# Neg Wiki Doc

# 1NC

## Off

### 1NC – Executive Power DA

#### The United States federal government should adopt a multistep executive deference test to decide whether the *foreign sovereign compulsion*, *comity*, and *act of state* immunity applies to antitrust suits in the United States.

#### Multistep deference allows courts to prevent abuse of state acts doctrine without stepping on the executive’s toes.

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.

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

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

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

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

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

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

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

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

### 1NC – DOJ Tradeoff DA

#### DOJ antitrust investigations solve supply chain stability now.

Fishman et al. ‘3/1 [Todd Fishman, Noah Brumfield, Eun Joo Hwang, Elaine Johnston; partners at Allen & Overy, specializing in antitrust; 3/1/22; “U.S. criminal antitrust enforcement priorities take shape through inter-agency and global coordination”; <https://www.allenovery.com/en-gb/global/news-and-insights/publications/us-criminal-antitrust-enforcement-priorities-take-shape-through-inter-agency-and-global-coordination>; Allen & Overy]

The DOJ Antitrust Division is amplifying the Biden Administration’s whole-of-government approach to antitrust enforcement by seeking cooperation from enforcers outside the U.S.

On February 17, 2022, the Antitrust Division of the U.S. Department of Justice (DOJ) and Federal Bureau of Investigation (FBI) announced an initiative to combat collusive schemes designed to exploit supply chain disruptions caused by Covid-19. The agencies intend to work together to prioritize existing investigations and to proactively investigate collusion in industries that have been particularly affected by supply chain disruptions, concerned that the pandemic may have opened up opportunities for competitors to fix prices for illicit gains.

In pursuit of this effort on an international level, the DOJ has assembled a working group of global peers including the Australian Competition and Consumer Commission, the Canadian Competition Bureau, the New Zealand Commerce Commission, and the United Kingdom Competition and Markets Authority. This working group is reportedly sharing intelligence and utilizing international cooperation tools to detect and prevent anticompetitive schemes to fix prices or wages, rig bids, or allocate markets.

Whole of government approach to Procurement Collusion Allegations

The DOJ and FBI have previously joined forces to pursue areas of criminal antitrust enforcement. In November 2019, the DOJ launched the Procurement Collusion Strike Force (PCSF) as a coordinated national response amongst U.S. Attorneys’ Offices, the FBI, and multiple agency inspectors general to combat antitrust schemes in government contracting at federal, state, and local levels. Since its creation, the PCSF has added a number of national partners and even expanded internationally with the Fall 2020 launch of PCSF: Global, which is designed to promote the investigation and prosecution of schemes outside of the U.S.

The PCSF’s public investigations have to date brought scrutiny in the markets for security services, aluminum structures, and concrete construction. These efforts have led to a total of USD22 million paid in criminal fines and multiple guilty pleas by corporations and individuals, including the PCSF’s first international resolution in June 2021 involving a Belgian firm which pled guilty to participating in a conspiracy to rig bids, allocate customers, and fix prices for defense-related security services. Most recently, in February 2022 a former executive of a North Carolina engineering firm was convicted for his participation in a bid-rigging conspiracy for aluminum structure project contracts involving the North Carolina Department of Transportation.

The PCSF, which has been described by its Director Daniel Glad as “a whole-of-government approach to combating a whole-of-government problem,” takes to heart the inter-agency cooperative approach encouraged in President Joe Biden’s July 2021 Executive Order on Promoting Competition in the American Economy. Glad indicated in an October 2021 speech that the DOJ sees an opportunity to “lead the way” in vigorous enforcement of the antitrust laws, and that the PCSF “sets a model” for cooperative government partnerships to aggressively protect competition.

A Spring 2021 update from the DOJ indicated that the agency has “nearly three dozen PCSF-related investigations opened to date,” with this number climbing as PCSF agents uncover additional conduct through its Tip Center, district teams, and the PCSF Data Analytics Project, which uses analytics to identify collusion and target bid rigging.

The recent success of the PCSF and proactive stance of the DOJ in tackling potential collusive behavior in specific markets presage an increase in criminal antitrust enforcement, and confirm that the agency’s reach will be bolstered through collaborations backed by the whole of government.

DOJ Focus on supply chain disruptions

The DOJ’s focus on supply chain collusion may have been born in part out of criticism from legislators and broader dissatisfaction from a public that has seen inflation accelerating to the highest level in decades. On February 8, 2022, Senator Elizabeth Warren (D-Mass.) implored Attorney General Merrick Garland and Deputy Attorney General Lisa Monaco to take more aggressive action against companies engaged in price-fixing. Warren wrote that increased demand coupled with buckling supply chains have allowed companies to grow their market power through anticompetitive means, which she implied is the root of today’s inflation.

The DOJ’s latest initiative expands the scope of its scrutiny into the transportation sector. In July 2021, the DOJ signed the first inter-agency Memorandum of Understanding with the Federal Maritime Commission (FMC) to foster cooperation between the agencies in oversight of the competitive conditions in the ocean liner shipping industry. This partnership was reaffirmed on February 28 through a joint announcement that the agencies would share resources to enhance enforcement in the maritime industry: the DOJ is to provide the FMC with the support of attorneys and economists for enforcement against violations of the Shipping Act, and the FMC has pledged to provide the DOJ with support and industry expertise in relation to antitrust enforcement actions. The DOJ’s most recent endeavor now brings other companies involved in the supply chain – those with trucking, warehousing, third party logistics, and delivery capabilities – into the crosshairs.

Key points

In partnership with the FBI, the DOJ Antitrust Division recently announced an initiative focused on collusive conduct arising from supply chain disruptions caused by Covid-19.

The announcement of this criminal enforcement priority follows on the heels of the Procurement Collusion Strike Force’s active prosecutions in 2020 and 2021, which resulted in a total of USD22 million in criminal fines and multiple guilty pleas.

The DOJ’s proactive posture in terms of criminal antitrust enforcement in recent years suggests an increase in both its activity and the activity of its national partners in the near future, posing a significant threat to those who seek to violate the antitrust laws.

#### Resources are finite – the plan forces tradeoffs.

Brian Blais 21. Partner in the litigation and enforcement practice group @ Ropes & Gray LLP and a former federal prosecutor, 3/26/21. “Podcast: 2021 DOJ Enforcement Priorities Under U.S. Attorney General Merrick Garland.” Interview with Lisa Bebchick. https://www.ropesgray.com/en/newsroom/podcasts/2021/March/Podcast-2021-DOJ-Enforcement-Priorities-Under-US-Attorney-General-Merrick-Garland

Brian Blais: Well, as I referenced earlier, I think one real challenge for the Garland DOJ will be the many competing demands on the resources available to DOJ leadership. In addition to the many corporate-related priorities I just discussed, there are a large number of Biden administration priorities that implicate the DOJ, many of which represent a sharp break from the priorities of the Trump Department of Justice—so those include things like environmental justice and the prosecution of environmental cases; civil rights and voting act cases; the ongoing fight against domestic terrorism, including as we talked about earlier, the January 6th Capitol attack; immigration reform and potential shifts in immigration prosecution priorities; potentially heightened antitrust enforcement; and criminal justice reform writ large, just to name a few. And putting aside even all these priorities, there’s a huge backlog of cases in the Department more broadly due to pandemic-related shutdowns, including a substantial trial backlog. So there will be a significant amount of prosecutorial time and effort in the near-term devoted to resolving these already charged matters, as well as moving along already opened investigations, so that leaves reduced prosecutorial bandwidth to advance any new enforcement priorities. So all of that’s to say, one big question for the Garland DOJ is: Can it do it all, or will these various competing demands lead to a natural prioritization of certain enforcement priorities over others? We’ll certainly have a better sense in the coming weeks and months as the remaining DOJ leadership is confirmed, as priorities get communicated, and as the first round of investigations under the new leadership start to launch.

#### Supply chain disruptions cause global war.

Bradley Martin 21, director of the RAND National Security Supply Chain Institute, and a senior policy researcher RAND Corporation, “Supply Chain Disruptions: The Risks and Consequences,” 11/15/21, https://www.rand.org/blog/2021/11/supply-chain-disruptions-the-risks-and-consequences.html

By now the impacts of supply chain disruption are becoming all too familiar: shortages, inflation, factory closures, goods waiting at ports to be unloaded. All these impacts are serious enough, but another more-hidden concern lurks just beneath the surface: the impact of supply chain failure on national security, broadly defined as a nation's ability to protect and ensure the well-being of its population.

This definition of “national security” is broader than just the defense industry or military-related efforts; it also could encompass the very ability of a nation to ensure economic well-being, public health, and protection of a nation's key infrastructure. Supply chain disruptions cause general economic disruption and key commodity shortages, which then in turn can, in fact, drive aggressive national behavior and international instability. And ironically, this reactive aggressive national behavior can happen even if the health of a national economy itself depends upon continued international economic interdependence. Indeed, this very interdependence can create vulnerabilities. So a systematic effort, cutting across agencies and public and private sectors, could be one way to ensure these vulnerabilities are understood and mitigated.

Supply Chain Disruption and Conflict

Dispersed supply chains develop because actors find it's economically advantageous to seek the least-expensive and most-productive sources of supply. These dispersed chains develop for good reasons, but they create complicated interdependencies whose risks and vulnerabilities are sometimes not even understood, let alone mitigated.

While the reasons for creating these chains lie largely with private interest, the effects of disruption—which can come from sources ranging from malign human action to natural disaster—are rarely localized. When shortages occur in one industry, the disruptions in one area nearly always spill into adjacent companies and sectors. Whole economies feel the impact, not isolated actors.

The impact on vulnerable populations may be particularly dire. Supply chain disruptions do not just create higher prices and shortages among high-end consumer products, such as cars. They also affect more-basic commodities such as generic drugs or energy, increasing the cost of living and the provision of basic needs.

This kind of disruption can create instability more generally, promoting conditions for conflict between and within nations. For the most part, nations try to maintain access to markets and resources by peaceful means such as stockpiling, direct investment in partner nations, and use of other financial incentives. However, there is no guarantee that such competition will remain peaceful.

As affluent nations and individuals can find ways to mitigate shortages, they may create blocs of “haves” and “have nots,” where some actors have enough but others cannot meet basic needs. “Haves” may find ways to more directly change distribution, most likely at the expense of other “have nots.” Or “have” nations may try to forcefully safeguard what they have gained and work to exclude competitors. In all these cases, the actors are facing shortages, occasioned by interdependence, and seeking security for themselves in ways that actually promote wider international systemic instability.

Escalation of Conflict

In some cases, supply chain disruptions can have an even more-direct impact than general disruption, causing shortages of commodities the nation must have to ensure national security. This kind of disruption can go beyond matters of justice, equity, and general prosperity to threatening a nation's very ability to defend itself and look after its citizens. Some examples are pharmaceuticals and personal protective equipment, energy, food, raw materials used in manufacturing, and semiconductors used in multiple different systems including military applications. Such shortages can make the need for a national government to act more dire and immediate and thus raise the risk of conflict. In some cases, particular types of raw materials only exist in certain places, so shifting to more-secure sources isn't even possible.

Supply chain disruptions create both leverage for some nations and reasons for other nations to minimize leverage. For example, Taiwan currently dominates the market for semiconductors, which in some respects gives it leverage with other actors, including the mainland People's Republic of China (PRC). Semiconductors are capital-intensive—a new fabrication facility for semiconductors costs approximately $4 billion, with some estimates as high as $12 billion, and can take three or more years to build.

This does not even account for the skilled labor, and points to the difficulty of readily shifting production. As a result, Taiwan gains considerable leverage over the PRC and indeed the world. However, this very dominance, plus its proximity to the PRC and its dependence on the PRC for other commodities, may in fact raise the incentive for the PRC to take aggressive military action to ensure access to a key commodity. Such action could range from a “quarantine” to military threats to an actual invasion.

Aggressive action may stop well short of outright war, yet still be very dangerous for actors in the system. The problem of security vulnerability overall is complicated by the complexity and spread of supply chains across the world. A nation might not be able to successfully secure a commodity just by aggressive action against a single other nation. However, that action against another nation certainly could have the unintended effect of causing supply chains to fail in a more general manner. Aggressiveness, while understandable and probably predictable, might therefore also be extremely dangerous and unproductive.

Conflict and Instability

Nations have gone to war in the past over natural resource shortages or in an effort to secure key markets and labor pools. The need to secure resources and markets was an explicit premise in German and Japanese actions leading to World War II. Such conflict has occurred even during times of significant interdependence between nations, such as in the European system prior to World War I. Historically, nations have not yet resorted to war to ensure supply chain security, but it might be a mistake to assume that such action could never occur when circumstances become sufficiently dire. Interdependence does create incentives to cooperate to avoid disruption, but may offer few alternatives for some desperate nations if some part of the interdependent chain is broken.

### 1NC – ITC CP

#### The United States federal government should clarify that 19 U.S.C. § 1337 authorizes remedies against anticompetitive business practices by the People’s Republic of China’s private sector where the private party and foreign sovereign did not affirmatively disclose their intent to act in an anti-competitive nature under subsection (a)(1)(A), irrespective of subsections (a)(2) and (a)(3), utilizing an attenuated antitrust injury requirement, and provide all resources necessary for adjudicating and proactively investigating such cases.

#### It solves enforcement AND deterrence without expanding the scope of antitrust law.

Barry Pupkin 20, practices primarily before the Federal Trade Commission and the US Department of Justice, as well as other regulatory and legislative bodies including the Merger Task Force of the European Commission, US Congress and the Committee on Foreign Investment in the United States, “Beyond IP Rights: Pursuing Antitrust Claims Under Section 337 of the Tariff Act,” Global IP &amp; Technology Law Blog, 4-13-2020, https://www.iptechblog.com/2020/04/beyond-ip-rights-pursuing-antitrust-claims-under-section-337-of-the-tariff-act/

Although investigations under Section 337 of the Tariff Act of 1930 have focused on intellectual property rights involving patents, unregistered trademarks or trade secret claims, the language of Section 337 is much broader.

The provision applies to any “unfair methods of competition and unfair acts in the importation of articles.” That language is similar to the Federal Trade Commission Act, which prohibits “unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce.”

In June 2016, decades after the last Section 337 claim based on an antitrust violation had been filed, U.S. Steel alleged, in part, a conspiracy to “fix prices and control output volumes” in order to “restrain or monopolize trade and commerce in the United States” in violation of Section 337, in Certain Carbon and Alloy Steel Products. The International Trade Commission (ITC or the Commission) dismissed the U.S. Steel complaint because the Commission said that U.S. Steel had not pleaded the requisite “antitrust injury” to proceed. In fact, the Commission stated that U.S. Steel, “if given the opportunity to amend the complaint, [] will not be able to plead or demonstrate antitrust injury.” One commissioner, Meredith M. Broadbent, dissented from the ITC decision, arguing that Section 337 confers broad unfair competition jurisdiction on the ITC, and that the Commission should not be constrained by standing requirements under US antitrust laws. She said that Section 337 was intended “to capture within its scope any nefarious practices that distort domestic competition,” and as such, the U.S. Steel petition would have been sufficient and should not have been dismissed. That said, it soon became clear that the Commission decision against U.S. Steel was not meant to foreclose future Section 337 claims based on antitrust violations. In fact, soon after the Certain Carbon and Alloy Steel decision, the ITC initiated an antitrust investigation in Certain Programmable Logic Controllers pursuant to Section 337.

Where does this leave a company interested in pursuing an antitrust-related Section 337 matter going forward?

In the Carbon and Alloy Steel case, U.S. Steel based its Section 337 claim on a violation of the Sherman Act. That Act prohibits contracts, combinations and conspiracies in restraint of trade, including price fixing and market division. The Sherman Act also prohibits monopolization and attempts to monopolize. Specifically, with regard to the U.S. Steel claims that Chinese steel producers conspired to fix prices at below-market levels and control output and export volumes, the ITC determined that U.S. Steel needed to allege that the Chinese respondents had agreed to set prices below a certain level of their cost and that the Chinese respondents had a dangerous probability of recouping their investment (i.e., their predatory below-cost prices). A private plaintiff bringing a Section 337 case, then, would need to plead and prove the same antitrust injury that courts require of private plaintiffs bringing cases under US antitrust laws.

For predatory pricing claims, antitrust injury is shown by pleading and providing evidence of below-cost pricing and recoupment. These two claims are difficult to prove given the logistical hurdles of conducting discovery and obtaining relevant cost and recoupment information in China from Chinese companies. It might have been possible, though, to plead injury based on the anticompetitive conspiracy among Chinese companies to effect price at a level that would not allow U.S. Steel to invest in new technology or to continue to provide quality service to its customers. Section 337 does not limit antitrust inquiries to predatory pricing claims alone.

In fact, in January 2018, Radwell International filed a Section 337 complaint with the ITC requesting that it institute an investigation into certain alleged unfair methods of competition and unfair acts by Rockwell Automation. In its complaint, Radwell alleged several different antitrust-based claims, which it said would “destroy or substantially injure a domestic industry in the United States” and/or “restrain or monopolize trade and commerce in the United States.” These claims included a conspiracy to fix resale prices; a conspiracy to boycott resellers; and monopolization. Just as these claims are substantially broader than the claims made by U.S. Steel, the ability to demonstrate antitrust injury for each of these claims was correspondingly broadened. On March 23, 2018, the ITC issued a notice of institution of investigation into the antitrust-based Section 337 claims brought by Radwell.[1]

What does this mean for a Section 337 litigant going forward?

It means that antitrust lawyers and trade lawyers need to work closely with one another to figure out the best, most credible claims, as well as the arguments, under both antitrust and trade law that will likely be sustained by the ITC. Given the dearth of precedent in this area, it seems that in pursuing antitrust-related Section 337 actions, it is probably best to plead as broad and as comprehensive a set of antitrust claims as possible. Counsel should assess any and all possible antitrust offenses that might be relevant to the facts, and allege, as well as gather evidence of, antitrust injury for each such offense. Alternatively, because the language of the Tariff Act is so broad, prohibiting unfair methods or acts that may “restrain or monopolize trade or commerce in the United States,” a petitioner might avoid the necessity of showing antitrust injury by grounding its complaint only on the language of Section 337.

We believe that Section 337 can become an even stronger tool to exclude certain imports from sale in the US if antitrust claims become a more routine allegation in future Section 337 actions. If this happens, and more precedent is developed, petitioners will be in a much better position to frame their competitive injury arguments going forward.

### 1NC – T

#### ‘Expand’ must make more expansive, not merely clarify existing principles.

Terry J. Hatter, Jr. 90, Judge, US District Court, California Central, “In re Eastport Assoc.,” 114 B.R. 686, Lexis

[\*\*10] Second, Eastport asserts that the presumption against retroactivity does not apply because the amendment was intended only as a clarification of existing law. HN7 Where an amendment to a statute is remedial in nature and merely serves to clarify existing law, no question of retroactivity is involved and the law will be applied to pending cases. City of Redlands v. Sorensen, 176 Cal. App. 3d 202, 211, 221 Cal. Rptr. 728, 732 (1985). The evidence in this case, however, does not support the conclusion that the amendment to section 66452.6(f) was simply a clarification of preexisting law. The Legislative Counsel's Digest specifically states that "the bill would expand the definition of development moratorium." Senate Bill 186, Stats. 1988, ch. 1330, at 3375 (emphasis added). Since the Legislative Counsel is a state official required by law to analyze pending legislation, it is reasonable to presume that the Legislature amended the statute with the intent and meaning expressed in the Counsel's digest. People v. Martinez, 194 Cal. App. 3d 15, 22, 239 Cal. Rptr. 272, 276 (1987). By its ordinary meaning, the term "expand" indicates a change in the law, rather than a restatement of existing [\*\*11] law. In light of the Counsel's comment, Eastport's argument is unpersuasive.

#### The aff is not inherent. Appeals court established that post-hoc government petitions cannot establish sovereign compulsion. The Supreme Court remanded, but did not reverse the restriction on post-hoc petitioning.

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.

Additionally, the appeals court objected to the rejection of sovereign compulsion defence on the ground that the defendants may not have been constrained to form a cartel and only petitioned the government to approve the same post hoc. In its opinion, the compulsion defence is not undermined even if the cartel was not forced on the defendants. “It is enough that the Chinese law actually mandated such action, regardless of whether the [d]efendants benefted from, complied with, or orchestrated the mandate.” The uneven enforcement of the price agreement does not extinguish the mandate of the Ministry to coordinate, nor negate the Ministry’s representation that the Chamber was acting in its behalf. A confict between the laws of US and China exists, which is the basis for invoking international comity. That some producers escaped penalties from occasional non-compliance with the Chamber’s coordinated price does not mean that frequent refusal to comply would not give rise to severe sanctions. The rationale for the appeals court reversal was explained as follows:19

We balance the interests in adjudicating antitrust violations alleged to have harmed those within our jurisdiction with the offcial acts and interests of a foreign sovereign in respect to economic regulation within its borders. When, as in this instance, we receive from a foreign government an offcial statement explicating its own laws and regulations, we are bound to extend that explication the deference long accorded such proffers received from foreign governments. Here, because the Chinese Government fled a formal statement in the district court asserting that Chinese law required Defendants to set prices and reduce quantities of vitamin C sold abroad, and because Defendants could not simultaneously comply with Chinese law and U.S. antitrust laws, the principles of international comity required the district court to abstain from exercising jurisdiction in this case.

Underscoring the deference due to the Ministry’s testimony, the appeals court stated further:20

We reaffirm the principle that when a foreign government acting through counsel or otherwise, directly participates in U.S. court proceedings by providing a sworn evidentiary proffer regarding the construction and effect of its laws and regulations, which is reasonable under the circumstances presented, a U.S. court is bound to defer to those statements. If deference by any measure is to mean anything, it must mean that a U.S. court not embark on a challenge to a foreign government’s off cial representation to the court regarding its laws or regulations, even if that representation is inconsistent with how those laws might be interpreted under the principles of our legal system. [Ibid.] (Italics supplied.)

The Supreme Court disagreed. In remanding the case to the lower court, the Supreme Court clarifed that a foreign state’s characterization of its own laws deserves “respectful consideration”, against the conclusive effect accorded by the appeals court. It counselled the lower court not to ignore other available evidence, in keeping with Rule 44.1, and to make its own determination on what the Chinese law actually required from the defendants. The weight to be given to a foreign government’s statement will depend on circumstances that may include: “the statement’s clarity, thoroughness, and support; its context and purpose; the transparency of the foreign legal system; the role and authority of the entity or offcial offering the statement; and the statement’s consistency with the foreign government’s past positions”. Any determination of foreign law is “de novo”; thus, “no single formula or rule will ft all cases”.21

Some legal practitioners are apprehensive that the absence of a bright-line rule could increase the risk of erroneous and inconsistent judgment. Arguably, no one is better placed to interpret the meaning and intent of a law than the government that promulgated and enforces it. To subject an offcial testimony to the same scrutiny as other evidence is to accommodate the odds that a foreign government is equivocating or perjuring. Perhaps because of this awkward implication, the Supreme Court does not prevent a court from being bound when there is no contrary evidence or if the highest court, with authority to interpret the laws of the land, proffers the testimony. The Supreme Court noted, however, that the Chinese government attested before the WTO in 2002 that it had given up on export controls since its accession.22

#### Vote neg:

#### Limits – clarifying existing principles exponentially increases the caselist and makes negative research impossible.

#### Inherency – it’s a stock issue and an aff burden. Noninherent affs are un-negatable.

### 1NC – TTC CP

#### The United States federal government should establish and advocate a framework for contingent international cooperation, through the Trade and Technology Council that prohibits anticompetitive business practices by the People’s Republic of China’s private sector where the private party and foreign sovereign did not affirmatively disclose their intent to act in an anti-competitive nature.

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Effective TTC coordination is necessary to resolve all existential risks.

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

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

### 1NC – Court Politics DA

#### The court has taken up a challenge to EPA climate authority, but will refrain from re-establishing the non-delegation doctrine because of fear of public backlash

Smith 21 – Lexi Smith, former advisor to the Mayor of Boston on climate policy, currently JD candidate at Yale Law School, “Supreme Court to weigh EPA authority to regulate greenhouse pollutants,” 11/7/21, https://yaleclimateconnections.org/2021/11/supreme-court-to-weigh-epa-authority-to-regulate-greenhouse-pollutants/

The Supreme Court agreed to hear a case, West Virginia v. EPA, challenging the Environmental Protection Agency’s authority to regulate greenhouse gases as pollutants.

The case presents an opportunity for the Court to overturn key climate precedents and potentially change the relationship between federal agencies and Congress. The decision could have far-reaching consequences for federal climate policy and perhaps even for federal agencies more broadly.

How did we get here, how far might the Court go, and what consequences might the case have for climate change regulation and executive branch authority?

EPA’s authority to regulate greenhouse gases: Massachusetts v. EPA

In a groundbreaking decision in 2007, the Supreme Court held 5-4 that EPA has authority to regulate greenhouse gases under the Clean Air Act. During the Bush administration, environmentalists petitioned the agency to issue a rule on the regulation of greenhouse gases. The Bush EPA denied the petition, and environmental groups, states, and local governments challenged that decision in court. The Supreme Court’s decision turned on whether greenhouse gases like carbon dioxide fall under the definition of “air pollutants,” which the Clean Air Act authorizes EPA to regulate.

The Court concluded that carbon dioxide and other greenhouse gases are air pollutants under the Clean Air Act’s definition, and also noted that the EPA cannot refuse to regulate greenhouse gases for policy reasons outside the Clean Air Act itself, as the Bush administration had done. The Court ordered EPA to either issue a finding that greenhouse gases are dangerous to the public health and welfare, the first step toward regulation, or to give a reasoned explanation for why greenhouse gases do not meet the threshold of endangerment outlined in the Clean Air Act. The agency ultimately found that greenhouse gases are dangerous to the public health and welfare, which formed the foundation for EPA’s regulation of greenhouse gases.

That Supreme Court’s ruling in Massachusetts v. EPA was a 5-4 decision, and environmental advocates leading up to it were not at all certain that they would win the case. In fact, the case was controversial at the time because many environmentalists worried that it would result in a harmful adverse ruling. The four liberals on the Court in 2007, Justices Souter, Ginsburg, Breyer, and Stevens, were joined by Justice Kennedy to form a majority. But Chief Justice Roberts and Justices Thomas, Scalia, and Alito dissented.

Chief Justice Roberts’s dissent (joined by Justices Scalia, Thomas, and Alito) argued that the states, local governments, and environmental groups challenging the EPA should not have been allowed to sue in the first place because they lacked standing: One requirement of standing is a “concrete and particularized” injury. Chief Justice Roberts argued that harms from climate change affect everyone, so the injury in question was not sufficiently individualized and personal to support a lawsuit.

Justice Scalia’s dissent (joined by Chief Justice Roberts and Justices Thomas and Alito) focused on the Clean Air Act and argued that the Act is meant to address conventional air pollutants that harm human health directly through exposure, such as inhalation. He maintained that the Act was not meant to address the broader issue of climate change, and that greenhouse gases therefore did not fall under the definition of “air pollutants.”

Of course, the Supreme Court’s composition has changed significantly since 2007. With a 6-3 conservative-liberal divide, the conservative dissenters’ objections to Massachusetts v. EPA may now represent the majority view.

The ‘worst case scenario’: What could West Virginia v. EPA bring?

There are reasons to expect that the Court will show restraint when it hears the upcoming challenge to EPA’s authority in the West Virginia v. EPA case. But first, let’s walk through the worst potential outcomes from the perspective of climate advocates.

As suggested above, the Court could overturn its decision in Massachusetts v. EPA and effectively take away EPA’s authority to regulate greenhouse gases. With such a ruling, EPA could no longer issue rules directly regulating greenhouse gas emissions, and past greenhouse gas rules issued under its Clean Air Act authority would be invalid.

Richard Lazarus, a Harvard Law School professor who recently wrote a book about Massachusetts v. EPA, called the Court’s decision to hear West Virginia v. EPA “the equivalent of an earthquake around the country for those who care deeply about the climate issue.”

The consequences of the case could even reach far beyond climate regulation. The case presents an opportunity for the Court to revive the “nondelegation doctrine,” a mostly defunct principle that purported to limit Congress’s authority to delegate legislative power to executive branch agencies. The doctrine comes from Article I of the Constitution, which says that “[a]ll legislative powers herein granted shall be vested in a Congress of the United States.” The Supreme Court has not used the nondelegation doctrine to strike down agency action in more than 80 years.

Implications of enforcing nondelegation doctrine

The practical consequences of enforcing the nondelegation doctrine would debilitate the current system of executive branch rulemaking and regulation, subject to judicial review and congressional oversight. If Congress were to do all the rulemaking currently done by EPA, for instance, environmental regulation would become virtually impossible to enact. Congress in that case would have to make thousands of granular and technical decisions about environmental policy, even though we know it can barely pass major legislation as it is.

More broadly, nondelegation could mean that much of the work done by all federal agencies would have to be done instead by a clearly ill-equipped Congress. Even without current gridlock on Capitol Hill, the sheer volume of policy decisions Congress would have to make would be completely unworkable.

While this outcome sounds unlikely and illogical to those who support federal agency regulation, several of the current Justices at various times have expressed interest in weakening the administrative state and deregulating industry. For them, the nondelegation doctrine may be an attractive principle.

Notably, for instance, in a case called Gundy v. United States in 2019, four of the conservatives (Chief Justice Roberts and Justices Gorsuch, Thomas, and Alito) showed a willingness to revisit the nondelegation doctrine. At that time, Justice Kennedy had retired, and Justice Kavanaugh had not yet been confirmed, so the case was 4-4. With Justices Kavanaugh and Barrett now on the court, there appears to be some chance that reviving the nondelegation doctrine would garner the support of five or even six Justices.

The petitioners – West Virginia and North American Coal Corporation – that brought the appeal in West Virginia v. EPA explicitly suggested that this case could be an opportunity for the Court to reconsider nondelegation: “Nothing in the statute [the Clean Air Act] approaches the clear language Congress must use to assign such vast policymaking authority – assuming, of course, it can delegate enormous powers like these in the first place.”

In short, the worst-case scenario from the perspective of climate action advocates is that the Supreme Court takes away the EPA’s authority to regulate greenhouse gases and also revives the nondelegation doctrine, which would strip most federal agencies of much of their regulatory power.

Reasons for a less sweeping outcome

Let’s now consider some reasons the Court may be unlikely to completely overturn Massachusetts v. EPA or fully embrace the nondelegation doctrine.

First, Chief Justice Roberts, and increasingly Justices Kavanaugh and Gorsuch, appear keenly mindful and protective of the Court’s reputation and legacy. They have tended to look out for the public perception of the Court and avoid decisions that would have provoked especially strong public backlash. Recent examples include upholding the Affordable Care Act and civil rights protections for the LGBT community.

These cautious impulses may be heightened by the looming threat of court reform, which could gain more momentum if a particularly controversial conservative decision were issued. Given the strong public backlash likely to result from a decision taking away EPA authority to regulate greenhouse gases and/or reviving the nondelegation doctrine, the Court may proceed with caution.

#### The plan’s liberal ruling provides breathing room for a conservative decision on non-delegation

Bazelon 15 – Emily Bazelon, staff writer for the New York Times Magazine, Truman Capote Fellow at Yale Law School, “Marriage of Convenience,” 1/27/2015, https://www.nytimes.com/2015/02/01/magazine/marriage-of-convenience.html

More significant, if the court is seen as transcending partisan politics, Roberts will probably have more chances, over time, to accomplish what appears to be his primary long-term goal: to move the court in a more conservative direction on a range of issues. In particular, Roberts's brand of conservatism has manifested itself in two main areas. The first is in decisions that are sympathetic to corporations. A 2013 study found that he had been more likely to side with businesses than any justice in the previous 65 years, except for Samuel Alito. The second is in decisions that are antagonistic toward the idea of taking race into account in shaping law or policy. Roberts has voted repeatedly against affirmative action, writing last year that it was not hard to conclude that racial preferences may ''do more harm than good.'

When Roberts was nominated to be chief justice 10 years ago by President George W. Bush, he exuded calm neutrality at his confirmation hearing, comparing judges to umpires who call balls and strikes. At the end of his first term, he emphasized the importance of the court's ''credibility and legitimacy as an institution,'' in an interview with the George Washington University law professor Jeffrey Rosen.

But in 2010, Roberts supplied the fifth vote for the court's remarkably unpopular ruling in Citizens United. By striking limits that Congress set on campaign spending by corporations, the court was perceived as favoring the interests of the wealthy. The court's approval rating fell 10 percentage points, to barely break even, from 61 percent.

Since then, the court has fared better with the public when it pairs conservative decisions with progressive ones. And same-sex marriage is part of that equation. In 2013, the term ended with a splashy ruling in which five justices -- Roberts not among them -- struck down part of the Defense of Marriage Act, which restricted federal benefits for spouses to male-female couples. This decision came one day after the court gutted a central component of the Voting Rights Act, in a 5-to-4 decision written by Roberts.

#### Broad revival of non-delegation destroys executive regulatory flexibility

Farber 21 – Dan Farber, Sho Sato Professor of Law at the University of California, Berkeley, “The “Sick Chicken Case” and an Impending Attack on the Regulatory State,” 5/27/21, https://www.ucpress.edu/blog/56287/the-sick-chicken-case-and-an-impending-attack-on-the-regulatory-state/

Although conservatives like to portray themselves as limiting the power of the bureaucracy, most major regulatory efforts are closely overseen by the White House. In effect, by reviving the nondelegation doctrine, conservatives are both striking a blow against the regulatory state and against the power of presidents to set domestic policy agendas.

Some progressives fear, and some conservatives hope, that the Court will use the doctrine to decimate the regulatory state. But as I explain in Contested Ground, I suspect relatively few laws will be declared unconstitutional outright. Many more will be read narrowly by the courts in order to limit agency authority. Courts generally interpret laws narrowly if a broader interpretation would raise constitutional issues. An example is recent lawsuits challenging the CDC moratorium against evictions during the pandemic. Earlier this month, a federal judge declared the moratorium invalid. The judge gave federal public health laws a narrow reading, in part because it might be an unconstitutional delegation for Congress to give CDC such broad public health powers. As a result of rulings like this, presidents like Biden may be ~~hamstrung~~ [blocked] in their efforts to use regulatory powers to deal with national crises or newly emerging issues.

#### Extinction – administrative state caps emerging threats.

Bazelon & Posner ’17 [Emily and Eric; 2017; Staff writer and Law Professor at the University of Chicago; New York Tunes, “The Government Gorsuch Wants to Undo,” https://www.nytimes.com/2017/04/01/sunday-review/the-government-gorsuch-wants-to-undo.html]

The 80 years of law that are at stake began with the New Deal. President Franklin D. Roosevelt believed that the Great Depression was caused in part by ruinous competition among companies. In 1933, Congress passed the National Industrial Recovery Act, which allowed the president to approve “fair competition” standards for different trades and industries. The next year, Roosevelt approved a code for the poultry industry, which, among other things, set a minimum wage and maximum hours for workers, and hygiene requirements for slaughterhouses. Such basic workplace protections and constraints on the free market are now taken for granted.

But in 1935, after a New York City slaughterhouse operator was convicted of violating the poultry code, the Supreme Court called into question the whole approach of the New Deal, by holding that the N.I.R.A. was an “unconstitutional delegation by Congress of a legislative power.” Only Congress can create rules like the poultry code, the justices said. Because Congress did not define “fair competition,” leaving the rule-making to the president, the N.I.R.A. violated the Constitution’s separation of powers.

The court’s ruling in Schechter Poultry Corp. v. the United States, along with another case decided the same year, are the only instances in which the Supreme Court has ever struck down a federal statute based on this rationale, known as the “nondelegation doctrine.” Schechter Poultry’s stand against executive-branch rule-making proved to be a legal dead end, and for good reason. As the court has recognized over and over, before and since 1935, Congress is a cumbersome body that moves slowly in the best of times, while the economy is an incredibly dynamic system. For the sake of business as well as labor, the updating of regulations can’t wait for Congress to give highly specific and detailed directions.

The New Deal filled the gap by giving policy-making authority to agencies, including the Securities and Exchange Commission, which protects investors, and the National Labor Relations Board, which oversees collective bargaining between unions and employers. Later came other agencies, including the Environmental Protection Agency, the Occupational Safety and Health Administration (which regulates workplace safety) and the Department of Homeland Security. Still other agencies regulate the broadcast spectrum, keep the national parks open, help farmers and assist Americans who are overseas. Administrative agencies coordinated the response to Sept. 11, kept the Ebola outbreak in check and were instrumental to ending the last financial crisis. They regulate the safety of food, drugs, airplanes and nuclear power plants. The administrative state isn’t optional in our complex society. It’s indispensable.

## AT: China

### 1NC – AT: China

#### Sanctions on Russia vaporize global trade

Goodman 3-4 – Joshua Goodman, correspondent for The Associated Press, “Russia’s invasion of Ukraine leaves global trade in tatters,” 3/4/2022, https://apnews.com/article/russia-ukraine-business-europe-middle-east-global-trade-12ba42660a05c0b3ff533aec4e73bbac

Sanctions on Russia are starting to wreak havoc on global trade, with potentially devastating consequences for energy and grain importers while also generating ripple effects across a world still struggling with pandemic-induced supply chain disruptions.

Since Russia’s invasion of Ukraine, hundreds of tankers and bulk carriers have been diverted away from the Black Sea, while dozens more have been stranded at ports and at sea unable to unload their valuable cargoes.

Russia is a leading exporter of grains and a major supplier of crude oil, metals, wood, and plastics — all used worldwide in a range of products and by a multitude of industries from steelmakers to car manufacturers.

Only a small handful of Russia’s 2,000 cargo and tanker ships have been sanctioned by Western powers but freezing the assets of the country’s biggest banks means the business of importing and exporting from Russia will take a major hit.

Intensifying the squeeze are companies from Apple and Nike to major shippers like Maersk abandoning the country, whose extensive trade ties with the West have been all but severed.

“This is an earthquake like we’ve never seen before,” said Ami Daniel, a co-founder of Windward, a maritime intelligence firm that advises governments.

He added, “Companies are going well beyond what’s legally required and taking actions based on their own values before their customers even demand it.”

One potential escape valve for Russian exports is China, whose fast-growing economy is thirsty for natural resources.

But China, perhaps the biggest beneficiary of globalization, so far has shown little appetite to fully back President Vladimir Putin despite abstaining from a U.N. vote condemning the land grab.

The strains are already being felt at Interunity Group, a family-run Greek shipping company whose 60 oil tankers and bulk carriers are operated by dozens of Russian and Ukrainian sea captains and officers.

After the invasion, the Russian part of Interunity’s workforce wondered how they’d get home after the European Union imposed a flight ban on their country.

The Ukrainian half didn’t know if they’d have a home to return to.

So far, the war’s impact on global trade has been most severe in the Black Sea, where Russian and Ukrainian ports are major hubs for wheat and corn.

Traffic has ground to a halt, effectively shutting down the world’s second-largest grain exporting region.

#### Circumvention – antitrust is not the key to US China decoupling. US full court press is irreversible and fiat isn’t attidunal. Sanctions, Tarriffs, anti-dumping etc. inevitable.

