steadily increasing. Various commercial deals are being made in Yuan, demonstrating an increasing global role for the currency. 94 China's efforts at internationalizing use of the Yuan is ongoing and the development of China's CBDC is in the advanced stage. 95 China understands that the [\*445] innovation of CBDCs is an integral aspect of the hegemonic rivalry. As a People's Bank of China (PBOC) official commented on Facebook's Libra: "[i]f the digital currency is closely associated with the US dollar . . . there would be in essence one boss, that is the US dollar and the United States. If so, it would bring a series of economic, financial and even international political consequences." 96 China also has engineered the Belt and Road Initiative ("BRI") infrastructure project which in addition to the hope for economic gains, will--if successful--induce nations to align with China. 97 Recognizing the importance of alliances, China has endeavored to engage U.S. allies, bringing them within China's orbit of influence. 98 U.S. policymakers and enforcement agencies will not view the AIIB or BRI or Yuan internationalization in isolation but as components of China's overall strategy. For example, despite the expectation that the AIIB and NDB would lend money only in U.S. dollars, these Chinese-dominated institutions are already starting to "de-dollarize" and are lending in Yuan and other currencies. 99 Doing so has a deleterious effect on the prominence of the U.S. Dollar which is a pillar of U.S. power projection, especially as U.S. dollar sanctions have become increasingly invoked. From the U.S. perspective, notwithstanding the distinctness of each project, the stratagems will likely be viewed jointly [\*446] as the initiatives are interrelated to promote the ultimate goal of achieving Chinese ascendancy. 100 The developments described above point to an ambitious China 101 and corroborate China as a capable and effective hegemonic rival. 102 While the United States had ostensibly welcomed China's economic rise, 103 U.S. perceptions have markedly changed; the United States now perceives China as a strategic rival. 104 Unsurprisingly, U.S.-China relations have undergone an adversarial transformation. 2018 will be recalled as the year the rivalry was acknowledged, and the gauntlet was thrown down. 105 The new contentious relationship has manifested in various contexts, 106 generating threats 107 and tit-for-tat diplomatic expulsions. 108 [\*447] Unquestionably, the United States is endeavoring to push back China's rise based upon threats to U.S. hegemony--a quintessential U.S. national security interest. 109 The U.S.-China rivalry has dramatically increased invocation of national security whose conceptualization is broadening and blurring the distinctions between technological and economic strength. 110The next section details the fusion of "governance competition, technology and economic power" as a national security threat. B. The Fusion of Ideology (Political Governance Competition), Emerging Technology, and Economic Power as a National Security Threat U.S. efforts to contain China have fused together several competitions: ideological supremacy, dominance in emerging technology, and economic power. One illustration of the fusion of different competitions is provided in a July 2020 report from the U.S. Senate: "[i]n an era in which rising authoritarianism is working to undermine the fabric of democratic institutions globally, the Internet and connected technologies represent a continually evolving domain that will fundamentally shape the future of politics, economics, warfare, and culture." 111 The linkage of Chinese dominance in emergent technology and rising economic strength, along with a competition over political governance as a vital national security interest, was enforced in a series of summer 2020 speeches, remarkable in the sweeping nature of the U.S. assessment of the threat posed by China. A critical mass of government agencies is now targeting China in an apparent all-governmental agency defense of U.S. democracy, dominance in technology, and economic supremacy. As national security threats are intertwined with economic and emerging technology, the United States is now linking a host of seemingly unrelated concerns into a general "all-perils" security threat. [\*448] For example, U.S. National Security Advisor Robert C. O'Brien identified China's state-capitalism's subsidization of emerging technology as a serious threat to U.S. economic interests. 112 Highlighting the blurring of economic and technological power, Huawei and ZTE were singled out as willing to sell at a loss and to undercut the competition in order to advance the strategic goals of China which includes access to data. 113 And data is crucial not only for economic reasons, such as artificial intelligence ("AI"), but data is also vital as a conduit for strategic usage, such as intelligence gathering and political interference, as well as promotion of visions for global governance. As O'Brien commented, "[t]he CCP's stated goal is to create a 'Community of Common Destiny for Mankind,' and to remake the world according to the CCP. The effort to control thought beyond the borders of China is well under way." 114 O'Brien's claims dovetail a U.S. Senate Report profiling Huawei as benefiting from China's state-capitalism and government support for national champions: [Huawei] is a prime example. In 1996, the Chinese government gave Huawei the status of "national champion" and ensured it would have easy access to financing and high levels of government subsidies. . . . Government support has enabled Huawei to offer prices for its network equipment that are below [\*449] other companies' prices, allowing Huawei to quickly gain market advantage. In the Netherlands, for example, Huawei undercut its competitor, the Swedish firm Ericsson, by underbidding for a contract to provide network equipment for the Dutch national 5G network by 60 percent. Two industry officials who spoke to The Washington Post on the condition of anonymity held that Huawei's price was so low that, absent the subsidies the company had been provided, Huawei would have been unable to even produce the necessary network parts. Some countries also receive low-interest loans from Chinese state-owned banks to use Huawei equipment. 115 Similarly, U.S. Federal Bureau of Investigation ("FBI") Director Christopher A. Wray commented that U.S. economic superiority was under threat: "[t]he stakes could not be higher, and the potential economic harm to American businesses and the economy as a whole almost defies calculation. We need to be clear-eyed about the scope of the Chinese government's ambition." 116 For purposes of extraterritoriality and the FCPA, Wray connected bribery and corruption to China's ambitions: "China is engaged in a highly sophisticated malign foreign influence campaign, and its methods include bribery, blackmail, and covert deals." 117By doing so, Wray strengthened the argument that U.S. enforcement of laws such as the FCPA are inextricably linked to defending U.S. national security interests as outlined in the U.S. Justice Department's China Initiative's emphasis on FCPA enforcement of Chinese economic actors. 118As discussed elsewhere in this Article, defending U.S. economic interests within the context of the U.S.-Soviet rivalry was an integral aspect of the FCPA's enactment. The U.S.-China contest is a similar contest, and defending U.S. economic interests in light of China's achievements to date will likely be viewed as substantially more of a U.S. national security interest than the concerns over the Soviet Union. Echoing this line of thought, U.S. Attorney General William P. Barr identified economic rivalry and China's economic model as a threat to U.S. economic preeminence: [\*450] The People's Republic of China is now engaged in an economic blitzkrieg--an aggressive, orchestrated, whole-of-government (indeed, whole-of-society) campaign to seize the commanding heights of the global economy and to surpass the United States as the world's preeminent superpower. . . . Made in China 2025" is the latest iteration of the PRC's state-led, mercanti-list economic model. 119 But Barr also repeated the accusation that China intends to spread its political governance globally--linking governance, technology, and finance. "[T]he CCP's campaign to compel ideological conformity does not stop at China's borders. Rather, the CCP seeks to extend its influence around the world, including on American soil." 120 In the final speech, U.S. Secretary of State Michael P. Pompeo specifically profiled Huawei, accusing the Chinese giant of constituting a critical national security threat. 121Referring to Chinese state-linked businesses, Pompeo stated that they are promoting China's ideological objectives. "[I]t's this ideology that informs his decades-long desire for global hegemony of Chinese communism. America can no longer ignore the fundamental political and ideological differences between our countries, just as the CCP has never ignored them." 122 As detailed in the next subsection, China's state-capitalism and the fact that important and strategic corporations 123are controlled or [\*451] owned by the Chinese government heightens national security concerns. 124 1. Chinese State-Linked Firms and U.S. National Security Interests In light of the above-referenced speech excerpts, it is useful to understand what is behind the claims that Chinese businesses such as Huawei pose a threat to U.S. security interests. Large global corporations wield immense power over nations. 125 State-owned or controlled corporations may also potentially promote a sovereign's interests. 126 "States and corporations are now capable of deploying forces in the field--sometimes states hire corporations that serve as mercenary armies that protect its own operations as well as those of the institutions of the state from sub-national and supra-state threats." 127 Even among allies, national security concerns are raised by foreign government-controlled entities buying shares in other nations' corporations. 128 Whether to protect national champions or to partner with and direct businesses to achieve strategic goals, sovereign participation in economic affairs raises national security issues. 129 [\*452] While state-linked entities such as state-owned enterprises ("SOE") generally are significant global economic participants, 130 Chinese state-linked firms are especially important economic actors 131 and are likely to increase in importance in the years ahead. "The role of SOEs has become all the more important . . . China is home to 109 corporations listed on the Fortune Global 500--but only 15% of those are privately owned." 132 Chinese SOEs exist to promote state goals, 133which is common to SOEs globally. However, an additional dimension of complexity arises in the context of China's state-linked corporations for two reasons. First, in contrast to a private market-led corporate architecture, China's economic model embraces state-capitalism--a "unique Chinese model of state-business relationships" wherein the state owns or controls important businesses and national champions and directs important national goals via the economic model. 134 Second, China's domestic governance is unique: the nation is governed by a single party, and "the [] manifestation of the party-state in its role as controlling shareholder" is of critical importance. 135 China's model of partnering government with the private sector has produced impressive breakthroughs. 136 The partnering of private actor [\*453] businesses with governmental ownership under the Chinese state capitalism model is increasingly viewed by U.S. authorities as possessing unfair competitive advantages and, in light of the fusion of business, technology, and ideology, a national security threat. 137 Interestingly, partnering with the private sector was also an impetus for several significant U.S. technological breakthroughs. 138 State subsidies and incentives to emerging technology businesses have been suggested by U.S. corporate leaders as well. 139

