# Texas Round 6 Wiki

## 1NC

### DA Sovereignty

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

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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.

#### 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!

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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.

#### The aff’s standard spills over and wrecks cooperation in areas beyond cartels.

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Robert E. Connolly, “Why the Motorola Mobility Decision was Good for Cartel Enforcement and Deterrence,” CPI Antitrust Chronicle, January 2015, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2559149

A. What’s Good for the Goose…

Another concern I have related to the reach of the FTAIA is “what’s good for the goose is good for the gander.” Many foreign companies do business in the United States, either directly or through subsidiaries. What would the reaction be of a U.S. company, for example, if it was hauled into court in China for sales made in the United States to a Chinese subsidiary because the subsidiary operating in the United States felt the laws (courts) in China would be more favorable? The quote below, while in relation to FCPA enforcement, expresses my concern better than I can:

It’s most certainly not good economics that one court jurisdiction gets to fine companies from all over the world on fairly tenuous grounds. Who would really like it if Russia’s legal system extended all the way around the world? Or North Korea’s? And I’m pretty sure that the non-reciprocity isn’t good public policy either. Eventually it’s going to start getting up peoples’ noses and they’ll be looking for ways to punish American companies in their own jurisdictions under their own laws. And there won’t be all that much that the U.S. can honestly do to complain about it, given their previous actions.17

B. Cooperation in Areas Beyond Cartels

Continued cooperation among enforcement agencies isn't just important in the areas of cartels, but also in mergers and other competition conduct cases. Thomas O. Barnett, recent head of the Division, stated that global antitrust enforcement could create “burdensome requirements” if “procedures and substantive antitrust analysis diverge across countries, which can lead to inconsistent or even incompatible results.”18 And, in Europe, Joaquín Almunia, the former European Commissioner for Competition, voiced a similar concern, “In this setting, our ability to protect competition on the merits, foster innovation, and keep markets open and fair will depend on how well we manage to establish a common set of principles and goals for our enforcement work.”19

If the United States is seen as a competition bully, the blowback in other areas besides cartels could be far reaching. Of course, core principles should not be abandoned. So, for example, the United States will likely continue to disagree with partners about the treatment of resale price maintenance. But the ability of a U.S. parent to stand in the shoes of its foreign subsidiary in order to press damages claims in the United States is not a core principle. In that area companies may have to simply “vote with their feet” and not set up foreign subsidiaries. An even more simple solution, and simple is usually better, would be for the U.S. parent to make purchases if it does not want to have to seek antitrust remedies under the laws of the country in which its subsidiary is are operating.

#### Flexible extraterritorial regulation solves existential risks.

**Kent 16**

Dr. Randolph Kent, Director of the Humanitarian Futures programme at King’s College London, Senior Research Associate of the International Policy Institute, Fellow at The Policy Lab, long-time senior UN official, Joanne Burke, and Amanda Taylor, King’s College London, EXPLORING ALTERNATIVE WAYS OF UNDERSTANDING HUMANITARIAN CRISES AND SOLUTIONS, http://www.humanitarianfutures.org/wp-content/uploads/2017/10/Alternative-Humanitarian-Paradigm-Final-4-July-2016s.pdf

Never before have we been able to **disrupt the fundamental processes of Earth’s ecology**, and never before have we created **social, economic and technological systems** – from **continent-wide industrial agriculture** to the **international financial system** – with today’s **enormous** complexity, **connectedness** and **speed of operation**. Whether the issue is **drug resistant diseases** or **shiploads of migrants** dumped on our shores, our problems **spill across geographical** and intellectual **boundaries**, their complexity often exceeds our wildest imaginations, and they **converge and intertwine** in totally unexpected ways. The **real danger of the 21st century** is ‘**synchronous failure**.’1

Introduction: The Copernican challenge Nicholas Copernicus at the beginning of the 16th Century announced his theory that the earth was not at the centre of the universe, but actually rotated around the sun. This proposition, though resisted initially by the establishment, ultimately formed an alternative basis of knowledge and understanding about our universe that continues today. 1 Presentation by Dr. Thomas Homer-Dixon, of the University of Toronto’s Center for the Study of Peace and Conflict, ‘Synchronous Failure: the Real Danger of the 21st Century’, for the US Congressional bi-partisan study group on ‘Security for a New Generation’, 5 December 2002, US Capital, Washington, DC. The underlying assumptions upon which knowledge and the search for knowledge are based are generally referred to as paradigms. The search for alternative paradigms is intended to improve both understanding and explanations by challenging the assumptions that underpin present conceptual constructs. It is not about improving understanding and explanation by building upon existing assumptions, but rather by proposing alternative assumptions that might provide different frameworks for ordering evidence that leads to knowledge.2 This note comes at a time when there is growing concern that the present humanitarian sector may not be adequate to meet the crises – the disasters and emergencies -- of the present, let alone the future. Directly and indirectly a series of global consultations and meetings, including the World Humanitarian Summit, have been seeking ways to make humanitarian action more relevant to ever growing types, dimensions and dynamics of humanitarian threats. And, while there has been a wide spectrum of suggestions aimed at improving the sector, this spectrum is nevertheless sustained by a traditional set of assumptions that might be described 2 Two key figures in the understanding of paradigms and the assumptions that sustain or challenge them are Thomas Kuhn, The Structure of Scientific Revolutions, University of Chicago Press, 1962 and Imre Lakatos, Proofs and Refutations: The Logic of Mathematical Discovery, Cambridge University Press, 1976. 2 as ‘the Western hegemonic’ paradigm.3 Is there an emerging alternative? This exploration of alternative ways of understanding the contexts and factors which underpin crisis threats and their solutions is closely tied to the Planning from the Future [PFF] project. The PFF is primarily concerned with the loosely defined ‘humanitarian sector’s capacities to deal with ever more complex and uncertain humanitarian crises, or, disasters and emergencies. Towards that end, the PFF partnership, consisting of King’s College London, the Overseas Development Institute and Tufts University, will in the first instance explore the present landscape of the humanitarian sector, how that sector responds to ‘game changers’ that confront it with unanticipated challenges and the extent to which that sector is fit for the future. 4 In that context, if the sector is not fit for the future, plausible solutions may emerge for improving it through institutional change and methodologies that reflect our present understanding of the nature of crisis threats and mitigation. Or, alternatively, the assumptions that are made about crisis threats and appropriate action may stem from a paradigm which by analogue might be Copernican in consequence, and may well lead not only to different understandings about the nature of crises, but also to different approach to solutions. This exploration began with extensive research about the nature of paradigms and the assumptions that underpin humanitarian action. The concepts incorporated in the paper were frequently the result of seven meetings with humanitarian experts, and at the end with a major consultation that brought together all of those who had helped in the past. 3 See, for example, the forthcoming Planning from the Future report (Chapter 1). www.planningfromthefuture.org The result is Exploring alternative ways of understanding humanitarian crises and solutions. The paper is divided into three man sections: Section 1 suggests five assumptions that might serve as guideposts on the journey for alternative perspectives. In Section 2, the three key elements of the emerging paradigm are considered, each with a set of reflections about what will be described as their ‘normal life’ implications. Finally, Section 3 draws specific conclusions about what might be considered as the humanitarian implications that can be drawn from this emerging paradigm. In its totality, the paper links directly into what is called the Synthesis Report, or, Planning from the Future: Humanitarian spectres, a PFF product intended to make futures real for humanitarian practitioners. Exploring alternative ways has been designed to suggest different approaches for understanding the nature and drivers of risk as well as new ways to understand alternative solutions. The Synthesis Report is intended to incorporate these new perspectives into broad but practical approaches to planning and decisionmaking. I Hypotheses guiding the paradigmatic exploration There are five hypotheses that guide this effort to identify the possibility of an emerging alternative humanitarian paradigm: [1] Humanitarian crises are reflections of the ways that societies structure themselves and allocate their resources. They are not aberrant phenomena, divorced from ‘normal life,’ but rather a reflection of it,5 everything 4 See the forthcoming Planning from the Future report (Chapter 2). www.planningfromthefuture.org 5 ‘Normal life’ in this context refers to the fact that disasters and emergencies are an integral 3 from governance and leadership to human security and socio-economic opportunities; 6 [2] Humanitarian crisis drivers, their dimensions and dynamics are directly linked to human progress and related change, including technological advance;7 [3] Except for existential crises, e.g., asteroid impact8 , the types of humanitarian crisis drivers, their dimensions and dynamics, have increased exponentially over the past 200 years, and continue to do so even more intensely. This latest phase of exponential increase is due to a rapidly changing, interconnected and globalised world, one in which technology will continue to act as a major driver of change and determinant of human progress; [4] Increasing extra-terrestrial, or, outer space involvement by humankind is but one dramatic example of highly plausible change in the nature of vulnerability and the perception of what and who is vulnerable. The prospect of existential risk that have potential global impacts are increasing, all in one way or another underscoring the part of environmental abuse and economic and social exploitation. Rather than the assumption that disasters and emergencies foster vulnerability, the ways in which human beings organise their social and economic lives do. Randolph C. Kent, Anatomy of Disaster Relief: The International Network in Action, Pinter Publishers Ltd, London, 1987, p.4ff 6 See the forthcoming Planning from the Future: Humanitarian spectres for specific discussions on governance and human security and human agency. 7 Linked to societal structure and resource allocation is the impact of technological advance, which over the past 200 years has bent the curve of human history – of populations and social development – by almost 90 degrees. See Eric Brynjolfsson and Andrew McAfee, The Second Machine Age: Work, Progress and Prosperity in a Time of Brilliant Technologies, W.W. Norton & Co., New York. 2014, p.6 8 The Cretaceous–Paleogene (K–Pg) extinction event was a mass extinction of some threequarters of plant and animal species on earth increasing speed of global vulnerability9 ; [5] As suggested in #1, above, humanitarian crises are reflections of the ways that societies structure themselves and allocate their resources. This is what was referred to above as the ‘normal life proposition’, and is based upon the dynamics of complex systems. Such systems are open, dynamic, non-linear and in a state of perpetual disequilibrium. This, therefore, suggests that ‘…in many of the pressing issues for our future welfare as well as for the management of our everyday life, [we] will need such a systemic complex system and multidisciplinary approach’10 to be adequately prepared to deal with ever more complex and uncertain threats. II An exploration of paradigmatic assumptions The search for the possibility of an emerging alternative paradigm might begin with the ‘normal life’ proposition that suggests that all societal phenomena, including disasters and emergencies, reflect highly complex that occurred over a geologically short period of time, 66 million years ago 9 The University of Cambridge’s Centre for Study of Existential Risk is but one of a growing number of interdisciplinary research centres focused on the study of human extinction-level risks that may emerge from amongst other things technological advances. Examples include M. Rees, Our Final Century: Will the human race survive the 21st century?; J.F.Richard, High Noon: 20 global problems, 20 years to solve them, New York – Basic Books, 2002, Nick Bostrom, “Existential Risks: Analysing human extinction scenarios and related hazards,” Journal of Evolution and Technology, Vol.9, No.1, 2002 10 D. Sornette, “Dragon-Kings, Black Swans and the Prediction of Crises,’ International Journal of Terraspace Science and Engineering, 2(1): 1-18, p.1, 2009 as quoted in Ben Ramalingam, Aid on the Edge of Chaos: Rethinking International Cooperation in a Complex World, Oxford University Press, 2013, p.138 4 messes, 11 and that such ‘messes’ are not restricted in either space or time. They perpetually evolve. This runs contrary to standard assumptions underlying the term, ‘humanitarian’. That term is principally concerned with systems failures, and reflects a belief that such failures have finite beginnings and ends. An emerging paradigm might be based upon the assumption that humanitarian crises from a whole of society perspective are not bound by clearly defined space and time dimensions. And, emerging from this perspective are three interconnected sets of propositions that form the basis of the proposed alternative humanitarian paradigm: [1] Reflections of normal life – The proposition that humanitarian crises are reflections of normal life is on the one hand generally accepted.12 Yet, on the other, ‘disasters are still predominantly seen as exogenous and unforeseen shocks that affect supposedly normally functioning economic systems and societies.’13 However, what all too often have not been appreciated are the full implications of ‘the normal life’ proposition. In this regard, a more comprehensive societal focus changes 11 In defining the use of the term, ‘messes’, Alpaslan and Mitroff state that problems ‘resist our attempt to confine them and rein them in by reducing them to a single discipline or point of view. For example, different stakeholders rarely have the same definition of the individual problems that constitute a mess and of the entire mess itself. Indeed the fact that different stakeholders have different perceptions of a mess is itself one of the keys defining attributes of messes! As a result “problem negotiation” is one of the most important aspects of managing messes. Before one can “solve” a problem one first has to agree on the nature of the problem. And if agreement is arrived at all, it should be reached only at the end of an intense debate about the “nature” of the problem instead of the all–too-common pressure to get a quick consensus.’ Can M. Alpaslan and Ian I. Mitroff, Swans, Swine and Swindlers: Coping with the growing threat of mega-crises and megamesses, Stanford University Press, Stanford, 2011, pp xx ff. 12 Op cit. #5 See, for example, Randolph C. Kent, Anatomy of Disaster Relief: The the ways that crisis threats are defined and solutions posited. This focus in turn suggests the following: n humanitarian crises consist of complex systems of changing problems that interact with each other. No crisis driver is in itself the sole explanatory factor for a crisis event or its consequences. People ‘are not confronted with problems that are independent of each other, but with dynamic situations that consist of complex systems of changing problems that interact with each other’.14 These are defined as ‘messes’, and this concept is an important starting point for understanding and explaining humanitarian crises. The need to understand and prepare for humanitarian threats and actions in terms of complex systems and interacting problems will become increasingly evident as such ‘messes’ reflect ever more fluid manifestations of vulnerability. Accepting the concept of ‘messes’ should narrow the perceived bifurcation between so-called natural disasters and man-made emergencies.15 And, International Network in Action, Pinter Publishers Ltd, London, 1987, p.4ff 13 Allan Lavell and Andrew Maskrey, The Future of Disaster Risk Management: An Ongoing Discussion 14 Russell L. Ackoff, Re-creating the Corporation, Oxford University Press, New York, 1999, p.324 15 The definition of ‘emergency’ within a humanitarian context has various interpretations. Quarantelli sees ‘emergency’ as one of a threshold of events, each depending upon resource requirements, from accidents to emergencies to disasters and finally to catastrophes. The OCHA orientation handbook sees emergencies as ‘a humanitarian crisis in a country, region or society where there is total or considerable breakdown of authority resulting from internal or external conflict and which requires an international response that goes beyond the mandate or capacity of any single agency.’ The IFRC views a complex emergency ‘as a reflection of disasters [which] can result from several different hazards or, 5 yet, while there are perceptible moves towards recognising the interconnectedness between certain types of humanitarian crises (e.g., natural hazards and technological failures), there continues to be resistance in the humanitarian world to accepting the interdependent nature of most if not all crisis events, including natural events and conflict. In that sense, ‘some of the greatest mistakes are made when dealing with a complex mess, by not seeing its dimensions in their entirety, carving off a part, and dealing with this part as if it were a complicated problem, and then solving it as if it were a simple puzzle, all the while ignoring the linkages and other connections to other dimensions of the mess.’16 This tendency to accept if not reinforce the dichotomy and to ignore basic causation and solutions can also be perceived as a convenience. Not unlike the reactions of the establishment in the time of Copernicus, politicians, policymakers and planners resist alternative perspectives because it goes against the inherent ‘short-termism’ of most institutions and their incremental approach to problem solving.17 n humanitarian response is underpinned by contending and not universal principles, the former reflecting cultural, local more often, to a complex combination of both natural and man-made causes and different causes of vulnerability. Food insecurity, epidemics, conflicts and displaced populations are examples.’ 16 Ben Ramalingam and H. Jones with T. Reba and J. Young, ‘Exploring the Science of Complexity: Ideas and Implications for Development and Humanitarian Efforts’, Working Paper 285, ODI, London, 2008, p.11 17 As described by one analyst, in crises, ‘political stakes logically increase….Disasters overload political systems, catastrophes can bring down regimes.’ Richard Stuart Olson, ‘Towards a Politics of Disaster: Losses, Values, Agendas and Blame, International Journal of Mass Emergencies, August 2000, Volume 18 #2. and regional perspectives and values. One prevailing assumption underpinning the predominant humanitarian paradigm is that there is an inherent human motivation that explains why human beings respond to the plight of other human beings, namely, an overarching moral sense of responsibility, benevolence and empathy that is universal. This abiding motivation in turn justifies what are regarded as universal humanitarian principles. Morality as motivation and universal principles, however, ignore the relationship between crises and the ways that they test and reinforce basic values – religious, spiritual, philosophical. There are profound differences in the ways that societies explain and interpret their respective worlds.18 Increasingly, ‘we will have to deal with “contending” and not “universal principles,” suggests the renowned anthropologist, Arjun Appadurai. In a world in which different power structures will emerge, with their concomitant local and regional perspectives and values, the presumption of common principles will be less and less relevant. More and more, perceptions of self-interest and possible mutual self-interest will be at the heart of humanitarian action.19 18 ‘Thank you for explaining your principles,’ said a member of a Middle Eastern group that had come to hear an ICRC delegate’s explanation of the organisation’s humanitarian role. ‘However, we, too, have our own principles,’ he continued, ‘Ours begins with justice. To what extent do your principles incorporate the concept of justice?’ In so many ways, the avowedly universal principles presented by humanitarians reflect a Western hegemony that can be traced to the age of discovery in the 15th and 16th centuries, to the age of industrialisation, colonialism and economic dominance of the 18th and 19th centuries – past Solferino – and clearly into the 20th century in the post 1945 world. 19 Students of humanitarian affairs will have ‘to deal with “tactical humanism” – a humanism that is prepared to see universals as 6 n humanitarian crises always have transformative consequences that go well beyond the geopolitical and socio-economic boundaries of the event, itself. As in physics, so, too, in the nature of ‘normal life’, dynamics are not constrained by fixed time and space. Their effects continue in various forms over time and across spatial boundaries. While these dynamics are inherent in all matter, they are becoming increasingly evident in a world that is overtly more interconnected, through trade and through movements of capital, people and information. ‘What we call “flows”’.20

The ‘normal life’ dimension of humanitarian crises means that the drivers of such crises are part of systems that are in constant flux, driven by a ‘persistent need for energy’.21 They are in a state of ‘non-equilibrium’. In that sense, as suggested below in the technological paradox, humanitarian crises also reflect the ever-fluctuating boundaries of ‘normal life’, and those boundaries are moving in myriad directions, including beyond the earth’s atmosphere. Hence, another assumption underpinning the alternative paradigm is that a growing number of crisis drivers and ways to mitigate them will become extraterrestrial. **Extraterritoriality** will emerge as a **major factor** in what we continue to call ‘humanitarian response’, and will fundamentally change many aspects of what is a crisis driver and who and what is a ‘humanitarian actor’.22

[Footnote 22] An example is ‘asteroid impact avoidance’ where technology enables human intervention to divert asteroids. Hence, the ‘humanitarian actor’ might well be someone who has the capacity to **prepare for** and **prevent** potentially **existential threats**. This could well be the humanitarian actor of the future. [End Footnote 22]

### CP Private Action

#### Text: The United States federal government should allow relevant agencies to sue to enjoin domestic export cartels that operate in foreign nations without protections for export cartels and recover single damages.

