# 1NC

## Off

### 1NC – OFAC CP

#### The President of the United States should prohibit anticompetitive business practices under an executive order administered by the Office of Foreign Asset Control.

#### OFAC can prohibit any dollar transaction anywhere in the world.

Paul Marquardt & Chase D. Kaniecki, Counsel @ Cleary Gottlieb, ‘20, “President Trump Authorizes Restrictions on WeChat and TikTok; Details to Come” https://www.clearytradewatch.com/2020/08/president-trump-authorizes-restrictions-on-wechat-and-tiktok-details-to-come/

Last night, President Trump issued two Executive Orders establishing a framework for prohibiting transactions involving popular Chinese-owned communications apps WeChat and TikTok.[1] Contrary to some press reports, the Executive Orders do not prohibit all transactions with their respective parent companies; they do not in fact set out the scope of the restrictions. Rather, they give the Commerce Department authority to prohibit any transaction involving a U.S. person or within the jurisdiction of the United States involving the two services; each of the Executive Orders clearly states “45 days after the date of this order, the Secretary shall identify the transactions subject to subsection (a) of this section [which contains the broad authority to prohibit].”[2] Furthermore, the scope of Commerce’s authority is subtly (and no doubt intentionally) different in the two Executive Orders: with respect to TikTok, the authority covers any transaction with ByteDance, TikTok’s parent; with respect to WeChat, the authority covers any transaction relating to WeChat involving its parent, Tencent Holding. Commerce will, within 45 days, take further action specifying exactly which transactions will be prohibited; it is even possible, particularly with respect to TikTok if the mooted divestiture of U.S. operations occurs, that no restrictions will be imposed.[3] Unless and until Commerce implements the Executive Orders, no restrictions are in place and their precise future scope is unknown.

To speculate on the possible shape of the ultimate restrictions, it appears unlikely that they will be quite as broad as the authorizing language suggests. The language identifying the transactions that may be prohibited is familiar from U.S. economic sanctions. Furthermore, as with the previous Executive Order relating to the information technology and communications supply chain permitting Commerce to review transactions with foreign suppliers on a case-by-case basis (to which the new Executive Orders refer),[4] the Executive Orders rely upon the framework statute underlying most sanctions programs administered by the Treasury Department’s Office of Foreign Assets Control (OFAC).[5] If taken to its maximum extent, this language would permit Commerce to prohibit any U.S. person or U.S. company anywhere in the world, and any person physically within the United States, from engaging in any transaction directly or indirectly involving or benefiting Tencent, if the transaction related to WeChat, or ByteDance—including processing any U.S. dollar payment clearing through the U.S. financial system (as the vast majority of global interbank U.S. dollar payments do).

However, the sanctions analogy is likely misleading. If the Administration intended to prohibit all transactions with ByteDance and TikTok, it would have been far simpler and more usual to designate them under an executive order administered by OFAC, as the United States has done in the past with parties considered malicious cyber-actors.[6] The Administration’s public statements hint at a narrower scope. The prefatory language of the Executive Orders emphasizes “the spread in the United States of mobile applications developed and owned by companies in the People’s Republic of China” and “access to Americans’ personal and proprietary information.” Furthermore, two days ago Secretary of State Michael Pompeo announced the “Clean Network” policy initiative, which includes the “Clean Store” effort to ”remove untrusted applications from U.S. mobile app stores.”[7] While there is no guarantee, it appears that the primary focus of the initiative may be blocking the use and availability of the apps within the United States, rather than prohibiting ordinary-course commercial transactions with ByteDance or (to the extent they relate to WeChat) Tencent generally to the extent they relate to operations outside the United States.

Ultimately, though, until Commerce takes implementing action any discussion of scope is educated guesswork. We will continue to monitor and report on developments.

#### There are three core federal antitrust laws.

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

Enacted in 1914 to bolster and clarify the government's authority to hold accountable business enterprises that harm or endanger market competition, the FTC Act is one of three core federal antitrust laws together with the Sherman and Clayton Acts. The "catch-all" legislation established the FTC and empowers commissioners to investigate a wide range of anticompetitive business practices and to penalize culpable companies.27 Section 5 is central to the statute with its prohibition of "unfair methods of competition in or affecting commerce," as well as "unfair or deceptive acts or practices in or affecting commerce., 28 Any violation of U.S. antitrust laws-including, but not limited to, monopolization under Section 2 of the Sherman Act and mergers and acquisitions that trigger Section 7 of the Clayton Act-constitutes a violation of the FTC Act.

#### OFAC action does not expand “core” antitrust legislation and avoids political controversy.

Ortblad 8 — Vanessa, J.D. Candidate, Northwestern University School of Law, May 2009; B.A., University of Washington, 2002, “THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY,” Northwestern University, School of Law, <http://www.law.northwestern.edu/journals/jclc/backissues/v98/n4/9804_1439.Ortblad.pdf>, “CRIMINAL PROSECUTION IN SHEEP’S CLOTHING: THE PUNITIVE EFFECTS OF OFAC FREEZING SANCTIONS,” ADM

Unfortunately, U.S. courts have not considered any of the policy implications of OFAC’s actions because of its extreme deference to executive actions. Furthermore, Congress has amplified the Executive’s current powers through the USA PATRIOT Act and IEEPA, so no argument can be made that the President is acting “in a zone of twilight.”156 Congress currently seems most concerned with verifying that OFAC’s blocking actions are actually effective in countering terrorism financing by demanding better quantitative and qualitative measures for assessing OFAC’s efforts.157 But Congress should especially take note of the effect of OFAC’s actions on civil liberties. In the face of the expansion of executive power to combat the war on terror, it is particularly important for Congress to also focus its attention on safeguarding civil liberties, especially in light of past excesses during wartime. OFAC sanctions tend to fly below the radar when competing for attention with abuses at Abu Ghraib, debates over whether water-boarding is actually torture, and discussions regarding the possible closure of Guantanamo Bay. In light of these other pressing policy concerns, OFAC has largely escaped the media scrutiny and public policy discussion it merits.

### 1NC – Politics DA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Budget key to solve climate change.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 1NC – Decoupling DA

#### Decoupling is on the brink.

Leonardo Dinic, NYU Alumnus, China-US Focus, 2-2-2021, "US-China Competition – Semiconductors and the Future of Tech Supremacy," https://www.chinausfocus.com/foreign-policy/us-china-competition-semiconductors-and-the-future-of-tech-supremacy

While Chinese investment in the U.S. slowed down during the Trump administration, goods and services trade volumes were less than 3 percent down from 2016 to 2019. The U.S. portfolio more than doubled from the end of 2016 to the end of 2019. So, we see a $13 billion trade decrease and a $120 billion increase in U.S. investment in China. Therefore, the two countries are still intimately tied. There is undoubtedly a threat of decoupling in tech if China can separate and develop a self-reliant ecosystem. Thus, the biggest losers from 'tech decoupling' are U.S. firms, which are heavily reliant on revenue from China. The U.S. could subsidize American firms to kedep their R&D levels steady, but this might not be easy in the immediate post-pandemic environment. The U.S. could tax businesses instead of taxpayers, but this could also prove to be a hurdle.

#### China retaliates to US pressure tit-for-tat to try and steamroll the US. Revisionism is irrelevant because cooperation is possible even amongst antagonists.

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

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

2.1 The Folk Theorem

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

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

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

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

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

#### Decoupling and economic duties makes US-China nuclear war more likely.

Guardian, ‘19, "Could doomsday be nearing as US-China trade war heats up?," https://www.theguardian.com/business/2019/may/10/could-this-be-doomsday-as-us-china-trade-war-enters-new-phase

The economic conflict that has been simmering between the US and China has entered a new and dangerous phase. Without question, the world is closer to a full-blown trade war than it has been since the 1930s. The issue now is whether the two sides can step back from the brink. So far, financial markets think the standoff is akin to the Cuban missile crisis of October 1962, the closest the US and the Soviet Union came to nuclear conflict during the cold war. Seen this way, Donald Trump is John F Kennedy, Xi Jinping is Nikita Khrushchev and the goods that have just left Chinese ports on their way to the US are the Soviet missiles en route to Cuba. That Trump’s decision to increase tariffs from 10% to 25% on $200bn (£154bn) of goods only applies to items leaving China after the measure was announced just reinforces the historical parallel. As there was time for Khrushchev to back down, so there is time for Washington and Beijing to do a deal while the ships are crossing the Pacific. China has more to lose from a trade war. It exports far more to the US than it imports, the Chinese economy is slowing and there are only a limited number of additional US products to which tariffs could be applied in the event the tit-for-tat protectionism continues. What’s more, China is more to blame for the hotting up of the trade cold war than the US. The US thought a 150-page draft agreement was the basis for a comprehensive deal, only to find Beijing had filleted the document of its concessions in contentious areas, such as the theft of US intellectual property rights. Now China has met with firm US resistance, the expectation is Xi will back down – as Khrushchev did. Since Trump has no desire to see a meltdown on Wall Street, both sides will seek to avoid the mutually assured destruction a full-blown trade war would involve. But what if the idea that sense will prevail is wrong? What if neither side is prepared to back down? Then, this is not 1962 but the summer of 1914, after the assassination of Archduke Franz Ferdinand. Trump and Xi – both self-styled hardmen with an aversion to backing down – are not Kennedy and Khrushchev but Kaiser Wilhelm II and Tsar Nicholas II. Politically, Trump is seeking to make capital out of the fact he is prepared to stand up to China. In contrast to the views of most economists, he thinks protectionism is good for the US and plays well in swing states. For his part, Xi says he would prefer to talk, but he is prepared to fight if that’s what the US wants. Nationalism plays well in China, so Beijing says reluctantly it has no choice but to respond to Trump’s tariffs with equivalent action of its own. Washington retaliates by putting import duties on the $325bn of Chinese goods it has yet to target. Beijing then starts to make it more difficult for US companies to operate in China and says that if Trump doesn’t back off, it will stop buying US treasury bonds. The White House says it has no intention of doing so and events are set in train that lead remorselessly to the doomsday outcome nobody wanted.

### 1NC – WTO Deference CP

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

#### The Congress of the United States should increase its prohibitions on anticompetitive business practices by expanding the extraterritorial scope of its antitrust laws.

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

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

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

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

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

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

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

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

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

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

#### Solves the case – WTO will penetrate foreign export cartels and rule for the US.

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

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

#### The counterplan avoids the PQD and Protectionism/ DA. Deference to the WTO avoids court’s involvement in lengthy, factual inquiry over political questions and the signal of unilateralism.

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

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

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

### 1NC – Executive CP

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

#### The executive branch should file an amicus brief in ensuing litigation holding that export cartels that harm US economic growth do not satisfy the criteria for exemptions from antitrust law.

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

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

A. Weighing Trade and Antitrust

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

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

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

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

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

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

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

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

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

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

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

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

B. Deference to the Executive

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

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

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

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

## Harmonization

### 1NC – AT: Harmonization

#### Many causes of EU/US trade barriers, but antitrust is not one of them.

Köhler-Suzuki 20 [Nicolas; Trade Policy Advisor at International Trade Intelligence; “STRATEGIC CHOICES FOR THE EU’S DIGITAL TRADE POLICY AFTER THE US ELECTION”; https://institutdelors.eu/en/publications/strategic-choices-for-the-eus-digital-trade-policy-after-the-us-election-2/; AS]

The EU has sent multiple signals that it wants to engage with the US on digital trade. Commission President von der Leyen proposed working together on a “rule book for the digital economy and society covering everything, from Big Tech to data use and privacy, from infrastructure to security.”[14] EU Trade Commissioner Valdis Dombrovskis called for solving existing trade disputes and establishing an EU-US trade and technology council–a holdover from the regulatory cooperation body that was envisaged under the failed Transatlantic Trade and Investment Partnership (TTIP).[15] There have also been other symbolic moves, such as the settlement of the lobster dispute by the European Parliament and signals for reconciliation on the Boeing-Airbus case. But von der Leyen also cautioned EU ambassadors that “some shifts in priorities and perceptions run much deeper than one politician or administration” which would not “disappear because of one election”.[16] Digital taxation and data flows, for example, will likely become a sticking point in transatlantic relations in the coming months.[17] At the same time, transatlantic views on the role of antitrust, privacy, and artificial intelligence seem to be converging. Crucially, the EU and the US have a shared foundation of liberal democratic values, which could help to break deadlock in the face of an external systemic threat.

IV. Opportunities and pitfalls for collaboration

Unilateral digital taxes and the conclusion of the OECD Base Erosion and Profit Shifting (BEPS) framework could be amongst the most difficult issues to resolve. On the campaign trail, Biden promised to increase corporate tax rates from twenty-one to twenty-eight per cent. He specifically called on technology companies to pay a larger share of taxes through raising the global intangible low-taxed income (GILTI) tax and promised to close offshoring loopholes. But Biden did not offer proposals for structural reforms of the international tax system, unlike some other Democratic candidates in the primaries.[18] Of course, the role of tax enforcer may not come naturally to Biden, who has for four decades been senator of Delaware, one of the world’s most significant tax havens. Silicon Valley was also an important contributor to his presidential campaign and to Vice President-elect Kamala Harris, and they may not want to bite the hand that fed them, at least not too much.[19] In any case, tax policy in the US is a prerogative of the legislature and digital taxes have faced strong bipartisan opposition in the House and the Senate–possibly also related to generous campaign contributions from technology firms.[20] Moreover, the Biden administration will need to finance the substantial fiscal programs it intends to implement in the coming years. It will therefore unlikely want to forgo the considerable tax revenue from US technology firms that could be diverted to other jurisdictions.

Yet there could still be room for progress. OECD tax officials do not expect a fundamental shift in the US position, but express hope that a Biden administration will support a multilateral solution.[21] While the Trump administration threatened retaliatory tariffs in return for unilateral European digital taxes, it seems less likely Biden would retaliate in the same forceful manner as Trump while he is trying to mend the diplomatic relationships with key allies.[22] If an ever-increasing number of US allies were to introduce unilateral digital taxes in 2021 or 2022, this could create pressure for the US to join OECD BEPS.

Further discord can be expected on transatlantic data flows. In July 2020, the European Court of Justice ruled in the so-called Schrems II case that the EU-US Privacy Shield, which governed transatlantic data flows, is incompatible with European privacy standards. This followed the ECJ’s 2015 invalidation of the preceding Safe Harbour framework (Schrems I). In both cases, the role of systematic surveillance by the US government was key to the reasoning of the court, that the privacy of EU citizens was insufficiently protected. It is clear that any meaningful new agreement on data flows between the EU and the US has to be based on a deeper level of trust, for example through a credible “no-spy” agreement. This, however, would likely be met with stiff resistance from the US national security apparatus as much as from European intelligence agencies, and would therefore require political will at the highest levels of government.

