# 1nc – round the third

## off

### topicality – scope

#### The “scope of antitrust law” refers to the number of activities within the net of competition law.

Keith N. Hylton, Professor of Law, Boston University, and Fei Deng, and Consultant, NERA Economic Consulting, ‘7, “ANTITRUST AROUND THE WORLD: AN EMPIRICAL ANALYSIS OF THE SCOPE OF COMPETITION LAWS AND THEIR EFFECTS” Antitrust Law Journal [Vol. 74 2007] <https://www.jstor.org/stable/pdf/27897550.pdf?refreqid=excelsior%3A424f12ccaeba1aa8d4150377ebe7192d>

A. Measuring the Scope of Competition Law

1. Scope Index

The first charts we present show Scope Index scores. These scores are found by summing the total points within each country template, and then subtracting off the defense scores. To give an example, return to the template for New Zealand. The Scope Index score for New Zealand is found by summing the numerical values in the template shown in Table 1, and then subtracting off scores associated with defenses (and one point to reduce the merger subtotal). In the case of New Zealand, there are three defenses (merger public interest defense, efficiency defense for dominant firms, efficiency defense for restrictive trade practices). The sum of the points is 19 (after reducing the merger subtotal), and after subtracting 3, the Scope Index for New Zealand is 16. For each European Union member state, an alternative Scope Index was computed based on EU law.24

The point of the Scope Index is to measure the size of the competition law net in every country. As the score increases, so does the size of the net. Alternatively, one can think of the Scope Index for a particular country as a measure of the number of ways in which a firm could run afoul of the competition laws in that country. However, the Scope Index score does not indicate the degree to which a country invests resources into enforcing its competition laws. Continuing with the net metaphor, the Scope Index tells us the size of the competition law net without saying anything about the likelihood that the government will attempt to swing the net at any firm.

#### Expanding the number of activities subject to mandatory competition requires the aff to either expand the definition of “commerce” or limit exemptions/immunities.

Chris Sagers, Prof. of Law @ Cleveland-State, ’21, “Antitrust,” *Third Edition*, Wolters-Kluwer, ISBN 978-1-5437-0762-2

§20.2 THE BASIC SCOPE OF ANTITRUST: THE “COMMERCE” REQUIREMENT, THE INTERSTATE REQUIREMENT, AND THE REACH OF THE CLAYTON AND FTC ACTS

§20.2.1 “Trade or Commerce” in General; Its Exclusion of Charity and Gratuity; and That Awkward Orphan of Antitrust, Professional Baseball

While, again, there are many specific exceptions from the scope of antitrust, it remains the case that where no statutory or case-law exemption is available, . antitrust cuts very, very broadly. The basic ques tion of its scope is to ask where . the boundaries might lie of the “trade or commerce” that occurs ' among the several States, or with foreign nations,” which is explicitly referenced in 1 ■ Sherman Act §1 andt2. ■

First, observe that, by the apparent indication .of the explicit language, the requirement that the conduct occur in interstate or foreign commerce is logically distinct from the requirement that the conduct constitutes “trade or commerce.” The indication seems to be that conduct can be “trade-like” or “commercial” without being in interstate or foreign commerce, and vice ' versa. Fortunately, at least one of these requirements is easy. It is now clear that • domestic conduct is within “interstate” commerce any time it is within the interstate commerce jurisdiction of Congress under the Commerce Clause of the U.S. Constitution. Whether it can be within “foreign” commerce turns out to be a fair bit more complex, but that will be discussed in §20.3.

. Whether conduct is “trade or commerce” raises a different question, and it is the question of whether the conduct is the sort that Congress intended to be subject to mandatory competition. Modern courts define the scope of “trade or commerce” very broadly. Even early decisions defined the “commerce” subject to the statute to include any “purchase, sale, or exchange of commodities,”3 and they said it should be construed liberally, to give the statute its intended effect—it should “not [be treated as] a technical legal conception, but [as] a practical one, drawn from the course of business.”4 More importantly, modern courts have held generally that any exchange of money for a good or service, between any persons, is in “trade or commerce.”5 In one influential case, United States v. Brown Univ., 5 F.3d 658 (3d Cir. 1993), the Third Circuit held that an agreement among nonprofit universities concerning need-based scholarship funds was a contract relating to “trade or commerce.” Despite what might have appeared to be genuine charity, the court had no real trouble with the issue. The defendants conceded that the giving of educational services in exchange for money is “commerce,” regardless of the defendants’ nonprofit form of organization. And, the court wrote,

[t]he amount of financial aid not only impacts, but directly determines the amount that a needy student must pay to receive an education at [the defendant schools]. The financial aid therefore is part of the commercial process of setting tuition

In fact, it is really only in limited, exotic circumstances that modern courts have found conduct simply not within “trade or commerce" for antitrust purposes A leading case is Dedication and Everlasting Love to Animals V. Humane Socy. of the United States, Inc., 50 E3d 710 (9th Cir. 1995). The plaintiff was a California charitable organization devoted to animal welfare. It sued the Humane Society, a national umbrella organization, for nonprofit entities committed to similar purposes. The plaintiff’s theory of liability was in effect that the Humane Society, a “competitor” for the same charitable donations on which the plaintiff relied to fund its operations, had taken various actions to steal away the “market” for donations. While first acknowledging that no conclusion could be drawn from the fact that the parties were organized as nonprofit corporations, the court seemed fairly appalled at the very idea of the plaintiff’s theory of liability. “If statutory language is to be given even a modicum of meaning,” wrote the court, “the solicitation of [charitable] contributions ... is not trade or commerce, and the Sherman Act has no application to such activity.” Id. at 712.

#### Key to limits and ground – expansive definitions of scope allow any rule of reason aff or limitless tinkerings with the antitrust process

Anu Bradford, Professor of Law @ Columbia, and Adam S. Chilton, Professor of Law @ Uchicago, ’18, “COMPETITION LAW AROUND THE WORLD FROM 1889 TO 2010: THE COMPETITION LAW INDEX” Journal of Competition Law & Economics, 14(3), 393–432

Indicators for Competition Law and Policy (CLP): Finally, the CLP Indicators measure the strength and scope of competition regimes in 49 jurisdictions in 2013.53 Relying on a survey conducted among competition agencies, the CLP captures these agencies perception of whether various features of their domestic competition laws prevent anticompetitive behavior. These features include (1) the scope of action (including competences, investigative powers, sanctions/remedies, and private enforcement); (2) policy on anticompetitive behaviors (including horizontal agreements, vertical agreements, mergers, and exclusionary conducts); (3) probability of investigation (including independence, accountability, and procedural fairness); and (4) competition advocacy. Like CPI, FNI, and Four Indicators, the CLP also attempts to measure whether the competition policy reflects generally recognized “good” practices

### counterplan – ttc

#### The United States federal government ought, via the Joint Technology Competition Policy Dialogue of the Trade and Technology Council, develop and implement a prohibition of anticompetitive business practices impermissible under international law.

#### The plan actively brings the US out of coordination with the EU over competition and Russia.

Reuters 3-21 (EU to relax cartel rules to help ease supply chain disruptions caused by sanctions on Russia, <https://www.euronews.com/2022/03/21/ukraine-crisis-eu-antitrust> 3-21-22)//gcd

The European Commission will temporarily relax cartel rules so that thousands of companies in the EU whose supply chains have been disrupted by sanctions against Russia can band together to buy, supply or distribute products without violating competition rules, reports Reuters.

The EC has published the guidance jointly with the national competition authorities and the Supervisory Authority after dozens of businesses sought advice on how to deal with violations caused by the sanctions.

This type of cooperation between companies will most likely either not result in a restriction of competition or will result in efficiency gains that are likely to outweigh any such restriction, the competition authorities said.

EU regulators will not actively intervene in strictly necessary and temporary initiatives specifically aimed at preventing major disruptions caused by the impact of war and/or sanctions on the single market, they said.

#### The TTC is driving democratic tech governance now, but that requires long-term coordination over competition policy in Spring 22.

Torbøl 21 – founding partner of the firm’s Brussels office and is a member of the antitrust, competition, and trade regulation group. Within his practice, he focuses on EU competition law, international trade laws, and internal market (Phillip, "Brussels Regulatory Brief: October," No Publication, <https://www.klgates.com/Brussels-Regulatory-Brief-October-November-2021-12-14-2021> 12-14-2021)//gcd

Promoting small and medium-sized enterprises (SME) access to and use of digital tools, by launching activities that will offer opportunities for SMEs and underserved communities to share their needs, experience, strategies and best practices with policymakers on both sides of the Atlantic, in order to ensure better understanding of the barriers to their digital empowerment.

Global trade challenges, by focusing on challenges from non-market economic policies and practices, promoting and protecting labour rights and decent work, as well as trade and environment issues.

Cooperation within the TTC will improve EU and U.S. coordination in relevant bodies and promote a democratic model of digital governance. As well, both parties will establish a Joint Technology Competition Policy Dialogue, which will focus on developing joint approaches, and cooperation on competition policy and enforcement in the tech sectors.

The European Union and the United States together form the largest bilateral economic relationship in the world, which influences the global economy. With the cooperation of both sides, we can see that the TTC marks a new phase in both trade and digital relations, where EU and U.S. partners move from addressing urgent and pressing issues, to the development of a coherent and common long-term policy.

The next gathering is planned to take place in spring 2022.

#### New antitrust approaches that are developed unilaterally destroy TTC cohesion. That turns the case alone. Only the CP solves

Stelly and Borggreen 21 – (RACHAEL STELLY AND CHRISTIAN BORGGREEN, "The EU-U.S. Trade and Technology Council is an opportunity to discuss platform regulation," Disruptive Competition Project, <https://www.project-disco.org/21st-century-trade/070821-the-eu-u-s-trade-and-technology-council-is-an-opportunity-to-discuss-platform-regulation/> JULY 8, 2021)//gcd

Separate from the new TTC, there is a long-standing dialogue between the U.S. antitrust enforcers, the Federal Trade Commission and Department of Justice, and their European counterparts in the competition department of the European Commission. This dialogue has helped competition enforcement authorities engage productively on information gathering as well as specific elements of antitrust enforcement such as evidentiary requirements and the assessment of economic data. The [EU-U.S. Summit declaration](https://www.consilium.europa.eu/media/50758/eu-us-summit-joint-statement-15-june-final-final.pdf) suggested that this dialogue on competition enforcement would continue with a greater degree of formality under the umbrella of a Joint Technology Competition Policy Dialogue, likely focused on cooperation on active enforcement actions.