#### 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

**Defense merger markets are opening now – that allows opportunities for firms to invest in new lines of innovation**

**Aaronson et al. 20** – Matt Aaronson leads BCG’s Aerospace and Defense practice globally; Doug Belair is the former Senior Vice President of Strategy and Corporate Development for BAE Systems, Inc., and current Senior Advisor for the Boston Consulting Group; Paul DeLia is a Senior Advisor at The Boston Consulting Group; Drosten Fisher is a Partner in BCG's New York office; Stephen O’Bryan is Senior Advisor for the Boston Consulting Group; Mel Wolfgang serves on Boston Consulting Group's Industrial Goods practice leadership team and the North American management team

Matt Aaronson, Doug Belair, Paul DeLia, Drosten Fisher, Stephen O’Bryan, and Meldon Wolfgang, "Building Beachheads in the US Defense Market Through M&A," Boston Consulting Group, 7-23-2020, <https://www.bcg.com/publications/2020/building-beachheads-us-defense-market-through-mergers-acquisitions>

Despite the serious economic pain that the coronavirus pandemic has created for some defense companies—sapping their ability to undertake acquisitions—**all is not lost**. Defense M&As are **still an option**. Historically, industry **consolidation** occurs when US defense spending is on the decline, and, given the trajectory of such spending today, the industry could well be on the **cusp** of another **period of consolidation.**

Of course, some formidable challenges await companies that want to tap into the enormous US defense market, as well as for companies that hope to expand an established presence. A wave of consolidation over the past decade has cemented positions, leaving a relatively small number of large players that would be logistically difficult to acquire. Any major deal would surely face careful regulatory scrutiny. With those caveats in mind, companies should plan now for how they could seize opportunities to establish new platforms and beachheads in the US defense market.

The Next Consolidation Wave?

US defense spending tends to go in waves, and we may be about to enter **another downturn** with **aggressive cuts** similar to those proposed by the Budget Control Act in 2011. (See Exhibit 1.) While the President’s FY21 defense budget requests an annual 2% increase, our modeling suggests an increase is **unlikely**, given the size of the **stimulus package** to counter COVID-19. We forecast a range of scenarios, with the best case being essentially a flat budget, and the worst being a steep decline. If the worst case occurs, it’s likely that new programs will be postponed, R&D cut for all but the most strategic efforts, and current procurements will slip. There could also be pressure to keep existing programs in service longer than planned—which could increase their sustainment costs and modernization requirements.

[[figure omitted]]

Such downturns have historically been **periods of consolidation** in the industry, a chance for **stronger companies** to buy firms in financial distress and either **establish a beachhead** in the US or **expand their presence**. (See Exhibit 2.) This presents a **near-term opportunity** for companies—whether they are foreign firms, domestic commercial aerospace companies, private equity investors, or existing players looking to create new platforms.

[[figure omitted]]

For example, BAE Systems took advantage of the downturn in the 1990s to acquire the Sanders electronics business from Lockheed Martin. This put BAE on the path to building a $12 billion business in the US, accounting for 50% of the group’s revenue and making it a major prime contractor. The Sanders acquisition helped BAE establish a Special Security Agreement with the US Department of Defense (DOD), which eventually regarded the company’s US business as a domestic company. Using this as a foundation, BAE went on to acquire United Defense and the Bradley Fighting Vehicle franchise in 2005. The company followed up this acquisition in 2007 with the purchase of Armor Holdings a provider of tactical vehicle and soldier protection equipment. The land vehicle acquisitions proved highly lucrative in the Iraq and Afghanistan wars.

While it’s true that few companies have the financial resources of a BAE, or the risk appetite for multibillion dollar acquisitions, we still see **many opportunities** to create **custom plays**—to **assemble** what a company wants in a **few steps** instead of one fell swoop—and at a **lower cost** than buying a large firm (and with less regulatory scrutiny).

Become A **Conduit Of Innovation**

It’s important to understand that while the prime contractors (aka, “the primes”) are huge, their R&D budgets are **relatively constrained**—typically **just 2%** or so of revenue. They tend to focus on winning new programs and developing existing programs but **not pure innovation**. As a result, their “cash cows” can sometimes get shortchanged on the R&D front. The primes still value these programs, but they must prioritize and often **cannot spare the resources** to upgrade them.

This **creates opportunities** for others. A prime might **happily divest** a seemingly stagnant component business (in order, hypothetically, to focus on system integration) but would be very interested if the new owner of that component business **pursued R&D** and did the **necessary conversion work** to help extend the life of the prime’s existing system integration program. In addition, the Pentagon is looking to **diversify its sourcing** to more creative and flexible vendors who will assume more of the financial risk of system **modification and development.**

With that mind, we believe that **ambitious companies** should consider **M&A strategies** that help them become “**conduits of innovation**” for the main players. The aspiring company may need to **acquire several subunits** from existing players to build a **cohesive whole**, then marry **industry knowledge** (such as where to find certain expertise or anchor capabilities) together with an **analytical understanding** of where the leading edge of the industry is trending. This approach requires a coherent vision for what a successful player will look like in three to five years. (See the sidebar, “Six M&A Success Factors.”)

#### Aff is a massive expansion of antitrust law, which causes a chilling effect

Nuechterlein, JD, partner and co-leader of Sidley's Telecom and Internet Competition practice, and Muris, George Mason University Foundation Professor of Law, served from 2000-2004 as Chairman of the Federal Trade Commission, ‘21

(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.

**Sends chills throughout the industry and deters defense mergers**

**Carroll 21** – Partner in the Antitrust & Competition Practice Group in the Washington, D.C. office, former member of the Mergers I Division of the Federal Trade Commission’s Bureau of Competition

John D. Carroll, "How a New Era in Antitrust Enforcement May Impact Government Contractors," The National Law Review, 2-24-2021, https://www.natlawreview.com/article/how-new-era-antitrust-enforcement-may-impact-government-contractors

With a new presidential administration promising vigorous antitrust enforcement, and a new Democratic majority in Congress seeking to make **drastic changes** to U.S. **antitrust laws**, the technology and healthcare industries have found themselves the main targets of increased antitrust scrutiny. Though companies engaging in government contracting, particularly in the **aerospace and defense industries**, already have had to deal with a **range of antitrust issues** – for example, the Department of Justice, Antitrust Division (the “DOJ”) launched the Procurement Collusion Strike Force (“PCSF”) in 2019 (discussed in more detail here), which focused on “deterring, detecting, investigating and prosecuting antitrust crimes … in government procurement, grant and program funding” – they may find themselves subject to **increased antitrust enforcement** in 2021. In fact, on February 23, 2021 PCSF Director Daniel Glad confirmed he is “focus[ed] on three things in 2021: expanding our platform with PCSF building out our data analytics program; and bringing investigations to the recommendation/disposition stage.”

Antitrust enforcement is not typically a “hot button” issue in modern American politics, nor is it at the top of agendas for new administrations’ enforcement priorities. In fact, historically antitrust enforcement has not changed materially when new presidential administrations or Congressional majorities have come into power, even when those administrations or majorities are from a different political party. Recently, however, antitrust has become a prominent issue, as there has been a growing concern among academics, practitioners, and elected officials that U.S. antitrust enforcement is not adequately addressing competition issues and needs major changes.

While it only has been a month since the 117th Congress and the Biden administration have come into power, and many key antitrust positions at the DOJ and Federal Trade Commission (“FTC”) have yet to be filled, the government already has suspended Early Termination (“ET”) for all mergers and acquisitions reportable under the Hart-Scott-Rodino Act, over the objections of two FTC Commissioners – meaning that all such deals now must undergo the full 30 calendar waiting period. In Congress, Senator Amy Klobuchar (D-MN), the Chair of the Antitrust Subcommittee of the Judiciary Committee, introduced the Competition and Antitrust law Enforcement Reform Act on February 4, 2021, that seeks to overhaul U.S. antitrust enforcement, by among other things, placing significant restrictions on businesses that have more than 50% market share in their relevant markets.

Given concerns by some regarding increased concentration in certain aerospace and defense industries – after all, in January 2021, the Pentagon raised concerns about “drastic consolidation” in the defense sector in its annual Industrial Capabilities report to Congress – companies may find their **transactions and personnel practices** under **even more scrutiny** by the DOJ and FTC.

With respect to transactions, companies’ proposed mergers or acquisitions of competitors have received close looks by the government in recent years, especially in concentrated industries, with the Department of Defense (“DOD”) playing a crucial role in determining the scope and result of review by the FTC or DOJ. **Teaming agreements,** which the DOD and antitrust enforcement agencies recognize **can be pro-competitive**, may be **even more closely examined** by government, and it is possible that the **current guidance** from the government regarding its antitrust evaluation of such agreements **could be changed**.

Because government contractors often operate in industries where there is a **limited supply of potential employees** with the necessary skills and credentials, they should be especially careful about **restrictive provisions** in their transaction and employment agreements, such as non-competes and non-solicits. Also, government contractors should be wary about engaging in discussions or **sharing** confidential compensation information sharing with competitors, particularly in light of the government’s recent **criminal antitrust actions** against “**no poach” agreements** entered into between competitors.

Though it is early, it is clear that the Biden administration is going to make antitrust enforcement a priority, and we can expect they may be enforcing **new, more rigorous laws** passed by Congress. Government contractors should therefore **be prepared** to face increased scrutiny of their operations. Antitrust enforcement can have **profound consequences** on a company’s business, as it can place **limitations on transaction strategy** and potentially **expose a company** to **significant** civil or even criminal **liability**.

**That causes global war – defense mergers are critical to maintaining the US’s advantage over Russia and China**

**Marks 19** – Former Senior Policy Advisor to the Under Secretary for Security Assistance, Science and Technology at the U.S. Department of State

Michael Marks, "Strengthen US industry to counter national security challenges," American Military News, 10-10-2019, https://americanmilitarynews.com/2019/10/strengthen-us-industry-to-counter-national-security-challenges/

While U.S. defense budgets have recently been on the rise, it is likely that we will see a spending decline in the coming years as competition for non-defense federal budget dollars increases and deficits grow. The United States, therefore, must **take action** to ensure that we **maintain our technological edge** against our adversaries by **empowering the private sector** to provide cost-effective **innovation** for America’s defense.

Since the end of the Second World War the U.S. has relied on **qualitative superiority** over its potential adversaries, especially those like the Soviet Union/**Russia and China**, who enjoyed comparative quantitative advantages. These qualitative advantages were **vital** to maintaining **global stability** and helped enable our nation to become the preeminent **global economy**, but they have been eroded over the last few decades.

In 1960, the U.S. share of global research and development (R&D) spending stood at 69%. U.S. defense-related R&D alone accounted for 36% of total global expenditures. Soon thereafter other nations recognized the need to increase their R&D expenditures and build their own defense industrial bases to compete with the United States. From 2000-2016, China’s share of global R&D rose from 4.9% to 25.1% while the U.S. share of global R&D dropped to 28%. U.S. defense-related R&D meanwhile now makes up a **mere 4%** of global R&D spending.

There can be no doubt that Russia and China are **determined** **to challenge America’s qualitative advantage**. From the rebirth of Russian military power under Vladimir Putin to the ever-growing Chinese military prowess across the board, their efforts show **no sign** of slowing down.

Russia has been and continues to undergo a **major modernization** of its armed forces. For example, they are in the midst of a ten-year program to build hundreds of **new nuclear missiles** and have set a goal of modernizing 70% of the Russian Ground Force’s equipment by 2020.

One of the most frightening examples of Russia’s resurgence is its development of a **hypersonic missile** that could be ready for combat as early as 2020. Worryingly, the US is currently **unable to defend** against this type of missile. To accompany these developments came the emergence in 2017 of Russia as the world’s second-largest arms producer, ready and able to support nations hostile to US interests.

China, on the other hand, used to be a country that only manufactured cheap products and knockoffs, but that is no longer true. **Technology development** and **innovation** figure prominently in all of China’s national planning goals, with plans to make the country the **global leader** in science and innovation and the preeminent **technological and manufacturing power** by 2049, the 100th anniversary of the Chinese communist revolution.

This, of course, has huge implications for China’s military capability. The country now has the second-largest national defense budget behind the U.S. and wants to be Asia’s preeminent military power. Beijing is developing next-generation **fighter jets, ICBMs** and shorter-range **ballistic missiles**, as well as advanced naval vessels.

The People’s Liberation Army has reached a **critical point of confidence** and now feel they can **match competitors** like the United States in combat. This has implications for the **security of Taiwan, Japan, other US allies** in the region as well as to America itself. To make matters worse, there are a growing number of experts that see China developing **asymmetric technologies**, combined with **conventional and nuclear systems** that could create an **existential threat** to the U.S. pacific based assets.

It is in the wake of these growing threats to our national security American industry will likely be expected to shoulder an even **larger responsibility** concerning investment in **defense-related R&D**.

One of the ways we can empower companies to make these additional investments and lead next-generation defense innovation is to **allow commonsense mergers** between important defense and aerospace companies. Horizontal consolidation **eliminates the redundancy** of enormous fixed costs, **leading to savings** passed down to customers. Mergers can also create **economies of scale** and **existing synergies** that help the combined company realize access to **larger numbers** of engineers and innovators, while keeping cos**ts low** and **improving the timeline** for taking a product from concept to development.

A recent example of how this can work is the proposed Raytheon and United Technologies merger. The two parties project that the new combined company will employ more than **60,000 engineers**, hold over **38,000 patents** and invest approximately **$8 billion per year** in research and development. This will allow the development of **new, critical technologies** more quickly and efficiently than either company could **on its own**. Such private sector investments in innovation will be **critical** in the face of the **growing challenges** to American **military dominance**.

America’s **R&D advantage**, crucial to **maintaining military superiority**, is increasingly **at risk**. As China and Russia continue to challenge America’s military dominance and pressures on the defense budget continue to mount, the federal government will likely turn more and more to contractors and commercial companies to develop **next-generation defense capabilities**. Strengthening U.S. industry, therefore, will be **critical** to countering our **national security challenges.**

### CP Offsets

#### The United States Federal Government should NOT expand the scope of its core antitrust laws, NARROWING the scope of its core antitrust laws to exempt gun manufacturers, expanding enforcement resources, and increasing prohibitions on domestic export cartels that operate in foreign nations without protections for export cartels.

#### First, their plan wording makes this compete. The plan explicitly mandates an increase in prohibitions and expansion in scope. The CP is a PIC that does the opposite.

**Ayres & Wickelgren 18** --- \*William K. Townsend Professor - Yale Law School. Professor - Yale School of Management. \*\*Bernard J. Ward Professor in Law - University of Texas at Austin

Ian & Abraham, 3-14-2018, "A gun control solution manufacturers can get behind," Brookings, <https://www.brookings.edu/research/a-gun-control-solution-manufacturers-can-get-behind/>

The idea that government might act as a cartel ringmaster affirmatively facilitating private collusion might seem far-fetched. But Congress already has explicitly exempted baseball and insurance from parts of the Sherman Act. More to the point, the 1997 multi-state tobacco settlement effectively reduced harm by facilitating a huge price increase on tobacco products. Under this deal, manufacturers had to pay “damages” of 35 cents a pack on future sales but the settlement [exempted a substantial quantity of sales](https://urldefense.proofpoint.com/v2/url?u=https-3A__www.brookings.edu_wp-2Dcontent_uploads_2016_07_1998-5Fbpeamicro-5Fbulow.pdf&d=DwMFAg&c=RAhzPLrCAq19eJdrcQiUVEwFYoMRqGDAXQ_puw5tYjg&r=TU0YTtm6oQJc2RBgyH6nZuym14d_WYVcV-dq-Nbdh64&m=S3iZEzMrG74XOFRm04hIaWQGFgnFCsbkAQUhNnimJmU&s=K0Y8r9vFWlOQGUOH7bxgm1CGmWDjHFgB63YMVDhYffU&e=) from the damages formula. The settlement quickly led to an across the board price increase with the [manufacturers earning an extra 35 cents a pack on all of the exempted sales](https://urldefense.proofpoint.com/v2/url?u=https-3A__ianayres.yale.edu_sites_default_files_files_2000-2520Monsanto-2520Lecture.pdf&d=DwMFAg&c=RAhzPLrCAq19eJdrcQiUVEwFYoMRqGDAXQ_puw5tYjg&r=TU0YTtm6oQJc2RBgyH6nZuym14d_WYVcV-dq-Nbdh64&m=S3iZEzMrG74XOFRm04hIaWQGFgnFCsbkAQUhNnimJmU&s=KPsvAN4Bj_tOt43S4sdf2Cd2NfEq-dNATc4KMDtQ41g&e=).

#### Second, the CP is net-beneficial – It narrows the scope of antitrust law to exempt gun manufacturers. That would spur monopolization and massive price hikes for guns, engineering *de facto* gun control.

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Ian & Abraham, 3-14-2018, "A gun control solution manufacturers can get behind," Brookings, https://www.brookings.edu/research/a-gun-control-solution-manufacturers-can-get-behind/

One of the more daunting tasks in the current struggle to pass sensible gun control legislation is how to neutralize the political power of gun manufacturers who potentially have hundreds of millions of dollars at stake.

But there is a straightforward, if perverse, way to co-opt the gun industry into supporting some restrictions: Help firearm manufacturers cartelize their industry. Congress could immunize gun manufacturers from antitrust liability—making it legal for them to collude and raise gun prices.

Our antitrust laws are designed to prevent firms from agreeing to limit supply in order raise prices. In most markets, this is in the service of protecting consumers and enhancing efficiency. But for products that cause harm, both the public and the producers of the product can benefit from higher prices and reduced supply. Legalizing a gun cartel by itself is a kind of gun control. Just as OPEC is the friend of any environmentalist who wants to reduce oil consumption, a gun manufacturing cartel will reduce the quantity of guns sold in order to raise prices.

