# D7 Round 1 Wiki

## 1NC

### CP Private Action

#### Text: The United States federal government should

#### allow relevant agencies to sue to enjoin anticompetitive business practices conducted against foreign subsidiaries wholly owned by United States parent companies and recover single damages.

#### Increase the funding and staffing of the Federal Trade Commission and Department of Justice

#### Counterplan avoids private enforcement---private suits are an inextricable part of antitrust liability---public enforcement is sufficient

McCarthy et al., GC & Chief Legal Officer of Womble Bond Dickinson (US) LLP, ‘07

(Eric, Allyson Maltas, Matteo Bay and Javier Ruiz-Calzado, “Litigation culture versus enforcement culture A comparison of US and EU plaintiff recovery actions in antitrust cases,” <https://www.lw.com/upload/pubContent/_pdf/pub1675_1.pdf>)

In comparison, in the European Union, private enforcement actions are rare and play less of a role than public enforcement in the fight against anti-competitive behaviour. Several obstacles hinder actions for damages in member state national courts, including a plaintiff’s limited access to evidence, the unavailability of class actions and the potential that the plaintiff may have to pay the defendants’ costs if the plaintiff loses the case. To address these obstacles and the great diversity of damages actions among the member states, the European Commission recently published a green paper on Damages Actions for Breach of the EC Antitrust Rules.3 The green paper examines those aspects of EU litigation practice that have led to a pronounced underdevelopment of private damages actions in the EU. Since its publication in December 2005, the green paper has sparked significant debate within the international antitrust community about the role of private enforcement of EC Treaty competition law and about damages actions in particular. The general expectation is that private damages actions will emerge (albeit slowly) in the European Union. This article compares the state of plaintiff recovery actions in antitrust cases in the US with that of the EU and explores why the United States is more litigious than the EU.

Private antitrust damages actions in the US

Rightly or wrongly, the United States has earned the reputation of having a ‘litigation culture’ that permeates its entire legal system.4 If that is true, it certainly earned its stripes this past year in the area of antitrust litigation. Although the number of civil cases filed in the United States dropped by 10 per cent from 2004 to 2005, the number of antitrust civil filings, almost all of which were initiated by private plaintiffs, rose by 8.8 per cent.5 In the first six months of 2006, the number of antitrust class actions doubled over the same period in 2005.6 Some experts speculate that “[h]ard-charging regulators, a more aggressive plaintiffs[’] bar, and the implementation of [CAFA]” may contribute to the increase in antitrust litigation.7 But in all likelihood, the explanation is far more elementary. As discussed in greater detail below, the pot of treble damages available to plaintiffs in the United States, as well as pro-plaintiff discovery and procedural rules, make private damages extremely easy and attractive to pursue.

The treble damages remedy

In 1914, the US Congress passed the Clayton Act, codified at 15 USC sections 12-27. Section 4 of the Act extends the Sherman Act’s prohibitions on anti-competitive behaviour and, most notably, allows “any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws” to sue for and “recover threefold the damages by him sustained”.8 Treble damages were designed to deter illegal conduct, deprive antitrust violators of the “fruits of their illegal activities” and provide compensation to victims of wrongdoing.9

The Clayton Act’s treble damages provision is not without its critics.10 Many practitioners and policy makers contend that trebling damages creates too great an incentive for plaintiffs to sue. Additionally, they argue, treble damages actions can result in a windfall to plaintiffs. Furthermore, some believe that large fines and the potential for criminal penalties create just as much of a deterrent against violations, without the need for treble damages.11 Nonetheless, the ability of a US private plaintiff to recover treble damages is so sacred and well protected that earlier this year the First Circuit held in Kristian v Comcast Corp12 that, although Comcast could contract with its subscribers to arbitrate antitrust claims, the arbitration agreements could not bar treble damages because “the award of treble damages under the federal antitrust statutes cannot be waived”.13

Although exceptions to the treble damages provision remain few and far between, congress enacted the Criminal Penalty Enhancement and Reform Act (CPERA) in June 2004. CPERA eliminates the treble damages remedy for corporations that qualify for amnesty under the Department of Justice’s Amnesty Programme.14 Under CPERA, a corporation must report its own anti-competitive behaviour to the DoJ and enter into the Corporate Leniency Programme.15 If a private plaintiff sues the corporation for the same behaviour, the civil court may assess single damages against the participating corporation, but only if the judge in the civil action determines that the corporate defendant is cooperating with the civil claimant by providing a full account of the conduct, furnishing all potentially relevant documents, and securing testimony, depositions and interviews from employees.16

Discovery and evidence

Plaintiffs enjoy broad discovery rights in the United States under the Federal Rules of Civil Procedure. These rules provide significant incentives for plaintiffs to file damages suits, even if they have very little factual bases for the underlying claims. At the outset of a case, the parties are obliged to make certain disclosures to one another, including the name of each individual “likely to have discoverable information” and a description by category and location of all documents in the party’s possession or control that it may use to support its claims or defences.17 Thereafter, during the fact-finding or discovery period, plaintiffs may seek a defendant’s business documents through written requests18 as well as answers to questions through written interrogatories.19 Plaintiffs may also ask questions of a defendant’s employees (regardless of seniority), who must sit for depositions and testify under oath.20 Moreover, plaintiffs may seek documents and testimony from non-parties with relative ease.21

Armed with such easy access to a defendant’s or non-party’s documents and employees, plaintiffs with limited evidentiary bases for their lawsuits may be inclined to sue and go on ‘fishing expeditions’ to discover facts to support their case.

Contingent fees

Plaintiffs that file antitrust damages actions in the United States routinely do so on a contingent fee basis. Under such an arrangement with counsel, the plaintiff client does not pay any fees to his or her attorney unless and until the plaintiff collects damages either by settling with the defendant or prevailing at trial. Typically, plaintiffs’ attorneys demand 33 per cent of the recovery as the fee.22 The result is a win for both client and attorney. The fee arrangements allow plaintiffs with limited funds the freedom to pursue their lawsuits without having to fund the litigation along the way. The plaintiffs’ attorney, on the other hand, is attracted to the prospect of treble damages, and thus a larger fee, and therefore is willing to front the litigation costs in the hopes of earning a sizeable fee at the conclusion of the suit.

Class actions

Class actions are the procedural device that enable one or more plaintiff members of a proposed class to sue on behalf of all similarly situated members of the same proposed class.23 Courts in the US have recognised that class actions can be appropriate mechanisms for promoting private enforcement of the antitrust laws.24 In this way, large numbers of potential claimants can prosecute their claims in a cost-efficient manner.25 The objective of any class action lawyer is to get the class certified. To do so, the court must find that the proposed class is “so numerous that joinder of all members is impracticable”, that there are “questions of law or fact common to the class”, that the “claims or defenses of the representative parties are typical of the claims or defenses of the class” and that the proposed class representatives “will fairly and adequately protect the interests of the class”.26 In addition, in most antitrust cases, the court must determine that the “questions of law or fact common to the members of the class predominate over any questions affecting only individual members” and that “a class action is superior to other available methods for the fair and efficient adjudication of the controversy.”27 Under rule 23, proposed class members are afforded the opportunity to decline to join or to ‘opt out’ of the class. But if the class is certified, all class members who do not affirmatively opt out are bound by the decision in the case and cannot pursue their claims individually. Class actions remain a popular means among plaintiffs’ lawyers to litigate antitrust conspiracy claims because they are regularly certified.

State indirect purchaser actions

In Illinois Brick Co v Illinois,28 the US Supreme Court held that, in order to maintain a claim for damages under section 4 of the Clayton Act, a plaintiff must have purchased the product in question directly from the alleged defendant-antitrust violator. The landmark decision thus precludes plaintiffs in a federal court from seeking alleged damages that were ‘passed through’ from the defendant down the chain of distribution in the form of overcharges. In direct response to Illinois Brick, many US state legislatures passed antitrust statutes that permit indirect consumers (ie, below the direct purchaser in the distribution chain) to sue the alleged violator. Today, 29 states permit such suits, or, alternatively, allow the state attorney general to pursue antitrust claims on behalf of indirect consumers.29 In these ‘Illinois Brick repealer’ states, as they are known, defendants face the real prospect of defending against lawsuits that mirror direct purchaser lawsuits pending against them in a federal court.

Huge jury verdicts and settlements

One natural result of the ease with which plaintiffs can pursue treble damages actions in the United States is huge jury verdicts in private antitrust cases. In Conwood v US Tobacco, the plaintiff manufacturer of moist smokeless tobacco (snuff) sued a competitor, the manufacturer of Copenhagen and Skoal, for unlawful monopolisation in violation of section 2 of the Sherman Act, among other claims.30

The jury awarded plaintiffs approximately US$350 million in damages, which, when trebled, resulted in an award that exceeded US$1 billion. The award is thought to be the largest antitrust jury verdict ever recorded.31

Additionally, the several aspects of US litigation highlighted above are a catalyst to settlement. Even before discovery begins, some defendants, confronted with the promise of invasive and expensive discovery, will choose to settle with plaintiffs in order to spare their employees from intrusive discovery and to save on exorbitant legal fees. Plaintiffs routinely extract large settlements from defendants after gaining access to corporate documents and information that, although not dispositive of any wrongdoing, are damaging or embarrassing enough to justify settlement. Similarly, class actions may contribute to settlement of private damages actions because, if certified, defendants do not want to risk losing at trial and therefore pay treble damages. The same is true for state indirect purchaser actions. Defendants often settle these suits in order to avoid duplicative litigation costs.32 Settlement is also preferable for many defendants in this situation who rightly fear the application of collateral estoppel if they are adjudicated liable in even one state.33

The ultimate risk of large jury verdicts inspire settlements even if the defendants litigate the cases for years and at great expense. In 1998, in In re NASDAQ Market-Makers Antitrust Litigation, MDL Docket No. 1023, plaintiffs settled with 37 defendants for a total of US$1.027 billion.34 And in 2003, on the eve of trial, defendant Visa USA settled with plaintiffs in In re Visa Check/Mastermoney Antitrust Litigation, 297 F Supp 2d 503, 506-508 (EDNY 2003) for approximately US$2 billion. Two days later, defendant MasterCard settled for approximately US$1 billion. The combined US$3.05 billion settlement has been described as “the largest antitrust settlement ever”.35 Private damages actions in the EU

In stark contrast to the United States, private damages actions in the EU are few in number and have never played much of an antitrust enforcement role. Although the European Court of Justice (ECJ) in 2001 explicitly recognised a right to damages for breaches of EC competition law,36 plaintiffs have pursued very few damages claims for violations of competition rules. According to a 2004 study (the Ashurst Study), private damages actions based on the violation of either EU or national antitrust rules are in a state of “total underdevelopment” due to various obstacles in bringing such lawsuits.37

To address these obstacles, the EC recently published a green paper, in which the Commission has sparked significant discussion on the present and future role of private enforcement in the EU. This section explores that role.

EU antitrust laws and enforcement

In the EU, there are two levels of antitrust laws and enforcement. The Commission enforces EU antitrust rules at the EU level, which is limited to public enforcement. At the member state level, however, national antitrust authorities and national courts apply both EU and national antitrust laws. Member states permit private enforcement, including damages actions, through national courts.38 Within this two-tiered system, national antitrust authorities and national courts may apply both EU and national antitrust laws, though substantively there is often little difference between the two.

Articles 81 and 82 of the European Community Treaty govern antitrust enforcement. The ECJ long ago decided that these provisions create rights for private parties that national courts must safeguard.39 In Courage v Crehan, the ECJ held that these rights include the right to damages,40 and recently it clarified that such a right includes compensation not only for actual loss, but also for loss of profit plus interest.41 Moreover, with the adoption of Regulation 1/2003,42 the Council of the European Union ‘modernised’ antitrust enforcement by including new procedural rules for the application of articles 81 and 82. In particular, by devoting specific provisions to national courts, the EU legislative branch has recognised the fundamental role that national courts play in the private enforcement of EU antitrust law for the first time since the inception of EU antitrust enforcement in the early 1960s.

The green paper

These developments, however, have not been sufficient to ensure an effective system of private antitrust enforcement, particularly damages actions, throughout 25 jurisdictions with very different legal traditions and markedly diverse substantive and procedural rules. According to the Ashurst Study, to date there have been only 28 successful private actions for damages for violations of the antitrust laws in the EU.43 More often than not, only single large companies that allege anti-competitive behaviour by dominant competitors have pursued private damages actions. For these well-financed plaintiffs, the damages that they seek are large enough to offset the trouble and costs of private litigation before a national court.

In light of the obstacles to private enforcement in the EU, the Commission published its green paper in 2005 to facilitate damages actions, enhance the overall effectiveness of antitrust enforcement and, ultimately, increase compliance with antitrust laws. In response to criticism from those practitioners who fear the adoption of a USstyle system that could lead to ‘excessive litigation’, the Commission has stated that the objective is that of building “an enforcement culture, not a litigation culture”, in which private enforcement would complement public enforcement.44 For each obstacle to damages actions, the green paper proposes several solutions, although the Commission has not yet indicated how it intends to implement any of these solutions (eg, by means of an EU Directive harmonising certain aspects of national law, or thorough ‘soft law’ such as Commission guidelines).

Amount of damages

Treble damages are not available in the EU. It is also not likely that they will be any time soon; the Commission notes that the US treble damages system can lead to “unmeritorious or vexatious litigation”.45 Instead, compensation is limited to the harm suffered, without the possibility of obtaining punitive or exemplary damages. Plaintiffs may thus usually recover only the loss actually incurred, as well as, in some countries, the loss of profits.46 The Ashurst Study, however, revealed that this system of limited recovery provides disincentives to private litigation.47 To provide balance, the Commission proposes to maintain the rule of single damages, while contemplating the possibility of awarding double damages in cartel actions.48 On this issue, it recognises that the addition of double damages will require the implementation of appropriate measures to avoid jeopardising the effectiveness of leniency programmes (eg, successful immunity applicants would be exposed to single damage recovery only).49

#### Expanding liability to private plaintiffs is bad---turns case and undermines solvency

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(Jon and Timothy J., “Private Antitrust Remedies: An Argument Against Further Stacking the Deck,” March, <https://instituteforlegalreform.com/wp-content/uploads/2021/03/March-2021-Antitrust-Paper-FINAL.pdf>)

Advocates of expanding private antitrust remedies begin with the premise that “private enforcement deters anticompetitive conduct” and conclude, in the words of the Report, that legal “obstacles” to recovery by “private antitrust plaintiffs” should be eliminated to maximize deterrence.24 But even if the premise is true,25 the conclusion would not follow. The Report appears to assume that the more deterrence the law provides, the better, and that any “obstacles” to private recovery should thus be removed.26 But that position ignores the consequences of overdeterrence, including the prospect that firms will respond to the threat of draconian penalties in ways that reduce the threat of liability but that ultimately harm consumers.

Overdeterrence is a particular concern in antitrust doctrine because the line separating lawful from unlawful conduct can be blurred and much of the conduct falling on the lawful side of the line is socially beneficial. As economists William Baumol and Alan Blinder explain: One problem that haunts most antitrust litigation is that vigorous competition may look very similar to acts that undermine competition …. The resulting danger is that courts will prohibit, or the antitrust authorities will prosecute, acts that appear to be anticompetitive but that really are the opposite. The difficulty occurs because effective competition by a firm is always tough on its rivals.27

For example, excessive antitrust remedies for predatory pricing may not only deter firms from engaging in conduct that would ultimately be deemed unlawful, but also induce them to keep prices well above their costs and, in effect, hold a price umbrella over smaller, potentially litigious rivals. Such a regime would result in less competition and higher prices for consumers—the very outcomes the antitrust laws are designed to prevent.

Proposals to slap another layer of deterrence on top of existing private remedies are particularly perverse because, as discussed above, the current U.S. regime is already overdeterrent, in that it subjects firms to unusually severe liability risks even for overt conduct subject to the rule of reason. If anything, Congress should consider aligning private antitrust remedies with remedies for analogous common law torts by, for example, limiting treble damages and one-way fee-shifting to cases involving hard-core violations that may elude detection, such as price-fixing cartels. In all events, Congress should not make a bad situation worse by ratcheting up the level of overdeterrence.

#### Resource improvements solve any reason agencies fail now

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Alison Jones and William Kovacic, April 17 2020, “The Institutions of U.S. Antitrust Enforcement: Comments for the U.S. House Judiciary Committee on Possible Competition Policy Reforms,” https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3619095

Measures to expand federal antitrust intervention dramatically – through the prosecution of lawsuits or the promulgation of trade regulation rules – will face arduous opposition from the affected businesses. Assuming that litigation will provide the main method in the coming few years to attack positions of single-firm or collective dominance, the targets of big antitrust cases will marshal the best talent that private law firms, economic consultancies, and academic bodies can offer to oppose the government in court. The defense will benefit from doctrinal principles that generally are sympathetic to dominant firms (we assume that legislation to change the doctrinal status quo may not be immediately forthcoming). Beyond a certain point, the addition of new, high stakes cases to the litigation portfolio of public antitrust agencies can create a serious gap between the teams assembled for the prosecution and defense, respectively. Although the public agencies can match the private sector punch for punch when prosecuting several major de-monopolization cases, when the volume of such cases rises from several to many, the government agencies may have to rely on personnel with considerably less experience to develop and prosecute difficult antitrust cases that seek to impose powerful remedies upon global giants. An enhanced litigation program therefore will go only as far as the talent of the agencies will carry it. We propose three steps to build and retain the human capital – attorneys, economists, technologists, and administrative managers – to undertake a more ambitious litigation program. The first is to use antitrust as a prototype for a program to raise civil service salaries. The second two steps consist of cautions about the dangers of (a) denigrating the skills and accomplishments of existing agency personnel, and (b) attempting to shut the revolving door through which professionals now move between the public and private sectors. We discuss all three of these steps below. (i) Resources and Compensation. To accomplish the desired expansion of enforcement, we see a need for more resources, but not simply to build a larger staff by hiring more people. It is also to attract and retain a larger number of elite personnel who are equal to the tasks that the ambitious reform agenda will impose. We would use an increase in resources mainly to boost compensation, which means taking the antitrust agencies out of the existing civil service pay scale. We do not see how the public agencies can recruit and retain necessary personnel without a significant increase in the salaries paid to case handlers and to senior managers. It surprises us that adequate compensation for civil servants is not a focus of attention in contemporary proposals for an expansion of antitrust enforcement, including new cases to take on the leading firms in the high technology industry and in other sectors. Consider two possibilities for compensation reform. The first is to align antitrust salaries to the highest scale paid to the various U.S. financial service regulators. Here the model would be the compensation paid to employees of the banking regulatory agencies; the salary scale for these bodies exceeds the General Schedule (GS) federal civil service wage scale by roughly twenty percent.54 In adopting the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010, 55 Congress concluded that the importance of the mission of the new Consumer Financial Protection Bureau (CFPB) warranted higher salaries for the agency’s personnel. If the higher salary scale made sense for the CFPB, we see no good reason why a more generous compensation schedule is not appropriate for the antitrust enforcement agencies.56 Are the duties entrusted to the federal antitrust agencies any less significant? Are the economic problems that the DOJ and the FTC (which is also the principal federal consumer protection agency and privacy regulator) are being called on to address – in the proceedings of this Committee and in many other fora -- any less significant? If the answers to these questions is “no,” Congress should allow the antitrust agencies to pay at least the same wages as the CFPB does. Our second alternative requires a more dramatic change, which we would implement in the first instance at the FTC.57 We would triple the FTC’s existing budget of about $330 million per year and use the increase mainly to raise salaries and partly to add more employees. This experiment might be carried out for a decade to test whether a major hike in pay would increase the agency’s ability to recruit the best talent, retain the talent for a significant time, and apply that talent with greater success in a program that involves prosecuting numerous ambitious cases and devising other significant policy initiatives. We see a major increase in compensation, either by adopting the CFPB model or trying our more dramatic alternative, to be a crucial test of the commitment and sincerity of elected officials who say a major expansion of antitrust enforcement is necessary to correct grave market power problems involving digital platforms. If fundamental competition policy reforms are vital to the nation’s well-being, then the country should spend what it takes to get the best possible personnel to run the difficult cases (and carry out other measures, such as the promulgation of trade regulation rules) that will be the pillars of a new, expanded enforcement program. Such steps will become even more important if new political leadership seeks to close the revolving door, which has operated as a mechanism to encourage attorneys and economists to accept lower salaries in federal service in the expectation of receiving much higher compensation in the private sector at a later time. In considering these proposals, legislators should take no comfort in the idea that the sense of satisfaction that can come from serving noble goals in public service creates a sufficient inducement for the best personnel to come to the DOJ, the FTC, or other federal agencies and stay there, notwithstanding the huge disparity in salaries between civil servants and their private sector counterparts. From personal experience working inside public institutions58 and studying their operations as academics, we are convinced that civil servants in the United States and in many other countries derive genuine “psychic income” from their work, and this reward offsets, to some degree, the wage disparities with the private sector. In the United States, the psychic income for civil servants at the DOJ and the FTC is evaporating quickly. In articles, books, blog posts, press releases, and tweets, a large body of commentators (including elected officials) today depict the federal antitrust agencies as “useless” and portray their activities as “toothless,” or worse.59 Who would aspire to join, or remain at, such institutions?60 A dramatic expansion of enforcement could create a temporary buzz of excitement that draws first-rate talent into the agency, but only for a time. As experience at the DOJ and the FTC in the 1970s shows, the excitement wears off after a few years as attorneys and economists, facing relentless opposition from better-resourced teams acting for defendants, leave the agencies for other jobs. Over time, there is no getting around the need to compensate civil servants properly in the paycheck, and not with appeals to patriotic spirit, if they are to persevere in conducting arduous cases, rules, or studies.