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

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

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

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

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

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

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

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

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

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

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

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

#### National antitrust silos steamrolls the LIO.

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

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

#### Alt causes to inequality and trade reduces it.

Irwin 15 – Douglas, John Sloan Dickey Third Century Professor in the Social Sciences in the Economics Department at Dartmouth College (“FREE TRADE UNDER FIRE” Copyright © 2015 by Princeton University Press Library of Congress Control Number 2015936929 ISBN 978- 0- 691- 16625- 4 pp 134)

Although average wages are determined by the underlying factors that make American workers productive, trade can affect the distribution of wages in an economy. And here, a very basic point must be stressed: the perception that imports destroy good, high- wage jobs in manufacturing is almost completely erroneous. It is closer to the truth to say that imports destroy bad, low- wage jobs in manufacturing. This is because wages in industries that compete against imports are well below average, whereas wages in exporting industries are well above average. For example, the United States tends to import labor- intensive products, such as apparel, footwear, leather, and goods assembled from components. These labor- intensive sectors tend to employ workers who have a lower- than- average educational attainment, and who therefore earn a relatively low wage. For example, in 2006 average hourly earnings of Americans working in the apparel industry were 37 percent lower than in manufacturing as a whole. Average hourly earnings were 32 percent lower in the leather industry and 25 percent lower in textile mills than in the average manufacturing industry.47 Figure 4.9 shows the relationship between the share of imports from low- wage developing countries in a given industry and the average U.S. wage. The United States tends to import more from developing countries in industries that pay relatively low wages.48 (The category of computers and electronic products is an outlier because these items are assembled in low- wage developing countries from components produced elsewhere, as noted in chapter 1.) By contrast, the United States tends to export more skill- intensive manufactured products, such as aircraft, construction machinery, engines and turbines, and industrial chemicals. Workers in these industries earn relatively high wages. For example, in 2006 average hourly earnings in the aircraft and aerospace industry were 56 percent above the average in manufacturing, 11 percent higher in metalworking machinery, and 27 percent higher in pharmaceuticals. Figure 4.10 shows the positive relationship between exports per worker and the average wage by industry. Because exports increase the number of workers in relatively more- productive, high- wage industries, and imports reduce the number of workers in relatively less- productive, low- wage industries, the overall impact of trade in the United States is to raise average wages.49 Conversely, any policy that limits overall trade and reduces both exports and imports tends to increase employment in low- wage industries and reduce employment in high- wage industries. Restricting trade would shift American workers away from things that they produce relatively well (and hence export and earn relatively high wages in producing) and toward things that they do not produce so well (and hence import and earn relatively low wages in producing) in comparison with other countries. Employment gains for the low- wage textile machine operators in the factory mills would be offset by employment losses for the high- wage engineers in aircraft and pharmaceutical plants.

This raises the concern that trade has contributed to increased income inequality in the United States. In theory, trade can have sharply different effects on the wages of different types of workers. In a classic article, Wolfgang Stolper and Paul Samuelson connected the distribution of wages in an economy to the prices of traded goods that are determined by the world market. They reached the unambiguous conclusion that the real income of some factors of production will rise absolutely as a result of free trade, while the real income of other factors will fall absolutely.50 This is implicit in what we have discussed: trade creates jobs in high- wage industries in which the United States exports (aircraft, machinery), and reduces jobs in low- wage industries in which the United States imports (apparel, footwear). There is no doubt that wage and income inequality have increased in recent decades. In the 1980s and the early 1990s, the wage premium for college- educated workers relative to workers with less education (high school degree or dropout) rose substantially, but then leveled off after 2000.51 In addition, there is evidence of wage stagnation in the middle of the income distribution and an absolute decline in the real wages of workers with very few years of formal education. Has international trade contributed to the increase in wage inequality in the United States, as theory suggests it might? The impact of international trade and wages and the wage structure has proven to be one of the most difficult things to untangle of all of economics.52 The consensus among economists seems to be that increased demand for educated workers due to technological changes is mostly responsible for the rising wage premium. By contrast, the role of trade in generating wage inequality appears to be modest. How has this conclusion been reached? If trade had been driving the changes in relative wages in the United States during the 1980s, then theory suggests that the price of unskilled labor- intensive goods should have fallen relative to the price of skilled labor- intensive goods. But after examining the data, researchers failed to detect such a decline. In addition, they found that manufacturing firms were consistently choosing to employ more skilled labor relative to unskilled labor, despite the rising cost of hiring those skilled workers. This evidence is consistent with an increase in the demand for educated workers.

Another way of looking at the question examines the quantities of imports of labor- intensive goods as a factor that may cause the displacement of less- educated workers and reduce their wages. In this case, the volume of traded goods, rather than their prices, is the focus. This approach yields essentially the same conclusion. Examining the period from 1980 to 1995, one study finds that the wages of college graduates rose 21 percent relative to those of high school graduates. At the same time, trade and immigration accounted for only about two percentage points (or 10 percent) of this change.54 The relatively small contribution of trade is related to the fact that imports of manufactured goods from developing countries, presumably the primary source of unskilled labor- intensive goods, rose from just 1.0 percent of GDP in 1970 to 3.2 percent in 1990, hardly a dramatic increase in light of the spectacular increase in the labor market returns to education during this period.

Studies are just emerging of the more recent period from the late 1990s in which there was a large increase in imports from low- wage developing countries, such as China and Mexico after NAFTA. Yet the preliminary evidence also suggests that the contribution of trade to wage inequality is relatively small. One estimate puts the contribution of trade with low- wage countries from 1980 to 2006 at something shy of 10 percent of the overall rise in the college wage premium.55 Another study concludes that “without the impact on wage inequality between 1981 and 2006, the wages of blue- collar workers would have been 1.4 percent higher than they were in 2006 and that almost all of this took place before 2000.”

Furthermore, “the timing of wage inequality is not what might have been expected if increased trade penetration in the U.S. economy always gives rise to increased wage inequality” because inequality grew rapidly in the 1980s when trade with developing countries was growing slowly, whereas inequality leveled off when imports from low- wage countries were accelerating.57 Because the college premium that increased so much in the 1980s has leveled off since then, those theories are less useful. More recent work has suggested a polarization of the labor force, based less on education level than on the skills used at work. Recent studies have identified a hollowing out of the middle of the wage distribution, in which highly educated workers have done very well, low- skilled workers have done all right, but workers in the middle have done very poorly. 58 The leading hypothesis is that information and communication technologies polarize labor markets by increasing demand for the highly educated at the expense of the middle educated, with little effect on low- educated workers who do routine work. While this hollowing out has apparently occurred in a number of advanced economies, research has failed to link it to international trade.59

Trade, then, does not appear to be primarily responsible for increased wage inequality in recent decades. Evidence instead points to technological change as having raised the demand for more highly educated workers and having significantly altered the skill set and the type of work that is valued (e.g., routine versus nonroutine). For example, the advent of ATM machines and personal computers reduced the demand for bank tellers and office assistants and increased the demand for skilled technicians and highly trained or educated personnel. Whereas international trade would shift the demand for skills between sectors of the economy, skill- biased technical change would increase the demand for skilled workers in all sectors.60 In fact, the relative wage of educated workers in many developing countries has been increasing as well, a pattern that can be explained by skill- biased technical change but is more difficult to explain as a result of international trade.61

#### Trade solves populism and fascism – improves democratic governance.

Irwin 15 – Douglas, John Sloan Dickey Third Century Professor in the Social Sciences in the Economics Department at Dartmouth College (“FREE TRADE UNDER FIRE” Copyright © 2015 by Princeton University Press Library of Congress Control Number 2015936929 ISBN 978- 0- 691- 16625- 4 pp 60-63)

There is also a longstanding idea that trade promotes peace among nations. Many Enlightenment philosophers in the eighteenth century and classical liberals in the nineteenth century endorsed this view. Montesquieu argued that “the natural effect of commerce is to lead to peace” because “two nations that trade with easch other become reciprocally dependent.” John Stuart Mill endorsed this view: “It is commerce which is rapidly rendering war obsolete, by strengthening and multiplying the personal interests which are in natural opposition to it. And it may be said without exaggeration that the great extent and rapid increase of international trade, in being the principal guarantee of the peace of the world, is the great permanent security for the uninterrupted progress of the ideas, the institutions, and the character of the human race.”59

Political scientists, and a few economists, have examined whether economic interdependence mitigates conflict between nations. Most empirical studies have tended to support the idea that there is a positive link between trade and peace.60 While the link between trade and peace is intriguing, there are many difficulties in establishing a statistical relationship between them. The methodological obstacles include making political concepts operational and representing them numerically, as well as establishing causal relationships. For example, countries that are at peace with one another are also more likely to be trading partners; which is the cause and which is the effect? Countries that are less aggressive are probably more likely to join international institutions, raising the same question. One recent study finds countervailing effects: increased bilateral trade increases the cost of conflict between the partners and thereby promotes peace, but increased multilateral trade may reduce the cost of conflict (because a country would have alternative sources of supply) and hence may increase the risk of conflict.61

If the trade- peace link is eminently plausible though not definitively established, a stronger finding is that democracies are more peaceful than autocratic countries. While we do not know whether democratic regimes are inherently more peaceful than other types of government, overwhelming evidence shows that democracies rarely go to war against one another. Does increasing trade contribute to peace indirectly, by promoting political reform and democratization? Untangling the links between trade and democratization is difficult because each is related to the other. Trade may indeed promote democracy, but democracies are also more likely to pursue open trade policies and therefore trade more.62

Even after accounting for this effect, it appears that trade does indeed promote democracy. Examining the period after 1870, one study detects a positive impact of openness on democracy from about 1895 onward. Late nineteenth- century globalization may have helped to generate the “first wave” of democratization. Between 1920 and 1938, countries more exposed to international trade were less likely to become authoritarian. These results hold for the post−World War II period as well. However, there is some variation in the impact of openness by region, and commodity exporters and petroleum producers do not seem to become more democratic by exporting more of such goods.63 Recent research also indicates a relationship between free trade agreements and the strengthening of democracy in developing countries.64 By destroying the rents that come from protectionist policies, such agreements reduce the incentive of authoritarian groups to seize power. Thus, governments in unstable democracies may have an incentive to seek such agreements to consolidate their position.

This view of nineteenth- century classical liberals appears to have gained new support in recent years as well: as Chile, Taiwan, South Korea, and Mexico have been integrated into the world economy, they have also moved toward more democratic political systems. Those opposed to the U.S. trade embargo against Cuba believe that greater trade with that country would increase the prospects of political reform there too.

The big question today is whether economic development and expanding trade will lead China to move away from its authoritarian political regime and toward a more pluralistic political system that includes improvements in human rights. The link between trade liberalization and political liberalization was a contentious issue in the debate over extending Permanent Normalized Trade Relations (PNTR) to China and allowing it to join the WTO in 2000. Proponents of normalized trade argued that expanding commerce would enhance the power and influence of the private sector in China at the expense of the government. Opponents disagreed, arguing that more trade would simply enrich and strengthen the Chinese government. Although greater openness has operated very slowly in the case of China, there is some evidence of potentially important political changes at local levels.

Even if trade fails to generate a movement toward democracy, it can still promote better performance in other domestic institutions. For example, countries that are more open also tend to be less corrupt, a finding that holds even after accounting for the fact that less corrupt countries may engage in more trade.66 Conversely, protectionist policies have been found to breed corruption, particularly when bureaucrats have discretion in allocating import licenses to those who wish to import goods.67 A study of India finds that freer trade led to a reduction in violent crime, because trade restrictions led to smuggling and gang violence; in particular, murder rates fell significantly after the 1991 trade reforms, especially in industrial states more affected by the lifting of import barriers.68 While the statistical relationships among trade, peace, and democracy are difficult to sort out, the existing evidence suggests that they share beneficial links. In sum, Mill’s observations about the noneconomic benefits of trade—including peace and political reform—appear to be broadly valid, although they may not hold in every case.

## Cartels

### 1NC – AT: Cartels

#### Reject aff solvency ev – from a JD Candidate in 2016 – not qualified to make predictions about international trade.

#### Countries with export cartels can’t and won’t cooperate to procure evidence for trial.

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

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

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

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

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

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

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

#### No internal link to any innovation scenario – they have one card that says the industry loses “some materials ” then a card that says rapid industry growth solves extinction.