Continued dialogue between antitrust enforcers is important for the future of competition policy and its aspiration for transatlantic convergence. However, there are more fundamental directional challenges currently being discussed with the EU’s Digital Markets Act that would shift the landscape far beyond antitrust reform and enforcement. It is therefore critical that these novel regulatory approaches to platform governance are discussed among those drafting the new laws, not just those enforcing them.

The TTC provides an ideal forum for elevating these new and complex challenges and ensuring thoughtful political and legislative consideration of the different interests and values underlying these regulations. A lack of high-level transatlantic coordination – and the absence of regulatory dialogue – will inevitably lead to lopsided rules, and potentially contradictory regulatory systems that no level of enforcement cooperation will be able to resolve. What one jurisdiction may find an acceptable infringement of the rights to intellectual property, security and privacy protections, or the freedom to contract, may go beyond what another would countenance, particularly when foreign companies are targeted. A conflict of laws will also negatively impact relations between the EU and U.S. in the long term, directly undermining the shared ambition under the TTC “to deepen transatlantic trade and economic relations.”

The TTC is an opportunity for a frank dialogue on transatlantic and global tech challenges as well as an opportunity to drive EU-U.S. leadership on the future of the digital economy in the face of increasing global threats. Political leaders across both jurisdictions will need to be clear-eyed about opportunities for shared technological leadership as well as the risks of inadvertently empowering authoritarian countries through blunt or untested regulatory approaches. Building a strong forum to collaborate on tech standards and address diverging approaches to platform regulation would be a timely and appropriate place to start.

#### Effective TTC coordination is necessary to resolve all existential risks AND an effective EU relationship

Tocci 21 – Director of the Istituto Affari Internazionali, Honorary Professor at the University of Tübingen (Nathalie, “After the Honeymoon, How to Make the EU-US Relationship Work.” Politico, October 6, 2021)//gcd

Indeed, [the launch of the EU-U.S. Trade and Tech Council (TTC)](https://www.politico.com/news/2021/09/29/us-eu-trade-tech-council-pittsburgh-514760) in Pittsburgh last week points the way to the relationship’s revival, and to the true center of 21st century transatlantic relations. The fourth industrial revolution, public health, economic recovery, the green energy transition — this is where European change is actually taking place, and it is where the greatest potential for cooperation with the U.S. lies. For all the talk of diplomacy and alliances on full display in [Biden’s U.N. General Assembly address](https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/09/21/remarks-by-president-biden-before-the-76th-session-of-the-united-nations-general-assembly/), the U.S. will act — as it always has — in its national interest. And while U.S. interests do align with the EU on European security, its [need to strategically reorient toward China](https://www.politico.eu/article/us-joe-biden-eu-reckons-asia-push/) and to invest more in deterrence in the Indo-Pacific region will also mean a continued gradual disengagement from Europe’s surrounding regions. The only reasonable conclusion for the EU to draw is to step up to its own responsibilities in its neighborhood. Both Afghanistan and AUKUS have reignited the debate about European defense and strategic autonomy — but unfortunately, hardly anything is happening. Europeans continue to talk about security and defense and, in fairness, are gradually investing more in their capabilities. But when it comes to action, with the exception of France’s operation in the Sahel, there is not much to see. A strong transatlantic partnership should eventually include a more balanced security and defense relationship — one with greater European responsibility, as well as greater respect from the U.S. Perhaps one day it will. But that day is not today. This doesn’t mean there isn’t much the two sides can do together. Areas like the economy, technology, climate and energy transition offer far more promising avenues for meaningful cooperation. In these realms, the pandemic offered the EU the opportunity for action — and Europe seized it. The EU is navigating out of this coronavirus crisis as one, with its ability to deliver for its citizens on full display. The TTC is the most immediate example for the potential for this type of transatlantic coordination. The inaugural meeting’s concern with the market behavior of China also reflects a fundamental truth: The world is settling into a new bipolar structure, largely revolving around the U.S. and China. This does not mean that other powers — including the EU — are irrelevant. But it does imply that they will be drawn to either one pole or the other, largely depending on the nature of their political systems. Unlike the Cold War, however, the current competition features deep interdependence and primarily plays out in the economic and technological spheres. This places Europe in a distinctly different position than before: Whereas in the 20th century, Europe mattered to the U.S. because it was on the proverbial menu, today the EU matters because it has a seat at the table. The economic, technological and energy transitions will be the beating heart of 21st century transatlantic partnership. In contrast to defense, these are areas where Europe has taken responsibility — and earned respect. This is not to say that differences don’t exist in these areas as well. While progress has been made — on decarbonization targets, pledges for climate finance and the launch of the global methane alliance, for instance — there are still deep waters separating the EU and the U.S., most notably on issues like carbon pricing. If the two sides can’t manage to make common ground, some of these risk turning into consequential transatlantic gaps, both strategically when it comes to China and for the future of our planet. Honeymoons come and go, but now that real life has kicked in, it’s time to make the relationship work — especially in these areas of transition that are so existential to both.

### counterplan – aid

#### The United States federal government, in coordination with relevant international actors, should:

#### increase development aid to at least $2.5 trillion per year for relevant developing countries, including in Latin America, the Middle East, and Africa;

#### increase funding for alleviating stress on the environment and global resource production; and

#### expand international food aid and at least double investments in agricultural and food research over the next 10 years.

#### Development aid solves the aff.

Gulati ’21 [Shreya; 4/26/21; Masters in Development Studies @ London School of Economics; “Priming the pump: Is development aid still relevant?”; <https://www.orfonline.org/expert-speak/priming-the-pump-is-development-aid-still-relevant/>; AS]

The past few decades have witnessed a gradual change in the purpose and nature of international development aid and assistance. Unlike in 1970s when the main purpose of aid was to solely foster economic growth, the contemporary polysemous notion of aid aims to accommodate several aspects of human well-being as enshrined in the Sustainable Development Goals (SDG) of the United Nations. The estimated ‘price tag’ for the realisation of these SDGs by 2030 would necessitate the mobilisation of US $2.5 trillion per year through Official Development Assistance (ODA) and private flows. On the other hand, the contending narratives of reducing ‘Aid Dependency’ in the Global South prompts us to evaluate the most fundamental question, ‘Is Development Aid still relevant?’ Thus, an evaluation of aid relevance becomes imperative on four accounts—aid effectiveness in terms of propelling tangible developmental outcomes, emergence of new donors in the Global South, composition of international capital flows, and change in the nature of aid from an economic to a political and security agenda.

An evaluation of the key debates in the international aid landscape

Major shifts in paradigms influence our perspective on development aid and determine its relevance. Tracing the historical evolution of aid suggests that till 1970s, the main purpose of aid was to fill resource and financial gaps and improve infrastructure to foster economic growth. This changed with the advent of the ‘basic needs’ and ‘redistribution with growth’ narratives, which informed the creation of the Millennium Development Goals (MDGs). This narrative viewed ‘human needs’ as ‘human rights’ and replaced the earlier paradigms that emphasised on the means (i.e. growth) rather than the end (i.e. well-being). Successively, the financial crises of 2007 and 2008 initiated attempts to search for a new ‘big idea’ under the umbrella of the ambitious Sustainable Development Goals (SDGs) in 2015. The estimated ‘price tag’ for the realisation of these SDGs by 2030 would necessitate the mobilisation of US $2.5 trillion per year through Official Development Assistance (ODA) and private flows. On the other hand, the contending narratives of reducing ‘Aid Dependency’ in the Global South prompts us to evaluate the most fundamental question, ‘Is Development Aid still relevant?’ This essay attempts to systematically evaluate the debates around four key issues—aid effectiveness, emergence of new donors, composition of aid, and the change in the nature of aid, from an economic to a political and security agenda in order to understand the relevance of aid in contemporary times.

The link between international aid and development

The hot debate between aid optimists and pessimists can provide a framework to evaluate aid effectiveness and relevance. There are several criticisms of aid stemming out of—the faulty architecture, mismanagement, volatile nature, opacity, high selectivity of geo-politically favorable regions, and the top-down hierarchical approach of international aid which result in context blind development projects. It is believed that aid to Africa is characterized by ‘authoritarian paternalism’ and ensures that Africa remains perpetually in an infant-like state. On the contrary, proponents of aid would suggest that aid is instrumental in uplifting the standard of living and setting economic progress into motion. Also, a ‘big-push’ is required to overcome the obstacles of poor agricultural productivity, poor health, and education, etc. to overcome the impediments to growth that capture these countries in a poverty trap. Consider Botswana, Africa’s growth miracle, it has received more aid per person than an average low- income country by eight times. More recently, the income per capita in large recipient countries like Mozambique and Uganda has doubled since 1990s. Moreover, since 1960s, the average real income of Egypt has increased by three times while the infant mortality rate has astonishingly dropped from 189 to 35 per 1,000 live births. This has been corresponded by the doubling of literacy rates in the country. Since ‘evidence beats rhetoric’, it prods us to think that aid is still relevant in terms of its positive effects on growth and poverty reduction.

The emergence of ‘new donors’

The relevance of developmental aid has increased with the emergence of new donors like- Brazil, India, and China outside the Development Assistance Committee (DAC), marking a silent revolution in the arena of development aid and assistance. Debates in this sphere highlight the contending narratives of neo-imperialism of rising powers and South-South cooperation. On one hand, it is noted that aid from new donors like Brazil and China are often decontextualized and propagate a set of alien prescriptions incongruent to the realities. In Africa, Chinese development aid upholds the principle of ‘non-interference’ and ‘non-conditionality’ in the domestic economico-politico affairs of the recipient country. However, it deploys economic restrictions by tying the contract with the exclusive use of Chinese labour and equipment. On the other hand, the misperception of China as a rogue donor stems from the inability to distinguish China’s ODA from Other Official Flows (OOF). While the former is provided at a concessional rate to advance political agendas, the latter is provided at a near market rate to promote economic interests. Moreover, China is merely pursuing a strategy of influence as opposed to conditionality and interference. The emergence of new donors has also enabled developing countries to look beyond the DAC for technical and financial assistance and questioned ideals embodied within the Washington Consensus. Therefore, on balance, the addition of new players in the development field has increased the relevance of aid by causing a shift in the global power structure, reducing dependency, and increasing the amount of aid at the developing countries’ disposal.