### DA Sovereignty

#### Unilateral imposition of extraterritorial antitrust liability escalates to war! — And collapses cooperation on other issues, and trade flows

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Steven R. Salbu, The Foreign Corrupt Practices Act as a Threat to Global Harmony, 20 MICH. J. INT'L L. 419 (1999), Available at: <https://repository.law.umich.edu/mjil/vol20/iss3/1>

The world is too culturally diverse to accept the external imposition of laws without resentment. 154 [ FN 154] 154. For comparison, consider treaties through which signatories all agree to mutually accepted conditions and terms that apply only to the signatories themselves. Within these bounds, no laws are being applied extraterritorially without the consent of the local sovereignty. In contrast, FCPA-style legislation, now to be adopted in dozens of countries, restricts behavior even in non-signatory nations that have not consented to the intrusion. [End FN] Under these conditions, extraterritorial legal fiat is at the very least insulting and distasteful.'55 Transnational relations likely will be strained by the overreaching of any one nation into the affairs conducted within the borders of another.'56 As one commentator suggests, other nations "may perceive the FCPA as a culturally arrogant encroachment on their ability to govern activities exclusively within their own borders, in accordance with international law principles on territorial sovereignty."''57

While the risk of being perceived as obnoxious and intrusive is hardly insignificant, it pales when compared with a more serious risk--the increased likelihood that transnational relations will become strained,'58 and that nationalistic sentiments will flourish in response to the perceived invasiveness of the extraterritorially applied laws. 5 9 The results of this scenario can range from mounting hostilities over other issues to the severance of trade,' 6 0 and potentially even to military confrontation.161 [Footnote 161] 161. The potential for hostilities over extraterritorial legislation to escalate to the point of military confrontation is a logical possibility, rather than a trend in recent history. Indeed, even U.S. antitrust law, the extraterritorial application of which has evoked substantial retaliatory reaction, has not led to this extreme. See William S. Dodge, Extraterritoriality and Conflict-ofLaws Theory: An Argument For Judicial Unilateralism, 39 HARV. INT'L L.J. 101, 165 (1998) (noting that while extraterritoriality of U.S. antitrust law has evoked blocking statutes and claw-back statutes, it has not caused the cessation of international cooperation). While we have yet to see hostilities over U.S. extraterritorial legislation escalate to the point of war, the potential for such a scenario can never be ruled out. [End FN] Thus, van den Berg observes that extraterritorial application of the Helms-Burton Act in Canada has fueled an "international perception of the United States not only as a cultural imperialist but as a growing legal imperialist."' 62 Perhaps more threatening to the delicate global diplomatic balance, the reach of the Helms-Burton Act has sparked an unforeseen and undesirable alliance between Canada and Cuba, 163 in effect undermining U.S. efforts to apply economic sanction pressures in the latter. Simply stated, laws resented for their overreaching nature can be counterproductive.

Van Wezel Stone identifies similar risks in another area where extraterritorial law has been posited as a possible global solutioninternational labor regulation.'" She notes that because extraterritorial jurisdiction does not aspire to be integrative, it fails to contribute to a common international system of norms and standards.' 65 Instead, extra-territorial jurisdiction tends to undermine international peace and cooperation by creating tension and destabilizing international relations.'" Sovereign nations "react with intense hostility when... activities within their own borders are made the subject of investigation by a foreign nation applying foreign rules and procedures.' 6

The world is not sufficiently homogenized to embrace one conceptualization of morality in gray areas, '6 8 and attempts to force a unified fit via extraterritorial legislation are likely to spark ill will and retaliation.'69 Such hostilities can result, of course, whenever one country imposes its rule upon transactions that occur in another country. The potential is increased when vague laws are applied to the ambiguous conditions of markets in transition, such as communist economies that are in the process of converting to capitalist ones. 70 This suggests a danger in externally-based efforts to unify legal structures addressing such moral issues. Must we therefore throw up our hands in despair, and abandon all exertions to extirpate bribery and corruption? The answer is decidedly no. Abdication of responsibility to improve global markets would be as irresponsible as overweening intrusion into the affairs of other nations. The appropriate middle ground between complacency and invasiveness is persuasion.

**Protectionism causes global wars**

**Palen 17** – historian at the University of Exeter

Marc-William Palen, "Protectionism 100 years ago helped ignite a world war. Could it happen again?," The Washington Post, 6-30-2017, https://www.washingtonpost.com/news/made-by-history/wp/2017/06/30/protectionism-100-years-ago-helped-ignite-a-world-war-could-it-happen-again/

The liberal economic order that defined the post-1945 era is disintegrating.

Globalization’s foremost champions have become the first to signal the retreat in the wake of the Great Recession. Economic nationalism, historically popular in times of economic crisis, is once again on the rise in Britain, France and the United States. We are witnessing a return to the antagonistic protectionist politics that defined a bygone era that ended with World War I — suggesting that today’s protectionist revival threatens not just the global economy, but world stability and peace.

Leading liberal democracies have turned their back on free trade. Britain, through Brexit, announced its retreat from European market integration. Before the parliamentary elections, British Prime Minister Theresa May announced a new Industrial Strategy, which includes state subsidization of select industries and stringent immigration restrictions on foreign workers at “every sector and every skill level.” Despite her post-election collapse in support, May continues to move forward with leaving the European Union single market thanks to an unholy alliance with the Democratic Unionist Party, Northern Ireland’s far-right supporters of Brexit.

Likewise, in the recent French presidential elections the vast majority of candidates ran on a platform of “patriotisme économique.” Marine Le Pen, leader of the French far-right National Front party, made a strong bid for the French presidency through a campaign that combined a condemnation of globalization alongside the promise of extreme economic nationalist legislation and an end to immigration into France. President-elect Emmanuel Macron is now pushing hard for a “Buy European Act” to placate French anti-globalization forces.

But nowhere has the anti-trade turn been more marked than in the United States, where “globalism” has become a dirty word. “Free trade’s no good” for the United States, as Donald Trump put it in 2015. President Trump has threatened to shred the North American Free Trade Agreement and to impose protective tariffs on imports from Mexico and China, two of America’s largest trading partners.

In January, a paranoid Trump pulled the United States out of the Trans-Pacific Partnership negotiations — a massive free-trade deal that included a dozen countries in the Asia Pacific — because he believed that the Chinese were secretly plotting to use it to take advantage of the U.S. market.

And in April, Trump signed a “Buy American, Hire American” executive order that forces U.S. government agencies to purchase domestically made products and limits the immigration of foreign skilled workers.

This widespread fear of the global marketplace and the looming threat of tit-for-tat trade wars herald a return to late 19th-century geopolitics. Then, too, many of the leading economies of the day took shelter behind high tariff walls to halt the forces of globalization. Following the onset of an economic depression in the early 1870s, one industrializing country after another turned against trade liberalization. Trade wars, colonialism and closed markets became the name of the geopolitical game.

In stark contrast to today, back then only Britain stuck to free trade with “all the world.” Yet even free-trade bastion Britain was not without its domestic economic nationalist enemies.

In response to the late 19th-century turn to protectionism among Britain’s competitors, formidable right-wing British organizations like the Fair Trade League and the Tariff Reform League emerged to champion retaliatory tariffs and an imperial trade preference system. And the political leader of the turn-of-the-century British imperial protectionist movement was none other than Joseph Chamberlain, Theresa May’s “political hero.”

“Fortress France” turned away from free trade in 1892, the culmination of a decade-long “protectionist backlash” to the ongoing economic depression. The protectionist measure exacerbated the Franco-Italian trade war, which Italy had started with its turn to protectionism in the mid-1880s. Trade between these countries fell considerably, pushing Italy ever closer to Austria-Hungary and Germany — the Triple Alliance — in the years before the First World War.

The United States, however, topped the list of protectionist states. The political and ideological power of protectionism in late 19th-century America — the Gilded Age — was palpable. The Republican Party, formed as the party of antislavery in the 1850s, fast remade itself as the party of protectionism following the Civil War.

Hoping to protect U.S. industries from the unpredictable gales of unfettered global market competition, the ultranationalist party tacked its sails to the “American System” of high tariffs and government subsidization of domestic industries.

More than a century before Trump’s “America first” policy, slogans like “America for Americans — No Free Trade” filled Republican Party convention halls.

For paranoid Gilded Age Republican protectionists, free trade became tantamount to conspiracy.

The GOP’s lead spokesman on the tariff at that time was a short, cigar-smoking politician from Ohio named William McKinley. “The Napoleon of Protection,” as he was dubbed, had well earned the moniker by the time he entered the White House in 1897.

Like the Trump administration today, McKinley viewed free trade with suspicion, although the target of McKinley’s free-trade conspiracy theories was the industrial powerhouse of Britain instead of Trump’s China. McKinley, throughout his long Republican career, charged his pro-free-trade political opponents with being part of a vast British conspiracy that sought to sap America’s high tariff walls and undermine infant American industries. The conspiracy, he argued, included “free trade leaders in the United States and the statesmen and ruling classes of Great Britain”; American free traders were pawns, agents of “the manufacturers and the traders of England, who want the American market.”

Countering Republican conspiracy theorists, late 19th-century U.S. free traders argued that trade liberalization fostered international stability and peace, and that, by contrast, the era’s global uptick in imperialism and war only illustrated how protectionism fomented geopolitical rivalry and conflict.

Trump, tapping into long-standing Republican fears of free trade, is knowingly returning the GOP to its paranoid protectionist roots — a move against globalization that is also building up populist momentum in Britain and France.

The protectionist resurgence among the leaders of post-1945 globalization — be it Brexit, patriotisme économique, or “America first” — holds dire consequences for the liberal economic order by pitting nations against one another and breeding suspicion, distrust and conspiratorial thinking. The ultranationalism, militarism and tariff wars of the late 19th century spilled over into the 20th century, and ended in world war — suggesting a return to the protectionism of old could damage far more than national economies.

#### Antitrust key—Reverse-causal

--We control uniqueness: *protectionism* is inevitable, but strong trade barriers + the political lawmaking constituencies around them make doing things like tariffs broadly infeasible, so it’s try or die for global trade to prevent antitrust law becoming inflected with a protectionist and arbitrary bent that gets modeled!

Murray 19 – Chief Growth Officer, CheckAlt; Judicial Law Clerk, US Bankruptcy Courts

Allison Murray, JD, Loyola Law School, 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?, 42 Loy. L.A. Int'l & Comp. L. Rev. 117 (2019), Available at: <https://digitalcommons.lmu.edu/ilr/vol42/iss1/3>

Trump. Le Pen. Brexit. Protectionist rhetoric has consumed the international political stage. Western countries and their leaders were once the drivers of economic globalization, relying on free-market speeches and the prospect of removing trade barriers to appeal to their constituents.1 They pointed fingers at other countries engaging in or encouraging protectionist behavior and challenged them in the court of public opinion and elsewhere to stop their antics. The “our country first, world trade after” mentality was widely politicized and vilified. Now, it seems that Western national leaders are championing the very protectionism that they once criticized.2

Although a system of truly free world trade has never been perfected, past world leaders have eliminated most of the protectionist trade mechanisms that once ran rampant in the international economy. They did so by implementing multilateral and bilateral trade agreements. These webs of agreements have bolstered decades of support for free trade, or at least some version of it. By and large, tariff policies and other forms of protectionism were either eliminated or dramatically reduced. Now, as we have seen in the media, when a government imposes a tariff, it becomes a rather extreme political statement which sends a shockwave of significant global consequences.

Protectionism did not end when the age of overbearing tariff policies did, despite then-leaders’ best efforts to vilify it. Rather, the end of the tariff era forced nations to achieve protectionist goals through more subtle trade vehicles, like antitrust law.3 So, the recent resurgence of protectionist rhetoric should mean that these subtle trade vehicles, including antitrust law, will be relied on more heavily. It is a fear of many that antitrust law may become overused and inequitably applied to achieve and combat protectionist aims.

Notwithstanding the recent uptick in tariff threats, it is unlikely that all Western leaders will revamp or terminate the trade agreements set forth by their predecessors and bring back the kinds of tariff policies that once existed in their place. Although in the United States (“U.S.”), President Trump recently imposed tariffs on steel imports, it appears that his intent is to limit this behavior to a specific industry rather than institute a widespread policy favoring the use of tariffs generally.4 To remedy bad behavior in a specialized set of industries is not to instigate a global paradigm shift. This purpose is underscored by his use of the national security exemption, which is largely interpreted as being used for individual situations rather than general policy schemes.5 Many still hope that his course of action will be retracted and is merely a strong negotiation tactic. However, there is no doubt that Trump is far more comfortable than past leaders with subverting the status quo on trade relations.

Trump is not the only high-profile leader flirting with staunch protectionism. Western leaders in the E.U. appear to be growing more comfortable than their predecessors with considering similar policies. However, Western lawmakers themselves do not seem as persuaded by the statements of their leadership. The general sentiment among international policymakers is that there has been too much political wherewithal spent on loosening international trade barriers to take actions that could counteract that progress.6 Presidential actions taken because of dissatisfaction with current global trade relations aside, a complete overhaul of trade agreements may be too daunting and difficult a task, especially absent ample political support in legislative bodies.

Given the anticipated continuation of cooperative trade agreements and the proliferation of protectionist rhetoric as the new norm of public opinion, leaders will be forced to rely on existing avenues to meet protectionist aims. Again, we find ourselves relying squarely on antitrust law, the more subtle and widely accepted mechanism of restricting trade, to address perceived inequities. In the words of the World Trade Organization (“WTO”), “once formal trade barriers come down, other issues become more important.”7 Among the important issues lies antitrust law. Antitrust and competition laws can form a subtle trade barrier resulting in the imposition of tariff-like measures.

Antitrust law can be enforced to reach protectionist aims and to combat them. It is a tool that allows nations to achieve individual protectionist aims without undermining the future of trade between countries and the cooperative framework underpinning the relatively delicate global free trade enjoyed today. However, the perception of enforcement of antitrust laws as an abusive and solely protectionist mechanism may cause the death of even the smallest semblance of international free trade that remains in the international marketplace today.

This paper explores how the near-term enforcement of antitrust and competition laws may be either the last hope for preserving aims toward a free global economy or the final nail in free trade’s coffin. We will begin by examining the background of antitrust and competition laws, explaining the goals and economic theories at the heart of the laws, including the myriad of criticisms. Next, we will take a general view of the prevalence of competition laws in the world market, revealing the differences in underlying theory and enforcement by the top three players on the international trade stage. This paper will finish with the subject most at the center of the recent rise of protectionist rhetoric: the perception of unfair enforcement of antitrust laws among the United States, the European Union, and China.

### CP Advantage

#### The United States federal government should

#### Increase regulatory enforcement and streamlining of critical supply chains

#### Support R&D and public private partnerships to secure supply chains

#### Improve national infrastructure to boost innovation in supply chains

#### That solves advantage 1 – delinks essential supply chains from China

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Eleftherios Iakovou and Chelsea White, December 3 2020, “[How to build more secure, resilient, next-gen U.S. supply chains](https://www.brookings.edu/techstream/how-to-build-more-secure-resilient-next-gen-u-s-supply-chains/),” Brookings, https://www.brookings.edu/techstream/how-to-build-more-secure-resilient-next-gen-u-s-supply-chains/

Supply chain resilience has already emerged at the forefront of the United States’ research and development agenda. In identifying R&D priorities for federal agencies for fiscal year 2021, the Office of Science and Technology Policy at the White House [has called](https://www.whitehouse.gov/wp-content/uploads/2019/08/FY-21-RD-Budget-Priorities.pdf) for the development of resilient advanced military capabilities and improved resilience of critical infrastructure and U.S. advanced manufacturing to natural and man-made disasters, including cyber-attacks and exploitation of supply chain vulnerabilities.

Following the COVID-19 pandemic, policymakers are now calling for supply chains of critical goods, especially medical supplies and high-tech products, to be reshored to the United States. But the complete reshoring of such supply chains cannot be the answer. Domestic suppliers can also be disrupted. And such a move would make U.S. businesses less competitive, putting them at a disadvantage with businesses of other (often adversarial) nations that continue [to embrace globalization and support key industries](https://www.cornellpress.cornell.edu/book/9781501725913/chinese-economic-statecraft/#bookTabs=1) with aggressive industrial policies, including subsidies and currency manipulation. The result may be reduced appeal of U.S. products in foreign markets, increased costs to U.S. consumers, reduced shareholder value for investors, and the erosion of the United States’ global innovation leadership, as [complete reshoring would hinder](https://www.foreignaffairs.com/articles/2020-04-01/how-pandemic-proof-globalization) its openness to ideas, people, and sourcing of parts and [may not make](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3609677) the U.S. economy more resilient to pandemic-type shocks.

The design and operation of a supply chain is highly dependent on the product. Functional products with long life cycles and relatively small demand variability require cost efficient supply chains that can be offshored. Innovative products with short life cycles and relatively high demand variability [require](https://hbr.org/1997/03/what-is-the-right-supply-chain-for-your-product) market-responsive supply chains with nearshored or domestic sourcing and production. Products of critical importance to defense, security, health, and national competitiveness require the federal government to take a special interest in their supply chains. Today, such products include rare-earth metals, artificial intelligence, hypersonic weaponry, 5G technology, semiconductors, pharmaceuticals, synthetic biology, and specialized medical equipment.

The competitiveness, resilience, and security of these supply chains, embracing holistically R&D, planning, procurement, manufacturing, distribution, and maintenance along with the cultivation of a national manufacturing ecosystem of small to medium enterprises is key to U.S. national security. Achieving this requires an understanding of a given industry’s “[clock speed](https://books.google.com/books/about/Clockspeed.html?id=KlVvQgAACAAJ)”, which refers to the speed at which it introduces new products, processes and organizational structures; government and regulatory processes; and manufacturing operations for repair and maintenance, which are often not synchronized across these supply chains. Federal government interventions to cultivate supply chain resilience must work in tandem with a given industry’s clock speed.