### 1NC – AT: Dollar

#### Dollar heg declining now—inflation

Morris 21 [David Z. Morris is CoinDesk’s chief insights columnist, "The End of Exorbitant Privilege: Inflation, the Global Dollar and What Comes Next", 8/5/21, https://www.yahoo.com/now/end-exorbitant-privilege-inflation-global-144158537.html]

This year has been rife with anxiety about inflation. Economist Lawrence Summers sent up an early warning flare in March, speculating that debt-financed government coronavirus pandemic relief payments could overheat the economy. Summers got some vindication from consumer price index numbers this summer, including 5.4% annualized CPI growth in June.

Inflation terrifies people for a lot of reasons, including its erosion of the purchasing power of wages and the value of dollar-denominated debt. But in May, a leading foreign exchange trader named Stanley Druckenmiller warned of an even bigger long-term risk of inflation: That it might threaten the U.S. dollar’s status as the world’s dominant “reserve currency.” The U.S. dollar is overwhelmingly the preferred currency for international trade – for instance, the huge global oil trade is dollar denominated and settled. The dollar is also the most widely held foreign currency in central banks. This produces major economic benefits for Americans – what has come to be known as the “exorbitant privilege” of the dollar – and its decline could harm the U.S. economy.

We’re still miles away from the kind of hyperinflation that can truly wreck a currency or an economy – Argentina is currently dealing with 50% inflation, for comparison. There’s also a lot of evidence that current U.S. inflation is highly concentrated in a few sectors, and bond investors have remained stubbornly skeptical of inflation doomsaying.

But whether inflation pushes things along or not, it’s clear the dollar’s reserve status is already under pressure. In May, the dollar’s share of global reserves dropped to a 25-year low. Since 1999, the dollar’s share has dropped from about 71% to just below 60%.

#### But—dollar heg is enduring—COVID locked it in

Tooze 21 [Adam Tooze is a columnist at Foreign Policy and a history professor and director of the European Institute at Columbia University, "The Rise and Fall and Rise (and Fall) of the U.S. Financial Empire", 1/15/21, https://foreignpolicy.com/2021/01/15/rise-fall-united-states-financial-empire-dollar-global-currency/]

If 2020 confirmed one thing, it was the centrality of the dollar to the global economy. U.S. hegemony may already have passed us in a political and strategic sense, but U.S. financial influence is proving more enduring. This is reassuring in the sense that the U.S. Federal Reserve has once again acted as a responsive and generous steward of the dollar-based financial system. But it is also a cause of puzzlement and frustration.

#### Zoffer’s only about sanctions—they fail, 200 examples prove.

Taylor 17. [Adam; 8/2/2017; foreign affairs writer for The Washington Post; studied at the University of Manchester and Columbia University; “Do sanctions work? The evidence isn’t compelling.” https://www.washingtonpost.com/news/worldviews/wp/2017/08/02/do-sanctions-work-the-evidence-isnt-compelling/?utm\_term=.8e156c380960]

Sanctions are again the talk of Washington. At the time of writing, the United States is considering or is in the process of extending economic sanctions on several countries, including some major geopolitical foes: Russia, North Korea, Iran and Venezuela.

The use of sanctions in such contexts is far from unusual. You could probably argue that sanctions are among the most popular tools for responding to major foreign crises. The problem, however, is that nobody is quite sure whether they actually work.

This is not a new quandary. [WorldViews considered](https://www.washingtonpost.com/news/worldviews/wp/2014/04/28/13-times-that-economic-sanctions-really-worked/?utm_term=.ff30429c1d01) it before, in April 2014, when the Obama administration announced sanctions on Russians close to Vladimir Putin in response to Moscow's aggression in Ukraine. Below is a long excerpt from that post, which pointed to an academic study of sanctions and their usefulness:

As we noted at the time, given that the study looked at 200 sets of sanctions, this wasn't a reassuring argument for their effectiveness (and, more damningly, some experts have argued that the definition of sanctions used in the study is too broad).

On a more positive side, it should be noted that the list ends in 2008 and, as such, mostly avoids the targeted sanctions on individuals, companies or institutions that became more widely used afterward (such as in 2014 in Russia).

However, the fact that sanctions are being expanded in 2017 doesn't speak well to previous sanctions' effectiveness, and some of the situations being responded to are so complex that it is hard to gauge how economic measures will influence them.

Can sanctions really force a belligerent and ideological North Korea to forsake its weapons program, for example, especially if major powers like China and Russia won't fully cooperate and the country has already been under significant sanctions for more than a decade? And Venezuela is deep into an economic nightmare — how will targeted sanctions on its dwindling elite be effective?

The case of Iran is especially confounding. Many would argue that sanctions finally brought Tehran to the negotiating table, resulting in the 2015 nuclear deal with the United States and other world powers. But President Trump and many other Americans don't believe that was a good deal and want to back out of it. Meanwhile, many Iranians believe that U.S. sanctions in response to their country's ballistic missile program are a violation of the agreement.

And then there's Russia. Obama-era sanctions on the country seem to have had an effect on its economy. However, they also gave Moscow an excuse for its own financial mismanagement in the face of falling oil prices. The situation in Ukraine is far from resolved, and Russia is now in Syria, helping to prop up the regime of Bashar al-Assad.

And, of course, everyone knows by now that Russia stands accused of meddling in the 2016 U.S. election — despite the targeted sanctions that were already in place.

### 1NC – AT: Taiwan

#### No Taiwan invasion

* international backlash, Taiwanese defenses, and economy focus.

Thompson 20—(former US Defence Department official responsible for managing bilateral relations with China, currently a visiting senior research fellow at the Lee Kuan Yew School of Public Policy, National University of Singapore). Thompson, Drew. 2020. “Beijing Is Unlikely to Invade Taiwan During the Pandemic.” Foreign Policy, May 11, 2020. https://foreignpolicy.com/2020/05/11/china-taiwan-reunification-invasion-coronavirus-pandemic/.

Yet despite the triumphal tone in public, China is far from ready to launch an invasion of Taiwan. China’s leaders are far from confident in the Communist Party’s ability to remain in power, to the point of paranoia, and continually emphasize the threats and risks that they face, both internally and externally. China’s top think tank affiliated with the Ministry of State Security, the China Institutes of Contemporary International Relations, reportedly advised party members in an internal report to prepare for armed conflict with the United States, which is driving global anti-China sentiment in the aftermath of the COVID-19 pandemic to levels not seen since 1989. Initiating a war over Taiwan in the face of both internal and external threats is the greatest risk imaginable. Regardless of these risks, invading Taiwan would not be a cakewalk. Taiwan has been upgrading and reforming its defense over the past decade, adopting an asymmetric strategy designed to capitalize on its strengths to counter PLA power projection capabilities. U.S. President Donald Trump’s unpredictability, and his administration’s steadfast support for Taiwan, makes it impossible for Xi to believe China’s hawks who claim that the United States is unwilling to brave the costs of coming to Taiwan’s defense. Japan’s steady turn away from China also raises doubt about whether it would sit out a Taiwan contingency. An even bigger factor is the global economic impact of the pandemic and whether or not economic decline in China is long- or short-term and whether it causes persistently high unemployment, public dissatisfaction, and domestic unrest, which will focus the immediate attention of senior leaders in Beijing to these internal challenges. The uncertainty of the global economy, shifting trade and investment trends, and high debt-to-GDP ratios also argue against Beijing starting a potentially costly war.