Renouard, PhD, 19

(Dr. Joe Renouard teaches at the Johns Hopkins University School of Advanced International Studies (SAIS) in Nanjing, China. His most recent book is Human Rights in American Foreign Policy: From the 1960s to the Soviet Collapse (Penn Press, 2016). Joe, “America’s Anti-China Mood Is Here to Stay,” *The Diplomat*, <https://thediplomat.com/2019/08/americas-anti-china-mood-is-here-to-stay/>)

The U.S.-China trade war that began last year continues to drag on as a long-term war of attrition. Negotiators ended their latest round of talks at the end of July with few results, and each side rang in August by announcing a new set of retaliatory measures. Optimists hope to see the talks resume in September, and their spirits were buoyed by U.S. President Donald Trump’s decision on Tuesday to push some tariffs back from September 1 to December 15. Yet even if there are significant breakthroughs on the trade front — and that’s a very big “if” — it will do little to change the anti-China mood in Washington. Partisan rancor and the president’s Twitter musings may get the headlines, but there is broad agreement in the nation’s capital that the Sino-U.S. relationship has fundamentally changed. A critical mass of policymakers, national security hawks, China specialists, and even business liberals now rejects the long-standing conventional wisdom that engagement with China would engender that nation’s domestic liberalization and peaceful integration into the world order. Instead, China has gotten richer, more confident, and, at least to many observers, more authoritarian and more of a threat to U.S. interests. As of 2018-19, the new conventional wisdom is a damning, comprehensive critique of China’s trade policies, its assertive foreign policy, its pursuit of advanced technology, its demands on foreign companies, its narrowing of civil society space, its ideological battles with the West, and its environmental and labor standards. In the latest Washington parlance, China is a “whole-of-society” or “whole-of-nation” threat that necessitates a reciprocal response from Americans. These sentiments are abundantly clear in executive statements on security and trade, in the language of new bills and laws, in legislative hearings, and in the many reports which Washington’s bureaucrats produce with regularity. Call it the triumph of the security perspective: The defense community has long pushed for a stronger hand against China, and since the end of 2017 U.S. defense and security reports have openly defended a more forceful line. The December 2017 National Security Strategy (NSS) called China “a revisionist power” that “gathers and exploits data on an unrivaled scale and spreads features of its authoritarian system” in order to “shape a world antithetical to U.S. values and interests.” This was a far cry from the conciliatory 2015 NSS, which not only noted that the U.S. “welcomes the rise of a stable, peaceful, and prosperous China,” but also highlighted multiple examples of Sino-American cooperation. The 2018 National Defense Strategy called for a new focus on “great power competition” with China (and, to a lesser degree, Russia), and minced no words in dubbing China “a strategic competitor using predatory economics to intimidate its neighbors while militarizing features in the South China Sea.” China, the report charged, seeks “regional hegemony in the near-term and [future] displacement of the United States” in its program to “shape a world consistent with [its] authoritarian model.” These claims stood in stark contrast to the 2014 Quadrennial Defense Review, which did not describe China as a threat and only briefly noted its military modernization. The Department of Defense’s (DoD’s) 2018 and 2019 annual reports on China-related military and security developments followed much the same line in detailing Beijing’s strategy, force modernization, capabilities, and resources. A December 2018 DoD report similarly assessed the security implications of China’s global expansion via the Belt and Road Initiative, foreign direct investment, and the acquisition of overseas ports and military bases. While admitting that this expansion is not exclusively a military issue, it called for a “whole-of-government” response to China’s international activities. In this June’s first-ever Indo-Pacific Strategy Report, the Pentagon called the region its “priority theater” and repeated the now-familiar litany of charges — that China is militarizing the South China Sea; is “engaged in a campaign of low-level coercion” to assert control in its region; and is using economic means to undermine smaller nations’ sovereignty. Even Defense Secretary James Mattis’s December 2018 resignation letter reiterated the charge that “China and Russia . . . want to shape a world consistent with their authoritarian model.” His immediate replacement, Acting Defense Secretary Patrick Shanahan, told the heads of the military services on his first day on the job to “remember China, China, China” while carrying out their duties. On the commercial front, federal agencies have justified the trade war by laying out a detailed case against China in about a dozen public reports. The title of a June 2018 study from the Office of Trade and Manufacturing Policy (OTMP) could not have been clearer: “How China’s Economic Aggression Threatens the Technologies and Intellectual Property of the United States and the World.” Its authors argued that China’s growth was achieved in significant part through “aggressive acts, policies, and practices that fall outside of global norms and rules,” and they listed a dizzying array of “vectors of China’s economic aggression” in tech and IP, from cyber espionage and piracy to economic coercion, discriminatory regulations, and state-sponsored evasion of U.S. export control laws. The March 2019 U.S. Trade Representative (USTR) Trade Policy Agenda and Annual Report mentioned China over 600 times under headings on non-market policies, illegal trade practices, excessive trade barriers, and “China’s Attacks on U.S. Innovation.” This contrasts sharply with the 2016 policy agenda, which mentioned China only 70 times while more optimistically stressing “dialogue, negotiation, and enforcement.” The two most recent USTR reports on China’s WTO compliance each provide more than 150 pages of grievances from across market sectors. The January 2018 version detailed the “market-distorting” policies that were limiting access for foreign companies in China, and even argued that the United States erred in supporting China’s WTO entry on insufficient terms. The February 2019 version repeated the charge of China’s “poor” record of WTO compliance, and assailed its “continued embrace of a state-led, mercantilist approach to the economy and trade.” In 2018, the USTR released nearly 200 pages of findings and a 50-page follow-up on IP, tech, and innovation practices, this time with details on China’s technology transfer rules for foreign companies, foreign ownership restrictions, and discriminatory licensing restrictions. The April 2019 USTR special report on Section 301 of the Trade Act put China on its Priority Watch List for the 15th straight year. In Congress, too, it is now customary to advocate confronting China on trade, security, and other issues, as evidenced by the provocative titles of some recent committee hearings: A New Approach for an Era of U.S.-China Competition; The China Challenge: Economic Coercion as Statecraft; Strategic Competition with China; Countering China: Ensuring America Remains the World Leader in Advanced Technologies and Innovation; China’s Predatory Trade and Investment Strategy; U.S. Responses to China’s Foreign Influence Operations; Tackling Fentanyl: The China Connection; China’s War on Christianity and Other Religious Faiths; and many more. These hearings are awash in adversarial rhetoric and assertions that the United States has been asleep at the wheel for far too long. “For more than 40 years,” argued Representative Will Hurd (R-Texas) last September, “the U.S. has encouraged China to develop its own economy and take its place alongside the U.S. as a central and responsible player on the world stage, but China does not want to join us. They want to replace us… They are stealing our technology. They are forcing intellectual transfer.” As Senator Jim Talent (R-Missouri) of the U.S.-China Economic and Security Review Commission (ESRC) stated this March, “The dominant view … was that participating fully in the world trading system would change China. But it’s fair to say that the opposite happened — that China has succeeded in changing the world trading system.” Congress has also begun to act. Following the modest defense budget reductions of former President Barack Obama’s second term, last year’s FY 2019 budget raised defense spending to $716 billion and included a variety of China-related amendments, such as banning that nation from participating in the RIMPAC naval exercise. This year, Congress boosted the defense budget to $738 billion. Congress has also worked to strengthen Indo-Pacific defense, reinforce alliances, and stand up for Taiwan. It passed the Asia Reassurance Initiative Act (ARIA) at the end of 2018 to reassure regional partners and counter China’s strategic influence based on the premise that China’s “coercive economic practices” and “illegal construction and militarization” of South China Sea islands are undermining the “core tenets” of the liberal world order. Regarding Taiwan, both houses unanimously passed the Taiwan Travel Act to encourage high-level exchanges between Taipei and Washington. Congress has also pushed for Taiwan’s observer status in the World Health Organization, and some legislators have forcefully made clear that the U.S. “one China policy” is not equivalent to Beijing’s “one China principle.” At present, an array of China-related bills is awaiting action in congressional committees, including the South China Sea and East China Sea Sanctions Act, the China Technology Transfer Control Act, the Fair Trade with China Enforcement Act, and bills addressing foreign influence operations. Passage is not certain for any of them, but they exemplify the zeitgeist. Despite the unmistakable trend toward confrontation, it is not altogether clear that Washington has the collective attention span for a long fight. The president and Congress are ostensibly working for the future benefit of American businesses, but many businesspeople, investors, and farmers would prefer not to wait. Legislators are always gearing up for the next election, and China hawks and their allies will have to compete for attention and resources just like everyone else. Moreover, although the days when American corporations lined up to lobby for China may be behind us, China still has its advocates inside the beltway. But whatever happens on the policy front in the next few years, there can be little doubt that mainstream opinion has shifted, perhaps irrevocably, and we should not expect a return to the conciliatory approaches of years past. Counter-China sentiment in Washington now runs so deep and wide that, at least in the short term, no summit or trade breakthrough will change its course.

#### WTO not key to global trade – fill in solves.

Brown 18 – Gerry, Counterpunch (“Will World Trade Collapse After America Withdraws From WTO? Don’t Bet on It” https://www.counterpunch.org/2018/09/07/will-world-trade-collapse-after-america-withdraws-from-wto-dont-bet-on-it/)

The threat to growth in world trade didn’t begin with Trump’s “America First” policy. Way back in 2008 when the WTO Doha Round broke down on liberalization of agricultural trade, many already saw the writing on the wall. Countries in East Asia started to negotiate and enter into bilateral and regional FTAs.

The most significant FTA concluded in the new millennium in Asia was between the 10 member states of Association of Southeast Asian Nations (ASEAN) and China, dubbed ACFTA. China and ASEAN have a combined population of 1.9 billion and aggregate nominal GDP of almost $16 trillion in 2017 or 22% of global total. ACFTA is the largest trade grouping in terms of headcount, and the second largest measured by GDP, which ranks a close second to NAFTA’s 28%. After ACFTA came into effect in 2010, China’s bilateral trade with ASEAN members soared from under $200 billion in 2009 to more than half a trillion dollars last year, a whisker shy of China-EU trade of $540 billion, and a fifth less than China-US trade. Close to 90% of products are transacted at ZERO tariffs under ACFTA.

Earlier this year, all the TPP signatories sans the US agreed on a slightly modified version of TPP called CPTPP with a combined GDP (excluding America’s) representing 13% of the global total. CPTPP got rid of a few predatory provisions insisted by Washington such as empowering large multinational corporates to sue member states for enacting legislation to protect public health that “harms” their business, “national treatment” for foreign oil and mineral companies, and extending the copyrights period to lifetime of creators plus 75 years (restored to 50 years) . No big loss to China which has bilateral or multilateral FTA with all the 11 CPTPP signatories, except Japan and Mexico. The object of the original TPP to contain China is thus defanged.

A more ambitious and momentous regional FTA may be wrapped up by this year or next, after years of protracted and hard bargaining. The mother of all FTAs, the Regional Comprehensive Economic Partnership or RCEP for short, is a multilateral FTA between the 10 ASEAN members and their 6 dialogue partners, namely, China, India, Japan, South Korea, Australia and New Zealand. The 16 countries together have close to half of the world population, and boast an aggregate nominal GDP representing four-tenths of the global GDP, or one-third larger than that of NAFTA . With faster growth rates of RCEP than NAFTA, and if purchasing power parity GDP is used instead of nominal GDP, NAFTA will be left behind in the dust in no time .

And we have yet to mention the Belt and Road Initiative, which facilitates and increases trade between more than 70 participating countries with two-thirds of world population and a combined nominal GDP accounting for 35% of world total, slightly smaller than RCEP’s as a result of Japan and India not coming on board yet. Though BRI isn’t a customs union, the first multilateral FTA, i.e. Eurasia Economic Union or EAEU spearheaded by Russia has hit the ground running with 5 members. EAEU will eventually be enlarged to encompass all former USSR states except those in the Baltics. The EAEU as it stands now is a market of 183 million consumers and nominal GDP in excess of $4 trillion, one third more than ASEAN’s $2.8 trillion. Turkey and Iran have expressed interest in joining EAEU. More importantly, there’s likelihood of ASEAN-China FTA linking up with EAEU. If that materializes, the enlarged ACFTA-EAEU will have total GDP in excess of $20 trillion or 27% of global GDP (nominal), snapping at NAFTA’s heels.

The world outside America have long prepared for Washington’s withdrawal from WTO. Most of the pieces to deal with global trade ex USA are in place. Instead of hurting other countries, Trump’s America First and America Only policies will hurt itself with trade protectionism, unilateralism and self-imposed isolation. The rest of the world can get by, and pretty well too, without USA.

#### WTO is doomed.

Marc L. Bush, Professor @ Georgetown SFS, 2-5-2022, "The six trade disputes that could imperil American exports for years to come," TheHill, https://thehill.com/opinion/international/592946-the-six-trade-disputes-that-could-imperil-american-exports-for-years-to

The good news is that the United States is negotiating with several trade partners to end the national security tariffs on steel and aluminum. The bad news is that there are six countries on the outside of these negotiations looking in, all of which will soon win favorable rulings against the U.S. at the World Trade Organization (WTO). It’s time to settle these cases too.

The Biden administration has sought to ease tensions with Europe, Japan and the United Kingdom (UK). But China, India, Norway, Russia, Switzerland and Turkey are still waiting for relief. This is a big problem, because these countries have cases pending at the WTO, and rulings are due in the second quarter of 2022. The U.S. will lose them all. Worse, the way in which the U.S. will lose is going to create chaos throughout the global economy and imperil American exports for years to come.

President Biden needs to avert this chaos by settling these cases. Europe and others have agreed to talks on excess global capacity in steel and aluminum, and the potential to backfill with standard trade remedies should offer political cover to get the job done.

The backstory is that, in 2017, the Trump administration pulled the trigger on 25 percent tariffs on steel, and 10 percent tariffs on aluminum. This was done under Section 232, a provision in the Trade Expansion Act of 1962 that had never been used. The move caused outsized tensions, not because of the magnitude of the tariffs, but because President Trump justified them as being about national security, despite targeting countries like Canada, Norway and Switzerland.

Almost immediately, the U.S. started laying the groundwork for a legal defense at the WTO that was built on exception for national security. In a line rehearsed in U.S. third-party submissions in cases pitting Ukraine against Russia, and Qatar against Saudi Arabia, the Trump administration demanded that this exception was “non-justiciable,” meaning the WTO can’t review it. Both Russia and Saudi Arabia peddled this same logic, but the WTO found otherwise, insisting that national security is “an objective fact, subject to objective determination.”

Russia and Ukraine were shooting at each other, so the WTO let Russia off the hook. Saudi Arabia had pulled its diplomats from Qatar, which (unfortunately) also persuaded the WTO, but there was a catch. In the Russia case, the WTO said that the further removed a case is from armed conflict or public disorder, the tighter the connection needed between the trade measure(s) used and the country’s national security. This tripped up Saudi Arabia, which had refused to give legal representation to Qataris protecting their intellectual property in a Saudi court. The WTO ruled that this measure didn’t contribute to Saudi Arabia’s “essential security interests.” The U.S. is even wider of the mark.

In February 2020, the WTO asked the U.S. nearly 50 questions about its use of the national security exception. Unlike in the Russia and Saudi cases, the questions were confident and often cutting. Many of these questions were also posed to third parties, nearly all of which have been strongly against the U.S. position. Norway, for example, which has also filed against the U.S., chimed in as a third party in China’s case with a biting critique of the U.S. argument about non-justiciability.

Speaking of China, the Biden administration has sufficient “leverage” with its Section 301 tariffs to walk back (and backfill with trade remedies) its Section 232 tariffs. The aluminum tariffs on Russia pose a real commercial challenge, but they can be put on hold until hostilities ease with Ukraine.

Big picture, what would the six U.S. losses mean? After all, couldn’t the U.S. just appeal the rulings, leaving them in the legal void it created by blocking reappointments to the WTO’s Appellate Body”? Yes, but this would be short-sighted. It would lead allies to shy away from working with the U.S. to build secure supply chains in critical technologies, fearing a repeat performance. And it would wreck U.S. investments in a rules-based global economy, not just in Geneva, but also in the Indo-Pacific and elsewhere. That would be the greatest threat to America’s national security interests.

#### No trade impact.

Victoria Pistikou et al. 21, Assistant Professor, International Political Economy, Democritus University of Thrace; Eftychia Tsanana, Lecturer, Economics, University of Macedonia; Thomas Poufinas, Faculty Member, Economics, Democritus University of Thrace, "A Financial Analysis Approach on The Impact of Economic Interdependence on Interstate Conflicts," Theoretical Economics Letters, Vol. 11, No. 5, 09/03/2021, Sci-Hub.

This indicates that the increase of economic interdependence does not lead to a decrease of the interstate conflict as captured by defense expenses. On the contrary the increase of exports of country 1 to country 2 leads to an increase of the expenses of both countries. Hence, both countries seem to consider the conflict as vivid even though some trade activity is built. This may be attributed to the fact that the defense expenses of these countries are not necessarily related to the particular interstate conflict with the investigated pair in the dyad. It could also be due to the fact that the economic crisis has potentially led to a decrease of both the economic activity and the defense expenses in some cases. This explains partially the results. Furthermore, country 1 is not always the stronger economy. In addition, it is not necessarily the country that has initiated the conflict. These findings indicate that the topic needs to be further investigated so as to incorporate more dyads and potentially additional proxies of interstate conflict and economic interdependence in order to realize whether the latter impacts the former.

[Table omitted]

The impact of the independent variables and their explanation is summarized in Table 4.

In political terms, policymakers may find these empirical results interesting as they show that they cannot rely solely on the strengthening of bilateral trade in order to end or reduce the conflict. In addition, according to other studies, establishing a free trade area may be the way for fostering economic ties and interdependence with potential rivals, however, it will be difficult to have a critical impact on conflict if this cannot happen in bilateral level without any degree of economic integration. Therefore, we cannot expect, at least for the mentioned cases, de-escalation or elimination of the conflict caused by increased economic activity between the rivals. Therefore, other routes need to be explored so that an interstate conflict can be reduced or eliminated through trade.

6. Conclusions and Further Research

In the present analysis, a study of the impact of economic interdependence on interstate conflict was attempted with the use of a sample that consisted of three dyads of countries facing a similar context of interstate conflict: India-Pakistan, Russia-Ukraine and Yemen-Saudi Arabia. The results show that only exports from country 1 to country 2 have an impact on the level of defense expenses either for country 1 or for country 2. This indicates that economic interdependence does not necessarily reduce interstate conflicts, since both countries 1 and 2 increase the defense expenses even though exports from country 1 to country 2 increase. Our contribution in the current literature relies upon the correlation between defense expenses and bilateral trade and is in the direction of the research of Seitz et al. (2015). There has been a big diversity of dependent variables employed in the relevant studies, such as trade expectations (Copeland, 1996), common interests (Li and Sacko, 2002), interaction between domestic politics and the international system (Kapstein, 2003), income ratio (Martin et al., 2008), Preferential Trade Agreements (Herge et al., 2010; Long, 2008), trade (Barbieri and Levy, 1999; Long and Leeds, 2006), Militarized Interstate Disputes (MIDs) (Copeland, 1996; Oneal and Russett, 1999; Gartzke et al., 2001; Powers, 2004; Martin et al., 2008; Li and Reuveny, 2011). As all studies, it has certain limitations that primarily stem from data availability; three dyads where analyzed and certain proxies were used. Consequently the results depend purely on the span of the dataset. Our future research venues include the extension to additional dyads to more variables that are relevant to the interstate conflict as well as the economic interdependence, provided data become available. Furthermore, as indicated by the anonymous reviewers, it is worth investigating whether the strength of defense can affect the mutual trade of two countries. In addition, as recommended by the anonymous reviewers it would be interesting to apply game theoretical approaches in order to establish the hypotheses around economic interdependencies prior to the investigation of the correlation of the latter to the interstate conflict.

#### China rise inevitable – plan causes war.

Joshua R Itzkowitz Shifrinson, IR @ BU, ’21, “Neo-Primacy and the Pitfalls of US Strategy toward China” The Washington Quarterly 43 (4), 79-104

It Is Difficult to Stop China’s Continued Rise

Second, neo-primacy’s logic rests on shaky foundations, as the United States’ opportunity to reclaim preeminence is extremely small, and the effort will likely prove both counterproductive and dangerous. Baldly, if the United States was unable to keep China from becoming a near-peer competitor in the first place via classic primacy, it is even less likely that the United States has the wherewithal to put the Chinese genie back in the bottle and now push China from the great power ranks via neo-primacy.

States generally balance when confronted with a direct external threat. This tendency is significant in the US-China context because, under neo-primacy, the United States would effectively declare itself a direct threat to China at a time when US analysts acknowledge China has a growing capacity to oppose American plans and ambitions.53 Though China is not poised to dominate East Asia, it can thus be expected to devote its own considerable resources toward keeping pace with US efforts to arrest China’s rise and/or shift the relative distribution of power in the US favor. The odds of major crises would then increase as Washington and Beijing maneuver for position, in turn raising the odds of escalatory spirals, miscalculation, and war.54

Trends in military spending and recent economic developments suggest China’s capacity to oppose neo-primacy and a US drive to reclaim untrammeled preeminence. On one level, China currently devotes a smaller share of its economic wealth to military purposes than the United States, yet it has still managed to reduce American military advantages. This implies that Beijing could do quite a bit to frustrate American policy simply by allocating more to international purposes; if the United States feels pressured by a China that spends 2 percent of its GDP on defense, a China that spends 3 or 4 percent of GDP on defense—roughly what the United States has spent since the Cold War—would present a still larger problem and place the United States in an even worse position.55

Nor is it just military spending that underlines neo-primacy’s limitations. After all, ongoing efforts to decouple the US and Chinese economies—designed partly to limit Chinese growth—has pushed Beijing toward fostering a self-sustaining domestic economy able to withstand “sustained acrimony with the United States.” Given this, it is reasonable to infer that additional economic efforts to outpace Beijing will generate countervailing Chinese responses.56 Considering, too, that China’s economy has grown at a faster rate than the United States’ (even during COVID-19) and that the country has worked to narrow the USChina technological gap,57 the PRC’s ability to keep pace with the United States cannot be discounted.58 Shifts in the distribution of power since the Cold War make neo-primacy self-defeating by enabling China to match US efforts while risking US national security along the way. In this sense, neoprimacy risks exacerbating the very problem it seeks to address.

#### US quest for supremacy causes miscalculation. Transition wars are unlikely because parity is a destination, not a midway point.

Jared Morgan McKinney, Professor of IR @ Nanyang Tech (Singapore), ‘19, How to avoid a contest for supremacy in East Asia, Comparative Strategy, 38:4, 316-326,

A second discourse framework also emerged around the time of the pivot to Asia: the so-called Contest for Supremacy currently said to be underway in Asia between China and the United States.4 This essay contends that such a contest is based on a faulty theory of international relations and will create the very conditions in which hegemonic war is most likely. Strategists and military officers should stop thinking in terms of hegemonic competition to be number one and restore a forgotten tradition described by adjectives such as balance, parity, equilibrium, and stability.

Power transition theory and American grand strategy

The frame of a contest for supremacy, the increasingly dominant way to conceive of Sino American rivalry, is based (even if often subliminally5 ) on power transition theory (PTT). At the heart of this theory is the belief that there is a “dominant power” that hierarchically structures international systems, and that war becomes probable when an unsatisfied rising power approaches, or transcends, the power capability of the dominant power.6 As constituted by its authors, PTT proposed a twofold theory of peace: avoid parity or satisfy the rising power’s ambitions.7 The essential proposition of PTT—that parity comes with many dangers—has been today restated prominently by Graham Allison under the moniker “Thucydides” trap.”

Within America’s grand strategy discourse, there have been two prevailing “solutions” to the prospect of a rising China disturbing the repose of the United States, the world’s dominant state or “unipole.” The first, traditionally called “liberalism,” has been to “socialize” and integrate China into the U.S.-led system.9 The most important stage in this process was for China to gradually become democratic. The various means to achieve this end—e.g., free trade, industrialization, or the rise of a middle class—differed, but all reflected forms of “modernization” theory descended from Enlightenment thought.10 Liberalism complemented, and did not contradict, the second “solution,” which was simply to prevent power parity. This has typically gone by the name “balancing” 11 and it has been unambiguously included in America’s National Defense/ Security Strategies since at least the early 1990s.12

Both responses are increasingly seen as inadequate.13 China’s refusal to be socialized into America’s system has “defied” the expectations of liberals.14 Meanwhile, balancers increasingly warn that China is likely not just to reach parity with the U.S., but to surpass it in Asia.15 In consequence of the failure of the two “solutions” to China’s rise, fear is increasingly becoming the driving emotion behind America’s strategic disposition in the Indo-Pacific. What the U.S. fears is perfectly clear. In the words of noted Asia scholar Lowell Dittmer, “America’s Asia is becoming China’s Asia.”

16 This fear is widely held.17 Insofar as a strategist accepts the theoretical assumption that the international system is hierarchical and constituted by the rise and fall of dominant/ hegemonic states,18 this fear is warranted. Historical evidence indicates that war becomes more likely in conditions of power parity,19 and a world without U.S. dominance is likely to be more illiberal in noticeable ways.20 So much for the better angels of our nature.21 Given this dilemma, America’s new consensus is that it is time for the U.S. to “get tough” and to “stand up” to China.22 That this requires unlearning the lessons of the First World War (i.e., the danger of inadvertent escalation) is simply a cost to be paid in the quest to win the contest for supremacy.23 If the choice is either to compete in Asia to maintain America’s hegemony or to cravenly leave24 for the sake of peace—surrendering it to the Chinese—only the first option realistically matches America’s (supposedly) deeply rooted attachment to the region25 and deepseated phobia of appeasement.26 Honest balancers, such as John Mearsheimer, acknowledge that staying in the region to compete for hegemony comes with a very serious risk of major-power war. Even if neither side sought intentionally to cause such a war, the “lessons” of the First World War suggest that competitive risk-taking can occasionally get out of hand, and a great war—neither quite intentional nor quite accidental—can materialize.27 What should be “almost unthinkable” in an age of nuclear weapons28 remains quite possible, for, as the annals of history demonstrate, political leaders are not consistently “prudent, enlightened, far-sighted, and peaceloving.” 29 Far from coolly calculating interests, leaders are well known to act intuitively and emotionally,30 to choose war even when it is “materially inefficient,” 31 to prefer catastrophic defeat to humiliation,32 to be obsessed with national prestige,33 and to fight for status.34 This is the “stuff” of international politics, and anyone who blindly implies the contrary has not seriously grappled either with the historical record or the ever-growing body of scholarship on the many paths to war.35

Risking major-power war may make sense if the only alternative is U.S. dominance or Chinese dominance.36 But this is a false dichotomy. In fact, PTT is fundamentally flawed both conceptually and historically. Conceptually, the theory ignores the obvious possibility that approximate parity can be a destination just as well as it can be a mere waypoint. Making international politics about “supremacy” is as likely to create a contest for supremacy as it is to describe one. Historically, PTT vastly overstates the evidence supposedly in its favor. Hegemonic wars do take place.37 However, such wars seem to require certain structural conditions. These include the emergence of technologies that can give certain states a large lead, the existence of powerful enabling ideologies (e.g., monotheism38 or Nazism39) and the material significance of land and mass labor in generating wealth and power.40 That being said, PTT’s most common illustrations for “hegemonic war”—the Peloponnesian War and the First World War—only support the theory in the vaguest of manners. In 431, Athens can be said to have acted from hubris and Sparta from honor;41 in 1914, Russia—not Germany—was seen as the rising and unstoppable colossus.42 In both cases, war developed out of a confluence of international structures, the actions of allies/clients, and chance. It is far from clear that the theory of “hegemonic war” actually explains anything about these cases.43

More to the point, the Long Nineteenth Century (1815–1914), which witnessed, in the words of Karl Polanyi, “a phenomenon unheard of in the annals of Western civilization, namely, a hundred years’ peace,” 44 is the best example of parity as a destination. The old canard that the century’s peace rested on “British hegemony,” despite its continuing repetition in the IR literature,45 can no longer be seriously held.46 To the contrary, it resulted from a special form of the balance of power, which Richard Little has theorized as an “associative balance” 47 and Paul Schroeder has called “shared hegemony.” 48 This associative balance was intentionally constructed upon a territorial settlement that satisfied the basic needs of the system’s major powers.49 This “formally instituted” peace was maintained through an intricate system of diplomacy called the Concert of Europe.50 The point, which need not be prolonged here, is that there is a conceptually and historically extant alternative to the contest for supremacy, and that this alternative is partially responsible for the most peaceful century in modern European history. This, one would think, would be worthy of serious contemporary attention.

#### Power parity creates strategic stability that prevents nuclear war. China revisionism operates continuously, not discretely.

Jared Morgan McKinney, Professor of IR @ Nanyang Tech (Singapore), ‘19, How to avoid a contest for supremacy in East Asia, Comparative Strategy, 38:4, 316-326,

Comparative Strategy was founded to help the U.S. triumph in a quest for supremacy with a “traditional imperial international order based on a totalitarian political-system.” The struggle, as the journal’s founding editor then characterized it, had been long in the making, but had been enabled by “the final breakup of the European colonial system after World War II” which had “left a vacuum” that the USSR was “moving to fill.”

71 The contrast was between an America whose “conquests are made with the plowshare,” and a Russia whose conquests were made “with the sword.” The one stood for international “freedom,” the other, international “servitude.” 72 A principal objection to any call for abandoning America’s strategy of dominance in Asia is that China is replicating the USSR’s former quest for supremacy. China is not going to be satisfied with balance, parity, or equilibrium: it wants what America fears, dominance. China’s “revisionist” territorial ambitions in the region are generally submitted as the proof for this proposition. The trouble with this move is that it treats the category “revisionist” as if it were discrete (yes or no) when it is actually continuous.

73 The vital point is not whether a state is committed to modifying some aspects of the existing order, but which aspects and to what extent. The vast majority of China specialists, across the entire ideological spectrum, agree that China’s territorial ambitions are limited, derived from (perceived) historical inequities, and tied to popular legitimization.74 Contrary to much rhetoric, China has never clarified the nature of the claims implied by the Nine-Dashed Line.75 A reasonable way to interpret the ambiguity is to think of it as a bargaining tactic: China has “padded” its position in order to improve its ability to negotiate the claims.76 Importantly, this implies China, though surely a tough actor, is willing to accept an eventual compromise settlement. Other than the territorial issues, there are a few points of exasperation with other (perceived) inequities in the international system,77 but China’s overall approach has been to seek gradual reform through legitimate means.78 In short: China is neither a modern equivalent to the expansionist and imperialist Soviet Union nor the revolutionary and totalitarian China of the Mao years.79 Just as importantly, there is no “vacuum” in Asia today.80 To the contrary, the states of the region are prosperous, relatively stable, and increasingly armed with area-denial weapons.81 Neither the context of contemporary international politics in Asia nor the nature of the contemporary Chinese state indicate a quest for supremacy is imperative or inevitable.

Even if this is so, what about the claim that even China’s limited ambitions conflict with vital American interests? The “national interest,” like the “public interest,” is a contested concept.82 Nonetheless, generally “vital” interests are considered those necessary for America’s survival and flourishing. A common attempt to meet this standard is to talk about the amount of commerce that travels through the South China Sea (allegedly around $5 trillion) and then to suggest that China’s territorial claims and interpretation of the United Nations Convention on the Law of the Sea treaty (UNCLOS) threatens this trade. But this argument fails to convince: the vast majority of this commerce is going to or from China. Furthermore, shipping density maps indicate that most of the commerce not being routed through China is coast hugging and already outside China’s Nine-Dashed Line. So even if China did interfere with commerce within the NineDashed Line—something not even a scintilla of evidence suggests is likely—it would be principally its own commerce it was upsetting.83 China committing economic suicide is hardly a violation of an American “vital” interest! The “magical” discourse about a “rules-based order” in East Asia is about geopolitics, not economics.84

As for Taiwan, geostrategists tend to argue that the island forms an essential part of what Nicholas Spykman called East Asia’s “maritime periphery” and what today is generally called the “first island chain.” 85 If the U.S. were to back off from actively propping up the ROC regime, the danger is less that Taiwan would be conquered—in fact, Taiwan has an extensive capability to inflict extreme pain on an invader86—and more that it would let Chinese naval forces, particularly ballistic missile submarines, transit into the blue waters of the Western Pacific. Such transiting is necessary because China’s Jin-Class SSBNs have to travel approximately 4,000 kms east in order to be in range of the continental U.S.87 This, however, can be seen as a feature rather than a bug. China’s nuclear force is currently potentially vulnerable to an American first-strike.88 There is some evidence China is moving from a minimum to a limited deterrence posture,89 but it is still a long way from accomplishing this. For the time being, there is a real possibility China could be pushed into a “use or lose” situation, i.e., the most destabilizing and escalatory of strategic scenarios.90 A geopolitical situation that permitted China’s ballistic missile submarines to break out of the first island chain could help restore and preserve strategic stability.  
  
 Arms races and rapid technological innovations create conditions where even a solid nuclear deterrent could be undermined;91 today, this is even truer of China’s small arsenal. In an age of nuclear weapons, Spykman’s “maritime periphery” may simply be too good of a barrier, one which suggests the strategic paradox: “nothing fails like success.”

Conclusion

At some point in the coming generation, it is highly likely—indeed, effectively certain—that the developing contest for supremacy will result in serious crises that will threaten the United States, China, and Asia with the prospect of major war. Whether such a war would go nuclear is now simply one question among many, for this is an age in which potential domains of conflict are expanding, and certainly include space, cyber, and the geo-economic.92 If war does result from these crises, historians will likely look back upon the contest for supremacy with critical eyes, wondering why all of the intelligence of the modern age still allowed the strategic situation to be framed by a false dichotomy (dominance or subservience). If war does not result, that will be the moment in which a shift in U.S. policy will become the most conceivable; the moment when the false certitudes of PTT and the quest for supremacy are cast aside, and—for the sake of peace—a new policy of cautious equilibrium is articulated. It took one hundred years for the Abbe de Saint-Pierre’s ideas to bear fruit. It can only be hoped that the delay is not, this time, so long.

#### Chinese hegemony key to global stability. Primacy research reflects Eurocentric selection bias.

David Kang, Professor of IR @ USC, ‘20 “THOUGHT GAMES ABOUT CHINA” ISSN: 1598-2408 , 2234-6643; DOI: 10.1017/jea.2020.18 Journal of East Asian studies. , 2020, Vol.20(2), p.135-150 Cambridge University Press.

China is not a rising eighteenth-century European state competing desperately for power in a multipolar system. China is a massive and ancient country with an enduring civilizational influence. From the time of the Han dynasty (206 BCE–220 CE), although Chinese power waxed and waned over the centuries, East Asia was a hegemonic system, not a multipolar balance of power system as existed in Europe. As MacKay (2016, 474) observes:

Western Europe = Austria, Belgium, Denmark, Finland, France, Germany, Italy, Netherlands, Norway, Sweden, Switzerland, UK (12 W. Europe) Data From: The Maddison Project (2013)

For more than two millennia … a relatively consistent idea persisted of what Imperial China was or should be. When China was ascendant, as during the Han and Ming dynasties, this identity justified Chinese regional dominance. When China was in decline, it provided a source of aspiration. When foreigners occupied the country, as did the Mongols under the Yuan dynasty and the Manchus under the Qing dynasty, they justified their rule by claiming the Mandate of Heaven (tianming) for themselves.

Every other political actor that emerged in the past two thousand years emerged within the reality or idea of Chinese power (Pines 2012). Korea, Japan, Vietnam, the peoples of the Central Asian steppe, the societies of Southeast Asia—all had to deal with China in some fashion and decide how best to organize their own societies and to manage their relations with the hegemon. The reality of Chinese power and Chinese ideas and debates about the proper role of government and state-society relations and the different ways to conduct foreign relations were a fact of life in East Asia. Surrounding peoples could choose to embrace or reject the idea and fact of China, but they had to engage it no matter what they chose.

Thus, even a cursory glance at East Asian history would reveal that the conditions for power transition almost never obtained in East Asian history. China was a hegemon and predominant through much of East Asian history, with virtually no other contender ever coming close to being a peer competitor of China in the past thousand years. China alone comprised 22.6 percent of the world’s GDP and 22 percent of the world’s population in 1000 CE, dwarfing Western Europe’s shares (Table 1).

Compared to any European hegemon, Chinese hegemony in East Asia lasted much longer. Why not look at the far more long-enduring Chinese hegemony for clues about how China might behave while ascendant? Contrary to assumptions that the European experience of constant warfare and continuously rising and declining great powers is universal, East Asia shows a clearly different pattern of long-enduring hegemony. Over the centuries, China expanded in some directions but crafted enduringly stable relations with many countries, as well. As Dincecco and Wang (2018, 342) observe about China, “The most significant recurrent foreign attack threat came from Steppe nomads … external attack threats were unidirectional, reducing the emperor’s vulnerability.” Rarely does anyone ask, however, why these threats were unidirectional and arose mainly from nomads, rather than from powerful states such as Japan, Korea, and Vietnam. Explaining how and why these historical patterns developed over time will likely provide better insight into China’s priorities and how East Asia as a region dealt with China than looking at European history (Kang, Nguyen, Shaw, and Fu 2019).

Indeed, the fact that the historical East Asian system was hegemonic did not rule out the rise and fall of particular regimes. If they did not result from power transitions, then what was the cause? Table 2 provides an overview of the causes of the rise and fall of these dynasties. Strikingly, only three out of twenty dynastic transitions before the nineteenth century came as a result of war. Perhaps the biggest lesson to draw from East Asian histofry are the dangers of internal challenges rather than external threat (Kang and Ma 2017). Also notable is the startling longevity of these countries. In stark contrast to the European experience, there were centuries when most of these countries did not face existential threats from external powers. These four countries—recognizably the same countries today—spent centuries living with each other and interacting with each other, but only rarely fighting with each other. Turning to the question of Chinese intentions, and viewed through the lens of history, China is not a rising power with unknown aims and ambitions. It is a massive and ancient country that is returning to power and stability after a tumultuous century.

An obvious rejoinder is that all the world is Westphalian now, and China is interacting on a global, not regional scale, so even if the theory only applied in Europe at certain times in history, the theory is applicable today. As I argued long ago (Kang 2003, 67), “A century of chaos and change, and the increased influence of the rest of the world and in particular the United States, would lead one to conclude that a Chinese-led regional system would not look like its historical predecessor.” However, states that developed over millennia in vastly different cultural and structural situations than those of Europe perhaps remain different today. There is a robust scholarship that argues that history does not end, and that the past continues to influence politics and society in the present. For example, Seo-hyun Park (2017, 12) uses the term “usable past” for the fact that states create and sustain collective identities and memories and that they join international orders that are not created on a blank canvas.

It is simply not possible to answer these questions without directly addressing the reality of China itself. The question is, how much of this “usable past” influences and informs China today, and how much has changed. Arguably, pre-Qing regimes were more similar to each other than to today’s CCP, given the massive shocks of modernization, the leveling of traditional culture during the Cultural Revolution, and the transition to single party rule. Stated differently, is China still the same China? These shocks may have made China Westphalian, or they may have made China more like a standard autocratic single party regime. Perhaps most likely, China’s behavior may be partially like other countries and partially a function of its own past (Perry 2008).

After all, few contemporary countries have survived over millennia as recognizably the same country as have those in East Asia. Few autocratic single party regimes can call upon the historical and cultural resources that the CCP can. Few countries are massive and centrally located in their regions. Directly researching what has changed and what China is like today would perhaps be a more useful starting point for explaining and predicting Chinese behavior and relations with the United States, rather than the generalizations the four authors reviewed here seek to make based on European historical experience.

Indeed, one of the most intense debates in the contemporary scholarly literature concerns whether China poses a threat to the contemporary Western liberal order (Acharya 2014). As Allan, Vucetic, and Hopf (2018, 839–869) summarize it: “how strong is the US-led Western hegemonic order and what is the likelihood that China can or will lead a successful counterhegemonic challenge?” If China is so different in its identity or goals that it is at best a partial member of the contemporary order, then it follows that it is not clear that China will follow behavioral patterns that only occurred within that order. But if China is completely Westphalian now, and the liberal international order is not simply Western—can China simultaneously be so different that is poses a fundamental threat to that same order?

It is here that MacDonald and Parent, Schake, and Goddard, by focusing on domestic politics, political choices, and national interests and ideas and values, have provided us with all the elements of a truly insightful view of China. Schake’s argument rests on a number of unique American traits. If she is right—that power transitions rest on a host of domestic contingencies—then we cannot predict what will happen without closely examining Chinese traits. But the logical conclusion is thus the opposite of what Schake and Goddard conclude: We have no reason to believe China will behave like a European rising power and fight a power transition war or claim hegemony like the US did. As Allan et al. (2018, 843) argue, “if hegemony is simply leadership of a rule-based order conditioned by elite beliefs, then in the abstract it can incorporate any rising power. But if hegemony is a thick phenomenon … then the substantive ideational content of the order, rather than its abstract form, is crucial.”

China cannot simultaneously be unproblematically and completely Westernized and Westphalian, and yet also pose a fundamental challenge to that same Western, Westphalian order. There is insufficient room in this brief essay to adequately address the extent to which China’s past affects its present. My point is that although it can be argued whether the most relevant characteristics of China today are its capabilities relative to other Great Powers, whether China’s foreign policy is most centrally a function of its institutional makeup as an autocratic single party regime, or whether China’s most relevant characteristics are its history, aims, or nationalism, much social science scholarship points in the direction of looking directly at China itself. Merely recognizing these debates means that it is not clear that power transition theory is the best lens to view China today, and it is not clear that power transition theory can be applied uncritically to contemporary US–China relations.