As it responds to the pandemic, the United States has made some moves to improve its supply chain resiliency, including provisions in the CARES Act economic relief package to investigate U.S. medical supply chains. President-elect Joe Biden has announced a plan to rebuild U.S. supply chains that aims for broad-based resilience as opposed to pure self-sufficiency. Additionally, there have been multiple Senate hearings to examine the integrity and reliability of critical supply chains following the onset of the pandemic. There are a number of other policy interventions the U.S. government might take to promote more resilient and competitive supply chains. These interventions include:

Mapping supply chains that are critical to U.S. health and economic security in order to identify potential vulnerabilities and threats. Supply chain mapping provides visibility to “the suppliers’ suppliers” and can be laborious and time intensive, as it is often conducted on paper. Following the 2011 tsunami in Japan, for example, a team of 100 executives of a global semiconductor giant [needed](https://www.economist.com/special-report/2019/07/11/multinational-companies-are-adjusting-to-shorter-supply-chains) more than one year to complete this task. Embracing novel digital approaches to illuminate the relevant extended supply networks [is imperative](https://www2.deloitte.com/global/en/pages/risk/articles/covid-19-managing-supply-chain-risk-and-disruption.html) to help identify what data are important for the development of well-informed policy interventions and operations.

Investing to improve national logistics infrastructure, including its “hard” (ports, roads, rail networks) and “soft” infrastructure (the service industries that underpin logistics) with a focus on improved customs performance, supply chain reliability and service quality, cybersecurity, environmental sustainability, and skills shortages. These priorities [would further raise](https://openknowledge.worldbank.org/handle/10986/29971) the United States’s ranking in supply chain performance, global logistics connectivity, and competitiveness. Such long overdue investments unfortunately were not made in the globalization-driven economic boom of the 1980s, when policymakers [failed to embrace](https://www.basicbooks.com/titles/dambisa-moyo/edge-of-chaos/9780465097470/) long-term thinking.

Ensuring that IP law, R&D incentives, education and work force training infrastructure, and societal attitudes toward diversity and inclusion [support](https://www.hup.harvard.edu/catalog.php?isbn=9780674019942) the [innovation ecosystem](https://books.google.com/books/about/How_We_Compete.html?id=Va21AAAAIAAJ) to accelerate [idea creation](https://www.basicbooks.com/titles/richard-florida/the-rise-of-the-creative-class/9781541617742/) and the process of turning ideas into useful products, services, or processes.

Establishing a “one stop shop” federal agency for harmonizing relevant regulatory interventions (e.g. relevant efforts by the General Services Administration, the Defense Logistics Agency, NIST, Department of Labor, DHS, the Federal Trade Commission, and the State Department), and the development of comprehensive national strategies for competitive, secure, and resilient U.S. manufacturing supply chains.

Further investing in public-private partnerships, such as the [Manufacturing USA](https://www.manufacturingusa.com/) program, supporting a continuum of research from early (basic research) to late technology readiness levels (commercialization) to facilitate the transition of innovative technologies into scalable, competitive, and high-performing domestic manufacturing capabilities.

### DA M&A

**Healthcare consolidation is booming now and has momentum for the future**

**Diamond et al. 21** – Brandee Diamond is an M&A partner at Foley & Lardner LLP; Louis Lehot is an emerging growth company, venture capital, and M&A lawyer at Foley & Lardner; Eric Chow is an M&A lawyer with Foley & Lardner LLP

Brandee Diamond, Louis Lehot, and Eric Chow, "Healthcare Shines in M&A’s Major Comeback So Far In 2021," Healthcare Innovation, 4-12-2021, https://www.hcinnovationgroup.com/finance-revenue-cycle/mergers-acquisitions/article/21218175/healthcare-shines-in-mas-major-comeback-so-far-in-2021

In 2020, everything changed. Jobs were cut, businesses were shuttered, and too many people lost their lives. But the global pandemic also triggered a response that is creating new jobs, stimulating innovation, and **forging new business models**. The market for mergers and acquisitions has **weathered the storm** of COVID-19 and is **surging** into the second quarter of 2021 with **all pistons firing**, particularly in **healthcare**.

Today, there is so much more besides COVID testing and vaccinations happening behind the doors of healthcare providers worldwide. Think about it. Your town's family doctor's office down the street might now be part of a giant healthcare system. Or, your local urgent care center may be considering a merger with a leading healthcare corporation. These are unprecedented times in virtually every facet of the word in every nook and cranny on the planet, and **healthcare is at the forefront** when it comes to M&A.

In 2020, the healthcare industry was **beaten down** from the **overflowing** of COVID patients causing the **ripple effect** of non-emergency procedures' **postponements**. Looking forward, however, healthcare M&A activity is **set to increase** with the return of non-urgent **medical interventions** and healthcare companies **betting on growth** to get stronger and healthier.

The 2021 rebound

Early in 2020, there was a massive drop-off in M&A deals compared to the prior-year period, particularly for more significant transactions. However, the M&A market still had plenty of **potential for momentum**. Tragically, as the coronavirus's **full impact hit** by late March, most deal-making came to a screeching halt. Since companies put their resources into transitioning staff to working from home, reviewing finances, and maximizing dollars, many **paused** any pre-planned M&A deals and stopped filling the top of the funnel for a new pipeline.

As companies, investors and bankers adapted to virtual deal-making over the last year, M&A in sectors unaffected or boosted by the lockdown slowed. By summer 2020, transactions grew each month with key announcements in technology and **healthcare** corporate **consolidations**. Despite a slowdown for deals in the second quarter of 2020, activity increased in the second half, triggering an annual volume above $3 trillion for the seventh year in a row. And by winter, the pace of M&A deals **exceeded the historical average** with a fourth-quarter record of 1,250 global M&A transactions, equal to over $1 trillion.

This year, there is already **significant growth** on the horizon. In fact, 53 percent of U.S. executives said their companies plan to **increase M&A investment** in 2021. And, according to Morgan Stanley, “**All the elements** **are there** for an active M&A market in 2021, from corporations looking for **scale and growth** to private equity firms and SPACs looking to **invest capital**.” For some, growth will come from market leaders finding strength in a recovering economy. In contrast, others that have seen business models destroyed by the pandemic will explore how smaller deals in complimentary sectors can help innovate their businesses. Overall, targets will come from sellers, including businesses that have **struggled during the recession**, private investors, and companies that are reassessing assets.

M&A activity in healthcare to watch

As 2021 unfolds, there will an increase in **urgent care M&A activity**. We will likely see urgent care systems **buying smaller urgent care systems**, healthcare companies that don't have much to do with urgent care making **mergers and acquisitions**, and urgent care buying companies that complement their services. For example, retail chains like Walmart and CVS are opening more healthcare clinics. These days, urgent care clinics are not just used for emergency or immediate problems but are now also giving out vaccines and even doing annual physicals.

In healthcare, a merger's primary goal is to improve the quality of care while concurrently driving efficiencies that should lower costs. The reality is that today, it’s becoming more challenging to **stay in business** when your company is only known for one thing. Oftentimes, larger companies **offer more services**, which helps the patient and the provider’s pocket. Most of the time, consolidation happens because **customers prefer to combine trips**. The **fear of exposure** to the virus and **aiming to limit outings** will likely **push healthcare** companies to **make moves in M&A** as it relates to consolidation.

As of late, youth sports activities have become more sophisticated, with more businesses catering to them. As popularity grows, unfortunately, sports-related injuries grow too - creating **more opportunities** for healthcare companies. Ultimately, the pandemic is another reason for healthcare companies to offer **all-in-one** facilities. Despite the factors fueling deals, healthcare companies are going to see **more M&A activity** is due to the **growth vector** it can bring to a business.

M&A trends triggered by COVID-19

Several significant trends may characterize a robust M & M&A market for the rest of 2021 and beyond. First of all, we can expect **more megadeals** (transactions of at least $5 billion) in 2021, from pharma companies acquiring early-phase products and private equity acquisitions. With larger companies leading in this area, this activity will come even as company valuations have increased from their COVID-19 lows. The increase in megadeals in the second half of 2020 helped total U.S. deal value bounce back strongly going into 2021.

In addition, companies pursuing stock-for-stock mergers to gain scale comprised many of the largest corporate M&A transactions. Scale has always been important, and the pandemic has proven that you have to be **large enough** in order **to survive**. **Scale** and **more access** to capital markets have been a **considerable benefit** for larger companies. As the pandemic rages on, corporates remain focused on accessing capital, strengthening positions, and **investing in scale**, and consolidations **should continue** in sectors powered by technology and **healthcare**.

Private equity firms should continue to contribute to 2021 M&A volume meaningfully. In 2020, sponsor-backed transactions comprised 26 percent of M&A activity - the highest since before the financial crisis. In fact, by the end of 2020, financial sponsors had a record $2.9 trillion of capital. Last year, we saw many traditional private-equity funds investing across the capital structure to provide companies with cash during a challenging time.

Looking ahead

Looking later in 2021 and beyond, as vaccinations increase and business conditions in COVID-impacted sectors improve, companies will likely focus more on spending to accelerate growth, scale, and digitize their businesses.

As the global economic rebound aims for more growth this year, those **low-interest rates** will continue to make borrowing cheaper than ever before. This, along with the prospect for companies’ **renewed confidence** to spend, could create **more deals**, especially in **healthcare**-related business. So, M&A remains one of the most attractive ways to achieve growth, which should make 2021 a busy year…

**Consolidation is necessary to preserve rural hospitals, but antitrust expansion deters and prevents necessary mergers**

**Kaufman 20** – chair of Kaufman, Hall & Associates LLC

Ken Kaufman, "Removing Antitrust Barriers to Solve the Rural Health Care Crisis," Morning Consult, 1-2-2020, https://morningconsult.com/opinions/removing-antitrust-barriers-solve-rural-health-care-crisis/

Almost 120 rural hospitals have closed since 2010, and an estimated **21 percent** of rural hospitals are at **high risk of closure**.

The high number of financially stressed hospitals is creating a **crisis of access** for rural communities and a potential **crisis of quality** and patient safety, as these hospitals **struggle to secure** **sufficient** clinical and technological **resources**. These struggles can be even more difficult in towns that could once support two hospitals but can **no longer do so**.

A **solution** to the rural health crisis that promotes **partnerships** with larger health systems addresses two critical needs. First, it enables a **rational, equitable approach** to a fundamental restructuring of rural health care resources. Second, it provides **access to sufficient financial resources** to ensure that rural communities are able to benefit from the same resources available elsewhere.

Antitrust impediments to a system-based approach

Current **antitrust law makes it difficult** for individual hospitals or health systems to **collaborate on efforts** to restructure delivery of essential services within a rural health care market. These efforts can, however, be pursued among facilities owned by a **single health system**, enabling a rational and equitable distribution of services across the health system’s network of facilities and the communities they serve.

The Federal Trade Commission and Department of Justice have themselves acknowledged the **value** of a **system-based approach** to rural health. In their 1996 “Statements of Antitrust Enforcement Policy in Health Care,” the agencies created a **safe zone** for mergers of certain hospitals with a low bed size and low patient census with other hospitals.

The agencies recognized that these hospitals often “will be the only hospital in the relevant market” and that “mergers involving such hospitals are **unlikely** to **reduce competition substantially**.” They also recognized that “rural hospitals … are unlikely to achieve the efficiencies that larger hospitals enjoy. Some of these cost-saving **efficiencies** may be **realized** … **through a merger**.”

The situation becomes **more difficult** when a community has two hospitals that do not fall within the safe zone and it can **no longer support both**. Such markets will be considered highly concentrated, and an attempt to merge the hospitals **likely will be challenged** by the federal agencies.

Several states have tried to overcome the likelihood of an antitrust challenge by granting certificates of public advantage to health systems that want to come together to more effectively pool resources and rationalize services within a rural market. But these efforts also are being challenged by the federal agencies.

The **threat** of **antitrust enforcement** actions **throws a chill** over health system-led efforts to make the **rural health care** delivery system **more rational**, economically viable and equitable. For example, the systems that combined to form Ballad Health went through a two-year process to secure the COPA that ultimately allowed their merger.

They willingly accepted state oversight of their efforts to rationalize health care delivery. Yet, they now face an order by the FTC to provide extensive information for a study on the impact of COPAs, even though long-term benefits will not be apparent just a year after the merger. The effort and **ongoing scrutiny** these systems take on certainly might **dissuade other health systems** from pursuing a **similar route**.

Rethinking competition in rural health care markets

The FTC and DOJ must revisit an approach that prioritizes competition over access to care and the quality and financial sustainability of the rural health care delivery system. The agencies have themselves acknowledged that competition among hospitals may not be a **practical reality** in rural communities.

The rural health care crisis is **happening now**; there is not time for multiyear studies of the impact of efforts to rationalize and improve rural health care. Health systems that **understand** and **are willing** to take on the challenges of rural health care markets should be **given the opportunity** to do so.

**Rural hospital closures cause massive food spikes**

**Alemian 16** – President & CEO of Alemian & Associates

David Alemian, "Rural Healthcare Is a Matter of National Security," HCPLive, 11-8-2016, https://www.hcplive.com/view/rural-healthcare-is-a-matter-of-national-security

Rural health organizations are already struggling with enormous turnover rates and costs that run up into the millions of dollars each year. The additional financial burden of penalties from Medicare and Medicaid will put many rural health organizations at risk of going out of business. If **too many** rural health organizations go **out of business**, it then becomes a matter of **national security** and here’s why:

In most rural communities, the healthcare organization is the **largest employer**. When the largest employer goes out of business, the **community collapses** and **people move away**. What was once a thriving community then **becomes a ghost town**. Rural America **produces the food** that feeds the rest of the country.

What will happen when our **amber waves of grain turn to desert wastelands** because there is **no one to work our great farmlands**? As the source of food dries up, and store shelves empty, the price of food will go **through the roof**. As food prices go up, hyperinflation will become a reality, and our printed money will **become worthless**. Almost **overnight**, Americans will **begin to go hungry** because they won’t be able to afford to put food on the table.

**Food insecurity causes conflict and war – continued US leadership is key and no one fills the vacuum**

**Flowers**, director of the Global Food Security Project and the Humanitarian Agenda at the Center for Strategic and International Studies (CSIS), **‘18**

(Kimberly, “Keeping it Stable: The Connection Between Hunger and Conflict,” January 31, <https://www.georgetownjournalofinternationalaffairs.org/online-edition/2018/1/31/keeping-it-stable-the-connection-between-hunger-and-conflict)>

Although achieving this SDG’s targets in totality is unlikely, a global focus on reducing poverty, malnutrition, and hunger around the world **remains essential** both as a universal moral value in a world of inequalities, and as an important contributor to economic growth and **national security**. The United States has been a **global leader** in **addressing the root causes** of hunger and poverty through **agricultural development**, including President Obama’s leadership role in creating the L’Aquila Initiative at the 2009 G8 summit in Italy. The initiative emerged in **response to a food price crisis** and resulted in a promise by donors to provide $22 billion in agricultural development assistance over three years.

It is **more critical now than ever** for leaders within the Trump administration to continue to leverage that progress, starting with gaining a better understanding of the complexity of global food insecurity and its inherent connection with conflict. As food insecurity is both a cause and a consequence of conflict, addressing food insecurity goes well beyond a moral obligation; **it is a national security imperative.**

A lack of access to food can **spark unrest** among civilian populations, particularly when triggered by food **price spikes**. Hungry populations are more likely to express their discontent with unresponsive or corrupt leadership, perpetuating a **cycle of political instability** and further undermining long-term economic development. In addition, governments and non-state actors alike can **use food as a strategic instrument of war**, as witnessed in instances spanning from Sudan’s civil conflict in the 1990s to President Bashar al-Assad’s war-torn Syria today. In Syria, all sides have used food as a tool to **control** and **expel** populations. ISIS has used food resources as both a source of **funding** and a lure for **recruitment**. Food **weaponization** further **underscores the importance of United States** action to protect food security abroad and recognize strategies employed to transform a basic necessity into a military tool.

Today, between 1.2 and 1.5 billion people live in fragile, conflict-ridden states. These conflicts have pushed over 56 million people into crisis and emergency levels of food insecurity. The U.N. estimates that 65 million people are internally displaced within their own countries or are refugees in other countries. These numbers continue to rise as conflicts and violence **escalate across the world,** in countries like **Yemen**, South **Sudan**, and **Syria**, causing social and economic devastation. Meanwhile, the number of people dependent on humanitarian assistance has mushroomed. Projections indicate that by 2030, more than two-thirds of the world’s poor could be living in fragile countries.

The international community is increasingly recognizing the **linkages** between **food insecurity** and **political instability.** Sharp rises in global food prices in 2007 and 2008 sparked riots and street demonstrations in more than 40 countries across the world. Since political leaders started paying attention to this connection, there has been notable progress in increasing international attention and funding to address the root causes of hunger and poverty. The United States has dedicated roughly $1 billion to agricultural development since 2010 through its global food security programs. Thanks to the bipartisan Global Food Security Act that passed in July 2016, multiple U.S. agencies are implementing a global food security strategy that reduces poverty, bolsters resilience, and improves nutrition.

Even the U.S. intelligence community has noticed food security challenges. In November 2015, the National Intelligence Council released an assessment that linked food insecurity to political instability and conflict. The report states that the overall risk of food insecurity in many countries, **compounded** by demographic shifts and constraints on key resources such as land and water, **will increase** during the next decade. The assessment concludes that in some countries, declining food security will contribute to social disruptions and **large-scale political instability** or conflict. The intelligence community’s highlighting of the importance of food security as a diplomacy tool and security strategy broadens the number of stakeholders who are tracking, responding to, and mitigating food insecurity. It is no longer solely a focus for policymakers in the development space.

After nearly a decade of progress, global hunger is again on the rise. A U.N. report on food security and nutrition released last year estimates that 815 million people, or 11 percent of the global population, are chronically malnourished, an increase of nearly 40 million people over the previous year. Conflict and climate change are the two primary causes of this reversed trend. More than half of those experiencing extreme hunger live in countries affected by protracted conflict. Droughts and natural disasters also pose a serious threat to food security, particularly to smallholder farmers vulnerable to a volatile climate.

The 2017 State of Food and Agriculture report explains that conflict and climate change are responsible for rising global hunger levels. Smallholder farmers around the world will be forced to adjust to changing rainfall patterns and severe droughts and floods, which will directly impact their crops and incomes. Many weeds, pests, and pathogens are influenced by climate and thrive in warm conditions. Severe floods can wipe out fields and block market transportation routes, reducing smallholders’ abilities to maintain a sustainable income. Researchers, including those at the National Academies of Science, conclude that human-induced climate change and drought is one of the root causes of Syria’s conflict. Climate change thus places an added burden on countries with limited resources already struggling to feed their populations, as declining agricultural growth and incomes can create displacement and heighten hunger.

Food insecurity and climate change are not the sole cause of the conflict in Syria, but their contribution to the country’s instability cannot be ignored. Investing in international development programs and humanitarian **assistance** that fosters agricultural-led growth and **strengthens the resilience** of vulnerable people can **create peace**, improve lives, and **reduce conflict.** U.S. foreign policy priorities should include strengthening the health and prosperity of those less fortunate before a crisis occurs because our investments can help prevent a crisis in the first place. As Former Secretary of Defense Robert M. Gates said, “Development is a lot cheaper than sending soldiers.”

### K

#### Theorizing the economy in terms of neoclassical mental models of narrow causality makes it impossible to solve a slew of wicked 21st century problems. Try or die for a mission-oriented approach—We should “ask what kind of markets we want, rather than what problem in the market needs to be fixed.”

Mazzucato 21 – Professor in the Economics of Innovation and Public Value, University College London

Mariana Mazzucato, Founding Director of the UCL Institute for Innovation & Public Purpose (IIPP), MISSION ECONOMY: A Moonshot Guide to Changing Capitalism, Penguin Publisher, 2021, <https://www.penguin.co.uk/books/315/315191/mission-economy/9780241419731.html>

This book encourages us to apply the same level of boldness and experimentation to the biggest problems of our time – from health challenges such as pandemics, to environmental challenges such as global warming, to educational challenges such as the divide in opportunity and achievement between students partly caused by unequal access to digital technology. These ‘wicked’ problems require not just technological, but also social, organizational and political innovations. They are huge, complex and resistant to simple solutions. We must solve them – not merely accommodate them – by focusing policymaking on outcomes. And this means getting the public and private sectors to truly collaborate on investing in solutions, having a long-run view, and governing the process to make sure it is done in the public interest.

