# 1NC Round 5

## Off

### 1NC – WTO Deference CP

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

#### The Congress of the United States should pass legislation increasing its prohibitions on anticompetitive business practices by the private sector in the People’s Republic of China and launch a suit in the judiciary claiming violations of the mandate on the grounds that the presumption against extraterritoriality does not apply.

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

#### Counterplan’s mechanism pressures China more effectively and avoids the signal of unilateralism.

James Bacchus, member of Congress, former intl trade negotiator, former Chief judge of the WTO, ‘18, "Disciplining China's Trade Practices at the WTO: How WTO Complaints Can Help Make China More Market-Oriented," Cato Institute, https://www.cato.org/policy-analysis/disciplining-chinas-trade-practices-wto-how-wto-complaints-can-help-make-china-more

The Trump administration has argued that the World Trade Organization (WTO) has failed to address China’s “unfair” trade practices. While it is true that China’s economic rise poses a unique challenge to the world trading system, WTO dispute settlement has more potential to address China’s practices than the administration believes. If the Trump administration really does want the Chinese economy to be more market‐​oriented, it should make better use of WTO rules by filing more complaints against China. While it is often accused of flouting the rules, China does a reasonably good job of complying with WTO complaints brought against it.

There are a number of policy areas where additional complaints are possible. The U.S. Trade Representative’s Office (USTR) has been gathering detailed information on China’s practices for years and should file complaints on this basis, coordinating these efforts with key allies. And for those areas that are not well covered by WTO rules, such as state‐​owned enterprises, the United States should work with these allies to develop new rules. So far, the Trump administration has mainly relied on unilateral tariffs to open the Chinese market, but these are likely to hurt Americans, while not having much effect on Chinese trade practices. The multilateral route is a better approach to disciplining these trade practices and making China more market‐​oriented.

Introduction

There is a growing bipartisan sentiment in Washington that Chinese trade practices are a problem, since these practices are unfair to American companies in a number of ways. But there is disagreement about the appropriate response. Can multilateral institutions be of use here? Or is unilateralism the only way?

The Trump administration believes that the international dispute settlement system of the World Trade Organization (WTO) offers no effective remedy for these practices, and prefers an approach that relies mostly on unilateral tariffs. The administration sees the issue as follows. China’s mercantilist state systematically discriminates against foreign products and foreign producers in China while forcing foreign companies to hand over their intellectual property (IP) as the price of access to China’s large and growing market. China engages in widespread cheating in its trade practices, including not only high tariffs, domestic content requirements, and other traditional forms of protectionism, but also rigged regulations that erect trade barriers by favoring Chinese companies and outright theft of foreign IP. And, Trump and his trade cohorts say repeatedly, there is virtually nothing the United States can do under current WTO rules to stop this predatory Chinese behavior.

Leading administration officials have referred to the WTO’s “abject failure to address emerging problems caused by unfair practices from countries like China”1 and its “inability to resolve disputes, limit subsidies or draw China into the market status that was envisioned when China joined the WTO”2; and they have declared that the WTO “is not equipped to deal with [the China] problem.”3 Since Trump became president, the United States has pursued only one new WTO complaint against China (although it has continued to litigate some cases brought by the Obama administration). According to the U.S. Trade Representative’s Office (USTR), in a report issued in January of 2018, “The notion that our problems with China can be solved by bringing more cases at the WTO alone is naïve at best, and at its worst distracts policymakers from facing the gravity of the challenge presented by China’s non-market policies.”4 A recent report by the USTR has gone so far as to call China’s entry into the WTO in 2001 under the terms adopted at that time a mistake.5

Even some scholars with no allegiance to Trump have their doubts about the sufficiency of WTO rules and the capacity of the WTO as an international institution to confront the unique challenge of an economy like that of 21st-century China. Harvard Law professor and former USTR official Mark Wu has written that “the WTO is struggling to adjust to a rising China” because of “China’s distinctive economic structure.” He notes, “The WTO dispute settlement system has effectively resolved certain disputes and will continue to do so,” but “the system has its limits.”6 He adds, “Overall, I contend that without major change China’s rise, should it continue, will contribute to a gradual weakening of the WTO legal order.”7

While it is true that China’s rise poses a unique challenge to the WTO-based world trading system, and there are limits to what can be done to counter China’s mercantilist and protectionist practices under existing WTO rules through dispute settlement, this paper makes the case that WTO dispute settlement has considerably more potential than the Trump administration thinks, and it offers, over the long term, a far more effective means of responding to protectionist Chinese trade policies than the current Trump policy of applying illegal unilateral tariffs on billions of dollars’ worth of Chinese products entering the U.S. market—and threatening hundreds of billions more. While WTO complaints alone cannot solve all of America’s commercial problems related to China, they can be a crucial part of the ongoing effort to encourage China to see that the best way for it to rise is not by the mercantilism and protectionism of state-managed trade but, instead, by becoming a market-oriented, rule-following, fully developed nation.

Supporting China’s membership in the WTO in 2001 was not a mistake by the United States. All 163 other members of the WTO, including the United States, are much better off because China is inside the rules-based global trading system and has not been left outside it. China has made great strides since 2001 toward full compliance with the rules of the WTO trading system.

And yet, even greater strides remain to be made. Today, China faces a choice: Will it continue to move toward free markets, or will it entrust the future of the Chinese people to an economic philosophy extolling state-devised and state-driven economic decisionmaking that limits foreign competition and tips the scales against foreign producers and their products? As China confronts this choice, WTO rules and disciplines offer one opportunity, and a much better one than some believe, for showing China the merits of making the right choice of a much freer market economy.

#### 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 avoids DAs. Deference to the WTO avoids court’s involvement in lengthy, factual inquiry over political questions and 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 argued 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.

### 1NC – Protectionism DA

#### Unilateral application of extraterritorial antitrust law highlights US hypocrisy. Pro-development countries will backlash to the international trading system to protect national champion industry.

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

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

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

#### Plan’s unilateral action sends signal of unilateralism, resulting in the end of global trade, not inclusive trade. Turns 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.

#### Extinction from nuclear resource wars.

Derviş & Strauss ’21 [Kemal a senior fellow in the Global Economy & Development program at the Brookings Institution; and Sebastián; oject manager and senior research analyst in the Global Economy & Development program at the Brookings Institution; “Global governance after COVID-19,” https://www.brookings.edu/wp-content/uploads/2021/08/Global-Governance-after-COVID-19.pdf]

Some of my answers are more wishes than view. 10 years ago, no one could have imagined the impact of the previous US government on multilateralism, nor Covid one, but the lessons learned should inform the way multilateralism is approached. Definitely more solidarity is needed, and globalisation is more than ever needed. Financial globalisation has not brought the expected positive changes and has further exacerbated inequalities, while covid shows that health risks, like climate ones, are -more than ever - to be addressed more collegially. About 25 years ago I was in a meeting with George Schultz abut major international security risks-nuclear war, oil security, war and revolution maybe pandemics (not sure), and he shocked us all by opining that a global trade war really ought to be on that list. I think he was right! The governments cannot recommit to supporting multilateral systems more effectively after the Covid aftermath simply because they are unequally distributed in terms of power, wealth and wellbeing. Many will be left too behind and many will spring too forward. That I wouldn't equate multilateralism and economic liberalism/trade and openness to trade. International value chains play a positive role; however, trends will see a repatriation of economic activity. This is also necessary for fundamental resource and environmental reasons. Current levels of trade are not sustainable. Dematerialisation and new techs (for instance 3D printing) will make production more circular and resource efficient... The UN system should increase its capacity to act in a binding way with countries and multinational corporations and players with the goal of creating the embryo of three forms of global citizenship: civil, political and social En la próxima década el multilateralismo perderá importancia dado que hasta la fecha ha sido altamente ineficaz en lograr sus objetivos. Transformándose en un gigantesco aparato burocrático muy alejado de las verdaderas necesidades e inquietudes de la gente. (T: In the next decade, multilateralism will lose importance given that, to date, it has been highly ineffective in reaching its goals. Transforming itself into a giant, distant bureaucratic apparatus betrays the real needs and unrest of the people). It is more important to work on the present than predict the future. There is need for a new world order. Revamping of institutions and rethinking the priorities. I think the EU will play a much stronger role, but that does not make it a separate "pole". Disagree with the whole notion of a multipolar order (as opposed to a complex and interwoven world order that does include strong regional powers and two superpowers), so find it difficult to answer the questions framed that way. Multilateralism will be more effective should the USA and China become more accommodating towards each other interests and of course to achievements. EU in future will become more of a normative power with limited impact on major global issues. If, as I fear, the above scenario materializes it might be suicidal for humanity on earth The questions adopt an old language that builds in assumptions that I question. I do think it is likely that power and influence will be more distributed but do not think that will result in "poles". And I think the system will function more effectively because I think it will change. The recent trend of entrusting social and environmental welfare considerations to private sector, shifting these responsibilities away from government, has been highly problematic and did not lead to positive overall welfare outcomes. The Covid crisis with its major public programs seems to be turning that trend a bit.

### 1NC – Executive CP

#### The United States federal judiciary should defer to the executive’s position on whether antitrust law applies to extraterritorial business practices and solicit executive opinions in instances where the executive has not initiated action.

#### The executive branch should file an amicus brief in ensuing litigation holding that anticompetitive business practices by the private sector in the People’s Republic of China do not satisfy the criteria for a presumption against extraterritoriality and other exemptions from antitrust law.

#### 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.

#### The counterplan defers to the executive decide on whether exemptions apply in antitrust suits, instead of removing the exemptions all together. The courts should defer because the executive is institutionally best equipped to delicately balance foreign affairs.

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

As illustrated by the U.S. government's contrasting stance in regard to Japanese export cartels in the 1980s and in the recent Vitamin C Case, the optimal response to export cartels is not fixed as a specific formula. Rather, it is contingent upon the changing political and economic conditions. Thus, U.S. courts should be aware of the risks that their judgments in State-led export cartel cases could create for international relations, especially when the underlying factual circumstances are unclear. However, courts are not institutionally well equipped to make such a cost-benefit analysis. In her remarks at an antitrust conference, Judge Diane Wood, Chief Justice of the Seventh Circuit, acknowledged that it is extremely difficult to ask a court to administer comity as 234 the court's hands are often tied. This implies that U.S. courts should generally defer to the position of the executive branch, which possesses the foreign expertise and is in the best position to balance competing interests.

Indeed, in cases involving foreign relations, U.S. courts have traditionally accorded a high level of deference to the executive branch, which is in a superior position to determine strategies for the United States in such cases.235 Prominent legal scholars including Eric Posner and Cass Sunstein have proposed extending the Chevron deference doctrine to executive actions related to international 236 affairs. In a seminal article, they argue that U.S. courts should only defer to foreign sovereigns' interests after a careful assessment of the consequences.237 More specifically, they observe that the cost of deference is the loss of American control over certain regulatory activities.238 In the context of export cartels, granting immunity to foreign producers on the basis of comity implies that the United States would cede control over antitrust regulations, compromising the interests of U.S. consumers. On the other hand, Posner and Sunstein also suggest that the benefits of deference include reciprocal gains from the foreign government's deference to American regulations and the reduction of potential tension with the foreign country.239 In the context of export cartels, there could be other benefits, such as the bailing out of failing domestic producers and the sheltering of them from foreign competition, as illustrated in the Japanese export cartel cases. This approach of deferring to the executive branch would greatly simplify the current case law, which has focused too narrowly on the foreign sovereign compulsion issue. As shown in the Japanese export cartel cases, a foreign sovereign's involvement in the cartels may not even be relevant. Indeed, in certain political and economic circumstances, it might be in the best interest of the United States to encourage export cartels. In fact, the U.S. government concluded a number of VER agreements directly with foreign steel producers in the 1960s, bypassing their governmental counterparts. Nor is the appearance of the foreign sovereign in the U.S. court necessarily decisive, as shown in the Vitamin C Case. The deference analysis ultimately turns on the government's determination of whether the harm on foreign relations as a result of the refusal to defer to the foreign government will outweigh the harm done to domestic consumers if foreign producers are exempt from antitrust litigation. In practice, in cases involving State-led export cartels, the executive branch may have already initiated actions against the foreign sovereign or the foreign exporters, either through trade or antitrust. Therefore, U.S. courts' optimal responses should not be static, rather, they must take into account the specific steps the executive branch has undertaken with regard to the export cartels. More specifically, I propose the following legal framework of comity analysis when courts face inconsistent and ambiguous factual evidence in export cartel cases.

Scenario 1. Has the executive branch brought suit against the foreign exporters for antitrust violations? The executive branch is in a superior position to weigh the costs and benefits of its actions on foreign relations. Therefore, its decision to initiate an antitrust suit sends a strong signal that it deems the challenged conduct to be more harmful to the United States than the corresponding harm to foreign relations from the antitrust lawsuit.24 If a U.S. court endorses a comity-based defense in such a circumstance, it would directly conflict with the position of the executive branch and undermine the government's efforts to protect domestic consumer welfare.

Scenario 2. Has the executive branch negotiated with the foreign sovereign to impose export restraints to accommodate the desires of the United States? If so, U.S. courts should refrain from reaching a ruling that might undermine the efforts of the U.S. executive branch. Under unique political circumstances, the United States could negotiate for VER agreements to avoid potentially more drastic legislative responses to foreign exports. Foreign governments may not agree to coordinate with the U.S. government unless the latter gives adequate assurances that comity defense would be available, and exporting companies would not be found liable under U.S. antitrust law. In such a circumstance, a comity-based defense such as foreign sovereign compulsion is of critical importance for the United States and the foreign governments to establish the VER agreements.

Scenario 3. Has the U.S. government tried to persuade the foreign sovereign to abandon export restraints via diplomatic means or through other multilateral treaty networks, such as the W.T.O? As diplomacy and trade are nimbler and more efficient than antitrust litigation in resolving conflicts between exporting and importing countries, U.S. courts should refrain from making decisions that might impede such efforts. Indeed, in Resco Products, the U.S. district court suspended the antitrust suit to await the resolution of such disputes through diplomatic means or trade remedies.

Scenario 4. If the executive branch has not taken any action through trade or antitrust, U.S. courts are well advised to solicit opinions from the executive branch. In the Vitamin C Case, the Second Circuit chose to defer to MOFCOM's statements for fear of creating international tension with the Chinese government. The Second Circuit however, had attempted to make such a judgment on international relations on its own. As the executive branch's amicus brief to the Supreme Court revealed, in this case, the executive branch did not appear to believe that the harms of not granting deference to the Chinese government outweighed American interests in the prosecution of antitrust violations. In this regard, the Supreme Court made exactly the right move by proactively soliciting opinions from the executive branch before making its final decision. 240.

#### Counterplan is goldilocks. Creating an advisory function for the executive prevents states from abusing antitrust immunity while keeping foreign policy as the exclusive domain of the political branches.

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

B. Deference to the Executive

Under any framework, however, the executive branch should receive considerable deference. Courts have long recognized that the executive plays the central role in forming foreign policy223 and is best positioned to advise a court on whether the risk of offense is negligible enough that the sovereign need not be deferred to.

Revisiting its ruling in Pink, the Court in Animal Science Products distinguished the conclusive effect given to a foreign sovereign's submis-sion in that case from the general rule of respectful consideration based on the reasoning that the declaration in Pink "was obtained by the United States through official 'diplomatic channels."' 224 This seems to suggest, unsurprisingly, that the Supreme Court expects lower courts to give the U.S. government essentially conclusive authority when it is involved in foreign sovereign amici. Whenever the United States actively solicits the amicus, or enters its own amicus to the same effect, the court should consider it conclusive. In contrast, the relevant executive agency-most likely the Department of Justice or State--could eliminate any deference due to a foreign sovereign amicus by disagreeing with it in an amicus of its own.225

This would ensure that foreign policy concerns remain with the political branches. The courts already appear to follow this policy, albeit informally, in the context of treaty interpretation. Even after Pfizer and the shift to filing amicus briefs, the State Department continued to relay the positions of foreign governments in some cases involving treaty interpretation. In Sumitomo Shoji America, Inc. v. Avagliano, for instance, the Court cited to the views of the State Department conveyed in an amicus brief as well as diplomatic cables from the U.S. Embassy in Tokyo indicating that the Japanese and U.S. governments had reached an "identical position" as to the import of a treaty provision in the Friendship, Commerce and Navigation Treaty between Japan and the United States.22 6 The Court found that these combined views were "entitled to great weight." 227 In Abbott v. Abbott, the Supreme Court similarly determined that a foreign sovereign's interpretation was due deference because it was "supported and informed by the State Department's view on the issue." 228 The participation of the executive branch in the litigation performs a "vetting" function, bolstering the court's confidence that a foreign sovereign can be trusted and that a particular course of action is in line with U.S. foreign policy goals. 229

Courts would have to remain careful not to overinterpret the silence of the executive branch, however. The original decision to encourage foreign governments to file amicus briefs, rather than channel their grievances through the U.S. State Department, allowed the United States government to remain neutral and depoliticize litigation involving foreign sovereign interests while also enabling it to intervene when it so chose.23 0 When noninvolvement became the norm, any affirmative act by the U.S. government came to appear more important.23 1 Assuming that courts and the executive do not intend to return to a pre-Zenith Radio era where the executive is solely responsible for representing any government positions, this only underlines the importance of a respectful consideration standard that will ensure courts can autonomously give adequate weight to foreign government interests. A robust analysis under respectful consideration ensures the best of both situations: The executive can keep its conclusive authority when it chooses to intervene, but it can equally rest assured that the courts will treat foreign sovereigns with appropriate respect on their own.

### 1NC – Politics DA

#### Budget passes now – leadership and base pressure get moderate Dems in line.

Alexander Bolton 9/9/21. Senior reporter. “Democratic leaders betting Manchin will back down in spending fight”. The Hill. Sept 9 2021. https://thehill.com/homenews/senate/571421-democratic-leaders-betting-manchin-will-back-down-in-spending-fight

Democrats are racing ahead with a $3.5 trillion spending package that would boost funding for social programs and raise taxes despite rumblings from Sen. Joe Manchin (D-W.Va.) that he might not support legislation with that price tag.

Democratic leaders are betting they can pressure Manchin to back down on his push for spending that’s closer to $1.5 trillion or $2 trillion.

In doing so, they’re essentially daring Manchin and other moderates like Sen. Kyrsten Sinema (D-Ariz.) to vote against the eventual budget reconciliation package, knowing that the base would erupt in anger over any Democratic lawmakers who buck the party on such a high-profile vote.

