# Open Source 1NC Round 5 ADA

## Off-Case

### T

#### The scope of antitrust law has already been expanded pursuant to a “comity balancing” test.

Alford 18—(Deputy Assistant Attorney General, Antitrust Division, U.S. Department of Justice). Roger Alford. January 29, 2018. “Antitrust Enforcement in an Interconnected World”. Department of Justice. <https://www.justice.gov/opa/speech/file/1029821/download>. Accessed 9/26/21.

The increasingly international scope of antitrust enforcement is one reason that the Department of Justice, together with the U.S. Federal Trade Commission, updated and reissued the Antitrust Guidelines for International Enforcement and Cooperation last year.8 Among the issues that these Guidelines address is our application of U.S antitrust law to conduct outside the United States, and the factors that we consider in applying our laws to that conduct. Namely, before pursuing an enforcement action or seeking a remedy that might have impacts outside the United States, the Department of Justice considers whether the U.S. antitrust laws apply to the conduct and whether there are comity considerations that should be taken into account.

#### That creates a double bind—they lose for one of two reasons:

#### 1—Topicality.

#### ‘Expansion’ requires making antitrust law greater, NOT clarifying its current state.

Hatter 90—(United States District Judge, California Central District). Terry J. Hatter. 1990. In re Eastport Assoc., 114 B.R. 686, 690, U.S. Dist. LEXIS 6308, \*10-11 (C.D. Cal. March 20, 1990), 3/20/1990

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

#### That’s a voter for limits and ground—they justify thousands of AFFs that point to a random enforcement practice and say it’s good—they wreck NEG offense by precluding any differentiation between their plan and the status quo, which erases DA links.

#### OR:

#### 2—Presumption.

#### The plan text does not fiat a change to the status quo, which means either the status quo solves their impacts, or you know with certainty that the plan doesn’t. The threshold for this AFF is winning that the US does not currently use a “comity balancing test” while determining the scope of the antitrust laws, and that adding a “comity balancing test” would solve their advantages.

#### Reading cards that say the current comity balancing test doesn’t work is abjectly irrelevant, because the plan as written does not specify any different comity balancing test—it says “*a* comity balancing test”, and we already have ‘*a’* comity balancing test!

### T

#### ‘Prohibiting’ a practice requires per se illegality – they defend the rule of reason

Lee Mendelsohn 6, Director at Edward Nathan, “KIPA Conduct Amounts to Price Fixing”, Business Day (South Africa), 6/12/2006, Lexis

The first step in any competition law analysis is to define the relevant market. There are two components to an analysis of the relevant market, namely the relevant product market and the geographic market.

The relevant product market consists of those products and services that operate as a competitive constraint on the behaviour of the suppliers of those products and/or services.

The relevant product market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to substitute the product with another product or would cause suppliers of other products to begin producing the product in question.

The relevant geographic market is determined by ascertaining whether a small but significant non-transient increase in pricing of the product in question would cause buyers to purchase the product from other geographic areas, alternatively suppliers of the product in other geographic areas to supply those products into the area in question.

For the purposes of this case study, we are instructed to accept that each medical speciality constitutes a relevant product market and that the relevant geographic market for each of them is Kleindorpie.

The Competition Act provides that "an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if … it involves … directly or indirectly fixing a purchase or selling price or any other trading condition".

An "agreement" is defined as including a contract, arrangement or understanding, whether or not legally enforceable. The term agreement is very widely defined. A "horizontal relationship" is defined as a "relationship between competitors".

The prohibition on the fixing of a purchase or selling price or any other trading condition is one of the so-called "per se" prohibitions which are included in our Competition Act. The prohibition is automatic and absolute and the fixing of prices or other trading condition cannot be justified on the basis of any technological, efficiency or other procompetitive gains that could outweigh the potential anticompetitive effect of the fixing of the price or trading condition. If the capitation plan of KIPA falls within the restrictive horizontal practice prohibiting price fixing and the fixing of other trading conditions, such practice will be a contravention of the act.

#### Vote neg for limits and ground – infinite standards make the topic unmanageable and fringe standards dodge links and allow bidirectional permissiveness.

### CP

#### The United States federal government should enter into prior, binding consultation with the European Union through the Trade and Technology Council on bilaterally establishing a balancing test for comity that expands the extraterritorial scope of its antitrust laws.

#### The US and EU will use the TTC forum before passing antitrust reforms now. The plan undermines the TTC, which collapses relations.

Rachael Stelly and Christian Borggreen 21, Policy Counsel at the Computer & Communications Industry Association. “The EU-U.S. Trade and Technology Council is an opportunity to discuss platform regulation” July 8. <https://www.project-disco.org/21st-century-trade/070821-the-eu-u-s-trade-and-technology-council-is-an-opportunity-to-discuss-platform-regulation/>

The thawing of relations between the EU and U.S. in the wake of President Biden’s successful visit to the EU last month has given new momentum to transatlantic cooperation, including on technology and data governance. The new EU-U.S. Trade and Technology Council (TTC) presents a key opportunity to drive transatlantic technological leadership while addressing diverging approaches to tech regulation, such as the EU’s Digital Markets Act proposal which has triggered U.S. concerns.

There are many trends pulling countries apart on digital policy issues right now, threatening to fragment the development of new technologies and divide democracies at precisely the time when a common approach and shared values are needed. Fortunately, President Biden and President von der Leyen have recently agreed to launch a EU-U.S. Trade and Technology Council (“TTC”). The TTC is an exciting development that has the potential to bring the U.S. and EU together to drive the global technological landscape in a much more positive direction.

The TTC will be led by heavy hitters on both sides. On the EU side the TTC will be co-chaired by the EU Trade Commissioner Valdis Dombrovskis and Commissioner Margrethe Vestager. On the U.S. side, the TTC is co-chaired by the Secretary of Commerce Gina Raimondo, Secretary of State Antony Blinken, and U.S. Trade Representative Katherine Tai.

The purpose of the TTC is to “coordinate approaches to key global trade, economic, and technology issues and to deepen transatlantic trade and economic relations based on shared democratic values.” The TTC sets out ten working groups covering a broad range of technology-related issues, including efforts to find common ground on data governance, platforms, supply chains, trade issues, climate, and technology standards.

This comes at a time when regulatory proposals such as the Digital Markets Act threaten to drive a wedge into improved U.S.-EU technological cooperation. U.S. and EU policymakers have a key opportunity to use the TTC to steer towards shared values like due process, regulatory dialogue, and the rule of law, and away from discriminatory outcomes that risk depriving businesses and users of basic privacy, security, and intellectual property protections.

Separate from the new TTC, there is a long-standing dialogue between the U.S. antitrust enforcers, the Federal Trade Commission and Department of Justice, and their European counterparts in the competition department of the European Commission. This dialogue has helped competition enforcement authorities engage productively on information gathering as well as specific elements of antitrust enforcement such as evidentiary requirements and the assessment of economic data. The EU-U.S. Summit declaration suggested that this dialogue on competition enforcement would continue with a greater degree of formality under the umbrella of a Joint Technology Competition Policy Dialogue, likely focused on cooperation on active enforcement actions.

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

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

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

#### Transatlantic policy is in lockstep now---maintaining coordination on competition law is crucial to overall U.S.-EU norm setting post-TTC revision.

Cheek et al ’10-11 [Marney; 2021; Member of the Council on Foreign Relations, [Stuart E. Eizenstat](https://www.globalpolicywatch.com/author/seizenstat/), [Holly Fechner](https://www.globalpolicywatch.com/author/hfechner/), [Marty Hansen](https://www.globalpolicywatch.com/author/mhansen/), [Lisa Peets](https://www.globalpolicywatch.com/author/lpeets/), [Bart Szewczyk](https://www.globalpolicywatch.com/author/bszewczyk/) & [Sebastian Vos](https://www.globalpolicywatch.com/author/svos/); Auswaertiges; Covington, “US-EU Trade and Tech Council: Takeaways and Next Steps,” https://www.globalpolicywatch.com/2021/10/us-eu-trade-and-tech-council-takeaways-and-next-steps/]

Last month, the US-EU Trade and Technology Council (TTC) held its inaugural ministerial in Pittsburgh: US Secretary of State Antony Blinken, Commerce Secretary Gina Raimondo, and Trade Representative Katherine Tai met with European Commissioners Margrethe Vestager and Valdis Dombrovskis. Only three months after the TTC process was [launched](https://www.globalpolicywatch.com/2021/06/transatlantic-summits-main-takeaways-for-tech-and-defense/?_gl=1*2nw9f7*_ga*MTIyNTY0NjIxMS4xNTk2NDY2NTM0*_ga_KSNMJSN08X*MTYzMzYxNTM1MC4xODAuMC4xNjMzNjE1MzUwLjA.&_ga=2.203223828.481923029.1633615351-1225646211.1596466534) at the US-EU summit, the two sides [committed](https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/29/u-s-eu-trade-and-technology-council-inaugural-joint-statement/) to significant steps in coordinating policy on issues such as investment screening, export controls, artificial intelligence (AI), semiconductors, and global trade challenges. The meeting also included stakeholder outreach with industry and labor groups, and was followed with further engagements with the private sector and civil society.

Leveraging Half of Global GDP

The TTC’s core logic is that the US and EU can jointly shape the global economic rules for the 21st century, given that the two sides continue to collectively represent nearly half of the world’s income. To be sure, a broader format such as the G-20 represents an even larger proportion of global GDP. But the G-20 also includes authoritarian states such as Russia and China, which do not share the same values and interests as Europe and America. Arguably, the TTC could benefit from the participation of other leading democracies, such as the United Kingdom or Japan, but there are no current plans to expand its membership.

The reinvigorated commitment towards a strong US-EU partnership also saw room for more topical issues to be included into the discussions. The EU seized the opportunity to highlight the importance of climate change for trade, which was welcomed by the US. Both sides agreed that trade policies could not substitute climate legislation, but that the two policy areas should reinforce each other.

Broad Agenda, Periodic Deliverables

[Ten working groups](https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/29/u-s-eu-trade-and-technology-council-inaugural-joint-statement/) span the TTC’s broad agenda: tech standards, climate and clean tech, secure supply chains, information and communication technology services security and competitiveness, data governance and tech platforms, tech misuse threatening security and human rights, export controls, investment screening, SME access to digital tools, and global trade. Although it may be difficult to develop a clear benchmark for success for these efforts—akin to jobs and growth yielded from a trade agreement—US and EU officials expect to be able to announce periodic deliverables, e.g., coordinated subsidies for semiconductors or complementary approaches to AI regulation. These gradual developments might not capture public headlines, but will be of crucial interest to affected firms and organizations.

For instance, the global shortage of semiconductors and their fragile supply chains was high on the TTC’s agenda. Both the EU and US have been adversely affected by semiconductor shortages, especially given that both rely primarily on Taiwan, which holds a near monopoly on production. The two sides have already begun to take legislative steps towards rebalancing their dependence with the European Chips Act and CHIPS for America Act. The Pittsburgh meeting, however, provided the opportunity for both to express their commitment toward coordinating measures to further enhance transparency in this area.

Furthermore, trade distorting and non-market practices provided the transatlantic partners with several common points of interest. There was general agreement to share information on certain sectors, especially new and emerging technologies. China’s presence and increasing dominance in these areas provided additional motivation for both sides to agree to come together to maintain their competitive advantage. It was agreed that a joint effort would be more likely to mitigate China’s efforts than two uncoordinated policies.

Moreover, the US particularly emphasized the importance of developing domestic measures to combat non-market practices. The EU’s investment screening tool was considered a step in the right direction, but there still exists a significant gap in capabilities between the two. Closer cooperation and coordination between the respective domestic policies was agreed to provide the best chances of countering distortive practices.

Cooperation on key future technologies is also set to continue to determine the TTC’s agenda, given China’s significant strides in fields such as AI. As one of the most significant issues during the meeting, the US and EU agreed to tie the joint cooperation on the development of AI to the maintenance and defense of their “[shared values and fundamental freedoms](https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/29/u-s-eu-trade-and-technology-council-inaugural-joint-statement/).”

TTC’s Separate Track from US-EU Technology Competition Policy Dialogue

Alongside the TTC is another US-EU dialogue on technology competition policy. Whereas the former is about coordinating policies, the latter is about coordinating enforcement actions, e.g., between the Federal Trade Commission and DG Competition, or between the Justice Department and European counterparts. Although at the surface the two dialogues might appear to overlap, they are intentionally kept separate and involve different groups of individuals from the US and EU.

#### The plan’s unpredictable revision of domestic antitrust policy chafes at the existing infrastructure for economic alignment.

Kirchner ’21 [Stephen; 2021; Director of the International Economy Program at the United States Studies Centre at the University of Sydney; United States Studies Centre, “State of the United States: An Evolving Alliance Agenda,” https://www.ussc.edu.au/analysis/state-of-the-united-states-an-evolving-alliance-agenda#avoid-protectionism-to-maximise-joint-economic-opportunities]

Avoid Protectionism to Maximize Joint Economic Opportunities

Context and background

Australia needs to work with the United States to ensure that Australia’s domestic policy objectives in areas such as manufacturing capability, supply chain security and digital platform regulation maximise joint economic opportunities and promote tax and investment certainty on a bilateral and multilateral basis. Australia should work within the context of existing and prospective trade agreements and multilateral negotiations to secure non-discriminatory approaches to these issues that reinforce the joint interest in a rules-based multilateral trading system.

The US and Australian governments have both announced efforts to examine manufacturing capability, the security of supply chains and critical goods. These efforts are potentially complementary and afford trading opportunities for Australia as a trusted ally and supplier. However, these efforts need to be harmonized to minimize the potential for unilateral and discriminatory approaches that could undermine the bilateral economic relationship and the international trading system.

Similarly, the Australian Government’s taxation and regulation of digital platforms should leverage multilateral negotiations in this space that avoid discriminatory treatment of foreign commercial interests in pursuing domestic policy objectives. The content deals between Australian media and US tech companies defused a potential irritant in the bilateral relationship. The focus of digital platform regulation should be minimising international tax and investment uncertainty. This is more likely to be achieved by working through multilateral mechanisms and extending the digital commerce provisions of existing and prospective bilateral and plurilateral trade agreements.

The Biden administration

Trade will not be an urgent priority for the administration relative to domestic issues. An early indication will be whether it seeks renewal of Trade Promotion Authority (TPA) from Congress when the current authority expires at the end of June 2021. If TPA is not sought or granted, trade negotiations will be downgraded in the administration’s first term.

There is growing public support for foreign trade in the United States and a partisan realignment around trade and tariffs as a result of Trump’s failed embrace of protectionism. However, the Democratic Congress is still sceptical of free trade and trade agreements and is well disposed to industry policy with a view to furthering domestic employment and economic recovery objectives.

These protectionist instincts have received a boost from concerns about national security and supply-chain resilience in the wake of the pandemic. Biden’s pre-election trade policy consisted of a commitment to the onshoring of production of critical and strategic goods — currently the subject of a review. These concerns could become a fig-leaf for more traditional forms of protectionism.

The Biden administration is reviewing Trump’s tariffs, including the steel and aluminium tariffs from which Australia secured an exemption. The ‘phase one’ trade deal with China is also under review. The purchasing commitments made by China under the deal may have been a factor in the imposition of Chinese anti-dumping duties on Australian barley.[201](https://www.ussc.edu.au/analysis/state-of-the-united-states-an-evolving-alliance-agenda#footnote-def-201)

Katherine Tai, President Biden’s nominee for US Trade Representative, has indicated that climate change will be a centrepiece of the administration’s trade policies in support of the goal of net-zero emissions by 2050.

While the US Government has domestic anti-trust concerns about ‘big tech,’ the US Trade Representative can still be expected to champion the interests of US multinational corporations abroad where foreign governments enact measures that discriminate against US commercial and national interests.

Australian interests

There may be opportunities for Australia to capitalise on national security and supply chain concerns as a trusted ally and supplier in expanding the bilateral trade and investment relationship. There is already cooperation between Australia and the United States in relation to critical minerals[202](https://www.ussc.edu.au/analysis/state-of-the-united-states-an-evolving-alliance-agenda#footnote-def-202) and the defence industrial base. But an inwardly focused and protectionist US trade and industry policy has the potential to discriminate against Australian commercial interests directly, as well as weigh on global trade. The Australian Government needs to highlight the economic opportunity in joint approaches that expand rather than limit trade.

The US efforts to address climate change at an international level, alongside those of the European Union, are likely to weigh on carbon-intensive exports, including those from Australia, such as thermal coal.

The Australian Government’s proposed regulation and taxation of digital platforms attracted attention from the US Trade Representative under the Trump administration, who noted concerns about due process and investor protection under the Australia-US Free Trade Agreement,[203](https://www.ussc.edu.au/analysis/state-of-the-united-states-an-evolving-alliance-agenda#footnote-def-203) although competition policy is an explicit carve-out from the dispute resolution provisions of the agreement. The content deals between Australian media and US tech firms have provided a temporary fix. However, the issue underscores the importance of ensuring that domestic regulation is consistent with the principles of non-discrimination and serves to promote international tax and investment certainty.

#### Trade’s the foundation of overall transatlantic ties---extinction.

Laschet ’21 [Armin; 2021; Candidate for Chancellor (CDU and CSU) for the 2021 Bundestag Elections, Chairman of the Christian Democratic Union (CDU), Minister President of North Rhine-Westphalia; Auswaertiges, “European Unity and Transatlantic Cooperation,” https://www.auswaertiges-amt.de/blob/2476468/0d0f5a2e00c821c50fc5f669471a0247/2021-aa-festschrift-40-jahre-ko-tra-en-data.pdf]

Rather than merely preserve the Atlantic alliance, it’s in our mutual interest to strengthen it. Only on this foundation can we jointly address shifts in global power and threats.

In 1981, when the position of Transatlantic Coordinator was created, the Federal Republic of Germany was in the initial throes of a heated rearmament debate. Global political tensions were high, and ultimately would peak with the imposition of martial law in Poland. Against this uneasy backdrop, one faction of the leading party in the ruling coalition joined forces with the burgeoning peace movement and took a stance against the United States and the transatlantic alliance. At the same time, the European integration process was stagnating. It took a refocusing of attention on the core aims of European and transatlantic policy under the clear leadership of Helmut Kohl to generate new momentum on both sides of the Atlantic. European integration and transatlantic cooperation became two sides of the same coin – and the years from the early 1980s to the early 1990s became a European and transatlantic decade of modernization. This symbiosis would culminate in German unification.

The process began with the resolute choice to remain tied to the West. It was the key lesson drawn from the horrors of the 20th century. Thanks to US support for European integration, transatlantic cooperation and European integration were never mutually exclusive; instead, they formed the two pillars that underpinned the Federal Republic of Germany’s ties to the West. From the beginning, support for these pillars came not only from heads of state and government. Rather, transatlantic ties have been upheld by an extensive network at the level of civil society.

The Transatlantic Coordinator plays a key role in this civil-society network, by providing stability in the ebb and flow of day-to-day politics. This keeps differences in political opinion from burdening relations at the level of civil society and harnesses the diversity of people-to-people contacts, creating new political momentum.

GLOBAL POWER SHIFTS

Today, we face tremendous challenges from within and without, whose effects are being felt by the European Union and are testing our transatlantic friendship. We are finding that in a world where power is diffused across the globe, the possession of military, economic, and political power no longer guarantees success in the pursuit of one’s goals. This state of affairs could be called a “global disorder”. Transatlantic ties have not been spared by this development. On the contrary, they are being fundamentally transformed.

The actual break with the past, however, occurred more than thirty years ago. In 1989 and 1990, the ground rules of the international order changed. In the bipolar world, every transatlantic crisis could essentially be resolved because the external threat outweighed any disputes the partners may have had with one another. For this same reason, transatlantic power imbalances were not only irrelevant, but possibly even intentional. With the US’s security guarantees, free Europe became increasingly politically stable and economically developed.

With the end of the Cold War came greater foreign policy leeway, for both the United States and the Europeans. All of a sudden, power asymmetries began to play a role in the transatlantic relationship. Furthermore, new focal points of political and economic power arose in Asia, and this presented the transatlantic partners with fresh challenges. New global threats, such as climate change and international terrorism, can no longer be framed through outdated concepts of foreign and security policy. They call for new strategies.

FORTIFYING THE TRANSATLANTIC PARTNERSHIP – THROUGH A STRONG EUROPE

Regardless of these developments – or, rather, because of them – our transatlantic partnership persists. Because the transatlantic alliance is built on common values, on political, economic, and cultural interdependencies, and on institutional ties. We should not only safeguard but also strengthen these ties – as we have a mutual vested interest in them. They form the basis for how we jointly deal with global shifts in power and threats.

First, and especially in view of the outcome of the recent US presidential election, we must make greater use of existing forums for transatlantic exchange, as well as create new ones. In both people-to-people and political relations, a partnership needs shared spaces of encounter. Only by engaging in conversation and constantly striving to put forward better arguments and finding the right solutions can we create a solid, long-term basis for transatlantic partnership and action. Naturally, we will argue from time to time. But we did that during the days of the East–West confrontation as well. What fundamentally matters is that freedom, democracy, and the rule of law are not merely political maxims. They are, instead, crucial norms for the functioning of states and societies, as they shape the actions of citizens, businesses, and governments – not only in domestic but also in foreign policy.

Second, as Europeans, we must go beyond merely presenting arguments based on our values and interests. We must also prove that we are capable of action. Only then will we also be a strong partner for our transatlantic friends, one that can stand by their side as we jointly confront the “global disorder” and compete with autocratic powers. For many years, paying lip service to a rules-based order and being part of the transatlantic “convoy” was sufficient.

Since World War II, despite setbacks and challenges, this rules-based order has bestowed a period of peace and ever growing prosperity on the world. To maintain this order, we must strengthen the European Union. Following the UK’s departure from the EU – the withdrawal of a country that has long functioned as a linguistic and cultural catalyst – this task assumed even greater prominence. As Europeans, we must be capable of action, be seen as a serious partner, and be an independent actor. Because when we are able to act we widen our policy options. Also, in this way, burden sharing becomes the best option rather than a last recourse. In the process, we will help make Europe a more attractive partner for Washington.

This attractiveness comes from our willingness and ability to act, our sense of solidarity, and our efforts to modernize. For this, we must address existing innovation gaps, invest in a digital, climate-neutral, resilient, and competitive Europe, not shy away from public–private partnerships, and become more efficient and agile overall. In so doing, we will not just be setting standards before others set those standards for us; we will also be defining benchmarks for others to measure themselves against.

Presidents Dwight D. Eisenhower and Ronald Reagan encouraged Europe to move toward being capable of action and more self-assertive when they spoke of a third great “power mass” and a “more genuinely European Europe”. And, of course, this has a magnetic effect on potential multilateral partners. Partnership, and not just allegiance, must be our aspiration.

Strengthening Europe, however, does not mean questioning the multifaceted character of the European Union; its nations and regions; its diversity of languages and religious faiths; the experiences of various peoples, social groups and individuals; and the differences between north and south, west and east. The regions play an important role as regulatory and cross-border actors. If the supranational and national levels are a kind of switchboard, then the regions are the cross-connections in the European network that make possible and necessitate international cooperation on all levels. The subnational level also plays a key role in transatlantic relations. Federalism is something Germany and the United States of America have in common – in the constitutional, political, and social spheres. That’s why we must expand relations between our federal states, provinces, and regions on both sides of the Atlantic, in the realms of politics, business, academia, and culture. Because mutual understanding is the ground on which communication thrives.

Of course, we need the supranational level so that the European Union can wield its influence on the global political stage. In some policy areas, including international trade, we have been doing this successfully for many years. In others, such as the common foreign, security, and defense policy, or regarding climate policy, we have launched important initiatives but can achieve so much more.

TRADE POLICY AS A CATALYST FOR EUROPEAN–TRANSATLANTIC RELATIONS

Trade policy is the European Union’s oldest, and in many ways most successful, instrument for shaping its external relations. In this sphere, we are on an equal footing with the United States because, many decades ago, we grasped the possibility, thanks to our cooperation with the United States, to help shape a global economic and trade order founded on liberal and multilateral principles. “They will seek to eliminate conflict in their international economic policies and will encourage economic collaboration between any or all of them,” the parties to the North Atlantic Treaty declared as their common goal. We should remain committed to this goal as we work to strengthen the European healthcare sector, for example, and make Europe more resilient to crises and less reliant on global supply chains.

The EU’s new trade agreements underscore the commitment to free trade. Our strong position in terms of economic policy with respect to the United States shows how partnerships can include occasional disputes. This is all the more reason for us to remain engaged in forging a common understanding about what we want the economy of the future to look like – especially when it comes to the digital revolution – and for us to agree on common standards for new technologies. All this would not only strengthen transatlantic cohesion, but would also benefit our societies and enhance our efforts to modernize Europe. Finally, it would send a clear, and possibly the most important, signal to the People’s Republic of China – because there is transatlantic agreement that China is not only a negotiation partner and competitor but also a rival. Only through transatlantic efforts will we continue to ensure that global trade and new technologies bear the stamp of our liberal system, norms, and standards. Instead of a comprehensive trade deal, this will require a multitude of related steps.

SECURITY POLICY: UPHOLDING THE ALLIANCE AND REMAINING A RELIABLE PARTNER

In its transatlantic relations, the European Union is strong on trade policy. However, it falls short on security and defense policy, judging by the targets it has set for itself and in light of US expectations. The call for a fairer share of the burden is as old as the alliance – and touches a raw nerve. Those who rely on partnerships must be reliable partners themselves. This has nothing to do with militarization. Over a decade ago, all NATO member countries pledged to spend two percent of their respective GDP on defense. This is not just a NATO target – in the context of PESCO, it is also a European target. And that’s how we should frame this issue. Moreover, our ability to defend ourselves and uphold the alliance is in the vested interest of Germany and at the same time helps defend our values, principles, and future.

The challenges we face in the coming years are more likely to increase than abate. Geographically, there will be a focus on an arc of problems that stretches from northern Africa to the Middle East and to Central Asia. In our policy on Russia, together with the US we can recommit to the formula set out more than fifty years ago in the Harmel Report, which defined a form of coexistence through deterrence and détente, i.e., maintaining adequate defence while promoting political détente. Aside from this, the United States will devote increasing attention to the Pacific region – while in Europe, unlike the US, we will have to address in particular the impact and aftermath of wars, civil wars, and failing states on our doorstep. Ten years after the revolutions in northern Africa and the Middle East, we are still insufficiently prepared to do so.

As Europeans, as Americans, and when and wherever possible as transatlantic partners, the challenges faced by our counterpart do indeed concern us, as they have for the past forty years. This shared history enables us to pose questions relating to the past, in order to learn from mistakes that were made – and especially with a view to once again, in the years ahead, creating a decade of European and transatlantic modernization. In this way, we can significantly contribute to forging a lasting and liberal global order.

### CP

#### The United States federal government should: -- increase prohibitions anticompetitive business practices by establishing a balancing test that expands the extraterritorial scope of its antitrust laws.

#### under Section 337 of the Tariff Act, -- provide all resources necessary for adjudicating and proactively investigating such cases, and -- authorize treble damages for private plaintiffs.

#### Solves the AFF via the Tariff Act.

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

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

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

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

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

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

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

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

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

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

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

### K

#### Anti-trust pacifies the working class, buys time to mystify unsustainable accumulation, and maps competition onto subjectivity, devaluing life.

Lebow 19 [David Lebow – Lecturer on Social Studies at Harvard University and lawyer, “Trumpism and the Dialectic of Neoliberal Reason,” Perspectives on Politics 18(2):380-398, doi:10.1017/S1537592719000434]

I. Neoliberal Reason

As Michel Foucault and others have argued, neoliberalism entails far more than an economic doctrine favoring deregulated markets.4 It is a novel form of governmentality—a rationality linked to technologies of power that govern conduct, not just through direct state action but through liberty itself.5 Not isolated to the traditionally demarcated sphere of economics, neoliberal society entails a whole economic-juridical order.

The central program of neoliberal governmentality is the absolute generalization of competition as a universal behavioral norm. Whereas in liberal thought, the root principle of capitalism was exchange of equivalents, for neoliberal reason it is competition entailing inequality. The key result of market processes goes from specialization to selection. The competitive market is the exclusive site of rationality. It processes information, indicated by price, and is the only mechanism of producing knowledge, defined as what is profitably utilizable. Because consumers are free to refuse inferior goods or services, the price mechanism of the market system ensures optimal solutions and maximal satisfaction of preferences.