Composition of international capital flows

Since 1995, remittances have overtaken ODA as one of the largest sources of capital inflow to developing economies which questions the viability of development aid in light of the enormous availability of remittances (Refer to Figure 1). One school of thought suggests that remittances are more effective in fostering savings and investment, as in the case of Sub- Saharan Africa. Also, unlike remittances, aid has negative effects on growth as it weakens the capacity of the state to collect revenue (the Dutch disease) and dampens the tradable goods manufacturing sector through overvaluation of currency. The other school of thought suggests that official aid is more effective in bolstering economic growth because remittances face the problem of uncertainty due to capital restrictions and are often undocumented. The third camp indicates the complementary nature of the two where an increase in remittances could enhance the growth effect of official aid. It could be said that unlike remittances, aid channelizes funds in priority sectors and is more manageable through bureaucratic administration. It also plays an important role in pulling households above a threshold income level to ensure that additional remittances are invested productively to enhance growth, thus, hinting towards the complementary relationship of aid and remittances. Therefore, the relevance of aid is not challenged by the growing amount of remittances.

Transformation in the nature of aid

Aid is a polysemous term and has transformed from being an economic agenda to a political and security agenda. It is often suggested that economic transformative goals can be realized when seen as being embedded in political realities. However, the post-9/11 declaration of ‘war on terror’ has increasingly linked developmental problems in the Global South to security issues to the Global North, a conceptualization which can have adverse effects on global security and global poverty reduction. While securitisation of aid is highly contentious, it has led to the channelization of 67 percent of ODA to fragile contexts. This is evident from the increase of US aid to Iraq from 5 percent to 25 percent during the war and the deployment of Provincial Reconstruction Teams for improving stability, protection, and security systems. Moreover, aid under the Commander’s Emergency Reconstruction Program was used in 11,000 development projects. Therefore, while there has been a change in the nature of aid from an economic to a political and security agenda, there has also been a corresponding increase in the channelization of ODA to fragile contexts.

Can development aid be ‘made’ relevant?

Development aid can be ‘made’ relevant and effective by undertaking various political, social, and economic measures. This can be understood by the measures taken by Rwanda and South Korea. In Rwanda, the Economic Development and Poverty Reduction Strategy was devised to decrease aid dependency from 86 percent in 2000 to 43 percent in 2012. This was achieved by effective public finance management, accountability of aid use through target setting and result achievement and bureaucratic transparency. Concomitantly, there was a large decline in infant, maternal, and malaria-related mortality and increase in access to health and education. South Korea also provides a blue-print for effective aid utilisation which led to the rapid economic recovery under the Syngman Rhee regime and modernisation under General Park Chung Hee. About 87 percent of the total aid was channelized towards the industrial sector—particularly mining, transport and manufacturing. State played an important role in the military-industry nexus and military aid encouraged development in conflict-free areas. The South Korean experience resonates with the idea that aid works where there are good policies and institutional quality.

In conclusion, an attempt has been made here to establish the relevance of aid by carefully analysing four factors—aid effectiveness evaluated in terms of propelling economic growth, the emergence of new donors like Brazil, India, and China, the changing composition of international capital flows from the Global North to the Global South and the changing nature of aid- from economic to security and political terms. Aid still seems relevant because—there’s overwhelming evidence of the positive effect of aid on growth; aid from emerging economies changes the global power structure and reduces the dependency of the developing countries on the developed countries. The complementary relationship between aid and remittances can facilitate the achievement of tangible development outcomes and securitisation of aid can be helpful in providing assistance to fragile contexts. Drawing from examples of Rwanda and South Korea, it becomes clear that good policies, institutions as well as bureaucratic accountability and transparency are able to ‘make’ aid relevant and effective.

### disadvantage – protectionism

#### Global trade rebounding now to pre-covid levels.

UNCTAD, United Nations Conference on Trade and Development, 1-19-2022, "Global foreign direct investment rebounded strongly in 2021, but the recovery is highly uneven," https://unctad.org/news/global-foreign-direct-investment-rebounded-strongly-2021-recovery-highly-uneven

Global foreign direct investment (FDI) flows showed a strong rebound in 2021, up 77% to an estimated $1.65 trillion, from $929 billion in 2020, surpassing their pre-COVID-19 level, according to UNCTAD’s Investment Trends Monitor published on 19 January. “Recovery of investment flows to developing countries is encouraging, but stagnation of new investment in least developed countries in industries important for productive capacities, and key Sustainable Development Goals (SDG) sectors – such as electricity, food or health – is a major cause for concern,” said UNCTAD Secretary-General Rebeca Grynspan. Biggest rise in developed economies Developed economies saw the biggest rise by far, with FDI reaching an estimated $777 billion in 2021 – three times the exceptionally low level in 2020, the report shows. In Europe, more than 80% of the increase in flows was due to large swings in conduit economies. Inflows in the United States more than doubled, with the increase entirely accounted for by a surge in cross-border mergers and acquisitions (M&As). FDI flows in developing economies increased by 30% to nearly $870 billion, with a growth acceleration in East and South-East Asia (+20%), a recovery to near pre-pandemic levels in Latin America and the Caribbean, and an uptick in West Asia. Inflows in Africa also rose. Most recipients across the continent saw a moderate rise in FDI; the total for the region more than doubled, inflated by a single intra-firm financial transaction in South Africa in the second half of 2021. Of the total increase in global FDI flows in 2021 ($718 billion), more than $500 billion, or almost three quarters, was recorded in developed economies. Developing economies, especially least developed countries (LDCs), saw more modest recovery growth. Strong investor confidence in infrastructure sectors The report says investor confidence is strong in infrastructure sectors (see the above figure), supported by favourable long-term financing conditions, recovery stimulus packages and overseas investment programmes. International project finance deals were up 53% in number and 91% in value, with sizeable increases in most high-income regions and in Asia and Latin America and the Caribbean. In contrast, investor confidence in industry and global value chains remains weak. Greenfield investment project announcements were practically flat (-1% in number, +7% in value). The number of new projects in global value chains (GVCs)-intensive industries such as electronics fell further. In other sectoral trends, greenfield investment activity remains 30% below pre-pandemic levels on average across industrial sectors. Only the information and communication (digital) sector has fully recovered. Project finance in infrastructure now exceeds pre-pandemic levels across most sectors. Project numbers are up most in renewable energy and industrial real estate. The boom in cross-border mergers and acquisitions (M&As) is most pronounced in services. The number of deals in information and communication increased by more than 50% to a quarter of the total. Trends in selected economies FDI in the United States – the largest host economy – increased by 114% to $323 billion, while cross-border M&As almost tripled in value to $285 billion. FDI in the European Union was up 8% but flows in the largest economies remained well below pre-pandemic levels. China saw a record $179 billion of inflows – a 20% increase – driven by strong services FDI, while Brazil saw FDI double to $58 billion from a low level in 2020, but inflows remained just below pre-pandemic levels. The Association of Southeast Asian Nations (ASEAN) resumed its role as an engine of growth for FDI in Asia and globally, with inflows up 35% and increases across most members. FDI flows to India were 26% lower, mainly because large M&A deals recorded in 2020 were not repeated, while inflows to Saudi Arabia quadrupled to $23 billion, in part due to an increase in cross-border M&As. Flows to South Africa jumped to $41 billion (from $3 billion in 2020) due to the $46 billion share swap between the South African multinational Naspers and its Dutch-listed investment unit Prosus. Recovery in development sectors remains fragile The recovery of investment flows to sectors relevant to the SDGs in developing economies, which suffered significantly during the pandemic with double-digit declines across almost all sectors, remains fragile. The combined value of announced greenfield investments and project finance deals rose by 55%, but mostly because of a small number of very large deals in the renewables sector. The number of SDG-relevant investment projects in developing economies rose by only 11%. Renewable energy and utilities continue to be the strongest growth sectors, especially through international project finance. In LDCs, the trend in SDG-relevant investment is less favourable. SDG investment project numbers in LDCs declined by a further 17%, after the 30% fall in 2020. Total project values increased by about 20% due to a single large renewable energy project. Looking at investment trends in LDCs through the lens of productive capacity development highlights structural weaknesses and shows that several sectors have been hit hard by the pandemic. Investment projects important for private sector development and structural change have partly dried up – exacerbating the downturn in natural capital (extractive) projects, traditionally an important part of investment in many LDCs. Positive outlook for 2022 The outlook for global FDI in 2022 is positive, according to the report. The 2021 rebound growth rate is unlikely to be repeated. The underlying trend – net of conduit flows, one-off transactions and intra-firm financial flows – will remain relatively muted, as in 2021. International project finance in infrastructure sectors will continue to provide growth momentum, the report projects. “New investment in manufacturing and GVCs remains at a low level, partly because the world has been in waves of the COVID-19 pandemic and due to the escalation of geopolitical tensions,” said James Zhan, director of investment and enterprise at UNCTAD. “Besides, it takes time for new investment to take place. There is normally a time lag between economic recovery and the recovery of new investment in manufacturing and supply chains,” Mr. Zhan added.

#### Extraterritorial Sherman act application prompts blocking statutes across the globe. Ensuing uncertainty will devastate global trade, innovation, and economic growth.