#### No LIO impact.

J.M. Mckinney, PhD Candidate @ Nanyang, and Nicholas Butts, CSIS, LLM @ Peking, Msc @ LSE, MPA @ Harvard, ’19, “Bringing Balance to the Strategic Discourse on China’s Rise” https://www.airuniversity.af.edu/Portals/10/JIPA/journals/Volume-02\_Issue-4/McKinney.pdf

One of the most repeated ideas in international affairs discourse today is that after World War II the United States created a “free and open international order” and that this order has been responsible for keeping the Indo-Pacific “largely peaceful” for the last 80 years.4 China is then typically said to be promoting a vision “incompatible” with this order—something that should make us worry, as it may herald the return of violent power politics.5

Michael Lind has summarized the perspective:“in my experience, most members of the U.S. foreign policy elite sincerely believe that the alternative to perpetual U.S. world domination is chaos and war.”6 It is indeed true that the years since World War II have been peaceful when compared with most of European history and that violence of all kinds has declined.7 This phenomenon has been dubbed the “New Peace,” and the United States certainly played some role in bringing it about.8

However, there is no consensus among scholars to what extent US actions—or more abstractly, the supposed “order”—contributed to the decline in war and violence. Existing academic explanations stress the role of nuclear weapons restraining states from major war;9 the evolution of territorial norms (as well as regimes and institutions, like the United Nations);10 the development of globalized markets and “trading states”;11 the longer-term spread of reason, sympathy, and feminization alongside the rise of stronger states;12 the settlement of territorial disputes after World War II;13 the spread of democracies;14 the declining utility of war as a rational instrument of statecraft;15 and hegemonic stability, which emphasizes (in its liberal form) how the United States helped create global institutions and shape norms16 and (in its “realist” form) how US power has deterred or compelled rivals to behave.17 This is not the place to judge between the various explanations, but it should be clear that they are diverse and the overall explanation is likely multivariate. Only the realist version of hegemonic stability directly supports the narrative of the free and open international order. Christopher Fettweis has recently sought to test the theory by looking at the changing pattern of global peace/violence relative to US military spending, frequency of intervention, and selection of grand strategy across four presidential administrations (Bush Sr. to Obama). He found no relationship at all. “As it stands,” he concluded, “the only evidence we have regarding the relationship between US power and international stability suggests that the two are unrelated.”18 If US officials and strategic pundits are going to claim that peace is dependent on an abstract order created and maintained by American power, they need to provide serious evidence for their claims. Until then, while we can be thankful that the United States contributed to postwar institutions like the United Nations, helped delegitimize colonialism, and did not abuse its power (as much) as many other states would have, policy makers and scholars should be highly skeptical of more sweeping claims.

Laying aside the question of how the New Peace came about, another oft repeated notion is that China is determined to undermine the contemporary international order, according to Friedberg, by corrupting, subverting, and exploiting it.19 The proof for this claim is generally said to be China’s “militarization” of the South China Sea (SCS) through “salami-slicing” and “grey-zone tactics,”20 and occasionally, a retired Chinese official or Global Times commentator is quoted as representative of China’s official (even if unarticulated) policy and intentions. In the abstract, such claims are alarming—in context, and in balance, rather humdrum. In fact, the evidence of any Chinese intention to destroy, or even merely undermine and exploit, the current order is slight. China is certainly using its growing military power to defend its claims in the SCS and even—on occasion— to coerce its neighbors. It uses protectionist economic policies to boost the prospects of Chinese companies and reduce competition. It employs economic statecraft to serve its interests abroad. And it certainly is opposed to America’s policy of global democracy promotion. However, none of these positions fundamentally challenge the existing order, none of them radically depart from America’s own actions when it was a rising power in the nineteenth century, and none of them obviously surpass America’s own contemporary record of order subversion.

When the United States was a rising power, it took half of Mexico and considered taking the rest, it colonized the Philippines and Hawaii, and it unilaterally seized the maritime choke points of the Caribbean (Puerto Rico and Cuba).21 The United States used tariffs—which by 1857 averaged 20 percent22 and by the end of the nineteenth century were “the highest import duties in the industrial world”23—to protect its industries. It stole intellectual property,24 and it ideologically challenged the governments of the “Old World.” Today, despite no longer being a rising power, the United States has launched two disastrous invasions, tortured prisoners, and dispatches drone strikes at a whim with little international legal authority.25 The point is not that two wrongs make a right; it is that international order is much more resilient than critics seem to realize,26 and it is utopian to expect any rising Great Power to act in a way that uniformly satisfies one’s moral scruples, evolving, in Friedberg’s words, “into a mellow, satisfied, ‘responsible’ status quo power.”27

Friedberg or Harris might object that America’s rise took place in the context of a different order. This is perfectly true, but the more important point is that the long nineteenth century (1815–1914)—the era of America’s rise—was the first iteration of the New Peace.28 The implication is that relative peace can and has coexisted with limited wars, property and territorial thefts, acts of coercion, and aggressive assertions of status. This does not mean any of these are desirable— they are not—but it shows that they need not be fatal to the system. Insofar as there is a lesson from that first period of relative peace, it is that Great Power confrontation is the one thing that is fatal. Accepting this does not mean capitulating in every instance, as implied by some,29 but it does mean rediscovering the rules of Great Power competition30 alongside the art of strategy.31

Focusing only on areas that China’s rise violates the scruples of the established powers, moreover, downplays the extent to which China, has, in fact, conformed to the existing order. As a RAND Corporation report published in 2018 concludes, China has been a supporter—albeit a conditional one—of the international order: “Since China undertook a policy of international engagement in the 1980s . . . the level and quality of its participation in the order rivals that of most other states.”32 The way in which Xi Jinping, following his 2017 Davos speech in defense of globalization, has been heralded as the most prominent champion of international order and defender of globalization underscores the fact that there are different elements of this order, and that China supports many, if not most, of them. Even in places where China is supposedly “altering” the current order, Beijing tends to simultaneously affirm that order. China’s Asian Infrastructure Investment Bank, for instance, actually mirrors existing structures, and China has intentionally copied elements and “best practices” of the World Bank and Asian Development Bank. China is playing the same game, even if it is seeking a bigger role within it.33

#### Multilateralism fails – leaders can’t agree and too slow.

Ross ’19 [Tim, Leading UK politics coverage & lobby team for Bloomberg, Co-author of Betting the House, 8/22/19, “Multilateralism Is Dead. Long Live the G-7”, https://www.bloomberg.com/news/articles/2019-08-22/multilateralism-is-dead-long-live-the-g-7]

Forums such as the G-20 and the upcoming Group of Seven meeting in France Aug. 24-26 were first dreamed up in the 1970s as a place for foreign officials to come together, fight, disagree, but ultimately resolve issues that go beyond borders. At first the discussion was primarily on economics, but the agendas quickly grew to encompass human rights, international security, global health, and climate change. The joint statement of values typically produced at one of these gatherings, known as the summit communiqué, lacks the force of law, or really any force beyond symbolism. But what it signifies—multilateralism, globalization, international understanding—has formed the foundation of the world order in what we like to think of as the modern era.

That foundation is beginning to crack. In the age of the strongman leader embodied by Vladimir Putin of Russia and Turkey’s Recep Tayyip Erdogan, and especially since the election of U.S. President Donald Trump, disrupting international norms has become a norm in itself. After last year’s G-7 meeting in Canada, Trump blew up the communiqué he’d agreed to mere hours earlier, reacting to a perceived slight from Prime Minister Justin Trudeau. Despite their valiant effort, the Sherpas at this year’s G-20 failed to craft language that all of the assembled leaders could agree to and had to insert a special section for the U.S. position on climate change.

If the era of agreement is over, what will the future look like? French President Emmanuel Macron has been grappling with that question as his country prepares to host this year’s G-7 in Biarritz. “I have battled at the G-20 and ended up at 19,” he said at the end of the G-20, “and I have battled at the G-7 to be all seven together and then have the U.S. pull out.” Desperate to avoid a repeat of the summit in Canada, Macron decided to abandon the communiqué all together. “We are living through a very deep crisis of democracy,” Macron said on Wednesday. “No one reads the communiqués, let’s be honest. And in recent times you read the communiqués only to find disagreements.”

These are hardly abstract concerns. While Macron and others have framed their search for solutions in terms of improved protocol, disagreements that begin at international meetings have a way of rippling into far less rarefied circles, and vice versa. Trump’s pique at Trudeau concerned the latter’s attempt to retaliate against tariffs the U.S. had applied to Canadian steel and aluminum weeks before. The Iran nuclear deal and the Paris climate accord were both reached through carefully orchestrated international discussions—and both were shredded single-handedly by Trump.

Yet even on the question of how to achieve unity, there’s disagreement. According to a high-ranking German official, Chancellor Angela Merkel also left the Osaka G-20 summit frustrated that once again a major gathering of world leaders had been hijacked by Trump. In her view, these events were turning into opportunities for the U.S. president to put on a show and boost his ego. But Merkel also insisted that reaching a common final declaration still ought to be paramount, however weak the language might be.

“Size will matter, the weakest will get picked off, and with that way forward lies more conflict, more confrontation, and greater risks”

Trump isn’t alone in turning international diplomacy into a stage for political posturing, complete with a global audience and background leaders to populate the scenery. Chinese leaders, for instance, have been frequent spoilers. Since Trump took office, however, his bilateral meetings have occupied center stage. Before the G-20, his anticipated meeting with China’s Xi Jinping dominated press coverage. In all, Trump held eight one-on-one meetings in Osaka, including with Saudi Crown Prince Mohammed bin Salman, still under a cloud after having been accused of orchestrating the murder of critic Jamal Khashoggi; Brazilian President Jair Bolsonaro, a gun-loving ex-military leader regarded as the Trump of South America; Erdogan; and Putin.

In Biarritz, the marquee event will be Trump’s meeting with the group’s latest populist entrant, Boris Johnson. Since he became Britain’s prime minister in July, Johnson has shown no interest in compromising on Brexit policy with his critics in London, let alone with his European counterparts; he waited nearly a month after taking office to travel for talks with the European Union’s two most powerful leaders, finally making a last-minute dash to Paris and Berlin in the days before heading to Biarritz.

As a former foreign secretary, Johnson is well aware of the diplomatic conventions he’s defying. The danger, says Alistair Burt, a Conservative member of Parliament who served with Johnson in the Foreign Office, is that the rest of the world shifts to accommodate that defiance rather than challenge it. “If you revert to a foreign policy where ‘my country comes first and stuff the rest of you,’ ” Burt says, global leaders risk contributing to the appeal of those who’ve succeeded at home by looking tough and standing alone on the world stage. “Size will matter, the weakest will get picked off, and with that way forward lies more conflict, more confrontation, and greater risks.”

Not that the global leadership has ever been entirely without conflict, even in the days when cooperation was a given. The G-7 used to be the G-8, of course, until 2014, when a U.S.-led coalition moved to suspend Russia from the group over its annexation of Crimea. Later that year, Australia’s then-Prime Minister Tony Abbott borrowed a term for an aggressive challenge in Australian football and vowed to “shirtfront” Putin at that year’s G-20, after pro-Russian rebels in Crimea had shot down a Malaysia Airlines plane carrying some Australian citizens. (He didn’t, but Putin nevertheless found himself isolated.) Years earlier, in 2009, Italy so bungled preparations for the G-8 that some were already questioning its continued relevance.

Innovation aside, some realpolitik ways to limit dissent already exist. According to an Italian official, G-7 diplomats expect the French to announce which foreign affairs topics will be on the agenda close to the beginning of the summit, perhaps only two days before. No full plenary discussion is likely on trade, and a minimal restatement of existing positions is likely on climate change. Should Trump make it impossible to reach a joint position, France, as the host, has the option of issuing its own statement at the end of the meeting.

Formal diplomacy has always been a complicated dance, which may pose a problem more fundamental than those created by chaos-loving nationalists. With or without Trump, the G-7 is already too slow for a world that will have fully digested whatever news comes out of it by the time everybody gets home. The talks among Sherpas have almost always been tortuous—the summit in Japan was less the exception than an extreme example of the rule. Much as with fusion cuisine, the result is usually an unhappy compromise designed to please the tastes of all that ultimately satisfies no one.

#### Trade studies are flawed – relies on narrow temporal correlations.

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

On paper, the two intertwined arguments for liberal peace would seem to make sense: if countries remove the barriers to trade and investment and choose to specialize in their comparative advantages, international productivity will be raised and we will enjoy a more prosperous global economy with satisfied consumers and states; also, if states develop close economic linkages, they will have important material incentives to avoid conflict with one another. In the real world, competition between jurisdictions and social groups implies often that the development and prosperity of some is based on the exploitation and vulnerability of others, as typically emphasized by the extensive literature on bifurcated economies, temporally constrained and contradictory growth patterns, and uneven and destructive forms of development. In this way, it is not that economic interdependence, when removed from its social context and put under the microscope, does not raise the costs of conflict. However, the political choices and social transformations needed to achieve interdependence are a key variable to understanding a state’s behaviour and predisposition to conflict. And while governments may in many junctures align with the interests of capital, they are not immune to crises of legitimacy, and will need to mediate issues of accumulation and social cohesion when people perceive the social transformations required to achieve interdependence to have a negative impact on their lives (Jessop, 2016, p. 189). This will reflect in a way or another on state behaviour as political elites, current and prospective, jostle for votes and/or legitimacy.

A key problem with the argument for liberal peace lies in its emphasis on narrow temporal correlations between trade and (lack of) conflict, which removes interdependence from its broader political economic context, disembedding peace and conflict from the broader set of historically bounded and politically contingent social relations that underpin them. A widened analytical timeframe renders clear the dialectical relationship between (neo)liberal social projects and their social responses, both progressive and reactionary. Whereas high volumes of trade may coincide at a particular ‘optimal’ period of liberal expansionism with interstate peace, they may also transform societies in ways that engender the conditions for a potential ‘illiberal’ turn or counter movement resulting in a higher risk of conflict as beggar-thy-neighbour positions emerge and new enemies need to be sought by political elites to bind national-constrained constituencies to their agendas to maintain power.

We can observe this temporal incongruity in the work of some of the key proponents of the capitalist peace. For example, Oneal and Russett (1999, p. 439) argue that trade ‘sharply reduces the onset of or involvement in militarized disputes among contiguous and major-power pairs’, which are identified by Maoz and Russett (1993) as the set of countries more likely to enter into conflict with each other. Despite Oneal and Russett’s sophisticated approach to the data (modelling, for example, to avoid ‘false negatives’ by factoring in geographic contiguity, or controlling for alliances) and the attention paid to statistical rejections of the liberal peace argument, trade interdependence and the occurrence of conflict are analyzed on a year-by-year basis (Oneal & Russett, 1999, p. 428). This is also the case with other comparable studies (Hegre, 2000; Oneal & Russett, 2001; Souva & Prins, 2006). This temporal frame is problematic, as international conflict tends to build up over prolonged periods of time, and the adverse impacts of interdependence and liberal integration are more likely to result first in crisis and social dislocation, followed by some sort of economic distancing (perhaps under a new administration that replaces the one that embraced liberalization) and a wide range of policy measures, before leading to military conflict – underpinned either by the state that perceives that liberal integration is having negative impacts on socioeconomic development, or more often than not by the one which wants to prevent the deterioration of important trade and investment links.

#### No interdependence impact.

Einstein ’17 [Joel; Ph.D. student at Australian National University in Political Science, written under the supervision of Dr Charles Miller, PhD, Political Science, and professor at Australian National University; 1/17/17; “Economic Interdependence and Conflict – The Case of the US and China”; http://www.e-ir.info/2017/01/17/economic-interdependence-and-conflict-the-case-of-the-us-and-china/; E-International Relations]

In 1913, Norman Angell declared that the use of military force was now economically futile as international finance and trade had become so interconnected that harming the enemy’s property would equate to harming your own.[1] A year later Europe’s economically interconnected states were embroiled in what would later become known as the First World War. Almost a century later Steven Pinker made a similar claim. Pinker argues, “Though the relationship between America and China is far from warm, we are unlikely to declare war on them or vice versa. Morality aside, they make too much of our stuff and we owe them too much money.”[2] His argument rests upon the liberal assumption that high levels of trade and investment between two states, in this case the US and China, will make war unlikely, if not impossible. It is this assumption that this essay seeks to evaluate. This essay is divided into three sections. The first briefly outlines the theory that economic interdependence results in a reduced likelihood of conflict, breaking the theory down into smaller components that can be examined. In the second section, this essay suggests that the premise ‘more trade equals less conflict’ is simplistic. It does not take into account many of the variables that can influence the strength of economic interdependence’s conflict reducing attributes. Within this section, the essay considers: the extent to which conflict cuts off trade, theories arguing that how and what a state trades matters, Copeland’s theory of trade expectations and the differences between status quo and revisionist states. The final section deals with the realist perspective, concentrating on arguments pertaining to the primacy of strategic interests and arguments that economic interdependence will increase the likelihood of conflict owing to a reduction of deterrence credibility. Each section will be related back to the US-China relationship with a view to assessing Pinker’s claim. The essay will conclude that economic interdependence does reduce the likelihood of conflict but is insufficient on its own to completely prevent it. To calculate the likelihood of conflict correctly one would need to factor in the nature of the economic interdependence alongside the strength of the strategic interests at stake. Economic Interdependence and Conflict The theory that increased economic interdependence reduces conflict rests on three observations: trade benefits states in a manner that decision-makers value; conflict will reduce or completely cut-off trade; and that decision-makers will take the previous two observations into account before choosing to go to war. Based on these observations, one should expect that the higher the benefit of trade, the higher the cost of a potential conflict. After a certain point, the value of trade may become so high that the state in question has become economically dependent on another. Proponents of this theory argue that if two states have reached this point of mutual dependence (interdependence), their decision-makers will value the continuation of trade relations higher than any potential gains to be made through war.[3] It is on this argument that Pinker rests his statement that the economic relationship between the US and China precludes war. One can see evidence of this when analysing US views on China as trade rises. A 2014 Chicago Council on Global Affairs survey indicates that only a minority of Americans see China as a critical threat, compared to a majority in the mid-1990s. This number is even higher when analysing Americans who directly benefit from trade with China.[4] As compelling as this argument may be, high levels of economic interdependence have not always resulted in peace. The decades preceding WW1 saw an unprecedented growth in international trade, communication, and interconnectivity but needless to say, war broke out.[5] This instance alone is not enough to disprove Pinker’s logic. War may become very unlikely but began nonetheless.[6] Let us take two hypothetical scenarios, one in which the chances of war is 80% and the other in which trade has reduced the likelihood of war to 10%. Just knowing that war did indeed take place does not tell us which scenario was in play. Similarly, the fact that WW1 took place gives us no information about whether economic interdependence made war unlikely or not. In fact, evidence even exists to suggest that economic linkages prevented a war from breaking out during the sequence of crises that led up to WW1.[7] However, the fact that a war as detrimental as WW1 could break out despite a supposed reduction of the likelihood of conflict gives us an impetus to examine whether this reduction does take place. Additionally, if this is the case, what variables can weaken this pacifying effect? Does Conflict Cut off Trade? Economic interdependence theory makes the assumption that conflict will reduce or cut-off trade. This assumption appears to be logical, as one would expect that the moment two states are officially adversaries, fear of relative gains would ensure that policy makers want to completely cut-off trade. However, there are many historical examples of trade between warring states carrying on during wartime, including strategic goods that directly affect the ability of the enemy to carry out the war.[8] For example, in the Anglo-Dutch Wars, British insurance companies continued to insure enemy ships and paid to replace ships that were being destroyed by their own army.[9] Even during WW2, there are numerous examples of American firms continuing to trade strategic goods with Nazi Germany.[10] Barbieri and Levy argue that these examples and their own statistical analysis suggest that the outbreak of war does not radically reduce trade between enemies, and when it does, it often quickly returns to pre-war levels after the war has concluded.[11] In response to this result, Anderton and Carter conducted an interrupted time-series study on the effect war has on trade in which they analysed 14 major power wars and 13 non-major power wars. Seven of the non-major power wars negatively impacted trade (although only four of these reductions were significant), but in the major war category, all results bar one showed a reduction of trade during wartime and a quick return to pre-war levels at its conclusion.[12] Accompanying this contradictory finding one must take into account that even if war does not radically reduce trade, if a state believes that it does then potential opportunity cost would still figure in their calculations. Variables that Impact the Pacifying Effect of Economic Interdependence The purpose of this section is to demonstrate that the pacifying effect of economic interdependence is not constant. It achieves this via a discussion of the effect of changes in a number of variables pertaining to how and what a state trades. Once it is established that changes in such variables may alter the effect of economic interdependence on the likelihood of conflict, Pinker’s statement (that the level of trade between the US and China makes conflict unlikely) can be considered to be an over-simplification. One variable is the relative levels of economic dependence. Some argue that asymmetry of trade can increase the chances of conflict if the trade is more important to one state than it is to the other; their resolve would not be reduced by the same degree. The less dependent state would be far more willing than its adversary to initiate a conflict.[13] An example is the possibility of the prevalent idea in China that ‘Japan needs China more than China needs Japan’ leading to China becoming more assertive in Senkaku/Diaoyu islands dispute.[14] It is important to recognize that all trade is asymmetric in one fashion or another. It is radical asymmetry that one has to fear, which at the moment does not appear to be the case in the China-Japan or US-China case. Another variable is the specifics of what is being traded. A study by Dorussen suggests that the pacifying effect of trade is less evident if the trade consists of raw materials and agriculture but stronger if the trade consists of manufactured goods. Even within the category of manufactured goods there are differences in effect. Mass consumer goods yield the strongest pacifying results whilst high-technology sectors such as electronics and highly capital-intensive sectors such as transport and metal industries tend to have a relatively weak effect.[15] If it is a sector with alternative trade avenues then embargos and boycotts as a result of conflict will have far less effect.[16] The rule is that the more inelastic the import demand, the higher the opportunity cost and the smaller the probability of conflict.[17] According to these studies, trade still generally reduces the likelihood of conflict however it is by no means homogeneous in its effects. Additionally, the opportunity costs are not the same for importers and exporters. Dorussen’s study suggests that increased trade in oil tends to make the exporters more hostile and the importers friendlier in relations to their foreign policy.[18] Taking this framework into account, in 2014 China’s top five exports to the US (computers, broadcasting equipment, telephones and office machine parts) all fell under the category of electronics,[19] whilst the US’s top five exports to China (air and/or spacecraft, soybeans, cars, integrated circuits and scrap copper) were all either high-capital intensive sectors or raw materials and agriculture.[20] According to Dorussen’s study, these exports should not yield the strongest possible conflict reducing results, which could impact the validity of Pinker’s statement. Copeland presents another variable, namely expectations of trade. Copeland argues that if a highly dependent state expects future trade to be high, decision makers will behave as many liberals predict and treat war as a less appealing option. However if there are low expectations of future trade, then a highly dependent state will attach a low or even negative value to continued peaceful relations and war would become more likely.[21] As an example, he points out that despite high levels of trade in 1914 German leaders believed that rival great powers would attempt to undermine this trade in the future, so a war to secure control over raw materials was in the interests of German long-term security.[22] Via this framework, if the US began to believe that in future years they would be less dependent on China’s economy, or if it became apparent that a US-China trade war was about to take place, there would be a sharp rise in the probability of conflict. The final variable this essay will discuss relates to the differences between status quo and revisionist states. Most empirical analyses of economic interdependence tend to group together states as different as the United States, Pakistan, Australia, Germany and China and assume that variations in their behaviour would be the same.[23] Papayoanou on the other hand, argues that when analysing the effects of economic interdependence it is useful to differentiate the effects on great power states and states with revisionist aspirations.[24] If a status quo power has strong economic ties with revisionist state there will be interest groups who advocate engagement and who believe that confrontational stances will threaten the political foundation of economic links. This will constrain the response of the status quo state.[25] One can see evidence of such an interest group in the US, a group Friedberg describes as the Shanghai coalition, who he argues advocate engagement with China at the expense of balancing.[26] A study by Fordham and Kleinberg backs up this argument as they find that US business elites who benefit from trade with China tend to see little benefit in limiting the growth of Chinese power.[27] A 21st Century revisionist power is far less likely to be a democracy, and therefore, interest groups will influence the leadership far less. This means an authoritarian revisionist power will be working under fewer constraints and will be able to take a more aggressive stance.[28] This appears to be the case in China where rather than having domestic constraints on taking an aggressive stance against Japan, one of their biggest trading partners, grassroots nationalism has made explicit cooperation a domestically risky option.[29] There are many indicators to suggest that China is a revisionist power willing to wage war. Lemke and Werner argue that an extraordinary growth of military expenditures’ reveals when a state is dissatisfied with the status quo.[30] Data provided by the Stockholm International Peace Research Institute certainly indicates that China qualifies as its military expenditure has nominally increased by 1270% between 1995 and 2015.[31] Additionally, the military modernization appears to be aimed at capabilities to contest US primacy in East Asia.[32] Much like German strategists recognized that Britain was operating under significant domestic constraints, China could realize the same of the US.[33] This is not to say that Chinese decision-makers would be cavalier about making a decision that would be to the detriment its economy. A crash in the Chinese economy due to the loss of exports to the US could potentially undermine the legitimacy of the Chinese Communist party and endanger the regime. However, the view that China is a revisionist power indicates that good trade relations alone will not result in a low probability of conflict. Realist Arguments Pertaining to Dominance of Strategic Interests Having established that if the pacifying effect of trade does exist, it can rise or fall depending on changes in a series of variables this essay proceeds to deal with realist theories arguing that trade has a negligible or even negative effect on the likelihood of conflict. Buzan argues that noneconomic factors contribute far more to major phenomena than liberal theorists usually cite to support their theory.[34] There is evidence of the primacy of strategic interests in Masterson’s 2012 study on the relationship between China’s economic interdependence and political relations with its neighbours. The study concluded that as economic interdependence with neighbouring states increased the likelihood of conflict did indeed decrease, but that the impact was minimal when compared to the impact of relative power capabilities. In other words, political and military issues dominated interstate relations. Growth in power disparities were associated with decreases in dyadic political relations that were greater than the increase caused by economic interdependence.[35] If the pacifying effect of trade can rise and fall so can the provocative effect of strategic interests. It is important to distinguish between the existence of a strategic interest and a situation of unbearable strategic vulnerability. China and the US have many opposing strategic interests, but neither is in a strategically vulnerable position. For example, China shares many borders, but none present the same threat of invasion that Tsarist Russia did to Imperial Germany as none of the current maritime tensions between China, Japan, and the US equate to a matter of national survival.[36] This is crucial as some believe that for a crisis to escalate to a major war an actor who is isolated and believes that history is conspiring against them is needed. Only this actor would take an existential risk to try and offset their strategic vulnerability.[37] Imperial Germany fit this description, but neither China nor the US does. This is largely due to the geography of the region. The tension between the US, China and Japan are over maritime regions. Maritime issues still relate to national interests but, as Krause points out, “Land armies are still the only forces that can conquer and hold territory.”[38] Taking this into account one can argue that the benefits of US-China trade are, for each state, currently greater than the benefits of pursing strategic benefits via force, but this situation will only remain as long as the situation does not become one of unbearable strategic vulnerability. Realist Arguments Pertaining to the Undermining of Deterrence Having established that scenarios exist where strategic interests and vulnerabilities have a greater effect on the likelihood of war than economic interdependence, this essay will now evaluate arguments that economic interdependence can increase the likelihood of conflict through the undermining of deterrence. The argument proceeds as follows: if economic interdependence constrains the ability or willingness of a state to use its military, security is lowered as the state now has a weakened ability to engage in deterrence and defensive alliances. Deterrence relies on the ability of a state to make credible threats and defensive alliances rely on credible promises to protect one’s allies.[39] Credibility is defined as the product of the operational capability to follow through with a threat and the communication of resolve to use force.[40] What is at risk here is that if economic interconnectivity interferes with the communication of resolve to use force then states may end up with a way that neither side expected or wanted. Some argue that it was such a failure to communicate resolve that resulted in the beginning of WW1. Indeed, Jolly claims that: “The Austrians had believed that vigorous actions against Serbia and a promise of German support would deter Russia: the Russians had believed that a show of strength against Austria would both check the Austrians and deter Germany. In both cases, the bluff had been called and the three countries were faced with the military consequences of their actions.”[41] The risk in the US-China case would be that the interest groups described earlier would prevent the US from effectively communicating its resolve to use force if China were to cross a redline. The flaw in this argument lies in the fact that whilst interest groups might push back against public statements outlining redlines; the US has many less overt options available to it to communicate resolve. Modern technology and the forms of interconnectivity have resulted in many more lines of communication between China and the US than adversaries had access to in 1914. Private meetings, electronic communication and numerous other methods of communication have the capability to be candid without being visible to interest groups. It is for this reason that this essay discounts the theory that Sino-American economic interdependence results in a reduction of deterrence and therefore increases the likelihood of conflict. Conclusion This essay has shown that the strength of the pacifying effect of economic interdependence is subject to change depending on a series of dynamic variables. It has also demonstrated that the strength of the conflict provoking effects of strategic interests can change depending on whether the strategic interest amounts to a situation of unbearable strategic vulnerability. It has discounted the theory that interdependence leads to a higher chance of conflict through an erosion of credibility. To sum up, trade does seem to reduce the likelihood of conflict but should not be seen as a deterministic factor as strategic interests, and vulnerabilities also have a large effect. There is no hard rule as to what will be the driving factor as the nature of economic interdependence and of strategic factors impact their relative values. Accordingly, Pinker’s statement that the trade between the US and China makes war exceptionally unlikely is simplistic and misleading because it fails to account for a wide array of variables that can radically change the likelihood of a Sino-American war. An intellectually honest thesis would insist upon a comprehensive approach in which the level of economic activity is simply one of many variables that is required.

#### No LIO impact.

Tang ’19 [Shiping; Fudan Distinguished Professor and Dr. Seaker Chan Chair Professor @ School of International Relations and Public Affairs (SIRPA), Fudan University, Shanghai, China; 1/24/2019; “The Future of International Order(s)” *The Washington Quarterly* 41(4), p. 117–131]

Globalization, but More Regional and Interregional Overlapping regional orders will become a key component of any future international order.15 Moreover, although the European Union is often the model conjured when thinking of regionalism, we need to approach regionalism without always taking the EU as the yardstick.16 According to a recent study by J. Thomas Volgy et al,17 regions with a single great power (e.g., North America) tend to be the most peaceful, with the exception of South Asia. In contrast, regions without a great power are more violenceprone such as the Middle East. Thus, when a region lacks a regional great power or a regional great power is either unable or unwilling (or both) to construct a peaceful regional order, that region tends to be less peaceful. In contrast, the outcomes for regions with two or more (mostly two) great powers depend on whether the regional powers can work together. Regional great powers working together tend to produce peace (e.g., the European Union in Europe), while their lack of cooperation (e.g. East Asia) tends to be more prone to war. Western Europe has been largely peaceful since World War II because Germany and France have cooperated with each other. By the same token, Central Asia may be moving toward a zone of peace, now that Russia and China have been increasingly working together. By comparison, East Asia’s future is looking increasingly fraught, given the rivalry between the U.S./Japan alliance and China, in addition to many regional states’ reluctance to embrace some kind of leadership role for Japan previously and now China. Indeed, with the collapse of the East Asia Summit that aims to forge a more integrated East Asia with only states from East Asia, East Asia seems to be a region lacking a genuinely regional project, at least for now. What does this mean for global governance? I venture to argue that regional resilience may now be more important than ever. As long as these regional blocs (and even spheres of influence) are rule-based and peacefully shaped, the current international order may be more stable and resilient than an order with only one center. Indeed, one can credibly argue that the post-WWII international system has been so stable precisely because many regions have institutionalized regional peace by constructing more rule-based regional orders.18 The key is not necessarily that there is one rulemaker, but that each region has rules. Here, it may be useful to recall that Pax Americana extended beyond the Western hemisphere only after the Cold War, and this may well be the first and the last time that any order approaches a global one. Throughout history, many regional orders have existed, though no truly global one has. Although many regional great powers may attempt to construct regional orders that can manage most regional issues within the region, few, if any, of these orders run counter to Pax Americana. The notion that Pax Americana is coming to an end and then will be replaced by a new global order underpinned by another global hegemon cannot be easily substantiated. We therefore should welcome regionalism projects in various regions. When regions can mostly take care of themselves, the world becomes a much safer and better governed place. Indeed, if regional states can manage their regional affairs well, then regions can withstand stronger headwind from the lonely and now whimsical superpower under Donald Trump. After all, almost every one of the existing security communities have originated regionally first. If regions are becoming increasingly critical, then we can also expect interregional coordination between regions to become more critical for the future international order. There are three possible types of these interregional dynamics. First, extra-regional great powers (EGPs) can choose to work for or against regionalism projects in other regions.19 It is certainly possible that extra-regional great powers (such as the United States in the European order) and regional great powers (such as France and Germany in Europe, or China and Japan in East Asia) and other regional small-to-medium states work together, if they can realize that doing so is better than plotting against each other. On this front, the United States has been the traditional go-to extra-regional great power. Today, however, both the EU and China might possibly join its ranks. Arguably, the Asia-Europe Summit, the Africa-China summit, and China’s “One Belt and One Road” (OBOR), or Belt and Road Initiative (BRI), are initiatives undertaken by the EU and China that may have a constructive role in another region. Of course, it must be admitted that China’s OBOR has not always been welcomed, to put it politely. As a result, it is unclear whether and how much OBOR can create interregional linkages. Likewise, it is unclear whether the China-Africa Summit can create much interregional and intraregional connection within Africa, although several African countries are quite interested in drawing useful lessons from China’s economic development simply because these countries would love to achieve a sustained high rate of economic growth. The same can be said regarding the Asia-EU Meeting (ASEM) and the Africa Union-EU Summit: these two interregional initiatives have added little to intraregional integration and the making of regional orders because countries within one of the regions do not like greater integration, at least for now. Second, regional organizations (e.g., the EU, the Africa Union, the Association of Southeast Asian Nations [ASEAN], and the Shanghai Cooperation Organization) can work together with each other and other key players to create new interregional frameworks or initiatives that can bring different regions together, or at least make different regions more connected with each other, besides making states within a region work together more. Here, the key question may be whether regions with more mature regionalism projects can lead the way. For instance, can the EU and East Asia work together, or even the EU, East Asia, and the Africa Union together? Third, different regional great powers can choose to work together with each other. Again, the United States has been the traditional go-to partner for many issues. Now with Trump, will key regional states rethink whether their U.S.-centrism is still warranted, at least until Trump is gone? For instance, can China and Japan work more closely with Argentina and Brazil in Latin America, or with India in South Asia? Likewise, can France and Germany work more closely with China and Japan? Altogether, because regions are becoming more regionalized, closer interregional coordination and cooperation based on open regionalism can become a key pillar of the emerging multiplex international order.20 Reforming Global Governance: More Bottom-up than Top-down? According to the definition of order noted above, rules or institutions (as key components of global governance) constitute the third dimension of international order, with the first being an order’s scope of coverage and the second being the relative distribution of power. Hence, reforming global governance is to reform one dimension of the international order for a better world by revising (or modifying) old rules and making new ones while retaining many key old rules. The post-WWII and then post-Cold War international order was mostly a top-down order because it was mostly imposed by the United States and its allies. Maintaining this status quo looks increasingly unlikely. In terms of making rules and reforming global governance, we are now moving from a mostly top-down style to a more bottom-up one. There are two critical forces behind this. First, major transformations of international order in the past had been mostly a process of victors imposing order after major wars (e.g., 1648, 1919, 1945, and 1991). With major wars being no longer feasible among great powers, it may be increasingly unlikely to have clear winners and losers. Hence, it may be increasingly unlikely to have clearly victorious sides that can hold the power and moral influence to impose order (upon losers and the rest). Second, with the diffusion of power from the West, the ability to impose order may no longer be realized. States, at least since 1648, were the only central agents in holding a concentration of power. In contrast, in today’s “flat” world, agents other than states have gained increasingly significant power in shaping rules, even though states remain key players. As a result, both developments point to new and multiple agents contesting rules. In addition, more regionalization will also mean that global governance will be increasingly constrained by regionalism projects. More regional, issue-specific, domain-specific (or ad hoc) rule-making is becoming the norm. Climate change is one prominent example of a specific issue getting attention because it is being moved forward by regional and subnational players. Federations of scientists and grassroots movements have played a critical role in pushing forward important agendas for environmental protection and reducing greenhouse gas. Despite serious under-participation from the Global South, subnational players, especially global cites, have taken a more active role in shaping the future rules of environmental protection while state-to-state coordination on climate change has mostly stalled.21 This is just one example. There will be many regional orders within different domains and dimensions, meaning more bottom-up rather than topdown rule-making. Similarly, key progress has been advanced by nongovernmental actors in areas like quality management, transparency accounting and corporate responsibilities.22 Even though many of these major changes such as the ISO certificate system and corporate responsibilities for environmental protection were mostly from the corporate world, they have played an important role in shaping global governance more broadly. Without quality management and corporate responsibilities, it is unlikely that issues such as food security and environmental protection would have the kind of attention they do. Global governance is no longer the exclusive domain of states. Non-corporate nongovernmental actors have also been making moves. One such example is the area of art repatriation. Although often a victim state does formally request its stolen or looted art treasures to be returned and often another state has to approve the repatriation, the real action in art repatriation has been driven by museums, artists, and associations of them. Finally, we should never forget technological breakthroughs. The capitalist system will continue to spur the relentless drive for technological progress and profit, and thus will continue to bring profound changes in rules underpinning global governance, especially in areas such as communication, logistics, e-commerce, and travel. All these developments point to a more bottom-up style of shaping the international order, with multiple cross-cutting agents and initiatives. For instance, global cities may work with grassroots movements to pressure their respective national governments in other areas as they have about environmental protection when state-led initiatives (e.g., the Paris Accord) have stalled. The question though remains: can we effectively cope with challenges by having multiple agents competing for rules in overlapping domains? Nevertheless, it appears to be the world (and the order) that we are increasingly living in. Beyond the West: The Future of Modernity Though cracks within the West were evident before Brexit and Trump—ranging from how to tackle global warming, the rise of non-Western countries, and regime change in Iraq, Libya, and Syria—I am not predicting the decline of the West. Global governance without the West is both unimaginable and undesirable. However, both the West and the non-West must look beyond the West for partners in a host of issues. Some issues require cooperation within the non-West; others require cooperation between the West and the non-West. Thus, the West needs to reduce its egocentrism and look beyond its borders for the sake of a better international order. More critically, identifying the West as the eternal exception in the modernity project hinders rather than helps progress toward a more inclusive modernity project. What does the rise of ethno-nationalism within the West (e.g., the United States, the UK, Austria, or even France) mean for the future of international order(s)? Politically, it will mean more “America first,” “Britain first,” and “Germany First” etc. As such, it will deepen the cracks in the West. Economically, it will mean more or less the same as what we have seen in recent years, with more protectionism and less open trade. Both trends present challenges for the operation of the present order. For the future of the West itself, two critical points should be considered. First, despite the rise of non-Western countries, the United States and the West remain the most critical players of the existing international order in the foreseeable future. Thus, one of the most critical unknowns to the future of international order may be what kind of damages Trump can wreck upon it. Trump will inevitably pass, but Trumpism, for lack of a better term, will likely remain an undercurrent within U.S. domestic politics for some time to come. What does this mean for the international order? At the very least, two aspects should be considered. First, will Trump and Trumpism have some lasting impact (or do lasting harm) on the U.S. role and power in the world, including on the legitimacy of American leadership? Or could the resilience of U.S. staying power make Trump and Trumpism only a fleeting moment without lasting impact? Also, even if the United States reverted to its pre-Trump approach toward the international order, will the world have changed so much that the United States will need to find new roles for exercising its leadership in a new world order? The second critical point about the West, for the near future, is whether the idea of a more-or-less coherent West persist with some modifications? Should such an idea still hold special sway inside and outside the West? Within the West, the idea of a unified West certainly provides a sense of security, solidarity, and perhaps superiority. But that idea may also have inhibited the West from coming to terms with the non-West. If this is true, will the West become less Western-centric? Or will the non-West remain so fragmented that the concept of the West will still remain a linchpin of any future international order? Since World War II, the United States and the EU (often together) have been leaders of the international order by default. Both sides of the Atlantic prefer each other as the go-to partner for almost all key issues. Yet, if the West-centric order really desires to integrate the rest of the world into the existing order, then a partnership between the EU and other key states and regional organizations would be useful. This is especially true with Trump in the White House and the European Union experiencing its own problems of governance and populism backlashes. For one thing, Trump seems to believe that the United States should replace partners, which are expensive and no longer necessary, with followers. The key question then becomes whether the EU can work together with other states and regional organizations. For instance, can the African Union and the EU cooperate to reduce poverty? Can the EU and Asia work together to promote trade? Similarly, can the EU and China forge a stable partnership to combat climate change and advance African growth? All these possibilities cannot become realities unless the EU and other regional organizations and states no longer see the United States as their only plausible partner. It may be high time for countries to rethink whether their U.S.-centrism is still warranted, at least until Trump is gone. For instance, whether the EU and China can forge a stable partnership really depends on whether they can see each other and approach their potential cooperation from an angle without the United States being at the center of their imagination.23 Likewise, can the EU and BRICS (Brazil, Russia, India, China, and South Africa) provide better ideas on rules of global governance and fill the void of political power now that Trump has only an “America First” policy? This may be the critical question for leaders of these countries. We need not only “West and West” and “Non-West and Non-West” but also “West and Non-West” partnerships. This rejection of U.S.-centrism, whether temporary or not, may be a critical variable in shaping the rules of global governance in future international order(s) in the next couple years.