#### Export cartels declining now post 2018 court ruling – China has internalized norms.

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

1. Improvement of China’s law

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

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

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

One familiar argument is the so-called diversionary (or “scapegoat”) theory of war. It suggests that leaders who are worried about their popularity at home will try to divert attention from their failures by provoking a crisis with a foreign power and maybe even using force against it. Drawing on this logic, some Americans now worry that President Donald Trump will decide to attack a country like Iran or Venezuela in the run-up to the presidential election and especially if he thinks he’s likely to lose. This outcome strikes me as unlikely, even if one ignores the logical and empirical flaws in the theory itself. War is always a gamble, and should things go badly—even a little bit—it would hammer the last nail in the coffin of Trump’s declining fortunes. Moreover, none of the countries Trump might consider going after pose an imminent threat to U.S. security, and even his staunchest supporters may wonder why he is wasting time and money going after Iran or Venezuela at a moment when thousands of Americans are dying preventable deaths at home. Even a successful military action won’t put Americans back to work, create the sort of testing-and-tracing regime that competent governments around the world have been able to implement already, or hasten the development of a vaccine. The same logic is likely to guide the decisions of other world leaders too. Another familiar folk theory is “military Keynesianism.” War generates a lot of economic demand, and it can sometimes lift depressed economies out of the doldrums and back toward prosperity and full employment. The obvious case in point here is World War II, which did help the U.S economy finally escape the quicksand of the Great Depression. Those who are convinced that great powers go to war primarily to keep Big Business (or the arms industry) happy are naturally drawn to this sort of argument, and they might worry that governments looking at bleak economic forecasts will try to restart their economies through some sort of military adventure. I doubt it. It takes a really big war to generate a significant stimulus, and it is hard to imagine any country launching a large-scale war—with all its attendant risks—at a moment when debt levels are already soaring. More importantly, there are lots of easier and more direct ways to stimulate the economy—infrastructure spending, unemployment insurance, even “helicopter payments”—and launching a war has to be one of the least efficient methods available. The threat of war usually spooks investors too, which any politician with their eye on the stock market would be loath to do. Economic downturns can encourage war in some special circumstances, especially when a war would enable a country facing severe hardships to capture something of immediate and significant value. Saddam Hussein’s decision to seize Kuwait in 1990 fits this model perfectly: The Iraqi economy was in terrible shape after its long war with Iran; unemployment was threatening Saddam’s domestic position; Kuwait’s vast oil riches were a considerable prize; and seizing the lightly armed emirate was exceedingly easy to do. Iraq also owed Kuwait a lot of money, and a hostile takeover by Baghdad would wipe those debts off the books overnight. In this case, Iraq’s parlous economic condition clearly made war more likely. Yet I cannot think of any country in similar circumstances today. Now is hardly the time for Russia to try to grab more of Ukraine—if it even wanted to—or for China to make a play for Taiwan, because the costs of doing so would clearly outweigh the economic benefits. Even conquering an oil-rich country—the sort of greedy acquisitiveness that Trump occasionally hints at—doesn’t look attractive when there’s a vast glut on the market. I might be worried if some weak and defenseless country somehow came to possess the entire global stock of a successful coronavirus vaccine, but that scenario is not even remotely possible. If one takes a longer-term perspective, however, a sustained economic depression could make war more likely by strengthening fascist or xenophobic political movements, fueling protectionism and hypernationalism, and making it more difficult for countries to reach mutually acceptable bargains with each other. The history of the 1930s shows where such trends can lead, although the economic effects of the Depression are hardly the only reason world politics took such a deadly turn in the 1930s. Nationalism, xenophobia, and authoritarian rule were making a comeback well before COVID-19 struck, but the economic misery now occurring in every corner of the world could intensify these trends and leave us in a more war-prone condition when fear of the virus has diminished. On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).” Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success. Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then. The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term. To be sure, I can’t rule out another powerful cause of war—stupidity—especially when it is so much in evidence in some quarters these days. So there is no guarantee that we won’t see misguided leaders stumbling into another foolish bloodletting. But given that it’s hard to find any rays of sunshine at this particular moment in history, I’m going to hope I’m right about this one.

#### No Korea war.

Post ’21 [Daniel; 1/29/21; PhD Candidate in IR @ Brown University; “Deterring North Korea,” <https://warontherocks.com/2021/01/deterring-north-korea/>]

With these principles in mind, can deterrence continue to work vis-a-vis North Korea? In short, yes. Throughout the evolution of the U.S-North Korean deterrence relationship, vulnerability has played an important role in the nuclear strategies and policies of both sides. The vulnerability of U.S. allies and assets in the region to North Korea’s intermediate-range missile and artillery barrages has almost certainly been a check on a more aggressive U.S. strategy, whether geared toward nonproliferation or regime change. It is certainly plausible that in the absence of this vulnerability the chances of the U.S. preventively attacking North during the Trump administration would have been higher, especially considering the extremely hawkish views of his national security adviser in 2017. As a result of this vulnerability, the U.S. routinely demonstrates its dedication to security agreements with allies in word and deed. Strategic bomber flights and military exercises, for example, demonstrate to North Korea their own vulnerability to U.S. and allied power in the region. Conversely, although the Kim regime would like nothing more than to unify the Korean Peninsula under North Korean leadership (dubbed the “holy grail of North Korean statecraft” in a recent report), it has refrained from overt and aggressive military action in pursuit of this goal. There is no doubt that Kim, like his predecessors, is wary of such behavior in the face of U.S. and allied military capabilities. Today, North Korea remains vulnerable to U.S. nuclear attacks, while the United States and its regional partners remain vulnerable to nuclear attack or retaliation from North Korea. This mutual vulnerability necessitates caution on both sides.

Recent progress in North Korean missile technology have made portions of the U.S. mainland vulnerable, giving the U.S. further reason to avoid unnecessary provocation. In 2017, North Korea conducted several tests of intercontinental ballistic missiles, two of which demonstrated the capability to potentially reach the continental United States. More recently, North Korea has successfully tested a submarine-launched ballistic missile and has showcased a new and larger submarine-launched ballistic missile at a recent parade. As a result, the United States continues to invest significantly in homeland missile defense, as well as to deploy missile defenses to defend allies and assets in the region. Missile defenses likely contribute to increased feelings of vulnerability among Kim’s regime, which may see the build-up as a prelude to a military offensive. Though imperfect, these attempts to reduce vulnerability enhance deterrence by potentially denying North Korea the expected military gains from a limited missile attack, even as fully effective missile defenses might contribute to strategic instability. Regardless of their effectiveness, Kim will have to factor in these defensive capabilities when assessing the success of engaging in conflict and will question the ability to achieve even limited goals through limited means. For example, in order to ensure the success of a missile attack, Kim would have to increase the size of the salvo in order to compensate for missiles likely to be shot down by U.S. and allied defenses. But knowing that a larger initial attack would be perceived as particularly aggressive and would likely invite a larger counter-attack, he might be deterred from pursuing whatever limited gains a smaller attack might have achieved. From Kim’s perspective, U.S. military capabilities are more than sufficient to make military success for North Korea in any conflict appear difficult and costly. Vulnerability to severe retaliation and punishment from U.S. strategic forces is also currently unavoidable for Kim. In fact, this very vulnerability has driven the North Korean nuclear program toward a capability to directly threaten the U.S., thereby demonstrating its own acknowledgement of vulnerability. In sum, both sides are vulnerable to each other. Most importantly for U.S. decision-makers, there is no likely development in the near to medium term that might remove this sense of vulnerability from Kim’s mind.

There is also great uncertainty in the nuclear capabilities and red lines of each side, in particular concerns about what might cause Kim to feel existentially threatened, and concerns over what might trigger the United States to exercise nuclear defense on behalf of its allies in the region. Kim consistently expresses concerns about regime survival and fear of a U.S. attack, and recent U.S. regime change operations in other states only strengthen this fear. While the United States should be careful not to inadvertently increase this threat level to a point where Kim believes he must start a major war, the threat of nuclear retaliation should be maintained. Such a scenario is far from implausible (nuclear scholar Jeffrey Lewis sketches out a hypothetical nuclear war between North Korea and the United States in a recent novel). Missile defenses also add an important element of uncertainty to the relationship. Uncertainty about the effectiveness of these systems should induce caution on both sides because neither can be completely sure about how effective the systems will be (though these systems may also strengthen resolve on the part of the U.S. if deemed very effective, as Robert Powell suggests). Although the United States has been clear in its statements regarding North Korean nuclear use, for example stating in the 2018 Nuclear Posture Review that “there is no scenario in which the Kim regime could employ nuclear weapons and survive,” uncertainty remains about which actions beneath the nuclear threshold might trigger a larger response. This uncertainty will undoubtedly induce caution in even lower-level conflict behavior. The U.S. explicitly includes some level of ambiguity and uncertainty in its declaratory statements, such as when describing possible conditions for nuclear use, saying, “Significant non-nuclear strategic attacks include, but are not limited to, attacks on the U.S., allied, or partner civilian population or infrastructure, and attacks on U.S. or allied nuclear forces, their command and control, or warning and attack assessment capabilities.” This type of statement leaves plenty of room for adversaries to question what might trigger a response and makes any aggression against the U.S. or its allies a risky proposition.

Last, both Kim and leaders in the United States and its allies appear to remain rational actors despite recent bombastic behavior and inflammatory rhetoric (which may be plausibly attributed to clumsy signaling attempts). Kim may be a cold and brutal oppressor, but his behavior should be seen as quite rational if you make the very supportable assumption that, like most political leaders, his primary goal is keeping his regime alive and keeping himself in power. As others have noted, “Kim is a tyrant, but I don’t think he is suicidal.” Kim continues to build and enhance his nuclear weapons capability in reaction to real and proximate threats to his very survival. The United States frequently conducts exercises with South Korea and Japan, and North Korea frequently decries these exercises as hostile and reckless. Kim sees these exercises as practice events for an eventual attack on North Korea. The United States has also stationed missile defense capabilities in South Korea and Japan, as well as on ships in the region. Kim’s continued pursuit of enhanced nuclear capabilities in response is as rational as it is for the U.S. to want to mitigate its own vulnerability. Frequent military deployments to the region, and overflights of U.S. strategic (nuclear capable) bombers also serve to enhance the perception of threat on behalf of Kim. These security dilemma dynamics have certainly contributed to Kim’s rational pursuit of an enhanced nuclear weapons capability. On top of these very visible military measures, recent dramatic increases in hostile rhetoric from former President Donald Trump, such as his “fire and fury” remarks, have only served to solidify Kim’s perceived need for a nuclear deterrent to potential U.S.-backed regime change. Of course, deterrence requires clear communication and credibility, which includes demonstrating capability. Kim is well aware that if he were to engage in any sort of large scale aggressive military behavior against his neighbors, this could spell the end of his regime. He also has no reason to doubt the U.S. capability and opportunity to respond to threats from North Korea. Assuming, as I do above, that Kim desires to remain the leader of his country and to preserve his regime, he has little incentive to test the U.S. nuclear deterrent. Whether his eccentric and brutal behavior leads to some other inadvertent escalation is a different question. As far as U.S. leaders are concerned, assuming Kim is rational enough to know what he wants and to recognize how he can lose it seems to be a safe bet.

#### Ag innovation is irrelevant.

Vestby ’18 [Vestby, Ida Rudolfsen, and Halvard Buhaug; 5-18-18; Doctoral Researcher at the Peace Research Institute Oslo; doctoral researcher at the Department of Peace and Conflict Research at Uppsala University and PRIO; Research Professor at the Peace Research Institute Oslo (PRIO); Professor of Political Science at the Norwegian University of Science and Technology (NTNU); and Associate Editor of the Journal of Peace Research and Political Geography; “Does hunger cause conflict?” Prio, https://blogs.prio.org/ClimateAndConflict/2018/05/does-hunger-cause-conflict/]

It is perhaps surprising, then, that there is little scholarly merit in the notion that a short-term reduction in access to food increases the probability that conflict will break out. This is because to start or participate in violent conflict requires people to have both the means and the will. Most people on the brink of starvation are not in the position to resort to violence, whether against the government or other social groups. In fact, the urban middle classes tend to be the most likely to protest against rises in food prices, since they often have the best opportunities, the most energy, and the best skills to coordinate and participate in protests.

Accordingly, there is a widespread misapprehension that social unrest in periods of high food prices relates primarily to food shortages. In reality, the sources of discontent are considerably more complex – linked to political structures, land ownership, corruption, the desire for democratic reforms and general economic problems – where the price of food is seen in the context of general increases in the cost of living. Research has shown that while the international media have a tendency to seek simple resource-related explanations – such as drought or famine – for conflicts in the Global South, debates in the local media are permeated by more complex political relationships.

# 2NC

## CP – WTO

### 2NC – OV

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

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

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

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

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

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

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

a. Raw Materials I

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

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

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

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

b. Rare Earths

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

c. Raw Materials II

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

### 2NC – AT: Do Both

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

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

A. Weighing Trade and Antitrust

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

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

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

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

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

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

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

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

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

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

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

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

### 2NC – AT: PDCP

#### “Prohibit”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Certainty. The counterplan conditions the plan on the failure of WTO negotiations. In circumstances where the WTO succeeds, the facts of the case may cause the court to dismiss the suit. Certainty is key to neg ground and implied by the following.

#### Resolved.

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

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

#### Should

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

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

## Harmonization

### XT 2 and 3 – Protectionism Turn

#### 3. That all causes extinction from nuclear resource wars.

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

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

#### Turns populism – nam says the signal of US economic nationalism causes countries around the globe to retaliate. That spills over across the globe, turning the case more than they solve.

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

As discussed above, most facets of competition law enforcement today have an important international dimension. For example, a large proportion of anti-cartel prosecutions, the most "hardcore" aspect of competition law enforcement, concerns price-fixing and market sharing arrangements that often spill across national borders and, in important instances, span the globe. 86 Left unchecked, these hold the potential to directly undermine the gains from trade. Therefore, in cases involving export cartels, competition policy is often entangled with trade liberalization. Consider the three following scenarios: 1) "[exporting] producers could coordinate to lower prices to gain increased global market share;" 2) "export markets already dominated by [exporting] producers . . . could [further] coordinate to raise export prices to increase profits;" and 3) "[exporting] producers could agree to divide overseas markets between themselves . . . [to downsize] unnecessary competition." 8 7

#### Turns growth. 1NC Kava says the only certain effect of the plan is an immediate adverse effect on global economic gains. Trade is also key to global productivity, preventing a decades long economic slowdown.

World Bank 18 – World Bank, Press Release 1-9-2018, "Global Economy to Edge Up to 3.1 percent in 2018 but Future Potential Growth a Concern ," https://www.worldbank.org/en/news/press-release/2018/01/09/global-economy-to-edge-up-to-3-1-percent-in-2018-but-future-potential-growth-a-concern)

WASHINGTON, January 9, 2018— The World Bank forecasts global economic growth to edge up to 3.1 percent in 2018 after a much stronger-than-expected 2017, as the recovery in investment, manufacturing, and trade continues, and as commodity-exporting developing economies benefit from firming commodity prices.

However, this is largely seen as a short-term upswing. Over the longer term, slowing potential growth—a measure of how fast an economy can expand when labor and capital are fully employed—puts at risk gains in improving living standards and reducing poverty around the world, the World Bank warns in its January 2018 Global Economic Prospects.

Growth in advanced economies is expected to moderate slightly to 2.2 percent in 2018, as central banks gradually remove their post-crisis accommodation and as an upturn in investment levels off. Growth in emerging market and developing economies as a whole is projected to strengthen to 4.5 percent in 2018, as activity in commodity exporters continues to recover.

“The broad-based recovery in global growth is encouraging, but this is no time for complacency,” World Bank Group President Jim Yong Kim said. “This is a great opportunity to invest in human and physical capital. If policy makers around the world focus on these key investments, they can increase their countries’ productivity, boost workforce participation, and move closer to the goals of ending extreme poverty and boosting shared prosperity.”

Download the January 2018 Global Economic Prospects report.

2018 is on track to be the first year since the financial crisis that the global economy will be operating at or near full capacity. With slack in the economy expected to dissipate, policymakers will need to look beyond monetary and fiscal policy tools to stimulate short-term growth and consider initiatives more likely to boost long-term potential.

