# 1NC

### 1NC CP

#### The US Trade Representative should launch a formal claim in the WTO DSB alleging that state-led export cartels are organized by a foreign sovereign and violate WTO obligations under the GATT and WTO accession protocols.

#### The Congress of the United States should launch a suit applying prohibitions on state-led export cartels under the FTAIA and other relevant statute.

#### The US judiciary should stay antitrust investigation pending resolution of trade dispute.

#### The counterplan conditions the plan on the failure of the WTO proceedings. Antitrust is worth pursuing only once the executive exhausts their diplomatic strategy.

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

"Export cartel" refers to a collusive behavior between exporting firms "to charge a specified export price or to divide export markets among themselves."1 The purpose is often to enhance domestic firms' welfare at the expense of foreign consumers.2 Antitrust and the World Trade Organization ("WTO") are mutually exclusive remedies when dealing with an export cartel. The difference is that a successful antitrust proceeding depends on showing the absence of government involvement. In contrast, a WTO proceeding's success depends on showing the State's participation in export restraints. Lately, the lines have blurred when certain export cartels wind their way through U.S. courts. In such cases, the extent to which U.S. courts should enforce antitrust laws against foreign export cartels has been controversial, as defendants often invoke foreign-sovereignty-related defenses. This issue has become more prominent than ever with involved litigants who are at times unable to apply their antitrust laws extraterritorially to international cartels because of the difficulty of obtaining evidence that is located outside of their jurisdiction. Similarly, litigants at the WTO complained about the government's role in the administrative and judicial system, including the use of verbal demands and informal notices on export cartels. This intervention undermines the ability to show that a WTO-inconsistent measure exists. Several recent U.S. antitrust litigations involving Chinese export cartels highlight this challenge.

In In re Vitamin C Antitrust Litigation ("Vitamin C"), 3 the Chinese defendants moved to dismiss the complaint of pricefixing on the ground that Chinese law required them to fix the price and quantity of vitamin C exports, shielding them from liability under U.S. antitrust law. The defendants invoked comity, sovereign compulsion, and the act of state doctrines. 4 The Chinese Ministry of Commerce ("Ministry") took the unprecedented step of intervening as amicus curiae in the proceeding. The Ministry explained that the China Chamber of Commerce of Medicines & Health Products Importers & Exporters ("CCCMHPIE") is a "[m]inistry-supervised entity authorized by the Ministry to regulate vitamin C export prices and output levels." 5 Thus, the Chinese defendants were compelled under Chinese law to collectively set a price for vitamin C exports.6

Two similar antitrust cases were brought in the U.S. courts against Chinese export cartels. In Resco Products, Inc. v. Bosai Minerals Group, 7 private litigants alleged price-fixing and other anti-competitive behavior by certain Chinese exporters of bauxite. As the members of the China Chamber of Commerce of Metals Minerals & Chemicals Importers & Exporters ("CCCMC"), the Chinese defendants relied on the amicus brief filed by the Ministry in Vitamin C and argued that CCCMC was a government entity that directed them to coordinate their price. 8 Similarly, in Animal Science Products, Inc. v. China National Metals and Minerals Import and Export Corp, 9 private litigants alleged price-fixing and other anti-competitive behavior by certain Chinese exporters of magnesite in a separate U.S. court proceeding. The defendants asserted that their trade chamber, CCCMC, was an instrument of the Chinese government to regulate export trade.10

On June 23, 2009, with the blessings of the Obama Administration, the U.S. government requested WTO consultations with China regarding China's export restraints on several raw materials. 11 In its first written submission, the U.S. government cited the above three cases, arguing that based upon representations already made by the Chinese Ministry, "the European understands that the CCCMC's export-price related functions and responsibilities . . . are attributable to China." 12 On December 21, 2009, the Dispute Settlement Body ("DSB") established a single panel to examine the complaints. 13

The above cases fostered a perception that antitrust and WTO meet when private anticompetitive conduct is mixed with state conduct. Emblematic of this viewpoint is Professor Eleanor M. Fox and Professor Merit E. Janow's argument that "[t]rade and competition rules sympathetic to markets are important in today's world of deep economic globalization."14 Both of the scholars were astonished by the opportunities for nations to play one system (trade) against the other (competition). They also cautioned that U.S. courts involved with foreign export cartels need to flexibly interact with the international regime to form a coherent approach to legal challenges over foreign regulatory systems.

What academics and other commentators have missed is that the involved U.S. courts and the executive branch's stance in the above litigations perfectly illustrates a pervasive Transnational Legal Process. The U.S. not only represents all antitrust nations' interests when it is anti-cartel. The transnational actors generated interactions that led to WTO law and competition policy interpretations that become internalized, thereby binding under domestic law (in this Article, China law).

This Article assesses the roles of Transnational Legal Process by examining transnational actors engaged in antitrust litigation and evaluating their relationship to transnational actors participating in the WTO litigation. My central thesis is that essential synergies exist between trade and competition, in which Transnational Legal Process will largely prove a positive role in constraining state-sponsored export cartels and international cartels. To avert gaming by the litigants due to ambiguous factual evidence in cartel cases, U.S. courts and the executive branch should become active transnational actors. They therefore stimulate each other to participate in a dynamic process of Transnational Legal Process. Under the condition that cartel action is attributable to State in the antitrust proceeding, as defendants invoke foreign-sovereignty-related defenses, transnational actors in the competition system promote WTO obedience by sending a strong signal to the executive branch. Under the condition that cartel action is attributable to private parties in the WTO proceeding, transnational actors in the competition system should perform a gap-filling role that the WTO system precludes. 16 The resulting tendency is to suggest a synergistic relationship between transnational actors to play by rules of free trade (not to restrain exports) and competition (not to cartelize). Having described the most basic features of Transnational Legal Process, my Article partly confirms that Transnational Legal Process could somewhat fix the potentially worrying issue of nations' opportunities to play one system (trade) against the other (competition).

#### Solves the case – WTO will rule for the US.

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

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

#### The counterplan alone avoids the signal of unilateralism.

Dingding Tina Wang, \* J.D. Candidate 2012, Columbia Law, ’12, “WHEN ANTITRUST MET WTO: WHY U.S. COURTS SHOULD CONSIDER U.S.-CHINA WTO DISPUTES IN DECIDING ANTITRUST CASES INVOLVING CHINESE EXPORTS” Columbia Law Review , JUNE 2012, Vol. 112, No. 5 (JUNE 2012), pp. 1096-1142

1. Bauxite Case. — In Resco Products, Inc. v. Bosai Minerals Group, the 2010 case in the Western District of Pennsylvania, a U.S. plaintiff sued Chinese bauxite exporters for price-fixing.128 The Chinese defendants ar gued that their trade association, CCCMC, was a government entity that directed them to coordinate their prices.129 The court decided to stay the proceedings pending a final ruling in the U.S.-China WTO dispute over export restrictions on raw materials, including bauxite.130 The U.S. plain tiff protested that "no court has stayed an otherwise valid action pending the conclusion of WTO proceedings, and deference to the WTO is not required."131 The court acknowledged that it was "aware that decisions to stay cases usually involve pending lawsuits and not pending WTO pro ceedings,"132 so it took pains to justify its order of a stay.

The court emphasized the similarity of factual and legal inquiries between its case and the WTO case.133 It posited that the overlap between the antitrust case and the WTO dispute touched upon separation of powers, the merits of the bauxite claim, and judicial economy goals. First, the court clearly expressed its aversion to the possibility of issuing a decision conflicting with the assertions in the WTO made by the USTR, the executive branch agency that conducts WTO litigation for the United States: "This potential conflict between the judicial and executive branches could implicate separation of powers concerns if decisions of this court were to embarrass the executive branch in the conduct of for eign affairs."134 If the case proceeded, the court might "resolve the pend ing motion to dismiss or future dispositive motions in a manner that may be inconsistent with the position of the USTR and the eventual decision rendered by the WTO panel."135 Second, the court stated that while it recognized that WTO decisions are not binding, "the findings of fact and conclusions of law made by the WTO panel may at the very least simplify the analysis of the act of state doctrine here."136 It claimed that if the WTO panel agreed with the United States, "that finding may favor the defendants' arguments in this case," and a "contrary holding likewise could impact whether the act of state doctrine applies."137 Third, the court was reluctant to duplicate fact-finding efforts between the court and the USTR, as well as between the court and the WTO.138 It noted that in the interests of judicial economy, "substantial time, effort, and sources may be saved by waiting until a final WTO decision, particularly given the massive complexity of international antitrust cases.139 Thus, the court paid much attention to the U.S. position in the WTO, and addi tionally thought it valuable to wait for WTO findings in order to be able to take them into account. It did not explicitly say whether it would ac cord greater weight to the U.S. WTO position or to the WTO ruling. Nor did it elaborate on what it would do if the U.S. position and the WTO ruling conflicted, an issue that this Note addresses in a later section.

#### USTR WTO-leadership key to maintain global non-discriminatory vaccine supply chain management.

Naotaka Matsukata, Ph.D. was a senior USTR official in the George W. Bush Administration, ‘20, "Forget the WHO — where is US leadership at the WTO?," TheHill, https://thehill.com/opinion/healthcare/504099-forget-the-who-where-is-us-leadership-at-the-wto

WTO rules are designed to protect both the exporter and importer of goods from arbitrary actions that interrupt the flow of trade. Established in 1994, the World Trade Organization organized around the principles of non-discrimination, reciprocity, binding and enforceable commitments, transparency, and safety values — all principles that must be present in any commercial distribution plan for the COVID-19 vaccine. Once already, the United States, working with the private sector and the WTO, crafted a compromise on trade-related intellectual property rights to address AIDs. The result was President George Bush’s President’s Emergency Plan for AIDS Relief (PEPFAR). The program is credited with saving millions of lives. As of now, the prospects of an encore performance — an approach to COVID that benefits from what was learned through PEPFAR — appear to be grim. The WTO has been adrift for several years, its negotiating role moribund. In May, the WTO’s director-general, Roberto Azevedo, unexpectedly resigned, leaving the WTO leader-less and searching for a replacement. Self-inflicted wounds and unilateral actions by key members have marginalized the trade body, which today is a mere shell of its former self. The question of the WTO’s relevance, as opposed to its proven potential, has unfortunately come to dominate our conversations about trade. Instead, with a diminished international trade system, the COVID crisis has ignited a “vaccine arms race”. There are 13 World Health Organization-recognized clinical evaluations underway for a COVID-19 vaccine. Over half of the trials are based outside of the United States. There is a good chance that the United States ends-up as an importer of the vaccine — instead of the world’s supplier. Under such circumstances, the specter of a dysfunctional WTO — and the lack of other international coordination mechanisms — should be of great concern to our national interest. What if another country decides to ban the export of its vaccine? The United States has taken important steps to coordinate the development of a COVID-19 vaccine, and PEPFAR’s Supply Chain Management System (SCMS) may provide a roadmap for in-country vaccine deployment. The National Institutes of Health on April 7, 2020, announced the Accelerating COVID-19 Therapeutic Interventions and Vaccines (ACTIV) partnership to coordinate and help fund the development of vaccines. The initiative includes 16 companies representing Europe, Asia, and North America. PEPFAR’s SCMS, an infrastructure delivery system, familiar to Dr. Anthony Fauci and Ambassador Deborah Birx, has for years supplied critical medicines and technical assistance to developing nations. To ensure that these efforts are successful, the United States must also develop and coordinate a non-discriminatory global distribution plan that is WTO compliant and is supported by the private sector. Whether the next president is President Trump or former U.S. vice president and presumptive Democratic nominee Joe Biden, orderly vaccine distribution will be a high and early priority for his administration. Global access and distribution of the COVID-19 vaccine may be our own lifetime’s greatest moral and ethical challenge. To avoid a Sophie’s Choice moment of who gets or doesn’t get the vaccine, the United States should immediately declare our intention to abide and enforce existing WTO rules and pledge to extinguish any form of vaccine nationalism. A strong WTO led by a committed United States is the answer to the distribution challenge. Our recovery and the world’s economic recovery depends upon non-discriminatory access to a vaccine. U.S. leadership at the WTO has never been more important.

#### Extended COVID causes multilateral meltdown – causes nuclear war, climate change, arctic and space war.

Strategic Partners Marsh McLennan SK Group Zurich Insurance Group, Academic Advisers National University of Singapore Oxford Martin School, University of Oxford Wharton Risk Management and Decision Processes Center, University of Pennsylvania, ’21, “The Global Risks Report 2021 16th Edition” “http://www3.weforum.org/docs/WEF\_The\_Global\_Risks\_Resport\_2021.pdf

Forced to choose sides, governments may face economic or diplomatic consequences, as proxy disputes play out in control over economic or geographic resources. The deepening of geopolitical fault lines and the lack of viable middle power alternatives make it harder for countries to cultivate connective tissue with a diverse set of partner countries based on mutual values and maximizing efficiencies. Instead, networks will become thick in some directions and non-existent in others. The COVID-19 crisis has amplified this dynamic, as digital interactions represent a “huge loss in efficiency for diplomacy” compared with face-to-face discussions.23 With some alliances weakening, diplomatic relationships will become more unstable at points where superpower tectonic plates meet or withdraw.

At the same time, without superpower referees or middle power enforcement, global norms may no longer govern state behaviour. Some governments will thus see the solidification of rival blocs as an opportunity to engage in regional posturing, which will have destabilizing effects.24 Across societies, domestic discord and economic crises will increase the risk of autocracy, with corresponding censorship, surveillance, restriction of movement and abrogation of rights.25 Economic crises will also amplify the challenges for middle powers as they navigate geopolitical competition. ASEAN countries, for example, had offered a potential new manufacturing base as the United States and China decouple, but the pandemic has left these countries strapped for cash to invest in the necessary infrastructure and productive capacity.26 Economic fallout is pushing many countries to debt distress (see Chapter 1, Global Risks 2021). While G20 countries are supporting debt restructure for poorer nations,27 larger economies too may be at risk of default in the longer term;28 this would leave them further stranded—and unable to exercise leadership—on the global stage.

Multilateral meltdown Middle power weaknesses will be reinforced in weakened institutions, which may translate to more uncertainty and lagging progress on shared global challenges such as climate change, health, poverty reduction and technology governance. In the absence of strong regulating institutions, the Arctic and space represent new realms for potential conflict as the superpowers and middle powers alike compete to extract resources and secure strategic advantage.29 If the global superpowers continue to accumulate economic, military and technological power in a zero-sum playing field, some middle powers could increasingly fall behind. Without cooperation nor access to important innovations, middle powers will struggle to define solutions to the world’s problems. In the long term, GRPS respondents forecasted “weapons of mass destruction” and “state collapse” as the two top critical threats: in the absence of strong institutions or clear rules, clashes— such as those in Nagorno-Karabakh or the Galwan Valley—may more frequently flare into full-fledged interstate conflicts,30 which is particularly worrisome where unresolved tensions among nuclear powers are concerned. These conflicts may lead to state collapse, with weakened middle powers less willing or less able to step in to find a peaceful solution.

### T – Increase – 1NC

#### Interpretation – “increasing” prohibitions requires making more of them or increasing their severity.

Merriam-Webster no date. https://www.merriam-webster.com/dictionary/increase

Definition of increase (Entry 1 of 2)

intransitive verb

: to become progressively greater (as in size, amount, number, or intensity)

#### Violation – aff allows them to say they increase or decrease antitrust laws based on coop.

#### Limits and ground – doubles the topic and allows 2AC clarification to get out of all DAs.

### CP – State Bargaining – 1NC

**The fifty states and relevant subnational actors should refuse to cooperate with federal initiatives unless the United States federal government prohibits private sector export cartel practices that produce anticompetitive effects in the markets of countries that accede to a reciprocal antitrust framework.**

#### Solves the aff and establishes precedent normalizing uncooperative federalism.

Heather Gerken 17, J. Skelly Wright Professor of Law at Yale Law School, JD from the University of Michigan Law School, AB from Princeton University, and Joshua Resevz, JD from Yale Law School, BA in Political Science from Yale University, now Civil Attorney with the Appellate Staff at the United States Department of Justice, “Progressive Federalism: A User’s Guide”, Democracy: A Journal of Ideas, Number 44, Spring 2017, <https://democracyjournal.org/magazine/44/progressive-federalism-a-users-guide/> [language modified]

But if progressives can simply look outside the Beltway, they will find that they still have access to one of the most powerful weapons in politics: federalism. Using the power they wield in states and cities across the country, progressives can do a good deal more than mourn and obstruct. They can resist Washington overreach, shape national policies, and force the Republicans to compromise. Cities and states have long been at the center of the fight over national values. And it’s time progressives recognized that federalism isn’t just for conservatives.

Unfortunately, the moment one mentions federalism many progressives stop listening. The language of “states’ rights” has an ugly history, invoked to shield slavery and Jim Crow. Federalism’s checkered past led political scientist William H. Riker to remark in 1964 that “if one disapproves of racism, one should disapprove of federalism.” Even today, many progressives think of federalism as a parochial anachronism, better suited for stymieing change than for effecting it.

But they are making a mistake. This is not your father’s federalism. These days, state and local governments are often led by dissenters and racial minorities, the two groups progressives think have the most to fear from federalism. And this has allowed them to not only take advantage of the enormous power that federalism confers within their own cities and states, but to affect national debates, influence national policy, and force national actors to the bargaining table. Their success shows that federalism is a neutral and powerful tool for change, not an intrinsically conservative quirk of U.S. government.

The call for progressive federalism is not a new one. In 2004, Duke law professor Ernie Young invited liberals to come to the “Dark Side” and embrace the power of the states. (And one of the authors of this essay has spent more than a decade arguing—including in the pages of this journal— that federalism doesn’t have a political valence.) But having a Democrat in the White House was just too tempting for most progressives. They turned their attention to Washington while neglecting what was going on in California, Massachusetts, or New York City. We suspect that most progressives aren’t even aware that the Democrats have lost 27 state legislative chambers since 2008. But perhaps the 2016 election will help progressives shake loose the notion that D.C. is the center of the political universe.

Needless to say, though, the devil is in the details. So below we offer a “user’s guide” that identifies four ways that progressive leaders—from Jerry Brown and Bill de Blasio to small-city mayors—can push back against federal policy and force compromise. And, in doing so, we hope to persuade even the most fervent nationalist to become a fan of federalism. While we fashion this as a progressive user’s guide, it could, in theory, work just as well for conservatives should they lose the presidency in 2020. That’s precisely the point.

Types of Resistance

We often forget that the federal government’s administrative capacity is modest, relatively speaking. Excluding the military, it employs just short of three million personnel. Its 2015 budget (excluding defense, Social Security, and mandatory spending obligations) was less than $600 billion. Together, state and local governments [swamp] dwarf these figures, with more than 14 million workers and a combined budget of more than $2.5 trillion.

Because of this, Washington can’t go it alone. When Congress makes a law, it often lacks the resources to enforce it. Instead, it relies on states and localities to carry out its policies. Without those local actors, the feds cannot enforce immigration law, implement environmental policy, build infrastructure, or prosecute drug offenses. Changing policies in these areas—and many more—is possible only if cities and states lend a hand. This arrangement creates opportunities for federal-state cooperation. But it also allows for “uncooperative federalism”: State and local officials can use their leverage over the feds to shape national policy.