The moon landing was a massive exercise in problem- solving, with the public sector in the driving seat and working closely with companies – small, medium and large – on hundreds of individual problems. It required collaboration between government and many different sectors, from computing and electrical equipment to nutrition and materials. Government used its purchasing power to develop procurement contracts that were short, clear and massively ambitious. When the private sector sometimes failed to deliver, NASA threw back the challenge and did not pay until the solution was right. If successful, companies could grow through serving the new markets that government purchases opened up and scale up through a purpose-driven strategy.

What integrated all these efforts and gave them direction was that they were part of a mission – a mission led by government and achieved by many. Today, a ‘mission- oriented’ approach - partnerships between the public and private sectors aimed at solving key societal problems – is desperately needed. Imagine, for example, using public- sector procurement policy to stimulate as much innovation as possible – social, organizational and technological – to solve problems as diverse as knife crime in cities or loneliness of the elderly at home.

Of course, lessons from the moon landing cannot just be cut and pasted onto any challenge. But they do highlight the need to resurrect ambition and vision in our everyday policymaking. This cannot just be about bold statements. We have to believe in the public sector and invest in its core capabilities, including the ability to interact with other value creators in society, and design contracts that work in the public interest. We must create more effective interfaces with innovations across the whole of society; rethink how policies are designed; change how intellectual property regimes are governed; and use R&D to distribute intelligence across academia, government, business and civil society. This means restoring public purpose in policies so that they are aimed at creating tangible benefits for citizens and setting goals that matter to people – driven by public-interest considerations rather than profit.5 It also means placing purpose at the core of corporate governance and considering the needs of all stakeholders, including workers and community institutions, as opposed to just shareholders (owners of stock in a company).

In this context, ‘moonshot’ thinking is about setting targets that are ambitious but also inspirational, able to catalyse innovation across multiple sectors and actors in the economy. It is about imagining a better future and organizing public and private investments to achieve that future. This, in the end, is what got a man on the moon and back.

But there is a catch.

Conventional wisdom continues to portray government as a clunky bureaucratic machine that cannot innovate: at best, its role is to fix, regulate, redistribute; it corrects markets when they go wrong. According to this view, civil servants are not as creative and risk-taking as the entrepreneurs of Silicon Valley, and government should simply level the playing field and then get out of the way – so the risk-takers in private business can play the game.

This book’s thesis is that we cannot move on from the key problems facing our economies until we abandon this narrow view. Mission thinking of the kind I outline here can help us restructure contemporary capitalism. The scale of the reinvention calls for a new narrative and new vocabulary for our political economy, using the idea of public purpose to guide policy and business activity.6 This requires ambition – making sure that the contracts, relationships and messaging result in a more sustainable and just society. And it requires a process that is as inclusive as possible, involving many value creators. Public purpose must lie at the centre of how wealth is created collectively to bring stronger alignment between value creation and value distribution. And the latter should not only be about redistribution (ex post) but also predistribution ex ante: a more symbiotic way for economic actors to relate, collaborate and share.

It is essential to link the micro properties of the system – such as how organizations are governed – to the macro patterns of the type of growth desired. By rethinking how the relationships between the public sector and private sector can be better governed around public purpose, we can create growth that is better balanced and resilient, with new capabilities and opportunities spread across the economy. But this means, at the start, replacing the fashionable, bland terminology of ‘partnership’ with clearer metrics as to what a symbiotic and mutualistic ecosystem looks like; that is, one in which risks and rewards are more equally shared. In our era, unfortunately, the relationship is often parasitic: public-health funding is structured so that publicly financed drugs are too expensive for citizens to buy.

I call this different way of doing things a mission-oriented approach. It means choosing directions for the economy and then putting the problems that need solving to get there at the centre of how we design our economic system. It means designing policies that catalyse investment, innovation and collaboration across a wide variety of actors in the economy, engaging both business and citizens. It means asking what kind of markets we want, rather than what problem in the market needs to be fixed. It means using instruments such as loans, grants and procurement to drive the most innovative solutions to tackle specific problems, whether those be getting plastic out of the ocean or narrowing the digital divide. The wrong question is: how much money is there and what can we do with it? The right question is: what needs doing and how can we structure budgets to meet those goals?

### T

#### Interpretation – prohibit means to forbid a given practice – that’s distinct from restrictions

Kennard 93 – Judge, California Supreme Court

Joyce L. Kennard, THEODORE R. HOWARD et al., Plaintiffs and Appellants, v. GEORGE H. BABCOCK et al., Defendants and Respondents. No. S027061., Supreme Court of California, 1993, https://law.justia.com/cases/california/supreme-court/4th/6/409.html

As I pointed out earlier, the majority's conclusion is at odds with the great weight of authority. Also, in determining reasonableness based on the relationship between or among attorneys, the majority gives little regard to the relationship between the attorney and the client. Moreover, the majority fails to recognize that restrictive covenants are intended to and do restrict the practice of law. Rule 1-500 proscribes agreements that "restrict" the practice of law, not just those that prohibit "altogether" the practice of law. (Contra, Haight, Brown & Bonesteel v. Superior Court (1991) 234 Cal.App.3d 963, 969 [285 Cal.Rptr. 845] [rule 1-500 "simply provides that an attorney may not enter into an agreement to refrain altogether from the practice of law"].) To "restrict" means to restrain, to confine within bounds. (Webster's New Collegiate Dict. (9th ed. 1988) p. 1006.) To "prohibit" means to prevent, to [\*\*164] [\*\*\*94] forbid. (Id. at p. 940.) The terms are not synonymous.

#### They violate: Allows rule of reason analysis is a restriction not a prohibition

#### That’s a voter for limits and ground – allowing exemptions on the rule of reason lets the aff straight turn core topic DAs and get advantages based off clarifying vague statutes

### Supply Chains

#### Cartels are deterred – most recent evidence prices in aff arguments and concludes that cartels are on the decline.

Verbeke & Buts 08-17 – Professor of International Business and Strategy, McCaig Chair in Management, University of Calgary; Professor at the department of applied economics of the Vrije Universiteit Brussel

Alain Verbeke, Caroline Buts, “The Not So Brilliant Future of International Cartels,” Management and Organization Review, Cambridge University Press, August 2021, https://www.cambridge.org/core/journals/management-and-organization-review/article/not-so-brilliant-future-of-international-cartels/363CC718A5FD54F8BB390B9AB22150B7

A NOT SO BRILLIANT FUTURE OF INTERNATIONAL CARTELS?

As explained in the previous section, we do not dispute the possibility that international cartels could become more important in the future under carefully defined conditions. We are doubtful, however, even when accepting B&C’s broad definition of this governance mode, that international cartels will gain ground more generally, vis-à-vis other forms of governance in international business, when multinational enterprises face increased political risk.

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.

#### They can’t solve chip security – their evidence may be right that TSMC produces the majority of chips but NO CARDS say they achieved that dominance via violations of antitrust laws.

#### A number of issues make deterrence structurally impossible in antitrust – even after altering what is considered anticompetitive, effective enforcement is impossible.

Baer et al. 20 – Visiting fellow in governance studies at The Brookings Institution, former assistant attorney general of the Antitrust Division, former acting associate attorney general of the U.S. Department of Justice, former director of the Bureau of Competition at the Federal Trade Commission

Bill Baer, Jonathan B. Baker, Michael Kades, Fiona Scott Morton, Nancy L. Rose, Carl Shapiro, Tim Wu, “Restoring competition in the United States: A vision for antitrust enforcement for the next administration and Congress,” Washington Center for Equitable Growth, November 2020, https://equitablegrowth.org/research-paper/restoring-competition-in-the-united-states/

Antitrust enforcement faces a serious deterrence problem, if not a crisis. Deterrence is central to most civil and criminal law enforcement programs because catching every lawbreaker is either implausible or would require an immense enforcement apparatus. The antitrust laws, by their very nature, will always lack some of the deterrent clarity characteristics of other legal regimes.30 Yet there is reason to fear we have reached an extreme. Rather than deter anticompetitive behavior, current legal standards do the opposite: They encourage it because such conduct is likely to escape condemnation, and the benefits of violating the law far exceed the potential penalties.31

Antitrust enforcement’s current reactive posture has contributed to this problem. Enforcers typically respond to cases and complaints that come before them.32 Reactive enforcement works well when anticompetitive conduct is rare and is the exception across the U.S. economy.33

But reactive enforcement is unlikely to address wide-ranging competition problems, and may even exacerbate them, when it spreads limited resources broadly, making it difficult to tackle major competitive problems when powerful interests will expend substantial resources to defend their actions. A reactive approach also may largely accept existing legal precedents and try to operate within that reality. The combination can create a ratchet: Court decisions that limit enforcement tend to circumscribe later enforcement. There are no countervailing forces to convince courts to develop rules based on sound economics that will strengthen enforcement.

#### Supply chain relocation is inevitable – COVID and U.S.-China strategic rivalry ensure it.

**Suzuki 21** – Visiting fellow with the Japan Chair at the Center for Strategic and International Studies

Hiroyuki Suzuki, “Building Resilient Global Supply Chains: The Geopolitics of the Indo-Pacific Region,” CSIS, February 2021, https://www.csis.org/analysis/building-resilient-global-supply-chains-geopolitics-indo-pacific-region

Covid-19 Has Accelerated Supply Chain Restructuring

During the era of globalization over the last two decades, companies of all sizes have been building domestic and international supply chains that prioritize efficiency. However, rising labor costs in emerging economies, including China, and growing geopolitical uncertainty due to U.S.-China strategic rivalry, including the strengthening of protectionist policies in the United States, forced a reassessment of global business models—such as multinational corporations announcing plans to relocate their manufacturing operations to Vietnam and Mexico in 2018–19. The Covid-19 pandemic has greatly accelerated this trend and reaffirmed the importance of protecting citizens’ livelihoods by strengthening supply chains. In particular, the impact on essential commodities such as food and medicines and on social infrastructure, coupled with political tensions, provided an opportunity to promote policies of homeland security in many countries.

In response to an increasingly complex global economic environment, global corporations are taking the following measures to reduce supply chain risk:

▪ Reshoring

In short, this is a strategy to redirect manufacturing operations back to the home market. This trend has been evident since 2019, particularly in the United States due to tariff increases in the wake of the U.S.-China trade conflict that have caused the U.S. manufacturing import ratio (imports as a percentage of total domestic manufacturing output) to fall for the first time in almost a decade. In addition, the Covid-19 pandemic has increased awareness in the United States of the vulnerability of supply chains for critical items such as health care products and food, further encouraging policies that allow companies to repatriate their supply chains back to their home countries. However, in the case of developed countries, reshoring entire supply chains is not practical due to additional labor and overhead costs, so it is important to focus on strategic sectors for reshoring from a national security and industrial policy viewpoint.

#### BUT large scale restructuring is impossible.

Brown 20 – News Writer for MIT Sloan

Sara Brown, “Reshoring, restructuring, and the future of supply chains,” MIT Sloan, June 2020, https://mitsloan.mit.edu/ideas-made-to-matter/reshoring-restructuring-and-future-supply-chains

Companies are unlikely to completely abandon China

The new coronavirus has put a spotlight on the world’s reliance on Chinese manufacturing, and prompted speculation that supply chain restructuring might start with pulling out of China.

But “this is really not happening,” said Sheffi, the director of the MIT Center for Transportation and Logistics, at the EmTech Next conference last month. While some companies have been leaving China over the last decade as costs go up, Sheffi said most can’t, and won’t, move their supply chains out of the country completely.

China is a sophisticated supplier of many parts, he said, pointing out that clothing manufacturers who have left China for other countries are still buying Chinese textiles. Proof in point: While China’s share of clothing manufacturing has fallen over the last five years, its export of raw textiles, which are made with sophisticated large machinery, has gone up.

Even if sewing and parts of some other industries leave, “big industries invested decades in building up a whole ecosystem in China,” Sheffi said. “It will take decades and untold money to move out of China, so I don’t see it happening very quickly.”

Sheffi said none of the executives he’s interviewed for an upcoming book expressed plans to move out of the country entirely.

“They just can’t,” he said. Even if costs are high, China offers capability, speed, and sophistication — an entire ecosystem that can’t easily be replicated or replaced.

#### Laundry list of tech issues prevent a space elevator from being constructed

The Economist 18

The Economist, “Why the world still awaits its first space elevator,” The Economist, 1/30/18, https://www.economist.com/the-economist-explains/2018/01/30/why-the-world-still-awaits-its-first-space-elevator

FOR decades engineers and science-fiction writers have dreamed of lifts capable of carrying things into orbit from the Earth’s surface. Konstantin Tsiolkovsky, a Russian scientist, suggested the idea in 1895, inspired by the Eiffel Tower. And in 1979 Arthur C. Clarke wrote an entire novel, “The Fountains of Paradise”, about the construction of such a space elevator. Thanks to SpaceX and other private spaceflight companies, rocket launches have fallen in price in recent years. Each launch of the Falcon Heavy, which will become the beefiest rocket in the skies when sent up by SpaceX next week, costs around $90m. But whisking satellites, space probes and even people into orbit on a giant elevator might be cheaper, more reliable and more civilised than using giant fireworks—if one could be built. Unfortunately, the technical challenges are formidable.

The basic idea of a space elevator is to run a fixed cable from a point on the Earth’s equator to a space station directly overhead, in geostationary orbit (that is, at an altitude of 36,000km). Objects at that altitude circle the planet once a day, so they have the useful characteristic of appearing to hover over a fixed spot. Cargo-carrying vehicles can then be run up and down the cable. They need to be powered on the way up, but can reclaim energy as gravity helps them on the way down. These vehicles would have to be quite large to carry people: even if they moved at 500kph, the trip in each direction would take three days. And building a 36,000km-long high-speed railway on Earth would be hard enough. Building a vertical one into space would be much more difficult.

The chief obstacle is that no known material has the necessary combination of lightness and strength needed for the cable, which has to be able to support its own weight. Carbon nanotubes are often touted as a possibility, but they have only about a tenth of the necessary strength-to-weight ratio and cannot be made into filaments more than a few centimetres long, let alone thousands of kilometres. Diamond nanothreads, another exotic form of carbon, might be stronger, but their properties are still poorly understood. Even if a suitable material could be found, the part of the cable within the atmosphere would be subject to weather disturbances, and the vehicles running up and down it could also cause dangerous oscillations. Anchoring it to a moveable, seagoing platform might help, but keeping the cable steady would still be a tall order. A further worry is collisions: there are thousands of satellites and other items in orbit around the Earth, from an altitude of around 2,000km upwards. Any impact with the cable could cause disaster.

True believers in space elevators continue to look for ways around these problems, but they may be insurmountable. The idea refuses to die, however, possibly because of its elegance and simplicity. Perhaps the dream will be realised, just not on Earth. Building a space elevator between the moon’s surface and lunar orbit (to transport things such as visiting tourists or material mined on the moon) would be far easier, because of the weaker gravity and lack of atmosphere. Anyone hoping to take a space elevator into orbit from Earth, however, faces a long wait.

#### No one would build space elevators – not profitable and no political will

#### Tons of barriers prevent a transition to renewables – capital costs, subsisdies for fossil fuels, financing risks, regulatory issues and more are not solved by the plan

Beck and Martinot 4 – Renewable Energy Policy Project. Global Environment Facility.

Fred Beck and Eric Martinot, 2004 “Renewable Energy Policies and Barriers,” https://biblioteca.cejamericas.org/bitstream/handle/2015/3308/Renewable\_Energy\_Policies\_and\_Barriers.pdf?sequence=1&isAllowed=y

The need for enacting policies to support renewable energy is often attributed to a variety of “barriers” or conditions that prevent investments from occurring. Often the result of barriers is to put renewable energy at an economic, regulatory, or institutional disadvantage relative to other forms of energy supply. Barriers include subsidies for conventional forms of energy, high initial capital costs coupled with lack of fuel-price risk assessment, imperfect capital markets, lack of skills or information, poor market acceptance, technology prejudice, financing risks and uncertainties, high transactions costs, and a variety of regulatory and institutional factors. Many of these barriers could be considered “market distortions” that unfairly discriminate against renewable energy, while others have the effect of increasing the costs of renewable energy relative to the alternatives. Barriers are often quite situation-specific in any given region or country; nevertheless, three broad categories of barriers are discussed in this section.

#### Alt causes to warming – other countries outweigh

#### Grid is resilient

Niiler 19 – Science and technology writer for Wired and National Geographic.

Eric Niiler, “The Grid Might Survive an Electromagnetic Pulse Just Fine,” *Wired*, 30 April 2019, https://www.wired.com/story/the-grid-might-survive-an-electromagnetic-pulse-just-fine/.

OVER THE PAST few years, speculation has risen around whether North Korea or any other nation could detonate a nuclear weapon over the United States that would create an electromagnetic pulse and knock out all electricity for weeks or months. This doomsday hypothesis has been promoted by a former CIA director, a commission set up by Congress, and a book by newsman Ted Koppel. But a sober new engineering study by industry experts finds that key equipment on the grid can be protected from any such EMP. Even if it could happen, the resulting blackouts would affect a few states but wouldn't turn the US into a backdrop for The Walking Dead.

The study, by the Electric Power Research Institute, a utility-funded research organization, finds that existing technology can protect various components of the electric grid to buffer it from the effects of solar flares, lightning strikes, and an EMP from a nuclear blast all at the same time: a three-for-one surge protector. “We have a strong technical basis for what the impacts [of an EMP] might be,” says Randy Horton, EPRI project manager and author of the report being released today. “That is one thing that didn’t exist before.”

Horton says that EPRI technicians worked with experts at the Department of Energy labs at Los Alamos and Sandia to simulate some effects of an EMP on substations and distribution systems. They also did real-world testing of electrical equipment at an EPRI laboratory in Charlotte, North Carolina. The study, which took three years to complete, looks at the effects of three kinds of energy spawned by a nuclear detonation.

The first high-energy wave occurs in just a few nanoseconds and is called an E1. The second wave, called an E2, lasts up to a second and can fry electric systems the way a lightning strike does, unless they are properly grounded. Effects of an E2 wave on the grid are expected to be minimal. The third kind of wave can last for tens of seconds and is similar to what utility operators might expect from a low-frequency, long-duration solar flare or geomagnetic storm. The report says that the combination of an E1 and E3 would cause the most damage over the widest area.

Horton says simulations and testing by EPRI contradicts earlier findings that an EMP would wipe out the US grid. “You could have a regional voltage collapse, but you wouldn’t damage a large number of bulk power transformers immediately,” Horton says. “That was the difference in our finding. There were some studies that said you could damage hundreds of transformers. We just didn’t find it.”

Some members of an EMP commission have argued for the past decade that an attack would destroy the electric grid, and kill 90 percent of the US population through disease or starvation. That panel shut down in 2017 after the Department of Homeland Security did not request more funds from Congress to keep it going.

Apart from the electric power industry, the Pentagon has been conducting its own classified tests about potential effects from such an event on military installations. A group of experts is meeting this week at Maxwell Air Force Base in Montgomery, Alabama, says Air Force lieutenant-general Steven Kwast, who is coordinating the event.

Kwast says the threat is much more real than the public believes. “You don’t need to have a nuclear detonation in space to do this,” he said. “You could have a hot-air balloon rising above a city with a tactical electromagnetic weapon. You could do one over an airfield of F-35s or one Army post so none of the tanks work or over a shipyard so that none of the ships sail. Our enemy is clever and adaptive. They see our soft underbelly is our electricity.”