# 2NC

## CP – ITC

### 2NC – OV

#### Counterplan solves the aff – it utilizes the ITC to prosecute anticompetitive conduct by expanding the scope of Section 337 of the Tariff Act, NOT antitrust law. That solves every impact – the ITC has equal discretion and authority to apply remedies against unfair methods of competition – no reason antitrust law is the necessary hammer.

### 2NC – AT: PDCP

#### Core antitrust laws are Sherman, Clayton, and FTCA

Kendall Kuntz 21, J.D. Candidate at The University of Maryland Francis King Carey School of Law, “Can the Courts and New Antitrust Laws Break Up Big Tech?,” 2/23/21, https://www.law.umaryland.edu/Programs-and-Impact/Business-Law/JBTLOnline/Break-Up-Big-Tech/

There are three core antitrust laws in effect today: the Sherman Act, the Clayton Act, and the Federal Trade Commission Act. These three antitrust laws attempt to protect market competition for the benefit of consumers. The Sherman Act outlaws monopolies and contracts that unreasonably restrain trade. The Clayton Act prohibits mergers and acquisitions that substantially lessen competition or create a monopoly. Lastly, the Federal Trade Commission Act bans “unfair methods of competition” and “unfair or deceptive acts or practices.” Antitrust laws are not established to punish success, but are focused on preventing anticompetitive effects, exclusionary practices, reduced consumer choice, and hindered innovation.

#### Their scope is what those provisions cover

Donald F. Parsons Jr. 14, Vice Chancellor of the Court of Chancery of Delaware, “Vichi v. Koninklijke Philips Electronics, N.V.,” 85 A.3d 725, Lexis

As an initial matter, I reject the proposition that the determination of who can invoke a choice of law provision must precede the analysis of the provision's validity and scope. The “scope” of a choice of law provision refers to how broadly or narrowly that provision applies and includes the question of whether the provision created enforceable rights in third parties.310 The only case Philips N.V. cites in support of its assertion that Delaware law should govern whether it can invoke the choice of law clause merely stands for the proposition that a Delaware court will apply its own conflict of laws rules to determine which jurisdiction's substantive law will govern the claims before it.311 As noted previously, under Delaware conflict of laws rules, the scope of a valid choice of law provision is determined by the law of the selected jurisdiction—in this case, England.

#### ‘Of’ means that coverage must come from the core laws

M. Margaret McKeown 11, Judge, US Court of Appeals for the 9th Circuit, “Simonoff v. Expedia, Inc,” 643 F.3d 1202, Lexis

Our recent decision in Doe 1 is central to our analysis. There we considered a forum selection clause in AOL's website user agreement that [\*\*5] provided for "exclusive jurisdiction for any claim or dispute . . . in the courts of Virginia." Id. at 1080. We concluded that the choice of the preposition "of" in the phrase "the courts of Virginia" was determinative—"of" is a term "'denoting that from which anything proceeds; indicating origin, source, descent, and the like.'" Id. at 1082 (quoting Black's Law Dictionary 1080 (6th ed. 1990)). Thus, the phrase "the courts of" a state refers to courts that derive their power from the state—i.e., only state courts—and the forum selection clause, which vested exclusive jurisdiction in the courts "of" Virginia, limited jurisdiction to the Virginia state courts. Id. at 1081-82.

#### The CP doesn’t do that---it expands the scope of 19 U.S.C. § 1337, which is the Tariff Act

F. Scott Kieff 18, Fred C. Stevenson Research Professor at George Washington University Law School and Senior Fellow at Stanford University’s Hoover Institution, “Private Antitrust at the U.S. International Trade Commission,” https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2597&context=faculty\_publications

This paper, drafted as an adjudicator’s opinion in a recent case of nearly first impression,7 explores a different approach to aligning the strengths and opportunities available through the ITC by considering how more ordinary antitrust issues can be adjudicated through the Section 337 portion of the ITC’s docket. This might be done using existing law. The basic theme is that there are several significant reasons why even a Title VII skeptic – as well as an antitrust skeptic – should be significantly less worried when cases normally expected to be brought in the Title VII portion of the ITC’s docket as petitions are instead brought in the Section 337 portion of the ITC docket as complaints alleging ordinary violations of the antitrust laws.

#### That’s categorically different.

Geoffrey Manne & Kristian Stout 18, Manne is the president and founder of the International Center for Law and Economics (ICLE), a nonprofit, nonpartisan research center, distinguished fellow at Northwestern University Center on Law, Business, and Economics, FCC’s Broadband Deployment Advisory Committee, and he recently served for two years on the FCC’s Consumer Advisory Committee; Stout is ICLE's Director of Innovation Policy is an expert in intellectual property, antitrust, telecommunications, and Internet governance, “The Tariff Act is indeed protectionist — and that’s how Congress wants it,” Truth on the Market, 5-11-2018, https://truthonthemarket.com/tag/international-trade-commission/

A tale of two statutes

The case appears to turn on an arcane issue of adjudicative process in antitrust claims brought under the antitrust laws in federal court, on the one hand, versus antitrust claims brought under the Section 337 of the Tariff Act at the ITC, on the other. But it is actually about much more: the very purposes and structures of those laws.

The ALJ notes that

[The Chinese steel manufacturers contend that] under antitrust law as currently applied in federal courts, it has become very difficult for a private party like U.S. Steel to bring an antitrust suit against its competitors. Steel accepts this but says the law under section 337 should be different than in federal courts.

And as the ALJ further notes, this highlights the differences between the two regimes:

The dispute between U.S. Steel and the Chinese steel industry shows the conflict between section 337, which is intended to protect American industry from unfair competition, and U.S. antitrust laws, which are intended to promote competition for the benefit of consumers, even if such competition harms competitors.

Nevertheless, the ALJ (and the Commission) holds that antitrust laws must be applied in the same way in federal court as under Section 337 at the ITC.

It is this conclusion that is in error.

Judging from his article, it’s clear that Kieff agrees and would have dissented from the Commission’s decision. As he writes:

Unlike the focus in Section 16 of the Clayton Act on harm to the plaintiff, the provisions in the ITC’s statute — Section 337 — explicitly require the ITC to deal directly with harms to the industry or the market (rather than to the particular plaintiff)…. Where the statute protects the market rather than the individual complainant, the antitrust injury doctrine’s own internal logic does not compel the imposition of a burden to show harm to the particular private actor bringing the complaint. (Emphasis added)

Somewhat similar to the antitrust laws, the overall purpose of Section 337 focuses on broader, competitive harm — injury to “an industry in the United States” — not specific competitors. But unlike the Clayton Act, the Tariff Act does not accomplish this by providing a remedy for private parties alleging injury to themselves as a proxy for this broader, competitive harm.

As Kieff writes:

One stark difference between the two statutory regimes relates to the explicit goals that the statutes state for themselves…. [T]he Clayton Act explicitly states it is to remedy harm to only the plaintiff itself. This difference has particular significance for [the Commission’s decision in Certain Carbon and Alloy Steel Products] because the Supreme Court’s source of the private antitrust injury doctrine, its decision in Brunswick, explicitly tied the doctrine to this particular goal.

More particularly, much of the Court’s discussion in Brunswick focuses on the role the [antitrust injury] doctrine plays in mitigating the risk of unjustly enriching the plaintiff with damages awards beyond the amount of the particular antitrust harm that plaintiff actually suffered. The doctrine makes sense in the context of the Clayton Act proceedings in federal court because it keeps the cause of action focused on that statute’s stated goal of protecting a particular litigant only in so far as that party itself is a proxy for the harm to the market.

By contrast, since the goal of the ITC’s statute is to remedy for harm to the industry or to trade and commerce… there is no need to closely tie such broader harms to the market to the precise amounts of harms suffered by the particular complainant. (Emphasis and paragraph breaks added)

The mechanism by which the Clayton Act works is decidedly to remedy injury to competitors (including with treble damages). But because its larger goal is the promotion of competition, it cabins that remedy in order to ensure that it functions as an appropriate proxy for broader harms, and not simply a tool by which competitors may bludgeon each other. As Kieff writes:

The remedy provisions of the Clayton Act benefit much more than just the private plaintiff. They are designed to benefit the public, echoing the view that the private plaintiff is serving, indirectly, as a proxy for the market as a whole.

The larger purpose of Section 337 is somewhat different, and its remedial mechanism is decidedly different:

By contrast, the provisions in Section 337[] are much more direct in that they protect against injury to the industry or to trade and commerce more broadly. Harm to the particular complainant is essentially only relevant in so far as it shows harm to the industry or to trade and commerce more broadly. In turn, the remedies the ITC’s statute provides are more modest and direct in stopping any such broader harm that is determined to exist through a complete investigation.

The distinction between antitrust laws and trade laws is firmly established in the case law. And, in particular, trade laws not only focus on effects on industry rather than consumers or competition, per se, but they also contemplate a different kind of economic injury:

The “injury to industry” causation standard… focuses explicitly upon conditions in the U.S. industry…. In effect, Congress has made a judgment that causally related injury to the domestic industry may be severe enough to justify relief from less than fair value imports even if from another viewpoint the economy could be said to be better served by providing no relief. (Emphasis added)

Importantly, under Section 337 such harms to industry would ultimately have to be shown before a remedy would be imposed. In other words, demonstration of injury to competition is a constituent part of a case under Section 337. By contrast, such a demonstration is brought into an action under the antitrust laws by the antitrust injury doctrine as a function of establishing that the plaintiff has standing to sue as a proxy for broader harm to the market.

Finally, it should be noted, as ITC Commissioner Broadbent points out in her dissent from the Commission’s majority opinion, that U.S. Steel alleged in its complaint a violation of the Sherman Act, not the Clayton Act. Although its ability to enforce the Sherman Act arises from the remedial provisions of the Clayton Act, the substantive analysis of its claims is a Sherman Act matter. And the Sherman Act does not contain any explicit antitrust injury requirement. This is a crucial distinction because, as Commissioner Broadbent notes (quoting the Federal Circuit’s Tianrui case):

The “antitrust injury” standing requirement stems, not from the substantive antitrust statutes like the Sherman Act, but rather from the Supreme Court’s interpretation of the injury elements that must be proven under sections 4 and 16 of the Clayton Act.

\* \* \*

Absent [] express Congressional limitation, restricting the Commission’s consideration of unfair methods of competition and unfair acts in international trade “would be inconsistent with the congressional purpose of protecting domestic commerce from unfair competition in importation….”

\* \* \*

Where, as here, no such express limitation in the Sherman Act has been shown, I find no legal justification for imposing the insurmountable hurdle of demonstrating antitrust injury upon a typical U.S. company that is grappling with imports that benefit from the international unfair methods of competition that have been alleged in this case.

Section 337 is not a stand-in for other federal laws, even where it protects against similar conduct, and its aims diverge in important ways from those of other federal laws. It is, in other words, a trade protection provision, first and foremost, not an antitrust law, patent law, or even precisely a consumer protection statute.

#### It is an alternative to the plan.

Ian Simmons & Julia Schiller 16, Attorneys at O’Melveny LLP, “International Comity Saves Vitamin C Defendants from $147 Million Judgment,” OMM, 9-22-2016, https://www.omm.com/resources/alerts-and-publications/alerts/in-re-vitamin-c/

With its decision this week in In re Vitamin C Antitrust Litigation,1 the Second Circuit resolved a case of first impression and weighed in on the question of how far the Sherman Act extends abroad. The Second Circuit vacated a $147 million judgment against Chinese vitamin C manufacturers that admittedly conspired to fix prices and output in violation of the Sherman Act.2 Relying on the principle of international comity, the Second Circuit held that exercising jurisdiction over the defendants was improper—even though the price fixing harmed American importers and consumers—because the defendants’ actions were compelled by Chinese law.

The decision shows that American courts may be increasingly likely to dismiss US antitrust claims against foreign companies based in countries with heavy government involvement in the economy. Similar cases may be less likely to arise out of China going forward because the development of China’s antitrust regime (particularly the 2008 Antimonopoly Law) and its continued emphasis on market-oriented reforms have reduced state-compelled price fixing.

OVERVIEW OF THE CASE

The Second Circuit’s opinion brings this long-running action to a potential close. The plaintiffs, importers of vitamin C, filed the initial complaint in January 2005. The complaint alleged that four defendants—large, Chinese vitamin C manufacturers who collectively held over 60% of the worldwide market—conspired to fix prices and volumes in violation of Sherman Act § 1 and Clayton Act §§ 4, 6. In a motion to dismiss and subsequent motion for summary judgment, the defendants did not dispute the allegations, but raised three defenses: (1) foreign sovereign compulsion, (2) the act of state doctrine, and (3) the principle of international comity.3

The Chinese government—specifically the Ministry of Commerce of the People’s Republic of China (MOFCOM)—filed a sworn statement and historic amicus brief in support of the defendants’ motions, marking the first time any entity of the Chinese government appeared as amicus curiae in any US court. MOFCOM’s statement and brief stated that binding Chinese law compelled the defendants’ price fixing. US District Judge Brian Cogan nonetheless denied the defendants’ motions because he found that MOFCOM’s statement was not credible and was contrary to the factual record: “[MOFCOM’s] assertion of compulsion is a post-hoc attempt to shield defendants’ conduct from antitrust scrutiny rather than a complete and straightforward explanation of Chinese law during the relevant time period in question.”4 Following this decision and grant of class certification, several defendants settled, marking “the first civil settlements with a Chinese company in a US antitrust cartel case.”5 The remaining defendants went to trial; the jury returned a $147 million award.

On appeal, the Second Circuit held that the district court abused its discretion by not abstaining from exercising jurisdiction “on international comity grounds,” a “principle under which judicial decisions reflect the systemic value of reciprocal tolerance and goodwill” between the US and other countries.6 A starkly different view of MOFCOM’s statement drove the Second Circuit’s opinion.  The court criticized the district court’s failure to give MOFCOM sufficient deference, stating that “a US court is bound to defer to [] statements” about its laws and regulations made by a foreign government directly participating in a US court proceeding.7 Crediting MOFCOM’s statement, the Second Circuit found that the Chinese government forced the defendants to fix prices, thus creating a “true conflict” as defined by the Supreme Court in Hartford Fire.8 Because a “true conflict” existed between Chinese law and US law, the Second Circuit dismissed the case on international comity grounds.

EFFECT ON THE SHERMAN ACT'S GEOGRAPHIC SCOPE

This decision is significant because it limits the extraterritorial reach of the Sherman Act, thereby echoing recent decisions narrowing the geographic scope of US law in other areas.9 The seminal Alcoa case first clarified that the Sherman Act only applied to foreign conduct that had actual and intended effects on US commerce.10 Then, in 1982, Congress passed the Foreign Trade Antitrust Improvements Act (FTAIA) to subject to the Sherman Act import commerce and other foreign commerce with a “direct, substantial, and reasonably foreseeable effect” on the United States.11 The Supreme Court explained in Hartford Fire that “the Sherman Act applies to foreign conduct that was meant to produce and did in fact produce some substantial effect in the United States.”12

None of these cases and statutes definitively explain how comity affects a US court’s ability to hear a Sherman Act claim against a foreign defendant. Some courts turn to comity as a principle of statutory construction to determine whether the Sherman Act grants a cause of action or jurisdiction.13 Under this view, where a claim is properly before the court, no comity analysis is necessary because Congress is best situated to make inherently political determinations about the effects of US laws on foreign relations. Other courts—including the Second Circuit in In re Vitamin C—consider that a comity analysis remains proper even where plaintiffs’ cause of action and the court’s jurisdiction are undisputed.14 This view reserves to US courts considerable power to relinquish jurisdiction over foreign defendants, such as those in this case, that are in violation of US antitrust laws and undoubtedly subject to the jurisdiction of US courts.

By exercising that power here, the Second Circuit strengthens the view that a “true conflict” between US and foreign laws nearly guarantees a case’s dismissal. Before the Supreme Court’s Hartford Fire decision, courts evaluated comity based on the factors enunciated by the Ninth and Third Circuits in Timberlane Lumber and Mannington Mills, including the degree of conflict with foreign law, the nationality of the parties, and the availability of a remedy abroad.15 Then, in Hartford Fire, the Supreme Court refused to relinquish jurisdiction on comity grounds, explaining that a “true conflict” exists only where a defendant is incapable of complying with both US and foreign law.16 That is, comity applies where one sovereign’s law compels a course of action that another sovereign’s law condemns. Courts remain divided on whether Hartford Fire’s heavy focus on the presence of a “true conflict” displaced or merely clarified the factors enunciated in Timberlane Lumber and Mannington Mills. The Second Circuit returned to the first principle of comity analysis by looking for a “true conflict” between US and Chinese law as a threshold matter, and relied on the existence of that conflict to reverse the district court. By devoting almost all of its analysis to the true-conflict factor, the court arguably confirmed that this factor is indeed the determinative one, particularly when the conflict originates from a foreign country with significant political and economic clout, such as China.

COMITY AND CHINESE ANTITRUST LAW

Exact analogs to the Vitamin C litigation are unlikely to emerge moving forward because the regulatory regime at issue in that case no longer exists. China’s first comprehensive competition statute, the Antimonopoly Law (AML) took effect in 2008. The AML and its implementing rules broadly prohibit horizontal price-fixing and output restraints referred to as “monopoly agreements,” and explicitly forbid trade associations from facilitating cartels. Over the last eight years, Chinese competition authorities have actively enforced the AML against both domestic and international cartels, including many cartels involving state-owned enterprises or trade associations. In 2015, the central government launched a new “fair competition review mechanism” aimed at paring back anticompetitive government policies and regulations. While the AML leaves some room for coordinated efforts to maintain the competitiveness of Chinese enterprises, collusion among exporters would generally be prohibited, unlike the facts presented in the Second Circuit’s Vitamin C opinion. Although significant differences between the AML and the competition laws of the US and other jurisdictions persist, a “true conflict” between the Sherman Act and Chinese law is far less likely today than in 2001.

The Second Circuit’s opinion itself hinted that the conflict between US and Chinese law that it had to resolve may be more of a relic of the past than a major concern moving forward. The court noted that the PVC program was “intended to assist China in its transition from a state-run command economy to a market-driven economy” and that “the resulting price-fixing was intended to ensure China remained a competitive participant in the global vitamin C market.”17 With these statements, the court seemed to suggest that China’s use of these types of state-sanctioned coordination is on the decline.

Nevertheless, Chinese companies operating under a hybrid state-run and capitalist economy may still pursue conduct that violates the Sherman Act under state direction in some key industries in which the government operates with a heavier hand, thereby limiting private plaintiffs’ ability to recover in federal court under the Second Circuit’s precedent. This, in turn, may push US companies to pressure the US government to bring an action at the WTO rather than rely on civil litigation, as suggested by the Second Circuit itself, or look at other avenues such as the administrative courts in the ITC, as a group of US steel manufacturers have already done.18

### 2NC – CP Amendment

#### The United States federal government should clarify that 19 U.S.C. § 1337 authorizes remedies against anticompetitive business practices by the People’s Republic of China’s private sector where the private party and foreign sovereign did not affirmatively disclose their intent to act in an anti-competitive nature under subsection (a)(1)(A), irrespective of subsections (a)(2) and (a)(3), and provide all resources necessary for adjudicating and proactively investigating such cases.

#### The United States federal government should substantially increase funding and resources for the DOJ Antitrust Division and implement initiatives and training programs designed to boost morale for the DOJ Antitrust Division.

### 2NC CP’s – Good

2NC counterplans are good:

1. Tests the intrinsicness of new aff offense – negation theory means we just need to prove a competitive option avoids our DA, not the original 1NC counterplan.
2. Our interp checks vague plans and sketchy solvency mechanisms that get re-explained in the 2AC – theirs incentivizes sand-bagging, which breaks debate because late-breaking debates reduce intricate clash.
3. Arbitrary – you wouldn’t ban new 1NR impacts to politics – proves any restraint is arbitrary, which creates an unpredictable burden for the neg that incentivizes goalpost shifting and crowds out substance.
4. Justified by conditionality – the distinction between the 1NC and 2NC is arbitrary.

### 2NC ­– Solvency

#### Applying Section 337 operates synonymously to FTC litigation under the Clayton Act, except it doesn’t import the ‘antitrust injury’ doctrine from antitrust law.

2AC Kieff ’18 [F. Scott; Fred C. Stevenson Research Professor at GW Law School; 3/19/18; “Private Antitrust at the U.S. International Trade Commission”; <https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2597&context=faculty_publications>; GWU Legal Studies Research Paper No. 2018-16; accessed 10/28/21; TV]

On the legal question about what is needed for their antitrust case to proceed before the ITC, Complainants have a different take. They argue that their antitrust claim(s) should proceed before the ITC whether focused on price fixing or on other horizontal agreements spanning a much broader spectrum of behaviors than merely predatorily low price. This approach is easier for me to follow for the reasons explained below.

Section 337 instructs the ITC to investigate and adjudicate claims of “[u]nfair methods of competition and unfair acts in the importation of articles . . . into the United States, or in the sale of such articles by the owner, importer, or consignee, the threat or effect of which is . . . to restrain or monopolize trade and commerce in the United States.”18 As recognized in early Commission cases, “[t]his prohibition is generally modeled after section 1 of the Sherman Antitrust Act (15 U.S.C. § 1).”19

Complainants in this case seek, inter alia, relief from injury caused by Respondents’ “conspiracy to fix prices and control output and export volumes, in violation of Section 1 of the Sherman Act, 15 U.S.C. § l.”20 Although at oral argument there appeared to be some lack of clarity about which provision of the ITC’s statute was invoked on what date and by whom regarding the antitrust issues in this case,21 at present there are two particular statutory hooks on which the Complainants hope to hang their case. They rely on either Section 337 (a)(1)(A)(i) or (iii), which prevent acts of unfair competition, the threat or effect of which is: “(i) to destroy or substantially injure an industry in the United States; … [or] (iii) to restrain or monopolize trade and commerce in the United States.”22 Simply put, they complain of harm to a domestic industry under (i) and harm to “trade and commerce” under (iii).

Past Commission determinations relating to these provisions in the ITC’s statute have recognized that by the end of an investigation brought under these provisions, the complainant must have shown actual injury either to the industry or to trade and commerce before the Commission will order a remedy. For example, the Commission determined that “[Section 337] contains a separate requirement of injury, either to competition or to competitors,” i.e., “[t]he party with the burden of proof must show by substantial, probative and reliable evidence that either injury or a restraint of trade is taking place, or that there is a tendency toward them.”23

But no Commission determination applying these provisions of the ITC’s Section 337 statute has imported the antitrust injury doctrine from cases brought under the Clayton Act in district court. Some important differences between the two statutory regimes may explain why.

One stark difference between the two statutory regimes24 relates to the explicit goals that the statutes state for themselves. The ITC’s statute explicitly states it is to remedy harm to the industry or harm to trade and commerce.25 By contrast, the Clayton Act explicitly states it is to remedy harm to only the plaintiff itself.26 This difference has particular significance for the issue now before the Commission because the Supreme Court’s source of the private antitrust injury doctrine, its decision in Brunswick, explicitly tied the doctrine to this particular goal of the Clayton Act. More particularly, much of the Court’s discussion in Brunswick focuses on the role the doctrine plays in mitigating the risk of unjustly enriching the plaintiff with damages awards beyond the amount of the particular antitrust harm that plaintiff actually suffered.27 The doctrine makes sense in the context of the Clayton Act proceedings in federal court because it keeps the cause of action focused on that statute’s stated goal of protecting a particular litigant only in so far as that party itself is a proxy for the harm to the market. By contrast, since the goal of the ITC’s statute is to remedy for harm to the industry or to trade and commerce – and such harms would have to be eventually shown in a case like ours before a remedy would be imposed – there is no need to closely tie such broader harms to the market to the precise amounts of harms suffered by the particular complainant.

A second key difference between these two statutory regimes relates to the different mechanisms the statutes use to accomplish their goals. The remedy provisions of the Clayton Act benefit much more than just the private plaintiff. They are designed to benefit the public, echoing the view that the private plaintiff is serving, indirectly, as a proxy for the market as a whole. For example, the enhanced damages provisions of the Clayton Act, including treble damages and attorney fees, provide general deterrence against anticompetitive conduct. In addition, the broad equitable power of the injunction has allowed courts and agencies to deploy myriad structural remedies to provide future protection against such conduct. In a sense, this mix of remedies is designed to reward the prospecting risks of a private plaintiff incurring the costs to act as a private attorney general, but under the private antitrust injury doctrine, such remedies must then be reinedin to ensure they are not used to unjustly enrich that particular plaintiff with remuneration beyond the particular antitrust harm it actually suffered or to deter pro-competitive conduct of defendants in general. By contrast, the provisions in Section 337(a)(1)(A)(i) and (iii), however, are much more direct in that they protect against injury to the industry28 or to trade and commerce more broadly. Harm to the particular complainant is essentially only relevant in so far as it shows harm to the industry or to trade and commerce more broadly. In turn, the remedies the ITC’s statute provides are more modest and direct in stopping any such broader harm that is determined to exist through a complete investigation. The remedies available under the ITC’s statute are limited to an exclusion order and a cease and desist order.29 The directness of the Commission’s statute decreases the risk of the errors associated with the indirectness of a proxy approach. Furthermore, the more limited scope of the remedies available under Section 337 decreases the harm from any such errors that do occur.30

#### Ordinary antitrust issues can be litigated by the ITC rapidly and efficaciously.

2AC Kieff ’18 [F. Scott; Fred C. Stevenson Research Professor at GW Law School; 3/19/18; “Private Antitrust at the U.S. International Trade Commission”; <https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2597&context=faculty_publications>; GWU Legal Studies Research Paper No. 2018-16; accessed 10/28/21; TV]

The basic structure of the statute governing the U.S. International Trade Commission (ITC) is grounded in the Smoot-Hawley Tariff Act of 1930.2 The adjudicatory portions of the ITC’s docket arising from this statute are generally recognized to include two basic categories of cases (more precisely termed “investigations”): the Title VII portion, which is filled mostly with issues of antidumping and countervailing duty law; and the Section 337 portion, sometimes also referred to as the “unfair competition” portion, which is filled mostly with issues of intellectual property law.3 For the Title VII portion, a longstanding concern has been that these cases essentially run too high of a ratio of risk to reward for the overall societal benefit. The low reward is because Title VII cases proceed without any requirement there be evidence of actual or threatened economic harm to the market as a whole. 4 The high risk is that these cases can have the effect of merely picking particular winners and losers within our economy by issuing orders that protect those investing capital and labor into the particular domestic industries that are subject to the orders while raising prices paid by those investing capital and labor in the industries for which the subject products are inputs to downstream production, as well as prices paid by consumers for final products.5 In response to such concerns about overall social benefit, commentators have recommended that Congress should import into these international trade laws many of the limits now recognized in modern antitrust law to focus in on true economic harm to markets by incorporating key lessons about error costs learned over the past century in institutional economics, such as the requirement that adjudication of complaints about low pricing turn on proof of actual predatory pricing.6

This paper, drafted as an adjudicator’s opinion in a recent case of nearly first impression,7 explores a different approach to aligning the strengths and opportunities available through the ITC by considering how more ordinary antitrust issues can be adjudicated through the Section 337 portion of the ITC’s docket. This might be done using existing law. The basic theme is that there are several significant reasons why even a Title VII skeptic – as well as an antitrust skeptic – should be significantly less worried when cases normally expected to be brought in the Title VII portion of the ITC’s docket as petitions are instead brought in the Section 337 portion of the ITC docket as complaints alleging ordinary violations of the antitrust laws.

Private antitrust litigation fits well within the ITC’s Section 337 docket for several reasons. It squarely fits with the plain meaning of the ITC’s statute. It also squarely fits the well-established antitrust case law. In addition, it offers some practical benefits. Unlike the relatively easy-to-satisfy legal requirement for assessing injury in the Title VII portion of the docket,8 a 337 investigation involving established antitrust law would turn on the substantive legal standards within that body of established antitrust law that are seen by a broad consensus to be focused on a middle of the road attempt to represent true public interest in avoiding actual economic harm to a market as a whole. In addition, a 337 investigation, which involves initial inter-partes adversarial litigation before an Administrative Law Judge (ALJ), implicates less reliance on administrative deference than an action in the Title VII portion of the docket, and more reliance than in the Title VII portion of the docket on a detailed factual record involving the full panoply of procedural devices ordinarily available in federal court for truth-testing of evidence including cross examination of testimony, all in a timeframe likely to be significantly shorter (around 18 months) than the many years typically required for antitrust litigation in federal court.9

Nevertheless, at least one recent high-profile dispute shows there is at least one significant barrier that may stand as a practical obstacle to a private litigant bringing an antitrust claim under the Section 337 portion of the ITC’s docket: the doctrine that federal courts developed called “antitrust injury,”10 During the initial phases of such a case recently brought against Chinese importers of steel by the domestic US steel industry, with support from both companies and unions, the ALJ dismissed the antitrust complaint for lack of antitrust injury in an initial determination that was then reviewed by the Commission. 11 This paper explores some reasons why the antitrust injury doctrine from federal court may not be a good fit for investigations brought under Section 337 at the ITC.

#### The ITC can litigate antitrust cases within a broader scope than even Section 5 of the FTC Act.

Buckler & Jackson ’13 [Michael & Beau; CEO and general counsel of Village X Inc; associate in Adduci Mastriani & Schaumberg's Washington, D.C., office; 2013/2014; “ “Section 337 as a Force for Good - Exploring the Breadth of Unfair Methods of Competition and Unfair Acts under Sec. 337 of the Tariff Act of 1930”; https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2530728; Federal Circuit Bar Journal, vol. 23]

"What is unfair under § 1337(a)(1)(A)?" is a threshold question for any party seeking to enlist the power of § 337 to halt the harmful effects of imports, particularly those that do not infringe statutory IP. In the debate immediately prior to the passage of the 1922 Act debuting the unfairness language, Senator Smoot, the Act's primary sponsor, declared § 316 to be a law "which will reach all forms of unfair competition in importation [including] .. . bribery, espionage, misrepresentation of goods, full-line forcing, and other similar practices frequently more injurious to trade than price cutting.""

Likewise, the Senate report on the 1922 Act explained that "[t] he provision relating to unfair methods of competition in the importation of goods is broad enough to prevent every type and form of unfair practice and is, therefore, a more adequate protection to American industry than any antidumping statute the country has ever had.""

1. Comparable Language in FTCA

For interpretive purposes, various authorities have compared the subject matter jurisdiction of§ 337 to that of Article 5 of the Federal Trade Commission Act ("FTCA")." Addressing the FTCA, the Supreme Court had held that unfairness does not encompass

practices never heretofore regarded as opposed to good morals because characterized by deception, bad faith, fraud or oppression, or as against public policy because of their dangerous tendency unduly to hinder competition or create monopoly. The act was certainly not intended to fetter free and fair competition as commonly understood and practiced by honorable opponents in trade."

Yet, "[l]ater [Supreme Court] cases . . . have rejected [this] view and it is now recognized .. . that the Commission has broad powers to declare trade practices unfair."" Citing § 337 in a discussion of the FTCA, the Supreme Court has found that " [w] hat are 'unfair methods of competition' are . .. to be determined in particular instances, upon evidence, in the light of particular competitive conditions and of what is found to be a specific and substantial public interest.""

Importantly, the Federal Circuit's predecessor court recognized that 5 337 might be even broader than the FTCA in terms of behavior deemed actionable since the prohibition under § 337 of unfair methods of competition and unfair acts in the importation of articles is deemed

broad and inclusive and should not be held to be limited to acts coming within the technical definition of unfair methods of competition as applied in some decisions. The importation of articles may involve questions which differ materially from any arising in purely domestic competition, and it is evident from the language used that Congress intended to allow wide discretion in determining what practices are to be regarded as unfair."o

2. Agency Deference

The ITC's interpretation of the scope of unfairness actionable under § 1337(a) (1) (A), while not necessarily determinative, is entitled to great weight." Despite the statute's theoretical breath, the ITC has exercised caution when faced with opportunities to recognize and redress novel forms of unfairness. During oral argument before the Federal Circuit in 2010, an attorney in the ITC Office of General Counsel offered her opinion (non-binding on the ITC) that paying overseas workers wages that are low relative to those of American workers does not, by itself, qualify as unfairness under § 337.52 Similarly, the ITC recently refused to institute an investigation where the alleged unfairness involved prescription drug competition from compounding pharmacies, which the Food and Drug Administration ("FDA") had previously condoned." Although such an investigation under § 337 would have arguably encroached on the FDA's authority to exercise its discretion under the Food, Drug, and CosmeticAct," two ofsix commissioners wrote a concurring opinion clarifying that the ITC did not "reach the issue ofwhether properly pleaded claims based on the Food, Drug, and Cosmetic Act may be cognizable under § 1337(a)(1) (A)."" It is intriguing to consider whether "properly pleaded claims" would include actions or omissions deemed unlawful by the FDA, such as failure to comply with regulations governing the safety of imported food and medicine.

Such circumspection by the modern ITC is part of a larger historical trend. In the early twentieth century, the ITC (then known as the U.S. Tariff Commission) conducted an investigation into Russian asbestos, which complainants alleged was imported into the United States through several modes of unfairness." Addressing each in turn, the ITC recommended termination of the investigation, emphasizing the necessity of "establish [ing] definite unfair acts" or "an actual unfair practice," as opposed to conditions under which those acts or practices can occur, such as oversight or participation by a Communist regime. 7

The ITC's current inclination to tread cautiously in its interpretation of unfairness under § 1337(a) (1) (A) is explicable in light of modern international agreements. If the ITC veers too widely from what courts have previously found unfair under statutory or common law, it risks placing the United States in violation of its obligations under Articles I and III of GATT, which require that imported products be treated under U.S. law no less favorably than domestic products."

However, the strictures of GATT do not explain the fate of antitrust claims under § 337. While not the focus of this Article, antitrust clearly falls within the purview of§ 1337(a)(1)(A)," as at least ten antitrust investigations have been instituted at the ITC, though none since 1988.' Nine of those investigations ended with no relief-three terminated pursuant to settlement between the parties62 and six terminated after a finding of no violation. The ITC found a violation in only one investigation, in 1978, where the unfair act was predatory pricing.' However, that violation was disapproved upon Presidential review largely because the underlying facts evinced an act of dumping, and thus the matter fell under the purview of another statute, as discussed infra."

Although commentators have suggested several explanations for the ITC's antitrust drought, it is baffling (and indicative of § 337's underutilization) that the ITC attracts so few antitrust cases as compared to U.S. district court." Both venues apply the same standard for liability and seek to ensure the efficient operation of a free and fair marketplace." Although district courts, unlike the ITC, offer monetary damages to successful antitrust plaintiffs, the ITC can nevertheless issue cease and desist and exclusion orders to discourage anticompetitive conduct, as appropriate, within a fraction of the time required for a district court remedy." While exclusion orders are of dubious value in investigations where anticompetitive conduct does not lead to underpricing or other forms of competitive harm to domestic industries, they may provide the most effective remedy where overseas monopolies use ill-gotten economies of scale (not below-market prices) to supply the United States with artificially low-priced products. Indeed, in this situation, § 337 exclusion orders might provide the most effective relief."

Antitrust claims notwithstanding, there is no requirement that a complainant allege a familiar and well-trodden tort in litigation under § 337.

While it may be persuasive in making the legal argument that certain practices are "unfair" to refer to other federal statutes or laws under which similar practices have been found to be unfair, Section 337 is not merely eclectic. The Commission is not limited to finding unfair acts only when others have found them to be unfair.o

While recognizing without further analysis the existential nature of the debate over what is fair versus unfair in the world, for the purposes of § 337, it appears that the ITC is prepared to intervene now, as was its predecessor a century ago, where alleged unfairness in the importation of articles threatens "the assurance of competitive conditions in the United States economy,"7 even for the purpose of halting such unfairness in its incipiency.72 In this respect, § 337 is a noble ilk of protectionist statute-one that encourages fair competition by protecting against unfair competition.73

### 2NC – AT: Deterrence/Certainty

#### Most judicial antitrust remedies are unenforceable against international actors.

Robert Kantner 13, Partner in the International Law Firm of Jones Day, speciAlizes in Trade Secret and Other Intellectual Property Litigation and Counseling, “Protecting Trade Secrets Internationally Through A Comprehensive Trade Secret Policy,” The Practical Lawyer, February 2013, http://files.ali-cle.org/thumbs/datastorage/lacidoirep/articles/TPL1302\_Kantner\_thumb.pdf

American Judgments May Not Be Enforceable In Foreign Countries

Assuming a company is able to successfully pursue its claim in an American court, it may be awarded damages and/or the defendant may be enjoined from continuing to use, or import products containing, or disclosing, the trade secrets. The next obstacle is enforcing that judgment. While the American court’s Judgment is enforceable within the United States, it may be difficult to enforce the Judgment overseas, particularly if a foreign government has supported the economic espionage in the first place.

#### The severity far exceeds the plan.

Matthew N. Bathon 15, Steptoe & Johnson LLP, 2015, “IP Enforcement: Domestic and Foreign Litigants in the ITC and U.S. District Courts,” University of Pennsylvania East Asia Law Review, Vol. 10, https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1082&context=ealr

E. Remedies

As noted, another important distinction between the ITC and district court is the fact that money damages are not available at the ITC. The ITC, however, can issue orders excluding products from being imported into the United States through general and limited exclusions orders. Cease and desist orders can also be issued to prevent the sale of infringing products that have already been imported into the United States. Exclusion orders are enforced by CBP, whereas cease and desist orders are enforced by the ITC. The Commission has broad discretion in selecting the form, scope, and extent of the remedy in ITC investigations. 19

The Commission’s authority extends to the prohibition of all acts reasonably related to the importation of infringing products. 20 Exclusion orders are not typically limited to the specific models of accused devices found by the Commission to infringe. The Commission can direct the exclusion order to all infringing products within the scope of the investigation, as set forth in the Notice.

Since 2008, limited exclusion orders may only be issued to the respondents specifically named in the complaint.21 General exclusion orders however, can extend to infringing articles of nonnamed respondents. As discussed in Kyocera, the Commission has authority to issue a general exclusion order against products of nonrespondents if the “heightened requirements of Section 337(d)(2)(A) or (d)(2)(B) are met.”22 To obtain a general exclusion order, a party must show that a general exclusion is necessary to prevent the circumvention of an exclusion order limited to products of named persons, or that there is a pattern of violation and it is difficult to identify the source of the infringing products.23

Cease and desist orders may be issued in lieu of or in addition to exclusion orders.24 . “The Commission’s purpose in issuing cease and desist orders in patent cases has been to afford complete relief to complainants when infringing goods are already present in the United States, and thus cannot be reached by issuance of an exclusion order.”25 . The Commission issues cease and desist orders against respondents that maintain “commercially significant” inventory of the infringing products in the United States.26 What is required to satisfy the “commercially significant” requirement is based on the particular facts presented. Respondents that are found to be in default by failing to adequately participate in the investigation are presumed to maintain commercially significant inventory of the infringing products in the United States.27 . Of course, the statute does not require that a commercially significant inventory must exist.28 The Commission has entered cease and desist orders where no commercially significant inventory was shown. 29 In Certain Handbags, Luggage, Accessories and Packaging Thereof, Inv. No. 337-TA-754, the ITC issued a general exclusion order (“GEO”) that enjoined anyone – not just the named respondents – from importing products into the United States that infringed the Louis Vuitton trademarks at issue in the case.30 The Commission informed CBP that Louis Vuitton’s marks were susceptible to being infringed in a number of different ways, not necessarily only through the particular instances of infringement at issue in the investigations. The GEO in that investigation states,

For the purpose of assisting the U.S. Bureau of Customs and Border Protection in the enforcement of this Order, and without in any way limiting the scope of the Order, the Commission notes that there may be numerous ways to manipulate the trademarks at issue so as to create infringements. In an effort to provide some guidance to the U.S. Bureau of Customs and Border Protection in the enforcement of this Order, the Commission has attached to this Order copies of photographs featuring different infringements of [the trademarks at issue].31

The value of a GEO, like the one referenced above, is significant for intellectual property owners not only to stop new infringements from being imported, but as a deterrent to current infringers facing an enforcement proceeding.