This means that states can shape policy simply by refusing to partner with the federal government. This form of resistance involves more than mere obstruction. It allows progressive states to help set the federal agenda by forcing debates that conservatives would rather avoid and by creating incentives for compromise. When states opt out of a federal program, it costs the federal government resources and political capital. That’s why President Trump has a lot more incentive to compromise with Democrats in Sacramento than with those on the Hill.

#### Uncooperative federalism solves bioterror.

Dr. Paul Posner 3, Ph.D., Recognized National Expert on U.S. Federalism, Managing Director, Federal Budget Issues, Strategic Issues for the General Accounting Office, 3/24/2003, “The Federalism Challenge: The Challenge for State and Local Government,” p. 20

For example, in public health, let’s examine what a local government faces to prepare for bioterrorism. It has to improve the capacity of its local health departments, the human capital that has been woefully neglected in recent years reportedly. It has to update its technology so that it at least can communicate problems to the CDC in Atlanta over the Internet. It has to achieve agreements with hospitals to develop surge capacity and support from doctors and other medical personnel. It has to develop laboratory infrastructure to at least know where the labs are and reach some kind of agreements on how to process samples of suspicious materials. And most importantly, what we’re finding increasingly in the local health departments, it has to develop surveillance systems to produce real-time data on day-to-day incidences, to help get early warning of suspicious health trends and incidents to facilitate an expeditious response to health problems where time is such a critical variable influencing potential health outcomes for those exposed.

Baltimore is one of the pioneers. They can show daily the numbers of admittances to emergency rooms, the veterinarians’ reports, daily school absences. They are trying to get pharmacies to report daily on medications prescribed. The point is they can monitor these things and look for variations and look for puzzles and, fortunately, they haven’t found any. That’s the kind of surveillance system that is under development in some communities and illustrates the political challenges in gaining the cooperation of numerous independent actors at the local level.

Framing the Problem

The way the problem is framed determines the framework and the modality or the process that we use to address it. For example, if we define the homeland security problem as a response problem, as a first responder’s problem, then the model will have a local orientation. City managers have told me that when you’re dealing with the response to an incident, the most effective thing for the effective management of response is for the federal government to stay out of our way. These managers feel they know their communities best. As one said, “Give us money but let us control the action.”

#### That’s an existential threat.

Owen Cotton-Barratt et al. 17. PhD in Pure Mathematics from Oxford, Lecturer in Mathematics at Oxford, Research Associate at the Future of Humanity Institute; Sebastian Farquhar, PhD student in Computer Science at Oxford; John Halstead, DPhil in Political Philosophy from Oxford, former Research Fellow at the Global Priorities Project; Stefan Schubert, Ph.D. in philosophy from Lund University, former postdoc at London School of Economics; Haydn Belfield, Academic Project Manager at the Centre for the Study of Existential Risk, BA in PPE from Oxford; Andrew Snyder-Beattie, leads Open Philanthropy's work on biosecurity and pandemic preparedness, former Director of Research at the Future of Humanity Institute, PhD/DPhil in Zoology from the University of Oxford. “Existential Risk: Diplomacy and Governance”. pg. 9. GLOBAL PRIORITIES PROJECT 2017. <https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf>. wms-hhb.

1.1.3 Engineered pandemics For most of human history, natural pandemics have posed the greatest risk of mass global fatalities.37 However, there are some reasons to believe that natural pandemics are very unlikely to cause human extinction. Analysis of the International Union for Conservation of Nature (IUCN) red list database has shown that of the 833 recorded plant and animal species extinctions known to have occurred since 1500, less than 4% (31 species) were ascribed to infectious disease.38 None of the mammals and amphibians on this list were globally dispersed, and other factors aside from infectious disease also contributed to their extinction. It therefore seems that our own species, which is very numerous, globally dispersed, and capable of a rational response to problems, is very unlikely to be killed off by a natural pandemic. One underlying explanation for this is that highly lethal pathogens can kill their hosts before they have a chance to spread, so there is a selective pressure for pathogens not to be highly lethal. Therefore, pathogens are likely to co-evolve with their hosts rather than kill all possible hosts.39 Recent developments in biotechnology may, however, give people the capability to design pathogens which overcome this trade-off. Some gain-of-function research has demonstrated the feasibility of altering pathogens to create strains with dangerous new features, such as vaccine-resistant smallpox40 and human-transmissible avian flu,41 with the potential to kill millions or even billions of people. For an engineered pathogen to derail humanity’s long-term future, it would probably have to have extremely high fatality rates or destroy reproductive capability (so that it killed or prevented reproduction by all or nearly all of its victims), be extremely infectious (so that it had global reach), and have delayed onset of symptoms (so that we would fail to notice the problem and mount a response in time).42 Making such a pathogen would be close to impossible at present. However, the cost of the technology is falling rapidly,43 and adequate expertise and modern laboratories are becoming more available. Consequently, states and perhaps even terrorist groups could eventually gain the capacity to create pathogens which could deliberately or accidentally cause an existential catastrophe.

### CP – Commerce – 1NC

#### The USFG should:

* **Reduce subsidies, tariffs, Antidumping and countervailing duties consistent with the GATT**
* **Ratify the UNDHR, the convention of the rights of child, the convention against torture and the ICCPR**
* **End drone strikes, Guantanamo Bay, and immigrant detention centers, and recognize a right to reproductive health care and education**
* **End the Cuban embargo, war on drugs, and support for the opposition regime in Venezuela**
* **Negotiate and ratify the TPP and TTIP**
* **Substantially increase development assistance**
* **Through the president, direct the secretary of commerce to apply the powers pursuant to EO 13,873 to private sector export cartel practices that produce anticompetitive effects in the markets of countries that accede to a reciprocal antitrust framework.**

#### The counterplan solves the case without expanding “core” antitrust law.

Sitaraman ’22 [Ganesh; Co-founder and Director of Policy @ Great Democracy Initiative, Professor of Law @ Vanderbilt University; “The Regulation of Foreign Platforms,” Stanford Law Review 74 (Forthcoming); AS]

C. TikTok and the Future of Platform Regulations

Together, these four elements—sectoral regulations, structural separations, standards and interconnection, and public investment and provision—offer a third paradigm for regulating tech platforms. There are two ways that this traditional paradigm could be revived and applied to tech platforms such as TikTok today—via legislation or regulation.

1. IEEPA, CFIUS, and Legislative Reforms — First and foremost, it is worth noting that the existing statutory frameworks are legally limited and have been used in practice as part of a technocratic, case-by-case strategy. The Trump administration relied on two primary legal authorities to address TikTok and other Chinese apps. The first was the CFIUS review process. A company can voluntarily inform CFIUS of a merger, takeover, or investment in a U.S. firm, or CFIUS can initiate a review of its own.394 This process, however, applies only to foreign investments of specific types.395 For a tech platform that does not acquire, merge with, or invest in a U.S. company, CFIUS review does not apply. Mere presence in the United States does not trigger CFIUS review. In the case of TikTok, for example, had Chinese-owned ByteDance not acquired U.S. company Music.ly, the CFIUS process would not have been applicable.396 This is clearly a limitation of that framework. Observe also that CFIUS is designed to be a case-by-case review and remedy process. The other regulatory authority is the International Emergency Economic Powers Act (IEEPA),397 which also has significant limitations that the TikTok example illustrates. Under IEEPA, the president has the power to declare a national emergency to address “any unusual and extraordinary threat.”398 Having done so, IEEPA allows the president to regulatory or prohibit any use or transaction related to the property of any foreign person subject to U.S. jurisdiction.399 Congress has, however, limited the scope of this vast and expansive power with respect to, among other things, “any postal, telegraphic, telephonic, or other personal communication” and the direct or indirect regulation of “any information or informational materials,” regardless of format or medium.400 The information exception, which has been revised since its initial adoption in 1988 as the Amendment, was intended to be broad and emerged in response to U.S. seizure of “magazines and books from countries that had been subject to trade embargos.”401 President Trump’s executive order on TikTok402 cited his authority under IEEPA, and ordered ByteDance to divest TikTok’s U.S. operations.

This action was quickly challenged in Court, and in Marland v. Trump, Judge Wendy Beetlestone of the Eastern District of Pennsylvania issued an order enjoining the Commerce department’s implementing actions under the information exception.403 After analyzing the Trump Administration’s arguments that the president had authority under the statute and that the information exception did not apply in this instance, she concluded that the statute made it clear that “Congress…created an IEEPA-free zone” when it came to informational materials.404 The information exception thus likely precludes the president from taking action against a foreign communications platform even under the expansive authority that IEEPA gives for commercial activities.

Taking a page from the history of platform regulations, Congress could adopt legislation to address some of the limits of CFIUS and IEEPA—and adapt the platform democracy paradigm to tech platforms. First, Congress would need to consider passing sectoral regulations that apply to foreign platforms. Such regulations would engage the particular issues raised by foreign platforms in the given sector (e.g. payment systems; telecommunications), in addition to data issues. Questions about data could be address either via a trans-sectoral data privacy and security law or through sector specific laws—again depending on the particular challenges at issue in each sector. This approach would also allow Congress to address the Berman exception to IEEPA, without a blanket delegation to the President, and it would apply generally to activities within the United States, not merely to new investment and mergers as under CFIUS.

General sectoral rules could be designed to apply to every firm in the sector—domestic or foreign—or, if there are particular dangers of foreign ownership or influence, rules could apply to all foreign tech platforms.405 More narrowly, Congress could alternatively require that the rules apply only to platforms from countries designated as “adversaries.”406 This could potentially have the strategic advantage of exempting close allies and allowing the United States to cooperate with and create shared regulatory systems amongst close allies with whom there are limited, if any, national security concerns.

Congressional action along these lines would have some significant benefits: it would operate ex ante, rather than after the fact; it would offer generally applicable rules in each sector, creating greater clarity, notice, and transparency for firms; it would be far more administrable than starting with bespoke, case-by-case assessments, mitigation plans, and monitoring; and it would offer a clear statement of legislative intent and a comprehensive statutory foundation for restrictions.

2. The Presidential Regulation of Foreign Tech Platforms — In the absence of congressional action, there is also a path forward for the presidential regulation of foreign tech platforms. In spite of the limitations of IEEPA and CFIUS, the Trump and Biden administrations have built a legal foundation for the ongoing regulation of foreign tech platforms using their authority under IEEPA. In 2019, President Trump issued Executive Order 13,873, “Securing the Information and Communications Technology and Services Supply Chain.”407 The order prohibits the operation of a foreign adversary’s information and communications technologies that the Secretary of Commerce, with consultation from other heads of departments and agencies,408 determines that is a danger to national security.409 Specifically, the Secretary must evaluate whether the foreign adversary’s technology “poses an undue risk of sabotage to or subversion of” information and communications technologies and services, “poses an undue risk of catastrophic effects on the security or resiliency of United States critical infrastructure or the digital economy,” or “otherwise poses an unacceptable risk to the national security of the United States or the security and safety of United States persons.”410 The Secretary also has the power to “design or negotiate measures to mitigate” these concerns, including as a precondition to operating with the United States,411 and to issue “rules and regulations” that determine which countries or persons are covered, what technologies are covered, criteria to include or exclude categories, and establish licensing procedures.412

Even though the Biden Administration revoked President Trump’s executive orders on TikTok, WeChat, and other Chinese apps, it has built upon the framework of Executive Order 13,873. In Executive Order 14,034,413 President Biden ordered the Secretary of Commerce to consider the dangers of data collection by “connected software applications,” under its Executive Order 13,873 obligations.414 The Order requires “rigorous, evidence based analysis” and offers multiple factors that the Secretary should consider, including connections to foreign governments and militaries, use of data for surveillance and espionage, a foreign adversary’s ownership, control, and management, and the presence of independent and reliable auditing.

415 Recall that Executive Order 13,873 prohibits operations in the United States if the Secretary finds they threaten national security. The Biden order, while revoking the TikTok and other bans, does not change that fundamental position: Chinese tech platforms are still subject to bans if the Secretary of Commerce finds that they imperil national security. Because E.O. 13,873 creates a default rule of prohibition and allows case by case bans, ex ante licensing, and rulemakings, it gives significant discretion to the Secretary of Commerce to develop a new framework for the regulation of foreign tech platforms. It is unclear, as of this writing, how exactly this authority will be exercised. The Commerce Department could take a light-touch tech neoliberal approach and effectively permit all foreign tech platforms. It could take a technocratic approach and make case-by-case, firm-specific determinations. But it could also use its rulemaking powers to establish sector-specific regulations that are attentive to the dynamics in each sector. All three models identified in this Article thus remain live options for the regulation of tech platforms. As the Department of Commerce moves forward, it can—and should—take a lesson from the long tradition of restrictions on foreign platforms and consider the creation of ex ante, sectoral, and structural regulatory regimes as it implements these executive orders.

### DA – FTC – 1NC

#### Plan trades off with FTC resources in other areas

Reinhart 21 – Tara Reinhart, head of the Antitrust/Competition Group in Skadden’s Washington, D.C. office, “Lina Khan’s Appointment as FTC Chair Reflects Biden Administration’s Aggressive Stance on Antitrust Enforcement,” 6/18/21, https://www.skadden.com/insights/publications/2021/06/lina-khans-appointment-as-ftc-chair

Second, like all antitrust enforcers, Ms. Khan and the FTC will face resource constraints. Bringing antitrust litigation is an expensive and laborious process, often requiring millions of dollars for expert fees and a large army of FTC staff attorneys and taking many months or even years to accomplish. Typically, the FTC can only litigate a handful of antitrust matters at a time. It seems likely that Congress will provide more funding to the FTC in the current environment, but even with these extra resources, the FTC will still have to pick its cases carefully and cannot challenge every deal or every instance of alleged unlawful conduct.

#### Resources are key to FTC privacy leadership.

Hoofnagle et al. ’19 [Chris; 8/8/19; Adjunct Professor of Information and Law @ Cal; Woodrow Hartzog; Professor of Law and Computer Science @ Northeastern University; and Daniel Solove; John Marshall Harlan Research Professor of Law @ George Washington; “The FTC can rise to the privacy challenge, but not without help from Congress”; https://www.brookings.edu/blog/techtank/2019/08/08/the-ftc-can-rise-to-the-privacy-challenge-but-not-without-help-from-congress/; AS]

We think the FTC is still the right agency to lead the US privacy regulatory effort. In this essay, we explain the FTC’s structural and cultural strengths for this task, and then turn to reforms that could help the FTC rise to modern information privacy challenges. Fundamentally, the FTC has the structure and the legal powers necessary to enforce reasonable privacy rules. But it does need to evolve to meet the challenge of regulating modern information platforms.

THE FTC WIELDS GREAT POWERS TEMPERED WITH EXPERIENCE

The FTC has remarkable powers. At its creation a century ago, Congress gave it unprecedented investigatory and enforcement tools. These have been broadened over time as the FTC has faced new wrongs. Today, the FTC can examine business practices even where there is no investigatory predicate, and as a general-purpose consumer protection agency, it can sue almost any business.

As a result, the FTC is nimble and can adapt to new technologies without an act of Congress. Founded in the days of misleading newspaper advertising, the FTC was quick to pivot to radio, television, and internet fraud. The breadth and generality of its powers are also a source of strength. Much more than just data protection, modern consumer problems involve platforms, power, information asymmetries, and market competition. In theory, the FTC has a broad enough jurisdiction and charge to handle diverse issues often labeled as “privacy,” such as algorithmic manipulation and accountability.

In the information economy, privacy is among the most important values that law and norms should protect. Yet at the same time, privacy must also accommodate other important values, including the risks inherent in economic development. In our view, privacy is a means to the ends of freedom and autonomy in our personal lives and in our polity. It is a key component for human flourishing.

THE FTC HAS ACHIEVED MUCH WITH LIMITED RESOURCES AND WITHOUT CONSISTENT CONGRESSIONAL SUPPORT

Many privacy issues are thought to be new. But the FTC has decades of experience handling privacy problems, particularly in credit reporting and debt collection. The FTC’s earliest information privacy matters, in 1951 and then a series of cases in the 1970s, recognized the general consumer preference against commercialization of personal data. Using its enforcement powers, the FTC sued companies for deceptive data collection, and for the sale of data collected in preparing tax returns. The agency brought its first internet-related fraud case in 1994, long before most consumers shopped online. Since then, the FTC has pursued the biggest names in internet commerce. It has steadily broadened the duties for fair information handling, particularly in the information security domain.

The FTC’s broadest jurisdiction is its enforcement against unfair and deceptive practices under Section 5 of the FTC Act. Despite a wide reach, however, Section 5 has some significant limits in power. The FTC generally cannot issue a fine for Section 5 violations initially—fines can only be issued for violations of consent decrees, as happened in the Facebook case.

Resources are the FTC’s greatest constraint. It is a small agency charged with a broad mission in competition and consumer protection. It carries out this mission with a budget of just over $300 million and a total staff of about 1,100, of whom no more than 50 are tasked with privacy. In comparison, the U.K.’s Information Commissioner’s Office (ICO) has over 700 employees and a £38 million budget for a mission focused entirely on privacy and data protection. In addition, for much of modern history, Congress has kept the FTC on a short leash. In 1980, Congress punished the agency for being too aggressive, causing it to shut down twice. Congress has held authorization over the agency’s head and used oversight power to scrutinize what members of Congress perceive as the expansive use of FTC legal authority, including its interpretation of privacy harm.

Given these constraints, FTC attorneys make pragmatic choices in their case selection. At any given time, line attorneys are investigating many companies and weighing decisions on where to target limited enforcement resources. The FTC can only bring actions against a small fraction of infringers, and it has chosen cases wisely to make loud statements to industry about how to protect privacy.

Even with these severe limitations, it has managed to bolster important norms and send strong signals to industry that have influenced the practices of many companies. It has become a significant enforcement agency that industry pays attention to. It has an enforcement record that compares quite well to other agencies in the US as well as around the world.

Some critics of the Facebook settlement have focused only on its shortcomings. Despite flaws and limits in the consent order, the five-billion-dollar fine was the biggest privacy settlement worldwide by far. It is an order of magnitude greater than the highest fine under the EU’s General Data Protection Regulation so far (the UK ICO’s €183 million fine against British Airways) and roughly double the record fine under EU competition law, which privacy advocates have urged as the reference for privacy fines.

The settlement also contains significant and noteworthy measures, such as forcing Facebook to make privacy a board-level concern and requiring Mark Zuckerberg to verify compliance. As dissenting Commissioners Chopra and Slaughter note, the FTC’s settlement doesn’t solve every problem; Facebook’s structure and business model remain the same. But no existing enforcement agency has come close to matching the FTC’s impact in this case, and foreign data protection agencies similar to proposed in the U.S. as FTC alternatives have not demonstrated the power or political capital to do so. As privacy enforcers go, the FTC stacks up well to others in many regards.

#### Privacy regulation is key to the liberal order – US leadership resolves the current patchwork of rules.

Slaughter & McCormick ’21 [Matthew; Paul Danos Dean and Earl C. Daum 1924 Professor of International Business in the Tuck School of Business @ Dartmouth College, Former Member @ White House Council of Economic Advisers; and David; CEO @ Bridgewater Associates Former Senior Positions @ U.S. Commerce Department, the National Security Council, and U.S. Treasury Department; “Data Is Power: Washington Needs to Craft New Rules for the Digital Age,” *Foreign Affairs* 100(3), p. 54-63; AS]

A PATCHWORK OF RULES

Current international institutions are not equipped to handle the proliferation of data. Nor are they prepared to address the emerging fault lines in how to approach it. The institutional framework for international trade-that of the World Trade Organization and its predecessor, the General Agreement on Tariffs and Trade-was built at a time when mainly agricultural and manufactured goods crossed borders and data flows were in the realm of fiction. The wTO's framework depends on two key classifications: whether something is a good or a service and where it originated. Goods are governed by different trade rules than are services, and a product's origin defines what duties or trade restrictions apply.