The slowdown in potential growth is the result of years of softening productivity growth, weak investment, and the aging of the global labor force. The deceleration is widespread, affecting economies that account for more than 65 percent of global GDP. Without efforts to revitalize potential growth, the decline may extend into the next decade, and could slow average global growth by a quarter percentage point and average growth in emerging market and developing economies by half a percentage point over that period.

“An analysis of the drivers of the slowdown in potential growth underscores the point that we are not helpless in the face of it,” said World Bank Senior Director for Development Economics, Shantayanan Devarajan. “Reforms that promote quality education and health, as well as improve infrastructure services could substantially bolster potential growth, especially among emerging market and developing economies. Yet, some of these reforms will be resisted by politically powerful groups, which is why making this information about their development benefits transparent and publicly available is so important.”

Risks to the outlook remain tilted to the downside. An abrupt tightening of global financing conditions could derail the expansion. Escalating trade restrictions and rising geopolitical tensions could dampen confidence and activity. On the other hand, stronger-than-anticipated growth could also materialize in several large economies, further extending the global upturn.

“With unemployment rates returning to pre-crisis levels and the economic picture brighter in advanced economies and the developing world alike, policymakers will need to consider new approaches to sustain the growth momentum,” said World Bank Development Economics Prospects Director Ayhan Kose. “Specifically, productivity-enhancing reforms have become urgent as the pressures on potential growth from aging populations intensify.”

In addition to exploring developments at the global and regional levels, the January 2018 Global Economic Prospects takes a close look at the outlook for potential growth in each of the six global regions; lessons from the 2014-2016 oil price collapse; and the connection between higher levels of skill and education and lower levels of inequality in emerging market and developing economies.

#### Turns leadership and innovation. Culture of free investment most advantages US industry.

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

The U.S.' rise atop the liberal international order coincided with Great Britain's early twentieth century decline, but also was precipitated by a culture of free investment that resisted strong financial institutional sway and social democratic interferences in the public firm. The Gilded Age's exponential industrial expansion, dependent on a small number of powerful trusts, gave way to large public firms with diffuse ownership and frequent differences in opinion between shareholders and managers. 129 Their eventual prevalence and sophistication largely spared U.S. antitrust regulators of concerns over the national economic consequences that discrete enforcement action or inaction against any one firm might trigger. In contrast, competition authorities in countries that were slower to industrialize and/or operate within a more coordinated variety of capitalism have had to contend with the national ramifications of penalizing national champions, many of them controlled by dominant families. Mercantilist political pressures can further obfuscate regulator responsibilities within the interdependent global economy. 30 Per Gilpin:

Nation-states are induced to enter the international system because of the promise of more rapid growth; greater benefits can be had than could be obtained by autarky or a fragmentation of the world economy. The historical record suggests, however, that the existence of mutual economic benefits is not always enough to induce nations to pay the costs of a market system or to forgo opportunities of advancing their own interests at the expense of others. There is always the danger that a nation may pursue certain short-range policies.... in order to maximize its own gains at the expense of the system as a whole.'

#### Turns ag and telecom innovation. Both those industries are American export cartels. Foreign sovereigns will retaliate by blocking American exports, crushing the industry.

Jane Lee, University of Virginia School of Law, J.D. 2009; Yale University, B.A. 2002.’10, "Vitamin C Is for Compulsion: Delimiting the Foreign Services Compulsion Defense," Virginia Journal of International Law 50, no. 3 (Spring 2010): 757-792

This proposal also better serves the goals of international comity. If a U.S. court were to conduct an interest-balancing approach in which the concerns of a foreign nation were accurately assessed, the court in the Chinese Vitamin C litigation would have to take into account the U.S. interests served by Webb-Pomerene associations. The scope of this Note does not extend to the United States' own export trade immunities, but there are some stark similarities between the activities of the Chinese manufacturers through the Chamber and the activities of U.S. exporters through Webb-Pomerene associations. Under the Webb-Pomerene Act of 1918 (also known as the Export Trade Act), associations comprised of competing businesses engaging in collective export sales can escape U.S. antitrust liability. 50 Businesses engaged solely in export trade can register with the FTC to receive an exemption from the Sherman Act. The exemption does not apply to acts by association that restrain trade within the United States or restrain the trade of any domestic competitor of the association.' 5' If the U.S. exporters meet these conditions, they will be exempted from U.S. antitrust laws. The DOJ has emphasized that the protection afforded Webb-Pomerene associations lies only within U.S. borders and that these associations are not shielded from liability under foreign antitrust laws. 152

Nevertheless, some commentators criticize the United States' continued sanction of export cartels.' 53 Export cartels, often euphemistically referred to as "export associations," are essentially "agreements between exporters to act collusively" on various aspects of their export activity, which may include anything from joint production or joint marketing to naked price fixing and market allocation. 154 The Webb- Pomerene Act was originally passed to offset some of the disadvantages faced by small companies, where the export association can maximize welfare for both the exporting and importing state by increasing the value of the export with reduced costs or improved products.' 55 The practical result, however, has been large companies in concentrated industries taking advantage of the Webb-Pomerene antitrust exemptions. 56 This leads to enhanced producer welfare for the exporting nation, with the cartel able to reap the monopoly rents in the importing nation. 157 Predictably, Webb-Pomerene associations and the anticompetitive conduct they have encouraged abroad have antagonized some of America's foreign trading partners.' 58 Some commentators have suggested that foreign authorities are likely to "tolerate import cartels dealing with U.S. export associations on the theory that they were necessary to coun-ter the market power of the export associations., 159 America's use of these "export cartels" has also prompted other nations to employ similar strategies. Germany, Japan, and the United Kingdom are among the nations with export cartels patterned after the U.S. model. 160

### XT – Unilateral Trade Link

#### Unilateral enforcement is impossible, ensuring jurisdictional fights in the international trading system. The magnitude of this independent link is “huge.”

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

The unilateral extraterritorial application of antitrust law is a huge source of conflicts. The extraterritorial approach, especially when combined with the US effect doctrine, can raise different types of problems:

• It necessarily implies that two or more States will assert jurisdiction over the same conduct;40

• It can cause conflicts between competition policy and trade or industrial policy;41

• It can create tension in the international system;

Concerning the US system, private enforcement is likely to increase the tension, because foreign governments will often refuse to give information or consideration to private lawsuits.42

As Monti noted in relation to the EC extraterritorial application of antitrust law, in what can be taken as a general criticism, this kind of measure causes conflicts or discrepancies with rulings of foreign agencies, gives rise to conflicts with foreign governments, suffers of logistical fact-finding problems and enforcement difficulties.43

Extraterritoriality was established to face international practices that harm competition internally, but that was not enough. Zanettin concluded about its weaknesses:

“The extraterritorial application of competition law is a necessary, but limited, step to tackle foreign anticompetitive practices affecting the domestic market. The shortcomings of the unilateral use of extraterritoriality are all too clear: it is a potential of jurisdictional and political conflicts; it is hampered by the difficulty of obtaining incriminating information located abroad and of asserting jurisdiction over foreign persons; and it is a totally inadequate tool to remedy foreign export foreclosing practices. Its limits are even more obvious now that an increasingly number of countries have recourse to this instrument: enforcing decisions or information requests abroad is an even trickier task for domestic competition agencies that do not have the means and influence of the DOJ, the FTC or the European Commission. Furthermore, the simultaneous application of different national laws to foreign restrictive practices creates an increasingly complex regulatory environment, especially in the area of merger control”.

Furthermore, the difficulties associated with investigating and enforcing national law abroad – because access to information is hard – have also propelled antitrust jurisdictional issues to take the way of cooperation.

### XT 1NC 5: Alt Causes to Inequality

#### Protectionism reduces employment downstream, those costs are much greater.

Irwin 15 – Douglas, John Sloan Dickey Third Century Professor in the Social Sciences in the Economics Department at Dartmouth College (“FREE TRADE UNDER FIRE” Copyright © 2015 by Princeton University Press Library of Congress Control Number 2015936929 ISBN 978- 0- 691- 16625- 4 pp 94-98)

After noting that the U.S. price of sugar had been at two to three times the world price for twenty- five years, a Commerce Department report in 2006 concluded that “this price difference results in a significant competitive cost disadvantage for domestic sugar- containing products manu factur ers.”36 It reported that employment in the sugar- refining and sugar- containing products industry had fallen by more than eleven thousand between 1997 and 2002, even as employment in the non–sugar- containing food products industry had risen by more than thirty thousand. Of the ten thousand jobs lost, the Commerce Department attributed at least 6,400 to plant closings and relocation related to the high domestic price of sugar. In fact, sugar policy has jeopardized many more workers in sugar- using industries than it protects in the sugar- growing industry: in 2002, employment in sugar- using industries was 987,810, whereas there were only 61,000 workers employed growing and harvesting sugarcane and beets. Trade barriers were thought to protect only 2,260 of those sugar- growing jobs, which meant that the consumer cost per job saved was $826,000. As a result, the report noted, “nearly three confectionery manufacturing jobs are lost for every job protected in the sugar- growing sector due to the price gap between U.S. and world refined sugar prices.” More recent estimates of the sugar program conclude that between 17,000 and 20,000 jobs would be created in the food industry with the removal of the sugar quotas, while 2,700 jobs would be lost in sugarcane farming and sugar processing.37 There are numerous examples of the adverse effect that trade restrictions have on employment in related industries. In 1991, the United States imposed antidumping duties on imported flat- panel displays, used by domestic manufacturers of laptop computers: specifically, 62.67 percent duties on active matrix LCD displays and 7.02 percent duties on electroluminescent displays. Producers of laptops could no longer afford to purchase the expensive displays in the United States and still compete effectively against overseas rivals, who could buy the same displays at much lower prices on the world market and then export their laptops freely to the United States. To avoid the higher domestic prices, several manufacturers decided to shift production abroad. Immediately after the imposition of the antidumping duties, Toshiba announced that it would cease production of laptops in California and shift production to Japan, Sharp announced that it would cease production of laptops in Texas and move production to Canada, and Apple announced that it would relocate its assembly of laptops from California to Ireland or Singapore.38 Similarly, after the United States imposed price floors on Japanese DRAM semiconductors, computer manufacturers shifted their assembly operations outside of the United States to take advantage of the lower prices for memory chips in other markets. In these and numerous other cases, import restrictions benefiting one industry have only harmed another industry. When the purchasers of imported intermediate goods organize politically, they can alter the debate over the desirability of protection on employment grounds. In the case just mentioned, firms that used semiconductors (particularly computer manufacturers IBM, HewlettPackard, Sun Microsystems, and others) formed a coalition to oppose the renewal of the price floors on Japanese memory chips. As a result of this consumer coalition, U.S. trade officials no longer heard a single voice—that of semiconductor producers—regarding America’s trade policy. The government did not know how to deal with the sharply conflicting domestic interests, so it simply let the price floor agreement expire.

The same political process played out in the steel industry. In 1984, the United States negotiated voluntary restraint agreements (VRAs) that limited steel imports from all major foreign suppliers. The VRAs raised the domestic price of steel and helped steel producers, but harmed the production, employment, and exports of the far more numerous domestic users of steel, including the automobile, machine tool, and construction industries. To fight the VRAs, these downstream industries formed the Coalition of American Steel- Using Manufacturers (CASUM), led by Caterpillar, the manufacturer of heavy earthmoving equipment, and by the Precision Metalforming Association, a small business group whose members process raw steel for industrial users such as the automobile industry. The VRAs were allowed to expire in 1991 in part because CASUM posed an extremely difficult question to government officials: How are Caterpillar, John Deere, and other domestic steel- using firms supposed to compete at home and abroad against such foreign competitors as Komatsu when they are forced to pay a hefty premium for the steel they must purchase? If Caterpillar laid off workers because higher domestic steel costs led to sales being lost to foreign producers, those workers could justifiably ask whether the government believed that jobs in the steel industry were more important to the economy than jobs in the equipmentmanufacturing industry.40

#### Their internal link to fascism is poverty – trade improves it.

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Thus, the higher income that comes with freer trade is important not just for crass material reasons, but because it can lead to a better life. With higher incomes, families can pay for more and better food, gain access to medicines and better healthcare, and afford schooling for their children. One study examined the direct connections between trade openness and a society’s health outcomes, specifically infant mortality and life expectancy. Even after controlling for a country’s per capita income, average years of schooling, number of doctors per capita, and other factors, people in countries with lower tariffs had longer life expectancy and experienced lower infant mortality. For example, an eleven- percentage- point reduction in the tariff rate—a change of about one standard deviation in the sample—is associated with between three and six fewer infants dying per thousand live births.24 Such findings are a powerful reminder of the life- and- death stakes of good and bad economic policies. The tragedy of India is that, by delaying economic reforms for so many decades, it contributed to the impoverishment of its people for so long. One Indian businessman writes with dismay the following:

Most people remember the Emergency [suspension of democracy between 1975 and 1977] because it represented a generalized loss of liberty. They do not understand that by suppressing economic liberty for forty years, we destroyed growth and the future of two generations. For the average citizen it was a great betrayal. Lest we forget, we lived under a system where a third of the people went hungry and malnourished, half were illiterate while the elite enjoyed a vast system of higher education, and one of ten infants died at childbirth. Our controls and red tape stifled the entrepreneur and the farmer, and the command mentality of the bureaucrat, which fed the evil system, continues till today to frustrate every effort at reform.”25

India has paid a very heavy price in human lives for delaying its reforms. But what China and India have accomplished is stunning. Though both countries still have a long way to go, the improvement in human well- being achieved over the past generation is mind- boggling. Of course, not all of the improved economic performance of China and India can be attributed to more liberal trade policies. China moved away from a system of central planning and collective agriculture, while India freed up bureaucratic obstacles to domestic investment. Nonetheless, trade reforms were a key component of the overall economic reforms. Both countries deliberately shifted from closed economies to ones more open to world trade.

## Cartels

### XT 1NC 2 and 3: No Solvency

#### Any residual solvency arguments demonstrate the link to our turn to advantage 2 and China DA – to enforce international restrictions, the US must invade other countries sovereignty, encouraging other countries to reduce respect for the US.