Liberal capitalism, as Karl Polanyi argued, required the construction of “fictitious” commodities like land and labor.6 These abstract, exchangeable factors of production had to be disembedded from concrete non-market social relations, norms, and values. Instead of merely disembedding commodities, neoliberalism intervenes to make competitive mechanisms regulate every moment and point in society. It strives to build an empire of market choice that invades every domain of life, and deposes all other social, political and solidaristic institutions and values.

Neoliberalism does not allege that markets are natural; competition must be constructed. Rather than endorsing laissez-faire overseen by a night watchman, it stipulates a strong state engaged in permanent vigilance, activity, and intervention to maintain artificial competition. It must not plan outcomes, which would upset the market’s innate rationality, and must be insulated from political disturbances. Economic interventionism leads down the road to serfdom; fascism and unlimited state power are its necessary results. A “minimum of economic interventionism” on the “mechanisms of the market” must be accompanied by “maximum legal interventionism” on the “conditions of the market.”7 Fixed, formal rules make up an economic constitution that inhibits planning, repulses political disruptions, and impartially safeguards competition. The state is the executor of the market and growth is the basis of public legitimacy. Governance depoliticizes public power, promotes ostensibly post-ideological technical problem-solving by experts, and relies on “best-practices” that dissolve the distinction between public and private organization.8

Unlimited generalization of competition yields an enterprise society in which calculations of supply/demand and cost/benefit become the model of all social relations. Neoliberal reason renders homo economicus, based on this model of the enterprise, the exhaustive figuration of human subjectivity. The center of economic thought shifts from labor and processes of production, exchange, and consumption to human capital and rational decision-making under conditions of scarcity. Capital is everything that can generate future income; wages are reconceived as income from capital. Labor is no longer comprehended as a commodity exchanged for a wage, but as a combination of human capital (the worker’s education and abilities) and the income stream it generates. This neoliberal subject is an aggregate of human capital who invests in his own income-generating abilities.

Neoliberalism replaces the invariant identity of the moral person as a rights-bearing citizen with a formally empty receptacle filled up through enterprising choices. It brushes aside models of freedom as self-rule achieved through moral autonomy or popular sovereignty.9 In the neoliberal “democracy of consumers,” individual consumers together constitute the sovereign that monopolizes the issuance of legitimate commands.10 Sovereign will is expressed not through political channels, but by choices in the “plebiscite of prices.”11 Whereas producers have particular interests like protectionism, consumers have a consensual and common interest; all favor the impartial functioning of market processes. In the neoliberal free society, consumers exercise their right to choose in complete independence.

II. From Keynesian State Capitalism to Neoliberal Deregulation

Situating the 2008 crisis in a historical account of American political and economic development clarifies its broader significance. The early twentieth-century Progressives were disdainful of what they took to be the chaos and waste of fin de siècle laissez-faire society. They strove to build a new American state that would replace the structural and rights-based formalisms of the nineteenth century with direct democracy and expert administration. It took the Great Depression and New Deal to bring into full bloom the Progressive commitment to pragmatic rationality. Thereafter, the “policy state” was authorized to pursue designated social goals and develop the means to accomplish them.12 The slew of New Deal innovations included state oversight of labor negotiations, invigorated antitrust, Keynesian countercyclical deficits to stimulate demand and increase purchasing power, an expansive public sector sheltered from the business cycle, aggressive banking regulation, and social insurance. Regulation and redistribution ensured the conditions necessary for an economic system based on capital accumulation, private property, and corporate profit to endure.

To many, the differences between the New Deal and Nazi political economies appeared less significant than their common response to monopoly capitalism. Both erased boundaries between state and society by politicizing the private sphere and authorizing public bureaucracies to rationalize crisis-prone economies. Frankfurt School member Friedrich Pollock suggested that this common “state capitalism” had solved the contradiction between the forces and relations of production, and thus overcome the economy’s crisis tendencies. It seemed to him that management had become merely technical and “nothing essential” had been “left to the laws of the market.”13 Worries abounded that the private law sphere of property and contract was necessary for individual freedom. Despite salient differences between Nazi and New Deal state capitalism, many feared that intervention into society was a waystation to domination. Unease about the specter of American despotism motivated development of mechanisms to ensure that interventionism did not devolve into arbitrary rule.14 Expertise was one justification and limitation of the policy state. Authority could be safely delegated to a new corps of public-spirited administrators because their scientific knowledge would not only make them effective, but also counsel restraint. Enduring misgivings led later to new laws of administrative process. The procedural state was legitimated by its defenders as being a substantively value-neutral and instrumentally rational machine serving goals set by society. Regulatory decision-making was shunted into the abstruse procedures of courtrooms and bureaucracies. Defenders of the state emphasized that its processes of allocating authority were neutral, impartial, and open to all. The balanced accommodation of all interest groups seeking to exercise influence would yield an equilibrium corresponding to the public interest.15

The intermeshing of state and society through interest groups, agencies, and professionalized parties marginalized the public. The sovereign public opinion that Progressives had hoped would rationalize government gave way to the rationality supposedly inherent in processes of public law, public-private negotiation, and regulated markets. The state was endowed with a diffuse legitimacy in exchange for a growing economy, broad distribution, and ongoing household capacity to consume.16 The Keynesian welfare settlement pacified the working class, protecting the market economy from more radical political pressures. Newly available, mass-produced commodities encouraged leveled-down notions of citizenship as welfare clientelism and privatistic consumption. As the state expanded and routinized, the initial politicization of private property relations through public intervention developed into depoliticized economic management by lawyers and social scientists organized by administrative and judicial processes.

The terms of the social contract preserving the coexistence of capitalism and democracy had been set. In exchange for a pacified citizenry and depoliticized regulatory authority, the policy state promised to deploy instrumental reason to sustain both capital accumulation and widely distributed capacity to consume (supported, always, by the exclusion of African Americans). During the decades of postwar growth, these twin responsibilities seemed attainable and compatible. Capitalism functioned smoothly enough and potentially delegitimating inequality was clipped by inflation, tax-based welfare, and collectively negotiated wages. But in the late 1960s and early 1970s, weakening growth, stagflation, trade deficits, and the collapse of Bretton Woods revealed that state capitalism had not solved the problems of economics. As the Great Depression had enabled construction of the instrumentally rational policy state, economic disturbances in the 1970s opened the breach into which neoliberal reason entered to reconfigure the political economy. Rather than shielding rational policy-making from political pressure and assuring broadly distributed welfare, neoliberalism promised growth driven by depoliticized markets freed from regulation and downwards redistribution. Believing in the optimal rationality of competitive markets, neoliberals sought to reinvigorate capital accumulation through deregulation, lowered taxes, financialization, privatization, and market expansion.

Liberating accumulation from the restrictions and obligations incurred under state capitalism might have imperiled capitalism’s peace treaty with democracy. For deregulation to proceed without impairing the system’s legitimacy, the quid pro quo—depoliticization for consumption—had to continue. Over the ensuing decades, as Wolfgang Streeck explains, the state “bought time” by finding new ways to generate illusions of widely distributed prosperity that prolonged the capacity of the lower and middle classes to consume.17 Each successive attempt exhausted itself, leading to new and escalating disturbances. In the 1970s, inflation safeguarded social peace by compensating workers for inadequate growth until stagflation ended this mode of buying time. A subsequent reliance on public debt enabled the government to pacify conflict with borrowed money. Rising debt and balking creditors delimited this phase, which was brought to a definitive close with the Clinton administration’s social spending cuts and balanced budgets. In a final stage that dawned in the 1980s but grew increasingly paramount over time, debt-based support of purchasing power was privatized. Household spending was financed through mortgages, student loans, and credit cards. This “privatized Keynesianism” buoyed consumption up through 2008, despite cuts to social spending, falling wages, and tightening employment markets.18

Each device for upholding spending maintained the legitimacy of the depoliticized political economy, even as liberalization continued to strip the wage-dependent population of regulatory and redistributive safeguards. The end of the inflation era brought structural unemployment and weakened trade unions. The passing of the public debt regime meant cuts to social rights, privatization of social services, and a trimmed public sector. Growing private debt enabled people to hold on despite lost savings, and rising under- and unemployment. At every step, the neoliberal project was “dressed up” as a consumption project.19 Continuing consumption ensured legitimacy long enough to enact total transformation of the political economy.

The state could not buy time indefinitely. The 1970s had already witnessed the beginning of the transition from a manufacturing, production-oriented economy that exported surpluses to an import-based, finance and services economy focused on consumption. As the United States went from creditor to debtor, a system of “balanced disequilibrium” took hold.20 With impunity granted as the world’s reserve currency, the United States ran mounting budget and trade deficits. To finance them, it absorbed surplus capital from abroad, much of which wended its way to Wall Street. Banks used these profits to extend credit to the working- and middle- classes. Household debt funded consumption of imported goods, returning the surplus capital abroad, and completing the circuit of global trade. This system depended on the unsustainable condition of ever-increasing debt-based consumption. Consumption was notoriously reinforced by secondary markets in what was essentially private money (securitized derivatives and collateralized debt obligation) that was much riskier than assumed. Because increasingly irresponsible lending was integral to continuing the consumption that stabilized the macroeconomic system, it became a sort of vicious collective good that progressively magnified the scale of the inevitable crash.21 When in 2008 the debt finally proved unserviceable and the housing bubble burst, the private money disappeared and the disequilibrated global economic system fell into crisis.

Consumption based on private debt had provided an unstable bridge over the yawning inequality brought about by deregulation, financialization, globalization, and the diminished welfare state. When the 2008 crisis dried up credit, it revealed a divided “dual economy.”22 On one side is the primary sector of elite, highly-educated professionals who are collected in coastal urban centers and tied in to corporate management, technological innovation and oversight of global capital flows. On the other is the secondary sector of low-skilled workers primarily fixed in the heartland, for whom deregulated competition has brought under- or unemployment, job instability, depressed wages, exploding debt, and diminished prospects.

Unable to buy more time, the state’s breach of the postwar social contract has been exposed. The neoliberal system of capital accumulation was entrenched at the expense of broad and sustainable consumption. The results have been the politicization of defrauded citizens and a political economy plunged into legitimation crisis. Time has belied the premature conclusion that contradiction and crisis potential had been overcome by state capitalism. Contradiction was relocated into cross-cutting imperatives for the state to enable capital accumulation and distribute consumption. In hindsight, we find only a window of stabilization of an enduring crisis potential built into capitalist political economy. As Nancy Fraser puts it “on the one hand, legitimate, efficacious public power is a condition of possibility for sustained capital accumulation; on the other hand, capitalism’s drive to endless accumulations tends to destabilize the very public power on which it relies.”23 The political fallout from the 2008 crisis marks the end of the postwar social contract that had established conditions ensuring the continued coexistence of capitalism and democracy.

#### Capitalism is unsustainable due to ecological overshoot which causes multiple avenues for extinction. Err neg—breaching carrying capacity turns every impact.

Martenson 1/25/19 (Chris Martenson – PhD, Co-Founder of Peak Prosperity, Economic Researcher, writer and trend forecaster interested in macro trends regarding the economy, energy composition and environment. “Collapse is Already Here” <https://www.peakprosperity.com/blog/114741/collapse-already-here>, DOA: 2/1/19, kbb)

Many people are expecting some degree of approaching collapse -- be it economic, environmental and/or societal -- thinking that they’ll recognize the danger signs in time. As if it will be completely obvious, like a Hollywood blockbuster. Complete with clear warnings from scientists, politicians and the media. And everyone can then get busy either panicking or becoming the plucky heroes. That's not how collapse works. Collapse is a process, not an event. And it's already underway, all around us. Collapse is already here. However, unlike Hollywood's vision, the early stages of collapse cause people to cling even tighter to the status quo. Instead of panic in the streets, we simply see more of the same -- as those in power do all they can to remain so, while the majority of the public attempts to ignore the growing problems for as long as it possibly can. For both the elite and the majority, their entire world view and their personal sense of self depends on things not crumbling all around them, so they remain willfully blind to any evidence to the contrary. When faced with the predicaments we warn about here at PeakProsperity.com, getting an early start on prudently shifting your own personal situation is of vital strategic and tactical importance. Tens of thousands of our readers already have taken wise steps in their lives to position themselves resiliently. But most of the majority won't get started until it’s entirely too late to make any difference at all. Which is sad but perhaps unavoidable, given human nature. If everybody around you is saying “Everything is awesome!”, it can take a long time to determine for yourself that things in fact aren't: Real collapse happens slowly, and often without any sort of acknowledgement by the so-called political and economic elites until its abrupt terminal end. The degree of rot within the Soviet Union went undetected until its final implosion, catching pretty much everyone in the West (as well as in the former USSR!) by surprise. Similarly, one day people woke up and passenger pigeons were extinct. They used to literally darken the skies for hours as they migrated past, numbering in the billions. Nobody planned on their demise and virtually nobody saw it coming. Sure, just as there always are, a few crackpots at the fringes noticed, but they were ignored until it was too late. Our view is that collapse of our current way of life is happening right now. The signs are all around us. Our invitation is for you to notice them and inquire critically what the ramifications will be -- irrespective of whatever pablum our leaders and media are currently spewing. While the monetary and financial elites strain to crank out one more day/week/month/year of “market stability”, the ecosystems we depend on for life are vanishing. It's as if the Rapture were happening, but it's the insects, plants and animals ascending to heaven instead of we humans. Committing Ecocide Be very skeptical when the cause of each new ecological nightmare is ascribed to “natural causes.” While it’s entire possible for any one ecological mishap to be due to a natural cycle, it’s weak thinking to assign the same cause to dozens of troubling findings happening all over the globe. As they say in the military: Once is an accident. Twice is a coincidence. But three times is enemy action. Right now, Australia is in the middle of the summer season and being absolutely hammered by high heat. Sure it gets hot during an Australian summer, but not like this. The impact has been devastating: Australia's Facing an Unprecedented Ecological Crisis, But No One's Paying Attention Jan 9, 2019 It started in December, just before Christmas. Hundreds of dead perch were discovered floating along the banks of the Darling River – victims of a "dirty, rotten green" algae bloom spreading in the still waters of the small country town of Menindee, Australia. Things didn't get better. The dead hundreds became dead thousands, as the crisis expanded to claim the lives of 10,000 fish along a 40-kilometre (25-mile) stretch of the river. But the worst was still yet to come. This week, the environmental disaster has exploded to a horrific new level – what one Twitter user called "Extinction level water degradation" – with reports suggesting up to a million fish have now been killed in a new instance of the toxic algae bloom conditions. For their part, authorities in the state of New South Wales have only gone as far as confirming "hundreds of thousands" of fish have died in the event – but regardless of the exact toll, it's clear the deadly calamity is an unprecedented ecological disaster in the region's waterways. "I've never seen two fish kills of this scale so close together in terms of time, especially in the same stretch of river," fisheries manager Iain Ellis from NSW Department of Primary Industries (DPI) explained to ABC News. The DPI blames ongoing drought conditions for the algae bloom's devastating impact on local bream, cod, and perch species – with a combination of high temperature and chronic low water supply (along with high nutrient concentrations in the water) making for a toxic algal soup. ([Source](https://www.sciencealert.com/up-to-a-million-fish-killed-in-unprecedented-australian-environmental-disaster)) Watching the video above showing grown men crying over the loss of 100-year-old fish is heartbreaking. This fish kill is described as “unprecedented” and as an “extinction level event", meaning it left no survivors over a long stretch of waterway. We can try to console oursleves that maybe this was just a singular event, a cluster of bad juju and worse waterway management that combined to give us this horror -- but it wasn’t. It's part of a larger tapestry of heat-induced misery that Australia is facing: How one heatwave killed 'a third' of a bat species in Australia Jan 15, 2019 Over two days in November, record-breaking heat in Australia's north wiped out almost one-third of the nation's spectacled flying foxes, according to researchers. The animals, also known as spectacled fruit bats, were unable to survive in temperatures which exceeded 42C. "It was totally depressing," one rescuer, David White, told the BBC. Flying foxes are no more sensitive to extreme heat than some other species, experts say. But because they often gather in urban areas in large numbers, their deaths can be more conspicuous, and easily documented. "It raises concerns as to the fate of other creatures who have more secretive, secluded lifestyles," Dr Welbergen says. He sees the bats as the "the canary in the coal mine for climate change". ([Source](https://www.bbc.com/news/world-australia-46859000)) A two-day heatwave last November (2018) was sufficient to kill up to a third of all Australia's known flying foxes, a vulnerable species that was already endangered. As those bats are well-studied and their deaths quite conspicuous to observers, it raises the important question: How many other less-scrutinized species are dying off at the same time? And the death parade continues: [More than 90 wild horses die in Australia's heat wave](https://tribune.com.pk/story/1895741/3-90-wild-horses-die-australias-heat-wave/) (Jan 24, 2019) [Australia heatwave: Mass animal deaths and roads melting as temperatures reach record high](https://www.independent.co.uk/news/world/australasia/australia-heatwave-latest-temperature-heat-records-stress-new-south-wales-bushfires-a8735541.html)(Jan 19, 2019) [Australia's Heatwave Responsible for Deaths of Horses, Camels](https://weather.com/news/news/2019-01-24-australia-extreme-heat-kills-horses-camels-0) (Jan 24) Are these data points severe enough for you to recognize as signs of ongoing collapse? Last summer was a time of extreme drought and heat for Australia, and this summer looks set to be even worse. This may be the country's 'new normal' for if the situation is due to climate change instead of just an ordinary (if punishing) hot cycle. If so, these heat waves will likely intensify over time, completely collapsing the existing biological systems across Australia. Meanwhile, nearby in New Zealand, similar species loss is underway: 'Like losing family': time may be running out for New Zealand's most sacred tree July 2018 New Zealand’s oldest and most sacred tree stands 60 metres from death, as a fungal disease known as kauri dieback spreads unabated across the country. Tāne Mahuta (Lord of the Forest) is a giant kauri tree located in the Waipoua forest in the north of the country, and is sacred to the Māori people, who regard it as a living ancestor. The tree is believed to be around 2,500 years old, has a girth of 13.77m and is more than 50m tall. Thousands of locals and tourists alike visit the tree every year to pay their respects, and take selfies beside the trunk. Now, the survival of what is believed to be New Zealand’s oldest living tree is threatened by kauri dieback, with kauri trees a mere 60m from Tāne Mahuta confirmed to be infected. Kauri dieback causes most infected trees to die, and is threatening to completely wipe out New Zealand’s most treasured native tree species, prized for its beauty, strength and use in boats, carvings and buildings. “We don’t have any time to do the usual scientific trials anymore, we just have to start responding immediately in any way possible; it is not ideal but we have kind of run out of time,” Black says, adding that although there is no cure for kauri dieback there is a range of measures which could slow its progress. ([Source](https://www.theguardian.com/world/2018/jul/14/like-losing-family-time-may-be-running-out-for-new-zealands-most-sacred-tree)) People are rallying to try and save the kauri trees, although it’s unclear exactly how to stop the spread of the new fungal invader or why it's so pathogenic all of a sudden. It could be due to another natural sort of cycle (except the fungus was thought to have been introduced and spread by human activity) or it could be a another collapse indicator we need to finally hear and heed. It turns out that New Zealand is not alone. Giant trees are dying all over the globe. [2,000-year-old baobab trees in Africa](https://blogs.scientificamerican.com/extinction-countdown/climate-change-is-killing-these-ancient-trees-but-thats-just-part-of-the-story/) are suddenly and rather mysteriously giving up the ghost. These trees survived happily for 2,000 years and now all of a sudden they're dying. Are the deaths of our most ancient trees all across the globe some sort of natural process? Or is there a different culprit we need to recognize? In Japan they're [lamenting record low squid catches](https://www.telegraph.co.uk/news/2019/01/21/japans-squid-industry-crisis-amid-record-low-catches/). Oh well, maybe it’s just overfishing? Or could it be another message we need to heed? To all this we can add the numerous scientific articles now decrying the 'insect Apocalypse' unfolding across the northern hemisphere. The Guardian recently issued this warning: [“Insect collapse: ‘We are destroying our life support systems’”](https://www.theguardian.com/environment/2019/jan/15/insect-collapse-we-are-destroying-our-life-support-systems?CMP=share_btn_tw). Researchers in Puerto Rico's forest preserves recorded a 98% decline in insect mass over 35 years. Does a 98% decline have a natural explanation? Or is something bigger going on? Meanwhile, the butterfly die-off is unfolding with alarming speed. I rarely see them in the summer anymore, much to my great regret. Seeing one is now as exciting as seeing a meteor streak across the sky, and just as rare: Monarch butterfly numbers plummet 86 percent in California Jan 7, 2019 CAMARILLO, Calif. – The number of monarch butterflies turning up at California's overwintering sites has dropped by about 86 percent compared to only a year ago,according to the Xerces Society, which organizes a yearly count of the iconic creatures. That’s bad news for a species whose numbers have already declined an estimated 97 percent since the 1980s. Each year, monarchs in the western United States migrate from inland areas to California’s coastline to spend the winter, usually between September and February. “It’s been the worst year we’ve ever seen,” said Emma Pelton, a conservation biologist with the Xerces Society who helps lead the annual Thanksgiving count. “We already know we’re dealing with a really small population, and now we have a really bad year and all of a sudden, we’re kind of in crisis mode where we have very, very few butterflies left.” What’s causing the dramatic drop-off is somewhat of a mystery. Experts believe the decline is spurred by a confluence of unfortunate factors, including late rainy-season storms across California last March, the effects of the state’s years long drought and the seemingly relentless onslaught of wildfires that have burned acres upon acres of habitat and at times choked the air with toxic smoke. ([Source](https://www.usatoday.com/story/news/nation/2019/01/07/monarch-butterfly-numbers-drop-86-california/2499761002/)) Note the “explanation” given blames the decline on mostly natural processes: late storms, droughts and wildfires. I believe that's because the article appears in a US paper, so no mention was permitted of neonicotinoid pesticides or glyphosate. Both of these are highly effective decimators of insect life -- but they're highly profitable for Big Ag, so for now, any criticism is not allowed. Sure a 97% decline since the 1980’s might be due to fires, droughts and rains. But that’s really not very likely. There have always been fires, droughts and rains. Something else has shifted since the 1980’s. And that “thing” is human activity, which has increased its willingness to destroy habitat and spray poisons everywhere in pursuit of cheaper food and easier profits. The loss of insects, which we observe in the loss of the beautiful and iconic Monarch butterfly, is a gigantic warning flag that we desperately need to heed. If the bottom of our billion-year-old food web disintegrates, you can be certain that the repercussions to humans will be dramatic and terribly difficult to ‘fix.’ In scientific terms, it will be called a “bottom-up trophic cascade”. In a trophic cascade, the loss of a single layer of the food pyramid crumbles the entire structure. Carefully-tuned food webs a billion years in the making are suddenly destabilized. Life cannot adapt quickly enough, and so entire species are quickly lost. Once enough species die off, the web cannot be rewoven, and life … simply ends. What exactly would a “trophic cascade” look like in real life? Oh, perhaps something just like this: Deadly deficiency at the heart of an environmental mystery Oct 16, 2018 During spring and summer, busy colonies of a duck called the common eider (Somateria mollissima) and other wild birds are usually seen breeding on the rocky coasts around the Baltic Sea. Thousands of eager new parents vie for the best spots to build nests and catch food for their demanding young broods. But Lennart Balk, an environmental biochemist at Stockholm University, witnessed a dramatically different scene when he visited Swedish coastal colonies during a 5-year period starting in 2004. Many birds couldn’t fly. Others were completely paralyzed. Birds also weren’t eating and had difficulty breathing. Thousands of birds were suffering and dying from this paralytic disease, says Balk. “We went into the bird colonies, and we were shocked. You could see something was really wrong. It was a scary situation for this time of year,” he says. Based on his past work documenting a similar crisis in several Baltic Sea fish species, Balk suspected that the birds’ disease was caused by a thiamine (vitamin B1) deficiency. Thiamine is required for critical metabolic processes, such as energy production and proper functioning of the nervous system. This essential micronutrient is produced mainly by plants, including phytoplankton, bacteria, and fungi; people and animals must acquire it through their food. “We found that thiamine deficiency is much more widespread and severe than previously thought,” Balk says. Given its scope, he suggests that a pervasive thiamine deficiency could be at least partly responsible for global wildlife population declines. Over a 60-year period up to 2010, for example, worldwide seabird populations declined by approximately 70%, and globally, species are being lost 1,000 times faster than the natural rate of extinction (9, 10). “He has seen a thiamine deficiency in several differ phyla now,” says Fitzsimons of Balk. “One wonders what is going on. It’s a larger issue than we first suspected.” ([Source](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6196476/)) This is beyond disturbing. It should have been on the front pages of every newspaper and TV show across the globe. We should be discussing it in urgent, worried tones and devoting a huge amount of money to studying and fixing it. At a minimum, we should stop hauling more tiny fish and krill from the sea in an effort to at least stabilize the food pyramid while we sort things out. If you recall, we’ve also recently reported on the findings showing that phytoplankton levels are down 50% (these are a prime source for thiamine, by the way). Again, here's a possible “trophic cascade” in progress: ([Source](http://www.roperld.com/science/peakfish.htm)) Fewer phytoplankton means less thiamine being produced. That means less thiamine is available to pass up the food chain. Next thing you know, there’s a 70% decline in seabird populations. This is something I’ve noticed directly and commented n during my annual pilgrimages to the northern Maine coast over the past 30 years, where seagulls used to be extremely common and are now practically gone. Seagulls! Next thing you know, some other major food chain will be wiped out and we'll get oceans full of jellyfish instead of actual fish. Or perhaps some once-benign mold grows unchecked because the former complex food web holding it in balance has collapsed, suddenyl transforming Big Ag's "green revolution" into grayish-brown spore-ridden dust. To add to the terrifying mix of ecological news has been the sudden and rapid loss of amphibian species all over the world. A possible source for the culprit has been found, if that’s any consolation; though that discovery does not yet identify a solution to this saddening development. Ground Zero of Amphibian 'Apocalypse' Finally Found May 10, 2018 MANY OF THE world's amphibians are staring down an existential threat: an ancient skin-eating fungus that can wipe out entire forests' worth of frogs in a flash. This ecological super-villain, the chytrid fungus Batrachochytrium dendrobatidis, has driven more than 200 amphibian species to extinction or near-extinction—radically rewiring ecosystems all over Earth. “This is the worst pathogen in the history of the world, as far as we can tell, in terms of its impacts on biodiversity,” says Mat Fisher, an Imperial College London mycologist who studies the fungus. Now, a global team of 58 researchers has uncovered the creature's origin story. A groundbreaking study published in Science on Thursday reveals where and when the fungus most likely emerged: the Korean peninsula, sometime during the 1950s. From there, scientists theorize that human activities inadvertently spread it far and wide—leading to amphibian die-offs across the Americas, Africa, Europe, and Australia. ([Source](https://news.nationalgeographic.com/2018/05/amphibians-decline-frogs-chytrid-fungi-bd-animals-science/)) Frogs, toads and salamanders were absolutely critical parts of my childhood and I delighted in their presence. I cannot imagine a world without them. But effectively, that’s what we’ve got now with so many on the endangered species list. This parade of awful ecological news is both endless and worsening. And there is no real prospect for us to fix things in time to avoid substantial ecological pain. None. After all, we can’t even manage our watersheds properly. And those are dead simple by comparison. Water falls from the sky in (Mostly) predictable volume and you then distribute somewhat less than that total each year. Linear and simple in comparison to trying to unravel the many factors underlying a specie's collapse. But challenges like this are popping up all over the globe: Fear And Grieving In Las Vegas: Colorado River Managers Struggle With Water Scarcity Dec 14th, 2018 On stage in a conference room at Las Vegas's Caesars Palace, Keith Moses said coming to terms with the limits of the Colorado River is like losing a loved one. "It reminds me of the seven stages of grief," Moses said. "Because I think we've been in denial for a long time." Moses is vice chairman of the Colorado River Indian Tribes, a group of four tribes near Parker, Arizona. He was speaking at the annual Colorado River Water Users Association meeting. The denial turned to pain and guilt as it became clear just how big the supply and demand gaps were on the river that delivers water to 40 million people in the southwest. For the last six months Arizona's water leaders have been experiencing the third stage of grief: anger and bargaining. Of the seven U.S. states that rely on the Colorado River, Arizona has had the hardest time figuring out how to rein in water use and avoid seeing the river's largest reservoirs — Lakes Mead and Powell — drop to extremely low levels. Kathryn Sorenson, director of Phoenix's water utility, characterized the process this way: "Interesting. Complicated. Some might say difficult." One of the loudest voices in the debate has been coming from a small group of farmers in rural Pinal County, Arizona, south of Phoenix. Under the current rules those farmers could see their Colorado River supplies zeroed out within two years. The county's biggest grower of cotton and alfalfa, Brian Rhodes, is trying to make sure that doesn't happen. The soil in his fields is powder-like, bursting into tiny brown clouds with each step. "We're going to have to take large cuts," Rhodes said. "We all understand that." ([Source](http://www.kunc.org/post/fear-and-grieving-las-vegas-colorado-river-managers-struggle-water-scarcity#stream/0)) Oh my goodness. If we’re having trouble realizing that wasting precious water from the Colorado River to grow cotton is a bad idea, then there’s just no hope at all that we'll successfully rally to address the loss of ocean phytoplankton. That’s about the easiest connection of dots that could ever be made. As [Sam Kinison](https://www.youtube.com/watch?v=bjO7QMP4h-Y), the 1980’s comedian might have yelled – IT’S A DESERT!! YOU’RE TRYING TO GROW WATER-INTENSIVE CROPS IN THE FREAKING DESERT! CAN’T YOU SEE ALL THE SAND AROUND YOU?!? THAT MEANS "DON’T GROW COTTON HERE!!" A World On The Brink The bottom line is this: We are destroying the natural world. And that means that we are destroying ourselves. I know that the mainstream news has relegated this conversation to the back pages (when they covered it at all) and so it's not “front and center” for most people. But it should be. Everything we hold dear is a subset of the ecosphere. If that goes, so does everything else. Nothing else matters in the slightest if we actively destroy the Earth’s carrying capacity. At the same time, we're in the grips of an extremely dangerous delusion that has placed money, finance and the economy at the top spot on our temple of daily worship. Any idea of slowing down or stopping economic growth is “bad for business” and dismissed out of hand as “not practical”, "undesirable" or "unwise". It’s always a bad time to discuss the end of economic growth, apparently. But as today's young people are increasingly discovering, if "conducting business" is just a lame rationale for failed stewardship of our lands and oceans, then it’s a broken idea. One not worth preserving in its current form. The parade of terrible ecological breakdowns provided above is there for all willing to see it. Are you willing? Each failing ecosystem is screaming at us in urgent, strident tones that we’ve gone too far in our quest for "more". We might be able to explain away each failure individually. But taken as a whole? The pattern is clear: We’ve got enemy action at work. These are not random coincidences. Nature is warning us loudly that it's past time to change our ways. That our "endless growth" model is no longer valid. In fact, it's now becoming an existential threat The collapse is underway. It’s just not being televised (yet).