Data defies this basic categorization for several reasons. One is that vast amounts of data-such as one's online browsing before ordering clothes-are unpriced consequences of the production and consumption of other goods and services. Another is that it is often hard to determine where data is created and kept. (From which country does data on an international flight's engineering performance originate? In which country does a multinational firm's cloud storage of its clients' data reside?) Moreover, there is no agreed-on taxonomy for valuing data. In the event of a trade dispute, WTO members may seek legal recourse and ask the organization to make a one-off correction, but such fixes do not address the fundamental inconsistencies between the WTO's framework and the nature of data.

The lack of an internationally accepted framework governing data leaves big questions about the global economy and national security unanswered. Should sovereign governments be able to limit the location and use of their citizens' data within national borders? What does this concept even mean when the cloud and its data are distributed across the Internet? Should governments be able to tax the arrival of data from other nations, just as they levy tariffs on the import of many goods and services? How would this work when the data flows themselves are often unpriced, at least within the firms that gather the data? What controls can sovereign governments impose on data entering their countries? Can they demand that data be stored locally or that they be given access to it?

The absence of an international framework also threatens people's privacy. Who will ensure that governments or other actors do not misuse people's data and violate their economic, political, and human rights? How can governments protect their citizens' privacy while allowing data to move across borders? Today, the United States and the EU do not agree on answers to these questions, causing friction that hurts cooperation on trade, investment, and national security. China, for its part, has shown little commitment to privacy. Without common and verifiable methods of anonymizing data to protect personal privacy, the innovative potential of personal data will be lost-or fundamental rights will be violated.

In the absence of coherent and collective answers to these questions, countries and trade blocs are improvising on their own. This has left the world today with a collection of inconsistent, vague, and piecemeal regulations. Recent regional trade deals have included several provisions regarding data and e-commerce. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which does not include the United States, prohibits requirements that data be stored within a given country and bans duties on cross-border flows of electronic content. It recognizes the growing importance of the digital services sector, and it forbids signatories from demanding access to the source codes of companies' software. The U.S.-Mexico-Canada Agreement (USMCA) has similar provisions. Both free-trade agreements aim to allow unencumbered flows of data, but they are largely untested and, by virtue of being regional, are limited.

The EU sharpened its data rules on privacy in the General Data Protection Regulation. The GDPR attempts to empower individuals to decide how companies can use their data, but many have voiced concerns that the GDPR has effectively established trade barriers for foreign firms operating in EU member countries by requiring expensive compliance measures and raising the European market's liability risks. Moreover, the EU's rules are the subject of continual dispute and litigation.

Of much greater concern to the United States is China's distinct digital ecosystem. Over a generation ago, China began building its "Great Firewall," a combination of laws and technologies that restrict the flow of data in and out of China, in part by blocking foreign websites. China has since adopted a techno-nationalist model that mandates government access to data generated in the country. The sheer quantity of that data fuels China's innovation but also enables the country's repressive system of control and surveillance-and at the expense of open, international flows of data.

Beijing now seeks to expand this model. It has clear plans to use its indigenous technology industry to dominate the digital platforms that manage data, most immediately 5G telecommunications networks. To that end, it has unveiled an audacious plan, China Standards 2035, to set global standards in emerging technologies. And through the so-called Digital Silk Road and the broader Belt and Road Initiative, it is working to spread its model of data governance and expand its access to data by building Internet infrastructure abroad and boosting digital trade.

And the United States? At the federal level, the country has not settled on any legal framework. Nor, beyond the USMCA, has it engaged in any meaningful cross-border agreements on data flows. So far, the United States has not answered China's efforts with a coherent plan to shape technology standards or ensure widespread privacy protections. The United States' ad hoc responses and targeted efforts to encourage other countries to reject the Chinese company Huawei's 5G technology may work in the near term. But they do not constitute an effective long-term plan for harnessing the power of data.

#### LIO prevents global great power war.

Beckley ’20 [Michael; Associate Professor of Political Science @ Tufts University; “Rogue Superpower Why This Could Be an Illiberal American Century”; *Foreign Affairs* 99(6), p. 73-87]

What would happen to the world if the United States fully embraced this kind of “America first” vision? Some analysts paint catastrophic pictures. Robert Kagan foresees a return to the despotism, protectionism, and strife of the 1930s, with China and Russia reprising the roles of imperial Japan and Nazi Germany. Peter Zeihan predicts a violent scramble for security and resources, in which Russia invades its neighbors and East Asia descends into naval warfare. These forecasts may be extreme, but they reflect an essential truth: the postwar order, although flawed and incomplete in many ways, has fostered the most peaceful and prosperous period in human history, and its absence would make the world a more dangerous place.

Thanks to the U.S.-led order, for decades, most countries have not had to fight for market access, guard their supply chains, or even seriously defend their borders. The U.S. Navy has kept international waterways open, the U.S. market has provided reliable consumer demand and capital for dozens of countries, and U.S. security guarantees have covered nearly 70 nations. Such assurances have benefited everyone: not just Washington’s allies and partners but also its adversaries. U.S. security guarantees had the effect of neutering Germany and Japan, the main regional rivals of Russia and China, respectively. In turn, Moscow and Beijing could focus on forging ties with the rest of the world rather than fighting their historical enemies. Without U.S. patronage and protection, countries would have to get back in the business of securing themselves and their economic lifelines.

Such a world would see the return of great-power mercantilism and new forms of imperialism. Powerful countries would once again try to reduce their economic insecurity by establishing exclusive economic zones, where their firms could enjoy cheap and secure access to raw materials and large captive consumer markets. Today, China is already starting to do this with its Belt and Road Initiative, a network of infrastructure projects around the world; its “Made in China 2025” policy, to stimulate domestic production and consumption; and its attempts to create a closed-off, parallel Internet. If the United States follows suit, other countries will have to attach themselves to an American or a Chinese bloc—or forge blocs of their own. France might seek to restore its grip on its former African colonies. Russia might accelerate its efforts to corral former Soviet states into a regional trade union. Germany increasingly would have to look beyond Europe’s shrinking populations to find buyers for its exports—and it would have to develop the military capacity to secure those new far-flung markets and supply lines, too.

As great powers competed for economic spheres, global governance would erode. Geopolitical conflict would paralyze the UN, as was the case during the Cold War. NATO might dissolve as the United States cherry-picked partners. And the unraveling of the U.S. security blanket over Europe could mean the end of the European Union, too, which already suffers from deep divisions. The few arms control treaties that remain in force today might fall by the wayside as countries militarized to defend themselves. Efforts to combat transnational problems—such as climate change, financial crises, or pandemics—would mimic the world’s shambolic response to COVID-19, when countries hoarded supplies, the World Health Organization parroted Chinese misinformation, and the United States withdrew into itself.

The resulting disorder would jeopardize the very survival of some states. Since 1945, the number of countries in the world has tripled, from 46 to nearly 200. Most of these new states, however, are weak and lack energy, resources, food, domestic markets, advanced technology, military power, or defensible borders. According to research by the political scientist Arjun Chowdhury, two-thirds of all countries today cannot provide basic services to their people without international help. In short, most countries depend critically on the postwar order, which has offered historically unprecedented access to international aid, markets, shipping, and protection. Without such support, some countries would collapse or be conquered. Fragile, aid-dependent states such as Afghanistan, Haiti, and Liberia are only some of the most obvious high-risk cases. Less obvious ones are capable but trade-dependent countries such as Saudi Arabia, Singapore, and South Korea, whose economic systems would struggle to function in a world of closed markets and militarized sea-lanes.

### DA – Politics – 1NC

**BBB passes now---hesitations won’t be terminal.**

**Kapur 11-8** (Sahil Kapur, NBC News, Centrist Democrats now hold the cards as infrastructure bill heads to Biden's desk, <https://www.nbcnews.com/politics/congress/centrist-democrats-now-hold-cards-infrastructure-bill-heads-biden-s-n1283485>)

Jonathan Kott, a Democratic consultant and former aide to Sen. Joe Manchin, D-W.Va., said **moderates** "will continue to **negotiate in good faith** as they have been" but simply want the CBO score. "If the CBO is not as expected, I think negotiations will continue but definitely make this a longer process," he said.

If the bill passes the House, it still needs to **clear the Senate**, where two key obstacles remain.

The first is **Manchin**. He has objected to **some** of the provisions in the House bill, particularly four weeks of paid family and medical leave. That and other policies may need to be removed to win his vote, without which Democrats cannot advance the bill.

The second is the so-called Byrd rule, which limits the budget process that Democrats are using to matters of spending and taxes. Republicans can challenge any provision as "extraneous," and the Senate parliamentarian would decide whether it can be included.

Kott said he expects the Senate to **pass the bill** "in mid- to late December."

"I think **moderates** want to make sure they get the bill **right**, not **fast**," he said.

Competing deadlines

Other hard deadlines could complicate the December timeline. Congress must pass legislation to fund the government by Dec. 3 or face a shutdown. Lawmakers also need to raise the debt limit to avert an economic meltdown. And Congress plans to pass a massive defense policy bill before the end of the year.

The infrastructure legislation provides around $550 billion in new spending, for a total of more than $1 trillion, in projects from roads to public transit to rural broadband. It was co-authored by Manchin and Sen. Kyrsten Sinema, D-Ariz., and it became a top legislative priority of House centrists who had battled with liberals for months over the timeline to pass it.

The legislation is projected to add $256 billion to the debt over a decade, according to the CBO.

**Despite** progressives' biggest **fears**, **centrist Democrats** have **plenty** to like in the **B**uild **B**ack **B**etter bill. **Manchin** has lavished praise on **universal pre-K** and **child care** funding, **Sinema** has championed the **climate** change measures, and **Gottheimer** has made an **increase** of the state and local tax deduction a **priority**

The White House is counting on those **incentives** to help **push** the package **across the finish line**.

#### Antitrust action saps finite capital, imperils rest of agenda

Karaim 21

(Reed, <http://library.cqpress.com/cqresearcher/document.php?id=cqresrre2021050705>, 5-7)

Stucke, the former U.S. Justice Department antitrust official, says that despite Wu and Khan's credentials and reputation, changing antitrust policy will require a concerted effort. With Biden having an ambitious overall agenda and his Democratic Party holding the slimmest possible majority in the Senate, Stucke says, the question is “to what extent will the Biden administration want to expend political capital on this. They've got some bipartisan support for antitrust reform, but to what extent are they going to mobilize that?”

#### Budget key to solve climate change.

Dino Grandoni and Brady Dennis 8/11/21. Reporter covering energy and environmental policy. Reporter focusing on environmental policy and public health issues. “Biden aims for sweeping climate action as infrastructure, budget bills advance”. Washington Post. Aug 11 2021. https://www.washingtonpost.com/climate-environment/2021/08/10/biden-climate-congress/

After years of dragging their feet, lawmakers in Washington advanced a pair of major bills this week that include significant provisions for tackling climate change as scientists continue to ring alarm bells about the state of the planet.

The Senate approved on Tuesday a sweeping bipartisan $1.2 trillion infrastructure bill with funding for many public works meant to cut climate-warning emissions. A day later, Democrats in the chamber took a major step to adopt an even bigger, $3.5 trillion budget bill supporting yet more programs for cleaning up power plants and cars.

Each, if passed, would invest billions of dollars in the sort of clean energy transition the United States must make to have any chance of hitting the goal set by President Biden to cut the nation’s emissions by at least 50 percent by the end of this decade.

“This was one of the most significant legislative days we’ve had in a long time here,” Senate Majority Leader Charles E. Schumer (D-N.Y.) told reporters Wednesday.

But both bills face a potentially bumpy road ahead. Democrats still need to draft in committees the details of their massive budget reconciliation package over the coming weeks, with not a single vote to spare in the 50-50 split Senate. The bipartisan public-works bill, meanwhile, still needs approval from the House, where progressive Democrats hold significant sway.

The moves on Capitol Hill come as hundreds of scientists detailed this week the intensifying fires, floods and other catastrophes that will continue to worsen until humans dramatically scale back greenhouse gas emissions.

Scientists assembled by the United Nations made clear in a landmark report Monday that time is running out for the world to make immediate and dramatic cuts to emissions produced by the burning of fossil fuels and other human activities. U.N. Secretary General António Guterres called the sobering, sprawling report from the Intergovernmental Panel on Climate Change a “code red for humanity.”

But it remains unclear whether the new findings alone will be enough to spur new action in a Washington as politically divided as ever.

Climate change remains a distinctly fraught issue in the United States compared with many other countries, with the de facto leader of one of the two major parties — former president Donald Trump — dismissing the scientific consensus about human-caused climate change and downplaying its risks throughout his term.

Even if Congress passes bills with big climate provisions, regulations from the Biden administration are vulnerable to being reined in by federal court judges appointed by Trump and the most conservative Supreme Court in a generation. And the fate of many of the administration’s climate initiatives could depend on the Democratic Party retaining control of Congress — and on how Biden himself fares if he runs again in 2024.

If Biden and his Democratic allies in Congress succeed in shifting the nation rapidly toward a greener future, the math of climate change means that the rest of the world would have to follow suit, and quickly. The United States accounts for only about one-seventh of global emissions. The rest of the world — particularly the world’s largest emitter, China — would need to set more aggressive goals for reducing footprints as well.

Other countries have taken steps to do that. The European Union, for instance, agreed earlier this year to cut carbon emissions as a bloc by at least 55 percent by 2030. But how aggressively China, India, Russia and other nations will move in the years ahead remains an open question.

World leaders already faced mounting pressure to arrive at a major U.N. climate conference scheduled this fall in Scotland with more ambitious, concrete plans to slow greenhouse gas pollution. That pressure grew only more intense after Monday’s IPCC assessment, which found that the world is quickly running out of time to meet the goals of the 2015 Paris agreement.

The report found that humans can only unleash less than 500 additional gigatons of carbon dioxide — the equivalent of about 10 years of current global emissions — to have an even chance of limiting warming to 1.5 degrees Celsius (2.7 Fahrenheit) above preindustrial levels.

The hopes of hitting that target, the most aspirational goal outlined in the Paris accord, will soon slip away without rapid action, the report made clear. After all, the world has already warmed more than 1 degree Celsius (1.8 degrees Fahrenheit), with few signs of slowing unless nations begin to cut emissions at a rate unprecedented in history.

For Biden to live up to his promises to reduce U.S. emissions sharply in coming years, transition to electric vehicles and eliminate the carbon footprint of the power sector by 2035, his administration needs a helping hand from Congress.

The infrastructure package, which the Senate approved in a 69-to-30 vote with the support of 19 Senate Republicans, apportions billions of dollars for building new transmission lines, public transit and electric-car charging stations.

Meanwhile, the separate $3.5 trillion budget reconciliation bill, which Democrats plan to pass on their own, includes more far-reaching provisions for tackling climate change.

That measure would impose new import fees on polluters and give tax breaks for wind turbines, solar panels and electric vehicles. It would also seek to electrify vehicles used by the U.S. Postal Service and other federal agencies and create a new Civilian Climate Corps to enlist young people in planting trees and other conservation work.

Perhaps most crucially, the legislation would put new requirements on electricity providers to use cleaner forms of energy — something President Barack Obama’s administration tried but failed to do.

Dan Lashof, U.S. director of the World Resources Institute, called Tuesday’s bipartisan infrastructure package “a down payment” on the fight against climate change but not nearly enough going forward. He said it is essential for the Senate to also pass the budget-reconciliation package that funds a broader array of climate-focused measures to create jobs and shift the nation’s infrastructure toward one no longer reliant on fossil fuels.

“The forthcoming reconciliation package could be our best opportunity for advancing climate action this decade,” he said. “Kicking the can down the road is no longer an option as extreme weather wreaks havoc across our nation and around the world.”

Passing both bills, along with tighter regulations from the Environmental Protection Agency, “puts us within shooting distance” reducing emissions by 50 percent by 2030, according to Collin O’Mara, president of the National Wildlife Federation.

#### Extinction.

Dr. Yew-Kwang Ng 19, Winsemius Professor of Economics at Nanyang Technological University, Fellow of the Academy of Social Sciences in Australia and Member of Advisory Board at the Global Priorities Institute at Oxford University, PhD in Economics from Sydney University, “Keynote: Global Extinction and Animal Welfare: Two Priorities for Effective Altruism”, Global Policy, Volume 10, Number 2, May 2019, pp. 258–266

Catastrophic climate change Though by no means certain, CCC causing global extinction is possible due to interrelated factors of non-linearity, cascading effects, positive feedbacks, multiplicative factors, critical thresholds and tipping points (e.g. Barnosky and Hadly, 2016; Belaia et al., 2017; Buldyrev et al., 2010; Grainger, 2017; Hansen and Sato, 2012; IPCC 2014; Kareiva and Carranza, 2018; Osmond and Klausmeier, 2017; Rothman, 2017; Schuur et al., 2015; Sims and Finnoff, 2016; Van Aalst, 2006).7 A possibly imminent tipping point could be in the form of ‘an abrupt ice sheet collapse [that] could cause a rapid sea level rise’ (Baum et al., 2011, p. 399). There are many avenues for positive feedback in global warming, including: • the replacement of an ice sea by a liquid ocean surface from melting reduces the reflection and increases the absorption of sunlight, leading to faster warming; • the drying of forests from warming increases forest fires and the release of more carbon; and • higher ocean temperatures may lead to the release of methane trapped under the ocean floor, producing runaway global warming. Though there are also avenues for negative feedback, the scientific consensus is for an overall net positive feedback (Roe and Baker, 2007). Thus, the Global Challenges Foundation (2017, p. 25) concludes, ‘The world is currently completely unprepared to envisage, and even less deal with, the consequences of CCC’. The threat of sea-level rising from global warming is well known, but there are also other likely and more imminent threats to the survivability of mankind and other living things. For example, Sherwood and Huber (2010) emphasize the adaptability limit to climate change due to heat stress from high environmental wet-bulb temperature. They show that ‘even modest global warming could ... expose large fractions of the [world] population to unprecedented heat stress’ p. 9552 and that with substantial global warming, ‘the area of land rendered uninhabitable by heat stress would dwarf that affected by rising sea level’ p. 9555, making extinction much more likely and the relatively moderate damages estimated by most integrated assessment models unreliably low. While imminent extinction is very unlikely and may not come for a long time even under business as usual, the main point is that we cannot rule it out. Annan and Hargreaves (2011, pp. 434–435) may be right that there is ‘an upper 95 per cent probability limit for S [temperature increase] ... to lie close to 4°C, and certainly well below 6°C’. However, probabilities of 5 per cent, 0.5 per cent, 0.05 per cent or even 0.005 per cent of excessive warming and the resulting extinction probabilities cannot be ruled out and are unacceptable. Even if there is only a 1 per cent probability that there is a time bomb in the airplane, you probably want to change your flight. Extinction of the whole world is more important to avoid by literally a trillion times.

## Advantage – Trade

### Solvency – 1NC

#### Solvency stuff –

#### Aff does not have a single card that they reduce extraterritorial antitrust for countries that don’t want it – their whole uniqueness claim is it will be extraterritorial now, but the aff cannot topically eliminate that, ONLY make it so we do more extraterritorial enforcement in countries that agree.