Senate and House committees are scrambling to reach consensus on sections of the so-called human infrastructure bill under their jurisdictions by Friday, and Democratic staff working on the legislation haven’t received any indication that it will be pared back to appease Manchin.

Progressive activists warn that if the bill falls well below the $3.5 trillion target set by Senate and House leaders, there will be significant backlash.

Manchin warned in a Wall Street Journal op-ed last week that he won’t vote for a $3.5 trillion reconciliation bill — putting President Biden’s agenda in peril since Democrats can’t afford a single defection in the 50-50 Senate — but his shot across the bow isn’t deterring fellow Democrats.

Axios reported Tuesday evening that Manchin won’t support a package that exceeds $1.5 trillion, a number the West Virginia Democrat floated earlier this year as a potential spending target.

Manchin’s office on Wednesday declined to confirm that $1.5 trillion is a red line for him. But the figure is in line with previous comments.

Manchin told ABC News’s “This Week” in June that he wouldn’t support a large spending package if Congress could only come up with enough revenue and savings to offset the cost of a $1.5 trillion or $2 trillion bill.

In last week’s Wall Street Journal op-ed, Manchin wrote that “ignoring the fiscal consequences of our policy choices will create a disastrous future for the next generation of Americans.”

But those warnings are falling on deaf ears in the Democratic leadership and the broader Democratic caucuses.

Senate Majority Leader Charles Schumer (D-N.Y.) on Wednesday brushed off Manchin’s threat and told reporters that negotiators are still planning to unveil a bold and ambitious proposal.

“In our caucus — there are some in my caucus who believe $3.5 trillion is too much, there are some in my caucus who believe it’s too little,” Schumer said on a press call Wednesday morning. “I can tell you this: In reconciliation we’re all going to come together to get something big done and, second, it’s our intention to have every part of the Biden plan in a big and robust way.”

Asked about Manchin’s call for a “strategic pause,” Schumer insisted “we’re moving full speed ahead.”

“We want to keep going forward. We think getting this done is so important to the American people for all the reasons we have outlined,” he said. “We are moving forward on this bill.”

Speaker Nancy Pelosi (D-Calif.) told reporters Wednesday that colleagues putting together the legislation will stick with the $3.5 trillion goal, though she acknowledged the final number might be different.

“I don’t know what the number will be. We are marking at $3.5 trillion,” she said.

A senior Democratic staffer said Senate and House committees, which face an end-of-week deadline to finish their elements of the reconciliation package by the end of this week, haven’t received any indication the final version will be pared down from the $3.5 trillion top-line spending goal laid out in the budget resolutions passed last month by each chamber.

“We’re working our asses off,” said the aide. “All we’re doing is working. We have been under orders to get to agreement with our House counterparts by close-of-business Friday.”

Senate Budget Committee Chairman Bernie Sanders (I-Vt.), who has primary jurisdiction over the reconciliation process, says the spending target agreed to by congressional Democrats already represents a significant compromise with moderates.

“The overwhelming majority of members of the budget committee — and I think a good 80 or more percent of Democratic members of the Senate — supported a $6 trillion bill,” Sanders said of the spending number he originally floated ahead of the budget debate.

Sanders argues that $3.5 trillion is what needs to be spent on transforming the nation’s energy economy to address climate change and “dealing with the needs of the working class.”

“To my mind, this bill at $3.5 trillion is already a major, major compromise. And at the very least this bill should be $3.5 trillion,” he said Wednesday.

Democratic strategists warn of a backlash from the party’s base if the legislation — which includes substantial spending on long-term care for the elderly and disabled, an extension of the child tax credit, funding for expanded child care and significant investments in renewable energy sources — falls well below $3.5 trillion.

“The reaction from progressives, which is already being indicated, would be very bad. People would be very disappointed,” said Mike Lux, a Democratic strategist.

But Lux said the threats from moderates should be viewed more as bargaining positions.

“People are doing a lot of posturing right now and throwing out broad numbers and broad statements. The fact is that Joe Manchin and other Democrats in the House and Senate voted for the $3.5 trillion budget outline,” he said. “We’re going to have to work very hard to get everybody on board with the budget plan again.

“There are going to be a lot of changes, a lot of compromises that everybody is going to have to make. The most important thing is to stay calm and keep talking to each other. Sooner or later we’ll get to a package that both Joe Manchin and [Rep. Alexandria Ocasio Cortez] can embrace because we need everybody,” he added. “I think it will work itself out in the end.”

#### 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.

#### Warming causes extinction – global nuclear conflagration.

Michael Klare 20. The Nation’s defense correspondent, professor emeritus of peace and world-security studies at Hampshire College, senior visiting fellow at the Arms Control Association in Washington, DC. “How Rising Temperatures Increase the Likelihood of Nuclear War”. The Nation. Jan 13 2020. https://www.thenation.com/article/archive/nuclear-defense-climate-change/

President Donald Trump may not accept the scientific reality of climate change, but the nation’s senior military leaders recognize that climate disruption is already underway, and they are planning extraordinary measures to prevent it from spiraling into nuclear war. One particularly worrisome scenario is if extreme drought and abnormal monsoon rains devastate agriculture and unleash social chaos in Pakistan, potentially creating an opening for radical Islamists aligned with elements of the armed forces to seize some of the country’s 150 or so nuclear weapons. To avert such a potentially cataclysmic development, the US Joint Special Operations Command has conducted exercises for infiltrating Pakistan and locating the country’s nuclear munitions. Most of the necessary equipment for such raids is already in position at US bases in the region, according to a 2011 report from the nonprofit Nuclear Threat Initiative. “It’s safe to assume that planning for the worst-case scenario regarding Pakistan’s nukes has already taken place inside the US government,” said Roger Cressey, a former deputy director for counterterrorism in Bill Clinton’s and George W. Bush’s administrations in 2011.

Such an attack by the United States would be an act of war and would entail enormous risks of escalation, especially since the Pakistani military—the country’s most powerful institution—views the nation’s nuclear arsenal as its most prized possession and would fiercely resist any US attempt to disable it. “These are assets which are the pride of Pakistan, assets which are…guarded by a corps of 18,000 soldiers,” former Pakistani president Pervez Musharraf told NBC News in 2011. The Pakistani military “is not an army which doesn’t know how to fight. This is an army that has fought three wars. Please understand that.”

A potential US military incursion in nuclear-armed Pakistan is just one example of a crucial but little-​discussed aspect of international politics in the early 21st century: how the acceleration of climate change and nuclear war planning may make those threats to human survival harder to defuse. At present, the intersections between climate change and nuclear war might not seem obvious. But powerful forces are pushing both threats toward their most destructive outcomes.

In the case of climate change, the unbridled emission of carbon dioxide and other greenhouse gases is raising global temperatures to unmistakably dangerous levels. Despite growing worldwide reliance on wind and solar power for energy generation, the global demand for oil and natural gas continues to rise, and carbon emissions are projected to remain on an upward trajectory for the foreseeable future. It is highly unlikely, then, that the increase in average global temperature can be limited to 1.5 degrees Celsius, the aspirational goal adopted by the world’s governments under the Paris Agreement in 2015, or even to 2°C, the actual goal. After that threshold is crossed, scientists agree, it will prove almost impossible to avert catastrophic outcomes, such as the collapse of the Greenland and Antarctic ice sheets and a resulting sea level rise of 6 feet or more.

Climbing world temperatures and rising sea levels will diminish the supply of food and water in many resource-deprived areas, increasing the risk of widespread starvation, social unrest, and human flight. Global corn production, for example, is projected to fall by as much as 14 percent in a 2°C warmer world, according to research cited in a 2018 special report by the UN’s Intergovernmental Panel on Climate Change (IPCC). Food scarcity and crop failures risk pushing hundreds of millions of people into overcrowded cities, where the likelihood of pandemics, ethnic strife, and severe storm damage is bound to increase. All of this will impose an immense burden on human institutions. Some states may collapse or break up into a collection of warring chiefdoms—all fighting over sources of water and other vital resources.

A similar momentum is now evident in the emerging nuclear arms race, with all three major powers—China, Russia, and the United States—rushing to deploy a host of new munitions. This dangerous process commenced a decade ago, when Russian and Chinese leaders sought improvements to their nuclear arsenals and President Barack Obama, in order to secure Senate approval of the New Strategic Arms Reduction Treaty of 2010, agreed to initial funding for the modernization of all three legs of America’s strategic triad, which encompasses submarines, intercontinental ballistic missiles, and bombers. (New START, which mandated significant reductions in US and Russian arsenals, will expire in February 2021 unless renewed by the two countries.) Although Obama initiated the modernization of the nuclear triad, the Trump administration has sought funds to proceed with their full-scale production, at an estimated initial installment of $500 billion over 10 years.

Even during the initial modernization program of the Obama era, Russian and Chinese leaders were sufficiently alarmed to hasten their own nuclear acquisitions. Both countries were already in the process of modernizing their stockpiles—Russia to replace Cold War–era systems that had become unreliable, China to provide its relatively small arsenal with enhanced capabilities. Trump’s decision to acquire a whole new suite of ICBMs, nuclear-armed submarines, and bombers has added momentum to these efforts. And with all three major powers upgrading their arsenals, the other nuclear-weapon states—led by India, Pakistan, and North Korea—have been expanding their stockpiles as well. Moreover, with Trump’s recent decision to abandon the Intermediate-Range Nuclear Forces (INF) Treaty, all major powers are developing missile delivery systems for a regional nuclear war such as might erupt in Europe, South Asia, or the western Pacific.

All things being equal, rising temperatures will increase the likelihood of nuclear war, largely because climate change will heighten the risk of social stress, the decay of nation-states, and armed violence in general, as I argue in my new book, All Hell Breaking Loose. As food and water supplies dwindle and governments come under ever-increasing pressure to meet the vital needs of their populations, disputes over critical resources are likely to become more heated and violent, whether the parties involved have nuclear arms or not. But this danger is compounded by the possibility that several nuclear-armed powers—notably India, Pakistan, and China—will break apart as a result of climate change and accompanying battles over disputed supplies of water.

Together, these three countries are projected by the UN Population Division to number approximately 3.4 billion people in 2050, or 34 percent of the world’s population. Yet they possess a much smaller share of the world’s freshwater supplies, and climate change is destined to reduce what they have even further. Warmer temperatures are also expected to diminish crop yields in these countries, adding to the desperation of farmers and very likely resulting in widespread ethnic strife and population displacement. Under these circumstances, climate-related internal turmoil would increase the risk of nuclear war in two ways: by enabling the capture of nuclear arms by rogue elements of the military and their possible use against perceived enemies and by inciting wars between these states over vital supplies of water and other critical resources.

The risk to Pakistan from climate change is thought to be particularly acute. A large part of the population is still engaged in agriculture, and much of the best land—along with access to water—is controlled by wealthy landowners (who also dominate national politics). Water scarcity and mismanagement is a perennial challenge, and climate change is bound to make the problem worse. Climate and Social Stress: Implications for Security Analysis, a 2013 report by the National Research Council for the US intelligence community, highlights the danger of chaos and conflict in that country as global warming advances. Pakistan, the report notes, is expected to suffer from inadequate water supplies during the dry season and severe flooding during the monsoon—outcomes that will devastate its agriculture and amplify the poverty and unrest already afflicting much of the country. “The Pakistan case,” the report reads, “illustrates how a highly stressed environmental system on which a tense society depends can be a source of political instability and how that source can intensify when climate events put increased stress on the system.” Thus, as global temperatures rise and agriculture declines, Pakistan could shatter along ethnic, class, and religious lines, precisely the scenario that might trigger the sort of intervention anticipated by the US Joint Special Operations Command.

Assuming that Pakistan remains intact, another great danger arising from increasing world temperatures is a conflict between it and India or between China and India over access to shared river systems. Whatever their differences, Pakistan and western India are forced by geography to share a single river system, the Indus, for much of their water requirements. Likewise, western China and eastern India also share a river, the Brahmaputra, for their vital water needs. The Indus and the Brahmaputra obtain much of their flow from periods of heavy precipitation; they also depend on meltwater from Himalayan glaciers, and these are at risk of melting because of rising temperatures. According to the IPCC, the Himalayan glaciers could lose as much as 29 percent of their total mass by 2035 and 78 percent by 2100. This would produce periodic flooding as the ice melts but would eventually result in long periods of negligible flow, with calamitous consequences for downstream agriculture. The widespread starvation and chaos that could result would prove daunting to all the governments involved and make any water-related disputes between them a potential flash point for escalation.

As in Pakistan, water supply has always played a pivotal role in the social and economic life of China and India, with both countries highly dependent on a few major river systems for civic and agricultural purposes. Excessive rainfall can lead to catastrophic flooding, and prolonged drought has often led to widespread famine and mass starvation. In such a setting, water management has always been a prime responsibility of government—and a failure to fulfill this function effectively has often resulted in civil unrest. Climate change is bound to increase this danger by causing prolonged water shortages interspersed with severe flooding. This has prompted leaders of both countries to build ever more dams on all key rivers.

India, as the upstream power on several tributaries of the Indus, and China, as the upstream power on the Brahmaputra, have considered damming these rivers and diverting their waters for exclusive national use, thereby diminishing the flow to downstream users. Three of the Indus’s principal tributaries, the Jhelum, Chenab, and Ravi rivers, flow through Indian-controlled Kashmir (now in total lockdown, with government forces suppressing all public functions). It’s possible that India seeks full control of Kashmir in order to dam the tributaries there and divert their waters from Pakistan—a move that could easily trigger a war if it occurs at a time of severe food and water stress and one that would very likely invite the use of nuclear weapons, given Pakistan’s attitude toward them.

The situation regarding the Brahmaputra could prove equally precarious. China has already installed one dam on the river, the Zangmu Dam in Tibet, and has announced plans for several more. Some Chinese hydrologists have proposed the construction of canals linking the Brahmaputra to more northerly rivers in China, allowing the diversion of its waters to drought-stricken areas of the heavily populated northeast. These plans have yet to come to fruition, but as global warming increases water scarcity across northern China, Beijing might proceed with the idea. “If China was determined to move forward with such a scheme,” the US National Intelligence Council warned in 2009, “it could become a major element in pushing China and India towards an adversarial rather than simply a competitive relationship.”

Severe water scarcity in northern China could prompt yet another move with nuclear implications: an attempted annexation by China of largely uninhabited but water-rich areas of Russian Siberia. Thousands of Chinese farmers and merchants have already taken up residence in eastern Siberia, and some commentators have spoken of a time when climate change prompts a formal Chinese takeover of those areas—which would almost certainly prompt fierce Russian resistance and the possible use of nuclear weapons.

In the Arctic, global warming is producing a wholly different sort of peril: geopolitical competition and conflict made possible by the melting of the polar ice cap. Before long, the Arctic ice cap is expected to disappear in summertime and to shrink noticeably in the winter, making the region more attractive for resource extraction. According to the US Geological Survey, an estimated 30 percent of the world’s remaining undiscovered natural gas is above the Arctic Circle; vast reserves of iron ore, uranium, and rare earth minerals are also thought to be buried there. These resources, along with the appeal of faster commercial shipping routes linking Europe and Asia, have induced all the major powers, including China, to establish or expand operations in the region. Russia has rehabilitated numerous Arctic bases abandoned after the Cold War and built others; the United States has done likewise, modernizing its radar installation at Thule in Greenland, reoccupying an airfield at Keflavík in Iceland, and establishing bases in northern Norway.

Increased economic and military competition in the Arctic has significant nuclear implications, as numerous weapons are deployed there and geography lends it a key role in many nuclear scenarios. Most of Russia’s missile-carrying submarines are based near Murmansk, on the Barents Sea (an offshoot of the Arctic Ocean), and many of its nuclear-armed bombers are also at bases in the region to take advantage of the short polar route to North America. As a counterweight, the Pentagon has deployed additional subs and antisubmarine aircraft near the Barents Sea and interceptor aircraft in Alaska, followed by further measures by Moscow. “I do not want to stoke any fears here,” Russian President Vladimir Putin declared in June 2017, “but experts are aware that US nuclear submarines remain on duty in northern Norway…. We must protect [Russia’s] shore accordingly.”

On the other side of the equation, an intensifying arms race will block progress against climate change by siphoning resources needed for a global energy transition and by poisoning the relations among the great powers, impeding joint efforts to slow the warming.

With the signing of the Paris Agreement, it appeared that the great powers might unite in a global effort to slash greenhouse gas emissions quickly enough to avoid catastrophe, but those hopes have since receded. At the time, Obama emphasized that limiting global warming would require nations to work together in an environment of trust and peaceful cooperation. Instead of leading the global transition to a postcarbon energy system, however, the major powers are spending massively to enhance their military capabilities and engaging in conflict-provoking behaviors.

Since fiscal year 2016, the annual budget of the US Department of Defense has risen from $580 billion to $738 billion in fiscal year 2020. When the budget increases for each fiscal year since 2016 are combined, the United States will have spent an additional $380 billion on military programs by the end of this fiscal year—more than enough to jump-start the transition to a carbon-​free economy. If the Pentagon budget rises as planned to $747 billion in fiscal year 2024, a total of $989 billion in additional spending will have been devoted to military operations and procurement over this period, leaving precious little money for a Green New Deal or any other scheme for systemic decarbonization.

Meanwhile, policy-makers in Washington, Beijing, and Moscow increasingly regard one another as implacable and dangerous adversaries. “As China and Russia seek to expand their global influence,” then–Director of National Intelligence Dan Coats informed Congress in a January 2019 report, “they are eroding once well-established security norms and increasing the risk of regional conflicts.” Chinese and Russian officials have been making similar statements about the United States. Secondary powers like India, Pakistan, and Turkey are also assuming increasingly militaristic postures, facilitating the potential spread of nuclear weapons and exacerbating regional tensions. In this environment, it is almost impossible to imagine future climate negotiations at which the great powers agree on concrete measures for a rapid transition to a clean energy economy.

In a world constantly poised for nuclear war while facing widespread state decay from climate disruption, these twin threats would intermingle and intensify each other. Climate-​related resource stresses and disputes would increase the level of global discord and the risk of nuclear escalation; the nuclear arms race would poison relations between states and make a global energy transition impossible.