#### Vote Neg for anti-capitalist commons.

Rose 21 [Nick. PhD in Political Ecology from RMIT University. Executive Director of Sustain: The Australian Food Network. From the Cancer Stage of Capitalism to the Political Principle of the Common: The Social Immune Response of “Food as Commons.” Int J Health Policy Manag 2021. 3-31-21. DOI: 10.34172/ijhpm.2021.20 //shree]

Silvia Federici provides a longer historical perspective, noting that ‘commoning is the principle by which human beings have organised their existence for thousands of years;’ and that to ‘speak of the principle of the common’ is to speak ‘not only of small-scale experiments [but] of large-scale social formations that in the past were continent-wide.’87 Hence a commons-based society is neither a utopia or reducible to fringe projects, and the commons have persisted despite the many and continuing enclosures, ‘feeding the radical imagination as well as the bodies of many commoners.’87 Federici acknowledges that commons and practices of commoning are diverse, that many are susceptible to cooptation and many are consistent with the persistence of capitalism; indeed some, such as charities providing social services (including foodbanks) during the years of austerity budgets in the United Kingdom (2010-2015), reinforce and stabilise capitalism.87 What matters to Federici is the character and intentionality of the commons as anti-capitalist, as ‘a means to the creation of an egalitarian and cooperative society…no longer built on a competitive principle, but on the principle of collective solidarity [and commitments] to the creation of collective subjects [and] fostering common interests in every aspect of our lives.’87

Federici’s analysis resonates with the political thought and proposals developed by Dardot and Laval in their 2018 work, ‘On Common: Revolution in the 21st century.’11 For Dardot and Laval, the common is likewise understood as a principle of political struggle, a demand for ‘real democracy’ and a major driving force behind the emerging articulation of a political vision and programme that transcends and overcomes the straitjacket logic of neoliberal ideological hegemony and its ‘policy grammar’ which appears to foreclose all alternatives and lock us forever into a capitalist realism in which ‘it is easier to imagine the end of the world than it is to imagine the end of capitalism.’89 Eschewing Bollier’s ‘triarchy’ of a market/state/ commons coexistence, Dardot and Laval argue for a politics of the common based on an engaged citizenry that directly participates and deliberates in all decisions which impact it, and in the process not merely transforms the institutions responsible for the management of services and allocation of resources, but creates new institutions and new ways of being in the world.11

Dardot and Laval describe this form of politics as ‘instituent praxis’: the common, they argue, is ‘not produced but instituted.’11 This acknowledges the conventional understanding of Ostrom, Bollier and others of ‘the commons’ as residing in the rules – the laws – that a community establishes for the collective management and use of shared resources, but extends it much further and in a more radical direction. The essence of the commons, they argue, is not in the goods per se such as land or a forest or a seed bank ‘held in common,’ but rather in the process of their establishment as well as the ongoing negotiation that will surround their use and governance. Hence, Dardot and Laval distinguish the commons from the ‘rights’ tradition of property, arguing that ‘the commons are above all else matters of institution and government…the use of the commons is inseparable from the right of deciding and governing. The practice that institutes the commons is the practice that maintains them and keeps them alive and takes full responsibility for their conflictuality through the coproduction of rules.’90 To ‘institute’ in this context should not be misunderstood as ‘to institutionalise [or] render official;’ rather it is ‘to recreate with, or on the basis of, what already exists.’ 90 This messy, conflictual and evolving process is what Dardot and Laval insist will ultimately bring about a revolution, not in the form of a violent uprising or insurrection, but rather through the ‘reinstitution of society’ via the transformation of politics and economy from its current state of ‘representative oligarchy’ to full participatory and deliberative democracy.11 Such a vision is premised on a mass politicisation of society; in effect a return of mass popular political contestation and a turn away from the postpolitical era of the neoliberal consumer.91-92

### DA

#### FTC fraud prevention is funded now---unexpected demands trade off

Bilirakis et al. 21 (Gus Michael Bilirakis is an American lawyer and politician serving as the U.S. Representative for Florida's 12th congressional district since 2013; Hon. Noah Joshua Phillips is a Commissioner at the Federal Trade Commission; Hon. Lina Khan is the Chair of the Federal Trade Commission, “Transforming the FTC: Legislation to Modernize Consumer Protection,” *Committee on Energy and Commerce*, 6/28/21, <https://energycommerce.house.gov/committee-activity/hearings/hearing-on-transforming-the-ftc-legislation-to-modernize-consumer>)

Gus Bilirakis (3:12:44): Thank you. Our committee has worked extensively in a bipartisan manner to protect consumers from fraud and scams. Mr. Carter's Combating Pandemic Scams Act was enacted at the beginning of the year thanks to all of our leadership here. Representive Blunt Rochester's Fraud and Scam Reduction Act, as well as Representative Kelly's Protecting Seniors from Emergency Scams Act both cleared our chamber with bipartisan support this year. My bill, HR 2672, the FTC Reports Act, would require the FTC to report on fraud against our seniors. Commissioner Philips, how important is the work the FTC staff does to protect Americans from scams? Noah Josuha Phillips (3:13:33): Congressman, thank you for your question. The work we do to protect American consumers against frauds and scams, is our bread and butter as an agency. There is no work that makes me feel better as a commissioner, when we watch our ability to find bad guys, or taking money from American consumers, dipping into their life savings, and get that money back to them. So the work that you have done on the committee to provide funding, to provide tools for us to go after scam artists, is critical. And I think that needs to continue with the agency. Gus Bilirakis (3:14:05): Thank you, and Chair Khan, again, as you pursue other initiatives, when staff and resources be shifted away from the fraud program, which is so essential in preventing bad actors from harming our constituents? That's the question, please. Lina Khan (3:14:22): Sorry, could you repeat the question - when should services be shifted... Gus Bilirakis (3:14:26): Yes, of course. As you pursue other initiatives, when staff and resources be shifted away from your fraud program, which is so essential in preventing bad actors from harming our constituents? Lina Khan (3:14:40): Well, of course, we're always limited by the appropriations bills when it comes to thinking through how we're delegating resources across the agency. In certain instances, I think there are exigent needs that can arise in certain aspects. Gus Bilirakis (3:14:54): But you don't anticipate moving money from the fraud program, is that correct? Lina Khan (3:15:00): Not especially, but I mean, I think overall, we are trying to look through the prism of managerial efficiency and trying to understand how we can best use our resources, especially given some of the exigent circumstances and so we'll be continuing to make those determinations. Gus Bilirakis (3:15:15): I suggest that you not because this is such a very important program. Commissioner Wilson, can you elaborate on why the FTC Reports Act would also prove beneficial to increasing much needed transparency and the flow of information within the commission?

#### Unplanned expanded enforcement drains finite resources from existing priorities

Dafny 21, Professor of Business Administration at the Harvard Business School and the John F. Kennedy School of Government, and former Deputy Director for Healthcare and Antitrust in the Bureau of Economics at the Federal Trade Commission. Professor Dafny’s research focuses on competition in health care markets, and the intersection of industry and public policy. (Leemore, “The Covid-19 Pandemic Should Not Delay Actions to Prevent Anticompetitive Consolidation in US Health Care Markets,” *Pro Market*, <https://promarket.org/2021/06/10/covid-pandemic-consolidation-pandemic-monopoly/>)

However, as Commissioner Rebecca Slaughter, the current acting FTC chair has noted, these efforts have “faced resistance, with two of these recent victories only coming after district court setbacks.” Blocking a horizontal merger, even when it appears to be an “open and shut” case to a layperson, requires extraordinary resources, including large investigation and litigation teams, as well as economic and other subject matter experts who must analyze the transaction, lay out the case for blocking the merger, and rebut arguments advanced by Defendants’ attorneys and experts. To pick a recent example, consider the proposed merger of two hospital systems in the Memphis area, which the FTC filed to block in November 2020. Based on the FTC’s complaint, the merger would have reduced the number of competing systems from four to three and created a system with over a 50 percent market share. In the face of litigation, the parties abandoned the deal—consistent with this being a straightforward case. Although the FTC prevailed without a trial, it took nearly a year from the merger announcement to the abandonment. Over that period, the FTC likely devoted thousands of staff hours to the investigation and lawsuit and expended substantial taxpayer resources on expert witnesses. The higher the payoff from the merger for the merging parties—and the payoff in the case of an increase in market power can be substantial—the greater the incentive for defendants to invest extraordinary resources to fight a merger challenge. Even if there is only a middling (and in some cases, small) chance of getting a merger through, it may well be in the parties’ interest to see if they can prevail, absorbing the agencies’ (i.e., DOJ and FTC’s) scarce resources in that attempt and preventing them from devoting those resources to investigate other transactions or anticompetitive practices. The substantial resources required to challenge transactions, paired with stagnating enforcement budgets, may explain why authorities have elected not to challenge some horizontal transactions they would likely have challenged in previous eras. Using data on a wide range of industries, antitrust scholar John Kwoka documents that enforcers rarely raise concerns about changes in market structure that used to draw scrutiny—that is, mergers that yield five or more market participants.

#### Fraud crackdowns stop major terror attacks

Michael Tierney 18, George & Mary Hylton Professor of International Relations; Director Global Research Institute (GRI), “#TerroristFinancing: An Examination of Terrorism Financing via the Internet,” International Journal of Cyber Warfare and Terrorism, vol. 8, no. 1, 01/2018, pp. 1–11

2. TERRORIST FINANCING AND THE INTERNET

As mentioned, terrorists’ use of the internet has become a major concern for security officials across the world in recent years. Like many other users, terrorists have found that the internet is an invaluable tool to share information quickly, in order to disseminate ideas and link up with likeminded individuals (Jacobson, 2010; Okolie-Osemene & Okoh, 2015). In this manner, terrorists use the internet for a variety of purposes, including recruitment, propaganda, and financing. As scholars have also noted, the internet is an attractive option for extremists due to the security and anonymity it provides (Jacobson, 2010). Yet while there have been a growing number of studies completed on the ways in which terrorist organizations use the internet to recruit and indoctrinate others, there has been relatively little focus on the methods by which terrorists finance themselves through online activities. Some researchers have attempted to fill gaps in this area by broadly studying internet aspects of terrorism financing. However, research on this particular aspect of terrorism financing still appears to be lacking, with little focus on new methods of terrorist financing via the internet or a marrying of strategies to combat online financing trends available to practitioners in the field.

For instance, Sean Paul Ashley (2012) assessed the mobile banking phenomenon, which is prevalent in regions such as the Middle East and Africa, and provides extremists with the ability to easily connect to the internet and remit funds around the world. The decentralization of this kind of banking, due to the fact that brick-and-mortar facilities are not needed to conduct transactions, has allowed terrorist financiersto more efficiently move funds while avoiding detection from authorities. Other researchers,such as MichaelJacobson (2010), have studied the waysin which terrorists engage in cyber-crime to raise and move funds. For example, Jacobson (2010) found that online credit card fraud was a fairly major source of terrorist financing. By stealing a victim’s private credit information, terrorists are able to co-opt needed funds and provide support to themselves or their counterparts. Yet as James Okolie-Osemene and Rosemary Ifeanyi Okoh (2015) note, the internet is mostly used to augment and assist activities which occur in the physical world. In this way, it would appear that the internet is far more useful as a means to move funds globally in support of terrorism, rather than simply as a method to raise funds.

#### Nuclear war---cash is key

Hayes 18, Executive Director of the Nautilus Institute for Security and Sustainability, Ph.D. in Energy and Resources from the University of California-Berkeley, Professor of International Relations at RMIT University (Dr. Peter J., “Non-State Terrorism and Inadvertent Nuclear War”, NAPSNet Special Reports, 1/18/2018, <https://nautilus.org/napsnet/napsnet-special-reports/non-state-terrorism-and-inadvertent-nuclear-war/>)

The critical issue is how a nuclear terrorist attack may “catalyze” inter-state nuclear war, especially the NC3 systems that inform and partly determine how leaders respond to nuclear threat. Current conditions in Northeast Asia suggest that multiple precursory conditions for nuclear terrorism already exist or exist in nascent form. In Japan, for example, low-level, individual, terroristic violence with nuclear materials, against nuclear facilities, is real. In all countries of the region, the risk of diversion of nuclear material is real, although the risk is likely higher due to volume and laxity of security in some countries of the region than in others. In all countries, the risk of an insider “sleeper” threat is real in security and nuclear agencies, and such insiders already operated in actual terrorist organizations. Insider corruption is also observable in nuclear fuel cycle agencies in all countries of the region. The threat of extortion to induce insider cooperation is also real in all countries. The possibility of a cult attempting to build and buy nuclear weapons is real and has already occurred in the region.[15] Cyber-terrorism against nuclear reactors is real and such attacks have already taken place in South Korea (although it remains difficult to attribute the source of the attacks with certainty). The stand-off ballistic and drone threat to nuclear weapons and fuel cycle facilities is real in the region, including from non-state actors, some of whom have already adopted and used such technology almost instantly from when it becomes accessible (for example, drones).[16]

Two other broad risk factors are also present in the region. The social and political conditions for extreme ethnic and xenophobic nationalism are emerging in China, Korea, Japan, and Russia. Although there has been no risk of attack on or loss of control over nuclear weapons since their removal from Japan in 1972 and from South Korea in 1991, this risk continues to exist in North Korea, China, and Russia, and to the extent that they are deployed on aircraft and ships of these and other nuclear weapons states (including submarines) deployed in the region’s high seas, also outside their territorial borders.

The most conducive circumstance for catalysis to occur due to a nuclear terrorist attack might involve the following nexi of timing and conditions:

1. Low-level, tactical, or random individual terrorist attacks for whatever reasons, even assassination of national leaders, up to and including dirty radiological bomb attacks, that overlap with inter-state crisis dynamics in ways that affect state decisions to threaten with or to use nuclear weapons. This might be undertaken by an opportunist nuclear terrorist entity in search of rapid and high political impact.
2. Attacks on major national or international events in each country to maximize terror and to de-legitimate national leaders and whole governments. In Japan, for example, more than ten heads of state and senior ministerial international meetings are held each year. For the strategic nuclear terrorist, patiently acquiring higher level nuclear threat capabilities for such attacks and then staging them to maximum effect could accrue strategic gains.
3. Attacks or threatened attacks, including deception and disguised attacks, will have maximum leverage when nuclear-armed states are near or on the brink of war or during a national crisis (such as Fukushima), when intelligence agencies, national leaders, facility operators, surveillance and policing agencies, and first responders are already maximally committed and over-extended.

At this point, we note an important caveat to the original concept of catalytic nuclear war as it might pertain to nuclear terrorist threats or attacks. Although an attack might be disguised so that it is attributed to a nuclear-armed state, or a ruse might be undertaken to threaten such attacks by deception, in reality a catalytic strike by a nuclear weapons state in conditions of mutual vulnerability to nuclear retaliation for such a strike from other nuclear armed states would be highly irrational.

Accordingly, the effect of nuclear terrorism involving a nuclear detonation or major radiological release may not of itself be *catalytic* of *nuclear* war—at least not intentionally–because it will not lead directly to the destruction of a targeted nuclear-armed state. Rather, it may be catalytic of non-nuclear war between states, especially if the non-state actor turns out to be aligned with or sponsored by a state (in many Japanese minds, the natural candidate for the perpetrator of such an attack is the pro-North Korean General Association of Korean Residents, often called Chosen Soren, which represents many of the otherwise stateless Koreans who were born and live in Japan) and a further sequence of coincident events is necessary to drive escalation to the point of nuclear first use by a state. Also, the catalyst—the non-state actor–is almost assured of discovery and destruction either during the attack itself (if it takes the form of a nuclear suicide attack then self-immolation is assured) or as a result of a search-and-destroy campaign from the targeted state (unless the targeted government is annihilated by the initial terrorist nuclear attack).

It follows that the effects of a non-state nuclear attack may be characterized better as a *trigger* effect, bringing about a *cascade* of nuclear use decisions within NC3 systems that shift each state increasingly away from nuclear non-use and increasingly towards nuclear use by releasing negative controls and enhancing positive controls in multiple action-reaction escalation spirals (depending on how many nuclear armed states are party to an inter-state conflict that is already underway at the time of the non-state nuclear attack); and/or by inducing concatenating nuclear attacks across geographically proximate nuclear weapons forces of states already caught in the crossfire of nuclear threat or attacks of their own making before a nuclear terrorist attack.[17]

### DA

#### Climate legislation passes now

Sargent 3-3 [Greg Sargent and Paul Waldman, journalists, “Progressives Say They’re Open to Manchin’s New Framework. So What’s the Holdup?” WASHINGTON POST, 3—3—22, <https://www.washingtonpost.com/opinions/2022/03/03/jayapal-manchin-new-build-back-better-framework/>, accessed 3-3-22]

This week, Sen. Joe Manchin III indicated that he’s prepared to restart negotiations over a climate and social policy bill that could pass the Senate with only Democrats. So is there any hope of progress?

For that to happen, you need two things: First, the West Virginia Democrat must take a firm position. Second, other Democrats, including progressives in the House, have to agree to what he wants.

In a sign of movement, progressives are now signaling a new openness to Manchin’s overture, which suggests there’s a way forward.

In an interview, Rep. Pramila Jayapal (D-Wash.), chair of the Congressional Progressive Caucus, said progressives are ready to talk to Manchin about his framework, and signaled a deal is possible, with caveats.

“We’re open to that approach,” Jayapal told us.

Jayapal opened the door to a way this could work. A good starting place, she said, would be to agree to specifics on what revenue generators can get Manchin’s support — and can get 50 votes in the Senate — and then talk about what to fund with them.

“Let’s come up with the revenue-producing measures,” Jayapal said, and then “look at it from there.”

Manchin told reporters he’s open to a package that includes some corporate tax reforms and higher taxes on top earners that were in the Build Back Better package (which he killed). He’s also open to raising money by allowing the government some ability to negotiate drug prices.

But Manchin also said a chunk of those revenues must be plowed back into deficit reduction, and the remainder put toward something like BBB’s proposals for combating climate change — tax incentives and other measures to encourage manufacture and consumption of alternate energy sources. Manchin insists those programs must be permanent.

Jayapal said progressives would be open to this general framework.

“We’re open to putting some of it toward deficit reduction, and then climate,” Jayapal said, adding that this framework could also include whatever other provisions Manchin might be willing to support with whatever is left over to spend.

As tax and health-care experts told us Wednesday, such an approach could raise at least $1.5 trillion in revenue, and perhaps more depending on what other taxes Manchin is open to. If that were divided by putting some into deficit reduction and about $500 billion into climate, as BBB did, you might have a few hundred billion extra for other expenditures.

Importantly, Jayapal said this could work for progressives. Under such a framework, you might be able to put those extra revenues into expanding health-care subsidies, or into subsidies for child care.

Such an outcome would be scaled way down from the original BBB. But Jayapal suggested it would nonetheless be a major achievement that would be worthwhile for progressives to support.

“We’d have to see all the details, but progressives are absolutely committed to trying to deliver as much as we can,” Jayapal told us, saying that even the items on this more limited list “are all big progressive priorities.”

We want to try and get major things done," Jayapal continued.

Still, Jayapal cautioned that progressives would like to see legislative text that Manchin says he can support, and then “let’s have a conversation."

This shouldn’t actually come as that much of a surprise. Progressives are still eager to vote for any part of the original BBB they can get. They might grumble a bit, but if a bill embodying Manchin’s desires came up for a vote, and it included some combination like the ones outlined above, odds are approximately 100 percent that progressives would support it.

Indeed, there is no reason that a specific version of Manchin’s own framework — one that he himself writes, or at least blesses — should not form the basis of such talks. In a way, a silver lining here is that Manchin has offered up a framework that would leave far fewer things to negotiate.

#### Antitrust reform requires PC and trades off

Peter C. Carstensen 21, the Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, February 2021, “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST,” https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities. 15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate! 16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Solves climate targets

Joselow 3—1 [Maxine Joselow, journalist, “In State of the Union, Biden Plans to Tout His Climate Agenda Despite Challenges in Congress and the Courts,” WASHINGON POST, 3—1—22, <https://www.washingtonpost.com/politics/2022/03/01/state-union-biden-plans-tout-his-climate-agenda-despite-challenges-congress-courts/>, accessed 3-2-22]

However, talks over Build Back Better have evaporated since Sen. Joe Manchin III (D-W.Va.) came out against the measure in late December. And Biden aides briefing reporters on the speech yesterday would not say whether Biden would mention his onetime signature legislation by name. “It’s not about the name of the bill. It’s about the ideas,” said one top Biden aide.

Regardless of the name, a study released Monday found that the spending bill would reduce U.S. greenhouse gas emissions by 5.2 billion tons, putting the United States within easy reach of Biden's 2030 climate goals. By contrast, the infrastructure law alone would leave the nation's emissions 1.3 billion tons short of Biden's 2030 target, according to the modeling by the REPEAT Project at Princeton University.

#### They read the terminal impact, it causes extinction

## Adv 1

### A2: Murray

#### Extraterritoriality of US antitrust offends other countries—perceptions of exceptionalism are on the brink.

Briggs 15 - (John DeQ Briggs & Daniel S. Bitton \* Co-chair of the Antitrust & Competition practice @ Axinn Veltrop & Harkrider LLP, Managing Partner of the firm’s Washington, DC, office, former Chair of the Section of Antitrust Law of the American Bar Association, Adjunct professor of International Competition Law @ the George Washington Law School \*\*partner in the Antitrust & Competition practice at Axinn Veltrop & Harkrider LLP; published 2015, The Sedona Conference Journal, Vol. 16, "Heisenberg’s Uncertainty Principle, Extraterritoriality and Comity," doa: 10-2-2021) url: https://thesedonaconference.org/sites/default/files/publications/Heisenberg%27s%20Uncertainty%20Principle\_Extraterritorialty%20and%20Comity.16TSCJ327.pdf

The enforcement of American law against foreign enterprises for their foreign conduct has become increasingly contentious and offensive, especially quite recently. The displeasure of the PRC seems particularly acute. In the Vitamin C litigation, a substantial treble damage jury verdict was entered against companies chartered by the PRC for their involvement in an export price-fixing cartel that the PRC itself claimed was conduct directed by a foreign sovereign in order to assure compliance with U.S. antidumping laws. The District Court rejected the interpretation of Chinese law advanced by the PRC and held that, under Rule 44.1 of the Federal Rules of Civil Procedure, the construction of foreign law was a factual matter for the court itself and that only “some degree of deference” was owed to the foreign sovereign’s statement as to the meaning of its own law.33 The case is now on appeal to the Second Circuit, where the PRC, through its Ministry of Foreign Commerce (MOFCOM), has filed a strong amicus brief expressing the view that the district court’s dismissive attitude towards the foreign sovereign’s explanation of its own law was “profoundly disrespectful and wholly unfounded.” The brief further stated that “the district court’s approach and result have deeply troubled the Chinese government, which has sent a diplomatic note concerning this case to the U.S. State Department.”34

It is not just foreign governments who react angrily to what some call American Judicial Imperialism. Consider the reaction outside of the United States to a statute that took effect on July 1 of last year—the Foreign Account Tax Compliance Act (FATCA). It is not well known that the United States is virtually alone in the world in exercising jurisdiction over its citizens no matter where they might be. FATCA is intended to detect and deter tax evasion by U.S. citizens through the use of accounts held abroad. But the extraterritorial feature is that FATCA places the reporting burden primarily on financial institutions, wealth managers, and national tax authorities, rather than individuals. These are foreign entities. For example in the UK, information on U.S. citizens’ accounts holding more than $50,000 must be reported to HM Revenue & Customs, who will then pass details to the U.S. Internal Revenue Service (this latter step is the subject of a bilateral agreement between the U.S. and the UK).

Placing responsibility for compliance with the U.S. statute on foreign banks or other such institutions amounts to extraterritoriality writ large. The U.S. was and is able to engage in this kind of regulatory hegemony because it controls the world’s finance system, at least for now. Americans, who are mostly unconnected with the international community, probably neither know nor care much about this. But outside the U.S., and in the business and financial community especially, FATCA (and other American regulatory provisos) are controversial. As Felix Salmon put it in the Financial Times last year:

America is using its banking laws not to make its financial system safer, nor to protect its own citizens from predatory financial behaviour, but rather to advance foreign policy and national security objectives. Only in America, for instance, would citizens have to apply to the finance ministry in order to get a visa to visit Cuba.

Leadership is important, and most countries would be fine with following America’s lead for some things—cross-border rules governing stability, liquidity, and leverage, for instance. But even then the US has a tendency to ignore everybody else once the rules have been written, and decide to implement a set of entirely separate rules instead. The hegemon does whatever it wants, for its own, often inscrutable reasons, and it does not enjoy being questioned about its decisions.

No other country can get away with this: what we are seeing is unapologetic American exceptionalism, manifesting as extraterritorial powermongering. Using financial regulation as a vehicle for international power politics is extremely effective. It is also very cheap, compared with, say, declaring war.

US officials never apologise for the fact that their own domestic law always trumps everybody else’s; rather, they positively revel in it. The consequence is entirely predictable: a very high degree of resentment at the way in which the U.S. throws its weight around.35

The U.S. indictments, plea agreements and extradition requests in the Fédération Internationale de Football Association (FIFA) fraud scandal are triggering similar signs of international skepticism. The first criticism actually came from Russia,36 which does not have much credibility in complaining about extraterritorial assertion of power, much less in complaining about the FIFA investigations (since it allegedly benefitted from the bribes that are being investigated). But that does not necessarily detract from the merits of the Russian criticism. Indeed, The Economist noted that Russia was onto something, observing that “American prosecutors . . . do indeed reach much farther than their peers elsewhere—sometimes too far” and that while the crack down on FIFA is welcome “when it comes to bribery, America has sometimes been too audacious.”37 DOJ’s reliance on the RICO Act and Travel Act (rather than anti-bribery statutes) to establish jurisdiction to prosecute what essentially are bribery allegations does not help its cause.38

The extraterritorial adventures of U.S. courts in antitrust proceedings have not yet produced quite this much heat, but they are producing in their own way a great deal of heat, and one senses that the temperature is rising.