#### Zero cards about the U.S. – all their ev is about what Europe should do, and a bunch of their cards are like two lines long!

#### Circumvention – act of state 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

1. Public actors vis-à-vis private actors

The act of state doctrine refers to a defence designed to avoid judicial inquiry into state officials’ conduct as opposed to private actors.86 The long-standing doctrine precludes courts from ruling on the validity of the public acts of a foreign sovereign within its own territory.87 In Vitamin C, the privately set price does not qualify as state action, and thus the doctrines of act of state should not bar plaintiffs’ suit. It may not meet the test of reasonableness, neither is the decision equitable. Otherwise, the effect would be to substantially impair antitrust enforcement and impose significant costs on US consumers.88 In the case of a foreign government ordering its firms to fix prices, the victims are at the will of the foreigners’ power and have no recourse.89 In order to apply the foreignstate compulsion defence, the Restatement (Fourth) 2018 clarifies that, the sanctions for failing to comply with the foreign law must be severe, and the person in question must have ‘acted in good faith to avoid the conflict’.90 The threshold is unlikely to be met given the intertwining of public and private actions inChina. In terms of the private actors’ price fixing, the defendants in Vitamin C had strong incentive to maximise their profits at the expense of US consumers, who have even benefited from the mandate.91 This happens when Chinese MNCs operating in a hybrid state capitalism pursue conduct in violation of the US antitrust laws.92 Such a scenario takes place more often in some key industries that the Chinese government firmly controls. It is rare in China for the government to use plausibly state-sanctioned coordination.93

Fromthe view of the Second Circuit, foreign sovereign briefs are likely a superior source on foreign law than the Court undertaking its own analysis.94 The overwhelming limitations on the court’s jurisdiction may create a substantial loophole in dealing with foreign deference. With the defendants’ conduct immunised, those Chinese firms’ interests have been outweighed over theirUS counterparts. 95 Requiring absolute deference would virtually allow MOFCOM to shield the Chinese defendants from the reach of US antitrust law.96 In this vein, a conclusive deference standardmakes it easier for defendants to prove foreign sovereign compulsion.97 It would be difficult for the US plaintiffs to gain remedies if a federal court stuck to a ‘bound to deference’ approach.98

#### 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.

### Turn – Protectionism – 1NC

#### Protectionism turn –

#### International norms of free trade recovering now post-trump and COVID.

By Alessandra Migliaccio And William, Al Jazeera, 7-8-2021, "G-20 set to redefine world economic order post Trump, pandemic," No Publication, https://www.aljazeera.com/economy/2021/7/8/g-20-set-to-redefine-world-economic-order-post-trump-pandemic

Global finance chiefs this week will make their most concerted effort yet to redefine the world economic order in the era after Donald Trump and the coronavirus pandemic.

With trade tensions no longer bedevilling the Group of 20 economies in the way they did during the former US president’s tenure, the first in-person meeting of its finance ministers since the disease struck last year will attempt to forge consensus on unfinished business ranging from climate change to corporate taxation.

Alongside those issues, the July 9-10 gathering is likely to take stock of an incomplete global recovery, clouded by the persistent threat of setbacks from new variants of the coronavirus. That may focus minds on the need for continued fiscal efforts to support growth, amid mounting inflation concerns and oil prices that remain elevated following this week’s breakdown in OPEC+ talks.

“The global economies are working together again,” said Rosamaria Bitetti, an economist at Luiss University in Rome. “This is a huge opportunity for the G-20 to think about how this pandemic showed that in our interconnected world, problems are global and need to be addressed together, leaving nationalism behind.”

With Italy hosting the meeting in Venice as chair of the group, the symbolism of convening in a former hub for trade between continents won’t be lost on participants. They can also look to the name of the city’s fire-cursed opera house — La Fenice, or the Phoenix — for inspiration on what to strive for in the embers of an unprecedented global crisis.

The risk is that the scars of discord that haunted international meetings during the Trump years might persist, including echoes of his frequently touted suspicion of China.

For Bruno Le Maire, the French finance minister, the onus is now on the group to build on the consensus it achieved during early stages of the pandemic.

“The G-20 must show in Venice that it can still meet its responsibilities and be able to provide concrete, new and radical responses to the challenges ahead in a continuation of what it has succeeded in doing since February 2020,” he told reporters Tuesday.

#### 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.

### Trade – 1NC

#### Advantage proper –

#### “blocs” thing is about China and Russia security blocs

Dr. Suzanne 1ac Fry 21, Director of the Strategic Futures Group at the National Intelligence Council (NIC), Ph.D. in Politics from New York University, B.A. in Government and International Studies from the University of Notre Dame, Member of the Council on Foreign Relations, et al., “Global Trends 2040: A More Contested World”, A Publication of the National Intelligence Council, March 2021, https://www.dni.gov/files/ODNI/documents/assessments/GlobalTrends\_2040.pdf

In 2040, the world is fragmented into several economic and security blocs of varying size and strength, centered on the United States, China, the European Union (EU), Russia, and a few regional powers, and focused on self-sufficiency, resiliency, and defense. Information flows within separate cyber-sovereign enclaves, supply chains are reoriented, and international trade is disrupted. Vulnerable developing countries are caught in the middle with some on the verge of becoming failed states. Global problems, notably climate change, are spottily addressed, if at all

#### COVID thumps their impact – zeroed trade.

#### Geoengineering internal is insane – says “warming coop fails so states will geoengineer”, which trade does NOT resolve AND the COP26 Summit will either inevitably solve or screw cooperation.

#### Downturn won’t cause war – prefer post-COVID evidence.

Walt ’20 [Stephen; Robert and Renée Belfer professor of international relations @ Harvard University; 5/13/20; "Will a Global Depression Trigger Another World War?"; Foreign Policy; https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/]

One familiar argument is the so-called diversionary (or “scapegoat”) theory of war. It suggests that leaders who are worried about their popularity at home will try to divert attention from their failures by provoking a crisis with a foreign power and maybe even using force against it. Drawing on this logic, some Americans now worry that President Donald Trump will decide to attack a country like Iran or Venezuela in the run-up to the presidential election and especially if he thinks he’s likely to lose. This outcome strikes me as unlikely, even if one ignores the logical and empirical flaws in the theory itself. War is always a gamble, and should things go badly—even a little bit—it would hammer the last nail in the coffin of Trump’s declining fortunes. Moreover, none of the countries Trump might consider going after pose an imminent threat to U.S. security, and even his staunchest supporters may wonder why he is wasting time and money going after Iran or Venezuela at a moment when thousands of Americans are dying preventable deaths at home. Even a successful military action won’t put Americans back to work, create the sort of testing-and-tracing regime that competent governments around the world have been able to implement already, or hasten the development of a vaccine. The same logic is likely to guide the decisions of other world leaders too. Another familiar folk theory is “military Keynesianism.” War generates a lot of economic demand, and it can sometimes lift depressed economies out of the doldrums and back toward prosperity and full employment. The obvious case in point here is World War II, which did help the U.S economy finally escape the quicksand of the Great Depression. Those who are convinced that great powers go to war primarily to keep Big Business (or the arms industry) happy are naturally drawn to this sort of argument, and they might worry that governments looking at bleak economic forecasts will try to restart their economies through some sort of military adventure. I doubt it. It takes a really big war to generate a significant stimulus, and it is hard to imagine any country launching a large-scale war—with all its attendant risks—at a moment when debt levels are already soaring. More importantly, there are lots of easier and more direct ways to stimulate the economy—infrastructure spending, unemployment insurance, even “helicopter payments”—and launching a war has to be one of the least efficient methods available. The threat of war usually spooks investors too, which any politician with their eye on the stock market would be loath to do. Economic downturns can encourage war in some special circumstances, especially when a war would enable a country facing severe hardships to capture something of immediate and significant value. Saddam Hussein’s decision to seize Kuwait in 1990 fits this model perfectly: The Iraqi economy was in terrible shape after its long war with Iran; unemployment was threatening Saddam’s domestic position; Kuwait’s vast oil riches were a considerable prize; and seizing the lightly armed emirate was exceedingly easy to do. Iraq also owed Kuwait a lot of money, and a hostile takeover by Baghdad would wipe those debts off the books overnight. In this case, Iraq’s parlous economic condition clearly made war more likely. Yet I cannot think of any country in similar circumstances today. Now is hardly the time for Russia to try to grab more of Ukraine—if it even wanted to—or for China to make a play for Taiwan, because the costs of doing so would clearly outweigh the economic benefits. Even conquering an oil-rich country—the sort of greedy acquisitiveness that Trump occasionally hints at—doesn’t look attractive when there’s a vast glut on the market. I might be worried if some weak and defenseless country somehow came to possess the entire global stock of a successful coronavirus vaccine, but that scenario is not even remotely possible. If one takes a longer-term perspective, however, a sustained economic depression could make war more likely by strengthening fascist or xenophobic political movements, fueling protectionism and hypernationalism, and making it more difficult for countries to reach mutually acceptable bargains with each other. The history of the 1930s shows where such trends can lead, although the economic effects of the Depression are hardly the only reason world politics took such a deadly turn in the 1930s. Nationalism, xenophobia, and authoritarian rule were making a comeback well before COVID-19 struck, but the economic misery now occurring in every corner of the world could intensify these trends and leave us in a more war-prone condition when fear of the virus has diminished. On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars

#### Trade doesn’t stop wars – causes populism and their studies lack causation.

Gonzalez-Vincente ‘20 [Ruben; University Lecturer in Global Political Economy @ Leiden University, PhD in Geography @ University of Cambridge; “The liberal peace fallacy: violent neoliberalism and the temporal and spatial traps of state-based approaches to peace,” *Territory, Politics, Governance* 8.1, p. 100-116; AS]

Yet, decades of neoliberal integration have not brought Fukuyama’s prophecy closer to its realization. Across the world, liberal market integration has facilitated convivial relations among key countries and paid important dividends to elites, yet it has also resulted in the concentration of wealth in ever fewer hands, rising inequalities within countries (although not between them) and higher concentration of wealth at the top, and increased risks and vulnerability as the logic of market competitiveness takes hold of many aspects of our lives (Anand & Segal, 2015; Lynch, 2006). The relation between the United States and China or the processes of economic integration in the European Union are clear examples of these trends. In these places as well as others, inequalities, precarization and economic insecurity have given way to a populist and nationalist momentum that can be interpreted both as a popular response to the extreme and diverse forms of violence engendered by processes of market integration, or as a manoeuvre to channel discontent towards the ‘other’ in order to protect elite interests (Gonzalez-Vicente & Carroll, 2017). By prescribing ever more market globalization to counter populist politics and avoid conflict, liberal elites add fuel to the fire as they sever the very conditions that led to the disfranchisement of significant segments of the population in the first place. Thereby, it is crucial to understand how the argument for capitalist peace fails to factor in the crisis-prone and socially destructive tendencies of capitalism, particularly in a context of unfenced global competitiveness along market lines.2

Two of the underlying problems in the liberal peace argument stand out. The first has to do with the statistical selection of fixed points in time that suggest correlations between growth in trade and diminished conflict – while failing to discern mechanisms of causation (Hayes, 2012). A wider temporal lens is needed to situate the contemporary rise of mercantilist and illiberal politics in the context of neoliberal globalization, representing the same sort of ‘counter movement’ that Polanyi had warned of in his reading of the 19th-century downward spiral towards war – aided in our contemporary case by the demise of the traditional left (Blyth & Matthijs, 2017; Carroll & Gonzalez-Vicente, 2017). The second problem relates to liberal international political economy and IRT’s scalar fixation on inter-state matters and hence their inability to factor in violence in the absence of war. I turn now to these two points.

## Advantage – Harmonization

### Harmonization – 1NC

#### No internal link to HR or resources – they have one single line about it, OBVIOUSLY things like Gitmo and international civil wars thump HR and industrial overconsumption make resource consumption inevitable.

#### Cooperation with EU now solves.

Michaels & Kendall ’21 [Daniel; 7/15/21; Brussels Bureau Chief @ The Wall Street Journal; and Brent; Legal Affairs Reporter in the Washington Bureau @ The Wall Street Journal “U.S. Competition Policy Is Aligning With Europe, and Deeper Cooperation Could Follow”; https://www.wsj.com/articles/u-s-competition-policy-is-aligning-with-europe-and-deeper-cooperation-could-follow-11626334844; AS]

The European Union’s top antitrust regulator foresees greater alignment with the U.S. on competition enforcement, particularly in the tech sector, amid a broader policy reorientation under the Biden administration.

EU Executive Vice President Margrethe Vestager, the bloc’s competition commissioner, said she expects “much more intense work when it comes to technology and the digitized market” between her team and Washington.

President Biden’s policy statements and appointments, plus legislative proposals from Congress, indicate the U.S. is moving closer to positions long held in the EU regarding internet giants, pharmaceutical firms and other industries with diminishing competition.

As the world’s two most powerful antitrust regulators, the U.S. and the EU can shape global competition discourse and rein in many of the world’s largest companies, so greater cooperation could have significant impact.

For supporters of aggressive enforcement, “it will certainly be a marriage made in heaven,” said Jeffrey Jacobovitz, a Washington-based antitrust lawyer with Arnall Golden Gregory LLP. “I think they’ll work hand in hand. Increased coordination makes enforcement stronger.”

That alignment will make it even more incumbent on companies in the crosshairs to develop broad, cross-Atlantic strategies on how to respond to that scrutiny, Mr. Jacobovitz said.

While tech companies say similar policies in multiple jurisdictions can simplify operations, some worry about the U.S. adopting some of Europe’s more aggressive positions.

“The U.S. should be wary of copying EU-style experimental regulation,” said Christian Borggreen, vice president and head of the Brussels office at the Computer & Communications Industry Association, which represents companies including Amazon.com Inc., Facebook Inc. and Google. “As a leader in tech innovation, the U.S. would have much more to lose if they get it wrong.”

Mr. Biden’s appointments of high-profile U.S. progressives who have criticized tech giants—Lina Khan to run the Federal Trade Commission, and Tim Wu to the White House Economic Council—have been widely seen as indicating that Mr. Biden plans to turn up the heat on internet conglomerates. Companies such as Microsoft Corp. , Apple Inc. and Google parent Alphabet Inc. previously felt little pressure from Democrats, including former President Barack Obama, who criticized past EU efforts to restrain U.S. tech companies.

Ms. Vestager held an initial meeting with Ms. Khan by videoconference on July 2. Mr. Biden has yet to appoint someone to lead antitrust enforcement at the Justice Department. That nomination could provide further clues to his administration’s approach.

In parallel, House Democrats recently introduced a package of bills with bipartisan support that target big tech companies’ practices considered by critics as anticompetitive. The proposed legislation could go as far as breaking up, or at least shrinking, Amazon and other top tech companies.

New York state could go a step further with proposed antitrust legislation that would forbid companies from abusing a dominant market position—a prohibition central to EU competition regulation that is much stricter than U.S. federal antitrust rules.

Mr. Biden last week issued an executive order seeking to curb the power of companies across the U.S. economy that dominate their markets.

The jockeying for new policy approaches comes as officials on both continents have faced enforcement challenges in limiting digital giants’ activities. Ms. Vestager has imposed billions of dollars in penalties on U.S. tech companies but had little impact on their ability to control markets, according to critics including consumer advocates and some smaller competitors.

In the U.S., a federal judge last month dismissed cases brought by the FTC and most U.S. states against Facebook, though the FTC is expected to try again with an amended lawsuit.

“I believe there is a greater consensus that competition enforcement has not always delivered on its promise,” said University of Oxford law professor Ariel Ezrachi, who is director of Oxford’s Centre for Competition Law and Policy. He said the new U.S. approach is “a real tectonic shift.”

#### Trump, Brexit, and Le Pen thump the populism impact – this card is *about the 2016 wave*!

#### Populism is structurally inevitable

Daron Acemoglu 11/6/20. Institute Professor at MIT. Trump Won’t Be the Last American Populist The Conditions That Produced Him Need to Be Understood to Be Addressed https://www.foreignaffairs.com/articles/united-states/2020-11-06/trump-wont-be-last-american-populist

Together with economic resentment has come a distrust of all kinds of elites. Much of the American public and many politicians now express a mounting hostility toward policymaking based on expertise. Trust in American institutions, including the judiciary, Congress, the Federal Reserve, and various law enforcement agencies, has collapsed. Neither Trump nor recent party polarization can be held solely to blame for this anti-technocratic shift. The almost complete rejection of scientific facts and competent, objective policymaking among many in the electorate and the Republican Party predates Trump and has parallels in other countries—Brazil, the Philippines, and Turkey to name a few. Without more deeply understanding the root of such suspicion, American policymakers can have little hope of convincing millions of people that better policies, designed by experts, will improve their lives enormously and reverse decades of decline. Nor can policymakers hope to put a lid on the discontent that fueled Trump’s rise.

POISONOUS SEEDS

Populist movements thrive on inequality and on resentment of elites. Yet these conditions alone don’t explain why American voters in 2016 turned right rather than left as inequality rose and the very wealthy benefited at ordinary people’s expense. In the United States, a right-wing populist movement stood ready to make itself the vehicle for the grievances of regular people and to marry those grievances to a stance that was anti-elite, nationalist, and often authoritarian.

Right-wing populism did not emerge in the United States because of Trump’s deranged charisma. Nor did it begin with the news media’s infatuation with his outrageous statements, or with Russian meddling, or with social media. Rather, right-wing populism resurged as a potent political force at least two decades before Trump’s takeover of the Republican Party—remember Pat Buchanan? And it has analogs all over the world, not just in mature democracies reeling from the loss of manufacturing jobs but in countries that have benefited economically from globalization, including Brazil, Hungary, India, the Philippines, Poland, and Turkey.

That the Republican Party would give itself over to such a movement—and to Donald Trump as its standard-bearer—was never a foregone conclusion. One can argue that Republicans supported Trump because he was willing to execute their agenda: cutting taxes, fighting regulation, and appointing conservative judges. Alas, this is only a small part of the story. Trump’s popularity surged based on positions diametrically opposed to Republican orthodoxy: restricting trade, increasing spending on infrastructure, helping and interfering with manufacturing firms, and weakening the country’s international role. One can point to skyrocketing rates of polarization before Trump or chide the role of money in politics. Yet these factors hardly explain the wholesale abandonment of many of the key policy tenets of a 150-year-old party. Before 2016, few would have believed that the Republican Party would try to dismiss and cover up meddling by a hostile government in a presidential election.

A GLOBAL UNRAVELING

Trump and Trumpism are American phenomena, but they arose within a context that is undeniably global. Under Boris Johnson in the United Kingdom, the Tory Party is transforming in a manner similar, if more benign, to that of the Republican Party. The French right has fallen behind the National Rally (the new name for the far-right National Front). And the Turkish right has remade itself in the image of a strongman, Recep Tayyip Erdogan. Together, these and other cases demonstrate not just polarization but a complete unraveling of the old political order.

How and why this unraveling has happened is not self-evident. The first place to look for an answer is in the major, crosscutting economic trends of the present era: globalization and the rise of digital and automation technologies, both of which have induced rapid social changes coupled with unshared gains and economic disruptions. As institutions proved unable or unwilling to protect those suffering from these transformations, they also destroyed public trust in establishment parties, the experts claiming to understand and better the world, and the politicians who appear complicit in the most disruptive changes and in cahoots with those who have stealthily benefited from them.