But other nuclear weapons experts say the technical study by EPRI brings scientific rigor to a field that has been dominated by hype and fearmongering. “When you are doing documented research on physical systems, it is still solid evidence, no matter who paid for it,” says Sharon Burke, a senior adviser at the Foundation for a New America and a former assistant secretary of defense for operational energy in the Obama administration. “This is not someone’s opinion.”

#### Info wars is a bad podcast, not a reason for escalation

Sari 19 – Senior Lecturer in Law, University of Exeter. Director, Exeter Centre for International Law.

Aurel, 6/6/19, "The Mutual Assistance Clauses of the North Atlantic and EU Treaties: The Challenge of Hybrid Threats", Harvard National Security Journal, https://harvardnsj.org/wp-content/uploads/sites/13/2019/06/Mutual-Assistance-Clauses-of-the-North-Atlantic-and-EU-Treaties.pdf

Nevertheless, the threat of subversion should not be overrated, either. In particular, the widespread unease over the blurring of the line between war and peace must be put into perspective. Hybrid warfare in its original, narrow sense describes a style of operational art: the integrated use of conventional and unconventional methods of warfighting in the same battlespace. Armed conflict, whether actual or impending, is integral to the concept. By contrast, hybrid warfare in its broader sense describes the use of the full range of instruments by hostile actors in pursuit of their strategic goals. Here, hybrid warfare no longer refers to a method of waging war, but to the combination of diverse levers of influence for the purposes of geopolitical competition. Hard power and the threat of military confrontation remain essential components of the concept, but actual or imminent hostilities do not. Describing non-forcible measures carried out by hostile powers as hybrid warfare may be justified in circumstances where these activities constitute shaping operations in anticipation of armed conflict or where they form part of ongoing hostilities.283 However, in the absence of any realistic connection with actual or impeding war, labeling such measures as acts of warfare, whether hybrid or not, is a misnomer.284 It may convey the hostile nature of geopolitical confrontation,285 but it is still hyperbole. The dividing line between war and peace may look blurred when it is viewed from the perspective of a wide understanding of hybrid warfare, but this is so largely because the very use of the concept in such a loose manner creates a link between non-forcible acts falling below the threshold of war and the mere prospect of war.286 Russian theorists of contemporary conflict have avoided such conceptual freefall by insisting that violence is an integral element of warfare.

#### No Taiwan conflict – relations stabilized

Scott Kastner, Feburary 16

Associate Professor in the Department of Government and Politics at the University of Maryland, College Park., "How Stable is the Taiwan Strait", belfercenter.ksg.harvard.edu/publication/26342/how\_stable\_is\_the\_taiwan\_strait.html

How Stable Is the Taiwan Strait?

After long being viewed as a flash point for conflict, relations across the Taiwan Strait have stabilized tremendously since Ma Ying-jeou, who explicitly rejected Taiwanese independence, was elected president of Taiwan in 2008. This unprecedented period of China-Taiwan détente has been characterized by frequent dialogue between officials from the two sides, numerous cooperative agreements, and the establishment of direct travel and commercial linkages across the strait. The DPP's landslide victory in Taiwan's January 2016 presidential election, however, was a stinging rebuke to Ma's Nationalist Party (the Kuomintang or KMT). The DPP historically has been committed to Taiwan independence, and Taiwan's new president-elect, Tsai Ing-wen, rejects some of the key foundations of Ma's cross-strait policy, including the idea that China and Taiwan are part of the same country. Although Tsai has signaled that she will approach crossstrait relations cautiously, it is unlikely that Beijing will be satisfied with her approach. Thus, it is unlikely that the recent détente will last.

The possibility that China-Taiwan relations could revert to their pre-2008 state is disquieting, given that many analysts at the time viewed armed conflict in the Taiwan Strait as a serious risk. **Nevertheless**, although China-Taiwan relations will almost certainly deteriorate to some degree under a Tsai presidency, military conflict remains unlikely. To understand why, it is important to first consider some of the major trends that have characterized the cross-strait relationship in recent years.

A Changing China-Taiwan Relationship

First, economic integration across the strait has become deeper and more institutionalized. China-Taiwan trade and investment flows have grown rapidly since the 1980s; by the mid-2000s, the PRC had replaced the United States as Taiwan's primary trading partner. China-Taiwan trade continued to grow after 2008 as the two sides took steps, such as lifting restrictions on direct trade across the strait, to normalize bilateral economic ties.

Second, the military balance of power in the Taiwan Strait has been shifting **rapidly in China's favor**. Preparation for a conflict in the strait has been the primary driver of PRC military modernization efforts dating to the 1990s, and China's booming economy has facilitated impressive advances in this regard. The PRC most likely does not (yet) possess the capacity to invade and occupy Taiwan, particularly if the United States were to intervene in a cross-strait conflict. **China** certainly **has an increasing ability**, however, **to impose tremendous costs on Taiwan** in the event of a cross-strait war.

Third, Taiwanese public opinion on sovereignty issues continues to evolve. To an increasing extent, most Taiwan citizens see themselves as Taiwanese rather than Chinese, and they view political unification with the PRC as a nonstarter. Indeed, most Taiwanese today reject unification even under hypothetically favorable conditions, such as the emergence of democracy in China. The recent détente in cross-strait relations has not altered these trends; to the contrary, the percentage of Taiwan's citizens self-identifying as Taiwanese grew especially rapidly during the Ma presidency. Still, most Taiwanese remain pragmatic. **A majority of Taiwanese**, for instance, **does not support formal independence if it were to trigger armed conflict with China.**

### Developing Countries

#### Circumvention—courts interpret the plan in the narrowest possible way to avoid intervention

Crane, Frederick Paul Furth, Sr. Professor of Law, University of Michigan, ‘21

(Daniel A., “Antitrust Antitextualism,” 96 Notre Dame L. Rev. 1205)

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.

#### The plan can’t spur harmonized antitrust in developing countries – they’re viewed as imperialism by Africa

Buxbaum 18 – Professor of law and John E. Schiller Chair at Indiana University.

Hannah L. Buxbaum, “Transnational Antitrust Law,” *Indiana Legal Studies Research Paper*, no. 384, 18 January 2018, pp. 10-13, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3101038.

III. Economic Globalization and the Prospects for the Convergence of Antitrust Norms

Transnational regulation rarely develops along an evolutionary pathway that begins with an initial stage of unilateral regulation, moves through stages manifesting progressively higher levels of cooperation and integration, and arrives at an end stage of complete harmonization. More frequently, it constitutes a body of norms and enforcement practices generated at multiple sites, both within and outside the state. Yet changes in political or economic conditions can precipitate a move toward greater uniformity of law (whether achieved through top-down lawmaking or through convergence of disparate legal systems). To a significant degree, this has occurred in the area of antitrust regulation as a result of economic globalization.

Economic globalization promotes greater uniformity in antitrust regulation in two particular ways. First, it has produced an increasing degree of trade liberalization, achieved through multilateral instruments (most prominently the General Agreement on Tariffs and Trade), regional accords, and bilateral investment treaties. In order to realize the full benefits of that liberalization, states must prevent private anti-competitive behavior from creating new restraints on trade. This imperative generates pressure to develop basic competition policies, as is reflected in the wave of lawmaking that followed the opening of markets in the 1990s. It also generates pressure to converge around certain substantive norms that are particularly important to trade: for instance, those prohibiting exclusionary practices (both monopolistic exclusions, including by state-owned enterprises, and exclusionary vertical constraints) and hard-core cartels.

Second, economic globalization has produced an increase in cross-border business activity. This has created a new set of global regulatory challenges, including the formation of international cartels, an increase in cross-border merger activity, and the threat of global monopolies or oligopolies. As a result, the transaction costs of maintaining inconsistent antitrust regimes (including the aggregate costs of multiple investigations involving the same transactions or conduct) have increased. In addition, there is increased risk of both underdeterrence—that certain anti-competitive conduct may fall into a regulatory gap between legal systems—and overdeterrence—that the application of multiple laws might deter otherwise beneficial activity. These outcomes likewise produce pressure to harmonize local antitrust rules.

There are limits to the momentum these pressures create. Many developing countries have either ideological or political reasons to resist adopting competition law regimes at all. In some, those regimes are viewed as opening the door to a new form of corporate imperialism; in others, they may be resisted by state or private actors who are deriving rents from a controlled economy. Moreover, while global competition may generate economic growth, the benefits of that growth do not accrue to all economies—or to all participants within particular economies— on the same timeframe or to the same extent. National decision-makers may conclude that the potential long-term gains expected from the adoption of a full-fledged antitrust regime are outweighed by the need to shield emerging industries, protect local employment opportunities, preserve autonomous local governance, or limit the impact of foreign businesses on local constituencies.

Even assuming the desirability of antitrust regulation, significant debate remains regarding the feasibility of broad-scale harmonization. Different countries remain differently situated in terms of their own economic policies and objectives. As noted above, many systems seek not only to maximize consumer welfare, but also to serve other important domestic goals, such as building up emerging domestic industries. It is therefore far from clear that a single set of substantive norms would be compatible with antitrust policy across all jurisdictions. In this regard, one question is whether states linked not by geographic proximity but by shared interests may form communities to develop antitrust norms that challenge the orthodoxy of the U.S.-EU model. The BRICS countries have recently taken steps in this direction, as part of a broader effort to represent the interests of emerging and developing economies in international financial regulation. Furthermore, efforts to identify a shared core, and to develop standards that are broadly compatible with a range of different economic policies, have been criticized for yielding either a “minimal” set of rules or a “least common denominator” solution. In 1980, for instance, the U.N. General Assembly adopted UNCITRAL’s Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices. The principles were criticized on this basis, and have not had significant impact on the generation of cross-border norms.

Differing economic conditions also mean that the incentives of individual countries to adopt particular norms are not fully aligned across jurisdictions. For instance, vertical restraints are less harmful to buyers in large economies, where there is more competition, and so those regimes have less incentive to regulate them tightly. Indeed, in areas beyond those most critical to the promotion of competition, there may be an offsetting benefit flowing from the experimentation that characterizes the development of antitrust norms today, and the greater ability of individual systems to react quickly to changes in global economic conditions. Finally, some of the countries currently lacking antitrust regimes are at a stage of development where the institutional capacity to implement and then enforce such laws is not sufficiently advanced. That capacity depends not only on governmental institutions such as agencies and judiciaries, but also on other public- and private-sector entities including educational institutions, professional associations, and civil society organizations.

In this light, it is no accident that the area in which a fully effective transnational order has taken hold is hard-core price fixing. Hard-core cartels are purely welfare-diminishing, and harm all economies alike. Moreover, the operation of global cartels creates the risk that inadequate enforcement in some countries would lead to overall underdeterrence, which has helped to shift the legal response to the international plane. In 1998 the OECD adopted a Council Recommendation Concerning Effective Action Against Hard Core Cartels, and urged member states both to adopt laws prohibiting such conduct and to ensure effective enforcement of those laws. The ICN has published an Anti-Cartel Enforcement Manual, and hosts regular conferences in this area. Today, over 100 systems have enacted such legislation, and significant progress has been made in enforcement of those prohibitions.

Further harmonization of antitrust norms might require a shift in philosophy toward a “world welfare” goal— defined as “the aggregate level of consumer benefits and profits realized by consumers and firms in all pertinent countries.”8 Short of that move, the settling of particular norms across multiple legal systems is likely to occur through continued regionalization or in connection with individual substantive areas.

#### 3. Instability in Africa doesn’t escalate – no nuclear states want war in the region

- Insurgents lack resources and training

- Opposition groups moved away from violence into politics

- China improves growth and builds state resilience

- Peacekeeping is effective

Straus 13

Scott Straus is a professor in the Department of Political Science at the University of Wisconsin, The Guardian, January 30, 2013, "Africa is becoming more peaceful, despite the war in Mali", http://www.theguardian.com/world/2013/jan/30/africa-peaceful-mali-war

What explains the recent decline in warfare across Africa? I don't know for certain, but would point to geo-political changes since the end of the cold war.

First, the end of the cold war meant that the opportunities for rebels to receive substantial weaponry and training from big external states declined. To be sure, states across Africa still meddle in the affairs of their neighbors, but insurgent funding from neighbouring states is usually enough to be a nuisance to, but not actually overthrow, existing governments.

Second, the rise of multi-party politics has sapped the anti-government funding, energy, and talent away from the bush and into the domestic political arena.

Third, China is a rising external force in sub-Saharan Africa. China's goals are mainly economic, but their foreign relations follow a principle of non-interference. To my knowledge, China supports states, not insurgencies.

Finally, conflict reduction mechanisms, in particular international peacekeeping and regional diplomacy, have substantially increased on the continent. Peacekeeping is more prevalent and especially more robust than in the 1990s. Regional bodies such as the African Union, Eccowas, Eccas, IGAD, and SADC are quite active in most conflict situations. They have exhibited greater resolves in conflicts as diverse as Côte d'Ivoire, Sudan, the Central African Republic, and Madagascar.

The four posited mechanisms are hypotheses, each of which deserves greater scrutiny and empirical testing. But taken together, they suggest plausible ways in which the incentives of insurgents and even state leaders to fight have been altered in recent years. They give reason to expect that while war is clearly not over in sub-Saharan Africa, we should continue to observe a decline in its frequency and intensity in coming decades.

#### No conflict impact to food insecurity – best models.

Buhaug et al, PhDs, 15

(Halvard, Political Science from NTNU, Tor A Benjaminsen, Human Geography from Roskilde, Espen Sjaastad, Resource Economics from NMBU, and Ole Magnus Theisen, Political Science from NTNU, Climate variability, food production shocks, and violent conflict in Sub-Saharan Africa, Environmental Research Letters 10(12)) BW

Across all models, we find relatively weak and insignificant effects for domestic food production and we also note that the sign of the coefficients shifts between outcome types. In this sense, table 1 implicitly contrasts both claims that political violence is more prevalent when basic needs are met (Salehyan and Hendrix 2014) and claims that agricultural income shocks increase civil conflict risk (von Uexkull 2014). The results are consistent with Koubi et al (2012) and van Weezel (2015), however, who conclude that rainfall—a significant determinant of yields in SSA—has little impact on conflict either directly or through economic performance. The covariate that best and most consistently explains temporal variation in political violence is the time-lagged conflict incidence indicator. Models 1–2 show that a new civil conflict is unlikely to break out if another one is already ongoing in the same country whereas Models 3–6, which capture the occurrence of less organized conflict, demonstrate that violence begets violence. Coups d’état (Models 7–8) exhibit a comparatively weak temporal correlation pattern in our data and are generally regarded as a highly unpredictable phenomenon (Luttwak 1979). Next, we estimate the same set of models on a subsample of 14 countries in SSA where rainfall has a large and significant positive effect on food production (figure 2(b); see supplementary information, section B for details). To better capture the influence of climate variability and reduce concerns with endogeneity, we further replace the standard OLS model with twostage instrumental variable regression. The first stage in this model estimates the joint influence of annual rainfall (linear and squared terms) and temperature (linear) on contemporaneous food production. This effect then constitutes the exogenous instrument for food production in the second stage. The results are reported in table 2. Mirroring the results presented above, we fail to uncover a robust signal for agricultural performance, although the sign of the coefficient for food production now remains negative in seven of the eight specifications. Food production shocks may have different consequences depending on the socioeconomic context, so next we consider a series of interactive relationships. Specifically, we investigate the joint effect of food production and (i) low level of development, (ii) extent of discriminatory political system, and (iii) economic dependence on agriculture; three conditions whereby loss of income from agriculture might constitute a particular challenge to society. To model these interactions, we include time-varying regressors instead of country-fixed effects where (i) is represented by infant mortality rate (IMR; World Bank 2014), (ii) is captured using the Ethnic Power Relations v.1.1 data (Cederman et al 2010), while (iii) uses an index of agricultural contribution to GDP (World Bank 2014). Moreover, to preserve focus on temporal dynamics, food production is now operationalized as yearly deviation from the country mean, 1961–2009. We use additive inverse deviation values to ensure theoretical consistency among the components in the interaction terms. All models control for (ln) population size, conflict history, and a common time trend, and models without IMR and agricultural dependence additionally control for (ln) GDP per capita. The results are presented in table 3. Again, we are unsuccessful in establishing a consistent covariation pattern between agricultural performance and political violence. Interpreting the combined effect of interaction terms with continuous parameters is inherently difficult but figure 4 shows that food production is insignificantly related to all conflict outcomes across levels of socioeconomic development for all three interaction terms. The sole exception is the result in Model 24, where lower food production in highly discriminatory societies is negatively associated with non-state conflict. This result would seem to contradict the standard scarcity thesis (Homer-Dixon 1999) although it is consistent with observations that conflict is more prevalent during surplus years (Witsenburg and Adano 2009, Salehyan and Hendrix 2014). Mirroring earlier research, ethnopolitical exclusion is strongly related to higher civil conflict risk, but not necessarily to other forms of political violence. Infant mortality rate and economic dependence on agriculture appear largely irrelevant. While this may come as a surprise, recall that most countries in SSA are characterized by underdevelopment and a large agricultural sector, implying that the variation in values on these indicators is modest. Large parameter uncertainties and p-values above the conventional significance threshold (5%) may disguise substantively important effects (Ward et al 2010). Accordingly, as a final assessment, we conduct a set of out-of-sample simulations and compare predictions for models with and without food production. The models are estimated on a subset of the full sample, in this case all years before 2000, and the estimated effects are then used to predict conflict outcomes out of sample, i.e., the 2000–09 period. Figure 5 shows the predicted values from four pairs of models that are specified similarly to Models 17, 20, 23, and 26, except for the shorter time period and the fact that one model in each pair drops the food production deviation variable. For civil conflict and social unrest, the models generate very similar predictions, signaling that agricultural performance adds little to the models’ predictive power. There is more spread in the predictions for the remaining two outcome categories. Puzzlingly, the model without food production performs better in both cases—i.e., the Receiver Operating Characteristics curves have higher ‘Area Under the Curve’ scores. We hesitate to put too much emphasis on the ROC tests, given the rareness of the outcomes(notably Models 17 and 26) and the relatively small training samples (Models 20 and 23), but nonetheless the patterns observed in the out-of-sample simulations substantiate the regression results reported above; fluctuations in agricultural output explain little of the observed variation in political violence in post-colonial Sub-Saharan Africa. 5. Concluding remarks Emerging evidence suggests that food price shocks are associated with an increase in social unrest (Smith 2014, Bellemare 2015, Hendrix and Haggard 2015, Weinberg and Bakker 2015). Yet, the robust ‘non-finding’ presented here implies that so-called ‘food riots’ play out largely isolated from climate-sensitive production dynamics in the affected countries. Likewise, claims that adverse weather and harvest failure drive contemporary violence in Africa (e.g., Hsiang et al 2013, IFPRI 2015) are not supported by our analysis. Instead, social protest and rebellion during times of food price spikes may be better understood as reactions to poor and unjust government policies, corruption, repression, and market failure (e.g., Bush 2010, Buhaug and Urdal 2013, Sneyd et al 2013, Chenoweth and Ulfelder 2015).

#### No motivation or capabilities for nuclear terror

Mueller 11/1

John Mueller, Adjunct Professor of Political Science and Woody Hayes Senior Research Scientist at Ohio State University and a Senior Fellow at the Cato Institute, “Nuclear Weapons Don’t Matter But Nuclear Hysteria Does,” Foreign Affairs. November/December 2018.

As for nuclear terrorism, ever since al Qaeda operatives used box cutters so effectively to hijack commercial airplanes, alarmists have warned that radical Islamist terrorists would soon apply equal talents in science and engineering to make and deliver nuclear weapons so as to destroy various so-called infidels. In practice, however, terrorist groups have exhibited only a limited desire to go nuclear and even less progress in doing so. Why? Probably because developing one’s own bomb from scratch requires a series of risky actions, all of which have to go right for the scheme to work. This includes trusting foreign collaborators and other criminals; acquiring and transporting highly guarded fissile material; establishing a sophisticated, professional machine shop; and moving a cumbersome, untested weapon into position for detonation. And all of this has to be done while hiding from a vast global surveillance net looking for and trying to disrupt such activities.