### A2: Cartels

#### Status quo solves—coordination and enforcement are high now—cartels are dying out.

Verbeke 21 – (\*Alain Verbeke and \*\*Caroline Buts \*Professor of International Business and Strategy and holds the McCaig Research Chair in Management @ Haskayne School of Business @ University of Calgary \*\*Professor at the department of applied economics @ Vrije Universiteit Brussel; published 2021, Management and Organization Review, “The Not So Brilliant Future of International Cartels,” doa: 9-4-2021) url: https://www.cambridge.org/core/journals/management-and-organization-review/article/not-so-brilliant-future-of-international-cartels/363CC718A5FD54F8BB390B9AB22150B7

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

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

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

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

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

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

### A2: Emerging Tech

#### No emerging tech impact.

Sechser 19 – Todd S. Sechser, Public Policy Professor at the University of Virginia. Neil Narang, Political Science Professor at the University of California, Santa Barbara. Caitlin Talmadge, Security Studies Professor at Georgetown University. [Emerging technologies and strategic stability in peacetime, crisis, and war, Journal of Strategic Studies, 42(6), Taylor and Francis]

Yet the history of technological revolutions counsels against alarmism. Extrapolating from current technological trends is problematic, both because technologies often do not live up to their promise, and because technologies often have countervailing or conditional effects that can temper their negative consequences. Thus, the fear that emerging technologies will necessarily cause sudden and spectacular changes to international politics should be treated with caution. There are at least two reasons to be circumspect.

First, very few technologies fundamentally reshape the dynamics of international conflict. Historically, most technological innovations have amounted to incremental advancements, and some have disappeared into irrelevance despite widespread hype about their promise. For example, the introduction of chemical weapons was widely expected to immediately change the nature of warfare and deterrence after the British army first used poison gas on the battlefield during World War I. Yet chemical weapons quickly turned out to be less practical, easier to counter, and less effective than conventional high-explosives in inflicting damage and disrupting enemy operations.6 Other technologies have become important only after advancements in other areas allowed them to reach their full potential: until armies developed tactics for effectively employing firearms, for instance, these weapons had little effect on the balance of power. And even when technologies do have significant strategic consequences, they often take decades to emerge, as the invention of airplanes and tanks illustrates. In short, it is easy to exaggerate the strategic effects of nascent technologies.7

Second, even if today’s emerging technologies are poised to drive important changes in the international system, they are likely to have variegated and even contradictory effects. Technologies may be destabilising under some conditions, but stabilising in others. Furthermore, other factors are likely to mediate the effects of new technologies on the international system, including geography, the distribution of material power, military strategy, domestic and organisational politics, and social and cultural variables, to name only a few.8 Consequently, the strategic effects of new technologies often defy simple classification. Indeed, more than 70 years after nuclear weapons emerged as a new technology, their consequences for stability continue to be debated.9

### A2: US-China/Russia

#### Ukraine obviously thumps this

#### No China war – certainly not over economic competition.

Henry Bienen and Jeremiah Ostriker 21. Former James S McDonnell Distinguished University Professor and Dean of Woodrow Wilson School at Princeton University, former President of NU. Astrophysicist whose academic positions have been divided among Princeton University, Cambridge University and Columbia University. “How the United States can chart a new path that avoids war with China”. Bureau of Atomic Scientists. Feb 3 2021. <https://thebulletin.org/2021/02/how-the-united-states-can-chart-a-new-path-that-avoids-war-with-china/>

Relations between China and the United States have degenerated so far that some foreign policy experts now believe that war between the countries is possible. While this is a minority view, it is a dangerous one. In the past, a US-China war was often considered unlikely for reasons of mutual economic interdependence and nuclear deterrence, not to mention the huge costs of war. Moreover, it has been said, ideological conflict and regional and international striving for advantage are not reasons enough for war. But now more pessimistic voices are also being heard. Citing pre-World War I analogies, in which it was (quite inaccurately) said that economic interdependence among European powers made war impossible, and noting what Harvard University’s Graham Allison has called the “Thucydides Trap,” in which there is a drift towards war when an emerging power threatens to displace an existing leading power, some believe war between China and the United States is becoming more conceivable and even probable.

We are concerned with the current direction of US-China’s policies, but we believe that the pessimists both overstate the possibility of a US-China war and understate the consequences of possible armed conflict. The production of so-called “small” nuclear weapons is given as a reason for the possibility of war without massive destruction. Nuclear war among nuclear powers has not occurred since the spread of nuclear weapons precisely because destruction would be huge and ghastly. But even lower-yield nuclear weapons nonetheless are quite deadly; each has the destructive potential of thousands of WWII airplane bombs. We cannot tell how limited the use of such weapons would be in advance of armed conflict, and, since Chinese missiles can reach our shores, we do not know if such a conflict could be contained.

There are other reasons for thinking war between China and the United States not only should be but will be avoided. We have past experience to warn us. The United States and China fought in the Korean War when US forces pushed to the Yalu River on China’s border. We know how that turned out. We also note that the United States did not send a land army to North Vietnam after China warned that the first US troops in North Vietnam would be met by Chinese “volunteers.” Lesson learned.

What points of conflict does the United States have with China that could actually lead to war? We can find only one, and it has nothing to do with trade, economic competition, ideology, human rights violations by China, or struggle for relative power in Asia or elsewhere. Taiwan is the critical point of conflict. China asserts its historical right to Taiwan as an integral part of China. The United States is committed to the principle that Taiwan’s relationship with China cannot be changed by force. Thus, how much military assistance to give to Taiwan, if China uses blockades or applies military force, is a critical issue for US policy. How and in what way to defend Taiwan loom as large questions. To do nothing in the face of Chinese military threats would not only call into question US commitments everywhere but might well lead to nuclear proliferation in Asia. What lessons would Japan, the Republic of Korea, Australia, perhaps Vietnam and Indonesia take? Taiwan itself has the capacity to build nuclear weapons and could do so, if the United States made clear that it would not respond to threats against Taiwan.

We do not minimize the difficulty of the Taiwan issue. There needs to be both clarity and ambiguity in how the United States deals with Taiwan. The United States needs to make clear that if China uses force against Taiwan there will be severe consequences. But we cannot in advance specify the consequences. We do not think war with China is probable over Taiwan. But we admit to the difficulties of finding the right policies in this area. We propose the following: As Joseph Nye noted recently in the Wall Street Journal, in consultation with China, the Biden administration should review policies for accident avoidance, crisis management, and high-level communications. Military-to-military relations already exist, and we do not know the details of them. But we suspect that the Trump administration let lapse, or weakened, constant communications and accident-avoidance protocols. These must be maintained and strengthened.

Arms sales to Taiwan are sensitive. Our aim is to avoid an invasion of Taiwan, and thus sales of missiles and technologies for defensive purposes seem right. We must make clear that we would work to circumvent a blockade of Taiwan. But obviously, Taiwan is not Berlin during the Cold War, and airlifts would have limited utility. Thus, it is the avoidance of a blockade that must be worked toward. And here, we need allies and friends in Asia and beyond to support the position that such a blockade would be disastrous for China’s economy and trade worldwide.

We can find no other issues where war could plausibly arise between China and the United States. And we reassert that any armed conflict could lead to a global catastrophe. In a more positive vein, the United States should be finding new paths to both cooperate and compete with China. The demonization of China—as per Donald Trump’s “China virus” and Secretary of State Pompeo’s bellicose language—are misguided and counterproductive. The two countries need to cooperate on climate and environmental issues and on the pandemic and other health matters.

Decoupling the economies of the United States and China would be very difficult, very expensive, and very foolish, as the Trump administration found out. It continued to want to export agricultural goods to China, and where it imposed tariffs, they raised costs to US consumers and manufacturers. We need to challenge China over its trade policies, but the best way to do that is to strengthen the US domestic economy and invest in education and technology innovation and research. So much of our vaunted technological progress has come from government investment. We should renew our government support for advanced research and technology, rather than faulting the Chinese for imitating our past actions. For but one example, consider how the internet was developed in the 1970s.

#### No Russia war

Doug Bandow 17, Senior Fellow at the Cato Institute, J.D. from Stanford, 3/6/17, "What Russian Threat? Americans Shouldn't Be Running Scared of Moscow," https://www.cato.org/publications/commentary/what-russian-threat-americans-shouldnt-be-running-scared-moscow

Russia possesses the world’s second most powerful nuclear arsenal, capable of destroying America many times over. But even Moscow’s sharpest critics don’t believe Vladimir Putin plans to commit suicide. That nuclear threat acts more as Russia’s guarantee against U.S. coercion. Neither side can allow the stakes of any conflict to race out of control. Beyond inaugurating nuclear Armageddon, how does Moscow threaten America? An invasion seems unlikely, since the two countries don’t share a land boundary. An attack across the Bering Strait to retake Alaska is more than a little unlikely. Which means there is no direct threat to the U.S. How about isolating America by controlling sea and air and interdicting commerce? That’s almost as implausible. The vaunted Red Navy is gone. Moscow deploys one decrepit aircraft carrier, no match for Washington’s multiple carrier groups. And the U.S. is allied with European nations which also possess capable if smaller fleets. Russia is upgrading its forces, but it lacks the resources to equal America. Moscow is no more likely to dominate the air above or around the U.S. Russia’s air force is capable and has gained valuable combat experience over Syria, but remains no match for America’s globe-spanning force. More dangerous may be Russian air defenses, which would ensure that hostile U.S. air operations were not the cakewalk like in Serbia, Iraq, Afghanistan, and Libya. Nor is there any obvious reason why Moscow would inaugurate war with the U.S. Russia’s critics notwithstanding, the Cold War is over. There is only one aggressive ideological power, and that is America. Putinism is a simpler, practical authoritarian nationalism. The concerted campaign by Republican hawks like Lindsey Graham and Democratic partisans of all stripes to turn Moscow into an enemy is not just counterproductive. It is dangerous. That’s obviously not a congenial home for anyone who believes in America’s classical liberal heritage. The vision of a limited government dedicated to protecting individual rights has few takers in the Russian Federation. The real problem posed by Vladimir Putin is not that he’s an unpleasant thug, but that he seems to represent a substantial number—a strong majority if polls are to be believed—of Russians. Still, Moscow’s policy reflects much more a defensive than aggressive stance. Its role in the world looks a lot like that of pre-1914 imperial Russia. The Putin government wants its interests to be respected and its borders to be secure. It especially doesn’t like seeing its friends, such as Serbia, dismembered without so much as a nod in Moscow’s direction. Russia also opposes a potentially hostile alliance pushing ever eastward, absorbing lands such as Ukraine that once were integral to the Russian Empire as well as the Soviet Union. The U.S. (and Moscow’s neighbors) might wish that Russia would accept America’s not always so benevolent hegemony. However, Boris Yeltsen’s rule proved to be but a brief interregnum until age-old Russian nationalism reasserted itself. That Moscow now stands up for what it considers to be its interests is no cause for alarm in Washington unless the latter has aggressive designs on Russia itself. The belief that such a nation and people would voluntarily, even enthusiastically, submit to American “leadership” always was a fantasy. Of course, Moscow’s policies sometimes run contrary to Washington’s desires, but that doesn’t mean Russia poses a threat. Moscow generally has been helpful in Afghanistan, Iran, and North Korea, all significant concerns of the U.S. Russia has moved closer to China, despite major differences between the two, but largely in response to Washington’s hostile policies toward both great powers. In this way the Obama administration inadvertently reversed Richard Nixon’s geopolitical masterstroke of 45 years ago. Washington is similarly displeased with Russia’s intervention in Syria, but Damascus long has been a Russian ally. America has no monopoly on the “right” to wage war in the Mideast. And the U.S. nevertheless remains the region’s dominant outside power, allying with Israel and the Gulf States, maintaining multiple bases in multiple countries throughout the region, and fighting endless wars for years. If there is a “Russian threat” to America it must come in Europe, generously defined to include Georgia and Ukraine. Yet the Cold War truly is over. There is no Red Army poised to plunge into the Fulda Gap and race to the Atlantic Ocean. The very idea of Russian domination of Eurasia is fantastic. Europe has recovered economically from World War II and consolidated politically into the European Union. The continent enjoys about three and a half times Russia’s population and almost 15 times its GDP. Indeed, Germany alone almost has three times Russia’s economic strength. The economies of the United Kingdom, France, and even Italy are larger than Russia’s economy. Despite their shameless defense lassitude, Europeans still collectively spend nearly four times as much as Moscow on the military. The UK alone comes close to Russia’s levels. For all of the sound and fury at recent NATO meetings, no one seriously contemplates a Russian attack on “Old Europe,” or even most of “New Europe.” What would Moscow gain by triggering a potential nuclear war while trying to overrun large populations of non-Russians who would resist Moscow’s rule? Theoretical capability does not equal intent. Last year the faculty of the Naval War College assessed the Russian “threat.” The NWC subsequently issued a “Sense of the Faculty” report which revealed that a majority believed “Russia’s fear of potentially ‘hostile’ forces on its doorstep and within its historical sphere of influence” was “the most fundamental cause of the Ukraine Crisis.” Moreover, 71 percent considered the likelihood of an attack on the Baltics to be low or very low. The latter are seen as most vulnerable to Russian pressure. Yet Estonia, Latvia, and Lithuania are irrelevant to America’s security. Washington is treaty-bound to defend them, an unfortunate result of the foolish go-go years of NATO expansion. However, Russian aggression is very unlikely.

## Adv 2

### Circumvention

#### Countries circumvent by taking their businesses out of the private sector.

Wallen 2K – (Spencer Weber Wallen, Professor of Law @ Brooklyn Law School and Of Counsel @ Kaye, Scholer, Fierman, Hays & Handler, LLP; published Winter 2000, Northwestern Journal of International Law & Business, Vol. 20, Issue 2, “Can U.S. Antitrust Laws Open International Markets?” doa: 9-4-2021) url: https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1506&context=njilb

Targeting international cartels thought to impede American exports and investment also may have the unfortunate effect of mutating the private cartel into a creature of the state beyond the effective reach of U.S. antitrust. This could be achieved through either outright compulsion or direction by the foreign government to achieve the same goals, or by private lobbying for other forms of protection from foreign competition. For example, one of the first reactions to the announcement of the Justice Department's intention to reapply antitrust to attempts to block United States export opportunities was the Japanese announcement that it was considering the adoption of a blocking statute along the lines of the British Protection of Trading Interests Act.97

#### Aff sparks blocking statutes---turns case and more.

---link: further expansion of extraterritorial antitrust causes foreign nations to backlash with blocking statutes which block US’ ability to apply antitrust abroad

---turns econ/trade/innovation/low costs---injects fresh uncertainty, forces businesses to spend massive resources on avoiding litigation which trades off with R&D and means they can’t scale, lower prices, or create innovative products; slows trade because of conflicting international laws which creates uncertainty

Kava 19 [Samuel F. Kava is an associate at White and Case LLP and was a JD/MBA candidate at the University of Maryland Francis King Carey School of Law and Johns Hopkins University Carey School of Business, “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”, 15 J. Bus. & Tech. L. 135 (2019), https://digitalcommons.law.umaryland.edu/jbtl/vol15/iss1/5] IanM

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.

### Warming

#### No internal link to this anywhere, plan might stop some amount of deforestation but no evidence that solves their impacts

#### Massive alt causes, to biodiversity, mining, oil spills dumping other nations emmisons etc…

### Brazil Econ D: Alt-Causes—1NC

#### Brazil econ is terminally tanked—alt causes

Focus Economics 10—11 [staff, “Brazil Economic Outlook,” Focus Economics, 10—11—21, <https://www.focus-economics.com/countries/brazil>, accessed 10-23-21]

After the economy shrank slightly in sequential terms in Q2, available data for Q3 paints a mixed picture. While overall activity grew at a robust rate in July, the economy appears to be operating at two different speeds. Externally, exports have been supported by rising commodity prices and strong foreign demand. However, domestically, industrial production shrank in July–August and retail sales tumbled at the fastest pace in eight months in August amid declining consumer confidence, likely pointing to muted household spending in the quarter. Moreover, business confidence fell throughout the quarter, likely reflecting concerns around the political situation: While President Bolsonaro has toned down his anti-democratic rhetoric in recent weeks, tensions remain high ahead of next year’s general elections.

#### Amazon deforestation is inevitable – way to many alt causes

Amigo 20 [Ignacio Amigo is a science writer based in Manaus, Brazil. “When will the Amazon hit a tipping point?” 2/25/22 Nature https://www.nature.com/articles/d41586-020-00508-4]

Seen from a monitoring tower above the treetops near Manaus in the Brazilian Amazon, the rainforest canopy stretches to the horizon as an endless sea of green. It looks like a rich and healthy ecosystem, but appearances are deceiving. This rainforest — which holds 16,000 separate tree species — is slowly drying out. Over the past century, the average temperature in the forest has risen by 1–1.5 °C1. In some parts, the dry season has expanded during the past 50 years, from four months to almost five2. Severe droughts have hit three times since 2005. That’s all driving a shift in vegetation. In 2018, a study reported that trees that do best in moist conditions, such as tropical legumes from the genus Inga, are dying. Those adapted to drier climes, such as the Brazil nut tree (Bertholletia excelsa) are thriving3. At the same time, large parts of the Amazon, the world’s largest rainforest, are being cut down and burnt. Tree clearing has already shrunk the forest by around 15% from its 1970s extent of more than 6 million square kilometres; in Brazil, which contains more than half the forest, more than 19% has disappeared. In the 2000s, Brazil was praised for drastically slowing forest loss, but the rate has since risen as a result of political turmoil and an economic recession. Last year, deforestation in Brazil spiked by around 30% to almost 10,000 km2, the largest loss in a decade. And last August, videos of wildfires in the Amazon made international headlines. The number of fires that month was the highest for any August since an extreme drought in 2010 (see ‘Forest loss’). Many scientists have linked these surges to the anti-environmentalist rhetoric of Brazil’s president, Jair Bolsonaro. In the face of a warming climate, increased deforestation and fiercer fires, scientists are more worried than ever about the Amazon. Some have warned that the forest will soon reach a tipping point that could turn much of it into dry scrubland. But others say they lack the evidence to make specific forecasts about how long the rainforest can remain healthy. Last September, a few dozen researchers formed a Science Panel for the Amazon that will report on the state of the rainforest, and suggest what needs to be done to conserve it. They hope to have their assessment ready in time for the United Nations climate negotiations in Glasgow, UK, this November. There’s little doubt that the situation is becoming dire. “It’s a very difficult moment for those who know, love and work in Amazonia,” says Eduardo Góes Neves, an archaeologist at the University of São Paulo, Brazil. The tipping-point question No matter the season, the temperature above the tree canopy is always high enough to make it sweaty for researchers climbing up a monitoring tower there. The air is full of moisture that sustains the rainforest ecosystem. The forest plays a major part in keeping itself alive, by recycling water through trees to generate rainfall. A water molecule travelling across the Amazon can fall as rain up to six times4. If drought, fire or deforestation damage too many trees, reduced rainfall leads to less vegetation, and so on in a shrinking cycle. Eventually, this might transform large regions of the Amazon into an ecosystem more like a savannah (although with much less biodiversity). Only the western Amazon near the Andes mountains would remain lush — there, air currents are forced up over the mountains, causing water vapour to condense and fall as rain. Take action to stop the Amazon burning In 2018, Carlos Nobre, a climate researcher at the University of São Paulo, raised the alarm by arguing that the Amazon might be much closer to a tipping point than scientists thought. He and Thomas Lovejoy, an environmental researcher at George Mason University in Fairfax, Virginia, wrote an editorial stating5 that if just 20–25% of the rainforest were cut down, it could reach a tipping point at which eastern, southern and central Amazonia would flip to a savannah-like ecosystem. Last December the pair repeated the warning, calling it a last chance for action6. “If the tree mortality we see continues for another 10–15 years, then the southern Amazon will turn into a savannah,” Nobre told Nature. If that happens, it would not only affect the millions of people and animals in the region. It could also mean billions of tonnes of carbon dioxide will be emitted into the atmosphere as trees die and vegetation burns; less rainfall throughout central and southern South America; and altered climate patterns farther afield. The pair’s forecast was based in part, Nobre says, on 2016 simulations1 modelling how the forest of the 1970s (before deforestation accelerated) would look in 2050 under different scenarios. The researchers first modelled how the regional Amazonian climate might be affected using various projections about future climate change, levels of deforestation and increased fires. Then they simulated how the original rainforest would have evolved under these altered climate conditions. When they modelled 20% forest loss with increased fires, more than half of the forest didn’t survive by 2050. The modelling did not investigate how quickly the forest would die over the 80 years of the simulation. Not everyone agrees on the 20% figure. Paulo Brando, a tropical ecologist at the University of California, Irvine, says it might require more deforestation to reach a critical point — but the main thing, he says, is to try to keep well away from it. “We’re playing an environmental Russian roulette,” he says. And some other researchers aren’t sure that it’s even possible to define critical deforestation thresholds. “The jury’s out on that,” says Peter Cox, a climate researcher at the University of Exeter, UK, who was one of the first to study an Amazon tipping point in detail in the 2000s. “I don’t think there is currently a strong scientific basis for defining precise thresholds of deforestation or global warming,” he says. He adds that the idea could give the false impression that the Amazon is safe below a certain threshold of deforestation and doomed above it. Scientists agree, however, that more global warming and more deforestation put the rainforest at increased risk. When the term was first introduced, a tipping point referred to an abrupt change of state: in the Amazon’s case, when the rainforest biome becomes unstable and regions swiftly transform into dry scrubland. But some now use it more loosely, Cox says, to refer to conditions that seem to lead inevitably to large-scale and dangerous damage, even when there isn’t an abrupt moment of change. Uncertain resilience Part of the problem is that a lack of data makes it hard to predict how climate change, deforestation and fires intersect, and how the forest will react. One big uncertainty is how a warmer climate enriched with CO2 would affect the Amazon. Extra CO2 could help the forest to flourish — but low levels of the nutrient phosphorus in the region’s soil might limit plant growth, says Anja Rammig, an ecologist at the Technical University of Munich, Germany. Rammig and others have for years been hoping to test the effect of elevated CO2 concentrations in the Amazon, by pumping the gas from towers into 30-metre-wide circular patches of forest and monitoring how this affects the ecosystem. Researchers have performed similar experiments — called free-air CO2 enrichment (FACE) — in other forests, but not in tropical ones. Several FACE trials have found that young forests do seem to grow faster in increased CO2, although mature eucalyptus trees did not gain extra biomass, a study in Australia reported7. In 2013, researchers secured US$1.25 million from the Inter-American Development Bank to kick-start the Amazon FACE project. But political and economic turmoil in Brazil from 2015 onwards meant that the study’s funding was not renewed. Researchers collected baseline measurements on how plots of trees behaved, but haven’t yet built towers to pump out CO2. For the moment, they are measuring the effect of high concentrations of CO2 on individual saplings. “It’s something novel, but it won’t give us the answers at the ecosystem scale that we would get with a real FACE experiment,” says David Lapola, a researcher at the University of Campinas, Brazil, and one of the leaders of the Amazon FACE team. Another uncertainty is how to model fires. Most fires in the Amazon are intentional — set either by farmers to fertilize soil or by ranchers to clear deforested land for cattle. In wet years, the fires spread less easily, but in drier years, more trees die and flames surge higher, says Brando. Once a forest is hit by fire, patches become drier and thus more flammable: “The forest turns into a Swiss cheese, full of holes. And through these holes you get more wind and more sunlight,” says Erika Berenguer, a tropical ecologist based jointly at the University of Oxford and Lancaster University, UK. This January, Brando and others published a paper suggesting that a warmer, drier climate could double the area of burnt forest in the southern Brazilian Amazon over the next three decades8. Their study indicates that, even without deforestation, climate change alone will inevitably cause a surge in the area burnt over the coming years. Researchers also need to improve their understanding of how hundreds of Amazon tree species react to heat and drought, says Oliver Phillips, a tropical ecologist at the University of Leeds, UK. That requires extensive laboratory and field testing, such as setting up a system that simulates a drought by capturing water droplets before they reach the soil. Studies have collected such data in forested areas of east Amazonia, but not in the hotter, drier southern Amazon, Phillips says. But Bolsonaro is not supporting the science that might help to pin down answers about the Amazon’s resilience. During his election campaign, he told the Brazilian Academy of Sciences that he thought it possible to boost investment in research from 1.3% to 3% of gross domestic product by the end of the forthcoming presidential term. But since his government took office, the scientific research budget, which had already shrunk heavily, has suffered extra cuts. Last year, Bolsonaro fired the director of the National Institute for Space Research, which is responsible for satellite monitoring in the Amazon. The president had denigrated the institute’s reports of deforestation rates as lies. That left Brazilian researchers uneasy about publishing work that could upset the government. Last year, several scientists decided not to appear as authors on a study that discussed the causes of the August wildfires, saying they feared government retaliation. Regrowth needed The Amazon science panel hasn’t yet drafted its report, but researchers have a good sense of what it is likely to recommend. The urgent priority is to halt deforestation. Another is to promote the growth of new forest in degraded areas. A 2016 study that analysed thousands of plots across 45 sites in South America showed that secondary forests that emerged in abandoned agricultural lands can take up huge amounts of carbon, at rates up to 11 times faster than those of old-growth forests9. “There’s a very high potential for restoration in the Amazon, especially in areas that have fairly recently been cleared or burnt and have not been used for agricultural production,” says Robin Chazdon, an expert on tropical-forest restoration at the University of the Sunshine Coast in Sippy Downs, Australia. In areas that have been heavily deforested, things are more complicated. A 2019 study showed that regrowth between 1999 and 2017 in an Amazon area that had been deforested several times over the past few decades happened slowly, and that the resulting forests accumulate less carbon and have lower biodiversity than native, primary forests10. Under the 2015 Paris climate agreement, Brazil pledged to restore 120,000 km2 of forest by 2030. In the longer term, Nobre thinks that Brazil needs to reforest even more — some 200,000 km2 — in southern and eastern Amazonia, the areas most heavily hit by deforestation. Adopt a carbon tax to protect tropical forests Nobre and others have also put forward a plan to commercialize Amazonian products in a sustainable way. There is untapped potential in certain foods, they say — including the Brazil nut and fruits such as guarana and açai — which are already sold, but could be produced on an industrial scale. The plan includes restoring degraded areas through low-impact agriculture systems such as agroforestry, in which farmers grow food crops alongside trees and shrubs. But Bolsonaro’s policies are heading in a different direction. Last November, the government lifted a ten-year ban on planting sugar cane in the Amazon. And a bill to regulate mining and oil exploration in Indigenous lands will soon make its way to Brazil’s national congress. If passed, it could threaten large swathes of well-conserved forest that are managed by Indigenous communities.

# 2NC/1NR

## T Increase

### Presumption---2NC

#### More ev.

Alford 18—(Deputy Assistant Attorney General, Antitrust Division, U.S. Department of Justice). Roger Alford. January 29, 2018. “Antitrust Enforcement in an Interconnected World”. Department of Justice. <https://www.justice.gov/opa/speech/file/1029821/download>. Accessed 9/26/21.

It is also clear that where necessary to address U.S. harm, the U.S. antitrust agencies can impose remedies that go beyond U.S. borders. But, when the Antitrust Division considers an extraterritorial remedy, it does not do so lightly. The Antitrust Division will look carefully at several issues. First, is the remedy necessary to redress harm or threatened harm to U.S. commerce and customers? Second, is the remedy we seek consistent with a comity analysis?

#### Here's the text of the guidelines themselves.

FTC & DOJ 17—(antitrust enforcement agencies). January 13, 2017. “ANTITRUST GUIDELINES FOR INTERNATIONAL ENFORCEMENT AND COOPERATION”. U.S. DEPARTMENT OF JUSTICE and FEDERAL TRADE COMMISSION. <https://www.justice.gov/atr/internationalguidelines/download>. Accessed 9/27/21.