In matters where money damages are important, district court cases can be filed in addition to filing a complaint with the ITC. Indeed, complainants routinely file parallel actions before the ITC and district court. In most cases, as long as the allegations are the same in the ITC and district court, the district court case will be stayed pending resolution of the ITC investigation if requested by the respondent/defendant.32 The stay is mandatory if requested by the respondent, as long as the statutory requirements are otherwise met.33 The record before the ITC can be used in connection with the district court case. For example, discovery can be crossdesignated between cases to avoid duplication between the ITC and district court. Additionally, if the district court adopts the findings of the ITC, the time required and certain costs for the district court case may be reduced.

IV. CONCLUSION

The ITC can be an advantageous forum for intellectual property owners that face significant infringement problems originating in foreign jurisdictions, and are the most likely to benefit from using the ITC as an enforcement forum. If successful, powerful exclusion orders can provide ongoing protection and strong deterrent value for years to come.

#### The deterrent effect is massive and empirically proven.

Michael Buckler & Beau Jackson 13, Beau Jackson is an associate in Adduci Mastriani & Schaumberg's Washington, D.C., office; Michael Buckler is the CEO and general counsel of Village X Inc., a nonprofit that crowd funds donations to community-led projects with quantifiable impacts in developing countries and provides live picture updates of project impacts, “Section 337 as a Force for Good - Exploring the Breadth of Unfair Methods of Competition and Unfair Acts under Sec. 337 of the Tariff Act of 1930,” Federal Circuit Bar Journal, 2014/2013, vol. 23, pp. 513–560

On the other hand, as the largest sovereign market on Earth, the U.S. economy is a powerful carrot for global behavior change and will remain so for the foreseeable future. In this vein, should a party seek to promote values consistent with the American experience (e.g., human rights), § 337 could serve as a powerful bully pulpit. Because the party's goals at the ITC would be limited to making the U.S. marketplace freer and fairer and other countries could choose to send their business elsewhere, such an action would hardly smack of cultural imperialism.

IV. Hypothetical § 1337(a) (1) (A) Investigations

In light of the above, the ITC is a compelling venue for an interest group that is opposed to an overseas practice incident to importation (e.g., child labor in garment factories) and interested in financing a ligation to challenge that practice. After identifying an unfair act (e.g., treaty violation) and partnering with a company with U.S. operations harmed by imported garments to act as a domestic industry complainant, the interest group could orchestrate the filing of a § 337 complaint, launching a worldwide campaign targeting multiple companies, myriad factories, and diverse garment offerings across several continents. Also, it cannot be understated that in the process of litigating such a § 337 investigation, a complainant's counsel would likely obtain (in the absence of defaulting respondents) discovery further explaining the strategy of the targeted industry (although the use of any such discovery designated as confidential business information would be subject to limitations set forth in an applicable protective order).2 7

Upon the ITC's institution of the investigation as published in the Federal Register, the complainant could immediately serve domestic and overseas parties who qualify as respondents (e.g., manufacturers overseas, importers, and U.S.-based wholesalers and retailers) with discovery requests seeking information about their business practices. Under ITC rules of procedure, respondents failing to appear could be held in default, and sanctions (similar to those set forth in Rule 37 of the Federal Rules of Civil Procedure) could be imposed for failure to comply with discovery requests."' Because the jurisdiction of the ITC in § 337 investigations is nationwide and in rem, the statute is a very powerful tool for this complainant.

Of course, whether interest groups can harness the power of § 1337(a)(1) (A) to redress activities occurring overseas will depend on the specific legal and factual contours of each potential case. By way of illustration, below are cursory overviews of the merits of § 337 actions falling under a non-exclusive list of four broad categories of allegedly objectionable activities: trading in conflict minerals, use of child labor, products resulting from environmental degradation, and unsafe food and drugs.

A. Conflict Minerals

There are currently few legislative tools for confronting the civil unrest associated with global trade in conflict minerals. In August 2012, the Securities and Exchange Commission ("SEC") issued a rule implementing § 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act requiring all publicly traded companies, beginning in 2013, to disclose their use of certain minerals associated with conflict and used in consumer goods, such as electronic devices.22

' Assuming, arguendo, that the rule remains effective (its legality is currently being challenged by industry groups), failure to comply could give rise to a § 337 action, to the extent that companies save money by not complying and, thus, are able to import and sell goods to U.S. consumers at prices below those of competitors who expend the money required to comply with the law. The incentive to shirk compliance is significant-according to even the SEC, it will cost $3-4 billion for U.S. industry to comply with the Act, and projections from industry groups reach as high as $16 billion.222 Another possible justification for invoking § 337 is acquisition and use of such minerals in derogation of a foreign sovereign's law. According to advocacy group Global Witness, the government of the Democratic Republic of the Congo ("DRC") issued a directive in September 2011 requiring all mining and mineral trading companies operating in the country to perform supply chain due diligence, in accordance with standards set by the Organisation for Economic Cooperation and Development ("OECD"), "to ensure their purchases are not supporting warring parties in eastern DRC." In February 2012, the Congolese government codified this requirement. 22 In theory, § 337 could reach companies operating in the DRC and trading in certain minerals without performing the required Congolese compliance, where those activities result in an importation into the United States.

B. Child Labor

The illegality of child labor is widely recognized. The United Nations Convention on the Rights of the Child is a treaty that defines a child as anyone below the age of 18 and recites basic human rights for all children, including the right to protection from economic exploitation and the right to education. 25 To date, 193 countries have ratified the Convention, and although the United States is not among them for political, not philosophical, 226 reasons, it advocated for the Convention.

Additionally, the Minimum Age Convention, 1973, developed by the International Labour Organization ("ILO"), requires countries to undertake a legal promise to stop child labor and to ensure that children below a certain "minimum age" (which varies depending on the activity) are not employed. At the end of 2010, this Convention had been ratified by 156 of the 183 member States of the ILO, including most Asian and African countries, but not the United States or India. Similarly, the ILO developed the Worst Forms of Child Labour Convention, 1999.228 At the end of 2010, this Convention had been ratified by 173 of the 183 member States.229

U.S. law regarding child labor is complex. In general, for non-agricultural jobs, federal law sets 14 years of age as the minimum age for employment, and limits the number of hours worked by minors under the age of 16.23 Several exceptions to this rule exist, however, such as employment by parents, newspaper delivery, and child acting.23' Moreover, children between the ages of 16 and 18 may be employed for unlimited hours in non-hazardous occupations.232 Restrictions on agricultural employment are more lenient, allowing children under the age of 12 to work in non-hazardous jobs on small farms for unlimited hours outside of school hours with parental permission.23 The DOL issues a periodic report entitled "List of Goods Produced by Child Labor or Forced Labor."234 The report reveals domestic and international uses of child labor, which is defined as all work performed by a person below the age of 15.235 As discussed supra, the DOL also distinguishes (albeit not perfectly) between categories of child labor and the forced or indentured labor outlawed in § 307 of the Tariff Act of 1930, the latter presumably falling outside the subject matter jurisdiction of § 337."'

Section 337 is well situated for claims arising from illegal labor practices involving the voluntary work of children. While the extraterritorial application of U.S. labor standards is legally suspect,237 "nations that violate [their own] fair labor laws and accepted standards . . . [can] accrue an unfairly gained competitive advantage through unfair reduction of the cost of labor, a major input in the cost of production, thereby distorting trade."238 "This practice has been labeled 'social dumping,' which is defined as the 'export of products that owe their competitiveness to low labour standards.' 239 The worst offenders are the rising markets of today in Asia and those of tomorrow in Africa.240 Between 1999 and 2004, the top seven countries by per capita percentage of working 5-14 year-olds were in Africa.' Indeed, between 2000 and 2004, 26.4% of children aged 5-14 worked in sub-Saharan Africa, while 18.8% of children between those ages worked in Asia and the Pacific.242 A § 337 complaint could potentially help these children by threatening import-driven segments of the U.S. marketplace trafficking in goods made by them.

C. Environmental Degradation

The Lacey Act is a powerful weapon for potentially demonstrating unfairness related to environmental degradation under § 337.243 Stunningly broad, the Act makes it unlawful (and thus unfair when undertaken for business advantage) "to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce . . . any fish or wildlife[,] . . . any plant," or "any prohibited wildlife species" that has been "taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law."244 Taken" encompasses "captured, killed, or collected and, with respect to a plant, also means harvested, cut, logged, or removed."245 Collectively, these terms encompass a considerable number of product lines covered by the Harmonized Tariff Schedule of the United States.

A § 337 investigation involving the Lacey Act is easy to envision. It would likely involve an allegation that complainant's competitors have flouted U.S. or foreign environmental law for the purpose of bringing a particular commodity to market at an artificially low price. For example, companies might be accused of illegally felling and using endangered lumber harvested opportunistically because it was easy to access without significant cost (e.g., tree groves close to highway infrastructure) or easy to shield from mandatory, but costly, reporting requirements.

According to the Congressional Research Service, "demand for illegal wildlife in the United States is likely to parallel U.S. demand for legal wildlife." 24" Estimates suggest that the United States purchases nearly 20% of all legal wildlife and wildlife products on the international market and that the value of U.S. legal wildlife trade grew from $1.2 billion in FY2000 to $2.8 billion in FY2007. 247 "If this is the case, the United States may be a significant destination for illegal wildlife, and the magnitude of the illegal trade may be increasing."248 According to the ocean conservation group Oceana, illegal, unregulated, and unreported ("IUU") fishing accounts for 20% of the global catch annually, amounting to 11 to 25 million metric tons of fish.249

Although § 337 could be used in conjunction with the Lacey Act to stem illicit wildlife and plant trade, its power has not yet been harnessed for this purpose. To date, the Lacey Act has been primarily utilized for piecemeal criminal prosecutions.250 Perhaps the most publicized Lacey Act criminal proceeding to date involved an iconic company-Gibson Guitar.25 In 2009, federal marshals raided three Gibson facilities in Tennessee, and the federal government launched a criminal investigation against Gibson.252 In August 2012, Gibson and the United States entered into a criminal enforcement agreement whereby Gibson admitted to illegally purchasing and importing ebony from Madagascar and rosewood and ebony from India and agreed to pay a $300,000 penalty and provide a community service payment of $50,000 to the National Fish and Wildlife Foundation.2 5 Gibson also agreed to a program designed to strengthen its compliance controls and procedures for monitoring its global supply chain.254 Under § 337, a complainant could potentially litigate alleged Lacey Act violations against many companies like Gibson at once.

D. Food and Drug Safety

"The United States imports 91% of its seafood," " 25 but only 2% is inspected by the FDA before it enters the U.S. market. Oceana found, based on the analysis of 1,200 seafood samples taken across 21 states, that 33% of samples were mislabeled, and thus sold to unsuspecting consumers under false, and potentially dangerous, pretenses.257 Sushi vendors and grocery stores, in particular, were likely to sell mislabeled food, and snapper and tuna had the highest mislabeling rates.258

According to FDA estimates, the number of drug products made outside of the United States doubled from 2001 to 2008." In 2008, 80% of active ingredients and 40% offinished drugs used by U.S. patients were manufactured abroad.2 ' Increasingly, the United States imports pharmaceutical materials from emerging economies such as India and China, yet the FDA cannot conduct sufficient oversight visits to foreign sites to ensure compliance with U.S. law."' Indeed, FDA inspected only 5.6% of Chinese sites in fiscal year 2009 (with 52 inspections that year, up from 19 in 2007).262 However, inspections are critical because good manufacturing practices are costly and thus prone to circumvention, as compliance with internal quality systems and regulations can represent up to 25% of a finished drug manufacturer's operating costs.' To offer more competitive pricing and gain market share, at the expense of compliant companies, some overseas plants have foregone good manufacturing practices and thereby caused adulteration of the U.S. drug supply.

Nothing is more quintessentially § 337 than protecting the U.S. marketplace against unfairness to domestic industries following the law, and incurring the attendant expense, where overseas operations skirt the law at a considerable cost savings and produce mislabeled or illegally harvested food or shoddy drugs that are imported into the United States to the detriment of U.S. consumers.

Conclusion

Today, as a mature and powerful statute used mostly to redress the infringement of statutory IP, § 337 appears to have ample room within its tent for protection against "[u]nfair methods of competition and unfair acts" never before litigated at the ITC.2" While there is inherent tension in using a trade statute to drive a social agenda, § 337 is broad enough to cover the common ground where these seemingly strange bedfellows overlap. Indeed, the ethos of § 337, rooted in governmental investigation of "unfairness," extends beyond patent infringement to cover a plethora of unfair acts and "the assurance of competitive conditions in the United States economy."265 In short, a complainant seeking to use § 337 to redress ethically or morally objectionable practices has a home at the ITC, so long as the complainant (alone or in partnership with another) can establish a prima face case-unfairness, nexus between unfairness and importation, domestic industry and injury, and nexus between unfairness and injury. Prior to filing a complaint, however, it is important to scrutinize ancillary considerations such as extraterritoriality, comity, GATT, conflicts of law, and anthropological considerations and unintended consequences. Having done so, the complainant can effectively pursue the types of global justice-for example, peaceful communities, liberated children, healthy ecosystems, and safe food and pharmaceuticals-that also happen to promote free and fair competition within the U.S. marketplace.

## Case

### Alt Causes – 2NC 1

#### Global trade is dead – there are barely any cards in the 1AC more recent than 2012 – sanctions on Russia from LAST MONTH are reaping unprecedented havoc on international trade and FDI flows – that’s Goodman.

#### There’s a rising appetite for protectionism and decoupling because of security concerns – it has nothing to do with the plan

Bokat-Lindell 3/30 – Spencer Bokat-Lindell, editor on the International desk at The New York Times, “Will the Ukraine War Spell the End of Globalization?” 3/30/22, https://www.nytimes.com/2022/03/30/opinion/ukrainne-russia-globalization-end.html

A growing number of business executives and commentators believe that the war in Ukraine will accelerate the shift many nations seek to make toward self-sufficiency. The chief catalyst is the coordinated campaign that major powers have mounted to cut off Russia from the world economy. “The sanctions regime against Russia is both extremely tough and surprisingly non-global,” Matt Yglesias writes for Bloomberg. “Aspiring regional powers such as India, Brazil and Nigeria are studying America’s financial weapons of mass destruction and asking how they can adjust their defenses lest they end up in the crossfire.”

The appetite for autarky isn’t limited to smaller economies, though:

Well before Russia’s invasion, the Biden and Trump administrations pursued policies to decrease the United States’ reliance on trade with China. As Yglesias notes, one of President Biden’s best-polling lines in his March 1 State of the Union address was his vow “to make sure everything from the deck of an aircraft carrier to the steel on highway guardrails is made in America from beginning to end.”

In part because Russia and Ukraine supply more than a quarter of the world’s wheat, the Chinese government has become particularly concerned about reducing its dependence on foreign agricultural products, as James Palmer writes in Foreign Policy. President Xi Jinping of China said this month that the “the rice bowls of the Chinese people must be filled with Chinese grain.”

After a reckoning with the costs of its dependency on Russian fossil fuels, the European Union vowed this month to slash Russian natural gas imports by two-thirds by next winter, and to phase them out by 2027.

The long view: “What we’re headed toward is a more divided world economically that will mirror what is clearly a more divided world politically,” Edward Alden, a senior fellow at the Council on Foreign Relations, told The Times. “I don’t think economic integration survives a period of political disintegration.”

#### Russia’s invasion specifically annihilates WTO legitimacy

Farge 3/22 – Emma Farge, Correspondent, Reuters Geneva, “WTO trade talks in disarray amid Ukraine tensions – sources,” 3/22/22, <https://www.reuters.com/business/wto-trade-talks-disarray-amid-ukraine-tensions-sources-2022-03-22/>

[Edited for language]

GENEVA, March 22 (Reuters) - Western countries are refusing to engage with Russia at the World Trade Organization (WTO) in Geneva in a coordinated move that has already led to negotiations seizing up across a number of sectors, trade sources told Reuters.

Russia's invasion of Ukraine and the ensuing economic isolation as a result of Western sanctions are the latest setback to WTO efforts to restore rules-based trade against a tide of growing protectionism.

Trade delegates now fear a June 13 meeting of trade ministers - originally slated for 2020 but twice delayed because of the coronavirus pandemic - will fail to yield deals.

"There are WTO members who do not want to negotiate with Russia," said Hamid Mamdouh, an ex-WTO official and trade lawyer in Geneva. "The longer the war drags on, the more disruptive it will be to the work of the WTO."

Washington and G7 partners have already announced they are revoking Russia's "most favoured nation" status, under which countries agree to treat each other as equal trading partners, and are withdrawing support for the eventual accession of Belarus, Moscow's close ally. read more

Russia in turn has accused the West of "a complete dismantling" of the world's trading system.

DISRUPTION

Beneath the barbed exchanges, tensions have affected the trade watchdog's nuts-and-bolts business.

One delegate from a Western country said those not engaging with Russia at the WTO included the European Union, the United States, Canada and Britain. Those missions did not respond to official requests for comment.

"We refuse to engage bilaterally or in the context of smaller groups," the source said.

The policy has so far affected negotiations on fisheries, agriculture as well as e-commerce and investment facilitation, the trade sources said, saying meetings were either postponed or never scheduled.

"Many governments have raised objections to what is happening in Ukraine and these objections have manifested themselves in a lack of engagement with the member concerned," WTO spokesperson Keith Rockwell said.

Well before Russia's actions in Ukraine, the 27-year old body was already under pressure to prove its relevance.

With its top dispute settlement body ~~paralysed~~ since 2019 by the opposition of former U.S. President Donald Trump to its methods, and no major global trade deal in years, the June meeting is seen by some as a last chance to redeem itself.

WTO ministerials typically take place every two years but officials delayed the 2020 meeting by 18 months to Nov. 2021 due to COVID, only to have the plan scuppered by the Omicron wave.

The new date was fixed a day before Russia's invasion.

"The cumulative effect (of the problems) could lead the WTO to a breaking point," said Mamdouh.

#### Russia’s invasion was the final nail – global free trade is dead

Yglesias 3/13 – Matthew Yglesias, politics and economics writer, “We’ll Miss Globalization When It’s Gone,” 3/13/2022, https://www.bloomberg.com/opinion/articles/2022-03-13/ukraine-war-will-accelerate-the-decline-of-globalization

Russia’s invasion of Ukraine is a much smaller conflict than World War I, and the trade disruptions associated with the U.S./European quasi-embargo on Russia are smaller than the British blockade of the Central Powers. But the clash is nonetheless a giant step away from globalization — and, unlike World War I, it comes at a time when the world has already been moving away from economic integration: Trade’s share of global GDP peaked in 2008, and has been falling for the past decade.

So the war in Ukraine doesn’t necessarily mark a sharp break in history. But it underlines and will perhaps cement the decline of globalization.

That decline started with a populist backlash to the Great Recession and sluggish employment growth that made the politics of saving jobs more appealing than the politics of efficiency. Eventually, the logic of geopolitical conflict entered the equation. President Xi Jinping’s “Made in China 2025” initiative, for example, isn’t about creating jobs, it’s about securing economic space for China to operate with political autonomy.

In a similar fashion, when Vladimir Putin’s Russia got hit with sanctions in 2014 after taking over Crimea, it responded not by withdrawing from Crimea but by launching a crash effort to sanction-proof the economy by emphasizing domestic production. That’s been costly for Russia, which is a sparsely populated nation rich in natural resources and so really ought to be highly trade dependent economy. But it also hasn’t worked, with the current sanctions regime demonstrating that countries which seek to protect themselves from American bullying will need to reduce their dependence on international supply chains even further.

Of course, most countries don’t aspire to launch unprovoked invasions of their neighbors. Yet even actors more benign than Putin can see the value of autonomy.

When the Covid-19 pandemic hit, national sovereignty took precedence over free trade almost everywhere. The question of where exactly masks and other personal protective equipment were produced suddenly became very relevant.

### XT 3 – WTO Not Key

#### Other countries fill in – china’s new silk road and regional trade agreements more than offset the loss of US trade as a percent of GDP. Remember, untapped Asian markets represent nearly 1/3rd of the entire world population – as their income levels rise so will trade share of GDP. Means the WTO is not the crux of global trade – that’s Brown.

#### OBOR alone will offset reduction in US trade – it connects the largest world markets at revolutionary rates

Cohen 16 – US congressman (Steve Cohen, “Follow the Modern Silk Road”, 5/13/16, <http://www.usnews.com/opinion/articles/2016-05-13/the-us-must-participate-in-central-eurasias-modern-silk-road>)

From terror bombings to border wars, Central Eurasia often makes news because of bloodshed that threatens regional stability and international security.

But now, four countries from a critical crossroads between Europe and Asia – Azerbaijan, Georgia, Kazakhstan and Turkey – are joining forces for commerce, not conflict. They're building a network of transportation infrastructure, special economic zones, and integrated customs and cross-border procedures to promote trade, travel and investment.

Because American businesses and workers need access to this region's 110 million consumers, and China, Iran and Russia must not dominate this strategically situated area, the United States should support the Trans-Caspian East-West Trade and Transit Corridor.

Make no mistake: If we don't take part in this endeavor now, we will be shut out of this geopolitically pivotal, economically emerging area for the foreseeable future.

Throughout my tenure in public office, I've seen new and modernized highways, airports and seaports improve local economies here in the U.S. Now we're going to see how similar smart investments can make a difference in a developing area abroad.

Today's headlines and hundreds of years of history explain why this corridor is so important. During the 15th century, the legendary Silk Road brought valuable goods, ideas and inventions from China to the West, including irrigation, paper and gunpowder. In the 21st century, the "Modern Silk Road" will connect the people, markets and economies of East Asia, Central Asia, the Caucasus and Europe.

This corridor is indispensable because, even now, 21st century products, such as personal technology devices, are shipped from East to West using 15th century transportation. Products assembled in Asia can take seven weeks by boat to arrive in Europe. But the same products can be carried to the same destinations in half that time by rail. Meanwhile, modern technologies, such as pipelines, cable lines and containerized shipping, are enabling easier and more effective ways to exchange ideas and information as well as transport energy resources and perishable products.

In order to make the most of these technological advances, Azerbaijan, Georgia, Kazakhstan and Turkey are investing in regional infrastructure projects. Among them are three seaports on the Caspian Sea and the Black Sea, a rail project in Istanbul with an undersea rail tunnel between the European and Asian sections of Turkey's largest city, and a regional railway linking Azerbaijan, Georgia and Turkey.

With this combined infrastructure in place, it will be possible to ship products across the Caucasus and Central Asia more rapidly, less expensively and in greater quantities. For instance, the time it takes to ship products from China to Istanbul will be cut by more than half.

Soon, the worldwide supply chain will get a few links shorter, and trade and investment between East and West will be reinvented. Just as half a millennium ago, Central Eurasia will play a crucial role in the world's economic, political and cultural life. The U.S. should not sit on the sidelines and allow our rivals to take center stage.

Understanding the Modern Silk Road's significance, China is investing heavily in the region's infrastructure, while Iran and Russia are flexing their diplomatic and military muscles. Although the U.S. has also supported regional development projects, there is the danger that American policymakers will disengage from the area, putting our geopolitical rivals in dominant positions and leaving our longtime partners, including Azerbaijan and Georgia, to fend for themselves in a dangerous neighborhood.

#### The new TPP also maintains global trade and sets an international model – Japan will lead

Mufson 18 – Steven Mufson covers energy and other financial matters. Since joining The Washington Post in 1989, he has covered economic policy, China, U.S. diplomacy, energy and the White House. Earlier he worked for The Wall Street Journal in New York, London and Johannesburg. Follow (“As Trump imposes tariffs, allies sign on to free-trade pact — without U.S.” https://www.washingtonpost.com/business/economy/as-trump-imposes-tariffs-allies-sign-on-to-free-trade-pact--without-us/2018/03/08/bb068820-2301-11e8-badd-7c9f29a55815\_story.html?utm\_term=.576de79196bb)

The TPP was an easy target. Trump called the TPP the equivalent of a “rape” of the U.S. economy. And key voting groups viewed international trade of any sort as a threat to their livelihoods.

Bilateral agreements seemed more limited and fit more naturally into Trump’s self-portrayed image as a dealmaker.

Three weeks after Trump took office, his trade adviser, Peter Navarro, briefed Senate Finance Committee members on the new administration’s key principles, one of them being an emphasis on bilateral trade deals with triggers for renegotiation when trade deficits occur. Germany, Japan and South Korea were high on the list for bilateral deals.

But German officials pointed out to Trump officials that Germany was prohibited from negotiating with the United States outside of the E.U. framework. And Japan not only rebuffed Trump’s overtures for a bilateral agreement but took over the U.S. leadership role in forging the Pacific trade accord.

The Peterson Institute’s Bergsten said that the Trump administration hoped to “hive off” Japan and kill the TPP with a bilateral deal but that Japan surprised people by “stiffing” the Trump administration and “filling the void left by the United States.”

In rejecting a bilateral deal, Japan helped undercut a key tenet of Trump’s trade strategy.

“You don’t have more leverage in a bilateral agreement,” said Christopher Smart, a senior fellow at the Carnegie Endowment for International Peace and a former Treasury and National Economic Council adviser on trade. In a multilateral negotiation such as the TPP, he said, the United States can allow dairy imports from New Zealand in return for greater access to the Canadian dairy market. “You can use the strength of the network to get a much better set of outcomes than you would in a whole set of narrow bilateral deals,” he sad.

In Chile, officials from the 11 nations celebrated the new trade bloc, now called the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

The member countries are Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.

Heraldo Muñoz, Chile’s minister of foreign affairs, told a news conference the agreement was a strong signal “against protectionist pressures, in favor of a world open to trade, without unilateral sanctions and without the threat of trade wars,” according to a Reuters report.

### XT 4 – WTO Doomed

#### WTO leadership permanently dead now – current US attempts to resolve trade disputes at the WTO are failing – the WTO refused to rule against Russia and the U.S. risks losing six other cases – that’s Bush.

**WTO perma-doomed – trump’s damage is irreversible.**

**Pelc, PhD, 18**

( Krzysztof J. Pelc PoliSci@McGill, https://www.washingtonpost.com/news/monkey-cage/wp/2018/06/07/the-u-s-broke-a-huge-global-trade-taboo-heres-why-trumps-move-might-be-legal/?utm\_term=.7d0fbcd23647

It’s been a rocky few weeks for U.S. trade partners. On June 1, the United States imposed trade barriers on steel and aluminum imports from the E.U., Canada and Mexico, after the exemptions that the U.S. granted earlier ran out. The U.S. justified these measures through a rarely used national security exception built into World Trade Organization (WTO) rules. These longtime allies then countered by targeting politically sensitive U.S. exports, from bourbon and Harley-Davidsons to peanut butter. Here’s the unexpected twist: The U.S. measures may have been unwarranted, but they **are likely legal**. The countermeasures by U.S. trade partners, on the other hand, are undoubtedly justified, but they **are most likely illegal.** The U.S. just broke a big trade taboo By turning to the national security exception, the U.S. has **broken an abiding taboo** in trade relations — for the 70 years the WTO and its predecessor regime, the General Agreement on Tariffs and Trade, have been in place, member countries have invoked the national security exception just six times. It has been formally used as a defense in legal proceedings only once. And the WTO has never ruled on its usage by a member state. [Trump has announced massive aluminum and steel tariffs. Here are 5 things you need to know.] In 1947, GATT negotiators included a national security exception in the form of Article XXI as a last-resort option in the event that a country’s trade commitments threatened its national security. Countries have always understood that security interests come first. None other than Adam Smith liked to remind everyone that “defence … is of much more importance than opulence.” But the result is that Article XXI is what John Jackson, the great scholar of the GATT, called a “catch-all clause” that is “so broad, self-judging, and ambiguous that it obviously can be abused.” For 70 years, countries avoided the security exception The world’s trading regime avoided this abuse for decades because countries agreed that the security exception was too risky to call upon, precisely because it was so unconstrained. That just changed. By invoking this exception in peacetime, using it as the reason to impose new tariffs on U.S. allies, and referencing reasons unrelated to security — like slow progress in the NAFTA renegotiations — the U.S. has **completely broken** with its own practice. [What is NAFTA, and what would happen to U.S. trade without it?] Past U.S. administrations steered clear of using the exception, even when it might have made sense to do so. Here’s an example: In 1984, when Nicaragua first challenged the legality of U.S. sanctions on the Sandinista regime, the U.S. opted to be found in violation of GATT rules, rather than set a dangerous precedent by invoking the security exception. This is a new and dangerous precedent Until now, countries understood that to open that door could be the end of the global trade regime. As U.S. House Democrats put it in a 2006 letter to the U.S. Trade Representative: “If the U.S. […] for any reason that it deems ‘necessary to its essential security interests’ can invoke a self-defining ‘essential security’ exception, what is to prevent other countries from using this exception to block U.S. exports or other U.S. rights such as enforcement of intellectual property rights without ample justification?” The answer is, not much — and that’s why the U.S. move creates such a dangerous precedent. The first to exploit that precedent may be Russia, which has invoked the same national security exception in an ongoing WTO dispute against Ukraine. Remarkably, in its own submission in that dispute, the U.S. took Russia’s side and stuck to its position that the national security exception is “self-judging,” “non-justiciable,” and “unreviewable” by any WTO panel, effectively giving Russia a pass. So which measures are legal, and which are not? Canadian Foreign Affairs Minister Chrystia Freeland called the U.S. move illegal, as did French President Emmanuel Macron. It’s impossible to know for certain how a WTO panel might handle this question, precisely because no panel has ever ruled on the issue. But the drafting history of the security exception actually offers the U.S. position a lot of support. In this view, the clause really is “self-judging”: a country’s security interest is whatever that country says it is. From a practical standpoint, it is also unlikely that a WTO panel would be bold enough to challenge the U.S. definition of its own security interests, especially at a time when the U.S. is exerting increasing pressure on the WTO’s dispute settlement mechanism by blocking the appointment of WTO judges. What about U.S. trade partners’ reactions? The E.U., Canada and Mexico have announced immediate retaliation. Here’s the wrinkle: Retaliation in the WTO is only legal if formally authorized by the WTO, after countries engage in the dispute settlement process, which includes arbitration over compliance and the amount of retaliation. Countries can retaliate legally only if a party is in continued violation after a ruling. This process has never taken less than two years. [Does Trump want a trade war? What you need to know about Smoot-Hawley tariffs and the 1930s.] In skipping this process, the E.U. has attempted to justify its moves by declaring that the U.S. tariffs are actually a safeguard measure, a type of trade remedy designed to help countries deal with unforeseen import surges — this means countermeasures could be allowed. Although legally ingenious, the E.U. stance is unlikely to hold water: The U.S. has explicitly invoked the national security exception — Section 232 of U.S. trade law. Safeguards fall under Section 201. All of which means the retaliation by U.S. trade partners is most likely illegal. U.S. trading partners are taking the law into their own hands. What’s the bottom line here? The U.S. move has prompted its trade partners to respond in an extralegal fashion. And that, from the standpoint of the Trump administration, which is broadly skeptical of the multilateral trade regime, may be its greatest tactical victory. By forcing the hand of its trade partners, the Trump administration has shifted the exchange onto a field where there are few rules to constrain state behavior. The last time states played out their commercial grievances on that field was in 1930, when the Smoot-Hawley Tariff Act raised tariffs on hundreds of U.S. imports. That move didn’t end well.

**Russia: in 2017 they made a national security argument against Ukraine, and they’re the test case for authoritarian powers, that’s Pelc. Russian action gave everyone a get out of jail free card.**

Jennifer A. **Hillman 18** is a professor at Georgetown University Law Center and was a member of the World Trade Organization’s Appellate Body from 2007-11, Trump Tariffs Threaten National Security, <https://www.nytimes.com/2018/06/01/opinion/trump-national-security-tariffs.html>, DOA: 6-11-18, y2k

“Economic security is military security,” Commerce Secretary Wilbur Ross has said. But this administration’s push to **blur**, or even erase, the line between our **economic** and **national security** interests is dangerous — both for the United States and for the world. First, the Trump administration is making overly **broad interpretations** **of national security** and then **insisting** these claims **cannot be challenged**. These actions undermine **international law** and threaten the **rules-based global trading system**. The law being invoked to justify these new tariffs was crafted during the Cold War. It gives the president broad power to ensure that the **U**nited **S**tates is not overly dependent on imports for critical defense needs, especially imports from countries we don’t trust to supply us in times of war. International law is more precise. It allows countries to pile on tariffs or take other actions that would otherwise violate their trade commitments when they judge them necessary to protect their essential security interests. This exception applies **only** in cases related to trade in nuclear materials, arms or ammunition; or during war or international emergency. Mr. Trump’s tariffs do not fit within **any of those boxes**. Those who crafted the “**national security” exception** to the international trading rules tried to balance every country’s need to judge their own national security risks with the concern that **an open-ended exception would be misused**. Hence, “national security” is **limited** to cases involving **emergencies**, **war** and **weapons**. The Trump administration has **upset** that balance. If the **U**nited **S**tates can justify tariffs on cars as a threat to national security, **then every country in the world can most likely justify restrictions on almost any product under a similar claim.** For more than two decades after the World Trade Organization was created in 1995, no claim for breaking the trade rules through the national security exception had ever reached a W.T.O. dispute settlement panel. None of the member countries wanted to allow the “nameless, faceless” bureaucrats in Geneva to define their essential security interests. That changed in 2017, with a claim by Russia, which had imposed myriad trade and transit restrictions on Ukraine, which challenged the Russian measures at the W.T.O. In the dispute, Russia contends that the moment any country claims its actions are based on national security, the judges hearing the case must put down their pens and go home. The only W.T.O. member joining Russia’s contention is the United States. **This is dangerous**. It provides all countries with a “get out of jail free” card that can be played just by saying the magic words **“national security.” Blurring the line** between economic and national security also invites **retaliation**. The **U**nited **S**tates agreed to eliminate steel tariffs and lower aluminum tariffs to below 5 percent in 1995 in exchange for tariff cuts by others. Now, by imposing 25 percent tariffs on steel and 10 percent on aluminum, the **U**nited **S**tates has broken that commitment. And by imposing the tariffs on some but not all trading partners (South Korea, Australia, Argentina and Brazil are exempt), the United States has also broken its commitment not to discriminate among W.T.O. members. Already our partners are **reacting**. China has placed tariffs on American exports of nuts, fruits, wine, pork and some steel pipes. Canada, the **E**uropean **U**nion, Mexico, Japan, India, Turkey and Russia may impose their own **retaliatory tariffs**. **This adds tremendous chaos to the trading system and may signal the start of a global trade war.** Moreover, the Trump administration is sacrificing real national security concerns for short-term economic gains. How else to describe a decision to dispose of the Commerce Department’s settlement with ZTE? It followed a multiyear investigation finding 380 alleged and admitted violations of American law by the Chinese telecomm giant. These included conspiracies, false statements and deceptions to obtain contracts to supply, build, and operate telecommunications networks in Iran, and to illegally ship telecommunications equipment to North Korea. If we impose tariffs on steel and cars based on a claim that those imports threaten our national security, what will we do if and when our national security is really threatened? Auto production in the United States has more than doubled since 2009, and imports of Chinese steel have fallen by nearly 75 percent since their 2014 peak. Why attack imports from longstanding allies now? Especially when it does nothing to target China’s massive subsidies, intellectual property theft, and unfair takeovers of technology — actions that truly threaten our national security. Erasing the line dividing national security from economic security threatens both. **Congress needs to recognize the danger and limit the president’s authority to raise the specter of national security at every turn**. At the same time, Congress must ensure that genuine concerns are not traded away for limited economic gains. **Cavalier use** of rarely invoked laws will only undermine their purpose and **put the trading system at risk.**

### XT 5 – No Trade Impact

#### Trade doesn’t solve war – studies disprove relationship between interdependence and declines in interstate conflict – especially true given dyadic relationships like the US and China – Pistikou.

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

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

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

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

#### Their studies are flawed – relies on narrow temporal correlations.

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

On paper, the two intertwined arguments for liberal peace would seem to make sense: if countries remove the barriers to trade and investment and choose to specialize in their comparative advantages, international productivity will be raised and we will enjoy a more prosperous global economy with satisfied consumers and states; also, if states develop close economic linkages, they will have important material incentives to avoid conflict with one another. In the real world, competition between jurisdictions and social groups implies often that the development and prosperity of some is based on the exploitation and vulnerability of others, as typically emphasized by the extensive literature on bifurcated economies, temporally constrained and contradictory growth patterns, and uneven and destructive forms of development. In this way, it is not that economic interdependence, when removed from its social context and put under the microscope, does not raise the costs of conflict. However, the political choices and social transformations needed to achieve interdependence are a key variable to understanding a state’s behaviour and predisposition to conflict. And while governments may in many junctures align with the interests of capital, they are not immune to crises of legitimacy, and will need to mediate issues of accumulation and social cohesion when people perceive the social transformations required to achieve interdependence to have a negative impact on their lives (Jessop, 2016, p. 189). This will reflect in a way or another on state behaviour as political elites, current and prospective, jostle for votes and/or legitimacy.

A key problem with the argument for liberal peace lies in its emphasis on narrow temporal correlations between trade and (lack of) conflict, which removes interdependence from its broader political economic context, disembedding peace and conflict from the broader set of historically bounded and politically contingent social relations that underpin them. A widened analytical timeframe renders clear the dialectical relationship between (neo)liberal social projects and their social responses, both progressive and reactionary. Whereas high volumes of trade may coincide at a particular ‘optimal’ period of liberal expansionism with interstate peace, they may also transform societies in ways that engender the conditions for a potential ‘illiberal’ turn or counter movement resulting in a higher risk of conflict as beggar-thy-neighbour positions emerge and new enemies need to be sought by political elites to bind national-constrained constituencies to their agendas to maintain power.

We can observe this temporal incongruity in the work of some of the key proponents of the capitalist peace. For example, Oneal and Russett (1999, p. 439) argue that trade ‘sharply reduces the onset of or involvement in militarized disputes among contiguous and major-power pairs’, which are identified by Maoz and Russett (1993) as the set of countries more likely to enter into conflict with each other. Despite Oneal and Russett’s sophisticated approach to the data (modelling, for example, to avoid ‘false negatives’ by factoring in geographic contiguity, or controlling for alliances) and the attention paid to statistical rejections of the liberal peace argument, trade interdependence and the occurrence of conflict are analyzed on a year-by-year basis (Oneal & Russett, 1999, p. 428). This is also the case with other comparable studies (Hegre, 2000; Oneal & Russett, 2001; Souva & Prins, 2006). This temporal frame is problematic, as international conflict tends to build up over prolonged periods of time, and the adverse impacts of interdependence and liberal integration are more likely to result first in crisis

and social dislocation, followed by some sort of economic distancing (perhaps under a new administration that replaces the one that embraced liberalization) and a wide range of policy measures, before leading to military conflict – underpinned either by the state that perceives that liberal integration is having negative impacts on socioeconomic development, or more often than not by the one which wants to prevent the deterioration of important trade and investment links.