SAMUEL F. KAVA, JD/MBA Candidate @ JHU/UofM, ’19,"The Extraterritorial Application of the Sherman Anti-Trust Act in the Age of Globalization: The Need to Amend the Foreign Trade Antitrust Improvements Act (FTAIA) & Vigorously Apply International Comity," Journal of Business and Technology Law 15, no. 1 (2019): 135-164,

Before the FTAIA was enacted, in 1982, many of the United States' closest allies were disgruntled by the U.S. courts' expansive extraterritorial application of the Sherman Anti-Trust Act. 152 These nations confided in the territorial principle, and believed it "axiomatic that in anti-trust matters the policy of one state may be to defend what it is the policy of another state to attack."153 The United Kingdom, one of the most outspoken allies against the United States' "attempt[] to impose [its] domestic laws on persons and corporations who are not U.S. nationals and who are acting outside the territory of the United States," viewed the extraterritorial application of the Sherman Anti-Trust Act as ironic given the fact "the United States was founded by those who took exception to little matters of taxation being imposed extraterritorially." 154 Thus, in an attempt to "protect their nationals from criminal [and civil] proceedings in foreign courts where the claims to jurisdiction [were] excessive and constitute[d] an invasion of sovereignty," foreign nations enacted blocking statutes to resist the extraterritorial application of the Sherman Act.155

The blocking statutes of each nation varied, but all served to "block the discovery of documents located in their countries and bar the enforcement of foreign judgements."156 The United Kingdom achieved these goals with the Protection of Trading Interests Act, France with the French Blocking Law, Canada with the Foreign Extraterritorial Measures Act, and Australia with the Foreign Proceedings Act.157 The conflicting laws between the United States and its foreign counterparts created tremendous uncertainty regarding what nation's laws would be applied in the event of a cross-border dispute. According to Nuno Lim o and Giovanni Maggi, economists from the University of Maryland and Yale University, "as the world becomes more integrated, the gains from decreasing trade-policy uncertainty should tend to become more important relative to the gains from reducing the levels of trade barriers."158

Essentially, for trade to prosper, it is more important to provide producers and consumers with predictability and certainty (regarding the rule of law) rather than enacting laws that focus on free trade economics. Accordingly, it is in the best interest of governments to focus on unifying its laws before negotiating for the elimination of tariffs or quotas. This is not to say that eliminating trade barriers is not vital to the health of the economy-in fact, tariffs, quotas, and other trade barriers are proven to adversely affect all parties involved in the chain of distribution-however, it is more important to unify laws before focusing on the elimination of any trade barriers.159

As mentioned in Part I.C., the complaints of U.S. exporters and foreign governments were heard, and the United States Congress enacted the FTAIA "to address the concerns of foreign governments that the effects test established in the Alcoa case had not made clear the magnitude of the U.S. effects required to support a claim under the Sherman Act." 160 Thus, the FTAIA was implemented to bring certainty to consumers and producers by requiring that "conduct must have a 'direct, substantial, and reasonably foreseeable effect"' for the Sherman Anti-Trust Act to apply extraterritorially. 161 This language provided the foreign community with temporary relief, and gave producers and consumers the certainty and predictability needed to establish confidence in the markets and continue trading. However, since the passage of the FTAIA in 1982, the world has witnessed a remarkable increase in globalization, such that most conduct that takes place today has a "direct, substantial, and reasonably foreseeable effect" 162 on the U.S. economy. Epitomizing the obscureness of the FTAIA, is the fact that U.S. enforcement agencies-i.e. the U.S. Department of Justice and the Federal Trade Commission-have taken an aggressive approach to pursuing international antitrust claims. In 2017, the U.S. Department of Justice ("DOJ") and Federal Trade Commission ("FTC") published the International Guidelines-a publication "explaining how the agencies intend to enforce U.S. antitrust laws against conduct occurring outside the United States." 163 The International Guidelines have taken the broadest approach in determining if conduct is "direct"-finding if there is a "reasonably proximate causal nexus between the conduct and the effect" conduct is "direct"-and the narrowest view that international comity bars enforcement of U.S. antitrust laws only when it is impossible for the actor to comply with both U.S. law and its foreign nation's law.164 Thus, because the FTAIA has become ineffective and there is a risk of further expansion of the extraterritorial application of the Sherman Anti-Trust Act with Apple v. Pepper, foreign nations will almost certainly strive to adopt modern and effective blocking statutes. These blocking statutes will revitalize uncertainty in the markets, and the global economy will be adversely affected.

In addition, because our world is more integrated, compared to the time when the FTAIA was implemented, the adverse economic effects may be worse if foreign nations pursue modern blocking statutes. To hedge against judicial uncertainty, corporations will likely react by hiring more robust legal teams. By re-allocating money to legal costs, with the hopes of avoiding potential litigation and ensuring compliance with all nations' laws, corporations would have foregone the opportunity to spend time and money on: (1) scaling its current line of products (which would decrease the price of goods for consumers), (2) enhancing the capabilities of its current line of products (which improve consumer capabilities and increase corporate profits), or (3) creating new and innovative products (which would benefit both consumers and producers). Thus, because corporations would be forced to spend more resources on avoiding litigation rather than research and development with the new blocking statutes, consumers, producers, distributors, and the economy as a whole will be adversely affected.

Overall, there is a significant risk that foreign nations will look towards blocking statutes to limit the extraterritorial application of the Act. The conflicting laws of the United States and international community will lead to judicial uncertainty, which will have an adverse impact on the global economy. Businesses will spend more time and money to avoid disputes; thus, undermining corporate profits, a customer's ability to purchase low cost goods, and the overall health of the global economy. The only certainty is that trade will slow down as a result of trade policy uncertainty. To avoid these adverse economic effects, it would be advantageous for the United States Congress to amend the FTAIA in a way that limits the effects of the extraterritorial application of the Sherman Anti-Trust Act. Specifically, Congress should limit the effects of the extraterritorial application of the Sherman Anti-Trust Act by expressly providing courts with a robust international comity analysis.

#### National antitrust silos promise the end of the economic order and liberal peace.

Steven S. Nam, Distinguished Practitioner, Center for East Asian Studies, Stanford University, ’18, Our Country, Right or Wrong: The FTC Act's Influence on National Silos in Antitrust Enforcement, 20 U. PA. J. Bus. L. 210 (2018).

National antitrust silos are not a novel phenomenon. Former European Commissioner for Competition Joaquin Almunia warned of them years ago, 5 2 and scholarship touching upon the furtherance of nationalist goals by various antitrust agencies dates back decades. 53 However, a creeping loss of public confidence in open markets-coupled with the obstacles to coherent global antitrust enforcement that bear the FTC Act's influence, as illustrated in this Article-risks amplifying the problem. As anti-free trade agendas continue to garner more mainstream popularity for formerly counter-establishment parties, a proliferation of protectionist silos could tempt even governments that, for the most part, had moved past them. Why, American officials may ask, should the U.S. continue championing the liberal international economic order when an illiberal China or an ostensibly liberal South Korea bends regulatory rules to disadvantage American companies, workers, and consumers? Skepticism towards a liberal democratic "end of history"'54 in general, and failures of economic liberalism in particular, are threatening to motivate political circles accordingly. Even perennial norms and conventions of the U.S. competition regime which evolved to safeguard regulator independence at home are no longer above disruption; the ambiguous statutory articulations that carried over abroad to empower strong executives are likewise playing a paper tiger role domestically of late.'55 Protectionist policies designed to compromise market competition-for all its documented excesses and inadequacies-would sap its creative vitality and the concurrent liberal peace 5 6 often taken for granted. Economic liberalism ails not so much from the intrinsic failings of core tenets, but from their more egregious nation-state and corporate violators. Proposals for greater accountability and harmonization have ranged from presumption of an underlying coordination scheme in antitrust investigations of a culpable country's companies,157 to an international competition regime binding on member states in at least some areas of antitrust.158 Each has associated costs, but their very debate harnesses polycentric dialogue lacking in nationalist regulatory agendas and calls for "our country, right or wrong" protectionist silos. It should be emphasized to policymakers and politicians collectively that lasting convergence in antitrust enforcement is unachievable without global coherence in regulator autonomy, and the FTC Act's formative influence is not above scrutiny or reproach. Still-elusive realization of the liberal economic international order's intended form will require an expanded constellation of independent competition regulators empowered to enforce antitrust laws consistently.

#### Nuclear war.

Roubini ’17 [Nouriel; 1/2/17; professor at NYU’s Stern School of Business and Chairman of Roubini Macro Associates, was Senior Economist for International Affairs in the White House's Council of Economic Advisers during the Clinton Administration; ““America First” and Global Conflict Next,” <https://www.project-syndicate.org/commentary/trump-isolationism-undermines-peace-worldwide-by-nouriel-roubini-2017-01>]

Trump, however, may pursue populist, anti-globalization, and protectionist policies that hinder trade and restrict the movement of labor and capital. And he has cast doubt on existing US security guarantees by suggesting that he will force America’s allies to pay for more of their own defense. If Trump is serious about putting “America first,” his administration will shift US geopolitical strategy toward isolationism and unilateralism, pursuing only the national interests of the homeland. When the US pursued similar policies in the 1920s and 1930s, it helped sow the seeds of World War II. Protectionism – starting with the Smoot-Hawley Tariff, which affected thousands of imported goods – triggered retaliatory trade and currency wars that worsened the Great Depression. More important, American isolationism – based on a false belief that the US was safely protected by two oceans – allowed Nazi Germany and Imperial Japan to wage aggressive war and threaten the entire world. With the attack on Pearl Harbor in December 1941, the US was finally forced to take its head out of the sand. Today, too, a US turn to isolationism and the pursuit of strictly US national interests may eventually lead to a global conflict. Even without the prospect of American disengagement from Europe, the European Union and the eurozone already appear to be disintegrating, particularly in the wake of the United Kingdom’s June Brexit vote and Italy’s failed referendum on constitutional reforms in December. Moreover, in 2017, extreme anti-Europe left- or right-wing populist parties could come to power in France and Italy, and possibly in other parts of Europe. Without active US engagement in Europe, an aggressively revanchist Russia will step in. Russia is already challenging the US and the EU in Ukraine, Syria, the Baltics, and the Balkans, and it may capitalize on the EU’s looming collapse by reasserting its influence in the former Soviet bloc countries, and supporting pro-Russia movements within Europe. If Europe gradually loses its US security umbrella, no one stands to benefit more than Russian President Vladimir Putin. Trump’s proposals also threaten to exacerbate the situation in the Middle East. He has said that he will make America energy independent, which entails abandoning US interests in the region and becoming more reliant on domestically produced greenhouse-gas-emitting fossil fuels. And he has maintained his position that Islam itself, rather than just radical militant Islam, is dangerous. This view, shared by Trump’s incoming National Security Adviser, General Michael Flynn, plays directly into Islamist militants’ own narrative of a clash of civilizations. Meanwhile, an “America first” approach under Trump will likely worsen the longstanding Sunni-Shia proxy wars between Saudi Arabia and Iran. And if the US no longer guarantees its Sunni allies’ security, all regional powers – including Iran, Saudi Arabia, Turkey, and Egypt – might decide that they can defend themselves only by acquiring nuclear weapons, and even more deadly conflict will ensue. In Asia, US economic and military primacy has provided decades of stability; but a rising China is now challenging the status quo. US President Barack Obama’s strategic “pivot” to Asia depended primarily on enacting the 12-country Trans-Pacific Partnership, which Trump has promised to scrap on his first day in office. Meanwhile, China is quickly strengthening its own economic ties in Asia, the Pacific, and Latin America through its “one belt, one road” policy, the Asian Infrastructure Investment Bank, the New Development Bank (formerly known as the BRICS bank), and its own regional free-trade proposal to rival the TPP. If the US gives up on its Asian allies such as the Philippines, South Korea, and Taiwan, those countries may have no choice but to prostrate themselves before China; and other US allies, such as Japan and India, may be forced to militarize and challenge China openly. Thus, an American withdrawal from the region could very well eventually precipitate a military conflict there. As in the 1930s, when protectionist and isolationist US policies hampered global economic growth and trade, and created the conditions for rising revisionist powers to start a world war, similar policy impulses could set the stage for new powers to challenge and undermine the American-led international order. An isolationist Trump administration may see the wide oceans to its east and west, and think that increasingly ambitious powers such as Russia, China, and Iran pose no direct threat to the homeland. But the US is still a global economic and financial power in a deeply interconnected world. If left unchecked, these countries will eventually be able to threaten core US economic and security interests – at home and abroad – especially if they expand their nuclear and cyberwarfare capacities. The historical record is clear: protectionism, isolationism, and “America first” policies are a recipe for economic and military disaster.