### 1NC – AT: Cyber

#### No cyber impact

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]

More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are:

Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals.

There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.)

No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare.

State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war.

This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation.

The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but neither Russia nor China would be well served by a similar attack on the United States. Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States. Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. North Korea has not yet developed this kind of capability.

## Cartels

### 1NC – AT: Slow Growth

#### It’s inevitable AND has no impact.

Dietrich Vollrath 20, Professor of economics at the University of Houston, "Slow economic growth is a sign of success," USAPP, 02/22/2020, https://blogs.lse.ac.uk/usappblog/2020/02/22/slow-economic-growth-is-a-sign-of-success/.

We’re accustomed to looking at the growth rate of GDP to evaluate the health of our economy. Which is why the recent slowdown in growth appears so troubling. In the US, GDP growth for 2019 was 2.3%, meaning it has been nineteen years since growth hit 4%, and nearly as long since it touched 3%. For the UK the story is similar, as it has been fifteen years since growth hit 3%. In the Eurozone as a whole, growth last came close to 4% in 2000. These slowdowns across developed economies predates the financial crisis, and leads to natural questions: what went wrong with the economy, and how do we fix it?

But the slowdown we’re observing isn’t something we can fix – or that we would want to fix – because the slowdown was never a consequence of things that went wrong. Instead, as I show my new book, the slowdown is a consequence of things that went right.

From a simple accounting perspective, there are two main factors behind slower growth: the fall in fertility during the 20th century, and the shift of our expenditures away from goods and towards services. And both of those explanations can be traced back to economic success.

The fall in fertility had a significant impact on economic growth for decades, particularly in the US. The baby boom generated a one-time wave of human capital that hit the economy during the middle of the 20th century. As those new workers hit the workforce, the proportion of workers to population rose substantially, as evidenced by the fall in the youth dependency ratio between 1960 and 1980 (see Figure 1). Combined with the relatively high educational attainment of the baby boomers compared to prior generations, this provided a substantial boost to the growth rate, increasing it around 1.25 percentage points in 1990 compared to immediately after World War II.

As that wave of human capital receded, so did the growth rate. Starting in the early 2000s, the old age dependency ratio started to rise (see Figure 1) the inevitable consequence of the drop in youth dependency back in the 1960s and 1970s. As workers aged out of the workforce – and continue to do so – this dragged down the growth rate of the aggregate economy. That 1.25 percentage point boost during the 20th century disappeared in the 21st, explaining most of the slowdown in the US.

But why should we see these demographic shifts as a success? The drop in fertility after the baby boom which explains the shifts was driven by several successes. Expanded access to college education pushed back the age at which people were willing to marry. The opening up of many professions to women, along with growth in overall wages, meant that it made sense for many women to delay marriage. Finally, advances in contraceptive technology meant it was possible for women to take advantage of the new educational and professional opportunities that arose. The growth slowdown today is a consequence of family decisions made decades ago in response to rising living standards and the expansion of women’s rights.

The second source of the slowdown, the shift from goods towards services, was also driven by success. In the past one hundred years we became incredibly efficient at producing goods like clothes, food, furniture, and computers. The consequence was a steady reduction in the price of those goods relative to services. We could have used that reduction to buy even more goods than we did, but instead we took advantage of the savings to purchase more services like education, healthcare, and travel. Therefore the composition of our expenditures shifted away from goods and towards services (see Figure 2). We still consume more goods than before; it is just that they got so cheap that their share of our total expenditure fell relative to services.

This had a consequence for overall economic growth, however. Productivity growth in services is lower than for goods. That wasn’t a failure of services in the last few years. It appears to be an inherent quality noted by economist William Baumol in the 1960s. If a restaurant — a service — tried to operate with half their normal staff, you’d complain about the slow service and lack of attention. In comparison, if a manufacturer produced a laptop – a good – with half as much labour, you’d never know. This makes productivity growth harder for services than for goods. As we shifted expenditures towards services, aggregate productivity growth was thus bound to fall. Between the middle of the 20th century and today, that probably shaved another 0.2 to 0.25 percentage points off of the growth rate. But note that this only happened because of the productivity growth we experienced in the first place, a success.

Relative to the successes in the demographic shifts and spending shifts, the usual suspects are not capable of explaining the growth slowdown. Tax rates fell right as the slowdown started, and evidence from across states and industries shows that, if anything, more regulation was associated with faster growth, not slower. Trade with China exploded in the last twenty years, but evidence suggests that this had little effect on growth for the economy as a whole, even though individual regions and industries saw booms or busts. Economy-wide measures of the mark-up of price over cost rose, but it turns out that this didn’t lower growth. The shift of activity to high mark-up industries kept economic growth rates from falling even further than they did, as it meant we produced more valuable products.

If you’re still uncertain that the growth slowdown is a consequence of success, ask yourself what you’d give up to bring growth back to 4%. We could destroy half of all our goods: cars, couches, TVs, laptops, houses, trampolines, and so on. That would lead to a massive shift of spending towards goods as we scrambled to replace everything, and we’d see a jump in productivity growth. Alternatively, we could roll back contraceptive rights and women’s participation in the workforce in the hopes of starting a new baby boom. Wait twenty years and we’d have another surge of human capital into the economy. Would either of those be worth it just to see growth hit 4% again, perhaps not until 2040? Assuming the answer is “no”, that tells us the growth slowdown happened because of things that went right, things we would not sacrifice.

### 1NC – AT: Chemicals

#### Chemical industry is resilient

Outlook ‘12; Economic world economic review, “Economic Outlook — Economic Outlook No.2-2012” <http://www.mydigitalpublication.com/display_article.php?id=1058343>

Rebound in the US **Benefiting from the impact of the last two massive public budget support plans for industry**, **the American chemical industry was also helped in 2011 by favourable dollar/**euro **exchange rate and by the restored health of the Auto sector**

, one of **its leading user industries**.While **construction**, the chemical industry’s second major customer, has not yet genuinely recovered, its **decline has** at least **halted, stabilising demand** at levels which are manageable in the end for its chemical suppliers. **The willingness of American politicians to support a forced march to US economic growth offers a reassuring outlook for activity in the sector in 2012**. **Additional factors include relatively stable oil prices,** the **good health of the inorganic chemical sector** – notably fertilisers – **and the improved financial structure of actors in the industry after their restructuring efforts implemented during the** 2008- 2009 **crisis**. On top of this, **there are the prospects of the juicy but more distant benefits of innovations in green chemistry**.

# 2NC

### Adv cp

#### R&D is self-reinforcing and drives economic growth – every 1% increase more than doubles the return and encourages investment from other sources.

Mandt et al. ’20 [Rebecca, Kushal Seetharam, and Michael Cheng; August 20; Ph.D. Candidate in the Department of Immunology and Infectious Diseases at Harvard University; Ph.D. Candidate in the Department of Electrical Engineering and Computer Science at the Massachusetts Institute of Technology; M.S. from Harvard University; MIT Science Policy Review, “Federal R&D funding: the bedrock of national innovation,” <https://sciencepolicyreview.org/2020/08/federal-rd-funding-the-bedrock-of-national-innovation/>]

Virtuous Cycles of Federal Funding

In addition to directly supporting research related to public priorities, federal investment also produces a domino effect in resource commitment, inducing investment from non-federal sources such as the private and philanthropic sectors into R&D related to broad societal objectives [41]. A multitude of studies have found that government investment in R&D increases private investment and effort (see, for example, [42]). Analysis done by Lanahan et al. in 2016 estimated that every 1% increase in federal research funding leads to a 0.468% increase in industry research investment, a 0.411% increase in nonprofit research investment, and a 0.217% increase in state and local research funding, cumulatively more than doubling the initial federal investment [41]. This positive feedback effect generally holds true across different disciplines including life sciences, physical sciences, and engineering. We therefore see that federal funding has an effect of “crowding-in” R&D investment from non-federal sources rather than crowding them out, as is sometimes erroneously assumed. As federal R&D investments are typically made in line with the missions of federal agencies which are in line with public priorities, increasing federal funding would lead the entire national R&D infrastructure to move more in step with societal needs and public benefits rather than purely market considerations. Additionally, federally-supported research is much more likely to be publicly disclosed compared to private sector R&D, and is therefore more likely to catalyze other innovations [23]. For example, as previously discussed, advances in supercomputing, and even the invention of the web browser, were built upon research done on computationally modeling black hole collisions [43]. As another example, fundamental physics research studying the movement of atoms led to the invention of molecular resonance imaging (MRI), a medical technology that helps save countless lives today [44, 45].