Consider, for example, the AR-15 rifle.  The AR-15 isn’t a brand name sold by single manufacturer.  Rather it is a genus of rifles produced by more than [a dozen competitors](https://gunnewsdaily.com/best-ar-15-for-the-money/)—sometimes with prices [less than $700](https://gun.deals/product/ar15-rifle-comparison-700-or-less). But protected by antitrust immunity, these erstwhile competitors could band together and raise the price toward what a monopolist would charge.  Remember last year when Turing Pharmaceuticals realized it was the only seller of [Daraprim and raised the price more than 50 fold.](https://www.scientificamerican.com/article/martin-shkreli-who-raised-drug-prices-from-13-50-to-750-arrested-in-securities-fraud-probe/) Monopolists sometimes charge prices many multiples of their cost. The demand for guns has been estimated to have [a fairly high price elasticity](http://www.jstor.org/stable/pdf/10.1086/324656.pdf?refreqid=excelsior%3A03c98753023c03dc2413bd46628d7548)—so even relatively small price increases of these deadly firearms might have put them beyond the means of the purchasers of the [AR-15 style rifles used in the Parkland, Newtown, and Aurora mass shootings](http://time.com/5160267/gun-used-florida-school-shooting-ar-15/).

#### Guns kill people, and gun control solves it, BUT direct gun control is politically impossible.

**Lopez 17** --- Senior Correspondent at Vox.

German, 10-4-2017, "The research is clear: gun control saves lives," Vox, https://www.vox.com/policy-and-politics/2017/10/4/16418754/gun-control-washington-post

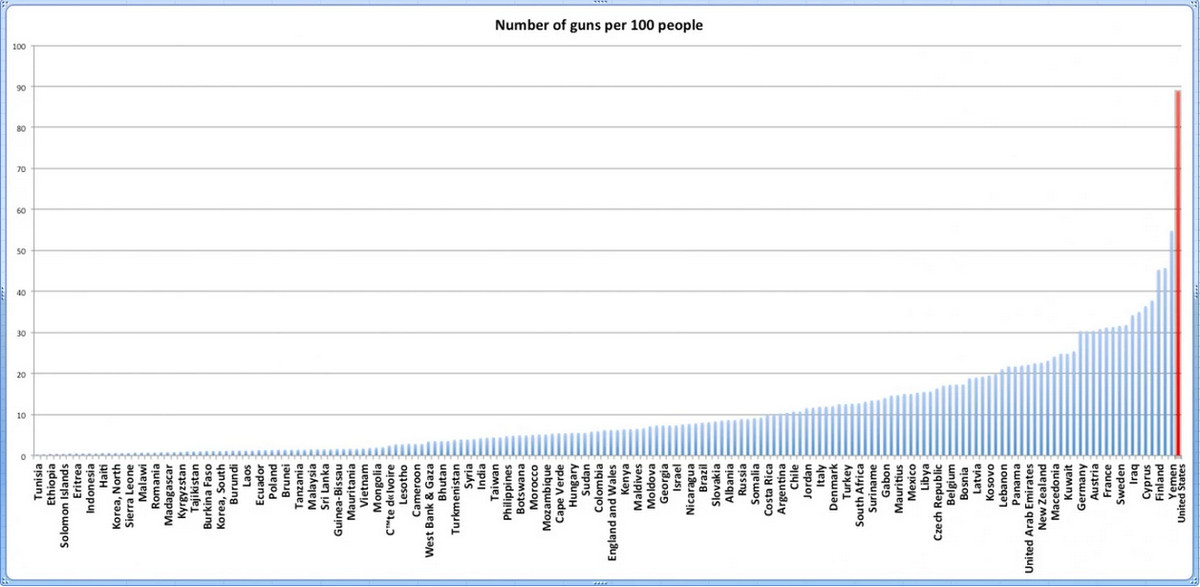
In fact, it’s so persuasive that it changed my mind. I was once skeptical of gun control; I doubted it would have any major impact on gun deaths (similar to [the views I took on drugs](https://www.vox.com/policy-and-politics/2017/4/20/15328384/opioid-epidemic-drug-legalization)). Then I looked at the actual empirical research and studies. My conclusion: Gun control likely saves lives, even if it won’t and can’t prevent all gun deaths.

America’s affair with guns is unique in the developed world

To understand this issue, there’s one thing you need to know: America stands alone when it comes to guns. Not only does the US have more guns than any other country in the world, it also has far more gun deaths than any other developed nation.

The US has nearly six times the gun homicide rate of Canada, more than seven times that of Sweden, and nearly 16 times that of Germany, according to [United Nations data](http://www.theguardian.com/news/datablog/2012/jul/22/gun-homicides-ownership-world-list) compiled by the Guardian. (These gun deaths are a big reason America has a [much higher overall homicide rate](http://www.vox.com/2015/4/7/8364263/us-europe-mass-incarceration), which includes non-gun deaths, than other developed nations.)

The US also has by far the highest number of guns in the world. Estimated in 2007, the number of civilian-owned firearms in the US was 88.8 guns per 100 people, meaning there was almost one privately owned gun per American and more than one per American adult. The world's second-ranked country was Yemen, a quasi-failed state torn by civil war, where there were 54.8 guns per 100 people.



In short, America has the most gun deaths in the developed world, and the most guns period. What’s more, the research indicates these two issues are very much related.

The research is very clear: more guns mean more gun deaths

Going back to the Washington Post op-ed, Libresco argues that her research proved her initial bias — that gun control works — wrong.

But there have been much more thorough statistical analyses than what Libresco published at FiveThirtyEight or wrote about in the Washington Post. They all point to one fact: Gun control does work to save lives.

Last year, researchers from around the country [reviewed](https://academic.oup.com/epirev/article/38/1/140/2754868/What-Do-We-Know-About-the-Association-Between) more than 130 studies from 10 countries on gun control for Epidemiologic Reviews. This is, for now, the most current, extensive review of the research on the effects of gun control. The findings were clear: “The simultaneous implementation of laws targeting multiple firearms restrictions is associated with reductions in firearm deaths.”

The study did not look at one specific intervention, but rather a variety of kinds of gun control, from licensing measures to buyback programs. Time and time again, they found the same line of evidence: Reducing access to guns was followed by a drop in deaths related to guns. And while non-gun homicides also decreased, the drop wasn’t as quick as the one seen in gun-related homicides — indicating that access to guns was a potential causal factor.

Based on the other research, this actually isn’t a very surprising finding. Regularly updated reviews of the evidence compiled by the [Harvard School of Public Health’s Injury Control Research Center](http://www.hsph.harvard.edu/hicrc/firearms-research/guns-and-death/) have consistently found that when controlling for variables such as socioeconomic factors and other crime, places with more guns have more gun deaths.

“Within the United States, a wide array of empirical evidence indicates that more guns in a community leads to more homicide,” David Hemenway, the Injury Control Research Center’s director, wrote in [Private Guns, Public Health](http://books.google.com/books?id=iANw1pb4fPAC&pg=PA61&lpg=PA61&dq=david+hemenway+%22more+guns+in+a+community+lead+to+more+homicide%22&source=bl&ots=GMTIi0MHC2&sig=x63NBQltDDNYkxHQeADfEl1EOis&hl=en&sa=X&ei=2nQIVLiKFY6wyATa5YGoCw&ved=0CDEQ6AEwAg#v=onepage&q=david%20hemenway%20%22more%20guns%20in%20a%20community%20lead%20to%20more%20homicide%22&f=false).

For example, this chart, from [a 2007 study](http://www.ncbi.nlm.nih.gov/pubmed/17070975) by Harvard researchers, shows a correlation between statewide firearm homicide victimization rates and household gun ownership after controlling for robbery rates:

Chart, scatter chart

Description automatically generated

A more recent [study](http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2013.301409) from 2013, led by a Boston University School of Public Health researcher, reached similar conclusions: After controlling for multiple variables, the study found that each percentage point increase in gun ownership correlated with a roughly 0.9 percent rise in the firearm homicide rate.

This holds up around the world. As [Zack Beauchamp explained for Vox](http://www.vox.com/2015/8/27/9217163/america-guns-europe), a breakthrough analysis in the 1990s by UC Berkeley’s Franklin Zimring and Gordon Hawkins found that the US does not, contrary to the old conventional wisdom, have more crime in general than other Western industrial nations. Instead, the US appears to have more lethal violence — and that’s driven in large part by the prevalence of guns.

“A series of specific comparisons of the death rates from property crime and assault in New York City and London show how enormous differences in death risk can be explained even while general patterns are similar,” Zimring and Hawkins wrote. “A preference for crimes of personal force and the willingness and ability to use guns in robbery make similar levels of property crime 54 times as deadly in New York City as in London.”

So America’s easy access to guns seems to lead to more gun violence and death.

But let’s focus on Australia and the UK in particular, since that’s what Libresco did in her Washington Post piece.

It is true that this is a difficult area to study. In part, that’s because these countries have such low homicide rates — to some degree because of previously existing, stricter gun control, criminal justice researcher Jerry Ratcliffe [pointed out](https://twitter.com/Jerry_Ratcliffe/status/915349170436927489) — that it’s going to be difficult to produce any statistically significant findings. It’s also difficult to wash out external effects, besides gun control, on gun deaths, even under the most statistically rigorous models.

The evidence from Australia in particular, though, is very suggestive. In her article for FiveThirtyEight, Libresco cited two studies — [one from 2003](http://faculty.publicpolicy.umd.edu/sites/default/files/reuter/files/gun%20chapter.pdf) and [another from 2016](http://jamanetwork.com/journals/jama/fullarticle/2530362) — that found what she described as little evidence of the effectiveness of gun control. This seems to be true for the 2003 analysis. But the 2016 analysis is much more mixed, noting that there were faster drops in gun deaths after the buyback program was put in place, but failed to reach any hard conclusions because non-gun deaths also dropped more quickly (even more than gun deaths), suggesting that other variables were likely involved.

But this isn’t the only research into Australia’s laws. As my colleagues [Dylan Matthews](https://www.vox.com/2015/10/5/9454161/gun-violence-solution) and [Zack Beauchamp](https://www.vox.com/2015/8/27/9212725/australia-buyback) noted, other studies found positive impacts of the law. [A review of the evidence](https://cdn1.sph.harvard.edu/wp-content/uploads/sites/1264/2012/10/bulletins_australia_spring_2011.pdf) by Harvard’s David Hemenway and Mary Vriniotis, for one, concluded that Australia’s law “seems to have been incredibly successful in terms of lives saved.”

[A 2010 study](http://andrewleigh.org/pdf/GunBuyback_Panel.pdf) by Andrew Leigh of Australian National University and Christine Neill of Wilfrid Laurier University also found that buying back 3,500 guns per 100,000 people correlated with up to a 50 percent drop in firearm homicides and a 74 percent drop in gun suicides. The drop in homicides wasn’t statistically significant, largely because the country’s gun homicide rate is so low that it’s hard to tease out even sharp drops with a lot of certainty. But the drop in suicides was statistically significant.

Most tellingly, Leigh and Neill’s study found that “the largest falls in firearm deaths occurred in states where more firearms were bought back.” Hemenway and Vriniotis reached similar conclusions in their review: “First, the drop in firearm deaths was largest among the type of firearms most affected by the buyback. Second, firearm deaths in states with higher buyback rates per capita fell proportionately more than in states with lower buyback rates.”

By homing in on individual states and types of guns, these studies provide a more rigorous and robust look at Australia’s law than a study like the 2016 analysis that Libresco cited, which broadly looked at nationwide data. And they conclude that the buyback program, along with other changes brought on by the 1996 law, reduced gun deaths.

But most importantly, this goes along with the rest of the evidence — including the extensive review published in Epidemiologic Reviews. When you put it all together, it’s hard to come to any conclusion other than gun control does, at least to some extent, reduce gun deaths.

Gun control can’t stop all violence. But it can help.

With that said, it's probably true that this aspect of the gun control debate is not emphasized enough: Guns are a factor, not the only factor. Other factors include, for example, poverty, urbanization, and alcohol consumption.

But when researchers control for other confounding variables, they have found time and time again that America's high levels of gun ownership are a major reason the US is so much worse in terms of gun violence than its developed peers — and stricter access to guns could help.

Another issue is that many of the policies researchers have studied seem to have, politically speaking, little to no chance in the US, at least at the federal level. Australia outright banned some types of guns, and set up a registry for all firearms owned in the country, required a permit for all new purchases. And, as if that wasn’t enough, its buyback program was mandatory — meaning you had to turn in your weapons, which is essentially government-mandated confiscation.

America can’t even get universal background checks through Congress. These much stricter measures have almost no chance of happening. That hinders the potential effectiveness of US laws: As Dylan Matthews [explained](https://www.vox.com/2015/10/5/9454161/gun-violence-solution), milder versions of gun control do have some evidence behind them in terms of reducing gun deaths, but they’re nowhere as strong as the effects seen with stricter policies.

It’s also true, as Libresco [said on Twitter](https://twitter.com/LeahLibresco/status/915582680263217152), that we could always use more research into gun policy (or, really, any policy issue). But the federal government has [stifled](https://www.vox.com/2015/10/6/9465649/gun-violence-research-cdc) gun research for years.

Still, the current research is clear: Gun control does cut down on gun deaths. A single data journalist’s look at some of the evidence doesn’t change that fact.

### K Economics

#### 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?

### CP QPQ

#### The United States federal government should engage in negotiations with foreign nations with protections for export cartels, making clear that the United States will substantially increase and enforce antitrust prohibitions on domestic export cartels that operate in those nations if and only if those nations do not protect their export cartels.

### PIC OPEC

#### The United States federal government should, by at least expanding enforcement resources for and the scope of its core antitrust laws, substantially increase prohibitions on domestic export cartels that operate in foreign nations which are not members of OPEC and which lack protections for export cartels.

#### The plan’s expansion of antitrust would establish liability for OPEC in price fixing

Stephan 5 – Lewis F. Powell, Jr., Professor and Hunton & Williams Research Professor, University of Virginia School of Law.

Paul Stephen, 2005 “Global Governance, Antitrust, and the Limits of International Cooperation,” Cornell International Law Journal, https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1635&context=cilj

Fox suggests that the broad claims of cosmopolitanism apply specifically to international antitrust. If one accepts the premise that variations among national competition policies reflect differences in local welfare, then any convergence toward a global standard would entail making some groups in some countries better off and others worse off, and probably would diminish the overall welfare of at least some countries, say OPEC members. Recognition of a universal right of freedom from competitive injury thus implies a commitment by states to international wealth redistribution.

#### Nuclear war

Crocker 80 – International Ass'n of Machinists and Aerospace Workers v. OPEC.

Lawrence Crocker, 1980, “Sovereign Immunity and the Suit against OPEC,” Case Western Journal of Law, https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1916&context=jil

However, that should not, in fact, have been the outcome of the case. However clumsily Judge Hauk may have handled some of the details, his instincts were correct. The suit against OPEC is just the sort of case for which Congress must have intended there to be sovereign immunity. To see why this is so it is only necessary to consider what would have happened if the IAM had won the suit. The court would then have issued an injunction to Libya, Saudi Arabia, Venezuela, and the ten other states forbidding them from conspiring to fix prices. It is conceivable that this injunction could be enforced if the United States were willing to make full use of its military power, and assuming that nuclear war did not intervene to make the whole matter academic. In short, to say that a suit against the members of OPEC for price fixing intrudes into a sensitive foreign policy area is a masterpiece of understatement.

### Trade Adv

#### No internal link – antitrust application doesn’t affect trade – their ev is based on theoretical assumptions, not data

Dr. Brian Ikejiaku 21, Senior Lecturer in Law at Coventry University, PhD from the Research Institute of Law, Politics, & Justice (RILPJ) at Keele University, and Cornelia Dayao, LL.M in International Business Law, “Competition Law as an Instrument of Protectionist Policy: Comparative Analysis of the EU and the US”, Utrecht Journal of International and European Law, Volume 36, Issue 1, http://doi.org/10.5334/ujiel.513

It is suggested that concerns regarding the link between competition policy and trade policy have been around since the pre-GATT period. There have also been attempts to integrate the competition policy with the WTO framework. Nonetheless, studies linking competition law and protectionism remained scant. While the protectionist tendencies of EU merger regulation enforcement have been explored empirically, little or nothing has been found in the US context. Furthermore, studies that relate export cartels to protectionism are mainly based on theoretical assumptions given the lack of empirical data to establish the economic effects of export cartels.

#### No impact uniqueness – gains in trade will reverse in 2022

White 12/7 – Reporter for Global Trade Review.

Maddy White, “World trade hits record high for Q3, but Omicron threatens to throw off recovery,” *Global Trade Review*, 7 December 2021, https://www.gtreview.com/news/global/world-trade-hits-record-high-q3-omicron-threatens-throw-off-recovery/.

World trade is continuing its strong recovery from the pandemic, states the United Nations Conference on Trade and Development (UNCTAD) in fresh analysis on goods trade. Global trade is forecast to reach about US$28tn in 2021, an increase of 23% compared with last year.

But the body warns of an uneven recovery across countries. In the UK, goods trade is set for a 23% decline this year relative to 2019, while markets in East Asia such as China and Taiwan are poised for growth of 16% and 23% respectively. Japan and Singapore are bucking the high-growth trend for Asia as they are set for declines of 9% and 5%. The recovery has also been more muted for services trade, which remains below 2019 levels.

“The positive trend for international trade in 2021 is largely the result of the strong recovery in demand due to subsiding pandemic restrictions, economic stimulus packages, and increases in commodity prices,” says UNCTAD. “However, the forecast for 2022 remains very uncertain due to several factors.”

These factors include a slowing economic recovery; disruption to logistics networks; the global semiconductor shortage; geopolitical tensions; governmental policies impacting international trade; and debt burdens after governments borrowed more to prop up economies in the face of the pandemic.

Additionally, a new threat in the shape of a heavily mutated Covid-19 strain has emerged. Omicron was named a “variant of concern” by the World Health Organization in late November and, similarly to its predecessor Delta that caused widespread restrictions and lockdowns, is rattling nations’ confidence of economic recovery.

Analysts at IHS Markit say that Omicron could be an “adverse game changer” for trade. “The financial markets reacted heavily to its emergence and the number of states reintroducing stricter contingency measures is increasing fast and that will impact global economic activity in Q4 2021/Q1 2022,” reads a briefing published on December 1.

#### Interdependence doesn’t prevent war---countries continue to trade during conflict.

Leda Zimmerman 21, Writer, editor and communications strategist, citing a paper by Mariya Grinberg, assistant professor at the Massachusetts Institute of Technology, “Solving puzzles of international trade, war, and order,” MIT News, 10/29/21, https://news.mit.edu/2021/solving-puzzles-international-trade-war-order-mariya-grinberg-1029

Poking at ideas

Her project was sparked by conversations with fellow graduate students at the University of Chicago about the impact of economic interdependence on the likelihood of conflict between nations. “The basic idea was that if states trade a lot, and war disrupts trade, that states don’t want to fight wars,” she recalls. “Something about that was not working for me, and I began poking at this idea,” she says.

Grinberg was born in Russia to a family of computer scientists. She shares the household aptitude for logical problem-solving, and has translated it into rigorous analysis of questions in her own field. So faced with claims about economically linked states avoiding conflict, she began a methodical interrogation. “There was lots of logic behind the general conception of trade as good, and war disrupting trade as bad.” But, she wondered, “Why should trade not happen during war?”