4. Agencies’ Consideration of Foreign Jurisdictions

4.1 Comity

In enforcing the federal antitrust laws, the Agencies consider international comity. Comity itself reflects the broad concept of respect among co-equal sovereign nations and plays a role in determining “the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation.”103 In determining whether to investigate or bring an action, or to seek particular remedies in a given case, the Agencies take into account whether significant interests of any foreign sovereign would be affected.104

A decision to take an investigative step or to prosecute an antitrust action under the federal antitrust laws represents a determination that the importance of antitrust enforcement outweighs any relevant foreign policy concerns. That determination is entitled to deference.105 Some courts have undertaken a comity analysis in disputes between private parties.106

In performing this comity analysis, the Agencies consider a number of relevant factors. The relative weight given to each factor depends on the facts and circumstances of each case. Among other things, the Agencies weigh: the existence of a purpose to affect or an actual effect on U.S. commerce; the significance and foreseeability of the effects of the anticompetitive conduct on the United States; the degree of conflict with a foreign jurisdiction’s law or articulated policy; the extent to which the enforcement activities of another jurisdiction, including remedies resulting from those enforcement activities, may be affected; and the effectiveness of foreign enforcement as compared to U.S. enforcement.

## TTC CP/Trade DA

### Overview---2NC

#### Breakdown escalates civil conflicts that draw in Iran, Russia, and North Korea---nuclear war

David Kampf 20, Senior PhD Fellow at the Center for Strategic Studies at The Fletcher School, MA in International Affairs from Columbia University, BA in Political Science from Bates College, Writing has Appeared in The New York Times, Washington Post, Foreign Policy, War on the Rocks, POLITICO Magazine, “How COVID-19 Could Increase the Risk of War”, World Politics Review, 6/16/2020, https://www.worldpoliticsreview.com/articles/28843/how-covid-19-could-increase-the-risk-of-war

But that overlooked the ways in which the risk of interstate war was already rising before COVID-19 began to spread. Civil wars were becoming more numerous, lasting longer and attracting more outside involvement, with dangerous consequences for stability in many regions of the world. And the global dynamics most commonly cited to explain the falling incidence of interstate war—democracy, economic prosperity, international cooperation and others—were being upended.

If the spread of democracy kept the peace, then its global decline is unnerving. If globalization and economic interdependence kept the peace, then a looming global depression and the rise of nationalism and protectionism are disconcerting. If regional and global institutions kept the peace, then their degradation is unsettling. If the balance of nuclear weapons kept the peace, then growing risks of proliferation are disquieting. And if America’s preeminent power kept the peace, then its relative decline is troubling.

Now, the pandemic, or more specifically the world’s reaction to it, is revealing the extent to which the factors holding major wars in check are withering. The idea that war between nations is a relic of the past no longer seems so convincing.

The Pessimists Strike Back

More than any other individual, it was cognitive scientist Steven Pinker who popularized the idea that we are living in the most peaceful moment in human history. Starting with his 2011 bestseller, “The Better Angels of Our Nature: Why Violence Has Declined,” Pinker argued that the frequency, duration and lethality of wars between great powers have all decreased. In his 2019 book, “Enlightenment Now: The Case for Reason, Science, Humanism, and Progress,” he wrote that war “between the uniformed armies of two nation-states appears to be obsolescent. There have been no more than three in any year since 1945, none in most years since 1989, and none since the American-led invasion of Iraq in 2003.”

Optimists like Pinker held that, rather than the world falling apart, as a quick glance at headline news might suggest, the opposite was true: Humanity was flourishing. More regions are characterized by peace; fewer mass killings are occurring; governance and the rule of law are improving; and people are richer, healthier, better educated and happier than ever before.

In their book, “Clear and Present Safety: The World Has Never Been Better and Why That Matters to Americans,” Michael A. Cohen and Micah Zenko argued that the evidence is so overwhelming that it is difficult to argue against the idea that wars between great powers, and all other interstate wars, are becoming vanishingly rare. Even when wars do break out, they tend to be shorter and less deadly than they were in the past. John Mueller, a senior fellow at the Cato Institute, also reasoned that the idea of war, like slavery and dueling before it, was in terminal decline, while Joshua Goldstein, an international relations researcher at American University, credited the United Nations and the rise of peacekeeping operations for helping win the “war on war.”

But in recent years, a range of critics have begun to poke holes in these arguments. Tanisha M. Fazal, an international relations professor at the University of Minnesota, contends that the decline in war is overstated. Major advances in medicine, speedier evacuations of wounded soldiers from the field of battle and better armor have made war less fatal—but not necessarily less frequent. Fazal and Paul Poast, who is at the University of Chicago, further assert that the notion of war between great powers as a thing of the past is based on the assumption that all such conflicts resemble World War I and II—both are historical anomalies—and overlooks the actual wars fought between great powers since 1945, from the Korean War and the Vietnam War to proxy wars from Afghanistan to Ukraine. Meanwhile, Bear F. Braumoeller, an Ohio State political science professor, analyzed the same historical data on conflicts used by Pinker, Mueller and Goldstein, and found no general downward trend in either the initiation or deadliness of warfare over the past two centuries. What’s more, Braumoeller contends that the so-called “long peace”—the 75 years that have passed without systemic war since World War II—is far from invulnerable, and that wars are just as likely to escalate now as they used to be. Just because a major interstate war hasn’t happened for a long time, doesn’t mean it never will again. In all probability, it will.

And by focusing solely on interstate wars, the optimists miss half the story, at least. Wars between states have declined, but civil wars never disappeared—and these internal conflicts could easily escalate into regional or global wars.

The number of conflicts in the world reached its highest point since World War II in 2016, with 53 state-based armed conflicts in 37 countries. All but two of these conflicts were considered civil wars. To make matters worse, new studies have shown that civil wars are becoming longer, deadlier and harder to conclusively end, and that these internal conflicts are not really internal. Civil wars harm the economies and stability of neighboring countries, since armed groups, refugees, illicit goods and diseases all spill over borders. Some 10 million refugees have fled to other countries since 2012. The countries that now host them are more likely to experience war, which means states with huge refugee populations like Lebanon, Jordan and Turkey face legitimate security challenges. Even after the threat of violence has diminished in refugees’ countries of origin, return migration can reignite conflicts, repeating the brutal cycle.

A Yugoslav Federal Army tank.

Perhaps most importantly, recent research indicates that civil wars increase the risk of interstate war, in large part because they are attracting more and more outside involvement. In a 2008 paper, researchers Kristian Skrede Gleditsch, Idean Salehyan and Kenneth Schultz explained that, in addition to the spillover effects, two other factors in civil wars increase international tensions and could possibly provoke wider interstate wars: external interventions in support of rebel groups and regime attacks on insurgents across international borders.

Immediately after the Cold War, none of the ongoing civil wars around the world were internationalized. According to the Uppsala Conflict Data Program, there were 12 full-fledged civil wars in 1991—in Afghanistan, Iraq, Peru, Sri Lanka, Sudan, and elsewhere—and foreign militaries were not active on the ground in any of them. Last year, by contrast, every single full-fledged civil war involved external military participants. This is due, in part, to the huge growth in U.S. military interventions abroad into civil conflicts, but it’s not only the Americans. All of today’s major wars are in essence proxy wars, pitting external rivals against one another. Conflicts in Syria, Yemen and Libya are best understood not as civil wars, but as international warzones, attracting meddlers including the United States, Russia, Saudi Arabia, Turkey, Iran, France and many others, which often intervene not to build peace, but to resolve conflicts in a way that is favorable to their own interests. These internationalized wars are more lethal, harder to resolve and possibly more likely to recur than civil wars that remain localized. It is not that difficult to imagine how these conflicts could spark wider international conflagrations. Wars, after all, can quickly spiral out of control.

As Risks Increase, Deterrents Decline

To make matters worse, most of the global trends that explained why interstate war had decreased in recent decades are now reversing. The theories that democracy, prosperity, cooperation and other factors kept the peace have been much debated—but if there was any truth to them, their reversals are likely to increase the chance of war, irrespective of how long the coronavirus pandemic lasts.

Democracy is often considered a prophylactic for war. Fully democratic countries are less likely to experience civil war and rarely, if ever, go to war with other democracies—though, of course, they do still go to war against non-democracies. While this would be great news if democracy and pluralism were spreading, there have now been 14 consecutive years of global democratic decline, and there have been signs of additional authoritarian power grabs in countries like Hungary and Serbia during the pandemic. If democracy backslides far enough, internal conflicts and foreign aggression will become more likely.

Other theories posit that economic bonds between countries have limited wars in recent decades. Dale Copeland, a professor of international relations at the University of Virginia, has argued that countries work to preserve ties when there are high expectations for future trade, but war becomes increasingly possible when trade is predicted to fall. If globalization brought peace, the recent wave of far-right nationalism and populism around the world may increase the chances of war, as tariffs and other trade barriers go up—mostly from the United States under President Donald Trump, who has launched trade wars with allies and adversaries alike.

The coronavirus pandemic immediately elicited further calls to reduce dependence on other countries, with Trump using the opportunity to pressure U.S. companies to reconfigure their supply chains away from China. For its part, China made sure that it had the homemade supplies it needed to fight the virus before exporting extras, while countries like France and Germany barred the export of face masks, even to friendly nations. And widening economic inequalities, a consequence of the pandemic, are not likely to enhance support for free trade.

This assault on open trade and globalization is just one aspect of a decaying liberal international order, which, its proponents argue, has largely helped to preserve peace between nations since World War II. But that old order is almost gone, and in all likelihood isn’t coming back. The U.N. Security Council appears increasingly fragmented and dysfunctional. Even before Trump, the world’s most powerful country ratified fewer treaties per year under the Obama administration than at any time since 1945.

Trump’s presidency only harms multilateral cooperation further. He has backed out of the Paris Agreement on climate change, reneged on the Iran nuclear deal, picked fights with allies, questioned the value of NATO and defunded the World Health Organization in the middle of a global health crisis. Hyper-nationalism, rather than international collaboration, was the default response to the coronavirus outbreak in the U.S. and many other countries around the world.

It’s hard to see the U.S. reluctance to lead as anything other than a sign of its inevitable, if slow, decline. The country’s institutionalized inequalities and systemic racism have been laid bare in recent months, and it no longer looks like a beacon for others to follow. The global balance of power is changing. China is both keen to assert a greater leadership role within traditionally Western-led institutions and to challenge the existing regional order in Asia. Between a rising China, revanchist Russia and new global actors, including non-state groups, we may be heading toward an increasingly multipolar or nonpolar world, which could prove destabilizing in its own right.

Finally, the pacifying effect of nuclear weapons could be waning. While vast nuclear arsenals once compelled the United States and the Soviet Union to reach arms control agreements, old treaties are expiring and new talks are breaking down. Mistrust is growing, and the chance of an unwanted U.S.-Russia nuclear confrontation is arguably as high as it has been since the Cuban missile crisis.

The theory of nuclear peace may no longer hold if more countries are tempted to obtain their own nuclear deterrent. Trump’s decision to abandon the Iran nuclear deal, for one thing, has only increased the chance that Tehran will acquire nuclear weapons. It’s almost easy to forget that, just a few short months ago, the United States and Iran were one miscalculation or dumb mistake away from waging all-out war. And despite Trump’s efforts to negotiate nuclear disarmament with Kim Jong Un’s regime in Pyongyang, it is wishful thinking to believe North Korea will give up its nuclear weapons. At this point, negotiators can only realistically try to ensure that North Korea’s nuclear menace doesn’t get even more potent.

In other words, by turning inward, the United States is choosing to leave other countries to fend for themselves. The end result may be a less stable world with more nuclear actors.

If leaders are smart, they will take seriously the warning signs exposed by this global emergency and work to reverse the drift toward war.

If only one of these theories for peace were worsening, concerns would be easier to dismiss. But together, they are unsettling. While the world is not yet on the brink of World War III and no two countries are destined for war, the odds of avoiding future conflicts don’t look good.

The pandemic is already degrading democracies, harming economies and curtailing international cooperation, and it also seems to be fostering internal instability within states. Rachel Brown, Heather Hurlburt and Alexandra Stark argue that the coronavirus could in fact sow more civil conflict. If this proves accurate, the increase in civil wars is likely to lead to more external meddling, and these next proxy wars could soon precipitate all-out international conflicts if outsiders aren’t careful. With the usual deterrents to conflict declining around the world, major wars could soon return.

#### Trade turns and solves the case---foreign competition is better than antitrust

Anu Bradford 19, Henry L. Moses Professor of Law and International Organization at Columbia Law School, LLM from Harvard Law School, Master of Laws from University of Helsinki, JD from Harvard Law School, and Dr. Adam S. Chilton, University of Chicago, Professor of Law and the Walter Mander Research Scholar at the University of Chicago Law School, MA in Political Science from Yale University, JD and PhD in Political Science from Harvard University, “Trade Openness and Antitrust Law”, Journal of Law & Economics, Volume 62, Number 1, 62 J. Law & Econ. 29, February 2019, Lexis

2.1. Trade and Antitrust Law as Substitutes

Many scholars suggest that trade liberalization may make adopting an anti trust regime unnecessary (Bhagwati 1968; Helpman and Krugman 1989; Blackhurst 1991; Neven and Seabright 1997; Melitz and Ottaviano 2008). According to this view, free trade is an effective way to ensure that markets remain competitive because facilitating entry checks market power (Baumol, Panzar, and Willig 1982). For example, when an economy is open to trade, monopolists refrain from abusing their market power because low external barriers ensure that competitors can enter the market and contest any such abusive practices. In this way, trade liberalization renders an anti trust intervention into monopolistic practices superfluous. Exports fueled by trade liberalization should also enhance market competition. New opportunities in export markets ensure that more firms can reach an efficient scale of production, which further spurs competition and reduces the need for an anti trust regime (Bartók and Miroudot 2008).

Relying on trade liberalization to safeguard market competition could have several advantages. First, foreign producers must incur certain fixed costs and variable trade costs to enter a new market that domestic producers do not incur. If foreign firms are able to enter and effectively compete even after incurring those costs, they are presumably more efficient and hence may act as an even more effective discipline on the market than domestic firms (Bartók and Miroudot 2008). Second, choosing free trade over anti trust regulation eliminates the need to rely on government bureaucracies. Many who remain skeptical of governmental intervention favor free trade and thus prefer to have imports discipline [\*33] anticompetitive behavior. This argument may gain all the more force today considering the complexities associated with antitrust regulators from over 130 countries all applying different rules in an effort to regulate the global marketplace. Finally, although trade openness may "act as an effective antitrust policy" (Pomfret 1992, p. 11), an effective antitrust policy does not act as an effective trade policy. For example, if the United States were to impose a 30 percent tariff on foreign producers today, foreign firms would likely not enter no matter how competitive the markets are behind the border. Domestic antitrust laws thus may do little to facilitate market entry in the presence of highly protectionist trade policy.

#### Incites digital biotech---extinction.

Moore ’20 [Scott; November 8; director of the Penn Global China Program at the University of Pennsylvania.; Foreign Policy, “China’s Biotech Boom Could Transform Lives—or Destroy Them,” <https://foreignpolicy.com/2019/11/08/cloning-crispr-he-jiankui-china-biotech-boom-could-transform-lives-destroy-them/>]

When James Clapper, the U.S. director of national intelligence at the time, appeared before Congress in early January 2016 for an annual briefing of threats to the United States, he didn’t lack for material. Just a few weeks earlier, North Korea had tested a nuclear device, and Russia had begun deploying cruise missiles that appeared to violate a crucial arms-control agreement. But to the surprise of many experts, Clapper devoted a good chunk of his time to describing a much more exotic threat: biomedical research. Specifically, [Clapper warned](https://thebulletin.org/2016/04/how-genetic-editing-became-a-national-security-threat/), “Research in genome editing conducted by countries with different regulatory or ethical standards than those of Western countries probably increases the risk of the creation of potentially harmful biological agents or products.”

Clapper’s statement didn’t explicitly mention China—but it didn’t need to. As his testimony went on to make clear, while in the 20th century the United States and Soviet Union held the keys to preventing planetary catastrophe, in the 21st the principal players are the United States and China. And while in a previous age keeping Pandora’s box closed meant preventing nuclear war, today it’s about preventing biotech dangers.

In just the past few years, the development of inexpensive gene-editing techniques has democratized biomedical research, producing a biotech bonanza in places such as China and creating a whole new category of security threats in the process, from the use of genetic information to persecute dissidents and minority groups to the development of sophisticated bioweapons.

When it comes to the United States, China, and technology, artificial intelligence tends to grab most of the attention. But policymakers need to come to grips with the even bigger threat of biotechnology—and soon. Fortunately, though, shared concerns about China’s role in biotechnology also provide a rare chance for meaningful and productive engagement in shaping the rules of a new world.

China’s starring role in preventing the 21st century’s biotech perils stems from its skyrocketing investment in biomedical research. Historically, Western countries, and especially the United States, have been the epicenter of research in the life sciences. The United States alone accounted for some [45 percent](https://itif.org/publications/2018/03/26/how-ensure-americas-life-sciences-sector-remains-globally-competitive) of biotech and medical patents filed in the 14-year period ending in 2013. But now, thanks to heavy state-backed investment, China is catching up. Economic plans instituted in 2015 call for the biotechnology sector to account for more than 4 percent of China’s total GDP by 2020, and [estimates suggest](https://www.nature.com/articles/d41586-018-00542-3) that as of 2018, central, provincial, and local governments had already invested over $100 billion in the life sciences. Chinese venture capital and private equity investment in the life sciences, meanwhile, totaled some $45 billion just from 2015 to 2017.

China has also invested considerable effort in competing with countries like the United States for biotech talent. Of some [7,000 researchers recruited](http://www.nature.com/articles/d41586-018-00542-3) under the Thousand Talents Plan since 2008, more than 1,400 specialized in the life sciences. A leading American geneticist, Harris Lewin, has [warned](https://www.wired.com/story/wildebeest-okapi-giraffe-ibex-come-peruse-their-genomes/) that the United States is “starting to fall behind … the Chinese, who have always been good collaborators, [are] now taking the lead.”

For the United States and other Western countries, China’s growing role in biomedical research is raising plenty of concern. Several Chinese researchers have shown a willingness to ignore ethical and regulatory constraints on genetic research. In 2018, He Jiankui became a poster child for scientific irresponsibility when he announced he had edited the genes of two twins in utero without following basic safety protocols. He [reportedly dismissed](https://dev.biologists.org/content/146/3/dev175778) them as guidelines, not laws.

Yet the reaction at home was not what He had hoped for. His research had been made possible by the relatively lax standards of Chinese universities, even as he had kept the true nature of it secret from many involved – while discussing it with a [small group](https://www.nytimes.com/2019/04/16/health/stanford-gene-editing-babies.html) of Western bioethicists and scientists, who stressed their disapproval. It’s not uncommon in China to break the rules and be lauded for the results anyway, whatever the field. For He, though, the vast international attention that came after the story broke cost him his career and possibly [his freedom](https://www.nytimes.com/2019/01/21/world/asia/china-gene-editing-babies-he-jiankui.html?module=inline). Chinese media rushed to stress [official disapproval](https://www.sciencemag.org/news/2019/08/untold-story-circle-trust-behind-world-s-first-gene-edited-babies) of the experiments. Even the [overt purpose](https://www.statnews.com/2019/04/15/jiankui-embryo-editing-ccr5/) of the editing – to ensure that the babies, born to HIV+ mothers, enjoyed protection against the virus – turned out to be scientifically weak.

As China’s biotech sector grows, so too do fears that Chinese researchers like He will be more willing to push the limits of both science and ethics than those in the United States. Earlier this year, Chinese researchers recorded another mind-bending milestone when they [implanted](https://www.technologyreview.com/s/613277/chinese-scientists-have-put-human-brain-genes-in-monkeysand-yes-they-may-be-smarter/) human genes linked to intelligence into monkey embryos—and then said that the monkeys performed better on memory tests.

The dominance of the party-state in China raises serious concerns around biotechnology, especially because it carries increasingly ethnonationalist tone. When in 2018 Chinese researchers created the world’s first primate clones, for example, they dubbed them Zhong Zhong and Hua Hua, from the term zhonghua meaning “The Chinese Nation”—an oddly jingoistic moniker for a pair of monkeys. Chinese government policies often blur the line between eugenics and education, lumped together as improving the “quality” (suzhi) of the population, which received another stamp of official [endorsement](https://twitter.com/globaltimesnews/status/1191681436635451392) following the recent Fourth Plenum. These programs are carried out through the country’s huge so-called family planning bureaucracy—originally established to enforce the one-child policy.

Moreover, Beijing is increasingly extending its formidable social control apparatus into the realm of genetics. While there are considerable restrictions on private firms sharing biomedical data, largely because of an ugly history of [popular discrimination](https://www.theatlantic.com/china/archive/2013/12/chinas-struggle-with-hepatitis-b-discrimination/281994/) against hepatitis carriers, the government has no such restrictions. A [New York Times report](https://www.nytimes.com/2019/02/21/business/china-xinjiang-uighur-dna-thermo-fisher.html) earlier this year suggested, for example, that Chinese authorities had assembled a vast trove of genetic data on Chinese citizens without their consent, with the Uighur minority group having been specifically targeted.

Beijing’s brand of bio-nationalism also directly threatens the United States. U.S. officials have been [warning](https://www.nytimes.com/2019/11/04/health/china-nih-scientists.html) universities and research institutions that the biotech sector is a focal point for Chinese industrial espionage activities in the United States. And this past August, a senior Defense Department official warned Congress that China’s growing role in pharmaceutical manufacturing could allow it to disrupt deliveries of critical battlefield medicines, or potentially even [alter them to harm](https://www.washingtonpost.com/opinions/we-rely-on-china-for-pharmaceutical-drugs-thats-a-security-threat/2019/09/10/5f35e1ce-d3ec-11e9-9343-40db57cf6abd_story.html) U.S. forces.

Yet the biggest risks posed by biotech, for China, the United States, and other countries, pertain to nonstate actors. A critical feature of modern biotech, in contrast to technology like nuclear weapons, is that it’s cheap and easy to develop. A technique known as CRISPR, which the Chinese researcher He used in his illicit gene-editing work, makes it practical for just about anyone to manipulate the genomes of just about any organism they can lay their hands on. CRISPR makes it much simpler to skirt ethical restrictions and terrifyingly straightforward for terrorist groups to develop fearsome biological weapons.

Researchers have already [shown](https://doi.org/10.1371/journal.pone.0188453) it’s possible to reconstruct the smallpox virus, which was eradicated in the real world in the 1970s, for as little as $200,000 using DNA fragments you can order online. If a terrorist or rogue state were to successfully do so, virtually no one alive would have any resistance to the virus—and most stockpiles of the vaccine were destroyed long ago. There is an organization, the [International Gene Synthesis Consortium](https://genesynthesisconsortium.org/), that tries to screen suspicious orders for DNA fragments that might be used to build such bioweapons. And while most of the world’s major DNA synthesis firms belong to the consortium, membership is completely voluntary, and there’s also a [thriving and entirely unregulated](https://www.wired.com/story/synthetic-biology-vaccines-viruses-horsepox/) black market—much of it based in China.

All of this means that biosecurity standards in places like China matter more than ever. After all, if a major bioweapon were to be unleashed, it’s unlikely that any major, globally integrated country could escape unharmed. Fortunately, there are growing signs China is open to better regulation of its biotech sector. In February, the Chinese government announced that “[high risk](https://www.statnews.com/2019/02/27/china-unveils-new-rules-on-biotech-after-gene-editing-scandal/)” biomedical research would be overseen by the State Council, China’s equivalent of the cabinet—a sign of the concern with which Beijing views incidents like the He Jiankui CRISPR scandal. In a further sign of this concern, in August, the Chinese Communist Party announced the creation of a [new committee](http://www.nature.com/articles/d41586-019-02362-5) to advise top leaders on research ethics.

#### Extinction.

Ng ’19 [Yew-Kwang; May 2019; Professor of Economics at Nanyang Technology University, Fellow of the Academy of Social Sciences in Australia and Member of the Advisory Board at the Global Priorities Institute at Oxford University, Ph.D. in Economics from Sydney University; Global Policy, “Keynote: Global Extinction and Animal Welfare: Two Priorities for Effective Altruism,” vol. 10, no. 2, p. 258-266]

Catastrophic climate change

Though by no means certain, CCC causing global extinction is possible due to interrelated factors of non‐linearity, cascading effects, positive feedbacks, multiplicative factors, critical thresholds and tipping points (e.g. Barnosky and Hadly, [2016](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0005); Belaia et al., [2017](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0008); Buldyrev et al., [2010](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0016); Grainger, [2017](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0027); Hansen and Sato, [2012](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0029); IPCC [2014](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0031); Kareiva and Carranza, [2018](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0033); Osmond and Klausmeier, [2017](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0056); Rothman, [2017](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0066); Schuur et al., [2015](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0069); Sims and Finnoff, [2016](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0072); Van Aalst, [2006](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0079)).[7](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-note-1009_67)

A possibly imminent tipping point could be in the form of ‘an abrupt ice sheet collapse [that] could cause a rapid sea level rise’ (Baum et al., [2011](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0006), p. 399). There are many avenues for positive feedback in global warming, including:

* the replacement of an ice sea by a liquid ocean surface from melting reduces the reflection and increases the absorption of sunlight, leading to faster warming;
* the drying of forests from warming increases forest fires and the release of more carbon; and
* higher ocean temperatures may lead to the release of methane trapped under the ocean floor, producing runaway global warming.

Though there are also avenues for negative feedback, the scientific consensus is for an overall net positive feedback (Roe and Baker, [2007](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0065)). Thus, the Global Challenges Foundation ([2017](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0026), p. 25) concludes, ‘The world is currently completely unprepared to envisage, and even less deal with, the consequences of CCC’.

The threat of sea‐level rising from global warming is well known, but there are also other likely and more imminent threats to the survivability of mankind and other living things. For example, Sherwood and Huber ([2010](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0071)) emphasize the adaptability limit to climate change due to heat stress from high environmental wet‐bulb temperature. They show that ‘even modest global warming could … expose large fractions of the [world] population to unprecedented heat stress’ p. 9552 and that with substantial global warming, ‘the area of land rendered uninhabitable by heat stress would dwarf that affected by rising sea level’ p. 9555, making extinction much more likely and the relatively moderate damages estimated by most integrated assessment models unreliably low.

While imminent extinction is very unlikely and may not come for a long time even under business as usual, the main point is that we cannot rule it out. Annan and Hargreaves ([2011](https://onlinelibrary-wiley-com.proxy.lib.umich.edu/doi/full/10.1111/1758-5899.12647#gpol12647-bib-0004), pp. 434–435) may be right that there is ‘an upper 95 per cent probability limit for S [temperature increase] … to lie close to 4°C, and certainly well below 6°C’. However, probabilities of 5 per cent, 0.5 per cent, 0.05 per cent or even 0.005 per cent of excessive warming and the resulting extinction probabilities cannot be ruled out and are unacceptable. Even if there is only a 1 per cent probability that there is a time bomb in the airplane, you probably want to change your flight. Extinction of the whole world is more important to avoid by literally a trillion times.

#### US-EU relations solve multiple existential risks

Bruce Stokes 20, fellow at the German Marshall Fund, a former international economics correspondent for the National Journal, a former senior transatlantic fellow at the German Marshall Fund and a former senior fellow at the Council on Foreign Relations. "Together or Alone? Choices and Strategies for Transatlantic Relations for 2021 and Beyond". October. <https://www.gmfus.org/sites/default/files/Task%2520Force%25202020_Oct_5_Final%2520%2528With%2520Footnotes%2529.pdf>

In 2021, the United States and the nations of Europe will face challenges that threaten their way of life: a catastrophic pandemic, a deep economic recession, accelerating climate change, a rising China, growing technological competition, and emerging security threats.

These challenges test our ability to deliver on our promise to safeguard and enhance the lives of our people. They confront the transatlantic community at a time when many citizens on both sides of the Atlantic continue to question whether their governments are able to deliver for them. These are issues that transcend national borders. They cannot be successfully dealt with alone. They can only be resolved through concerted, cooperative international action.

This Transatlantic Task Force report recommends concrete policy initiatives the United States and Europe can take together to manage our pressing shared problems. We make these recommendations, not because they will be easy to implement, but because they represent practical options to help address the key challenges we face.