From this perspective, it isn’t sufficient to decry the collapse of civic behavior or even to defeat toxic populists and authoritarian strongmen. Those who seek to shore up democratic institutions must build new ones that can better regulate globalization and digital technology, altering their direction and rules so that the economic growth they foster benefits more people (and is perhaps faster and of a higher quality overall). Building trust in public institutions and experts requires proving that they work for the people and with the people.

#### Development impact just says “instability” – that is not nuke war and they don’t have a draw in card.

## Advantage – OAS

### OAS – 1NC

#### This is absurd –

#### Brink evidence is from 09—we were all like *six years old*!

#### “Extinction” impact just says terror exists – NOT that it escalates, will be small scale – ditto for Gumbiner multilat card.

#### There is ZERO reverse causal evidence that says the plan solves OAS credibility. At best, they have a card that says other powers are interested in cooperating, but there’s zero evidence that says antitrust is key to OAS cred

#### Wrong “hotspot” countries – internal is about Africa, the Caucuses, and the Caribbean, the impact about hotspots is Israel, Iran, Turkey, and South Asia!

#### Alt causes to OAS harmonization – Cuban embargo, NAFTA renegotiation, Maduro, the Drug war, the immigration crisis.

#### OAS doesn’t solve anything.

Lee 12 – Senior Production Editor (Brianna, “The Organization of American States,” 4/13/12, http://www.cfr.org/latin-america-and-the-caribbean/organization-american-states/p27945)//SJF

CFR's Shannon K. O'Neil says the OAS's role as a forum for regular, high-level discussions on issues facing the hemisphere is one of its major strengths. Several other analysts have praised the Inter-American Human Rights Commission as a crucial, objective platform for human rights litigation. However, many state leaders and policymakers have also heavily criticized the OAS for its institutional weakness. Christopher Sabatini, senior policy director for the Americas Society/Council of the Americas, says the OAS as a political entity "has declined precipitously in recent years."

However, analysts say, since the Democratic Charter was signed, the organization's consensus around democracy promotion has atrophied.

One of the OAS's major administrative constraints is its consensus model, which requires a unanimous vote to make many of its decisions. As political ideologies have diversified within the region, this has made it difficult for the OAS to make quick, decisive calls to action. The polarization between American states has also led to one of the OAS's other major shortcomings: its many mandates unrelated to the core mission. In 2010, U.S. Secretary of State Hillary Clinton urged the OAS to streamline its processes (VOA) from what she called a "proliferation of mandates," noting that the expansion of mandates without proportional expansion of funding made for an "unsustainable" fiscal future.

Election monitoring, one of the OAS's major functions in light of its commitment to democracy, is also restricted by its inability to send election observers without the invitation of state governments. "They can't condemn a country unless that country wants to be condemned," CFR's O'Neil says. Nevertheless, she adds, it has become a norm in many member countries to accept OAS monitors, which she says has been helpful.

Within the hemisphere, conflicting views on the OAS's loyalties abound. In the summer 2011 issue of Americas Quarterly, Anthony DePalma sums up the range of mistrust: "Insulza and the OAS itself are widely seen as being bullied by Venezuela (he denies it), as catering to [Venezuelan President] Hugo Chavez's friends in Bolivia, Ecuador and Nicaragua (evidence suggests otherwise) and, strangely, still beholden to the U.S., even though Washington seems to have lost interest."

Chavez has called the OAS a puppet of the United States; at the same time, in July 2011, the U.S. House Committee on Foreign Affairs passed a Republican-sponsored bill to defund the OAS (ForeignPolicy), on the charge that the organization supported anti-democracy regimes in Latin America.

Various efforts have been made to create organizations to act as alternatives to the OAS. In 2010, Latin American leaders formed the Community of Latin American and Caribbean States (CELAC), an organization that excludes the United States. Chavez and Ecuadorean President Rafael Correa have expressed the desire for CELAC to eventually supplant the OAS, although Sabatini argues that CELAC is "nothing more than a piece of paper and a dream."

Many consider another regional organization, the Union of South American Nations (UNASUR), to be a useful counterweight to the OAS. UNASUR is regarded by many observers as a means for Brazil to assert its power in the region. O'Neil argues the organization has been able to fulfill some duties that the OAS has been less effective in doing, such as successfully mediating between Ecuador and Colombia during their diplomatic crisis in 2008.

Despite the OAS's shortcomings and questions over its continued relevance in the region, there is a strong call to reform the organization rather than eliminate it altogether.

# 2NC

### NB

#### US WTO leadership prevents vaccine nationalism – collapses the international order. Nuclear war.

Ronald O'Rourke, Specialist in Naval Affairs, and Kathleen J. McInnis, Specialist in International Security, 12-30-20, “COVID-19: Potential Implications for International Security Environment— Overview of Issues and Further Reading for Congress” https://www.everycrsreport.com/files/2020-12-30\_R46336\_68ae591edfaede65543751d6a841cc97e9761ef8.pdf

U.S. Relations and Great Power Competition with China and Russia

Some observers have focused on how the COVID-19 pandemic has become a significant element in U.S-China relations, and in U.S. great power competition with China and Russia, which the Trump Administration has placed at the center of its national security construct. For some observers, the COVID-19 pandemic presents an opportunity for U.S.-China cooperation on an important international issue of common interest. For other observers, the COVID-19 pandemic is a major new source of dispute and arena of competition between the two countries, and is causing U.S.-China relations to harden more fully into a Cold War-like adversarial situation. Some observers have focused on what they view as a competition or race between the United States, Russia, China, and other countries to be the first country to develop and field an effective vaccine for the coronavirus that causes COVID-19, and thus become the first country to be able to restore its economy to full operation and/or exploit foreign access to its vaccine as a foreign policy lever, and thereby gain a political-economic advantage in the post-pandemic world. The term vaccine nationalism is being used by some of these observers to refer to this perceived competition or race. Some observers have expressed concern that decisions by countries to pursue vaccine development and deployment in a competitive, individual manner rather than a cooperative, multilateral manner could reduce the overall effectiveness of efforts to develop and field effective vaccines and thereby prolong the pandemic.

Some observers have focused on how the COVID-19 pandemic provides a prominent new factor in the discussion of whether the United States should decouple its economy from China’s and reduce its dependence on China for key materials and products, including hospital supplies and pharmaceuticals. Some observers have focused on whether the U.S. and Chinese responses to the COVID-19 pandemic will affect views around the world regarding the relative merits of the U.S. and Chinese forms of government and economic models as potential examples to emulate.

Democracy, Authoritarianism, and Autocracy

Related to the point above about forms of government, some observers have focused on how the COVID-19 pandemic appears to be challenging democratic systems in various countries and providing national leaders with an opportunity or rationale for taking actions to seize greater power and move their countries away from democracy and toward authoritarianism or autocracy, or strengthen or consolidate their already-existing authoritarian or autocratic forms of government.3 As discussed in another CRS report, a key element of the traditional U.S. role in the world since World War II has been to defend and promote freedom, democracy, and human rights as universal values, while criticizing and resisting authoritarian and illiberal forms of government where and when possible.4

Societal Tension, Reform, and Transformation, and Governmental Stability

Beyond the specific point above about potential movement toward greater authoritarianism and autocracy, some observers have focused on the possibility that the COVID-19 pandemic more generally could cause increased social tensions in certain countries, could lead to (or present opportunities for) societal reforms and transformations, and could destabilize and perhaps cause the downfall of governments, akin to the effects of certain past world-changing events, such as World War I.5 Such changes could alter the political orientations, national strategies, foreign policies, and defense policies of the countries in which they occur, potentially inducing follow-on effects among governments and other global actors that interact with those countries.

World Economy, Globalization, and U.S. Trade Policy

Some observers have focused on the possibility that the COVID-19 pandemic could lead to significant and potentially long-lasting changes to the world economy that in turn could reshape the international security environment. Among other things, observers have focused on the possibility that the COVID-19 situation could be leading the world economy into a significant recession—an effect that could contribute to the societal tensions mentioned in the previous point. Noting that the COVID-19 pandemic has reduced world trade volumes and disrupted global supply chains, they have focused on the question of whether economic globalization will as a result be slowed, halted, or reversed. Observers are monitoring how such effects could influence or be influenced by U.S. trade policy.

Allied Defense Spending and U.S. Alliances

The so-called burden-sharing issue—that is, the question of whether U.S. allies are shouldering a sufficient share of the collective allied defense burden—has long been a point of contention between the United States and its allies around the globe, and it has been a matter of particular emphasis for the Trump Administration. Some observers have focused on the possibility that the costs that U.S. allies are incurring to support their economies during stay-at-home/lockdown periods will lead to offsetting reductions in their defense expenditures. Some observers argue that the NATO allies in Europe in particular may experience contractions in their defense budgets for this reason. More generally, some observers argue that if the COVID-19 pandemic causes a global recession, allied defense budgets could be further reduced—a potential impact that could affect not only NATO allies in Europe, but those in Asia as well.

### 1AC/2AC Rehighligtings for Harmonization

#### Here is a card from their AFF that advocates the exact CP as resolving the AFF

Dr. Brian Ikejiaku 21, Senior Lecturer in Law at Coventry University, PhD from the Research Institute of Law, Politics, & Justice (RILPJ) at Keele University, and Cornelia Dayao, LL.M in International Business Law, “Competition Law as an Instrument of Protectionist Policy: Comparative Analysis of the EU and the US”, Utrecht Journal of International and European Law, Volume 36, Issue 1, http://doi.org/10.5334/ujiel.513

The impact of anti-competitive business practices on international trade is the most important concern in trade policy.104 Experts105 recognise that anti-competitive practices of firms, in addition to trade barriers, hamper international trade. Hence, the necessity to integrate or at least align competition and trade policies has been formally recognised as early as the proposal for the establishment of the International Trade Organisation (Havana Charter). The Havana Charter contained provisions which encourage member States to prohibit business practices that affect international trade which restrain competition, limit access to markets, or foster monopolistic control whenever such practices are harmful to trade.106 Nonetheless, the Havana Charter was not ratified and was instead succeeded by the GATT of 1947, which salvaged some of the provisions from the Havana Charter. Thus, the negotiating parties that created the GATT of 1947 had shown a public awareness that arrangements designed to foster trade could be undermined when commercial enterprises engaged in cartels or other restrictive business practices, and these negotiating parties had proposed treaty provisions to ensure that competition policy would reinforce government measures for international trade.107 Subsequently, the World Trade Organisation was established in 1995 to succeed the GATT of 1947. Efforts to include competition policy within the trade policy framework in the WTO have proved particularly challenging due to lack of agreement among member States on competition policy.108 Support for international discipline regarding competition law was originally stimulated by US perceptions that international cartels and the absence or lack of enforcement of national competition law obstructed the ability of US firms to contest markets.109 The US supported the inclusion of a chapter dealing with restrictive business practices, reflecting its views against German cartels and Japanese zaibatsu who are the main opposition to including competition law in the WTO.110 In recent times, the EU has been in the lead, arguing that all WTO members must adopt and enforce competition laws. Developing countries have not been at the center of the debate on trade and competition in the WTO.111 However, competition policy has an important role in developing countries, both in promoting a competitive environment and in building and sustaining public support for a pro-competitive policy stance. However, the issue is that many do not have competition laws; those that do often have limited implementation ability.112 The bottom line of the debate is that any agreement on international competition policy that goes beyond general procedural cooperation and introduction of transparency mechanisms likely must be plurilateral, at least initially.

The lack of consensus on the nexus of competition and trade policy creates a gap which is exploited in order to pursue various motives such as promoting industrial policy, protectionism or nationalism.

#### Ristaniemi says WTO harmonization

Michael Ristaniemi 17, PhD Candidate in Commercial Law at the University of Turku, Vice President for Sustainability at the Metsä Group, Participant in the Visiting Scholar Programme at the University of California, Berkeley, “Export Cartels and The Case for Global Welfare”, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3166228

2. Possible facilitator and enforcer of such resolutions A key question is the appropriate forum for negotiations as well as the appropriate enforcer of a multilateral agreement, should such an agreement be reached. Some commentators propose that the WTO would be best placed to administer the negotiations and act as the umbrella organisation of an agreement,92 while others favour a separate multilateral arrangement.93 Should a stand-alone multilateral resolution be reached, it would, however, require setting up a separate system for monitoring and dispute settlement, something that already exists within the WTO. Thus, out of the two, the WTO seems more practical. Nevertheless, the WTO is not the only plausible organisation. Bradford suggests that developing countries would prefer an agreement concerning competition policy to be under the UN Conference on Trade and Development, which forum could help maximise the number of potential signatories.94 Guzman proposes expanding the WTO to non-trade areas, including competition policy, particularly encouraged by the example in the area of intellectual property: after failing to conclude a multilateral agreement under the World Intellectual Property Organisation (WIPO), the WTO was expanded to cover IP matters by virtue of the TRIPs Agreement, which sets a minimum standard for IP regulations applicable to all WTO members.

#### About WTO dispute mechanisms

Frederic Desmarais 9, LLB from McGill University, B.Sc. in International Studies from the University of Montreal, “Export Cartels in the Americas and the OAS: Is the Harmonization of National Competition Laws the Solution?”, Manitoba Law Journal, 33 Man. L.J. 41, Lexis

Competition law has become a topic that cannot be ignored in the activities of the major international organizations of the world. Currently, there is a favourable trend towards competition policy on the international scene, as evidenced, inter alia, by the Recommendation of the Council Concerning Action against Hard Core Cartels 1 [\*42] of the Organization of Economic Co-operation and Development (OECD), by the creation of the International Competition Network, 2 and by the Working Group on the Interaction between Trade and Competition Policy within the context of the World Trade Organization (WTO). 3 The Organization of American States (OAS) has followed this trend, and accordingly, its General Assembly (GA) has requested that the Inter-American Juridical Committee (IAJC) study competition law issues in the Americas. 4 In 2003, the IAJC published its final report entitled Competition and Cartels in the Americas. 5

The literature on hard core cartels is copious. The OECD defines a hard core cartel as "an anticompetitive agreement, anticompetitive concerted practice, or anticompetitive arrangement by competitors to fix prices, make rigged bids (collusive tenders), establish output restrictions or quotas, or share or divide markets by allocating customers, suppliers, territories, or lines of commerce". 6 This literature nonetheless neglects one type of cartel, which not only rests on a retrograde conception of the international system, but also which generates various anticompetitive effects: export cartels. Export cartels are associations of firms, operating in the same country, that cooperate with one another in various ways, such as fixing common prices in order to export their goods and/or services to the international market. The primary objective of this paper is to provide a comprehensive analysis of export cartels within the OAS framework, and to offer a solution to address their adverse effects on developing countries, which make up the majority of the states in the American hemisphere.

#### Sweeney – does not say the word antitrust in it – says that a multilateral competition regime is desirable when there is a request initiated in a multilateral forum – that is the WTO – rehighlighting

Dr. Brendan Sweeney 11, PhD in Economics from Monash University, Deputy Head of the Department of Business Law and Taxation at Monash University, “Export Cartels” in The Internationalisation of Competition Rules: The Approach of European States, ISBN 9780415685443, Routledge, 7/29/2011, p. 397-398

3. Agreement in which exporting state considers foreign harm

A more realistic arrangement is one in which the exporting state, when determining the legality of an export cartel, agrees to take into account the consumer effects suffered in the importing state. Necessarily this will require states to agree to an export cartel rule based on anti-competitive effects. 100

Proceedings in the export state could be initiated by a request from the importing state. Given that the exporting state has incentives to tolerate export cartels, the exporting state should be required to respond to another state′s request by investigating the matter and issuing a written determination. The exporting state should also provide to aggrieved importers non-discriminatory access to their local competition law and policy processes (both administrative and judicial), to provide adequate procedural rules (for example, discovery rules), and to ensure adequate transparency. 101 A private right of action would be a desirable addition to this type of positive comity agreement. 102 Hoekman and Mavroidis have even suggested that a WTO special prosecutor might be given authority (and the resources) to bring an action on behalf of the least developed states. 103

#### Martyniszyn – literally is an advocate for the WTO

Dr. Marek Martyniszyn 12, Senior Lecturer in Law at Queen’s University Belfast, PhD from University College Dublin, LLM (with Specializations in EU Economic and World Trade Law) from the Saarland University’s European Institute, MA Degree from the Warsaw School of Economics and Postgraduate Certificate in Higher Education Teaching (PGCHET) from Queen's University Belfast, “Export Cartels: Is it Legal to Target Your Neighbour?”, Journal of International Economic Law, March 2012

In recent years competition laws were introduced in many jurisdictions and considerable effort was invested by the international community in competition advocacy and voluntary cooperation between competition authorities (best exemplified by the creation of the International Competition Network which now has more than 100 members), leading to more dialogue and understanding in this area of law. This led, for example, to international consensus on international private hard core cartels (but not export cartels) as harmful and actual cooperation in their pursuit across jurisdictions. Taking this into consideration, the time is perhaps ripe to come back to the discussion on export cartels and to revisit narrow-focused proposals in this regard which could be introduced within the WTO framework. The one suggested by Sweeney seems particularly appealing: an agreement taking into account in antitrust investigations not only domestic, but also foreign harm caused by such cartels; reinforced by a positive comity (a commitment to investigate a particular case at the request of a foreign jurisdiction). 233 Such a regime could be adopted as a plurilateral agreement, preferably on the side and not within a major negotiation round, open to all interested jurisdictions and subject to the WTO dispute settlement mechanism. Taking into consideration that China, as the discussed cases present, is caught between a rock of antidumping and a hard place of antitrust actions, it may be interested in such a solution. The US, on the other hand, facing now Chinese export cartels with considerable state involvement may find it worthwhile to sit down and negotiate as well so as to avoid similar but greater problems in the future. The European Union, which already within the framework of the WTO Woking Group took the view that the issue of export cartels should be addressed, would surely join the talks. While developing countries were quite sceptical about competition issues on the trade agenda, the Indian experience with the US soda ash export cartel, discussed above, shows that they may now find it in their best interests to work towards an international solution to export cartels, especially if approached outside the major round of trade negotiations. 234 In fact if the tipping point has not been reached yet, the recent developments allow hoping that it is not too far away and more thought should be now invested into consideration of possible scenarios addressing export cartels, both private and public, reflecting the current challenges.235

### AT US Loses in WTO

#### Rehighlighting of Ristaniemi

#### WTO will rule for US. The counterplan uses China’s claim of foreign state compulsion to prove violation of WTO/GATT protocols.