Grinberg broke this down into a series of related queries: “You don’t want to sell an opponent a gun, which would be bad, because it could shoot me immediately, but what about a vase? While the vase doesn’t have bullets, an opponent could sell it somewhere and maybe buy a gun, which would take longer to do harm. But what if the war ends before the enemy has a chance to buy the gun?”

Working through her arguments, Grinberg established cases where trade could legitimately be conducted during conflict. It was time to turn to the evidence in historical records to find out very specifically what kind of trade occurred in wars, and under what kind of conditions.

Grinberg dug deep in British and French archives, where she found a trove of relevant documents going back to the Crimean War. She found notes from a British advisory committee in World War I that recommended banning the trade of products that could be used immediately in war, as well as banning those that could be used in war before the war was over, and those whose sales generated profits that could be used during war.

Of particular interest to Grinberg: The committee also recommended that if it took longer for the enemy to convert gains from trade into military capability than the war would last, then it made sense to trade with the enemy. “You can trade them something they can turn into a profit over a year to buy a tank, if you think the war will be over in six months,” says Grinberg. “If a state predicts a longer war, then it can add items to the prohibited trade list.”

These wartime trading policies popped up in all the archives she explored. “States do rational things,” says Grinberg. “Trade is mutually beneficial, and it makes sense for both sides to keep trade going, except under certain conditions.” At the start of World War I, for instance, Germany and allied armies frequently repositioned troops as they tried to outflank each other. During this period, merchants from combatant countries were permitted to buy and sell such products as pickaxes, shovels, and spades. But as the war ground on, armies dug into positions, and “all of a sudden, ‘entrenching tools and implements’ as the British called them, were prohibited from trade,” explains Grinberg.

There were more prohibitions for World War II, which participant nations figured would last longer. But Britain and Germany still traded with each other for products they couldn’t get anywhere else: For instance, Britain needed Germany’s precision-manufactured hosiery needles, because the specialized equipment for making the needles was unavailable in Britain for the foreseeable future.

Policy implications

With evidence from this research in hand, Grinberg began thinking through the implications. “The economic interdependence argument relies on the idea that nations don’t trade during war, and with more trading we should see less fighting.” But that’s not how it works at all, says Grinberg. “Given more interdependence and the likelihood of continued trading in conflict, the push is not toward less war, but continued trading during war.”

Her dissertation and a companion paper, “Wartime Commercial Policy and Trade between Enemies” (published in International Security), drive home the argument that “trade cannot be used as a lever to prevent war, because we have too many incentives to trade during war.” This means, for instance, that we should not assume that because the United States trades with another country, there is less possibility of war with that country. Given the tense relations between China and the U.S., two very established trading partners, this seems an important observation.

### Resources Adv

#### 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.

Hashmi 12

(Muhammad, Prof & Lecturer in Department of Political Science & International Relations @ U Gujarat and M.Phil. in Defence and Strategic Studies. He has authored a book entitled “Nuclear Terrorism in Pakistan: Myth of Reality?”, “Difficulties For Terrorists To Fabricate Nuclear RDD/IND Weapons – Analysis” January 30, 2012, Eurasia Review)

It is a fact that this kind of theft is inconceivable without the support of insiders and local knowledge. This kind of theft has not been witnessed so far any where in the world. Several types of safety and security systems exist around a nuclear facility, so that under any circumstances, no unwanted nuclear explosion takes place. These are some of them:

Inertial switches and acceleration sensors allow priming only after a threshold level has been reached;

Certain types require a high energy electrical impulse;

Environmental sensing devices monitor the trajectory and switch on only at a distinct ratio of the longitudinal to lateral acceleration;

A barometric switch activates the electric circuit only at a distinct height above ground;

A so-called permissive-action link (PAL) is needed, consisting for instance of several number codes with up to 12 digits and allowing a limited number of tries. The code has to be entered by more than a person, i.e. each person concerned knows only part of the entire code.

#### Retal is unlikely

Neely 13 (Meghan, research intern for the Project on Nuclear Issues, 21 March 2013, “Doubting Deterrence of Nuclear Terrorism,” CSIS, http://csis.org/blog/doubting-deterrence-nuclear-terrorism)

Yet, let’s think about the series of events that would play out if a terrorist organization detonated a weapon in the United States. Let’s assume forensics confirmed the weapon’s origin, and let’s assume, for argument’s sake, that country was Pakistan. Would the United States then retaliate with a nuclear strike? If a nuclear attack occurs within the next four years (a reasonable length of time for such predictions concerning current international and domestic politics), it seems unlikely. Why? First, there’s the problem of time. Though nuclear forensics is useful, it takes time to analyze the data and determine the country of origin. Any justified response upon a state sponsor would not be swift. Second, even if the United States proved the country of origin, it would then be difficult to determine that Pakistan willingly and intentionally sponsored nuclear terrorism. If Pakistan did, then nuclear retaliation might be justified. However, if Pakistan did not, nuclear retaliation over unsecured nuclear materials would be a disproportionate response and potentially further detrimental. Should the United States launch a nuclear strike at Pakistan, Islamabad could see this as an initial hostility by the United States, and respond adversely. An obvious choice, given current tensions in South Asia, is for Pakistan to retaliate against a U.S. nuclear launch on its territory by initiating conflict with India, which could turn nuclear and increase the exchanges of nuclear weapons. Hence, it seems more likely that, after the international outrage at a terrorist group’s nuclear detonation, the United States would attempt to stop the bleeding without a nuclear strike. Instead, some choices might include deploying forces to track down those that supported the suicide terrorists that detonated the weapon, pressuring Pakistan to exert its sovereignty over fringe regions such as the Federally Administered Tribal Areas, and increasing the number of drone strikes in Waziristan. Given the initial attack, such measures might understandably seem more of a concession than the retaliation called for by deterrence models, even more so by the American public.

#### 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.

### Outreach Adv

#### Move towards developing countries antitrust policy now – crucial to sustainable development, BUT path dependence on the U.S prevents that.

Fox 16 – Eleanor M. Fox is an academic who studies antitrust, economic development, globalization, International trade law, and the European Union. She is the Walter J. Derenberg Professor of Trade Regulation in the New York University School of Law.

Eleanor M. Fox, "Competition Policy: The Comparative Advantage of Developing Countries," Law and Contemporary Problems 79, no. 4 (2016): 69-84

To say that developing countries face better incentives than do developed countries to consider workable solutions does not mean that they will design and pursue the better solutions. They face severe hurdles. Not least are lack of resources and human capital, as well as the political and economic contexts of their nations, which often include deeply embedded corruption and lack of trustworthy institutions.' But the existence of hurdles does not detract from the fact of comparative advantage. This article is about the comparative advantages II DESIGNING NATIONAL LAw FIT FOR DEVELOPMENT Developing countries are at many different stages of implementing competition law and policy. Some competition authorities, such as several in West Africa, are at earlier stages of development and may operate as ad hoc price control agencies when prices rise. Others are more mature and apply competition law principles credibly.' Many of these agencies are still young agencies working to make their law relevant to their economies and people. Their law is still unformed or at least malleable.

This part is addressed especially to young agencies whose law is unformed or malleable. The message is: The competition authorities and their nations have a unique opportunity to design the path of their law. They have the opportunity to consider what is good for their country, which usually means the implementation of rules of law that promote sustainable inclusive development and prioritize concerns of the poor. They have the opportunity to consider the wheel that has already been invented (developed country law), as well as to ask their own foundational questions in constructing new trade and competition regimes. Developed countries, too, of course, can change their laws to adjust to new environments, but path dependence makes change more difficult."o Why should developing countries not just reproduce the wheel and simplify the flow of commerce in the world? The answer to the question requires reflection on economic law, its portability, and its fit.

Competition law is economic law. It is about markets and market failures. Economics must be generalized to make the law administrable. In competition law, economics is generalized to fit the character of the markets, both in view of how well the markets work to produce the goods and services people want and to serve other goals that markets serve, such as to provide an environment for business people to succeed on their merits.

#### ASEAN is too fractured for the aff to solve anything

Turton 20 – Australian journalist in Cambodia. Previously of Romania, the UK, Hong Kong and Melbourne's Magnificent Eastern Suburbs. Contributing writer for Nikkei Asia.

[Shaun](https://twitter.com/NikkeiAsia) Turton, November 13 2020, “Beijing-friendly Cambodia and Laos pushed out to ASEAN's fringe,” Nikkei Asia, https://asia.nikkei.com/Politics/International-relations/Beijing-friendly-Cambodia-and-Laos-pushed-out-to-ASEAN-s-fringe2

PHNOM PENH -- Meeting with U.S. diplomats in 2007, Lee Kuan Yew, Singapore's founding prime minister, offered a blunt assessment of some of the newer ASEAN members.

Laos was just an "outpost for China" and Cambodia's politics was "too personalized" around the country's longtime Prime Minister Hun Sen, the late Singaporean statesman said.

ASEAN, formed in 1967 as a Cold War bulwark against the spread of communism in Asia, should not have rushed to expand beyond its five founding members in the 1990s, Lee said, according to U.S. diplomatic cables released by WikiLeaks.

Those five were: Indonesia, Malaysia, the Philippines, Singapore, and Thailand.

While newer entrants "muddied" ASEAN values, the rise of China was becoming a fundamental issue, Lee argued. Beijing would present its rise as inevitable, advertise the benefits of sharing its growth and force countries to choose to be "friend or foe."

As the 37th ASEAN Summit gets underway, many of the weaknesses identified by Lee 13 years ago have proved Singapore's founder to be prescient. As China's ambitions in the region continue to grow in line with Lee's prognostication, ASEAN tensions have only increased.

Late last month, another prominent Singaporean, retired senior diplomat Bilahari Kausikan, provoked a furious response from Cambodian officials by suggesting the country and Laos could be booted from ASEAN for ceding influence to a foreign power, a thinly veiled reference to China.

Laos and Cambodia rely on Beijing as their most important benefactor and have been seen as acting as Chinese proxies.

Cambodia in 2012 took unprecedented action against its fellow ASEAN members by scuttling a joint statement that conflicted with Beijing's position on the contested South China Sea, where several of its Southeast Asian neighbors are claimants.

According to Kausikan, the retired Singaporean diplomat, Laos had shown a willingness to be slightly more flexible on the matter, while Cambodia's Hun Sen, who has reigned over the country since 1985, showed no regard for regional interest.

Should the country continue to cross the "red line" of 2012, it could force its ASEAN counterparts to make a "very difficult decision," Kausikan said. The over-the-top reaction to his comments from Cambodian officials, meanwhile, is best understood as a hint of a "guilty conscience" on their behalf, he posited.

"If you want to be part of a regional organization," Kausikan said, "you can't be entirely selfish. The patience of other members is not unlimited, and given the many challenges ASEAN is facing, if a limb becomes gangrenous, amputation may be the only option to save life."

Still, as frustrating as Cambodia's actions have been to its regional partners, expelling members from the bloc remains infeasible.

Mark Beeson, a professor of international politics at the University of Western Australia with a focus on Southeast Asia, called Kausikan's comments "overdue." Reliant on consensus to take diplomatic stands, ASEAN is now "hopelessly compromised" and "ineffective," he said.

"China is the proverbial threat or opportunity," Beeson said, "and ASEAN has never been able to make up its mind which it is ... and it doesn't want to be forced into making a choice on anything.

"The fact that Cambodia's in China's pocket now is just a real problem for the organization."

Still, ASEAN remains an important player in regional diplomacy, said Carl Thayer, emeritus professor at the University of New South Wales and an expert on Southeast Asia's security situation.

"It's not an independent power that can predetermine every result," he said, "but it's something that can manage and steer at least in the right direction."

Thayer said the frustrations that "one country can block ASEAN from moving forward" has added to a blocwide "malaise" that is now compounded by the COVID-19 economic slowdown.

In his recent book, "In the Dragon's Shadow: Southeast Asia in the Chinese Century," author and journalist Sebastian Strangio notes ASEAN's key place in the region's diplomatic architecture but points out Chinese power has uncovered the group's shortcomings.

The bloc attempted to bind the "Chinese Gulliver" with "a thousand multilateral threads," while Beijing "thrust economic wedges of inducement" into rifts between members, Strangio wrote.

Speaking to Nikkei Asia, Strangio said that short of a China-U.S. conflict, the status quo is unlikely to change quickly.

"Things would have to get to a pretty extreme situation before you could count on there being a consensus over expulsion for any member state," Strangio said.

Huong Le Thu, a senior analyst at the Australian Strategic Policy Institute, agrees. The so-called "ASEAN Minus X" formula -- already used in economic affairs -- should be extended, she said.

The ASEAN Minus X formula, she explained, was like 'minilateralism' -- a way to work in smaller groups that only concern a small number of ASEAN member-states.

"There will be a lot of resistance towards seriously implementing ASEAN Minus on broader issues, and this has been a recurring problem," she said. "But given the chronic limitation within the ASEAN, it's certainly worth debating and thinking creatively how to make ASEAN more functional and relevant."

Kausikan says this debate has already begun. He noted ASEAN statements on the South China Sea in recent years have shifted from emphasizing consensus to expressing the majority view held by powerhouses such as Singapore, Indonesia, Vietnam, Malaysia and the Philippines, thus downplaying Laos and Cambodia's dissent.

"It is a small sign that members, while adhering to the principle of consensus, are beginning to redefine consensus so as not to let one or two members have a veto," Kausikan said. "Cambodia, in particular, should take note of this."

## 2NC

### CP Offsets

#### After this 2AC, there is only one way they can still win this debate: To convince you that more than half the plan text is completely meaningless. You should reject that premise: must presume their choice of language is intentional.

Hanna 18 – US Magistrate Judge, W.D. La.

Patrick J. Hanna, opinion of the US District Court for the Western District of Louisiana, Lafayette Division, Batiste v. Quality Constr. & Prod. LLC, 327 F. Supp. 3d 972, decided 9 July 2018, Lexis

Any other interpretation of indemnity provision would require the words "the vessel, its owners, operators" to be ignored. Doing so would violate a cardinal rule of contract interpretation, which requires that all terms used in the contract should be given meaning and, consistently, that no terms used in the contract should be rendered superfluous. The only way to read the indemnity provision without ignoring the words "the vessel, its owners, operators, master, and crew," is to find that Arena owes indemnity to Alliance because it was both the owner and operator of the vessel at the time of the plaintiff's alleged injury.

#### Not increase

PAPUC 7 – Commissioners, Pennsylvania Public Utility Commission

PA Public Utility Commission Decisions, 2007 Pa. PUC LEXIS 2, 255 Pub. Util. Rep. 4th (PUR) 209, Lexis

The OTS states that the timing of revenue receipts and interest payments has long been recognized as an appropriate "offset" to the CWC requirement. In fact, Webster's Dictionary defines offset as "to place over against something or to serve as a counterbalance for." The point being that interest has long been recognized as an offset and that an offset by definition works in the opposite direction of the claim. An offset by regulatory practice or by definition has not constituted, nor should it constitute, an increase or enhancement to the Company's claim. (OTS Exc. at 7).

#### Nor expand

Lexico 22 – powered by Oxford English Dictionary

Lexico, “Narrow,” updated 2022, <https://www.lexico.com/en/definition/narrow>

Narrow, verb

Become or make more limited or restricted in extent or scope.

#### A – Expand requires enlargement to a greater dimension (which means that the plan requires net-more things fall within the category of “scope”)

White 07 – United States District Court, California Northern

Jeffrey S. White, Medtronic, Inc. v. W.L. Gore & Assocs., 2007 U.S. Dist. LEXIS 80038, United States District Court for the Northern District of California, October 2007, LexisNexis

8. "Expand" and variations.

Medtronic contends that the Court should construe this term, and its variations, to mean "enlarge from a first to a second larger dimension." Medtronic's proposed construction is in accord with the plain meaning of the term "expand." See, e.g., Webster's Ninth New Collegiate Dictionary at 436 ("to open up; to increase the extent, number, volume or scope of'). Gore, in contrast, argues that the Court should construe this term, and its variations, to require that the device expanded is a "low memory metal stent," which is expanded by a balloon rather than by its own resilience. For the reasons previously stated, the Court rejects Gore's proposed construction.

The Court finds further support for its conclusion from the claims of the '062 Patent, which do not contain the "balloon-expandable" limitation proposed by Gore. In contrast, dependent claim 2 of the '219 Patent does contain such a limitation, whereas independent claim 1 of that patent, does not. (See Bianrosa Decl., Ex. 6 ("219 Patent, 8:2-I 1.) Similarly, dependent claim 15 of the '828 Patent requires the use of a balloon, whereas claim 14 of the '828 Patent, from which claim 15 depends, contains no such limitation. ('828 Patent, 8:29-59.) Moreover, the use of the balloon in the dependent claims is the only meaningful distinction from the independent claims. Thus, the presumption of claim differentiation weighs against Gore's proposed construction. See SunRace Roots, 336 F.3d at 1303.

Accordingly, the Court construes the term "expand" (and its variations) to mean: "to enlarge from a first to a second larger dimension."

#### B – Scope is extent of application

Kelly 13 – Judge, Michigan Circuit Court, Third Judicial Circuit

Mary Beth Kelly, Petipren v. Jaskowski, 494 Mich. 190, Court of Appeals of Michigan, June 2013, LexisNexis

Again, MCL 691.1407(5) provides that, to claim absolute immunity, the highest appointive executive official must "act[] within the scope of his or her . . . executive authority." We begin our analysis of the phrase "executive authority" by examining the term's plain and ordinary meaning.38 "Authority" is defined as "a power or right delegated or given," and "scope" is defined as the "extent or range of view, outlook, application, operation, effectiveness . . . ."39 [FOOTNOTE 39 STARTS] Random House Webster's College Dictionary (2001); see also Backus v Kauffman (On Rehearing), 238 Mich App 402, 409; 605 NW2d 690 (1999). [FOOTNOTE 39 ENDS] Taken together, the words indicate that a highest appointive executive official's scope of authority consists of the extent or range of his or her delegated executive power.

#### That means the plan mandates that a net-greater amount of things be covered

Sleet 99 – Judge, United States District Court, Delaware

Gregory M. Sleet, Scriptgen Pharms., Inc. v. 3-Dimensional Pharms., Inc., 79 F. Supp. 2d 409, United States District Court for the District of Delaware, December 1999, LexisNexis

Noting that the term "extent" is not defined in either one of the patent specifications, 3-DP contends that the ordinary meaning of the word should control. See, e.g., Zelinski, 185 F.3d at 1315; Desper Prods., 157 F.3d at 1336. Because "extent" in this instance would appear to serve as synonym for "amount" or "degree," 3-DP purports to advance this interpretation.3 While Scriptgen appears to take issue with this proposed definition, it fails to provide an alternate construction. After reviewing the language of the representative claim, which discusses "the extent to which the target protein occurs in the folded state, the unfolded state or both in the test combination and in the control combination," the court will afford the term "extent" its ordinary meaning, i.e., as meaning "amount" or "degree."