Federal R&D expenditure is also responsible for both the education and training of scientists and engineers who move into the broader workforce as well as the physical infrastructure that often forms the kernel for regional hubs of technological innovation [46]. A core part of the NSF’s mission, for example, is supporting science, technology, engineering, and mathematics (STEM) education and the broader development of the human capital pipeline for national R&D [23]. The agency is also tasked with maintenance of large-scale research infrastructure such as facilities for materials research and fabrication, high-performance computing facilities, and particle accelerators, out of which technologies underlying countless start-ups and private sector innovations have been born [47]. The work done by university research centers and national labs, both of which are primarily funded by the federal government, also end up attracting technology incubators, start-ups, and a larger industry presence [3]. Therefore, federal funding is often responsible for the key centers around which technology hubs form and lead to regional economic growth; examples include Silicon Valley in California; Boston, Massachusetts; the Research Triangle Park in North Carolina; the Boulder-Denver corridor in Colorado; and Madison, Wisconsin. In addition to its indirect role in forming such innovation hubs, the federal government often takes a direct role in creating infrastructure critical to future private sector R&D including advanced manufacturing, high-performance computing, and smart cities [48]. Federal funding, therefore, plays two major roles: it spurs the general pace of national innovation forward, and it guides the national innovation ecosystem towards societal priorities. Both of these tasks are accomplished by utilizing the “crowd-in” effect of federal R&D investments, the training of the STEM workforce, the tendency for technology hubs to form around academic and federal research centers, and the types of R&D infrastructure the government catalyzes.

#### Empirics prove – R&D is just as likely to catalyze competition as antitrust.

Kovacic ’20 [William E.; 2020; Global Competition Professor of Law and Policy, George Washington University Law School; George Mason Law Review, “Competition Policy Retrospective: The Formation of the United Launch Alliance and the Ascent of SpaceX,” vol. 27; KP]

A second timely aspect of a review of the ULA transaction is the light it sheds on the many forms of government intervention that constitute a nation's competition policy. The prosecution of antitrust cases is but one way by which governments can help foster competition and stimulate business rivalry.26

Footnote starts.

Economists R. Shyam Khemani and Mark Dutz have developed the distinction between "antitrust" and a broader notion of "competition policy." See R. Shyam Khemani &Mark A. Dutz, The Instruments of Competition Policy and Their Relevance for Economic Development, in REGULATORY POLICIES AND REFORM: A COMPARATIVE PERSPECTIVE 16 (Claudio R. Frischtak ed., 1995). Antitrust agencies have come to realize that, in executing their own mandates, it is valuable to complement a law enforcement program with the application of non-litigation tools such as advocacy before other government agencies, preparaing reports, and convening public hearings. See More Than Law Enforcement:TheFTC'sManyTools-AConversationwithTimMurisandBobPitofsky,72ANTITRUST L.]. 773, 777-78 (2005).

Footnote ends.

Perhaps most important, the ULA episode illustrates the power of public procurement policy-including the funding of private sector research and development and the acquisition of goods and services-to influence the course of competition. 27 A key part of the ULA story is how government agencies (first NASA and later the DOD) used their funding and purchasing decisions to facilitate entry into the space launch services market by SpaceX and other private firms.2' Through policies that can be correctly characterized as procompetitive, the government purchasers helped catalyze new entry that transformed a sector seemingly destined to be the province of two firms or a single survivor. NASA, in particular, experimented with a new business model to inject more rivalry into the launch services sector. The ULA experience provides inspiration to ask how government procurement policy could achieve similar results in other concentrated sectors of the US economy.

### EU DA

#### The Brussels effect solves certainty and ensures spillover, but unilateralism is key to maintain influence

Bradford 12 [Anu, International Trade Law Professor @ Columbia Law School, Adam S. Chilton, Professor @ University of Chicago Law School, Katerina Linos, Professor @ University of California, Berkeley. Alex Weaver, Linklaters Law Prof. “The Brussels Effect” p. 44-45 https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1275&context=faculty\_scholarship]

The strictest antitrust laws prevail in situations where conflict exists among different regulators. If lenient antitrust jurisdiction A and stringent antitrust jurisdiction B investigate the same transaction, B's standard will prevail. A company seeking to merge that would be rejected by State B has two options: abandon the merger or abandon State B. If State B's market is relatively insignificant, the company might choose the latter. However, if State B's market is large, abandoning it is not often a realistic option.74 At the international level, the EU antitrust laws are, indeed, often the most stringent." The EU also consists of a consumer market that is too large and important to abandon. For this reason, the EU antitrust laws have often become the de facto global antitrust standards, to which the more permissive U.S. antitrust laws must yield.76 The reasons for the U.S.-EU difference in antitrust enforcement are manifold. At the most basic level, the EU antitrust authorities remain suspicious of the market's ability to deliver efficient outcomes and are therefore more inclined to intervene through a regulatory process." While the EU is more fearful of the harmful effects of nonintervention (so called "false negatives," anti-competitive practices that the EU fails to regulate), the U.S. authorities are often more mindful of the detrimental effects of inefficient intervention (so called "false positives," pro-competitive practices that the United States erroneously restricts)." Yet given the logic of unilateral regulatory globalization, it is the EU approach that determines the outcome. One of the most famous examples of the EU's global regulatory clout was its decision to prohibit the $42 billion proposed acquisition of Honeywell International by General Electric." When the EU blocked this transaction involving two U.S. companies, it was irrelevant that the U.S. antitrust authorities had previously cleared the transaction: the acquisition was banned worldwide because it was legally impossible to let the merger proceed in one market and prohibit it in another. In this sense, merger decisions are legally nondivisible.so The GE/Honeywell case is emblematic 20 107:1 (2012) The Brussels Effect of a difference in the antitrust regulatory approaches of the EU and the United States. The U.S. authorities considered the merger to be efficient and hence welfare enhancing. In contrast, the EU was concerned that any efficiencies that resulted from the transaction, including a short-term decrease in price, would later drive out competitors and result in a longterm increase in price." While GE/Honeywell is the most famous international antitrust enforcement conflict, it does not stand alone.82 The EU similarly threatened to block a merger between two U.S. companies, Boeing and McDonnell Douglas, even though the deal was already cleared by the U.S. authorities without conditions." In the end, the EU let the merger proceed subject to extensive commitments.84 These included abandoning Boeing's exclusive dealing contracts with various U.S. carriers." Similarly, the EU often gets to dictate the code of conduct for dominant companies worldwide. For example, the EU has imposed record-high fines and behavioral remedies against dominant U.S. companies, including Microsoft and Intel. 6 The global nature of antitrust remedies is not unusual. The EU has frequently extracted commitments that require parties to modify their behavior globally or restructure assets in foreign countries." However, the United States has similarly restructured deals where parties' productive assets are located offshore. Both the U.S. and EU agencies are vested with 21 NORTHWESTERN UNIVERSITY LAW REVIEW extraterritorial regulatory capacity." Both recognize their authority to apply laws to foreign companies as long as anticompetitive "effects" are felt on their markets. It is thus not the regulatory capacity as such but the EU's sustained preference to impose more frequent and more invasive remedies that has made it the world's de facto antitrust enforcer. In some respect, however, the EU Commission has an even greater regulatory capacity than its U.S. counterparts: the Commission is empowered to prohibit mergers and impose behavioral and structural remedies without first obtaining a court judgment." Administrative delegation does not reach this far in the United States, where the agencies need federal court endorsement to enjoin a merger.90

#### The CP isn’t protectionist

Majcher 20 [Klaudia Majcher, Vienna University of Economics and Business. “‘Open strategic autonomy’: towards the geopoliticisation of EU competition law?” November 20, 2020. <http://competitionlawblog.kluwercompetitionlaw.com/2020/11/20/open-strategic-autonomy-towards-the-geopoliticisation-of-eu-competition-law/>]

Similarly to trade or investment, EU competition policy might be seen as a field that is not insulated from the Union’s geopolitical concerns and that could play a more active role in addressing them. As suggested by scholars, ‘competition law is inherently political’ and forms ‘part and parcel of other public policies’.[7] Hence, as further argued, it would be short-sighted to ‘believe that the independence of competition authorities from the broader governmental marketplace of ideas – or that the independence of competition from political choices – is a precondition for the effective functioning of the competitive process’, particularly in unstable and unpredictable political and economic contexts.[8]

Executive Vice-President Margrethe Vestager has expressed readiness to embrace the objective of a strategic autonomy – more precisely, as she frames it, an ‘open strategic autonomy’ – as a principle that could inform competition policy going forward.[9] Offering no details on the exact meaning of this principle, she has pointed towards heavily subsidised Chinese firms as well as competitive distortions in digital markets as sources of concern when it comes to Europe’s autonomy and the ability of domestic companies to succeed. The Executive Vice-President’s references to the concept of autonomy have come, however, with a warning label that there are ‘strict limits on how competition policy as such can be a tool when it comes to geopolitics’.[10] In particular, she has invoked Europe’s rule of law, equal treatment, and non-discrimination as principles that might put a hold on attempts to use competition policy in pursuing geopolitical ambitions and selectively enforce it to the benefit of European stakeholders and detriment of their foreign counterparts.