Terrorists are unlikely to get a bomb from a generous, like-minded nuclear patron, because no country wants to run the risk of being blamed (and punished) for a terrorist’s nuclear crimes. Nor are they likely to be able to steal one. Notes Stephen Younger, the former head of nuclear weapons research and development at Los Alamos National Laboratory: “All nuclear nations take the security of their weapons very seriously.”

The grand mistake of the Cold War was to infer desperate intent from apparent capacity. For the war on terrorism, it has been to infer desperate capacity from apparent intent.

## 2NC

### CP Public Enforcement

#### Expansion of the antitrust laws necessarily allows for private suits—CP is germane because it’s a distinct model

Kenneth Ewing, JD, Steptoe & Johnson LLP, Private anti-trust remedies under

US law, 2007, <https://www.steptoe.com/images/content/1/7/v1/1731/2804.pdf>

One of the most important features of anti-trust enforcement in the US is the large and complicated role played by private remedies. Unlike most jurisdictions around the world, in which only governmental enforcement must be considered, the US grants private parties (and all state governments, acting on behalf of their citizens) a wholly independent right to seek:

Monetary damages.

Court injunctions to order potentially far-reaching changes in anti-trust defendants’ conduct.

In addition, special rules, such as the automatic trebling of damages, award of attorneys’ fees and costs, and aggregation of hundreds to thousands or more claims within a single action on behalf of a class of similarly placed claimants, dramatically increase both the attractiveness of bringing private claims and the stakes for defendants.

#### Private action is enshrined in the core of antitrust laws

Saint-Antoine et al 19 – Partner and co-chair of the antitrust practice group at Drinker Biddle & Reath LLP. JD from Columbia Law.

Paul H. Saint-Antoine, Joanne C. Lewers, Lee Roach, Lucas B. Michelen, John S. Yi, and Amanda M. Pasquini, “Private antitrust litigation in the United States: overview,” *Westlaw*, 1 March 2019, https://content.next.westlaw.com/6-632-8692?\_\_lrTS=20210213235748824&transitionType=Default&contextData=(sc.Default)&firstPage=true.

The legal basis for commencing a private federal antitrust action is contained in the Clayton Act (15 U.S.C. § 15(a)) ("any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States…"). Additionally, the Attorneys General of individual states have statutory authority to commence federal antitrust actions on behalf of their citizens (15 U.S.C. § 15c).

#### Settlements – threats of treble damages create powerful incentives for firms to settle which PREVENTS precedent being made to deter other anticompetitive conduct. McCarthy et al., GC & Chief Legal Officer of Womble Bond Dickinson (US) LLP, ‘07

(Eric, Allyson Maltas, Matteo Bay and Javier Ruiz-Calzado, “Litigation culture versus enforcement culture A comparison of US and EU plaintiff recovery actions in antitrust cases,” <https://www.lw.com/upload/pubContent/_pdf/pub1675_1.pdf>)

Additionally, the several aspects of US litigation highlighted above are a catalyst to settlement. Even before discovery begins, some defendants, confronted with the promise of invasive and expensive discovery, will choose to settle with plaintiffs in order to spare their employees from intrusive discovery and to save on exorbitant legal fees. Plaintiffs routinely extract large settlements from defendants after gaining access to corporate documents and information that, although not dispositive of any wrongdoing, are damaging or embarrassing enough to justify settlement. Similarly, class actions may contribute to settlement of private damages actions because, if certified, defendants do not want to risk losing at trial and therefore pay treble damages. The same is true for state indirect purchaser actions. Defendants often settle these suits in order to avoid duplicative litigation costs.32 Settlement is also preferable for many defendants in this situation who rightly fear the application of collateral estoppel if they are adjudicated liable in even one state.33

#### Rent seeking – U.S. firms will overuse the plans standard to go after competitors. Ruins effective supply chains because companies will be more focused on extracting settlements that developing new supply chains

Dorsey et al., Associate at Wilson Sonsini Goodrich, ‘18

(Elyse, Rosati. Jan M. Rybnicek is a Senior Associate at Freshfields Bruckhaus Deringer, and Joshua D. Wright, JD, PhD, University Professor and the Executive Director, Global Antitrust

Institute, Scalia Law School at George Mason University, Former FTC Commissioner, “Hipster Antitrust Meets Public Choice Economics: The Consumer Welfare Standard, Rule of Law, and Rent Seeking,” CPI Antitrust Chronicle, April)

Additionally, the incredibly costly nature of antitrust proceedings exacerbates its vulnerability to rent seeking.39 Antitrust cases and investigations can drag on for years, entail the collecting, processing, and production of millions of documents, and involve tremendous attorneys’ fees. Remedies (or consent terms) can be invasive, last for years, and impair a defendant’s ability to adapt to changing circumstances and thus to remain competitively viable. Looming in the background is the possibility of trebled damages at the end of the day. Consider that an unhappy competitor could embroil a rival in an antitrust quagmire via its own litigation, or by complaining to a government agency and potentially triggering an investigation, that would divert significant amounts of that rival’s resources for years — thereby crippling a rival and diminishing the amount of competition it faces. With so much at stake, conditions are ripe for actors to engage in just such rent-seeking activities in an attempt to appropriate some of this vast wealth for themselves. The empirical evidence and historical record of antitrust actions — particularly during the era when antitrust was explicitly governed by a vague, multi-faceted standard — provide ample support for public choice theory and the economic theory of regulation, while tending to reject the public interest account of regulatory behavior.40

Finally, given this reality, what can be done to mitigate rent seeking? Public choice economics instructs that rent seeking opportunities are diminished when agencies have less discretion (e.g. when rules are clearer) and when another body (e.g. the public, a court, Congress) can more easily hold them accountable for their actions — factors that tend to go hand-in-hand.41 The rule of law thus diminishes incentives for rent seeking and corruption. When these constraining factors are in place, agencies have lowered ability to depart from what is required of them or to otherwise manipulate outcomes to respond to rent-seeking incentives. As such, what antitrust enforcement craves is a clear, well-established standard by which the public and the courts can evaluate agency decisions and identify and correct any deviations that undermine consumer outcomes.

#### Every other nation does the CP which proves that public enforcement with SINGLE damages is sufficient – that’s because it makes anticompetitive conduct inefficient for firms

Italianer, Director-General for Competition, European Commission, ‘13

(Alexander, “Fighting cartels in Europe and the US: different systems, common goals,” October 9, <https://ec.europa.eu/competition/speeches/text/sp2013_09_en.pdf>)

Since the first cartel decision of 1969, the Commission has imposed a total of over €19 billion in fines to 820 companies. A question we often get from members of the public is: why are your fines so large? To this I always respond: what is large? Beauty is in the eye of the beholder. Are the fines still large when compared to, for instance, the annual turnover of the company in question? Under the 2006 fining guidelines, around twelve per cent of companies received the maximum fine of ten per cent of turnover. But fifty per cent of the fines amounted to less than one per cent of turnover.

Are the sums still large when we look at private enforcement? In the US, courts can award treble damages to victims in antitrust cases. Such damages are generally seen in the US as a form of deterrence. If damages are awarded in Europe, courts generally award single damages, in other words, compensation for harm suffered.

Our proposal for a directive on private enforcement of antitrust damages is based on the principle of full compensation, which has been recognised in the case-law of the Court of Justice. Damages actions before civil courts are, in our view, are about compensation. Deterrence is achieved through public enforcement proceedings, in which fines can be imposed.

#### That achieves optimal deterrence because agencies can sue to stop bad conduct without creating zealous liability regimes

Juška, PhD candidate, Leiden Law School, Leiden University, Leiden, ‘18

(Žygimantas, “The Effectiveness of Antitrust Collective Litigation in the European Union: A Study of the Principle of Full Compensation,” IIC - International Review of Intellectual Property and Competition Law volume 49, pages63–93)

The deterrent function is pursued through the imposition of competition fines, which punish the infringer (in other words, specific deterrence). It also deters other persons from engaging in or continuing behaviour contrary to competition rules (in other words, general deterrence).Footnote9 According to the EU, public enforcement is considered to have sufficient means for achieving deterrence.Footnote10 In this respect, it must be borne in mind that EU competition law focuses exclusively on imposing fines on infringing businesses, but Member States are given space to introduce other types of penalties.Footnote11 In order to combat cartels, a majority of EU Member States have incorporated criminal sanctions on individuals (such as imprisonment or criminal fines) in their antitrust enforcement schemes.Footnote12 However, these sanctions have very rarely been imposed in practice.Footnote13 Therefore, public authorities in the EU jurisdictions have failed in setting an example for criminal penalties being effectively utilized in public enforcement.

Achieve Corrective Justice When the Infringement Has Taken Place

This goal can be pursued if two conditions are met.Footnote14 First, corrective justice is achieved if the monetary remedy deprives the wrongdoer of any benefit gained from illegal conduct. This measure may be used when public enforcers impose a sub-optimal fine. As such, the enforcement may be reinforced by imposing additional fines on the wrongdoer in order to fully remedy the anti-competitive situation. Second, corrective justice is achieved when victims are compensated for the harm suffered. According to the Directive on damages actions, the objective of compensation is fulfilled when victims effectively exercise the right to claim and to obtain full compensation for the harm suffered. However, this objective should not lead to overcompensation of the claimants, whether by means of punitive, multiple or other kinds of damages.Footnote15 For this reason, the enforcement of the first condition may not comply with the principle of full compensation, as additional fines (besides damages on fully compensating victims) may be required to ensure corrective justice. As a consequence, only the second condition will be further discussed in this paper.

#### Spillover effects – Private enforcement creates substantial baggage for public enforcement that makes it more difficult to go after cartels

Crane, Frederick Paul Furth Sr. Professor of Law, Michigan Law, ‘19

(Daniel A., “Toward a Realistic Comparative Assessment of Private Antitrust Enforcement,”

*In Reconciling Efficiency and Equity: A Global Challenge for Competition Policy*, edited by Damien Gerard, and Ioannis Lianos, 341-54. Cambridge: Cambridge University Press, 2019)

The private-injunction action, like the treble-damage action under s 4 of the Act, supplements Government enforcement of the antitrust laws; but it is the Attorney General and the United States district attorneys who are primarily charged by Congress with the duty of protecting the public interest under these laws. The Government seeks its injunctive remedies on behalf of the general public; the private plaintiff, though his remedy is made available pursuant to public policy as determined by Congress, may be expected to exercise it only when his personal interest will be served. These private and public actions were designed to be cumulative, not mutually exclusive.30

The EU Directive also shows sensitivity to the relationship between public and private enforcement, asserting the need for “coordination of these two forms of enforcement in a coherent manner,”31 and proposing mechanisms for preventing private enforcement from undermining public enforcement, such as limiting private access to self-incriminating materials received as part of leniency applications.32 The reality, however, is that private enforcement cannot help but have spillover effects on public enforcement – not all in the direction of making public enforcement more effective. To the contrary, the US experience shows that a swell of private enforcement can subtly undermine public enforcement, or even choke it off altogether.33 Particularly if private enforcement in particular areas comes to significantly outstrip public enforcement in frequency, with the governing liability norms being predominantly created in private litigation, public litigation can become laden with the baggage of private litigation to the point if ineffectiveness or practical disappearance.

US monopolization law is a case in point. Historically, public antitrust enforcement of s. 2 of the Sherman Act has declined since a high in the 1970s, when the agencies were bringing over three cases a year,34 to the last several administrations where very few monopolization cases have been brought. Over the eight years of the Bush administration, the Justice Department filed no monopolization cases. While running for office in 2007, Senator Barak Obama singled out this ostensibly weak enforcement record for condemnation, characterizing the failure to pursue monopolization cases as “lax enforcement” that harmed consumer interests.35 His Antitrust Division immediately withdrew a report on monopolization offenses disseminated by the Bush administration and promised that the Justice department would be “aggressively pursuing” monopolization cases.36 But, then, over seven and a half years, the Justice Department brought only one monopolization case. The case, against United Regional Health Care System of Wichita, Texas, was hardly a blockbuster antimonopoly action of the earlier Standard Oil, IBM, AT&T, or Microsoft variety. The Justice Department alleged that the relevant market was for the sale of inpatient hospital services to insurance companies in a geographic area “no larger than the Wichita Falls Metropolitan Statistical Area.”37 The government’s theory – that United had a 90% market share in acute inpatient services and used exclusive dealing contracts with insurance companies to stifle competitors – broke no new theoretical or practical ground.

What happened to public enforcement against monopolization? Among the several contributing factors is the dramatic rise of private monopolization actions in the later part of the twentieth century. Figure 17.2 below provides a statistical summary of public and private monopolization cases in the federal appellate courts in the post-war period. From the 1950s to the 1970s, the federal agencies filed a modest number of monopolization cases during each five-year period – far fewer than private monopolization cases, but still enough to make a significant impact on the formation of legal norms and market circumstances. But, as private monopolization litigation skyrocketed from the mid 1970s to the early 1990s, public monopolization enforcement receded, both proportionally and absolutely. With a few notable exceptions such as the DC Circuit’s en banc Microsoft decision, the monopolization law made from the 1970s forward was made in the context of private litigation. As the courts reacted to the dramatic rise of private monopolization cases by announcing new restrictions on a variety of exclusion theories – from predatory pricing, to tying, to duties to deal – private monopolization cases began to recede, reaching an apparently stable equilibrium at about half of their peak levels for the last two decades. This dramatic rise and then significant reduction of private monopolization litigation left in its wake public monopolization enforcement, which all but disappeared.

#### Opportunism – Private firms to not seek to resolve deadweight loss, instead they attempt to prioritize their own gains even at the cost of consumers

Crane, Frederick Paul Furth Sr. Professor of Law, Michigan Law, ‘10

(Daniel A., “Optimizing Private Antitrust Enforcement,” 63 Vand. L. Rev. 675)

Private parties who sue antitrust defendants typically do not sue to vindicate the interests of the consumers who stopped buying the goods because they were too expensive. Instead, only the purchasers who did buy and actually incurred an overcharge bring antitrust claims.'8 For example, imagine the difficulty of representing a class of purchasers who stopped buying vitamins because of a vitamins cartel or, even worse, who never started buying vitamins because of excessive prices. How could one prove who the consumers were or quantify their injury? It is much easier to recover damages on behalf of purchasers who made the purchase but paid too much. In this case, the formula is simply to posit a but-for price and use the difference between the actual price and the but-for price as damages.19 The fact that private damages are automatically trebled under the Clayton Act 2 0 (save for a few exceptional cases) is no reason to believe that deadweight losses are being recovered after all. One could rationalize the treble damages allowance as necessary to capture a set of damages that are difficult to identify or recover in private litigation, including the deadweight loss. 2 1 Although this may be an argument for the deterrent purpose of treble damages, it is not a particularly good argument for their compensatory function. A consumer who recovers treble damages may be entirely different from a consumer who forgoes the relevant purchase after the price increase. Private antitrust enforcement tends to focus on a set of purchasers and injuries that are secondary in the hierarchy of antitrust concerns. Private enforcement does not seek compensation for, nor does it meaningfully analyze, the key concern of deadweight loss. 22

### CP Advantage

#### Public private partnerships allow private companies to get military expertise on how best to secure their manufacturing

Iakovou and White 20 – Eleftherios Iakovou is the Harvey Hubbell Professor of Industrial Distribution at Texas A&M University and the Director of Manufacturing and Logistics Innovation Initiatives at the Texas A&M Engineering Experiment Station.  
Chelsea C. White III is the Schneider National Chair in transportation and logistics and is a professor at the H. Milton Stewart School of Industrial and Systems Engineering at Georgia Tech.

Eleftherios Iakovou and Chelsea White, December 3 2020, “[How to build more secure, resilient, next-gen U.S. supply chains](https://www.brookings.edu/techstream/how-to-build-more-secure-resilient-next-gen-u-s-supply-chains/),” Brookings, https://www.brookings.edu/techstream/how-to-build-more-secure-resilient-next-gen-u-s-supply-chains/

In its efforts to strengthen the supply chain, the federal government could benefit by adopting best practices and state of the art strategies developed by industry and academia. Diffusion of best practices should not be limited from the private to the public sector. Commercial supply chains have much to learn from military logistics, including how to best deliver vaccines in the event of a future pandemic. Today, the old adage that the public sector has to rise up to the level of the private sector is no longer valid. As businesses are having to engage with a growing number of constituencies and to comply with demands for higher transparency, there is a confluence of policy management and business, and corporate leaders have much to learn from leaders of the public sector.

We have seen first-hand how public-private partnerships can benefit efforts to improve supply chain resilience. The new [SecureAmerica](http://www.secureamerica.us/) Institute at Texas A&M University is one such a partnership, made up of a network of about 100 partners across several technical domains within the manufacturing base. The program employs a novel interdisciplinary paradigm to build on policy, economics, and supply chain management research and education. By bringing together academia, industry, and government, the United States has terrific opportunities to strengthen the competitiveness, security and resilience of its supply chains to further boost its global technological, military, economic, and geopolitical strength.

#### This solves their plan the ONE internal link they read to solving chips says that government engagement MUST support alternative supplies to prevent cartelization!

1AC Tallman 21 [Dr. Stephen Tallman is the E. Claiborne Robins Distinguished Professor of Business at the University of Richmond, “Comments on ‘Multinational Enterprises and International Cartels: The Strategic Implications of De-globalization’ by Peter J. Buckley and Mark Casson”, Management and Organization Review, 1-7, https://www.cambridge.org/core/journals/management-and-organization-review/article/comments-on-multinational-enterprises-and-international-cartels-the-strategic-implications-of-degobalization-by-peter-j-buckley-and-mark-casson/6AA8A50AF9B51043C8CDF39A5042DA42] IanM

A **fourth context** for cartelization on an international scale is the global information technology (IT) **sector** – particularly the **manufacture** of commodity inputs such as **computer chips.** The current **crisis** in **automotive production** caused by the inability of chip manufacturers to quickly ramp up production of the relatively simple chips that are essential to modern cars **demonstrates** the limitations of market mechanisms when volatility of demand simply **cannot be matched** by complex and highly technical supply. This same sector has **experienced** **problems** with single sourcing for **key components** due, for instance, to floods in Thailand a few years ago or the 2011 earthquake and tsunami in Japan (Li, [Reference Li2020](https://www.cambridge.org/core/journals/management-and-organization-review/article/comments-on-multinational-enterprises-and-international-cartels-the-strategic-implications-of-degobalization-by-peter-j-buckley-and-mark-casson/6AA8A50AF9B51043C8CDF39A5042DA42#ref4)). **Beyond this,** supplies of the most advanced chips are highly concentrated and subject to political risk. As described in The Economist (‘Living on the edge’, [2021](https://www.cambridge.org/core/journals/management-and-organization-review/article/comments-on-multinational-enterprises-and-international-cartels-the-strategic-implications-of-degobalization-by-peter-j-buckley-and-mark-casson/6AA8A50AF9B51043C8CDF39A5042DA42#ref1)), Taiwan Semiconductor Manufacturing Corporation (TSMC) is predicted to **generate** more than 80% of the world revenues in the most **advanced integrated circuits** in 2021. Some 97% of TSMC's long-term assets and all of its advanced fabrication facilities are on the island of Taiwan. So, even though over 60% of TSMC's revenues came from IC design firms based in North America, actual production of the most advanced chips **is concentrated** on one small island that is subject to earthquakes and tropical storms and is at the heart of China's political objectives of consolidating what it sees as its historical territories. For users of the most advanced computing technology, supplies of their single most critical input are tied to both one location and one company – and TSMC seems to have no economic incentives to change the situation. Governmental engagement to both encourage TSMC to diversify its production sites and to support regional alternative suppliers of both standard and advanced chips seems ideally **suited to cartelization**.