#### No interdependence impact.

Einstein ’17 [Joel; Ph.D. student at Australian National University in Political Science, written under the supervision of Dr Charles Miller, PhD, Political Science, and professor at Australian National University; 1/17/17; “Economic Interdependence and Conflict – The Case of the US and China”; http://www.e-ir.info/2017/01/17/economic-interdependence-and-conflict-the-case-of-the-us-and-china/; E-International Relations]

In 1913, Norman Angell declared that the use of military force was now economically futile as international finance and trade had become so interconnected that harming the enemy’s property would equate to harming your own.[1] A year later Europe’s economically interconnected states were embroiled in what would later become known as the First World War. Almost a century later Steven Pinker made a similar claim. Pinker argues, “Though the relationship between America and China is far from warm, we are unlikely to declare war on them or vice versa. Morality aside, they make too much of our stuff and we owe them too much money.”[2] His argument rests upon the liberal assumption that high levels of trade and investment between two states, in this case the US and China, will make war unlikely, if not impossible. It is this assumption that this essay seeks to evaluate. This essay is divided into three sections. The first briefly outlines the theory that economic interdependence results in a reduced likelihood of conflict, breaking the theory down into smaller components that can be examined. In the second section, this essay suggests that the premise ‘more trade equals less conflict’ is simplistic. It does not take into account many of the variables that can influence the strength of economic interdependence’s conflict reducing attributes. Within this section, the essay considers: the extent to which conflict cuts off trade, theories arguing that how and what a state trades matters, Copeland’s theory of trade expectations and the differences between status quo and revisionist states. The final section deals with the realist perspective, concentrating on arguments pertaining to the primacy of strategic interests and arguments that economic interdependence will increase the likelihood of conflict owing to a reduction of deterrence credibility. Each section will be related back to the US-China relationship with a view to assessing Pinker’s claim. The essay will conclude that economic interdependence does reduce the likelihood of conflict but is insufficient on its own to completely prevent it. To calculate the likelihood of conflict correctly one would need to factor in the nature of the economic interdependence alongside the strength of the strategic interests at stake. Economic Interdependence and Conflict The theory that increased economic interdependence reduces conflict rests on three observations: trade benefits states in a manner that decision-makers value; conflict will reduce or completely cut-off trade; and that decision-makers will take the previous two observations into account before choosing to go to war. Based on these observations, one should expect that the higher the benefit of trade, the higher the cost of a potential conflict. After a certain point, the value of trade may become so high that the state in question has become economically dependent on another. Proponents of this theory argue that if two states have reached this point of mutual dependence (interdependence), their decision-makers will value the continuation of trade relations higher than any potential gains to be made through war.[3] It is on this argument that Pinker rests his statement that the economic relationship between the US and China precludes war. One can see evidence of this when analysing US views on China as trade rises. A 2014 Chicago Council on Global Affairs survey indicates that only a minority of Americans see China as a critical threat, compared to a majority in the mid-1990s. This number is even higher when analysing Americans who directly benefit from trade with China.[4] As compelling as this argument may be, high levels of economic interdependence have not always resulted in peace. The decades preceding WW1 saw an unprecedented growth in international trade, communication, and interconnectivity but needless to say, war broke out.[5] This instance alone is not enough to disprove Pinker’s logic. War may become very unlikely but began nonetheless.[6] Let us take two hypothetical scenarios, one in which the chances of war is 80% and the other in which trade has reduced the likelihood of war to 10%. Just knowing that war did indeed take place does not tell us which scenario was in play. Similarly, the fact that WW1 took place gives us no information about whether economic interdependence made war unlikely or not. In fact, evidence even exists to suggest that economic linkages prevented a war from breaking out during the sequence of crises that led up to WW1.[7] However, the fact that a war as detrimental as WW1 could break out despite a supposed reduction of the likelihood of conflict gives us an impetus to examine whether this reduction does take place. Additionally, if this is the case, what variables can weaken this pacifying effect? Does Conflict Cut off Trade? Economic interdependence theory makes the assumption that conflict will reduce or cut-off trade. This assumption appears to be logical, as one would expect that the moment two states are officially adversaries, fear of relative gains would ensure that policy makers want to completely cut-off trade. However, there are many historical examples of trade between warring states carrying on during wartime, including strategic goods that directly affect the ability of the enemy to carry out the war.[8] For example, in the Anglo-Dutch Wars, British insurance companies continued to insure enemy ships and paid to replace ships that were being destroyed by their own army.[9] Even during WW2, there are numerous examples of American firms continuing to trade strategic goods with Nazi Germany.[10] Barbieri and Levy argue that these examples and their own statistical analysis suggest that the outbreak of war does not radically reduce trade between enemies, and when it does, it often quickly returns to pre-war levels after the war has concluded.[11] In response to this result, Anderton and Carter conducted an interrupted time-series study on the effect war has on trade in which they analysed 14 major power wars and 13 non-major power wars. Seven of the non-major power wars negatively impacted trade (although only four of these reductions were significant), but in the major war category, all results bar one showed a reduction of trade during wartime and a quick return to pre-war levels at its conclusion.[12] Accompanying this contradictory finding one must take into account that even if war does not radically reduce trade, if a state believes that it does then potential opportunity cost would still figure in their calculations. Variables that Impact the Pacifying Effect of Economic Interdependence The purpose of this section is to demonstrate that the pacifying effect of economic interdependence is not constant. It achieves this via a discussion of the effect of changes in a number of variables pertaining to how and what a state trades. Once it is established that changes in such variables may alter the effect of economic interdependence on the likelihood of conflict, Pinker’s statement (that the level of trade between the US and China makes conflict unlikely) can be considered to be an over-simplification. One variable is the relative levels of economic dependence. Some argue that asymmetry of trade can increase the chances of conflict if the trade is more important to one state than it is to the other; their resolve would not be reduced by the same degree. The less dependent state would be far more willing than its adversary to initiate a conflict.[13] An example is the possibility of the prevalent idea in China that ‘Japan needs China more than China needs Japan’ leading to China becoming more assertive in Senkaku/Diaoyu islands dispute.[14] It is important to recognize that all trade is asymmetric in one fashion or another. It is radical asymmetry that one has to fear, which at the moment does not appear to be the case in the China-Japan or US-China case. Another variable is the specifics of what is being traded. A study by Dorussen suggests that the pacifying effect of trade is less evident if the trade consists of raw materials and agriculture but stronger if the trade consists of manufactured goods. Even within the category of manufactured goods there are differences in effect. Mass consumer goods yield the strongest pacifying results whilst high-technology sectors such as electronics and highly capital-intensive sectors such as transport and metal industries tend to have a relatively weak effect.[15] If it is a sector with alternative trade avenues then embargos and boycotts as a result of conflict will have far less effect.[16] The rule is that the more inelastic the import demand, the higher the opportunity cost and the smaller the probability of conflict.[17] According to these studies, trade still generally reduces the likelihood of conflict however it is by no means homogeneous in its effects. Additionally, the opportunity costs are not the same for importers and exporters. Dorussen’s study suggests that increased trade in oil tends to make the exporters more hostile and the importers friendlier in relations to their foreign policy.[18] Taking this framework into account, in 2014 China’s top five exports to the US (computers, broadcasting equipment, telephones and office machine parts) all fell under the category of electronics,[19] whilst the US’s top five exports to China (air and/or spacecraft, soybeans, cars, integrated circuits and scrap copper) were all either high-capital intensive sectors or raw materials and agriculture.[20] According to Dorussen’s study, these exports should not yield the strongest possible conflict reducing results, which could impact the validity of Pinker’s statement. Copeland presents another variable, namely expectations of trade. Copeland argues that if a highly dependent state expects future trade to be high, decision makers will behave as many liberals predict and treat war as a less appealing option. However if there are low expectations of future trade, then a highly dependent state will attach a low or even negative value to continued peaceful relations and war would become more likely.[21] As an example, he points out that despite high levels of trade in 1914 German leaders believed that rival great powers would attempt to undermine this trade in the future, so a war to secure control over raw materials was in the interests of German long-term security.[22] Via this framework, if the US began to believe that in future years they would be less dependent on China’s economy, or if it became apparent that a US-China trade war was about to take place, there would be a sharp rise in the probability of conflict. The final variable this essay will discuss relates to the differences between status quo and revisionist states. Most empirical analyses of economic interdependence tend to group together states as different as the United States, Pakistan, Australia, Germany and China and assume that variations in their behaviour would be the same.[23] Papayoanou on the other hand, argues that when analysing the effects of economic interdependence it is useful to differentiate the effects on great power states and states with revisionist aspirations.[24] If a status quo power has strong economic ties with revisionist state there will be interest groups who advocate engagement and who believe that confrontational stances will threaten the political foundation of economic links. This will constrain the response of the status quo state.[25] One can see evidence of such an interest group in the US, a group Friedberg describes as the Shanghai coalition, who he argues advocate engagement with China at the expense of balancing.[26] A study by Fordham and Kleinberg backs up this argument as they find that US business elites who benefit from trade with China tend to see little benefit in limiting the growth of Chinese power.[27] A 21st Century revisionist power is far less likely to be a democracy, and therefore, interest groups will influence the leadership far less. This means an authoritarian revisionist power will be working under fewer constraints and will be able to take a more aggressive stance.[28] This appears to be the case in China where rather than having domestic constraints on taking an aggressive stance against Japan, one of their biggest trading partners, grassroots nationalism has made explicit cooperation a domestically risky option.[29] There are many indicators to suggest that China is a revisionist power willing to wage war. Lemke and Werner argue that an extraordinary growth of military expenditures’ reveals when a state is dissatisfied with the status quo.[30] Data provided by the Stockholm International Peace Research Institute certainly indicates that China qualifies as its military expenditure has nominally increased by 1270% between 1995 and 2015.[31] Additionally, the military modernization appears to be aimed at capabilities to contest US primacy in East Asia.[32] Much like German strategists recognized that Britain was operating under significant domestic constraints, China could realize the same of the US.[33] This is not to say that Chinese decision-makers would be cavalier about making a decision that would be to the detriment its economy. A crash in the Chinese economy due to the loss of exports to the US could potentially undermine the legitimacy of the Chinese Communist party and endanger the regime. However, the view that China is a revisionist power indicates that good trade relations alone will not result in a low probability of conflict. Realist Arguments Pertaining to Dominance of Strategic Interests Having established that if the pacifying effect of trade does exist, it can rise or fall depending on changes in a series of variables this essay proceeds to deal with realist theories arguing that trade has a negligible or even negative effect on the likelihood of conflict. Buzan argues that noneconomic factors contribute far more to major phenomena than liberal theorists usually cite to support their theory.[34] There is evidence of the primacy of strategic interests in Masterson’s 2012 study on the relationship between China’s economic interdependence and political relations with its neighbours. The study concluded that as economic interdependence with neighbouring states increased the likelihood of conflict did indeed decrease, but that the impact was minimal when compared to the impact of relative power capabilities. In other words, political and military issues dominated interstate relations. Growth in power disparities were associated with decreases in dyadic political relations that were greater than the increase caused by economic interdependence.[35] If the pacifying effect of trade can rise and fall so can the provocative effect of strategic interests. It is important to distinguish between the existence of a strategic interest and a situation of unbearable strategic vulnerability. China and the US have many opposing strategic interests, but neither is in a strategically vulnerable position. For example, China shares many borders, but none present the same threat of invasion that Tsarist Russia did to Imperial Germany as none of the current maritime tensions between China, Japan, and the US equate to a matter of national survival.[36] This is crucial as some believe that for a crisis to escalate to a major war an actor who is isolated and believes that history is conspiring against them is needed. Only this actor would take an existential risk to try and offset their strategic vulnerability.[37] Imperial Germany fit this description, but neither China nor the US does. This is largely due to the geography of the region. The tension between the US, China and Japan are over maritime regions. Maritime issues still relate to national interests but, as Krause points out, “Land armies are still the only forces that can conquer and hold territory.”[38] Taking this into account one can argue that the benefits of US-China trade are, for each state, currently greater than the benefits of pursing strategic benefits via force, but this situation will only remain as long as the situation does not become one of unbearable strategic vulnerability. Realist Arguments Pertaining to the Undermining of Deterrence Having established that scenarios exist where strategic interests and vulnerabilities have a greater effect on the likelihood of war than economic interdependence, this essay will now evaluate arguments that economic interdependence can increase the likelihood of conflict through the undermining of deterrence. The argument proceeds as follows: if economic interdependence constrains the ability or willingness of a state to use its military, security is lowered as the state now has a weakened ability to engage in deterrence and defensive alliances. Deterrence relies on the ability of a state to make credible threats and defensive alliances rely on credible promises to protect one’s allies.[39] Credibility is defined as the product of the operational capability to follow through with a threat and the communication of resolve to use force.[40] What is at risk here is that if economic interconnectivity interferes with the communication of resolve to use force then states may end up with a way that neither side expected or wanted. Some argue that it was such a failure to communicate resolve that resulted in the beginning of WW1. Indeed, Jolly claims that: “The Austrians had believed that vigorous actions against Serbia and a promise of German support would deter Russia: the Russians had believed that a show of strength against Austria would both check the Austrians and deter Germany. In both cases, the bluff had been called and the three countries were faced with the military consequences of their actions.”[41] The risk in the US-China case would be that the interest groups described earlier would prevent the US from effectively communicating its resolve to use force if China were to cross a redline. The flaw in this argument lies in the fact that whilst interest groups might push back against public statements outlining redlines; the US has many less overt options available to it to communicate resolve. Modern technology and the forms of interconnectivity have resulted in many more lines of communication between China and the US than adversaries had access to in 1914. Private meetings, electronic communication and numerous other methods of communication have the capability to be candid without being visible to interest groups. It is for this reason that this essay discounts the theory that Sino-American economic interdependence results in a reduction of deterrence and therefore increases the likelihood of conflict. Conclusion This essay has shown that the strength of the pacifying effect of economic interdependence is subject to change depending on a series of dynamic variables. It has also demonstrated that the strength of the conflict provoking effects of strategic interests can change depending on whether the strategic interest amounts to a situation of unbearable strategic vulnerability. It has discounted the theory that interdependence leads to a higher chance of conflict through an erosion of credibility. To sum up, trade does seem to reduce the likelihood of conflict but should not be seen as a deterministic factor as strategic interests, and vulnerabilities also have a large effect. There is no hard rule as to what will be the driving factor as the nature of economic interdependence and of strategic factors impact their relative values. Accordingly, Pinker’s statement that the trade between the US and China makes war exceptionally unlikely is simplistic and misleading because it fails to account for a wide array of variables that can radically change the likelihood of a Sino-American war. An intellectually honest thesis would insist upon a comprehensive approach in which the level of economic activity is simply one of many variables that is required.

### XT 6 – China Heg

#### Peaceful transition to Chinese leadership is coming now – attempting to retain hegemony emboldens China and sparks global conflicts. Outweighs – lack of strategic stability makes nuclear war inevitability – Chinese military modernization is critical to perception of nuclear survivability that preserve strategic stability and prevent use or lose incentives to escalate – that’s McKinney and Kang.

#### Outweighs the case and makes miscalculated war inevitable. SSBN survivability is the biggest internal link to stability and non-survivability causes pro-SSBN deployment that makes nuclear war inevitable.

Carnegie-Tsinghua Center, ‘18, "The Survivability of China’s SSBNs and Strategic Stability," https://carnegietsinghua.org/2018/10/24/survivability-of-china-s-ssbns-and-strategic-stability-pub-77494

Of all the aspects of China’s SSBNs, their overall survivability is the most important factor in determining their impact on strategic stability. Survivability refers to an SSBN’s capability—through stealth, supporting forces, and other means—to remain safe from an enemy’s ASW efforts and, if needed, deliver SLBMs through an enemy’s missile defenses to strike their targets.

SSBN survivability has a significant impact on crisis stability. If China were concerned that its SSBNs could be destroyed, it would have a greater incentive to use the nuclear weapons onboard early in a conflict—even at the first sign of a preemptive strike by an adversary—before the weapons were lost. Moreover, concern about SSBN survivability could lead China to employ pro-SSBN forces (friendly general-purpose forces used to protect SSBNs) in aggressive ways to counter an enemy’s ASW capabilities, raising the risk of a conventional military conflict. Because such a conflict would be fought in the presence of SSBNs, it would unfold under the nuclear shadow and carry a greater risk of escalation.

SSBN survivability also seriously affects arms race stability. China’s accelerated investment into its SSBN program in recent years has been partially driven by concerns about the overall credibility of its nuclear deterrent. If Beijing feels its existing SSBN fleet falls short of what is required for a credible deterrent, it will likely increase its investment and build more and better SSBNs. These actions could, in turn, increase threat perceptions in other countries and intensify the existing competition. The arms competition resulting from Chinese efforts to protect its SSBNs and from other countries’ countermeasures could extend into the domain of conventional forces, including even unmanned vessels.

#### ASW causes crisis instability. China needs to get to the open pacific.

Carnegie-Tsinghua Center, ‘18, "The Survivability of China’s SSBNs and Strategic Stability," https://carnegietsinghua.org/2018/10/24/survivability-of-china-s-ssbns-and-strategic-stability-pub-77494

The prospect of U.S. ASW capabilities aimed at Chinese SSBNs could threaten crisis stability by posing sobering escalation risks that bear reflecting on, even in light of the perceived past benefits of targeting Soviet submarines during the Cold War. One perceived advantage of U.S. ASW operations against Soviet SSBNs was that, in the early stages of a hypothetical military conflict, Washington could discourage Moscow from further escalating by preemptively destroying Soviet SSBNs and thereby significantly reduce Soviet nuclear forces.35 It is unknown whether the United States embraces such thinking against China today. If it does, this approach would be very problematic in terms of managing escalation. Washington may hope that a preemptive attack on Chinese SSBNs would discourage escalation, but the risk of an escalatory Chinese response could not be easily ruled out.

Short of attempting to destroy an adversary’s SSBNs, U.S. efforts to interfere with an enemy’s ability to communicate with its nuclear-armed submarines could create escalation risks of their own. During the Cold War, the United States tried to exploit vulnerabilities in Moscow’s nuclear C3 systems, including those associated with the Soviet SSBN fleet. The hope was that, if necessary, the United States could prevent the Soviet high command from issuing launch orders to its SSBNs.36 Knowing this history, Chinese SSBN commanders could misinterpret an external disruption of their C3 systems as a hostile attempt to disable China’s sea-based nuclear deterrent or even as hostile preparations for a disarming strike. There would be a particularly high risk of misinterpretation if China’s SSBNs share some C3 infrastructure with the country’s attack submarines, as some U.S. experts believe to be the case.37 If so, an enemy strike against this shared C3 system—even if conducted exclusively to undermine China’s conventional military capabilities—could be misinterpreted by Beijing as an attempt to cut off communications between Chinese leaders and their SSBNs. This scenario would create serious risks of escalation.

The prospect of U.S. ASW capabilities aimed at Chinese SSBNs could threaten crisis stability by posing sobering escalation risks.

Moreover, the growing interactions between China’s nuclear assets and other countries’ conventional weapons will pose new challenges. Prior to China’s first SSBN patrols, all the country’s nuclear weapons were deployed exclusively on Chinese territory. With Chinese SSBNs now operating at sea, it is inevitable that the chance of foreign conventional military assets directly confronting Chinese nuclear delivery systems will rise. As early as the mid-2000s, there were Chinese reports of joint naval exercises between the United States and its regional allies to “hunt down strategic nuclear submarines” from “Country C [which is generally believed by Chinese experts to be a thinly veiled reference to China].”38

Intensified cat-and-mouse games between Chinese SSBNs and enemy ASW platforms have already greatly heightened the risks of an incident during peacetime sparking a conventional military conflict. Potentially dangerous encounters between the Chinese and U.S. militaries are increasing. In many of these cases, China has acted preemptively to remove potential threats to strategic nuclear assets. In recent years, for example, the United States has ramped up its airborne maritime surveillance activities with P-8A aircraft over the South China Sea. Some of these operations focus on tracking or collecting intelligence about Chinese nuclear submarines, a practice that has prompted Beijing to scramble fighter jets on many occasions to intercept U.S. aircraft.39

In addition, there have been encounters between U.S. surveillance vessels mapping the sea floor close to China’s nuclear submarine base and Chinese naval ships and maritime militia vessels that were dispatched to disrupt such surveillance.40 Notably, in December 2016, a Chinese naval ship seized a U.S. underwater drone in the South China Sea, despite protests from the nearby U.S. naval surveillance ship that was operating it. The incident increased military and political tensions between the Chinese government and the soon-to-be-inaugurated Trump administration. Some Chinese analysts have since argued that China was attempting to prevent the drone from conducting activities potentially threatening to Chinese SSBNs.41

Dangerous encounters involving Chinese SSBNs might grow in number as the United States and its allies enhance their efforts to counter the emerging Chinese SSBN fleet. Because of the involvement of SSBNs, the perceived stakes in such confrontations might be much higher than other confrontations involving purely conventional military forces. In such cases, more rapid escalation is a possible result.

Dangerous encounters involving Chinese SSBNs might grow in number as the United States and its allies enhance their efforts to counter the emerging Chinese SSBN fleet.

These interactions may impose a new degree of pressure on China’s unconditional no-first-use (NFU) policy—a commitment that the country will never or under any conditions use nuclear weapons first. If Chinese SSBNs are threatened by rigorous non-nuclear ASW operations, China’s leadership will face the dilemma of deciding whether to continue to uphold an unconditional NFU policy. Beijing is fully aware that this policy would constrain its response options if a Chinese SSBN were to be sunk and would, therefore, likely encourage enemies to vigorously track and trail Chinese SSBNs. So far, China has not indicated that it is reconsidering its NFU policy as a result of introducing an SSBN fleet.42

But whether it does so in the future may depend, in part, on how vigorously the United States and its allies pursue ASW in China’s coastal waters and how much of a threat China perceives such activities to pose. In fact, if China were to relax its NFU commitment in the future—and indicate that it might consider launching SLBMs during a conventional conflict—adversaries would be further incentivized to pursue more aggressive strategic ASW against Chinese SSBNs, potentially resulting in a negative action-reaction cycle. China needs to find ways to discourage preemptive attacks on its SSBNs other than relaxing the unconditional NFU policy.

#### US can’t keep up with Chinese naval expansion. Chinese navy is too cost competitive.

James Holmes, Professor @ Naval War College, 11-26-2020, "Why America Ignores China's Growing Naval Power," National Interest, https://nationalinterest.org/blog/reboot/why-america-ignores-chinas-growing-naval-power-173363?page=0%2C1

Henry Kissinger’s workmanlike formula for deterrence constitutes a serviceable formula for reassurance as well. Deterrence, writes Kissinger, is a product of three variables: “power, the will to use it, and the assessment of these by the potential aggressor.” All three are critical. And because “deterrence is a product of those factors and not a sum,” deterrence drops to zero if any one variable does.

Deterrence, then, is about fielding formidable capabilities and mustering the moxie to use them. Capability and willpower represent the two basic components of strength for any combatant. But deterrence comes down to making the antagonist a believer in one’s capability and resolve. The most musclebound, most stalwart competitor cannot deter an unbeliever.

The same goes for reassurance except the target audience is different. An ally must convince its partners that it is strong and resolute enough to uphold its security guarantees. If an ally comes to doubt a fellow ally’s power, or an allied leaders’ gumption to use it, then the consortium could falter or fall through altogether. Unbelief could seep into friendly capitals.

So how can China implant doubt in U.S. allies’ minds if the PLA still holds a weaker hand? Simple: it can execute its longstanding strategy of anti-access and area denial—a strategy premised on persuading U.S. leaders that they cannot win a Pacific war at a cost they’re willing to pay.

As strategic grandmaster Carl von Clausewitz observes, the value a combatant affixes to its political aims determines how many resources it invests to attain those aims, and how long it keeps up the investment. How badly that combatant wants its goals, in other words, determines how lavishly it spends on them, and for how long. If an East Asian venture’s price tag is too high—or if China’s armed forces can drive it too high—U.S. leaders may conclude the venture isn’t worth the expense.

If so, Clausewitz would counsel them to forego it.

China, consequently, doesn’t need to command sea or sky, either partially or wholly, to prevail in a trial of arms—let alone to deter in peacetime. It only needs to convince Washington, DC the price of, say, defending the Senkaku Islands is too steep considering the meager value Americans attach to the archipelago.

Beijing can ask, sotto voce: how many American lives, and how many aircraft carriers, destroyers, or fighter aircraft, is a group of uninhabited islets worth to you? If the PLA can plausibly threaten to inflict costs greater than that outlay, then U.S. leaders may do the Clausewitzian thing and abjure the effort. In light of that possibility, Tokyo could come to question whether Washington will really keep its pledge to defend the Senkaku Islands.

Doubt would have been sowed, and the U.S.-Japan alliance would have wavered—all without Chinese forces’ seizing maritime or air superiority through combat. This is the logic of anti-access and area denial. The weak need not prevail on oceanic battlegrounds. They only need to prevail in their enemies’ minds, skewing cost/benefit calculations to China’s benefit. So it is China that could deter—and loosen U.S.-led alliances in the bargain.

Blair’s blithe dismissal of Chinese military power scants all of this.

Now for Admiral Harris. As Jim Fanell notes, comparing Chinese with American submarines misleads. PLAN commanders envision using diesel boats to ambush oncoming U.S. Pacific Fleet surface forces in times of war, elevating the costs of entry into the Western Pacific. Kilo- or Yuan-class boats will blast away with anti-ship cruise missiles, exacting as high a toll as they can. Undersea warfare, then, represents one of the pillars of China’s anti-access strategy.

Yet the PLAN submarine fleet is not a fleet meant for fighting other submarines. That’s why Admiral Harris’s quip deceives. One of these things is not like the other. Boat-for-boat comparisons reveal little.

Now, U.S. Navy nuclear-powered attack boats (SSNs) would hunt PLAN submarines should war come, and they indeed embody the state of the art. They are also few—and dwindling—in numbers, and they carry only short-range armament

. Indeed, American boats must get within about ten nautical miles to launch their torpedoes. Swing a circle with a ten-nautical-mile radius around a point on your map of the Pacific Ocean. That’s the area where a U.S. Navy submarine cruising at that point can strike. You’ll notice that area is microscopic amid the ocean’s empty vastness.

Will U.S. anti-submarine forces really—as Harris implies—make short work of silent-running PLAN diesel boats dispersed for picket duty within this broad expanse? Color me skeptical.

So U.S. Navy SSNs may be Corvettes relative to PLAN Model Ts, but it may not matter much. Primitive implements can do many jobs. The Corvette is an artisanal vehicle, manufactured in small batches for well-heeled sports-car enthusiasts. The Model T was an inexpensive automobile mass-produced for Americans shopping on a budget. And yet both vehicles got drivers and passengers from point A to point B at acceptable speeds and in acceptable comfort for their day.

Now transpose Harris’s analogy to naval warfare. Long-term strategic competition involves competing on the cheap while goading competitors into competing at exorbitant cost. Is the U.S. Navy competing cost-effectively? Well, the latest-model Chevy Corvette Z06 runs over $80,000. One imagines some carmaker could put the 1927-vintage Ford Model T back into production for a minuscule fraction of that (assuming there was a market for creaky low-tech vehicles).

Similarly, a Virginia-class SSN sets back the U.S. Navy some $2.7 billion. Beijing divulges few details about how much platforms or weaponry cost, but the Japan Maritime Self-Defense Force can acquire a Soryu-class diesel sub for about $540 million, one-fifth of the sticker price of the Virginia’s class. The Japanese boat is a rough counterpart to PLAN diesel boats, so use it as a yardstick. If China can purchase five submarines that meet its needs for the same price the United States can purchase one, then who’s competing more efficiently and effectively?

Which brings us to a basic point: “good enough” constitutes the standard of excellence for military hardware. If China’s navy can execute its strategy with an armada of Model Ts while the U.S. Navy bankrupts itself struggling to procure enough Corvettes, then who gets the last laugh? The answer is far from obvious. Practitioners of competitive strategies—the art of competing at low cost to oneself and high cost to rivals—would applaud the miser while fretting over the spendthrift’s prospects.

### XT 1NC 4: Second Island Chain

#### Regional naval supremacy.

Walden Bello, Professor of Sociology @ SUNY Binghampton, ’19, in “China's wrong approach to its strategic dilemma” in *China: An Imperial Power in the Image of the West,* https://www.rappler.com/world/asia-pacific/china-wrong-approach-strategic-dilemma

No match for the US

Despite a serious buildup that began over a decade ago, China's military capabilities are still relatively modest compared to those of the US. The $250 billion it spent on its military in 2018 was far outstripped by the $649-billion military budget of the US, which accounted for 36% of total global military spending.

Beijing has a relatively small strategic nuclear force, one that is guided by a doctrine of "No First Use" focused on deterring a potential aggressor via the maintenance of a second strike retaliatory capacity. The US has vastly superior nuclear capabilities, and it has not adopted an NFU position. The PRC has only about 260 nuclear warheads while at the end of 2017, the United States' nuclear arsenal contained just under 1,400 deployed and approximately 4,000 stockpiled warheads.

There is much writing about the so-called "blue-water" ambitions of the People's Liberation Army Navy (PLAN), that is, it allegedly seeks to compete for naval supremacy with the US. Much of this writing remains highly speculative, however, and reminds one of the spate of analyses about the so-called Soviet push for maritime ascendancy in the 1970s and early 1980s, with the "founder" of the modern Chinese Navy, the now fabled Admiral Liu Huaqing, substituting for the then fabled Soviet Admiral Gorshkov.

In fact, China's power projection capability is rudimentary. It has only one overseas base, in Djibouti, and while the PLAN has many ships, their quality evokes skepticism from western defense analysts. Aircraft carriers are the key to offensive power projection, and Beijing has only two carriers, one that is a retrofitted Soviet-era warship, the other being a domestically produced craft that is still undergoing sea trials. In contrast, the US Navy has 10 carrier task force groups centered around mainly Nimitz-class supercarriers.

Beijing's fundamental posture: Strategic defense

In terms of its strategic posture, there is virtually no credible military expert, western or Chinese, who would claim that China has fundamentally departed from its military posture during the Mao and Deng periods, that of the "strategic defensive."

Current military doctrine has nuanced this posture to be one of "active defense," a concept described as "strategically defensive but operationally offensive" and is said to be "rooted in a commitment not to initiate armed conflict, but to respond robustly if an adversary challenges China's national unity, territorial sovereignty, or interests." Or as one of the leading western analysts on the People's Liberation Army puts it: "Strategically, China is defensive – it's not offensive, it's not an aggressor, it's not a hegemon. But nevertheless, to achieve these defensive goals, it will, at the operational and tactical levels of warfare, use offensive operations and means."

Beijing's strategic dilemma

The reason Beijing will not be able to depart from a strategic defensive posture and move to one of global military hegemony for a long, long time, if ever, is that it has its hands full coping with its strategic dilemma in the South China Sea. China's industrial power lies along the eastern and southeastern coasts bordering the East and South China Seas, which constitute a relatively narrow stretch of water ringed on its western end by the so-called "First Island Chain" stretching from South Korea through Japan down to Okinawa, Taiwan, and the Philippines. South Korea and Japan host numerous US bases and thousands of military personnel, the Philippines has US forces stationed in nominally Philippine bases, Taiwan remains a US protectorate, and the US Seventh Fleet, which never demobilized after the Second World War, roams the East and South China Seas with impunity. For all intents and purposes, the US intends a permanent military presence In the first island chain since, as General Douglas MacArthur once put it, "The strategic boundaries of the US were no longer along the western shore of North and South America; they lay along the eastern coast of the Asiatic continent."

This perspective is what has guided the consistent US strategy of "forward defense," which is to push the active defense of the US homeland several thousand miles farther west from its western political boundary, with the defensive goal sliding into an offensive thrust of projecting US power onto the Asian landmass to prevent the rise of a rival power that could threaten the United States. Preemptive action has become central to the US posture, with the National Security Strategy Paper of 2002 declaring that the US could engage in "anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack."

#### SCS containment is superfluous.

John Glaser, Director of Foreign Policy @ CATO, ‘17, "Withdrawing from Overseas Bases: Why a Forward-Deployed Military Posture Is Unnecessary, Outdated, and Dangerous," Cato Institute, https://www.cato.org/publications/policy-analysis/withdrawing-overseas-bases-why-forward-deployed-military-posture

In the Asia Pacific area, there are more than 154,000 active-duty military personnel (330,000 if you include civilians). There are 49 major bases located in Japan, South Korea, Australia, Singapore, Guam, the Marshall Islands, and the Northern Mariana Islands. 6 Smaller bases are positioned in Hong Kong, Thailand, Cambodia, the Philippines, and elsewhere. The Obama administration’s “Asiapivot” aspired to greater basing access and troop presence in countries such as Vietnam and the Philippines. Rotating through the Asia Pacific are five aircraft carrier strike groups, including as many as 180 ships and 1,500 aircraft, two-thirds of the Marine Corps’ combat strength, five Army Stryker brigades, and more than half of overall U.S. naval strength. 7

The United States also maintains many small bases in almost two dozen African countries—including Djibouti, Niger, Chad, Burkina Faso, Mauritania, Ghana, Liberia, South Sudan, and Uganda—as well as a relatively small number in Latin America—including those in Honduras, Cuba, Colombia, Peru, Chile, Argentina, and Brazil. Bases are also kept in such remote outposts as Greenland, Iceland, American Samoa, and Antarctica. The estimated total cost of maintaining this overseas base and troop presence ranges from about $60 billion to $120 billion annually. 8 America’s global military presence is the tangible manifestation of the grand strategy of primacy that has driven the U.S. approach to the world for decades. Primacy, according to proponents William Kristol and Robert Kagan, means maintaining a preponderance of U.S. power—a “benevolent hegemony”—over the international system. 9

According to an internal Pentagon memo in 1992, a forward-deployed military presence serves the core objective of “convincing potential competitors that they need not aspire to a greater role or pursue a more aggressive posture to protect their legitimate interests.” 10 Bases abroad help expand the domain of American influence and responsibility, enabling Washington to use force to police the world and suppress conflict spirals. 11 America’s forward-deployed posture is not intended to protect the nation from direct attack. Rather, its goal is to provide security for other states and protect against contingencies that, for the most part, would not involve vital U.S. interests. Indeed, as a recent Rand Corporation analysis put it, “military facilities used primarily for power projection are not defensive strongholds but rather launching pads and logistical hubs that support operations beyond their immediate vicinity.” 12 In other words, U.S. bases overseas are not about national defense per se.

They are an insurance policy on stability abroad. The argument of this paper is that this posture should be narrowed to prioritize U.S. defense interests. Despite the tendency of policymakers and the news media to exaggerate dangers and inflate threats from abroad, much scholarship shows that international conflict and overall levels of violence are at historic lows. The remarkably secure position of the United States, along with the relatively peaceful state of international politics, enables a withdrawal from this global network of overseas military bases. Rather than defending the security of other states and attempting to stabilize regions of conflict around the world, the United States should encourage allies to carry the burden of their own defense and should extricate itself from regional disputes lest it get drawn into conflicts in which its vital interests are not at stake. This paper evaluates the main strategic justifications for overseas bases, offers critiques of the current policy, and explores some additional costs and drawbacks of the status quo. The concluding sections propose an alternative posture consistent with a grand strategy of restraint—namely, withdrawing from all but a few overseas bases.

### XT 10 – AT: Impact/Collapse

#### No LIO collapse/impact – regional resilience checks. Even if the order broadly declines, regional blocs like the EU and China operate rules based orders that solve emerging threats – that’s Tang.

#### No LIO impact.

J.M. Mckinney, PhD Candidate @ Nanyang, and Nicholas Butts, CSIS, LLM @ Peking, Msc @ LSE, MPA @ Harvard, ’19, “Bringing Balance to the Strategic Discourse on China’s Rise” https://www.airuniversity.af.edu/Portals/10/JIPA/journals/Volume-02\_Issue-4/McKinney.pdf

One of the most repeated ideas in international affairs discourse today is that after World War II the United States created a “free and open international order” and that this order has been responsible for keeping the Indo-Pacific “largely peaceful” for the last 80 years.4 China is then typically said to be promoting a vision “incompatible” with this order—something that should make us worry, as it may herald the return of violent power politics.5

Michael Lind has summarized the perspective:“in my experience, most members of the U.S. foreign policy elite sincerely believe that the alternative to perpetual U.S. world domination is chaos and war.”6 It is indeed true that the years since World War II have been peaceful when compared with most of European history and that violence of all kinds has declined.7 This phenomenon has been dubbed the “New Peace,” and the United States certainly played some role in bringing it about.8

However, there is no consensus among scholars to what extent US actions—or more abstractly, the supposed “order”—contributed to the decline in war and violence. Existing academic explanations stress the role of nuclear weapons restraining states from major war;9 the evolution of territorial norms (as well as regimes and institutions, like the United Nations);10 the development of globalized markets and “trading states”;11 the longer-term spread of reason, sympathy, and feminization alongside the rise of stronger states;12 the settlement of territorial disputes after World War II;13 the spread of democracies;14 the declining utility of war as a rational instrument of statecraft;15 and hegemonic stability, which emphasizes (in its liberal form) how the United States helped create global institutions and shape norms16 and (in its “realist” form) how US power has deterred or compelled rivals to behave.17 This is not the place to judge between the various explanations, but it should be clear that they are diverse and the overall explanation is likely multivariate. Only the realist version of hegemonic stability directly supports the narrative of the free and open international order. Christopher Fettweis has recently sought to test the theory by looking at the changing pattern of global peace/violence relative to US military spending, frequency of intervention, and selection of grand strategy across four presidential administrations (Bush Sr. to Obama). He found no relationship at all. “As it stands,” he concluded, “the only evidence we have regarding the relationship between US power and international stability suggests that the two are unrelated.”18 If US officials and strategic pundits are going to claim that peace is dependent on an abstract order created and maintained by American power, they need to provide serious evidence for their claims. Until then, while we can be thankful that the United States contributed to postwar institutions like the United Nations, helped delegitimize colonialism, and did not abuse its power (as much) as many other states would have, policy makers and scholars should be highly skeptical of more sweeping claims.

Laying aside the question of how the New Peace came about, another oft repeated notion is that China is determined to undermine the contemporary international order, according to Friedberg, by corrupting, subverting, and exploiting it.19 The proof for this claim is generally said to be China’s “militarization” of the South China Sea (SCS) through “salami-slicing” and “grey-zone tactics,”20 and occasionally, a retired Chinese official or Global Times commentator is quoted as representative of China’s official (even if unarticulated) policy and intentions. In the abstract, such claims are alarming—in context, and in balance, rather humdrum. In fact, the evidence of any Chinese intention to destroy, or even merely undermine and exploit, the current order is slight. China is certainly using its growing military power to defend its claims in the SCS and even—on occasion— to coerce its neighbors. It uses protectionist economic policies to boost the prospects of Chinese companies and reduce competition. It employs economic statecraft to serve its interests abroad. And it certainly is opposed to America’s policy of global democracy promotion. However, none of these positions fundamentally challenge the existing order, none of them radically depart from America’s own actions when it was a rising power in the nineteenth century, and none of them obviously surpass America’s own contemporary record of order subversion.