#### Entirely independent of anything else on this page – Exemption Affirmatives are non-topical because they eliminate a carveout in the middle of the donut, rather than extending the boundaries. The court says that’s a clarification NOT an expansion! That’s best—Sets a limit that still allows loads of new Affirmatives BUT requires groundbreaking new extensions of antitrust which preserves both links and *link uniqueness* for the Neg’s core topic DAs

Davis 19 – Former Acting Assistant Attorney General, Partner at King & Spalding

Ethan P. Davis, Defendant’s Response to Plaintiff’s Motions for Judgment Upon the Agency Record, Trans Tex. Tire, LLC v. United States, United States International Trade Court, October 2019, LexisNexis

Zhejiang Jingu first argues that “Commerce’s reliance on the Petitions as the basis for ‘clarifying’ the scope with respect to chrome trailer wheels manufactured with the PVD process is not supported by substantial evidence because the Petitions unambiguously excluded trailer wheels if they were coated entirely with chrome without regard to manufacturing process.” Zhejiang Jingu Br. at 18-19. Contrary to Zhejiang Jingu’s claims, Commerce’s determination that PVD wheels were not included in the scope exclusion for chrome wheels constitutes a permissible clarification of the scope, rather than an expansion of the scope. See, e.g., Activated Carbon from China, 72 Fed. Reg. 9,508 (Dep’t of Commerce Mar. 2, 2007), and IDM at Cmt 1. Based on the totality of the record evidence, Commerce found that the petitioner’s “reference to ‘chrome’ in the scope exclusion language, initially proposed in the Petition, contemplated wheels coated by the process of chrome electroplating without consideration of the alternative PVD process.” Scope Memo at 10-11 (P.R. 602). Specifically, the information regarding chrome wheels in the Petition indicated that there are no United States producers of chrome wheels and that the manufacturing process differs as “{c}oating with chrome requires a different manufacturing process as {the} disc and rim need to be coated before being welded. This is due to the highly toxic nature of the chemicals and effects on the welds if applied after {the} disc and rim are welded together.” See Petition, Vol I – Narrative at I-13 (P.R. 47). Conversely, the information on the record demonstrates “that the PVD chrome coating process does not involve the same level of toxicity, and, as such, does not have such limitations, {because} it is applied in the United States (albeit not by wheel manufacturers) and PVD coatings are applied after assembly of the finished wheel over the weld.” Scope Memo at 11 (P.R. 602) (citing Clarification of Chrome Rebuttal at 3 (P.R. 534); Rebuttal to Dexstar Cmts – Part 1 at Exhibit 1 (P.R. 558)).Offsets don’t do that

Miller 7 – Judge, U.S. Court of Federal Claims

Opinion by Christine Odell Cook Miller, United States Court of Federal Claims, Salman Ranch Ltd. v. United States, 79 Fed. Cl. 189, November 9, 2007, Filed, Lexis

Defendant deems this series of transactions, undertaken by plaintiffs, to be a "variant of the Son of BOSS tax shelter described in Notice 2000-44." Id. at 10 (citing I.R.S. Notice 2000-44, 2000-2 C.B. 255). 5Link to the text of the note Defendant condemns such transactions for "refus[ing] to properly treat the partnership's assumption of the partners' liability to close the short sale" by decreasing the partners' basis in the partnership according to the partnership's assumption of the liability. Id. at 10-11. Thus, according to defendant, the "basis adjustments from the proceeds and obligation contribution would have essentially offset each other providing no increase in basis." Id. at 11. Defendant insists that this improper treatment resulted in an understatement of the "gain from the sale of the ranch in the amount of $ 4,567,946[.00]," a position echoed in the FPAA. Id. at 5,11. The partnership and William J. Salman, its Tax Matters Partner ("plaintiffs"), filed [\*\*8] the instant lawsuit in response to the FPAA.

#### That proves we’re a PIC

IRS 87 – US Internal Revenue Service

1987 PLR LEXIS 1882, Private Letter Ruling 8743071, July 30, 1987, Lexis

The company established a qualified plan with a 401(k) arrangement. This would constitute an increase in liabilities under section 412(f)(1) of the Code and section 304(b)(1) of ERISA. However, the defined benefit plan was amended so that future accruals are offset by all benefits provided [\*3] under the plan with the 401(k) arrangement. The total cost of the two plans after the transactions does not exceed the cost of the defined benefit plan prior to the transactions. Accordingly, the establishment of the 401(k) arrangement does not constitute an increase in liabilities described in section 412(f)(1) of the Code and section 304(b)(1) of ERISA.

#### Can’t permute it

WIPS 20 – Commissioners, Wisconsin Public Service Commission

WI Public Service Commission Decisions, December 23, 2020, Dated, 2020 WISC. PUC LEXIS 733, Final Decision on the Application of Wisconsin Power and Light Company for Authority to Adjust Electric and Natural Gas Rates, Lexis

WP&L's application proposed that electric and natural gas rates remain the same and not increase. To secure that result, WP&L's application proposed that any changes that would trend toward a rate increase be offset by reductions in fuel costs and the utilization of unprotected EDIT. Clean Wisconsin and Sierra Club argued that, despite the fact that WP&L's proposal would not constitute an increase in rates to consumers, that a hearing under Wis. Stat. § 196.20(2m) was nonetheless required.

Clean Wisconsin argued that Wis. Stat. § 196.20(2m) requires a hearing any time that [\*18] there is an increase in "base revenue or base rates, regardless of any concurrent fuel cost plans, adjustments, or refunds under Wis. Stat. § 196.20(4)." (PSC REF #: 394711.) Sierra Club similarly argued that a hearing was required under Wis. Stat. § 196.20(2m) because "the Proposal amounts to an increase in rate revenus, just deferred to later years." (PSC REF #: 394715.)

The Commission rejects these arguments because both Clean Wisconsin's and Sierra Club's interpretations of the applicable statute fails to give meaning to each of the words in the statute. First, WP&L's proposal does not include a change in schedules. Second, the words of Wis. Stat. 196.20(2m) explicitly differentiate between a "change in schedules" and a "change in schedules which constitutes an increase in rates to consumers." (Emphasis added.) Giving meaning to each the words of the statute entails viewing any given proposal from the standpoint of a consumer and then determining the effect of a proposed change on the consumer. If the effect of a change is that the amount to be collected from a consumer will increase, a hearing is required. If the opposite is true, no hearing is required under Wis. Stat. § 196.20(2m).

### Trade

#### US protectionism is high, and inevitable

---Biden will continue Trump’s protectionist policies (he just conducted an 8-month review of trade policy and concluded more tariffs are good) which triggers protectionist tariffs from China and every other nation

---its part of a sea change in US policy which sees the international as zero sum and guarantees the US will continue to engage in protectionist measures

---our evidence is structural and predictive – prefer it to neg evidence that is snapshot or about previous policies

Zakaria 10-7 [Fareed Zakaria writes a foreign affairs column for The Post. He is also the host of CNN’s Fareed Zakaria GPS and a contributing editor for the Atlantic, “Opinion: Candidate Biden was right on trade. President Biden is wrong.”, October 7, 2021, https://www.washingtonpost.com/opinions/2021/10/07/biden-is-wrong-on-trade-with-china/] IanM

After an **eight-month review** of the United States’ **trade policies** toward China, the **Biden** administration has concluded that Donald **Trump** was **right** and Joe Biden was wrong. On the campaign trail, Biden relentlessly attacked Trump’s tariffs on Chinese goods, [calling them](https://www.cnbc.com/2020/09/08/bidens-hands-may-be-tied-on-trumps-china-tariffs-trade-experts-say-.html) “disastrous.” Now, he has adopted those same “disastrous” policies.

**But** candidate Biden was right: Trump’s tariffs did not work. China’s behavior did not change, high-wage jobs did not come back, and while the U.S. deficit with China decreased, this caused the overall U.S. [trade deficit](https://www.brookings.edu/blog/order-from-chaos/2020/08/07/more-pain-than-gain-how-the-us-china-trade-war-hurt-america/) to go up. **Beijing responded in kind**, slapping its own tariffs on American goods. One **2020 study found** that “approximately **100 percent” of the costs** of the U.S. tariffs against Chinese goods were **paid for by American consumers** and **businesses**. A **2021 study** **found** that the **tariffs** **cost** the U.S. economy up to **245,000 jobs.**

Trade policy in Washington has **become** an encrusted [bipartisan ideology](https://www.theatlantic.com/international/archive/2021/10/perils-washingtons-china-consensus/620294/), **driven by** a set of unquestioned assumptions. But as Adam S. Posen, president of the Peterson Institute for International Economics, points out in a brilliant [Foreign Affairs essay](https://www.foreignaffairs.com/articles/united-states/2021-04-20/america-price-nostalgia), every one of these assumptions is wrong. We have embraced the dogma that over the past two decades, America opened up its economy to the world and that American workers suffered as a result. But the facts show the opposite. Posen writes, “[The United States] has increasingly insulated the economy from foreign competition, while the rest of the world has continued to open up and integrate.” He adds, “The country suffers from greater economic inequality and political extremism than most other high-income democracies — countries that have generally increased their global economic exposure.”

Much of the impetus for protectionism in general and toward China in particular has **come from claims** that **trade** with China was **responsible** for about **2 million** U.S. manufacturing **jobs lost** — the “China shock.” That sounds like a huge number until you put it into context. The number is for the period 2000 to 2015, so the average number of jobs lost each year was around 130,000.

How many jobs do American workers lose in a typical year through the normal churning of the U.S. economy? Sixty million. Of those, a third are voluntary and a third can be attributed to causes not related to foreign trade, such as an employer closing or relocating — leaving a third, 20 million, caused by external shocks. “In other words,” Posen writes, “for each manufacturing job lost to Chinese competition, there were roughly 150 jobs lost to similar-feeling shocks in other industries.”

Posen points out that only about 16 percent of non-college-educated workers are employed in the manufacturing sector. And much of the [decline](https://conexus.cberdata.org/files/MfgReality.pdf) in manufacturing jobs, if not most of it, can be attributed to changes in technology rather than trade. The United States’ manufacturing output [keeps rising](https://data.worldbank.org/indicator/NV.IND.MANF.CD?locations=US), even as the number of workers it takes to produce those products has [fallen](https://fred.stlouisfed.org/series/MANEMP) over time.

This is not just a U.S. trend. Posen’s institute produced a [chart](https://www.piie.com/research/piie-charts/despite-germanys-trade-surplus-manufacturing-employment-share-total-employment) tracking manufacturing employment in Ohio over the past three decades and compared it to Germany’s North Rhine-Westphalia (a similarly important manufacturing region). Unlike the United States, Germany has a [trade surplus](https://tradingeconomics.com/germany/balance-of-trade). It provides much [governmental assistance](https://www.dw.com/en/germany-to-pump-additional-3billion-in-ailing-automotive-industry/a-55641102) for manufacturing, which is seen as the heart of the German economy. Yet the job losses are even more pronounced in Germany. Even China has overall been [losing manufacturing jobs](https://www.piie.com/blogs/china-economic-watch/chinas-manufacturing-job-losses-are-not-what-they-seem) as its economy branches into software and services.

It is also worth noting that manufacturing jobs in the United States are mostly held by workers who are [male and White](https://www.foreignaffairs.com/articles/united-states/2021-04-20/america-price-nostalgia). A policy that obsessively focuses on them devalues the many good jobs in other sectors, which have more women and minorities in them. These groups, being poorer, are also disproportionately affected by the higher cost of tariffed goods. More protectionism means [more economic pain](https://www.washingtonpost.com/us-policy/2019/06/07/repeat-after-me-tariffs-are-bad-economy/?itid=lk_inline_manual_14) for the vast majority of middle-class workers.

Posen points out that the chief reason for many of the United States’ economic inequities and discontents is not open trade but stingy domestic spending. He argues that all workers would gain from a more secure safety net, one in which benefits such as health care are “portable,” meaning not tied to employment. That is where misguided market economics have distorted public policy. More and better benefits — of the kind President Biden is proposing — would help displaced workers, reduce inequality and improve job readiness.

**Writing** all **this** sometimes feels pointless. Protectionism has **become** one of those zombie ideas that continue to move forward despite all the evidence showing them to be wrong. **Most worryingly**, it is part of a sea change in the **U**nited **S**tates’ **basic outlook**. From an **optimistic** and confident **view** that we can **thrive in a world** in which **others also do well** — a view borne out by the data — we are now retreating to a cold, curdled view of international life, one that is dark and zero-sum, in which we search for villains to blame for our problems. It’s a world in which **we try to gain** some **narrow benefit** for ourselves by cheating everyone else. In other words, it is the Donald Trump way.

**ir studies lack causation.**

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

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

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

**No trade impact**

Joel **Einstein 17**. Australian National University. 01-17-17. “Economic Interdependence and Conflict – The Case of the US and China.” E-International Relations. <http://www.e-ir.info/2017/01/17/economic-interdependence-and-conflict-the-case-of-the-us-and-china/>

In 1913, Norman Angell declared that the use of military force was now economically futile as international finance and trade had become so interconnected that harming the enemy’s property would equate to harming your own.[1] A year later Europe’s economically interconnected states were embroiled in what would later become known as the First **World War**. Almost a century later Steven Pinker made a similar claim. Pinker argues, “Though the relationship between America and China is far from warm, we are unlikely to declare war on them or vice versa. Morality aside, they make too much of our stuff and we owe them too much money.”[2] His argument rests upon the liberal assumption that high levels of trade and investment between two states, in this case the US and China, will make war unlikely, if not impossible. It is this assumption that this essay seeks to evaluate. This essay is divided into three sections. The first briefly outlines the theory that economic interdependence results in a reduced likelihood of conflict, breaking the theory down into smaller components that can be examined. In the second section, this essay suggests that the premise ‘more trade equals less conflict’ is simplistic. It does not take into account many of the variables that can influence the strength of economic interdependence’s conflict reducing attributes. Within this section, the essay considers: the extent to which conflict cuts off trade, theories arguing that how and what a state trades matters, Copeland’s theory of trade expectations and the differences between status quo and revisionist states. The final section deals with the realist perspective, concentrating on arguments pertaining to the primacy of strategic interests and arguments that economic interdependence will increase the likelihood of conflict owing to a reduction of deterrence credibility. Each section will be related back to the US-China relationship with a view to assessing Pinker’s claim. The essay will conclude that **economic interdependence** does reduce the likelihood of conflict but **is insufficient** on its own **to** completely **prevent it**. To calculate the likelihood of **conflict** correctly one would need to factor in the nature of the economic interdependence alongside the strength of the strategic interests at stake. Economic Interdependence and Conflict The theory that increased economic interdependence reduces conflict rests on three observations: trade benefits states in a manner that decision-makers value; conflict will reduce or completely cut-off trade; and that decision-makers will take the previous two observations into account before choosing to go to war. Based on these observations, one should expect that the higher the benefit of trade, the higher the cost of a potential conflict. After a certain point, the value of trade may become so high that the state in question has become economically dependent on another. Proponents of this theory argue that if two states have reached this point of mutual dependence (interdependence), their decision-makers will value the continuation of trade relations higher than any potential gains to be made through war.[3] It is on this argument that Pinker rests his statement that the economic relationship between the US and China precludes war. One can see evidence of this when analysing US views on China as trade rises. A 2014 Chicago Council on Global Affairs survey indicates that only a minority of Americans see China as a critical threat, compared to a majority in the mid-1990s. This number is even higher when analysing Americans who directly benefit from trade with China.[4] As compelling as this argument may be, high levels of economic interdependence have not always resulted in peace. The decades preceding WW1 saw an unprecedented growth in international trade, communication, and interconnectivity but needless to say, war broke out.[5] This instance alone is not enough to disprove Pinker’s logic. War may become very unlikely but began nonetheless.[6] Let us take two hypothetical scenarios, one in which the chances of war is 80% and the other in which trade has reduced the likelihood of war to 10%. Just knowing that war did indeed take place does not tell us which scenario was in play. Similarly, the fact that WW1 took place gives us no information about whether economic interdependence made war unlikely or not. In fact, evidence even exists to suggest that economic linkages prevented a war from breaking out during the sequence of crises that led up to WW1.[7] However, the fact that a war as detrimental as WW1 could break out despite a supposed reduction of the likelihood of conflict gives us an impetus to examine whether this reduction does take place. Additionally, if this is the case, what variables can weaken this pacifying effect? Does Conflict Cut off Trade? Economic interdependence theory makes the assumption that conflict will reduce or cut-off trade. This assumption **appears** to be logical, as one would expect that the moment two states are officially adversaries, fear of relative gains would ensure that policy makers want to completely cut-off trade. However, there are **many** historical **examples** of trade between warring states **carrying on** during wartime, including strategic goods that directly affect the ability of the enemy to carry out the war.[8] For example, in the Anglo-Dutch Wars, British insurance companies continued to insure enemy ships and paid to replace ships that were being destroyed by their own army.[9] Even during WW2, there are numerous examples of American firms continuing to trade strategic goods with Nazi Germany.[10] Barbieri and Levy argue that these examples and their own statistical analysis suggest that the outbreak of war does not radically reduce trade between enemies, and when it does, it often quickly returns to pre-war levels after the war has concluded.[11] In response to this result, Anderton and Carter conducted an interrupted time-series study on the effect war has on trade in which they analysed 14 major power wars and 13 non-major power wars. Seven of the non-major power wars negatively impacted trade (although only four of these reductions were significant), but in the major war category, all results bar one showed a reduction of trade during wartime and a quick return to pre-war levels at its conclusion.[12] Accompanying this contradictory finding one must take into account that even if war does not radically reduce trade, if a state believes that it does then potential opportunity cost would still figure in their calculations. Variables that Impact the Pacifying Effect of Economic Interdependence The purpose of this section is to demonstrate that the **pacifying effect of economic interdependence is not constant**. It achieves this via a discussion of the effect of changes in a number of variables pertaining to how and what a state trades. Once it is established that changes in such variables may alter the effect of economic interdependence on the likelihood of conflict, Pinker’s statement (that the level of trade between the US and China makes conflict unlikely) can be considered to be an over-simplification. One variable is the relative levels of economic dependence. Some argue that asymmetry of trade can **increase** the chances of conflict if the trade is more important to one state than it is to the other; their resolve would not be reduced by the same degree. The less dependent state would be far more willing than its adversary to initiate a conflict.[13] An example is the possibility of the prevalent idea in China that ‘Japan needs China more than China needs Japan’ leading to China becoming more assertive in Senkaku/Diaoyu islands dispute.[14] It is important to recognize that all trade is asymmetric in one fashion or another. It is radical asymmetry that one has to fear, which at the moment does not appear to be the case in the China-Japan or US-China case. Another variable is the specifics of what is being traded. A study by Dorussen suggests that the pacifying effect of trade is less evident if the trade consists of raw materials and agriculture but stronger if the trade consists of manufactured goods. Even within the category of manufactured goods there are differences in effect. Mass consumer goods yield the strongest pacifying results whilst high-technology sectors such as electronics and highly capital-intensive sectors such as transport and metal industries tend to have a relatively weak effect.[15] If it is a sector with alternative trade avenues then embargos and boycotts as a result of conflict will have far less effect.[16] The rule is that the more inelastic the import demand, the higher the opportunity cost and the smaller the probability of conflict.[17] According to these studies, trade still generally reduces the likelihood of conflict however it is by no means homogeneous in its effects. Additionally, the opportunity costs are not the same for importers and exporters. Dorussen’s study suggests that increased trade in **oil** tends to make the exporters more hostile and the importers friendlier in relations to their foreign policy.[18] Taking this framework into account, in 2014 China’s top five exports to the US (computers, broadcasting equipment, telephones and office machine parts) all fell under the category of electronics,[19] whilst the US’s top five exports to China (air and/or spacecraft, soybeans, cars, integrated circuits and scrap copper) were all either high-capital intensive sectors or raw materials and agriculture.[20] According to Dorussen’s study, these exports should not yield the strongest possible conflict reducing results, which could impact the validity of Pinker’s statement. Copeland presents another variable, namely expectations of trade. Copeland argues that if a highly dependent state expects future trade to be high, decision makers will behave as many liberals predict and treat war as a less appealing option. However if there are low expectations of future trade, then a highly dependent state will attach a low or even negative value to continued peaceful relations and war would become more likely.[21] As an example, he points out that despite high levels of trade in 1914 German leaders believed that rival great powers would attempt to undermine this trade in the future, so a war to secure control over raw materials was in the interests of German long-term security.[22] Via this framework, if the US began to believe that in future years they would be less dependent on China’s economy, or if it became apparent that a US-China trade war was about to take place, there would be a sharp rise in the probability of conflict. The final variable this essay will discuss relates to the differences between status quo and revisionist states. Most empirical analyses of economic interdependence tend to group together states as different as the United States, Pakistan, Australia, Germany and China and assume that variations in their behaviour would be the same.[23] Papayoanou on the other hand, argues that when analysing the effects of economic interdependence it is useful to **differentiate** the effects on great power **states** and states with revisionist aspirations.[24] If a status quo power has strong economic ties with revisionist state there will be interest groups who advocate engagement and who believe that confrontational stances will threaten the political foundation of economic links. This will constrain the response of the status quo state.[25] One can see evidence of such an interest group in the US, a group Friedberg describes as the Shanghai coalition, who he argues advocate engagement with China at the expense of balancing.[26] A study by Fordham and Kleinberg backs up this argument as they find that US business elites who benefit from trade with China tend to see little benefit in limiting the growth of Chinese power.[27] A 21st Century revisionist power is far less likely to be a democracy, and therefore, interest groups will influence the leadership far less. This means **a**n authoritarian **revisionist** power will be working under fewer constraints and will be able to take a more **aggressive** stance.