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

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

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

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

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

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

# 1NR

## China

### 2NC – O/V

#### Decoupling destroys turns case, steamrolls the liberal order and reverses globalization.

Alan Dupont, CEO of geopolitical risk consultancy the Cognoscenti Group and a nonresident fellow at the Lowy Institute, ’20, "US-China decoupling and the eve of economic destruction," The Australian, https://www.lowyinstitute.org/publications/us-china-decoupling-and-eve-economic-destructio

This year will go down as the century’s worst if measured by the disruption, misery and strife that has marked the Year of the Rat. There seems no end in sight to the cascading series of crises afflicting millions of people around the world. Even those with no religious bent must wonder whether the Four Horsemen of the Apocalypse have been let loose as drought, wildfires, hurricanes, floods and pestilence continue to wreak havoc. But geopolitical rivalry between Washington and Beijing remains the bookies’ choice for the most destructive runner in the field. The US and China are headed for serious conflict with no ­circuit-breaker in sight. The speed with which the relationship has unravelled and the systemic impact of the falling-out has surprised even the pessimists. Disputes over trade and technology have now spilt over into telecommunications, business, financial markets, education and national security. Virtually every tool in their national armouries is being weaponised for geopolitical purposes as both countries seek to advance their interests at the expense of the other in an economic version of military arms racing. The dangerous, downward spiral in the relationship threatens to do lasting damage to the already stressed global economy and the fraying, rules-based international order. A big concern, with direct implications for Australia, is that decoupling of the US and Chinese economies will be more severe than previously thought, threatening our economic recovery. How decoupling plays out matters more to Australia than any other country because of our trade dependence on China and the US position as the world’s largest economy, our biggest investor and major ally. Often forgotten in conventional analyses of trade and economic disputes is that the international trading system established by the US was also about alliance management. Twelve months ago, the consensus view was that decoupling would be limited to some areas of technology and advanced manufacturing because the US and Chinese economies are joined at the hip. Divorce would be a form of mutually assured economic destruction and therefore unlikely. Veteran China watcher Arthur Kroeber points out that American companies have more than $US700bn ($980bn) of assets in China and do around $US500bn a year in domestic sales there. Despite the trade and tech wars, 70 per cent of American companies don’t anticipate reshoring. But if Donald Trump wins in November, this judgment may need to be revisited. Trump blames China for the devastation caused by the coronavirus and the setback to his election prospects, and has vowed to decouple the US from China’s economy. “Whether it’s decoupling or putting in massive tariffs like I’ve been doing ­already, we’re going to end our ­reliance on China once and for all,” says Trump. The use of tariffs and other forms of trade discrimination for geopolitical purposes — what Walter Russell Mead calls the “Trumpification of world politics” — is fast becoming a first resort for the larger economies. So it would be wrong to single out Trump for weaponising trade. China started down this road long ago. Administration hawks such as trade adviser Peter Navarro believe the best way of preserving America’s dwindling economic and technological lead and protecting against avaricious Chinese practices is to reduce trade exposure to China and restrict the country’s access to American technology and education. The debate within the administration is over the extent of that decoupling, and the uber hawks seem to be winning. They are determined to lock the US into a hard decoupling to make it difficult for the Democrats to reverse the ­policy in government. But there is not much likelihood of that: Joe Biden’s China ­policy is little different from Trump’s. He won’t risk being painted as soft on America’s main rival. Trump was never an ideological China hawk. Ever the pragmatic deal-maker, his instincts were to secure a better deal for the US by pressuring Xi Jinping to make concessions on trade, until the full force of the coronavirus shredded his plans to campaign on a strong and growing economy. His souring view of China gave hawks the opening they needed to drive home the message that the US must rectify a dangerous over-dependence on China. To their dismay, US health authorities discovered an astonishing over-reliance on China for everything from masks and personal protective equipment to essential medicines, reaching more than 90 per cent for antibiotics, cortisone and ibuprofen. Fears that Beijing might exploit this dependency have been heightened by provocative suggestions from Chinese government advisers that the export of antibiotics to the US might be curbed in retaliation for Trump’s punitive tariffs. Xi has reined in his own uber hawks for the moment, hoping that a Biden win will provide an opportunity for a relationship reset. But as an insurance policy he has accelerated efforts to become more self-reliant in everything from semiconductors to advanced manufacturing, education and financial technology. Xi’s recently announced Dual Circulation Theory is a declaration of intent to create a more resilient Chinese economy, future- proofed against external shocks and anticipated disruptions to international trade. Heavy on Chinese Communist Party sloganeering designed to signal the party-state’s policy priorities, DCT places renewed emphasis on spurring domestic demand (internal circulation) to compensate for a likely reduction in the exports that have fuelled the country’s stellar growth for decades (international circulation). As with most major CCP pronouncements, DCT has a geopolitical purpose. “It is first and foremost a strategy for Chinese decoupling and the continued advance of power,” says economist George Magnus. This is driven by the confluence of four factors: a less conducive environment for Chinese exports; the souring of China’s relations with the US and other Western nations including Australia; its still high dependence on foreign technology and know-how; and the impact of the coronavirus which has reinforced the momentum towards greater self-reliance globally. “The new strategy will be a cornerstone of China’s economic policy for years to come,” says trade analyst Stephen Olson. It is likely to shape the 14th Five Year Plan to be implemented next year. But its success hangs in the balance. The DCT is a blueprint for ­income and wealth distribution from the state to the private sector which, if fully implemented, would require structural reform and political change that could eventually challenge the CCP’s primacy. It’s also economically flawed. To increase domestic consumption, Magnus argues, the CCP will need to lift wages, lower income inequality, discourage high levels of household saving and expand social security, all of which are incompatible with ­export competitiveness. Data is also being weaponised along with trade. Chinese tech billionaire Jack Ma has called data more important than oil in driving the 21st century economy. The ability to collect, manipulate and use big data is the key to dominance of the foundational technologies that will define the industries of the future — artificial intelligence, quantum computing, robotics, semiconductors, energy storage, hypersonics and next- generation telecommunications. The US and China are striving for economic and technological supremacy in a fight neither can win, but both fear losing. The ultimate prize is the ability to set the rules and control the information highway. Driving this change is techno-nationalism — defined by the Hinrich Foundation’s Alex Capri as “mercantilist-like behaviour that links tech innovation and enterprise directly to the national security, economic prosperity and social stability of a nation”. Capri says China has been steadily closing the technology gap with the US because the CCP is funding its innovation agenda “on a scale never before seen in history”. By 2030, China will have an R & D budget of $US900bn and — unless the US makes adjustments — will invest at least $US70bn more per annum than all US industrial, government and academic R & D institutions combined. Capri says: “In response to decades of Beijing’s techno-­nationalism, the US has embarked on its own innovation offensive … that could surpass the scale of the moonshot projects during the space race with the former Soviet Union.” Technology analyst JS Tan holds a similar view. “For most of the internet’s history, the West dominated the online world. Embodying a mix of social progressivism and economic conservatism — known as the California Ideology — Silicon Valley became rulers of the open internet and champions of the free flow of information. Neoliberalism, in other words, went online.” But Silicon Valley’s neoliberal order has come to an end and a new era of tech ­nationalism has emerged. Responding to criticism that they are prepared to co-operate with Beijing but not Washington, leading US technology companies are starting to get on board Trump’s innovation agenda. Tan believes this turnaround is driven by fear of being branded disloyal and anxiety that the rise of China’s tech industry may spell the end of Silicon Valley’s dominance. Former Google CEO Eric Schmidt recently warned in an opinion piece for The New York Times that ­Silicon Valley must work with the Pentagon or China would win. But Trump is also “trying to out-China China”, says Fiona Alexander, a former US official and policy strategist at the American University in Washington. This means playing hard ball with China’s technology champions, severely restricting their ability to operate in the US and putting pressure on other countries to ban the use of Chinese apps and technology. Trump wants to deny China access to all American data — from military communications carried on undersea cables to 5G-enabled smart refrigerators and television sets — by establishing a “clean network” of trusted systems that the CCP can’t touch. This is beginning to threaten data on apps and the hard infrastructure that moves data around the world, jeopardising China’s tech business model. The Clean Network Program, announced in August, already includes nearly 30 countries. While China could withstand breaking off economic ties with the US alone, it would take a much bigger hit if American allies cut off Beijing. Many other countries are joining Trump in opposing China’s techno-nationalism. Capri says the US is seeking “alignment with the security, economic and ideological objectives of the EU and other historic allies”. Australia, Japan and the UK have already excluded Huawei from their 5G networks. India has banned more than 100 Chinese apps, including video-sharing platform TikTok, and is co-operating with Australia and Japan on an Indo-Pacific Supply Chain Resilience Initiative launched in September and clearly aimed at China. Kroeber thinks that Huawei is probably finished as a maker of 5G network equipment and smartphones once its inventories run out early next year unless a Biden administration were to cut a deal. He believes that Trump is winning his implicit bet that China needs access to US markets, capital and technology more than the US needs access to Chinese markets and imports. US national security can be strengthened at less cost “which is an absolute gain in Trump’s zero-sum world”. The risk is that the whole ­global ­economy could decouple if the US and China continue down their ­diverging paths. The dilemma for Australia is how to steer the ailing ship of state through the decoupling storm at a time of historic weakness and uncertainty. Some economic separation between the US and China is unavoidable and, ­indeed, necessary to preserve the integrity of a robust, open trading system and democratic values, freedoms and institutions. Unless it is opposed, China’s techno-­nationalism, gaming of international trade and domination of global supply chains would entrench its authoritarian system and make us more vulnerable to coercion. But every effort must be made to keep decoupling within manageable limits. A hard decoupling would not only delay and complicate Australia’s economic recovery. It could also sow the seeds of a second global recession, or even depression, as the US-China trade and tech wars would likely intensify, further fracturing global ­supply chains, reducing international co-operation and opening up new areas of conflict. A more astute, managed decoupling is required. Australia needs to embrace common approaches with other democracies that still permit global engagement and open trade with one another and China, while building a new consensus for ­reform of trade and technology governance. Global supply chains will continue to underpin international trade, albeit with higher levels of redundancy. But there will be a much higher priority on self-­reliance and national resilience. These will be the guiding principles in a product- and industry-wide reassessment of the capabilities required for security, development and critical public goods. Decoupling and the weaponisation of data are accelerating the shift to greater state intervention even in liberal democracies, where a renewed focus on strategic industries and national champions is likely, along with pressure for new social contracts. US-China decoupling is legitimising greater government intervention in market economies in the name of national security and greater self-reliance. Scott Morrison has intuitively grasped this shift and is moving to reinvent the Coalition as a reformist government not afraid to trumpet the virtues of big spending and to pick strategic winners. They include university courses, new energy technologies, defence, critical minerals, space industries, agricultural processing, digital connectivity and the establishment of a strategic petroleum reserve.

#### Semiconductor supply-chain decoupling steamrolls semiconductor innovation and hurts US tech supremacy – turns advantage 1.

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

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

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

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

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

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

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

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

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

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

#### Semiconductor innovation key to “smart” infrastructure.

Lori Cameron, Senior Writer @ IEEE, 20+ Years Tech Expertise, ’19, "Semiconductor Industry Making 5G World of ‘Smart Everything’ a Reality," No Publication, https://www.computer.org/publications/tech-news/trends/5G-semiconductor-industry-drives-smart-everything-iot

There’s no denying it. The “Internet of Things” and the cyber-physical systems that power it are blurring the lines between the physical and digital worlds. Smart grids, autonomous vehicles, medical systems, and robotics are revolutionizing the way we live and work. The semiconductor industry, which has powered every generation of microchip for the past fifty years, is gearing up for 5G, the long-promised network designed to operate at exponentially higher speeds than anything consumers have experienced to date. “When it comes to medical devices, self-driving cars, and many industrial/infrastructure IoT applications, ‘good enough’ won’t cut it.” ~ Jim O’Neill, CTO Entegris We asked Jim O’Neill, CTO of Entegris, about the future of smart technology and how leaders in the semiconductor industry can successfully lay the groundwork for it. How are industry leaders preparing for the advent of 5G? O’Neill: As seen in recent months, 5G networks are beginning to ramp up and roll out, promising to transfer large amounts of data 100-200X faster than 4G LTE. For the true value of 5G to be realized, however, various components of the IoT infrastructure—processors, modems, and logic chips at leading-edge nodes and devices—will need increased memory output and higher performance to sustain the next-gen applications of the future. Related: Like what you’re reading? Explore our collection of more than 50 magazines and journals. In what way is the semiconductor industry girding itself for the impact? O’Neill: Semiconductor manufacturing is playing a critical role in this transformational time. Semiconductors have always played a vital role in technological advancements; however, with the rapid speed of innovation dictated by the demands of the Fourth Industrial Revolution (4IR), innovation within the semiconductor manufacturing space will pave the way for advanced innovation. What will the semiconductor industry have to do to prepare for the launch of 5G? O’Neill: As 5G and IoT devices proliferate the market, so does the demand for high-performance and reliable semiconductor chips. Adding to that, per a study by IDC, the volume of global data will increase 10x to 163 zettabytes (or one trillion gigabytes) by 2025, leading to more demand of integrated chips (ICs) as data storage, analysis and process will play a central role in 5G and IoT infrastructure. With the full realization of 4IR is still years away, those in the semiconductor space must start preparing for the onslaught of demands these new drivers will require. 5G, cloud data centers, edge computing, IoT, IIoT, smart cities, and fully autonomous vehicles rely on advanced semiconductor and related technologies including microelectromechanical systems (MEMS) and sensors, light-emitting diode (LED) and flexible display technologies, and more. For example, until the 5G network infrastructure is in place, it will not be possible to fully deploy the technology needed for smart cities and factories, as well as fully autonomous vehicles.

#### Key to mega cities – extinction

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

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

### 2NC – Link – 2AC 1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 2NC – AT: No China War – 2AC 2

#### Yes china war– high alert, ASBM entanglement and nuclear opacity.

David Logan, Ph.D. candidate (International Affairs) @ Princeton, 9-18-2020, "The Dangerous Myths About China’s Nuclear Weapons," War on the Rocks, https://warontherocks.com/2020/09/the-dangerous-myths-about-chinas-nuclear-weapons/

Misplaced Attention: The Real Risks of Beijing’s Nukes

Although there is little evidence to support claims that China possesses a vast covert nuclear arsenal, that its no-first-use policy is a sham, or that it has developed an extensive array of tactical nuclear weapons, there are still several reasons to be concerned about China’s nuclear forces. Unlike the above myths, which often focus on China’s force modernization and potential arms racing dynamics, these legitimate concerns often relate to actual nuclear use.

First, China’s nuclear expansion and modernization, though modest in comparison to the much larger and sophisticated arsenals of the United States and Russia, ease the technical constraints that have influenced its nuclear policies, making it easier for Beijing to shift to a more alerted posture if the country’s leadership ever decides to do so. China is deploying more and increasingly sophisticated solid-fueled and road-mobile land-based missiles, fielding a fleet of nuclear-powered ballistic missile submarines, and has reassigned a nuclear role to its air force.