How should one understand this pledge to contribute to Europe’s open autonomy? Towards which direction, if any, could the pressures to strengthen its strategic autonomy steer competition enforcement?

Thus far, there are some known (or at least partially known) knowns. The most relevant one is that autonomy is unlikely to find its manifestations in traditional economic protectionism – at least not in the field of competition law. As regards merger control, for example, the EU competition enforcers have shown no appetite to adopt the flawed industrial policy logic that assumes relaxing merger rules in order to create ‘European champions’, with the prohibition of the Alstom-Siemens merger serving as a poster child for their approach.[11] This is consistent with the EU’s past enforcement strategy: a study by Bradford et al. that looked at all mergers decided by the Commission between 1990 and 2014 showed that the EU did not deploy its merger control powers to systematically advance protectionist industrial policy and protect European businesses.[12] A radical change of heart seems unlikely in the near future.

Similarly, the Commission has always forcefully rebutted accusations of geographically-targeted interventions in the tech sector, in particular in its cases against the U.S.-based internet giants such as Google, Apple or Amazon.[13] Given these rebuttals, it would be illogical to associate the openly stated aim of ensuring Europe’s strategic autonomy with traditional forms of protectionism and bias against foreign tech companies.

### Solvency

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

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

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

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

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

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

### China

#### China dodges US antitrust by nationalizing relevant businesses—plan is only private enterprises.

Kantner 13—(Partner in the international law firm of Jones Day, specializes in trade secret and other intellectual property litigation and counseling). Robert Kantner. “Protecting Trade Secrets Internationally Through A Comprehensive Trade Secret Policy.” The Practical Lawyer. February 2013. <http://files.ali-cle.org/thumbs/datastorage/lacidoirep/articles/TPL1302_Kantner_thumb.pdf>.

Foreign Defendants May Claim Foreign

Sovereign Immunity

Even if a plaintiff successfully exerts jurisdiction over a foreign entity, if the defendant is a state-owned entity, it may be able to claim that it is immune from suit under the Foreign Sovereign Immunities Act. Because economic espionage is being conducted more frequently by state-owned entities, particularly in China, many foreign defendants will likely seek immunity under this Act. While there are exceptions to the Act’s provision of immunity, briefing and arguing the matter will certainly extend the resolution of the case overall and possibly involve significant expense.

#### Dollar will continue to play a predominant role—it survived Trump and is best suited for a multilateral order

Tooze 21 [Adam Tooze is a columnist at Foreign Policy and a history professor and director of the European Institute at Columbia University, "The Rise and Fall and Rise (and Fall) of the U.S. Financial Empire", 1/15/21, https://foreignpolicy.com/2021/01/15/rise-fall-united-states-financial-empire-dollar-global-currency/]

Meanwhile, China’s growth continues. And with every passing year, its weight in key markets increases. For commodities such as oil, it is by far the largest growth market. In 2018, it created a yuan-based futures contract, which amid the gyrations in dollar-priced oil markets in the spring of 2020 proved its worth as a safe haven. In Shanghai, the price of oil never went negative. Meanwhile, foreign investors are ever more attracted to the interest rates on offer on Chinese bonds. Almost 10 percent of China’s sovereign bonds are now foreign-owned. That share will increase as the bonds are included in the main indices. But this is welcome diversification rather than an immediate threat to dollar hegemony.

When Trump took office, there was real fear in international financial circles that his brand of politics would be incompatible with America’s superintendence of the global financial system. Would a Trump White House and Republican-led Congress permit America to sustain the safety net for the global dollar-based financial system, ultimately underpinned by the United States? As it turned out, Trump was a president who liked a soft dollar and low interest rates. He gave not a damn for fiscal or monetary propriety. All he asked of the Fed was that it keep the taps open. When, in March 2020, the Fed embarked on quantitative easing, slashed rates, and reactivated the swap lines, Trump applauded. Soon, cronies such as Turkish President Recep Tayyip Erdogan were pleading to be included in the Fed’s programs. The Fed did not oblige, though as a gesture it opened a so-called repo facility for foreign reserve holders to swap their U.S. Treasurys for cash.

And so the ramshackle rule of the dollar has not just survived the 2020 crisis but been reaffirmed. Can it continue?

Faced with the grandiose spectacle of China’s return to global power, the conversation turns to history. Grand strategists invoke the Thucydides trap and predict war. That ought to be unthinkable. But war is, in fact, the only model we have in the modern era of a transition in hegemonic currency. It was World War I and World War II that exploded Britain’s global empire and brought about the dominance of the dollar. When advocates of monetary reform on both the left and right invoke a new Bretton Woods, it is worth remembering that the conference met in the weeks after D-Day and as the Red Army was battering its way toward Poland. If that is our future, the question of currency standards will be the least of our problems.

War is, in fact, the only model we have in the modern era of a transition in hegemonic currency.

If we imagine instead a more gradual transition, the key issue to watch is the ability of the United States to attract investors willing to lend to it in dollars. Foreign demand for U.S. Treasurys waxes and wanes with relative interest rates and the costs of hedging the exchange rate. In recent years, net foreign purchases of U.S. Treasurys have slowed dramatically. The vast increase in debt driven by the COVID-19 pandemic has been absorbed by U.S. investors and the Fed. There was a dangerous wobble in the U.S. Treasury market in March 2020. But that was due not to a flight out of dollars but the opposite. Too many investors needed to access their U.S. Treasury piggy bank at once. Even Wall Street’s über-sophisticated market makers could not absorb the sudden sales. Reform of the financial system’s plumbing—to ensure that the market for Treasurys can smoothly absorb the trillions of dollars of new issuance that will follow in the aftermath of the pandemic—should be an urgent priority for the incoming administration of Joe Biden.

Both Beijing and Brussels have what it takes to develop similarly deep asset markets. Europe’s fiscal pact for the first time promises the creation of a substantial pool of joint European debt. But the European Union is decades away from being able to rival the U.S. Treasury market for scale.

This does not, however, mean that the system is static. The balance in the global economy is shifting toward Asia. A green energy revolution would upend the global market for oil, gas, and coal. One can imagine digital platforms beginning to operate non-state-based currencies of one form or another, which is why central banks have been paying more and more attention to these media of exchange and stores of value. In digital currencies, the People’s Bank of China is leading the way.

In such a multipolar world, in which large parts of economic activity may well remain internal to each of the main blocs, one can imagine the dollar continuing to play a predominant role in international trade and finance.

Plausible long-range predictions out to 2050 suggest that China’s share of global GDP will likely settle at around 20 percent, compared with somewhere between 12 and 15 percent for the United States, EU, and India. In such a multipolar world, in which large parts of economic activity may well remain internal to each of the main blocs, one can imagine the dollar continuing to play a predominant role in international trade and finance. It would be a first. But then every successive stage in our monetary and financial history since the advent of the modern world economy in the 19th century has been a first. The London-centered gold standard prior to 1914, the dangerous interregnum of the interwar period, the makeshift arrangements of the post-World War II period, the brief precarious era of Bretton Woods, the breakthrough to fiat money in the 1970s, China’s peg of the early 2000s, the world of quantitative easing since 2008—each of these is without precedent.

In 1973, the economist Richard N. Cooper published an essay in Foreign Policy offering “an unconditional forecast about the future of the dollar for, say, the next decade.” He predicted: “At the end of a decade the position of the dollar will not be very different from what it is now. The dollar will continue to be suspect and the struggle to find acceptable ways to rein it in will continue, but generally they will fail, and the dollar will still be widely used both as a private international and as an official reserve currency. … The basic reason for this forecast is simple: there is at present no clear, feasible alternative.”

Almost half a century later, Cooper’s forecast still seems like a good bet. The dollar is a bit like democracy: It is the worst global currency, except for all the others.