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[28] This appears to be the case in China where rather than having domestic constraints on taking an aggressive stance against Japan, one of their biggest trading partners, grassroots nationalism has made explicit cooperation a domestically risky option.[29] There are many indicators to suggest that China is a revisionist power willing to wage war. Lemke and Werner argue that an extraordinary growth of military expenditures’ reveals when a state is dissatisfied with the status quo.[30] Data provided by the Stockholm International Peace Research Institute certainly indicates that China qualifies as its military expenditure has nominally increased by 1270% between 1995 and 2015.[31] Additionally, the military modernization appears to be aimed at capabilities to contest US primacy in East Asia.[32] Much like German strategists recognized that Britain was operating under significant domestic constraints, China could realize the same of the US.[33] This is not to say that Chinese decision-makers would be cavalier about making a decision that would be to the detriment its economy. A crash in the Chinese economy due to the loss of exports to the US could potentially undermine the legitimacy of the Chinese Communist party and endanger the regime. However, the view that China is a revisionist power indicates that good trade relations alone will not result in a low probability of conflict. Realist Arguments Pertaining to Dominance of Strategic Interests Having established that if the pacifying effect of trade does exist, it can rise or fall depending on changes in a series of variables this essay proceeds to deal with realist theories arguing that trade has a negligible or even negative effect on the likelihood of conflict. Buzan argues that **noneconomic factors contribute far more to major phenomena than liberal theorists usually cite to support their theory**.[34] There is evidence of the primacy of strategic interests in Masterson’s 2012 study on the relationship between China’s economic interdependence and political relations with its neighbours. The study concluded that as economic interdependence with neighbouring states increased the likelihood of conflict did indeed decrease, **but that the impact was minimal when compared to the impact of relative power capabilities**. In other words, **political and military issues dominate**d interstate relations. Growth in power disparities were associated with decreases in dyadic political relations that were greater than the increase caused by economic interdependence.[35] If the pacifying effect of trade can rise and fall so can the provocative effect of strategic interests. It is important to distinguish between the existence of a strategic interest and a situation of unbearable strategic vulnerability. China and the US have many opposing strategic interests, but neither is in a strategically vulnerable position. For example, China shares many borders, but none present the same threat of invasion that Tsarist Russia did to Imperial Germany as none of the current maritime tensions between China, Japan, and the US equate to a matter of national survival.[36] This is crucial as some believe that for a crisis to escalate to a major war an actor who is isolated and believes that history is conspiring against them is needed. Only this actor would take an existential risk to try and offset their strategic vulnerability.[37] Imperial Germany fit this description, but neither China nor the US does. This is largely due to the geography of the region. The tension between the US, China and Japan are over maritime regions. Maritime issues still relate to national interests but, as Krause points out, “Land armies are still the only forces that can conquer and hold territory.”[38] Taking this into account one can argue that the benefits of US-China trade are, for each state, currently greater than the benefits of pursing strategic benefits via force, but this situation will only remain as long as the situation does not become one of unbearable strategic vulnerability. Realist Arguments Pertaining to the Undermining of Deterrence Having established that scenarios exist where strategic interests and vulnerabilities have a greater effect on the likelihood of war than economic interdependence, this essay will now evaluate arguments that economic interdependence can increase the likelihood of conflict through the undermining of deterrence. The argument proceeds as follows: if economic interdependence constrains the ability or willingness of a state to use its military, security is lowered as the state now has a weakened ability to engage in deterrence and defensive alliances. Deterrence relies on the ability of a state to make credible threats and defensive alliances rely on credible promises to protect one’s allies.[39] Credibility is defined as the product of the operational capability to follow through with a threat and the communication of resolve to use force.[40] What is at risk here is that if economic interconnectivity interferes with the communication of resolve to use force then states may end up with a way that neither side expected or wanted. Some argue that it was such a failure to communicate resolve that resulted in the beginning of WW1. Indeed, Jolly claims that: “The Austrians had believed that vigorous actions against Serbia and a promise of German support would deter Russia: the Russians had believed that a show of strength against Austria would both check the Austrians and deter Germany. In both cases, the bluff had been called and the three countries were faced with the military consequences of their actions.”[41] The risk in the US-China case would be that the interest groups described earlier would prevent the US from effectively communicating its resolve to use force if China were to cross a redline. The flaw in this argument lies in the fact that whilst interest groups might push back against public statements outlining redlines; the US has many less overt options available to it to communicate resolve. Modern technology and the forms of interconnectivity have resulted in many more lines of communication between China and the US than adversaries had access to in 1914. Private meetings, electronic communication and numerous other methods of communication have the capability to be candid without being visible to interest groups. It is for this reason that this essay discounts the theory that Sino-American economic interdependence results in a reduction of deterrence and therefore increases the likelihood of conflict. Conclusion This essay has shown that the strength of the pacifying effect of economic interdependence is subject to change depending on a series of dynamic variables. It has also demonstrated that the strength of the conflict provoking effects of strategic interests can change depending on whether the strategic interest amounts to a situation of unbearable strategic vulnerability. It has discounted the theory that interdependence leads to a higher chance of conflict through an erosion of credibility. To sum up, **trade** does seem to reduce the likelihood of conflict but **should not be seen as a deterministic factor** as strategic interests, and vulnerabilities also have a large effect. There is no hard rule as to what will be the driving factor as the nature of economic interdependence and of strategic factors impact their relative values. Accordingly, Pinker’s statement that the trade between the US and China makes war exceptionally unlikely **is simplistic and misleading** because it fails to account for a wide array of variables that can radically change the likelihood of a Sino-American war. An intellectually honest thesis would insist upon a comprehensive approach in which the level of **economic activity is simply one of many variables** that is required.

### Resource

#### 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.

#### People will also object to the creation of new forms of renewables

Gross 20 – Samantha Gross is a fellow and director of the Energy Security and Climate Initiative.

Samantha Gross, January 2020, “RENEWABLES, LAND USE, AND LOCAL OPPOSITION IN THE UNITED STATES,” https://www.brookings.edu/wp-content/uploads/2020/01/FP\_20200113\_renewables\_land\_use\_local\_opposition\_gross.pdf

Decreasing greenhouse gas emissions in the electricity sector is crucial to avoiding the worst impacts of climate change. The American public overwhelmingly favors renewable power and the costs of wind and solar power have declined rapidly in recent years. However, inherent attributes of wind and solar generation make conflicts over land use and project siting more likely. Power plants and transmission lines will be located in areas not accustomed to industrial development, potentially creating opposition. Wind and solar generation require at least 10 times as much land per unit of power produced than coal- or natural gas-fired power plants,

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including land disturbed to produce and transport the fossil fuels. Additionally, wind and solar generation are located where the resource availability is best instead of where is most convenient for people and infrastructure, since their “fuel” can’t be transported like fossil fuels. Siting of wind facilities is especially challenging. Modern wind turbines are huge; most new turbines being installed in the United States today are the height of a 35-story building. Wind resources are best in open plains and on ridgetops, locations where the turbines can be seen for long distances. Even though people like wind and solar power in the abstract, some object to large projects near their homes, especially if they don’t financially benefit from the project. Transmission for renewable power can also be unpopular, and even more difficult to site when the power is just passing through an area, rather than directly benefiting local residents. This is an issue today building transmission to move wind power from the Great Plains and Upper Midwest states to cities in the east.

#### Is too slow even if transformative and disruptive – capitalism solving warming would require an innovation so great it rivals the discovery of fire

Barth et. Al. 19 – Timothée Parrique, Centre for Studies and Research in International Development (CERDI), University of Clermont Auvergne, France; Stockholm Resilience Centre (SRC), Stockholm University, Sweden Jonathan Barth, ZOE.Institute for Future-Fit Economies, Bonn, Germany François Briens, Independent, Informal Research Centre for Human Emancipation (IRCHE) Christian Kerschner, Department of Sustainability, Governance, and Methods, MODUL University Vienna, Austria; Department of Environmental Studies, Masaryk University, Brno, Czech Republic Alejo Kraus-Polk, University of California, Davis, USA Anna Kuokkanen, Lappeenranta-Lahti University of Technology, Lahti, Finland Joachim H. Spangenberg, Sustainable Europe Research Institute (SERI Germany), Cologne, Germany.

Parrique T., Barth J., Briens F., C. Kerschner, Kraus-Polk A., Kuokkanen A., Spangenberg J.H, July 2019, “Decoupling Debunked,” European Environmental Bureau, https://eeb.org/wp-content/uploads/2019/07/Decoupling-Debunked.pdf

Not fast enough In light of the past decades of technological change, the rate of improvement that is needed for highincome, high-footprint economies to absolutely decouple appears disproportionate in contrast to past and present rates of technical progress. Let us consider the example of carbon emissions. Jackson (2016, pp. 96–100) considers several simple hypothetical decoupling scenarios. The first baseline scenario runs as follow: extending the trend of global annual per capita economic growth of 1.3% in parallel of 0.8% of expected annual population growth and with the average annual decline of carbon intensity of 0.6%, that has been observed since 1990, would result in carbon emissions growing by 1.5% per year (1.3% + 0.8% – 0.6% = 1.5). In order to achieve a 90% emission reduction in 2050 compared to current levels with the same GDP and demographic hypotheses, the emission intensity would need to decline at an average rate 8% per year until 2050 – reducing the average carbon content of economic output to 20 gCO2 /US$, that is to say 1/26 of what it is today (497 gCO2 / US$). In comparison, the carbon intensity of the global economy fell from about 760 gCO2 /US$ in 1965 to just under 500 g/CO2 /US$ in 2015, that is to say, an annual decline of only 1%. Many more ambitious scenarios can be imagined,39 but the message is already clear: relying only on technology to mitigate climate change implies extreme rates of eco-innovation improvements, which current trends are very far from matching, and which, to our knowledge, have never been witnessed in the history of our species. Such an acceleration of technological progress appears highly unlikely, especially when considering the following elements: First, global carbon intensity improvement has been slowing down since the turn of the century, from an average yearly 1.28% between 1960 and 2000 to 0% between 2000 and 2014 (Hickel and Kallis, 2019, pp. 8–9). Narrowing the scope to high-income OECD countries only, where most innovations are developed, the improvement rate of CO2 intensity still declines from 1.91% (1970-2000) to 1.61% (2000-2014), which is a long way from matching appropriate levels to curb emissions to a 2°C target, let alone to 1.5°C. This empirical observation is nothing like a surprise with regards to the theory. Technological innovation is limited as a long-term solution to sustainability issues because it itself exhibits diminishing returns (Reason 1). Tracking the number of utility patents per inventor in the US over the 1970-2005 period, Strumsky et al. (2010) provide evidence that the productivity of invention declines over time, including in the sectors such as solar and wind power as well as information technologies (which are often acclaimed for their innovative potentials). “Early work […] solves questions that are inexpensive but broadly applicable. [Then] questions that are increasingly narrow and intractable. Research grows increasingly complex and costly […]” (ibid. 506). Looking at total factor productivity changes from 1750 to 2015, Bonaiuti (2018) argues that humanity has entered an overall phase of decreasing marginal returns to innovation.

## 1NR

### Outreach

#### Lack of enforcement mechanisms along with veto power means ASEAN can’t do anything

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Renato Castro, July 23 2020, “The Limits of Intergovernmentalism,” Journal of Current Southeast Asian Affairs, https://journals.sagepub.com/doi/full/10.1177/1868103420935562

In both instances, the Philippines found the powerless ASEAN a functional instrument in advancing its changing foreign policy agenda in the Indo-Pacific region. The country also took advantage of the ASEAN’s lack of collective commitment and security mechanisms to modify its goals relative to the South China Sea dispute. As mentioned earlier, with its insufficient enforcement mechanisms and the flexible interpretations of its rules and norms, the ASEAN is susceptible to institutional drift, which makes it vulnerable to its member-states’ external agendas that can circumvent potential veto-players. This structural flaw encourages member-states to use this regional association in promoting their national interests. The ASEAN’s institutional weakness, coupled with China’s desires and capabilities to create a Sino-centric regional order, will adversely affect the association’s ability to navigate the uncharted and potentially dangerous waters of an evolving Indo-Pacific region.

#### ASEAN is fundamentally weak and incapable of shaping norms – powerful countries will ignore them

Jones and Jenne 2015 – David Martin Jones is  Visiting Professor and teaching fellow in War Studies at King’s College,  and Honorary Reader in the School of Political Science and International Studies at the University of Queensland University of London. He received an undergraduate degree from Reading University a Masters degree from McMaster University (Canada) before completing  his doctoral studies  in political thought  at the London School of Economics (1984).  He has taught at the London School of Economics, Toronto University  and the Open University. Nicole Jenne has a Doctorate (PhD) in Political Science from the European University Institute, Florence, Italy. She is an associate professor at the Pontificia Universidad Católica de Chile and a researcher at the UC Center for Asian Studies.

David Jones and Nicole Jenne, August 2015, “Weak states' regionalism: ASEAN and the limits of security cooperation in Pacific Asia,” International Relations of the Asia-Pacific, https://academic.oup.com/irap/article-abstract/16/2/209/1750330?redirectedFrom=fulltext

ASEAN’s move toward a cultural, economic, and political and security community and its extension into the ASEAN-driven APT process after 1997 tests the dominant assumptions in ASEAN scholarship that maintains a socialization process would transform state interests into shared norms creating the ideational basis of a shared identity. Nation speaking unto nation would see nations evolving progressively into post-national constellations. This historicist teleology that came to influence the discipline of international relations after the Cold War found its exemplification in the evolution of ASEAN and its putative mutation into an East Asian Community. Problematically, however, we found that ASEAN’s weak state regionalism continues to be a conservative one. Those who advanced the view that ASEAN had evolved into an embryonic security community attended closely to official rhetoric and the conduct of ASEAN summitry. Yet, they overlooked the fact that the statements made by East Asian political leaders affirming a common interest needed ‘to be read in the particular context in which they were made’ (Ravenhill, 2002, 175). The case studies examined here reveal that ASEAN’s crucial norm of non-interference and its practice of nonbinding consensus inhibit deeper integration either within ASEAN or the wider East Asian region. Moreover, the contradiction between official consensus and actual practice has a damaging effect. The longevity of the institutional arrangement by no means entails progress, but rather the recourse to process without resolution. Protracted disputes and simmering suspicions render the use of force, an option that is not ruled out in ASEAN’s community and forestalls effective means to advance human security. Even when shifting the focus from outcomes to ostensibly more relevant process variables, ASEAN’s role to promote a regional public good in the examined cases was, at best, limited. If interstate war is indeed highly unlikely between any of the ASEAN states, this is not attributable to a liberal or ideational community but above all to the lack of meaningful capacity**.** Following the essentially intergovernmental practice of the security regime, states pursue bilateral or trilateral arrangements rather than building a supranational practice in dealing with intramural security. Meanwhile, extending conflict avoidance strategies to a wider East Asian Community has not altered the strategic reality of the individual and collective weakness of ASEAN. As a result, ASEAN appears doomed to remain a collection of weak and increasingly friable states in the twenty-first century. In fact what seems to be a Japanese and Chinese acculturation to the ASEAN Way has had a perverse effect, as these powers manipulate ASEAN’s pliable norms for their own strategic advantage. Consequently, ASEAN states either seek to bandwagon with a rising China that eschews any multilateral or legally binding code covering disputes over the South China Sea or hedges its bets by trying to maintain the regional presence of a declining and distracted US superpower. Whatever strategic mutation ASEAN eventually assumes, it can only mask the fact that weaker states cannot shape the fate of stronger ones.