Political change is underway on both sides of the Atlantic. In 2021, the United States may have a new president. The United Kingdom will formally leave the European single market, complicating transatlantic relations. And Germany will hold a national election and have new leadership by the fall.

But the ability of Europe and the United States to work together in the face of shared challenges faces an even more daunting test: public disenchantment with each other. Many Europeans, disillusioned with the United States and its leadership, desire greater economic, technological, and military autonomy. In the United States, supporters of President Donald Trump share his view that the United States has long been taken advantage of by its European allies.

The transatlantic relationship has weathered storms in the past. For more than seven decades, Europe and the United States have stood side by side in the face of threats to their wellbeing: during the Cold War, following 9/11, and once more in the aftermath of the 2009-2010 financial crisis. Our successful cooperation has been based on common interests and a shared set of democratic values that have led to greater security and prosperity for our people. But past performance is no assurance of future success.

In the face of existential challenges, such as climate change, pandemics, and competition from China, neither the United States nor its European partners can effectively act alone. Rather, these problems offer us an opportunity to find new ways to work together to build a better future for our people and the world. Our publics support such cooperative effort. Roughly six-in-ten Americans and Europeans believe that when dealing with major international issues their nation should take into account other countries’ interests, even if it means making compromises. In so doing, we can set an example for the world, laying the foundation for much broader cooperation among like-minded democracies that ultimately will be necessary to cope with what today are truly global challenges. In the process, we can transform the transatlantic relationship, assert U.S.-European leadership, affirm our citizens’ faith in our democratic values and each other, and demonstrate the ability of our democratic institutions to solve their people’s problems.

We understand that some of the initiatives we propose lack bipartisan support in the United States and may not be embraced by the next administration. Nor will they appeal to all Europeans. But several of them build on ideas and efforts already proposed by U.S. President Donald Trump, former U.S. Vice President Joe Biden and some European leaders. None of them are a one-year exercise. Meeting these new challenges will take an effort on the scale and duration of past alliance solidarity. The problems are clear, and their shared nature is self-evident. Now is not the time for more reflection and muddling through. Both sides of the Atlantic are facing very real threats to our way of life and concrete action is required to deal with these issues and preserve the democratic order that Americans and Europeans built together over the past seven decades.

The following recommendations reflect the deliberations of the co-chairs and the 14 American and European task force members, supplemented by interviews by the executive director with more than 150 European and American experts from diverse fields and countries. They are the sole responsibility of the executive director and the co-chairs; individual recommendations do not necessarily reflect the views of all task force members nor those who were interviewed, who are listed in the appendix.

### Link---2NC

#### Consultation is now expected.

Bahrke ’21 [Johannes; 2021; Worker for Europa; Europa, “EU-US Trade and Technology Council Inaugural Joint Statement,” https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\_21\_4951]

Among the actions the European Union and the United States intend to take in the Global Trade Challenges Working Group with respect to this objective are the following:

Share information on non-market distortive policies and practices that pose particular challenges for EU and US workers and businesses, both across sectors and in relation to specific sectors in which we have identified certain risks, with the goal of developing strategies for mitigating or responding to those policies, practices, and challenges. Non-market practices that raise concerns include – but are not limited to – forced technology transfer; state-sponsored theft of intellectual property; market-distorting industrial subsidies, including support given to and through SOEs, and all other types of support offered by governments; the establishment of domestic and international market share targets; discriminatory treatment of foreign companies and their products and services in support of industrial policy objectives; and anti-competitive and non-market actions of SOEs.

The European Union and the United States recognise that domestic measures that each takes on its own can play a critical role in ensuring that trade policy supports market-based economies and the rule of law. This recognition is without prejudice to the views that either of them may have with respect to the appropriateness of any particular measure.

To improve the use and effectiveness of such domestic measures, the European Union and the United States intend to:

Make an inventory of the growing number of domestic measures that the European Union and the United States each already employ, and exchange information on the operation and effectiveness of those measures and on any plans for future measures; and,

To the extent practicable or deemed desirable by both the European Union and the United States, consult or coordinate on the use and development of such domestic measures, with a view to increasing their effectiveness and mitigating collateral consequences for either the European Union or the United States from any such measure developed.

Exchange information on the impact of non-market, distortive policies and practices in third countries and explore ways of working together and with other partners with a view to addressing the negative effects of such policies and practices, which can undermine development goals and have a negative impact on EU and US commerce in those countries.

Avoiding New and Unnecessary Barriers to Trade in New and Emerging Technologies

The European Union and the United States recognise and respect the importance of regulation of goods and services to achieve legitimate policy objectives. They are also aware that such regulations may have unintended consequences and result in barriers to trade between them and that such barriers, once implemented, can be challenging to remove. Consequently, the European Union and the United States intend to work to identify and avoid potential new unnecessary barriers to trade in products or services derived from new and emerging tech, while ensuring that legitimate regulatory objectives are achieved.

#### PROCESS---the plan bypasses the TTC, the new, predictable forum for policy changes and has the U.S. stake out its own position without input by the EU or prior notice.

Lawder and Bose ’9-29 [David and Nandita; 2021; Senior Technology and Competition Respondent; Reuters, “U.S., EU agree to work on chip supplies, tech rules, China trade,” https://www.reuters.com/technology/us-eu-launch-consultations-tech-regulations-trade-china-2021-09-29/]

PITTSBURGH/WASHINGTON, Sept 29 (Reuters) - The United States and European Union agreed on Wednesday to deepen transatlantic cooperation to strengthen semiconductor supply chains, curb China's non-market trade practices and take a more unified approach to regulating big, global technology firms.

Launching a new forum, the U.S.-EU Trade and Technology Council (TTC), senior cabinet officials from both continents also pledged to cooperate on the screening of investments on export controls for sensitive dual-use technologies and on the development of artificial intelligence (AI).

The statement did not mention China but said: "We stand together in continuing to protect our businesses, consumers, and workers from unfair trade practices, in particular those posed by non-market economies, that are undermining the world trading system."

The Biden administration has kept in place tariffs imposed by former U.S. president Donald Trump but has sought to differentiate itself by collaborating more with allies in its approach to China.

#### The surprise nature of abrupt change to antitrust law **will be perceived as an ‘aggressive unilateralism’ that gave the EU zero say in the process.**

Smith ’94 [Aubry; 1994; Partner in Mayer Brown's New York office and a member of the Corporate & Securities practice; Michigan Journal of International Law, “Bringing Down Private Trade Barriers- An Assessment of the United States' Unilateral Options: Section 301 of the 1974 Trade Act and Extraterritorial Applications of U.S. Antitrust Law,” <https://www.reuters.com/technology/us-eu-launch-consultations-tech-regulations-trade-china-2021-09-29/>]

Another unilateral option to which the United States might turn is the so-called "anticompetitive practices clause" of Section 301 of the 1974 Trade Act. This alternative differs greatly from the extraterritorial application of antitrust law. A comparison of the two alternatives serves to highlight a number of traits in the antitrust option that call into question its validity

One can scarcely overemphasize the differences between the alternatives provided by trade law and antitrust law. The relevant trade statute, Section 301, institutes a process that requires the U.S. Trade Representative (USTR) to identify trade barriers and, in some instances, subject the foreign power in question to the choice of either removing the barrier or facing trade sanctions. The policy underlying Section 301 has been referred to in the literature as "aggressive unilateralism." 9 It is said to be "aggressive" because, unlike most other trade statutes, Section 301 is primarily concerned with opening foreign markets rather than protecting the U.S. domestic market.' ° It is "unilateral" because the targeted country has not agreed to be subject to the process. Despite this label, the Section 301 process is not wholly unilateral. Countries subjected to it ultimately chose whether to settle with the United States or face retaliation. If they choose to settle, they may bargain for acceptable terms of settlement, they may implement those terms, and they may later chose to breach them. By contrast, the extraterritorial application of antitrust law does not allow for this type of foreign government input. Instead of coercing other countries to regulate their businesses in a manner conducive to foreign trade, the antitrust option skips over the intermediary of the foreign government and operates to regulate directly those businesses. Needless to say, when unilateral regulation of foreign conduct replaces government-to-government coercion, this presents a novel situation in trade relations which takes aggressive unilateralism to new heights. The analogy with the aggressive unilateralism of Section 301 is perhaps somewhat strained, since the extraterritorial application of antitrust law is ostensibly part of antitrust policy, not trade policy. However, when antitrust statutes are deployed to promote export opportunities, the line between aggressive trade policy and the goal of preserving a healthy, competitive environment for the sake of U.S. firms and consumers begins to blur.

#### It’s the final nail in the coffin.

Murray ’19 [Allison; 2019; JD from the Loyola Law School, Los Angeles Law School, BS in Business Administration from the University of Redlands, Judicial Law Clerk at the U.S. Bankruptcy Courts, Former Corporate Paralegal at Boeing, Degree in Economics and Management from the University of Oxford Loyola of Los Angeles International and Comparative Law Review, “Given Today's New Wave of Protectionism, Is Antitrust Law the Last Hope for Preserving a Free Global Economy or Another Nail in Free Trade's Coffin?,” Lexis]

VI. CONCLUSION

There is a clear "conflict between the evolving economic and technical interdependence of the globe and the continuing compartmentalization of the world political system composed of sovereign states . . . ." 196 This conflict can breed protectionist political views. Unless and until there is a complete paradigm shift away from protectionism, which is impossible, the global economy will not meet the "rational" assumptions necessary to preserve free market efficiency.

Some amount of protectionism is inevitable. Although "inefficient" in economic and academic circles, protectionism preserves the sovereign powers enjoyed by certain countries. In this way, it is a necessity of free [\*146] trade. This paper is not intended to be a commentary on whether protectionism is right or wrong, but rather a demonstration and prediction that antitrust law, a tool of political and economic power, can and will be wielded by individual countries to promote protectionist policies that will affect the international trade landscape in the near term.

While attempting to act on this protectionism is difficult because of the web of international trade agreements currently in existence, individual countries may still use domestic antitrust law to meet protectionist aims, especially given that an international authoritative body governing the use of antitrust does not exist. Countries serious about preserving free trade may cooperate with one another to adopt realistic economic policies that serve to dull the blade of antitrust law through regional agreements, but ought not to attempt to eliminate it altogether.

Antitrust law, like medicine, must be used appropriately to be effective. While antitrust laws generally should encourage free trade, as promoting competition is the aim of their enforcement, they are also at risk of being used to thwart free trade. That risk is further exacerbated by perceptions of unfair enforcement and the divisive rhetoric of world leaders. In this way, antitrust law has the potential to weaken the already delicate international cooperative framework that exists to foster free trade. Absent a change in perceptions and the protectionist rhetoric fueling the current political landscape, antitrust law is likely to be manipulated to serve protectionist viewpoints, making it increasingly likely to become a nail in free trade's coffin, instead of the key to its preservation. It may be a nail that nations are able to ignore for the sake of its benefit, or it may be the one that finally puts an end to the pursuit of truly international free trade. Only time will tell, but one thing is clear: anti-trust law is a field that will impact the international economic community significantly for years to come.

#### Guarantees the EU to cement a shift towards China.

Atkinson ’9-13 [Robert; 2021; Canadian-American economist, Founder of the Information Technology and Innovation Fund; ITIF, “Advancing U.S. Goals in the U.S.-EU Trade and Technology Council,” https://itif.org/publications/2021/09/13/advancing-us-goals-us-eu-trade-and-technology-council]

To be sure, having strong allies is better than not having them, especially as the United States faces an increasingly hegemonic China ruled by an increasingly Leninist Communist Party. But U.S. policymakers need to decide how much they are willing to concede to the EU’s desires just to enhance harmony. It is also important to realize that it is not likely, at least until the EU suffers significantly more economic pain from China, that the EU and major member states will not decisively choose sides with the United States to push back on Chinese innovation mercantilism, “wolf warrior diplomacy,” and efforts to spread its authoritarian system. Europe sees the value of its economic relations with China as paramount, and despite its narrative that the EU is the globally responsible actor willing to sacrifice its own interests for the good of the world, as it portrays itself with climate change, it is unwilling to suffer very much—if at all—to join with the United States to constrain the worst Chinese practices that harm the world. It reveals Europe’s selective application of its values.

### U---AT: Thumpers---2NC

#### Uniqueness is goldilocks---alignment is solid, but by no means set in stone.

Scott and Barigazzi ’21 [Mark and Jacopo; 2021; Writers at Politico; Politico, “US and Europe to forge tech alliance amid China’s rise,” https://www.politico.eu/article/eu-us-trade-tech-council-joe-biden-china/]

Biden and his EU counterparts "will focus on aligning our approaches to trade and technology so that democracies and not anyone else, not China or other autocracies, are writing the rules for trade and technology for the 21st century," Jake Sullivan, the White House's national security adviser, told reporters this week.

Still, the renewed cooperation between Brussels and Washington is by no means a slam dunk.

U.S. officials have routinely criticized European countries for unfairly targeting American tech firms in a range of antitrust investigations and regulatory proposals. Many in the EU feel those policies are central in the 27-country bloc's efforts to regain its place at the top digital table alongside the U.S. and China.

Some EU leaders like German Chancellor Angela Merkel have also been less keen at singling out China because of significant economic ties to Beijing that they do not want to jeopardize in a potential trade war.

The new EU-U.S. body must also avoid the fate of previous efforts like the [Transatlantic Economic Council](https://www.state.gov/transatlantic-economic-council/), a George W. Bush era-initiative to reignite economic and trade ties between the U.S. and Europe, which eventually fizzled into obscurity.

#### Current antitrust is closely coordinated with allies and subject to international approval---only fiat bypasses regular channels of communication.

Abbott ’21 [Alden; March 24; Senior research fellow at George Mason; Mercatus, “US Antitrust Laws: A Primer,” https://www.mercatus.org/publications/antitrust-policy/us-antitrust-laws-primer]

Issues of International Jurisdiction

US and foreign competition authorities often cooperate in investigating cross-border conduct that has an impact on US consumers. In addition, as more US companies and consumers do business overseas, federal antitrust work often involves cooperating with international authorities around the world to promote sound competition policy approaches. There are now more than 130 foreign competition agencies. The FTC and DOJ have sought to promote sound, economics-based antitrust principles through regular consultations with major foreign agencies and through cooperative work under the International Competition Network. (The International Competition Network is a virtual network of most of the world’s competition agencies that promotes antitrust best principles through consultations, training, and the promulgation of substantive and procedural best practices.)

#### Foreign officials have input on recommendations.

Lima ’9-28 [Cristiano; 2021; Tech Reporter for the Washington Post; Washington Post, “Will the U.S. follow the E.U. playbook to crack down on Silicon Valley giants?” https://www.washingtonpost.com/politics/2021/09/28/will-us-follow-eu-playbook-crack-down-silicon-valley-giants/]

A high-stakes meeting between Biden administration officials and European Union leaders this week may offer a glimpse into how closely the White House will align its approach to reining in American tech giants with the E.U.’s aggressive plan.

The two sides are [set to meet Wednesday](https://www.washingtonpost.com/us-policy/2021/09/28/eu-us-council-trade-technology/?itid=lk_inline_manual_6) in Pittsburgh for the first joint meeting of the U.S.-E.U. Trade and Technology Council, a bilateral initiative [aimed at](https://trade.ec.europa.eu/doclib/press/index.cfm?id=2298) boosting cooperation on tech issues and “updating the rules for the 21st century economy.”

Senior administration officials, who spoke to reporters under the condition of anonymity to preview the summit, said the talks will touch on [two E.U. proposals](https://www.washingtonpost.com/politics/2020/12/16/technology-202-europe-proposed-digital-rules-target-amazon-facebook-other-big-tech-companies/?itid=lk_inline_manual_9) known as the Digital Markets Act and the Digital Services Act that seek to curb the power of U.S. tech giants.

Critics say companies like Amazon, Google and Facebook serve as “gatekeepers” to the digital economy and have the power to squelch potential rivals. One of the E.U.’s proposals aims to address those concerns by slapping more restrictions on the tech giants’ business practices, while the other creates tighter rules for how social media companies handle illegal content.

But critics of the measures, including [groups backed by the tech giants](https://twitter.com/ProgressChamber/status/1442155423004430338), say they would put U.S. tech companies — some of the most successful economically in human history — at an unfair disadvantage to their foreign competitors, who wouldn’t have the same legal obligations.

That creates a dilemma for the Biden administration, which has also [pushed](https://www.washingtonpost.com/business/2021/07/09/biden-executive-order-promoting-competition/?itid=lk_inline_manual_14) to rein in dominant tech platforms but resisted some [other efforts](https://www.politico.com/amp/news/2021/04/08/biden-global-digital-tax-companies-480193) by European policymakers to target only American companies with new regulations.

One senior administration official said they are “sharing with the Europeans a number of specific concerns and recommendations they have” about the proposals. Officials did not elaborate on the specifics of their requests, but the summit could illuminate where the two sides diverge.

### U---Trade---2NC

#### Trade has globally rebounded, exceeding pre-pandemic levels---U.S.-EU exports are the star of the show.

Conerly ’9-21 [Stacy; 2021; Ph.D. from Duke, Forbes Contributor; Forbes, “Economic Forecast for U.S. Exports 2022-2023,” <https://www.forbes.com/sites/billconerly/2021/09/21/economic-forecast-for-us-exports-2022-2023/?sh=4ed342f83b75>]

United States exports will grow at a slow pace in 2022, with improvement in 2023. Key factors will be the Covid-19 pandemic, how our largest trading partners fare economically, and the path for the dollar. No boom is in sight, but neither is a bust.

Total international trade fell sharply in the pandemic, with most countries’ exports and imports both declining. Trade has rebounded but has not yet increased to the prior trend line. Transportation and labor shortages may lead to slower growth than underlying economics would otherwise dictate.

The Covid pandemic brings great uncertainty to the forecast. The rise of the Delta variant is slowing economic activity in some countries, but not the most advanced nations, which have high vaccination rates. Although breakthrough cases (among people who had been vaccinated) are occurring, they average much milder symptoms and markedly less fatalities. Economic impacts are thus much milder. The assumption in this forecast is that the pandemic will decline around the world, though at varying rates. Covid will become endemic, and thus will be an economic problem for years to come, but with a much milder impact than we have seen so far. That means that U.S. exports should look better soon.

The global economy has regained much of its lost ground and should exceed pre-pandemic levels by the end of 2020. Brighter days are ahead in 2022 and 2023 according to the consensus tabulation by [FocusEconomics](https://www.focus-economics.com/). They tally up economic forecasters on the ground in different countries and regions to derive a world consensus economic forecast. This is probably the best methodology for big-picture economic predictions as it incorporates the knowledge of specialists in diverse countries.

Commodity prices also provide a good gauge of predicted future growth. Prices stopped their rise, indicating global expectations for economic expansion have leveled off. Oil prices match the general commodities trend.

America’s closest neighbors also buy the largest portion of our exports, Canada at 18% and Mexico at 15%. Neither are very strong right now. Canada had a marked slowing of economic growth in the first half of 2021, due mostly to Covid restrictions. With progress against the pandemic and recovery in the U.S., the country should rebound strongly.

Mexico gained much ground this year but did not fully recover. Sluggishness will continue in 2022, then growth will accelerate. Covid has come down sharply from its summer peak, but Mexico is slower than the U.S. in vaccinations, with 28 percent fully vaccinated and 47% having at least one dose. Remittances from Mexicans working in the U.S. have increased with the American economy, but the parts and materials shortages that plague the world have prevented strong export growth.

China ranks third nationally for exports from the U.S. (but first for Oregon and Washington). Their economic growth is slowing even more than in past years. Their Covid policy aims for zero cases, which will have severe consequences. Most westerners have resigned themselves to the idea that the disease is in the public and cannot be totally eradicated, but China’s path will slow commerce by stopping movement within the country as well as to and from the country. In addition, the government’s regulatory actions against private businesses have slowed activity both directly and through uncertainty about the future. China will continue to expand, but at a much slower pace than in years past.

European countries buy 20% of U.S. exports, and they are the brightest star on exporters’ horizon. Europe’s summer wave of Covid cases has been milder than America’s. Vaccination rates are high, making the case load lighter and the death rate very low. As Covid restrictions are easing and stimulative government policies continue, spending is increasing and Europe as a whole is on the mend.

The other key factor for U.S. exports is the foreign exchange rate. That has leveled off and so will be neutral for international trade. Federal Reserve tapering of its bond-buying (likely to begin late this year) may lead to dollar appreciation, but the time lags involved in international trade would prevent significant changes in export sales until 2023.

All told, U.S. exports will grow at a light-to-moderate pace in 2022 and faster in 2023 as Covid’s economic impacts diminish.

#### Trade is sturdy---they are each other’s central trading partner, but policy cooperation is key.

Bown and Malstrom ’10-7 [Chad and Cecilia; 2021; Reginald Jones Senior Fellow at the Peterson Institute for International Economics; Former European Commissioner for Trade and a Nonresident Senior Fellow at the Peterson Institute for International Economics; Foreign Affairs, “A Chance to Preserve the World They Made,” <https://www.foreignaffairs.com/articles/united-states/2021-10-07/chance-preserve-world-they-made>]

On their face, transatlantic relations over trade, investment, and technology seem sturdy. The United States and the European Union are among each other’s largest trading partners, as well as the largest source and destination for their companies’ foreign investments. Decades of policy cooperation have resulted in remarkable economic interdependence, job growth, and expanding investment.

Take, for example, the successful rollout of COVID-19 vaccines on either side of the Atlantic. Over one hundred million Americans have received doses of the Pfizer-BioNTech jab, a vaccine based on European innovation and made at Pfizer’s plants in Massachusetts, Michigan, and Missouri; a similar number of Europeans have received the same vaccine made at Pfizer’s facility in Belgium. Moderna’s messenger RNA (mRNA) vaccine was invented in the United States; it is also being bottled for distribution in plants in France and Spain and has become increasingly essential for the EU’s response to the coronavirus pandemic. The Johnson & Johnson vaccine was co-developed at the Janssen R & D lab in the Netherlands and a hospital in Boston and is also produced on both sides of the ocean.

## Adv 1

#### Emerging tech regulation fails AND no impact.

Allenby 16 – Brad Allenby, an American environmental scientist, environmental attorney and Professor of Civil and Environmental Engineering, and of Law, at Arizona State University. [Emerging technologies and the future of humanity, Bulletin of the Atomic Scientists, 71(6), https://journals.sagepub.com/doi/full/10.1177/0096340215611087]

It is thus highly likely that the first implicit assumption of the dystopian perspective is correct: Things are indeed different today, and the difference is fundamental and qualitative, not simply one of degree. Emerging technologies are making everything from individual molecules, to the human, to the planet itself, design spaces. Moreover, it is also likely that technological evolution, and all the concomitant changes in coupled institutional, social, economic, and cultural systems, will be more challenging and complex than anything humans have yet experienced. The remaining two issues, then, are: First, what can we do about it; and second, is this the end of humanity?

What can we do about it?

Precisely because new technologies are disruptive, they inevitably call forth opposition, both by conservative social forces and by threatened economic interests. Historical examples abound. With railroad technology, for example, conservative states such as the Austro-Hungarian Empire and Russia resisted rapid deployment, in part because it was feared that railroads might create social unrest in the still somewhat feudal and highly stratified cultures that characterized such countries; the French held back because of concerns it would destroy rural culture. The predictable result was that modernizing states that realized the commercial and military potential of railroad technology, such as Prussia, rapidly overtook the laggards in building rail infrastructure, with an eventual shift in geopolitical stature. In the United States, railroads were bitterly opposed by river transportation interests; in fact, Abraham Lincoln, when still a practicing lawyer, argued and won the seminal case for the Rock Island Railroad.4 (River shippers at the time were arguing that any railroad bridge over a river was an unlawful obstruction of commerce; had they been successful, railroads would have been limited to operating between rivers and streams, but not crossing them.) A more recent example is provided by the thousands of people sued by the Recording Industry Association of America in its vain effort to defend a technologically obsolete business model for the distribution of music. There are plenty of reasons, in other words, why emerging technologies might be regarded as dangerous and disruptive, and thus worth stifling.

History, however, indicates that while local opposition can be successful, it will not halt the evolution of technology. Consider, for example, the Japanese attempt to limit gunpowder technology to preserve traditional Samurai culture; successful in the short term, it left Japan open to subjugation by Western naval forces with gunpowder technology. Similarly, environmentalists and governments in Europe have aggressively opposed genetic engineering (GMOs, or “genetically modified organisms”) in agriculture. Outside Europe, however, GMO technology has been one of the most rapidly adopted agricultural technologies in history. Efforts to regulate the proliferation of nuclear weapon technology have been somewhat successful, but it appears unrealistic to assume that the technology can be uninvented.

Especially given today’s globalized culture, and the strategic and military advantages that emerging technologies can provide, it is highly unlikely that meaningful constraints on technological evolution, whether derived from cultural, competitive, or religious foundations, will be successful. That is particularly true as all players in the global Great Game understand that leadership in science and technology domains is a necessary, if not sufficient, prerequisite for dominance. Moreover, given the complexity of many emerging technology systems, especially as they co-evolve with other natural, built, and human systems, it is unfortunately also likely that projecting their effects and evolutionary paths before they are actually adopted and become embedded in their social and cultural context is not just hard, but for all practical purposes impossible. One can, and should, generate scenarios. But exhortations that purport to elevate hypotheticals to predictions and implications of certainty about future states are misplaced.

In short, there is no certainty, and the genie is well and truly out of the bottle. However, that doesn’t necessarily imply that we can’t modulate future technological evolution, but that the way we think about it today may be too simple, and our institutions too slow and maladaptive, to be up to the task.

Beyond simplistic dystopianism

This analysis suggests that, as dystopians might argue, emerging technologies are indeed potent, and that, especially as the human is becoming an active design space, if AI doesn’t destroy humanity, something will. But this is a grossly incomplete perspective.

Humanity, as it appears at any particular time, is always doomed. Foragers and hunter-gatherers were doomed, as were the serfs of medieval Europe with their small plots and lives lived within a radius of a few miles of where they were born. And so, in our turn, are we. Doom is, in other words, evolution, and it is unlikely that we will stop it—or, really, that we should want to. In fact, the images that we cling to, personally and institutionally and culturally, are already obsolete. The ethics and values that we insist we will impose on the future are not only historically and culturally contingent, but already obsolete as well. We want the physical and cultural landscape we live in now to propagate into tomorrow, because we all unconsciously privilege the present, but that is not how complex systems work. They evolve, and indeed our world is evolving at a remarkable and accelerating clip.

The fallacy of the dystopians, then, is not in their analysis of the power of technology, or the accelerating and destabilizing rates of change. The fallacy is in equating evolution with dystopia, and, without admitting it, privileging the present over the promise and inevitability of the future. What is at risk is the limited mental model of “human” that all of us carry with us, not “humans” as an ongoing process. This is actually a common category mistake in modern discourse: Sustainability advocates and environmental activists often claim that “the planet is at risk,” but of course it is not. The planet is a large mass of rock and a film of various carbon compounds, and that is not at risk at all. What is at risk is a particular mental model of what the world should look like, a constructed snapshot. That does not mean that there aren’t many environmental issues that require attention; of course there are. But, as in the case of the emerging technology discourse, it does mean that existential catastrophe language is not only invalid, but can actually prevent seeking constructive adaptations to accelerating change.

Our only recourse is neither technological fatalism nor ethical relativism. It is true that we have not yet appreciated, much less begun to respond to, the challenge of a future that will indeed be more complex and difficult than anything we have experienced as a species. Nonetheless, we can already identify several important principles. For example, we need to stop thinking of “problems” with “solutions,” and think more in terms of “conditions” that will require long-term, adaptive management. Challenges such as ISIS and climate change will not be solved, but they can and must be managed in light of other relevant goals. In this, the experience with nuclear weapons is instructive: They are not a problem that can be unmade, but they are a condition that can be, and has so far been, relatively successfully managed.

We also need to focus on creating option spaces—portfolios of social, institutional, and technological choices that can be adaptively and flexibly deployed in complex environments. Similarly, we need to play with scenarios: If dystopian pronouncements are instead taken as scenarios—“What would you do if…?”—they are far more useful and informative than suggestions of doom.

Socially and institutionally, we need to become more agile and adaptive. This is uncomfortable for many, because it implies a degree of contingency and uncertainty, but that is precisely why such skills are necessary. The rate of technological change is unforgiving and has already decoupled to a large extent from traditional governance mechanisms. So we need to develop new ones.