#### Deals now with TSMC allow us to attract talent and capacity to produce chips

Bean and Ezell 21 – Bean was visiting fellow at East-West Center in Washington in 2020, researching supply chain disruption for emerging technologies. He was previously editor of the Center for Strategic and International Studies’ Asia Policy blog and podcast. Stephen Ezell is vice president, global innovation policy, at the Information Technology and Innovation Foundation.

Jeffery bean and Stephen Ezell, May 14 2021, “WHEN THE CHIPS ARE DOWN: POLICY PRIORITIES FOR SUSTAINING U.S. SEMICONDUCTOR LEADERSHIP,” War on the Rocks, https://warontherocks.com/2021/05/when-the-chips-are-down-policy-priorities-for-sustaining-u-s-semiconductor-leadership/

One emerging concern is that, despite its strengths in semiconductor design, the United States lacks pure-play foundries at the cutting edge of the spectrum, particularly to meet military requirements for advanced systems and for overall resiliency. Policy intervention will be required to ensure a level playing field for U.S. companies on the global stage. (Currently, Intel, Samsung, and Micron all operate advanced foundries, but control other aspects of their chip production as well.) As a strategic industry, U.S. primacy in semiconductor manufacturing may dissipate if there are inadequate new facilities constructed to manufacture chips. For instance, whereas China held barely 1 percent of [global semiconductor manufacturing capacity](https://www.semiconductors.org/wp-content/uploads/2020/09/Government-Incentives-and-US-Competitiveness-in-Semiconductor-Manufacturing-Sep-2020.pdf) in 2000, this had grown to 15 percent by year-end 2020, and is forecast to increase to 24 percent by 2030. The U.S. share is now just 12 percent, which is expected to fall to 10 percent or less by the end of this decade without effective policy intervention. From 2007 to 2021, China’s [share of semiconductor fabrication capacity](https://cset.georgetown.edu/wp-content/uploads/Khan-Flynn%E2%80%94Maintaining-Chinas-Dependence-on-Democracies.pdf) increased by 13.4 percent, while America’s fell by 6 percent.

The United States still has many advantages to offer manufacturers, including high quality [infrastructure and logistics](https://lpi.worldbank.org/international/global?sort=asc&order=Infrastructure), [innovation clusters](https://nadersabry.medium.com/top-innovation-clusters-of-the-world-3c9f9de27561), [excellent universities](https://www.usnews.com/education/best-global-universities/rankings), and a [history of leadership](https://medium.com/@fesja/review-of-the-idea-factory-bell-labs-and-the-great-age-of-american-innovation-19027c133b75) in the field. However, challenges abound — in recent decades the political will to retain advanced manufacturing has dwindled, federal government tax incentives have diminished compared to competitors, and federal support for pre-competitive research and development has languished. This is an area where Taiwan, principally through Taiwan Semiconductor Manufacturing Co., has emerged as a [global leader in semiconductor fabrication](https://www.discoursemagazine.com/politics/2021/04/16/the-future-of-taiwan-semiconductors-alone-make-the-islands-continued-freedom-crucial-to-the-u-s/). Taiwanese companies now account for 78 percent of global foundry revenues, and in turn Apple alone now accounts for [25 percent](https://www.taipeitimes.com/News/biz/archives/2021/03/09/2003753477) of Taiwan Semiconductor Manufacturing Co.’s revenue. Fortunately, there is a high degree of complementarity between U.S. and Taiwanese strengths, with Taiwan Semiconductor Manufacturing Co. producing chips designed by leading U.S. technology companies (e.g., AMD, NVIDIA, and Apple) and Taiwan’s firms being leading customers of American-made semiconductor manufacturing equipment. Preserving access to Taiwan’s foundry ecosystem is a fundamental condition for continued U.S. leadership in semiconductors. Without even taking into account [security and diplomatic commitments](https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/201021_Glaser_TaskForce_Toward_A_Stronger_USTaiwan_Relationship_0.pdf) to Taiwan, calibrating the U.S. approach to the island in light of its [strategic importance](https://warontherocks.com/2020/06/the-chip-wars-of-the-21st-century/) to the technology industry will be crucial.

There have been two promising developments in terms of increasing U.S. semiconductor manufacturing capacity. First, the U.S. government has reached an [agreement](https://www.reuters.com/article/us-tsmc-arizona/phoenix-okays-development-deal-with-tsmc-for-12-billion-chip-factory-idUSKBN27Y30E) with Taiwan Semiconductor Manufacturing Co. to build a new advanced facility in the continental United States with the company announcing plans for a new facility that will [target five-nanometer production in Arizona](https://www.anandtech.com/show/15803/tsmc-build-5nm-fab-in-arizona-for-2024). However, by the time of completion this plant will be well behind leading foundries in Taiwan, and likely insufficient to provide full coverage for commercial and Department of Defense needs in microelectronics and semiconductors in the future. Second, in March 2021, Intel announced [its intent](https://www.intel.com/content/www/us/en/newsroom/news/idm-manufacturing-innovation-product-leadership.html) to move into the foundry business to serve external customers, with plans to build two additional fabs in Arizona for advanced semiconductor manufacturing, representing an evolution in its business model. While these steps are encouraging and will bolster supply chain resiliency, more needs to be done to ensure continued U.S. leadership.

Congress has awoken to the situation. Representatives from both parties put forward the Creating Helpful Incentives to Produce Semiconductors for America Act, better known as the CHIPS Act, and the American Foundries Act in 2020, which were consolidated into the [Fiscal Year 2021 National Defense Authorization Act](https://www.congress.gov/116/bills/hr6395/BILLS-116hr6395enr.pdf) under Title XCIX and passed into law. The bills enjoyed broad, bipartisan support in Congress. While Congress still needs to appropriate funding for the legislation’s initiatives, the authorizations represent [important steps in foundational investment](https://thehill.com/opinion/technology/505054-new-legislation-required-to-secure-us-semiconductor-leadership) to restore U.S. fabrication capacity and research and development advantage in semiconductors. Critics argue that a [sluggish and potentially miserly](https://www.csis.org/analysis/semiconductors-and-modern-defense-spending) U.S. response hinders the benefits of the bill in offsetting the significant domestic incentives offered by U.S. competitors, especially China. More investment, grants, and incentives (such as a proposed tax credit) will likely be required to offset the costs of building additional advanced facilities in the United States, but ideological concerns about government involvement in industrial policy could trigger a reduction in appropriations.

### Supply Chains

#### Every empiric goes neg – other jurisdictions have stepped up surveillance and enforcement which prevents cartels from abusing dominance

Ghsoal and Sokol 20 – Economics Department Head and Virginia and Lloyd W. Rittenhouse Professor of Humanities and Social Sciences, Rensselaer Polytechnic Institute. Professor, University of Florida Levin College of Law.

Vivek Ghosal and Daniel Sokol, April 16 2020, “The Rise and (Potential) Fall of U.S. Cartel Enforcement,” UF Law, https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=2019&context=facultypub

From the enforcement standpoint, perhaps leniency is working and there may be fewer cartels being formed.126 Data analytics also may be leading to greater internal detection and monitoring. The theoretical literature on leniency is that such a program increases the costs of collusion.127 Thus, the more successful leniency has been, the more it has worked to reduce the total number of cartels by preventing formation as well as destabilizing existing cartels.128 Fewer cartels formed (and hence prosecuted) may be due to an increasingly strong overall enforcement structure not merely in the United States but in other major jurisdictions, particularly at the European level due to the work of DG Competition.129 Significant fines for fewer cartels on the part of DG Competition exceed those of the Antitrust Division significantly.130 Firms have responded with increased compliance training that identify and mitigate situations that lead to collusion.131 Similarly, cartel guidelines promulgated by a number of competition authorities also provide guidance on how best to create anti-cartel programs for firms.132 It is possible that the increasing number of antitrust regimes that actively prosecute cartels, as well as European enforcement,133 means fewer global cartels. Compounding the increase in cartel enforcement globally is the impact of how other areas of compliance may be leading to better mechanisms for compliance that may impact cartel detection internally such as anti-bribery and audit related compliance involving accounting fraud.134 Thus, the more significant sanctions may be lowering the cartel crime rate.135

#### Especially during covid, products have become increasingly diversified and firms have become more averse to cartelization

Verbeke & Buts 08-17 – Professor of International Business and Strategy, McCaig Chair in Management, University of Calgary; Professor at the department of applied economics of the Vrije Universiteit Brussel

Alain Verbeke, Caroline Buts, “The Not So Brilliant Future of International Cartels,” Management and Organization Review, Cambridge University Press, August 2021, https://www.cambridge.org/core/journals/management-and-organization-review/article/not-so-brilliant-future-of-international-cartels/363CC718A5FD54F8BB390B9AB22150B7

Our predictions – assuming higher political risk that results from global institutional fracturing – are very different from those of B&C (2021). We predict increased investments in intelligence and contracting safeguards by individual lead-multinational enterprises in GVCs; lower levels of irreversible investments in hostile environments; higher product and industry diversification to counter the possible impacts of instant and uncontrollable government restrictions when a crisis occurs, whether health-related, national-security-related or for urgent economic reasons; and finally increased sophistication of relational contracting and ex post governance in GVCs (Verbeke, 2020).

When faced with sharply increased VUCA-conditions (referring to volatility, uncertainty, complexity, and ambiguity), the efficient governance response for most multinational enterprises will not be to engage in cartel-formation, considered as a dark governance form by competition authorities around the world. Rather, their response will be to become more efficient and effective stewards of the GVCs they lead, thereby eliminating dark-side elements in their own GVCs’ functioning.

#### Company surveys – almost every sector has said they are attempting to achieve more diverse supply chains

Brown 20 – News Writer for MIT Sloan

Sara Brown, “Reshoring, restructuring, and the future of supply chains,” MIT Sloan, June 2020, https://mitsloan.mit.edu/ideas-made-to-matter/reshoring-restructuring-and-future-supply-chains

The COVID-19 pandemic has been deeply disruptive for supply chains as businesses grapple with fluctuations in supply and demand, intermittent outbreaks in different parts of the world, and speculation about reshoring and reducing reliance on China. Many companies are looking at restructuring their supply chains, trying to balance resilience with efficiency and reduced costs — a process either started or accelerated because of the pandemic.

Even so, some predictions about how supply chains are changing are overblown, according to two supply chain experts. In separate web presentations recently, MIT professors Yossi Sheffi and David Simchi-Levi offered their thoughts about reliance on China, the possibility of reshoring, and how supply chains will — and won’t — change in the era of COVID-19.

Supply chain restructuring isn’t pandemic-specific

Supply chain restructuring was underway before the pandemic, Simchi-Levi said in a June webinar hosted by the MIT Industrial Liaisons Program. This includes companies reconsidering their relationship with China because of the trade war between the U.S. and China.

According to a survey of more than 3,000 companies released in February by Bank of America, companies in 10 of 12 global sectors said they intended to shift at least a portion of their supply chains from current locations. Companies cited tariffs, automation, and national security among the reason for the changes.

Some companies are thinking about bringing manufacturing closer to demand, said Simchi-Levi, an engineering professor, while others are looking toward fully reshoring.

Restructuring plans vary by industry, Simchi-Levi said. Some apparel manufacturing companies are moving out of China to Southeast Asia. High-tech industries are maintaining some manufacturing in China, but also bringing capacity closer to market demand by moving to Brazil, Mexico, and Eastern Europe. Simchi-Levi said these restructuring trends will likely continue and accelerate in light of the coronavirus pandemic.

#### Factor price convergence – complete offshoring has lost its profit potential which creates huge incentives to bring businesses back to the U.S.

Bacchetta et al. 21 – Counsellor in the Economics Research and Statistics Division of the World Trade Organization

Marc Bacchetta, Eddy Bekkers, Roberta Piermartini, Stela Rubinova, Victor Stolzenburg, Ankai Xu, “COVID-19 and Global Value Chains: A discussion of arguments on value chain organization and the role of the WTO,” World Trade Organization, January 2021, https://www.wto.org/english/res\_e/reser\_e/ersd202103\_e.pdf

There is a large literature showing that GVC integration on average facilitates technology transfer and diffusion from advanced to developing economies (See, e.g., Piermartini and Rubínová (forthcoming)). In line with this, different studies and reports have found that GVC participation increases productivity and output in developing countries (Stolzenburg, Taglioni and Winkler, 2019; World Bank Group, 2020). One study suggests, for instance, that 20% of Chinese labour productivity increases from 1995 until 2011 were driven by GVC integration (Stolzenburg, 2018). This econometric evidence is supported by descriptive evidence that shows that developing countries engaged in GVCs have enjoyed large growth rates and convergence of income to high-income country levels (United Nations Conference on Trade and Development (UNCTAD), 2013).

These spectacular growth rates translate into rising factor costs, most notably wages. From 2008 to 2018, average wages doubled in Thailand, almost tripled in China, and quadrupled in Vietnam according to statista.com. In contrast, wage increases in major GVC hubs like the United States or Germany increased only by a factor of about 1.25.^16 As a result, factor costs are converging between GVC trading partners and firms from advanced economies have less incentives to organize production within Global Value Chains. One report has estimated that in labour-intensive goods manufacturing the share of trade based on labour cost differences has fallen from 55% to 43% from 2005 to 2017 (McKinsey & Company, 2019).

Firms continuously re-evaluate their production networks and processes and factor price differences are an important aspect in these considerations. Convergence in factor prices between major actors in GVCs will cause firms to respond by shifting production to other locations or increase capital intensity of production. In that regard, it is important to highlight that many countries with relatively low wages have not integrated extensively into GVCs yet and, thus, offer untapped potential for firms from advanced economies. Vietnam has, for instance, benefitted from rising wages in China. The conclusion of the negotiations on the African Continental Free Trade Agreement is likely to increase the attractiveness of Africa to participate in European value chains. Hence, factor price convergence might lead to shifts in the geographic setup of value chains rather than reshoring. Another important point is that factor price differences are more important to some value chains than others. Price-competitive industries with low margins such as textiles or agriculture will respond faster to changes in wages than industries with high sunk investment costs that compete more on quality such as transport equipment or electronics.

### Developing Countries

#### That’s empirically true – even when given explicit mandates courts will read down laws to avoid intervention

Crane, Frederick Paul Furth, Sr. Professor of Law, University of Michigan, ‘21

(Daniel A., “Antitrust Antitextualism,” 96 Notre Dame L. Rev. 1205)

This Article has shown that, historically, the judiciary has treated the antitrust statutes as broad delegations to the courts to create a pragmatic common law of competition, even when the statutes plainly said something more specifically prohibitory. What, then, are the strategies available to a reformist Congress seeking to rein in business power through remedial antitrust legislation?

The one strategy that does not seem especially promising is simply writing clearer statutes. The antitrust statutes that the courts wrote down in favor of big business did not suffer from a lack of clarity or, if they did, not in the textual implications the courts chose to ignore. Strikingly, the courts continue to insist that the antitrust statutes are indeterminate delegations of common-law power, even while admitting in candor that they have simply chosen to ignore the statutes’ plain meaning in favor of a common method of deciding antitrust cases. For instance, in Professional Engineers, Justice Stevens remarked for the Court that “the language of § 1 of the Sherman Act . . . cannot mean what it says” and therefore that Congress must not have intended “the text of the Sherman Act to delineate the full meaning of the statute or its application in concrete situations,” thus justifying the courts in shaping the “statute’s broad mandate by drawing on common-law tradition.”255 Given over a century’s tradition of interpreting antitrust statutes as invitations to continue a common-law process whatever else is suggested by the statute’s text, it is difficult to see how simply accumulating stern new language in new texts would lead to a different result.

## 1NR

### Developing Countries

#### Which is why they’ll focus on other reforms instead of competition law – countries that connect to an impact don’t have the infrastructure necessary to model antitrust

Waked 8 – Dina Waked is an SJD Candidate at Harvard Law School and a Senior Teaching Fellow at the Department of Law, American University in Cairo.

Dina Waked, 2008, “Competition Law in the developing world: The why and how of adoption and its implications for international competition law,” http://www.icc.qmul.ac.uk/media/icc/gar/gar2008/Waked.pdf

Developing countries are generally reluctant to adopt competition rules. This stems from various challenges they face in adopting these rules. At the outset, enacting competition legislation is not considered a priority on their reform agendas. This is due to the high cost and low returns associated with adopting these rules compared to other reform-oriented policies, such as removing trade restrictions. The costs are related to the need to acquire, reform, or implement lacking administrative apparatuses, effective judiciary and appeal systems, independent investigating authorities, expertise, people with technical and legal skills, etc.

#### This means at best enforcement takes decades which is too slow to solve concentration

Waked 8 – Dina Waked is an SJD Candidate at Harvard Law School and a Senior Teaching Fellow at the Department of Law, American University in Cairo.

Dina Waked, 2008, “Competition Law in the developing world: The why and how of adoption and its implications for international competition law,” http://www.icc.qmul.ac.uk/media/icc/gar/gar2008/Waked.pdf

Also, most of these countries lack a reliable administrative enforcement system and a qualified independent judiciary, which can enforce the adopted models of competition rules.50 Also, the process of adjudicating is slow and in some cases almost a decade can pass before a ruling is final.

#### States also have incentives to preserve monopolies which makes them more reluctant to implement new laws

Waked 8 – Dina Waked is an SJD Candidate at Harvard Law School and a Senior Teaching Fellow at the Department of Law, American University in Cairo.

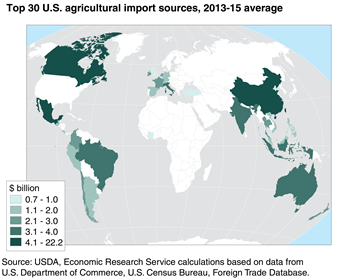
Dina Waked, 2008, “Competition Law in the developing world: The why and how of adoption and its implications for international competition law,” http://www.icc.qmul.ac.uk/media/icc/gar/gar2008/Waked.pdf

One of the critical challenges that face developing countries is the high level of government interference in the economy. This includes government-erected barriers to enter or exit the market,45 government monopolies, the various forms of subsidies granted by governments to loss-making enterprises,46 and government politicisation of the administrative authorities in force of applying and enforcing the competition rules. In most developing countries, governments play an active role in regulating and setting bureaucratic measures to be followed by firms to enter or exit the market, resulting in many instances in rigid barriers that cannot be surpassed.47 This in turn leads to rent-seeking behaviour, cronyism, corruption and favouritism .The economy is enmeshed in a ‘Kafkaesque maze of control’48 where large family owners often use their influence to limit competition and obtain finances from the government to alter the game in their favour.

#### only 1 dang country on the continent even shows up on a map of U.S. ag imports – there certainly would be no standing for suits in the world of the plan

USDA 15 – U.S. Department of Agriculture

https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/agricultural-trade/



### DA Sovereignty

#### Empirics prove – countries enact statutes that would block ties with the U.S. – that’s the OPPOSITE of BOTH supply chain harmonization AND modeling

Kava 19 – J.D./M.B.A. Candidate, 2020, University of Maryland Francis King Carey School of Law and Johns Hopkins University Carey School of Business

Samuel F. Kava, “The Extraterritorial Application of the Sherman Anti-Trust Act in the Age of Globalization: The Need to Amend the Foreign Trade Antitrust Improvements Act (FTAIA) & Vigorously Apply International Comity,” Journal of Business & Technology Law, Vol. 15, Issue 1, 2019, HeinOnline

A. Adverse Political and Economic Effects

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

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

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

As mentioned in Part I.C., the complaints of U.S. exporters and foreign governments were heard, and the United States Congress enacted the FTAIA "to address the concerns of foreign governments that the effects test established in the Alcoa case had not made clear the magnitude of the U.S. effects required to support a claim under the Sherman Act." 160 Thus, the FTAIA was implemented to bring certainty to consumers and producers by requiring that "conduct must have a 'direct, substantial, and reasonably foreseeable effect"' for the Sherman Anti-Trust Act to apply extraterritorially. 161 This language provided the foreign community with temporary relief, and gave producers and consumers the certainty and predictability needed to establish confidence in the markets and continue trading.