### DA

#### No empirical ev of an impact

Mariya Grinberg 21, assistant professor at the Massachusetts Institute of Technology, “Wartime Commercial Policy and Trade between Enemies,” International Security, Vol. 46, Issue 1, Summer 2021, https://direct.mit.edu/isec/article/46/1/9/102856/Wartime-Commercial-Policy-and-Trade-between

Conventional wisdom suggests that trade is the first casualty of war.1 Because the gains from trade can be converted into military capabilities, trading with the enemy is akin to selling the opponent the gun they will use to shoot you. The empirical record of wartime trade, however, suggests otherwise. For example, World War I, a total war in which the majority of the states involved fought for their very survival, saw extensive trade between enemy belligerents. Britain continued to trade with its enemies until October 1, 1918—one month and eleven days before the Armistice. In fact, Britain started the war with restrictions on the export of only 20 percent of the goods that it ultimately prohibited from reaching the enemy. Even after a year of ªghting, by the end of August 1915, around half of the products that would eventually be prohibited were still allowed to be legally traded with enemy states.

World War I is hardly unique in that trade occurred and varied during the war. Some enemies continue to trade throughout the war—for example, India and Pakistan in the First Kashmir War (1947–49) and Yugoslavia and Croatia in the War of Bosnian Independence (1992).2 Other states sever trade immediately at the start of the war—for example, England and Argentina in the Falkland Islands War (1982) and India and Pakistan in the Kargil War (1999).3 Yet, other states start off trading with the enemy, only to change course during the war, as occurred, for example, between Ethiopia and Somalia in the Second Ogaden War (1977–78).4 There is remarkable variation in wartime trading patterns between adversaries.

Why do states trade with their enemies in wartime? In this article, I argue that states make deliberate choices when setting their wartime commercial policies and that these policies are tailored to the type of war the state expects to ªght. Specifically, states seek to balance two goals—maximizing revenue from continued trade during the war and minimizing the opponent’s ability to benefit militarily from trade.

As a result, states have two reasons to continue trading with their enemies during war. First, states continue to trade in products that their opponents take a long time to convert into military capabilities, because the security consequences from this trade will not accrue in time to help the opponent win the war. Second, states continue to trade in products that are essential to the domestic economy but that can be obtained only from the opponent, because sacrificing this trade would impair the state’s long-term security. Furthermore, states revise their wartime commercial policies based on how well they perform on the battleªeld. As the expected length of a war increases, the number of prohibited products will increase, because the opponent will have more time to beneªt militarily from the gains of trade. Similarly, the closer the war is to becoming an existential threat, the greater the portion of wartime trade with the enemy that the state will sever.

The article makes two major theoretical contributions. First, it shows that temporality is key to understanding the security externalities of trade—that is, the military consequences of a state beneªting from trade. Existing scholarship focuses on the idea that trading with the enemy increases the adversary’s military capabilities,5 but it omits the temporal dimension, in which economic gains may be converted into military power. Although all gains from trade are ultimately convertible into military capabilities, the amount of time this process takes varies by product. A similar temporal distinction can be applied to all wartime policy tools to determine if, and to what extent, they carry security externalities.

Second, the article challenges a central conclusion of economic interdependence theory—that significantly interdependent states are least likely to fight each other. According to that theory, trade between states is severed in war, which incentivizes states to avoid war to prevent losing the benefits of trade.6 So long as trade is lost during war, trade deters conflict. As my research shows, however, under the right circumstances, states have ample reason to trade with their enemies during war. Additionally, the more interdependent two economies are, the greater their incentives for wartime trade. Contrary to the predictions of economic interdependence theory, trade is unlikely to serve as a deterrent to war between highly interdependent states. This finding is particularly salient given the heightened possibility of conºict between the United States and China. Although they share significant economic ties,

**Trade flow disruptions will continue into 2022---too many alt causes**

**Philippine News Agency 12/5**

Philippine News Agency, "Global trade forecast for 2022 very uncertain: UNCTAD," Canadianinquirer, 12-5-2021, https://canadianinquirer.net/2021/12/05/global-trade-forecast-for-2022-very-uncertain-unctad/

MANILA – Global trade growth remains strong this year amid the pandemic but outlook for 2022 is still “very uncertain” due to a slowing economic recovery and disruptions of logistic networks and increases in shipping costs.

A report of the United Natis Conference Trade and Development (UNCTAD) said the strong economic recovery of the first half of 2021 slowed down during the second half, with the economic growth of China in the third quarter below expectations and lower than in previous quarters.

“Lower than expected economic growth rates are generally reflected in more downcast global trade trends. Rising commodity prices and inflationary pressures may also negatively affect economic prospects and international trade flows,” the Global Trade Update said.

The report said many economies, including those in the European Union, continue to face coronavirus disease 2019 (Covid-19)-related disruptions.

“These disruptions may negatively affect consumers’ demand and ultimately be reflected in trade statistics for the upcoming quarters,” it added.

The UNCTAD also attributed this year’s outlook to disruptions of logistic networks and increases in shipping costs.

It said the recovery this year has been marked by large and unpredictable swings in demand, which have resulted in an increased stress supply chains.

“Logistic disruptions and high fuel prices have further contributed to supply shortages and spiraling shipping costs. In particular, the backlogs across major supply chain hubs that have characterized most of 2021 could continue into 2022 and therefore negatively affect trade and reshape trade flows across the world,” the report added.

Other factors cited are global semiconductor shortage, geopolitical factors and the regionalization of trade flows, governmental policies affecting international trade, and debt burdens.

### Private Enforcement

#### Public enforcement with SINGLE damages is enough

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

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(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.

#### 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.

**It’s competitive**

**Antoine 19 – Drink Biddle and Reath LLP**

**Paul Saint-Antoine, “Private antitrust litigation in the United States: overview”** <https://content.next.westlaw.com/6-632-8692?__lrTS=20210213235748824&transitionType=Default&contextData=(sc.Default)&firstPage=true>**, 1 march 2019**

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*).

#### Antitrust liability is uniquely chilling to firms—treble damages increase the potential cost of all conduct and undermines industry dealmaking

Delrahim, JD, former Assistant Attorney General for the Antitrust Division of the United States Department of Justice, ‘20

(Makan, “Assistant Attorney General Makan Delrahim Delivers Remarks at IAM’s Patent Licensing Conference in San Francisco,” September 18, <https://www.justice.gov/opa/speech/assistant-attorney-general-makan-delrahim-delivers-remarks-iam-s-patent-licensing>)

It can be a serious mistake for a court to allow either type of claim to proceed under the Sherman Act. To understand why that is the case, one should consider the policies underlying Section 2 of the Sherman Act.

One crucial element in establishing any claim of unlawful monopolization under Section 2 is a showing that a defendant acquired, enhanced, or maintained monopoly power in the relevant market through anticompetitive conduct that is “exclusionary” or “predatory” in nature. I will focus on so-called “exclusionary” conduct—the umbrella concept often invoked by licensees bringing Section 2 claims premised on FRAND violations.

The term exclusionary conduct in antitrust law is potentially misleading because there is a difference under the Sherman Act between “lawful” and “unlawful” conduct that results in exclusion of a competitive alternative. In market economies, every rational business wants to exclude and defeat its competitors, and indeed antitrust law encourages fierce competition among companies aiming for as high a market share as they can achieve. That is why courts applying Section 2 are careful not to condemn “exclusionary” conduct that is driven by competition on the merits such as innovation. Most obviously, legitimate competition on the merits can be “exclusionary” in the sense that consumers choose a superior product or service. That conduct does not violate Section 2. By comparison, conduct that “excludes” a competitor by hindering its ability to offer a superior product or service, without offering any benefit to competition, likely would constitute a Section 2 violation.

When courts police the line between lawful and unlawful “exclusionary” conduct, a few themes emerge.

First, courts have recognized that not every type of conduct that may enhance a business’s market power is actionable, such as when the application of Section 2 would impose a duty that contravenes the policies of the antitrust laws themselves. For example, in Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, the plaintiff alleged that Verizon refused to deal with a rival in order to limit competitive entry, thereby enhancing its monopoly position. The Supreme Court held that the claim did not satisfy Section 2 as a matter of law. That is because the claim would condemn a monopolist’s refusal to share its resources and effectively would create an antitrust duty to help a competitor. Such a duty, the Court explained, is in “tension with the underlying purpose of antitrust law, since it may lessen the incentive for the monopolist, the rival, or both to invest in those economically beneficial facilities.” The Court applied a legal rule, rather than a fact-specific rule, to protect conduct that may have an exclusionary, monopoly-enhancing effect.

Second, the Supreme Court has cautioned against antitrust standards that would create an unacceptable risk of “false positives” or condemnations of lawful pro-competitive conduct. As the Court has explained, “Mistaken inferences and the resulting false condemnations ‘are especially costly, because they chill the very conduct the antitrust laws are designed to protect.’” Judge Robert Bork, in his famous Antitrust Paradox, highlighted the same risk in the application of Section 2 theories, explaining with respect to exclusive dealing that “[t]he real danger for the law is less that predation will be missed than that normal competitive behavior will be wrongly classified as predatory and suppressed.”

This backdrop helps frame the question whether a unilateral refusal to license a lawful patent on “FRAND” terms after committing to do so constitutes a form of unlawful exclusionary conduct. A unilateral violation of a FRAND commitment should not give rise to a cause of action under Section 2 of the Sherman Act, even if a patent holder is alleged to have misled or deceived a standard-setting organization with respect to its licensing intentions. Applying Section 2 to this sort of unilateral conduct would contravene the underlying policies of the antitrust laws. This conduct may warrant remedies under contract law, but the important difference is that contract remedies do not involve the threat of treble damages that can deter lawful, pro-competitive conduct.

In the context of legitimate standard setting, the collective decision to incorporate a patented technology into a standard necessarily involves the “exclusion” of rival technologies. Moreover, as a result of having its technology incorporated into a standard, a patent holder may gain incremental market power beyond any power that holding a patent would already convey. By voluntarily participating in the standard setting process, however, owners of rival technologies and prospective licensees assume the risk that the outcome of that process may have an exclusionary effect where there are patents covering the “winning” technology. Simply winning selection by a standard setting process does not constitute unlawful exclusionary conduct under the antitrust laws. This is because that selection, regardless the reason for it, contributes to unification around a single standard, which creates interoperability benefits for consumers that could not be achieved without unification.

This form of lawful and pro-competitive exclusionary conduct should not be condemned as unlawful under the Sherman Act when a licensee believes that a patent-holder opportunistically has reneged on its commitment to license on “FRAND” terms and engaged in so-called “hold-up.” That is also true even where a patent holder never allegedly intended to license on the terms that a court ultimately determines are “FRAND.” I will explain why.

There is no duty under the antitrust laws for a patent holder to license on FRAND terms, even after having committed to do so. A FRAND commitment is a contractual representation that a patent holder will license on “fair,” “reasonable,” and “non-discriminatory” terms. It is not the same as a promise to pay a specific price in a final contract. Indeed, commentators have noted that by failing to specify a specific price, a FRAND commitment is an incomplete contract term.

To be clear, a FRAND commitment may create a duty under contract law to fulfill that obligation, and courts may be tasked with determining the relevant FRAND rate where parties disagree over this contract term. Section 2, however, is agnostic to the price that a patent-holder seeks to charge after committing to such a term. Breaking down “FRAND” by its component terms makes clear why this is so.

First, the Sherman Act does not police “fair” prices or competition; it protects the competitive process. Judge Easterbrook once asked, “Who says that competition is supposed to be fair, that we judge the behavior of the marketplace by the ethics of the courtroom? . . . When economic pressure must give way to fair conduct . . . rivals will trim their sails”; introducing conceptions of “fairness” into the Sherman Act “is to turn antitrust law on its head.”

Second, having undertaken a contractual duty to charge “nondiscriminatory” rates, the Sherman Act does not compel a patent-holder to abide by this promise. The Sherman Act is indifferent to price discrimination; indeed, in some circumstances price discrimination may be pro-competitive.

Third, the Sherman Act does not authorize courts to determine “reasonable” licensing rates. The Supreme Court has emphasized repeatedly that antitrust law does not recognize a cause of action that would “require[] antitrust courts to act as central planners, identifying the proper price, quantity, and other terms of dealing—a role for which they are ill-suited.”

It, therefore, would be a mistake to infer that a contractual FRAND commitment somehow establishes a duty under the antitrust laws to license on terms demanded by a licensee or that violations of an ambiguous FRAND term become an antitrust violation. Transforming such a contract obligation into an antitrust duty would undermine the purpose of the antitrust laws and the patent laws themselves, both of which serve the same goal of increasing dynamic competition by fostering greater investment in research and development, and ultimately in innovation.

Making the duty to license on FRAND terms enforceable under the antitrust laws would contravene the policies of the Sherman Act. As the Supreme Court recognized in Trinko, a business has no antitrust duty to deal with another company, and only in limited circumstances will a refusal to deal give rise to a potential antitrust claim. As then-Tenth Circuit Judge Neil Gorsuch explained in Novell v. Microsoft, following Trinko, a monopolist’s refusal to license its intellectual property is actionable under the antitrust laws only if it terminates a “presumably profitable course of dealing between the monopolist and the rival” and that termination is “irrational but for its anticompetitive effect.”

I would note that then-Judge Gorsuch’s standard echoes what the United States and FTC advocated to the Supreme Court in its amicus brief in the Trinko case. The brief stated:

Where, as here, the plaintiff asserts that the defendant was under a duty to assist a rival, the inquiry into whether conduct is “exclusionary” or “predatory” requires a sharper focus. In that context, conduct is not exclusionary or predatory unless it would make no economic sense for the defendant but for its tendency to eliminate or lessen competition.

That narrow window for a refusal to deal claim is irreconcilable with the broader contention that Section 2 obligates an SEP-holder subject to a contractual FRAND commitment to license its technology to any comer—much less on FRAND terms. An antitrust duty to license on FRAND terms would also contravene the patent laws’ policy of promoting innovation by offering incentives for holders of valid patents to seek the greatest rewards possible for their inventions.

To be clear, contract law may very well require an SEP-holder to deal with any willing licensee, but the Sherman Act does not convert FRAND commitments into a compulsory licensing scheme. It logically follows that there is no antitrust liability for proposing to deal at terms that are above FRAND rates.

Nor should an antitrust duty spring into being if a patent holder allegedly “deceives” an SSO when it commits to license on FRAND terms and its participants rely on that representation in deciding to adopt the technology. That is because Section 2 should not condemn a patent holder’s profit-maximizing intentions or aspirations at the time it makes a FRAND commitment, particularly where remedies are already available to an unhappy licensee or SSO participant.

Suppose that, hypothetically, the holder of a standard-essential patent knew upfront precisely what price would satisfy the vague definition of “FRAND” and planned to demand a much higher price after the SSO incorporated its technology into a standard. By making a legally binding commitment, a patent-holder acknowledges that it will be required under contract law to license at a rate determined by a court if a disagreement over that rate arises later. A licensee, for its part, understands that it can bring suit if a price does not fit its own subjective understanding of “FRAND.” Because both patent-holders and licensees participating in a standard-setting process recognize that the proper “FRAND” rate will be determined after the fact—in court, if necessary—there is therefore no meaningful ex ante “deception” that should give rise to an antitrust claim.

To be sure, having one’s technology incorporated into a standard, in some circumstances, may increase a patent-holder’s market power. The same could be said, of course, about a monopolist’s refusal to deal with a rival who might gain market share if it had access to the monopolist’s inputs. Even if this occurs as a result of a patent holder’s so-called “deception” about its licensing obligations, this is not the sort of market-power-enhancing conduct that Section 2 should reach because a cause of action for treble damages would impede the policies underlying the Sherman Act. Even worse, such a cause of action would “require[] the court to assume the day-to-day controls characteristic of a regulatory agency.”

More fundamentally, recognizing a Section 2 cause of action for violations of a FRAND commitment would create an unacceptable risk of “false positive” condemnations of pro-competitive conduct by licensees. The prospect of antitrust liability and treble damages for breaching a potentially vague FRAND term—or allegedly “misrepresenting” one’s intentions to offer some FRAND rate—threatens to chill incentives for innovators to develop new technologies that fuel dynamic competition.

Where contract law remedies exist to remedy and deter breaches of a FRAND commitment, the additional deterrence that Sherman Act remedies offer could deter lawful, pro-competitive conduct—that is, research and development by innovators who make careful cost-benefit calculations as to how much to invest in technologies that may not pay off. Demanding a high price for one’s patented technology is permissible, and expected, conduct in a free market negotiation. A Section 2 cause of action would skew the patent licensing bargain away from the bargaining outcome that a free market dictates.

In particular, where the parties have a subjective disagreement over the meaning of an incomplete contract term, a Section 2 remedy threatens the patent holder with the risk of enormously costly litigation and a possible treble damages award. Bargaining in the shadow of litigation, a patent holder would be wary that a high license demand could be penalized by a significant damages award, whereas a prospective licensee’s low-ball offer would do no such thing. Such a remedy would bestow any putative licensee with disproportionate negotiating power. In turn, the cost-benefit calculation for innovators would change and the prospect of additional dynamic competition likely would decline.

#### It’s a distinctly powerful tool

Delrahim, JD, former Assistant Attorney General for the Antitrust Division of the United States Department of Justice, ‘20

(Makan, Brief of The United States of America as Amicus Curiae in Support of Neither Party, City of Oakland v. Oakland Raiders, available at: <https://www.justice.gov/atr/case-document/file/1328216/download>)

The automatic treble damages provision of Section 4 is an uncommonly powerful tool, serving both to encourage private enforcement and to deter wrongdoers. Wielded indiscriminately, however, it can impose more harm than good: “Given the potential scope of antitrust violations and the availability of treble damages, an overbroad reading of § 4 could result in ‘overdeterrence,’ imposing ruinous costs on antitrust defendants, severely burdening the judicial system and possibly chilling economically efficient competitive behavior.” Greater Rockford Energy & Tech. Corp. v. Shell Oil Co., 998 F.2d 391, 394 (7th Cir. 1993). Section 4’s rigorous standing requirements are intended to mitigate this risk: “[B]y restricting the availability of private antitrust actions to certain parties, we ensure that suits inapposite to the goals of the antitrust laws are not litigated and that persons operating in the market do not restrict procompetitive behavior because of a fear of antitrust liability.” Todorov v. DCH Healthcare Auth., 921 F.2d 1438, 1449 (11th Cir. 1991).

Oakland’s claim for lost general tax revenues poses the very threat contemplated by these courts. If upheld, local governments could bring substantial Section 4 claims anytime anticompetitive conduct was found to reduce economic activity in their jurisdictions. Congress did not intend this result. Though “it could have . . . required violators to compensate federal, state, and local governments for the estimated damage to their respective economies caused by the violations . . . [,] this remedy was not selected.” Hawaii, 405 U.S. at 262. To reverse the district court and award antitrust standing to Oakland for its lost tax revenues would expand antitrust liability beyond the intended scope of the Clayton Act and threaten to deter the very competition it was designed to protect.

**Defense mergers are in line with the XO**

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Loren Thompson, "Why Biden’s Competition Order Bolsters The Case For A Lockheed-Aerojet Merger," Forbes, 7-12-2021, https://www.forbes.com/sites/lorenthompson/2021/07/12/why-bidens-competition-order-bolsters-the-case-for-a-lockheed-aerojet-merger/?sh=43be03e92247

President Biden’s executive order launching a whole-of-government campaign to promote competition in the U.S. economy is long overdue.