The development of more accurate, mobile, and survivable missiles, and the realization of a complete nuclear triad of land-, air-, and sea-based delivery systems will expand Beijing’s nuclear policy options. More accurate missiles improve the potential value of using nuclear weapons on the battlefield against opposing military units. Calls by some within China’s military to raise the alert status of its nuclear forces raise questions about the long-term trajectory of China’s nuclear policies. China is reportedly working on a space-based early warning system which could support a move to a launch-on-warning posture, if such a decision were made in the future. Last year, Russian President Vladimir Putin announced that his country would assist China in developing an early warning capability. In fact, the 2020 Department of Defense report on the Chinese military claims that “China intends to increase the peacetime readiness of its nuclear forces by moving to a launch-on-warning posture with an expanded silo-based force.” Some developments, like the deployment of a nuclear-powered ballistic missile submarine fleet, may create new pressures for mating warheads in peacetime or pre-delegating launch authority in certain situations. China’s expanding fissile material production capabilities, though intended for commercial purposes, could be used to support a larger expansion of its nuclear weapons arsenal. Recent reports have suggested increased activity at China’s nuclear weapons labs and testing site.

Together, these developments either create new opportunities for China to use its nuclear forces or introduce new pressures on longstanding nuclear weapons policies and practices. They also, in part, drive American skepticism of Chinese nuclear policies. In the past, the operational and technical characteristics of China’s nuclear arsenal lent inherent credibility to Beijing’s claims of maintaining only a retaliatory capability. China may have pursued these new capabilities primarily to ensure the survivability of its nuclear deterrent. But today, thanks to those modernization efforts, China’s nuclear forces may nonetheless be capable of more than simply retaliation. This has occurred against the backdrop of growing U.S.-Chinese strategic competition and mutual suspicion, further heightening threat perceptions.

Second, experts have increasingly warned that the possible entanglement of China’s conventional and nuclear forces could introduce dangerous escalation risks in a crisis or conflict. China fields the world’s largest and most sophisticated array of conventional and nuclear ground-based ballistic missiles. All of these missiles are under the control of the People’s Liberation Army Rocket Force. Some of these missiles, such as the DF-21, feature both conventional- and nuclear-armed variants. One missile system, the DF-26, appears technologically capable of switching between either a conventional or nuclear payload and Chinese military reporting describes DF-26 units rapidly transitioning from conventional strikes to nuclear ones. The mobility of these systems increases the possibility of nuclear and conventional units operating far from home garrisons and within proximity of one another. This organizational, technological, and geographic overlap may make it difficult for the United States to determine which systems are nuclear and which are conventional.

In a crisis or a conflict, U.S. strikes against China’s conventional capabilities might inadvertently degrade Beijing’s nuclear deterrent, introducing dangerous escalation pressures. U.S. efforts to locate and track Chinese conventional missiles could be misinterpreted in Beijing as preparations for a disarming first strike against its nuclear forces. Similarly, the United States might mistake the launch of a conventional Chinese missile as a nuclear attack. These risks stemming from entanglement are more pronounced given evidence that the United States misperceives the drivers of Chinese entanglement. Several American analysts have suggested that Beijing may have deliberately entangled its conventional and nuclear forces in order to increase the risks of nuclear use and deter the United States. While the logic is compelling and some Chinese strategists may have come to appreciate the potential deterrent benefits of entanglement, the evidence suggests that Chinese entanglement, to the degree it exists, developed from more parochial organizational dynamics (i.e., saving costs by using similar systems), not a desire to manipulate risk. This mismatch between what Americans and Chinese analysts perceive to be the drivers of entanglement could exacerbate escalation dynamics, with U.S. officials falsely believing that China is well prepared for the risks of entanglement and Chinese officials falsely believing that U.S. actions (inadvertently) targeting China’s nuclear weapons are part of a campaign to erode China’s nuclear deterrent. Together, this entanglement could increase pressures on China to use its nuclear weapons or for the United States to target them, raising the likelihood of a dangerous escalation spiral.

Third, China’s longstanding opacity about its nuclear forces and policies is risky, especially given the evidence of misperceptions and misunderstandings between Beijing and Washington. China and the United States appear to have dangerously different views of escalation dynamics and the ability of countries to control the scope and intensity of a conflict. For one, while American experts frequently highlight potential escalation pathways in a crisis or conflict, Chinese strategists appear overly sanguine about the escalatory potential of steps China might take with its nuclear forces to signal resolve. This mismatch in perceptions could lead each side to misjudge the actions or intentions of the other. For example, Chinese military texts describe potentially escalatory signaling practices for demonstrating resolve in a crisis, including broadcasting operations involving its strategic forces and even launching an intercontinental ballistic missile armed with a conventional warhead against an adversary’s territory. Though there is no indication that China ever deployed conventionally armed intercontinental ballistic missiles, such future actions could be easily mistaken for preparations of an actual nuclear strike. American skepticism about China’s nuclear policies, including its no-first-use pledge, exacerbates these risks.

Similarly, although skepticism about China’s no-first-use policy may be overblown, it would be dangerous to assume that it is inviolable in all possible circumstances. In a crisis or a conflict, plans can change. There are occasional reports of Chinese strategists and military officers debating the merits of the no-first-use policy, including expressing concerns about potential adversary efforts to exploit China’s no-first-use policy by mounting a conventional first strike against China’s nuclear forces. Versions of this debate have been going on for decades and there is no hard evidence that China’s no-first-use policy has changed (indeed, the existence of the debate is itself evidence that the policy is still in place). But that should not lead U.S. military planners to assume that there is no risk in non-nuclear operations intended to degrade Chinese warfighting capabilities or impose costs on China.

#### Rational deterrence theory overlooks psycho-symbolic drivers of state behavior. Actuarial risk tolerance makes nuclear war inevitable.

Gvosdev, Nikolas K. Prof of National Security @ Naval War College. ’17. Communitarian Foreign Policy: Amitai Etzioni's Vision. Routledge.

Realism assumed that a state would more or less react in the same way to the same set of external stimuli, and Realism as an explanation for international affairs was usually paired in the immediate postWorld War II period with the rational actor model for understanding how states made policy.3" The rational actor model was premised on an assumption that governments have a process in place that com siders all possible courses of action and that weighs all the costs and benefits of each approach.3' In turn, as James Blackweil has observed "Cold War deterrence was built on the rational actor model, which emphasizes the intellectual nature of deterrence. It holds that the threat by an opponent to use nuclear weapons, resulting in sure destruction of the other, would be so risky that no one—regardless of cultural or behavioral attributes or institutional decision­making processes­would ever conclude they could prevail in such an ultimate nuclear contest."32 This mind­set, augmented by the writings of strategic theorists like Herman Kahn, Thomas Schelling, Bernard Brodie, and Albert Wohlstetter, fed into a preoccupation with deterrence and thus a tendency to overestimate what was needed to offset the Soviet threat, whether in terms of arms or deployments. American politicians had an almost palpable fear of showing anything that could be constituted or understood as weakness by the USSR and its allies (or that might be characterized as such by their political opponents). Since the Korean War, US policymakers had been concerned about what I have termed the "Acheson effect" a fear (founded or otherwise) that a 1950 speech by Secretary of State Dean Acheson, in which he seemed to exclude the Korean Peninsula from the American defense perimeter, was a proximate cause of triggering the Soviet­backed North Korean invasion of South Korea that occurred in June of that year. (In reality, Stalin's willingness to countenance the invasion was based more on the successful Communist takeover in China and an assessment that, with no US troops stationed in Korea, the North Koreans could quickly take the peninsula and present the world with a fait accompli). How ever, the "Acheson effect" fed an unwillingness on the part of US statesmen to to rule out any possible threat or to declare any part of the world off limits to American intervention."33

The Acheson effect also raised the stakes because it fed the "tenacious, unshakeable belief that nuclear force is integral to the national security of any major power"; since the United States could not possibly defend all of its global commitments with its existing conventional forces, and did not want to allow the Soviet side to dictate the terms of engagement, it opened up the possibility that nuclear weapons might have to be employed.34 Indeed, in a speech on January 12,1954, Secretary of State Dulles noted:

Local defense will always be important. But there is no local defense which alone will contain the mighty landpower of the Communist world. Local defenses must be reinforced by the further deterrent of massive retaliatory power. A potential aggressor must know that he cannot always prescribe battle conditions that suit him. Otherwise, for example, a potential aggressor who is glutted with manpower might be tempted to attack in confidence that resistance would be confined to manpower.35

This mind­set contributed to an approach to policymaking that was extremely risk­averse, particularly in terms of offering the possibility of compromises or disengagement, for fear that this would stimulate further aggression and losses. Indeed, Kahn worried that a hesitation to stand firm against the USSR, particularly out of the fear of a nuclear conflict, might lead to a series of Munich­style compromises where aggressors would be appeased and the long­term strategic position of the United States would be compromised.36 Throughout much of this period, there was fear that the Soviet Union was on the verge of surpassing the United States and would become the world's leading power—and so be able to dictate changes in the global order which the United States would have to accept.37

To prevent this from occurring, the United States needed to be able to respond at all levels (up to and including the use of nuclear weapons) and at any point in the world to prevent the Soviet Union from gaining any sort of advantage. To the extent this view dominated the domestic policy discourse, it left decision makers with little margin to take chances by considering unilateral steps (such as disengagement from a region or an initial compromise on a pressing security issue) that might be interpreted as weakness. There was little interest in scaling back America's greatly expanded commitments or in defining interests more selectively, if either would create perceived vacuums that would be exploited by the Soviets.38 There was greater debate over whether to adopt what John Lewis Gaddis has described as "two distinct styles of containment"—symmetrical (a direct, proportional response in the immediate geographic area) or asymmetrical (a response that might be in a different area and at a different level of intensity)—but were designed to counter any Soviet threat and to avoid humiliation or escalation.3

How—and under what conditions—the US government might be able to adopt a more flexible approach to the Cold War helped to spur Etzioni's own research. His 1961 work A Comparative Analysis of Complex Organizations had helped to establish the field of organizational sociology and concluded that different types of organizations, even governments, "behaved (and misbehaved) following the same sociological laws."40

Such observations helped to challenge the assumption that, "for all intents and purposes, states behave as rational unitary actors"41 by calling attention to the fact that large bureaucracies would be driven more by their conception of their organizational interests than by a more abstract and general "national interest" in how they executed the decisions of senior political leaders­and in fact might even try to drive decisions based on their own preferences. The study of bureaucratic politics thus emerged as a way to assess how government institutions— and their leaders­might constrain and shape possible options made available to policymakers, in contradistinction to the rational actor model s expectations that all options and course of action were equally open to consideration. Yet this approach could not always explain pokey decisions taken by governments that the rational actor model also failed to anticipate.

Etzioni, along with other colleagues like Charles Osgood and Robert Jervis, then opened up yet another area for analysis by arguing that much more attention needed to be paid to social, psychologies, and cognitive influences on policymakers, including recognizing the impact of such influences as fear and misperception in driving policy. The realism of the rational actor model assumed that decisionmakers both had access to complete information and were able to process it in the cold light of pure rationality. Instead, Etzioni might have agreed with the sentiments expressed by Rajan Menon, namely, that oftentimes critical global events “are not shaped by the calculations of accountants. Honor, prestige and hubris – all emotions not easily factored into equations and hence predictions, but no less real for that – take center state. (These observations, of course, had initially been codified by the Greek historian Thucydides).

The psychological-cognitive dimension of policymaking was one of the areas that the rational actor model (and its version of realism) discounted or ignored altogether, a flaw that Etzioni sought to correct. After all, sober cost-benefit analysis might point to the desireability of a particular policy choice (say, disengagement from a regional conflict) that the country s leadership might still be unable to embrace due to its own cognitive limitations or to concerns about how the change might be received. Even more risky was that the core assumption of US foreign policy during this time—a reliance on nuclear weapons "to create uncertainty in the minds of potential adversaries as to what the United States might do if aggression took place, thereby making the risks appear to outweigh the benefits"44—rested on the assessment that Soviet leaders perfectly understood American intent, motivation, and resolve and thus would take no precipitous action that might provoke the United States. There was little provision for the possibility that different leaders might have different tolerances for risk, which might lead to miscalculation.

Thus, alongside the traditional military, political, and economic influences on foreign policy, Etzioni felt it was just as important to examine the "psychological­symbolic forces" which could also impact how choices were evaluated and made.45 He called attention to factors such as rigidity (continued adherence to a particular policy even after conditions had changed), as well as other forms of triggering behavior that might constrain or even invalidate the assumptions of the rational actor model.46 It was therefore critical, in his assessment, to pay attention to creating the psychological space that was the precondition for policy change to break out of the nuclear stalemate, the necessary "symbolic steps that create an atmosphere that will support its general purpose."4 Small unilateral gestures could create momentum leading to larger multilateral and simultaneous steps that could reduce tensions and the possibility of an accidental or unwanted clash.48

#### Fear and humiliation drive escalation.

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Emotions, international hierarchy and the South China Sea

Although the emotion of fear is central to the inquiry into, it is rarely operationalized in studies of contemporary politics.12 Even though recent scholarship refuted earlier concerns with scientific quality,13 the predominant view continues to treat actions based on fear, anger, shame, grief, hatred and hope as mere aberrations from the otherwise rational behaviour of the modern subject.14 Emotions that lead to so-called misperceptions tend to be attributed to the unreasonable ‘other’ and are seen as the very traits of human behaviour that need to be rooted out; usually through sufficiently strong and well-crafted postures of deterrence. Moreover, few studies have systematically analysed the important role of emotions in (international) politics beyond the Euro-Atlantic.15 This shortcoming may be pronounced in analyses of Asia–Pacific affairs.16 Therefore, the dimension of international hierarchy is often underappreciated. Likewise, few discussions of international hierarchy make emotions their focus of analysis.17 This is intriguing given that the defining vocabulary of ‘shifting’ and ‘rising’ powers display an emotional ‘expression of our vulnerability to events that we don’t control’.18 International hierarchy engenders a rather contradictory conception China’s place in the world. While most outside observers are anxious about an assertively ‘rising China’ remaking world order according to its own preferences, Chinese policy-makers fear the consequences of being weak; of a China that fails to advance fast enough, remains an outsider to the international community, and consequently faces the prospects of societal disorder, foreign encroachment, and even dismemberment.19 In Callahan’s words, China is a ‘pessoptimist’ nation.20 Fear of the future co-exists with hope for a better future, such as President Xi expounded it in his formulation of the Chinese Dream.21 It is the CPC’s long-standing aspiration to, first, realize a ‘moderately well-off society’ and second, to become a respected member of the international community.22 The leadership even set itself and every Chinese person deadlines for achieving them: The former by the centenary of the CPC’s founding in 2021 and the latter by the centenary of the founding of the People’s Republic in 2049.23 Hence, the Party sees the first two decades of the twentyfirst century as a ‘period of strategic opportunity’ not to be missed.24