## Relations

### 1NC – Relations

#### Alt causes to relations – Taiwan, SCS, Human rights, COVID wet-trade pressure.

#### No solvency – injunctive relief can’t be enforced in China.

Ben Bradshaw et al is a par tner and Julia Schiller a counsel in the Washington, DC office of O’Melveny & Myers LLP, Remi Moncel is an associate in O’Melveny’s San Francisco office, ’17, "International Comity in the Enforcement of U.S. Antitrust Law in the Wake of in Re Vitamin C," Antitrust 31, no. 2 (Spring 2017): 87-93

Having found that Chinese law required defendants to violate U.S. antitrust law, the Second Circuit went on to consider whether the remaining factors in the Timberlane/ Mannington Mills balancing test weighed in favor of dismissal. The court concluded that they did.32 Of particular note, the court found that while the plaintiffs may have been unable to obtain a Sherman Act remedy in another forum, complaints as to China’s export policies could be adequately addressed through diplomatic channels and the World Trade Organization, of which both the United States and China are members.33 The court found it significant that there was no evidence that the defendants acted with the express purpose or intent to affect U.S. commerce or harm businesses in particular. Moreover, the regulations at issue were intended to assist China in its transition from a staterun economy and to remain a competitive participant in the global Vitamin C market.34 Finally, the court recognized that according to MOFCOM the exercise of jurisdiction had already negatively affected U.S.-China relations, and it would be unlikely that the injunctive relief obtained by the plaintiffs in the district court would be enforceable in China, just as a similar injunction issued in China against a U.S. company would be difficult to enforce in the United States.35 Upon consideration of all of these factors, the court concluded that exercising jurisdiction was inappropriate and dismissed the case.

#### Decoupling uniqueness overwhelms – trade war and COVID barriers puts trade at an all time low.

#### Status quo solves – Chinese anti-monopoly law.

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. Improvement of China’s law

Private litigation can catalyse and reversely transform the legislative change although it is unlikely to resolve macroeconomic disputes.182 Some of Chinese old legislations have even legalised anti-competitive conduct, which was in direct conflict with US antitrust principles at issue in theVitamin C case.183 Similar casesmay be less likely to arise going forward because the development of China’s antitrust regime184 and its continued emphasis on market-oriented reforms have reduced state-compelled price fixing.185 It is noteworthy that antimonopoly law (AML 2008) regulates not only private actors but also government agencies when they get involved in the price fixing. 186 This means that executive branches could constitute an abuse of administrative monopoly.187 Institutionally, Chinese antitrust agencies have now been consolidated under the State Administration forMarket Regulation (SAMR).188 In the wake of the Vitamin C ruling, Anti-Monopoly Bureau is committed to advise Chinese MNCs on compliance with foreign laws.189 Accordingly, a proverbial rock and a hard place situation will be on decline, which makes it impossible for an entity to comply both conflicting sets of laws.190 Given the limited deference accorded to the MOFCOM, Chinese government agencies may thus be incentivised to avoid any potential inconsistency and even conflicts through ex ante coordination. Given the development of antitrust laws in China, US courts are less likely to encounter similar issues with Chinese MNCs in the future.191 Although significant differences between AML 2008 and the antitrust laws of the US persist, a true conflict between the Sherman Act and Chinese law is far less likely now than two decades ago.192

#### Aff *causes* decoupling. 1AC “solvency” advocate is painfully backwards.

Angela Huyue Zhang, Professor of Law, University of Hong Kong, ’21, Chinese Antitrust Exceptionalism., Chapter 5: Weaponizing Antitrust During the Sino- US Tech War, Oxford University Press (2021). DOI: 10.1093/ oso/ 9780198826569.003.0006

In response to US hostility, China has chosen to retaliate tit- for- tat. Such a strategy simultaneously consists of a promise and a threat: if the United States does nothing, then neither will China; conversely, if the United States attacks, so will China. One of the most famous examples of this strategy is the ‘liveand- let- live’ system that emerged during the trench warfare in the First World War.46 There, it was observed that cooperation is possible even amongst antagonists. Soldiers on the frontline defied orders from their higher command and refrained from shooting at the enemy as long as their opponents reciprocated. To deter America’s aggressive strategy of stifling Chinese leading technology companies, China has a few regulatory tools at its disposal. One of them is the AML which has emerged as a powerful economic weapon allowing the Chinese authority to exercise extraterritorial jurisdiction over foreign multinationals. The coercive capacity of the AML is expected to increase, given that a pending amendment to its powers would enhance its punitive capacities.

2.1 The Folk Theorem

To illustrate China’s tit- for- tat strategy, consider the following hypothetical game between the United States and China.47 In this game, the United States makes the first move, and it must decide whether it will maintain the status quo of accommodating the rise of China or take a more aggressive stance in order to deter China from acting in a way that would harm US interests. In this hypothetical game, if the United States keeps to the status quo, both countries will receive the same payoff score of 10. However, if the United States takes an aggressive approach, it will receive a score of 15 and China will obtain a score of 1. China must then decide whether to punish the United States, which will harm both itself and the United States. If China chooses to punish the United States, then both countries gain nothing. While the cooperative outcome yields the highest joint payoffs for the two countries, this equilibrium cannot be achieved in a one- shot game. If the game is only played once, then the United States’ dominant strategy will be one of aggression in which it will receive the largest advantage. In this scenario, United States will obtain the maximum payoff of 15. China will not be content but it is better off acquiescing and collecting a payoff of 1 instead of being left with zero gain. However, in reality, the United States and China are repeatedly and continuously interacting with each other in this relationship. Given that this game involves an infinite number of interactions, China will opt for a different strategy to fulfil its objectives. It will choose to punish the United States, in which case the United States will obtain nothing. In anticipation of being punished by China, the United States will modify its strategy to tolerate China’s rise, as a result of which China will acquiesce, achieving a payoff of 10 for both players. The key to maintaining this equilibrium is the implicit threat of punishment, and peace is only possible if China has the capacity to retaliate against any US aggression. This logic applied during the Cold War. In his Nobel Peace Prize lecture, Robert Aumann said: ‘In the long years of the cold war between the US and the Soviet Union, what prevented “hot” war was that bombers carrying nuclear weapons were in the air 24 hours a day, 365 days a year. Disarming would have led to a war.’48

But there is one important caveat: the discount rates for the two countries cannot be too high. For example, if the United States is very impatient, then it will still be worthwhile for it to attack Chinese technology companies. For instance, if America’s discount rate is over 67 per cent, the entire punishment at its present value is worth less than 5, which is all that the United States can gain today by attacking China. Therefore, if we assume that the parties engaged in an infinitely repeated game are patient and far- sighted enough, the cooperative outcome is achievable in equilibrium. Repeated interaction acts as an enforcement mechanism for a cooperative outcome.49 This is also known as the folk theorem because it was widely known among game theorists. A key insight of the folk theorem is that any player who does not carry out his punishment will be punished by the other player for its failure to do so.50 This motivates players to carry out the punishments, making their threat more credible while keeping each other on edge.

Accordingly, there are three important lessons that can be drawn from this hypothetical scenario. First, China must strike back in the event of US aggression, otherwise it might be punished for its failure to do so and in turn face heightened US aggression in the future. This, indeed, echoes the official line from the highest echelon of China’s Communist Party. Second, the Chinese threat must be large enough to deter US aggression. If, however, China appears to lack commitment to execute its threat, the United States may then decide that it is still better off attacking China today. For instance, if the costs and the risks associated with carrying out the punishment are very high, and China might back down, then the threat will appear less tenable to the United States. Third, China must react quickly so that the United States promptly senses the pains, since the Trump Administration appears impatient and near- sighted. Given China’s limited capacity to strike back with its own tariff sanctions, China needs to sharpen its economic weapons in order to swiftly retaliate against US aggression.

In the past, China has leveraged its expansive market access for its reprisals against other countries. As described by Barry Naughton, a renowned China expert: “China has established almost a kind of tit- for- tat machinery so that carefully calibrated punishment can be meted out to counterparts’.51 The example Naughton provided was China’s retaliation against South Korea. In July 2016, South Korea made a public announcement that it was installing an American anti- missile system to intercept missiles from North Korea. This move irked the Chinese government which perceived the deployment as a security threat and a way for the United States to extend its interests into Asia. In response, China imposed a number of economic sanctions on South Korea. Lotte, a company that agreed to allow its golf course in South Korea to be converted into a missile base, was directly targeted in this particular backlash. In December 2016, Lotte was obliged to suspend the construction and development of a large theme park project in Shenyang after the local government claimed that the project had not followed administrative procedures properly. In early 2017, Lotte was also fined for its advertising practices, and it was also forced to shut down 80 per cent of its supermarkets in China due to fire code violations. South Korea endured many such casualties in the aftermath of the installation of the anti- missile system. The Chinese government later imposed a travel ban on South Korea, boycotted South Korean products, and refused to provide licence approvals to South Korean online games for a year. The two countries reached a détente in late 2017. However, it was not until May 2019 that the Shenyang government lifted sanctions. Notably, none of these economic sanctions on South Korean businesses were imposed formally or as part of a bilateral negotiation. They were part of a tacit bargain where the punishment was delivered under the guise of violations of Chinese laws. In other words, China weaponized its various administrative regulations to levy informal economic sanctions on South Korean businesses. These Chinese measures constituted a credible threat sufficient enough to cause South Korea to back down. After all, China is South Korea’s primary export market, receiving almost a quarter of all South Korea’s total exports.

In theory, China could take a similar retaliatory strategy against the United States. Foreign direct investment from the United States to China amounted to USD 284 billion between 1990 and 2019, so China possesses an immense capacity to damage American businesses.52 Since the start of the trade war, US businesses have complained about the tighter scrutiny they undergo in Chinese customs clearance, as well as more stringent regulation of labour, advertising, and environment matters. For example, it has been reported that Chinese customs officials inspected 100 per cent of the imports of one US car manufacturer, as opposed to just 2 per cent in earlier years. US food importers are also subject to a longer quarantine period at airports, resulting in food spoiling or goods being sent back to the United States.

## Competition

### 1NC – AT: Competition

#### Offense on relations turns this advantage.

#### Advantage is backwards. China will use regulatory restrictions to block M&As across the board, including semiconductor acquisitions.

Angela Huyue Zhang, Associate Professor of Law, University of Hong Kong, ’21, Chinese Antitrust Exceptionalism., Chapter 5: Weaponizing Antitrust During the Sino- US Tech War, Oxford University Press (2021). DOI: 10.1093/ oso/ 9780198826569.003.0006

Since the eruption of the Sino- US. trade war, China has reportedly been withholding final approvals of many takeover transactions, using its administrative authority as leverage in the face of an aggressive US trade strategy. In fact, when the Trump Administration reversed its technology ban decision on ZTE, the Chinese government reportedly reciprocated by easing regulatory restrictions for US firms. On 17 May 2018, the State Administration and Market Regulation (SAMR) approved Bain Capital’s USD 18 billion purchase of Toshiba’s memory chip unit, a deal that had been held up by the Chinese government for so long that the parties were on the verge of giving up. However, Qualcomm’s attempted USD 44 billion purchase of NXP Semiconductors did not have the same fortune. In October 2016, Qualcomm announced its intention to acquire NXP Semiconductors, a large semiconductor manufacturer. The deal was deemed critical for Qualcomm, which held a dominant position in the smartphone chips sector but was looking for growth and expansion into other areas. As both merging parties were multinational companies with a business presence in several jurisdictions, nine different jurisdictions including the United States, the European Union, and China were notified of the deal. By early 2018, Qualcomm had obtained regulatory clearances from eight jurisdictions, with China being the sole jurisdiction holding up the transaction.

In the European Union, the major concern of the European Commission revolved around the ability and incentive of the merged entity to access NXP’s technology, the interoperability of Qualcomm’s baseband chipsets, and how NXP’s chips would fare against rival products, as well as the significant combined intellectual property portfolios owned by the merged entity.55 But none of these anticompetitive concerns proved fatal. To address the Commission’s issues, the two companies offered significant behavioural remedies, ultimately leading to full clearance.

The clearance decisions in eight jurisdictions seem to have emboldened the merging parties. Up till late May 2018, Qualcomm was fairly optimistic about sealing a deal with the Chinese antitrust regulator. The Wall Street Journal even ran pre- emptive headlines like ‘China Set to Approve Qualcomm- NXP Deal, A Sign of Easing Trade Tension’.56 The Chinese regulator had reportedly expressed concerns about the potential for the merging parties to crowd out domestic businesses in areas including mobile payments, largely on the rationale that NXP had retained its strong market position in those specific markets. However, a person privy to Qualcomm’s interactions with the SAMR underscored that ‘all the technical issues had been resolved’, and ‘from Qualcomm’s perspective everything that needed to be done was done’.57 When Qualcomm’s executive met Wang Qishan, China’s Vice President, in May 2018, along with other foreign business executives, Wang purportedly revealed that the deal stood a good chance of being approved by the Chinese regulator.58 Yet Qualcomm’s hopes were dampened a few days later when President Trump decided to proceed with punitive tariffs on Chinese goods worth USD 50 billion. Subsequently, the Chinese antitrust regulator began sending undesirable signals by making statements such as ‘your President embarrassed Liu He’ and ‘He offended the Chinese people’.59 On 26 July 2018, Qualcomm terminated its proposed takeover of NXP. Richard Clemmer, Chief Executive of NXP, criticized the Chinese government for providing no explanations for withholding the deal, noting that there were no regulatory requirements that the deal had failed to meet and that Qualcomm and NXP had both agreed to offer remedies to address the regulator’s concerns.60

There seems to be widespread consensus among foreign critics that the Chinese government used Qualcomm, in the same way that the Trump Administration exploited ZTE, as a bargaining chip in trade negotiations. Although both Qualcomm and NXP believed that Sino- US trade tensions contributed to the collapse of the deal, China denied that this factor played a role at all. Notably, the Chinese antitrust authority did not explicitly block the transaction but delaying the approval was sufficient to deter the merging companies from proceeding. This is not to suggest that political consideration will necessarily taint every antitrust decision in China, but even one extreme case is sufficient to demonstrate the potency of such administrative power; it simply depends on when and how the Chinese authority chooses to wield its discretionary authority. By tacitly holding up the Qualcomm merger, the Chinese authority demonstrated its coercive regulatory capability.

But the story does not end here. On 1 December 2018, during the dinner between President Trump and President Xi at the G- 20 meeting in Buenos Aires, President Xi communicated that ‘he is open to approving the previously unapproved Qualcomm- NXP deal, should it again be presented to him’.61 President Xi’s statements in this context dispelled doubts that Qualcomm was held hostage by the Chinese government. Having displayed its regulatory prowess by stalling mergers between foreign multinational companies, China is further enhancing the coercive capacity of its antitrust law. On 2 January 2020, the SAMR released a draft amendment of the AML for public consultation.62 The proposed revision significantly increases the level of sanctions that could be imposed under the law. For instance, the maximum fine for merger control violations has been augmented from RMB 500,000 to up to 10 per cent of the annual turnover of the undertaking in the previous year, bringing China’s fining power in line with other jurisdictions such as the United States and the European Union.63 The new plan allows the SAMR to stop the clock and freeze its assessment in situations where it is waiting for a response from the parties or engaged in remedy negotiations.64 Within the existing legal framework of the AML, the SAMR has up to 180 days to review a merger transaction. The proposed changes would afford the regulator more flexibility, permitting it to extend its review period.

Another striking modification is the explicit reference to criminal sanctions as they relate to anticompetitive conduct that amounts to a crime.65 Although China has yet to amend its criminal law, this reference sends a clear indication that such an amendment is under way. Practitioners are keeping a close eye on this development as the introduction of criminal liabilities for criminal sanctions will be deemed a game changer for the sanctioning power of the AML. It should also be emphasized that, by introducing criminal liabilities into antitrust sanctions, China will be following the model of the United States, known for actively imposing criminal liabilities on individuals for antitrust violations. In the United States, criminal sanctions under the US Sherman Act can amount to USD 100 million for a corporation and USD 1 million for an individual, as well as a ten- year imprisonment sentence.66 China has also significantly increased its penalties with respect to conduct violations. The penalty for concluding an anticompetitive agreement which has not been implemented has been raised from RMB 500,000 to RMB 50 million.67 Meanwhile, the penalty for investigation obstruction by undertakings has been raised from RMB 1 million to 1 per cent of the turnover in the previous year, or RMB 5 million if it is difficult to calculate the turnover, and the penalty for investigation obstruction by individuals has similarly been elevated from RMB 100,000 to RMB 1 million.68 Given the lack of checks and balances in Chinese antitrust enforcement, this considerable enhancement of the sanctioning power under the AML will no doubt afford the administrative enforcement agency even greater discretion in punishing companies under investigation.

#### No impact to Chinese tech dominance.

QING WANG, PROFESSOR OF MARKETING & INNOVATION, UNIVERSITY OF WARWICK, ’19, "Is Huawei a security threat? Seven experts weigh in," Verge, https://www.theverge.com/2019/3/17/18264283/huawei-security-threat-experts-china-spying-5g

Huawei a security threat? There is no hard evidence to support this notion, and some of the reasons put forward for this notion are weak. For example, the background of the chairmen of Huawei. Huawei founder Mr. Ren Zhengfei once served in the People’s Liberation Army. As we know, serving in the army was one way of getting out of poverty for people in the countryside, which is where Mr. Ren is from. His time in the army was a short one and he was not in any important position.

In terms of the background of the company, unlike state-owned enterprises such as China Mobile and China Railway Corporation, Huawei is a private enterprise, like Alibaba, Tencent, and Haier, that emerged from the economic reform of China in the 1980s. These enterprises would have never existed, let alone grew, if there was no economic reform and move from planned economy to market economy. State-owned enterprises operate differently from private enterprises. The CEOs of state-owned enterprises are government officials and are directly appointed by the government; they are the products of the old communist legacy. On the other hand, the CEOs of the private enterprises are either the founders themselves, or their offspring who succeed their family businesses. These enterprises have developed their technological capabilities and business acumen through market mechanisms both inside and outside China, and adopted the same business practice and competed with their Western counterparts without preferential treatment from the government. At most, government resources and supports are directed to the state-owned enterprises because they are no longer fit for the new market economy.

For someone like me who has studied emerging market enterprises for decades, Huawei is the textbook case of a great company in the making; unfortunately, it has fallen victim to the anti-globalization policy and sentiment of the US and the ongoing trade war with China. Huawei has been accused of close or even dubious relationships with the Chinese government — hence, a security threat to the Western world. It is true that now that these companies have become competitive in the global market, creating jobs and tax revenue for the government, the government is keen to see that their success can continue. If anything, it is in the interest of Huawei and the government to see the reputation and technological leadership continue rather than being ruined by scandals such as espionage.

## Comity

### 1NC – AT: Comity

#### No spillover. Presumption against extraterritoriality in antitrust does not apply to presumption against other congressional intention of extraterritoriality.