Individually, we need to become far more humble about our ability to visualize and prognosticate on a complex and dynamic future. Cautionary scenarios and hypotheticals are welcome exercises in practicing to adjust to the unknowable that lies in front of us, but they are not appropriate foundations for policy or legal action in the present. Nightmares are seldom reality, and when bad things do happen they are seldom the ones we thought about. Fear and anger in the face of change are popular responses—witness the rise of far right and far left factions, and fundamentalisms of all stripes, around the world—but they are maladaptive, and those in responsible positions at least cannot afford such luxuries.

#### Risk of military escalation is overblown.

Shifrinson 2/8/19 [Joshua Shifrinson is an assistant professor of international relations at Boston University. The ‘new Cold War’ with China is way overblown. Here’s why. February 8, 2019. https://www.washingtonpost.com/news/monkey-cage/wp/2019/02/08/there-isnt-a-new-cold-war-with-china-for-these-4-reasons/?noredirect=on&utm\_term=.f8ca8195c4e4]

Is a new Cold War looming — or already present — between the United States and China? Many analysts argue that a combination of geopolitics, ideology and competing visions of “global order” are driving the two countries toward emulating the Soviet-U.S. rivalry that dominated world politics from 1947 through 1990. But such concerns are overblown. Here are four big reasons why. 1. The historical backdrops of the two relationships are very different When the Cold War began, the U.S.-Soviet relationship was fragile and tenuous. Bilateral diplomatic relations were barely a decade old, U.S. intervention in the Russian Revolution was a recent memory, and the Soviet Union had called for the overthrow of capitalist governments into the 1940s. Despite their Grand Alliance against Nazi Germany, the two countries shared few meaningful diplomatic, economic or institutional links. In 2019, the situation between the United States and China is very different. Since the 1970s, diplomatic interactions, institutional ties and economic flows have all exploded. Although each side has criticized the other for domestic interference (such as U.S. demands for journalist access to Tibet and China’s espionage against U.S. corporations), these issues did not prevent cooperation on a host of other issues. Yes, there were tensions over the past decade, but these occurred against a generally cooperative backdrop. 2. Geography and powers’ nuclear postures suggest East Asia is more stable than Cold War-era Europe The Cold War was shaped by an intense arms race, nuclear posturing and crises, especially in continental Europe. Given Europe’s political geography, the United States feared a “bolt from the blue” attack would allow the Soviet Union to conquer the continent. Accordingly, the United States prepared to defend Europe with conventional forces, and to deter Soviet aggrandizement using nuclear weapons. Unsurprisingly, the Soviet Union also feared that the United States might attack and wanted to deter U.S. adventurism. Concerns that the other superpower might use force and that crises could quickly escalate colored Cold War politics. Today, the United States and China spend proportionally far less on their militaries than the United States and the Soviet Union did. Though an arms race may be emerging, U.S. and Chinese nuclear postures are not nearly as large or threatening: Arsenals remain far below the size and scope witnessed in the Cold War, and are kept at a lower state of alert. As for geography, East Asia is not primed for tensions akin to those in Cold War Europe. China can threaten to coerce its neighbors, but the water barriers separating China from most of Asia’s strategically important states make outright conquest significantly harder. Of course, as scholars such as Caitlin Talmadge and Avery Goldstein note, crises may still erupt, and each side may face pressures to escalate. Unlike the Cold War, however, U.S.-Chinese confrontations occur at sea with relatively limited forces and without clear territorial boundaries. This suggests there are countervailing factors that may give the two sides room to negotiate — and limit the speed with which a crisis unfolds.

#### Ukraine is a huge alt cause---doesn’t provide a brink for their impact but makes their internal link a joke

David M. Herszenhorn 3-4 [chief Brussels correspondent of POLITICO, "The fighting is in Ukraine, but risk of World War III is real," accessed 3-6-2022, https://www.politico.eu/article/fight-ukraine-russia-world-war-risk-real/, hec]

Officials and diplomats who are experts on Russia say the effort to portray the conflict as Ukraine’s war misses the key point: Putin has attacked Ukraine precisely because it chose a path toward the EU and NATO. Fighting Ukraine, they say, is a proxy for fighting the West. Some believe the conflict can only be resolved if Putin’s complaints about the U.S. and NATO are resolved. Until then, he will continue the war, seeking to conquer or destroy the country, and making the peace negotiations with Ukrainian officials of little significance. In other words, the West will end up even more directly involved, politically and perhaps militarily, than it is already. The precise nature of that greater role is a matter of debate but many believe it is coming, one way or another — and some argue that the sooner it happens, the quicker the war will end. That calculation, of course, presumes Putin choose self-preservation over nuclear Armageddon. But all signs suggest the situation in Ukraine will get far worse in the coming days, a point French President Emmanuel Macron warned about on Thursday. As Putin realizes that fury among the Ukrainian population means he will lose politically, no matter the military outcome, there is a heightened risk he will simply seek to destroy Ukraine, flattening its cities and towns just as Russian forces obliterated the Chechen capital of Grozny.

#### Putin will not de-escalate because of the aff---their impact card assumes increased cooperation between US and Russia

Tristan Brove 3-2 [Fortune, "Could the Ukraine crisis lead to World War III?," accessed 3-6-2022, https://fortune.com/2022/03/03/ukraine-war-russia-world-war-iii-nuclear-arsenal/, hec]

But the more the Ukraine crisis drags on, the bigger the risk of an “inadvertent escalation,” or something that goes wrong on the margins of the war, could cause it to expand. “The bigger the conflict, the greater the possibility of something like that happening,” Mary Elise Sarotte, a post-Cold War historian and author of the 2021 book Not One Inch: America, Russia, and the Making of Post-Cold War Stalemate, told Fortune. During the Cold War, the U.S. and the Soviet Union approached nuclear war several times. And many of these close calls were because of individual mistakes and human error. “A dangerous and tragic case would be if Russian forces were to inadvertently, and I want to emphasize inadvertently, launch a missile that landed in a bordering NATO country, such as Poland,” Glennys Young, Russian studies expert and chair of the University of Washington’s history department, told Fortune. “If this were perceived by NATO commanders as an attack, and hopefully it wouldn’t, this would trigger the provisions of the NATO alliance’s Article Five,” she continued. NATO’s Article Five emphasizes “collective defense,” the idea that an attack on one NATO-allied country constitutes an attack on all member nations, theoretically provoking a mass, global response. A raging war in Ukraine, which shares borders with four NATO countries (Romania, Hungary, Slovakia, and Poland), raises the risk of Article Five being invoked. Doing so would involve deliberation from all NATO members and, potentially, Russia, and wouldn’t necessarily translate to an immediate response. “There's this phrase, ‘the fog of war,’” Young said. “It means that even though one often has the sense that military maneuvers, campaigns, and attacks are orchestrated, one can never know exactly how they're going to play out.” Putin’s personality Putin’s decision to invade Ukraine was immediately met with international alarm, and some felt that his actions could be the biggest factor in creating a more global crisis. “[Putin] has been doing so many things recently that are just brazen, reckless, unpredictable, and frankly self-harming,” Sarotte said. “Given that a person like that is now in charge of a nuclear arsenal, I do think there is a serious concern for war.” Some longtime Russia observers have been surprised by Putin’s determined stance on Ukraine. They say he’s preoccupied with how the end of the Cold War turned out. “His unstated goal is to avenge what he has called the greatest tragedy of the 20th century: The collapse of the Soviet Union, the unraveling of the Soviet empire and the territories that it once controlled,” Young said. Putin has been undeterred by the sanctions President Joe Biden and other Western leaders have imposed on Russia while he’s doubled down on his invasion.

## Adv 2

#### They’ll make their businesses into State Owned Enterprises that are immunized from US law.

Kantner 13—(Partner in the international law firm of Jones Day, specializes in trade secret and other intellectual property litigation and counseling). Robert Kantner. “Protecting Trade Secrets Internationally Through A Comprehensive Trade Secret Policy.” The Practical Lawyer. February 2013. <http://files.ali-cle.org/thumbs/datastorage/lacidoirep/articles/TPL1302_Kantner_thumb.pdf>.

Foreign Defendants May Claim Foreign

Sovereign Immunity

Even if a plaintiff successfully exerts jurisdiction over a foreign entity, if the defendant is a state-owned entity, it may be able to claim that it is immune from suit under the Foreign Sovereign Immunities Act. Because economic espionage is being conducted more frequently by state-owned entities, particularly in China, many foreign defendants will likely seek immunity under this Act. While there are exceptions to the Act’s provision of immunity, briefing and arguing the matter will certainly extend the resolution of the case overall and possibly involve significant expense.

#### Enforcement abroad fails—host countries block investigation.

Shen 20—(L.L.M, J.S.D., Washington University School of Law). Weimin Shen. 2020. "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.

#### Aff sparks blocking statutes---turns case and more.

---link: further expansion of extraterritorial antitrust causes foreign nations to backlash with blocking statutes which block US’ ability to apply antitrust abroad

---turns econ/trade/innovation/low costs---injects fresh uncertainty, forces businesses to spend massive resources on avoiding litigation which trades off with R&D and means they can’t scale, lower prices, or create innovative products; slows trade because of conflicting international laws which creates uncertainty

Kava 19 [Samuel F. Kava is an associate at White and Case LLP and was a JD/MBA candidate at the University of Maryland Francis King Carey School of Law and Johns Hopkins University Carey School of Business, “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”, 15 J. Bus. & Tech. L. 135 (2019), https://digitalcommons.law.umaryland.edu/jbtl/vol15/iss1/5] IanM

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.

#### Court circumvention---they ignore intent and plain meaning, reject literature bias towards optimism.

Crane ‘21 [Daniel A Crane. Frederick Paul Furth, Sr. Professor of Law, University of Michigan. I am very grateful for many helpful comments from Tom Arthur, Jonathan Baker, Steve Calkins, Dale Collins, Eleanor Fox, Rebecca Haw, Hiba Hafiz, Jack Kirkwood, Bob Lande, Christopher Leslie, Alan Meese, Steve Ross, Danny Sokol, and other participants at the University of Florida Summer Antitrust Workshop. "ANTITRUST ANTITEXTUALISM." https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=4952&context=ndlr]

This view is so widely entrenched in the legal profession’s understanding of the antitrust laws—including, it must be admitted, this author’s—that it seems presumptuous to claim that the conventional wisdom is wrong, or at least significantly overstated. But it is. While the antitrust statutes may be lacking in some important particulars, they present a readily discernable meaning on many others. As Daniel Farber and Brett McDonnell have argued, “For the conscientious textualist, the statutory texts [of the antitrust laws] have considerably more specific meaning than the conventional wisdom would suggest.”5 And it is not simply the case that the meaning of the statutory texts could be rendered through ordinary methods of statutory interpretation but the courts have failed to see it. Rather, the courts frequently acknowledge that the statutory texts have a plain meaning, and then refuse to follow it.

But it gets worse. The courts have not merely abandoned statutory textualism or other modes of faithful interpretation out of a commitment to a dynamic common-law process. Rather, they have departed from text and original meaning in one consistent direction—toward reading down the antitrust statutes in favor of big business. As detailed in this Article, this unilateral process began almost immediately upon the promulgation of the Sherman Act and continues to this day. In brief: within their first decade of antitrust jurisprudence, the courts read an atextual rule of reason into section 1 of the Sherman Act to transform an absolute prohibition on agreements restraining trade into a flexible standard often invoked to bless large business combinations; after Congress passed two reform statutes in 1914, the courts incrementally read much of the textual distinctiveness out of the statutes to lessen their anticorporate bite; the courts have read the 1936 Robinson-Patman Act almost out of existence; and the Celler-Kefauver Amendments of 1950, faithfully followed in the years immediately after their promulgation, have been watered down to textually unrecognizable levels by judicial interpretation and agency practice. It is no exaggeration to say that not one of the principal substantive antitrust statutes has been consistently interpreted by the courts in a way faithful to its text or legislative intent, and that the arc of antitrust antitexualism has bent always in favor of capital.

#### Courts as a rule counter-balance congress on antitrust.

Crane 21—(Professor of Law, University of Michigan). Daniel A. Crane. 2021. “Antitrust Antitextualism”. 96 Notre Dame Law Rev. 1205. <https://scholarship.law.nd.edu/ndlr/vol96/iss3/7>. Accessed 9/12/21.

Congress writes expansive statutes reining in business power, the courts (either immediately or over time) disregard the plain text of the statutes and trim them down in favor of capital, and Congress acquiesces through inaction. Why? The best-fitting explanation is this: the antitrust laws reside in perennial tension between two fundamental impulses of the American political psyche—the romantic and idealistic attachment to smallness over bigness, and the pragmatic and often grudging realization that large-scale organization may be necessary to achieve material advantages. The romanticism and idealism of the anti-bigness impulse pushes it to the fore in the popular political arena. Congress legislates on the popular aspiration for an egalitarian economy organized around small proprietors and independent local businesses and freedom from economic dominance. When the statutes come to the courts or antitrust agencies, judges and antitrust enforcers play the pragmatic role of balancing those popular aspirations against the contending impulse for efficiency and material benefit. This balancing act induces them to give less effect to the statutes than the broad statutory texts suggest. So long as the judicial decisions achieve results that strike a politically acceptable outcome between the aspirational and pragmatic impulses, Congress is content to leave the judicial and enforcement decisions alone.

## PTX

#### Failure to regulate emissions ensures rampant deforestation

Duffy 16 (Ph.D. President and Executive Director Woods Hole Research Center, with 64 other research scientists, Letter to Senate, 2/22, http://www.eenews.net/assets/2016/04/20/document\_cw\_03.pdf)

We are 65 research scientists and practitioners who study energy, soils, forested and wetland ecosystems and climate change. We are writing in our individual capacities to express our concern over the implications of a “forest biomass carbon neutrality” Senate Amendment 3140 to the Energy Policy Modernization Act that was recently accepted by the US Senate. This well-intentioned legislation, which claims to address climate change, **would in fact promote deforestation in the U.S. and elsewhere and make climate change much worse.** The amendment would require all federal departments and agencies to promote consistent policies that “reflect the carbon neutrality of forest bioenergy and recognize biomass as a renewable energy source.” Mandating that there are no carbon dioxide emissions from burning wood from forests to produce energy does not make it so in fact. The consequence of the amendment is to encourage a shift to forest biofuels in the form of pellets and wood chips to replace coal in the generation of electricity. Wood burning power plants are becoming more numerous in the United States and in the European Union. The US Department of Commerce and the US Forest Service are promoting expanded export of American wood pellets for this purpose to Europe and to Asia. Burning any carbon containing substance whether biomass or fossil fuels releases carbon dioxide into the atmosphere. Burning forest biomass to make electricity releases substantially more carbon dioxide per unit of electricity than does coal. Removing the carbon dioxide released from burning wood through new tree growth requires many decades to a century, and not all trees reach maturity because of drought, fire, insects or land use conversion. All the while the added carbon dioxide is in the atmosphere trapping heat. Right now, large areas of American forests including old growth trees are being cleared for pellets that are shipped to Europe and burned to produce electricity that is counted there as zero carbon. There is no requirement in the amendment that trees used for bioenergy be replaced. International obligations require the United States to account for bioenergy emissions from either the energy sector or as land-use change. While forest biomass energy may be renewable over the long-term, it is not a low-carbon source of energy like solar panels. Using the same amount of land area, solar panels produce up to 80-times as much electricity as wood burning with no emissions at all. Yet with this amendment, both might receive the same subsidy under the Act. Furthermore, fossil fuel emissions associated with producing bioenergy (harvesting, chipping, drying, pelletizing and transporting) are equivalent to 20-25% of direct emissions, and under this legislation these emissions are unaccounted for. Forest bioenergy as currently produced also **competes with land for other forest products including timber, paper and agriculture.** Promoting forest biomass therefore **encourages additional deforestation. Granting carbon amnesty to forest biomass burning for energy could lead to significant depletion of US forests**. The potential implications of declaring carbon neutrality for forest biofuels are great because even small quantities of bioenergy require large quantities of wood. The US Energy Information Agency estimates that for each 1% added to current US electricity production from forest biomass an additional 18% increase in US forest harvest is required. **This policy would also encourage the destruction of forests in developing countries that would see the US as an export market. This would undermine international attempts to protect tropical forests in these countries through the programs agreed to in Paris.** This amendment puts forest carbon in the atmosphere contributing to climate change instead of keeping it in living, productive forests that provide multiple benefits of water and wetland protection, flood control, soils protection, wildlife habitat, improved air quality and recreational benefits for hunters and all who enjoy being in the great out-ofdoors. Legislating scientific facts is never a good idea, but is especially bad when the “facts” are incorrect. We urge you and other members of the Senate to reconsider this wellintentioned legislation and eliminate the misrepresentation that forest bioenergy is carbon-neutral.

#### Manchin signaling cooperation

Nilsen & Fox 3-3 (By Ella Nilsen and Lauren Fox, CNN, There's new momentum in Congress for a climate bill, but a lot of questions on what it could include, Updated 4:15 PM ET, Thu March 3, 2022, https://www.cnn.com/2022/03/03/politics/congress-climate-bill/index.html

Democratic Sen. Joe Manchin of West Virginia has cracked open the door for negotiations on a slimmed-down version of President Joe Biden's climate and economic bill following months of little progress on the issue. Manchin outlined his counteroffer this week, confirming that climate and clean energy provisions will be some of the few original pieces of Biden's original Build Back Better bill he wants to pass through a Democrat-only bill. Manchin is also calling for Democrats to raise taxes on corporations and America's wealthy and use that revenue to reduce the budget deficit and spend on new climate programs. "Half of that money should be dedicated to fighting inflation and reducing the deficit," Manchin said of new revenue from an adjusted tax code. "The other half you can pay for a 10-year program, whatever you think is a nice priority, and right now it seems to be the environment." That's being greeted with cautious optimism from Senate climate hawks and outside groups who want to see climate action in Congress as soon as possible. Biden attempted to revive pieces of his domestic agenda during Tuesday's State of the Union address, but Democrats are running out of time to pass something through budget reconciliation -- especially before midterms campaigning kicks into high gear this summer and fall. "I think that is very good news, and my view of it is we need to find a way to get specific about what that means and do it," Sen. Tina Smith of Minnesota told CNN. "I hope it's sooner rather than later. I don't think this is going to get easier the longer we wait." Negotiations are expected to start in earnest after the Senate finishes its appropriations package. But a lot of unknowns remain. There's no guarantee Manchin's vision for clean energy provisions will look like the $555 billion included in Build Back Better, and the industry-friendly head of the Senate Energy and Natural Resources Committee has indicated he also wants to encourage more fossil fuel use. But it also could be Democrats' only hope to pass something before the November midterms. "We should give Joe Manchin the pen so we actually know where he stands, and then we should negotiate and come to an agreement," Jamal Raad, executive director of climate group Evergreen Action, told CNN. "If we are looking to lower costs and stop enabling fossil fuel fascists like Putin, we actually have a policy prescription on the table. That's the climate investments in Build Back Better."

#### Not watered down---Manchin supports what solves our internal link

E&E DAILY 3-3 [Emma Dumain and nIck Sobczyk, journalists, “Manchin Outlines Energy Demands as Dems Mull Next Steps,” E&E DAILY, 3—3—22, <https://www.eenews.net/articles/manchin-outlines-energy-demands-as-dems-mull-next-steps/>, accessed 3-3-22]

Ultimately, whether or not that’s possible depends on Manchin and fellow moderate Sen. Kyrsten Sinema (D-Ariz.), who has opposed corporate tax rate hikes that Manchin wants to use for revenue.

But despite the ongoing situation in Ukraine, the climate portion of “Build Back Better” has for months been relatively noncontroversial. Sen. Sheldon Whitehouse (D-R.I.) pointed out that Manchin has not opposed most of the important emissions-reducing provisions — the $300 billion in clean energy and EV tax incentives from the Senate Finance Committee.

For now, Whitehouse said, Manchin is leaving the door open to “a significant piece of climate legislation.”

“The test is emissions reduction,” Whitehouse told reporters yesterday. “And if it’s climate stuff in quotes that has climate as this topic but doesn’t produce the emissions reductions we need to get on a safe pathway, then I’m going to need to see it improve until we’re on a safe pathway.”

#### Manchin is a yes on climate

CNN 3-3 [Ella Nilsen and Lauren Fox, journalists, “There’s New Momentum in Congress for a Climate Bill, But a Lot of Questions on What It Could Include,” CNN, 3—3—22, <https://www.cnn.com/2022/03/03/politics/congress-climate-bill/index.html>, accessed 3-3-22]

Manchin detailing what he’d support in a slimmed-down package was important to Senate climate hawks for two reasons: One, he backed the idea of using a Democrat-only budget reconciliation bill; and two, he specifically included climate in his list of items.

Manchin has been saying positive things about the clean energy tax credit package in Build Back Better for months, but Wednesday’s remarks were the most specific he’d been about what could be in a bill he’d support passing the Senate. The inclusion of climate wasn’t a huge surprise for other senators and staff, given his past public support for a $320 billion clean energy tax credit package.

“Climate, we’ve felt for months, was something we could actually get him there on. We have a lot of reasons to believe that’s true,” a Senate Democratic aide told CNN, adding that Democrats need to get more information on the specifics of what Manchin would support.

“We should ask him and find out, because he basically gave an invitation to engage,” the aide said.

#### Manchin will agree to the climate components

Bolton 322 [Alexander Bolton, journalist, “Manchin Proposes Dramatically Scaled Down Version of Build Back Better,” THE HILL, 3—2—22, <https://thehill.com/homenews/senate/596580-manchin-proposes-dramatically-scaled-down-version-of-build-back-better>, accessed 3-2-22]

Sen. Joe Manchin (D-W.Va.), who torpedoed President Biden’s Build Back Better agenda at the end of last year, on Wednesday laid out a dramatically scaled down version that he says he could vote for under the special budget reconciliation process.

Manchin said he could support a reconciliation package that reforms the tax code and lowers the cost of prescription drugs if the money raised is split between spending on new climate change proposals and deficit reduction and fighting inflation.

The West Virginia senator clarified he hasn’t made any formal counterproposal to the White House but is sketching the outlines of a proposal that he could support along with the rest of the Senate Democratic Caucus.

Whatever Manchin ultimately agrees to would have a different name than the Build Back Better Act, which he said in December he couldn't support.

“There’s not a proposal, there’s just a conversation,” he said of informal talks with White House officials.

“It just makes all the sense in the world. The one thing that we as Democrats all agreed on was the 2017 tax cuts were weighted unfairly. So if you want to fix the tax cuts and make everyone pay their fair share, whether it’s the very wealthiest or the corporations that pay nothing — I think the president identified that last night — then you have to fix the tax code,” he said.

“Then you find out what revenues you have from that if you fix it,” he added.

Manchin also said there is broad agreement among Democrats on passing legislation to reduce the cost of prescription drugs and suggested that modeling a program on what the Department of Veterans Affairs does to negotiate lower prices for military veterans would be a good idea.

“The other thing that we should all agree on is the high pharmaceutical prices, so you allow the negotiations. And I just said the organization that does the best job is the VA, the veterans administration gets some of the lowest prices. Maybe we should look at them and let them basically do [that] for our Medicaid and Medicare [recipients],” he said.

Manchin says half of the revenue raised from tax reform and prescription drug reform should be used to lower the deficit and fight inflation and the other half should be spent on whatever 10-year program has the most support in the Democratic caucus.

He suggested spending on an array of initiatives to fight climate change would likely unify his Democratic colleagues.

“Half of that money should be dedicated to fighting inflation and reducing the deficit,” he said. “The other half you can pick for a 10-year program, whatever you think is the highest priority and right now it seems to be the environment — and that’s a pretty costly one — would take care of it.”

#### Interpreting the plan to “be the courts” is the link – only possible way that happens starts with FTC overreach bringing a novel liability theory before the courts – the fact that courts abide because of fiat only makes Congressional retaliation against FTC more likely – implicates our Biden PC link too – because he’ll obviously also be a target of pressure campaigns – it’s NOT a question of who’s blamed for the Court ruling, BUT rather who has the power to prevent agencies from bringing similar cases to the courts

Jones and Kovacic 20 (Alison Jones, Professor of Law, King’s College London; and William E. Kovacic, King’s College London, George Washington University, United Kingdom Competition and Markets Authority; “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” The Antitrust Bulletin, 65(2), 3-20-2020, DOI: 10.1177/0003603X20912884)

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

In the end, FTC’s efforts to improve capability proved insufficient to support the expanded enforcement agenda, partly because the Commission failed to formulate an adequate plan to overcome the full range of implementation obstacles. The FTC seriously overreached because it did not grasp, or devise strategies to deal with, the scale and intricacies of its expanded program of cases and trade regulation rules, the ferocious opposition that big cases with huge remedial stakes would provoke from large defendants seeking to avoid divestitures, compulsory licensing, or other measures striking at the heart of their business, and the resources required to deliver good results. The Commission lacked the capacity to run novel shared monopoly cases that sought the break-up of the country’s eight leading petroleum refiners and four leading breakfast cereal manufacturers79 and simultaneously pursue an abundance of other high stake, difficult matters involving monopolization, distribution practices, and horizontal collaboration. The FTC also overlooked swelling political opposition, stoked by the vigorous lobbying of Congress, that its aggressive litigation program provoked.80

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

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

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

A. Judicial Resistance to Extensions of Existing Antitrust Doctrine

As noted in Section II.A, judicial decisions since the mid-1970s have reshaped antitrust law; created more permissive substantive standards governing dominant firm conduct, mergers, and vertical restraints; and raised the bar to antitrust claims in a number of ways. This remolding has been facilitated by the Court’s conclusion that the Sherman Act constitutes “a special kind of common law offense,”81 so that Congress “expected the courts to give shape to the statute’s broad mandate by drawing on common-law tradition.”82 This has allowed the statutory commands to be interpreted flexibly and the law to evolve with new circumstances and new wisdom;83 for example, where there is widespread agreement that the previous position is inappropriate or where the theoretical underpinnings of those decisions have been called into question.84

The proposed solutions will depend, in the short term at least, on the ability of enforcement agencies to navigate the described jurisprudence to find an antitrust infringement and, in some instances, a further rethinking, refinement, and/or development of doctrine, through softening, modification, or even a reversal of current case law. Although such an evolution could, in theory, result, as it did over the last forty years, from a steady stream of antitrust cases, judicial appointments since 2017 have arguably made such a change in direction unlikely. Rather, it seems more probable that successful prosecution of major antitrust, and especially Section 2 Sherman Act monopolization cases, will remain challenging and may even become more difficult. Cases will be litigated before judges who are ordinarily predisposed to accept the current framework, either by personal preference or by a felt compulsion to abide by forty years of jurisprudence that tells them to do so.85 A new president could gradually change the philosophy of the federal courts by appointing judges sympathetic to the aims of the proposed transformation.86 The reorientation of the courts through judicial appointments is, however, likely to take a long time.87

Until then, trial judges and the Court of Appeals will be compelled to abide by the existing jurisprudence and will only be at liberty to develop a more flexible approach in the “gaps” or spaces left by Supreme Court opinions—for example, in relation to mergers and rebates—and through creative interpretations of the law. Such cases are, however, likely to be hard fought. Indeed, Judge Lucy Koh’s finding in Federal Trade Commission v. Qualcomm, Inc. 88 that Qualcomm’s licensing practices constituted unlawful monopolization of the market for certain telecommunications chips has provoked hostile attacks, not only from practitioners and academics but also from the DOJ, the U.S. Departments of Defense and Energy, and even one of the FTC’s own members. In a scathing op-ed in the Wall Street Journal,89 Commissioner Christine Wilson attacked Judge Koh’s “startling new creation” of legal obligations that may trigger a new wave of enforcement actions and undermine intellectual property rights. Commissioner Wilson condemned the judge’s “judicial innovations,” and “alchemy,” through reviving and expanding the Supreme Court’s 1985 opinion in Aspen Skiing Co v. Aspen Highlands Skiing Corp 90 (which she stresses was described by the Supreme Court in Trinko 91 as “at or near the outer boundary” of U.S. antitrust law), turning contractual obligations into antitrust claims, and for departing from current federal agency practice, by imposing remedies requiring Qualcomm to negotiate or renegotiate contracts with customers and competitors worldwide. She has thus urged the Ninth Circuit (on appeal), and if necessary the Supreme Court, to assess the wisdom of these sweeping changes and to stay the ruling.92

It seems likely therefore that, at the same time as bringing cases seeking to develop procedural, evidential, and substantive antitrust standards under the existing regime, additional antidotes to the stringencies of existing jurisprudence will be required, including more extensive, and expansive, use of Section 5 FTC Act to plug the gaps created by the narrowing of the scope of Section 2 Sherman Act; and/or the adoption of legislation that directs courts to apply a wider goals framework.