Hierarchy conceals these emotions: Those showing emotions are seen as behaving unreasonably and their concerns and claims are, therefore, invalid or insignificant.25 The dismissal of Chinese emotional reactions as purely instrumental, as the Party’s tactical use of nationalism, is a direct outflow of this view.26 Because deliberately exaggerated and distorted ‘facts’ will elicit reactions from target audiences and may eventually become commonly held beliefs, also among the very manipulators, it is largely irrelevant whether emotional outbursts are part or results of a propaganda offensive or not. To the contrary, in their desire to portray themselves as strong leaders in control of every situation and contingency, officials will likely tone down the full extent of their individual disapproval and conceal their personal fears through the use of diplomatic jargon. Since escalating maritime conflicts are seen as epitome for how the power shift towards China destabilizes the established ‘rule-based order’, the South China Sea provides an insightful case for showing ‘how exactly [. . .] hierarchies create the trade-offs that (later) shape behavior’.27

While clashes between Beijing and Washington are well documented, studies that apply conventional methodologies display great difficulties with explaining the repetition of escalatory ‘mistakes’ and ‘miscalculations’, including officials’ refusal to use communication hotlines and their clear tendencies to believe in conspiracy theories amid the continuous build-up of antagonistic military postures.28 Methodologically more critical studies made the strong case for the relevance of deeply entrenched historical narratives, the so-called century of national humiliation in particular, in framing Beijing’s interpretations of the international environment and determining foreign and security political responses. Gries, for instance, points to the lasting humiliation that the Chinese leaders and public felt after the US in May 1999 bombed the Chinese embassy in Belgrade.29 Wang’s study shows in detail how these feelings led Chinese decision-makers to interpret the Belgrade bombing as US-led ploy to create chaos and topple the CPC. The same case also strongly supports the argument that China’s transformation to a capitalist economy led to a rekindling of national humiliation narratives and pushed leaders such as President Jiang Zemin – known for his personal emotional outbursts upon what he perceived as lack of respect for his country – to put utmost premium at increasing China’s status through boosting ‘comprehensive national power’, that is the twenty-first century version of the ‘rich nation strong army’ paradigm originally propagated by twentieth century nationalists.30

In the same vein as the Belgrade embassy bombing, the collision of a Chinese fighter jet with a US EP-3 reconnaissance plane over the South China Sea that caused the Chinese pilot’s death and led to a controversy over the arrest of the US crew after their emergency landing deepened Chinese indignation. The foreign ministry repeatedly asserted that China’s national sovereignty and dignity should not be violated and insisted that the American government apologize and take responsibility for the troubles caused to China.31 Shepperd, explicitly theorizing these emotions, found that while the US sought to bolster their position through references to international law, Chinese leaders and the public alike felt bullied and lamented the US’ hegemonic attitude.32 Noting the use of strongly emotional language and seemingly excessive insistence on a US apology, and recognizing that the ‘betrayal’ of hitherto practised rules of interaction led the situation deteriorate at ‘alarming’ speed, she points to the long-standing Chinese fears of encirclement fueled by the narrative of national humiliation. Hutchison goes one analytical step further. Examining the memory politics described by Wang and others, she finds that people in China have been unable to ‘act out’ their trauma.33 Yet, while pointing to the crucial role of community in this process, her conclusion stops with a reference to the need for critical reflection. Here, an explicit theorizing of international hierarchy and a discussion of evidence beyond instances of diplomatic crisis management promises deeper insights.34

#### China seeks status recognition – denying Chinese strategy causes conflict.

Deborah Welch Larson, professor of political science at the University of California, Los Angeles, and Alexei Shevchenko is professor of political science at California State University, Fullerton, ‘19 “Lost in Misconceptions about Social Identity Theory RESPONSE,” International Studies Quarterly63, 1189–1191

Dissatisfied with their relative standing in the world, China and Russia are challenging the US-dominated liberal order. China has built and militarized artificial islands in the South China Sea to gain control over a strategic waterway. Russian President Vladimir Putin annexed Crimea from Ukraine and meddled in the 2016 US elections. These recent actions by China and Russia appear to have a common denominator—the desire to assert their status as global great powers (Larson and Shevchenko 2019, 198, 202–3). Could US accommodation of Chinese or Russian status ambitions help channel their behavior in a more constructive direction?

The rationale for status accommodation is that attempts by established powers to obstruct the rise of a state such as China are apt to provoke a backlash in the form of heightened nationalism, military buildups, or geopolitical rivalry. This is rooted in the psychological insights of social identity theory (SIT), which argues that impermeable status barriers, combined with the perception of unfair treatment and the possibility of change in the status hierarchy, will motivate a lower-status group to challenge the status quo (Tajfel 1978a, 1978b; Tajfel and Turner 1979). Steven Ward (2017) argues that the case for status accommodation rests on shaky scholarly ground. Ward contends that scholars who draw this connection (Larson and Shevchenko 2010, 2014b, 2019) have misused the psychological theory and presents an alternative explanation of status competition in international relations (IR), which he claims is more consistent with SIT. In Ward’s version of SIT, impermeable elite group boundaries only affect individuals who try to leave their group for a higher-status one; impermeability does not influence the behavior of groups. Thus, instead of being motivated by anger or hostility at persistent status denial, states pursue geopolitical competition because they have the capability to do so and the international community values advanced weaponry and overseas possessions as indicators of status.

To refute the argument that persistent status denial leads to conflict, Ward discusses “most likely” cases for the IR version of SIT—Germany’s Weltpolitik before World War I and Japanese foreign policy in the interwar period. In neither case, he asserts, was geopolitical competition driven by reactions to status barriers thrown up by the established powers.

Ward’s narrow critique misses the meaning and real-world implications of SIT. Most crucially, he overlooks the psychological dynamics of why lower-status groups choose to challenge the status quo—their frustration and anger over being denied the chance for status advancement, their unfair treatment by society, and the illegitimacy of the status hierarchy. In what follows, we will first present the basic propositions of SIT. We will then highlight several of Ward’s principal misconceptions, errors that could mislead researchers and have disastrous policy implications.

Social Identity Theory Propositions

SIT was developed in the 1970s by Henri Tajfel and his colleagues at the University of Bristol in the United Kingdom to correct for the reductionism of US social psychology, which attributed such intergroup phenomena as prejudice to the characteristics of individuals (Hogg and Abrams 1988, 12– 13). One insight of SIT is that individuals have both a personal identity and a social identity, derived from the social groups to which they belong (Tajfel 1978a, 41–43).

Because a person’s social group membership constitutes part of the self, members want their group to have a “positively distinctive” identity. Unfavorable comparisons with a similar reference group threaten collective self-esteem and may lead to the adoption of an identity management strategy. The choice of strategy depends on beliefs about the permeability of group boundaries and the legitimacy and stability of the status hierarchy (Tajfel and Turner 1979, 40). If lower-status group members believe that boundaries between social groups are permeable, they may try to “pass” into a higher-status group (Tajfel and Turner 1979, 43)— a mobility strategy. Although Ward insists that mobility is limited to individuals, in his original theoretical statement, Tajfel (1978a, 94) refers to the lower-status group strategy of becoming “more like the superior group,” with the aim of “cultural, social, and psychological assimilation of the group as a whole.” In order for this to take place, there would have to be a “breaking down of the barriers preventing the group from obtaining improved access.” In their analysis of identity management strategies, Blanz et al. (1998, 700) report that there is “no consensus among social identity theorists on the conceptualization of assimilation as either an individual or a collective strategy.”1

In international politics, when states perceive that elite group boundaries are permeable, states seek social mobility through emulation of the values, practices, and norms of the higher-status states in order to be admitted to elite clubs (Larson and Shevchenko 2010, 71–73; 2014a, 38–40; 2014b, 271) or a more prestigious social category such as middle power (Gilady 2018, 113–18).

When the status hierarchy is perceived as secure, that is, legitimate and stable, the lower-status group cannot even conceive of any alternatives to the status quo (Tajfel 1978a, 87). Under these conditions, the lower-status group may reduce unpleasant feelings of inferiority by engaging in social creativity, that is, reinterpreting their situation. A social creativity strategy may (1) identify a new dimension on which the in-group is superior, (2) reevaluate an existing characteristic as positive, or (3) choose an even lower-status group as the target of comparison (Tajfel and Turner 1979, 43). In international relations, social creativity frequently entails reframing a negative characteristic as positive or finding a new dimension on which the state is superior (Larson and Shevchenko 2010, 73). For example, the Chinese Communist Party now celebrates Confucianism as an element of Chinese culture, although Mao Zedong condemned the philosophy as feudalistic. But when the lower-status group begins to regard its position as illegitimate and the status hierarchy as changeable, it may adopt a strategy of social competition (Tajfel and Turner 1979, 45–46). Social competition seeks to “reverse the relative positions of the in-group and out-group on salient dimensions” (Tajfel and Turner 1979, 44). To achieve this goal, social competition “aims to equal or outdo the dominant group in the area on which its claim to superior status rests” (Larson and Shevchenko 2010, 72). Ward (2017, 826) mistakenly claims that the Larson and Shevchenko application of SIT restricts social competition to military and economic competition, but it can assume various forms. For example, during the Cold War, the Soviet Union sought to “catch up and surpass” the United States in economic production, modernization, culture, and standards of living, as well as military power (Larson and Shevchenko 2014a, 39; 2019).

Misconceptions about SIT

Ward’s (2017, 822–23) reason for contending that impermeable group boundaries do not play any role in SIT is that only individuals have the unpleasant experience of being denied the opportunity to join a higher-status group. However, according to SIT, impermeable boundaries cause individuals to identify more strongly with their in-group and to act as group members (Tajfel and Turner 1979, 35; Ellemers 1993; Bettencourt et al. 2001). Ward’s account also downplays the importance of the legitimacy of the status hierarchy, which is central to SIT. Impermeable group boundaries combined with the perceptions of the illegitimacy of the status hierarchy and the possibility of change can turbocharge social competition (Turner and Brown 1978; Ellemers 1993; Bettencourt et al. 2001). Lower-status groups will “lash out” at the illegitimacy of their status (Hornsey 2008, 214; Tajfel and Turner 1979, 45– 46). As Tajfel (1978b, 52) observes, “a combination of illegitimacy and instability would become a powerful incitement for attempts to change the status quo.” The role of illegitimacy in encouraging challenges to the higher-status group distinguishes SIT from alternative explanations. For example, Wohlforth (2009) argues that uncertainty about which state will prevail due to uneven distribution of power increases the likelihood of status competition. Renshon (2017, 57–58) argues that states that receive less status than they believe they deserve are likely to take military action because it provides dramatic, visible, and unambiguous evidence of the state’s power and resolve.

Ward (2017, 825–26) claims that Larson and Shevchenko’s interpretation of SIT does not adequately distinguish mobility from competition. However, this assertion stems from misreading the fundamentals of SIT, where social competition clearly refers to seeking relative advantage over the out-group (Turner 1975), not “acquisition of consensually valued attributes,” as Ward asserts. Social competition is a zero-sum game. One group cannot be better unless another is worse (Brown and Ross 1982, 156–57). The higher-status group’s identity is threatened by the challenger, and it will attempt to hold on to its position by any means available (Tajfel 1978, 88; Tajfel and Turner 1979, 38, 45–46; Brown and Ross 1982). Although social creativity does not try to compete directly with the out-group, but merely to win recognition in a different domain, and thus is not subject to zero-sum logic, it may also result in conflict if the higher-status group refuses to recognize alternative criteria for status or the lowerstatus group’s preeminence on that dimension. When this happens, SIT predicts “intense hostility in intergroup attitudes and . . . marked discrimination in intergroup behavior” (Tajfel 1978, 97). Brown and Ross (1982) finds that lower-status group members expressed anger and hostility toward the higher-status group’s belittling of its achievements. In short, “when a group’s action for positive distinctiveness is frustrated, impeded, or in any way actively prevented by an out-group, this will promote overt conflict and hostility between the groups” (Tajfel and Turner 1979, 46).

Ward’s discussion of historical cases does little to strengthen his overall argument since it is not clear why Wilhelmine Germany or interwar Japan are “most likely” cases for SIT. If neither state faced obstacles to its status ambitions before adopting imperialist policies, then by definition SIT is not relevant. Moreover, Ward does not demonstrate that China and Russia are similar to the cases of Germany or Japan in the variables that caused them to engage in geopolitical rivalry. Thus, it is hard to see how one can draw inferences from these two historical cases about the policy implications for dealing with a rising China and a resurgent Russia.

Conclusion and Policy Implications

Ward concludes that the United States should try to convince China and Russia of the high costs or futility of status competition. SIT and empirical research, however, suggest that US efforts to frustrate the status aspirations of China and Russia will generate intense frustration and resentment (Deng 2008, 60), resulting in a backlash, analogous to Russia’s reaction to the West’s rejection of its efforts to be accepted as a player after the end of the Cold War, but potentially more dangerous given China’s increased military spending and enhanced naval capabilities (Larson and Shevchenko 2019, 248–51). Rather than trying to impede their efforts to gain increased influence, which could lead to military conflict, SIT implies that the United States should reinforce efforts by Russia or China to achieve status through social creativity in nongeopolitical areas, such as establishing new institutions or clubs, mediating international conflicts, or controlling proliferation. Successful status accommodation should be a continuing process and could involve formal summits, working groups, or strategic dialogues. Instead of containment, the goal would be social cooperation, where the United States, Russia, and China acknowledge each other’s achievements or preeminence in different issue areas, specialize in particular issues, or share leadership roles (Larson and Shevchenko 2010, 95; 2019, 249–50). Ward (2017, 831–32) confuses status accommodation with “appeasement” but this is yet another misconception about SIT. In fact, SIT implies that a status accommodation strategy should be supplemented with continuing investments in shaping perceptions of the stability and legitimacy of the status hierarchy to avoid contributing to Russian or Chinese beliefs that they can change their position unilaterally. This means that the United States should preserve its overall military and economic power and alliance networks. It should also ensure international support for its global leadership by resisting unilateralist temptations and by promoting universal rules.