#### Removing executive deference crushes WTO leadership.

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. A variable of foreign relations

The Vitamin C ruling has broader ramifications, since the Supreme Court provided less than full deference to China’s interpretations of its own laws. The application of the standard of respectful consideration may be detrimental to the US foreign relations,115 which could have serious consequences.116 Foreign law could compel the very conduct that US law prohibits, and judicial interference may infringe on the executive function to handle international relations.117 Inevitably, there is an impact on foreign diplomacy and trade relations.118 As Eichensehr observed:

‘it would be amistake for the Court to view the brief as a representation that disagreement with the foreign sovereign’s view of international law would provoke serious foreign policy consequences for the United States.’119

This landmark case ofVitamin C arises during a period of uncertainty and instability in Sino– US relations. The Supreme Court’s decision is sensitive amid the current climate, which could escalate trade tension.120 Given the current ongoing tit-for-tat trade disputes, the possibility exists that the court judgment can serve as a trigger.121 According to a decision in EEOC, US courts should tread carefully in a transnational context to ‘protect against unintended clashes between our laws and those of other nations which could result in international discord.’122 Justice Kennedy in Jesner stressed judicial restraint in the treatment of foreign corporations in order to encourage similar treatment of US corporations abroad.123 Posner and Sunstein even proposed that courts should defer to the executive in dealing comity because ‘the executive branch is in a better position to understand the benefits of foreign reciprocation or the likelihood and costs of retaliation than the judiciary.’124 The Supreme Court once held that it is ‘[T]he political branches, not the Judiciary, that have the responsibility and institutional capacity to weigh foreign-policy concerns.’125 The Vitamin C decision on the reach of a US law may have repercussions for the treatment that US companies receive abroad.126 However, a foreign sovereign’s interest should never outweigh the general national interest of a home state in the conduct of foreign relations.127

#### 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 economic decline causes multilateral meltdown – causes nuclear war, climate change, Arctic and space war.

McLennan 21 – 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, “The Global Risks Report 2021 16th Edition” “http://www3.weforum.org/docs/WEF\_The\_Global\_Risks\_Report\_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.

#### Congressional power makes foreign policy leadership *worse* – politicizes foreign relations.

Coll 15 – Steve Coll, a staff writer, is the dean of the Graduate School of Journalism at Columbia University, and reports on issues of intelligence and national security in the United States and abroad. He is the author of “Private Empire: ExxonMobil and American Power “Dangerous Gamesmanship”, April 27, 2015 https://www.newyorker.com/magazine/2015/04/27/dangerous-gamesmanship)

During the early nineteen-thirties, Bolivia and Paraguay fought a war over an arid borderland called Chaco Boreal. Congress passed a resolution permitting President Franklin Roosevelt to impose an embargo on arms shipments to both countries, and he did. Prosecutors later charged the Curtiss-Wright Export Corporation with running guns to Bolivia. The company challenged the resolution, but, in 1936, the Supreme Court issued a thumping endorsement of a President’s prerogative to lead foreign policy. “In this vast external realm, with its important, complicated, delicate and manifold problems,” the majority wrote, only the President “has the power to speak or listen as a representative of the nation. . . . He alone negotiates.” In this respect, the Justices added, Congress is “powerless.”

U.S. v. Curtiss-Wright Export Corp. has influenced law and the conduct of foreign policy for almost eight decades, but its admonitions have made little impression on the Republicans now on Capitol Hill. They have meddled in unprecedented fashion to undermine President Obama’s nuclear diplomacy with Iran, as he seeks—with Britain, France, Germany, Russia, and China—to cap Iran’s nuclear program in exchange for relief from economic sanctions. The most egregious example came in March, when forty-seven Senate Republicans signed an open letter to Iranian leaders, which contained a dubious analysis of the Constitution and warned the mullahs not to rely on any deal that Congress failed to approve.

Now a framework for a deal is in place, and many Democrats, such as House Minority Leader Nancy Pelosi, support Obama’s policy. Others, like Senators Tim Kaine and Michael Bennet, have pressed the call for a congressional review of a final agreement—due on June 30th—essentially on the ground that Congress should be heard. Last week, after reaching a compromise with the White House, the Senate Foreign Relations Committee voted unanimously for an act that sets prospective terms for such a review.

Is Congress within its rights to insist on a vote? The Constitution states that the Senate must approve treaties, but the Iran deal would not be a treaty; it’s a political agreement. Congress has voted on some political agreements involving nuclear issues as a matter of course. Yet the specifics of the Iran deal make it more closely resemble the scores of diplomatic bargains short of treaties that Congress has ignored, including such important arms-control deals as the one that created the Nuclear Suppliers Group. The Foreign Relations Committee act is a measured one—it may allow only for speechmaking and largely symbolic votes. That’s why the Administration went along with it. Nonetheless, it reflects a large measure of cynical partisanship.

It’s true that America’s faltering strategy in the Middle East could benefit from a more open and informed debate, but the increasing willingness of Republicans to entangle foreign policy in political gamesmanship has opened a new chapter in the fragmentation of American power. During the Tea Party era, Republicans in Congress have adapted to unbridled, grassroots-fuelled campaigning on domestic issues like Obamacare and the debt ceiling. This collapse of inhibition is now leaching into the Party’s position on matters of war and peace, from Benghazi and the Islamic State to Iran.

Last month, Senator John McCain said that Secretary of State John Kerry’s explanation of his negotiations with Iran was less trustworthy than that of Iran’s leaders. Kerry and McCain were once friendly Senate colleagues. “That’s an indication of the degree to which partisanship has crossed all boundaries,” President Obama said, of McCain’s remarks. “It needs to stop.” It probably won’t, although that may not matter in the short run. Obama is constrained by his congressional opposition, but, with less than two years left in office and no more elections to win, he is also freer to defy it.

Last Tuesday, the President informed Congress that he intends to remove Cuba from the State Department’s list of state sponsors of terrorism, a further step toward the normalization of U.S.-Cuban relations. According to the State Department, although Cuba harbors some violent fugitives, including a former Black Panther convicted of murdering a New Jersey state trooper, it no longer arms or funds terrorists. Since December, when Obama outlined steps to ease travel restrictions and other aspects of the anachronistic embargo on Cuba, he has outflanked his critics. American businesses want the embargo lifted, and many second-generation Cuban immigrants are open to policy change, as many Republicans well understand.

Obama’s announcement that he was taking Cuba off the list triggered a forty-five-day period during which Congress can vote to reverse his decision. The White House is in a position to prevail: Obama can veto any congressional resolution he doesn’t like, on either Cuba or Iran. If he does issue a veto, the White House would need the votes of only a third plus one of the members of the House or the Senate to uphold it. Still, departures in American foreign policy as momentous as making peace with the Castro regime or resetting nuclear diplomacy with Iran ought not to be constructed on narrow vote margins

in Congress. U.S. v. Curtiss-Wright helped to establish what was referred to during the Cold War as the One Voice Doctrine. That is, despite shifting disagreements between Presidents and Congress, the country should seek to project unity abroad, in order to reassure allies and deter enemies. The doctrine has flaws; it can be used to rationalize an imperial Presidency during national crises, among other things. Yet cohesion in foreign policy is surely preferable to senators sending freelance missives to declared enemies of the state.

The collapse of comity and common sense in Congress is not just a fountainhead of divisive politics. It is also a threat to the Constitution. The United States, founded on the hope that its three branches of government would evolve in roughly equal states of health, is not likely to manage successfully risks on the scale of China’s rise or the Middle East’s chaos if members of Congress continue to degrade and paralyze their institution. The Edward Snowden revelations provided only the latest reminder that protecting civil rights and liberty at home requires congressional oversight of the national-security state that is well resourced, expert, and unhindered by partisan opportunism. On the present evidence, it is hard to imagine Congress meeting that burden.

#### Congressional power also prevents effective executive trade leadership – turns chian and crushes leadership in the WTO.

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

As the analysis above reveals, the executive branch's plea that the Supreme Court not grant conclusive deference to MOFCOM's statements is firmly grounded in the specific circumstances of the Vitamin C Case. Since trade remedies were not desirable in the Vitamin C Case, it is natural that the United States leaned on antitrust remedies. But if the Executive were to decide that it was in the United States' best interest to resolve the conflict via the trade route, then it would seem best to refrain from suing the Chinese manufacturers on the basis of conflicting antitrust grounds. In fact, it would make sense for the U.S. federal courts to stay the antitrust action, pending the resolution of the trade dispute, as was done in Resco Products. 63 Under such circumstances, the executive branch would have greater incentive to nudge the court towards granting immunity to the Chinese exporters, regardless of whether the Chinese government had filed an amicus brief in the litigation. Thus, contrary to the Second Circuit's decision in the Vitamin C litigation, a foreign government's appearance in court is neither necessary nor sufficient for affording a comitybased defense to the foreign exporters, since such a defense ultimately turns on the specific circumstances of a case. As the U.S. response to the Japanese export cartel in the 1980s will illustrate, under certain circumstances, the executive branch may even encourage foreign export cartels into the United States to address intractable trade problems.

#### Executive flexibility solves HADR.

Brattberg, 13 – fellow at the School of Advanced International Studies (SAIS) at Johns Hopkins University (Erik, 11/21. “The case for US military response during international disasters.” <http://thehill.com/blogs/congress-blog/foreign-policy/190954-the-case-for-us-military-response-during-international>)

The scale of the U.S. military’s response to the disastrous Haiyan Typhoon in the Philippines has been impressive. The deployment of USS George Washington along with other smaller vessels has allowed for the delivery of over 600 tons of relief supplies. Moreover, U.S. military transport has already moved thousands of humanitarian workers into the disaster-stricken Tacloban and airlifted almost 5,000 survivors into safety. As natural disasters and complex humanitarian emergencies are becoming more common worldwide, the U.S. will increasingly be called in to assist during other disasters. What’s more, weak and fragile states with inadequate emergency response capacities, infrastructure and public health services are particularly vulnerable to severe natural disasters. Here, military response is crucial to getting relief efforts up and running during the immediate post-disaster phase. But military-led disaster relief is not only a humanitarian imperative – it can also serve a larger strategic imperative as a part of U.S. foreign policy. Compounding the strategic importance of the US military’s role in humanitarian assistance and disaster relief are four key reasons. First, and most obviously, providing disaster relief helps boost U.S. soft power in the world. By assisting in humanitarian emergencies, the U.S. military sends a message that it’s a global force for good. The importance of this kind of ‘soft-power diplomacy’ cannot be underestimated, especially in times when the US is perceived as losing influence in the Asia-Pacific region to China. Responding to disasters can also lead to a more positive attitude towards the U.S. – as was the case following U.S. assistance during the flood in Pakistan in 2010. Second, disaster relief can help contain some of the negative consequences of major disasters from spreading elsewhere in the world. This is particularly the case in weak states where crises can easily spill over national boundaries in the forms of massive refugee flows, the spread of infectious diseases, or environmental collapse. Case in point: the robust U.S. intervention in Haiti after the earthquake in January 2010 prevented what could otherwise have been huge refugee flows to the U.S. Third, disaster relief is also an opportunity for the U.S. military to forge stronger multilateral security relationships with other countries’ militaries. In the Philippines, U.S. troops have worked alongside troops from several other countries. As the U.S. looks to expand its presence in the Asia-Pacific in the future, these kinds of activities can serve a clear purpose of building trust and developing military-to-military ties. As the Pentagon currently winds down its military presence in Afghanistan, relief efforts can also provide essential real-life training opportunities for American troops. Moreover, they can serve to legitimize US military presence in certain parts of the world where it is currently disputed. Finally, military-led disaster relief reinforces the view of America as an indispensible nation. Clearly the only international actor capable of carrying out such large-scale complex operations as the one currently seen in the Philippines is the US military. Few countries are complaining when the US acts as the world’s police in times of real crisis. In contrast, China sent no troops to the Philippines and has so far contributed little in financial aid. The forceful U.S. response also serves to affirm American commitment to allies and partners that the U.S. is there and is willing to assist in times of crisis. Of course, the military is not the only important actor in international disaster response. Relief efforts must be a whole-of-government enterprise with solid civil-military links. Other international humanitarian actors are also equally important. But, as the Philippines illustrates, in some situations the military is the only institution with the capacity to respond. Without it, nothing else can get done. Given the growing importance of disaster relief, the U.S. military should prioritize these issues even more in coming years. This is not only the right thing to do; it is also increasingly in our interest to do so.

# 2NC

## CP – WTO

### 2NC – OV

#### The counterplan has the executive launch a WTO complaint at the same time congress does the plan, then has the courts hold that the plan can only occur if the US loses at the WTO. This solves the case by placing foreign export cartels between a rock and a hard place. Either foreign states claim that they organized an export cartel, in which case they are immune from antitrust but violate WTO protocols, or they claim that the export cartel is not organized by the state, in which case they violate antitrust law but are immune at the WTO. 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.

### 2NC – AT: Do Both

#### 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.

### 2NC – AT: PDCP

#### (A) 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.

#### “Private sector” – the WTO only litigates government to government action.

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

Obviously, this does not mean that the judicial framework of the DSB will transform private companies into subjects of the WTO. 88 Instead, the WTO will remain a regime that creates rights and obligations only for states. On the one hand, the WTO is a government-to-government organization. It has already handled precedents of state-coordinated economic actions, which is wellpositioned to address export restrictions, both by the State and by State-controlled companies. 89 For this class of actions, the subject complainant must obtain proof of the states' trade-restrictive behaviors before the WTO system can intervene. The challenges arises from the fact that the exporting States would likely step in with subtler mechanisms and methods, and its coordination usually does not take on an overt form.90 Also, the State could step in to assist the formation of such cartels, even without explicit de jure authority. Therefore, the challenge is always evidentiary, not legal. 91

#### “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.

#### Resolved.

Random House Unabridged 6 (http://dictionary.reference.com/search?q=resolved&r=66)

re·solved Audio Help /rɪˈzɒlvd/ Pronunciation Key - Show Spelled Pronunciation[ri-zolvd] –adjective firm in purpose or intent; determined.

#### Should

Summers ‘94 (Justice – Oklahoma Supreme Court, “Kelsey v. Dollarsaver Food Warehouse of Durant”, 1994 OK 123, 11-8, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13)

¶4 The legal question to be resolved by the court is whether the word "should"[13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn13) in the May 18 order connotes futurity or may be deemed a ruling in praesenti.14 The answer to this query is not to be divined from rules of grammar;[15](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker3fn15) it must be governed by the age-old practice culture of legal professionals and its immemorial language usage. To determine if the omission (from the critical May 18 entry) of the turgid phrase, "and the same hereby is", (1) makes it an in futuro ruling - i.e., an expression of what the judge will or would do at a later stage - or (2) constitutes an in in praesenti resolution of a disputed law issue, the trial judge's intent must be garnered from the four corners of the entire record.16 [CONTINUES – TO FOOTNOTE] [13](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn13) "*Should*" not only is used as a "present indicative" synonymous with *ought* but also is the past tense of "shall" with various shades of meaning not always easy to analyze. See 57 C.J. Shall § 9, Judgments § 121 (1932). O. JESPERSEN, GROWTH AND STRUCTURE OF THE ENGLISH LANGUAGE (1984); St. Louis & S.F.R. Co. v. Brown, 45 Okl. 143, 144 P. 1075, 1080-81 (1914). For a more detailed explanation, see the Partridge quotation infra note 15. Certain contexts mandate a construction of the term "should" as more than merely indicating preference or desirability. Brown, supra at 1080-81 (jury instructions stating that jurors "should" reduce the amount of damages in proportion to the amount of contributory negligence of the plaintiff was held to imply an *obligation* *and to be more than advisory*); Carrigan v. California Horse Racing Board, 60 Wash. App. 79, 802 P.2d 813 (1990) (one of the Rules of Appellate Procedure requiring that a party "should devote a section of the brief to the request for the fee or expenses" was interpreted to mean that a party is under an *obligation* to include the requested segment); State v. Rack, 318 S.W.2d 211, 215 (Mo. 1958) ("should" would mean the same as "shall" or "must" when used in an instruction to the jury which tells the triers they "should disregard false testimony"). [14](http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=20287#marker2fn14) *In* praesenti means literally "at the present time." BLACK'S LAW DICTIONARY 792 (6th Ed. 1990). In legal parlance the phrase denotes that which in law is *presently* or immediately effective, as opposed to something that will or would become effective in the future *[in futurol*]. See Van Wyck v. Knevals, 106 U.S. 360, 365, 1 S.Ct. 336, 337, 27 L.Ed. 201 (1882).

#### Substantial

Words and Phrases ‘64 (40 W&P 759)

The words “outward, open, actual, visible, substantial, and exclusive,” in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; **certain**; absolute; real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including admitting, or pertaining to any others; undivided; sole; opposed to inclusive.

### 2NC – AT: US Loses in WTO

#### 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.

#### 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

2. The Trilogy of WTO cases on China's Export Restrictions: The U.S. Government as Transnational Actor

a. Raw Materials I

Article 3.3 of the Dispute Settlement Understanding ("DSU") allows WTO Members to resort to the dispute settlement system of the WTO in situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member.226 That is, the WTO does not regulate the actions of companies. A member country cannot sue private actors at the WTO. 227

In 2009, the USTR observed the ongoing antitrust litigations and filed a complaint at the WTO, alleging that the Chinese government had imposed export restraints on multiple raw materials and violated several provisions of the GATT, including Articles XI:1 and Article X:3(a), as well as China's Accession Protocol, including Paragraph 11.3.228 A crucial foundation for the United States' position was whether China's Chambers of Commerce, which includes the CCCMC, "[F]unction as entities under MOFCOM's [the Ministry's] direct and active supervision and, accordingly, play a central role in regulating the trade of China's industries." 229 The USTR used the Ministry's amicus brief as evidence of the subject WTO trade violations. It argued that China described its authority over these entities as "plenary" and described the Chamber of Commerce as "the instrumentality through which [the Ministry] oversees and regulates the business of importing and exporting [ products in China." 230 On this basis, the U.S. emphasized, China should not argue otherwise from what it had already represented in the U.S. courts, that is, the CCCMC's export-price related functions and responsibilities should be attributable to China. 231

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.

## Adv 1

### XT 1NC 2: No Solvency

#### Discovery is too difficult to make enforcement feasible – other countries can’t and won’t cooperate to procure evidence for trial.

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.

#### Every innovative enforcement mechanism begets innovative blocking statutes. Changing interpretation of “true conflict” in foreign sovereign compulsion encourages states to pass new legislation that establishes a true conflict.