### Cartels

#### There’s no statistical basis for your claims—our study analyzes 670 different downturns

Charles BOEHMER, professor of political science at Pennsylvania State University, ‘2 [March 24, 2002, “Domestic Crisis and Interstate Conflict: The Impact of Economic Crisis, Domestic Discord, and State Efficacy on the Decision to Initiate Interstate Conflict,” paper presented to the International Studies Association, http://isanet.ccit.arizona.edu/noarchive/boehmer.html]

I have argued in this study that economic growth should be positively related to militarized interstate conflicts while at the same time reducing the risk of domestic regime transitions. I also expected that domestic conflict would reduce the risk of interstate conflict. The research design used here specifically allows for a comparison of the relative probabilities of both interstate conflict and regime transitions. I do not find support for the conclusions often made in studies of diversionary conflict claiming that lower rates of economic growth should lead to interstate conflict. With the exception of MID initiations (where it had little effect), economic growth increases state involvement in militarized foreign conflicts. However, the results also show that higher levels of domestic protest and rebellion both increase international conflict as well as the risk of regime transitions. These results are in part consistent with the predictions of diversionary conflict theory, although it is important to note that involvement in foreign conflicts in the face of high levels of domestic protest or rebellion is very risky. Of the 670 observations where country-years where a militarized interstate conflict was initiated, 117 of these foreign conflicts (17%) were related somehow to regime transitions. This means that some attempts to divert failed, while others following MID transitions may be completely unrelated to diversionary behavior. Moreover, these conflict initiations likely include many conflicts which most would agree were not diversionary, such as US interventions into Bosnia or Afghanistan. This means that the risk of regime transition during is even probably higher when leaders would most prefer to divert. To gain higher confidence that domestic conflict leads to diversionary behavior, we should require a more detailed analysis of other causes, controlling for such factors as interventions into civil wars.

Theories of diversionary conflict need to further specify the linkages between domestic conflict, state efficacy, and regime type. Attention has been focused on each of these elements, but more work could be done. For example, the results here show that domestic conflict is partly a source of both international conflict and domestic instability, although whether states will most likely experience high levels of protest or rebellion would seem to depend on the structure and efficacy of their governments. While most existing studies provide a discussion of why diversionary conflict could be beneficial to leaders, more attention must be paid to the potential costs of diversion. The results here suggest that some leaders will be removed from power before they can take advantage of an opportunity to use foreign conflict to induce a rally effect, while others that attempt this gambit fail in the process. Can leaders really fool all the people all the time? The answer would appear to be no. This should not be surprising. However, an implication of this study is that the rally-around-the-flag effect identified in the American case may not be applicable to other countries or necessarily work as successfully.

#### Market is growing fast now.

Menton ’10-1 [Jessica; 2021; reporter, citing Liz Young, head of investment strategy at SoFi, an online personal finance company; USA Today, “Is the stock market primed for an October swoon? Why investors shouldn't fear the frightful month.” https://www.usatoday.com/story/money/personalfinance/2021/10/01/stock-market-primed-october-swoon-investors-shouldnt-fearful/5931769001/]

While October is often considered a spooky month for investors, earning a bad reputation following the crashes of 1929, 1987 and the global financial crisis in 2008, investors shouldn’t be so fearful.

Since 1950, October ranks as the seventh-best month, while in the past 10 and 20 years, it ranks as the fourth-best, according to LPL Financial.

So while the 31-day stretch isn’t one of the best months of the year, it’s not the worst, either.

Still, some investors are jittery after September proved to be the worst month for the Dow Jones Industrial Average in nearly a year, while the S&P 500 recorded its biggest monthly loss since the start of the coronavirus pandemic.

More proof of October’s historic volatility came Friday when the Dow surged more than 480 points after drugmaker Merck announced progress in the development of an oral COVID-19 drug, which boosted investor optimism. Despite the gains, stocks still closed lower for the week, with the S&P 500 posting its worst weekly drop since February.

“October is known for some spectacular crashes and many expect bad things to happen again this year,” Ryan Detrick, chief market strategist at LPL Financial, said in a note to clients. “But the truth is this month is simply misunderstood, as historically it is about an average month.”

In fact, September has actually been the worst month for the stock market, averaging a 0.4% decline, according to the Stock Trader’s Almanac. And it lived up to its reputation again this year.

Why investors are spooked this month

Although Congress averted a government shutdown Thursday just hours before a midnight deadline, investors continue to wait for lawmakers to reach a deal on the national debt ceiling before the U.S. government runs out of money to pay its bills.

The debt ceiling is viewed as a greater economic threat if Congress fails to suspend or raise the U.S. borrowing limit before Oct. 18, which would result in a historic default and damage the financial system. While risk remains, analysts widely believe a deal will likely get done before then.

In addition to the debt ceiling debate in Washington, investors have already been weighing a string of concerns, including higher interest rates, the spread of the COVID-19 delta variant and indebted real estate developers in China.

This came as a shift had already taken place beneath the stock market's surface in recent months, with fewer stocks participating in the market rally, a trend that is often viewed as a warning sign for investors that a potential pullback is coming.

That weakness also signaled a pessimistic shift in investor attitudes after they remained largely euphoric in the market boom at the start of the year. There has been a wave of fear of missing out to cash in big on everything from GameStop to cryptocurrencies during the rebound.

In September, the blue-chip Dow slumped 4.3%, its biggest loss since October 2020.

The S&P 500, meanwhile, slid 4.8% in September, its first monthly drop since January and its largest since March 2020, when the COVID-19 pandemic first battered financial markets and the global economy. Its decline in September left it only 0.2% higher in the third quarter, its smallest quarterly gain since the COVID outbreak began.

To be sure, stocks have posted double-digit gains for the year. The Dow and the S&P 500 have rallied 12.2% and 16%, respectively, so far in 2021.

Why investors shouldn't be fearful

The economy is recovering following last year's recession and corporate profits are growing once again. Despite the challenges with COVID-19, investors are feeling more hopeful about the long-term.

The U.S. economy could benefit from a further spending boom as businesses reopen, fueled by reduced coronavirus fears, steady household incomes and bigger savings accounts. As the economy recovers and more Americans are vaccinated, the current bull market has more room to run and could further add to the value of Americans' 401(k) plans, experts say.

Since World War II, economic expansions, on average, have lasted more than five years. That suggests the stock market could be poised to keep climbing in the final months of 2021 and beyond as the economy recovers.

“I don’t see a recession coming,” says Liz Young, head of investment strategy at SoFi, an online personal finance company. “This volatility could last during the fall, but I still expect that the stock market will end higher this year, and things may feel more optimistic by December than they do now.”

After a historic crash in March 2020, stocks staged a rally of nearly 100%, reaching record highs following unprecedented aid from the Federal Reserve and Congress to shore up the economy during the global pandemic.

On Thursday, the S&P 500 slid more than 5% from its all-time high set on Sept. 2, the first time that has happened since September 2020. That's a long stretch of stability. Typically, the broad index falls 5% or more two to three times a year.

That means stocks were likely overdue for a pullback following a strong run, analysts say, which would benefit people who avoid the market during the market turbulence last year and lost out on hefty gains. It would also help people who want to continue piling money into their retirement and investing accounts, according to Young.

“The market was due for some volatility," Young added. "Pullbacks and drawdowns in the stock market without a recession are typically buying opportunities."

Following Friday’s rally, the S&P 500 is 4% away from its record high. Both the Dow and the Nasdaq are off 3.7% and 5.3% from their respective peaks.

#### Chemical industry is resilient – finish

Outlook ‘12; Economic world economic review, “Economic Outlook — Economic Outlook No.2-2012” <http://www.mydigitalpublication.com/display_article.php?id=1058343>

Rebound in the US **Benefiting from the impact of the last two massive public budget support plans for industry**, **the American chemical industry was also helped in 2011 by favourable dollar/**euro **exchange rate and by the restored health of the Auto sector**

, one of **its leading user industries**.While **construction**, the chemical industry’s second major customer, has not yet genuinely recovered, its **decline has** at least **halted, stabilising demand** at levels which are manageable in the end for its chemical suppliers. **The willingness of American politicians to support a forced march to US economic growth offers a reassuring outlook for activity in the sector in 2012**. **Additional factors include relatively stable oil prices,** the **good health of the inorganic chemical sector** – notably fertilisers – **and the improved financial structure of actors in the industry after their restructuring efforts implemented during the** 2008- 2009 **crisis**. On top of this, **there are the prospects of the juicy but more distant benefits of innovations in green chemistry**.