### 2NC – AT: Trade War Thumps – 2AC 4

#### International free trade and set to rebound – our evidence assumes COVID and trump.

NicoláS Albertoni and Carl Wise, Poli Sci Profs @ USC, ‘20, "International Trade Norms in the Age of Covid-19 Nationalism on the Rise?," PubMed Central (PMC), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7519384/

This special issue on nationalism and Covid-19 goes to press at a time of intense flux. The world community faces three important unknowns. The first is the Covid-19 pandemic. Among experts, there is an emerging consensus that the end of the virus will require a vaccine, which has yet to happen. In the meantime, the shutdown of borders and entire economies has quelled the spread of Covid-19 in Europe and parts of Asia. The Trump administration has refused to take similarly strict measures, haphazardly delegating responsibility to the states. Here, commitments and resources have been uneven, and US infection rates continue to surge. This delay on the part of the world’s largest economy will surely prolong the pandemic and wreak further havoc on global markets. What will the international political economy look like once the pandemic is finally under control? Are we in for another 6 months of social distancing and sheltering at home? Another year? The fact that there is no answer to these questions has wrought a level of uncertainty and insecurity on par with the Great Depression, which lasted a full decade.

The second unknown concerns the collapse of US leadership under the weight of populist-nationalist politics. Will the combination of the November 2020 US presidential election and the pandemic bring about a significant change? Under Trump, for example, the USA has withdrawn from the WHO, the Climate Change Treaty, the TPP, and the Iran deal, and the administration has repeatedly threatened to leave NATO, the WTO and the United Nations. Even those multilateral institutions to which the USA still formally belongs have suffered from cuts and delays in the usual US financial contributions. Allies and alliances are on ice, as Washington has acted unilaterally on any number of global issues. The degree of abdication has been such that a mere change in political party or a shifting majority in either house of congress may be neither necessary nor sufficient for the kind of major reset that the current juncture demands. As the prospect of a prolonged economic depression and a longer horizon on the pandemic looms, we reiterate that the world community may be looking at a set of challenges on par with those faced in the 1930s. Although the G-7, the G-20 and the OECD bloc have been hollowed out by US populist nationalism, the blueprint for cooperation and collaboration still exists.

A third unknown is the change of directorship now underway at the WTO. Our focus in this article has been on the effect of nationalism and Covid-19 on global trade norms and patterns. While the WTO has been in place for 25 years, it seems fair to say that this entity has still not taken off as a bona fide multilateral institution. We have spoken to the deadlock between North and South that derailed the Doha Round, and to the stagnation in rules, processes and procedures that has carried over from the GATT. The WTO needs better leadership, pure and simple. The futility of the US trade war on China and the damage done to cross-border production networks and GVCs has illuminated the risks of rash unilateralism within the global trade regime. In Fig. 1, we demonstrate how China has thrived since becoming a WTO member since 2001; however, in Table 2 we also see that the East Asia–Pacific region—led largely by China—has displaced North America as the source of illiberal trade policies and predatory trade practices. These asymmetries call for a coordinated collective action coalition of like-minded countries willing to hold China’s feet to the fire in following through on its earlier commitments.

In Figs. 2, ​,3,3, and ​and4,4, we see that patterns of commercial exchange and globalization have continued in spite of all the distortions that the USA, China, Brazil, India, and other large economies have inflicted on the global trade regime. The dynamic structures persist, although agency and initiative are in short supply. In terms of avenues for future research, this question of WTO reform, and how to go about it, is a crucial one. A second line of inquiry is the virus, itself. The pandemic has elicited numerous calls for studies and special issues such as this one. As we stated at the outset of this article, once it is under control Covid-19 presents the opportunity to conduct a natural field experiment that can accurately measure the full impact of the virus on the global trade regime. A third rich avenue for future research is the phenomenon of populist nationalism in the USA. Have the erratic, antiquated policies of the Trump administration done lasting damage to the image and political capital of the USA in the global community? Has the USA passed the point of no return in its ability to rally a cohesive leadership coalition and revive the spirit of multilateralism?

We argue that the destructive confluence of protectionism, nationalism and the pandemic has opened up a critical opportunity to institute real change. The question remains as to who will lead this charge and what will it look like several years down the road. As for the future of China–US relations, we take our cue from Mohamed El-Erian (2020), who writes optimistically of the possibility of a “rivalry partnership” between the two powers in the post-Trump era, “whereby healthy competition does not preclude the cooperation and shared responsibility that are critical to tackling major global challenges such as climate change and pandemics.”

#### Free trade norms high now.

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

On the surface, it may appear that faith in Transnational Legal Process has collapsed in the domain of international trade. Critics argued that the world is experiencing a new situation where there is no international law to apply, or the existing WTO law may not precisely cover this new situation. I contend, however, that the influence of Transnational Legal Process is still at work, even as the world experiences its longest-ever trade tensions. Transnational Legal Process remains standing in good faith among the opportunities for the United States to strengthen free trade and competition-by translating the spirit and intent of existing law to govern it

#### WTO leadership high now.

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

Yet it would be incorrect to assume that Transnational Legal Process is always perfect. As many scholars argued, the enforcement powers of the AML are so weak as to nearly undermine the effort. 273 Nevertheless, it is essential to step back and be clear that China is currently the United States' largest merchandise trading partner, its third-largest export market, and its most significant source of imports. The economic costs of the bilateral economic relationship are genuine. Meanwhile, the WTO is the only international body dealing with trade rules between the U.S. and China that reflect core U.S. values. It "form[s] a baseline ... to build global support to critique and push back against Chinese economic practices." 274 In the context of comprehensively addressing China's challenges, the WTO is still a central system, and subject to the strong leadership of the U.S.

#### The liberal order is recovering post-trump—solves a laundry list.

HIRSH, senior correspondent and deputy news editor at Foreign Policy 12-5-20 DECEMBER 5, 2020, 6:00 AMhttps://foreignpolicy.com/2020/12/05/liberal-internationalism-still-indispensable-fixable-john-ikenberry-book-review/

Joe Biden will enter office as America’s 46th president next month in a spirit of confidence for the future—but also with an almost confessional sense of humility about the past. Because Biden and his top advisors seem acutely aware of just how badly they botched things the last time they were in power. One of their chief manifestos for change, as some of the incoming Bidenites have already privately conceded, will be G. John Ikenberry’s new book, A World Safe for Democracy. It is in some ways the crowning achievement of the Princeton University’s scholar’s decadeslong work explaining and defending the liberal international order. Ikenberry’s research traces the origins of the liberal internationalist project—the idea of building a community of nations based on democracy, cooperation, and the rule of law—going back 200 years. He chronicles it from its inception in the Age of Enlightenment and the American and French revolutions to its near-dissolution in the post-Cold War period under the neonationalist banner of its worst nemesis, President Donald Trump. Ikenberry, in an interview, said that his purpose was to “reframe the debate between nationalism and internationalism” and acknowledge that American policymakers are now dealing with a “liberal internationalism for wintertime rather than a Francis Fukuyama-style liberal internationalism for springtime” of two decades ago. (After the collapse of the Soviet Union, Fukuyama, the Stanford political philosopher, famously suggested that the triumph of democratic liberal capitalism over communism was so complete it could constitute a kind of “end of history.” This did not turn out to be the case.) Ikenberry says that it’s long past time for Biden and the Democrats to acknowledge that rampaging American hubris after the Cold War led to some of the worst mistakes ever made by liberal internationalists of the modern era: from a Pollyannaish Reaganite belief that neoliberalism (or capitalist free markets) would solve most problems to the equally self-deluding notion that democracy would achieve the same, especially in the Arab world (hence the disastrous Iraq War). Along the way, he writes in his book, nations and especially Washington lost the “shared narrative” of being a diverse but connected international community and became more of a U.S.-manufactured “public utility” dominated by the interests of multinational corporations. And the former concept is what it must return to, he says. “The book tries to provide the deeper theory of the liberal project that Biden is going to try to renew,” Ikenberry said. “I think it’s the first book that attempts to look at a whole tradition and cull it for usable knowledge we can apply today. And to make the point that the post-1989 years [after the fall of the Berlin Wall] were very much an anomaly. Two centuries on, it’s much more of a world-weary, contested run of democracies struggling to build order.” According to a senior member of the incoming Biden team, speaking on background, the new administration is paying a great deal of attention to Ikenberry’s ideas about readdressing the problems of the American middle class that were sacrificed to overzealous ideas of globalization.According to a senior member of the incoming Biden team, speaking on background, the new administration is paying a great deal of attention to Ikenberry’s ideas about readdressing the problems of the American middle class that were sacrificed to overzealous ideas of globalization. He also said that reinventing liberal internationalism along the lines Ikenberry recommends will be at the forefront of their efforts. The incoming Biden team has already conceded that both they and the Republicans, pre-Trump, lost their way. They erred badly because they “came to treat international economic issues as somehow separate from everything else,” as Biden’s nominee to be national security advisor, Jake Sullivan, wrote in the Atlantic in early 2019. Under both Democrats and Republicans, “U.S. internationalism became insufficiently attentive to the needs and aspirations of the American middle class.” In a remarkable admission, Sullivan, who served as then-Vice President Biden’s national security advisor, confessed: “During the Obama administration, when the national-security team sat around the Situation Room table, we rarely posed the question What will this mean for the middle class? Many other countries have made economic growth that expands the middle class a key organizing principle of their foreign policy.” The United States suffered a dangerous, society-splitting populist backlash because it did not address that same question, instead recklessly embracing global neoliberalism, and engaging in a confident flinging-open of all borders. The result was the loss of any sense that internationalism was also a way of protecting social and economic equity—the kind of compact that existed after World War II. Another result was a series of policies and trade deals that opened the door to the decimation of the American middle class, particularly to Chinese competition. Beyond that, successive administrations, starting with President Bill Clinton (but in which George W. Bush’s administration was particularly culpable in not punishing Chinese dumping and intellectual property theft under World Trade Organization rules) allowed China to flagrantly violate the rules of the game. The post-Cold War internationalists failed equally in thinking they could easily co-opt major illiberal states such as China and Russia fully into the global system, Ikenberry writes. They did not. The answer may be to make liberal internationalism less “offensive” and intrusive. Instead “it must define itself less as a grand vision of a global march toward an ideal society, and more as a pragmatic, reform-oriented approach to making liberal democracies safe.” China, the major rival to the United States, in particular could at least abide such an approach, Ikenberry argues, because even in its rise to global dominance it is still seeking to work within institutions like the United Nations, the International Monetary Fund, and the WTO. “In effect this strategy calls for making the liberal international order friendly to China and Russia by stepping back from the vision of a one-world liberal order,” he writes. “The emphasis instead would be on coexistence, building on the ‘defensive’ liberal principles of self-determination, tolerance, and ideological pluralism. Liberal internationalism would be made more conservative.” Or, some would say, more realist. There is little doubt about the direction the Bidenites will go, because all of them know—as Ikenberry argues—that in the end there really is no alternative. As Sullivan wrote last year: Trump’s neoisolationist approach “is dangerous, but he has surfaced questions that need clear answers. Those of us who believe that the United States can and should continue to occupy a global leadership role, even if a different role than in the past, have to explain why Trump is wrong—and provide a better strategy for the future. … “This requires domestic renewal above all, with energetic responses at home to the rise of tribalism and the hollowing-out of the middle class.” Ultimately, the challenges of modernity will require a reinvented liberal internationalism because, Ikenberry argues, there really is no other system available for dealing with “the problems of interdependence” other than through international cooperation. Climate change, pandemics like COVID-19, nuclear proliferation—all can only be solved through the established global system. “The pandemic is the poster child of that problem,” he said in the interview. But even here the United States must adopt more realist approaches to liberal internationalism. “The problem of liberal internationalism is about managing interdependence, not globalizing the world,” he said. Ikenberry concludes that liberal internationalism must recreate itself as a more restrained version of President Woodrow Wilson’s original vision of making the world “safe for democracy.” But this, again, is likely to be more a defensive than offensive approach. And at home, Ikenberry says, it means finding a brand-new way of making internationalism work for average Americans, especially with labor and environmental protections. The idea of “protectionism” can no longer simply be anathema. Indeed, Trumpist populism will not disappear under Biden. He has already advocated a $700 billion-plus “Buy American” plan and conditioned his return to the Trans-Pacific Partnership he once advocated on greater worker protections. His political platform sounds a not a little Trumpian as well, declaring he will “ensure the future is ‘made in all of America’ by all of America’s workers.” Biden will also continue a campaign begun by former President Barack Obama—but turned into a strident war by Trump—pressuring European allies to pay their fair share of the Atlantic alliance and NATO. In the end, Biden’s return to liberal internationalism will be real, but more demanding of other nations, as was Trump’s. Above all, his approach will focus first at home, on the pandemic and joblessness. “Looking over 200 years,” Ikenberry said, “one of the things I found and which the Biden administration intuitively understands is that in every period where a golden era of internationalism that lifted America to greater heights existed, it was tied to a progressive agenda.” Restoring this vision means going back to the nationalist origins of internationalism, how it arose out of the wars of the 19th century, the industrial revolution, and, in hands of proto-internationalists such as the British politician Richard Cobden, how it became a means to global hegemony and economic prosperity for its first great practitioner, Britain. Cobden spoke of free trade and peace as “one and the same cause,” and at the same time new forms of social internationalism also sprung up, pushing for equanimity for all social classes. The new concept of Adam Smith-conceived free trade presaged “the dissolution of empire, the ending of territorial annexation and the abandonment of aristocratic militarism,” as the British historian Anthony Howe argues. It presaged the modern world, in other words, culminating, ultimately, in the international community institutions proposed by Wilson and imposed and perfected by President Franklin D. Roosevelt. But institutions that were always meant to benefit all Americans. These changes in the international system are now so entrenched they cannot simply be undone. Yet they remain badly misdirected at present. Somewhere along the line the idea of internationalism became, rather than a means to achieve the end of national prosperity and peace, instead an end in itself. And this is where policymakers went wrong. In Washington, especially, the domestic impact of liberalization was consistently played down by both Republican and Democratic administrations. The post-Cold War globalization of free trade did indeed create, as the economists predicted, more global equality and prosperity overall. But in the past few decades far more of that equality and prosperity has accrued to developing nations than to the working classes of the champions of globalization like the United States and Europe, where growing inequality has engendered a long-term populist reaction, one that is unlikely to disappear any time soon. As a result, Ikenberry said, “I think we’re in for a kind of managed openness that allows us to protect environmental and labor standards, so as to shore up the democracies.”