Dingding Tina Wang, \* J.D. Candidate 2012, Columbia Law, ’12, “WHEN ANTITRUST MET WTO: WHY U.S. COURTS SHOULD CONSIDER U.S.-CHINA WTO DISPUTES IN DECIDING ANTITRUST CASES INVOLVING CHINESE EXPORTS” Columbia Law Review , JUNE 2012, Vol. 112, No. 5 (JUNE 2012), pp. 1096-1142

B. U.S.-China WTO Dispute over Export Restrictions on Raw Materials

In 2009, the United States launched a WTO suit against China, charging China with imposing export restraints—export duties, export quotas, minimum export price requirements, and export licensing regu lations—on certain raw materials, such as forms of magnesium and baux ite, in violation of China's WTO commitments.107 China is "a leading pro ducer" of each of the industrial minerals, which are widely used in US industry.108 A crucial foundation for the U.S. position was that such ex port restraints were attributable to the Chinese government rather than to private exporters, in order to be subject to WTO dispute resolution. The United States recognized that it would be inconsistent for the Chinese government to argue in U.S. court that it directs Chinese ex porters to coordinate price floors, and at the same time argue before the WTO that it does not interfere with the pricing of those exports. In its submission to the WTO panel, the United States cited In re Vitamin C Antitrust Litigation as evidence that the Chinese government imposed "minimum export price requirements," i.e., export price floors, on pro ducers of various raw materials, including bauxite and magnesium.109 The United States argued that such export price requirements violated China's WTO obligations under the General Agreement on Tariffs and Trade (GATT) and China's Accession Protocol.110 Anticipating China's possible argument that the minimum export prices are effectuated through a private industry organization like China Chamber of Commerce of Metals, Minerals, & Chemicals Importers & Exporters (CCCMC), rather than the government, the United States marshaled the Ministry of Commerce's filings in the vitamin C case to argue that China's chambers of commerce are not private organizations but entities under the Ministry's "direct and active supervision" that "play a central role" in regulating trade.111 The submission elaborated that the export prices coordinated by CCCMC set a price floor that exports must meet in order to be approved, citing the Ministry's characterization of this "sys tem of self-discipline" as an "actual specific measure [] taken by China to effect its regulatory policies."112 In its written answers to the WTO Panel’s questions, the United States argued that China should not be able to ar gue otherwise from what it had already represented in U.S. court: "The complainants' challenge ... is directed at what China itself has repre sented," that is, that the minimum export price requirements of China's chambers of commerce are "attributable to China."113 Unfortunately, an observer cannot directly access China's response to these arguments. Par ties to WTO disputes can choose whether or not to make their own sub missions public; in contrast to the United States, China has not made its submissions public.

The WTO panel ruled in 2011 that many of China s export restraints violated its Accession Protocol and the GATT.115 It concluded that the Chinese government, through the CCCMC, coordinated export prices for raw materials including bauxite and magnesium, with which export ers had to comply or be subject to penalties, and that such minimum ex port price requirements qualified as quantitative restrictions on exports in violation of Article XI:1 of the GATT.116 Indeed, the U.S. govern ment's citation of the China Ministry of Commerce's amicus brief and statements in Vitamin C evidently had done significant damage to China's case. As some of the disputed minimum export price regulations were promulgated by "non-governmental bodies, such as the CCCMC" and not "formal legislation," the panel provided that there needed to be a strong basis for connecting such regulations to the Chinese government, be cause only claims against a WTO member's government, government-at tributable, or government-related action are subject to WTO dispute resolution.117 The vitamin C case provided this basis. Noting the China Ministry of Commerce's statements to the Vitamin C court, the panel found, Evidence presented by the complainants in the form of state ments made by China's [Ministry of Commerce] in the context of US domestic court proceedings prior to this dispute appear to confirm . . . that actions undertaken by the CCCMC with re spect to minimum export price requirements at issue in this dis pute are attributable to China, and are thus "measures" that can be challenged under the WTO dispute setdement proceed ings .... Accordingly, the Panel is satisfied that the measures at issue in this dispute that have been identified by the complain ants are measures "attributable" to China.

#### Consequently, either the anticompetitive practice is resolved in the WTO, and if not, it is resolved by antitrust. This strategy prevents litigants from gaming the system by making contradictory claims in either forum.

Dingding Tina Wang, \* J.D. Candidate 2012, Columbia Law, ’12, “WHEN ANTITRUST MET WTO: WHY U.S. COURTS SHOULD CONSIDER U.S.-CHINA WTO DISPUTES IN DECIDING ANTITRUST CASES INVOLVING CHINESE EXPORTS” Columbia Law Review , JUNE 2012, Vol. 112, No. 5 (JUNE 2012), pp. 1096-1142

2. Interplay of Antitrust Law and WTO Law. — WTO law and antitrust law share the common goal of ensuring competition, whether between domestic and foreign producers or among producers in general.79 But the WTO did not standardize an international form of antitrust law, and antitrust law remains cleaved along national lines.80 A member country generally cannot sue another member country in the WTO for anticom petitive conduct by private actors.81 Some scholars have argued that there is little incentive for a country to sign onto an international antitrust agreement because the advantage of export cartels for the exporting country is that losses typically fall to foreign consumers and gains accrue to domestic producers.82 National governments have an incentive to set up, encourage, or tolerate export cartels as a way to prop up domestic producers and externalize the costs of doing so to foreign markets,83 though at the risk of provoking trade tensions.84 Overall, WTO law con tinues to focus on state conduct while antitrust law mostly targets private anticompetitive conduct. But national antitrust law and WTO law interact and are likely to conflict when private anticompetitive conduct is mixed with state conduct.

As a prime example, the recent U.S.-China WTO dispute over China's export restraints on certain raw materials closely tracks the pend ing antitrust cases in U.S. courts, but the U.S. government and U.S. plaintiffs made contradicting claims: The U.S. government argued in the WTO that the Chinese government directed the export restraints, while the U.S. private parties argued in U.S. courts that the Chinese govern ment did not direct the export restraints.85 If China's price restraints are public in nature, the producers may be immune from U.S. antitrust li ability, due to available common-law foreign-sovereignty-related defenses, but the country should be vulnerable to WTO liability. If the price re straints are private in nature, China should avoid WTO liability but the private antitrust cases should proceed on the merits, because the foreign sovereignty-related defenses would fail.86 There is the risk of theoretical inconsistency, in which both the foreign country and its private produc ers are held liable, and the resulting "double whammy" for the foreign country of both treble damages from U.S. antitrust liability and trade sanctions from WTO liability.87 As one antitrust treatise notes, WTO and national antitrust cases "when taken together raise fascinating possibili ties for the interaction between competition policy and international trade law."88 The DOJ and FTC also observe, "There has always been a close relationship between the international application of the antitrust laws and the policies and rules governing the international trade of the United States.

#### The US will win its case in the WTO – empirics prove. Antitrust is unnecessary while more elegant approaches remain on the table.

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

Unsurprisingly, China asserted in its response to panel questioning that the measures are not "sources of Chinese law." 232 Meanwhile, China admitted that its Ministry delegated certain implementing authority to the CCCMC to coordinate export prices, but implementation authority granted to CCCMC terminated with the repeal of the PVC system in 2008.233

The Panel released its report on July 2011. In the section discussing whether the measures at issue may be subject to WTO dispute settlement, the Panel held that evidence presented-by China's MOFCOM ("Ministry") in the context of U.S. domestic court proceedings appeared to confirm the fact that China acknowledges that through the Ministry, it delegated certain implementing authority to the CCCMC to coordinate export prices. 234 According to the Panel, this confirmed that actions undertaken by the CCCMC are therefore measures that can be challenged under the WTO dispute settlement proceedings. 235 Accordingly, the United States won the raw materials case in the WTO proceeding even though the Appellate Body voided the findings of the Ministry's amicus brief and decided the case based upon other evidence. 236 Through a Transnational Legal Process lens, the "vertical internalization" happened when the U.S. government provided a lawful response under international law. 237 As the U.S.-China WTO dispute unfolded, the European Union and Mexico joined in the proceeding. 238 In conjunction with the E.U., Mexico, and thirteen other WTO members who asserted their third-party rights to the case, the U.S. generated interactions with China. 239 The WTO system then became a platform of interpretations that promoted "vertical internalization" of WTO law. 2 40 Through the WTO dispute settlement and appellate body, China was ordered to dismantle a series of illegal export restrictions. 241 At the meeting of the WTO Dispute Settlement Body on 28 January 2013, China informed the WTO membership that its Ministry and General Administration of Customs had issued a new set of notices removing the problematic export restrictions on the set of raw materials at issue in the litigation.

b. Rare Earths

The United States applied Transnational Legal Process and expanded this victory in the same way. On 13 March 2012, the United States requested consultations with China regarding China's restrictions on the export of various forms of rare earth elements, tungsten, and molybdenum. 242 The USTR cited several of China's published and unpublished measures (including certain quota administration measures) that imposed export restrictions. 243 The U.S. argued that such export quotas, in themselves and also in the manner in which they are administered, are inconsistent with China's obligations under Article XI:1 and X:3(a) of the GATT 1994 and China's Protocol of Accession.244 On 22 March 2012, the European Union and Japan requested to join the consultations. 245 On 26 March 2012, Canada requested to join the consultations. Subsequently, on 23 July 2012, sixteen other WTO members asserted their third-party rights by establishing a single WTO panel.246 Once more, China lost this case at both the Panel and the Appellate. 247 At the DSB meeting in May 2015, China informed the WTO that it had removed the challenged export duties, quotas, and restrictions on trading rights. 24 8

c. Raw Materials II

Furthermore, the preceding U.S. disputes led to yet a third complaint raised by the U.S. in July 2016 against the third set of export restrictions on raw materials. 249 Again, the United States was not alone. As a co-complainant in both China-Raw Materials and China-Rare Earths, the U.S. and the EU have simultaneously accused China again of violation of Paragraphs 2(A)(2), 5.1, 11.3 of Part I of China's Accession Protocol, as well as paragraph 1.2 of the Accession Protocol (to the extent that it incorporates paragraphs 83, 84, 162 and 165 of the Report of the Working Party on the Accession of China), and Articles X:3(a) and XI:1 of the GATT 1994, regarding China's export duties on various forms of antimony, cobalt, copper, graphite, lead, magnesia, talc, tantalum, and tin.25 0 Through this new WTO action, the United States sought to extend and reinforce the important victories obtained by the United States in the two previous WTO challenges, while the consultations requested by the US and the EU were running in parallel. On 8 November 2016, The DSB established a panel to hear the challenge raised by the United States. Fourteen WTO members reserved their third-party rights in that case. Similarly, on 23 November 2016, the DSB established a panel to hear the challenge raised by the European Union. Seventeen WTO members reserved their third-party rights.

#### If the US loses in the WTO, it solves the case better by allowing courts to borrow evidence from WTO proceedings that eliminate costly discovery and trial proceedings.

Dingding Tina Wang, \* J.D. Candidate 2012, Columbia Law, ’12, “WHEN ANTITRUST MET WTO: WHY U.S. COURTS SHOULD CONSIDER U.S.-CHINA WTO DISPUTES IN DECIDING ANTITRUST CASES INVOLVING CHINESE EXPORTS” Columbia Law Review , JUNE 2012, Vol. 112, No. 5 (JUNE 2012), pp. 1096-1142

2. Informative Role of WTO Proceedings. — But courts have suggested, and not rarely, that WTO documents may still have a role injudicial deci sionmaking. There is a line of cases in the U.S. Court of International Trade stating that WTO documents and the reasoning in those docu ments may "inform" a court's analysis.153 In most of those cases, the court was reviewing the determination of a federal agency, usually the U.S. Department of Commerce, in antidumping or countervailing duties pro ceedings under U.S. law where the law did not speak expressly on the is sue.154 Some scholars argue that U.S. courts are going too far in allowing WTO documents to play a role in their decisionmaking, while others say that courts have not gone far enough.155 As a result, much of the debate has centered on a WTO ruling's effect on domestic judicial review of fed eral agency construction of U.S. trade law. What has been less in the spotlight is how courts can consider WTO documents in other areas of law, such as in interpreting foreign law or understanding factual situa tions in order to apply U.S. antitrust law. Indeed, the Bos ai Minerals court implied as much. In Bosai Minerals, the plaintiff brought up the Corns Staal line of cases to argue that there is no basis for granting a stay pend ing a WTO decision since WTO decisions should not matter.156 In re sponse, the court emphasized that those cases are distinguishable from the antitrust case because those cases only stood for the principle that WTO rulings are not binding on a court's interpretation of U.S. statutory law.157 The Bosai Minerals court did not propose that the WTO decision will tell the court how to interpret the Sherman Act itself, but that the WTO proceeding will inform the court's understanding of foreign law and foreign circumstances in order to properly apply the Sherman Act.158 As the longstanding precedent of lack of judicial deference to WTO rul ings does not preclude courts from taking WTO disputes into account in these antitrust cases, the next Part explores the justifications, constitu tional and otherwise, for why U.S. courts should, in fact parallel WTO proceedings, and particularly the U.S. litigation position in those proceedings.

### AT Turf Wars

#### 2NR cited the Shen and Wang evidence about Chinese dispute resolution

### AT DB

#### The counterplan allows the executive to pursue mutually exclusive trade remedies that require antitrust law exemptions.

Angela Huyue Zhang, Associate Professor of Law, University of Hong Kong, ’19, "Strategic Comity," Yale Journal of International Law 44, no. 2

A. Weighing Trade and Antitrust

When dealing with export cartels, the United States generally has two options: it can seek help via a multilateral treaty network such as the WTO or through direct diplomatic negotiations with the foreign sovereign or, alternatively, it can bring antitrust actions against the foreign producers. The former is arguably a more efficient mechanism for resolution. First, although antitrust litigation in the United States can be initiated by both public and private actors, it can produce inefficient results. Private enforcement of antitrust litigation will likely involve piecemeal, decentralized, and uncoordinated efforts that aim to maximize plaintiffs' gains from litigation rather than the social welfare of the United States. Second, antitrust cases often involve lengthy discovery, thus heavily straining judicial resources. In comparison, the management of trade cases is coordinated and centralized by the U.S. executive branch, and these cases are usually resolved much more quickly through the WTO proceedings than through antitrust lawsuits.

At the same time, trade and antitrust are mutually exclusive remedies. The success of a WTO proceeding hinges on proving China's imposition of export restraints, whereas the success of an antitrust proceeding hinges on proving the absence of any government restraint (i.e., that the cartel is voluntary). In the Vitamin C Case, the United States did not directly challenge China's trading practice. Instead, the U.S. government filed a complaint with the WTO in 2009 alleging that the Chinese government had imposed export restraints on a number of raw materials.5 3 In its WTO case, the U.S. Trade Representative used MOFCOM's amicus brief in the Vitamin C litigation as evidence of the latter's trade violations. Therefore, a U.S. court holding that the Vitamin C cartel was voluntary would contradict the position of the U.S. Trade Representative and risk undermining the United States' case at the WTO. As it turned out, the United States won the raw materials case in the WTO proceeding even though the appellate panel voided the findings about MOFCOM's amicus brief and decided the case based upon other evidence. 54 With the trade claims settled, the U.S. courts did not have to worry about the spillover effects of this antitrust decision on the United States' trade claims.

#### Counterplan is mutually exclusive. The counterplan lets the executive choose whether to pursue antitrust or trade remedies, which are the opposite of antitrust.

Angela Huyue Zhang, Associate Professor of Law, University of Hong Kong, ’19, "Strategic Comity," Yale Journal of International Law 44, no. 2

Indeed, the U.S. government has taken a fluid stance with regard to export cartels. When a trade remedy is no longer desirable, the executive branch has tried to persuade U.S. courts to refuse to grant conclusive deference to a foreign government's statement, as in the Vitamin C Case. Meanwhile, when the executive branch prioritizes the protection of domestic industries from foreign competition, it has tried to persuade U.S. courts to treat a foreign government's statement as conclusive, as in Matsushita Electric. This shows that the basis of the executive branch's position has not been the law; rather, it has been politics. Ultimately, the decision on which approach to pursue comes down to assessing the cost and benefits of using either trade or antitrust remedies-which are mutually exclusive-in dealing with the conflict.

#### The perm sends a conflicting signal by simultaneously pursuing unilateral and multilateral strategies. Mixed signals crush global norms of trade – the counterplan alone restores certainty in international trade law.

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,

As was discussed in Part I.B., comity refers to "the respect nations afford each other by limiting the reach of their laws." 165 Prior to the Supreme Court case Hartford Fire Insurance Co., which narrowed the comity analysis to only situations where it would be impossible for a foreign entity to comply with both U.S. and foreign nation's laws, federal courts considered a host of factors to determine if the Sherman Anti-Trust Act was barred from applying extraterritorially. Section 403 of Restatement (Third) of the Foreign Relations Law of the United States provides eight factors a court should consider when deciding whether "a state may [or may] not exercise jurisdiction to prescribe law with respect to a person or activity having connections with another state." 166 These eight factors include: (1) the link of the activity to the territory of the regulating state; (2) the connection between the regulating state and the person principally responsible for the activity to be regulated; (3) the character, importance, extent, and degree of importance of the regulation to the regulating state; (4) the existence of justified expectations that might be protected or hurt by the regulation; (5) the importance of the regulation to the international political, legal, or economic system; (6) the extent to which the regulation is consistent with the traditions of the international system; (7) the extent to which another state may have an interest in regulating the activity; and (8) the likelihood of conflict with regulation by another state. 167

Justice Scalia, in his dissenting opinion in Hartford Fire Insurance Co., highlighted many of these factors and determined that international comity barred the Sherman Anti-Trust Act's extraterritorial application in that case. 168 However, the majority decided to narrow the comity analysis by only considering if "the non-U.S. law must require the action being challenged so that 'compliance with the laws of both countries is...impossible."' 169 This narrow comity analysis has led to the broadening of the Sherman Anti-Trust Acts extraterritorial application, which jeopardizes the economic well-being of the global economy. While some courts have disregarded the Supreme Court's narrow comity analysis, by claiming that the Supreme Court "left unclear whether it was saying that the only relevant comity factor in that case was conflict with foreign law...or whether the Court was more broadly rejecting balancing of comity interests in any case where there is no true conflict," Congress should expressly provide federal courts with a broad range of factors it should consider to ensure the United States respects the laws of other nations. 170 Specifically, Congress should amend the FTAIA by explicitly providing that the Sherman Anti-Trust Act only applies extraterritorially in cases where it does not offend the sovereignty of a foreign nation.

In essence, to ensure the economic prosperity of the global economy, the United States Congress should be proactive in amending the FTAIA. Specifically, Congress should prescribe a broad international comity test for courts to consider when deciding if the Sherman Anti-Trust Act should apply extraterritorially. If international comity is taken seriously, unlike its most recent application by the Supreme Court in Hartford Fire Insurance Co., there will be a greater degree of compliance by the international community and more certainty will be provided to consumers and producers. Moreover, federal courts should not wait until Congress amends the FTAIA. In fact, federal courts should, on its own accord, extensively apply an international comity analysis to every case where a foreign entity is involved. As was previously mentioned, some courts continue to apply a robust international comity analysis. Specifically, the Ninth Circuit Court of Appeals in Mujica v. Airscan Inc. considered:

[T]he location of the conduct in question, the nationality of the parties, the character of the conduct in question, the foreign policy interests of the United States, any public policy interests, the strength of the foreign governments' interests, and the adequacy of the alternative forum. 171

Thus, until the United States Congress takes the necessary step to amend the FTAIA, federal courts should consider applying an international comity analysis to all cases that involve an international entity. By adopting a broad international comity analysis: (1) foreign nations would be less likely to adopt burdensome blocking statutes, (2) consumers and producers would have more certainty through unified laws, (3) the global economy will continue to prosper because of the certainty and predictability of the law, and (4) foreign nations may become more amenable to enter into bi-lateral treaties with the United States

### 2NC – AT: PDCP

#### Requires across-the-board prohibitions. The counterplan isn’t across the board because it allows antitrust violations in the circumstance that those violations are better prosecuted in the WTO.