#### Don’t solve harmonization – card only alludes to a WTO agreement which would never happen

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>]

Absent linkages, states are likely to be forced to negotiate compromises that lead to shallow international obligations.211 The United States has resisted the WTO antitrust agreement precisely because of the fear that a binding international agreement would weaken antitrust laws throughout the world. Conflicting regulatory priorities would inevitably lead to a watered-down compromise, weakening antitrust laws worldwide.212 At worst, the WTO antitrust agreement would merely codify the lowest common denominator among its broad and diverse membership.213 Diane Wood similarly predicts that efforts to reach a compromise in the midst of vast disagreement would merely lead to international rules riddled with exceptions.214 Proponents of the WTO antitrust agreement may respond that initially weak antitrust commitments could deepen with time as a result of voluntary convergence and gradual alignment of states’ preferences.215 However, the WTO does not generally lend itself well to the idea of ‘gradualism’. Frequent revision of WTO obligations would call for new negotiations among over 150 states. These negotiations would inevitably be slow and costly, producing, at best, an uncertain outcome.

#### Too many complexities the aff doesn’t account for

Lipsky 9 [Abbott B. Lipsky Jr., Retired Law Partner at Latham & Watkins LLP (in 2017). A member of the firm since 2002, Mr. Lipsky is internationally recognized for his work on both US and non-US antitrust and competition law and policy, and has handled antitrust matters throughout the world. “Managing Antitrust Compliance Through the Continuing Surge in Global Enforcement.” 2009. <https://www.lw.com/thoughtLeadership/managing-antitrust-compliance-during-global-enforcement>]

I have tried to describe the three waves of the continuing global antitrust surge in a way that conveys their power, scope, and potential for enterprise-threatening impact. I have also pointed out why it should be an easy decision for any business enterprise contemplating cross-border operations—and that category includes a large and increasing number of enterprises within the continuing evolution of the global economy— to adopt a global perspective on antitrust compliance. I conclude here with a few thoughts on the future of antitrust, given the reality of this massive and still-expanding global antitrust enforcement network.

This network is characterized by great diversity, extreme complexity, and by the potential for heavy legal consequences in many different jurisdictions around the world. Taking it as assumed that strong antitrust laws are desirable, the huge range of diversity in the approaches of different jurisdictions is not necessarily beneficial. The themes of convergence (“soft” and “hard”—meaning “somewhat aligned” versus “identical” or nearly so), harmonization, and the like have been much discussed in the extensive literature on international antitrust enforcement.69 There are pros and cons and the considerations are shifting and complex.

There are real questions about the viability of an antitrust enforcement environment in which (1) over 100 national (and supranational) jurisdictions enforce their own laws through their own procedures, (2) many of these jurisdictions allow private remedies in some form—perhaps in very powerful forms, such as treble-damage opt-out class actions, (3) many of these jurisdictions allow independent antitrust enforcement efforts to be undertaken by subordinate jurisdictions, such as the states of the United States, the EU Member States, the Spanish autonomous communities, and the Canadian provinces, (4) none of these jurisdictions will defer fully or even substantially to any other, except in relatively rare and limited circumstances, (5) there is no international body—and within national jurisdictions there is often no national body—with the capacity or authority to reconcile and coordinate these additive and sometimes conflicting demands. (Consider the United States—with the longest and strongest antitrust tradition—where federal antitrust law does not generally preempt the antitrust laws of the fifty states, and even at the federal level we have two agencies that waste time squabbling over their jurisdiction in some particular matters.)

The costs and complexities of this network system are enormous. We are just beginning to adopt the most rudimentary mechanisms for reducing them. The ICN has made some progress in the area of merger notification and procedures. The United States and the European Union work hard to anticipate overlaps and conflicts in the merger review process, with apparent success. But coordinating EU-U.S. approaches to the conduct of globally significant firms—viz., IBM and Microsoft—is visibly unsuccessful. The right blend of uniformity and diversity is still not clear and may never become clear as circumstances change. (What will happen—and what should happen—to U.S.-EU cooperation in merger review when notification regimes come on line in China and India?) Are the agencies in the smaller jurisdictions destined to become bystanders in the global antitrust game? That makes no sense if an important resource or industry or class of consumers is concentrated in that jurisdiction. There seems to be no general formula by which compliance overlaps and conflicts can be reconciled.

# 1NR

## Trade DA

### 1NR - TC

#### 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 – UQ – Trade

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

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

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

Trade is recovering robustly alongside the upticks in growth in major economies. This good news deserves more attention. Less than 12 months ago, many observers were 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 – China

#### Phase 1 stalled the trade war and granted stability

Bloomberg 21 [Bloomberg News, "US-China trade war: bilateral trade stable despite coronavirus, tariffs and Beijing-Washington tensions". 6/22/21. https://www.scmp.com/economy/china-economy/article/3142051/us-china-trade-war-bilateral-trade-stable-despite-coronavirus]

China and the United States are shipping goods to each other at the briskest pace in years, making the world’s largest bilateral trade relationship look as if the protracted tariff war and coronavirus pandemic never happened.

Eighteen months after the Trump administration signed the phase-one trade deal, the agreement has turned out to be a truce at best. The US trade deficit has not shrunk, most levies are still in place, and it has not led to negotiations over other economic issues.

And yet, bilateral trade in goods is an area of stability in a relationship that has otherwise continued to deteriorate, with rising tension over Hong Kong, Taiwan, human rights, the origins of the coronavirus pandemic, accusations of computer hacking and many other flashpoints.

Monthly two-way trade, which tumbled to US$19 billion in February 2020 amid shutdowns in Chinese factories, rebounded over the past year to record levels, according to official Chinese data.

And that boom looks set to continue, with China purchasing millions of tons of US farm goods for this year and next and stuck-at-home US consumers still shopping and importing in record amounts.

While the US government’s numbers differ somewhat, the bustling trade has defied all expectations that the tariffs on hundreds of billions of dollars worth of merchandise would force a decoupling of supply chains.

Instead, both sides have learned to live with the taxes, with Chinese firms buying more to fulfil the terms of the 2020 trade deal, and US companies purchasing goods they cannot get elsewhere to meet elevated houasehold demand fuelled in part by trillions of dollars in government stimulus.

“We’ve seen the strong consumer demand that’s been occurring throughout the pandemic, and we’ve seen the import levels just go through the roof,” said Jonathan Gold, vice-president of supply chains and customs policy at the National Retail Federation (NRF), which represents vendors from family-run stores through to the large retail chain behemoths. “That’s a strong sign that the economy continues to recover.”

#### China trade’s stable---Biden rejected decoupling

Jianli Yang 10/1, Founder and President of Citizen Power Initiatives for China, “Biden Calls For International Cooperation, But How To Cooperate With China?”, The Hill, 10/1/2021, https://thehill.com/opinion/international/574380-biden-calls-for-international-cooperation-but-how-to-cooperate-with

Responding to the China threat, some in Washington have been advocating for a total decoupling with China — namely, to shut down all “areas of cooperation” altogether. However, this is unrealistic. Even during the past two years of heightened tensions between the U.S. and China, the trade volume between the two hostile nations has remained relatively stable, and has even shown signs of growth. Moreover, it would be detrimental to global welfare if the world’s two major powers — which are also the two largest economies — were unable to collaborate on issues of global concern, such as climate change and the coronavirus pandemic. Even during the peak of the Cold War, the U.S. and the Soviet Union were able to negotiate and work out deals on arms control, most notably the Anti-Ballistic Missile Treaty. Responding to the question of whether the Trump administration was seeking to “decouple” from China, then Vice President Mike Pence stated bluntly in his Oct. 24, 2019, address at the Woodrow Wilson International Center for Scholars, “The answer is a resounding ‘no.’”

The Biden administration and the preceding Trump administration both agree that decoupling from China is neither possible nor desirable — and both can be considered the most hawkish U.S. administrations toward China over the past 40 years. Kerry announced on the day following Biden’s U.N. address that he would go to China again, in his effort to seek collaboration with China.