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,

The broad application of the Sherman Anti-Trust Act, and the narrow exception to barring the Act through international comity, led many foreign nations to enact blocking statutes to "protect their nationals from criminal [and civil] proceedings in [the United States] where the claims to jurisdiction by those courts [were] excessive and constitute[d] an invasion of sovereignty." 60 Many of the United States' closest allies-the United Kingdom, Australia, Canada, France, Italy, South Africa, the Netherlands-enacted blocking statutes that:

[T]riggered the issuing of conflicting injunctions, [] given rise to a spate of foreign statutes designed to thwart discovery in the United States proceedings...[and] the most extreme example of outrage at the extraterritorial application of our anti-trust law is the United Kingdom's 'Clawback Act.' This statute goes far beyond simply denying recognition to the United States decrees and permits suits in the United Kingdom to recover any part of the judgement already paid that exceeds compensatory damages. 61

In addition, even U.S. companies opposed the broad application of the Act because they felt it "handicapped [them] in competing for off-shore business against foreign firms that were not subject to the strict antitrust constraints imposed by U.S. law." 2

To quell the concerns of both foreign nations and domestic companies, the United States Congress enacted the FTAIA. The FTAIA, which went into effect in 1982, provided protection for export transactions by "imposing additional requirements for establishing a Sherman Act claim involving foreign commerce that is not import trade or import commerce." 3 Specifically, in order to bring an antitrust claim, the FTAIA required "the conduct to have a direct, substantial, and reasonably foreseeable effect on commerce in the United States." 64 In other words, a foreign exporter would not be subject to prosecution under the Sherman Anti- Trust Act if it engaged in an anticompetitive act (i.e. price fixing) that did not "have a direct, substantial, and reasonably foreseeable effect on commerce in the United States." 65 As is apparent by the FTAIA statute, corporations that are engaged in import commerce are "unaffected by the FTAIA and remain[] subject to the Sherman Act." 66 Nevertheless, the FTAIA was a good faith effort by the legislative branch to: (1) improve the nation's international relations, (2) ensure U.S. domestic companies were not disadvantaged, and (3) provide "a unified legal standard to determine whether the U.S. antitrust law applies to foreign transactions." 67

#### Even if they do manage to collect the evidence, China will present contrary evidence blaming price-fixing on WTO antitrust remedies. The plan can’t solve that because it becomes state led conduct instead of private sector practice.

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

In sum, China's economic problem is not that there is too little competition, but that there is too much. As a preemptive measure against anti-dumping investigations, China's policymakers see a positive role in its trade associations regulating market order. Policies like "industrial self-discipline" and "advance approval" imposed restrictions on competition and functioned as price cartels reflecting the government's concerns with perceived excessive competition problems. Equally importantly, this governmentagencies-turned-trade associations model demonstrated that "the boundary between state and private ownership of enterprise is often blurred in contemporary China." 177 It also provides ample opportunity for state-led coordination of international trade action. When examining their legitimacy, both under WTO treaty obligations and under domestic antitrust law, related fact-finding are usually uncertain and difficult to discern. 178 States could in theory engage in the opportunities to play one system against the other.

#### Empirics prove – establishing state control is too difficult for courts to discover.

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

As illustrated in the Vitamin C Case and Matsushita Electric, the challenges for courts in taking the fact-specific approach lie in the inherent difficulty of identifying the extent of State control over domestic companies.220 On the one hand, even if the State imposes a mandatory export restraint over its own companies, it may fail to coordinate an export cartel. After all, firms that participate in a cartel may have incentives to cheat in order to line their pockets. Thus, the effectiveness of the State's policing system directly impacts the success of the State-led cartel. On the other hand, the State is no ordinary legal actor. Even if the State does not issue any binding administrative law or order, it can threaten to penalize a firm if the firm does not voluntarily comply with the State's request. In other words, the State could have de facto control over the firms, even without clear de jure control. In the Vitamin C Case, neither MOFCOM nor any other government department imposed a mandatory requirement on the Chinese manufacturers to coordinate prices, but the Chinese government may have been able to obtain de facto control over these exporters via other administrative means. However, the extent of such de facto control is very difficult for a court to discern through discovery.

#### Any residual solvency arguments demonstrate the link to our DA – to effectively enforce, the US must engage in unprecedented, lengthy discovery and trial that alienates allies.

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

2. International Discovery Rules. - Another area of U.S. law prone to draw the ire of foreign countries is discovery.193 United States discovery rules are alien to most jurisdictions, which adopt far less permissive approaches to evidence gathering by private litigants.1' Some jurisdictions resist the application of U.S. discovery rules,1 9 5 often through "blocking statutes" or secrecy laws, 196 and many governments reserve an active role for themselves in the approval or denial of discovery requests sent by U.S. litigants or courts.1 97

The United States has ratified the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, which the parties drafted with the purpose of harmonizing international discovery procedures among signatory states.1 98 The Supreme Court has determined, however, that U.S. courts are able to compel foreign parties to provide evidence in accordance with ordinary U.S. rules of discovery, rather than through the Convention procedures, even if this means overriding the foreign country's domestic law.1 99 Not surprisingly, foreign sovereigns have found this rule somewhat disturbing. The Swiss government, for instance, strongly opposed this interpretation of the Hague Evidence Convention and threatened that enforcement of U.S. discovery rules would jeopardize the future of Swiss compliance with the Convention.2 0 A decision to ignore a country's blocking statute or secrecy law and order discovery is subject to a balancing test, however. The Court has emphasized the importance of looking at the extent to which compliance with discovery would undermine the interests of the foreign state involved (as well as where noncompliance with discovery would under-mine important interests of the United States);201 this factor "directly addresses the relations between sovereign nations."202 Foreign sovereigns often enter amicus briefs to resist discovery orders and to underline the importance of their government interests in the litigation. 203 A court's ruling that gives weak deference to foreign sovereigns in this area risks upsetting the foreign government and jeopardizes reciprocity in international discovery rules. 204 A court's disregard of arguments pertaining to foreign criminal law might also, not unlike McNab, leave those subject to U.S. discovery orders stuck between the threat of foreign prosecution and contempt orders from U.S. courts.

### XT 1NC 4: Squo Solves

#### Reject evidence that doesn’t explicitly reference post-Vitamin C antitrust cases. Aff evidence describes circumstances that have since changed, neg evidence predicts future trends.

Ma. Joy V. Abrenica, Professor of Economics @ UPH, ’19, “Sovereign determination or disguised protectionism?: the Vitamin C Case” The Philippine Review of Economics 2019 56(1&2):147-172.

The perception of “excessive” competition in industries dominated by private enterprises was based on copious reports of price undercutting, substandard quality of goods, “zero” or “negative” prices and rampant false advertising campaign.28 A record number of WTO members initiated anti-dumping cases against China, on account of alleged cutthroat competition from Chinese exporters. China was respondent to close to one-fourth of all anti-dumping cases since the establishment of WTO in 1995.29 Apart from the Vitamin C case, two other price-fixing cases were filed in the US against Chinese exporters of magnesium and bauxite. In 2009, the US, European Union, and Mexico filed separate complaints against export restraints imposed by China on metal products. The disputed measures included minimum export price requirement and export quota, which violated GATT Article XI:1 and China Accession Protocol.30

To put order in the market amid legal challenges, China adopted a number of competition-related market regulations. The 1993 Anti-Unfair Competition Law proscribes a closed-list of trade practices, such as infringement of trademarks, bribery to buy or sell goods, false or misleading representation on quality of goods and spreading of falsehoods about a competitor. The 1998 Price Law provides for three pricing regimes: market-determined, government-guided31 and government set, and prohibits producers from engaging in predatory pricing, price collusion, discriminatory pricing and excessive pricing.32 In 2005, industries previously reserved to SOEs, such as electricity, telecommunications, railroad, civil aviation, petroleum and national defence, were opened to private entrepreneurs.33 And in 2007, China passed its first comprehensive competition law, the Anti-Monopoly Law (AML), which took 13 years of drafting and extensive public consultation.34

#### Prefer comparative evidence. Incentives for China to integrate into the world economy outweigh pressure to protect national champion companies.

Ma. Joy V. Abrenica, Professor of Economics @ UPH, ’19, “Sovereign determination or disguised protectionism?: the Vitamin C Case” The Philippine Review of Economics 2019 56(1&2):147-172.

The protracted drafting process was caused by long internal deliberation on the economic philosophy and policy priorities that should be reflected in the competition law. The outcome is a mixture of rules borrowed from other jurisdictions35 and measures to address China-specific concerns such as excessive competition in some industries and dominance of SOEs and administrative monopolies in others. The process was also dragged by debates on whether it is time to espouse an efficiency-oriented competition policy that could limit the country’s flexibility in implementing policies to support industrialization and long-term growth.36 Thus, there were political pressures to use competition law to reserve the domestic market for national champions37; to foil foreign multinationals from dominating the Chinese market38; and to break technological barriers39. But there was also recognition of the vitality of integrating into the global economy and incompatibility of naked protectionist policies with WTO commitments. In the end, China opted for a set of market regulations that is neutral and aligned with international rules in some aspects, but open-ended in others.40

### XT 1NC 5: Turn

#### Their ‘advocate’ does not advocate for increasing antitrust law enforcement against China. It says China is moving “towards the law” now, and the plan foments backlash – here’s the “conclusion” the 2AC referenced.

1AC Zhang 21 – Angela Huyue Zhang is an associate professor at the Faculty of Law at the University of Hong Kong. An expert in Chinese law, Angela has written extensively on Chinese regulatory issues. Angela is a four-time recipient of the Concurrence Antitrust Writing Award, which selects the best articles published globally in the field of antitrust law each year. Angela frequently speaks at prestigious antitrust conferences in the United States, Europe, and Asia. And she regularly contributes commentaries to popular press including Project Syndicate, Nikkei Asia Review and Bloomberg. Angela has broad research interests in the areas of law and economics, particularly in transnational legal issues bearing on businesses. She is currently working on a few projects pertaining to platform governance and regulation, trade and investment, as well as the Chinese political economy. Angela also serves as the Director of the Centre for Chinese Law at the University of Hong Kong, which promotes legal scholarship with the aim to develop a deeper understanding of China and facilitate dialogue between East and West. Before joining the University of Hong Kong, Angela taught at King’s College London and practiced law for six years in the United States, Europe, and Asia. She worked as a bankruptcy lawyer at Debevoise & Plimpton in New York and as an antitrust attorney at Cleary Gottlieb Steen & Hamilton in Brussels. Angela was admitted to the New York Bar in 2009. ​Angela received her LLB from Peking University, and her LLM, JD and JSD from the University of Chicago Law School. She wrote her doctoral dissertation under the supervision of former Judge Richard A. Posner. Chinese Antitrust Exceptionalism: How The Rise of China Challenges Global Regulation. Oxford: Oxford University Press, 2021. https://doi.org/10.1093/oso/9780198826569.001.0001.

in recent years, Western hostilities directed towards China and Chinese firms have triggered strong nationalistic sentiments in China, making it difficult for a substantial minority of Chinese policy-makers to push for reforms that would allow for greater democracy and freedom at home.17 Worryingly, policies of disengagement and containment will turn China into a more isolated, self-reliant, and inward-looking country, further heightening the risk of a full-blown war. Certainly, my proposal to foster economic interdependence does not imply a laissez-faire approach. It is perfectly understandable that host countries want to stay vigilant about Chinese influence.18 Thus, a pragmatic and flexible legal framework must be put in place to allow the host countries to retain significant regulatory leverage over Chinese firms, while avoiding too much red tape and undue regulatory burden on businesses. This is not an easy balance to strike but it is also the new normal that today’s foreign policy-makers should be prepared for given China’s rise. Antitrust lawyers and academics should also abandon the utopian ideal that antitrust law analysis is completely immune from political influence. It cannot be. As clearly illustrated by the EU’s latest proposal to tackle foreign state subsidies, the fine lines between competition law, trade law, and national security are becoming increasingly blurred. In a similar vein, the US Supreme Court’s decision to accord high deference to the Executive in the Vitamin C case means that politics will inevitably play a role in affecting future judicial decision-making in export cartel cases. For sure, some external pressure on China to reduce state interference in the economy is beneficial. However, there is a danger that the current Western trend of politicizing antitrust enforcement, if carried too far, can evolve into a double-standard used against Chinese firms. The appearance of this hypocrisy would then severely undercut the ability of EU and US enforcers to convince their Chinese counterparts that antitrust analysis should be grounded in legal and economic analysis, free of political considerations. The trend may even backfire if China retaliates against foreign firms Such an outcome would be quite ironic. With the SAMR assuming a leadership role over the new antitrust bureau, Chinese antitrust enforcement is expected to become more legalized and professional. Yet as China is moving towards the law, the rest of the world seems to be moving away from it. As the Trump Administration continues to launch aggressive legal assaults on Chinese technology companies, China has fallen back on its vast market access by wielding its antitrust law against US technology giants. The emerging transatlantic consensus against China and the ensuing nationalist fury are drowning the voices of progressive Chinese reformists advocating for a freer and more equitable China. In fact, Western efforts to contain China will have the unintended consequences of regressing Chinese legal reforms to the detriment of foreign firms operating in China.

#### China will retaliate by applying its anti-monopoly law on US export cartels.

Angela Huyue Zhang, Associate Professor of Law, University of Hong Kong, ’21, Chinese Antitrust Exceptionalism., Chapter 5: Weaponizing Antitrust During the Sino- US Tech War, Oxford University Press (2021). DOI: 10.1093/ oso/ 9780198826569.003.0006

[AML = Anti-Monopoly Law]

With the US exertion of extraterritorial jurisdiction over Huawei and ZTE generating heated discussions in China, Chinese policy- makers and scholars are now advocating for strong countermeasures to retaliate against US aggression. 6 While China has yet to adopt any sanction- specific measures, the AML has emerged as a powerful weapon that can be used in China’s regulatory response. China is not the first country to employ its antitrust regulations as a strategic tool to advance trade policy. In Chapter 4, we see how the US government promised to grant antitrust immunity to Japanese exporters in the 1980s in order to persuade the Japanese government to impose voluntary export restraints. These export restraints raised the prices of Japanese exports, thus shielding US domestic manufacturers from Japanese competition. However, unlike the US government, whose antitrust enforcement was deactivated to assure the Japanese government, the Chinese government is doing the exact opposite by enhancing the sanctioning power of the AML and invigorating its antitrust enforcement. In fact, the Chinese government has regarded the AML as a potent economic weapon that can be readily and easily implemented as a component of its tit- for- tat strategy against the United States during the trade war.

#### China has more to gain than lose when retaliating against the US because they can retaliate without violating international law or decreasing investor confidence.

Angela Huyue Zhang, Associate Professor of Law, University of Hong Kong, ’21, Chinese Antitrust Exceptionalism., Chapter 5: Weaponizing Antitrust During the Sino- US Tech War, Oxford University Press (2021). DOI: 10.1093/ oso/ 9780198826569.003.0006

Still, none of the regulatory measures China has inflicted on US firms were administered on the basis of long- arm jurisdiction. To respond in kind, China would need to demonstrate that it can also regulate US business operations beyond its own borders. The AML, promulgated in 2007, has developed into an attractive tool during the tech war. First, the AML allows the Chinese government to exert extra- territorial jurisdiction over foreign businesses.53 Based on the ‘effects doctrine’, a principle which originated in the United States, antitrust laws in many jurisdictions allow a country to exercise its jurisdiction over an individual or entity beyond its physical borders as long as the activities have effects within that country’s territory.54 For this reason, even if a merger transaction or a business practice is conducted overseas and has little nexus with China, China can exert its jurisdiction on the mere basis that the participating parties have sufficient sales in the Chinese market. As China has a vast and lucrative consumer market that few multinational companies can afford to ignore, this gives the Chinese government significant leverage over foreign firms.

Second, antitrust sanctions are powerful and immediate. As discussed in Chapter 1, an inherent characteristic of Chinese antitrust laws is that they empower regulators to impose heavy sanctions on infringing firms. For instance, a multibillion- dollar merger between large multinational companies, which generally requires approvals from multiple jurisdictions, can be held up by China’s intentional delay of antitrust approval. Similarly, a foreign firm operating in China can be slapped with hefty fines and harsh conduct remedies for its business practices in violation of the AML. Under the AML, the fining ceiling is elastic; it is typically based on a percentage (1– 10 per cent) of the firm’s revenue in the previous fiscal year. Therefore, an antitrust fine can amount to billions of dollars for a large multinational company. In addition to high fines, strict behavioural remedies can also be imposed on firms, significantly impacting on their business model. In 2015, the National Development and Reform Commission (NDRC) imposed a RMB 975 million fine on Qualcomm for abusing its dominant position in the Chinese market, along with a number of behavioural remedies. Despite receiving a strict penalty, Qualcomm was satisfied with such an outcome. As was discussed in Chapter 1, the NDRC could have pushed further at the time by requiring the firm to change how it charges licensing fees completely, which would have directly threatened Qualcomm’s survival.

Third, using antitrust law will only send a noisy signal to the market about China’s strategic leverage of the law to achieve its geopolitical purpose. Antitrust cases often rest on issues of economic effects, and the analyses can be highly technical and complex. In high- profile cases involving prominent business targets, well- known economists are often engaged to proffer evidence to support each side. And as noted in Chapter 1, the substantive issue of whether there is a legitimate legal basis for the Chinese authority to penalize a particular firm is often less observable to outsiders. Even if the parties concerned argue that politics has played a role and influenced their case, it is extremely difficult to verify such claims. Furthermore, as I illustrated in Chapter 2, the AML affords Chinese regulators wide discretionary power, and businesses rarely challenge the agency for fear of retribution and the imposition of reputational sanctions. As such, in spite of their complaints, businesses have more often than not acquiesced to the demands of the Chinese agency by publicly admitting their guilt. This thus sends a loud signal to the market that China is strategically employing the AML to inflict pain on particular foreign firms. The Chinese government can therefore achieve its policy objectives without explicitly flaunting existing international trade and investment rules. This strategy also causes less damage to China’s reputation as it tries to maintain a friendly business environment for foreign businesses.

#### Reject affs strict realist reading of Chinese IR – tacit strategic bargaining more accurately predicts tit-for-tat negotiation. Independently, China regulatory retaliation blurs national security and antitrust regulation.