When the United States was a rising power, it took half of Mexico and considered taking the rest, it colonized the Philippines and Hawaii, and it unilaterally seized the maritime choke points of the Caribbean (Puerto Rico and Cuba).21 The United States used tariffs—which by 1857 averaged 20 percent22 and by the end of the nineteenth century were “the highest import duties in the industrial world”23—to protect its industries. It stole intellectual property,24 and it ideologically challenged the governments of the “Old World.” Today, despite no longer being a rising power, the United States has launched two disastrous invasions, tortured prisoners, and dispatches drone strikes

at a whim with little international legal authority.25 The point is not that two wrongs make a right; it is that international order is much more resilient than critics seem to realize,26 and it is utopian to expect any rising Great Power to act in a way that uniformly satisfies one’s moral scruples, evolving, in Friedberg’s words, “into a mellow, satisfied, ‘responsible’ status quo power.”27

Friedberg or Harris might object that America’s rise took place in the context of a different order. This is perfectly true, but the more important point is that the long nineteenth century (1815–1914)—the era of America’s rise—was the first iteration of the New Peace.28 The implication is that relative peace can and has coexisted with limited wars, property and territorial thefts, acts of coercion, and aggressive assertions of status. This does not mean any of these are desirable— they are not—but it shows that they need not be fatal to the system. Insofar as there is a lesson from that first period of relative peace, it is that Great Power confrontation is the one thing that is fatal. Accepting this does not mean capitulating in every instance, as implied by some,29 but it does mean rediscovering the rules of Great Power competition30 alongside the art of strategy.31

Focusing only on areas that China’s rise violates the scruples of the established powers, moreover, downplays the extent to which China, has, in fact, conformed to the existing order. As a RAND Corporation report published in 2018 concludes, China has been a supporter—albeit a conditional one—of the international order: “Since China undertook a policy of international engagement in the 1980s . . . the level and quality of its participation in the order rivals that of most other states.”32 The way in which Xi Jinping, following his 2017 Davos speech in defense of globalization, has been heralded as the most prominent champion of international order and defender of globalization underscores the fact that there are different elements of this order, and that China supports many, if not most, of them. Even in places where China is supposedly “altering” the current order, Beijing tends to simultaneously affirm that order. China’s Asian Infrastructure Investment Bank, for instance, actually mirrors existing structures, and China has intentionally copied elements and “best practices” of the World Bank and Asian Development Bank. China is playing the same game, even if it is seeking a bigger role within it.33

#### It's overwhelmingly resilient

Mousseau 19 Michael James Mousseau, Political Science Professor at the Univeristy of Central Florida, focuses on the link between economics and conflict, PhD at Binghamton University. [The End of War: How a Robust Marketplace and Liberal Hegemony Are Leading to Perpetual World Peace, 44(1), Summer 2019, ProjectMUSE]

Reports of the demise of the liberal order, however, are greatly exaggerated. First, Hungary and Poland are newly contractualist states. The sociological nature of economic norms theory means that contractualist values should be more firmly rooted in older contractualist societies than in newer ones. This is corroborated with the natural experiment of Germany: in 1962 West Germany embraced contractualism (see table 1), but it was only after 1991 that East [End Page 191] Germany could have become contractualist, when massive investments from the Federal Republic caused incomes in the marketplace to become higher than incomes obtainable from status relationships. Today, Germany's populist movement is concentrated in the eastern part of the country and is largely nonexistent in the western part,83 which corroborates the expectation that some newly contractualist societies retain some of their status values even after a generation of robust opportunity in the marketplace. Deeper changes in values may not occur until generational cohorts initially socialized into status or axial economies have passed on. Second, the electorates in most of the thirty-five contractualist states listed in table 1 in 2010 have not experienced substantial increases in populist sentiment. Italy's Five Star movement is often called populist but largely because of its anti-immigrant stance. Although an embrace of immigrants would seem consistent with contractualist values, opposition to large numbers of immigrants is arguably a rational response to what is essentially a huge external shock that has intensified in recent years. Britons voted to leave the European Union, but largely because they believed they were being treated unfairly in it. The rejection of unfair terms of trade, whether perceived correctly or not, is consistent with contractualist values. Third, the strength of institutions far exceeds that of any one person, including the president of the United States. Liberal values and institutions are rooted in contractualist economic norms and will not disappear simply because some leaders choose not to abide by them. For instance, although Trump may want the United States to withdraw from the North Atlantic alliance, this is not a view shared by Congress and the American people. Even members of Trump's administration have often restrained him in ways consistent with contractualist values and institutions.84 In economic norms theory, the only way the United States' contractualist values could shift to status or axial values would be through radical economic change. As mentioned above, economics is ultimately at the mercy of politics, as an influential coalition of rent-seekers could potentially collapse a contractualist economy by failing to sustain the highly inclusive marketplace or uphold the state's credibility in enforcing of contracts. In recent years, the U.S. economy has begun tilting toward rent-seekers, given the growing role of private money in electoral campaigns and the increasing sophistication of rent-seekers [End Page 192] in masking their activities though the manipulation of public opinion, including through their concentrated ownership of media outlets. Such rentierism could precipitate a change in U.S. values if it results in a retraction of the market substantial enough that newer generations began to obtain higher wages in newfound status networks than in the marketplace. In this way, the Trump phenomenon may reflect a pathology in U.S. governing institutions; but at least so far, it arguably has not extended to the American people. Most of Trump's supporters seem to be drawn to him not for his expressions of status values, but for his pledges to fight a "rigged" system and create well-paying jobs. Whether or not Trump means what he says, many of his supporters saw a vote for him as an act of protest against the increasing corruption occurring in the United States, a clear contractualist expression.85 Although a collapse of the U.S. economy and transition to an axial or a status economy is always possible, the feedback loop of popular insistence on economic growth and a highly inclusive marketplace makes this unlikely. Aside from an external shock (such as nuclear war or climate devastation), such a transition could happen only if the rentiers somehow manage to remain in power long enough to institutionalize a permanently underemployed underclass. Fourth, even if the U.S. economy were to collapse and the United States became an axial or a status power, the combined economic might of all the other contractualist countries in the world is nearly twice that of the United States. The soft power of the United States in world politics lies not in its power to persuade, but in it being the largest of the contractualist states, and in its willingness to provide the public good of global security since the collapse of the pound sterling in late 1946. If the United States withdrew from its leadership role, the remaining contractualist powers would fill the vacuum. None of them has an economy relatively large enough to enable it to act as a natural leader and principal provider of global security, but it is the temperament of these states that they can easily form an international organization to coordinate and act on their shared security interests, even if some may choose to free ride. Fifth, current events need to be viewed within a larger context. Fernand Braudel pinpoints the rise of the modern world economy as starting around the year 1450 in northwestern Europe.86 The first contractualist economy emerged more than two centuries ago. Since then, contractualist states have [End Page 193] confronted numerous shocks and threats to their systems, including the American Civil War, the Great Depression, two world wars, and the Cold War. The present populist mini-wave and pathologies in U.S. democracy are mere trifling episodes in a larger historical frame.

#### Integrative tendencies, shared authority, and economic gains.

Ikenberry ’18 [G. John Ikenberry, International Relations Professor at Princeton; Why the Liberal World Order Will Survive, Roundtable: Rising Powers and the International Order, Ethics & Affairs, 32(1), p. 17-29]

Self-Reinforcing Characteristics of Liberal International Order The United States has dominated the post-war international order. It is an order built on asymmetries of power; it is hierarchical. But it is not an imperial system. It is a complex and multilayered political formation with liberal characteristics— openness and rules-based principles—that generate incentives and opportunities for other states to join and operate within it. Four characteristics reinforce and draw states into the order. First, it has integrative tendencies. Over the last century states with diverse characteristics have found pathways into its “ecosystem” of rules and institutions. Germany and Japan found roles and positions of authority in the post-war order; and after the cold war many more states—in Eastern Europe, Asia, and elsewhere—have joined its economic and security partnerships. It is the multilateral logic of the order that makes it relatively easy for states to join and rise up within the order. Second, the liberal order offers opportunities for leadership and shared authority. One state does not “rule” the system. The system is built around institutions, and this provides opportunities for shifting and expanding coalitions of states to share leadership. Formal institutions, such as the IMF and World Bank, are led by boards of directors and weighted voting. Informal groups, such as the G-7 and G-20, are built on principles of collective governance. Third, the actual economic gains from participation within the liberal order are widely shared. In colonial and informal imperial systems, the gains from trade and investment are disproportionately enjoyed by the lead state. In the existing order, the “profits of modernity” are distributed across the system. Indeed, China’s great economic ascent was only possible because the liberal international order rewarded its pursuit of openness and trade-oriented growth. For the same reason, states in all regions of the world have made systematic efforts to integrate into the system. Finally, the liberal international order accommodates a diversity of models and strategies of growth and development. In recent decades the Anglo-American model of neoliberalism has been particularly salient. But the post-war system also provides space for other capitalist models, such as those associated with European social democracy and East Asian developmental statism. The global capitalist system might generate some pressures for convergence, but it also provides space for the coexistence of alternative models and ideologies. These aspects of the liberal international order create incentives and opportunities for states to integrate into its core economic and political realms. The order allows states to share in its economic spoils. Its pluralistic character creates possibilities for states to “work the system”—to join in, negotiate, and maneuver in ways that advance their interests. This, in turn, creates an order with expanding constituencies that have a stake in its continuation. Compared to imperial and colonial orders of the past, the existing order is easy to join and hard to overturn.

### XT 11 – AT: Multilat

#### Multilat fails – failure of the Iran deal, rise of autocratic leaders, and the G8 becoming the G7 prove multilateral cooperation is impossible. Trump was the symptom, not the cause – that’s Ross.

#### Multilateralism fails – leaders can’t agree and too slow.

Ross ’19 [Tim, Leading UK politics coverage & lobby team for Bloomberg, Co-author of Betting the House, 8/22/19, “Multilateralism Is Dead. Long Live the G-7”, https://www.bloomberg.com/news/articles/2019-08-22/multilateralism-is-dead-long-live-the-g-7]

Forums such as the G-20 and the upcoming Group of Seven meeting in France Aug. 24-26 were first dreamed up in the 1970s as a place for foreign officials to come together, fight, disagree, but ultimately resolve issues that go beyond borders. At first the discussion was primarily on economics, but the agendas quickly grew to encompass human rights, international security, global health, and climate change. The joint statement of values typically produced at one of these gatherings, known as the summit communiqué, lacks the force of law, or really any force beyond symbolism. But what it signifies—multilateralism, globalization, international understanding—has formed the foundation of the world order in what we like to think of as the modern era.

That foundation is beginning to crack. In the age of the strongman leader embodied by Vladimir Putin of Russia and Turkey’s Recep Tayyip Erdogan, and especially since the election of U.S. President Donald Trump, disrupting international norms has become a norm in itself. After last year’s G-7 meeting in Canada, Trump blew up the communiqué he’d agreed to mere hours earlier, reacting to a perceived slight from Prime Minister Justin Trudeau. Despite their valiant effort, the Sherpas at this year’s G-20 failed to craft language that all of the assembled leaders could agree to and had to insert a special section for the U.S. position on climate change.

If the era of agreement is over, what will the future look like? French President Emmanuel Macron has been grappling with that question as his country prepares to host this year’s G-7 in Biarritz. “I have battled at the G-20 and ended up at 19,” he said at the end of the G-20, “and I have battled at the G-7 to be all seven together and then have the U.S. pull out.” Desperate to avoid a repeat of the summit in Canada, Macron decided to abandon the communiqué all together. “We are living through a very deep crisis of democracy,” Macron said on Wednesday. “No one reads the communiqués, let’s be honest. And in recent times you read the communiqués only to find disagreements.”

These are hardly abstract concerns. While Macron and others have framed their search for solutions in terms of improved protocol, disagreements that begin at international meetings have a way of rippling into far less rarefied circles, and vice versa. Trump’s pique at Trudeau concerned the latter’s attempt to retaliate against tariffs the U.S. had applied to Canadian steel and aluminum weeks before. The Iran nuclear deal and the Paris climate accord were both reached through carefully orchestrated international discussions—and both were shredded single-handedly by Trump.

Yet even on the question of how to achieve unity, there’s disagreement. According to a high-ranking German official, Chancellor Angela Merkel also left the Osaka G-20 summit frustrated that once again a major gathering of world leaders had been hijacked by Trump. In her view, these events were turning into opportunities for the U.S. president to put on a show and boost his ego. But Merkel also insisted that reaching a common final declaration still ought to be paramount, however weak the language might be.

“Size will matter, the weakest will get picked off, and with that way forward lies more conflict, more confrontation, and greater risks”

Trump isn’t alone in turning international diplomacy into a stage for political posturing, complete with a global audience and background leaders to populate the scenery. Chinese leaders, for instance, have been frequent spoilers. Since Trump took office, however, his bilateral meetings have occupied center stage. Before the G-20, his anticipated meeting with China’s Xi Jinping dominated press coverage. In all, Trump held eight one-on-one meetings in Osaka, including with Saudi Crown Prince Mohammed bin Salman, still under a cloud after having been accused of orchestrating the murder of critic Jamal Khashoggi; Brazilian President Jair Bolsonaro, a gun-loving ex-military leader regarded as the Trump of South America; Erdogan; and Putin.

In Biarritz, the marquee event will be Trump’s meeting with the group’s latest populist entrant, Boris Johnson. Since he became Britain’s prime minister in July, Johnson has shown no interest in compromising on Brexit policy with his critics in London, let alone with his European counterparts; he waited nearly a month after taking office to travel for talks with the European Union’s two most powerful leaders, finally making a last-minute dash to Paris and Berlin in the days before heading to Biarritz.

As a former foreign secretary, Johnson is well aware of the diplomatic conventions he’s defying. The danger, says Alistair Burt, a Conservative member of Parliament who served with Johnson in the Foreign Office, is that the rest of the world shifts to accommodate that defiance rather than challenge it. “If you revert to a foreign policy where ‘my country comes first and stuff the rest of you,’ ” Burt says, global leaders risk contributing to the appeal of those who’ve succeeded at home by looking tough and standing alone on the world stage. “Size will matter, the weakest will get picked off, and with that way forward lies more conflict, more confrontation, and greater risks.”

Not that the global leadership has ever been entirely without conflict, even in the days when cooperation was a given. The G-7 used to be the G-8, of course, until 2014, when a U.S.-led coalition moved to suspend Russia from the group over its annexation of Crimea. Later that year, Australia’s then-Prime Minister Tony Abbott borrowed a term for an aggressive challenge in Australian football and vowed to “shirtfront” Putin at that year’s G-20, after pro-Russian rebels in Crimea had shot down a Malaysia Airlines plane carrying some Australian citizens. (He didn’t, but Putin nevertheless found himself isolated.) Years earlier, in 2009, Italy so bungled preparations for the G-8 that some were already questioning its continued relevance.

Innovation aside, some realpolitik ways to limit dissent already exist. According to an Italian official, G-7 diplomats expect the French to announce which foreign affairs topics will be on the agenda close to the beginning of the summit, perhaps only two days before. No full plenary discussion is likely on trade, and a minimal restatement of existing positions is likely on climate change. Should Trump make it impossible to reach a joint position, France, as the host, has the option of issuing its own statement at the end of the meeting.

Formal diplomacy has always been a complicated dance, which may pose a problem more fundamental than those created by chaos-loving nationalists. With or without Trump, the G-7 is already too slow for a world that will have fully digested whatever news comes out of it by the time everybody gets home. The talks among Sherpas have almost always been tortuous—the summit in Japan was less the exception than an extreme example of the rule. Much as with fusion cuisine, the result is usually an unhappy compromise designed to please the tastes of all that ultimately satisfies no one.

#### No impact or internal link to multilateralism.

Ferry ’18 [Jean; October 2018; Professor of Economics with Sciences Po of Paris and the Hertie School of Governance of Berlin, former campaign director for Emmanuel Macron and Commissioner-General of France Stratégie, the Founding Director of the think tank Bruegel; Policy Contribution, “Should we give up on global governance?” https://bruegel.org/wp-content/uploads/2018/10/PC-17-2018.pdf]

C. Obsolescence of global rules and institutions

Although the previous argument primarily rests on the broad pattern of international trade and finance, the adverse effects of external liberalisation can be compounded by inadequate governance. As far as trade is concerned, two cases in point are, first, inertia in the categorisation of countries, especially the fact that emerging countries, including China, still enjoy developing country status in the WTO; and, second, failures to enforce the adequate protection of intellectual property (an issue on which the EU recently joined the US and filed a complaint at the WTO against Chinese practices; see European Union, 2018). These grievances, and others concerning subsidies or investment, are not new: they were clearly spelled out by policymakers from the Obama administration (see for example, Schwab, 2011, and Wu, 2016). The underlying concern is that the systemic convergence on a market economy template that was expected from participation in the WTO has failed to materialise. The rules and institutions of global trade have brought shallow convergence but not the deeper alignment of economic systems that was hoped for.

More generally, existing rules and institutions were conceived for a different world. This is very apparent in the trade field: the GATT/WTO framework dates from what Baldwin (2016) has called the “first unbundling” of production and consumption. They were not designed for the “second unbundling” of knowledge and production that gave rise to the emergence of global value chains. For decades, the implicit assumption behind the structure of trade negotiations has been that nations have well-defined sectoral trade interests: they are either exporters or importers. But in a world of global value chains, they are both importers and exporters of similar products simultaneously. Even if the principles of multilateralism remain valid, important features of the rules and institutions in which they are embedded are increasingly outdated.

In the same way, opening to capital movements was supposed to result in net financial flows from savings-rich to savings-poor countries. What has happened instead is a massive increase in gross flows resulting in the interpenetration of financial systems and the coexistence of sizeable external assets and liabilities. The consequence has been the emergence of a global financial cycle (see for example Rey, 2017) and of policy dilemmas that are quite different from those arising in a simple Mundell-Fleming framework, in which interdependence takes place through net inflows and outflows of capital.

Developments in the climate field further illustrate the point. The 1997 Kyoto Protocol was negotiated under the assumption that the bulk of greenhouse gas emissions would continue to originate in the advanced countries. But by the time the Protocol was meant to enter into force, it was clear already that the hypothesis was deeply wrong. The exemption of developing countries from emissions reductions was one of the reasons why the US did not ratify the treaty. The failed Copenhagen agreement of 2009 was an attempt to replicate Kyoto on a global scale, but there was no consensus for such an approach.

Rules can be reformed and institutions can adapt. But this is a long and demanding process, especially when it requires unanimity, when participating countries have diverging interests and when changes require ratification by parliaments where there is no majority to support them. Global rules therefore exhibit a strong inertia that often prevents necessary adaptations. Trade rules, amendments to which require unanimity, are a case in point.

Institutions are nimbler and can adapt to changing priorities or perspectives on interdependence. The IMF for example has succeeded in adjusting to major changes in the international economic regime and major shifts in the intellectual consensus. But even institutions face limitations to their ability to keep up with underlying transformations. This is one of the reasons why solutions to emerging problems have often been looked for outside the existing multilateral, institution-based governance framework (Table 1).

D. The imbalances of global governance

A further reason for popular dissatisfaction with global governance is its unbalanced nature. The deeper international integration becomes, the broader the scope of policy its management should cover, and the more acute the tension between the technical requirements of global interdependence and the domestically-rooted legitimacy of public policies. This is most apparent in the field of taxation. International tax optimisation by multinationals has become an issue of significant relevance and it is estimated that 40 percent of their profit is being artificially shifted to low-tax countries – with major consequences for national budgets (Tørsløv et al, 2018). But the fact that taxation remains at the core of sovereign prerogatives limits the scope and ambition of initiatives conducted at international level. The result, which can be regarded as an illustration of Rodrik’s trilemma, is that global coordination in tax matters falls short of what equity-conscious citizens regard as desirable and, at the same time, exceeds what sovereignty-conscious citizens consider acceptable.

The imbalances of global governance are by no means limited to the taxation field. The same can be found in a series of domains, for example biodiversity and the preservation of nature.

E. Increased complexity

The final obstacle to multilateral solutions has to do with the sheer complexity of the challenges global governance has to tackle. In recent decades channels of international interdependence have both multiplied and diversified. They now link together countries with significantly differing levels of technical, economic or financial development. Because they have developed outside the scope of negotiated rules and established institutions, some of channels of interdependence also escape the reach of international agreements to an unprecedented degree. This is especially, but not only, the case of the internet and the multiple networks that rely on it. The world does not fit anymore the usual representation whereby individual nations trade goods, capital and technology. Even putting aside geopolitical consequences and assuming a shared commitment to openness and multilateral solutions, such complexity is bound to test the limits of existing international governance arrangements.

#### Gridlock is self-reinforcing.

Hale & Held 18 Dr Thomas Hale, Politics PhD from Princeton, Global Politics master’s degree from the London School of Economics, public policy professor at the University of Oxford, & David Held, a British political scientist, Politics and International Relations Professor at Durham University until his death. [Breaking the Cycle of Gridlock, Global Policy, 9(1), Wiley Online Library]

One of the central concepts developed in Gridlock was ‘self‐reinforcing interdependence’ (Hale et al., 2013), the mutually enabling relationship between globalization and the institutionalization of world politics that profoundly deepened interdependence over the postwar period. The idea is that international cooperation is not just a response states use to manage existing interdependence; over time, cooperation also increases the links between economic and social systems across borders, deepening interdependence further. For example, trade agreements create incentives for companies to develop global supply chains and invest in technologies that facilitate cross‐border production, changing their business models and building new constituencies for trade. The resulting increase in interdependence creates additional political incentives for countries to cooperate further, beginning the cycle again. We argued in Gridlock that this historical process of partially endogenous interdependence deepened to such a degree over the postwar period that a number of ‘second order’ cooperation problems arose – namely, multipolarity, harder problems, institutional inertia, and fragmentation – causing gridlock. Today it seems clear that gridlock itself also has a self‐reinforcing element, one that emerges from the corrosive effect of unmanaged globalization on domestic politics. The rise of nationalism and populism across the world, in many different kinds of countries, has multiple and complex origins. But this trend can be seen as part of a downward spiral in which gridlock leads to unmanaged globalization or unmet global challenges, which in turn help to provoke anti‐global backlashes that further undermine the operative capacity of global governance institutions (Figure 1). image Figure 1 Open in figure viewerPowerPoint The vicious cycle of self‐reinforcing gridlock. Consider each dynamic in turn. First, as per the gridlock argument, we face a multilateral system that is less and less able to manage global challenges, even as growing interdependence increases our need for such management. Second, in many areas this inability to manage globalization or to meet global challenges has led to real, and in many cases severe, harm to major sectors of the global population, often creating complex and disruptive knock‐on effects. Perhaps the most spectacular recent example of harm caused by mismanaged interdependence was the 2008–9 financial crisis. A product of inadequate regulation in major economies and at the global level, the crisis wrought havoc on the world economy in general, and on many countries in particular, which was reinforced in many places by severe austerity measures that tried to limit the fallout. We should not be surprised that such significant impacts have led to further destabilization. Third, what has become clear only several years after the crisis is not just the economic cost, but the scale of the political destruction to which the crisis contributed. Rising economic inequality, a long‐term trend in many economies, has been made more salient by the crisis. It reinforced a stark political cleavage between those who have benefited from the globalization, digitization, and automation of the economy, and those who feel left behind in the wake of these powerful disruptions. The global financial crisis was not the only cause of many of the political disruptions that have come to characterize and realign politics in major countries in the last few years, but it has been a critical contributing factor in several of them, building on the economic dislocations that globalization had effected over several decades (Colgan and Keohane, 2017). Perhaps most importantly, the financial crisis sharpened the divide between working‐class voters in industrialized countries, who were hit hard by the events, and other segments of the population. This division is particularly acute in spatial terms, in the cleavage between global cities and their hinterlands. Global cities like London, Paris, Shanghai, New York and San Francisco have become nodes of power and influence in the global economy, linked to each other through a variety of social and economic networks. Their citizens have benefited directly as opportunities have sharply risen. By contrast, those in the hinterlands, typically rural areas and deindustrialized cities, but not exclusively so, have often been left behind in absolute and relative terms, building up frustrations and resentments. The effect on politics has been profound, with a number of nationalist and populist movements emerging and, in some cases, winning elections (or otherwise seizing power) in many countries. Again, we should not be surprised that people exposed to the negative effects of globalization will turn against it. Research shows that over the course of history, right‐wing populist movements and financial crises are strongly correlated (see Funke et al., 2016). Relatedly, the 2008 crisis exacerbated many of the woes that have beset the eurozone since 2010, such as the repeated bailouts of Greece and other countries, and consumed European politics, driving voters on both the creditor and debtor side of the political chasm towards Euro‐scepticism. And more broadly, the impact on the centre‐left parties that have traditionally supported global and regional cooperation has also been severe, with the differential effects of globalization straining the traditional coalition between metropolitan progressives and the working class. Moreover, the financial crisis is only one area where gridlock has undercut the management of global challenges and undermined political support for global cooperation. Consider the global response to terrorism. International cooperation, though effective in many areas, has failed to prevent extremists from attacking civilians around the world. While relatively cohesive and centralized networks like Al Qaeda have been largely taken apart through a combination of aggressive policing, surveillance, drone attacks, and other techniques, more inchoate movements like the Islamic State are much harder to root out. The attacks by these groups, for example in Paris in 2015, have been all too effective in creating a public discourse in many countries that sees perpetual war between Islamists and the West. This sentiment, in turn, creates political pressure for militarized responses from the West that can create as many terrorists as they eliminate, as well as anti‐Muslim policies that breed further resentment. These negative effects also spill across issue areas. The failure to manage terrorism and to bring to an end the wars in the Middle East has had a particularly destructive impact on the global governance of migration. With millions of refugees fleeing their countries in search of safety and a better life for their families, many of them heading for Europe, the global forced migration regime has been overwhelmed. Many recipient countries have seen a potent political backlash from right‐wing national groups and disgruntled populations, which further reduces the ability of countries to generate effective solutions at the regional and global level. We see trends toward nationalism and populism across many different kinds of countries, from Trump's United States to Duterte's Philippines, from Putin's Russia to Brexit Britain, from Modi's India to Erdoğan's Turkey. The anti‐global backlash is heterogeneous and rife with contradictions. It encompasses terrorism in the name of Islam and Islamophobic discrimination against Muslims. It includes leftist rejection of trade agreements and right‐wing rejection of environmental agreements. One powerful tie that unites these disparate movements is a rejection of interdependence and collective efforts to govern it. Global institutions and (perceived) cosmopolitan elites have always been a potent and politically expedient whipping boy [scapegoat] for nationalist and populists, even when those institutions, or some other form of international cooperation, are needed to tame the socioeconomic forces that inflamed populist movements to begin with. This undermining of global cooperation, whether for migration, terrorism, financial regulation, climate change, or other areas, is the fourth and final element of self‐reinforcing gridlock. As the global trend to nationalism and populism undermines the effectiveness of global institutions even further, the whole cycle begins anew.

#### Shifting power relations.

Anton ’18 [Diana, Writer @ Global Risk Insights, “What Trump’s actions at the G7 summit mean for multilateralism,” 6/10/18, https://globalriskinsights.com/2018/07/trump-g7-summit-mean-multilateralism/]

The shifting power relationship among the G7 and other countries will be further complicated in the long term by the rise of new political powers such as China and North Korea. With China’s strategic influence growing in the right-wing governments in Central-Eastern Europe due to economic and political investment, the G7 powers may find it difficult to keep the right-wing governments of Hungary and Poland under control with the present multilateral framework. This is because there is the potential that any economic leverage the G7 powers may have over the East will decrease as the East becomes more heavily reliant on China. Thus, being unable to exert control over these authoritarian governments, the G7 powers will not be able to promote the image of a united Europe thereby undermining the multilateral framework. Furthermore, a stronger alliance is beginning to develop between the United States and the more authoritarian North Korea. If this alliance bears fruit, there will be a new dimension to international security that the G7 will have to consider if multilateralism is to continue being effective. According to Chatham House, if it is to survive, multilateralism needs to evolve to incorporate not just the countries’ governments, but the private sector and civil society as well. However, this will not be easily accomplished in today’s political climate and is in fact likely to have significant consequences that may spell the end for multilateralism. The main obstacle to any potential reforms is the rise of right-wing governments in Austria, Hungary, Poland and Italy. The election of these right-wing governments indicates that an increasing proportion of civil society in the East does not hold much confidence in the G7, and as a result will most likely not be willing to cooperate with them.

#### Competition wrecks it.

Egel ’16 Naomi Egel, research associate in the International Institutions and Global Governance program, Government PhD candidate at Cornell University. [Multilateralism is Hard to Do, 6-9-2016, https://www.cfr.org/blog/multilateralism-hard-do]

Challenges to the liberal world order limit multilateralism Traditional multilateralism—as part of the U.S.-led liberal world order—is under strain and underperforming. At the precise moment that global interdependence is deepening, resurgent great power competition is undercutting prospects for sorely needed cooperation. Emerging powers are obviously determined to secure greater influence over international institutions. What is less clear is whether their ultimate aim is simply to increase their proportional weight and authority within these institutions, or something more ambitious—to replace the current norms and rules governing state conduct in spheres ranging from international security to development cooperation. The answer to this question matters. If countries like China, India, Russia, Brazil, and Turkey are invested in the system but merely looking for greater voice, the relative decline of the West seems less worrisome. If their aims are to transform the system, all bets are off. Complicating matters, the redistribution of global power is occurring in an increasingly crowded institutional environment—in which the effectiveness of different bodies varies dramatically. With many existing multilateral organizations deadlocked and resistant to reform, the United States and other countries are pursuing alternative, essentially experimental forms of international cooperation, including coalitions of the capable, interested, or likeminded. This dynamic is evidenced across the board, from the Nuclear Security Summit to the surprising resilience of the Group of Seven advanced market democracies. Multilateralism is also increasingly networked, disaggregated, and bottom-up. The Paris Agreement on climate change exemplifies this new model. Although it was an intergovernmental agreement, a slew of nonstate actors influenced its negotiation and will be critical to its implementation. It is also simply one part of the climate change puzzle, which is being addressed through multiple, mutually reinforcing multilateral initiatives. Finally, it took the form not of a single comprehensive treaty, handed down on all parties from above, but as the compilation of individual, nationally-determined contributions, in the hopes that the whole would exceed the sum of its parts. Domestic turbulence makes multilateral agreement more difficult Turbulent domestic politics around the world, including in the United States, create serious obstacles to effective multilateral cooperation. The tensions facing the European Union highlight this point: The persistence of low economic growth, the ongoing crisis in the Eurozone, Europe’s struggle to respond to uncontrolled flows of refugees and migrants, and the rise of nationalist and xenophobic parties have stopped integration in its tracks. Meanwhile, the total breakdown of social trust and governing structures in much of the Middle East poses a fundamental, potentially decades-long challenge for the region. Whatever agreements the United States and other external actors might be able to achieve in diplomatic corridors will not be sufficient to restore stability and deliver prosperity in the Middle East. Getting the world on the right track, in other words, increasingly depends on whether individual countries can get their own houses in order first. Take the international economy. In the wake of the global financial crisis, the major institutions of global economic governance performed rather well, staving off what might well have been a second Great Depression. What multilateral cooperation has not delivered, however, is a path to sustained global growth and prosperity. And the reason is that this outcome ultimately rests on sound domestic policy decisions and their implementation at the national level. The main challenges facing the global economy, including low productivity in developed economies and growing inequality around the world, will not be met through simply deeper commercial and financial integration or multilateral regulations.

# 1NR

## Exec Power

### 1NR – Kick

Concede perm – not going for it

Turns don’t have UQ bc we kicked the CP and are resolved by the ITC CP

We will also concede exec fails and bows out so theres no internal link to the impact anyway

### 2NC – AT: Condo Bad

#### Condo’s good – we get what we did:

#### Neg flex – the neg is always reactive – the aff gets the 2AR and has infinite prep to stake out 2AC strategy. Condo restores competitive equity.

#### Negation – the neg only has to disprove the aff – condo simulates effective negation by testing from multiple angles. Their interp evades clash by insulating the case from contradiction.

#### Critical thinking – forces smart 2AC choices, adaptation, and logic – that offsets 2AC process clarification and vague plans and impact turns aff choice.

#### Logic – the judge should endorse the best policy – proving the counterplan is bad doesn’t prove the plan is good, means you should judge kick the CP if it doesn’t solve.

#### Ideological flex – debaters are risk-averse – condo enables argumentative diversity and innovation which maximizes portable benefit.

#### Reasonability – add-ons, perms, straight-turning the net benefit, and 2AC choice check – they need to prove in-round strategic damage, or substance crowdout outweighs. Going for one in the 2NR and strategically conceding contradictions solves.

#### Reject the argument, not the team – voting aff won’t dissuade condo in other debates.

#### No time tradeoff or moral hazard impact – condo fosters strategic balance – there’s diminishing returns to each additional advocacy, so the aff can still introduce offense strategically. Plus, deficits or perms beat most counterplans – debating offense detracts from topic education and doesn’t rejoin the plan. Skew is inevitable because of procedurals and DA’s.

#### Dispo can’t solve – it’s arbitrary and undefined, enables teams to force perms, decreases neg flex, and invites logical contradictions when straight-turning multiple advocacies.

## TTC CP

### 1NR – Kick

Concede perm – not going for it

## Court Politics

### 1NR – Kick

Concede antitrust is under the radar and thumpers, and ruling isn’t relevant for the EPA – not going for it

## DOJ

### 1NR – O/V

#### Dropped the impact – supply chain disruptions cause global war by incenting resource shortages that incentivize countries to quickly escalate war. Outweighs on time frame – they’ve concede the DOJ is focused on supply chains from COVID shocks, outweighs any long term impasts solved by deep interdependence.

#### Turns the case – economic system-resiliency enables the US to prevent all existential risks, stabilize trade, and prevents conflict with China from escalating.

Ganesh Sitaraman 20, Professor of Law at Vanderbilt Law School, “A Grand Strategy of Resilience,” Foreign Affairs, September/October 2020, https://heinonline.org/HOL/Page?handle=hein.journals/fora99&div=128&g\_sent=1&casa\_token=&collection=journals

Every so often in the history of the United States, there are moments of political realignment—times when the consensus that defined an era collapses and a new paradigm emerges. The liberal era ushered in by President Franklin Roosevelt defined U.S. politics for a generation. So did the neoliberal wave that followed in the 1980s. Today, that era, too, is coming to a close, its demise hastened by the election of President Donald Trump and the chaos of the coronavirus pandemic.

The coming era will be one of health crises, climate shocks, cyberattacks, and geoeconomic competition among great powers. What unites those seemingly disparate threats is that each is not so much a battle to be won as a challenge to be weathered. This year, a pandemic is forcing hundreds of millions of Americans to stay at home. Next year, it might be a 1,000-year drought that devastates agriculture and food production. The year after that, a cyberattack could take out the power grid or cut of critical supply chains. If the current pandemic is any indication, the United States is woefully underprepared for handling such disruptions. What it needs is an economy, a society, and a democracy that can prevent these challenges when possible and endure, bounce back, and adapt when necessary—and do so without sufering thousands of deaths and seeing millions unemployed. What the United States needs is a grand strategy of resilience.

For psychologists who research child development, resilience is what enables some children to endure traumatic events and emerge stronger and better able to navigate future stresses. For ecologists, resilience is an ecosystem’s ability to resist, recover, and adapt to ires, loods, or invasive species. For emergency, disaster relief, and homeland security experts, a resilient system is flexible, adaptable, and can withstand an impact. The writer Maria Konnikova has summed up the concept with a single question: “Do you succumb or do you surmount?”

The highest goal for American policymakers should be to preserve and defend the country’s constitutional democracy while enabling Americans to thrive regardless of their race, gender, location, or origin. A society that achieves that goal will be better prepared to face the next crisis. A more equal and more just nation is a more resilient one.

Although Americans tend to think of grand strategy as an overarching foreign policy vision, any true grand strategy requires a solid domestic foundation. The United States’ Cold War policy of containment, for instance, had a domestic analog, although it is less emphasized in the foreign policy community. For a generation after World War II, Democrats and Republicans alike embraced a model of regulated capitalism, with high taxes, inancial regulations, strong unions, and social safety net programs, and thus charted a path between the totalitarian control of the Soviet Union and the laissez-faire approach that had plunged the United States into the Great Depression. Regulated capitalism and containment together were the grand strategy that deined the post–World War II era. A grand strategy of resilience, likewise, will not meet with success unless the United States addresses the many forms of inequality, fragility, and weakness that undermine the country’s preparedness from within.

AGE OF CRISES

“Grand strategy” is a slippery term, with perhaps as many deinitions as authors who invoke it. It can describe a framework that guides and focuses leaders and societies on their aims and priorities. Critics of the notion believe this is impossible: no paradigm, they say, can help navigate a chaotic, uncertain future, and in any case, U.S. society is too polarized to identify a consensus paradigm today. But the skeptics have it backward. Grand strategy is won, not found. It emerges from argument and debate. And it is useful precisely because it offers guidance in a complex world.

Start with pandemics. For hundreds of years, quarantines have been essential to preventing the spread of infectious diseases. But today’s stay-at-home orders have exacted a devastating social, eco-nomic, and psychological toll on individuals and communities. Small businesses that are closed may never reopen. Tens of millions of people are out of work. Families are struggling to juggle childcare, homeschooling, and working from home. The government’s goal should be to minimize those disruptions—to build a system that can prevent economic disaster, secure supply chains for essential materials, and massively scale up production and testing when needed.

Climate change could pose an even bigger threat. A sustained drought, akin to the one that created the Dust Bowl during the Great Depression, could threaten the global food supply. Rising sea levels, especially when coupled with storms, could flood low-lying cities. Fires already disrupt life in California every year. Climate-induced crises will also lead to population migrations globally and, with them, social unrest and violence. Part of the answer is aggressive action to limit increases in temperature. But in addition, the United States must be able to endure climate shocks when they arise.

Consider also the country’s dependence on technology and the vulnerabilities it entails. Cyberattacks have already targeted U.S. election systems, banks, the Pentagon, and even local governments. The city of Riviera Beach, Florida, was forced to pay a ransom to cybercriminals who had taken over its computer systems; big cities, such as Atlanta and Baltimore, have faced similar attacks. Cyberattacks on the U.S. power grid, akin to the one that led to blackouts in Ukraine in December 2015, could “deny large regions of the country access to bulk system power for weeks or even months,” according to the National Academy of Sciences.

All these challenges will play out at a time of growing rivalry—and especially geoeconomic competition—among great powers. Over the last half century, the United States has been the world’s most powerful economy and has thus been relatively safe from outside economic pressures. But as China’s economic strength grows, that is likely to change. The United States and other democracies have become dependent on China for essential and nonessential goods. China’s ability to exploit that dependence in a future crisis or conflict should be extremely worrisome. A strategy based on resilience would help deter such coercion and minimize the disruption if it does occur.

THE HOME FRONT

One foundational weakness is that American democracy is beset by broken processes and vulnerable to outside meddling. Four years after Russia interfered in the 2016 presidential election, the United States has yet to take serious steps to protect is voting systems from hostile foreign governments and cybercriminals. Comprehensive reforms would include voter-veriied paper ballots and the auditing of voting results. A new agency charged with election security could develop standards and conduct mandatory training for election oicials, as Senator Elizabeth Warren, Democrat of Massachusetts, has proposed. And as the pandemic has made clear, voting should not require a trip to the ballot box on Election Day. Nationwide vote-by-mail and early voting policies would provide resilience during a crisis—and make voting easier and safer in ordinary times, too. Democracy is not resilient if people do not believe in it. Yet Americans’ trust in the government has been stuck near historic lows for years, and surveys show that startling numbers of citizens do not think democracy is important. It is no accident that this loss of faith has coincided with decades of widening economic inequality and a rising consensus that the government is corrupt. Study after study has shown that the U.S. government is far more responsive to the wealthy and big corporations than to ordinary citizens. Only sweeping changes to the rules regulating lobbying, government ethics, corruption, and revolving-door hiring from the private sector can restore public trust. Generations of racist policies—redlining, militant policing, and the failure to regulate predatory lending, to name just three examples— have done much to undermine U.S. resilience, too. A country will have trouble bouncing back when entire communities are disproportionately vulnerable in a crisis and when leaders use divide-and-conquer ideas to stir division and prevent solidarity across races. Fighting for justice is the morally right thing to do—and it makes American society stronger. When it comes to economic policy, an entire generation of American leaders embraced deregulation, privatization, liberalization, and austerity. The result has been staggering inequality, stagnant wages, rising debt loads, an intolerable racial wealth gap, shrinking opportunity, and rising anxiety. Low wages, limited social beneits, and an unafordable and ineicient health insurance system have weakened the country’s resilience by turning any economic shock into a potentially existential threat for many citizens. “Deaths of despair,” such as suicides and overdoses, plague rural areas. Meanwhile, the wealthy and powerful continue to push for and win lower tax rates, which increase their wealth and power and create artiicial political pressure to oppose social infrastructure spending. The damage to American resilience, in ordinary times and especially in a crisis such as the current one, has been considerable, as has the resulting loss of economic opportunity and innovation that could boost the United States’ power. Resilience demands reversing these trends: expanding health care and childcare to all Americans, restructuring the economy so that people gain higher wages, restoring the power of unions, making early education universal, and ensuring that students can graduate from college debt free. All these goals are eminently achievable. Oicials must also provide the basic infrastructure necessary to operate in the modern world. The United States has a long tradition of public investment in infrastructure—from the post oice to rural electriication to the national highway system. In recent decades, however, that legacy has been abandoned. The pandemic has revealed that, whether for telemedicine, remote work, or education, high-speed Internet is an essential utility, just like water and electricity. But nearly a quarter of rural Americans do not have adequate access to it, in part because Internet provision has been left to the marketplace. The country’s inancial infrastructure also needs to be updated. Millions of unbanked Americans are dependent on check cashers to access their hard-earned dollars, which eats into their wages and their time. Both in normal times and during a crisis, the Federal Reserve’s policies are less efective than they could be and favor inancial institutions because the Fed uses banks as intermediaries rather than interfacing directly with consumers. If every person or business instead had access to a no-fee, no-frills account at the Federal Reserve, it could reduce the unbanked population and ensure that everyone could get stimulus payments instantaneously in a crisis.

MARKET FAILURES

Decades of neoliberal capitalism have not made markets more resilient, either. Competition is suffering, and fewer companies are being founded, as monopolists and mega-corporations come to dominate one sector after another. The “shareholder primacy” philosophy and growing pressure from inancialization have turned some corporate leaders into short-term tacticians who use buybacks, leverage, tax strategies, and lobbying to increase their stock prices, even if doing so means greater fragility, volatility, and boom-and-bust economic cycles that lead to big taxpayer bailouts. As some sectors come to depend on just a few firms, prices rise, innovation surfers, and supply chains become fragile. Meanwhile, some companies amass so much power that they distort the democratic process by throwing their weight around in Washington.

Combating these trends will require reforms designed to deconcentrate wealth and power: robust inancial regulations (including a new Glass-Steagall Act, to separate investment banking from retail banking), a more progressive tax structure, stronger unions, and aggressive antitrust enforcement to prevent anticompetitive mergers and to divorce platforms from the commercial activity that traics across them. Such reforms, especially when applied to the financial, telecommunications, and technology sectors, would discourage business models that increase systemic risk and make individual companies “too big to fail.” These reforms would also make it harder for wealthy individuals and well-funded special interest groups to capture the government.