### disadvantage – deference

#### The United States Congress should clarify that the scope of U.S. antitrust law solely applies domestically.

#### Solves their “uncertainty” link turns.

#### Foreign affairs deference high now but extraterritorial antitrust enforcement requires adjudication of political questions that causes judicial encroachment on executive power.

Daniel Fahrenthold, JD Candidate @ Columbia Law School, ’19, "Respectful Consideration: Foreign Sovereign Amici in U.S. Courts," Columbia Law Review 119, no. 6 : 1597-1632

The judiciary does not manage the country's foreign relations. 5 2 For this reason, the courts have adopted a number of doctrines to avoid entangling themselves in foreign affairs. International comity counsels courts to approach cases "touching the laws and interests of other sovereign states" in a "spirit of cooperation."1"5 3

The courts have expressed reluctance to pass judgment on questions of foreign relations. The Supreme Court conceded in Banco Nacional de Cuba v. Sabbatino, for instance, that courts are "hardly. . . competent to undertake assessments of varying degrees of friendliness or its absence" in relations between the United States and other countries. 5 4 In Empagran the Justices questioned the petitioners' counsel as to how they could determine which approach to U.S. antitrust law would be "consistent with not antagonizing our allies."155 When the petitioners' counsel directed the Court's attention to the seven foreign sovereign amicus briefs filed by some of the United States' most significant trading partners,' 5 6Justice Scalia expressed dissatisfaction, wondering what the positions would be of "other partners who have not been heard from"15 7 and whether they would accord with the views of those states which had filed with the Court. Distant as they are from the bodies responsible for conducting U.S. foreign policy, courts have traditionally declined to make decisions that may harm the United States' relations with foreign powers absent more direct guidance.

The impact the courts can have on U.S. foreign relations is not merely hypothetical. The Supreme Court's decisions in Breard and Sanchez-Llamas have brought wide condemnation from the international community for failing to recognize individual rights under the Vienna Convention on Consular Relations and the procedural safeguards necessary to protect those rights.1 58 In McNab, the Honduran government argued that the court's reinterpretation of Honduran law would "dramatically harm the trading relationship between Honduras and the United States" and could "only result in distrust that will produce less cooperation and less trade overall." 159 And the Chinese Ministry of Commerce in its amicus brief to the district court in Vitamin C I directly threatened that, if the court found jurisdiction, "[i] t cannot be denied that the possibility of insult to China is significant."' 60 By lodging an amicus brief with the court in the first place, the foreign sovereign is unequivocally demonstrating that it takes a special interest in the outcome of the litigation. While some judges have argued that to decide cases based on the opinions of foreign sovereigns is itself "conducting foreign policy," 161 the distinct possibility remains that a co decision can easily have unintended foreign policy implications-especially one imposing $147 million in damages, as in Vitamin C 1.162

#### The plan spills over to broadly erode the one voice doctrine.

Qingxiu Bu, Commercial Law @ University of Sussex, formerly professor of transnational business @ Georgetown Law Center, ’20, ‘“Respectful Consideration, but Not Deference: Chinese Sovereign Amici in the US Supreme Court Vitamin C Judgment” Journal of European Competition Law & Practice, Vol. 11, No. 5–6

2. Impact on Chinese MNCs’ behavioural change

The weight the US court should give MOFCOM’s views is pivotal to determining whether the Vitamin C manufacturers can escape liability for their anticompetitive conduct.193 The case has set the ground rules for a broad range of cross-border disputes.194 The implications of the Supreme Court’s decision reach well beyond the confines of antitrust doctrine.195 The ruling will have far-reaching implications on many other cross-border disputes, since similar issues of foreign deference in Vitamin C always arise in a wide context. Vitamin C sheds light on the Supreme Court’s stance on the application of the doctrine of international comity.196 Such presumption of jurisdictional obligation applies squarely to other kinds of transnational litigation as well.197 It does not necessarily mean that the adoption of respectful consideration would increase the exposure of Chinese firms to US liability. The decision is likely to have an enormous impact on the way Chinese MNCs make business decisions on their access to the US markets.

#### Foreign affairs deference key to forth gen warfighting – outweighs and turns every impact.

Yoo ’22 [John; "ON UNILATERAL PRESIDENTIAL WAR POWERS."Harvard Journal of Law & Public Policy Vol. 45]

Delegating War Powers The Supreme Court has said that the nondelegation doctrine does not apply to foreign affairs. That is the point of United States v. Curtiss–Wright Export Corp., 21 which is probably the most famous and criticized decision by the Supreme Court on foreign affairs. In Curtiss–Wright, the Court said regardless of whether the nondelegation doctrine applies domestically, it does not apply when it comes to foreign affairs.22 Justice Sutherland further held that the President had a broad sole organ power to set foreign policy.23 That is the current doctrine. In terms of the original understanding, I do not think it would have occurred to the Framers as a question of delegation. What they had in mind was what they had seen in the 100 years of British constitutional history before the Founding. 24 They saw that the Crown and the Parliament fought over war through, primarily, Parliament’s power to cut off funds for the Crown’s wars.25 The Crown would often start a war.26 Sometimes the king himself would lead the battles without any declaration of war.27 You would not see Parliament getting upset because there was no declaration of war. Instead, Parliament would control the war through its authority over funds.28 It would not pass legislation or declarations of war to control warmaking. Instead, Parliament used the harder tool of funding. For what it is worth, my view on the nondelegation doctrine domestically is that if Congress wants to stop anything that an agency does, it knows how to do it quite easily, which is to attach a funding rider here and there. When funding is at issue, the agencies snap to it. I think that tool works well in constraining executive action in both domestic and foreign affairs. Interpretive Consistency and Separation of Powers I think we still are suffering from a case of what we sometimes call “foreign affairs exceptionalism,” whereby the law on particular foreign affairs is just different than domestic affairs. Many people think Congress ought to have the same power over war that it has over domestic affairs. That leads people to ask: why does Congress not have the right to use the same tools to control the President in war that it would normally use when it comes to building a power plant or shutting down a pipeline? For judges, the answer has to rest on what the Constitution says, which should turn on original meaning. Are originalists, however, going to be consistent? Are critics willing to be originalist in foreign affairs or on the war powers and then apply those same commitments to all other questions of constitutional interpretation? Are they willing to be originalists on the question of the administrative state or the role of the courts in the expansion of individual liberties? Why is it that originalism is only applied in foreign affairs but not to questions of the Due Process Clause or questions of deference to the agencies under Chevron?29 The second point I would make in particular about the role of the courts is that if several of the other speakers on the panel are to be believed and the practice of war powers for the last sixty or seventy years has been unconstitutional, are they calling for courts to intervene and strike down all of these wars? If that is the case, do they also believe that courts should be equally interventionist in the decisions of the executive branch, and particularly the administrative state, on domestic questions? Why is it that we see progressives urge such enormous deference to agencies domestically but not in foreign affairs?30 Look at the enormous demands for judicial deference to the decisions of agencies and executives on the question of the COVID–19 pandemic and lockdowns.31 I often find some of the same people demanding intrusive judicial review in foreign affairs would not adopt the same posture toward the workings of the executive branch on domestic affairs.32 I do not expect President Biden to be consistent on these questions. President Biden has already flip–flopped on this. He wrote a law review article where he called for more changes to the War Powers Resolution to make it stronger and tougher to stop presidential adventurism in military affairs.33 This is the same Joe Biden who just attacked Syria without seeking permission beforehand from Congress.34 I expect President Biden, like many Presidents, will have taken one position before he was President, such as granting Congress the premier role in foreign affairs. But then once in office, Biden will use traditional presidential powers over war just as his predecessors have. It is very easy for Congress to respond if it wants to. Professor John Bellinger and I worked on the negotiations over the Authorization for Use of Military Force (AUMF) in 2001.35 Congress was heavily involved in both the 2001 and 2002 AUMFs, and its negotiators asserted the constitutional right to approve wars beforehand. They also raised questions about how long the AUMF should run, what would happen if Al Qaeda morphed into different organizations, should the authority be limited to a single region, or a certain kind of conflict. But when it came time to vote on the AUMF, nobody in Congress actually wanted to impose those limitations. The problem is not that Congress lacks powers. Congress ended the Mexican–American War.36 Congress ended the Vietnam War.37 The problem is that Congress does not want to use the ample powers it has. I do not think the Constitution has a defect. It is just that Congress does not want to, for political reasons, take responsibility and accountability for war decisions. Congress is happy to fund an enormous, offensive army. Our military is not designed for homeland defense; it is designed to carry out wars in other people’s countries. Congress has created a military that is designed for offensive operations. But it does not want to take responsibility for how that army is used. I do not think we should reread the Constitution in different ways to force Congress to take accountability when it is going to do everything it can to escape it. Defining Powers and the Office of Legal Counsel Some people suggest that the Office of Legal Counsel (OLC) should be an impartial arbiter of interpreting the Constitution in order to provide a check on what the executive officials want to do. I disagree. OLC’s role flows from the President’s authority in constitutional interpretation, which is all the authority OLC could, at its maximum, ever exercise. OLC is just exercising the delegation to the Attorney General from the President or the President’s ultimate authority to interpret the Constitution for the executive branch. I would not say the President is supposed to be an impartial arbiter of constitutional disputes among the branches. The President interprets the Constitution because he has the Article II authority to take care that the laws are faithfully executed.38 As part of that responsibility, he or she must interpret the law. The President should come to the interpretation that he or she thinks is best, but that does not mean that the President is a neutral arbiter. Some say that the courts should be a neutral arbiter, but sometimes I do not think that they are. I do not think Congress is neutral either. I think the Constitution creates a departmental system where each branch interprets the Constitution for itself within its area of competence. The Constitution expects the branches to fight over its interpretation as over other subjects. Out of that fighting emerges a practice or consensus about what the Constitution means. But this does not create a system where any one branch has any supreme authority, including the courts. No branch has supreme authority over the final meaning of the Constitution. I think that is what OLC has come to be, but I do not think that was what it originally was. Historically, it was an offshoot of the Solicitor General’s department, 39 and the Solicitor General’s job was to represent the interests of the executive branch in Supreme Court litigation.40 The OLC split off from the Solicitor General’s office when its job of adjudicating disputes among the agencies became too significant and distracted from the advocacy function of the Solicitor General’s office.41 I disagree with OLC’s work product on war. Since the Clinton years, OLC has taken the view that wars that were small, short, and not too dangerous to U.S. personnel did not need congressional approval.42 I just do not think that is the correct answer. If that test were right, then the United States could drop a nuclear bomb on an enemy, and that would not be a war because no U.S. ground troops would be involved. By dropping a nuclear weapon, the ability of the enemy to attack us would be zero. Yet that is the test that OLC essentially adopted: no ground troops, no chance of American casualties, so therefore, no war. Consider Libya—we tried to kill the head of state of another country, Muammar Gaddafi.43 I happen to disagree with the OLC test in that case, but I do not think it means OLC itself has to be reformed or changed. And I do not think President Biden and Merrick Garland are going to change the OLC. They will act just like White Houses and Justice Departments in the past when it comes to war. Treaty Obligations and War Powers It is not the subject of our discussion today, but I am sure everybody is familiar with the question of self– executing and non–self– executing treaties. There is a debate over whether we are a country where most treaty obligations must be carried out by statute or by administrative regulation in the same way that those same policies would be carried out domestically, or whether treaties are self–executing and courts can enforce them directly without implementation by the political branches.44 I have written that these treaties are non – self–executing and require statutory or regulatory enactment.45 But if all treaties are presumptively self–executing, which is the majority view among international law scholars, then why is the NATO treaty obligation not automatically legally binding in domestic law? This was the constitutional issue that killed the Treaty of Versailles.46 People may remember that one of the arguments that Senator Henry Cabot Lodge made was that the United States could not join the League of Nations because Congress would be delegating its war powers to an international organization.47 My point is a little different. It is that a treaty cannot create a new domestic legal obligation to go to war. A treaty is just a promise, but then we still have to go through the normal domestic process— however you think the Constitution distributes war powers—in deciding whether to live up to the treaty obligation or not. The treaty itself cannot change the Constitution’s allocation of power between the President and Congress. Those who believe most treaties are self–executing must take a different view. It must be that the treaty’s existence creates a domestic legal obligation, and we must carry it out, unless the President terminates the treaty. Concluding Thoughts The topic of the President’s war powers will continue to inspire worthwhile debate. You might remember Arthur Schlesinger, Jr. He wrote the book The Imperial Presidency after the Vietnam War, which was a long critique of the slow, gradual presidential accumulation of powers over war.48 But before the Vietnam War, Schlesinger argued that nuclear weapons rendered domestic war powers obsolete because a nuclear missile made war too quick.49 It removed the time frame for Congress to deliberate about war. There were a number of scholars in the period between the end of World War II and Vietnam who thought that the Constitution had to be interpreted differently because of the challenge of new military technologies.50 This is a phenomenon that we will face again. I predict that ultimately, our application of the Constitution to new technology –- as in, say, cyber warfare—will enhance presidential power. Cyber warfare shows again the weakness of Congress as an institution to exercise the war powers that some people are calling for, especially given the difficulty in attributing the origins of an attack and how quick and easy attacks are to wage. It seems to me that, regardlesof how you think the Constitution originally should be read to allocate war powers, cyber warfare is going to lead to more authority by the executive branch over how to conduct war. Do you think Congress would ever really vote, or want to vote, on whether to conduct a campaign in cyber against another country or against a non–state actor beforehand? I doubt it. I would be shocked, actually, if it did. The President’s unilateral war powers are strong, both constitutionally and, with increasing frequency as time passes, in practice.