Justice White, ’87, California v. Cabazon Band of Mission Indians, 480 US 202 - Supreme Court 1987

Following its earlier decision in Barona Group of Capitan Grande Band of Mission Indians, San Diego County, Cal. v. Duffy, 694 F. 2d 1185 (1982), cert. denied, 461 U. S. 929 (1983), which also involved the applicability of § 326.5 of the California Penal Code to Indian reservations, the Court of Appeals rejected this submission. 783 F. 2d, at 901-903. In Barona, applying what it thought to be the civil/criminal dichotomy drawn in Bryan v. Itasca County, the Court of Appeals drew a distinction between state "criminal/prohibitory" laws and state "civil/regulatory" laws: if the intent of a state law is generally to prohibit certain conduct, it falls within Pub. L. 280's grant of criminal jurisdiction, but if the state law generally permits the conduct at issue, subject to regulation, it must be classified as civil/regulatory and Pub. L. 280 does not authorize its enforcement on an Indian reservation. The shorthand test is whether the conduct at issue violates the State's public policy. Inquiring into the nature of § 326.5, the Court of Appeals held that it was regulatory rather than prohibitory.[8] This was the analysis employed, with similar results, 210\*210 by the Court of Appeals for the Fifth Circuit in Seminole Tribe of Florida v. Butterworth, 658 F. 2d 310 (1981), cert. denied, 455 U. S. 1020 (1982), which the Ninth Circuit found persuasive.[9]

We are persuaded that the prohibitory/regulatory distinction is consistent with Bryan's construction of Pub. L. 280. It is not a bright-line rule, however; and as the Ninth Circuit itself observed, an argument of some weight may be made that the bingo statute is prohibitory rather than regulatory. But in the present case, the court reexamined the state law and reaffirmed its holding in Barona, and we are reluctant to disagree with that court's view of the nature and intent of the state law at issue here.

There is surely a fair basis for its conclusion. California does not prohibit all forms of gambling. California itself operates a state lottery, Cal. Govt. Code Ann. § 8880 et seq. (West Supp. 1987), and daily encourages its citizens to participate in this state-run gambling. California also permits parimutuel horse-race betting. Cal. Bus. & Prof. Code Ann. §§ 19400-19667 (West 1964 and Supp. 1987). Although certain enumerated gambling games are prohibited under Cal. Penal Code Ann. § 330 (West Supp. 1987), games not enumerated, including the card games played in the Cabazon card club, are permissible. The Tribes assert that more than 400 card rooms similar to the Cabazon card club flourish in California, and the State does not dispute this fact. Brief for 211\*211 Appellees 47-48. Also, as the Court of Appeals noted, bingo is legally sponsored by many different organizations and is widely played in California. There is no effort to forbid the playing of bingo by any member of the public over the age of 18. Indeed, the permitted bingo games must be open to the general public. Nor is there any limit on the number of games which eligible organizations may operate, the receipts which they may obtain from the games, the number of games which a participant may play, or the amount of money which a participant may spend, either per game or in total. In light of the fact that California permits a substantial amount of gambling activity, including bingo, and actually promotes gambling through its state lottery, we must conclude that California regulates rather than prohibits gambling in general and bingo in particular.[10]

#### (B) requires ex ante prohibitions. The counterplan is an ex-post remedy.

Emmet G. Sullivan, United States District Judge, ’20, PJES BY AND THROUGH ESCOBAR FRANCISCO v. Wolf, 502 F. Supp. 3d 492 - Dist. Court, Dist. of Columbia 2020

The Court first reviews "the language of the statute itself." United States Ass'n of Reptile Keepers, Inc. v. Zinke, 852 F.3d 1131, 1135 (D.C. Cir. 2017). Both Plaintiff and the Government provide various definitions for the word "introduction" and the phrase "prohibit... the introduction of." See Pl.'s Prelim. Inj. Mem., ECF No. 15-1 at 25-26 (citing Introduce, Universal English Dictionary 1067 (John Craig ed. 1861) (the "term— `introduction'—meant then, as now, `the act of bringing into a country.'"); Gov't's Combined Opp'n, ECF No. 42 at 29-30 (citing Universal English Dictionary 458 (John Craig ed. 1869) ("to `prohibit ... the introduction' naturally means to intercept or prevent such a process."). The Government further states the meaning of the word "prohibit" is "to forbid; to interdict by authority; to hinder; to debar; to prevent; [or] to preclude." Gov't's Combined Opp'n, ECF No. 42 at 30 (citing Prohibit, Oxford English Dictionary 1441 (1933)). Based on these definitions, the Government argues that Section 265 "clearly includes the authority to intercept persons who have already crossed the border and are in the process of being introduced into the United States." Gov't's Objs., ECF No. 69 at 16.

Magistrate Judge Harvey assumed without deciding that the Government's interpretation —intercepting or preventing a process was legally sound, finding that even if the court "accept[s] that `to `prohibit... the introduction' means `to intercept or prevent such a process', [it] does not lead to the conclusion that `prohibition,' `interception,' or `prevention' includes `expulsion.'" R. & R., ECF No. 65 at 25. Magistrate Judge Harvey reasoned that to "prohibit" "connotes stopping something before it begins, rather than remedying it afterwards." Id. at 25-26.

#### “Scope” --- the counterplan reduces the scope of antitrust law by limiting the court’s scope of activities used to deter and discover antitcompetitive practices. When courts defer to the WTO, they accept a mutually exclusive trade remedy.

Enrico Alemani et al, Organisation for Economic Co-operation and Development Economics Department, Caroline Klein, Isabell Koske, Cristiana Vitale and Isabelle Wanner, ’13, NEW INDICATORS OF COMPETITION LAW AND POLICY IN 2013 FOR OECD AND NON-OECD COUNTRIES OECD ECONOMICS DEPARTMENT WORKING PAPERS No. 1104

Scope of action: The effectiveness of a competition regime depends on the scope of the activities it can undertake to deter, discover, stop and punish anticompetitive behaviours and mergers. These are measured by the extent of exemptions from the competition law for public and foreign firms, the powers of the institutions enforcing the competition law to investigate and to impose sanctions on competition law infringements and to investigate and remedy or block anticompetitive mergers, and the possibility for individuals, firms or group of consumers to take legal action against firms whose actions have caused them economic or financial harm.

### 2NC – AT Rules Against Plan

# 1NR

### 1 – AT: pdb – 1nr

#### Fails to resolve the net benefit:

#### 1. Refusal – following through on withdrawing cooperation is necessary to make the threat credible in the future. Acquiescence can’t engender uncooperative federalism since immediate fiat means the fed does the plan independently, not due to state pressure. That’s Gerken.

#### 2. Conflict – the perm removes it by aligning states and fed as partners.

Elizabeth Weeks Leonard 10, Visiting Professor of Law at the University of Georgia and Professor of Law at the University of Kansas, JD from the University of Georgia, BA from Columbia University, “Rhetorical Federalism: The Value of State-Based Dissent to Federal Health Reform”, Hofstra Law Review, Fall 2010, 39 Hofstra L. Rev. 111, Lexis

A. Uncooperative Federalism

Uncooperative federalism, a theory articulated by Jessica Bulman-Pozen and Heather Gerken, suggests that even when states actively refuse to cooperate with the federal government, their resistance may be beneficial. To understand uncooperative federalism, it is helpful to place the theory in the context of other federalism theories. Bulman-Pozen and Gerken offer the following matrix, which I slightly modify, in their footnote 18.

Table

Description automatically generated

The vertical axis represents the normative position of what states should do: either they should serve as rivals or challengers to the federal government, or they should serve as friends or allies with the federal government. The horizontal axis identifies two strategies to facilitate healthy federal-state relations: either the power of states as sovereigns, or the power of states as servants. The authors note that most existing scholarship falls in Box 1, the state autonomy or dual sovereignty view of federal-state relations, or Box 4, the cooperative federalism view. Their theory fills Box 2, the affirmative case for states as rivals and challengers from the posture of servants.

For Box 3, Bulman-Pozen and Gerken suggest Roderick Hills's "functional theory." Hills favors state autonomy not so that states can operate as dual or separate sovereigns, but so that they can bargain effectively for their role within a cooperative, integrated federal regime. States, under their reserved powers, hold a property right to refuse to lend state administrative processes to implement federal policies, which right they can sell in a freely negotiated trade, like any other private contractor. Cooperation is a good thing, but only when the federal government "purchases" state services through voluntary agreements.

Dual sovereignty or state autonomy, like uncooperative federalism, urges states to rival and challenge the federal government but from the posture of sovereign powers. Values associated with the dual [\*121] sovereignty view include providing alternative, more accessible forums for citizen participation in the political process. In addition, different territories may have different tastes and needs, especially on social policy matters. The diversity of approaches creates a "political market," allowing citizenry a choice of "laws, customs, and attitudes," and ultimately, exit rights. States also serve as laboratories of democracy, experimenting and crafting solutions to problems, which approaches can be borrowed by other states and the federal government.

[\*122] The dual sovereignty scholarship recognizes the value of dissent, especially state-level dissent, within the federal system. Dissent "contributes to the marketplace of ideas, engages electoral minorities[,] … and facilitates self-expression." The Framers envisioned friction, clashes, and jarring as part of the constitutional design. States may act as lobbyists and litigants, challenging federal policies and laws. Objections may be voiced by states qua states, or by states as spokespersons for individuals.

Cooperative federalism, by contrast, envisions the federal government and states working together as partners to address common problems or implement legislation. States serve as supportive allies, freely and voluntarily, albeit often with strong encouragement, implementing federal policies. Conditional spending programs, such [\*123] as Medicaid, are prime examples of cooperative federalism. Under its spending power, Congress entices states to enact laws or implement programs by conditioning federal funding on states' compliance with broad federal requirements, even though the federal government cannot directly regulate states or "commandeer" state regulatory authorities to implement, administer, or enforce federal programs. ACA employs several cooperative federalism strategies, including conditional spending, conditional preemption, grants, and contracts, to engage state cooperation in implementing the massive package of health care reforms.

Uncooperative federalism focuses on the power that states wield precisely because of their subservient posture vis-a-vis the federal government. The theory emphasizes the "power of the servant" and "the ways in which integration can serve as a distinct source of strength." Lacking adequate financial resources or regulatory reach to implement comprehensive programs, the federal government often [\*124] depends on states to implement and administer federal policies. Because Congress cannot simply mandate states to administer federal programs, it must offer carrots, such as conditional funding or block grants, or sticks, such as conditional preemption or threats to usurp state implementation. In so doing, the federal government cedes considerable power and discretion to states. For example, under Medicaid, states must comply with broad federal requirements but otherwise are free to tailor their state plans to meet their citizens' particular needs, still receiving federal matching dollars for every state dollar spent. Even though the federal government ultimately holds the threat of revoking federal funds or taking over state programs, financial, political, and practical realities may render that threat an empty one.

States' power as servants also derives from their integration into federal program implementation. State regulators and policymakers have regular interaction with federal authorities in administering complex, cooperative programs. State actors may develop subject-matter specialization within certain areas, such as environmental or health policy, which transcends federal and state lines of authority. A related source of power derives from the fact that states serve two masters: the federal government and their state constituents. Voters' dissenting views give states the political will and capital to challenge federal policies.

Bulman-Pozen and Gerken conclude that uncooperative federalism can be useful within a well-functioning federal system. Friction between the federal government and states fosters a rich dialogue, clarifies accountability, and encourages political participation. Doctrinal implications of the uncooperative federalism theory suggest that commandeering, which is considered unacceptably intrusive on state autonomy to Box 1 adherents, perhaps should be allowed or encouraged under Box 2 because it engenders dissent. Uncooperative federalism, like state autonomy or dual sovereignty, prefers narrow preemption but not because state power should be interpreted as broadly as possible but, [\*125] rather, as a way to create larger overlapping spheres of federal and state regulatory authority thereby ensuring ongoing conflict and jarring.

The authors are equivocal on the value of conditional spending programs like Medicaid in advancing the uncooperative federalism thesis. The amount of power that states wield as servants under conditional spending schemes depends on how badly states need the federal money. If states have no real choice but to accept the federal funds, conditional spending essentially becomes commandeering, sparking various forms of beneficial state resistance and dissent. But if states can freely decline the federal government's offer or bargain for additional terms, little meaningful dialogue remains. States that freely opt-out of cooperative federalism programs have little reason to object, while states that bargain effectively may have their objections appeased.

### 2 – AT: pdcp – 1nr

#### Severs the ‘federal’ government – voting issue for deterrence.

OED 89 – Oxford English Dictionary, 2ed. XIX, p. 795

b. Of or pertaining to the political unity so constituted, as distinguished from the separate states composing it.

### 3 – AT: text and function – 1nr

#### 1. Err neg – in no world does the CP fiat the plan, only thing we fiat is the states threaten the fed and revoke cooperation. Any theory interp that limits out this limits out every other CP because all of them MIGHT THEORETICALLY result in plan action. AND, neg is fucked on this topic -- Khan hoses link UQ and all affs have to do is find AT states and AT regulate.

#### 2. We are textually competitive – we PIC’ed out of “prohibitions” and the counterplan’s actor is the states, not the fed.

#### 3. Counterplans only have to be functionally competitive, and textual permutations are illegitimate:

#### Allowing functional intrinsicness justifies a slew of “word scramble permutations” (that was explained above.) that allow perms that do the opposite of the plan and additions of elements that are neither in the plan nor counterplan.

#### Sophistry – plan texts are policy shorthand, not an exact description of implementation. Multiple virtually synonymous plan texts prove wording reflects strategic choice more than any coherent metric for competition.

#### They are guaranteed ground due to functional competition, since we are introducing a distinct version of the aff.

#### Reasonability – decide the legitimacy of counterplans on a case by case basis. They get certainty, delay, uncooperative federalism bad, say no, legal jurisprudence deficits, add-ons, or disads to the counterplan’s process. Functional competition bad is too brute of a tool that ends up limiting out good counterplans – this means winning theory justifies our model of competition.

### 4 – AT: intrinsic perm – 1nr

#### 1 – Beefed the perm text – prohibiting all anticompetitive effects STILL PROHIBITS THEM in other countries, which means the perm does the aff and has the states threaten to do the AFF AND THEN SOME, so all of our perm both answers apply.

#### 2. Reject functionally intrinsic perms. They enable the aff to strategically splice together words to deny the net benefit to any counterplan and derive new offense via textually artificial perms. They have to win theory to justify it – otherwise, presume against intrinsicness because it’s a non-resolutional and arbitrary standard, so every theory argument becomes a net benefit to a model devoid of intrinsicness. And, if we win textual competition is bad, then we’ve beaten the logical basis.

#### 3. Functional and textual competition isn’t a justification for intrinsicness. If they win counterplans must be functionally and textually competitive, then perms must be both functionally and textually non-intrinsic because both words and function matter – it’s the same principle.

#### 4. Can’t solve the net benefit – the vagueness of the perm text means it doesn’t specify a policy the fed needs to enact for the states to resume cooperation with the fed. That either destroys any cooperative relationship between the state and the fed – which obviously can’t produce coordinated environmental policy – or it demonstrates the states’ threat to suspend cooperation is toothless, which can’t guarantee its application in future cases. Independently, it’s theoretically illegitimate since later speeches can always re-clarify what the perm is intended to target or solve.

### 5 – AT: say no – 1nr

#### States have leverage over antitrust – aggressive, coordinated action via conditioning cooperation forces the fed to acquiesce.

Greve ‘5 [Michael S; Professor at the George Mason University School of Law; 2005; “Cartel Federalism? Antitrust Enforcement by State Attorneys General”; <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=5317&context=uclrev>; University of Chicago Law Review; accessed 9/15/21; TV]

In fact, Ticor presented the FTC and the U.S. Solicitor General with a massive federalism problem. Among the obstacles was an effusively "federalist," pro-immunity decision by then-Judge Anthony Kennedy in a case presenting very similar questions." Predictably, Ticor played the federalism angle and especially the opinion of Kennedy-by then, a crucial vote on an increasingly federalism-friendly Supreme Court-to the hilt." The majority states' brief allowed the federal government, which had theretofore ignored Ticor's federalism argument, to denounce that argument as rank opportunism.4 Justice Kennedy's explicit reliance on the majority states' averments suggests that the FTC might well have lost the case but for the states' support.

If the federal government had every reason to seek the states' support, the states had equally good reasons to lend it. The Ticor briefs were submitted shortly before a certiorari petition in Hartford Fire Insurance Co v California,9' then described by a leading state antitrust enforcer as "the biggest and most important civil case ... pending in the United States."9' The states had initiated the Hartford litigation despite the FTC's severe misgivings, and there was every reason to think that the outcome could well depend on the U.S. government's position before the Supreme Court-which was by no means a foregone conclusion at the time of Ticor. Lo, at the end of the day, in Hartford the federal government deferred to the states.93

The proximity and parallelism between the states' and the federal enforcers' interests do not imply some outright quid pro quo. An explicit bargain actually seems unlikely, since both sides sport multiple institutional actors who cannot easily commit their sister agencies, let alone their successors in interest.9 Moreover, the analysis is meant to capture the political economy of the federal-state transaction (which the economics literature treats under the heading of "incomplete contracts"), not its social dimension (which will to the participants look like collegial, if not frictionless, "networked enforcement"). So understood, though, the stipulated logic fits, and may help to explain, the trajectory of federal-state antitrust relations from confrontation during the Reagan years to increased cooperation since the first Bush administration and to this day.95 Throughout, state-sponsored cartels were a top enforcement priority for the FTC, under both Republican and Democratic administrations. Federal enforcers soon realized that state opposition often impedes federal enforcement at this front, and that state support is worth something. Conversely, an aggressive state agenda requires federal accommodation. The broad enforcement powers of state authorities, from divestiture remedies to indirect purchaser actions, may now be settled law. But that was not true twenty-five years ago, when state attorneys general aspired to play a more prominent role in antitrust law. At that time, the states needed federal accommodation, both in the everyday enforcement process and in high-stakes cases involving questions of federal preemption and prerogatives, where the federal government's official position often makes a crucial difference. And one of the few meaningful concessions the states had to offer was their support for federal enforcement efforts that might otherwise be perceived as nationalist intrusions into "states' rights."

#### Yes follow-on---

#### 1---Political incentives---the fed needs the states to implement drug laws, immigration and climate initiatives

#### 2---Constituent support---there would be massive congressional pressure because every state declares its support for the plan, nobody in congress would go against that---that’s Gerken

#### Political costs force federal compliance.

Heather Gerken 17, J. Skelly Wright Professor of Law at Yale Law School, JD from the University of Michigan Law School, AB from Princeton University, “We’re About To See States’ Rights Used Defensively Against Trump”, Vox, 1/20/2017, https://www.vox.com/the-big-idea/2016/12/12/13915990/federalism-trump-progressive-uncooperative

Progressives have long been skeptical of federalism, with the role that “states’ rights” played in the resistance to the civil rights act and desegregation typically featuring prominently in their criticism. Its ugly history even led one 20th-century scholar to insist that “if one disapproves of racism, one should disapprove of federalism.” Even now, with every national institution in the hands of the GOP, progressives associate federalism with conservatism and shy away from invoking the language of federalism to change the policies they oppose. That is a mistake. Federalism doesn’t have a political valence. These days it’s an extraordinarily powerful weapon in politics for the left and the right, and it doesn’t have to be your father’s (or grandfather’s) federalism. It can be a source of progressive resistance — against President’s Trump’s policies, for example — and, far more importantly, a source for compromise and change between the left and the right. It’s time liberals took notice. Here are three important ways progressives can take a chapter from the conservatives’ playbook and use their control over state and local governments to influence the national agenda, shape policy results, and encourage political compromise. If Jerry Brown or Andrew Cuomo or Eric Garcetti is looking for a “to do” list for the next four years, it’s here. Uncooperative federalism People assume that if Congress changes a law, everything changes on a dime. They forget that Congress depends heavily on states and localities to implement federal policy. The federal government doesn’t have enough resources to deal with immigration, enforce its own drug laws, carry out its environmental policies, build its own infrastructure, or administer its health care system. Instead, it relies on the states to do much of this work. We call such arrangements between the states and federal government “cooperative federalism.” But we forget that they create many opportunities for what Jessica Bulman-Pozen and I have called “uncooperative federalism.” Progressives at the state and local level can influence policy simply by refusing to partner with the federal government. By doing so, they force issues onto the national agenda, foregrounding debates that the Republicans would rather avoid. More importantly, defeating state or local opposition costs fiscal resources and political capital the federal government would rather employ elsewhere. The GOP-controlled federal government can’t put cops on every beat or bureaucrats at every desk; it needs state and local officials to get its agenda through. If blue states and cities refuse to implement Trump’s agenda, Republicans will sometimes be forced to compromise rather than pay a political and fiscal price.