For decades, economic-policy makers also failed to think seriously about a deliberate, national-level industrial policy, deeming it impermissible even as they allowed it in the form of a host of sector-speciic tax benefits and regulatory policies. A coherent industrial strategy would enable leadership and innovation in areas critical to the challenges of the future, including clean energy and technologies such as artificial intelligence and robotics. It would also decrease the risk of supply chain disruptions, which can lead to public health and economic disasters, as the shortages of ventilators and personal protective equipment during the pandemic have shown.

#### Resilient supply chains enable repurposing in a future pandemic – solves disease spread

GTR 21 – Global Trade Review, trade finance media company, “The role of trade finance in the systemic response to supply chain resilience,” 12/8/21, https://www.gtreview.com/supplements/gtr-scf-2021/role-trade-finance-systemic-response-supply-chain-resilience/

The importance of assuring the resilience of “strategic suppliers” – whose inputs are critical to the conduct of trade in a particular supply chain – is increasingly appreciated by senior executives, and was brought into sharp focus during the tragic tsunami in Japan, where disruptions at a single supplier brought an entire supply chain to a halt. Beyond this, the Covid crisis has highlighted the importance of agility and the ability to quickly re-tool, or shift from “brick and mortar” distribution to online sales, and more broadly, to decisively digitise operations and transactions.

Covid-19 has illustrated too that a resilient supply chain can be repurposed in times of crisis, to be responsive to the urgent needs of communities and society. For example, small businesses and global luxury brands have set aside at least some of their sourcing and production capability to manufacture masks and other essential products, for reasons of social responsibility and contribution.

There are concerns that Covid-19 could be the first of a series of pandemics we may face, and at the same time, climate change is commonly cited as an urgent and existential threat, in particular to global freight as sea levels are transformed. Perhaps less intuitively, events over the past five years in particular have shown with striking clarity that it is no longer sufficient for corporates – or their financiers – to think of supply chain resilience as being limited to commercial considerations. Geopolitics such as the US-China trade tensions must enter the discourse around supply chain resilience. Geopolitics and the “national interest” continue to influence company sourcing decisions as well as foreign investment choices. Supplier and country-level concentration risk is now at the heart of supply chain management and financing deliberations, even as practitioners and market observers acknowledge that the outcome will be some form of “re-globalisation” and not a full-scale reversal of globalisation.

#### Future pandemics cause nuclear war

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 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 COVIDinfected 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?

#### Link alone turns the case – hampers enforcement.

Rory Van Loo 18, Associate Professor, Boston University School of Law and Affiliated Fellow, Yale Law School Information Society Project, “Making Innovation More Competitive: The Case of Fintech,” UCLA Law Review, 232, 2018, hein.

The DOJ and FTC options have several shortcomings. Unlike the CFPB, they lack substantial financial expertise. Both entities cover many other industries. If a financial bureau were housed within the existing competition agencies, financial competition might receive inadequate internal independence. Cuts to antitrust resources, or shifts in policy, would affect financial competition. If other industries needed attention, financial competition resources could be redirected. In the alternative, if the financial competition bureau were completely independent of the current competition offices, the co-location synergies would be less, reducing the benefits of housing it in those agencies. Nor do either of these agencies have strong rulemaking cultures,275 which could inhibit even a separate financial bureau’s rulemaking activities.

### 2NC – AT: UQ

#### Their evidence is from December – far too old, is talking about tech suits, not supply chain enforcement that’s happening NOW in march.

#### DOJ resources high now, but it’s carefully tailored to their antitrust enforcement priorities.

Murphy et al. ‘3/17 [Justin P. Murphy, Paul M. Thompson, Han Cui, Joshua W. Eastby, Anthony S. Ferrara, Alexandra Lewis; partners in the law firm of McDermott Will & Emery LLP; 3/17/22; “Cartel Corner | March 2022”; <https://www.natlawreview.com/article/cartel-corner-march-2022>; National Law Review]

As we move into the second quarter of 2022, one thing is abundantly clear: The DOJ’s aggressive criminal antitrust enforcement will only continue to increase. The Division ended the last fiscal year with 146 open grand jury investigations—the most in 30 years.[11] President Biden has made competition a priority for his administration.[12] Attorney General Garland has specifically identified “reinvigorating antitrust enforcement” as at the center of the DOJ’s mission.[13] In its FY 2022 budget request, the DOJ requested a 9% increase in spending, amounting to an additional $200 million.[14]

At the same time, there seems to be a shift in tone and approach at the Division. The Division has started to push the boundaries of criminal antitrust enforcement. As noted above, it has pursued naked no-poach agreements criminally, something that it had never done prior to 2020. In recent remarks to the ABA Institute on White Collar Crime, Richard Powers, the US Deputy Assistant Attorney General for Criminal Enforcement in the Division, noted that the Division is also prepared to criminally charge individual executives for violations of Section 2 of the Sherman Act, the provision that prohibits market monopolization—another exceedingly aggressive and controversial approach and something that the Division has not done in decades. To cap it off, the Division has shown a tendency, of late, to take cases to trial, rather than negotiate resolutions. And, it has hired a number of prominent Criminal Division alumni, several with significant trial experience, to help with this effort. All of this suggests that the Division is prepared to stretch the law in places and go the distance to pursue what it views as criminal violations of the antitrust laws.

#### They’re aggressively ramping up active investigations now.

Jay & Dillickrath ‘3/8 [A. Joseph & Thomas; white collar defense and government investigations partner in the firm's Washington, D.C. office; partner in the Antitrust and Competition Practice Group at Sheppard, Mullin, Richter & Hampton LLP; 3/8/22; “Executives Beware: DOJ Antitrust Division is Taking a Hard Look at a Wide Spectrum of Potential Criminal Violations”; <https://www.governmentcontractslawblog.com/2022/03/articles/department-of-justice/executives-beware-doj-antitrust-division-is-taking-a-hard-look-at-a-wide-spectrum-of-potential-criminal-violations/>; Sheppard, Mullin, Richter & Hampton]

On March 2, Deputy Assistant Attorney General Richard Powers laid out a significant and aggressive criminal enforcement agenda for the Antitrust Division of the Department of Justice. While speaking at the the ABA National Institute on White Collar Crime in San Francisco, CA, Powers began his remarks by noting that the Division’s Criminal Section currently had 18 indicted cases against 10 companies and 42 individuals, including 8 CEOs or Presidents. DAAG Powers also noted that the Section had 146 open grand jury investigations – more than at any time in the last thirty years and “expect[ed] to stay busy this year and beyond.”

DAAG Powers’ remarks came at a conference during which various government enforcement officials, including the U.S. Attorney General, focused not only increased white collar enforcement generally, but specifically on charges against individual defendants. DAAG Powers went further, noting that the Section was “willing to bring tough cases that are consistent with the facts and law,” even if it doesn’t win all of those cases. As DAAG Powers explained, “if we win every case, we are not being aggressive enough.” A defense lawyer on the panel summed up DAAG Powers’ remarks: “Be afraid, be very afraid,” to the nervous laughter of audience primarily composed of defense lawyers.

DAAG Powers’ speech also touched on other areas of focus for the Section. For example, Powers cited the S international reach of the Section’s enforcement and investigation efforts, noting that international cases, where the U.S. has an interest, will continue to be a priority for the Section.

DAAG Powers also noted the continuing significance of labor market investigations as a continuing priority, particularly with criminal enforcement given So-called “no poach,” “no hire,” or even “no solicit” agreements to harm individual Americans and reduce wages and livelihoods. To this end, DAAG Powers reported 6 currently indicted cases and noted that illegal labor market agreements need not be limited to agreements with traditional competitors, but could be extended to agreements with anyone; all such agreements are, in the government’s view, illegal.

DAAG Powers also pointed to two additional areas of targeted focus; first, a new supply chain initiative (in concert with the FBI) to detect, identify, investigation and, where appropriate, prosecute companies and individuals who seek to profit off of the supply chain crisis; and, the Procurement Collusion Strike Force formed in 2019. In connection with the Strike Force, DAAG Powers pointed to the use of data analytics in identifying potential leads for investigation of bid rigging and other collusive conduct in federal, state, and local procurement. DAAG Powers noted that, since 2019, there have been 50 grand jury investigations opened and that he expected that number could rise with the President’s infrastructure bill.

In closing, DAAG Powers reiterated that the Section was focused not just solely on corporate criminal cases, but especially on individual prosecutions. Echoing sentiments of other enforcement officials – and judges – at the Institute, there is no better deterrent in the eyes of the U.S. Department of Justice than individual liability and sending guilty executives to jail.

#### Actively subpoenaing companies now.

Whiteman ‘3/16 [Alex; 3/16/22; “Maersk subpoenaed as part of US probe into 'supply chain collusion'”; <https://theloadstar.com/maersk-subpoenaed-as-part-of-us-probe-into-supply-chain-collusion/>; The Loadstar]

Maersk has told The Loadstar its subpoena by the US Department of Justice (DOJ) is tied to an “ongoing investigation into supply chain disruption”.

However, with no official announcement or response from the DOJ to requests for comment, there is scant detail on why the world’s second-largest container line has been subpoenaed.

The carrier’s North America spokesperson, Tom Boyd, confirmed to The Loadstar that it was linked to the investigation, adding: “We have not seen evidence of any actual or alleged wrongdoing on the part of Maersk, and will continue to cooperate with the DOJ as they continue their investigation.”

It is not known if other carriers have been subpoenaed, but the news underlines renewed interest on the container shipping sector, with the Biden administration known to be keen on challenging a sector that saw historic rate increases amid the pandemic.

Indeed, in his State of the Union address this month, President Biden underscored his plans to remove shipping’s exemption from competition law. Furthermore, the US and its Five Eyes partners – Australia, Canada, New Zealand and the UK – announced that they would be widening their intelligence gathering to investigate supply chain collusion.

The move is intended to “put firms on notice” over suspected anti-competitive behaviour, collusion and “using Covid as an opportunity for cartel conduct”.

#### They’re cooperating internationally and effectively rededicating data analytics expertise against supply chain collusion.

Nassikas et al. ‘3/3 [John N. Nassikas, Andre Geverola, Wilson D. Mudge; partners at Arnold & Porter LLP; 3/3/22; “Holy Monopoly: DOJ Antitrust Ready to Revive a Criminal Arrow in Its Quiver”; <https://www.arnoldporter.com/en/perspectives/blogs/enforcement-edge/2022/03/holy-monopoly-doj-antitrust-ready-to-revive>; Arnold & Porter]

Powers began his panel presentation by noting his division’s “historic level” of trials and investigations the past year, including 18 indicted cases against 10 companies and 42 individuals and 146 grand jury investigations (the most in 30 years). He also cited DAG Lisa Monaco’s October pronouncement at the last WCC in Miami about needing to be aggressive in bringing cases where the government will not always win. We support prosecutors who “lean in” and pursue such cases with higher litigation risk, he said, and “we will have their backs” if they lose. Powers acknowledged that in comparison with the slew of domestic cases, there has been a diminution of international cartel cases, for a variety of reasons he did not elucidate. He said international cartel cases remained a priority, given the big impact such price fixing and collusion have on the American economy. One by-product of the pandemic is that international enforcers on Zoom had more time to stay in touch and coordinate future efforts. Powers reminded the audience that only a few weeks ago, on February 17, DOJ announced a supply chain initiative with the FBI to create a working group with the United Kingdom, Canada, New Zealand, and Australia to focus on collusive actions to keep prices high even when supply chain issues have dissipated. So stay tuned on the international front, where more cases seem likely to develop.

Powers highlighted two other areas of DOJ focus. First, he described the Procurement Collusion Strike Force (PCSF), launched in 2019 to punish procurement collusion at the federal, state, and local levels. Twenty-two USAOs are currently involved, along with seven federal investigatory agencies, 25 agency OIGs (out of 70), and international partners. He said one prong of the PCSF’s work has been to train over 17,000 agents and inspectors across the country and world on red flags of collusive activity. The second prong is then to investigate and prosecute meritorious cases. To aid the enforcement effort, the government increasingly is using data analytics to see signs of collusion, similar to the way healthcare fraud strike forces for years have been mining data for aberrational levels of testing and billing. Mekki in her talk also cited the “trove of data” that exists in the government bidding process and that will help agents and prosecutors find and develop their cases. In her final comments, Mekki noted DAG Monaco’s exhortation to “be bold,” and she suggested it is energizing for her division to have an Attorney General, Merrick Garland, with deep experience in antitrust law. So, she concluded, her division has the high-level support to be smart, creative, righteous, and bold in their cases, both civilly and criminally.

### 2NC – AT: Morale

#### This is just a broad description of the DOJ having less moral relative to other agencies. It does not have a UQ argument that it is actively hampering enforcement. TO win this turn, they need to win supply chain cases now will fail because there is low morale. Their evidence is far too old and does not assume existing supply enforcement which is effective now.

#### No morale issues – it’s a top priority for the DOJ.

Murphy et al. ‘3/17 [Justin P. Murphy, Paul M. Thompson, Han Cui, Joshua W. Eastby, Anthony S. Ferrara, Alexandra Lewis; partners in the law firm of McDermott Will & Emery LLP; 3/17/22; “Cartel Corner | March 2022”; <https://www.natlawreview.com/article/cartel-corner-march-2022>; National Law Review]

Given the long-running nature of the investigations involving broiler chickens and commercial flooring, the change in the US presidential administration seems to have only increased the DOJ’s scrutiny into industries affecting consumer goods. Looking ahead, consumer products will likely remain one of the DOJ’s top priorities. Indeed, while the Biden administration recognizes the strain the pandemic has put on supply chain issues, resulting in higher prices in consumer goods, the White House has also placed the blame on “another culprit”: “dominant corporations in uncompetitive markets taking advantage of their market power to raise prices.”

The DOJ recently announced an initiative to deter, detect and prosecute those who would exploit supply chain disruptions to engage in collusive conduct. As part of that initiative, the DOJ is prioritizing any existing investigations where competitors may be exploiting supply chain disruptions for illicit profit and is undertaking measures to proactively investigate collusion in industries particularly affected by supply disruptions. The DOJ is also working with authorities in other countries to detect and combat global supply chain collusion.

Those who work in the consumer goods space can expect additional scrutiny and enforcement from the DOJ in the months and years to come, especially in industries that have experienced higher consumer price increases. It is therefore important to have robust compliance programs, including appropriate employee training, in place to address and provide guidance on these issues.

#### They’re prioritizing supply chain disruption when applying antitrust scrutiny now.

Carson et al. ‘3/9 [Dylan Carson, Kathy Osborn, David Yoshimura; partners with Faegre Drinker Biddle & Reath LLP; 3/9/22; “DOJ and FBI Prioritize Antitrust Investigations of Price-Fixing and Collusive Schemes Stemming From Supply Chain Disruptions”; <https://www.jdsupra.com/legalnews/doj-and-fbi-prioritize-antitrust-2533670/>; JDSupra]

With consumer prices increasing across the economy, the U.S. Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) announced on February 17, 2022, a new joint initiative designed to identify and prosecute companies and executives who try to exploit the global supply chain disruptions caused by the COVID-19 pandemic in order to fix prices and harm consumers. The announcement by DOJ and FBI was made in coordination with a new global working group of competition enforcers from the United Kingdom, Canada, Australia and New Zealand, designed to put companies on notice that using legitimate supply chain challenges as a cover for illegal collusion will “face the full force of the law.”

The new DOJ and FBI supply chain initiative comes at a time when DOJ has sought a significant increase in funding for corporate criminal enforcement efforts. On March 3, 2022, in a speech at the ABA White Collar Conference, Attorney General Merrick Garland announced that DOJ is seeking funding to hire 120 additional attorneys and 900 FBI agents to support white collar criminal investigations and prosecutions such as antitrust crimes. This significant increase in enforcement resources signals, AG Garland noted, that “enforcement activity will only accelerate as we come out of the pandemic.” Accordingly, companies considering price increases to counter the effects of supply chain disruptions, especially firms with multinational sales and operations, should plan for enhanced antitrust scrutiny and focus on antitrust law compliance.

The “Great Supply Chain Disruption”

The COVID-19 pandemic has taken a huge toll on the international supply chain for goods and materials. Throughout the world and at every point in the supply chain — including manufacturing plants, air and sea freight, trucking, warehouses, wholesalers and retailers — companies have seen significant new constraints and increasing costs in the movement of goods and materials. In part because of severe shortages of goods and labor in the supply chain (coupled with booming consumer demand), consumer prices have surged recently.

The DOJ Warns Companies About Collusion

In this context of extraordinary price inflation, the Antitrust Division has put companies on notice that it intends to focus on bad actors who exploit the supply chain issues faced by economies across the globe in order to violate the antitrust laws. DOJ notes that it will focus on a variety of industries “particularly affected” by “transportation constraints, disruptions to routine business operations and difficulty in obtaining raw materials… ranging from agriculture to health care.”

Preparing for Extra Antitrust Scrutiny

With the new global initiative, DOJ and FBI have clearly set out their intent to “investigate schemes that violate our antitrust laws and stifle our economic recovery.” The enforcement agencies acknowledge, however, that “many individuals and businesses across various sectors in the economy have responded and will continue to respond to supply chain disruptions caused by the pandemic with laudable ingenuity — bringing goods to communities in need, expanding existing capacity and developing products and services to meet new needs.” Indeed, the antitrust laws are not intended to limit a suppliers’ unilateral response to market forces like scarcity.

But companies that pass through increased overhead costs because of genuine supply chain disruptions may still be swept up in the new initiative in an enforcement environment where U.S. antitrust enforcers have been encouraged to investigate whether antitrust violations are causing increased inflation across the economy.

For companies contemplating price increases (especially in markets across the globe), DOJ’s initiative places a premium on carefully documenting the nature and effect of supply chain disruptions and attendant cost increases, as well as heightened emphasis on antitrust risk assessment and robust antitrust compliance programs.

The antitrust laws are nuanced and complex, and their application to particular business situations is a fact-specific inquiry. Businesses concerned about how recent developments will impact their risk of violating the antitrust laws are strongly advised to consult with legal counsel.

#### The DOJ recently elevated supply chain collusion as a top antitrust priority.

Lee et al. ‘2/24 [Craig Y. Lee, Leslie W. Kostyshak, Perie Reiko Koyama; 2/24/22; “Supply Chain Under Scrutiny: DOJ to Step Up Investigation of Collusive Activity Relating to Supply Chain Disruptions”; <https://www.lexology.com/library/detail.aspx?g=b05f3e1a-b8f0-469f-9edd-7c4a148d5763>; Lexology]

On February 17, 2022, the Antitrust Division of the US Department of Justice announced an initiative to “deter, detect and prosecute those who would exploit supply chain disruptions to engage in collusive conduct.” DOJ’s announcement comes in the wake of supply reduction seen throughout the COVID-19 pandemic.

The global pandemic has disrupted business operations, tightened the labor market, constrained transportation, and delayed the procurement of raw materials. DOJ has made clear that the economic realities of the pandemic cannot be used as justification to circumvent the antitrust laws. DOJ identified price and wage fixing, bid rigging, and market allocation schemes as ongoing areas of prosecution, including criminal investigations related to the supply chain.

“Temporary supply chain disruptions should not be allowed to conceal illegal conduct,” said Assistant Attorney General Jonathan Kanter of the Antitrust Division. “The Antitrust Division will not allow companies to collude in order to overcharge consumers under the guise of supply chain disruptions.”

Recent international and cross-agency partnerships have signaled the intent of the Biden Administration to promote and enforce competition vigorously across many sectors. DOJ has formed a working group with global competition partners in Australia, Canada, New Zealand, and the United Kingdom to share intelligence and combat anticompetitive schemes. In July 2021, DOJ also signed a Memorandum of Understanding with the Federal Maritime Commission to collaborate in enforcing competition in the maritime industry.

Cartel enforcement related to the supply chain is not an entirely new area of interest for the federal government. For more than a decade, DOJ has actively investigated and prosecuted cartel activity in supply chains.

For example, from 2006 until 2011, DOJ prosecuted global airlines and their executives for fixing rates and surcharges on international air cargo shipments. At least 22 airlines and 21 executives were charged, and more than $1.8 billion in criminal fines were assessed against the defendants.

Between 2008 and 2013, DOJ also prosecuted US shipping executives in the coastal water freight industry for rigging bids, fixing prices, and allocating the market for customers transporting goods between the continental United States and Puerto Rico. As a result, the water freight carriers were ordered to pay more than $46 million in criminal fines. Several executives were convicted and sentenced to prison.

DOJ prosecuted ocean shippers and their executives between 2014 and 2017 for fixing prices, rigging bids, and allocating customers in the international ocean shipping industry for roll-on, roll-off cargo, a method used to ship vehicles and agricultural equipment. The shippers were ordered to pay more than $136 million in criminal fines, and several executives received prison sentences.

DOJ has also prosecuted companies and executives in the freight forwarding industry, which involved coordinating and managing the shipment of goods between destinations. In 2010 and 2011, DOJ prosecuted several international freight forwarders for a price fixing conspiracy, leading to imposition of more than $100 million in criminal fines. Again in 2018 and 2019, DOJ prosecuted freight forwarders for a conspiracy to fix prices. Several executives were sentenced to prison for this conduct.

In light of DOJ’s history in prosecuting anticompetitive conduct in the supply chain—as well as the recently announced enforcement initiative—business leaders should be vigilant about avoiding and detecting any conduct that could invite scrutiny, as well as recognize signs that their businesses could be potential victims of collusive activity. As such, one should undertake a thorough review of their antitrust compliance policies and training, monitor developments closely, and seek legal guidance before entering into any agreements with competitors.

#### The link outweighs the turn – the DOJs morale will always go back and forth – but the detemrinign factor

#### Resources are limited – new antitrust trades off with supply chain investigations.

Koenig ‘1/26 [Bryan; citing Jonathan Kanter, the U.S. Department of Justice's Antitrust Division chief; 1/26/22; “Limited Resources Will Test DOJ Preference For Merger Suits”; <https://www.law360.com/articles/1458660/limited-resources-will-test-doj-preference-for-merger-suits>; Law360]

Kanter, the assistant attorney general for antitrust, said Monday that the Antitrust Division should focus on challenging anti-competitive deals outright because divestitures and other remedies often aren't enough to protect consumers.

His outlook aligns with a Biden administration antitrust policy at the DOJ and the Federal Trade Commission that views enforcement in recent decades as too permissive of anti-competitive conduct and tie-ups and maintains that divestitures and other settlement deals enforcers reached with merging parties to let deals go through did little to blunt the harm to competition.

Even so, a stated preference for challenges over consent decrees clearing otherwise problematic mergers might not translate to a major shift away from the status quo, in which antitrust enforcers file far more consent decrees than courtroom challenges.

Some antitrust professionals say Kanter, known as a major critic of Google, may have a longer-term strategy: setting up a court case that will result in a favorable court precedent for enforcers or prompt congressional action in the face of judicial rulings clearing unpopular transactions. In the short term, they say, enforcers just don't have the financial resources and manpower to bring about a dramatically higher number of challenges.

"Litigation is a really resource-intensive endeavor," said Kevin Hahm, a partner with Hunton Andrews Kurth LLP and a former FTC official.

Lawsuits also often pit the enforcers, which have argued for years that they're underfunded, against deep corporate pockets that public agencies can be hard-pressed to match.

"If Congress threw a lot more money at the agencies ... then yes, I think I'd expect to see more challenges," said Joel Mitnick, a partner at Cadwalader Wickersham & Taft LLP and a former FTC trial attorney.

Until that happens, however, agency resources are an important consideration, said Craig Minerva, counsel at Axinn Veltrop & Harkrider LLP and a former DOJ attorney "Litigating a case certainly requires more resources than settling a case pre-litigation."

David P. Wales, a partner with Skadden Arps Slate Meagher & Flom LLP and former senior official with both enforcement agencies, said they had "natural constraints" on the number of cases they can bring. "They have to pick their cases carefully under the current law," he added.

In Monday's remarks, Kanter told the antitrust law section of the New York State Bar Association that he wanted to bring more challenges, in part to generate court precedent that settlements do not create. According to Mitnick, generating more precedents could be beneficial to antitrust practice by bringing more certainty to competition law.

There's "a large body of consent decree lore," Mitnick said. "The lore is not binding. So it would be nice to have the clarity of litigated case decisions."

Courts have become increasingly skeptical of antitrust enforcement, and critics in and out of the agencies argue that enforcers should be more willing to take risks to secure clarity from the courts and Congress, a call Kanter picked up in his speech.

But Wales said that even if agencies were willing to lose, "you've got to be very careful in the cases you choose to litigate."

Jonathan M. Grossman, co-chair of Cozen O'Connor's antitrust practice, said the DOJ might be "playing a long game," working to either change court precedent or force congressional intervention in the face of a loss. "Congress is considering some changes that would make a difference in both merger and non-merger enforcement," Grossman said.

In the more immediate future, Grossman and others said the preference for challenges over settlements would probably not lead to an especially dramatic shift. Some antitrust professionals instead expect an immediate change only on the margins, with the DOJ only slightly reducing the number of consent decrees it signs and challenging a few more transactions considered problematic but may appear harder to successfully contest.

"There are only so many cases that get to that point a year," Grossman said of the difference between settling and challenging.

Even a dramatic shift toward challenges over settlements would not mean the end of consent decrees, with Kanter himself saying they can work in certain limited circumstances.

University of Pennsylvania Law School Professor Herbert Hovenkamp said deals will probably be signed "particularly where the competitive threat is isolated and can easily be severed"; for example, in cases where competitors have overlap only in specific geographical areas.

Kanter's remarks did not come in a vacuum. They follow on the heels of the first move by the FTC and DOJ to dramatically overhaul their merger guidelines and are concurrent with a broader reconsideration at the agencies and on Capitol Hill of the power of antitrust enforcers to rein in corporate power, especially that wielded by major online platforms.

The FTC has already shown a willingness to challenge deals it may have cleared in the past, going after a number of recent vertical transactions despite the parties' offering behavioral remedies. "Historically, those types of remedies would have had a high likelihood of being accepted," Hahm said.

A heavier emphasis on challenges over settlements could also put into greater play the fixes that companies themselves propose and that have become the centerpiece of several high-profile merger cases in recent years, where courts are convinced that those fixes adequately safeguard competition. According to former longtime DOJ attorney Jack Sidorov, now a senior attorney with Lowenstein Sandler LLP, how future courts will handle efforts to "litigate the fix" remains an open question.

"It may not just be in the agency's hands if they accept a settlement or not," he said.

The shift away from settlements, according to Hovenkamp, was also telegraphed in recent tweaks to enforcers' remedies manual, issued in September 2020 by the Trump-era Antitrust Division, which was already showing a swing towards a more aggressive antitrust enforcement posture.

"That statement does disfavor settlements," Hovenkamp said.

Baker Botts LLP partner Taylor M. Owings, former chief of staff under Kanter's Trump-era predecessor, sees in Kanter's new remarks more of a continuation of the remedies manual and broader policies than something new.

"He's hitting on common wisdom. But he's trying to do so in a way that demonstrates that he is not afraid to litigate," Owings said.

In seeking public comment to help shape guidelines on how the agencies review horizontal tie-ups between direct competitors and vertical mergers between companies on different points in the supply chain, the FTC and DOJ also sent strong signals of their continued desire to push back on corporate concentration.

#### Expanding the rule of reason unduly burdens federal agencies – high costs, delays, and complex litigation sap resources.

Chopra & Khan ’20 [Rohit; Commissioner @ Federal Trade Commission; and Lina; Chairperson @ Federal Trade Commission, JD @ Yale Law School; “The Case for “Unfair Methods of Competition” Rulemaking,” *The University of Chicago Law Review* *87*(2), p. 357-380; AS]

The current approach to antitrust also makes enforcement highly costly and protracted. In 2012, the American Bar Association (ABA) published the report of a task force that sought to “study ways to control the costs of antitrust litigation and enforcement.”9 The task force, the authors explained, was “a response to concerns” about both “the costs imposed on businesses by the American system of antitrust enforcement” and “the length of time required to resolve antitrust issues both in litigation and in enforcement proceedings.”10 Out-of-control costs undermine effective antitrust enforcement by agencies and private litigants, but may advantage actors who profit from anticompetitive practices and can treat litigation as a routine cost of business. Professor Michael Baye and Former Commissioner Joshua Wright have noted that generalist judges may be ill-equipped to independently analyze and assess evidence presented by economic experts.11 Because determining the legality of most conduct now involves complex economic analysis, courts have effectively “delegate[d] both factfinding and rulemaking to courtroom economists,” making courtroom economics “not just inevitable but often dispositive.”12 In fact, paid expert testimony now is often “the ‘whole game’ in an antitrust dispute.”13

Paid experts are a major expense. Some experts charge over $1,300 an hour, earning more than senior partners at major law firms.14 Over the last decade, expenditures on expert costs by public enforcers have ballooned.15 In a system that incentivizes firms to spend top dollar on economists who can use ever-increasing complexity to spin a favorable tale, the eye-popping costs for economic experts can put the government and new market entrants at a significant disadvantage.16 Another component of the burden is that antitrust trials are extremely slow and prolonged.17 The Supreme Court has criticized antitrust cases for involving “interminable litigation”18 and the “inevitably costly and protracted discovery phase,”19 yielding an antitrust system that is “hopelessly beyond effective judicial supervision.”20 That it can easily take a decade to bring an antitrust case to full judgment means that by the time a judge orders a remedy, market circumstances are likely to have outpaced it.21 The same 2012 ABA report suggested that lengthy, costly litigation may be contributing to reduced government-enforcement efforts over time relative to the expansion of the US economy.22

#### Yes tradeoff – scarce resources means the DOJ can’t stop other anticompetitive practices.

Leemore Dafny 21. Bruce V. Rauner Professor of Business Administration at the Harvard Business School and the John F. Kennedy School of Government, and former Deputy Director for Healthcare and Antitrust in the Bureau of Economics at the Federal Trade Commission. "The Covid-19 Pandemic Should Not Delay Actions to Prevent Anticompetitive Consolidation in US Health Care Markets". ProMarket. 6-10-2021. https://promarket.org/2021/06/10/covid-pandemic-consolidation-pandemic-monopoly/

However, as Commissioner Rebecca Slaughter, the current acting FTC chair has noted, these efforts have “faced resistance, with two of these recent victories only coming after district court setbacks.” Blocking a horizontal merger, even when it appears to be an “open and shut” case to a layperson, requires extraordinary resources, including large investigation and litigation teams, as well as economic and other subject matter experts who must analyze the transaction, lay out the case for blocking the merger, and rebut arguments advanced by Defendants’ attorneys and experts.

To pick a recent example, consider the proposed merger of two hospital systems in the Memphis area, which the FTC filed to block in November 2020. Based on the FTC’s complaint, the merger would have reduced the number of competing systems from four to three and created a system with over a 50 percent market share. In the face of litigation, the parties abandoned the deal—consistent with this being a straightforward case. Although the FTC prevailed without a trial, it took nearly a year from the merger announcement to the abandonment. Over that period, the FTC likely devoted thousands of staff hours to the investigation and lawsuit and expended substantial taxpayer resources on expert witnesses.

The higher the payoff from the merger for the merging parties—and the payoff in the case of an increase in market power can be substantial—the greater the incentive for defendants to invest extraordinary resources to fight a merger challenge. Even if there is only a middling (and in some cases, small) chance of getting a merger through, it may well be in the parties’ interest to see if they can prevail, absorbing the agencies’ (i.e., DOJ and FTC’s) scarce resources in that attempt and preventing them from devoting those resources to investigate other transactions or anticompetitive practices.

#### Resource constraints force the DOJ to choose which antitrust actions to pursue.

Nicol Turner Lee 21. Senior Fellow - Governance Studies Director - Center for Technology Innovation, Brookings, with Caitlin Chin – Research Analyst, Center for Technology Innovation - The Brookings Institution, 7/8/21. “The debate on antitrust reform should incorporate racial equity.” https://www.brookings.edu/blog/techtank/2021/07/08/the-debate-on-antitrust-reform-should-incorporate-racial-equity/

Last year, then-acting FTC Chair Rebecca Kelly Slaughter put forward an argument that U.S. enforcement agencies should consider antitrust statutes as “a tool for combatting structural racism” by prioritizing competition enforcement in highly concentrated industries where people of color are marginalized. These enforcement decisions are especially consequential given the resource constraints that federal antitrust agencies face. According to Michael Kades of the Washington Center for Equitable Growth, appropriations for the FTC and Antitrust Division of the Department of Justice (DOJ) decreased 18% from 2010 to 2018 when adjusting for inflation. These constraints force federal enforcement agencies to choose which antitrust actions to pursue or abstain from; each active choice potentially impacts marginalized communities within the related sector.

#### New antitrust cases shift staff and resources away from big-tech investigations.

Juan A. Arteaga et al. 20. Partner @ Crowell Moring, with Alexis J. Gilman, William Randolph Smith, and Rosa M. Morales, 8/25/20. “DOJ Antitrust Division Announces Organizational Changes Focused On Increasing Prosecution of Consent Decree Violations and Civil Conduct Offenses.” https://www.crowell.com/NewsEvents/AlertsNewsletters/all/DOJ-Antitrust-Division-Announces-Organizational-Changes-Focused-On-Increasing-Prosecution-of-Consent-Decree-Violations-and-Civil-Conduct-Offenses

While reports indicate that the Antitrust Division specifically and DOJ more generally have dedicated significant resources to the ongoing “Big Tech” antitrust probes, the Division’s civil conduct investigations have traditionally taken somewhat of a backseat to its merger investigations because conduct investigations are not subject to any deadlines. Consequently, when faced with a significant increase in the number of merger investigations or the demands of such investigations, the Antitrust Division has often shifted staffing and resources away from its civil conduct matters to its merger matters, which must be completed within the statutory or negotiated timeframe. This resource strain creates the risk that civil conduct investigations will unnecessarily linger for extended periods, thereby subjecting companies to the uncertainty, costs, and stress associated with having a DOJ investigation hanging over their heads. Conversely, this resource strain creates the risk that potentially meritorious civil conduct investigations will be closed prematurely or unnecessarily narrowed in scope.

#### They cause the DOJ to walk away from litigating other antitrust actions.

Bernard (Barry) A. Nigro Jr. et al 21. chair of the Global Antitrust and Competition Department for Fried Frank, Principal Deputy Assistant Attorney General for the DoJ’s Anitrust Division (2019-2020), former Deputy Director for the Federal Trade Commission's Bureau of Competition, and Nathaniel L. Asker, partner in the Antitrust Department, resident in Fried Frank's New York office, and Aleksandr B. Livshits, special counsel in the Antitrust Department, resident in Fried Frank's New York office, where he is a member of the Antitrust and Competition Practice, “Managing Antitrust Risk in the Biden Administration.” Fried Frank. 1/5/2021. <https://www.friedfrank.com/siteFiles/Publications/FFAntitrustAggressiveAntitrustEnforcement01052021.pdf>

Further, despite a record number of litigated cases, the budget at the antitrust agencies is insufficient to match the rhetoric of more enforcement. The DOJ had 25% fewer full-time employees in 2019 than it had 10 years earlier9 and the FTC recently imposed a hiring freeze. With limited resources, the agencies are forced to make important tradeoffs in deciding what matters to challenge, settle, or walk away from. Indeed, Commissioner Wilson reportedly voted against bringing a lawsuit to block CoStar’s acquisition of RentPath, in part, because of limited FTC resources.10 Although the agencies will receive a modest budget increase for the current fiscal year,11 it is far short of what some think is needed.12 As antitrust enforcement has become a bipartisan issue, a significant increase in the antitrust agencies’ budgets in the future is likely.

#### The plan forces them to drop other investigations

David Mccabe 18. Writer @ Axios. "Mergers are spiking, but antitrust cop funding isn't". Axios. 5-4-2018. https://www.axios.com/antitrust-doj-ftc-funding-2f69ed8c-b486-4a08-ab57-d3535ae43b52.html

Why it matters: A wave of mega-mergers touching many facets of daily life, from T-Mobile’s merger with Sprint to CVS’s purchase of Aetna, will test the Justice Department's and Federal Trade Commission’s ability to examine smaller or more novel cases, antitrust experts say.

What they’re saying: “You have finite resources in terms of people power, so if you are spending all of your time litigating big mergers … there might be some investigations where decisions might have to be made about which investigations you can pursue,” said Caroline Holland, who was a senior staffer in DOJ’s Antitrust Division under President Obama and is now a Mozilla fellow.

### Link – AT: We Give More Resources

#### The plan cannot fiat additional resources – the aff only gets control over things that are explicitly in their plan text – questions of follow-up action or resources are not in the plan because the aff wants to get the strategic benefit of avoiding PIC’s and DA links, but that means they must suffer the strategic cost of having to debate the results of the plan

#### It’s also not normal means – all of our link cards prove that the FTC has been given more responsibilities but their resources have not kept up, which demonstrates that the plan would not come with more money attached

#### Even if they can fiat additional resources and enforcement actions, backlash from courts, Congress, and corporations make those additional resources ineffective

Jones 20 – Alison Jones, Professor of Law at King's College London and solicitor at Freshfields Bruckhaus Deringer LLP, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” *The Antitrust Bulletin*, Volume 65, Number 2, 2020, pp. 227-255

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

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

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

that its aggressive litigation program provoked.80

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

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

The discussion in this section identifies likely impediments to the implementation of ambitious reforms, either through litigation (under the present-day regime) or legislation. These include judicial resistance to broader applications of the Sherman, Clayton, and FTC Acts, the complexities of designing effective remedies, the uncertainty of long-term political support for ambitious reforms and the possibilities for political backlash once agencies begin prosecuting major new cases, and the complications, and resistance, that confronts any effort in the United States to make legislative change.

#### Waving the magic wand of fiat to dismiss implementation questions side-lines technical details which is precisely why antitrust reforms tend to fail – these are essential questions in antitrust discussions that the aff should be forced to debate

Jones 20 – Alison Jones, Professor of Law at King's College London and solicitor at Freshfields Bruckhaus Deringer LLP, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” *The Antitrust Bulletin*, Volume 65, Number 2, 2020, pp. 227-255

In this article, we do not debate the condition of competition in the U.S. economy, nor do we assess the substantive merits of the respective measures proposed to correct the market and policy deficiencies identified. Instead, we focus on a less noticed issue—the policy implementation challenges that stand between the soaring reform aspirations and their effective realization in practice. We thus take the reform recommendations—presented in scholarly papers, blue-ribbon studies, and in popular essays—at face value, and ask what legislators and policy makers must do to land them. For example, assuming that more aggressive antitrust enforcement is required, how can an effective program actually be delivered—through winning antitrust cases and securing positive change—and how can it be delivered well?

In our view, these “implementation” issues have tended to be overlooked in the modern critique and to have been too quickly side-lined as technical details to be (easily) addressed once the high-level concepts of a bold antitrust program have been settled.21 Implementation is not, however, a simple matter that will necessarily sort itself out once the intellectual architecture is in place. Rather, inattention to implementation challenges invites serious disappointment by creating a chasm between elevated policy commitments and the capacity of responsible public institutions (competition agencies, new regulators, and the courts) to produce expected outcomes. This is the implementation blindside. Unless the blindside is acknowledged and addressed, there is a significant risk that a major reform program will engage considerable resources, public and private, in initiatives that fall well short of their goals. Instead of restoring confidence in the ability of government agencies to enforce antitrust laws effectively, a failed effort might merely reinforce doubts, and cynicism, about the quality of public administration.

This article analyzes important impediments that are likely, if not carefully addressed, to hamper the delivery of the current proposals to expand competition policy significantly and propose ways to overcome them. It commences in Part II by introducing the principal flaws that modern commentary attributes to U.S. antitrust policy (the “crisis in antirust”), before describing some of the proposals offered to bolster competition, strengthen antitrust policy, and restore its centrality as a tool of economic control. It also sketches how the federal and state agencies are responding to demands for more extensive intervention. As already explained, the purpose of this section is not to address the (respective) merits of these policy proposals but to identify the magnitude of the implementation challenges that the proposals for a major expansion of the U.S. antitrust program create.

Part III sets out the chief implementation obstacles that confront efforts to execute bolder antitrust programs, including tougher scrutiny of mergers and dominant firm conduct. We draw parallels between current debates and past ones, including those that influenced enhanced antitrust enforcement (especially by the FTC) in the 1960s and early 1970s and use historical examples to show what might happen if these hurdles are underestimated or ignored in the formulation of bold new initiatives.