#### Trade agreements prevent overt protectionism, but antitrust is a unique means to *circumvent* them – destroys any remaining semblance of free trade

Murray 19 – Chief Growth Officer, CheckAlt; Judicial Law Clerk, US Bankruptcy Courts

Allison Murray, JD, Loyola Law School, 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?, 42 Loy. L.A. Int'l & Comp. L. Rev. 117 (2019), Available at: <https://digitalcommons.lmu.edu/ilr/vol42/iss1/3>

The WTO’s warning was intended to raise awareness that the creeping protectionism of the 1930s may be rearing its ugly head yet again, with the intention of preparing world leaders to avoid the pitfalls of such an approach.195 With so many agreements in place that are designed to prevent countries from raising tariff levels and engaging in the policies which plagued the world economy during the Great Depression, it makes sense that individual countries may fall back to antitrust law as a lever to promote protectionist policies.

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 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.

#### Their card’s only warrant is trade conflicts – those are fine now

Ruidong Gao 9-2, Chief Macroeconomist at Everbright Securities Co. Ltd., “Opinion: Why the U.S.-China Trade War Will Ease in the Fourth Quarter”, Caixin Global, 9/2/2021, https://www.caixinglobal.com/2021-09-02/opinion-why-the-us-china-trade-war-will-ease-in-the-fourth-quarter-101767913.html

Political maneuvering between Beijing and Washington has become the norm these days, with the U.S. sure to continue to pressure China regarding the international order and tracing the source of the coronavirus among other things. However, in terms of the economy and trade, we believe the last quarter of 2021 will likely see an easing of tensions.

Both China and the U.S. have incentives to reduce tariffs or make exemptions. Since the second quarter of 2021, China and the U.S. have restarted discussions on the economy and trade, signaling tensions are already easing.

#### Trade is recovering from COVID

Andrew Rosenbaum 21, Business Editor at Cyprus Mail, Journalist, Editor, Copywriter and Content Strategist, Focusing on Finance, Former Correspondent for Business Week, “International Trade Forgets Trump, Grows Stronger in 2021”, Cyprus Mail, 8/22/2021, https://cyprus-mail.com/2021/08/22/international-trade-trump-grows-stronger-in-2021/?fr=operanews

Amid economic disruptions from Covid-19, global trade on the whole held up relatively well in 2020 and moved on to greater strength in 2021, according to a report by United Nations Conference on Trade and Development (UNCTAD).

The World Trade Organisation’s Goods Trade Barometer has hit a record high in its latest reading issued on 18 August.

The Goods Trade Barometer is a composite leading indicator providing real-time information on the trajectory of merchandise trade relative to recent trends ahead of conventional trade volume statistics. The latest barometer reading of 110.4 is the highest on record since the indicator was first released in July 2016, and up more than 20 points year-on-year.

“ Much of the trade resilience was due to East Asian economies, whose early success in pandemic mitigation allowed them to rebound faster and to capitalise on booming global demand for COVID-19 related products. The positive trends from the last few months of 2020 grew stronger in early 2021. In the first quarter of 2021, the value of global trade in goods and services grew by about 4 per cent quarter-over-quarter and by about 10 per cent year-over-year. Importantly, global trade in Q1 2021 was higher than pre-crisis levels, with an increase of about 3 per cent relative to Q1 2019.”

Trade in services has not rebounded as strongly, and this hits Cyprus for which the export of services is much more important than the trade in goods.

But we are seeing a welcome rebound from the period in which former US president Donald Trump maintained policies that caused a steep decline in global trade.

The United States, the world’s largest importer, started a bitter tariff war with China and with its European allies in 2018. Then US President Donald Trump upended longstanding trade relationships with many of Washington’s top trading partners.

The fallout: Global growth in 2019 fell to 3.0 per cent, the slowest pace in a decade, before the pandemic started, the International Monetary Fund said.

Trump caused further disruption by attempting to undermine the World Trade Organization. He refused to name new judges to its hearings, and this effectively made it impossible for the organisation to operate.

“The world came perilously close to a return to what we saw in the 1930s. In response to the outbreak of the Great Depression, countries imposed trade barriers, blocking imports from other state, and a general escalation of tit-for-tat protectionism which hurt economic growth for many years,” according to analysts at Chatham House.

All this has changed today.

#### They cut out the part this card was referring to – it says CURRENT cases don’t trigger the DA because of limiting principles in FTAIA and the Motorola decision

Leonardo 16 [Lizl Leonardo was a J.D. Candidate, DePaul University College of Law, 2018; B.S., 2011, De La Salle University-Manila, Philippines. They are now an attorney for Fisher Zucker, “A PROPOSAL TO THE SEVENTH AND NINTH CIRCUIT SPLIT: EXPAND THE REACH OF THE U.S. ANTITRUST LAWS TO EXTRATERRITORIAL CONDUCT THAT IMPACTS U.S. COMMERCE”, DePaul Law Review, 66(1), 175-220, https://via.library.depaul.edu/cgi/viewcontent.cgi?article=4008&context=law-review] IanM

In Empagran, the U.S. Supreme Court held that extraterritorial application of U.S. antitrust law should be limited to balance the “legitimate sovereign interests of other nations.”355 One of the fears is that foreign plaintiffs with no relation to domestic commerce would flock to the United States to recover damages, which would be too costly given the already scarce judicial resources.356 The Seventh Circuit emphasized the principle of international comity and brought up the same concern in its Motorola opinion.357 However, the enactment of the FTAIA, particularly the “gives rise to” requirement, already accounts for this concern.358 This second requirement of the FTAIA ensures that all causes of action that have domestic effects to the United States are the proximate causes to those effects.359 Congress, therefore, made sure that unnecessary suits are not filed in U.S. jurisdictions, while not overstepping into another country’s interests.360 In Motorola, it is undisputed that the defendants’ conduct had domestic effects, as the inflated prices paid by the foreign purchases were ultimately passed on to U.S consumers.361 Motorola purchased over $5 billion worth of panels, over fifty percent of which eventually entered U.S. commerce.362 What seems to be a small increase in the price of the panels nonetheless would have a substantial effect on the market.363 Furthermore, the defendants were business executives engaged in global supply chains.364 If they did not already, they should have known that the artificially inflated price of these LCD panels targeted to reach the United States (as alleged by Motorola) would have an impact on the U.S. market.365

[GMU Card Begins]

Moreover, it does not appear that these cases have raised serious comity concerns; despite the **DOJ’s** prosecution of the foreign companies and **their employees**, no foreign government has stepped forward expressing deep concerns about the overreaching enforcement of antitrust law.366 This is not to say that courts must forget about the importance of international comity when analyzing antitrust cases. International comity ensures that the United States does not overstep into foreign countries’ authority when extending the reach of U.S. antitrust laws.367 In fact, the United States has **proactively assisted** **foreign countries** in their **efforts** to **capture** more **anticompetitive conduct**.368 However, despite the need to “tread softly” in this arena, the United States must put down its foot and continue to litigate claims of anticompetitive conduct by foreign companies, so long as the foreign anticompetitive conduct satisfies the requirements of the FTAIA.369

#### Aff is unprecedented – would be the hydrogen bomb of trade wars

--Note: it’s unique, this ruling didn’t go into effect, which is the aff’s entire premise!

Gibeaut 97 – reporter for the ABA Journal

John Gibeaut, "Sherman Goes Abroad: Landmark decision OKs international antitrust prosecution," American Bar Association Journal, Vol. 83, No. 7, pp. 42-43, July 1997, <https://www.jstor.org/stable/27839916>

A 1st U.S. Circuit Court of Appeals panel may have cut that leash entirely. An unprecedented decision now allows the federal government to criminally prosecute international anti-trust cases, even though all the criminal acts charged were committed by foreign nationals outside U.S. territory.

The Boston-based court’s unanimous March 17 decision in United States v. Nippon Paper Industries Co. Ltd., 109 F.3d 1, could become the equivalent of a hydrogen bomb in global trade wars where U.S. companies feel threatened by unfair foreign competition.

Nippon Paper has said it will pursue the case to the Supreme Court. If the decision stands, the feds can prosecute the Tokyo-based company on charges it conspired with other Japanese manufacturers to fix the price of fax paper imported into the United States.

#### Plan’s application of antitrust is distinct – it’s seen as aggression, not cooperation – that **wrecks relations, causes terror, and sparks war**

Salbu 99 – Professor of law and ethics, Georgia Tech

Steven R. Salbu, The Foreign Corrupt Practices Act as a Threat to Global Harmony, 20 MICH. J. INT'L L. 419 (1999), Available at: <https://repository.law.umich.edu/mjil/vol20/iss3/1>

The overreaching of extraterritorial legislation can affect world relations. The 1990s critique of relativism. 4 has the potential to empower a resurgence of moral imperialism. Peter Drucker identifies this trend as a new ethics that "denies to business the adaptation to cultural mores which has always been considered a moral duty in the traditional approach to ethics."" 5 History tells us that nations around the world highly value control over their own political processes." 6 At best, they will resist extraterritorially imposed legislation that is perceived as imperialistic."7 At worst, the encroachments such legislation represents can engender the same kinds of international hostility and conflicts caused by physical invasion.

Pfaff accurately casts some United States efforts toward global economic transformation as imperialistic." 8 He asserts, "[t]he United States, ambivalently backed by Europe and Canada, is attempting to force the replacement of crucial economic and social institutions in the nonWestern world with institutions drawn from its own experience and that of Western Europe.""' 9 While critiques that cast modern U.S. economic policy as the colonialism of the 1990s"2° may be dramatic, they also contain a prudent warning, reminding nations with expansionist histories that the world resents and fights their encroachment. While "[tihe new Western offensive means no damage . .. it is a war of society and culture, and causes damage ... [that] has political consequences."''

The vernacular of Senator Jesse Helms in regard to the Convention on Combating Bribery captures an attitude U.S. interests adopt all too often in the debate over corruption. In Helms' own words, there is "a need to push-and I use that word advisedly-to push our European allies and other countries to enact laws that criminalize bribery of foreign officials b , their citizens overseas."' 22 The comment is telling in two ways-it evokes a tradition of aggressive, forceful U.S. demands that the world resolve problems in the U.S-endorsed manner, and it reinforces the idea that "[t]he only right way is our way-the way we do it in the United States."'2 In view of Helms' comments and similar statements, it is little wonder that both the FCPA and aggressive U.S. measures to bring other countries in line with the statute's philosophy have met with resistance and resentment.

Few would challenge the idea that physical aggression and expansionism endanger global harmony. A greater number of observers would question the idea that forcefulness in promoting public policies bears similar kinds of risks. Yet Alterman accurately observes that global hostilities toward U.S. imperialism are not limited to military foreign relations issues, but encompass economic encroachments as well.'25 "Growing resentment of U.S. heavy-handedness is hardly limited to Europe, the Gulf, or even military matters," he notes, adding that, "[i]n Asia, resentment is growing at U.S.-directed demands that nations like Indonesia and South Korea open up their societies to U.S.-style capitalism. ' ' 116 He concludes that many Asians see "a U.S. attempt to use their temporary weakness to impart a new form of what Thai newspapers are calling 'U.S. financial imperialism' and 'economic colonialism' in the region."'27

Thus, while much of the world resented perceived U.S. political imperialism during the Cold War, nations are now likely to resent U.S. economic imperialism.' The resentment will be exacerbated when nations fear that their culture is at risk of being supplanted by U.S. culture.' 9 Moreover, other nations' sensitivity regarding U.S. economic intrusiveness has become aggravated over the past few years. Europe is increasingly uneasy with U.S. world influence,'30 and Canada has instituted "blocking measures" that "insulate Canadian nationals and companies from foreign attempts to enforce their extraterritorial requirements or penalize their violation."'' Meanwhile, turmoil in Asia's economy has triggered a backlash there against U.S. influence in global economic affairs.12 According to Kawachi,

Those who feel victimized by post-cold war trends regard economic globalization as a campaign to impose Western values, under which a country's development strategy and reform efforts are judged by how close they approach the AngloAmerican model. Among these people there are rising concerns that, unless something is done, their own cultures and even value systems will be swallowed up by foreign norms."'

To what degree such resentments are justified is an interesting question. In itself, however, its answer cannot resolve the policy issues surrounding extraterritorial statutes. Justified or not, resentment over legislative overreaching has historically engendered hostility,3' 4 potentially threatening diplomatic relations between nations."' This hostility in turn has created a hazard to international relations, and may even pose a threat to global peace. In a world where U.S. flags are burned in demonstrations against alleged U.S. arrogance and hegemony, ' any perception of an overweening megalith has the potential to fuel backlash " ' 37 and create an atmosphere of conflict, acts of retributive terrorism, and even war.

Of course, the degree of harm engendered by invasive laws will vary and will be difficult to predict under a range of circumstances. Goldsmith and Rinne attribute "withdrawal of foreign investment, blocking of corporate acquisitions and mergers, and damage to foreign relations" to extraterritorial application of laws.'38 Zimmerman accurately notes, "[t]he more intrusive the application [of an extraterritorial statute], the more the United States exposes itself to international criticism and retaliation."'139

#### China specifically would certainly backlash to the 1AC – its threatened to do so already

Perlman 21 – Writer and Reporter for Law360

Matthew Perlman, “Vitamin C Price-Fixing Case: Round 2 At The 2nd Circ.,” Law360, March 2021, https://www.law360.com/articles/1365219

The case has already created geopolitical strife, with the Chinese government calling the case offensive and the issue one it deems important.

Stephen Calkins, a professor at Wayne State University Law School, told Law360 that the Chinese legal system involves more than just written laws and requires looking at different applications and interpretations of legislation, as well as various protocols. This, he said, creates the potential for abuse by the Chinese government and could obscure when it's actually trying to help its own companies.

But in its brief to the Second Circuit after the high court's decision, MOFCOM argued that there's no reason for it to offer anything but a bona fide interpretation of its regulations.

"It would make no sense for a sovereign to appear in U.S. court for the first time to offer untrue statements that could be used against its own interests by other nations, all to support a handful of domestic companies facing litigation abroad," the ministry said in a brief.

Calkins acknowledged that it's politically sensitive to accuse another country of using competition law as a backdoor way to give its own companies an advantage in the global marketplace.

"When you start saying that in writing in court, in an official document, it comes close to assaulting the integrity of a foreign country," Calkins said. "That's what makes it so tricky. It's hard from the outside, really, to have a good understanding of the Chinese legal system."

John Briggs, a partner with Axinn Veltrop & Harkrider LLP, told Law360 that he views the case as an example of a broader issue for international relations, saying it's an example of U.S. courts reaching beyond the country's borders in a way that some consider an exercise in "judicial adventurism" or "extraterritorial bullying."

"No other judicial system in the world so regularly reaches across oceans and borders to issue orders with extraterritorial effects at the behest of private parties," Briggs said, adding that when other countries' courts reach overseas, "they're doing so at the behest of foreign governments."

applications of U.S. law to conflict with international law.257

#### Aff generates substantial friction with foreign countries – they care about practical effects, not legal doctrine

Piraino 12 – Law Clerk, Meltzer, Lippe, Goldstein, & Breitstone, LLP

Stephen D. Piraino, “A Prescription for Excess: Using Prescriptive Comity to Limit the Extraterritorial Reach of the Sherman Act,” Hofstra Law Review, Vol. 40, Issue 4, Article 10, 2012, https://scholarlycommons.law.hofstra.edu/cgi/viewcontent.cgi?article=2685&context=hlr

D. The Global Community Disapproves of the Expansive Reach of the Sherman Act

The expansive reach of the Sherman Act has been met with resistance from other nations,221 especially from countries with which the United States is a trading partner.222 Some nations oppose the United States' antitrust regime because it infringes on their sovereignty and thus violates international law.223 Other nations are concerned about the detrimental effects on their economies caused by the extraterritorial application of U.S. antitrust law.224 The United Kingdom is one of the most vociferous objectors to the globalized reach of U.S. antitrust 225 laws. Japan, too, strongly disapproves of the extraterritorial application of U.S. antitrust laws into its sovereign territory.226 Both Japanese and British nationals and businesses have frequently been targets of U.S. antitrust prosecution, despite their nations' much weaker antitrust enforcement schemes.227 Even U.S. courts that have allowed U.S. antitrust law to apply extraterritorially recognized the validity of this concern.228

While the United States and the United Kingdom have formed a strong and mutually beneficial military alliance,229 the extraterritorial application of U.S. antitrust laws has been a source of tension between the two nations. 230 The United States and United Kingdom have fundamentally different perspectives about the extraterritorial application of their own laws, especially with antitrust laws. 231 The United Kingdom adopts a more restrictive view, compared to the liberal effects test used in the United States. 2 With few exceptions, the United Kingdom will only exercise jurisdiction over actions occurring in its territories or the actions in foreign territories perpetrated by its own nationals or domestic corporations.233 Antitrust matters do not seem to fall under the exceptions, as the view of the British government is that "substantive jurisdiction in antitrust matters should only be taken on the basis of the territorial principle or the nationality principle. 234

The United Kingdom has criticized the much more expansive effects test employed by the United States because it infringes on other nations' sovereign rights. 231 In 1978, the British government expressed its disapproval in a diplomatic note.236 The note, prepared on behalf of the British Embassy by Department of State Deputy Assistant Secretary for International Finance and Development Charles F. Meissner 237 stated: "HM Government considers that in the present state of international law there is no basis for the extension of one country's antitrust jurisdiction to activities outside of that country ....”238

Even more, the United Kingdom passed the Protection of Trading Interests Act (the "PTLA") 239 in 1980 as a result of the nation's strong disapproval of the extraterritorial application of U.S. antitrust law and in order to protect its domestic industries. 240 The PTIA "provide[s] protection from requirements, prohibitions and judgments imposed or given under the laws of countries outside the United Kingdom and affecting the trading or other interests of persons in the United Kingdom., 241 Not only does the PTIA provide protections against the extraterritorial application of foreign laws in the United Kingdom, but it also deters parties from bringing private actions.242 Through protective discovery measures and the unenforceability of certain judgments,243 it becomes more expensive and less certain to bring a private antitrust lawsuit against a British company.244

The United Kingdom referenced the PTIA in its amicus brief supporting the British reinsurers in Hartford Fire.245 Its major argument in the brief was that international law prohibits the type of extraterritorial application sought by the plaintiffs in Hartford Fire.246 While the United Kingdom acknowledged that it worked with the United States on adjudicating disputes surrounding conduct that was illegal in both countries, it recognized the friction that extraterritorial application of the Sherman Act has caused between the two nations. 247 The British government did not take the position that all instances of the extraterritorial application of U.S. antirust law were prohibited by international law.248 Instead, its disapproval in this particular case was based on how exercising jurisdiction over the British reinsurers would interfere with Britain's ability to regulate its own industries.249 The United Kingdom argued that international law required the U.S. courts to decline to adjudicate the matter because it would be unreasonable to exercise jurisdiction over the British defendants. 250 Further, the British government mirrored Justice Scalia's dissent in Hartford Fire by recognizing the canon of construction that U.S. laws should not be construed to violate international law.25 Following from this canon, the amicus brief argued that the Sherman Act has not been previously construed by the Supreme Court so as to ignore its impact on U.S. allies.252

The government of Canada also submitted an amicus brief supporting the foreign petitioners in Hartford Fire because of its concerns about U.S. extraterritorial jurisdiction.253 Canada did not want the conduct of the British reinsurers to be included under the Sherman Act because it would violate international law.254 The conduct of the British reinsurers was legal in the United Kingdom, and Canada did not want U.S. antitrust laws to apply to conduct that was legal in the country where it occurred.255 In its brief, Canada also raised an important question: Would the United States want another nation to apply its laws extraterritorially to conduct that was legal in the United States, but illegal in that foreign country?256 Like the United Kingdom, though, Canada recognized its relationship with the United States and because of that close economic relationship, Canada did not want applications of U.S. law to conflict with international law.257