## advantage – regimes

### AT: empagran – 1nc

#### Plan causes international legal backlash, NOT “modelling.”

Jared S. Sunshine, J.D., cum laude, Fordham University School of Law, 2008; B.A., Columbia College of Columbia University in the City of New York 20, ’21, Observations at the Quinceanero of Intel Corp v. AMD, Inc. on International Comity in Domestic Discovery for Foreign Antitrust Matters, 69 DRAKE L. REV. 295 (2021).

With much due respect, Professors Amram and Smit and the commission delegated by Congress were mistaken back in 1964 when it comes to the demesne of antitrust, albeit with the best of intentions. They imagined a glorious future of well-accepted U.S. hegemony in discovery procedures. But that brand of hegemony is fundamentally incompatible in the antitrust context with the comity of nations and the prerogatives of the numerous FCAs that exist today, as illustrated by the inglorious history of transnational disputes over competition law enforcement and discovery thereto in particular. 690

Hegemony would be easier. There is no doubt that is so, and the United States has every right to promulgate a vision of discovery in its own interests. But those interests include the insurance that international corporations that do harm to U.S. consumers within the reach of the Sherman Act cannot evade the reach of U.S. justice by sleight of hand in foreign registration or operation abroad. Nor do the United States' peers abroad have any less incentive to secure their citizens against the abuses of anticompetitive U.S.- based corporations. In our global economy, nation-states must agree on a manner of holding to task those economic interests that attack rather than advance the collective benefit of humanity. Transnational competition law enforcement is the foremost manner in which the league of credible nations accomplishes that goal. The current application of § 1782 and other discovery gambits in the antitrust context impedes that goal, for it makes enemies of the United States' natural friends. To be at odds so regularly with Brussels-not to mention London, Paris, The Hague, Bern, Seoul, Tokyo, Canberra, and elsewhere-should signal a more fundamental problem. The absence of foreign participants from U.S. proceedings supposedly undertaken to enhance comity can only lead to judicial conjecture and international friction. In May 2020, Justice Neil Gorsuch, writing for a unanimous Court, summarized parallel developments in the greatest forum of international comity, sovereign immunity:

In the mid-20th century, the State Department started to take a more restrictive and nuanced approach to foreign sovereign immunity. Sometimes, too, foreign sovereigns neglected to ask the State Department to weigh in, leaving courts to make immunity decisions on their own. "Not surprisingly" given these developments, "the governing standards" for foreign sovereign immunity determinations over time became "neither clear nor uniformly applied."691

Justice Gorsuch then narrated that the resulting diplomatic disarray was addressed by Congress's passage of the watershed Foreign Sovereign Immunities Act, laying down definitive rules and standards for comity in the immunity arena.692 Similarly definitive standards in evaluating discovery requests in antitrust matters are achievable without even congressional action, and thus a mutually agreeable solution in this vital area of international comity is not so elusive today as it seemed 40 years ago. 693 At the turn of the millennium, the Superior Court of Ontario wrote about discovery in the much-manhandled Vitapharm: "As a result of the inexorable forces of globalization and expanding international free trade and open markets, there will be an ever-increasing inter-jurisdictional presence of corporate enterprises. This is seen particularly in respect of U.S. and Canadian business activity, given the extent of cross-border trade."694 It added: "If both societies are to maximize the benefits of expanding freer trade and open markets, the legal systems of both countries must recognize and facilitate an expeditious, fair and efficient regime for the resolution of litigation that arises from disputes in either one or both countries." 695 U.S. courts considering discovery disputes have agreed: "[W]orld economic interdependence has highlighted the importance of comity, as international 691. commerce depends to a large extent on 'the ability of merchants to predict the likely consequences of their conduct in overseas markets."' 696

Justice Breyer did not merely dissent from the holding in Intel in 2004, but also wrote the majority opinion in the unanimously decided Empagran, offering a throaty defense of comity in antitrust cases. 697 Pointedly, the former quoted the latter directly: by "so ignoring the Commission, the majority undermines the comity interests § 1782 was designed to serve and disregards the maxim that we construe statutes so as to 'hel[p] the potentially conflicting laws of different nations work together in harmony -a harmony particularly needed in today's highly interdependent commercial world.' 698 It is to be hoped, for the sake of comity in antitrust discovery at least, that Empagran's principle proves the more persistent of the two in the long run

#### U.S. antitrust does *not* cause development. Developing countries want monopolies.

Waisberg, Ivo, Professor @ Catholic University of Sao Paolo, ’19, "International Antitrust Approaches and Developing Countries." Available at SSRN 3424274 (2019).

If the comity to respect or analyze the interests of other nations was an important ingredient in the extraterritorial application of antitrust laws, the harms caused by this system could be mitigated. Because of the little weight given to comity in the US, and in large extent in the EU, developing countries must seek alternative frameworks to mitigate extraterritoriality. Conversely, countries that can impose their interests through an efficient application of their laws in relation to conducts occurring elsewhere are not supporters of comity principles. This is the reason why American scholars argue in favor of abandoning comity and increasing extraterritoriality based purely on American interests.39 This makes sense from a purely unilateral point of view.

The point is that the current unilateral enforcement system, from a developing country perspective, is a one-way street. Powerful antitrust agencies can decide to enforce their laws whenever they see fit, and, like many trade measures, antitrust enforcement can be strongly influenced by political decisions. For the developing country, this will represent an overenforcement by the developed country agency. On the other hand, if the developed country underenforces its law for its national, there is nothing the developing country can do. Of course, it can be argued that underenforcement of antitrust laws by a developing country creates the need for extraterritorial measures by other agencies. Even if we agree that an underenforcement problem exists in most developing countries, it would be useful for them to fight for an international system that enables them to contest developed countries for both overenforcement and underenforcement, which is something they cannot do in the unilateral system unless a developed country decides to show some goodwill.