### 6 – AT: DS trade – 1nr

#### 1 – Yes it does. Rest of deficits are irrelevant if we win that the US says yes because it results in the action of the plan – have not read a card that the fed-states fight is perceived by other countries. It looks no different: there’s always lobbying by various political interest, so no action looks uncoerced. The question is just the effectiveness of external leverage, not whether it exists.

#### 2 – If anything, the CP sends a stronger and better signal:

#### A) It has all 50 states collectively demand the plan---that sends a literally unprecedented signal of support that’s seen as U.S. interest

Julie Melissa Blase 3, PhD in Government from the University of Texas, BA from the University of Texas at Austin, “Has Globalization Changed U.S. Federalism? The Increasing Role of U.S. States in Foreign Affairs: Texas-Mexico Relations”, Doctoral Dissertation, December 2003, https://repositories.lib.utexas.edu/bitstream/handle/2152/463/blasejm039.txt

Although what the states and cities are doing may not rise to the level of federal law, many of these policy initiatives are in harmony with domestic policy goals. Collectively, it can be argued, they serve to shape the foreign relations of the nation as a whole. Ivo Duchacek sees no difference in relations conducted by federal actors and by subnational actors. "If by diplomatic negotiation we mean processes by which governments relate their conflicting interest to the common ones, there is, conceptually, no real difference between the goals of paradiplomacy and traditional diplomacy: the aim is to negotiate and implement an agreement based on conditional mutuality."45 Brian Hocking objects to treating the foreign relations of subnational governments as if they were something distinct from the federal level. Hocking studies what happens in federal systems when foreign policy issues become local concerns. He sets his approach apart from the complex interdependence crowd, such as Duchacek, saying that ideas such as "paradiplomacy" places subnational activities outside of traditional diplomatic patterns. Hocking sees non-central governments as integrated into a dense web of diplomatic interactions, in which they serve more as "allies and agents" in pursuit of national objectives rather than as flies in the ointment. "The nature of contemporary public policy with its dual domestic- international features, creates a mutual dependency between the levels of government and an interest in devising cooperative mechanisms and strategies to promote the interests of each level."46 Rather than separating the activities of non-central governments from those of central governments, Hocking's goal is to "locate" subnational governments in the traditional diplomatic and foreign policy processes initiated and carried through by the federal government. But what Hocking does not look at as closely are the ways in which subnational governments initiate relations directly with foreign governments. Looking at why states initiate their own foreign relations is the way to determine to what degree the states, in pursuit of their own goals, can be "allies and agents" of the federal government. This dissertation addresses state- initiated relations with foreign governments to see whether the states are acting as de facto agents of the federal government, in pursuit of shared goals or distinct state interests. But one point to consider is that the development of state roles is not a matter of devolution. Many of the developments at the subnational level are state and local responsibilities to begin with. While the federal government is responsible for trade policy, states have the primary role in economic development, and criminal justice is a state and local concern, albeit state and local governments share responsibility with the federal government for public safety. But the states are active in the policy areas examined here not so much because the federal government has mandated they be so, but because globalization has changed the nature of governing at the subnational level. These developments signify not a transfer of power from the federal level to the states but an expansion of traditional state- level powers.

#### B) That the demand works and the fed accedes is seen abroad as federal endorsement

Nick Robinson 7, JD from Yale Law School, Fox Fellow at Jawaharlal Nehru University, New Delhi, “Citizens Not Subjects: U.S. Foreign Relations Law and the Decentralization of Foreign Policy”, Akron Law Review, Lexis

State and local governments are arguably seen as representing the U.S. government abroad in a more official capacity than U.S. non-state actors. The governments of these localities are democratically elected and so it is more likely that they will be seen as acting on behalf of the American people. Additionally, the federal government generally has a greater ability to control the actions of these localities than non-state actors. Therefore, there is a greater chance that nonintervention by the federal government to stop offensive activity will be seen as federal endorsement of such activity. Such logic though should caution against court intervention in these cases rather than encourage it. If localities' actions damage U.S. foreign policy interests, the federal government can easily preempt the state or local policies in question. Further, with the world's increased interconnectedness, it is more likely that if a foreign government takes offense to a locality's policy it can discriminate between the policy of the locality and the policy of the federal government. n155

### 7 – AT: clarity – 1nr

#### Same action as the aff – above

### 8 – AT: coherence, kovacic and nam – 1nr

#### Neither is about the states, not about uncooperative federalism at all, our cards above say solves signalling

### 9 – AT: FTC fights – 1nr

#### This card is about the other counterplan, BUT it is not responsive because we will win that (1) the WTO will rule for the U.S., which means the FTC does not have to act, and (2) the CP fiats that Congress initiates suit in U.S. court over domestic anticompetitive practices, which fiats THRU FTC OPPOSITION bc we require them to bring suit.

### 10 – AT: !D – 1nr

#### COVID and new partnerships between the far-right and other terror groups increase the risk of a WMD-level attack.

Yonah Bob 20. the Jerusalem Post's intelligence, terrorism and legal analyst and Literary Editor, graduated with honors from Columbia University and Boston University Law School. “Far-right obsession with bioterror could lead to work with al-Qaeda, Iran”. Jun 25 2020. Jerusalem Post. https://www.jpost.com/international/far-right-obsession-with-bioterror-could-lead-to-work-with-al-qaeda-iran-632662. wms-hhb.

The specific possibility of far right cooperation with Iran or al-Qaeda was played up by Andrei Breivik already in a 2011 manifesto.

Breivik killed 77 people in 2011 in Oslo, and some of the worst far right terrorists globally through 2019 wrote about him as a key inspiration in their own manifestos.

AFTER REVIEWING the possibility of obtaining WMDs from Serbian Nationalists and Christian Nationalists in the Middle East, Bervik explores the idea of receiving WMDs from “extremely high risk sources, Jihadi groups... There might come a time when we, the PCCTS, Knights Templar [a group he formed] will consider to use or even to work as a proxy for the enemies of our enemies.”

Essentially, Breivik writes that if all current efforts fail, the PCCTS, Knights Templar “will for the future consider working with the enemies of the EU/US hegemony such as Iran... al-Qaeda, al-Shabaab or the rest of the devout fractions of the Islamic Ummah with the intention for deployment of small nuclear, radiological, biological or chemical weapons in Western European capitals and other high priority locations.”

Karmon writes that, “Such ad hoc cooperation with jihadi groups or even with Iran [which is known to finance radical right media and Holocaust deniers] should not be discarded but rather monitored closely.”

In terms of harmful impact, Breivik claims that “a briefcase full of high-grade anthrax has the potential to kill as many as 200,000 people if dispersed effectively.”

Writing in 2011, Breivik ironically set a 2020 deadline after which his group would consider itself free to explore all WMD options, including bioterrorism from any seller.

In terms of kinds of bioweapons, Breivik’s treatise focused on Bacillus anthracis (the causative agent of anthrax), ricin and concentrated liquid nicotine.

Aerosolized anthrax, nicotine, and ricin are considered deadly BWs, but Breivik only mentioned the use of aerosolized anthrax, notes the ICT report.

Breivik focused on using un-aerosolized ricin and nicotine for armed assaults, though the report says the greater concern is a terrorist releasing chemical and/or biological agents into a building’s ventilation system.

On March 27, 2019, and again on August 22, 2019, a document known as the White Resistance Manual began resurfacing on the white supremacist forum Stormfront, says the report.

According to the report, links to the document were shared by multiple accounts on Gab and BitChute, and it has thus far been available for more than 3,000 online users.

Curiously, the report says that the manual bore a striking resemblance to the shorter Lone Mujahid Guide, which was published by al-Qaeda.

The inspiration between far-right and Islamist terrorists works in both directions.

In 2014, an ISIS laptop was found with large amounts of material on WMDs from the White Resistance Manual and other far right publications.

Describing broader trends, the report says that in the last decade, “73.3% of all domestic extremist-related killings in the United States have been perpetrated by right-wing extremists. In Europe, a similar trend is visible. In Germany... domestic intelligence services have observed a steady rise in the number of potentially violent right-wing extremists, with current estimates at 13,000.”

Karmon discusses the views of experts who believe “the threat from far right domestic terrorism is far more serious for US national security than jihadi threats... COVID-19... will give impetus to anti-government conspiracy theories, growing hope, plans, coordination and intention to bring about radical societal transformation through acts of violence.”

Moreover, the report notes recent warnings from UN Secretary-General Antonio Guterres and security experts from the Council of Europe, “The COVID-19 pandemic has shown” terrorists of all colors “how vulnerable modern society is to viral infections and their potential for disruption.”

#### Extinction, overcomes traditional barriers.

Diane DiEuliis 19, National Defense University, Washington, D.C., USA; Andrew D. Ellington, University of Texas at Austin, Austin, USA; Gigi Kwik Gronvall, Johns Hopkins Center for Health Security, Department of Environmental Health and Engineering, Johns Hopkins University Bloomberg School of Public Health, Baltimore, USA; Michael J. Imperiale, Department of Microbiology and Immunology, University of Michigan, Ann Arbor, USA. 2019. “Does Biotechnology Pose New Catastrophic Risks?” Global Catastrophic Biological Risks, edited by Thomas V. Inglesby and Amesh A. Adalja, Springer International Publishing, pp. 107–119. Springer Link, doi:10.1007/82\_2019\_177.

4 Modifying Viral and Bacterial Genomes

In addition to recreating or resurrecting viruses, synthetic biology facilitates the introduction of new traits onto viral genomes. For example, a significant amount of effort is underway in the gene therapy field to produce viruses that target specific cells or tissues through modifications of their receptor tropism (Asokan and Samulski 2013; Goins et al. 2016). Unfortunately, the same techniques used to introduce therapeutic genes (transgenes) into viruses may also be used to introduce genes that encode harmful proteins or toxins. For gene therapy, transgenes are usually expressed from viruses that have been engineered to be replication-defective, non-pathogenic, or both. However, some viruses, especially large DNA viruses, can accommodate extra genetic “payloads” without sacrificing pathogenicity or replication ability. The fitness of these viruses in the wild would not be tested and so may not be effective—and it might not be a legitimate biomedical research activity.

Another potential biosecurity consideration is the possibility that a malicious actor could “mix and match” genes from different viruses to produce a more virulent pathogen. The largest constraint on this approach is that viral genome size and organization have been finely tuned through evolutionary processes. A telling demonstration of this is the finding that simply switching the order of the genes of vesicular stomatitis virus results in a greatly attenuated virus (Wertz et al. 1998). Thus, producing a chimeric virus that exhibits enhanced virulence—particularly virulence that could be predicted by its designer—would be extremely difficult. However, synthetic biology affords an actor the possibility to interrogate a large amount of sequence space without any preconceived notion of what will work, i.e., to try many options at once (as long as an appropriate selection for the desired trait can be developed and there is sufficient access to resources). Such an approach could present a significant biodefense problem if expertly applied.

The advent of synthetic biology has added to previous biosecurity concerns about laboratory manipulations of pathogens, for example, introducing antibiotic resistance to bacteria, a longtime biodefense concern. Synthetic biology has provided a more facile route to the diversification of threats, which are challenging to mount defenses against. Manipulating bacterial genomes to introduce new features has been generally technically more straightforward than manipulating viruses, without synthetic biology. For example, transformation using plasmids is a routine laboratory technique and may be used to either introduce resistance to clinically useful antibiotics or introduce genetic pathways encoding the synthesis of toxic products. Single-cell eukaryotic organisms may also be modified by introduction of foreign DNA. As the understanding of biosynthetic pathways and the ability to engineer enzymatic functions grow, however, these capabilities will become technically more straightforward to achieve. This is one of the areas that the NASEM report deemed to be of highest relative concern, namely using an organism to deliver a toxic product in situ, for example, by introducing the organism into the host microbiome.

The ability to mix and match (or, in the parlance of synthetic biology, “plug and play”) the pathogenic characteristics of known species has expanded as an understanding of gene expression across a wide range of bacteria (or “chassis”) has become known. For example, in the past, trying to express a toxin gene in a heterologous bacterial strain would have proven challenging. Now, there are tools to help: Expression cassettes and constructs have been widely introduced across species, and tools such as T7 RNA polymerase have been adapted to function across multiple platforms. Secretion systems are better characterized, and the movement of genes not only within but between otherwise distantly related bacterial species (i.e., between Gram-negative and Gram-positive species) is commonplace. Thus, a toxin “payload” may not be restricted to a single type of bacteria, but could be introduced into virtually any species, including ones that are thought to be harmless. This allows for the manipulation of pathogenesis characteristics, including host range, tropism, and transmission frequency and mode. The effect of these multitudinous changes to the fitness of the resulting chimera may be unknown, but also may be unimportant for some weaponization or terrorism purposes.

Synthetic biology has also brought about the ability to make very large pieces of DNA and put them into organisms—including multiple genes encoding synthetic pathways for complex small molecules. This could be used to make weapons that were not possible before. In the past, the idea that any organism other than Aspergillus could make aflatoxin would have seemed fantastical, but the production of this toxin (and many others) is enabled with synthetic biology tools. More complex misuse of these tools could be binary biological weapons or complex pathogenic responses following biological signals (e.g., signals present following a successful infection using quorum sensing or products of human physiology).

The burgeoning capabilities of large DNA synthesis make possible not only serial expansion of biothreats, but their parallel expansion, as well. The design— build—test cycle that is at the heart of synthetic biology practice relies on the notion that design need not be overly precise, as many different constructs can be made and tested at the outset, allowing repetition to hone toward optimal design. There is still the question of whether a weapon would be effective—but it is possible that many different constructs could be made and released in parallel, letting natural selection determine which construct has the greatest capability for infection and spread. This may mean that multiple potential pathogens could be released earlier in the development cycle, a very different model than was exploited by biological weaponeers in the past.

Finally, synthetic biology’s contribution to biothreats is to redefine what a biothreat is, from an organism to DNA. In the past, the organism was the unit of replication. Now, DNA vectors on their own can potentially provide a means of spread, either as broad-host-range vectors or as phages. Just as the use of P1 transduction and lambda lysogeny were essential tools for the early development of molecular biology, the engineering of transmission between bacterial strains and even species is becoming a signature of synthetic biology efforts to move beyond a single organism and into the realm of the microbiome as a whole (e.g., the discovery and engineering of highly transmissible integrative and conjugative elements (ICEs) in Gram-positive bacteria). This may allow the possibility of deliberately introduced “commensal DNA,” which spreads throughout a microbiome, and then to others’ microbiomes. The original bacteria may be gone by the time such an engineered construct is triggered or before a person shows symptoms.

The microbiome is an area of active research, and there is some suggestion that the composition of the microbiome affects human disease states that are both obvious (diabetes) and much less obvious (schizophrenia). This could be amenable to weaponization for which current biodefense systems are not prepared. The targeting and spread of this kind of threat would be difficult, because the composition of the microbiome seems to be most effectively regulated by human behavior. However, as the adaptive mechanisms of microbes to the gut and other reservoirs (dermal, nasopharyngeal, oral, vaginal) are better delineated, possibilities for engineering will become available. This brings up the longer-term possibility of a sophisticated adversary introducing self-replicating DNA molecules (again, broad-host-range vectors, phage) that subtly impact the microbiome, leading to greater overall incidences of disease or dysfunction that are extremely difficult to detect or attribute (a horizontally transmitted element might be expected to be a chimera, while an organism with foreign DNA is far more suspect). Thankfully, the subtlety of such an attack would seemingly place it out of bounds for many types of adversaries.

5 The Role of Synthetic Biology in Response to Global Catastrophic Events

Historical records of plague, smallpox, and influenza outbreaks that decimated human populations demonstrate the lethal consequences of the spread of infectious disease. With a densely interconnected population and increased connectivity through modern transportation, the adverse effects of even a relatively small event are more likely than a century ago. Disease may spread much more rapidly globally, becoming a catastrophic event that outpaces the ability to respond.

### 11 – AT: spillover – 1nr

#### It creates a feedback loop that guides other cases

Richard H. Fallon 17, Jr., Story Professor of Law at Harvard Law School, “The Future of Federalism: Federalism as a Constitutional Concept”, Arizona State Law Journal, 49 Ariz. St. L.J. 961, Lexis

3. Disruptive or Uncooperative Federalism

The idea of disruptive or uncooperative federalism, and in particular its characterization as potentially attractive or beneficial, has emerged in recent, imaginative writing by Heather Gerken and others. In the view of defenders of this conception, federalism-based elements of the Constitution's design not only limit federal power; they also create a feedback loop in which states and state officials can resist or temper otherwise lawful assertions of federal authority in potentially creative, informative, and productive ways.

Like the states' rights and experimentalist conceptions, a conception of disruptive or uncooperative federalism could not purport to capture the full [\*974] complexity of the concept of constitutional federalism. It could only plausibly aspire to guide constitutional or statutory interpretation in some range of contested cases--and to do so without specifying in detail how the values that it serves relate to, cohere with, or in some instances possibly trump other constitutional values. Leading proponents of uncooperative federalism so acknowledge. For example, Dean Gerken and Professor Bulman-Pozen write that they do not "offer a single, authoritative account of federalism," that they "do not mean to suggest that contestation will always be desirable," and that they "merely argue that the benefits of uncooperative federalism have not been fully appreciated in the literature."

#### The demonstration effect encourages future use

Dr. John Dinan 11, Professor of Political Science at Wake Forest University, Ph.D. from the University of Virginia, “Contemporary Assertions of State Sovereignty and the Safeguards of American Federalism”, Albany Law Review, 74 Alb. L. Rev. 1637, Lexis

Recent state statutes and constitutional amendments challenging federal health care legislation and other federal laws have attracted significant attention, both from critics who view them as nullification acts that are inconsistent with the Supremacy Clause and from some supporters who have been equally willing to embrace the nullification label for the purpose of defending such legislation. Upon closer examination, it becomes possible to view these measures as falling short of invoking the clearly repudiated doctrine of nullification and as capable of contributing under certain conditions to safeguarding federalism principles. An analysis of these recent assertions of state sovereignty - whether regarding health care, guns, drivers' licenses, or medical marijuana - can contribute to a better understanding of the range of opportunities for states to wield influence in the U.S. federal system by showing that state statutes challenging federal law can play a role, alongside of, and occasionally in place of, traditional mechanisms by which states can advance their interests in the national political process.