### 1NR - Uniqueness - EU

#### The EU trade war is over!

Doreen M. Edelman 21, Chair of Global Trade & Policy at Lowenstein Sadler, JD from the George Washington University Law School, and Christian C. Contardo, Associate at Lowenstein Sadler and JD from the American University Washington College of Law, “The Tightrope of Biden’s Global Trade Policy”, Lowenstein Sadler, 8/23/2021, https://www.lowenstein.com/news-insights/publications/articles/the-tightrope-of-biden-s-global-trade-policy-edelman-contardo

At the same time, the administration is making efforts to resolve disputes with traditional U.S. allies. In June Biden struck a deal with the EU to end the 17-year old subsidies to Boeing and Airbus, ensuring no rapid fire tariff squabbles for the next 5 years. Next, he will focus on resolving disputes over the digital services tax by working with the Organization for Economic Co-operation and Development (OECD) structure. The administration is reengaging with strategic partners like the EU and Australia to reform the WTO, bolster the Paris Agreement on climate change, and to promote an option to China’s Belt and Road Initiative with the OECD and G-7. Congressional recommendations on securing U.S. national security supply chains recommend similar outreach, developing processes to foster closer cooperation on resources and investments from traditional U.S. allies as an alternative to reliance on adversaries such as Russia and China.

### 1NR – I/L – Retal – Smoot Hawley

#### The empirics of Smoot-Hawley prove

Dr. Kris Mitchener 21, PhD from the University of California-Berkely, Robert and Susan Finocchio Professor of Economics at the Leavey School of Business at Santa Clara University and Research Fellow at CEPR, Kevin O'Rourke, Professor of Economics at NYU, and Kirsten Wandschneider, Professor of Economics at the University of Vienna, “The Ghost of Smoot-Hawley Tells Why America Isn’t Too Big to Avoid Retaliation”, Vox EU, 5/19/2021, https://voxeu.org/article/ghost-smoot-hawley-tells-why-america-isn-t-too-big-avoid-retaliation

In March 2018, as the US was moving towards a more protectionist trade policy, White House National Trade Council Director Peter Navarro predicted that no country would retaliate against America “for the simple reason that we are the most lucrative and biggest market in the world”.1 Meanwhile, opponents of President Trump pointed to the 1930s as a cautionary tale of the unintended consequences of protectionist policy. As Robert J. Samuelson put it, “the ghost of Smoot-Hawley seems to haunt President Trump”.2 The US was an important market in the interwar period also – did that prevent retaliation against US protectionism then? And if retaliation did take place, what were its consequences?3

As it became clear that the Smoot-Hawley legislation was going to be passed, foreign complaints grew louder. By the autumn of 1929, more than 30 countries and colonies had officially protested to the US government. There is no ambiguity about the identity of these protestors, since their complaints were read into the public record while Congress debated the bill.4

On the other hand, the question of who took the next step, and actually retaliated against Smoot-Hawley, has been the subject of academic debate. As Irwin (1998: 337) points out, there were three possible responses to Smoot-Hawley. The first was not to respond at all, but in the context of the Great Depression that might have involved raising tariffs for purely domestic political reasons. The second was to take Smoot-Hawley as a signal that international cooperation had broken down, and erect tariffs as a result. And the third was to take “direct retaliatory measures against the United States”. Only the last of these possibilities constituted retaliation per se. If a country protected its car industry, was that because it wanted to retaliate against the US, or because it wanted to increase domestic car production? Not surprisingly, scholars have disagreed.

At the time, however, there was little doubt in policymakers’ minds that Smoot-Hawley had provoked widespread retaliation – “the Hawley-Smoot tariff in the United States was the signal for an outburst of tariff-making activity in other countries, partly at least by the way of reprisals. Extensive increases in duties were made almost immediately by Canada, Cuba, Mexico, France, Italy, and Spain” (League of Nations 1933:193). Writing in the same year that Smoot-Hawley was passed, Mann (1930) listed 11 countries that were particularly badly affected by the legislation and were either contemplating retaliation or had already retaliated: Argentina, Australia, Canada, Cuba, France, Italy, Mexico, New Zealand, Spain, Switzerland, and Uruguay. The countries concerned raised tariffs on particularly important US exports, while there were calls for boycotts and other measures targeting American goods. Later sources such as Jones (1934) argued that these countries had indeed retaliated, although Eichengreen (1989) doubted whether the protectionism they engaged in always constituted retaliation per se.

Perhaps there is some value in letting the data on bilateral trade flows speak to this issue. In a recent paper (Mitchener et al. 2021), we provide the first systematic quantitative estimates of the impact of retaliation against Smoot-Hawley on US exports. We construct a new, quarterly panel dataset of bilateral trade flows between 1925 and 1938, for 99 countries, colonies, and country groupings. The dataset contains 108,722 raw observations, and accounts for the vast majority of world trade. In 1928, we capture 89% of global imports. The data were collected from national statistical sources, and are to our knowledge the first bilateral trade dataset for the interwar period recorded at a higher than annual frequency. Having high frequency data allows us to exploit the differential timing of retaliatory measures when estimating the impact of retaliation.

We divide our 99 territories into three groups (see the Annex below). First, there are those classified by Mann and Jones as having retaliated, and which we term ‘retaliators’. Second, there are those who officially protested Smoot-Hawley, but were not classified by these authors as retaliators, who we describe as ‘threateners’. Members of these first two groups are collectively referred to as ‘responders’. And third, there are countries that neither retaliated nor protested, which we term ‘non-responders’.

Figure 1 plots US exports to responders and non-responders before and after the passage of Smoot-Hawley. The figure shows that responders accounted for the majority of US exports, so the actions of these countries mattered for aggregate US trade. It also shows that US exports to responders fell more sharply after June 1930 than did exports to non-responders, providing a first hint that retaliation might have been at work.

Chart, line chart

Description automatically generated

In order to explore that possibility more rigorously, we estimate a theoretically well-founded gravity model looking at the impact of threatening and retaliating. Threatening and retaliating are captured by dummy variables that are equal to one if the exporter is the US, and the importer falls into either one of these two categories. The dummy variables switch on in the quarter when the country or colony concerned filed a protest or retaliated. As is standard, we include exporter-time, importer-time, and bilateral pair fixed effects, and we control for a variety of potential confounders, including joint membership in various blocs (the sterling bloc, Reichsmark bloc, gold bloc, or British Imperial Preference system; see Jacks and Novy 2019), the Anglo-Irish trade war, trade treaties with the US signed as a result of the 1934 Reciprocal Trade Agreements Act, and simultaneous financial crises. In particular, by including importer-time fixed effects we are controlling for the aggregate decline in the imports of threatening and retaliating countries – any impact of responding that we uncover will capture the differential decline suffered by US exporters to responders.

We estimate our gravity models using both OLS and PPML and find that the impact of retaliating was big. Ceteris paribus, US exports to countries regarded by Mann and Jones as having retaliated fell by between 28% and 33%. More surprisingly, perhaps, US exports to threateners fell by between 15% and 22%, suggesting that de facto retaliation may have extended beyond those countries traditionally regarded as having retaliated.

In order to probe more deeply into the mechanisms involved, we compiled a second panel data set comprising 27,840 quarterly observations of US exports in 104 product categories to 59 trade partners between 1926Q3 and 1932Q2. The dataset captures 35.6% of all US exports in 1928. The use of product-level data allows us to see which products were particularly affected by retaliation overseas. We identified the top 10 US exports in our dataset to each destination, and found that, controlling for aggregate US exports to the economy concerned, exports of these top 10 products to retaliators fell by an additional 33% (exports to threateners fell by an additional 20%). The evidence is consistent with responders targeting particularly important US exports. A final exercise found that exports of cars were especially badly affected, consistent with the historical evidence that automobile exports were in many cases singled out for retaliation.

Peter Navarro was mistaken in 2018, and economic history suggests that this should have come as no surprise. Trade data suggest that the US faced widespread retaliation against Smoot-Hawley, and that the impact was large. While retaliation may indeed have been costly for the countries concerned this did not dissuade them. No matter how lucrative your market, if you behave badly, you risk being punished.

### 1NR – I/L – Protectionism

#### Antitrust protectionism is the only viable mechanism and it 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.

### 1NR – Selective Enforcement

#### 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.”

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

Ismael Beltrán Prado 20, J.D. from the Javeriana University, LL.M from Columbia University, Master’s in Applied Economics Candidate at the Andes University, Commercial and Antitrust Lawyer and Coordinator of the Public Procurement Collusion Task Force, at the Colombian Competition Authority, Pursuing a Master’s in Applied Economics at the Andes University, “Competition Policy After COVID-19”, Competition Policy International, 4/26/2020, https://www.competitionpolicyinternational.com/competition-policy-after-covid-19/

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.

### 1NR – Courts Bought out Link

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

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

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

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

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

### 1NR – Private Claims Link

#### 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.

### 1NR – Perception Link

#### 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.

### 1NR – Nail in Coffin Link

#### 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.