#### No enforcement – no mechanism, countries won’t cooperate, and impossible to discover evidence of collusion.

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

Concerns, however, may arise in the case of export cartels with similar effects. For example, suppose authorities in these importing jurisdictions are unable to cooperate effectively in investigating cartels. In that case, their investigative efforts may not easily yield necessary evidence on the producers' conduct in exporting jurisdictions. 60 Multiple jurisdictions may repeat the same investigative steps, resulting in extra costs for business subject to investigations. 61 Meanwhile, cooperation with the authorities of those jurisdictions may be hampered by the fact that they may not perceive an immediate interest in tackling the cartel if it does not create harmful effects for the national economy. 62 Some countries specifically exempt "export cartels" from competition law, while many others will only investigate cartels if there are adverse effects within their jurisdictions. 63 Some international cartels may be beyond the effective reach of the laws in the countries where they have their most pernicious effects.64 According to the Organization for Economic Co-operation and Development ("OECD") report, most countries in which violations occur may not have access to the evidence necessary to determine the guilt or innocence of the parties involved. 65 Therefore, cartels may at times remain undiscovered due to lack of cooperation. Harmful cartel activity could go unpunished in these importing jurisdictions when enforcing national competition law against such cartels.

Also, the extraterritorial reach of competition law, the "effect doctrine," is a sensitive issue and jurisdictional conflicts may occur. For example, two different countries may assert their own jurisdiction in the same case, leading to potential divergent assessments. 66 In such circumstances, "positive comity" provisions are now included in many bilateral cooperation agreements between countries, whereby competition authorities can request another jurisdiction to address anti-competitive conduct that might best be fixed with an enforcement action in the country that is the recipient of the request.67 However, as I will illustrated in the following Chapter, international cartels could in theory be carried out either by the State or by State controlled firms. In examining their legitimacy both under WTO treaty obligations and under antitrust laws, there could be opportunities for nations to play one system against the other.

In sum, numerous changes in enforcement activity against international cartels have occurred over the past two decades: the adoption of antitrust policies prohibiting hardcore cartels by countries around the globe, vastly increased enforcement against international cartels by antitrust authorities, increased use of leniency policies, application of extraterritoriality, and a slow but growing trend toward criminalization of price-fixing. The net effect of these changes is that numerous competition policy agencies now vigorously pursue and successfully prosecute international cartels, levying increasingly large fines. However, even where international cartel activity can be tackled effectively by national competition laws, inefficiencies may occur during the investigation of international cartels and lead to underenforcement of competition policy and laws. In the absence of well-functioning and institutionalized cooperation mechanisms, multiple jurisdictions may repeat the same investigative steps, resulting in extra costs related to the investigations for business and costs to competition authorities from unnecessary duplication. As a result, harmful cartel activity could go unpunished, consumers would be harmed, and future harmful behavior will not be deterred.

### AT: sdgs – 1nc

#### Case doesn’t solve SDGs – can’t cause sustainable development in the U.S., India, or China, which are massive emitters.

#### SDGs are structurally unsustainable – adherence causes environmental overshoot

Jason Hickel, 9/30/20, Foreign Policy, “The World's Sustainable Development Goals Aren't Sustainable,” Nexis Uni, mm

In 2015, the world's governments signed on to the U.N. Sustainable Development Goals (SDGs) with a commitment to bring the global economy back into balance with the living world. Now, five years later, as the UN General Assembly convenes online to discuss the global ecological crisis, everyone wants to know how countries are performing. To answer this question, delegates and policymakers have referred to a metric called the SDG Index[1], which was developed by Jeffrey Sachs 'to assess where each country stands with regard to achieving the Sustainable Development Goals.' The metric tells a very clear story. Sweden, Denmark, Finland, France, and Germany—along with most other rich Western nations—rise to the top of the rankings, giving casual observers the impression that these countries are real leaders in achieving sustainable development. There's only one problem. Despite its name, the SDG Index has very little to do with sustainable development all. In fact, oddly enough, the countries with the highest scores on this index are some of the most environmentally unsustainable countries in the world. Take Sweden, for example. Sweden scores an impressive 84.7 on the index, topping the pack. But ecologists have long pointed out that Sweden's 'material footprint'—the quantity of natural resources that the country consumes each year—is one of the biggest in the world, right up there with the United States, at 32 metric tons per person[2]. To put this in perspective, the global average is about 12 tons per person, and the sustainable level is about 7 tons per person[3]. In other words, Sweden is consuming nearly five times over the boundary. There is nothing sustainable about this kind of consumption. If everyone on the planet were to consume as Sweden does, global resource use would exceed 230 billion tons of stuff per year. To get a sense for what this would look like, consider all the resources that we presently extract, produce, transport, and consume around the world each year—and all of the ecological damage that this causes—and triple it. Or take Finland, for example, which is No. 3 on the SDG Index. Finland's carbon footprint is about 13 metric tons[4] of carbon dioxide per person per year, similar to that of Saudi Arabia. This makes it one of the most polluting countries in the world, in per capita terms, and a major contributor to climate breakdown. For comparison, China's carbon footprint is about 7 tons per person. India's is less than 2. If the whole world were to consume as much fossil fuels as Finland does, the planet would be literally uninhabitable. This isn't just a matter of a few odd results. Data published by scientists at the University of Leeds shows that all of the top-ranked countries in the SDG Index have significantly overshot[5] their fair share of planetary boundaries, in consumption-based terms—not only when it comes to resource use and emissions but also in terms of land use and chemical flows like nitrogen and phosphorous. It is physically impossible for all nations to consume and pollute at the level of the SDG top performers without destroying our planet's biosphere. In other words, the SDG Index is, from the perspective of ecology, incoherent. It creates the illusion that rich countries have high levels of sustainability when in fact they do not. So what's going on here? Well, the SDG Index is directly linked to the Sustainable Development Goals. There are 17 goals, each of which include a number of targets. The SDG Index takes indicators for each of these targets (where data is available), indexes them, and then averages them together to arrive at a score for each goal. Then the 17 goals are averaged together in turn to come up with the final figure. All of this seems reasonable enough, on the face of it. But taking this approach means introducing a number of analytical problems. First, there is a weighting problem. The SDGs include three different kinds of indicators: Some focus on ecological impact (like deforestation and biodiversity loss), some focus on social development (like education and hunger), and some focus on infrastructure development (like transportation and electricity). Most of the SDGs contain a mix of these, but the ecological indicators are almost always swamped, as it were, by the development indicators. For example, the SDG Index has four indicators[6] for Goal 11 (on 'sustainable cities and communities'); three of them are development indicators, while only one of them has to do with ecological impact. This means that if a country performs well on the development indicators, its score for that goal will look good even if it fails in terms of sustainability. This issue is compounded by a second problem, namely, that only four of the 17 SDGs deal mostly or wholly with ecological sustainability (Goals 12 through 15). The other 13 are mostly focused on development. Once again, this means that good performance on the development goals outweighs poor performance on the sustainability goals, so countries like Sweden, Germany, and Finland can rise to the top of the index (with the United States ranking in the top 20 percent) even though they have highly unsustainable levels of ecological impact. The final problem is that the vast majority of the ecological indicators are territorial metrics that do not account for impacts related to international trade. For instance, take the air pollution indicator in Goal 11. Rich countries come out looking clean—but this is largely because they have offshored most of their polluting industries to countries in the global south since the 1980s, thus shifting the problem abroad. So too with the indicators on deforestation, overfishing, and so on: most of this damage happens in poorer countries, but it is disproportionately caused by overconsumption in richer countries, and quite often perpetrated by corporations or investors headquartered there. As a result, poorer countries get punished in the SDG Index for being harmed and polluted by richer countries. Of course, in many cases territorial metrics are appropriate; but there are a number of indicators in the SDG Index that should be reckoned as well in consumption-based terms and yet are not. In effect, the SDG Index celebrates rich countries while turning a blind eye to the damage they are causing. Ecological economists have long warned against this approach. It violates the principle of 'strong sustainability,' which holds that good performance on development indicators cannot legitimately substitute for destructive levels of ecological impact. The SDG Index team are aware of this problem. It's even mentioned (briefly) in their methodological notes—but then it's swept under the rug in favor of a final metric that has little grounding in ecological principles. Ultimately, metrics of sustainable development need to be universalizable. In other words, the top performers on the index should represent a standard that all nations could aspire to achieve without this leading to a collapse of global ecosystems. That's not the case with the SDG Index, where rich countries are held up as models when in reality, as the Leeds research shows[7], they are a big part of the problem. The United Nations needs to redesign the index to correct these issues. This can be done by rendering the ecological indicators in consumption-based terms wherever relevant and possible, to take account of international trade, and by indexing the ecological indicators separately from the development indicators so that we can see clearly what's happening on each front. This way we can celebrate what countries like Denmark and Germany have achieved in terms of development while also recognizing that they are major drivers of ecological breakdown and need urgently to change course, with rapid reductions in emissions and resource use. Until then, we should avoid using the SDG Index as a metric of progress in sustainable development, because it's not. Given the stakes of the crisis we face, we need to tell more honest, accurate stories about what's happening to our planet and who is responsible for it

### AT: state failure – 1nc

#### “Brink” is silly – antitrust requires decades of economic reorganization, which means if countries are on the “brink,” the aff cannot solve fast enough.

#### “Civil strife” is inevitable – repression, lack of social spending, and ethnic tensions throughout the world.

#### No impact to failed states.

Mazarr 14—Professor of National Security Strategy at the National War College [Michael, “The Rise and Fall of the Failed-State Paradigm,” *Foreign Affairs*, Vol. 93, No. 1, Jan/Feb, p. 113-121, Emory Libraries]

THE DECLINE OF A STRATEGIC NARRATIVE

The practical challenges of state-building missions are now widely appreciated. They tend to be long, difficult, and expensive, with success demanding an open-ended commitment to a messy, violent, and confusing endeavor -- something unlikely to be sustained in an era of budgetary austerity. But the last decade has driven home intellectual challenges to the concept as well.

The threat posed by weak and fragile states, for example, turned out to be both less urgent and more complex and diffuse than was originally suggested. Foreign Policy’s Failed States Index for 2013 is not exactly a roster of national security priorities; of its top 20 weak states, very few (Afghanistan, Iraq, and Pakistan) boast geostrategic significance, and they do so mostly because of their connection to terrorism. But even the threat of terrorism isn’t highly correlated with the current roster of weak states; only one of the top 20, Sudan, appears on the State Department’s list of state sponsors of terrorism, and most other weak states have only a marginal connection to terrorism at best.