Enforcement of antitrust measures has become so lax that virtually every big merger wins federal approval, even when the resulting combination will likely dominate a critical industry.

However, if you think that the Biden competition order is a **blanket proscription** of corporate mergers, then you **probably haven’t read the document.**

The goal **isn’t to impede** market forces, it is to assure that they function as intended in delivering high quality and low prices through vigorous competition.

There are some sectors of the nation’s industrial economy where **mergers** may be the **most expeditious way** of **assuring competition continues**, rather than giving way to monopoly.

A case in point is the **rocket motor industry**, which is essential to the production of launch vehicles, missiles, munitions and other products requiring energetic propulsion.

There are basically two types of rocket motors, those using solid fuel (which is more stable), and those using liquid fuel (which is more energetic).

It is not uncommon for NASA and commercial launch providers to use both types of motors on vehicles like the Space Shuttle.

However, the industry has become highly concentrated.

There are only **two major producers** of large solid rocket motors, and three producers of liquid propellant motors.

Aerojet Rocketdyne and the rocket motor unit of Northrop Grumman formerly known as Orbital-ATK are the key domestic players in both market segments, with Northrop/**Orbital tending to dominate**.

I should note that I have past or present business ties to all of the companies mentioned in this article, so I know of whence I speak.

Orbital’s rise to dominance in the domestic rocket motor industry is illustrative of how the segment has concentrated.

In 1995, a corporate antecedent of Orbital called Alliant Techsystems (ATK) bought Hercules Aerospace. Alliant built the third stage of the Navy’s Trident ballistic missile, while Hercules built the second stage.

In 2001, Alliant bought a third propulsion company called Thiokol, which supplied the missile’s first stage.

Alliant Techsystems thus became the sole supplier of large solid rocket motors for one of the nation’s most important weapon systems, which likely will remain in service through mid-century.

In 2018, the Federal Trade Commission permitted the resulting combination, which had come to be known as Orbital-ATK, to merge with Northrop Grumman, a leading producer of missiles and munitions.

Northrop thus became a vertically integrated enterprise, producing not only missiles and munitions but also the motors that propelled them (typically comprising about half of the end product’s value).

By the time FTC approved the merger, with conditions, Orbital-ATK was well on its way to **dominating** the market for large solid rocket motors.

It repeatedly **displaced the smaller Aerojet Rocketdyne** from legacy franchises on civil, commercial and military rockets.

When Northrop Grumman subsequently won the contract to build a next-generation replacement of the Air Force’s Minuteman III ICBM, it appeared Aerojet had lost its last opportunity to remain a player in the large solids business.

In other words, that segment of the market was **consolidating to monopoly**.

The problem wasn’t that Northrop Grumman had become vertically integrated. Most of the major producers of launch vehicles, such as SpaceX and Blue Origin, are vertically integrated.

The problem was that Northrop’s rocket motor unit was **far better resourced**, and controlled far more of the market than Aerojet was able to command.

With $2 billion in annual sales, Aerojet Rocketdyne is only about **5% of the size** of Northrop Grumman.

If Northrop hadn’t made the decision to give Aerojet a role on its future ICBM, the smaller company **would have been gone** from the large solids business.

However, that means Northrop Grumman will **decide the fate** of its **sole competitor** in the critical large solids part of the market.

This is not a prescription for vigorous competition, and it raises **troubling questions** about the future of both military and civil space innovation.

Against that backdrop, Lockheed Martin’s bid to acquire Aerojet Rocketdyne presents **the most plausible path** for preserving Aerojet’s role as a **viable player** in large solids—and probably the rest of the rocket motor business.

Like Northrop Grumman, Lockheed Martin is a major defense contractor with sufficient resources to continue Aerojet’s efforts at innovation across a range of propulsion technologies.

Lockheed is promising the government **big cost savings** if the merger is consummated, but that **isn’t the crux** of the matter.

The crux is what will happen to the defense and civil space industrial base **if Aerojet isn’t allowed** to combine with a better-endowed aerospace enterprise.

The short answer is that it will likely continue to **lose ground**, and eventually be acquired by a financial buyer that has **little incentive** to invest in long-term innovation.

Obviously, the FTC will have to impose the same kind of constraints on a Lockheed-Aerojet combination—firewalls, non-discriminatory pricing, etc.—that it imposed on Northrop-Orbital, because Lockheed will become vertically integrated too.

However, the notion that a small company dependent on a **narrow slice** of the aerospace market can **survive over the long run** in an environment dominated by behemoths is **not believable**.

The proposed Lockheed-Aerojet merger is thus the **simplest way** of accomplishing the goal of President Biden’s executive order: to maintain vigorous competition in a market critical to the nation’s future security and prosperity.

## 2NR

### Procedrual

#### Changing language doesn’t subvert ableism—their critique of language choices prevents genuine contestation of ableist oppression.

Perpetually Myself 11 — Perpetually Myself—a blog by an anonymous author self-described as "a historian, cat lover, autistic woman, Yankee fan, neurodiversity advocate, feminist, Harry Potter fan, Hunger Games fan, fantasy/science fiction reader, and general supporter of social justice," 2011 ("It’s not enough to call out ableist language," Perpetually Myself—a blog, May 2nd, Available Online at <http://allies-person.tumblr.com/post/5141183778/its-not-enough-to-call-out-ableist-language>, Accessed 03-02-2012)

Language is important, but more important still are the underlying assumptions which shape our society. Assumptions about who is valuable and who isn’t, about what the proper way to behave is, about what counts as “contributing” to to society/the economy/whatever…the list goes on and on. **Widespread use of “crazy” and “lame” (etc.) are but symptoms** of the larger problem—society is full of ableist assumptions, some of which are very obvious and some of which may be more subtle—but ableist nonetheless. The elimination of ableist words is but a small part **of what needs to be done, and it frustrates and disappointments me that so much “social justice” work has stopped at language**—which is in many ways the easiest part. Take stigma against people with intellectual disabilities. I am glad that **it’s no longer acceptable to use the r-word in many circles**, and that other words are making some headway. (I struggle with ”idiot” and “crazy” and a lot of others myself in everyday speech.) **But I don’t think this has actually done all that much to promote the equality and worth of people with intellectual disabilities.** There is still the assumption that it is better to be “intelligent” (whatever that means), that mental illness (however you define that) is something to be pitied, and that, in short, it’s better to be non-disabled than not. **The end result is a very shallow sort of “social justice” discourse that keeps all of the underlying problematic assumptions in place while giving lip service to equality**. It’s very troubling. Truly examining one’s ableism does not mean renaming the tags on your blog so that “lame” and “crazy” no longer appear. It is not being the fifth person on a thread to self-righteously proclaim that “idiot” is ableist, and then simply stopping at that. **That is superficial, and oftentimes little more than a way for neurotypical and/or able-bodied people to publicly demonstrate their Good Ally status and pat themselves on the back**. Examining one’s ableism means constantly questioning and re-formulating basic assumptions which are oftentimes so deeply ingrained that it’s hard even to see them, let alone disavow them. Take the assumption that “intelligence” is valuable, for instance. It’s so ingrained in our society, so hard to root out—I’ll not pretend to be perfect on this score—and yet doing so is vital if we are to create a world in which people with intellectual disabilities are equals—not simply people-seen-as-lesser whom are condescended to.

#### Focusing on language distracts from the real problems – actions speak louder than words.

Rose ’04 Damon Rose "Don’t call me handicapped21"Editor of BBC disability website Ouch21 Monday, 4 October, 2004 <http://news.bbc.co.uk/2/hi/uk_news/magazine/3708576.stm> 

It differentiates them from normal, but in a saccharine manner. Disabled people are different, but not better or more important. Besides, putting them on a pedestal does not appear to be shifting attitudes or solving the appalling disability unemployment situation. Clearly**, language in this field is a hotch-potch of confusion.** Barriers There's an idea that the correct terminology is "people with disabilities**".** It's quite cute because it's born of a belief that we're people first. But speak to a disability studies student or rights campaigner and you're likely to be told this is a thoroughly incorrect use of language, due to a concept known as "the social model of disability". They will tell you the correct term is "disabled people". Why? Because the word disabled and disability refer to how society treats them, not their impairment, which is a medical matter. Disabled refers to what barriers have been placed in their way due to the physical environment: steps instead of ramps, no Braille menus in restaurants etc. It also refers to attitudes which perpetuate joblessness or non-inclusion. Linguistically the disability movement is trying to separate its personal medical situation from society's responsibility to all disabled people. It is about identifying as one who believes in having rights as opposed to someone who believes their poor quality of life is because they are not "perfect" human specimens. Of other words used to describe disabled people, "invalid" gives the message of being not valid or worthless. "Handicapped" is a word which many disabled people consider to be the equivalent of nigger. It evokes thoughts of being held back, not in the race, not as good, weighed down by something so awful we ought not to speak of it. Some would accuse disabled people of being over-sensitive, but language shapes thoughts. Russians have two entirely different words for light blue and dark blue and so tend to think of them as two totally separate colours. English speakers however see the two as shades of the same thing. Ultimately though, **attitude is more important than words.** **The simple task of giving disability a name proves such a headache for some organisations they simply do nothing about "the disability problem".** Glib and perhaps overly-simple it might be, but the phrase "**actions speak louder than words" is really relevant here. Many warm words are spun about the furthering of disabled people - usually through a fear of getting sued - but positive action is often lacking.**

#### **Call-outs are quick fixes that offer the thrill of social assassination but crowd out the lower-profile work that needs to be done**

Finley 19 – Associate Professor of Sociology & Criminology at Barry University

Laura, with Matthew Johnson, “Sexual Misconduct, Callout Culture and the Possibility of Redemption.” In Factis Pax, Volume 13 Number 2 (2019): 117-133. http://www.infactispax.org/wp-content/uploads/2015/06/Finley-IFP-13.2.pdf

Although it was actually started more than ten years ago by survivor Tarana Burke as a means for women, especially Black women, to offer support to others who had endured sexual assault, the rapid spread of MeToo as a hashtag and a movement came in fall 2017 when several Hollywood actresses commented on the frequency of sexual assault and harassment in that industry. Alyssa Milano is often credited with starting the movement but has repeatedly acknowledged Burke. Milano was spurred to use the phrase MeToo when actress Rose McGowan accused Hollywood mogul Harvey Weinstein of rape. It wasn’t just Weinstein, however. The movement did prompt action against the accused in many cases — sometimes legal and other times shaming them within the industry. Yet there are definite limitations to the “callout culture.”

As Melo (2019) explains, what is missing in this public shaming is the chance for perpetrators to change. “The assumption is that tearing down fellow human beings will somehow eliminate their past bad behavior,” yet “Call-out culture seems increasingly concerned with the thrill of social assassination, rather than with remedying undesirable behavior. It does not seek justice for the wronged, but the destruction of the wrongdoer” (Melo, 2019). Similarly, Rebecca Hamilton (2017), assistant professor of law at American University, Washington College of Law, herself a victim of rape, asserts that naming her perpetrator would not help her, as it would bring him back to a place central to her thoughts. It would essentially force her to relive something she wish never happened. Further, calling him out would then also make her family, friends and colleagues share in the revictimization.

Hamilton (2017) further argues that social media campaigns like #MeToo view raising awareness as an end, not as a means to an end. They emphasize quick and visible solutions, such as the firing of perpetrators, and, “over time, they crowd out lower profile work that could ultimately create the structural changes needed to really reserve the problem” (Hamilton, 2017). What is particularly interesting is that progressives who typically critique the rush to judgement and the hyper- punitive system of justice in the U.S. often advocate just those things when it comes to sexual misconduct. That is especially true when it comes to allegations against someone who politically aligns progressive as well.

#### 1AR specifically makes the appeal that the ballot is a referendum on their identity as an individual with a brain aneurysm - th’t's a political dead end that weakens the struggle against oppression, especially where competition is involved

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Miriyam, “‘White privilege’ and shortcuts to anti-racism.” Institute of Race Relations, Vol. 61(2) 3–26. SagePub.

Racism, as a global phenomenon of oppression and exploitation, has specific local configurations with particular processes of othering and marginalising. Important structuring principles have been obscured through the tendency to exception- alise subjective skin-colour, or fixed geographic references as a code for oppres- sion. The increase in references to experientially grounded claims that are focused on skin colour differences have given primacy to anti-blackness, which has in turn reinforced essentialist definitions of race.

The invoked ranking of oppression has implications – firstly, it assumes an incre- mental logic from black to brown to white; secondly, the consequent hierarchies affect solidarities. We see this in certain applications of the term ‘non-black people of colour’ (code for ‘brown’, interchangeable with Arabs, North Africans, Asians, Latinx), where NBPoC either manifests the dropping of the collectivist PoC or highlights a specificity of blackness through ‘black people of colour’(BPoC). While this incrementalism grows into an ontology (a hierarchy that relies on (ascribed) racialised/geographic features), the specification also coincides with a critique of coalition politics that was underwritten by the term PoC that was, ironically, put forward by black feminists. Because ‘anti-black’ oppression also relies on the degree of closeness to ‘white’, such an order carries political meaning: a default complicity in anti-blackness. In practical usage, this ‘NBPoC’ does not refer to a collective group but rather produces the assumption that the individual is the collective- writ-small. Therefore, the NBPoC should not speak about or for (real) black struggles but is told to deal with anti-blackness in their own communities.

There are two immediate objections to this reasoning. First, it is strange to hold individuals accountable for varied (historic) injustices through a subjective demarcation regardless of other categories or conditions. hence, no one is immune if held accountable for what other members of their community do, let alone its general alliance with oppressive forces.27 Secondly, while ‘NBPoC’ indi- viduals (such as Turks or Moroccans in the Netherlands) are criticised somewhat out of proportion, white ‘allies’ remain unchallenged and white supremacy as a social reality, which impacts on all PoC, remains untouched. The idea that, for instance, a Dutch-Moroccan is more privileged than a Dutch-Surinamese or a Dutch-ugandan is mainly a result of a reactionary interpretation. In addition, ‘blackness’ is linked to an Africa romanticised as a continent and understood in an ahistorical way. Africa is divided by a biological hierarchy of skin colour and facial features – as if there are no cultural, linguistic, or religious differences between East, West, South, North and Central Africa.

Noting differentiations between groups is necessary to understand patterns of oppression and the multi-layered status of marginalisation is an important reason to take experiential knowledge seriously. Such internal differences can be over- looked by projecting standardised categories. Racism is generously distributed across a whole range of victims of anti-refugee politics, anti-blackness, Islamophobia, anti-Semitism, etc. But this state of affairs is also used to undermine ‘political black- ness’ or even the collective sense behind PoC. This complexity requires a nuanced approach towards racism; we cannot sweep all kinds of racism into one. The term ‘black’, when used politically, was not meant as a pigment marker. It denoted unity in struggle; a guideline for revolutionaries of colour who saw in the (racist) state a mutual enemy. So, organising in mixed groups together, uniting against police bru- tality, helps nail the lie of biological and essentialist notions of colour/race. Such a praxis actually allows one to raise the issue of prejudice within groups. Moreover, transformative awareness about, and radical commitment to, combating internal oppression is a crucial, if underestimated, possibility offered by unifying struggles. Across western metropoles, during particular eras a political outlook was shaped by struggles informed by internationalism and confidence. For them, the term black was a unifying radical denominator, a context in which activists were involved in an optimistic progressive politics within and across their respective communi- ties. This approach is exhibited in neither the current WP approaches nor the inven- tion of ‘NBPoC’. That this is easily overlooked confirms the difference between analytical and descriptive tools.

Much of my understanding of political blackness, and its breaking down by state policies of ethnicism, originates in the critical work of Sivanandan about multiculturalism and diversity in the uK.28 It is outside the scope of this article to offer a detailed account and compare the different contexts, but we can see how the bases on which state funds are allocated validate ethnic claims. Anthropologist Francio Guadeloupe has demonstrated this dynamic in a detailed account of the role of blackness and Afrocentricity for Dutch artists and activist scenes. The alignment of ethno-racial categorisation with state aims and funding regimes leads, according to him, to ‘strategic essentialism’.29A white versus black descrip- tor in line with uS usage does not actually have the same historic lineage in the Netherlands. This is where a ‘politics of fulfilment’ began to matter, and in turn, this accommodates a practice that encourages material and conceptual rivalries, or a ‘hyper commercialized meta identity’.30 unsurprisingly, this does not sit well with progressive politics. It indicates that the meanings of Africa, Afro, black are adapted and/or conflated as part of the larger re-interpretation of anti-racism. An international black nationalism grounded in a supposed sub-Saharan kinship is very unconvincing. This myth of a unified black identity (in the North American sense of the term) supposedly functions as the enduring reality of how race is understood by all peoples of sub-Saharan African descent, with a clear-cut divi- sion of human beings into black, brown, and white, as Guadeloupe notes.31 In this metanarrative, black identity is the prerogative of persons with what are consid- ered classic sub-Saharan features: dark skin, coiling or curling hair, and genetic ancestry in sub-Saharan Africa. ultimately, this supposed genetic ancestry (an updated version of the ontology of blood) is an invention where ‘Black identity belongs to sub-Saharan people . . . this [is a] metaphysical understanding of colo- nial history by which blood, skin, bone, and genetic ancestry slips in through the backdoor of [the] social constructivist avowal of race’.32 Taking a similar approach to Guadeloupe, olaloku-Teriba identifies a pattern where there is ‘on one hand, the exceptionalisation of a thing referred to as “anti-blackness”; and on the other, the mobilisation of this charge against “non-black people of colour” who attempt to draw comparison between black struggles and their own’.33 The ‘tension between the presumptions of this universalising analysis of racial categories and the as-yet unresolved question of blackness, what it is and who possesses it, plagues anti-racist politics and organising’.34

A problem emerges when emphasising ‘racism denial’, or utilising ‘brown privilege’, nurtures competition between ethnic minority groups. Naturalising differences among oppressed groups gives political currency to the wrong anti- racism. Any criticism of this view by non-black anti-racists is labelled anti-black, and hence, delegitimised. In this outlook, a radical holistic and material analysis of racism is opportunistically coded as ‘erasure’. Just like white people who mainly carry responsibility and will not ‘know’ what racism is, NBPoC will never ‘really’ know what it is like to be black since realising this can only come from personal experience. But what stops this logic from expanding to every subjective group? Men will never know what it is like to be women. Cis women will never know what it is like to be trans. Able LGBTQ women will never know what it is like to be a disabled LGBTQ woman. When political responsibility becomes invested in personal accountability or subjective characteristics outside of genu- ine coalition work, the space for transformative change narrows down. While it can work in a complementary way, replacing social reality with subjective experi- ence and a universal political vision of emancipation with cultural- or colour- based analysis weakens the struggle against oppression rather than strengthening it, as examples in the next section show.