Angela Huyue Zhang, Associate Professor of Law, University of Hong Kong, ’21, Chinese Antitrust Exceptionalism., Chapter 5: Weaponizing Antitrust During the Sino- US Tech War, Oxford University Press (2021). DOI: 10.1093/ oso/ 9780198826569.003.0006

As President Xi Jinping reportedly told a group of chief executives of American and European multinationals at a gathering in June 2018: ‘In the West you have the notion that if somebody hits you on the left cheek, you turn the other check. In our culture we punch back.’7 So what is the rationale behind China’s decision to return America’s fire? How does China use its antitrust law to exert influence? Is there a limit of China’s regulatory response? In this chapter, I will attempt to answer these questions by applying game theory analysis of conflict and cooperation. I draw heavily upon the insights from Thomas Schelling, a renowned economist who won the Nobel prize in 2005 for applying game theory to the study of war and peace.8

Schelling is a pioneer who revolutionized how we should think about conflict resolution. In contrast to realists in international relations theory who stress the material foundations of power, Schelling perceives most conflicts as a strategic bargaining situation.9 Essentially, such bargaining is a process of influence through which actors attempt to resolve a conflict. Schelling was also the first to propose that the bargaining process can be explicit or tacit.10 The ongoing Sino- US trade negotiation involving formal diplomatic exchanges between the two countries is an example of an explicit bargain. Worth noting is that a bargain is tacit when there is no explicit negotiation between the countries, or when there exists some communication but the negotiation remains incomplete.11 In such circumstances, it is the actions, rather than rhetoric, that constitute the main medium of communication.12 To put this into perspective, when the United States imposed sanctions on Chinese technology companies and used such cases as bargaining chips during trade talks, there was no formal diplomatic dialogue between the countries on the subject of dispute resolution. After all, the handling of sanctions is ostensibly a matter for the US government and its judicial branch and is an internal affair. This, however, does not mean that China cannot exert influence. In the event that China responds aggressively and threatens to retaliate in kind, the US government and courts will not ignore such grievances completely, something that could then affect their next move. The interdependent actions of the two countries can therefore be viewed as a tacit bargain. In his seminal work, The Strategy of Conflict, Schelling often makes interesting analogies between the criminal underworld and international relations.

Just like the criminal underworld, the international system lacks a central authority such as an enforceable legal system that can resolve conflicts arising between countries embroiled in a dispute.13 That said, repeated interactions between the countries could act as an enforcement mechanism. If a country expects that it will repeatedly engage with the other in the near future, this forethought could cast a long shadow over the present negotiations and affect the countries’ strategic moves today.14

Indeed, in response to America’s waywardness in applying its sanctions laws as an instrument of trade and foreign policy, China has settled on a rather unyielding approach. The Chinese antitrust authority has been flexing its regulatory muscles by holding up multi- billion- dollar merger transactions between large multinationals, amending provisions in the AML to allow for high monetary fines and potential criminal liabilities, and threatening to impose heavy antitrust sanctions on firms that boycott or refuse to supply key components to Chinese technology companies. As such, the line between national security and antitrust policy, once belonging to separate spheres, is becoming increasingly blurred amid the growing Sino- US trade tension.

## Adv 2

### XT Semiconductors Turn

#### 3. Semiconductor supply-chain decoupling undermines US tech supremacy – turns this advantage.

Fp Analytics, 2-16-21, "Semiconductors and the U.S.-China Innovation Race," Foreign Policy, https://foreignpolicy.com/2021/02/16/semiconductors-us-china-taiwan-technology-innovation-competition/

Semiconductors, otherwise known as “chips,” are an ­­essential component at the heart of economic growth, security, and technological innovation. Smaller than the size of a postage stamp, thinner than a human hair, and made of nearly 40 billion components, the impact that semiconductors are having on world development exceeds that of the Industrial Revolution. From smartphones, PCs, pacemakers to the internet, electronic vehicles, aircrafts, and hypersonic weaponry, semiconductors are ubiquitous in electrical devices and the digitization of goods and services such as global e-commerce. And demand is skyrocketing, with the industry facing numerous challenges and opportunities as emerging technologies such as artificial intelligence (AI), quantum computing, Internet of Things (IoT), and advanced wireless communications, notably 5G, all requiring cutting-edge semiconductor-enabled devices. But the COVID-19 pandemic and international trade disputes are straining the industry’s supply and value chains while the battle between the United States and China over tech supremacy risks splintering the supply chain further, contributing to technological fragmentation and significant disruption in international commerce.

For decades, the U.S. has been a leader in the semiconductor industry, controlling 48 percent (or $193 billion) of the market share in terms of revenue as of 2020. According to IC Insights, eight of the 15 largest semiconductor firms in the world are in the U.S., with Intel ranking first in terms of sales. China is a net importer of semiconductors, heavily relying on foreign manufacturers—notably those in the U.S.—to enable most of its technology. China imported $350 billion worth of chips in 2020, an increase of 14.6 percent from 2019. Through its Made in China 2025 initiative and Guidelines to Promote National Integrated Circuit Industry Development, over the past six years, China has been ramping up its efforts using financial incentives, intellectual property (IP) and antitrust standards to accelerate the development of its domestic semiconductor industry, diminish its reliance on the U.S., and establish itself as a global tech leader. As U.S.-China competition has intensified, notably under the former Trump administration, the U.S. has been tightening semiconductor export controls with stricter licensing policies, particularly toward Chinese entities. Concerns continue regarding China’s acquisition of American technology through civilian supply chains and integration with Chinese military and surveillance capabilities.

Caught between these global superpowers is the Taiwan Semiconductor Manufacturing Corporation (TSMC), a leading manufacturer in the industry, owning 51.5 percent of the foundry market and producing the most advanced chips in the world (10 nanometers or smaller). TSMC supports both American and Chinese firms such as Apple, Qualcomm, Broadcom, and Xilinx. Until recently, the firm also supplied Huawei but severed ties with the Chinese giant in May 2020 because of U.S. Department of Commerce restrictions on Huawei suppliers over security concerns.

Taiwan has also become a geopolitical focal point because the Trump administration’s moves to strengthen American-Taiwanese relations heightened tensions in the Taiwan Strait and increased China’s military activity in the region, testing the Biden administration’s resolve. Together, these factors present significant risks to a critical manufacturing node for the global semiconductor industry. Taiwan represents one part of the industry’s complex ecosystem and shows more broadly the increasing difficulty for companies and countries to remain insulated from geopolitics—particularly amid pressures contributing to U.S. and China decoupling. As geopolitical, trade, and technology disputes mount and the COVID-19 pandemic continues to harm the supply and value chains, semiconductor firms are trying to secure their manufacturing processes by stockpiling supplies or relocating production facilities—disrupting the industry at large.

With semiconductors at the heart of U.S.-China strategic and technological competition, the industry continues to experience a range of protective tariff and non-tariff measures that threaten production and competitiveness of the industry. This FP Insider Report analyzes the evolving strategic economic relationship among China, Taiwan, and the United States as it pertains to semiconductors, examines the growing economic and security challenges that key private and public sector actors within the industry face, and pinpoints opportunities for the Biden administration as it seeks to bolster U.S. competitiveness while containing China’s technological ambitions. In particular, this report finds:

Semiconductors represent the linchpin for U.S. and China’s mutually dependent technological ambitions. Semiconductors are a critical technological vulnerability for both China and the United States, which rely on each other as well as Taiwan for cutting-edge semiconductor devices.

Despite massive investment, China is highly unlikely to achieve independent semiconductor manufacturing capabilities in the next five to 10 years. Chinese companies are unable to compete against top-tier firms because of limited access to semiconductor manufacturing equipment (SME) and software, and their overall lack of industry knowledge hinders the development of a self-sufficient supply chain.

Taiwan is set to become the center of U.S.-China tensions. Given the country’s central role in semiconductor manufacturing and technology supply chains, China will likely leverage its economic influence through trade restrictions, talent recruitment, and cyber to attack key companies in order to obtain core semiconductor intellectual property (IP) needed to bolster its domestic industry.

Unilateral restrictions fostering distrust among companies and country governments risk economic decoupling. Unilateral economic measures imposed by the United States on segments of the supply chain, notably manufacturers such as TSMC, have fostered concern among private and public actors on the impact of action by U.S. leaders on global supply chains and corporate competitiveness. Recognizing critical bottlenecks and vulnerabilities, some companies are evaluating new production models, diversifying investments and suppliers to circumvent American economic policies, which could undermine U.S. primacy in the industry.

#### 4. Externally, key to mega cities – extinction

Basulto 14 (Dominic - Washington Post innovations contributor, 10-28-2014, "The future of innovation belongs to the mega-city," Washington Post, https://www.washingtonpost.com/news/innovations/wp/2014/10/28/the-future-of-innovation-belongs-to-the-mega-city/?utm\_term=.42327edfad1c)

By 2030, according to the UN, there will be 41 mega-cities around the world with populations of greater than 10 million people. Not only will these mega-cities control the lion’s share of the world’s global economic and financial resources, they will also largely determine the future of innovation — and that could have a major impact on how we think about America’s hub-and-spoke model of innovation. If you think about how innovation works in America, a relatively small metropolitan area such as Austin or Seattle (both of which do not rank among America’s 10 biggest cities by population) can have a disproportionate impact on the future of national innovation. That’s a pattern repeated around the country, as even smaller metropolitan areas — places like Raleigh-Durham or Chattanooga — also play an important role in pushing forward U.S. innovation. Even freewheeling Silicon Valley has always been based on its density of ideas, not the density of its population. Yet, all the current trends suggest that this uniquely American system of innovation, in which innovation is so geographically diverse and spread out across so many hubs, is about to sustain a major challenge from the relentless pace of urbanization around the world. Just 40 years ago, there were only 3 mega-cities in the world: New York, Tokyo and Mexico City. Now there are 28, and there are plenty more waiting in the wings. It’s now become conventional wisdom that cities are the engines of growth, progress, jobs and prosperity. And the bigger the cities are, the bigger is that potential engine. Viewed from this perspective, it’s almost impossible to see any way that the United States can keep up with the growth of Asia’s mega-cities without making changes to its national model of innovation. Take a look at the projected map of global mega-cities created by Bloomberg – of the 41 mega-cities in the world by 2030, 24 will be in Asia. By way of comparison, North America will have only three mega-cities: New York, Los Angeles and Mexico City. South America will have five: Bogota, Lima, Sao Paulo, Rio and Buenos Aires. Even Africa — with Lagos, Luanda, Kinshasa and Johannesburg — will have more mega-cities than North America. You can already glimpse how the inexorable logic of the mega-city is going to play out. Take America’s two mega-cities, New York and Los Angeles. A recurring theme in New York tech circles has been that New York City has finally caught up to Silicon Valley as America’s new innovation leader, based largely on the remarkable confluence of so many industries – media, finance, fashion – being based in such a densely populated urban space. That’s exactly the right environment for new technologies to take advantage of network effects. And Los Angeles seems to be experiencing a new tech boom these days, giving us a whole host of interesting new start-ups. Again, sheer population density is one of the factors at work. “Silicon Beach” is showing signs of being a rival to Silicon Valley these days. As a recent paper from Kristin Ljungkvist of Uppsala University in Sweden points out, it’s not only technological innovation where these mega-cities have the potential to play a huge role in future innovation. On just about any issue with a political angle to it — climate change, poverty, transnational crime, pandemics and counterterrorism – there’s a good chance that mega-cities are going to be at the forefront of new innovation and creative thinking. The specific example cited by Ljungkvist in her paper is New York City. In areas such as counterterrorism, New York City is already a national leader. In many ways, says Ljungkvist, New York is acting like its own city-state, with its own approach to climate change and its own counterterrorism policy. And all this policy innovation drives economic growth as part of a virtuous circle: “Local representatives, when they get involved in global issues such as climate change, do it primarily to ensure continued strong economic development for the metropolitan area.” After all, as the UN argued in its 2013 report “World Urbanization Prospects,” innovation is the single most important weapon these mega-cities have to deal with problems ranging from transportation to health care. In short, to deal with the massive crush of higher population, mega-cities have to get smarter faster. They have a real need for all the innovations that can transform them into “greener, healthier, friendlier and more efficient metropolises.” Of course, not everyone is upbeat about the growing role of mega-cities. McKinsey has pointed out that some of the talk about mega-cities may be overhyped: “Contrary to common perception, mega-cities have not been driving global growth for the past 15 years.” And other researchers have highlighted how mega-cities present their own unique socio-economic problems — everything from traffic congestion to slums — created by such dense population growth. Joel Kotkin, for example, sees mega-cities as “a tragic replaying of the worst aspects of the mass urbanization that occurred previously in the West.” So what does all this mean for U.S. innovation? For one thing, tech innovators chasing new opportunities may choose to move to America’s biggest cities in even greater numbers, further exacerbating demographic trends of population shifting away from suburbs to urban metropolises. Immigrants, who typically cluster in larger cities, may play an even greater role in guiding the future of American innovation. And larger cities not typically regarded as national innovation leaders but on the demographic cusp of becoming a mega-city – Dallas, Houston, Miami and Phoenix — may increasingly find their innovation prospects improved at the expense of regional hubs that have smaller or declining populations. With the rise of mega-cities, Washington policymakers and Wall Street investors may find it harder to sell the Silicon Valley story abroad. Remember when just about every city in the world was attempting to build its own version of Silicon Valley? If mega-cities in China, India and Nigeria take off as many suggest they will, then policymakers could be talking about implementing a “Chengdu” or an “Ahmadabad” or a “Lagos” model rather than a “Silicon Valley” model. That would imply not just a new language of innovation, but also a radically new way of thinking about America’s role in global innovation. When it comes to innovation, maybe size does matter.

#### Aff evidence overlooks Chinese strategic culture. China is status seeking, proven by Larson and Shevkenko’s onslaught of empirical and theoretical support. Rather than absolutely adversarial entities, states cooperate when mutually advantageous. Alternative data reflects eurocentric bias.

Jonathan Renshon, Associate Professor of Political Science @ UWM, ’16, “Status Deficits and War” International Organization, Vol. 70, No. 3

Abstract

Despite widespread agreement that status matters, there is relatively little in the way of focused research on how and when it matters. Relying on the assumption that it "matters" has provided few extant theories of variation in states' concern for status and little understanding of its specific implications for international conflict. I introduce a theory of status dissatisfaction (SD) that clarifies who forms the basis for status com parisons in world politics, when status concerns should be paramount, and how they are linked to international conflict. I demonstrate the viability of conflict as a strategy for status enhancement: both initiation and victory bring substantial status benefits over both five- and ten-year periods. Using a new, network-based measure of international status, I demonstrate that status deficits are significantly associated with an increased probability of war and militarized interstate dispute (MID) initiation. Even internation ally, status is local: I use "community detection" algorithms to recover status communi ties and show that deficits within those communities are particularly salient for states and leaders.

Scholars from disparate traditions in political science and international relations (IR) agree that status—standing or rank in a hierarchy—is a critical element of internation al politics.1 The first aspect of this consensus is scholars' strong belief that status affects outcomes of interest across IR, including behavior related to international or ganizations, nuclear proliferation, and international political economy.2 Horowitz and colleagues are typical of this assumption and conclude that "status seeking and dom inating behavior may be as important as raw aggression in affecting the likelihood of international conflict."3 The second element is general agreement that status has been an important factor in particular cases of real-world importance, where scholars have been confident in attributing status-seeking motives to states and leaders. For example, Mastanduno, in describing the Cold War dynamic, states that "US officials worried greatly, some would say obsessively, about the costs to US credibility and prestige of failed or aborted interventions."4

Although there is considerable agreement within the political science discipline and the foreign policy community that status matters in world affairs, there is little focused research on how and when it matters. Qualitative work has been illuminating, but unable to establish patterns across time and space, while cross-national research on status and conflict has established a foundation for future inquiries, but has yet to generate concrete, replicable findings on the subject.5 Recent experimental work on political and military leaders has touched on the subject as well, though without the direct link to international conflict that is still the gold standard in IR.6

I present a series of methodological and theoretical innovations intended to break new substantive ground in the study of status and world politics. On the theoretical side, I clarify the relationship between status and conflict through a theory of "status dissatisfaction." Although the desire to show that status matters has been a valuable building block, I propose an approach that focuses on status concerns that vary over time and context, rather than the traditional focus on status-seeking or general preferences for status. This is critical because, while preferences for higher status can be taken as a constant, the level of concern over relative status is not and thus provides far greater analytical leverage in examining the effects of status in world politics Status dissatisfaction also explains how status is linked to international conflict, be ginning with the critical issue of how states make status comparisons. In particular, it focuses on how states group themselves into "status communities" of peer competi tors. Although previous work has noted that status is relative, it has failed to ask: rel ative to whom? Thus, one notable advancement of this theory is its treatment of these reference groups, long cited as one of the key elements of status by virtually every other field in the social sciences, but severely neglected in IR.

Finally, the theory provides an explicit link between status dissatisfaction—a heightened concern for status triggered by status deficits within a given status community—and conflict. Previous theories have relied on "frustration" or "unthink ing" aggression that presupposes a degree of irrationality that is difficult to prove and serves to underemphasize the strategic nature of status-seeking in world politics, one that is consistent with both psychological and rationalist accounts of IR.7 States seek status commensurate with their abilities because it is a valuable resource for coordi nating expectations of dominance and deference in strategic interactions. Rather than a response to failing to change an actor's status position, the initiation of conflict is better conceptualized as one way that states seek to alter the beliefs of other members of the international community. This strategy works: states that initiate and win con flicts receive substantively and statistically significant boosts in their status ranks after both five and ten years.

The ephemeral (that is, ideational and social) nature of status implies that several methodological issues must be tackled to provide a convincing demonstration of status dissatisfaction. The two most prominent are the measurement of status itself and the identification of "status communities." Following previous work, I use the diplomatic exchanges between countries as a measure of status, but I identify three issues that have limited the usefulness of these data thus far:

1. All countries are equal (representation from smaller states "counts" as much as representation from superpowers).

2. All diplomats are equal (previous work has ignored the different levels of diplo matic representation by collapsing the data into binary form).

3. There is only one hierarchy, composed of all states.

To rectify the first issue, I innovate by measuring status through a network centrality measure that—unlike previous work—sensibly takes into account the importance of the sending country so that states are allowed differential abilities to confer status on other actors. To address the latter two issues, I use a "community detection" algorithm that weights edges (connections between states) by the level of diplomatic representation to form "status communities" based on the number and intensity of real-world interactions between states.