A lack of definitional rigor posed a second problem. There has never been a coherent set of factors that define failed states: As the political scientist Charles Call argued in a powerful 2008 corrective, the concept resulted in the “agglomeration of diverse criteria” that worked to “throw a monolithic cloak over disparate problems that require tailored solutions.” This basic methodological flaw would distort state-building missions for years, as outside powers forced generic, universal solutions onto very distinct contexts.

The specified dangers were never unique to weak states, moreover, nor would state-building campaigns necessarily have mitigated them. Take terrorism. The most effective terrorists tend to be products of the middle class, often from nations such as Saudi Arabia, Germany, and the United Kingdom, not impoverished citizens of failed states. And terrorist groups operating in weak states can shift their bases of operations: if Afghanistan becomes too risky, they can uproot themselves and move to Somalia, Yemen, or even Europe. As a result, “stabilizing” three or four sources of extremist violence would not render the United States secure. The same could be said of threats such as organized crime, which finds comfortable homes in functioning but troubled states in Asia, eastern Europe, and Latin America.

As the scholar Stewart Patrick noted in a 2006 examination of the purported threats issuing from weak states, “What is striking is how little empirical evidence underpins these assertions and policy developments. Analysts and policymakers alike have simply presumed the existence of a blanket connection between state weakness and threats to the national security of developed countries and have begun to recommend and implement policy responses.”

And although interconnectedness and interdependence may create risks, the dangers in such a world are more likely to come from strong, well-governed states with imperfect regulations than weak ones with governance deficiencies. Financial volatility that can shake the foundations of leading nations and cyberattacks that could destabilize energy or information networks pose more immediate and persistent risks than, say, terrorism.

## advantage – cartels

### AT: cartels – top – 1nc

#### Cards are laughably old – zero card to price in Ukraine or COVID for any of their *advantages about international economics*.

#### Cartels are down.

Alain Verbeke & Caroline Buts 21, – Professor of International Business and Strategy, McCaig Chair in Management, University of Calgary; Professor at the department of applied economics of the Vrije Universiteit Brussel, “The Not So Brilliant Future of International Cartels,” Management and Organization Review, Cambridge University Press, 8/17/2021, https://www.cambridge.org/core/journals/management-and-organization-review/article/not-so-brilliant-future-of-international-cartels/363CC718A5FD54F8BB390B9AB22150B7

A NOT SO BRILLIANT FUTURE OF INTERNATIONAL CARTELS?

As explained in the previous section, we do not dispute the possibility that international cartels could become more important in the future under carefully defined conditions. We are doubtful, however, even when accepting B&C’s broad definition of this governance mode, that international cartels will gain ground more generally, vis-à-vis other forms of governance in international business, when multinational enterprises face increased political risk.

A key element, and perhaps a surprising one, explaining our doubt about the bright future of cartels is four clear trends in cartel regulation that are now creating significant political risk for international cartel members (admittedly not covering B&C’s benevolent cartels). First, competition policy is now a priority for policy makers around the world, as reflected in the progress made in detecting, investigating, and prosecuting cartels (OECD, 2020; OECD, 2021b). Recently published data indicate that 68% of global cartels (with members from at least two different continents) have been prosecuted by multiple jurisdictions, with average cartel fines being very high at €19.3 million (OECD, 2020).

Second, the consequences of being caught as a cartel member have gradually become more severe and far-reaching, both for the orchestrating and the participating companies, and for the employees involved (Ordóñez-De-Hano, Borrell, & Jiménez, 2018). Depending on the jurisdiction, a wide array of sanctions is now being deployed, including personal fines, trade prohibitions, and prison sentences (these have increased sevenfold over a recent five-year period, OECD, 2020). After a finding of cartel-behavior from the competition authority, the legal battle usually continues in the form of lawsuits for damages whereby victims file claims and may also coordinate their actions, e.g., to recover cartel overcharges (Burke, 2019).

Third, cartel investigations have also become more sophisticated. Leniency policies – providing immunity from fines for the first player who admits to the existence of a cartel and discloses information on its functioning – are on the rise. This powerful tool serves both detection and deterrence purposes in the realm of anticompetitive behavior (Margrethe & Halvorsen, 2020; Marvão & Spagnolo, 2018; Miller, 2009). It incentivizes cartel members to become whistle blowers. Companies will be less likely to join a cartel if they know that its members may be enticed to disclose cartel operations, (Brenner, 2009; Vanhaverbeke & Buts, 2020).

A larger number of agencies than before now also have the mandate to conduct ‘dawn raids’, in order to collect evidence of cartel behavior and they can even enter private premises of employees during their search for incriminating material. In addition, sophisticated econometric analyses have become standard practice to provide evidence of coordinated conduct in industry and to calculate cartel overcharges (Parcu, Monti, & Botta, 2021).

Fourth, competition authorities have invested more in outreach, communicating competition rules through dedicated events, online campaigns, and competition networks. Compliance programs have also been on the rise with an increasing number of mainly large companies investing in compliance training to abide by competition rules (De Stefano, 2018).

The increased efforts to fight anticompetitive agreements in industry are now deterring and destabilizing cartels. Following a substantial increase in the number of cartels that have been ‘caught’, the average life span of these cartels is now going down rapidly (OECD, 2020). The fight against illegal, anticompetitive behavior will intensify further in the near future, rather than governments shifting their focus to contemplate potential benefits. At the same time, the beneficial effects have been widely acknowledged of international collaboration forms that are legally allowed by various competition policy regimes (and are therefore not considered cartels), see for instance Martínez-Noya and Narula (2018) on international R&D cooperation.

### AT: africa – 1nc

#### Big Ag in the U.S. thumps – world’s largest exporter.

#### Antitrust doesn’t solve inflation due to Ukraine war

Lowrey 3/18 – Annie Lowrey, economics writer at the Atlantic, “Inflation Is Bad and About to Get Worse,” 3/18/22, https://www.theatlantic.com/ideas/archive/2022/03/inflation-federal-reserve-recession/627079/

With corporate profits near their all-time high, Democrats have insisted that price-gouging and greed are additional drivers of today’s rates of inflation. “If gas retailers’ costs are going down, they need to immediately pass those savings on to consumers,” Jen Psaki, the White House press secretary, said this week, chiding energy companies for “any effort to exploit American consumers.” Excess corporate concentration is at work too, they argue: A lack of competition has enabled firms to jack up prices. There’s truth to both points, though they do not explain why prices are going up now.

But Russia’s invasion of Ukraine does, and is a third major factor lifting prices this year. One of the world’s biggest energy exporters is engaged in an unprovoked assault on one of Europe’s largest agricultural exporters. This means higher prices for commodities, which means higher prices for manufacturers, which means higher prices for retailers, which means higher prices for families in a brief matter of time. Much higher, perhaps: One barometer of the price of raw materials jumped 16 percent in the first week of March, the sharpest increase in half a century.

Sanctions on Russia in general and bans on the import of Russian gas in particular are pushing up energy costs, which increases the cost of all other goods. As of last year, Russia was the world’s biggest exporter of natural gas, the second-biggest exporter of crude oil, and the third-biggest exporter of coal. “Affordability is already deteriorating, and security and reliability are faltering,” argues Ryan Severino, the chief economist at Jones Lang Lasalle, a global real-estate and investment firm. “In the short run, this means consumers will simply pay higher prices for whatever energy they can obtain for their immediate needs.”

At the same time, the invasion has cut Europe off from its bread basket: Ukrainian wheat, corn, and sunflower oil are no longer leaving its Black Sea ports. As a result, wheat futures listed on the Chicago Board of Trade jumped the maximum allowed each of the first five days of March; they are now up about 40 percent from before the invasion. Even if Russia were to withdraw from Ukraine shortly, those price increases would probably persist. The war is disrupting the harvest cycle and damaging Ukraine’s shipping infrastructure, and the West is likely to maintain sanctions on Russia for years.

## advantage – avoidance

### AT: avoidance – 1nc

#### Deference to foreign sovereigns good – was impact turned on deference DA.

#### This advantage is a *double turn* – top two UQ cards say that the court has removed itself from foreign involvement, then the next card says courts hearing cases causes entropy. There are zero cards that the executive’s desire for antitrust would supercede comity. There is only a risk of our turn.

#### No U.S. influence on ilaw ever – Trump, gitmo, and 6-3 conservative court disprove it. Certainly not key to countering the BRI or hegemony.

#### Court can still issue international law decisions – Charming Betsy doctrine.

#### Courts won’t be modelled.

deLisle 2 (Jacques, Professor – University of Pennsylvania Law School, “A "Sinical" Look at the Use of U.S. Litigation to Address Human Rights Abuses Abroad”, DePaul Law Review, Winter, 52 DePaul L. Rev. 473, Lexis)

It still might be supposed that courts roving about enforcing an expanding body of international legal norms might be especially dangerous in the American context because of the unusually high levels of independence and power that U.S. courts enjoy as a coequal and (on some accounts) unaccountable branch. The potential for courts to derange the nation's foreign policy might seem to be commensurately greater. But it is far from clear that this is so. True, the structure of governmental power and the extensive autonomy of courts in the United States may still seem exotic and hard to imagine in much of the world, especially in China and many of the other authoritarian regimes that have been the foci of human rights litigation. But that does not mean that foreign governments and their leaders fail to comprehend the U.S. structure. It does not mean that they view court decisions as of a piece with U.S. foreign policy as articulated by the executive branch or Congress because they see courts as agents of the political branches (as they arguably are in China and many ATCA target countries). Nor does it mean that they view judicial opinions as on par with legislative or presidential pronouncements because they view courts as the equal of the political branches in foreign policy (as a highly simplistic version of American constitutional law and politics might suggest). Indeed, these two imaginable foreign views of U.S. courts are contradictory. Moreover, there is considerable evidence that the PRC has a reasonably accurate and sophisticated understanding of U.S. separation of powers principles. In these circumstances, it is unwarranted and unwise - and would unnecessarily constrain and [\*546] undermine the political branches' conduct of foreign policy - to accept at face value statements from foreign governments (including notably China) that exaggerate opportunistically their incomprehension of U.S. separation of powers law, and that express shock and offense at judicial decisions (or, for that matter, congressional expressions of opinion that do not become law) and that purport to construe them as expressions of the foreign policy positions of the American government. 211