B. Infirmities of Section 5 of the Federal Trade Commission Act

One possible solution to rigidities that have developed in Sherman Act jurisprudence is for the FTC to rely more heavily on the prosecution, through its own administrative process, of cases based on Section 5 of the FTC Act and its prohibition of “unfair methods of competition.”93 This section allows the FTC94 to tackle not only anticompetitive practices prohibited by the other antitrust statutes but also conduct constituting incipient violations of those statutes or behavior that exceeds their reach. The latter is possible where the conduct does not infringe the letter of the antitrust laws but contradicts their basic spirit or public policy.95

There is no doubt therefore that Section 5 was designed as an expansion joint in the U.S. antitrust system. It seems unlikely to us, nonetheless, that a majority of FTC’s current members will be minded to use it in this way. Further, even if they were to be, the reality is that such an application may encounter difficulties. Since its creation in 1914, the FTC has never prevailed before the Supreme Court in any case challenging dominant firm misconduct, whether premised on Section 2 of the Sherman Act or purely on Section 5 of the FTC Act.96 The last FTC success in federal court in a case predicated solely on Section 5 occurred in the late 1960s.97

The FTC’s record of limited success with Section 5 has not been for want of trying. In the 1970s, the FTC undertook an ambitious program to make the enforcement of claims predicated on the distinctive reach of Section 5, a foundation to develop “competition policy in its broadest sense.”98 The agency’s Section 5 agenda yielded some successes,99 but also a large number of litigation failures involving cases to address subtle forms of coordination in oligopolies, to impose new obligations on dominant firms, and to dissolve shared monopolies.100 The agency’s program elicited powerful legislative backlash from a Congress that once supported FTC’s trailblazing initiatives but turned against it as the Commission’s efforts to obtain dramatic structural remedies unfolded.101

C. Designing Effective Remedies

Important issues arising for the new enforcement strategy proposed will be what remedies should be sought; how can an order, or decree, be fashioned to ensure that the violation is terminated, that competition on the market is restored, the opportunity for competition is re-established, and that future violations are not committed and deterred; and will a court be likely to impose any such remedy.102

The Sherman Act treats infringements of its key commands as crimes attracting severe sanctions, including fines (corporate and individual) and imprisonment. Although since 1980, the DOJ has used criminal prosecutions only to challenge hard-core horizontal cartels,103 some antitrust reform proponents are calling for the introduction of fines to sanction illegal monopolization, and some commentators have proposed that the DOJ reconsider its policy of not seeking criminal penalties beyond the Section 1 conspiracy context.104 For the time being, however, it would appear that existing civil sanctions will remain the tool of choice for DOJ in dealing with antitrust infringements and will be the only set of remedies available to the FTC, which has no mandate to bring criminal cases.

The civil remedial options, which can broadly be grouped into three categories, for the federal agencies, are nonetheless powerful in principle. The first and, perhaps, the most common form of remedy consists of controls on conduct. Conduct-related relief ordinarily takes the form of cease and desist orders that forbid certain behavior or, in a smaller number of cases, compel firms to engage in affirmative acts, such as providing a competitor access to an asset needed to compete.

The second major form of remedy is structural relief in the form of divestitures or the compulsory licensing of intellectual property that enables a firm to enter a previously monopolized market. The boundary between purely conduct-based and structural remedies is not always clear. A compulsory licensing decree has strong structural features (it directly facilitates new entry) and conduct elements (it may require the owner of the patent to provide the licensee know-how and updates of the patented technology).

The third remedy consists of civil monetary relief in the form of disgorgement of ill-gotten gains or the restitution of monopoly overcharges to victims. A number of Supreme Court decisions in monopolization cases in the late 1940s and early 1950s appeared to hold that these forms of recovery are encompassed in the mandate of courts to order equitable remedies to cure antitrust violations. The federal agencies have not used this power expansively, though it would appear to be available to recoup overcharges in Section 2 or other cases.105

The cures envisaged by many of the advocates of change call for the bold application of the full portfolio of civil remedies, including unwinding past mergers, divestment of assets, restructuring concentrated markets, limiting or reversing vertical integration or through the imposition of licensing obligations. Such advocates thus wish the DOJ and FTC to use the antitrust laws as an effective and simple mechanism for deconcentrating both monopolistic and oligopolistic markets, rapidly introducing new competition into a market; and reversing what they consider to be severe structural problems that have been allowed to develop on the market.106

Structural remedies, in particular, have always been a real and important part of the antitrust remedial arsenal,107 not only in merger cases where a violation of the antitrust rules may consist of an unlawful acquisition of shares or stock108 but also in Sherman Act cases.109 In the 1960s the FTC also sought, using its powers under Section 5 FTC Act to deconcentrate the petrol and breakfast cereal markets110 and in 1969 the Neal Report,111 commissioned by President Lyndon Johnson, proposed the adoption of laws which would allow oligopolistic industries to be deconcentrated and the condemnation of mergers on markets that were already concentrated.112

Modern antitrust has, however, had less appetite for the use of antitrust to break up companies. Although the District Court in United States v Microsoft Corp 113 ordered, at the request of the DOJ, that Microsoft be broken into two parts, the Court of Appeals, despite affirming the violation of section 2, reversed and remanded the finding that Microsoft should be split into two. Setting out a high bar for structural relief, the Court stressed that the lower court had not (1) held a remedies-specific hearing114 or (2) provided adequate reasons for the decreed remedies.115

A number of factors seem responsible for the trend away from structural remedies. First, the change in antitrust thinking that has evolved since the early 1970s, from a belief that antitrust intervention and structural remedies can improve performance116 to the current more laissez-faire one.117 Second, concerns about the effectiveness of previous attempts to deconcentrate industries,118 especially given the length of time that antitrust proceedings take.119 Third, the difficulty involved in constructing and overseeing a structural remedy effectively. Although in cases involving a merger or acquisition it may be relatively easy to structure such a remedy through disentangling assets that were once owned separately,120 outside of this situation, the question of how and what to divest might be much more speculative, seem much more risky and may in fact be complex and difficult to administer (involving significant restructuring, separation of physical facilities, and allocation of staff from integrated teams).121 These types of concern make it a challenge to persuade a court that a structural remedy is warranted and will be successful in achieving its objective.122

In the discussion above, we have been addressing the types of remedies that are imposed at the conclusion of a lawsuit. A problem in highly dynamic markets, however, is that the lag between the initiation of a case and a final order on relief may be so great that market circumstances have changed dramatically or the victim of allegedly improper exclusion may have left the market or otherwise lost its opportunity to expand and contest the position of the incumbent dominant firm. In this context, the antitrust cure arrives far too late to protect competition. The relatively slow pace of antitrust investigations and litigation (with appeals that follow an initial decision) has led some observers to doubt the efficacy of antitrust cases as effective policy-making tools in dynamic commercial sectors.

There are at least five possible responses to concerns about the speed of antitrust litigation, particularly matters involving dominant firms. First, agencies could experiment with ways to accelerate investigations, and courts could adopt innovative techniques to shorten the length of trials. In the United States, we perceive that greater integration of effort among the public agencies would permit the more rapid completion of investigations (e.g., by pooling knowledge and focusing more resources on the collection and evaluation of evidence). Courts could use methods tested with success in the DOJ prosecution of Microsoft in the late 1990s to truncate the presentation of evidence. These types of measures have some promise to bring matters to a close more quickly.

Second, the initiation of a lawsuit could be recognized as being, in some important ways, its own remedy; the prosecution of a case by itself causes the firm to change its behavior in ways that give rivals more breathing room to grow. Moreover, the visible presence of the enforcement authority, manifest by its investigations and lawsuits, causes other firms to reconsider tactics that arguably violate the law. Seen in this light, the entry of a final order that specifies remedies may not be necessary for all instances to have the desired chastening effect.

A third response is to experiment more broadly with interim relief that seeks to suspend certain types of exclusionary conduct pending the completion of the full trial.123 Effective interim measures would require the enforcement agency to develop a base of knowledge about the sector that enables it to accurately identify the practices to be enjoined on an interim basis and to give judges a confident basis for intervening in this manner.

A fourth approach would be that the remedies achieved in protracted antitrust litigation may not be so imperfect or untimely as they might appear to be. There have been a number of instances in which the remedy achieved in a monopolization case was rebuked as desperately insufficient when ordered but turned out to have positive competitive consequences.124 This is a humbling and difficult aspect of policy making. It may not be easy for an agency to persuade its political overseers—or other external audiences—that the chief benefits of its intervention will emerge in, say, two or three decades. Yet the positive results may take a long time to become apparent.

A fifth technique would be to rely more heavily on ex-ante regulation in the form of trade regulation rules that forbid certain practices. A competition authority—most likely the FTC—would use its rulemaking powers to proscribe specific types of conduct (e.g., self-preferencing by dominant information services platforms).

In this article, we do not purport to solve the problems of the remedial design set out above. There is, however, a fairly clear conclusion about how enforcement agencies should go about thinking of remedies. As we note below, there is considerable room for public agencies to design remedies more effectively by systematically examining past experience and collaborating with external researchers to identify superior techniques. In this regard, the FTC’s collection of policy tools would appear to make it the ideal focal point for the development of more effective approaches to remedial design.

D. Political Backlash

As we have already indicated, the government’s prosecution of high stakes antitrust cases often inspires defendants to lobby elected officials to rein in the enforcement agency. Targets of cases that seek to impose powerful remedies have several possible paths to encourage politicians to blunt enforcement measures. One path is to seek intervention from the President. The Assistant Attorney General of the Antitrust Division serves at the will of the President, making DOJ policy dependent on the President’s continuing support. The White House ordinarily does not guide the Antitrust Division’s selection of cases, but there have been instances in which the President pressured the Division to alter course on behalf of a defendant, and did so successfully.125

The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.126 Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or muted if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.127 If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder.

Imagine, for a moment, that the DOJ and the FTC launch monopolization cases against each of the GAFA giants. Among other grounds, these cases might be premised on the theory that the firms used mergers to accumulate and protect positions of dominance. The GAFA firms have received unfavorable scrutiny from legislators from both political parties over the past few years, but the current wave of political opprobrium is unlikely to discourage the firms from bringing their formidable lobbying resources to bear upon the Congress. It would be hazardous for the enforcement agencies to assume that a sustained, well-financed lobbying campaign will be ineffective. At a minimum, the agencies would need to consider how many battles they can fight at one time, and how to foster a countervailing coalition of business interests to oppose the defendants.

#### New SCOTUS action links—anti-court sentiment drives

Quinn 21 [MELISSA QUINN, "Democrats vow to protect abortion rights after Supreme Court decision on Texas law", 9/3/21, https://www.cbsnews.com/news/texas-abortion-law-rights-democrats-supreme-court/]

President Biden and congressional Democrats are vowing to take action to protect a woman's right to an abortion after a divided Supreme Court allowed a Texas law outlawing the procedures after six weeks of pregnancy to remain in effect in a late-night decision Wednesday. House Speaker Nancy Pelosi pledged Thursday that once the House returns to Washington, D.C., later this month from its recess, it will take up legislation that enshrines the right to an abortion into federal law and prohibits "medically unnecessary restrictions" on abortion services or facilities. "This ban necessitates codifying Roe v. Wade," Pelosi said in a statement condemning the Supreme Court's decision. The high court established the woman's right to an abortion in its 1973 decision in Roe.

#### Court action links --- congressional debate and legislative introductions

**Pearlstein 20**, Steven, is a former business and economics columnist for The Washington Post and the Robinson professor of public affairs at George Mason University, “Facebook and Google cases are our last chance to save the economy from monopolization,” 12/18/20, accessed 8/23/21, https://www.washingtonpost.com/business/2020/12/18/google-facebook-antitrust-lawsuit

**To achieve that more ambitious outcome**, says Gene Kimmelman, a former chief counsel to the Justice Department’s antitrust division**, the government does not have to go so far as to convince the courts that their past decisions were wrong**. But **it would have to convince judges that those earlier precedents have to be adapted to the competitive realities of today’s winner-take-all markets** — markets **where customers all want to use the same network or supplier**, the price of a product can be zero, and the competitive threat comes from small start-ups offering a different product or technology. **Beating up on Big Tech is fun and easy. Restraining it will require rewriting the law. Even as these cases proceed through the courts, the issues** they raise **will also be actively debated in Congress**, where there is considerable bipartisan interest in restraining the power of Big Tech. And what happens in one forum is likely to inform and affect the other. **The filing of the court cases**, for example, **is likely to give further impetus to legislative proposals to strengthen the antitrust laws and create a new agency to directly regulate digital platforms**, **much in the way the F**ederal **C**ommunications **C**ommission **regulates telephone and cable companies and the F**ederal **E**nergy **Re**gulatory **C**ommission **regulates electric utilities**. In addition to **regulating business practices and approving mergers, such an agency could also address issues of privacy, data ownership and regulation of disinformation and hate speech**. Just this week, both the British government and the European Union unveiled a proposal for such an agency.

#### Court ruling tanks PC

Mr. Mirengoff 10 is an attorney in Washington, D.C. A.B., Dartmouth College J.D., Stanford Law School, June 23 The Federalist Society Online Debate Series, http://www.fed-soc.org/debates/dbtid.41/default.asp

The other thing I found interesting was the degree to which Democrats used the hearings to attack the "Roberts Court." I don't recall either party going this much on the offensive in this respect during the last three sets of hearings. What explains this development? My view is that liberal Democratic politicians (and members of their base) think they lost the argument during the last three confirmation battles. John Roberts and Samuel Alito "played" well, and Sonia Sotomayor sounded like a conservative. The resulting frustration probably induced the Democrats to be more aggressive in general and, in particular, to try to discredit Roberts and Alito by claiming they are not the jurists they appeared to be when they made such a good impression on the public. I'm pretty sure the strategy didn't work. First, as I said, these hearings seem not to have attracted much attention. Second, Senate Democrats are unpopular right now, so their attacks on members of a more popular institution are not likely to resonate. Third, those who watched until the bitter end saw Ed Whelan, Robert Alt and others persuasively counter the alleged examples of "judicial activism" by the Roberts Court relied upon by the Democrats -- e.g., the Ledbetter case, which the Democrats continue grossly to mischaracterize. There's a chance that the Democrats' latest **partisan innovation** will **come back to haunt them**. Justice Sotomayor and soon-to-be Justice Kagan are on record having articulated a **traditional, fairly minimalist view of the role of judges**. If a liberal majority were to emerge -- or even **if the liberals prevail in a few high profile cases** -- the charge of "deceptive testimony" could be turned against them. And if Barack **Obama** is still president at that time, he likely **will receive** some of **the blame**.

#### President gets the blame for Supreme Court decisions

Toobin 15(CNN Senior Legal Analyst, “Obama’s Game of Chicken with the Supreme Court,” accessed 6-4-15, <http://www.newyorker.com/news/daily-comment/obamas-game-of-chicken-with-the-supreme-court?intcid=mod-latest>)

For many people, the President of the United States **is the government of the U**nited **S**tates. It’s why he gets the **credit and blame** for so many things, like the economy, where his influence can be hard to discern. This is particularly true for a subject in which the President has invested so much of his personal and political capital. If the Supreme Court rules against him, the President can blame the Justices or the Republicans or anyone he likes, and he may even be correct. **But the buck will stop with him**.

#### Court action is politicized and blamed on Biden. No cover.

Lindsay Harrison 5 [Professor of Law at the University of Miami, “Does the Court Act as “Political Cover” for the Other Branches?”, 11-18, http://legaldebate.blogspot.com/]

While the Supreme Court may have historically been able to act as political cover for the President and/or Congress, that is not true in a world post-Bush v. Gore. The Court is seen today as a politicized body, and especially now that we are in the era of the Roberts Court, with a Chief Justice hand picked by the President and approved by the Congress, it is highly unlikely that Court action will not, at least to some extent, be blamed on and/or credited to the President and Congress. The Court can still get away with a lot more than the elected branches since people don't understand the technicalities of legal doctrine like they understand the actions of the elected branches; this is, in part, because the media does such a poor job of covering legal news. Nevertheless, it is preposterous to argue that the Court is entirely insulated from politics, and equally preposterous to argue that Bush and the Congress would not receive at least a large portion of the blame for a Court ruling that, for whatever reason, received the attention of the public.

#### Ukraine revitalized the need for climate reform

Gerdes 3-3 [Justin Gerdes, “Ukraine Crisis Reinvigorates Biden’s Build Back Better Agenda,” ENERGY MONITOR, 3—3—22, <https://www.energymonitor.ai/joe-biden/opinion-ukraine-crisis-reinvigorates-bidens-build-back-better-agenda>, accessed 3-3-22]

In evoking consumers’ loathing of gas station fill-ups, Biden and the White House opened a potential new route to secure passage of a rebranded climate plan. Vladimir Putin’s decision to invade Ukraine is exacerbating price volatility that even before the crisis had sent oil and gas prices soaring. Could a pitch focused on energy security, paired with reducing inflation, finally get the Build Back Better Act over the finish line?

Hours before Biden’s address, Manchin called out the US’s dependence on oil from Putin’s Russia.

“Putin has used energy as a weapon to gain leverage over our European allies,” said Manchin at a committee hearing. “During this time of war, the United States is still importing more than half a million barrels per day of crude oil and other petroleum products from Russia, with imports up over 20% in 2021 over 2020.

“It makes no sense at all for us to rely on energy from a country that is actively engaging in acts of war against a freedom-seeking democracy – Ukraine – when we are blessed with abundant energy resources right here in America,” he added. “It is time for the administration to take strong action to unleash American energy, up to and including banning Russian oil imports at a time when they are attacking our allies.”

Fellow Democrats in Congress joined Manchin’s call to wean the US from foreign oil.

“Russia’s invasion of Ukraine has provided a stark reminder of the need to free ourselves from the need for oil and gas from countries ruled by despots like Vladimir Putin,” Senator Ron Wyden, chair of the Senate’s tax-writing Finance Committee, said in a statement. “We have been talking about achieving this goal for decades and have failed. It is time to change that.”

He added: “While our package of clean energy tax incentives is first and foremost a way to reduce drastically carbon emissions, it will also reduce energy costs and further lessen our reliance on foreign oil and gas, including from authoritarian regimes. We need to move this package as soon as possible – opposition to it is now simply a commitment to be reliant on tyrants like Putin for decades to come.”

“The reality is the way to stop buying Russian oil is to massively increase the efficiency of the US economy," Rep. Sean Casten told Politico. "Then we can not only stop buying Russian oil, but stop buying oil from a whole lot of other people."

Climate action to fight inflation

It is Manchin’s vote, in the end, that is proving most elusive for the White House to secure. Biden and Democrats in Congress share Manchin’s concern over Putin’s ability to wield energy as a weapon, but getting Manchin to say “yes” to a new Build Back Better bill will likely require that Democrats accept provisions to boost all forms of US energy production.

That still may not be enough to win over the mercurial Manchin, however. So, when the White House introduced the new Build Back Better plan in the State of the Union, the speechwriters did their utmost to tailor their pitch to just one man.

Manchin often raised the spectre of inflation during the many months Democrats lobbied for his support of the Build Back Better Act, which explains why Biden presented the rebranded Build Back Better plan as a “better plan to fight inflation”. Federal clean energy incentives in the package, Biden said, will “cut energy costs for families an average of $500 a year by combatting climate change”, providing relief for voters who now list inflation as one of their top priorities.

Did the new framing resonate with Manchin? It is impossible to know for certain. Manchin appears to revel in his inscrutability but he did on Wednesday signal a willingness to approve a scaled-down version of Build Back Better.

Manchin told Politico he could support a package that raises revenue via prescription drug savings and tax reform, with the new revenue split evenly between two buckets: deficit reduction and inflation in one, spending on climate and social programmes in the other.

“If you do that, the revenue-producing [measures] would be taxes and drugs. The spending is going to be climate,” he said.

There is a beautiful simplicity in decarbonisation. Every action taken to get us off fossil fuels not only makes it a little more possible to preserve a livable planet, it also denies petrostate autocrats the means to remake the world with their aggression. Putin’s Ukraine war should make it easier for politicians in the US and beyond to embrace the freedom and security that come with climate action.

#### Environment is a top domestic priority---everything else is priced in

Rubin & Duehren By Richard Rubin and Andrew Duehren 3-2 [Biden Climate-Change Plans Gain Momentum as Democrats Retool Agenda https://www.wsj.com/articles/biden-climate-change-plans-gain-momentum-as-democrats-retool-agenda-11646398801

The climate-focused tax incentives, worth more than $300 billion over a decade, enjoy broad consensus among Democrats, including Mr. Manchin, though details remain to be ironed out. Many Democrats see fighting climate change as a singularly important and time-sensitive policy endeavor, making them willing to sacrifice other party goals in talks with Mr. Manchin. Sen. Sheldon Whitehouse (D., R.I.) said many Democrats feel they need to pass a climate package while the party still controls Congress and while emissions-reductions measures could prevent some of the worst consequences of climate change. “You can’t necessarily come back to it later,” he said. “There are tipping points that are points of no return and there are few other public policy issues that are characterized by that kind of point-of-no-return problem.” The U.N. has released reports warning of the consequences of unabated carbon emissions and global temperature increases, with many climate experts and Democrats viewing the next decade as a crucial window for action. Republicans, meanwhile, generally don’t see the need for broad government support for clean-energy sources, meaning bipartisan action is unlikely or would be much narrower if the GOP takes control of Congress next year. In recent weeks, Democrats have added two arguments designed to appeal more broadly to the public and to Mr. Manchin, who represents a major coal-producing state and earlier rejected a program that would have offered grants to utilities that increase clean-energy production. Senate Finance Chairman Ron Wyden (D., Ore.) has described the clean-energy incentives as a way to bolster American energy independence after Russia’s invasion of Ukraine. Mr. Biden has made climate policy part of his anti-inflation reframing of his agenda, pitching incentives for electric vehicles and home weatherization as ways to cut families’ costs. Mr. Manchin has largely been supportive of the tax incentives for clean-energy production, which Democrats designed to encompass a variety of methods for reducing emissions, such as carbon capture. In remarks to reporters this week, he outlined a plan that would raise taxes on companies and high-income households, then split the proceeds between climate policies and deficit reduction. “Half of that money should be dedicated to fighting inflation and reducing the deficit,” he said. “The other half you can pick for a 10-year program, whatever you think was the highest priority and right now that seems to be the environment.” The comments from Mr. Manchin, whose support Democrats need to pass the package in the 50-50 Senate, encouraged other Democrats after months of stalled talks in which he dismissed other ideas as wasteful spending or budget gimmicks. Given their past failures, it remains uncertain whether Democrats can actually ink the agreement, and it could still be several weeks before talks resume in earnest. A package along the lines described by Mr. Manchin would require Democrats to abandon additional policy ambitions such as an expanded child tax credit. The party has previously jettisoned ideas like free community college and a corporate tax-rate increase to address concerns from Mr. Manchin and Sen. Kyrsten Sinema (D., Ariz.), yet the climate provisions remain in play. Climate is the one issue that some lawmakers said they couldn’t give up. There are likely enough tax increases to fund climate programs and deficit-reduction that are broadly acceptable to all Senate Democrats, including Ms. Sinema, whose objection to tax-rate increases has shaped the proposals. Democrats crafted a series of tax increases, including a corporate minimum tax and a surtax on very-high earners, last year with her support. I’m a progressive but I’m also a pragmatist,” said Sen. Tina Smith (D., Minn), who noted her support for measures such as the expanded child tax credit. “But if we don’t have 50 votes for that, we don’t have 50 votes for it and we should do what we can do.” Sen. Ed Markey (D., Mass.) said he thought “ ‘climate first’ is an approach that can bring Joe Manchin on board.” He added that Democrats can augment the package Mr. Manchin outlined with other issues that win 50 votes.

#### Biden PC is sufficient to sway dems

Cochrane et al. 3-2 [Zolan Kanno-Youngs, Jonathan Weisman, and Emily Cochrane, journalists, “As Biden Pivots, Democrats Seek to Salvage His Domestic Agenda,” NEW YORK TIMES, 3—2—22, <https://www.nytimes.com/2022/03/02/us/politics/biden-pivot-moderate-agenda.html>, accessed 3-2-22]

A spokeswoman, Hannah Hurley, suggested that Ms. Sinema’s stance should be no impediment, because she had already embraced tax increases large enough to finance a “narrow plan.”

Many Democrats said that given the obstacles to Mr. Biden’s initial, far-reaching plan, they were ready to rally around a piecemeal approach of the sort Mr. Manchin laid out.

“I’ll take whatever works,” declared Senator Elizabeth Warren, Democrat of Massachusetts. “There’s no way around the math, so we’ve got to find out what 50 of us can agree on.”

With all 50 Republicans opposed, all 50 senators who caucus with Democrats would have to support the proposal for it to pass with Vice President Kamala Harris’s tiebreaking vote in the evenly divided Senate.

The White House has fielded calls for months to distance the president from congressional wrangling and describe how his proposals would address the rising inflation stoking anxiety in his party and driving down his approval ratings. Mr. Biden’s top aides privately discussed whether the Build Back Better label had become a hindrance to negotiations, according to a senior administration official, who conceded that the final version of the package would look very different than the sprawling bill proposed last year.

Moderate Democrats said they appreciated what they saw as a concerted effort to connect with voters in their states and districts. By highlighting popular components of the larger bill without putting them under a single, sweeping title, Mr. Biden may have made them more palatable, they said.

“When I go back to the state of Montana, I hear about how people hate Build Back Better,” said Senator Jon Tester, Democrat of Montana. “But then they say we need some help with child care, we need some help with housing, we need some help with elder care, we need to do something about climate change. So I think he struck the right tone.”

#### Tons of momentum

CNN 3-3 [Ella Nilsen and Lauren Fox, journalists, “There’s New Momentum in Congress for a Climate Bill, But a Lot of Questions on What It Could Include,” CNN, 3—3—22, <https://www.cnn.com/2022/03/03/politics/congress-climate-bill/index.html>, accessed 3-3-22]

Democratic Sen. Joe Manchin of West Virginia has cracked open the door for negotiations on a slimmed-down version of President Joe Biden’s climate and economic bill following months of little progress on the issue.

Manchin outlined his counteroffer this week, confirming that climate and clean energy provisions will be some of the few original pieces of Biden’s original Build Back Better bill he wants to pass through a Democrat-only bill. Manchin is also calling for Democrats to raise taxes on corporations and America’s wealthy and use that revenue to reduce the budget deficit and spend on new climate programs.

“Half of that money should be dedicated to fighting inflation and reducing the deficit,” Manchin said of new revenue from an adjusted tax code. “The other half you can pay for a 10-year program, whatever you think is a nice priority, and right now it seems to be the environment.”

That’s being greeted with cautious optimism from Senate climate hawks and outside groups who want to see climate action in Congress as soon as possible. Biden attempted to revive pieces of his domestic agenda during Tuesday’s State of the Union address, but Democrats are running out of time to pass something through budget reconciliation – especially before midterms campaigning kicks into high gear this summer and fall.

“I think that is very good news, and my view of it is we need to find a way to get specific about what that means and do it,” Sen. Tina Smith of Minnesota told CNN. “I hope it’s sooner rather than later. I don’t think this is going to get easier the longer we wait.”

Negotiations are expected to start in earnest after the Senate finishes its appropriations package. But a lot of unknowns remain. There’s no guarantee Manchin’s vision for clean energy provisions will look like the $555 billion included in Build Back Better, and the industry-friendly head of the Senate Energy and Natural Resources Committee has indicated he also wants to encourage more fossil fuel use.

But it also could be Democrats’ only hope to pass something before the November midterms.

“We should give Joe Manchin the pen so we actually know where he stands, and then we should negotiate and come to an agreement,” Jamal Raad, executive director of climate group Evergreen Action, told CNN. “If we are looking to lower costs and stop enabling fossil fuel fascists like Putin, we actually have a policy prescription on the table. That’s the climate investments in Build Back Better.”