Status in International Relations

In empirical IR, the most prominent manifestation of status has been the idea that con flict arises from status "inconsistency," a disjuncture between the status attributed by the international community and the status one actually deserves.8 Attributed status was indexed using the number of diplomatic representatives received and achieved status—what countries would feel they "deserved"—was measured as military and industrial capacity.9 Findings in this tradition were mixed: some research found greater inconsistencies associated with the onset and severity of international conflict while others found either no relationship or a negative relationship between status in consistency and war.10 Still others argued that these mixed results might be explained by temporal shifts in the relationship between status inconsistency and conflict.11 In Table 1, what at first glance seem to be many "failed" replications are an ag glomeration of different research designs, hypotheses, and subsets of data: no analy sis has examined the entire international system over the entire span of time for which data exist. And while some studies examined the overall levels of status inconsistency and its relationship to levels of international violence, most works examine status in consistency for individual states.12 This means that we have little sense of whether the mixed results are the "fault" of the general intuition, the specific theory (based on frustration and aggression), or the multiple and conflicting ways it has been tested. Related work can be found in the "causes of war" literature as well as research on the acquisition and demonstration of both conventional and nuclear weapons.13 In power transition and hegemonic war theory, status has been a focus of the theories, but neglected in empirical efforts. Gilpin and Organski and Kugler have all argued for the importance of prestige as one of the central benefits denied to rising powers by the reigning hegemon who "locks in" a hierarchy of prestige that may no longer accurate ly reflect the balance of capabilities.14 Yet, "satisfaction" with the system has been measured—not directly through careful construction of status dissatisfaction measures—through second- or third-order implications, such as an alliance portfolio that aligns with that of the "system leader."15

A growing literature on status in IR has drawn from Social Identity Theory (SIT), a particularly useful lens that focuses our attention on social comparison. Larson and Shevchenko have used SIT to explore strategies that great powers have used to main tain or increase their status, such as emulating the practices of higher-status groups.

In a similar vein, Wohlforth has proposed a theory of great power status competition that predicts more "status conflict" (wars whose motivating factor is competing for primacy in the status hierarchy) in multipolarity than in bipolar or unipolar systems.17 Related work has focused on the dynamics of status recognition, how status concerns affect the decision making of political and military leaders and how states balance trade-offs between status and material capabilities.18

Many of these works are bounded by a strict set of conditions, such as an equal power distribution among major powers.19 In other cases, they rely on a set of as sumptions that consider status-seeking irrational or noninstrumental, despite evidence that there are strategic rationales for acquiring status.20 While many of the ideas gen erated by a SIT-based approach are valuable, they have proven difficult to test sys tematically in IR. For example, experimental findings on social comparison and "which of many possible identity-maintenance strategies they [states] will choose" have been difficult to operationalize in the context of world politics.21 A much larger problem, however, is that we have ignored several key conceptual features of status that would help us to refine both our theoretical and empirical work. Here, a large body of literature on status in economics and psychology helps in gen erating more definitive hypotheses about social comparison, the most important feature of status still unaccounted for in existing work. Frank, for example, has argued that human beings are motivated by a biological mechanism to improve or maintain their status and that this mechanism is far more responsive to local rather than global comparisons.22 "Local" in this case implies comparisons to actors that are similar along a range of dimensions, or ones that are forced upon the actor through proximity (such as workplace associates, or countries in a similar region).

A related area in need of improvement is our measurement of status itself. Although there is general agreement that the diplomatic exchange data set provides a crucial window into status dynamics in world politics, all previous research has simply counted the total number of diplomats a state has received (the more diplomats received, the higher status that state is).23 This, too, ignores several important features of status, foremost among them that the status of the sending state matters; status is more effectively gained from high—not low—status actors. To rectify this, I use the tools of network analysis to provide a measure of diplomatic importance that con forms to the conceptual requirements of status far better than previously used mea sures. In response to the importance of "local" status, I extend the network-based analysis using the formal method of community detection to recover "status com munities" in the international system.

### XT 1NC 3 – AT: Tech Leadership

#### China doesn’t hurt US tech leadership.

Economist ’18 [5-3-2018, “Fears that China has hurt innovation in the West are overblown,” https://www.economist.com/finance-and-economics/2018/05/03/fears-that-china-has-hurt-innovation-in-the-west-are-overblown]

POPULAR concern about free trade with China has focused on the loss of manufacturing jobs in America and Europe. Policymakers have an additional worry: that China’s rise is hurting innovation in the West. This fear is among the small set of issues that unites American Democrats and Republicans. In 2016 Barack Obama’s commerce secretary said that China’s state-driven economy would weaken the world’s innovation ecosystem. Donald Trump’s advisers allege that China makes it harder for foreign firms to invest in innovation by squeezing their returns. Mr Trump’s trade team was expected to raise this complaint, among others, with Chinese officials during talks in Beijing on May 3rd and 4th, as The Economist went to press. There is one problem. Data suggest that competition with China has coincided with more innovation in America, not less. The relationship between competition and innovation is complex, even before considering trade with China. Economists agree that the right competitive landscape fosters innovation. But they disagree about what exactly that landscape looks like. More competition might prod companies to try harder to develop new products in the hope of gaining market share. Alternatively, if competition is cut-throat, profits might evaporate to the point that companies have little incentive to take risks. The fear is that China generates the wrong kind of competition and stunts the good kind. Businesspeople elsewhere worry that when the Chinese government decides to fund this or that industry, investment soars and margins collapse. Overcapacity in steel was caused in part by Chinese investment in steel processing; semiconductor firms think their industry might be next. At the same time, argues Robert Lighthizer, the US Trade Representative, foreign companies that beat their Chinese competitors are not adequately rewarded because China presses them to transfer their intellectual property. The two main academic papers on this question looked at the years around China’s accession to the World Trade Organisation in 2001. Far from settling the matter, they were contradictory. Economists studying European companies found that competition from Chinese imports both caused firms to improve their technology and led to a shift in jobs to the most advanced firms. They concluded that 15% of the upgrading of technology in Europe between 2000 and 2007 could be attributed to the increase in imports from China. But economists examining the impact on America argued that, on the contrary, Chinese competition had led companies to spend less on research as profits fell. They calculated that imports from China explained 40% of a slowdown in American patenting between 1999 and 2007, compared with the preceding decade. The IMF has now weighed in with more recent figures. Its conclusion is rather more cheerful, at least for those who think a trade war with China is a rotten idea. In a report published in April the fund showed that, following an extended period of decline, high-quality patents granted to American companies had risen sharply between 2010 and 2014. It also pointed to a big increase in American spending on research and development during the same years—even as America’s trade deficit with China rocketed (see chart). The growth in patents was more sluggish in Europe and Japan. But both patents and research spending soared in South Korea, the country most directly exposed to manufacturing competition from China. A separate IMF working paper late last year unpicked some of what is happening in America. Competition from Chinese imports has caused research spending to be reallocated within certain industries, away from also-rans and towards the most productive and profitable firms. At the same time, many researchers left manufacturing industries and moved into service sectors such as data-processing and finance. Both results are consistent with an American economy that is playing to its strengths. The IMF’s analysts concluded that Chinese imports were not a threat to innovation in America, after all, and that policymakers could take a deep breath. No loud inhaling sounds have yet been reported from the White House.

#### Chinese tech isn’t special.

Jun ’18 [Zhang; dean of the School of Economics @ Fudan University and director of the China Center for Economic Studies, a Shanghai-based think tank., 8-3-2018, "The West exaggerates China's technological progress," Nikkei Asian Review, https://asia.nikkei.com/Opinion/The-West-exaggerates-China-s-technological-progress]

Over the past two decades, China has been achieving rapid technological progress, thanks in no small part to its massive investment in research and development, which totaled some 2.2% of its gross domestic product last year. Yet China is nowhere near the technological frontier. In fact, the distance separating it from that frontier is far greater than most people recognize. In the West, many economists and observers now portray China as a fierce competitor for global technological supremacy. They believe that the Chinese state's capacity is enabling the country, through top-down industrial policies, to stand virtually shoulder-to-shoulder with Europe and the U.S. Harvard economics professor and former U.S. Treasury Secretary Larry Summers, for example, declared last March at a Beijing conference that it is a "historical wonder" that China, where per capita income amounts to just 22% that of the United States, could have the world's cutting-edge technology and technological giants. The U.S. Trade Representative, in a March report, presented the "Made in China 2025" plan -- a 2015 blueprint for upgrading China's manufacturing capacity -- as proof that the country is seeking to displace the U.S. in high-tech industries that it considers strategic, such as robotics. Moreover, the USTR report asserts, China has happily played the game by its own rules, and has violated current global regulations to achieve its goals. Indeed, many Westerners warn that China is planning to use its technology-based power to impose an entirely new set of rules that is inconsistent with those long enforced by the West. This is a serious misrepresentation. While it is true that digital technologies are transforming China's economy, this reflects the implementation of mobile-Internet-enabled business models more than the development of cutting-edge technologies, and it affects consumption patterns more than, say, manufacturing. This kind of transformation is hardly unique to China, though it is occurring particularly rapidly here, thanks to a huge consumer market and weak financial regulation. Furthermore, it is not so obvious that these changes have anything to do with the government's industrial policies. On the contrary, the growth of China's internet economy has been driven largely by the entrepreneurship of privately owned companies like Alibaba and Tencent. In fact, Western observers -- not just the media, but also academics and government leaders, including U.S. President Donald Trump -- have fundamentally misunderstood the nature and exaggerated the role of China's policies for developing strategic and high-tech industries. Contrary to popular belief, these policies do little more than help lower the entry cost for firms and enhance competition. In fact, such policies encourage excessive entry, and the resulting competition and lack of protection for existing firms have been constantly criticized in China. Therefore, to the extent that China relies on effective industrial policies, they do not create much unfairness in terms of global rules. Having said that, what are China's actual technological prospects? The Chinese are certainly fast learners. Over the last 30 years, Chinese manufacturers have proved adept at seizing opportunities to emulate, adapt and diffuse new technologies. But technological advances in the Chinese business sector occur at the middle of the smile curve (where gains are generally lower than at the innovative start of a new product or at the end, in marketing finished goods to consumers). Foreign core-technology owners extract most of the added value from Chinese manufacturing. For example, in Danyang, a county of Jiangsu Province that is a production hub of optical lenses for global markets, manufacturers can produce the most sophisticated models. Yet they lack the core software to produce, say, progressive lenses, so they must pay a fixed royalty to a U.S. company for each progressive lens they make. Likewise, China's automobile manufacturers still import their assembly lines from developed countries. Clearly, there is a big difference between applying digital technologies to consumer-oriented business models and becoming a world leader in developing and producing hard technology. The latter goal will demand sustained investment of time, human capital, and financial resources in sectors with long basic R&D cycles (such as pharmaceuticals). Given this, China probably remains 15-20 years away from matching the R&D input of, say, Japan or South Korea, and when it comes to output -- the more important factor -- it is much further behind. While China can accelerate progress by attracting creative talent and strengthening incentives for long-term research, there are no real shortcuts when it comes to achieving the gradual shift from learning to innovating.

#### Chinese tech is safe.

Lee & Triolo ’17 [Kai-Fu; Ph.D., is a Co-Founder, Chairman, President, Chief Executive Officer, and Managing Partner of Sinovation Ventures, Paul Triolo is a China Digital Economy Fellow at New America and the geo-technology practice head at the Eurasia Group, “China’s Artificial Intelligence Revolution: Understanding Beijing’s Structural Advantages”, https://www.eurasiagroup.net/files/upload/China\_Embraces\_AI.pdf]

Beijing’s AI policy priorities are clear. The “Next Generation Artificial Intelligence Development Plan,” announced by China’s State Council in July 2017, called for China to catch up on AI technology and applications by 2020, and to become a global AI innovation hub by 2030. Chinese President Xi Jinping hammered the point home in his 19th Party Congress speech in October, when he mentioned the development of advanced manufacturing and the promotion of further integration of the Internet, big data and artificial intelligence with the real-world economy. Beijing has placed huge bets on AI for a host of political and economic reasons, from improving governance capacity to improving policy development and surveillance. The plan calls for China to lead the way in developing a regulatory environment to both encourage AI development and to mitigate the potential downsides of AI. A few months after the national plan’s announcement in July, the Ministry of Science and Technology (MOST) designated Baidu to lead the autonomous vehicle platform, Tencent for medical, Alibaba for Smart Cities, and iFlyTek for speech interfaces. These plans should be taken seriously, as the Chinese government has shown a strong track record in delivering results. For example, Beijing announced in 2010 that China would become the world’s leader in adopting high-speed rail (HSR). Today it has 60% of the world’s HSR market. In 2014, the Chinese government announced the “Mass Entrepreneurship and Innovation Plan.” Today there are business 8000 incubators in China, compared to 1400 in 2014. These plans have teeth, both due to the deadlines and metrics set out at the national level, as well as the local companies that are likely to take these directions as top priorities. We can expect a similar trajectory for China’s AI policies. Historically, the Chinese government has been open-minded towards technology development. When a new technology comes out, the government will give it the benefit of doubt and let it grow, rather than stifle it with policy or endless debates. Also, the environment in China is more conducive to fast launch and iteration. There is a general belief that it is better to launch something and then get it approved later. This allows Chinese businesses to generate real data at scale, which in turn allows technology to improve over a shorter period of time, particularly once AI is introduced into the equation. For example, while in the US, truckers’ unions are petitioning the Department of Transportation to delay autonomous truck testing, in China, the Xiong’an New Area, a planned smart city development southwest of Beijing, is being designed from the ground up with full autonomy in mind. Various highway authorities are willing to develop road augmentation, special lanes, or move warehouses near highway exits, all to facilitate faster deployment of autonomous trucks. We also see major initiatives in cities, following the central government’s call to action. Shanghai, Nanjing, Wuhan, and Tianjin are but a few of the cities coming out with their own AI initiatives. As with past policies, much of the resources will be applied at the provincial and city government levels. The types of resources may include subsidies for top talent (especially overseas talent); guidance for top VC funds, with the government playing the role of limited partner (LP) but offering some of its upside to the general partners (GPs) of the funds; special programs for top AI companies and start-ups (free rent, subsidy for local hiring, housing and private school for top talents); and technical awards for companies and individuals. Finally, the US, EU, and China will also compete to be out in front on developing a regulatory regime around AI technologies and applications. The National Plan’s explicit recognition of the need for regulatory, legal, and ethical principles for AI development and use represents an uncommonly foresighted approach. Of course, the government’s approach to AI regulation, ethics, and economic adjustment will reflect Beijing’s broader model of governance and ideology. Given its preference for a state-centric approach to international issues, for example, it is possible China will launch an initiative via the UN to establish first an automation/AI-related “code of conduct,” or basic regulatory approach, followed by a special committee on the topic and eventually an oversight body operating within a UN framework. Such an initiative would put China at the forefront of developing a global approach to these issues. Beijing has attempted a similar approach on cybersecurity issues, which it argues have a global impact and require a global regulatory response.

# 1NR Round 5

## Comity

### 2NC – OV

#### 1. Probability – vaccine distribution creates resiliency. Bioweapons are as deadly and more likely to be used than nuclear warheads.

DR. TOM FRIEDEN, director of the Centers for Disease Control and Prevention during the Obama administration AND SENATOR TOM DASCHLE (D-SD [1979-2005]), 7-20-2021, "After 2020, pandemic preparedness budget cuts should be unthinkable," TheHill, https://thehill.com/opinion/white-house/563836-after-2020-pandemic-preparedness-budget-cuts-should-be-unthinkable

Furthermore, advances in biological science have made it increasingly easy to create dangerous pathogens. The intentional or unintentional release of a biological agent could be as deadly as a nuclear war, and we need a similarly vigorous system of standards and inspections to reduce that horrifying risk. While it remains unclear (and may never be known for certain) whether the SARS-CoV-2 virus emerged naturally or from a laboratory, it is clear that biosafety and biosecurity — domestically and abroad — poses a significant national security threat to every American. We must improve our preparedness infrastructure to meet this reality.

Finally, we must strengthen global health security, because it is essential to protecting the United States from health threats. The plain truth is that in our increasingly interconnected world, disease spread anywhere is a risk everywhere. If the world is safer, we will be safer here at home. Throughout this pandemic and other infectious disease events, we have seen unfortunate examples of failures of global cooperation which hasten the spread of infectious diseases. By working together — sharing data, knowledge and resources, and holding countries accountable for progress on reducing threats — we can increase our safety and security.

This is our now-or-never moment to make the investments we need to strengthen our nation’s public health infrastructure. We must prevent the next pandemic and ensure that we and the rest of the world never again are as underprepared as we were for COVID-19. The costs are high, but nowhere near as high as the cost of failing to invest in our health security.

#### 2. Magnitude and time frame: COVID induced political instability causes extinction.

RECNA, Research Center for Nuclear Weapons Abolition, Nagasaki University (RECNA), Asia Pacific Leadership Network (APLN) & Nautilus Institute (2021), ’21, Pandemic Futures and Nuclear Weapon Risks: The Nagasaki 75th Anniversary pandemic-nuclear nexus scenarios final report, Journal for Peace and Nuclear Disarmament, 4:sup1, 6-39, DOI: 10.1080/25751654.2021.1890867

The Challenge: Multiple Existential Threats

The relationship between pandemics and war is as long as human history. Past pandemics have set the scene for wars by weakening societies, undermining resilience, and exacerbating civil and inter-state conflict. Other disease outbreaks have erupted during wars, in part due to the appalling public health and battlefield conditions resulting from war, in turn sowing the seeds for new conflicts. In the post-Cold War era, pandemics have spread with unprecedented speed due to increased mobility created by globalization, especially between urbanized areas. Although there are positive signs that scientific advances and rapid innovation can help us manage pandemics, it is likely that deadly infectious viruses will be a challenge for years to come. The COVID-19 is the most demonic pandemic threat in modern history. It has erupted at a juncture of other existential global threats, most importantly, accelerating climate change and resurgent nuclear threat-making. The most important issue, therefore, is how the coronavirus (and future pandemics) will increase or decrease the risks associated with these twin threats, climate change effects, and the next use of nuclear weapons in war.5

Today, the nine nuclear weapons arsenals not only can annihilate hundreds of cities, but also cause nuclear winter and mass starvation of a billion or more people, if not the entire human species. Concurrently, climate change is enveloping the planet with more frequent and intense storms, accelerating sea level rise, and advancing rapid ecological change, expressed in unprecedented forest fires across the world. Already stretched to a breaking point in many countries, the current pandemic may overcome resilience to the point of near or actual collapse of social, economic, and political order. In this extraordinary moment, it is timely to reflect on the existence and possible uses of weapons of mass destruction under pandemic conditions – most importantly, nuclear weapons, but also chemical and biological weapons. Moments of extreme crisis and vulnerability can prompt aggressive and counterintuitive actions that in turn may destabilize already precariously balanced threat systems, underpinned by conventional and nuclear weapons, as well as the threat of weaponized chemical and biological technologies. Consequently, the risk of the use of weapons of mass destruction (WMD), especially nuclear weapons, increases at such times, possibly sharply. The COVID-19 pandemic is clearly driving massive, rapid, and unpredictable changes that will redefine every aspect of the human condition, including WMD – just as the world wars of the first half of the 20th century led to a revolution in international affairs and entirely new ways of organizing societies, economies, and international relations, in part based on nuclear weapons and their threatened use. In a world reshaped by pandemics, nuclear weapons – as well as correlated non-nuclear WMD, nuclear alliances, “deterrence” doctrines, operational and declaratory policies, nuclear extended deterrence, organizational practices, and the existential risks posed by retaining these capabilities – are all up for redefinition.

A pandemic has potential to destabilize a nuclear-prone conflict by incapacitating the supreme nuclear commander or commanders who have to issue nuclear strike orders, creating uncertainty as to who is in charge, how to handle nuclear mistakes (such as errors, accidents, technological failures, and entanglement with conventional operations gone awry), and opening a brief opportunity for a first strike at a time when the COVID-infected state may not be able to retaliate efficiently – or at all – due to leadership confusion. In some nuclear-laden conflicts, a state might use a pandemic as a cover for political or military provocations in the belief that the adversary is distracted and partly disabled by the pandemic, increasing the risk of war in a nuclear-prone conflict. At the same time, a pandemic may lead nuclear armed states to increase the isolation and sanctions against a nuclear adversary, making it even harder to stop the spread of the disease, in turn creating a pandemic reservoir and transmission risk back to the nuclear armed state or its allies.

In principle, the common threat of the pandemic might induce nuclear-armed states to reduce the tension in a nuclear-prone conflict and thereby the risk of nuclear war. It may cause nuclear adversaries or their umbrella states to seek to resolve conflicts in a cooperative and collaborative manner by creating habits of communication, engagement, and mutual learning that come into play in the nuclear-military sphere. For example, militaries may cooperate to control pandemic transmission, including by working together against criminal-terrorist non-state actors that are trafficking people or by joining forces to ensure that a new pathogen is not developed as a bioweapon.

To date, however, the COVID-19 pandemic has increased the isolation of some nuclear-armed states and provided a textbook case of the failure of states to cooperate to overcome the pandemic. Borders have slammed shut, trade shut down, and budgets blown out, creating enormous pressure to focus on immediate domestic priorities. Foreign policies have become markedly more nationalistic. Dependence on nuclear weapons may increase as states seek to buttress a global re-spatialization6 of all dimensions of human interaction at all levels to manage pandemics. The effect of nuclear threats on leaders may make it less likely – or even impossible – to achieve the kind of concert at a global level needed to respond to and administer an effective vaccine, making it harder and even impossible to revert to pre-pandemic international relations. The result is that some states may proliferate their own nuclear weapons, further reinforcing the spiral of conflicts contained by nuclear threat, with cascading effects on the risk of nuclear war.

Developing Pandemic-nuclear Nexus Scenarios

How might the COVID-19 pandemic (and future pandemics) create new opportunities or challenges for governments, civil society, and market actors to reduce nuclear risk and resume nuclear disarmament? And how might those challenges and opportunities emerge in Northeast Asia, in particular?

In the face of so much uncertainty, a powerful way to obtain navigational guidance and to develop robust strategies is to conduct scenario-based dialogues. Scenarios may be underpinned by analysis, but they rest primarily on eliciting diverse insights through a dialogic process (typically a workshop) that explores the multiple, powerful drivers of complex problems and possible strategies to resolve such problems. Rather than predict any specific future, the goal of developing scenarios is to prepare individuals and organizations for radically divergent, possible futures.

A scenario is a tool for ordering one’s perceptions about alternative future environments in which today’s decisions might play out. In practice, scenarios resemble a set of stories built around carefully constructed plots. These stories can express multiple perspectives on complex events and give multiple meaning to these events. The development of such scenarios was the primary goal of the Nagasaki 75th Anniversary Pandemic-Nuclear Nexus Scenarios workshop. Through this project, we wanted to develop an analytic understanding of the interrelated nature of nuclear weapons and global pandemics. We wanted to explore the potential levers and pathways to influence the future. And we wanted to find concrete strategies to reduce the risk of nuclear war and resume disarmament, particularly novel approaches that could engage both state and non-state actors.

Shaping the Focal Question

At the outset of the Pandemic-Nuclear Nexus Scenarios Project, the organizers framed a focal question that would guide the development of the scenarios: What are the opportunities driven by global pandemics for Northeast Asian governments, civil society, and market actors to reduce nuclear risk and resume nuclear disarmament? This focal question has twin normative values in it: (a) how to reduce the risk of nuclear war arising from the pandemic and (b) how to resume nuclear disarmament under pandemic conditions. Measures to realize (a) might be in opposition to measures to realize (b). They might be independent, or they might be complementary. Discovering opportunities where the measures are synergistic has the highest value; avoiding contradictory measures might be critically important. But forced to choose, we likely must go first and foremost with measures to reduce the risk of nuclear war, as disarmament becomes moot and improbable if nuclear war occurs.

As in any scenarios event, we sought to identify robust strategies that could work across the divergent, uncertainty-based scenarios and move each story line toward a higher probability of realizing these two strategic goals. We were particularly interested in prompting discussion on the role of cities as potential new players with regard to nuclear war risk reduction. The challenges of “global nuclear governance” and nuclear disarmament have traditionally been dominated by great powers (that is, nation-states).

But given their evident and emerging leading role as “first responders” to the existential threats of the coronavirus pandemic and climate change effects, we wanted to see how cities’ capacity and experience may be useful in relation to nuclear risk and disarmament. The focal question also centers on Northeast Asia, a region that was the site of the first use of nuclear weapons (in Hiroshima and Nagasaki), and that today has thousands of cities, as well as potential for conflict on multiple fronts, including between China and Taiwan, China and the United States, and the ROK and DPRK. Northeast Asia sits at the nexus of relations between the world’s three largest nuclear armed states (China, Russia, and the United States), and it is home to the DPRK, a rapidly developing new nucleararmed state.

Identifying Critical Uncertainties

In the first phase of the scenario development process, participants were divided into four groups where they brainstormed a broad range of “critical uncertainties,” variables whose outcomes are both undetermined and important for shaping the near- and long-term future. Participants were asked to consider uncertainties based on different categories (social, technological, environmental, economic, political, military, and epidemiological). Through their initial brainstorm, groups developed a list of dozens of critical uncertainties (see Appendix 2). They were asked to narrow down their lists of uncertainties to those most likely to play a major role in shaping the pandemic-nuclear nexus. They then considered how these uncertainties could unfold along an axis with two diverging outcomes. Following are a few of the drivers participants identified: How might a distanced society affect nuclear strategies? On one end of the spectrum, for example, re-spatialization could lead to greater cooperation as people work across borders, physical and virtual. On the other end, the need to maintain distance could lead to shifts in militaries’ offshore strategies for deterrence/military projection of might and could potentially lead to the increased use of non-conventional (including nuclear) weapons.

How will changes in budgets affect dis/armament? The economic recession caused by the pandemic could lead to drastic cuts in funding for the military, including for nuclear weapons. On the other hand, countries’ economic struggles could lead them to increasingly favor investing in nuclear, as opposed to higher-cost conventional weapons.

How might pandemics affect global cooperation? The COVID-19 pandemic could serve as an impetus for increased international cooperation and the sharing of global information, which could extend to other areas, including nuclear. On the other hand, questions over the origin of the virus, border closures, and “vaccine competition” could lead to a rise in tensions.

How will information sharing evolve? The proliferation of misinformation through diverse media channels (including social media) could erode progress in tackling shared global challenges. Or new systems could emerge that help ensure that information is shared with a high level of transparency and be verified as accurate.

Will inequality increase or decrease? Following the economic recession caused by shutdowns aimed at limiting the pandemic, the gap could continue to grow between (and within) societies regarding economic well-being and human health. Or the pandemic may usher in a more redistributive economic system that leads to a decrease in inequality.

How will governments manage simultaneous or prolonged threats? Governments may struggle to contend with concurrent challenges of pandemics, climate change, food insecurity, and terrorism, leaving them to ignore the nuclear issue. Or they may find ways to collaborate, reallocating budgets toward effective solutions and developing international agreements that could later pave the way for disarmament.

What is the effect of technology on nuclear risk and disarmament? Changes in technology could have a major influence on nuclear risk. New risks could emerge from the proliferation of artificial intelligence systems (including in nuclear command, control, and communication systems), deep fakes, drones, and hackers intercepting and altering messages. On the other hand, technology could enhance capacity for early warning systems, increase monitoring of military movement, and improve communication systems.

#### Courts also prevents effective executive trade leadership – turns CHina and crushes leadership in the WTO.

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

As the analysis above reveals, the executive branch's plea that the Supreme Court not grant conclusive deference to MOFCOM's statements is firmly grounded in the specific circumstances of the Vitamin C Case. Since trade remedies were not desirable in the Vitamin C Case, it is natural that the United States leaned on antitrust remedies. But if the Executive were to decide that it was in the United States' best interest to resolve the conflict via the trade route, then it would seem best to refrain from suing the Chinese manufacturers on the basis of conflicting antitrust grounds. In fact, it would make sense for the U.S. federal courts to stay the antitrust action, pending the resolution of the trade dispute, as was done in Resco Products. 63 Under such circumstances, the executive branch would have greater incentive to nudge the court towards granting immunity to the Chinese exporters, regardless of whether the Chinese government had filed an amicus brief in the litigation. Thus, contrary to the Second Circuit's decision in the Vitamin C litigation, a foreign government's appearance in court is neither necessary nor sufficient for affording a comitybased defense to the foreign exporters, since such a defense ultimately turns on the specific circumstances of a case. As the U.S. response to the Japanese export cartel in the 1980s will illustrate, under certain circumstances, the executive branch may even encourage foreign export cartels into the United States to address intractable trade problems.

#### Turns assitance – executive flexibility solves HADR.

Brattberg, 13 – fellow at the School of Advanced International Studies (SAIS) at Johns Hopkins University (Erik, 11/21. “The case for US military response during international disasters.” <http://thehill.com/blogs/congress-blog/foreign-policy/190954-the-case-for-us-military-response-during-international>)

The scale of the U.S. military’s response to the disastrous Haiyan Typhoon in the Philippines has been impressive. The deployment of USS George Washington along with other smaller vessels has allowed for the delivery of over 600 tons of relief supplies. Moreover, U.S. military transport has already moved thousands of humanitarian workers into the disaster-stricken Tacloban and airlifted almost 5,000 survivors into safety. As natural disasters and complex humanitarian emergencies are becoming more common worldwide, the U.S. will increasingly be called in to assist during other disasters. What’s more, weak and fragile states with inadequate emergency response capacities, infrastructure and public health services are particularly vulnerable to severe natural disasters. Here, military response is crucial to getting relief efforts up and running during the immediate post-disaster phase. But military-led disaster relief is not only a humanitarian imperative – it can also serve a larger strategic imperative as a part of U.S. foreign policy. Compounding the strategic importance of the US military’s role in humanitarian assistance and disaster relief are four key reasons. First, and most obviously, providing disaster relief helps boost U.S. soft power in the world. By assisting in humanitarian emergencies, the U.S. military sends a message that it’s a global force for good. The importance of this kind of ‘soft-power diplomacy’ cannot be underestimated, especially in times when the US is perceived as losing influence in the Asia-Pacific region to China. Responding to disasters can also lead to a more positive attitude towards the U.S. – as was the case following U.S. assistance during the flood in Pakistan in 2010. Second, disaster relief can help contain some of the negative consequences of major disasters from spreading elsewhere in the world. This is particularly the case in weak states where crises can easily spill over national boundaries in the forms of massive refugee flows, the spread of infectious diseases, or environmental collapse. Case in point: the robust U.S. intervention in Haiti after the earthquake in January 2010 prevented what could otherwise have been huge refugee flows to the U.S. Third, disaster relief is also an opportunity for the U.S. military to forge stronger multilateral security relationships with other countries’ militaries. In the Philippines, U.S. troops have worked alongside troops from several other countries. As the U.S. looks to expand its presence in the Asia-Pacific in the future, these kinds of activities can serve a clear purpose of building trust and developing military-to-military ties. As the Pentagon currently winds down its military presence in Afghanistan, relief efforts can also provide essential real-life training opportunities for American troops. Moreover, they can serve to legitimize US military presence in certain parts of the world where it is currently disputed. Finally, military-led disaster relief reinforces the view of America as an indispensible nation. Clearly the only international actor capable of carrying out such large-scale complex operations as the one currently seen in the Philippines is the US military. Few countries are complaining when the US acts as the world’s police in times of real crisis. In contrast, China sent no troops to the Philippines and has so far contributed little in financial aid. The forceful U.S. response also serves to affirm American commitment to allies and partners that the U.S. is there and is willing to assist in times of crisis. Of course, the military is not the only important actor in international disaster response. Relief efforts must be a whole-of-government enterprise with solid civil-military links. Other international humanitarian actors are also equally important. But, as the Philippines illustrates, in some situations the military is the only institution with the capacity to respond. Without it, nothing else can get done. Given the growing importance of disaster relief, the U.S. military should prioritize these issues even more in coming years. This is not only the right thing to do; it is also increasingly in our interest to do so.

### 2NC – AT: NonUnique

#### Numerous other rulings confirm – courts defer because lack the capacity to balance their rulings with international diplomacy.

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

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

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

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

#### Overall trends outweigh isolated hiccups – the judiciary is moving towards greater deference.

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

In this Article, I attempt to draw. upon the insights from game theory to unravel the complicated dynamics between the importing and exporting country in export cartel cases. In deciding on how to respond to State-led export cartels, the United States does not act alone. Its choices closely interact with the decisions of the exporting country, whose conduct implicates the interests of the United States. The optimal strategy of the United States is contingent on the strategy of the exporting country, whose strategy is also dependent on both the United States' and its own domestic politics and trade policy. Accordingly, the United States' best response to a State-led export cartel not only turns on a calculation of its own payoffs from competition, trade, and politics, but also on a careful assessment of the strategic moves of the exporting country. Comity analysis, therefore, needs to be robust enough to accommodate and adapt to changing economic and political circumstances.

However, much of the judicial response to State-led export cartels has been static, and judges have failed to appreciate the dynamic features of these cases. Judges have also tended to fix their attention on the factual issue of compulsion, while giving inadequate consideration to other dimensions, such as trade and politics. But whether a U.S. court should abstain from exercising its jurisdiction and defer to the interests of the foreign sovereign should depend on the specific circumstances of the particular case, taking into consideration the interests of all players involved, while recognizing the strategic nature of their decisionmaking. Because the executive branch is in the best position to reconcile competing interests, I contend that U.S. courts should accord a high level of deference to the executive branch in cases involving State-led export cartels. The Supreme Court's recent decision in the Vitamin C Case, in which the Court appears to have accorded deference to the executive branch, offers a prime example of a pragmatic judicial resolution of such cases. Viewed in this light, the Supreme Court's decision not only represents a major step forward in clarifying the existing case law on export cartels but also signals the judicial trend towards deference with regard to future comity-related cases.

### 2NC – AT: No Spilover

#### Plan’s ruling spills over beyond antitrust.

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

2. Impact on Chinese MNCs’ behavioural change

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

#### Particularly, to trade law.

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

Although the proper balance between executive and congressional control over trade policy has come under question in recent years,1 85 the President, not the courts, has traditionally been considered the main arbiter of trade policy since at least the mid-twentieth century. 8 6 Because antitrust and trade law are interconnected, 187 courts may create unintended ramifications in trade law as a result of their judgments in antitrust contexts if the respectful consideration standard remains so open ended. Any administration undoubtedly retains the authority to align U.S. trade policy as it wishes, but should courts be perceived as part of a general effort, alongside the political branches, to combat the "predatory" trade policies of particular countries, 188 this may serve to undermine the legitimacy of U.S. courts as independent and unbiased in some countries' views.1 89

#### A single court-ruling can trigger international trade disputes. Countries respond to US antitrust cases tit-for-tat. That’s Bu and

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

1. U.S. Trade Policy. - The United States' international trade policy is one area in which the risks of disregarding foreign sovereigns, and the corresponding importance of deference to their submissions, are plainly illustrated. Extraterritorial application of U.S. antitrust law attracts foreign sovereign amicus submissions more than perhaps any other body of law,' 77 and it is closely connected with the trade policies of both the United States and foreign countries.1 78

As Animal Science Products itself demonstrates, antitrust law can be treacherous grounds for courts applying foreign law. Since Hartford Fire, antitrust law has frequently been applied extraterritorially, a move that many countries find distasteful. 79 Foreign sovereigns often become involved in order to protect domestic industries from treble damages, an "internationally contentious" practice in U.S. antitrust cases,180 or simply to resist interference with their own competition law. The foreign sovereign compulsion defense to antitrust liability leads foreign governments to submit arguments based on their own domestic law,181 as was the case in Animal Science Products. A foreign government has a natural incentive to protect its industries when they are targeted in antitrust cases given that, in order to have become the target of antitrust litigation in the first place, defendant corporations must be successful outfits in their country of origin almost by definition." 2 Thus the risk of offending foreign sovereigns becomes acute when that sovereign has entered an antitrust case to make its views and interests known.

These concerns are heightened in the current atmosphere around international trade, as the issue has moved into the political mainstream in many countries. As tit-for-tat trade disputes arise between the United States and countries around the world,' 8 ' the possibility exists that a court judgment can serve as the trigger for an unintended trade dispute. Under the respectful consideration standard, even if a foreign sovereign strenuously objects to ongoing litigation, no great weight is given to the possibility of setting off an international incident; that concern is just one factor among many, if it is one at all.' 84

### 2NC – AT: Resilient

#### Courts trample on delicate executive strategy – empirics prove courts may take positions that undermine the US’s case in the WTO.

Michael Sohn and Jesse Solomon, attorneys with the firm of Davis Polk & Wardwell LLP. Mr. Sohn is a former General Counsel of the Federal Trade Commission, ’13, “Lingering Questions on Foreign Sovereignty and Separation of Powers After the Vitamin C Price-Fixing Verdict” Antitrust, Vol. 28, No. 1, Fall 2013.

The Vitamin C case has potentially expansive implications for how the U.S. antitrust laws do and should interact with executive branch and foreign interests on international trade. While courts have discretion to interpret the laws of foreign sovereigns, one issue raised by the case is how that discretion should be exercised when a duly authorized representative of a foreign government represents directly to a court that it has compelled the actions being challenged under U.S. law. Where the United States has diplomatic and trade relationships with that government, the potential im - pact on foreign relations and trade arguably should weigh heavily in the exercise of the court’s discretion. Relatedly, the district court has entered a judgment that is at least in tension with the executive branch’s position, posing a second question about separation of powers: that is, whether the judiciary’s application of the U.S. antitrust laws should defer to the executive branch’s positions on foreign trade.